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Exploring the Legacy of U.S. Slavery

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Foreword: Looking Back to Move Forward: Exploring the Legacy of U.S. Slavery

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**FOREWORD: LOOKING BACK TO MOVE
FORWARD: EXPLORING THE LEGACY OF
U.S. SLAVERY**

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This year, the 30th Annual Ira C. Rothgerber Conference brought together scholars, lawyers, and community leaders from all over the country to discuss one of the most salient issues today—the legacy of U.S. slavery. Centuries of systemic racism and discrimination following the brutal chattel slavery of African Americans has resulted in Black Americans disproportionately faring worse on virtually every economic and social measure today. Metrics along education, housing, health, environment, and justice axes reveal a country still divided along racialized fault lines. Following the through line from slavery to the present brings us to an uncomfortable place. This is where we asked our conference participants to sit this year.

Just recently, in 2020, the country witnessed and learned (some for the first time) about the inhumanity of racialized violence following the murder of an unarmed Black man, George Floyd, by white police officer, Derek Chauvin. This example prompted many in the United States to engage in one of the most significant civil rights movements since the 1960s, based on the simple premise and irrefutable position that Black lives matter. From classroom curriculum to boardroom composition, college admissions to employment opportunities, mass incarceration to crushing wealth disparities, race took center stage. The 2020 “racial reckoning” has motivated many Americans to bolster their knowledge of U.S. history, particularly slavery and its

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aftermath, and to better understand its impact. Many students are hungry for a fuller, more accurate, and deeper understanding of this complex history. Those who are curious and determined to learn the truth have found a treasure trove of diverse perspectives, robust theory, and alarming facts. For a number of Americans, this “reckoning” has been singularly transformative.

This courageous struggle to re-up this conversation and to push the United States to lean into its promises of equality and justice for all, however, has resulted in a concomitant backlash, involving an alarming spike in white supremacist groups, hate crimes, and racialized polarization today. Efforts to squash robust and honest discussion via educational censorship, book bans, and dismantling of DEI (diversity, equity, and inclusion) initiatives has taken root nationwide.

Thus, now more than ever, it is important for our community to come together and do the hard work of unpacking and understanding the legacy of U.S. slavery. My hope is that the Rothgerber Conference helped to do that. The Byron R. White Center for the Study of American Constitutional Law, at the University of Colorado Law School, was honored to bring together a collection of voices, life experiences, and expertise to tackle the intractable problem of making real the Constitution’s promise of equal protection for all of its people. To this end, this interdisciplinary conference included historians and legal scholars, doctrinal and clinical faculty, and policymakers and formerly incarcerated community leaders, whose perspectives deeply enriched the analysis.

Determined to ground ourselves in the lived reality of slavery’s legacy, the conference kicked off on the evening of April 7, 2022 with a presentation by Motus Theater, *JustUs: Stories from the Frontline of the Criminal Legal System and the Legacy of Systemic Racism and Slavery*. Formerly incarcerated members of the community delivered powerful monologues of their experiences with the criminal justice system, followed by musical selections from Spirit of Grace, and a poetry reading by writer, performer, and activist Dominique Christina. With each progressive reading by the monologists (Dereck Bell, Juaquin Mobley, and Colette Payne), the theater fell dark and silent, and the space filled with music responding in kind to the pain, brilliance, and provocation of the story.

One of the most powerful experiences for me was the opportunity to share the stage with monologist Dereck, whose monologue we took turns reading to the audience. Metaphorically standing in his shoes, telling his story, imprinted his experience in me in a way otherwise impossible. His story reminded me of our common humanity and precarious futures. As someone who cares deeply about racial inequities in this country, I was reminded of my own privilege. Coming from a family of slaves and slaveowners, I stand in the breach between oppressed and oppressor—a perfect example of the complicated, messy story of the United States. I shared with the audience that Dereck reminded me of my father—a Black man who had grown up poor in the segregated South whose humanity had also been devalued by virtue of his identity. While their lives took very different turns, I was reminded of the adage: “but for the grace of God go I.” The distance between the two men was not that far. Dereck’s narrative and his courage to share it with me was a gift I will always treasure.

