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Faith and Property in African American History

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Today I'd like to raise some questions about the meaning and significance of "civil rights" by examining African Americans' encounter with a sort of out-of-the-way corner of law—the private law of religion.¹

When black church members in the early 1900s set out to write the history of their churches, they talked a lot about property: so many dollars raised in one year, so much spent to buy the land and raise a building. The crowning moment came when crowds of onlookers watched the church's oldest, or "charter" members proudly set the mortgage on fire.² Such ceremonies mattered to people because, as Carter Woodson pointed out in 1930, rural African Americans sank more of their money "in church property than any other institution."³

[OVERHEAD: MIDWAY BAPTIST CHURCH... Pop-pop at St. Luke's?]

And yet most black churches in the slavery era were legally under the control of white trustee boards, who held the title and appointed the minister.⁴ What that means is that the *independence* of post-emancipation black churches rested largely on the same foundation that their slavery-era *dependence* did: on

the ownership of a building and some land, rows of pews, hymnals, and robes, and the ability to pay a minister's salary. When we talk about the rise of independent black churches, in large part what we are really talking about is property.

Black Christians faced two interlocking challenges after slavery. The first was to accumulate the property that would physically embody their churches' presence on earth. The second was to establish their churches as legal subjects, under the control of their black leaders, many of whom had only recently been objects of the law.

Legally, in most states, a church was a religious corporation that held property for the benefit of its members.⁵ When black worshipers went to their local circuit court and filed the paperwork to incorporate or appoint trustees, they took for themselves several important rights and protections, not just property rights, but also tax-exemption, and the standing to sue and be sued as a collective rather than individually. It was these men, the trustees, who would stand vigil over any financial or legal matter that affected their brethren. As the Georgia Supreme court put it, trustees watched over "the civil rights" of their congregations.⁶ Believers, a pastor, a deed, and trustees—these were pillars of the black church. This is why so many black congregations incorporated⁷ in the late 1860s: they were taking legal charge of their churches, so "that their rights may be protected,"⁸ as a group of A.M.E. trustees put it. Incorporation was a way of asserting a legal identity separate from the whites who had overseen their affairs for decades. That legal identity was crucial for their rights over an astonishing accumulation of resources in the late 1800s—astonishing because so hard-won.

From the 1840s to the 1870s, in a series of cases involving church property, appeals courts made two big moves. First, they ratified the separate existence of the new sectional "southern" churches that had split off from the major denominations, and second, they restricted what civil courts could decide in church cases. In *Watson v. Jones*, the Supreme Court held that judges had to "defer" to the denomination, applying and, if necessary, enforcing whatever decision its own rules and governing body dictated.⁹ The point was to

limit courts' power to intervene by fencing off secular matters (like property) from spiritual ones (which civil courts weren't qualified to judge).

Because they were property, churches had a fair amount of routine dealings with courts: asking permission to borrow money against their buildings and lands,¹⁰ to "perfect" a title,¹¹ to defend against lawsuits by contractors or ¹² unfriendly neighbors.

The conversation between churches and law went inward, too. As blacks took control of church property in the late 1800s, they turned the church, almost out of necessity, into a locus of legal and business skill and knowledge. A typical business meeting opened with prayers, bible readings, and hymns, and then moved to money matters: approving the last meeting's minutes, reporting the latest church fundraising "entertainment," voting to buy lumber and tools for a new building, giving the hardware man "a deed of trust to make him Safe for His Money."¹³ These were big decisions for small churches and since an unpaid carpenter could sue them out of their sanctuary, such deliberations were recorded in painstaking detail.¹⁴ If you were lucky enough to be sent to one of the denomination's annual conferences, you might hear "an instructive lecture on the 'Rights of the Church and Ministry before the Civil Courts'" delivered by a leading black attorney.¹⁵ Law was in the everyday life of black churches, from the pulpit to the deacon's office to the pews. And that legal culture informed how the churches were run, how they handled crises, and, to an extent, people's sense of themselves as Christians.

