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DYLAN C. PENNINGROTH'S
**THE CLAIMS
OF KINFOLK**

AFRICAN AMERICAN PROPERTY
AND COMMUNITY IN THE
NINETEENTH-CENTURY SOUTH



Dylan C. Penningroth

Penningroth is Associate Professor of History at Northwestern University, as well as a Research Fellow at the American Bar Foundation. Prior to his joining the Northwestern Faculty in 2002, he was Associate Professor of History at the University of Virginia, Charlottesville. He earned his Ph.D. in American History at Johns Hopkins University in 1999.

Penningroth's 2003 book, *The Claims of Kinfolk: African American Property and Community in the Nineteenth Century South*, won the Avery O. Craven Award from the Organization of American Historians. Penningroth further develops the themes of the book in his recent publications, "The Claims of Slaves and Ex-Slaves to Family and Property: A Transatlantic Comparison," *American Historical Review*, Vol. 112, 2007, and "African American Divorce in Virginia and Washington, D.C., 1865-1930," *Journal of Family History*, forthcoming 2008.

The Claims of Kinfolk

AFRICAN AMERICAN PROPERTY AND COMMUNITY
IN THE NINETEENTH-CENTURY SOUTH

With the appointment of Dylan C. Penningroth as Research Fellow in September 2007, the American Bar Foundation welcomed a scholar whose research opens up new perspectives on African American and U.S. legal history.

Penningroth, who holds a joint appointment as associate professor at Northwestern University, researches the social and legal history of slavery and African American family and community life in the nineteenth and early twentieth centuries, and investigates the same subjects and time period in the Gold Coast region of the present-day West African nation of Ghana. By bringing concepts from African history and anthropology to the study of African American history, Penningroth challenges conventional understandings of economic and social relations in the ante and post-bellum American South.

Central to Penningroth's research is the phenomenon, well-known among historians of American slavery, but perhaps not to non-specialists, of slaves owning property. What are we to make, he asks, of the seeming contradiction of "property" owning property? How did enslaved African Americans come to accumulate property? How did they make their ownership of property, which by law was illegal, known and how was their ownership acknowledged by other members of the community, both black and white? In the United States, how did slaves' ownership of property change in the days following Emancipation when finally they

could claim legal title to it or claim compensation for property seized by Union troops during the Civil War?

Penningroth's research on these questions unveils a deeply entrenched "extra-legal" system in the ante-bellum American South, one in which slaves' ownership of property provided them with economic benefits, however meager, even as it contributed to the smooth functioning of the larger, slave-based, Southern economy. At the same time, as Penningroth states, "a whole world of social relationships and negotiations lay behind the fact that slaves owned property." Kinship networks among slaves allowed them to accumulate property much more effectively, Penningroth argues, and, conversely, property helped strengthen — for those whose families were relatively intact — or "create" anew — among people whose biological kin may have been removed by sale or forced migration — kinship ties. In the social and economic upheavals that followed the Civil War, African Americans renegotiated the meaning of both kinship and property with government officials, former masters, their other white neighbors, and, crucially, amongst themselves.

As Penningroth notes, historians have explained African American economic and social life mostly by means of the paradigms of "accommodation and resistance" and "debates over cultural 'survivals' and acculturation," perspectives that make white

oppression the point of reference for understanding African American history. While by no means ignoring or downplaying the significance of conflict and negotiation between African Americans and whites both during and after slavery, Penningroth breaks new ground by putting conflict and contingency at the center of his analysis of black family and community life, an approach that

A whole world of social relationships and negotiations lay behind the fact that slaves owned property.

reveals the complexities of social and economic negotiations *among* African Americans. By viewing African American life "through the prism of African studies" Penningroth uncovers "a whole world of black-black social relations," a world in which "the meanings of property, race, and kinship were interrelated, and none of them stood still for long."

