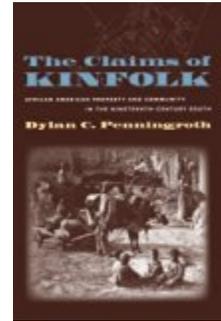


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Reviewed by Kelly Kennington (Duke University)  
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## Slave Property Ownership: An Interdisciplinary Approach

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In *The Claims of Kinfolk*, Dylan Penningroth offers a path-breaking account of slave property ownership, raising provocative questions about the status of enslaved men and women in the nineteenth-century American South. Winner of the 2004 Avery O. Craven Award of the Organization of American Historians, *The Claims of Kinfolk* makes a significant contribution to the fields of African American, southern, and American legal history; in the process it uses property to rethink basic questions of law, power, and community. The issue of property looms large in the historiography of slavery, and Penningroth adds to this literature by exploring how slaves, though considered by whites to *be* property, understood property ownership themselves. In other words, he is interested in reconstructing the legal consciousness of those at the bottom of nineteenth-century America's social hierarchy.

Penningroth begins his story with a case-study of the Gold Coast of West Africa in the nineteenth century, using the tools of historical anthropology to examine the relationships between slaves, free persons, communities, and their property. He then considers property-owning and community relations among slaves in the American South, where he discovers an intricate web of personal kinship and property ties among slaves, even those outside of the Low Country task-system of labor. Penningroth does not argue for a causal relationship between

West African notions of family, property, and community on the Gold Coast and those of African Americans in the South. Instead, he employs the study of West African traditions as a comparative benchmark, one that leads him to new questions and possibilities that promise to broaden the scholarship on American slavery. By viewing slave property and community relations from the vantage point of African historians and anthropologists, Penningroth produces fresh perspectives on the deeply researched field of slavery in the United States. Looking beyond black-white relations to the relationships among blacks themselves, he enriches our understanding of how they viewed ideas of family, community, and property in the years before and after the Civil War. Although the enduring paradox of slaves as both property and persons remains central to his analysis, Penningroth breaks outside of this traditional paradigm to think about how slaves became integrated into their masters' households and how they created new, expanded networks of kinship and community, partly as a basis for their own property ownership. Penningroth ultimately argues that "if social ties helped 'make' property, property was one of the things that 'made' social ties" (p. 11).

Penningroth's first chapter considers the Fante and Asante peoples of the Gold Coast in West Africa, societies that sent tens of thousands of people onto the Middle Passage. In each of these cultures, he notes, "slaves were viewed as kinless outsiders who were gradually assimilated into society by being absorbed into the family that owned them" (p. 13). Both the African definition of

slavery as the “absence of kin” rather than a relationship based on “property rights” and commodity production (p. 8), and the legal actions of ex-slaves in Africa allow for fresh insights into North American slavery. An 1874 British ordinance ended slavery in the newly-established Gold Coast colony, but the act did not include instructions for enforcing emancipation in the colony, so colonial officials did not bother to force slaveowners to free their slaves. Despite the failure of the act to compel emancipation of slaves, Penningroth finds that those held in slavery in Africa tended to enter courts after 1874 to sue for family property rather than for freedom or personal rights, an action that allowed them to gain status and wealth without severing all ties with their masters’ families. West African slaveowners argued that the lack of freedom suits demonstrated the mild nature of slavery in the Gold Coast, but Penningroth alternatively interprets this strategic preference as a measure of slaves’ emphasis on the importance of kin and family relations and the rights that accompanied them. This discovery prompted Penningroth to think about American slavery in terms of how slaves “claim[ed] kin and claim[ed] property,” and he observes that these two themes “defined an important part of everyday life in both Africa and America” (p. 44).