In the 1950s, black legal culture burst back onto the national stage for the first time since the 1870s. African Americans attacked Jim Crow in the streets and in the courts, and finally the national government, prodded in large part by the ugly spotlight of media attention, swung into action. Since segregation and racial discrimination were *legal* barriers, the attack necessarily raised questions about black Americans' relationship to law. Martin Luther King Jr. offered one possible answer in his famous "Letter from a Birmingham Jail." Robert F. Williams, Joseph H. Jackson, and Malcolm X offered others. We have remembered these pronouncements because they spoke of segregation and white supremacy and because

they self-consciously portrayed themselves as pursuing something called “civil rights” or “black freedom.” Along the way, they lifted up some kinds of black legal activity and downplayed others. And this has obscured the real significance and scope of black legal activity during the civil rights era.

Consider Dexter Avenue Baptist Church, where Martin Luther King, Jr. was first called to the pulpit. Dexter was famous at the time as a “deacons’ church,” where ministers got kicked out constantly, unlike most Baptist churches, where ministers held most of the power. On his first Sunday morning, Sept. 5, 1954, heeding the warnings of his father and the advice of Dexter’s most recently booted pastor, Vernon Johns, King announced a breathtaking plan to reorganize every part of the church under his authority.¹⁶ The welter of church organizations would be replaced by a new, streamlined committee structure that reported to him. All monies raised or spent by church groups would have to be approved by him. And he proposed an ambitious and expensive four-year building renovation program. “[L]eadership,” he announced that morning, “descends from the pulpit to the pew,” and so long as the minister was not a “dictator[,]” he had to “be respected and accepted as the central figure around which the policies and programs of the church revolve.”¹⁷ As Taylor Branch puts it, Dexter members saw “from the very first sentence that the boyish-looking young man in the pulpit did not intend to become another victim of the church fathers.”¹⁸ It was a “coup,” a risky grab for leadership, the kind of thing that had sparked countless lawsuits in American churches, and it worked beautifully.¹⁹

Like any church, Dexter lived in a world structured by law. It signed contracts with its pastors and mortgages with its lenders.²⁰ And it had its share of lawsuits and near-lawsuits. In 1932, a Depression-pinched Dexter could not pay its pastor’s salary and avoided a messy lawsuit only by selling off the church’s car.²¹ Just nine years before King arrived, the deacons had gone to court to shoo out another pastor, Alfred Arbouin, for abusing his wife, concocting a typically creative legal answer to the problem that warring church factions had been thrusting before judges since the 1871 *Watson* decision. When King took the pulpit in September 1954, he stepped into a very old debate over the nature of authority in the black Baptist

church and the role of courts in black religious life.

As King became the leader of the civil rights movement, he articulated a powerful vision of law, one that built not only on the writings of Thoreau and Gandhi but also on what he knew—from his own experience at Dexter and from watching his father at Atlanta’s Ebenezer—about running a church. A church was governed by rules, he preached in 1966, just as school districts were. Just as the brand-new Civil Rights Act of 1964 cut off federal funds to any school district that strayed from its rules, “the funds of grace” would be “cut off from the devine treasury” if churchmembers failed to “follow the guidelines.”²² And “the guidelines made it very clear that God anointed” the pastor to steer his church.²³ To critics who felt “they talk too much civil rights in that church,” King retorted with an even more bald declaration of ministerial power than he had dared when he took the Dexter pulpit.

You called me to Ebenezer, and you may turn me out of here, but you can’t turn me out of the ministry because I got my guidelines and my anointment from God Almighty and *anything* I want to say I’m going to say it from this pulpit. It may hurt somebody, I don’t know about that; somebody may not agree with it but when God speaks, who can but prophesy? The word of God is upon me like *fire* shut up in my bones, and when God gets upon me I’ve got to say it I got to tell it all over everywhere. And God has called me to deliver those that are in captivity.²⁴

There was no way that Ebenezer or Dexter or any other church was going to fire Martin Luther King, Jr. in 1966. Yet that kind of language was exactly what got generations of less famous ministers fired or sued. If he had not been so famous, one can easily imagine him being forced out. Plenty of Baptists believed that God had *not* called their ministers “to deliver those that are in captivity,” not in the way King was leading. One of those Baptists, Joseph Jackson, was president of their national Convention. And any resulting lawsuit would have hinged on exactly the issues King raised in his sermon: who has the authority to call and

dismiss the pastor? What can churchmembers do when the minister has “hurt somebody”?

