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Book Review (Risa L. Goluboff's *The Lost Promise of Civil Rights*)

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Risa L. Goluboff, *The Lost Promise of Civil Rights*, Cambridge: Harvard University Press, 2007. Pp. 384. \$ 35.00 (ISBN 0-674-02465-6).

Regret, at times mournful and at times cutting, threads Risa L. Goluboff's important and lucid book, *The Lost Promise of Civil Rights*. Goluboff argues that legal historians have mistakenly characterized the years 1940 to 1954 as a long but inevitable march toward *Brown v. Board of Education*. Instead, "the world of civil rights was conceptually, doctrinally, and constitutionally up for grabs" (5). Furthermore, claims rooted in labor rights and focused on economic harms seemed likely to prevail, not those emphasizing formal equality, psychological harms, and government discrimination that *Brown* ushered in.

Goluboff stresses that civil rights capable of dismantling Jim Crow had to address both its economic and racial dimensions. Opportunities for such rights abounded in the 1940s. Political, intellectual, and doctrinal trends rendered the meaning of civil rights "up for grabs" and made rights that reached into the private workplace and extended New Deal economic protections to African Americans the strongest contenders. These were also the rights that African Americans sought. But lawyers rejected and reworked these pleas according to their understanding of doctrinal possibility and their own institutional and political imperatives. Goluboff compares the NAACP and the Civil Rights Section (CRS) of the U.S. Department of Justice to explain how these promising civil rights were lost.

The CRS attorneys primarily attacked the economic dimension of Jim Crow. Established to defend labor rights, during World War II, CRS brought this perspective to African Americans' civil rights. For political, institutional, and doctrinal reasons, CRS used the Thirteenth Amendment to contest economic coercion. This Amendment had great potential: it had no state action requirement, easily reaching private employers, and could extend affirmative New Deal labor rights—to organize, earn a decent wage, and enjoy personal security—to the mostly African American agricultural and domestic workers left out of New Deal statutes.

The NAACP, Goluboff argues, came to workplace rights late and mostly opportunistically. Traditionally, it litigated issues that concerned its elite membership and leadership, such as education and housing. Then, in the 1940s, wooed by black war-industry workers' membership dollars and political cachet, the NAACP brought substantive due process and equal protection Fourteenth Amendment claims that promised to "take seriously the economic . . . components of Jim Crow" by stretching the state action doctrine to reach private discrimination (199). Despite the late-1940s rise of anti-labor Cold War politics, Goluboff maintains that economic-focused civil rights remained viable politically and available doctrinally. Nonetheless, by 1950 the NAACP had "rejected" labor cases in favor of an "all-out attack on *Plessy v. Ferguson*" (198). It would once again focus on the problems "most acute for the more privileged of the race": state-mandated discrimination and the stigma of segregation (252).

For Goluboff, whichever case made the decisive attack on Jim Crow would "both embody the legal understanding of what Jim Crow was and begin to define the constitutional response to it" (239). The NAACP's choices meant that case was *Brown*, not one vindicating the economic-based civil rights of the 1940s. Once decided, *Brown* consolidated government lawyers' shift to race-based desegregation claims

and reinforced the NAACP's eschewal of working-class African Americans' concerns. *Brown* also led to today's civil rights, which have "separated economics from race and justified judicial interference with the latter but not the former" (264).

Goluboff's impressive book is required reading for legal, political, civil rights, and labor historians. While scholars have recognized the labor-focused civil rights activism of the 1930s and 1940s, Goluboff is the first to recover its legal counterpart, wherein civil rights attorneys sought to ensure substantive economic security for all workers, not only formal equality for African Americans. She also helps complicate *Brown*-centered civil rights legal histories, inserting contingency into the rise of modern equal protection. Furthermore, Goluboff challenges recent postwar histories that have emphasized legal liberals' misplaced faith in courts as vehicles for change, suggesting legal decisions had the power to foster, or thwart, Jim Crow's demise.

But Goluboff may prematurely eulogize civil rights' promise, both overestimating the potential of the abandoned Thirteenth Amendment approach and underestimating the economic goals of post-*Brown* equal protection. For decades after *Brown*, equal protection offered hope of economic security as attorneys stretched state action to reach ostensibly private discrimination by employers and unions. And while Goluboff details the limits of equal protection, she does not similarly examine Thirteenth Amendment claims. Which of Jim Crow's many facets might they have ultimately failed to reach? Many of equal protection's limits resulted from backlash litigants bending doctrine to their own ends. If successful, in what ways might Thirteenth Amendment doctrine have been likewise transformed?

Goluboff convincingly demonstrates that *Brown* has warped civil rights legal histories, which have read a road to that decision onto a much richer, variable, and contested past. As such, it is a triumph. In what sense civil rights' economic promise has been lost is less clear: did it cease after *Brown* or has it merely fallen from view? That Goluboff's rich book provokes such weighty questions is a testament to its significance.

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Tony A. Freyer, *Little Rock on Trial: Cooper v. Aaron and School Desegregation*, Lawrence: University Press of Kansas, 2007. Pp. 238. \$35.00 cloth (ISBN 978-0-7006-1535-3); \$17.95 paper (ISBN 978-0-7006-1536-0).

Tony Freyer wrote the first comprehensive review and interpretation of the *Cooper v. Aaron* case (*The Little Rock Crisis: A Constitutional Interpretation* [1984]). That text remains a classic. This new book, *Little Rock on Trial*, is part of a University Press of Kansas series intended to be used as teaching materials. The press web site describes the book as "a concise, lucid, and eminently teachable summary of that historic case and shows that it paved the way for later civil rights victories."

The book will serve well as adjunct reading in a course with a broader textbook and a professor's lectures. A lengthy introduction (twelve pages) summarizes the entire book. Each chapter begins with one to three pages summarizing that chapter's contents. The bulk of each chapter then provides the meat of the material.