

## Book Review

Kirt von Daacke, *Freedom Has a Face: Race, Identity, and Community in Jefferson's Virginia*, Charlottesville: University of Virginia Press, 2012, pp. 288, \$45.00

Alfred L. Brophy

*Freedom has a Face* is one of several recent books causing us to rethink rather dramatically the legal history of free people of African descent in the South during the years of slavery. It is part of a wholesale rethinking of Southern and African-American history, which has implications for legal historians' assessment of the ways that the Southern law of race operated and just how much statutes, the dictates of judges and local law enforcement, community norms, and interpersonal dealings worked for those in the twilight zone between slavery and freedom. Therein lies a story.

Once upon a time, in the early 20th century, Southern history was dominated by the moonlight-and-magnolia school, which depicted slavery as a benevolent institution that gave enslaved people a home and provided them an education. This school, which, like the idea of separate but equal, was challenged from the beginning, was eclipsed somewhere around World War II with a very different interpretation. The new interpretation focused on the harshness of slavery. Kenneth Stampp's *The Peculiar Institution*, published in 1956, is representative of the new school.<sup>1</sup> Subsequent historians pushed it even further, even likening slavery to concentration camps. The reaction to that was not so much to challenge the harshness of the system of slavery, but to say that there were pieces of the story that needed to be told *in addition* to the harshness. This new line of argument, represented by works like John Blassingame's *The Slave Community*<sup>2</sup> and Eugene Genovese's *Roll, Jordan, Roll*,<sup>3</sup> taught us that African-American culture thrived despite the institution of slavery.

Yet there was also a parallel theme alongside the literature on the lives and minds of African Americans during slavery, about the brutality of slavery. In the past fifteen years there have been such works as Ira Berlin's *Many Thousands*

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1. KENNETH M. STAMPP, *THE PECULIAR INSTITUTION: SLAVERY IN THE ANTE-BELLUM SOUTH* (1956).
2. JOHN W. BLASSINGAME, *THE SLAVE COMMUNITY: PLANTATION LIFE IN THE ANTEBELLUM SOUTH* (1972).
3. EUGENE D. GENOVESE, *ROLL, JORDAN, ROLL: THE WORLD THE SLAVES MADE* (1974).

*Gone*<sup>4</sup> and Walter Johnson's *Soul by Soul: Life Inside the Antebellum Slave Market*.<sup>5</sup> Other recent and important volumes, such as Annette Gordon-Reed's *The Hemingses of Monticello*, have this as an important subtheme, even as they focus on the lives and ideas of enslaved people independent of slavery.<sup>6</sup> Then there is work that focuses on the proslavery ideology.<sup>7</sup> It serves as an analog to the works on the harsh reality of life of the enslaved by focusing on the ideas and motives that kept people in slavery. There is now substantial question about which elements to emphasize about slavery—the brutality or the ways that enslaved people lived lives independent of that brutality.

There is another strand to this literature that looks at the lives of free people of African descent in the South over the era of slavery. The great historian John Hope Franklin first opened this field in 1943 with his book *The Free Negro in North Carolina*. Franklin looked at the way that law regulated the lives of free people. He had two key themes: the problem of “obtaining freedom” and the problem of “maintaining the status of free people.”<sup>8</sup> Ira Berlin's *Slaves Without Masters* similarly focused on the legal system's harshness toward free blacks, especially when rebellions were afoot.<sup>9</sup> Among his examples were the laws that required free people to register with local officers and those that required recently emancipated people to leave their state.<sup>10</sup> Such laws testified to the belief that free people could facilitate rebellion and that such free people provided an example to enslaved people that freedom was a distinct possibility. The only right that remained intact, Berlin surmised, was the right to hold property. Berlin called that “a striking commentary on the America idea of liberty.”<sup>11</sup>

Just as histories of slavery recognized that enslaved people had lives despite the conditions of slavery, some books began to recognize the property holdings of free people. Loren Schwenger's *Black Property Owners*<sup>12</sup> and Michael P. Johnson's and James L. Roark's study of a free man who was also a slave owner suggested a turn in interpretation toward the ways that free people of