By the 1950s, church leaders had built up a storehouse of experience with legal tools—like the injunction, the trust deed, the corporation—and a set of arguments about the role of law in Christian life. They now began to apply those lessons, learned in internal church fights and in routine church business, to the external problem of racial injustice. The most famous example was King’s *Letter from a Birmingham Jail*, which laid out a theological justification for civil disobedience in the face of official oppression. Civil officials were using “the moral arm of the law for immoral purposes, namely, to impede...a moral social reform movement.”²⁵ Specifically, they were using injunctions. “The injunction method has now become the leading instrument of the South to block the direct-action civil-rights drive,” King wrote.²⁶ If the reference to injunctions meant anything to sympathetic white readers in 1963, it probably conjured up the ghost of the labor injunction, the scourge that had broken unions from the coalmines to the car-factories until the New Deal.

But King was a preacher, and the way that he and millions of black Christians would have been most familiar with the injunction was as a weapon in a church fight. Underneath the references to St. Augustine, King’s logic proceeded in a prosaic second register. Nonviolent resistance was moral, King argued, when it targeted unjust laws. And unjust laws were those that violated “the moral law or the law of God”: “a code that a...majority group” forces on “a minority...but does not make binding on itself,” or a law “inflicted on a minority that, as a result of being denied the right to vote, had no part in enacting or devising the law.”²⁷ This is exactly what church lawsuits had been about ever since Richard Allen incorporated Bethel A.M.E. in 1796,²⁸ and King’s world was full of them. Ten years before his birth, just down Auburn Avenue from his father’s Ebenezer Baptist, opponents of Rev. Richard H. Singleton sued out an injunction after he used a poll tax to strip them of their voting rights at Mother Bethel A.M.E. and then rammed through his own agenda.²⁹ Injunction cases filtered up to the Georgia Supreme Court from black churches in Poplar Springs in 1928,³⁰ in Atlanta in 1945,³¹ and in Americus in 1953.³² And in 1960 and

1961, King was among the warring reverends who lobbed injunctions at each other from courts in Philadelphia and Kansas City to get control of the National Baptist Convention.

Indeed, it is worth emphasizing that legal activity *among* blacks continued, sustaining and informing the new tide of legal attacks on segregation. “Civil rights” in the 1940s and 50s was as much about the internal affairs of black communities as their dealings with whites. It was about a tenant so angry over her black landlord evicting her from her rented house that she went to a white lawyer to find out “her rights.”³³ It was a man suing his stepson over a colt, a half-dozen witnesses on either man’s side.³⁴ The jostling and overlapping of black people’s inward- and outward-facing legal activity lies under the surface of even the most famous moments in the modern freedom struggle. In 1958, King’s lieutenant, Ralph Abernathy, was attacked with a hatchet in broad daylight by a churchmember who swore Abernathy was sleeping with his wife; perhaps the only reason this scandal failed to take hold on the public imagination was that a peevish Montgomery policeman decided to arrest King on the courthouse steps just as a photographer happened by.³⁵ [SLIDE: KING ARREST]

I have tried to convey a rich history of engagement between black churches and legal institutions. Right from the beginning, black churches were incorporating, negotiating contracts, buying and selling property, and defending what both they and the courts called their “civil rights.” As the stifling curtain of white supremacy weighed down in the 1890s, those were about the only civil rights that black people could claim. But claim them they did. During the 1940s, 50s and 60s, the legal culture of the black church began to bridge between the civil rights of property and contract and the civil rights of desegregation and equal protection. The modern vision of “civil rights” that took shape in the mid-twentieth century settled alongside and drew focus from the older vision of civil rights that had animated black legal for more than 100 years. Civil rights in the 1960s continued to be as much about fire insurance as mass marches, as much about bonds for church treasurers as bonds for jailed demonstrators. The fire insurance was part of what made possible the marches, not just in the practical sense that, as Martin Luther King put it during the

Montgomery bus boycott, “litigation costs money,”³⁶ or that calls for black rights often came from the pulpit, or that a major black bar association once held its annual meeting at a church,³⁷ but because they grew out of the same fertile legal culture. Church lawsuits whose focus on issues of property seems so distant from the realm of constitutional rights, were in fact intimately related to that realm.