Penningroth's book, *The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South* (University of North

Carolina Press, 2003), provides an in-depth exploration of the ties between property and kinship among African Americans. The first chapter introduces alternate ways of thinking about slavery and kinship by way of a case study of slavery in the Gold Coast region of present day Ghana and its relationship to family and property. Africans in this region as well as other parts of the continent held slaves, and the Gold Coast also functioned as a major port in the North Atlantic slave trade, until the trade was outlawed by the British in 1807. Slavery within the Gold Coast was "woven into the fabric" of society for hundreds of years, and deeply entwined with notions of kinship.

Slavery in many parts of Africa leaned heavily on an ideology of kinship rather than an ideology of race, as in the United States, Penningroth observes. Africans were required to give up their kin ties upon enslavement, becoming metaphorical "orphans" who were gradually absorbed into their masters' lineages as subordinate members (at least in theory; the process was not automatic or certain). When slavery within the Gold Coast was abolished by the British colonial power in 1874, the fabric of society changed as both former slaves and former masters made property claims against each other, based on notions of "kinship" between them.

Penningroth does not imply that

African notions of property and family carried over to the US South with the arrival of enslaved Africans, or that African Americans' post-Emanicipation experience was directly similar to that of former slaves in Ghana. Rather, he uses "methods and insights from a case study of African history and anthropology to raise new questions about African American history." As Penningroth states, "property was at the heart of African Americans' ideas about family and community and, after slavery ended, it helped mold their relationship to the state. In turn, black people's social ties helped 'make' property. That connection between claiming kin and claiming property is central to recent work in African history and anthropology, and in the 1800s it defined an important part of everyday life in both Africa and America."

SLAVERY'S OTHER ECONOMY

In the second chapter of *The Claims of Kinfolk*, Penningroth draws on a rich variety of historical sources to establish that "there was a significant informal economy of property ownership and trade among enslaved people throughout the [American] South." The two main systems of slave labor, though harshly demanding, still allowed time for slaves to work in their own interests. In the Low Country of the southern Atlantic seacoast, the "task system,"

where slaves were assigned a certain amount of work per day, predominated. By completing tasks quickly, slaves opened up time to raise their

“By bequeathing property, slaves over and over again defined not only *what* belonged to them but also *who*.”

own cash crops or produce, to help other slaves finish their tasks, to hire themselves out to other masters, either on their own or their master's initiative (in either case always giving a cut to their master), or to craft baskets, harnesses and other useful items for sale. As Penningroth asserts, "this practice of organizing labor by task rather than by time was the taproot of property ownership by Low Country slaves." To the west, in the large cotton plantations that stretched from inland Georgia to Louisiana and in the tobacco and wheat farms of the Upper South, slaves worked in "gangs" for a set amount of time per day. However, most gangs did not work on Sundays, except during the harvest, and some had Saturday afternoons free as well, freeing up time for slaves to work in

their own interest. Under both the gang and task systems slaves were allotted plots of land for their own use, a critical factor in their ability to raise funds to acquire property.

Penningroth's research findings indicate that, far from being exceptional, or limited to specific subregions, as most historians have assumed, "property ownership was generic among slaves, and...it was perfectly compatible with the institution of slavery." Slaves who owned property were relatively free to trade it, and "exchange money and labor with one another, with their masters, and with nonslaveowning whites," Penningroth reveals. Slaves' participation as relatively independent agents in these activities was sometimes controversial, but was widespread and officially regulated. As Penningroth states, "no law ever formally recognized slaves' ownership of property, yet many southern towns had laws to regulate slaves' marketing of property." Property-owning slaves were ubiquitous and were tolerated by masters, Penningroth states, because "slaves' ability to earn, own, and trade property directly boosted the formal economy of the plantation..." By producing or buying their own food and clothing, slaves lowered production costs on plantations and increased profit margins. Slaves' ownership of property was thus advantageous to masters whose goal was "to capture exactly as much of the



Enslaved African Americans “protected their claims...by using public occasions and public spaces to display their possessions and to secure acknowledgement from their masters,” Penningroth notes.

slaves’ time as the plantation’s crop required at any particular moment while spending as little as possible to subsist the slaves.”

