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Joseph A. Ranney. *In the Wake of Slavery: Civil War, Civil Rights and the Reconstruction of Southern Law.* Westport: Praeger, 2006. ix + 199 pp. $49.95 (cloth), ISBN 978-0-275-98972-9.

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Legal Road to Redemption

Reconstruction lasted three times as long as the American Civil War and its long-term effects on both the North and South linger, to some extent, even today; the historiography of the subject is one familiar to every graduate student of the era. Thankfully, Reconstruction history has come a long way from the Dunning school. Today the field boasts quality works from some of the finest historians of our time. In addition, the legal history of the Reconstruction era benefits from attention given to landmark U.S. Supreme Court cases like *Slaughterhouse* (1873), *Cruickshank* (1875), and *Plessey* (1896). However, few Reconstruction studies look at the rebuilding of the legal system in the South at the state level in the fifty years following the Civil War.

Most contemporary historians agree that Reconstruction failed miserably in terms of uniting the two sections and securing basic economic, political, and civil liberties for freed slaves. The South preserved its pre-war racial system albeit without slavery, and in many ways its success was a triumph of law over arms, as the new Southern social order eventually carried the legitimization of the legal system. Joseph A. Ranney seeks to explain how this occurred and to demonstrate that the process at the state level was far from a product of Southern unity against reunion, and much of the success enjoyed by the South in legitimizing segregation and Jim Crow came through a judiciary influenced not by postwar Southern radicalism, but rather older conservative American judicial traits.

Historians of the Civil War era have become comfortable with the notion that the South was far from a homogenous entity as it entered and fought the Civil War. Ranney takes this lack of unity further, asserting that the postwar South, at least in regards to its lawmakers and judiciary, was far from a unified force marching in lockstep against the efforts of the North. At the end of the process in 1900, Ranney sees a Southern judiciary that clearly cut away at, but did not totally destroy all of the Reconstruction reforms promulgated by the North. Ultimately, Ranney credits the Southern judiciary with "keeping the door to justice open at least a crack for Southern Blacks until the coming of a second civil rights revolution" (p. 10).

Ranney's approach is both chronological and thematic. Divided into twelve chapters, the book begins with a short introduction that traces the history of the antebellum South's legal system, some of the legal effects of the war, such as West Virginia's creation out of the State of Virginia, and a general description of the Reconstruction process that eventually led to the South's redemption of its governments. He follows this general historical background with a more detailed discussion of the Southern judiciary's pre-war approaches to race in an effort to demonstrate the legal thinking that judges brought with them from the antebellum era. While many judges and politicians conceded that the era of slavery was dead, their world remained a place where blacks were less than equals, a view not unique to the South, but one shared by their counterparts in the North.

Into the postwar South's legal morass came a mix of judges that Ranney classifies as conservatives, pragmatists, and outsiders. Conservatives believed that even without slavery the old social order had to be maintained. Men like Mississippi's Alexander Handy fit this description. Pragmatists included North Carolina's Richmond Pearson, the only Southern jurist who would serve throughout the war and the Reconstruction period. Pragmatists sought to use the law to forge an accommodation between their citizens and the new order. Outsiders were those outside the mainstream of social thought and those who advocated a radical reshaping of Southern law. Some of these people literally came from the outside; others had been Southern Unionists and now felt pushed to the outside by their secessionist neighbors. Not only did the South experience a range of different ideological approaches from its judiciary, but (aside from Virginia and North Carolina) Ranney argues that there was very little continuity on the bench as wartime judges gave way

to radical Reconstruction judges, who in turn yielded to Redemption era jurists. The instability on the bench combined with different wartime experiences to create a judicial climate that saw judges view the postwar era differently, at different times.

Ranney insists that regardless of one's ideological leanings, Southern jurists shared a common trait that influenced the development of the South's post-Civil War legal system. Broader American judicial culture, characterized by what he calls "strong elements of nationalism and judicial conservatism," served to bring even disparate ideologies closer together (p. 27). This culture encouraged judges to insulate themselves from politics and to look to other jurisdictions and the English common law for guidance.

With this background Ranney takes the reader from wartime efforts to maintain order into the early days of Reconstruction, with an emphasis on the initial efforts by both judges and legislators to deal with the emancipation of over four million slaves. Ranney's conclusions in many ways mirror conventional thought; for example, efforts to translate freedom into true equality failed, but he contends that despite the failure there were gains, even if those gains seem trivial by modern standards. For Ranney, given the "immensity of the task of overcoming a centuries-old culture of slavery," the gains should be seen a significant (p. 61). The protective provisions that were put in place (requirements for written employment and the need to explain contract terms to the illiterate, for example) even if seldom enforced at the time, provided what he calls, "a small opening for free labor values and eventual acceptance of blacks as human beings … an opening that would be more fully exploited a century after Reconstruction" (p. 62).

The rise of "new federalism" and the allocation of losses incurred during the war forced judges to define the Confederacy. Two views developed at the state level. One, a centrist view, held that in a failed rebellion, losses suffered by Southern citizens directly connected to the war would go uncompensated, while, for purely practical reasons, non-war related acts of the Confederate government were legitimized. The predominant tendency, however, saw state approaches differ over time as Reconstruction went through its various phases and the makeup of state courts changed from radicals to redeemers. A process common to all states involved the rejection of the *ab initio* doctrine, Charles Sumner's effort to force the seceding states to begin anew in their efforts to regain statehood, essentially arguing that each vote for secession became "a practical abdication by the state of all rights under the constitution" (p. 67). Ranney chronicles the debate in each state as its lawmakers and the judiciary reconciled rebellion with reconstruction. The final result transformed the notion of "states' rights" but did not destroy the concept, because, while each state affirmed the primacy of federal courts, they did so through decisions at the state level.