That history challenges the common view that American trial courts before the 1960s were uniformly hostile or inaccessible to ordinary black people; on the contrary, African Americans may have stepped into litigation campaigns against segregation armed with practical knowledge and a pragmatic faith in law’s possibilities and limits, and steeped in a legal culture formed by decades of interaction between churches and legal institutions. It also raises questions about what church meant to the children and grandchildren of slaves, why they would take church affairs to white-dominated courts, and why white lawyers would take them up. Black churches kept the lights on at many a black law firm, and that practical connection only deepened in the 1950s and 1960s, when the emerging cadre of ‘civil rights lawyers’—people like Sadie and Raymond Alexander, A. Leon Higginbotham, James M. Nabrit, Jr., and A. T. Walden—added public-accommodations, workplace, and voting rights lawsuits to their traditional diet of church lawsuits. Viewed from the standpoint of local courts, the law looks less like an instrument of racial subordination and labor control than like a reluctant participant, in which judges’ decisions were rarely conclusive, but rather became bargaining chips in open-ended conflicts that reflected, as much as anything else, the needs and aspirations of black people.

¹ That is, the body of law governing relations between religious organizations and their members, and their private relations with non-members; chiefly concerned with matters of governance and property, this body of law stands distinct from constitutional law, but often is implicated in it.

² James M. Simms, *The First Colored Baptist Church in North America Constituted at Savannah, Georgia, January 20, A.D. 1788. With Biographical Sketches of the Pastors* (Philadelphia: Lippincott, 1888; electronic edition,

<http://docsouth.unc.edu/church/simms/simms.html>), 55-60, 78-79, 92-93; Narrative of David A. Hall, Ohio Narratives, in *American Slave*, vol. 12; John W. Cromwell, "The First Negro Churches in the District of Columbia," *Journal of Negro History* 7, no. 1 (1922), 75n14; *The Negro in Virginia: Compiled by Workers of the Writers' Program of the Works Projects Administration in the State of Virginia* (New York, 1940), 253; Miles Mark Fisher, "The History of the Olivet Baptist Church of Chicago," MA thesis, University of Chicago, 1922, 69.

³ Carter Godwin Woodson (1930), quoted in Lois E. Myers and Rebecca Sharpless, "'Of the Least and the Most': The African American Rural Church," in *African American Life in the Rural South, 1900-1950*, ed. R. Douglas Hurt (Columbia, Mo., 2003), 61.

⁴ Elsa Barkley Brown, "Negotiating and Transforming the Public Sphere: African American Political Life in the Transition from Slavery to Freedom," *Public Culture* 7, 1 (1994), 111 note 6. On slavery-era church fundraising, including from enslaved donors, see Raboteau, *Slave Religion*, 179; Luther P. Jackson, "Religious Development of the Negro in Virginia from 1760 to 1860," *Journal of Negro History* 16, no. 2 (1931), 229-30, 232; Penningroth, *Claims of Kinfolk*, **; and Berlin, *Generations of Captivity*, 208-9; Ralph Morrow, "The Methodist Episcopal Church, The South, and Reconstruction, 1865-1880," PhD diss., Indiana Univ., 1954, 92. As Albert Raboteau points out, in some places "the rise of the black church" happened before the Civil War, not after. Raboteau, *Slave Religion*, 196. The discussion that follows this important observation addresses questions of church governance more than the question of ownership. [*Frey and Wood?]

