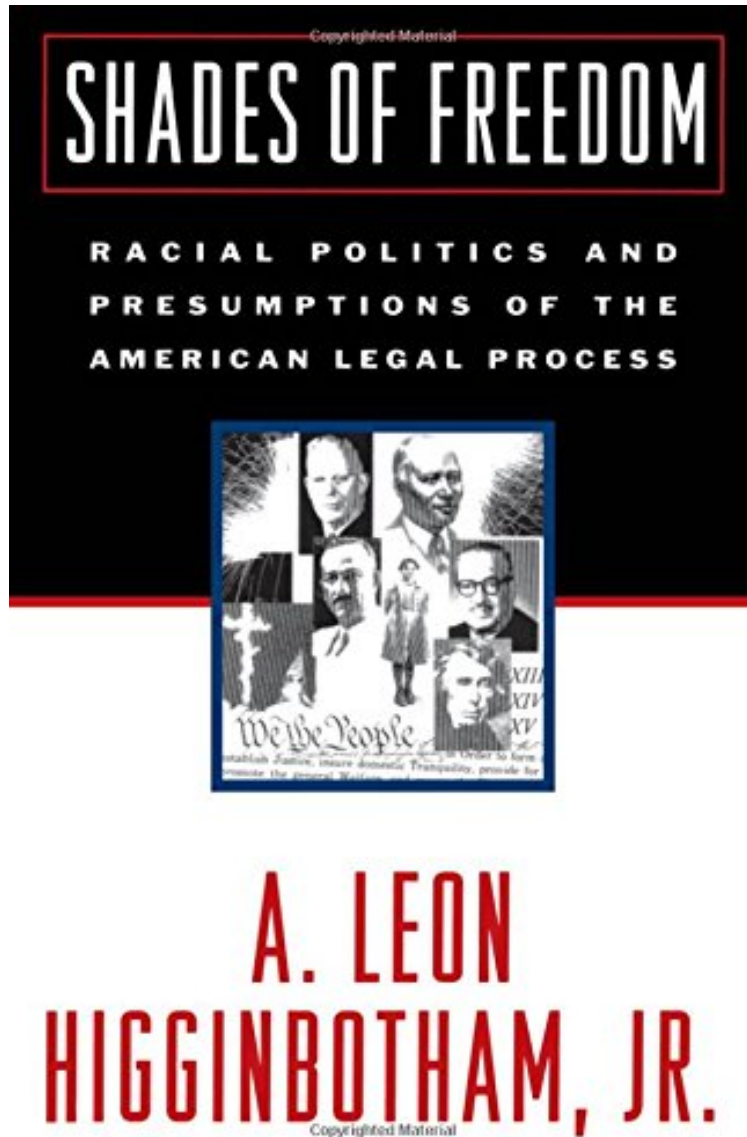


Shades of Freedom: Racial Politics and Presumptions of the American Legal Process

A. Leon Higginbotham

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A. Leon Higginbotham : Shades of Freedom: Racial Politics and Presumptions of the American Legal Process before purchasing it in order to gage whether or not it would be worth my time, and all praised Shades of Freedom: Racial Politics and Presumptions of the American Legal Process:

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Few individuals have had as great an impact on the law--both its practice and its history--as A. Leon Higginbotham, Jr. A winner of the Presidential Medal of Freedom, the nation's highest civilian honor, he has distinguished himself over the decades both as a professor at Yale, the University of Pennsylvania, and Harvard, and as a judge on the United States Court of Appeals. But Judge Higginbotham is perhaps best known as an authority on racism in America: not the least important achievement of his long career has been *In the Matter of Color*, the first volume in a monumental history of race and the American legal process. Published in 1978, this brilliant book has been hailed as the definitive account of racism, slavery, and the law in colonial America. Now, after twenty years, comes the long-awaited sequel. In *Shades of Freedom*, Higginbotham provides a magisterial account of the interaction between the law and racial oppression in America from colonial times to the present, demonstrating how the one agent that should have guaranteed equal treatment before the law--the judicial system--instead played a dominant role in enforcing the inferior position of blacks. The issue of racial inferiority is central to this volume, as Higginbotham documents how early white perceptions of black inferiority slowly became codified into law. Perhaps the most powerful and insightful writing centers on a pair of famous Supreme Court cases, which Higginbotham uses to portray race relations at two vital moments in our history. The *Dred Scott* decision of 1857 declared that a slave who had escaped to free territory must be returned to his slave owner. Chief Justice Roger Taney, in his notorious opinion for the majority, stated that blacks were "so inferior that they had no right which the white man was bound to respect." For Higginbotham, Taney's decision reflects the extreme state that race relations had reached just before the Civil War. And after the War and Reconstruction, Higginbotham reveals, the Courts showed a pervasive reluctance (if not hostility) toward the goal of full and equal justice for African Americans, and this was particularly true of the Supreme Court. And in the *Plessy v. Ferguson* decision, which Higginbotham terms "one of the most catastrophic racial decisions ever rendered," the Court held that full equality--in schooling or housing, for instance--was unnecessary as long as there were "separate but equal" facilities. Higginbotham also documents the eloquent voices that opposed the openly racist workings of the judicial system, from Reconstruction Congressman John R. Lynch to Supreme Court Justice John Marshall Harlan to W. E. B. Du Bois, and he shows that, ironically, it was the conservative Supreme Court of the 1930s that began the attack on school segregation, and overturned the convictions of African Americans in the famous *Scottsboro* case. But today racial bias still dominates the nation, Higginbotham concludes, as he shows how in six recent court cases the public perception of black inferiority continues to persist. In *Shades of Freedom*, a noted scholar and celebrated jurist offers a work of magnificent scope, insight, and passion. Ranging from the earliest colonial times to the present, it is a superb work of history--and a mirror to the American soul.

