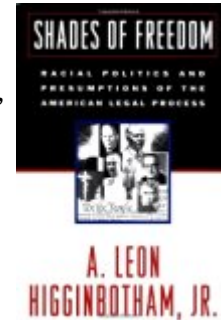


A. Leon Higginbotham. *Shades of Freedom: Racial Politics and Presumptions of the American Legal Process.* New York: Oxford University Press, 1996. \$30.00 (cloth) \$30.00, cloth, ISBN 978-0-19-503822-4.



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Published on H-PCAACA (July, 1997)

In the late 1970s, renowned legal scholar, A. Leon Higginbotham completed *In the Matter of Color*, the first book in his series "Race and the American Legal Process." This influential text examined the ways in which the legal structure of the American Colonial Period, the institution of chattel slavery, and racism were inextricably intertwined. The publication of the second volume in the series, *Shades of Freedom*, has come eighteen years later. In *Shades of Freedom* Higginbotham endeavors to move beyond the period of American history so defined by the forced submission of African-American people codified in pre-Civil War constitutional law, to a time when racial equality appeared to be an attainable reality. He aims to trace how the law systematically dehumanized African-American people and "its impact on the journey from the midnight of total oppression to some early dawn, where there were occasional glimmers of light and muted shades of freedom" (p. xxiv). He boldly strides into a complex period of African-American history, where these "shades of freedom" regularly obfuscate the actual nature of racial injustice.

Higginbotham's analysis is driven by a concept he has coined the "precept of inferiority." Higginbotham defines this theme as the effort to "presume, preserve, protect, and defend the ideal of the superiority of whites and the inferiority of blacks" (p. 195). He distinguishes four historical stages in the development of this "precept" within the American legal system: the ancestry of inferiority (1619 to 1662)--during which the legal process presumed black inferiority and white supremacy; the ideology of inferiority (1662 to 1830)--when black inferiority and white supremacy become strategically encoded within legal rhetoric and practice; the politics of inferiority (1830 to the Civil War)--at which time the legal structure maintained the precept of inferiority even as its primary institutional support, slavery, was dissolving; and the dream of freedom and its demise (Reconstruction to Plessy and beyond)--characterized by the unsuccessful efforts remove racially-based prejudice from the American legal process.

The historical and legal exploration of these four periods dictates much of Higginbotham's

writing, but he places the greatest emphasis on the period from Reconstruction until Plessy. It is in these sections where he turns up the energy on his judicial analysis. His narrative easily glides from Supreme Court judgments like *Railroad Company v. Brown*, in which the court ruled that "separate but equal" was considered discrimination under the law in 1873, to more debilitating decision like *Robinson v. Memphis & Charleston Railroad Company*, when the court decided that an African-American woman did not have the legal right to a seat in the "ladies" car. Higginbotham clearly maps out several of the critical legal cases and political actions that laid the all important foundations for the Supreme Court's 1896 "separate but equal" decision handed down in *Plessy v. Ferguson*. Higginbotham's powerful legal analysis is bolstered by his efforts to interpret the numerous cases within the contexts of the battle surrounding the Thirteenth, Fourteenth, and Fifteenth Amendments, the Hayes-Tilden Election Compromise of 1877, and a host of other events impacting African-American life. The major strength of this volume is the manner in which Higginbotham teases out some of the complex ways the African-American populace has been manipulated, marginalized, and deemed inferior by Supreme Court rulings and a legal structure intended to protect all American citizens.

Higginbotham suggests that this book is part of a much larger intellectual project. *Shades of Freedom* is to be the first of several volumes delineating his "Ten Precepts of American Slavery Jurisprudence." In light of this intent, this book appears programmatic at times. Yet, the carefully interlaced historical documentation lifts this piece from being merely an exercise in explicating one of his precepts of American slavery jurisprudence to a purposefully crafted examination of race and the law. Higginbotham argues that the precept of inferiority's legacy continues to linger within contemporary American culture. To this end, the text illustrates the power of historical analysis in understanding our current racial situation in a soci-

ety which continues to be divided by the construction of race. Even though his approach is occasionally disjointed, the legal insight Higginbotham provides makes this volume an important addition to the ever-evolving knowledge necessary for a fuller understanding of African-American life.

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Citation: Rayvon Fouche. Review of Higginbotham, A. Leon. *Shades of Freedom: Racial Politics and Presumptions of the American Legal Process*. H-PCAACA, H-Net Reviews. July, 1997.

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