

be packed into tight parcels.
Ms. Bashford has partitioned her book into thematic essays. She depicts the family culture of the Huxleys, their dynastic intelligence and literary prowess, their masterful capacity to synthesize scientific knowledge, and their driving conviction that the pursuit of pure truth was a

and Aldous Huxley, Julian's younger half-brother (a biophysician and Nobel laureate), Julian's distinguished sons Anthony (a botanist) and Francis (an anthropologist). She discusses the study by the Huxleys of the human species in the remote past, and their work to better, as they hoped, the social conditions of the

Generations of the Huxley family suffered from crippling depression. Thomas Huxley described his depressions as "paroxysms of internal pain" and "deserts of the most wearisome ennui." His father, a failed schoolmaster, was a melancholic who died in a mental asylum; his afflicted brother

neurologist Jean Martin Charcot. Julian, who had an acute episode of depression in 1912-13, described himself in 1917 as a "would-be suicide" sunk in "hopeless despair." He underwent a variety of treatments, including electroshock. His brilliant brother Trevenen, who spoke of being "lost in a pit an enormous way behind my eyes," hanged himself in 1914.

Squad, Portuguese men of war. These were first of all alive in their habitat, and then dead and dissected under microscopic investigation. He and, later, Julian studied fossilized and stuffed animals too.

Living creatures, however, delighted Julian best. In Oxford during the 1920s he fed Mexican salamanders
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Willfully Blind Justice

By Hands Now Known
By Margaret A. Burnham
Norton, 328 pages, \$30

By DAVID J. GARROW

THOUSANDS OF extra-legal killings of black citizens across the U.S. South were committed in the decades stretching from the Civil War's immediate aftermath until the peak of the black freedom struggle a century later. Lynching is the word most often used to describe these murders, but many of them, reaching from Camilla, Ga., in 1868 to Tulsa, Okla., in 1921, were nothing short of massacres, with deaths reaching into the dozens. Some, like Colfax, La., in 1873, are well-known in the historical literature, while others, such as Slocum, Texas, in 1910, remain relatively obscure.

One 2015 study counted a total of 3,959 such deaths between 1877 and 1950, but every student of the era readily concedes that any precise accounting is necessarily incomplete. The onslaught of white racist violence against black Southerners was

vast and sometimes—as in Eufaula, Ala., in 1874, and Philadelphia, Miss., in 1964—extended to white allies as well.

Margaret A. Burnham's "By Hands Now Known: Jim Crow's Legal Executioners" is part of a raft of recent books that aim to underscore an important part of this story: White Southern lawmen, more often than not, were directly complicit in such killings, and state prosecutors and courts rarely pursued criminal charges against the perpetrators. That left the responsibility for enforcement to the federal government. Yet finding clear constitutional support for federal authority to prosecute such crimes became a legal minefield from the initial Civil Rights Act of 1866 forward.

In theory, the 13th, 14th and 15th amendments could have been interpreted to sustain full-blown federal

**A raft of recent books
have chronicled why
convictions for lynchings
and other crimes were
so difficult to obtain.**

protection for the rights of those formerly enslaved, but in practice that expansive reading never was common. Two Reconstruction-era statutes, later known as 18 U.S. Code Sections 241 and 242, constrained its



CRUSADE Marchers outside Philadelphia, Miss., in 1964, protesting the murders of three civil-rights workers.

application and defined the future legal debate. The federal prosecution of the Colfax killers, engagingly chronicled in Charles Lane's "The Day Freedom Died" (2008), was derailed by the U.S. Supreme Court in *U.S. v. Cruikshank* (1876), in which the justices held that Section 241 could not be used to punish the actions of private individuals.

That left 18 USC 242 as the Justice Department's best possible tool to combat Southern lawmen who killed black citizens. This statute, however, presented two hurdles: one, the officials needed to have acted "under color of law" and, two, they needed to have acted "willfully," as per a 1909 amendment. Only when the Roosevelt administration created a dedicated civil-rights unit in 1939—the precursor to today's Civil Rights

Division—did enforcement of Section 242 finally become a live possibility.

Ms. Burnham, a professor at Northeastern University School of Law, takes the reader on a grim tour across the South ("Pensacola to Black Bottom," "Tuskegee in the Middle District," "Bad Birmingham," "Southwest Mississippi"). But the book is undermined by the author's ideology and limited engagement with other similar works. Twenty years ago, Philip Dray published a compendious history called "At the Hands of Persons Unknown: The Lynching of Black America," and while any student of the literature will read Ms. Burnham's title as a retort to Mr. Dray's, she never cites Mr. Dray's book, nor many other well-known volumes, including Christopher Waldrep's insightful "The Many

Faces of Judge Lynch" (2002), Kevin Boyle's "Arc of Justice" (2004) and Douglas A. Blackmon's prizewinning "Slavery by Another Name" (2008). Important histories by law professors such as Risa L. Goluboff's "The Lost Promise of Civil Rights" (2007) and Kenneth W. Mack's "Representing the Race" (2012) also go unmentioned.