Chapters two and three explore the often-neglected world of slave property owning in the American South. Their status as property prohibited slaves from legally owning property, in a positivist sense. Penningroth, however, views law from a pluralist standpoint, as open to competing social visions of what defined property, and he examines conflict and its resolution to determine the substance of legal culture.<sup>[1]</sup> He portrays law as created from the bottom up, arguing that even slaves could contribute to the shifting legal notions of property and property rights. No American slave, of course, could enforce alleged property rights through the antebellum courts. But masters in all areas of the South generally allowed their slaves to accumulate wealth and property of their own, mainly because the informal practice boosted agricultural output. By laboring after completing their daily tasks, on weekends, or on holidays, slaves managed to accrue small amounts of property in land, goods, or even money. On one “cotton belt” plantation, for example, Charles Ball’s overseer paid him a cent per pound of cotton picked over the quota of fifty pounds, and, Ball recalled, “This money was punctually paid to me every Saturday night” (p. 52).

Penningroth describes the resulting economic culture of slaves as driven by an “economy of time rather than an

economy of land” (p. 47), since land was usually available to slaves, but time was a scarcer, more valuable commodity. Using West African experience as a backdrop, Penningroth discovers the importance of kin relations in these property accumulations, since often slaves would pool their resources to better consolidate their earnings. Kinship for slaves in the American South had an expanded meaning, with slaves on the same plantations banding together in real or “fictive” kin relations. “Part of property’s value for slaves, apart from its capacity to be used or consumed,” Penningroth argues, “lay in the social relationships it embodied” (pp. 90-91). In this way, property could serve to “make” community and family ties among slaves. Also, as Penningroth discovers in the testimony of ex-slaves before the Southern Claims Commission and the Freedmen’s Bureau, American slaves viewed property as belonging to several individuals collectively when it was publicly associated with those individuals through open display in yards or slave quarters.

Chapters four and five consider African Americans’ use of the law before and after the Civil War, drawing heavily on records of the federal agencies designated to help former slaves and southerners negotiate disputes following the War. The provost courts, the Freedmen’s Bureau, and the Southern Claims Commission were among the institutions that “worked together to promise blacks a more evenhanded treatment at law” (p. 112). According to Penningroth, northerners who served in these agencies assumed that ex-slaves “knew nothing about property, marriage, or personal responsibility and that they would have to learn such concepts from northerners” (p. 114). These assumptions proved false, as scores of ex-slaves entered the courts to settle disputes among themselves that often connected concerns of family and community with property claims. Many disputes occurred after broken marriages or engagements in which women held claims to property that their partners disputed (p. 123). These petitioners knew a great deal about property, but their beliefs and practices differed from prevailing, northern understandings of property—“that law defined property and that property was an indivisible, individual possession” (p. 132).

Although northern officials worked to impose formal, legal definitions of property in the South, they had to contend with ex-slaves’ claims that “what made an object into property was not that it disappeared into the private sphere of a single person but that it was associated publicly with people” (p. 137). Northern agencies adopted local community strategies to work out property disputes and to determine rules and tactics for dealing

with the claims of ex-slaves. By the 1870s, claims agents began to legally recognize ex-slaves' property, but convincing their former masters of these rights proved more difficult. As a result, ex-slaves took pains in their testimony before the Claims Commission to acknowledge the rules of the Commission and the "expectations of its agents" (p. 139), appealing to prevailing, "white" notions of property. Linda Jones, for example, filed an individual claim for a corn mill despite it belonging to several of the plantation slaves in common because the slaves feared the Commission would be less receptive to a group claim (p. 139). In this way, ex-slaves adjusted their understanding of property to "one that drew strength from the law but was not determined by it" (pp. 143-44). At the same time, ex-masters fought to retain the property claimed by ex-slaves in order to preserve their power over their former bondsmen. In doing so, they limited the land and goods available to ex-slaves, seeking to transform "slavery's economy of time" into "an economy of land" (p. 143).

