

Fathers of Conscience: Mixed-Race Inheritance in the Antebellum South

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Review

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Jones, Bernie D. *Fathers of Conscience: Mixed-Race Inheritance in the Antebellum South*. University of Georgia Press, \$24.95 ISBN 9780820332518

A Look at Antebellum Legal History

In *Fathers of Conscience*, Bernie D. Jones, Assistant Professor of Legal Studies at the University of Massachusetts-Amherst, examines southern state appellate court decisions concerning the wills of white slaveholders who left property to their mixed-race children. As numerous scholars have demonstrated, white slaveholders often engaged in sexual relationships with enslaved women. Southern communities typically accepted this behavior, as long as it remained hidden. But problems arose when white men chose to recognize the children of interracial unions and grant them freedom and property, particularly when these grants came at the expense of white relatives. In the latest contribution to the Studies in the Legal History of the South series, Jones argues that contests over wills forced southern judges to weigh the right of white slaveholders to dispose of their property as they wished against community concerns about the growing free black population and the threat it posed to the institution of slavery.

The first two chapters of *Fathers of Conscience* describe the types of cases that resulted throughout the antebellum South when potential white heirs challenged the validity of a slaveholder's will, focusing especially on the language southern jurists used in their decisions. The first chapter argues that judges had "a limited set of tropes from which to choose" in deciding cases involving mixed-race inheritance, so they primarily described white testators in three ways: as "righteous fathers" who took responsibility for their mixed-race children; as "vulnerable old men" who were under the control of their enslaved black sexual partners; and as "degraded creatures" who garnered the disgust of southern jurists (42). In the second chapter, Jones describes judges whose language focused not on categorizing white men but on the consequences of these wills for southern society. Judges in these instances rebuffed white men's

efforts to free their enslaved children because jurists recognized the dangers of expanding the population of free people of color. In doing so, Jones argues that judges were “hiding behind the formal laws of slavery” when they cited statutes to deny the validity of wills (57).

The organization Jones employs in the first two chapters raises questions for this reader. For example, Jones separates cases based on whether the judge’s opinion focused on categorizing the white testator, or whether his primary concern was the “greater demands of the slave society” (42). It is not clear why she makes this distinction; in all likelihood, most southern judges would have had *both* of these concerns in mind when deciding will contests. Jones also distinguishes between judges who felt sympathy for white testators and judges who adhered to the rule of law to deny the validity of wills. But are these two impulses mutually exclusive? Even judges who were sensitive to the wishes of white testators might also find themselves constrained by the law, and in cases where judges felt community pressure to decide against the wills, the letter of the law could also force them to uphold the will. Jones characterizes judges who decided against these wills as “hiding behind the formal laws of slavery,” but one wonders if some judges may have wanted to decide differently but felt obligated to follow the dictates of the statutes. It is not possible to determine the exact motivations of southern jurists, and for this reason, Jones should exercise caution in categorizing their decisions as solicitous or not.

In the following three chapters, which are the strongest of the book, Jones demonstrates the importance of geography for the success of disputes over wills, examining in greater detail particular cases from Kentucky, Mississippi, and South Carolina, respectively. Tracing the legal developments of each state, Jones supplements the appellate court records with census data, letters, and other materials to examine the backgrounds of individual judges in these locations. She argues that Kentucky judges generally were more solicitous towards free people of color, often upholding their inheritances, whereas in Mississippi and South Carolina, community anxiety over any possible increase in the free black population led most judges to find the wills invalid. By the later antebellum years, legislatures throughout the South passed laws that made it more difficult or even impossible to manumit a slave, and this shift in policy also meant fewer slaveholders were able to bequeath property to their mixed-race children. Jones discovers that, in some instances, white slaveholders found ingenious ways to skirt the new laws, including the possibility of sending an enslaved woman and her children to a northern state to free them. Despite these creative uses of the

law, manumission and inheritance became increasingly difficult by the 1850s, when sectional tensions over slavery continued to grow.

Throughout the book, Jones details the backgrounds, motivations, and decisions of appellate court judges, but she spends little time discussing the local context of the cases or looking at the other participants. Jones' strategy of looking at appellate litigation limits her ability to explore the community relations and other factors that influenced whether or not the lower courts recognized the validity of wills. Certainly the attitudes, backgrounds, and connections of community residents played a vital role in how these contests played out, in both the local and appellate courts. By focusing solely on appellate records, Jones is perhaps missing part of the compelling story of interracial relationships and inheritance disputes.

Despite these minor criticisms, *Fathers of Conscience* makes a valuable contribution to the literature on slavery, race, and the law in the antebellum South by recognizing the complex considerations of antebellum jurists and arguing for the importance of geography in determining judicial treatment of will contests. Jones concludes with the convincing argument that challenges to mixed-race inheritance were ultimately about deciding "whether a white man could exercise the prerogatives of his race and class" (152). Through her careful detailing of cases of disputed wills that involved the inheritance rights of children of white slaveholders and enslaved women, Jones adds to our understanding of the interplay of family relations, community pressures, and racial hierarchy in antebellum America.

Kelly Kennington is the 2009-2010 Law & Society Postdoctoral Fellow at the Institute for Legal Studies, University of Wisconsin Law School. She is currently working on her manuscript, "River of Injustice: St. Louis's Freedom Suits and the Changing Nature of Legal Slavery in Antebellum America."