FAMILY AND PROPERTY IN SOUTHERN SLAVERY

Penningroth is quick to point out that while concessions from masters allowed slaves to own property, it was slaves’ relationships with each other that not only helped them acquire it, but also establish their claims of ownership. He devotes the third chapter

of *The Claims of Kinfolk* to an exploration of the meanings property had for enslaved African Americans, meanings, Penningroth observes, “that often departed from what the law said.”

Though some slaves gained property by working individually for hire, the majority acquired it by working together with kinfolk. Children worked alongside their parents in “after-task” time, raising crops and livestock, among other activities, or they were sent to market to sell their

family’s produce and wares. Young children also took care of many household tasks, freeing their parents to work in the family’s interest. When old enough to work in their masters’ fields, young slaves continued to spend spare time working for their elders, Penningroth notes. Thus, “children helped to create family wealth and learned the importance of gathering property.”

At the same time, parents could and did bequeath property to their children. Inheritance was “one of

the most important ways slaves got their start as property owners,” Penningroth states, but it also helped define kinship. “By bequeathing property, slaves over and over again defined not only *what* belonged to them but also *who*.” These acts of claiming kin prompt us to consider the power relations implicit in black kinship, Penningroth asserts, which are often glossed over in scholarship on the 19th-century black family, which tends to stress unity in opposition to the master.

In addition to their biological kin, slaves drew on wider social networks in their acquisition of property. Engaging in “joint effort and negotiation,” slaves worked with others who came “from different families, had different occupations and legal statuses, and lived on different plantations.” Through these networks, which sometimes included free blacks, slaves provided services for each other, pooled their resources, bought and sold goods, created trading links with more distant partners, and overall enabled each other’s participation in an informal, extralegal economy.

Once slaves acquired possessions such as livestock, wagons, grain, and other items, they needed to make their rightful ownership known. In some cases, they were allowed to adopt traditional practices of property marking common in the South, which were also used by whites. For example,

hogs and other smaller livestock were usually allowed to forage unfenced across the countryside, necessitating that they be branded or marked with distinctive ear cuts, and that all owners — masters, non-slaveholding whites, and slaves — acknowledge each other’s marks. Slaves, in fact,

“
I know
it was his
because every
man on one place
know every other
man’s property...
All go in his
yard before
his door.”

were often required to have their masters present when they branded their hogs, or they paid neighboring whites to do the branding for them, creating witnesses to their ownership. Thus, traditional methods of property marking, “pulled together masters, slaves and local whites in tacit cooperation,” Penningroth states.

With other kinds of property enslaved African Americans “protected their claims...by using public occasions and public spaces to display their possessions and to secure

acknowledgement from their masters,” Penningroth notes. On plantations, slave cabins were usually clustered in rows within sight of the master’s house. In these quarters, slaves stored their property in the cabin yards, visible to masters and slaves alike. “In the absence of legal protection,” Penningroth observes, “the claim a slave had to property seems to have depended on his or her long association with a thing, an association that had to be visible to as many eyes as possible.” As evidence of this way of thinking, Penningroth cites one ex-slave who testified in a property claim, “I seen it in her possession and her master knew it, and everyone considered it her property.” Similarly, another ex-slave testified, “I know it was his because every man on one place know every other man’s property...[He] can’t help from knowing it. All go in his yard before his door.”