The book's final chapter traces how notions of kinship and community evolved after emancipation, noting the existence of conflict in ex-slave communities because of kinship's importance to property and because of the changing meaning of kinship itself. The Civil War accelerated the expansion of the black family, as ex-slaves banded together with a wider extended kin network in their struggle to make ends meet. Although these connections became a source of community and allowed for greater property ownership, precisely because they had become so important, kinship relations also caused tension for those kept outside of the family and whose access to labor and property were consequently more severely limited. Thus, ex-slaves in the Sea Islands drew sharp distinctions between themselves and newcomers from Georgia and the Low Country, using the terms "Georgia" and "home place" to "define the boundaries of an emerging community" (p. 173). Despite these distinctions, the mixing of freedpeople from other places offered opportunities for expanding community and kin networks. Penningroth concludes that understanding "the inner dynamics of black social relations in the 1800s may require changing some of our basic assumptions about property, kinship, and the way communities work" (p. 189). African history and anthropology, he suggests, can help demonstrate how "property was less an institution or a legal right than a social process" that involved kinship relationships and public recognition of ownership (p.189). As a result, blacks viewed access to resources and people as matters of kin rather than

race.

Penningroth makes powerful arguments for this complicated system of kin relations and property ownership. He does so by sifting through a vast array of source materials from the mid-nineteenth century in Africa and the American South. His study is based primarily on legal documents, including over six-hundred court cases from Africa and from Virginia, Mississippi, and North Carolina. His main resource, however, are the existing records of the Southern Claims Commission, the agency in charge of determining who would receive compensation for property confiscated by the Union army during the Civil War. Of the twenty-two thousand claims filed before the Commission, only about five thousand of the accepted claims have survived with their testimony. Of these, there are approximately five hundred claims filed by ex-slaves. Although this figure appears small, these records contain significance beyond their numbers. The financial difficulty involved in filing suit almost certainly prohibited many ex-slaves from filing.

The Claims Commission records allow Penningroth to trace the dynamics of property ownership among slaves, and to discover how ex-slaves viewed their property and how they proved their ownership. The Commission originally intended to restore property to white southerners only, but the commissioners found themselves so bombarded with the claims of former slaves and free blacks that they quickly adjusted their thinking to include these claims as well. Slaves rarely possessed any sort of receipts or documentation of ownership, so they based their claims on community recognition and public display of their property. The federal claims records describe slave property in these terms, and thus provide an excellent source of data on property ownership and family and kin relationships in the slave community. Slaves also based arguments for legal recognition of their marriages under slavery on the common acceptance and knowledge of these relationships among owners and other slaves.

Penningroth acknowledges the dangers of expanding his claims to the whole South; the Claims Commission only dealt with the strip of territory that came into direct contact with Union soldiers and, as a result, much of Penningroth's evidence comes from Mississippi, Alabama, upcountry South Carolina, and Georgia. But the geographic distribution of these claims provides a sample that represents very different parts of the slave South: west, east, areas with large plantations and smaller ones, large slaveholdings and not, as well

as different crop cultures. Penningroth therefore argues convincingly that these records provide one of the closest looks at slave property ownership in the South and are useful for the depth of detailed descriptions of property that they provide. Although previous studies have used the Southern Claims Commission records for local case studies, Penningroth's is the first to use these records to explore their implications for property ownership throughout the South. He also supplements the claims records with details of slave property ownership found in court cases, narratives, travelers' accounts, and archeologists' reports, providing a broader basis for his arguments about the prevalence of slaves' ownership of property.

Penningroth's work adds to that of a small group of scholars who have described slave property as part of an informal economy, most notably Ira Berlin, Philip D. Morgan, Betty Wood, and Loren Schwenger.[2] These studies primarily locate this informal economy in the Low Country region of South Carolina and Georgia, but Penningroth follows the trail of slave property ownership beyond the confines of this area and argues that slaves throughout the South became property owners and actively traded in southern markets. He also notes how, even before the Civil War, slaves' property transactions boosted the plantation economy and local markets throughout the South, making them more than an informal, localized phenomenon. By allowing slaves to accumulate property, masters also shifted responsibility for some of the slaves' subsistence to the slaves themselves, therefore increasing the profit margin of the plantation (55).

