



NATIONAL ENDOWMENT FOR THE HUMANITIES

DIVISION OF RESEARCH PROGRAMS

Narrative Section of a Successful Application

The attached document contains the grant narrative and selected portions of a previously funded grant application. It is not intended to serve as a model, but to give you a sense of how a successful application may be crafted. Every successful application is different, and each applicant is urged to prepare a proposal that reflects its unique project and aspirations. Prospective applicants should consult the Research Programs application guidelines at <https://www.neh.gov/grants/research/fellowships> for instructions.

Note: The attachment only contains the grant narrative and selected portions, not the entire funded application. In addition, certain portions may have been redacted to protect the privacy interests of an individual and/or to protect confidential commercial and financial information and/or to protect copyrighted materials.

Project Title: Race, Liberty, and Policing before the Fourteenth Amendment to the U.S. Constitution

Institution: Northwestern University

Project Director: Kate Masur

Grant Program: Fellowships

The Law of the Land: Race, Liberty, and Policing before the Fourteenth Amendment

Research

The Law of the Land examines the struggle over race, liberty, and policing in the United States from the early nineteenth century through the Civil War, focusing on the crucial principle of personal liberty. Personal liberty, widely understood as the right to move freely from one place to another within the nation, has long been central to American visions of freedom. Yet from the beginning, the commitment to personal liberty was counterbalanced by commonplace understandings of government's obligation to secure order – that is, to police its population. From the colonial period through the Civil War, the tension between personal liberty and state police powers was most acute in debates about the rights of *free people of African descent*. Elucidating debates over race and personal liberty, this book offers a new account of the origins of the Fourteenth Amendment's protections of citizenship, equal rights, and due process, and helps us understand why those protections have been so very tenuous.

Proceeding largely chronologically, the book examines social movement organizing, print culture, formal politics, and constitutional law, revealing a debate that unfolded over many decades. I begin by showing how Americans built racially discriminatory laws atop an inherited tradition of English settlement law. Under settlement laws with origins in seventeenth-century England, communities could demand that members of ostensibly undesirable groups carry passes attesting to their status and provide bonds guaranteeing that they would not become public charges. In early-nineteenth-century America, many states – slaveholding and non-slaveholding alike – turned the settlement law tradition to racial purposes, passing laws that required free people of color to carry passes and register with county officials. I argue that those laws were in many respects consistent with Anglo-American legal traditions; they invoked the government's power to police, and they were widely considered legitimate, in large part because Americans were accustomed to accepting a range of restrictions on personal liberty in the name of public order.

The book goes on to show how activist northerners attacked both the principles behind racist police laws and the practices themselves. One chapter highlights the 1826 case of Gilbert Horton, a free black New Yorker who was arrested in Washington, D.C., because he could not provide adequate evidence of his free status. Horton had prominent and politically savvy allies in New York, and his case drew national attention as newspapers covered his situation and the congressman from his district insisted that the House of Representatives take up the question of whether the Constitution protected free black people's right to mobility in slaveholding jurisdictions. White and black northerners grew increasingly uncomfortable with the idea that black northerners traveling in the South – people who might be neighbors, friends, or family members – could be questioned, arrested, and incarcerated simply because they appeared to be of African descent. But it was not simply a question of North and South. Another chapter examines the fight against the "black codes" of the Midwestern states. The states carved from the Northwest Territory passed laws requiring free black people to register with local officials and carry passes that attested to their freedom; among those states, Ohio became most notorious. The campaign against the Ohio black codes – waged by Ohioans and outsiders – helped strengthen many northerners' conviction that the right of free persons to move within states or across state lines ought not be restricted.

Throughout the four core chapters, I show how northerners developed new ideas about what it meant to be a citizen of a state and of the nation. Before ratification of the Fourteenth Amendment in 1868, the Constitution's most important reference to citizenship was as a *state-based* status (in the "privileges and immunities" clause). In the course of the antebellum debate over race and police powers, anti-slavery activists came to realize that the absence of any *national* guarantee of rights or citizenship status was a major problem. I emphasize that theme particularly strongly in my chapter on the northern movement to protect free black sailors who were subject to arrest and incarceration in southern ports. Activists in Massachusetts led the campaign against such practices, developing the argument that those sailors were citizens of their states and *therefore* citizens of the United States, and that they were entitled to protection of their rights not only by their home state but by the U.S. government. White southerners vehemently rejected that argument, invoking states' powers to police and arguing that the survival of their social order demanded that they restrict the mobility of free black people.