Just as slaves called on their social networks to help them obtain property, so property helped maintain, and even create those relationships, Penningroth argues. The informal, extralegal system of property ownership entwined slaves in a web of public acknowledgement, exchange and mutual obligation so deep that in some cases it could be said to not only call on kinship but also to “create” it. Property was valuable to slaves, not just as something “to be used or consumed,” Penningroth states, but

also “in the social relationships it embodied, ready to be called into action.” As Penningroth observes, “slaves’ efforts to raise and keep property were built largely on their relationships with one another, especially with family members. At the same time, family ties were flexible

to pursue claims to property and family, yet they also utilized alternative “extralegal forums” (such as church meetings, family meetings, and public arguments) in these matters, and “did not draw a sharp line between these venues.” In the fourth chapter of *The Claims of Kinfolk*, Penningroth

including slaves and ex-slaves. The Freedman’s Bureau, and the related American Freedman’s Inquiry Commission, was also a branch of the army, which “extended and institutionalized the provost marshal’s legal protection of freedpeople,” and which operated until 1869. The Southern

“**Though government officials badly wanted to reconstruct the South on the trusted bedrock of law, in practice, legal and extralegal processes were hopelessly, vibrantly mixed together.**”

and negotiable, influenced by many factors other than marriage and descent, including people’s interest in property.” Seen in this light, property opens a window on the contingent nature of black kinship, which historians have usually assumed to be natural or stable, apart from disruptions induced by masters, Penningroth argues.

IN AND OUT OF COURT

Emancipation and the end of the Civil War brought many changes to the South, not the least of which were changes of the legal status of former slaves. African Americans’ families were now legally recognized, as was their right to own property. During Reconstruction ex-slaves accessed courts and other formal legal settings

explores the “complex story of ambivalence, change, and creative tension between legal and extralegal systems in the South,” after the Civil War. “Though government officials badly wanted to reconstruct the South on the trusted bedrock of law,” Penningroth notes, “in practice, legal and extralegal processes were hopelessly, vibrantly mixed together.”

In the waning days of the war, and for some years thereafter, African Americans took their claims to a variety of military courts, set up by the Union army, the records of which are key to Penningroth’s research. The provost courts were originally intended to discipline troops, but as the Union took over larger parts of the South the court’s authority was extended to civilians,

Claims Commission, set up in 1871 to hear claims from Unionist southerners whose property had been seized by Northern troops during the war, provided the bulk of records used by Penningroth in his research. Between 1873 and 1880 the Claims Commission considered 22,000 claims and heard testimony from 220,000 witnesses. Five thousand successful claims survive today, of which, Penningroth discovered, five hundred were filed by former slaves.

Northerners, who had assumed that slaves knew nothing about property, were startled when “reports of slaves who owned property flowed into the American Freedman’s Bureau from all over the South.” The Southern Claims Commission, for its part, had not been set up with ex-slaves’



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claims particularly in mind, Penningroth notes, but the nature of the Commission made it an attractive and logical forum for some ex-slaves’ property claims. One of the Commission’s criteria for compensation was proof of loyalty to the Union, so it relied on both written and oral testimony of neighbors and acquaintances of claimants. As Penningroth points out, the Commission’s “emphasis on local knowledge in finding facts about the loyalty of white claimants — and its searches for both written and oral

evidence — opened opportunities for ex-slaves to assert claims to property, and even to revive the extralegal practices that had secured ownership during slavery.”

At the same time, free African Americans used the courts to settle domestic and community disputes amongst themselves, Penningroth notes. Courts heard cases involving domestic violence, child support, debt, fraud, theft, assault, battery and rape. Many cases involved both property and kinship, as in the case

of disputes about property during divorce. “More than anything else,” Penningroth states, “ex-slaves used the courts to make claims to property and kinship.”

Yet, however much African Americans used official legal means to protect their property, their access to courts and commissions did not stop them from continuing to engage in familiar “extralegal practices that had anchored property claims during slavery,” Penningroth asserts. The legal system could be expen-

sive, and in some instances hostile and racially discriminatory toward ex-slaves, so church meetings, family meetings, conjurers and fortune tellers, local committees, and loud “public displays of argument and insult” continued to be important means for the airing of disputes among African Americans. “Moreover,” Penningroth states, “African Americans began to use those forums to make claims not just to property but to kinship as well, asserting both their membership in families and their authority over their kinfolk.”

