

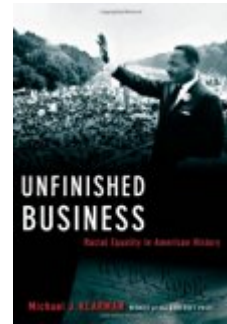
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Michael J. Klarman. *Unfinished Business: Racial Equality in American History*. New York: Oxford University Press, 2007. xx + 239 pp. \$19.95 (cloth), ISBN 978-0-19-530428-2.

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An Accessible Legal History of Racial Equality

In *Unfinished Business*, Michael J. Klarman, Bancroft Winner in 2005 for *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (2004), surveys the long history of racial inequality in the United States in a short, very accessible book. After *From Jim Crow to Civil Rights* placed him in the top echelon of historians of civil rights, Oxford University Press invited Klarman to place this important work in the longer history of inequality in America. Klarman begins during the founding era and draws it to the present, including a discussion of Hurricane Katrina.

Because of his desire to be accessible, Klarman's overarching analytical or historiographical promises are modest but probably eye-opening for the lay reader. Klarman offers a coherent and well-connected analytical framework for the law and inequality. First, he seeks to dispel the myth that inequality in America has evaporated in a clear, linear, and progressive manner. He shows that inequality still exists today, and, in the past, the law has worked to erase inequality but has worked equally hard at perpetuating or even creating it. Second, the law usually reflects changes already in the works in society; it does not change society. Drawing from the popular notion of *Brown v. Board of Education* (1954), he seeks to demonstrate how the law follows social convention and does not create it, as is often thought about *Brown*. His second point is rooted in his third; he notes that law means little if it will not be enforced. If the law moves beyond socially acceptable boundaries, no one will enforce it, which in turn enfeebles the law. This point

also shows that the law is not always that powerful and may not exact the change that it intends to. Lastly, while the law can be fairly impotent in adverse conditions, progressive changes in the law do have influence in indirect ways, namely, by motivating and educating the public and thus ultimately affecting opinion. This nexus of these offers to a general readership a complicated vision of inequality and the power of the law in America.

Each chapter begins with a vignette; taken together these vignettes work to debunk the myth that the law has evolved in a progressive manner. To accentuate that idea, Klarman begins his first chapter, "The Founding," with a story of growing equality and the abolition of slavery in Massachusetts, and in chapter 2, he discusses the efforts of the Wisconsin Supreme Court to protect fugitive slaves from the 1850 Fugitive Slave Act. Chapter 3 on the Civil War, points to the North, and demonstrates the way average Northerners, as shown through the New York City draft riots, were not ready to sacrifice themselves to end slavery. While this depiction is nothing new to most historians of the United States, for the general public, it deflates the strong correlation between antislavery Northerners fighting the war, jolting the popular understanding of the trajectory of freedom and slavery. Chapters 4 through 7, which stretch from Reconstruction to WWII, begin with violence, placing race riots and lynching at the center of the story and demonstrating that the Civil War brought violence to black Americans as they sought to gain the freedom promised to them. For Klarman, WWII catapulted Americans out of the dol-

drums of inequality. Chapter 8, therefore, begins with the 1946 “watershed” case of Etoy Fletcher, a black man who sought the ability to vote in Mississippi. Predating the normal “watershed” case of 1954, the war brought on the changes in society that enabled the court to make the decision in *Brown*. Again, to disrupt the linear narrative, Klarman follows his chapter on *Brown v. Board of Education* with violence. Chapter 10 on the civil rights era begins with the 1959 lesser-known lynching of Charles Parker, in which many contemporaries cited *Brown* as the catalyst of the lynching. Chapter 11, which brings the reader to the present, begins by dismantling the progressive timeline and reminds the reader that the events surrounding Hurricane Katrina show that racial inequality still remains in our country.