4. IRA BERLIN, *MANY THOUSANDS GONE: THE FIRST TWO CENTURIES OF SLAVERY IN NORTH AMERICA* (2000).
5. WALTER JOHNSON, *SOUL BY SOUL: LIFE INSIDE THE ANTEBELLUM SLAVE MARKET* (1999).
6. ANNETTE GORDON-REED, *THE HEMINGSSES OF MONTICELLO: AN AMERICAN FAMILY* (2009).
7. See, e.g., CHRISTOPHER TOMLINS, *FREEDOM BOUND: LAW, LABOR, AND CIVIC IDENTITY IN COLONIZING ENGLISH AMERICA, 1580-1865* (2010); Alfred L. Brophy, *The World Made By Laws and the Laws Made by the World of the Old South*, in *SIGNPOSTS: NEW ESSAYS ON SOUTHERN INTELLECTUAL HISTORY* 219-33 (Sally Hadden & Patricia Minter eds., 2013).
8. JOHN HOPE FRANKLIN, *THE FREE NEGRO IN NORTH CAROLINA, 1790-1860*, at 56-57 (1943).
9. IRA BERLIN, *SLAVES WITHOUT MASTERS: THE FREE NEGRO IN THE ANTEBELLUM SOUTH* (1974); FRANKLIN, *supra* note 8, at 71-73.
10. See BERLIN, *supra* note 9, at 327-32 (discussing uneven enforcement of registration law); *id.* at 320 (discussing local ordinances that restricted free people); *id.* at 333-34 (discussing heightened enforcement in wake of rebellions).
11. *Id.* at 97.
12. LOREN SCHWENGER, *BLACK PROPERTY OWNERS IN THE SOUTH, 1790-1915* (1990).

African descent successfully negotiated around the harsh segregation statutes and the norms of white supremacy.<sup>13</sup>

That is where the literature stood a decade ago when Melvin Ely's *Israel on the Appomattox*, a study of a community of free people in Prince Edward County, Virginia, from the turn of the 19th century through the Civil War appeared.<sup>14</sup> Ely studied a community of people freed by their owner in the 1790s. Those freed people and then their descendants lived on several hundreds of acres along the Appomattox River until the 20th century. Ely based this study largely on public records, such as land records, wills, the occasional civil suit, and even some criminal prosecutions. Thus formal law lay close to the heart of Ely's book. Yet his focus was their everyday life rather than statutes. He showed the community protected itself, even prospered. All of this was happened a few counties over from Southampton, Virginia, where, in the wake of Nat Turner's rebellion, enslaved people and perhaps a free person, too, were executed without trial.<sup>15</sup> Ely opened up the possibility of further investigation of the lives of free people—particularly their interactions with the legal system—in pre-Civil War Virginia. Other more recent work has developed the theme of the economic and social options and property of free people in Virginia and their ability to maintain a life despite Virginia laws that required both registration of free people and removal of recently freed people.<sup>16</sup>

That is where Kirt von Daacke's exciting work on the free people of Albemarle County, Virginia—home to Charlottesville and the University of Virginia—comes in.<sup>17</sup> Von Daacke widens the horizon that Ely began with, because he is looking at free people across the entire county, not an insular community. He also looks across a set of legal records—land transactions, civil suits over commercial transactions, freedom suits, and criminal prosecutions. The results are surprising—I'd even be tempted to say shocking. Yet, von Daacke is convincing me that there are important lessons emerging from the work on the lives of free people in slave states. For he shows that Albemarle's free people had a degree of economic importance and power—and even had respect from many in the white community—that is at odds with what one might expect in the depths of the era of slavery.

13. MICHAEL P. JOHNSON & JAMES L. ROARK, *BLACK MASTERS: A FREE FAMILY OF COLOR IN THE OLD SOUTH* (1984). There were regional variations too. For instance, the free people of Maryland may have had more in common with free people in Pennsylvania than those of farther Southern states.

14. MELVIN PATRICK ELY, *ISRAEL ON THE APPOMATTOX: A SOUTHERN EXPERIMENT IN BLACK FREEDOM FROM THE 1790S THROUGH THE CIVIL WAR* (2004).

