

The Civil Rights Movement You Haven't Heard Of

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Kate Masur, [Until Justice Be Done: America's First Civil Rights Movement](#) (2021).

I have no doubt that most Jotwell readers—particularly readers of its legal history section—remember sitting in their U.S. History class, learning the accepted narrative of “The Coming of the Civil War.” The Missouri Compromise. Check. The Mexican War. Check. The Wilmot Proviso. Check. The Compromise of 1850. Check. The Kansas-Nebraska Act. Check. The *Dred Scott* case. Double check for the audience of this review, I’d bet. The Lincoln-Douglas debates, Harpers Ferry, Lincoln’s election, Fort Sumter. Check, check, check, and check. Many of us enjoyed this story of the political and legal maneuvering that shaped the conflict between freedom and slavery. What our eighteen-year-old selves probably didn’t notice was that the story focused primarily on the federal government. We also probably assumed that freedom and slavery were the only two statuses available to Americans in the years leading up to the Civil War.

Kate Masur’s marvelous *Until Justice Be Done* shows us otherwise. Indeed, she recounts a very different series of events—stories of the fight for the rights of free Black Americans at the state and local level for the hundred years between the Revolutionary War and the end of Reconstruction. This “first civil rights movement” runs alongside the traditional story of sectionalism and slavery, intersecting with it and explaining it in ways that a myopic focus on the federal government and political conflict over slavery do not. Indeed, after reading *Until Justice Be Done*, the standard narrative seems thinner and less substantial than it once was. Knowing what was left out, you can’t look at the sectional conflict, the Civil War, and Reconstruction in the same way again.

Until Justice Be Done is a book of many accomplishments. Most obviously, it tells a compelling narrative of the fight to overturn the racist laws and policies that, along with the law of slavery, constituted the legal framework of white supremacy in antebellum America. In the first decades of the nineteenth century, many northern states stripped Black men of the right to vote and prohibited African Americans from testifying against white people in court. Politicians in some northern states—particularly those carved out of the Northwest Territories—restricted the migration of African Americans into their states, banning it outright or imposing special requirements on Black migrants. They had to carry certificates of freedom that functioned as work permits. They had to find current residents of the state to post surety bonds guaranteeing that they would not become public charges. Southern states and the District of Columbia also regulated the mobility of free African Americans. They incarcerated free African Americans who had the audacity to travel without written proof of their free status. Similarly, Black sailors were required to report to jail for confinement while their ships were docked in southern ports. In certain circumstances, these temporary confinements became permanent, as Black travelers who could not prove their freedom were sold into slavery to cover the cost of their incarceration.

At the core of *Until Justice Be Done* is the story of the fight against these laws. Abolitionism, Masur shows us, was not merely a movement against slavery. It also sought to protect and promote the civil and political rights of free Black people. At its very center was the demand that African Americans be treated as citizens, both of the state where they resided and of the United States as a whole. As such, their privileges and immunities were protected by the Constitution. Their movement between states, and their right to work and hold property in any state could not be abridged. The government had the obligation to protect them from violence and unjust incarceration. It was also forbidden from denying them the franchise or the right to participate in judicial proceedings.

Unsurprisingly, the political and legal battles to secure these rights were uphill struggles. Racial egalitarianism was

hardly a popular political position in antebellum America, and the fact that a large percentage of Black Americans living in the north were disfranchised did not make the task any easier. Nor did antiblack violence, threatened and actual. Masur also describes less obvious obstacles to legal and political equality. She demonstrates that the widely accepted constitutional and legal structures of nineteenth-century America – federalism and each state’s unquestioned police powers – were potent barriers to racial reform. Nonetheless, one of *Until Justice Be Done*’s signal contributions is to surprise its readers with the number of successes in this fight: Pennsylvania’s rejection of antiblack laws, Ohio’s stunning overturning of these laws in the 1840s, and Massachusetts’s bold defense of Black sailors, for example.

Indeed, what makes Masur’s narrative a page-turner is her ability to compellingly tell these stories of political and legal maneuvering and explain how civil rights advocates achieved successes, some pyrrhic and others genuine. In the process, readers learn the backstories of many familiar characters who would shape the legal and constitutional structures of Reconstruction-era America: Salmon Chase, Fredrick Douglass, Charles Sumner, and Lyman Trumbull, for example. More significantly, Masur exposes her readers to the Black abolitionists who led the antebellum civil rights movement, people often missing from the traditional narrative of abolitionism and the causes of the Civil War. These people – Samuel Cornish, William Howard Day, John Jones, and Theodore Wright, to name just a few—shaped the meaning of citizenship in a manner that would define antiracist law and politics in the years following the Civil War.

