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SYMPOSIUM ON THE LAW OF SLAVERY

PAUL FINKELMAN
SYMPOSIUM EDITOR

INTRODUCTION

THE CENTRALITY OF THE PECULIAR INSTITUTION IN AMERICAN LEGAL DEVELOPMENT

Paul Finkelman 1009

This Article explores the ways in which the racial basis of slavery in the United States made it a "peculiar" institution, while at the same time discussing how slavery was a major force in the development of American law and a key factor in the evolution of constitutional interpretation.

THEORIES OF DEMOCRACY AND THE LAW OF SLAVERY

LEARNING THE THREE "I'S" OF AMERICA'S SLAVE HERITAGE

Derrick Bell 1037

In this Article, Professor Bell discusses the need to learn the history of slavery. A study of slavery and its aftermath teaches us that Black history is a continuing story of struggle and survival. Yet, that story provides direction for future civil rights actions and provides inspiration to those who will undertake those actions.

IDEOLOGY AND IMAGERY IN THE LAW OF SLAVERY

William W. Fisher III 1051

This Essay explores the relationship between the rules used in the Southern states to regulate the interactions of masters and slaves and the changing beliefs of white Southerners on three issues: What are Negroes like? Why is slavery just? How should an honorable and moral person live?

CONSTITUTIONAL LAW AND SLAVERY

SLAVERY IN THE CANON OF CONSTITUTIONAL LAW

Sanford Levinson 1087

Slavery was one of the constitutive institutions of the American constitutional order. It raised problems along the spectrum of doctrinal areas that resonate even in today's legal and political universe. Therefore, those who teach constitutional law should teach

far more about slavery than apparently is now the case, especially as measured by the treatment of slavery in most of the widely-used casebooks in the field.

**THE 1859 CRISIS OVER HINTON HELPER'S BOOK,
THE IMPENDING CRISIS: FREE SPEECH,
SLAVERY, AND SOME LIGHT ON THE MEANING
OF THE FIRST SECTION OF THE
FOURTEENTH AMENDMENT**

Michael Kent Curtis 1113

This Article shows how slavery suppressed free speech, press, and religion in the years before the Civil War and how these freedoms, essential to republican government, in turn threatened slavery. The crisis over free speech, free press, and freedom of religion shaped the Fourteenth Amendment, including its provision that "no state shall . . . abridge the privileges or immunities of citizens of the United States."

**A FEDERAL ASSAULT: AFRICAN
AMERICANS AND THE IMPACT OF
THE FUGITIVE SLAVE LAW OF 1850**

James Oliver Horton & Lois E. Horton 1179

This Article explores the impact of the Fugitive Slave Law of 1850 on the lives of the Crafts and other African Americans living in the North before the Civil War. It also examines how black people, working as individuals and in groups, responded to the new law and the threat it posed to the freedom of all African Americans, fugitives and free people alike. These responses ranged from cooperation and self-help to migration and violence. In their reaction to what many viewed as an assault by the federal government, African Americans revealed much about the strength of their racial and national identity.

**A NINETEENTH-CENTURY PRECURSOR OF
BROWN V. BOARD OF EDUCATION: THE TRIAL
COURT OPINION IN THE KANSAS SCHOOL
SEGREGATION CASE OF 1881**

Andrew Kull 1199

Professor Kull presents a Kansas trial court opinion that represents the earliest known judicial statement that the Fourteenth Amendment prohibited legal segregation of public schools. The opinion has remained unknown because it previously had been published only in local newspapers after the original trial.

CRIMINAL AND CIVIL LAW OF SLAVERY

**SLAVES AND THE RULES OF EVIDENCE
IN CRIMINAL TRIALS**

Thomas D. Morris 1209

This Article examines the ways Southern whites determined the conditions under which the evidence of slaves would be admitted in criminal trials. Among the factors considered are religious values, racism, the master-slave relationship, the property interests of owners, and legal traditions. The general policy trend, from the seventeenth to the nineteenth centuries, was from exclusion of evidence from slaves to admissibility.