"By showing us how profound our struggle has been, and how far we have come, Higginbotham also has shown by implication how difficult the struggles ahead are bound to be."--*Emerge*"A carefully researched and impressively documented book...Insightful."--*The New York Times Book* "An important exploration of some of the most critical and difficult terrain in American history."--*The Washington Times*"*Shades of Freedom* is Leon Higginbotham's masterpiece. It exhibits a towering intellect, a peerless capacity for potent articulation, an unbending integrity and rich reservoirs of deep compassion all coalescing in a dance of incredible beauty and energy."--Justice I Mahomed, Chief Justice of Namibia, Chairperson of the South African Law Commission, Deputy President of the Constitutional Court of South Africa"Every course in American history must now include as required reading Judge Higginbotham's superb treatment of the legal process from 1619 to the modern era. In *Shades of Freedom*, as the author concentrates on 'The Precept of Inferiority,' the first of ten precepts which will portray the historical treatment of blacks in America, we are exposed to a kaleidoscope of official conduct--legislative, executive, but especially judicial--that must not be glossed over as a series of past events, but preserved and understood as true recordation of our history."--Ruggero J. Aldisert, Senior Circuit Judge, United States Court of Appeals for the Third Circuit"In 1978, Judge A. Leon Higginbotham Jr., published *In the Matter of Color*, a meticulous examination of how white Americans used law in aid of slavery in the Colonial period. It was a pathbreaking scholarly achievement. 18 years later, judge-turned-professor Higginbotham has produced an impressive sequel to his earlier work. It was worth the wait. *Shades of Freedom* starts the process (at least one further volume is in early prospect) of bringing the tangled tale of race and law--and of the overarching cultural precepts which govern their interaction--up to date."--Lewis H. Pollak, U.S. District Judge"One of the nation's leading constitutional scholars demonstrates, with a powerful command of history, the corrosive effects that centuries of racism have had on American justice. Judge Higginbotham's book is a milestone in the continuing effort to understand the manner in which racism has compromised the capacity of law to achieve equal justice for every

