

Summer 2007

Stephen M. Best's *The Fugitive's Properties: Law and the Poetics of Possession* (book review)

Guyora Binder

University at Buffalo School of Law, gbinder@buffalo.edu

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/book_reviews



Part of the [Law Commons](#)

Recommended Citation

Guyora Binder, *Stephen M. Best's The Fugitive's Properties: Law and the Poetics of Possession (book review)*, 25 *Law & Hist. Rev.* 421 (2007).

Available at: https://digitalcommons.law.buffalo.edu/book_reviews/26

This article has been published in a revised form in *Law and History Review* <https://doi.org/10.1017/S073824800003059>. This version is free to view and download for private research and study only. Not for re-distribution, re-sale or use in derivative works. © copyright holder.

This Book Review is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Book Reviews by an authorized administrator of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

pended to many books in this catalog provide information on bindings, history of the texts, and contemporary opinion. Also noteworthy in the catalog are the number of law texts that have been translated: English to French, French to Spanish, Italian to French, Latin to French, German to English, Italian to Spanish. Wouldn't it be useful to discover why a book was popular enough to be translated and where the demand for translation originated?

Michael Hoeflich's introduction to both volumes provides biographical and historical background. Karen Beck's careful index of titles in the Story catalogue adds an essential reference point. Louis de la Vergne, Schmidt's great-great grandson, recognized the importance of publishing the Schmidt catalogue—with its annotations and prices—for a broader public. The essay by Kjell Å. Modéer incorporates documents from Swedish archives, correspondence about their books between Gustavus and his brother Carl, a Swedish judge. The Tarlton Law Library has made an excellent choice in bringing early law catalogs to light. These two publications will sustain the growing interest in history of the book by focusing attention on law books, their production, distribution, and ownership in the nineteenth century.

Whitney S. Bagnall
Columbia University

Stephen M. Best, *The Fugitive's Properties: Law and the Poetics of Possession*, Chicago: University of Chicago Press, 2004. Pp. xii + 362. \$69 cloth (ISBN 0-226-04433-5); paper \$25.00 (ISBN 0-226-04434-3).

Stephen Best's *The Fugitive's Properties* is a New Historicist exploration of the problem of representing personhood in turn-of-the-century American law, literature, and culture. Other works in this vein include Brooke Thomas's *American Literary Realism and the Failed Promise of Contract*, and Walter Benn Michaels's *The Gold Standard and the Logic of Naturalism*. Like these earlier works, *The Fugitive's Properties* presents legal formalism as a self-defeating response to the social dislocations of commercial and industrial development. Readers of critical legal histories of this period will find some of Best's conclusions familiar: "The law's purpose is to produce reliable principles of value that seem to emanate from the object—with the consequence that the very conception of property as an object appears only at the end, not the beginning, of any legal deliberation. Equality is no different . . . it too is an effect, not a grounds, of deliberation . . ." (274). What Best adds to the realist critique of formalism, however, is a reading of disputes about slavery and racial status in the later nineteenth century as reflections of a pervasive anxiety about commodification of personality: "Slavery is not simply an antebellum institution that the United States has surpassed but a particular historical form of an ongoing crisis involving the subjection of personhood to property" (270).

Best begins his argument by juxtaposing the *Dred Scott* case with the emergence of intellectual and other intangible property. For Best, disputes over the rendition of fugitive slaves highlight the dependence of all property on law, and of its value on such "fugitive" factors as capital, credit, and commercial good will. In Best's

rhetoric, property in slaves becomes a metaphor for rights of all kinds, as the idea of estates in persons grounds liberal rights of self-ownership, as well as rights to privacy and intellectual property. Best is fascinated by the constitution's euphemistic characterization of fugitive slaves as absconding debtors. He takes this as a paradigmatic illustration of the capacity of liberal jurisprudence to justify any social arrangement whatever by constructing a mythology of prior consent.

In the same eclectic chapter, Best recounts the career of "Blind Tom," a celebrated slave savant who, from childhood could play any piece of music by ear by hearing it once, and who remained a dependent of his former master for decades after slavery's end. Best suggests that racist culture managed the anomaly of African-American genius by identifying authenticity and originality in formalist terms, as inhering only in creations reducible to some system of notation; and by associating African-American cultural expression with repetition, rhythm, and parody as opposed to genuine innovation and progress.