**SOUTH CAROLINA'S LARGEST SLAVE
AUCTIONEERING FIRM**

Thomas D. Russell 1241

This Article presents data that demonstrate that half of all slave sales were sales by operation of law. Historiographic consequences result from this fact. The role of legal institutions and the motives of those who managed the courts and other agencies of law must be taken into account by economic historians when examining the history of slave selling.

**"DETAILS ARE OF A MOST REVOLTING
CHARACTER": CRUELTY TO SLAVES AS
SEEN IN APPEALS TO THE SUPREME
COURT OF LOUISIANA**

Judith K. Schafer 1283

Slaves in antebellum Louisiana had little practical protection from cruel treatment by their owners, overseers, or others who chose to abuse them. Only the most atrocious crimes resulted in criminal prosecutions, and even then, juries often refused to convict, despite overwhelming evidence of guilt. Appeals to the Supreme Court of Louisiana indicate that the legal system in Louisiana was more concerned with maintaining the property rights of slaveholders than providing even the most basic protection for those held in bondage.

**SEXUAL CRUELTY TO SLAVES:
THE UNREPORTED CASE OF
*HUMPHREYS V. UTZ***

Judith K. Schafer 1313

Professor Schafer presents a previously unpublished opinion from the Supreme Court of Louisiana that details cruelty of a sexual nature to slaves. This case is all the more remarkable because the supreme court case contains the complete trial court record. From the entire record we are able to learn grisly details of a type of cruelty that was rarely reported.

COMPARATIVE LAW AND SLAVERY

**SEVENTEENTH-CENTURY JURISTS, ROMAN
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Alan Watson 1343

This Article examines the intellectual baggage from their studies in Roman law that European scholars brought to their discussion of slavery and slave law, with which they had no personal experience or involvement.

THINKING PROPERTY AT ROME

Alan Watson 1355

This Article examines issues that arose at Rome because at law slaves were treated as property, but property that thinks.

**THINKING PROPERTY AT MEMPHIS:
AN APPLICATION OF WATSON**

Jacob I. Corr  1373

In this Comment Professor Corr  takes up the conceptual problems identified by Professor Watson in *Thinking Property at Rome* and shows how they manifested themselves in one particular corner of United States slave law.

BOOK REVIEW

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Ruth Wedgwood 1391

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THE KENNETH M. PIPER LECTURE

THE IMPACT OF THE EEC ON LABOR LAW

Bernd Baron von Maydell 1401

As the European Community develops towards political union, it will emphasize the social dimension to a much greater extent. This Article surveys the influence which the EC already exerts in the field of labor law, and discusses tendencies which are emerging with regard to future development.

THE EC VS. NAFTA: LEVELLING UP VS. SOCIAL DUMPING

Sheldon Friedman 1421

The priority given to the social dimension of economic integration in Europe stands in marked contrast to the approach to economic integration reflected in the North American Free Trade Agreement (NAFTA). Quite unlike the approach being followed in the EC, the NAFTA blueprint for economic integration is silent or, at best, ineffective by design on the critical issues of labor standards, workers' rights, and health, safety and environmental protections. In the European Community, by contrast, economic integration has been accompanied by massive "social funds" and a social charter that provides a framework for upward harmonization, and guards against the kind of "social dumping" that NAFTA will exacerbate.

THE IMPACT OF THE EUROPEAN COMMUNITY ON LABOR LAW: SOME AMERICAN COMPARISONS

Marley S. Weiss 1427

The European Economic Community is in the midst of a major reorganization and expansion of its spheres of competency and its institutional arrangements, including highly significant changes regarding labor-management relations. American labor relations law, too, may be on the verge of important change, although the dimensions and scope of the change are, at this point, difficult to ascertain. This Article does a comparative analysis of these changes.

**CHICAGO-KENT
DEDICATION SYMPOSIUM**

**Dean Richard A. Matasar
Symposium Editor**

