This book explores the complex ways in which political debates and legal reforms regarding the criminalization of racial violence have shaped the development of American racial history. Spanning previous campaigns for criminalizing slave abuse, lynching, and Ku Klux Klan violence and contemporary debates about the legal response to hate crimes, this book reveals both continuity and change in terms of the political forces underpinning the enactment of new laws regarding racial violence in different periods and of the social and institutional problems that hinder the effective enforcement of these laws. A thought-provoking analysis of how criminal law reflects and constructs social norms, the book offers a new historical and theoretical perspective for analyzing the limits of current attempts to use criminal legislation as a weapon against racism.

Ely Aaronson is an assistant professor of law at the University of Haifa, Israel.
This series publishes leading-edge work in American legal history, broadly construed. Methodologically, the series seeks work that extends the boundaries of how legal history is defined. Substantively, the series is interdisciplinary, exploring law and legal history through numerous perspectives and techniques rather than particular doctrinal areas.

Previously Published in the Series:
Stuart Chinn, *Recalibrating Reform: The Limits of Political Change*
Ajay K. Mehrotra, *Making the Modern American Fiscal State*
Yvonne Pitts, *Family, Law, and Inheritance in America: A Social and Legal History of Nineteenth-Century Kentucky*
David M. Rabban, *Law’s History*
Kunal M. Parker, *Common Law, History, and Democracy in America, 1790–1900*
Steven Wilf, *Law’s Imagined Republic*
Rebecca M. McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776–1941*
Tony A. Freyer, *Antitrust and Global Capitalism, 1930–2004*
Davison Douglas, *Jim Crow Moves North*
Andrew Wender Cohen, *The Racketeer’s Progress*
Michael Willrich, *City of Courts: Socializing Justice in Progressive Era Chicago*
Barbara Young Welke, *Recasting American Liberty: Gender, Law and the Railroad Revolution, 1865–1920*
Michael Vorenberg, *Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth Amendment*
Robert J. Steinfeld, *Coercion, Contract, and Free Labor in the Nineteenth Century*
David M. Rabban, *Free Speech in Its Forgotten Years*
Jenny Wahl, *The Bondsman’s Burden: An Economic Analysis of the Common Law of Southern Slavery*
Michael Grossberg, *A Judgment for Solomon: The d’Hauteville Case and Legal Experience in the Antebellum South*
From Slave Abuse to Hate Crime

The Criminalization of Racial Violence in American History

Ely Aaronson

University of Haifa Law School
For Karin, Daniel, and Yahli
The headlong stream is termed violent
But the river bed hemming it in is
termed violent by no one

Bertolt Brecht, *On Violence*
# Contents

## Acknowledgments

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Toward a Historical and Sociological Analysis of the</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Criminalization of Racial Violence</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Progressive Criminalization at the Heart of Darkness?</td>
<td>26</td>
</tr>
<tr>
<td></td>
<td>The Legal Response to the Victimization of Slaves in the</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Colonial and Antebellum South</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>“Social Equality Is Not a Subject to Be Legislated Upon”:</td>
<td>61</td>
</tr>
<tr>
<td></td>
<td>The Rise and Fall of Federal Pro-Black Criminalization Policy, 1865–1909</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>“We Bring It Out in the Open, Where It Can Be Seen and Dealt With”:</td>
<td>99</td>
</tr>
<tr>
<td></td>
<td>Campaigning for Criminalization Reform in the Long Civil Rights</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Movement, 1909–1968</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Criminalizing Racial Hatred, Legitimizing Racial</td>
<td>154</td>
</tr>
<tr>
<td></td>
<td>Inequality: Hate Crime Laws and the New Politics of</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Pro-Black Criminalization</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Conclusion: Criminalization Reform and Egalitarian</td>
<td>188</td>
</tr>
<tr>
<td></td>
<td>Social Change – An Uneasy Relationship</td>
<td></td>
</tr>
</tbody>
</table>

## Index

| Page |
Acknowledgments

I have incurred many debts in the preparation of this book. It is an enormous pleasure to finally express my gratitude to the many teachers, colleagues, and friends who have helped me bring this project to fruition.