Penningroth, moreover, challenges the view of some historians of slavery, such as Eugene Genovese, that slaves' informal property networks were necessarily part of a unified push towards acculturation and resistance.[3] This view assumes that Africans held a uniform conception of property in the eighteenth and nineteenth centuries that fundamentally differed from that of European-Americans at the time. It also implies a homogeneity in the slave communities and downplays the existence of conflict between slaves. Penningroth insists that there is no reason to assume slave communities were any more harmonious than those of white southerners, and that scholars must examine slave relations "on their own terms," not just in terms of black-white relations. Most scholars of American slavery, Penningroth stresses, have studied slave property to talk about master-slave relations, and this view "tends to obscure or even romanticize the experiences of black people, whose understanding of

economic and social life involved far more than their relations with white people" (p. 8). By thinking of African American life with African understandings of property and kinship in mind, Penningroth argues, we can better expose the dynamics of slave relationships as they would have experienced them. His work also suggests, by implication, that future scholarship on slaves should at least partly consider their lives outside of the framework of black-white relations in order to better explore their actual experiences.

The Claims of Kinfolk also fruitfully engages with debates in American legal history. Like many legal historians, Penningroth views the mid-nineteenth century as a period of intense legal change, when lawyers, judges, and legislators struggled to adapt American law to the intense social and economic changes occurring at the time.[4] In the case of African-American slaves' property, he contends, the slaves' property did not gain formal recognition by the state until several years after emancipation. As the Southern Claims Commission heard testimony of how ex-slaves understood their property rights, these northern officials eventually began accepting their claims to property restitution. Penningroth argues that this acceptance came as a result of several factors, such as northern officials turning to local customs to mediate property claims and disputes in this period. This shift may also have been part of the larger trend during Reconstruction towards increased property consciousness. In the war years, Union soldiers sometimes refused to recognize slaves' property, as best evidenced by the actions of Sherman's men during their march through Georgia and South Carolina.[5] But in the years after the war, northern officials became more open to the possibility of ex-slaves' property ownership. The Commission also had less reason to doubt the loyalty of ex-slaves to the Union, and many of these claimants could provide great details about the property at issue. Taking local, more informal systems of property-ownership into account, Southern Claims Commission officials began to legalize the claims of ex-slaves to property, and to create a more formal legal system in the post-emancipation South.

Penningroth's work further contributes to broader discussions of slavery and freedom in the nineteenth century. Penningroth asks why, when American slaves managed to save up money and property, more of these slaves did not use their earnings to buy their freedom.[6] His answer is that "slaves faced grave dangers in working toward freedom and, once they grasped it, they found that it was a strange fruit" (p. 55). As scholars have noted, free blacks faced severe constraints on their lib-

erty in many areas of the South.[7] Also, Penningroth adds, many slaves did take the step to buy their freedom, only to be cheated out of it, sometimes more than once.

Certainly the reality of freedom's ambiguous nature and the difficulty involved in attaining free status discouraged many slaves from working to buy their freedom, but how did these factors affect the way that slaves viewed freedom in the antebellum South? Numerous scholars in post-emancipation studies, both in the United States and in the larger Atlantic World, have argued that the meaning of freedom for many ex-slaves often focused on land ownership. A recent work that adds to this body of literature is Amy Dru Stanley's *From Bondage to Contract* (1998), which shows that for many people in the Civil War era, freedom meant the capacity to have recognized legal ability to enter contracts, be they labor or marriage contracts.[8] Stanley also reiterates the argument that above all, after emancipation, freedmen wanted land. Penningroth's findings suggest that before the Civil War many slaves viewed themselves as having land, and were more interested in gaining control over their own time. He also notes that after emancipation, ex-slaves' struggles for control over their own time shifted to struggles to retain their property rights. Thus Penningroth reinforces the findings of many other studies of post-emancipation societies that ex-slaves altered their definitions of freedom in the wake of emancipation to one based more totally in legal land ownership and greater access to land.

