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## Book Review of Race, Law, and American History, 1700-1990

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Paul Finkelman (ed.), *Race, Law and American History 1700-1990: The African-American Experience*. New York and London: Garland Press, 1992. 11 volumes. \$995.

For three centuries, race has loomed as a central issue in American law and history. Indeed, few groups have had their identity shaped so decisively by legal rules and institutions as have racial minorities, particularly African-Americans. This eleven-volume set of materials attempts to bring together a broad sampling of the best scholarship in this area of race and American history.

Throughout the seventeenth and eighteenth centuries, colonial legislatures expended considerable energy redefining the status of Africans in the New World. Nineteenth century courts and legislatures further circumscribed the status of slaves and free blacks, leading ultimately to what has been perhaps the Supreme Court's most significant decision, *Dred Scott v. Sandford* (1857), and to the onset of one of the bloodiest wars in this country's history. Constitutional amendments — particularly the fourteenth amendment — and congressional legislation promulgated during the Reconstruction era attempted to protect the rights of the freed slaves. Nevertheless, emancipation eventually brought a new set of racial restrictions, as Jim Crow segregation and disfranchisement received the sanction of law by the end of the nineteenth century. Eventually, during the twentieth century, African-American effectively utilized legal process to secure basic political and civil rights: first, by means of the courts during the 1940s and 1950s, and then by

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6. "A Philosophy for Philistines," in *The Pathos of Distance* (New York, 1916), 354.

means of the legislative and executive branches of government during the 1960s.

Yet just as the law has dramatically influenced the status of African-Americans in this country, so has race influenced the development of American law. Two of the most important legal doctrines of the past century have emerged from the fourteenth amendment: the due process clause, which formed a critical part of the constitutional jurisprudence of the early years of this century, and the equal protection clause, the meaning of which has evolved in dramatic fashion during the past forty years. Indeed, the notion of equality, so central to American ideology and jurisprudence, has developed in significant measure as part of this country's struggle to redefine the legal and social status of African-Americans. Significantly, the most important Supreme Court decision of this century, *Brown v. Board of Education* (1954), involved an interpretation of whether racial segregation in the public schools violated the equal protection clause.

Not surprisingly, scholars from a vast array of disciplines, including the editor of this series, have paid considerable attention — particularly during the past twenty-five years — to the ways in which legal institutions and rules have affected racial minorities in this country. Indeed, one of the richest areas of American legal history has been in the area of race relations.

This ambitious eleven-volume collection containing over 250 articles is an attempt to draw together some of the best writing from historians, lawyers, sociologists, economists, and political scientists on the topic of the treatment of African-Americans in American law. The series includes several volumes organized on a chronological basis — the antebellum period, emancipation and reconstruction, the Jim Crow era, and the modern civil rights movement — as well as volumes that are typically organized, including voting, education, criminal justice, racial violence, and the legal profession. In so doing, the editor has made accessible an enormous wealth of materials from which to draw when considering issues of race in this country's legal and social history.

There are some acknowledged limitations with the materials which the editor has assembled. First, the bulk of the articles deal with post-Civil War law, given the fact that this publisher has previously produced similar collections that deal with the law of slavery. Second, the collection does not consider groups other than African-Americans, Native Americans, and Hispanic-Americans. Third, copyright constraints and cost considerations led the editor to rely almost exclusively on articles as opposed to book chapters and required the exclusion of a few articles that otherwise would have merited inclusion.

Despite these limitations, the series is an excellent resource for students and scholars of American law and race. The primary strength of the series lies in the fact that it has pulled together in one place most of the best articles that pertain to the treatment of race in American legal and social history; moreover, the editor has gone to great pains to cull materials from disciplines other than law and history to complete the set, including articles from journals of economics, sociology, education, and political science. In addition, each volume contains a limited bibliography that directs the reader to the leading monographs and articles on the subject that have not been included in the series.

The articles chosen reflect the various ways in which legal rules and institutions have affected racial minorities in this country. Some of the articles deal with significant judicial decisions; others analyze acts of Congress and state legislatures; others focus on the various activities of the executive branch; and still others explore the ways in which cultural and social attitudes have influenced the development of legal doctrines and institutions as they pertain to racial minorities.

The first volume of the series, designed as an overview of the topic, pulls together an array of essays that deal with some of the major legal themes that pertain to African-Americans. The second volume contains a few articles from the vast collection of materials written on the law of slavery; because the editor sought to avoid overlap with a previously published multi-volume set of materials on slavery, this volume contains several articles on slavery that are less well known. The third volume, focusing on the Reconstruction period, includes articles that address the debate over the meaning of the reconstruction constitutional amendments and congressional legislation as well as an assortment of regional studies that analyze the treatment of African-Americans in particular states and territories during reconstruction. Many of these local studies included in this volume address the northern and western experience in addition to the more traditional focus on the South. The fourth volume draws from the vast literature on the Jim Crow era. Many of these articles consider the ways in which the courts evaluated the various legal restrictions imposed on African-Americans; other articles examine the application of Jim Crow laws in specific communities. Furthermore, this volume draws from the significant body of literature wherein scholars have attempted to resolve the issue of when Jim Crow actually began. The fifth volume finishes the chronological survey of race in American history by collecting articles that pertain to the post-New Deal civil rights movement. Not surprisingly, a large number of these entries address the way in which the courts functioned as the central means by which legal standards evolved during this time period.

The last six volumes are organized thematically. Volume six addresses African-Americans and the right to vote, ranging from the voting rights of free blacks during the antebellum era to the Voting Rights Act of 1965. Several of the articles contained in this volume are regional studies, examining voting practices in particular states. The seventh volume treats the question of race and education; consistent with the vast literature on this topic and its importance in the historical development of the rights of African-Americans, the editor has compiled two separate volumes on this topic. Appropriately, many of these articles deal with the *Brown* decision and its meaning and impact; other articles examine the struggle for educational opportunities in particular communities. Volume eight deals with the ways in which the criminal justice system has been used to subordinate African-Americans from the colonial era to the present, addressing such issues as the rights of racial minorities to testify and serve on juries as well as some of the more celebrated denials of criminal justice such as the Scottsboro case. Volume nine explores the ways in which violence has served to support legal oppression of African-Americans, beginning in the context of slavery and continuing during the post-Civil War era. Much of this volume deals with the practice of lynching and the efforts to proscribe its use through federal legislation. The final volume considers the history of African-Americans in the legal profession, emphasizing both the limited number of black lawyers in this country until very recently as well as the stories of a few exceptional black lawyers.

Race continues today to be a central theme in American political and social life. This collection of articles provides an excellent resource for those seeking to understand the ways in which the law has shaped the African-American experience in this country over the course of the past three centuries.

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