This project began as a doctoral dissertation written at the London School of Economics and Political Science (LSE). I owe my deepest thanks to Nicola Lacey and Robert Reiner, who supervised the thesis. My early meeting with Nicola Lacey as a student in her class on the sociology of punishment sowed the seeds of my interest in the history and theory of criminal justice. Since then, I have benefited time and again from her wealth of knowledge, unstinting support, and true friendship. She has been an incredible mentor and a constant source of inspiration to me. Robert Reiner has been extremely generous with his time, expertise, and intellectual gifts. I am grateful for his guidance and unwavering support throughout the different phases of this project. This book bears numerous traces of his profound influence on my thinking.

Working with Chris Tomlins has been an honor and a pleasure. I am forever grateful for his confidence in this project and for his enormous support along the way. His intellectual insights and editorial comments have helped to make this a far better book than I could otherwise have hoped for.

Throughout the four years I spent as a PhD student at LSE, I enjoyed the stimulating company of an extraordinary group of friends and colleagues whose scholarship focuses on criminal justice and social theory. I have benefited from numerous discussions with Zelia Gallo, Manuel Iturralde, Arlie Loughnan, Emanuel Melissaris, Peter Ramsay, and Hedi Viterbo – all of whom provided useful and perceptive comments on the dissertation. I would also like to thank Alan Norrie, whose probing questions and illuminating observations as the dissertation’s examiner encouraged me to explore new avenues of research while preparing this book. In ways large and small, the many great conversations with my close friend Eyal Geva influenced the ideas presented in this book and greatly enlivened my time in London.
The two terms I spent as a visiting scholar at the Center for the Study of Law and Society (CSLS) at the University of California, Berkeley, were immensely helpful in enabling me to complete the research and develop the arguments in this book. Jonathan Simon’s pioneering scholarship had a formative effect on my thinking about the role of crime and criminalization in shaping American politics and culture. I am grateful for his generous support and insightful comments, which introduced me to important material that would otherwise have been left unread. Malcolm Feeley offered excellent comments that challenged me to rethink various elements of my analysis. I am grateful for the many great conversations with and feedback from my fellow visiting scholars. On that score, special thanks go to Christopher Roberts and Daniel Margolies. I would also like to thank Rosann Greenspan for her friendly assistance and support. I admire her contribution to making the CSLS such an ideal place for research and writing.

I benefited enormously from conversations with friends and colleagues at the University of Haifa, which has been my academic home for the past four years. I am particularly grateful to Dean Gad Barzilai for his intellectual stimulation, personal support, and invaluable comments on draft chapters. Warm thanks are due to Sandy Kedar for inviting me to present my work in the faculty seminar and to the many colleagues and friends who provided cogent criticisms and helpful suggestions at that event. Yair Sagy offered extremely useful and perceptive comments on several chapters. Sincere thanks are due to Dekel Brilliant, for his outstanding research assistance. I am deeply appreciative of the financial assistance provided by the Alon Fellowship of the Israel Council of Higher Education over the past three years.

I had the privilege of discussing this project with David Nelken and Mark Tushnet, who gave me helpful and insightful comments on draft chapters. Josh Guetzkow deserves special thanks for his excellent comments and for his friendship. The opportunity to present my work in several conferences and workshops was immensely useful in testing and refining the arguments of this book. I benefited enormously from the comments made and questions asked by participants in the legal history workshops at Tel Aviv University and at the Hebrew University. I received a great deal of useful feedback on early versions of my argument from participants in the workshop on Citizenship and Criminalization in Contemporary Perspective, held at the LSE in December 2008, and from participants in the law and philosophy workshop at the Hebrew University.

The editorial team at Cambridge University Press has been wonderful. I thank the editor Deborah Gershenowitz and the editorial assistants Dana Bricken and Abby Zorbaugh for their enormous help.
Acknowledgments

A special debt of gratitude is reserved for Eric Crahan for his trust in this project. I also want to thank the two anonymous reviewers for their detailed, constructive, and insightful comments.

It is to my family that I owe the most. I thank my parents, Nurit and Ephraim Aaronson, for all their love and support through thick and thin. Liat Aaronson provided enormous help and support. My greatest debt, which continues to grow daily, is to Karin, the love of my life. In so many ways, she has made the writing of this book possible. I dedicate this book to her, and to our sons Daniel and Yahli, who enrich our life in such a delightful way. Nothing I write here can fully convey the love and gratitude I feel for them.