citizen."--James O. Freedman, President, Dartmouth College"Leon Higginbotham's *Shades of Freedom* is a testament to the great tradition of liberal jurisprudence that characterized the crucial legal aspect of the civil rights movement. Alone among the legal minds that comprised that movement, Judge Higginbotham has chronicled the long history of the idea of race in legal discourse, establishing himself as the major scholar of this field, as well as the logical heir of Mr. Justice Thurgood Marshall on the Supreme Court."--Henry Louis Gates, Jr., W.E.B. Du Bois Professor of the Humanities, Harvard University"Judge Higginbotham's book is customarily well researched, extensively documented, persuasively written, and offers compelling insights on the painfully slow process of racial progress in America. While W.E.B. Du Bois reminded us that the problem of the twentieth century is the problem of the color line, Judge Higginbotham has documented Du Bois's prophecy in *Shades of Freedom*, the seminal work on race in the legal system for the twenty-first century."--Charles J. Ogletree, Professor of Law, Harvard Law School"In his powerful treatise, Judge Higginbotham has exposed both the pathology and the potential of the law in either eliminating or perpetuating racial injustice. He has written with the eloquence of a Martin Luther King, the scholarship of a W.E.B. Du Bois, and the superb legal craftsmanship and wisdom of Chief Justice Warren and Thurgood Marshall. For all individuals who believe that history is relevant, *Shades of Freedom* must be read and reflected on. A must-read book for every generation of Americans."--Kweisi Mfume, President CEO, NAACP"*Shades of Freedom* is a worthy successor to *In the Matter of Color*. With eloquence and authority, Judge Higginbotham chronicles and analyzes the long, sordid history of the use of law in establishing and maintaining a system in which 'Equal Justice Under Law' is a mockery of the actual practice. Anyone interested in race in America should read this important book."--John Hope Franklin, James B. Duke Professor of History Emeritus, Duke University"*Shades of Freedom* magnificently reflects on the systematic denial and betrayal of our past and present rights to full liberty and justice, while providing a sobering and disturbing prognosis of our future progress in achieving our full Constitutional guarantees. It superimposes a historical mosaic of denial and unkept promises. The Judge brilliantly chronicles the insidious patterns of racism that have always short-circuited our quest for unconditional freedom, as embraced by America's most enduring concept 'We the People.' In *Shades of Freedom*, as in *In the Matter of Color*, Judge Higginbotham passionately sounds the trumpet for a Rainbow of Freedom for 'We the People.'"--Dr. C. DeLores Tucker, President/Founder, The Bethune-Du Bois Fund"Judge Higginbotham is once again the smithy, wielding, as a mighty hammer, his powerful intellect, scholarship, historical, and logic, in the forge of justice, seeking to reshape on the anvil of the Constitution, minds badly twisted by racism. In this classic work, *Shades of Freedom*, Higginbotham takes his readers through historical and social time zones with their sunlight and shadows, showing forward movement and retreat. Given the confused state of race relations today this remarkable book could not be more timely."--Honorable Nathaniel R. Jones, United States Court of Appeals for the Sixth Circuit"Higginbotham's masterful work is a compelling and convincing examination of how the law developed the official American doctrine of racial inferiority."--Congresswoman Eleanor Holmes Norton"Once again, this great freedom fighter, A. Leon Higginbotham, Jr., has masterfully presented a remarkable and refreshingly honest assessment of the role of race in American society and law. With great clarity and perception, Higginbotham exposes underlying cultural assumptions of inferiority and the impact such assumptions have on our collective progress. *Shades of Freedom* is aptly entitled because in describing the vast spectrum of freedoms enjoyed by African Americans today, it serves as a poignant reminder that there are many miles yet to travel on the road to freedom and equality."--Honorable Damon J. Keith, United States Court of Appeals for the Sixth Circuit"In my lifetime, two giants of the bench did not make the Supreme Court: Learned Hand and Leon Higginbotham. Now one has written a book that you would expect from him: eloquent, scholarly, compassionate, and a ringing call for justice."--Senator Paul Simon"In *Shades of Freedom* one of our greatest legal minds makes a powerful case for turning the use of law to the service of justice. Judge Higginbotham carefully explains the role of law in reinforcing the concept of African American inferiority since the colonial period."--Mary Frances Berry, University of Pennsylvania, and Chairperson, United States Commission on Civil Rights"Eighteen years is a long time to hold one's breath, but it has been worth the pain and effort. *Shades of Freedom* is in its own way as remarkable a book as Leon Higginbotham's magnificent *In The Matter of Color*. It reflects the same mastery of historical research, passion for equality and the rule of law, and judicial temperament. With the publication of this volume, Judge Higginbotham confirms my judgement that he is our leading judicial scholar, and my hope that, with his leadership, this nation will resume its progress toward equal protection of the law for all."--Stanley N. Katz, President, American Council for Learned Societies, and Professor, The Woodrow Wilson School of Public and International Affairs, Princeton University"After groundbreaking work *In the Matter of Color*, which covered racism, slavery and the law in colonial America, in *Shades of Freedom*, the author provides a thorough account of the interaction between the law and racial oppression from colonial times to the present."--JFK School of Government"By showing us how profound our struggle has been, and how far we have come, Higginbotham also has shown by implication how difficult the struggles ahead are bound to be. The major lesson of this book is that it is folly to go into those struggles without a sound knowledge of our cultural and legal history. If we heed Higginbotham--a wise teacher as well as a great judge--we shall not face the future unarmed."--Roger Wilkins in *Emerge*"*Shades of Freedom* is a carefully researched and impressively documented book. It contains insightful chapters on the ancestry, ideology and politics of the idea of racial

inferiority as well as thought sections of the Supreme Court's legitimization of racism...Mr. Higginbotham writes clearly, briskly and with controlled passion. And he writes with power and style."--The New York Times Book "On the whole, particularly for those who believe the U.S. Supreme Court has been a longtime friend of African-Americans, this book offers a sobering perspective. The author marshals an impressive volume of cases that could easily lead the reader to despair that the United States will ever become a fair multicultural society. Yet, this is a book for optimists."--The National Law "Mr. Higginbotham's concern with the ideology of black inferiority and its influence on American law has led him on an important exploration of some of the most critical and difficult terrain in American history."--The Washington Times"Shades of Freedom enriches our understanding of the history that we cannot escape and encourages us to take responsibility for our future."--Judith A. Hagley

About the Author
A. Leon Higginbotham, Jr. is Public Service Professor of Jurisprudence at the John F. Kennedy School of Government, Harvard University, and Of Counsel to Paul, Weiss, Rifkind, Wharton, Garrison. He was formerly Chief Judge on the United States Court of Appeals for the Third Circuit, and is a recipient of the Presidential Medal of Freedom. His landmark volume, *In the Matter of Color*, won the American Bar Association's Silver Gavel Award and the National Bar Association's Literary Award.