Ms. Burnham rightly highlights "the chronic, unpredictable violence that loomed over everyday Black life" for decades—not just all across the South, including in major cities like New Orleans, but also occasionally in Northern cities such as Detroit. She offers brief summaries of the tragic family losses of dozens of black citizens killed by white lawmen, and also identifies fascinating but little-known black attorneys, such as William Henry Huff, who merit more sustained attention than she gives them. Yet those stories pass so quickly from one to another that, as the book progresses, even a diligent reader will be hard pressed to keep track of who was who.

Ms. Burnham's proclivity for obscurantist jargon is another recurring demerit. Readers may wonder what "a commanding counterstructure" is, or "the infrastructures of history," or what "the profound obduracy of social death" might mean. She invests heavily in asserting that the efforts of the Communist-sponsored Southern Negro Youth Congress (SNYC) in Birmingham, Ala., were "as vital and historic in the 1940s" as the famous

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Lynchings And the Legal System

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protests of the 1960s would later be. This is special pleading: Her father, Louis E. Burnham, was a top SNYC leader, and in her very next sentence the author concedes that SNYC's work "was only marginally effective."

Ms. Burnham generally emphasizes systemic causes for the campaigns of terror she chronicles. But she does observe, accurately, that "the most serious blow to an effective federal prosecutorial campaign against racist police brutality" was a single 1945 Supreme Court decision, *Screws v. United States*.

In the 1960s, the first civil-rights organizers to venture into southwest Georgia would speak of the region's most dangerous rural counties as "Terrible Terrell" and "Bad Baker." Baker's bad reputation was in significant part the product of Sheriff M. Claude Screws, who on the night of Jan. 29, 1943, aided by two other officers, killed the 31-year-old African-American Robert Hall in the town square of Newton, the small county seat, within earshot of dozens of witnesses. "The officers punned their prisoner with their fists and beat him with a solid-bar 2-pound blackjack," Ms. Burnham relates. "Neighbors, aroused by the commotion, heard the police shouting profanities and hollering to one another,



JUSTICE Michael Schwerner, James Chaney and Andrew Goodman, the civil-rights workers murdered in 1964 in Mississippi by members of the Ku Klux Klan. Unusually, the perpetrators were convicted by federal prosecutors.

"Hit him again, damn him, hit him again."

When the state of Georgia, unsurprisingly, failed to prosecute the three lawmen, two FBI agents from Atlanta were sent south and a thorough investigation ensued. Screws

When states refused to prosecute cases, the battle shifted to federal courts, and eventually to the Supreme Court.

and his accomplices were tried, found guilty and sentenced to three years each in federal prison, with their convictions affirmed on appeal. Then the U.S. Supreme Court agreed to hear Screws's case.

For over a decade, the justices had wrestled with applying the require-

ment for "state action" to various Southern misdeeds. The *Screws* case presented that issue in the form of Section 242's language, for as federal appellate judge Paul J. Watford explained in an erudite 2014 lecture, "it wasn't entirely clear what the phrase 'under color of law' meant." At the justices' private conference following oral argument, Kentuckian Stanley Reed zeroed in on what he felt was the problem: "I can't say he committed murder under state action," because Halls's killing was in no way in compliance with Georgia law.

Ms. Burnham describes some of the Supreme Court deliberations, criticizing both Justice William O. Douglas's controlling opinion, which overturned the *Screws* conviction, and the more expansive arguments made in a dissenting opinion by Justice Felix Frankfurter. Douglas's narrow decision imposed a new "specific intent" reading upon 242's "willfully" requirement, and at retrial under

that standard Sheriff Screws was acquitted. Frankfurter, who sought to void Section 242 itself, was well-nigh obtuse in castigating federal officials for not "leaving this misdeed to vindication by Georgia law." Section 242, Frankfurter incorrectly asserted, "was born of that vengeful spirit which to no small degree envenomed the Reconstruction era."

"The *Screws* case would define the terms of federal engagement with racially motivated police crimes for at least forty years," Ms. Burnham writes. She contends that it made convictions of state actors all but impossible. But that is not the full story: Judge Watford has persuasively argued that "the most important legacy" of the case was that "Section 242 survived" Frankfurter's attempt to void it, and thus was available to federal prosecutors to convict some, albeit not all, of the white Klansmen who murdered three civil-rights organizers

outside Philadelphia, Miss., in 1964.

Unfortunately, the author's analysis of these legal matters is constrained because, in essence, she considers all of American jurisprudence compromised: Justice cannot come through the courts. Her "ultimate teaching" is that "the regenerative tendencies of ancestral harms" require "an ideological debate about the American future that transcends the criminal legal system." She explicitly rejects "legal concepts" that are "encrusted in Western ways of thinking about individual responsibility" and envisions "structural remedies" that can advance "a social order that does not depend on carceral punishment" and which will appreciate "the parallels between modern policing and slavery."

The book advocates a modest start, for "we need not determine the full reach of a reparations project to agree that the families of victims of lynching and racial murder... constitute a distinct and distinctly deserving subset of victims." Yet she also advocates for "those who suffered in other ways" and cites "obligations that can persist for centuries" while giving no further specifics. The author identifies not only "the perpetrators' successors" but also "people at a temporal and geographic remove from the wrongs who nevertheless benefited" who should prepare to pay up. Ms. Burnham's argument is as clear as her book is weak.

Mr. Garrow's books include "Bearing the Cross," a Pulitzer Prize-winning biography of Martin Luther King Jr., and "Rising Star: The Making of Barack Obama."