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PAUL FINKELMAN
SYMPOSIUM EDITOR

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"ONLY THE LAW WOULD RULE BETWEEN US": ANTIMISCEGENATION, THE MORAL ECONOMY OF DEPENDENCY, AND THE DEBATE OVER RIGHTS AFTER THE CIVIL WAR *Emily Field Van Tassel* 873

This Article explores the way the concepts of race and gender were used to shape the meaning, content, and limits of civil, social, and political rights during Reconstruction and beyond. First, it explains the antebellum South as a "moral economy of dependency" grounded in the household. Then, utilizing rights of citizenship, this Article suggests that however indeterminate the legal "rights" sought by the former slaves were, they were still preferable to the personal dependence that was the hallmark of the antebellum South.

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This Article examines the nature of the freedom experience by free African-American residents in Cumberland County, Virginia during the antebellum period. Focusing on landholding and litigation, the Article finds that much restrictive state legislation targeting free African Americans was enforced only sporadically in the County and that the one realm the state legislature never racially restricted during the antebellum period—land ownership and the rights accompanying it—remained accessible to Cumberland County's free black residents, although substantial variation existed in the size of individual holdings and the length of tenure.

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This Article focuses on the legislative history of five important federal laws enacted between 1870 and 1872 to enforce the Fifteenth Amendment. It examines the historical background of these laws; discusses how the lawmaking process reflected the Republican lawmakers' understandings of the meaning of such Reconstruction establishments as black freedom, political equality, and new federal-state relations; and analyzes how the intra-party political division affected the quality of federal enforcement of the Fifteenth Amendment in the post-Civil War era.

BETWEEN EMANCIPATION AND ENFRANCHISEMENT: LAW AND THE POLITICAL MOBILIZATION OF BLACK SOUTHERNERS DURING PRESIDENTIAL RECONSTRUCTION, 1865-1867 *Steven F. Miller, Susan E. O'Donovan, John C. Rodrigue, & Leslie S. Rowland* 1059

Even before obtaining formal political rights during Radical Reconstruction, former slaves actively contested the efforts of state and local lawmakers to circumscribe their freedom. The documents presented in this Article illustrate how unenfranchised black Southerners mobilized to demand equality before the law, to protest discriminatory and oppressive legislation, to insist on justice in the enforcement of the law, and to press for the suffrage and other privileges of citizenship.

THEY WHISPER: REFLECTIONS ON FLAGS, MONUMENTS, AND STATE HOLIDAYS, AND THE CONSTRUCTION OF SOCIAL MEANING IN A MULTICULTURAL SOCIETY *Sanford Levinson* 1079

Some of the most profound ways in which a state speaks include the construction of monuments, the design of flags, and the institution of public holidays honoring great individuals or events. To the extent that we are indeed a truly multicultural society, one can expect strongly varying responses to given monuments, flags, and holidays. This Article explores these issues in regard to memorializing the Confederacy and asks to what extent a society genuinely committed to eradicating the legacy of slavery can comfortably honor a society predicated on its maintenance. More particularly, does the Constitution compel any given answer to such questions, given the fact that the state enjoys no First Amendment rights as such and the possibility that the Fourteenth Amendment prohibits any state speech designed to establish or maintain a system of white supremacy? Even if one decides that the matter is best left to political decisionmaking by the society at large, what principles should undergird such decisions?

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Harvard Law Professor Charles Fairman and Supreme Court Justice Felix Frankfurter were two of the most influential commentators on the Fourteenth Amendment. Their contributions are generally analyzed separately. This Article treats the interrelationship of Fairman and Frankfurter from Fairman's days as Frankfurter's student to Fairman's work after Frankfurter's death, and concludes that they were kindred souls who really shared a joint enterprise.

YES, BUT WHAT HAVE THEY DONE TO BLACK PEOPLE LATELY? THE ROLE OF HISTORICAL EVIDENCE IN THE VIRGINIA SCHOOL BOARD CASE *Peyton McCrary* 1275

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"NEVER INTENDED TO BE APPLIED TO THE WHITE POPULATION": FIREARMS REGULATION AND RACIAL DISPARITY — THE REDEEMED SOUTH'S LEGACY TO A NATIONAL JURISPRUDENCE? *Robert J. Cottrol & Raymond T. Diamond* 1307

This Article explores the complexities of the history of gun control and the constitutional notion of the right to bear arms in Southern history. As a region, the South has always had a high history of gun ownership and private use of firearms. The South has also had some of the earliest legislative restrictions on gun ownership and judicial sanctioning of such restrictions. "Never Intended to be Applied to the White Population" questions the role of race and class conflict in developing Southern legislative and judicial approaches to the issue of firearms ownership and the extent to which these Southern approaches played a role in the development of a national jurisprudence in this area.

FREEDOM: BEYOND THE UNITED STATES

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In any system of slavery, the opportunity for a slave to become free lessens the burden of an inhumane institution. The Jewish law of slavery has provided for the manumission of slaves since ancient times. Evidence that, over the course of time, rabbis reduced the formal requirements for manumission justifies a finding that slavery under Jewish law was less harsh than other forms of slavery.

EMANCIPATION BETRAYED?: SOCIAL CONTROL LEGISLATION IN THE BRITISH CARIBBEAN (WITH SPECIAL REFERENCE TO BARBADOS), 1834-1876 *Anthony De V. Phillips* 1349

The ending of slavery in the British colonies in the Caribbean on August 1, 1838 should have meant full freedom for employers and employees, for capital and labour. The planters, however, persisted in attempting to constrict the boundaries of freedom and to make the labourers dependent on the sugar plantation regime. Since they controlled the legislatures in the colonies and had the ear of the Colonial Office in London, they enacted coercive legislation which aimed to control access to land, to limit wages, and to promote large-scale immigration of indentured labourers from India, China, and elsewhere.

BOOK REVIEW

THE ANTIDEMOCRATIC POWER OF WHITENESS *Kathleen Neal Cleaver* 1375

This Article is a review of David R. Roediger's study of the formation of the nineteenth-century working class, a work which focuses on the creation and the consequences of its racial consciousness. The convictions workers held based on white supremacy assisted them in accepting the harsh discipline of industrialization by displacing their anxieties and frustrations on dependent blacks, and thus helped crush the promise of democracy extended by post-Civil War laws of freedom. Roediger insists the study of class must be reconceptualized to acknowledge the participation of race in its creation, so that race and class no longer remain competing categories of analysis.

STUDENT NOTES AND COMMENTS

THE DIFFUSION OF DUE PROCESS IN CAPITAL CASES OF ACTUAL INNOCENCE AFTER *HERRERA* *Henry Pietrkowski* 1391

In 1993, the U.S. Supreme Court in *Herrera v. Collins* held that a capital claim of actual innocence based upon newly discovered evidence is not cognizable on federal habeas review absent an accompanying procedural error. This Article argues that the Court's decision in *Herrera* only serves to diffuse the problem of due process in such cases to inappropriate fora such as executive clemency and state habeas review. The Article concludes that the Supreme Court must reassert its jurisdiction over such claims by defining its vague "extraordinarily high" threshold standard in more clear terms.

FACULTY SCHOLARSHIP SURVEY

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