Masur’s deft telling of this narrative makes *Until Justice Be Done* an easy, rewarding read. The narrative, however, is only one facet of this fantastic book. She also makes a number of compelling analytical points. The first of these is to place the emergence of antiblack laws in the context of an increasingly robust literature about the state in early nineteenth-century America. As Masur notes, antiblack legislation was not *sui generis*. It was not a locus of intense regulation in an otherwise free society. To the contrary, the legal mechanisms of early nineteenth-century white supremacy sat comfortably within “a variety of interlocking and widely accepted structures of inequality.” (P. 317.) Combating these laws was difficult not simply because of the pervasive racism of antebellum America. The fundamental regulatory presumption that states had broad power to maintain what they viewed as a peaceful, “well-ordered” society inhibited reform impulses. The idea that the state could limit the rights of individuals – their right to move in and out of a community, to work, to hold property, or to vote – was uncontroversial. Women, children, the sick, the poor, “vagrants” and “vagabonds,” and the mentally ill all had their liberties profoundly circumscribed by the power of the state. Thus, the participants in the first civil rights movement had to overcome not simply a legal and political order suffused with white supremacy, but also a presumption that a state could routinely exercise its power to limit the fundamental rights of most of its inhabitants.

Until Justice Be Done also casts a new light on the history of Reconstruction and the meaning of the Fourteenth Amendment. By connecting the politics of Reconstruction to antebellum ideas about citizenship and civil rights, Masur helps her readers fully contextualize the amendment’s limitations. Most obviously, she demonstrates how far astray the Supreme Court wandered in the *Slaughterhouse Cases*. *Until Justice Be Done* shows that an expansive definition of “privileges and immunities” was central to antebellum civil rights advocacy. For half a century prior to Reconstruction, the opponents of antiblack laws argued that the privileges and immunities clause of Article IV required the states to recognize specific rights stemming from national citizenship. This was the basis of their argument that laws preventing Black Americans from moving between states or denying them the right to work or hold property on the same terms as others were unconstitutional. This was a debate they lost prior to the Civil War. It was also the basis for the definition of privileges and immunities the Republican Party placed in the Fourteenth Amendment. Put in this context, Masur shows us just how far the *Slaughterhouse* opinion deviated from the definition of privileges and immunities that had been nurtured for decades prior to its incorporation into the amendment.

Masur’s narrative also allows readers to better understand the state action requirement of the Fourteenth Amendment. Since 1883, civil right advocates have condemned this limitation, suggesting either that the Supreme Court irresponsibly read it into the amendment, or that the framers of the amendment should have anticipated the need for the federal government to directly police the private violence and discrimination that became a central part of Jim Crow. Yet, Masur’s narrative frames the Fourteenth Amendment’s focus on state action in a different light. *Until Justice Be Done* demonstrates that civil rights activists in antebellum America directed their energies at state action—racist laws in

both the north and the south. Prior to the Civil War, this fight was carried out on a state by state basis with limited success. Accordingly, the framers of the Fourteenth Amendment had a transformative opportunity. They could remake the Constitution in a manner that created a uniform, explicit prohibition on the racist laws of every state. This was the goal that antebellum racial egalitarians had been seeking for decades. Thus, the state action requirement was not limitation. It was a radical, dramatic expansion of the power of the federal government to eliminate white supremacy.

While these analytic innovations sit at the center of *Until Justice Be Done*, the book is stuffed with other fascinating revelations. It is a treasure trove for readers interested in politics, race, and law in antebellum America. What was the legal and political significance of the right to petition? Where did the colonization movement fit in antiracism politics of the nineteenth century? How did Black Americans create powerful political institutions within a society that sought to subordinate them? How did the relationship between abolitionism and state-level politics cause the collapse of the Second Party System? Masur weaves the answers to these questions into her story of the first civil rights movement. In doing so, she grounds the events leading up to the Civil War and the contours of Reconstruction in a dramatically expanded narrative of nineteenth-century U.S. history and the history of race, pluralism, and democracy in America.

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