Tracing conflicts such as the ones mentioned above, I show that already by the 1840s, many northerners realized they were at a constitutional impasse. The federalist order established by the original Constitution did not seem to permit Congress to instruct states to accord free black people the same basic liberties as white people enjoyed. And Congress, dominated by slaveholding interests, would not have passed such a measure even if it were constitutional. Meanwhile, the federal courts' jurisdiction was quite limited, making it virtually impossible to test in court the constitutionality of racially discriminatory state laws. It was only the cataclysm of the Civil War (1861-1865) that created conditions in which the U.S. Constitution could be altered to address the problems of rights and citizenship identified by the anti-slavery movement. In fact, many of the Republican leaders who were responsible for measures like the Fourteenth Amendment and the first federal civil rights laws were veterans of the antebellum struggles detailed in this book, among them Henry Wilson of Massachusetts, John Bingham of Ohio, and John P. Hale of New Hampshire. The war gave them the chance to forge legislation based on principles they and others had honed in a decades-long fight over race, liberty, and policing. In sum, then, *The Law of the Land* demonstrates that in the process of fighting for the rights of free black people, northern activists and politicians developed a newly expansive vision of individual liberty and citizenship that would ultimately be instantiated in the Fourteenth Amendment and other federal Reconstruction measures.

Contribution/Significance

Despite the signal importance of race and civil rights in American history, historians have seldom studied how principles of racial equality made their way into federal policy, nor have they revealed the significance, in that history, of the tradition of state police powers. Scholarship on the origins of the Fourteenth Amendment typically emphasizes the emergency conditions that gave rise to the amendment in 1865-1866, rather than the amendment's long-term cultural and intellectual origins. Even more significant for my purposes, scholarship on the anti-slavery movement has focused almost exclusively on claims to rights, situating the history of abolitionism within a broader history of the quest for universal human dignity and equality. That approach is understandable, but it is also insufficient because it neglects the depth, scope, and legitimacy of the order against which antislavery activists were fighting. When we look at the intertwined history of rights *and* police powers in the era before the Fourteenth Amendment, we can better grasp the extraordinarily tenuous nature of claims to basic liberties by many marginalized groups throughout American history. Attention to police powers also makes it easier to understand how the federal government's post-Civil War attempts to enforce racial equality before the law – through the Fourteenth Amendment and various civil rights statutes – while momentous in their own right, nonetheless left local governments ample power to limit the individual liberties of members of groups considered outsiders or threatening to the common good.

My hope is that this new history of race, rights, and policing in the United States will be relevant across several different fields. Political scientists of the *American Political Development* school have paid close attention to how American federalism (sometimes called the “dual state”) has shaped civil rights law and policy, and my book will contribute to that work by exploring how individual rights were made in the context of a broader conversation about the relationship between local, state, and federal power. At the same time, I am attentive to how people's convictions about race, liberty, and equality reflected *culturally specific* ideas that were subject to pressure and revision. I draw on scholars of law and literature, and of law and society, who have long recognized that the law is a fundamentally humanistic enterprise that involves telling stories, analyzing texts, and constituting authority. Finally, *The Law of the Land* addresses questions of race, policing, and incarceration that have significant resonance in our present moment. Most of the recent historical scholarship on such issues focuses on the post-World War II period. By contrast, my book illuminates the longer history of those contemporary challenges and thus enriches our understanding of their depth and complexity.