Having centered the conference on the lived experiences of slavery’s legacy, conference discussion the following day was anchored in reality as well as ideas. The conference itself, held on April 8, 2022, started with a robust discussion with Colorado Law’s new Dean, Lolita Buckner Inniss, about her book, *The Princeton Fugitive Slave: The Trial of James Collins Johnson*. In a fireside chat with Dr. Hilary Green, Associate Professor of History in the Department of Gender and Race Studies at the University of Alabama, the Dean shared the challenges of researching and giving voice to the story of fugitive slave James Collins Johnson (“Jim Stink”) and Princeton College’s complex relationship with slavery. The book, written by Dean Inniss and taught by Professor Green, stands as a model and testament to the kinds of narratives that need to be told and the relentless determination necessary to extract information from archives not designed to illuminate or dignify marginalized lives. This Symposium Issue includes a contribution from Dean Inniss, who reminds us of how Johnson was “a small actor but whose story represented many larger concepts in law and society.”¹ Recounting how her property law students would resist the mention of slavery in her doctrinal course, Dean Inniss aptly observes “how the history and legacy of slavery have often been

1. Lolita Buckner Inniss, *Foreword: Expanding the Boundaries of Knowledge About Slavery and Its Legacy*, 94 U. COLO. L. REV. 381, 383 (2023).

relegated to narrow spaces and closely limited boundaries, either misremembered, or altogether unremembered.”² The goal of the Rothgerber Conference and this Symposium Issue is to disrupt this practice and chart a new course of understanding.

In that vein, the next discussion centered around another example of long hidden racialized violence—the Tulsa Race Massacre of 1921. This roundtable, *The 1921 Tulsa Race Massacre; The Quest for Accountability*, reunited many of the original team of lawyers and advocates who brought the sole constitutional rights case against the city of Tulsa and state of Oklahoma for their orchestration and participation in one of the worst race massacres in U.S. history. Professor Emerita Adjoa A. Aiyetoro from William H. Boyd School of Law, Professor Eric Miller from Loyola Law School, and I were all part of a team of renowned lawyers, historians, scholars, organizers, and community leaders who represented massacre victims in their quest to hold the government accountable over two decades ago. With activist Rev. Dr. Robert Turner, we wrestled with the underlying causes of the massacre, the legal barriers to restitution, and the future strategies for making the last three living survivors and their descendants whole. It was truly a treasure to be reunited after having lost so many of our clients and members of our formidable team.

Each roundtable participant contributed to this Symposium Issue. Professor Aiyetoro explains how race is a social construct and how the myths of white supremacy and Black inferiority are necessary to justify the ongoing oppression of Black people and other people of color.³ She concludes that “if this country has a chance of survival, of actually being great, it must embrace restorative justice and reparations.”⁴ Professor Miller’s essay ironically describes the Tulsa Race Massacre of 1921 as a “love story” between the Black community and the young Black man Dick Rowland, who was wrongly accused of assaulting a white woman.⁵ The neighbors of “Black Wall Street” (led by recently returned Black World War I veterans) fought valiantly to protect their child from the white lynch mob eagerly waiting outside the

2. *Id.*

3. Adjoa A. Aiyetoro, *Social Construction of Race Undergirds Racism by Providing Undue Advantages to White People, Disadvantaging Black People and Other People of Color, and Violating the Human Rights of All People of Color*, 94 U. COLO. L. REV. 415 (2023).

4. *Id.* at 443.

5. Eric J. Miller, *Loving Reparations*, 94 U. COLO. L. REV. 395 (2023).

jailhouse doors. Professor Miller's essay provocatively recasts the tragedy with love as the center piece and argues that loving Blackness is central to reparations. Finally, Rev. Dr. Turner's essay contends that true repentance goes beyond mere apology.⁶ While his admonishment of the government is strong, he remains hopeful: "I do not subscribe to the belief, as some of my friends, do that America is broken. I just believe America is not finished."⁷

Rev. Dr. Turner's hope begs the question of what can or should be done today. The conference continued with three panel discussions that delved into this inquiry in three distinct areas. The first, *Institutional Complicity in American Slavery: The Role of the Judiciary and Higher Education*, unpacked how these major institutions upheld and perpetuated slavery, benefitted from its legacy, and can potentially atone for its vestiges today. The participants included Professor Brian Mitchell from University of Arkansas at Little Rock, Professor F. Michael Higginbotham from University of Baltimore Law School, and Visiting Professor Christopher Mathis from University of Iowa College of Law. Professor Mathis's contribution to this Symposium Issue describes how integral slavery was to higher education, from the most elite private schools to flagship public universities. In recognition of the depth and breadth of their harm, a number of states have sought to rectify their harm legislatively. Professor Mathis critiques this statutory approach to reparations, concluding that they constitutionally fall short.⁸ Professor F. Michael Higginbotham's essay discusses the racial profiling of African American males as a vestige of slavery, drawing upon his own experiences growing up in Los Angeles.⁹ In addition to the criminal justice system's devaluing of Black life, Professor Higginbotham faults the courts for their creation of racial stratification via precedents.