Ex-slaves sometimes “shuttled between” extralegal forums and the formal courts in settling the same disputes, and not necessarily because the extralegal forum had failed to bring the parties to a mutual agreement. Penningroth cites a case where two ex-slaves brought a debt dispute to their church for settlement, and accepted the church’s decision, but later took the matter to court because the debtor failed to raise the necessary funds. African Americans also used the threat of court as leverage in negotiations carried out in extralegal forums. The informal, out-of-court settlements that resulted were bolstered by the use of local witnesses to the agreement.

Out of necessity, white judges and claims agents blended the two systems as well, Penningroth notes. In the South in the late 1860s “property ownership still depended on

local understandings and knowledge,” and most poor southerners, black or white, lacked any written receipt or title to their property. “Consequently,” Penningroth states, “the commission leaned heavily on witnesses to provide the information about property that it could not find in duly recorded legal documents.” Ex-slaves

“As black families and communities were getting bigger, they were also becoming less equal inside.”

usually had little trouble producing such witnesses, Penningroth notes, as “prewar living conditions, the system of display, and the intense affective ties created by shared interests in property fostered detailed knowledge of property...”

But, according to Penningroth, claims agents favored the testimony of white witnesses, and were more likely to consider the claims of blacks who could produce at least one white witness. Blacks found themselves at a disadvantage in claims hearings because, while many ex-masters did

not dispute ex-slaves’ claims, and were willing to testify, the majority of supportive ex-masters “did not value property in the same way that ex-slaves did.” “Slaves had valued some objects not only for their worth in exchange but also because those objects were enmeshed in a network of social relationships that made them personally and culturally precious,” Penningroth states. The personal and social meanings of property were “‘use’ values that former masters and federal agents did not understand and that had no equivalents in the monetary awards of the commission.”

REMAKING PROPERTY

Northern officials’ conception of property derived from a set of assumptions that had taken shape over the course of the nineteenth century, with the move toward “more purely capitalist relations of land, labor, and capital,” Penningroth notes. As part of this transition, a traditional conceptual orientation of property around land was replaced with an orientation towards chattels and other less stable kinds of property, “putting property into flow, freely alienating it in the market.” Legal theorists and judges rationalized the system of property, founding it on two assumptions: “that law defined property and that property was an indivisible, individual possession.” Penningroth devotes the fifth chapter of *The Claims of Kinfolk* to

an exploration of African Americans' negotiations, in the face of these new ideas, "with northern bureaucrats, white landlords, and other black folk about the ownership and meaning of property."

During the war, as Union troops advanced through the South, agents from the Treasury Department had painstakingly recorded property seized from civilians, using a system of receipts and ledgers. This system was intended to preserve the idea of private property during the upheavals of war, to bolster Unionism in the South, and to enable loyal Southerners to apply for compensation after the war. Yet, as they compiled detailed records, Penningroth notes, "agents began to change the meaning of property. By introducing this written system of receipts and ledgers into people's lives, the federal government laid the groundwork for a system of property ownership based on formal law rather than on display and acknowledgement, and one that aimed to reduce the complex social networks of southern ownership practices down to an exclusive individual legal right."

Most ex-slaves, however, still adhered to their customary conceptions of property, and thus, "successful [property] claims had to resolve the conflict of expectations between ex-slaves and federal officials." Unlike northern officials, "ex-slaves thought that what made an object into prop-

erty was not that it disappeared into the private sphere of a single person," Penningroth argues, "but that it was associated publicly with people... each piece of property embodied the interests of several people, including the master." Nevertheless, ex-slaves strategically adjusted their property claims to fit the assumptions of federal agents and judges, Penningroth notes. In these instances,

“For the most vulnerable black southerners, belonging *in a family* could almost mean belonging *to a family*.”

ex-slaves "conformed their testimony to the rules of the commission," as in the case of Linda Jones, who individually claimed a corn mill "taken from beside her house," but which, as her testimony revealed, the slaves on her plantation had bought and used collectively.