Best's second chapter juxtaposes *Uncle Tom's Cabin* with the emergence of marginalism in economics. Best reads Stowe's commercially successful novel as an ambivalent commentary on the morality of the market in which it was sold, adapted, translated, and purloined. While Stowe condemns slavery as the sin of commodifying the soul, she also condemns it as imprudent commerce. Thus slavery corrupts its beneficiaries by insulating them from the puritanical discipline of market and family, and shifting the costs of their imprudence onto their disposable dependents. Like many abolitionist texts, *Uncle Tom's Cabin* presented slaveholders as infected with vices (lazy, shortsighted, and irresponsible) stereotypically attributed to slaves. Stowe's villains are at once excessively passionate and insufficiently compassionate. Best sees a similar ambivalence about sentiment and social mobility in nineteenth-century economic debates about whether price movements reflected real value or fickle fads and idle speculation. Finally, he sees the same ambivalence and anxiety about consumerism in white appropriation of African-American cultural forms that parody the masters' pretensions.

Best's wonderfully suggestive third chapter juxtaposes *Plessy v. Ferguson* with an early silent film in which a gentleman flirts with a young lady on a train, only to find, on emerging from the darkness of a tunnel, that he is embracing her bemused black maid. Best first explores the use of railroads as literary and cinematic symbols of destructive progress, social mobility, and narrative necessity. Next, he locates the film as part of a genre of place-switching jokes in cinema and fiction that invoke the fixity of racial status ironically, to dramatize the arbitrariness and fragility of social position in a rapidly industrializing society. Best finds the same trope of place switching repeated in the oral argument and opinion in *Plessy*. This leads him, finally, to an intriguing meditation on counterfactual reasoning in legal accounts of equality, causation, and damages. In Best's view, liberal jurisprudence typically conceives equality in formal terms as fungibility, likening persons to exchangeable commodities.

This is a stimulating book, loaded with ideas and surprising connections. It is not, however, without flaws. Legal historians will be frustrated to find gratuitous errors, like confusing Charles Sumner and William Graham Sumner, or misattribut-

ing the term “originalism” to nineteenth-century constitutional lawyers. That such errors rarely undermine the author’s claims points to another problem: at times, too much disjointed historical detail competes for the reader’s attention, with too little contribution to the argument. This is a chronic risk of the New Historicist method, which often draws connections among disparate events that are more aesthetic than causal. The author uses such connections to explore unresolved antinomies in liberal legal thought that he believes transcend time and place; but historically trained readers may wonder how much thought—even very abstract, formalist thought—ever transcends time and place.

Guyora Binder
SUNY—Buffalo

Mary Frances Berry, *My Face Is Black Is True: Callie House and the Struggle for Ex-Slave Reparations*, New York: Alfred A. Knopf, 2005. Pp. 314. \$26.95 (ISBN 1-4000-4003-5).

Mary Frances Berry has uncovered a valuable link for scholars interested in learning about the historical antecedents of the legal and political debates over slavery reparations in America. She has written an incredibly informative biography of Callie House, an early activist for reparations whose story has not been told until now.

In the contemporary debates over slavery reparations, one claim opponents make is that African Americans of the contemporary period have no standing to raise the issue of reparations on behalf of their enslaved ancestors, because the claims are too remote, the victims of slavery long dead. But Mary Frances Berry demonstrates why the reparations movement persists.

At the end of the Civil War, the newly freed, those who possessed living memories of enslavement, who had the best claims for reparations, found that their demands were ignored. The Freedman’s Bureau Act promised that the freed people would be eligible to receive not more than forty acres of land abandoned or taken from Confederate loyalists. They could rent with the option to purchase from the United States government.

But the government did not follow through and did nothing for the former slaves who were freed but given no financial resources to begin their lives anew. As for the old and infirm who spent years toiling away for the benefit of their white masters, they were destitute in their old age. White Civil War veterans routinely received pensions for their service, and a few black veterans did too. What was to happen to those who could no longer work to support themselves?

Callie House was born a slave in Tennessee. She was four years old at Emancipation in 1865 and emerged as a leader in the movement to petition the government for pensions, reparations for those once enslaved. Traveling throughout the South, she organized on behalf of the National Ex-Slave Mutual Relief, Bounty and Pension Association, made up of local chapters, self-help groups for mutual financial aid. The goal was to build a reparations movement as former slaves signed