⁵ Virginia and West Virginia were special: until recently, they did not grant incorporation charters to churches. Yet, argue Paul Kauper and Stephen Ellis, these two states granted their churches through statutes basically the same powers that other states provide through the corporate form, especially laws permitting transfers of property in trust to trustees to be used for religious purposes—a use of the trust device indistinguishable from the (ostensibly unlawful) trustee corporation. In short, this "most basic power—the right to hold, manage, and dispose of real property—is universally granted...even...where churches are not allowed to incorporate." Paul G. Kauper and Stephen C. Ellis, "Religious Corporations and the Law," *Michigan Law Review* 71, (1972-1973), 1531-33, 1545.

⁶ *Godfrey v. Walker*, 42 Ga. 562 (1871), 569. This case was about a black church.

⁷ Or had a court appoint trustees.

⁸ Petition of George Washington Thomas et al, n.d., in *Zachariah Turner, Robert S. Gill, and Trustees of St. John A.M.E. Church v. Jesse Hodges et al*, 1873-018, Circuit Court (Chancery), Isle of Wight Co., LV. Hodges had sold land to the church and then mortgaged it to Turner and Gill, who then sued him for the debt; the A.M.E. trustees were intervening to clear their title to that land from those creditors' claims.

⁹ Gordon 2008: 437-38.

¹⁰ This borrowing may have peaked just after the Civil War, when black churches were financing their very first separate buildings, and again in the late 1880s and 90s, when many churches began replacing those first sanctuaries. That shift is still etched on countless granite cornerstones and painted signs, and it also left traces in the courts, as black church trustees, looking to renovate or build, petitioned their local courts for permission to buy, sell, and borrow against church property. In the matter of the *Petition of the Trustees of Witherspoon Street Presbyterian Church of Princeton for the Sale of Lands* (1925), Chancery Court of New Jersey, microfilm, Superior Court of New Jersey Record Center, Trenton; *Petition of Bethlehem Baptist Church*, Mecklenburg County, 1912-65CC; *African Baptist Church of Smithfield Virginia*, Isle of Wight County, 1899-007; *Macedonia African Methodist Episcopal Church*, Isle of Wight County, 1909-034; *Petition of Blooming Zion Reformed Zion Union Apostolic Church*, Brunswick County, 1909-018; *Petition of trustees Union Zion Baptist Church of Gloucester County*, Gloucester County, 1886-017. For examples of white churches petitioning for permission to encumber church property, see *Petition [of] Trustees Methodist Episcopal Church South [of] Smithfield*, Isle of Wight County, 1899-008; *Petition of E. S. Emory, L. Allen, Chas Hutchison, James L. Toone, and J. W. Swift, committee for M.E. Church*, Chase City, Mecklenburg County, 1902-09CC.

¹¹ For example, see testimony of Joseph N. Saunders, Dec. 12, 1922, in *Carter et al v. Prout et al*, case no. 40433, NARA.

¹² A mechanic's lien is statutory, and arises even if the contract doesn't mention it. [*CHECK if true in 1900s in these states.]

¹³ "Exhibit B," handwritten meeting minutes dated May 14, 1909, in *Petition of Blooming Zion Church*, Brunswick County, 1909-018. Census records indicate that Sallie Baskerville was married to the pastor, S[imeon] M. Baskerville. Blooming Zion collected \$25.76 all told for the month ending May 14, 1909. See also the receipts in "Financial Papers of the New Hope Baptist Church," and J. E. B. to Benjamin F. Yancey, Mar. 28, 1915, both in Yancey Papers, Special Collections, University of Virginia.

¹⁴ Summons, in *Sinnickson-Smith Lumber Co. v. The Trustees of the Mount Zion Baptist Church of Salem and Robert T. Seagraves*, Feb. 18, 1912, p. 4, Sealing Dockets, Salem County, New Jersey.

¹⁵ Israel L. Butt, *History of African Methodism in Virginia; or Four Decades in the Old Dominion* (Hampton, Virginia: Hampton Institute Press, 1908), 101, 202 (quotation on 202). William M. Reid, who gave the speech at the 1903 Conference on "Rights of the Church," was the first black lawyer in Portsmouth. Edwin Archer Randolph, who lectured at the A.M.E.'s 1885 Conference on "Civil Law," was Yale's first black law graduate and founder of the *Richmond Planet*. Smith, *Emancipation*, 37, 126, 225-26.