15. Alfred L. Brophy, *The Nat Turner Trials*, 91 N.C. L. REV. 1817, 1829 n. 93, 1830-35 (2012).

16. EVA SHEPPARD WOLF, *ALMOST FREE: A STORY ABOUT FAMILY AND RACE IN ANTEBELLUM VIRGINIA* (2012); Ellen Eslinger, *Free Black Residency in Two Antebellum Virginia Counties*, 79 J.S. HIST. 261 (2013); Michael L. Nicholls, *Creating Identity: Free Blacks and the Law*, 35 SLAVERY & ABOLITION 214 (2014).

17. KIRT VON DAACKE, *FREEDOM HAS A FACE: RACE, IDENTITY, AND COMMUNITY IN JEFFERSON'S VIRGINIA* (2012).

The book is built upon a foundation of extensive research in the Albemarle County court records, which reveal the extensive interactions that free people had with white people, often on terms of contracts, sometimes as providers of services and at other times as purchasers and debtors, and sometimes in criminal matters. Through such records we learn, for instance, about James Munroe, a slave who contracted with his owners to purchase his freedom by doing additional work after he had done the work he agreed to for them. Munroe worked in rooming houses, where he met University of Virginia faculty. They and other prominent Charlottesville residents then signed petitions he circulated to the Virginia Legislature asking for a special bill to allow him to stay in the state after he was manumitted (85-88). A counterpetition circulated against leniency for Munroe (90-91). Virginia law at the time required slaves freed after 1806 to leave the state within one year, though von Daacke shows this law frequently went unenforced (77).<sup>18</sup> Then there is the white man, William Roach, who was prosecuted for threatening a free woman—and also, earlier, for destroying the property of the estate of a free woman (158). Perhaps the prosecution derived from the idea that everyone should obey the law and that those who broke the peace deserved prosecution.

Building on such examples, von Daacke concludes that free people were “propertied masters of lesser worlds,” not slaves without masters (138). For example, they owned guns, sometimes fought with white people on terms that did not seem tinged with the expectations of racial deference, and turned to white people to vouch for them when they requested permission to stay in the state and when they were defendants in prosecutions. This testifies to the extensive and close contact that Albemarle’s free people had with white people.

*Freedom Has a Face* is important for legal historians for several reasons. First, it is an important example of the methodology of using court records to write history. It shows the centrality of law to African-American, indeed American, history. It is an excellent example of social historians using legal records and in that way linking legal history to American history. Second, and perhaps more important than the methodology, it shows how people lived independently of the harsh statutes that required many free people to leave the state. Thus, there is a story here about how local officials looked the other way despite state laws seeking to remove free people from the states. Third, and related to this distinction between law in books and local practices in action, it offers a challenge to the historians who see the era of slavery as one of absurd inequities in the race relations in the South. It may reveal a different element of law, even some rudimentary fairness, despite the racial crimes and injustices of slavery. And it shows the interaction between law in books and law in action, as actions at the local level evoke responses by the legislature and vice versa.

18. An Act to Amend the Several Laws Concerning Slaves, Section 10, 1806 Va. Acts 36, also available in 3 THE STATUTES AT LARGE OF VIRGINIA, FROM OCTOBER SESSION 1792, TO DECEMBER SESSION 1806, at 251, 252 (Samuel Shepherd ed., 1836), available at [http://www.encyclopediavirginia.org/\\_An\\_ACT\\_to\\_amend\\_the\\_several\\_laws\\_concerning\\_slaves\\_1806](http://www.encyclopediavirginia.org/_An_ACT_to_amend_the_several_laws_concerning_slaves_1806) (last visited 5th May, 2015).

Such work tells us about the centrality of human interactions to trump law imposed from distant legislatures. Across a variety of regions and types of interaction, legal historians are showing us that slaves, free people of African descent, and white people interacted, sometimes in commercial transactions and at other times in very intimate ways.<sup>19</sup> Sometime when free people and whites violated laws prohibiting commercial, educational, and sexual interactions, law enforcement looked the other way. This picture fits with what legal historian Laura Edwards found in North Carolina local courts: People who were known in the community had more leeway in court and more freedom in general than strangers.<sup>20</sup> The boundaries of this kind of bending of the formal legal rules for neighbors and acquaintances invites further investigation.<sup>21</sup> One wonders how the appellate courts treat such issues, for instance.