Methods and work plan

An NEH Faculty Fellowship would support a year of leave in 2018-2019, during which I would remain at home in the Chicago area and complete the book manuscript. My current plan is that the book will consist of six chapters: 1) an introduction to tensions between personal liberty and police powers in Anglo-American law and state-making dating back to early modern England 2) debates about the rights of free blacks in the early

United States, with particular attention to the racialization of poor law and settlement law traditions 3) the 1826 case of Gilbert Horton as an exemplar of growing northern concern about the rights of free blacks 4) the outcry against the arrest of northern black sailors in southern ports and the (unsuccessful) effort to get Congress involved on their behalf 5) the fight against racially discriminatory laws in the Midwestern, particularly in Ohio 6) how preceding struggles shaped Civil War and Reconstruction debates about the use of federal power to enforce racially equal rights to personal liberty.

The book is grounded in extensive primary source research, much of which is now complete. During a year of leave at Harvard's Hutchins Center for African American and African Studies (2014-2015), I conducted significant research in New England archives and wrote preliminary drafts of two chapters. Since then I have researched and written a polished third chapter on the northern outcry against the incarceration of black sailors in southern ports. The main research I have yet to conduct is three-fold: 1) For chapter five, I need to travel to archives in Ohio and look at legislative records, personal papers, and country registries 2) I have worked on chapter six in dribs and drabs, but I need time to further investigate the congressional debates that resulted in the federalization of anti-slavery activists' personal liberty policies. 3) For chapter one I need to read and synthesize scholarship on settlement law in England and its colonies through the era of the American Revolution. Thanks to library resources at Northwestern, I can do the bulk of my remaining research at home. I recently received a partial course reduction for the 2017-18 academic year, courtesy of the Alice Kaplan Humanities Institute for the Humanities at Northwestern. That reduction will allow me time to complete my research before my fellowship term begins.

I will start the fellowship period with my research complete and will spend the academic year on writing, revising, and developing the book into a coherent whole. I will be eligible for a leave from Northwestern in 2018-2019 and plan to complete the manuscript by June 2019.

Competencies, skills, and access

I have spent much of my career to date writing about the politics of the post-Civil War period and am now moving back in time in an effort to understand the origins and earlier history of the ideas and practices with which I'm most familiar. Therefore this project entails a shift in time period but continuity in my fundamental research questions, which concern the long history of race, rights, and equality in the United States. My current project engages with the field of legal history more directly than my previous work, but I feel well-positioned for that transition. I regularly attend a legal history workshop at the American Bar Foundation in Chicago and often go to the American Society for Legal History meeting; indeed, many of my scholarly interlocutors work, as I do, at the nexus of legal, social, and political history.

I particularly welcome the opportunity to return to my own research agenda now, because in the last two years I have spent significant professional time on public history work with the U.S. National Park Service. Among the fruits of that labor are a published *Reconstruction Handbook* and a major study that I co-authored with historian Gregory Downs: *The National Historic Landmark Theme Study of the Reconstruction Era*. That work reached a happy milestone in early 2017, when President Obama declared the nation's first-ever National Monument to Reconstruction. Promoting public recognition of the Reconstruction era made me increasingly aware of the need for greater understanding of its historical antecedents. I believe my current project will help make Reconstruction seem less anomalous by placing its legal and constitutional innovations (and their limitations) in broader historical context.

Final product and dissemination

The intended audience for this book is interested general readers, historians, and students. I do not yet have a book contract but have been in conversation with editors at several academic and commercial presses about publication. In all my work I am committed to writing clearly and accessibly; I believe my topic is of broad interest and I look forward to discussing my scholarship with a wide audience of people interested in the history of race, rights, and policing in the United States.

Bibliography

Representative Primary Sources

Manuscript sources:

- Papers and correspondence of anti-slavery activists at archives and libraries including Boston Public Library, Clements and Bentley Libraries (Univ. of Michigan), Houghton Library (Harvard), Library of Congress, Massachusetts Historical Society, Massachusetts State Archives, New Hampshire Historical Society, New-York Historical Society, Ohio History Center, Ohio State Archives.
- United States National Archives
 - Papers of congressional committees, including antislavery petitions and memorials
 - Congressional serials set

Published sources (digitized and hard copy)

- Anti-slavery newspapers such as *Liberator*, *Freedom's Journal*, *Philanthropist*, *Anti-Slavery Standard*, *Emancipator*, and *North Star*
- Miscellaneous anti-slavery pamphlets and books

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