¹⁶ Branch, *Parting the Waters*, 104, 109-10, 114.

¹⁷ “Recommendations to the Dexter Avenue Baptist Church for the Fiscal Year 1954-1955,” Sept. 5, 1954, *Papers of Martin Luther King, Jr.*, vol. 2, pp. 287-94.

¹⁸ Branch, *Parting the Waters*, 114.

¹⁹ Branch, *Parting the Waters*, 116-17.

²⁰ By coincidence, on the day King was indicted for his role in the Montgomery bus boycott, his father was about to sign loan documents for his own church’s building program in Atlanta. Branch, *Parting the Waters*, 175.

²¹ Roberson, *Fighting the Good Fight*, 63.

²² Martin Luther King, Jr., “Guidelines for a Constructive Church,” manuscript notes, ca. 1966, R66-06-05, King Center online.

²³ Martin Luther King, Jr., “Guidelines for a Constructive Church,” audio-recording of sermon delivered at Ebenezer Baptist Church, Atlanta, June 5, 1966, The Martin Luther King, Jr. Research and Education Institute, Stanford Univ. (hereafter, MLKStanford), http://mlk-kpp01.stanford.edu/index.php/encyclopedia/documentsentry/doc_guidelines_for_a_constructive_church/.

²⁴ King, “Guidelines for a Constructive Church,” MLKStanford

²⁵ Peter J. Paris, *Black Religious Leaders: Conflict in Unity* (1978; Louisville: Westminster/John Knox Press, 1991), 118.

²⁶ King, quoted in Paris, *Black Religious Leaders*, 119. As Branch puts it, injunctions effectively “shift[ed] all the advantage of judicial delay from the [activists] to the city” or other government officials. While it was in effect, it outlawed things that were otherwise perfectly legal, like marching or running a car pool. Branch, *Parting the Waters*, 192.

²⁷ King, quoted in Paris, *Black Religious Leaders*, 120-21.

²⁸ Gordon, “The African Supplement”

²⁹ *Gibson v. Singleton*, 149 Ga. 502 (1919). The Georgia courts denied the injunction on the dubious ground that no property right was involved.

³⁰ *McCluskey v. Rakestraw*, 144 S.E. 761 (1928) (over control of Poplar Springs Baptist Church in Jackson Co.).

³¹ A pulpit fight in St. James Baptist Church. A. T. Walden represented defendant Rev. E. D. White. *Knowles v. White*, 199 Ga. 772 (1945).

³² *Dowdell et al v. Cherry et al*, 209 Ga. 849 (1953) (over control of Daniels Grove Missionary Baptist Church).

³³ Declaration, Nov. 23, 1938, *Betty Shaver v. G. T. Thomas, Sr. and G. T. Thomas, Jr.*, case 1855, CoCtLaw, Coahoma Co., Miss. Shaver’s story suggests that Thomas used strong-arm tactics to get his way.

³⁴ *Ike Mayfield v. William Poynter [Pointer]*, case 5316 (1937), CirCtLaw, Marshall Co., Miss. (appeal from J.P. court).

³⁵ Two months after the spectacular attack on Abernathy, after a trial involving tales of sex and hired-killing, a jury acquitted the attacker, a man named Edward Davis. Abernathy and King closed ranks, the Davises divorced soon after and Vivian Davis left town, and the whole thing was “soon...forgotten.” Branch, *Parting the Waters*, 237-41, 245-46. But not before Edward Davis had won \$45,000 damages from Chicago’s *Jet* magazine, in a libel suit much less famous than *New York Times v. Sullivan*. See *Johnson Pub. Co. v. Davis*, 271 Ala. 474 (1960).

³⁶ “More Buses Cut Off In Montgomery!” *Pittsburgh Courier*, Mar. 17, 1956.

³⁷ “Lawyers Warned Against ‘High Hat’ Attitude as Bar Association Meets,” *Pittsburgh Courier*, Aug. 14, 1937.