These introductory vignettes, however, are only a small part of Klarman’s story. In each chapter, he surveys quickly the major court cases, legislation, and activist activity for each period. Each era had its black and white progressive reformers trying to equalize society, to end slavery, and to challenge lynching or Jim Crow, and each reform developed in a similar narrative. More often than not, these reformers ran counter to the prevailing social or political thought. As such, their efforts to change the law frequently failed. Let us look, for example, at the first half decade of the Fourteenth Amendment. Klarman describes the early, somewhat anomalous support for this revolutionary amendment, based primarily on the Republicans’ efforts to sustain power. In particular, the provisions keeping disloyal Southern whites from voting and encouraging black Republicans to vote were very popular. Moreover, the clever way the amendment forced states with large black populations to enfranchise blacks and hardly penalized states with small black populations that did not enfranchise them gave it widespread support, even in the Northern regions where racist ideas were strong. In addition, the decision to attach support of the amendments to reentry into the Union ensured its ratification, even with the Southern states that deeply disagreed with it. In the end, reformers got this powerful amendment added to the U.S. Constitution, along with the equally significant Thirteenth and Fifteenth Amendments. Its power to exact real change, however, was minimal. State governments and the Supreme Court quickly refused to recognize the significant civil rights that the amendment guaranteed, especially for black Americans. Throughout the rest of the nineteenth century, the Supreme Court chipped away at its radical nature continuously limiting its power. Of course, this emasculation of the amendment peaked with

Plessey v. Ferguson (1896). The courts supported *Plessey* until *Brown* and only began in the 1920s to provide the civil rights guaranteed even to white Americans. For most of a century, then, the amendment was a failure because the courts and local law refused to enforce it. Despite this failure, black activists and their white allies refused to stop trying to test the amendment. The existence of the Reconstruction amendments gave black Americans assurance that they could be equal citizens in America, even if they were not given those rights at the time. So they continuously fought, inspired by the impotent amendment. This narrative of inspirational, yet ineffective reform pervades each chapter and gives the reader a strong narrative on which to understand the law.

The book is most successful when it aligns with Klarman’s own research, that is, in the second half of the book. Earlier chapters suffer from less interesting analysis and less specificity. For example, Klarman has a tendency not to give names of court cases as frequently in his earlier chapters as in the second part of the study. Since this is a survey book and it should inspire further reading from a lay reader, the lack of case names could make further reading difficult.

For the most part, this is the story of black Americans. While Klarman includes short units on laws discriminating against East Asians, including the Chinese Exclusion Act and, of course, the travesty of the Japanese internment camps, his coverage of Latinos and Native Americans is almost nonexistent. Had he given no examples of Latino or Mexican American inequality, one might state that it was outside of the boundaries of “racial inequality” as they are an “ethnic” minority. This point is denuded by the very cursory inclusion of these groups. And, since much of the Latino experience has been a distorted reflection of the treatment of African Americans, it would have enriched his story. For example, nowhere does he discuss the Foreign Miner’s Tax that pointedly attacked Latin American miners, or the lynching of Mexican Americans in the Southwest that rivaled the peak eras of African American lynching in the South. The laws differed in interesting ways with a foreign government lobbying for them. In the same vein, the abysmal relationship between the American government and Native Americans is given very short shrift.

Lastly, in the final chapter, it would have been appropriate to bring in the most recent manifestation of the civil rights movement: the reparations movement. Klarman, instead, focuses primarily on the adventures of affirmative action in the Supreme Court. In doing that, he

does not note this important movement that began successfully in the United States with reparations for the victims of the Japanese internment camps over twenty years ago. It is a subject familiar to but misunderstood by the average American—his audience—that has yet to be fully tested by the Supreme Court or the federal government. Given his understanding of inequality and the law, where

does he believe this controversial movement is headed?

Even with these three drawbacks, this book offers a lot to the lay reader or undergraduate student in understanding the basic history of racial inequality in the United States. As such, *Unfinished Business* would be an interesting choice for many undergraduate courses, especially in legal history and even in a U.S. history survey.

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