The second panel picked up the theme of the criminal justice system as a major legacy of slavery. Entitled *Vestiges of Slavery in the Criminal Justice System*, this panel did a deep dive on the

6. Robert Turner, *Roundtable: The 1921 Tulsa Race Massacre; The Quest for Accountability*, 94 U. COLO. L. REV. 445 (2023).

7. *Id.* at 448.

8. Christopher L. Mathis, *Higher Education Redress Statutes: A Preliminary Analysis of States' Reparations in Higher Education*, 94 U. COLO. L. REV. 387 (2023).

9. F. Michael Higginbotham, *Shades of Justice: Racial Profiling Then and Now*, 94 U. COLO. L. REV. 533 (2023).

myriad of ways slavery has impacted criminal law, drawing a through line from slave law to modern criminal law practices. These panelists challenged disparate policing, systemic racism, and mass incarceration. Participants included Professor Gabriel J. Chin from UC Davis School of Law; Robert Saleem Holbrook, Executive Director of the Abolition Law Center at Penn Carey Law School and co-founder of the Human Rights Coalition; Professor Sunita Patel from UCLA School of Law; and Professor Monica Bell from Yale Law School. Professor Chin contributed to the Symposium Issue. While appreciating the relationship of slavery to contemporary practices in the criminal justice system, Professor Chin's essay argues that "the scholarly focus on slavery understates the nature of American racism."¹⁰ He notes how Black people who were not enslaved were subjected to harsh regulation and discrimination and how not just Black people, but other non-white individuals, were "subject to legal domination across multiple areas of life."¹¹ Jim Crow, Indian Removal, Asian Exclusion, and Mexican oppression reveal a broader legal regime grounded in the "common foundation of white supremacy vigorously enforced through law over time."¹² Professor Chin's essay challenges the Supreme Court to take a bird's-eye view of history and see slavery in the context of a much broader commitment to white supremacy doctrine.

The third panel, *Bringing It Home: How Slavery Impacts Property and Land Ownership in Colorado Today*, localized the conference theme by connecting the dots from slavery to issues of affordable housing, discrimination, zoning, and districting in the state of Colorado. Speakers included Professor Tom I. Romero, II from University of Denver Sturm College of Law, Rita R. Lewis as the former Executive Director of the Denver Metro Fair Housing Center, and Councilwoman Candi CdeBaca from Denver's District 9. Conference participants were challenged to critique local practices and policies and to reexamine the myth of Colorado as a respite from racial antagonism. Professor Romero's article unpacks what is meant by a "Colorful Colorado" through a historical and modern lens.¹³ He describes the cognitive dissonance between the state's

10. Gabriel J. Chin, *Slave Law, Race Law*, 94 U. COLO. L. REV. 551, 554 (2023).

11. *Id.*

12. *Id.* at 557.

13. Tom I. Romero, II, *The Color(blind) Conundrum in Colorado Property Law*, 94 U. COLO. L. REV. 449 (2023).

identity as a racial utopia with the myriad examples of racial violence and Jim Crow discrimination. Professor Romero focuses on Colorado's property law regime to illustrate willful blindness to racialized discriminatory policies. From racially restrictive covenants to gentrification to foreclosures, Professor Romero highlights how our home state is not exempt from its commitment to the maintenance of white supremacy.

In closing the conference, Professor Reiland Rabaka—from the African, African American, and Caribbean Studies and the Department of Ethnic Studies at University of Colorado Boulder and founding Director of the Center for African and African American Studies that co-sponsored the conference—expressed gratitude for the day's discussions. Reflecting on the importance of these types of conversations, he concluded: "This is what decolonization looks like."¹⁴

In sum, over the course of two days, Rothgerber Conference participants were afforded an opportunity to do a deep dive into one of the most wretched aspects of U.S. history—that is, slavery—and examine its concomitant consequences today. Those conversations were rife with serious reflection and, at times, some serious disagreement. I am grateful to the participants for their brilliance, hard work, time, courage, and vulnerability. In true Colorado fashion, we ended the day hiking the foothills and enjoying dinner together at the base of the mountain. I trust that you will appreciate the incredible contributions of the conference participants in general, and a sampling of their work found in this Symposium Issue in particular.

14. Colorado Law, *Panel 3: How Slavery Impacts Property and Land Ownership in Colorado Today & Closing Remarks*, YOUTUBE, at 01:16:36 (Apr. 12, 2022), <https://www.youtube.com/watch?v=McbIMid4Zsc> [<https://perma.cc/D7KH-8A8E>].