Penningroth's work suggests numerous possibilities for additional research, a measure of its originality. One avenue for further study would be to explore how the property consciousness and relationships among slaves, and then ex-slaves, fit within the larger story of the nineteenth-century South. How did planters, before and after emancipation, act as adjudicators when disputes arose among African Americans in their communities? Use of planters' records and court cases would help to uncover a more complicated picture of slaves' and ex-slaves' property consciousness in the era of emancipation. Another potential path for research would be to compare slaves' view of property as depending on public recognition by the community with other "bottom-up" customs in the South, such as common-law marriage and racial "passing." Both common-law marriage and racial "passing," like property ownership, relied on community recognition for their legitimacy. After the war, numerous ex-slaves entered the courts and other Reconstruction agencies to legalize these marriages and confirm their racial status. Using records of the Freedmen's

Bureau as well as court records could allow one to compare ex-slaves' property consciousness with these other customs. Penningroth's book opens a variety of prospective areas for additional research, and his innovative use of methods from outside fields provides a model for future interdisciplinary investigations.

#### Notes

[1]. Positivism is the legal theory dating from the nineteenth century that stresses an unambiguous, unitary meaning of law and the sovereignty of established legal institutions, apart from any type of moral order or from different interpretations and social practices. Legal pluralism emerged as a theoretical approach to law in the 1930s, which portrayed law as involving fundamental conflict, with different groups vying to influence the trajectory of law and legal jurisprudence and often holding different beliefs about what the "law" required. For more on positivism and pluralism see Hendrick Hartog, "Pigs and Positivism," *Wisconsin Law Review* 4 (July 1985): pp. 899-935; and James Willard Hurst, "Old and New Dimensions of Research in United States Legal History," *American Journal of Legal History* 23 (1979): pp. 1-20. Some examples of pluralist legal history include: Lawrence M. Friedman, *A History of American Law* (New York: Simon & Schuster, 1973); and A. G. Roeber, *Faithful Magistrates and Republican Lawyers: Creators of Virginia Legal Culture, 1680-1810* (Chapel Hill: The University of North Carolina Press, 1981).

[2]. Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge: Harvard University Press, 1998); Philip D. Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake and Lowcountry* (Chapel Hill: The University of North Carolina Press, 1998); and "The Ownership of Property by Slaves in the Mid-Nineteenth Century Low Country," *Journal of Southern History* 49(1983): pp. 399-420; Betty Wood, *Women's Work, Men's Work: The Informal Slave Economies of Lowcountry Georgia* (Athens: The University of Georgia Press, 1995); Loren Schweninger, *Black Property Owners in the South, 1790-1915* (Urbana and Chicago: The University of Illinois Press, 1990). Berlin writes, "Although the lines of battle continually shifted, by mid-century [18th] planters had acknowledged the slaves' right to produce independently, understanding that the slaves' accumulation of property reinforced their attachment to their home estates and reduced the impulse to flight" (p. 165), even though this system was still "a matter of continual contention" (p. 166).

[3]. Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Vintage Books, 1972), esp. pp. 309-24.

[4]. For example, see Morton Horowitz, *The Transformation of American Law, 1780-1860* (Cambridge: Harvard University Press, 1977) and William J. Novak, *The People's Welfare: Law & Regulation in Nineteenth-Century America* (Chapel Hill and London: The University of North Carolina Press, 1996).

[5]. Jacqueline Campbell, *When Sherman Marched North from the Sea: Civil War America* (Chapel Hill: University of North Carolina Press, 2003).

[6]. Although Penningroth does not quantify how many slaves accumulated this amount of property, my own research in Louisiana, where slaves could legally contract to buy their freedom, suggests that it was not unusual for slaves to acquire sufficient property to buy freedom for themselves or their relatives.

[7]. See for example, Ira Berlin, *Slaves Without Masters: The Free Negro in the Antebellum South* (New York: Pantheon Books, 1974).

[8]. Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (Cambridge: Cambridge University Press, 1998).

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