*Freedom has a Face* is part of a trend in historical literature on race to focus on the local and how localities interact with state and national law. What happens locally has consequences for the state or the nation and vice versa. This literature reveals that the law in books has consequences for norms of behavior at the local level and that local interactions in turn respond to law in books. For instance, as von Daacke shows, sometimes the norms at the local level tolerated interactions across the color line—or tolerated more humane treatment of enslaved and free people. In those instances the law about the removal was ignored. Moreover, that literature reveals how lives cut across the clear lines of segregation and discrimination drawn by statutes. That messy story reveals people who crossed the color line, both ways.<sup>22</sup> Where historians once emphasized the brutality of slavery, for a variety of reasons the trend now is to see the rich lives created by enslaved people—and also to see the ways that some people prospered while they negotiated around the constraints of the law. Such work, perhaps, derives from our interest in people's interactions with law and with how law works at the ground level, which is often different from what statutes impose from above.

*Freedom has a Face* correlates with what other legal historians are emphasizing about free people and slaves in the Upper South in particular. Martha Jones' expansive study of free people and slaves in Maryland in the years leading into the Civil War is showing the ways that people of African descent in Maryland

19. See, e.g., JOSHUA D. ROTHMAN, *NOTORIOUS IN THE NEIGHBORHOOD: SEX AND FAMILIES ACROSS THE COLOR LINE IN VIRGINIA, 1787-1861* (2003).

20. LAURA F. EDWARDS, *THE PEOPLE AND THEIR PEACE: LEGAL CULTURE AND THE TRANSFORMATION OF INEQUALITY IN THE POST-REVOLUTIONARY SOUTH* (2009).

21. Perhaps, as von Daacke suggests, the leniency represents the accommodations worked out on an interpersonal level (6, 77-81). But the leniency—and occasional departures from it—might also serve to create further deference of free people to the dictates of the white community. The free people would sense that the leniency might be removed if they angered power brokers in the white community. See BERLIN, *supra* note 9, at 335-36. According to Berlin, the cost of enforcement would have been great and permitting the activities might continue to benefit the white community. *Id.*

22. See, e.g., DANIEL SHARFSTEIN, *THE INVISIBLE LINE: A SECRET HISTORY OF RACE IN AMERICA* (2012).

acted as citizens.<sup>23</sup> She is thus demonstrating that Chief Justice Taney's talk in *Dred Scott* that people of African descent are not citizens was wrong as a practical matter, as well as a moral one. And quite probably wrong as a legal matter, too.

Von Daacke challenges us to rethink the nature of Southern law and to ask whether there might have been something of fairness in it. This question might be asked of trials involving slaves, as well—what function did law serve in a system of such extraordinary brutality. He raises the important question for readers of this journal of the role of law in this system, such as how formal laws relate to the practices of courts and the norms of the community. He invites a number of questions about the relationship of law to social practices. Under what circumstances did the local law enforcement consciously overlook violations of the state's segregation statutes? What function did the formal laws, their administration, and the local norms serve in establishing—even on a grossly unfair playing field—something that looked like the rule of law? This raises a parallel issue for enslaved people: What functions did the prosecution of slaves through the criminal courts serve and why did the community often try to get whites to funnel their punishment of slaves through the legal system rather than through extrajudicial violence?

Von Daacke's deeply researched *Freedom Has a Face* challenges us to rethink the role of courts, prosecutors, and the public in the regulation of free people during the era of slavery. If we pay sufficient attention to von Daacke's deeply researched book we will learn a lot about what the rule of law meant in the slave-owning South. And we will understand much more fully the world of law that free people of African descent inhabited in the years leading into the Civil War. Our understanding of the American history is being remade through research on race at the ground level.

23. Martha S. Jones, *Hughes v. Jackson: Race and Rights Beyond Dred Scott*, 91 N.C. L. REV. 1757 (2012); Martha S. Jones, *The Case of Jean Baptiste, un Créole De Saint-Domingue: Narrating Slavery, Freedom, and the Haitian Revolution in Baltimore City*, THE AMERICAN SOUTH AND THE ATLANTIC WORLD 104 (Brian Ward, Martin Bone, and William A. Link, eds., 2013); Martha S. Jones, *Leave of Court: African-American Legal Claims Making in the Era of Dred Scott v. Sandford*, CONTESTED DEMOCRACY: FREEDOM, RACE, AND POWER IN AMERICAN HISTORY 54-74 (Manisha Sinha & Penny Von Eschen eds., 2007).