Part of Ranney's argument is that some Reconstruction reforms did not die, but remained dormant, even if ineffective at the time. In addressing the development, evolution, and legacy of Reconstruction constitutions he points out some of the more important constitutional reforms that survived redemption, specifically common school systems, homestead exemptions, and married women's property rights. However, he admits that the radial racial reforms that characterized Reconstruction constitutions did not survive. In addition, motivated by the postwar railroad scandals, Redeemer constitutions went to great lengths to discourage government subsidies by putting a ceiling on state debt and moving to regulate railroads. Still, Ranney sees the survival of some of the non-racial changes as one of the enduring legacies of the Reconstruction era.

Ranney concludes his topical coverage of Southern lawmaking and judicial oversight by examining two areas of economic importance and the fate of women's rights. In a chapter devoted to what he calls "A Republic of Paupers," Ranney describes the elimination of debtor's prison and the rise of the crop lien system. Sharecropping existed prior to the war, but tenant farmers simply did not comprise a significant part of the antebellum agricultural labor force. Emancipation changed everything. Millions of former slaves owned their labor, but had almost no chance of ever becoming landowners. Ranney chronicles the battle between tenants, landowners, and a new player, the merchant. What he sees in the end is a clash between Reconstruction legislators (using extraordinary efforts to help poor farmers, black and white, at a time of incredible poverty) and the South's judiciary (following its own deep sense of obligation to defend the right of contract and landowner property rights). In the end, the Southern judiciary chose to fall back on well-established legal principles rather than promote economic growth.

The analysis of corporations in the South follows Ranney's discussion of debt reform and the crop lien system. The rise of corporations stands as one of the most important changes to American law in the nineteenth century. The problems inherent in regulating these new business giants perplexed lawmakers and jurists alike,

not only in the South but in the North. Ranney argues that the treatment of corporations, in regards to their creation, regulation, and the propriety of government subsidy, provided "a point of commonality between the newly reunited sections that has seldom been examined by historians but made an important contribution to the process of reunion" (p. 104). Ranney disagrees with the notion that the state reaction against government subsidy of private enterprise followed a pattern set by Reconstruction lawmakers pursuing a wide-open policy, with Redeemer lawmakers reacting against such polices. In reality, Ranney argues, the reaction against government subsidy to private corporations began in the 1860s, a trend Reconstruction governments followed and Redeemer's affirmed. As for regulation, Southern states found themselves in the mainstream of American policy by regulating railroads and limiting the reach of the "Dartmouth Doctrine," the policy that exempted state incorporated entities from laws passed after they were formed. Ranney argues that, like most Northern states, the South took the lead in railroad regulation and eventually enacted anti-Dartmouth clauses, making corporate charters conditioned on submission to laws passed after the date of incorporation. Much the same result occurred regarding general incorporation laws as Southern lawmakers and judges looked to their Northern counterparts for guidance.

Like corporate regulation, women's rights were a national movement and Ranney sees the South as "very much in the movement's mainstream" (p. 114). Whether dealing with issues of married women's property rights or the right to vote, women's rights as a whole evolved in much the same ways as the rest of the country. In both sections of the country, married women saw gains in their right to own and control property. In the South, Reconstruction governments pushed through laws protecting married women's property, with all but the five Border States giving these new laws constitutional protection. When the Redeemers regained control, those advances remained intact. Southern Judges, on the other hand, still clinging to old ideas, often proved reluctant to give the laws full effect. When it came to the vote, both sections proved unwilling to expand women's suffrage.

Ranney concludes with two chapters that trace the evolution of Southern law through the Bourbon era, 1877-90, and into the Straight Out era running from 1890 to 1915. Like most works on Reconstruction and the rise of Jim Crow in the South, Ranney concludes that by the beginning of World War I, African Americans found themselves on the opposite side of an "impassable chasm" that separated blacks and whites. For black Southerners this meant a world with clearly defined lines as to where they could and could not go in the public sphere. The situation was made more difficult for blacks by a justice system clearly colored white, which gave blacks little hope of using the vote to change anything.

This book has much to recommend in it, both to the specialist and the general historian. Its focus on the purely legal aspects of Reconstruction gives it a unique perspective. Much of what Ranney offers is based upon secondary material, although that does not undermine his main points. The book is about process and how things evolved. It is almost impossible, based on the scholarly state of Reconstruction literature today, to conclude that the process was anything short of an utter failure. However, Ranney offers worthwhile insight into the role of Southern lawmakers, and the judiciary in particular, in the outcome of what Eric Foner calls the "unfinished revolution." The most important insight Ranney offers is in the complexity of the judicial process that was far from a simple North versus South or Radical versus Redeemer contest. In the end, the legal reconciliation of many of the problems posed by Reconstruction actually helped bring the two sections closer together. Ranney does not offer much in the way of hard proof that Reconstruction planted the seeds that eventually bloomed into the civil rights movement in the 1960s. However, perhaps there is some ring of truth to his notion that the process of legally recognizing that African Americans had rights was the beginning of equality, even if those rights were subsequently undermined by the South's Redeemer governments.

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