Yet, in staking claims to property, African Americans by no means abandoned the older system of display and acknowledgement; rather they adapted it to fit new realities. The typical layout of living quarters

changed after the war, as ex-slaves moved out of the old centralized slave quarters to scattered clusters of tenant housing that were closer to the fields in which they worked. Living away from view of their ex-masters or current landlords, but clustered together, ex-slaves continued to display their property to each other in house yards and other public spaces. "By taking themselves and their property away from the oversight of white landlords, ex-slaves showed they no longer considered their property claims to be a custom or a privilege but a right." At the same time, as Penningroth points out, "such changes in the plantation landscape raised the stakes of negotiation among blacks — especially among kin."

REMAKING KINSHIP AND COMMUNITY

In his final chapter Penningroth explores "how African Americans' understanding of marriage, family and community changed during the years after emancipation." Though newly free African Americans experienced the joy of reuniting scattered kin, they also wrestled to redefine what "family" meant in a shifting social and economic environment. Penningroth's research reveals how, in the upheavals of the post-war period, black family and community life involved not just belonging but also conflict and exclusion, not just acceptance, but also dominance and submission.

With freedom, African Americans continued to call on their children, grandchildren and other younger relatives to work for them. To maintain as much independence from white employers as possible free blacks “leaned heavily” on their children, sometimes imposing harsh discipline, Penningroth notes. Children now found themselves under the sole authority of family members for a longer portion of their lives than under slavery as “kinship [became] the language of choice among freed-people for claiming authority over other black folk.”

Marriage had to be renegotiated as well and, according to Penningroth, the evidence suggests, “some level of struggle over women’s work,” and women’s property. Women who had married men who lived on different plantations now shared a full-time residence with their husbands in tenant housing, where both their property and work came under his scrutiny (when not working in the fields, women put in long, unpaid hours tending to domestic chores in their tenant compounds). As Penningroth states, “the same changes that hid black women’s work from whites made it more visible to other black people, especially relatives, who now could legitimately claim it for themselves.”

Family and community structure were further reconfigured by the thousands of black war refugees

“Property was less an institution or a legal right than a social process.”

who migrated throughout the South. Some displaced ex-slaves banded together in groups as large as 200, referring to themselves as “families.” Others were taken in by more conventional families as they started new lives in new settings. But the new arrivals could cause tensions in communities as, desperate for work, they accepted lower than customary wages from white employers. Newcomers could also jeopardize longtime residents’ property, as landlords allowed them to work on land already allotted for the personal use of others.

“As black families and communities were getting bigger, they were also becoming less equal inside,” Penningroth observes. As strangers were integrated into the life of the community, claims were made on their labor and time. Though they found protection in larger families, strangers were vulnerable, “making it easy for longtime residents to integrate them as junior, inferior members of their families or communities,”

Penningroth notes. Through their labors newcomers helped to create property, but were not always successful in claiming their interests in it. Given their status, Penningroth states, for the new arrivals “belonging *in* a family could almost mean belonging *to* a family.”

As Penningroth concludes, “there is much more to being black than the struggle against white oppression,” as evidenced by the “vibrant, creative tension between social solidarity and difference among African Americans.” Moreover, “understanding the dynamics of black social relations in the 1800s may require changing some of our basic assumptions about property, kinship and the way communities work.” Penningroth’s research leads him to conclude that, for African Americans (and possibly for poorer white southerners), “property was less an institution or a legal right than a social process.” The complex networks of social relationships that “made slaves’ possessions into property” prompt us to find property within the “messy swirls of history,” setting aside, at least for a moment, our more static, abstract notions of what property means. [1](#)

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