

## ROBERT J. KACZOROWSKI\*

*Martin S. Flaherty\*\**

Whether they know it or not, everyone at Fordham Law who does rigorous, interdisciplinary scholarship—scholarship that matters in the real world—and who conveys the fruits of this work to students and colleagues owes a great debt to Bob Kaczorowski. He was and remains a signal catalyst in the transformation of the Law School into a respected national institution under the stewardship of Dean John D. Feerick.

Let me speak first of Bob Kaczorowski the scholar. Early in my teaching career, whenever my constitutional law class would take up the issue of civil rights, I would always let the students know that right here at the Law School they had the opportunity to learn from the nation’s leading historian on the Reconstruction Amendments. That statement was no hyperbole. Bob’s pathbreaking book, *The Politics of Judicial Interpretation*,<sup>1</sup> not only broke new ground in showing how the lower courts applied the Thirteenth, Fourteenth, and Fifteenth Amendments,<sup>2</sup> but also confirmed that those amendments’ supporters sought to ensure a broad vision of national rights.<sup>3</sup> Bob’s own vision has since become the mainstream view. Currently, when my classes get to civil rights, I read my students a passage from James McPherson, who is perhaps the nation’s leading historian of the Civil War. In his book, *Abraham Lincoln and the Second American Revolution*,<sup>4</sup> he prominently and approvingly cites Kaczorowski for the proposition that the Reconstruction Amendments amounted to nothing less than a constitutional “revolution” in how the nation would protect fundamental rights.<sup>5</sup> Just this year, Eric Foner, the leading political historian on Reconstruction, came to

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1. *See generally* ROBERT J. KACZOROWSKI, *THE POLITICS OF JUDICIAL INTERPRETATION: THE FEDERAL COURTS, DEPARTMENT OF JUSTICE, AND CIVIL RIGHTS, 1866–1876* (2005).

2. *See id.* at 93–107.

3. *See id.* at 12.

4. *See generally* JAMES M. MCPHERSON, *ABRAHAM LINCOLN AND THE SECOND AMERICAN REVOLUTION* (1992).

5. *See id.* at 141.

speak of his latest book<sup>6</sup> at a faculty workshop. Though written with clarity and insight, there was still no conclusion in the volume that Kaczorowski in one way or another hadn't advanced decades ago.

To be the nation's leading historian on its second constitutional revolution is enough reason to celebrate. But implicit in that achievement is a further distinction: Bob Kaczorowski has ever been an exemplar of interdisciplinary scholarship at its best. His historical works speak to modern doctrine, nowhere more so than in undergirding a broader reading of the clauses meant to be the cornerstones of constitutional revolution including Due Process, Equal Protection, and Privileges or Immunities. Yet neither does he allow present imperatives to undermine historical rigor. One example of such integrity is his history of Fordham Law.<sup>7</sup> Such a work in lesser hands could easily have become a second-rate public relations job. Instead what resulted was a serious work of academic history that stands on its own.

Nor would Bob, as some do, allow his commitment to academic integrity serve as a barrier to commitment in the "real world." One example welcomed me not long after I arrived at the Law School. Bob had just written an important article in the *Yale Law Journal*<sup>8</sup> to address a then-pending Supreme Court case<sup>9</sup> interpreting 42 U.S.C. § 1981, originally the Civil Rights Act of 1866.<sup>10</sup> The case presented the question of whether the Court should adhere to an earlier precedent endorsing a broader reading of the state action doctrine.<sup>11</sup> Bob's article showed compellingly that the Reconstruction Republicans who enacted the statute assumed it would prohibit a wider range of action that violated federal rights.<sup>12</sup> All too typically, the Court ignored the historical evidence,<sup>13</sup> a result that many of us who attempted to follow in Bob's footsteps would come to know. If not as influence, Bob's work nonetheless succeeds as rebuke, and as such may induce a future group of Justices one day to do the right thing.

Beyond the library, Bob was a master at translating scholarship, both his and others', to the classroom. When I first started teaching constitutional law, I quickly found that the better teaching tips I received were Bob's. As I become more established and taught upper-level seminars, it came as no surprise that I could always tell which students had taken Bob's course as first-years. I told them they were lucky. They were the ones who knew not just constitutional doctrine, but also the historical context—without which the cases mean little.

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6. See generally ERIC FONER, *THE SECOND FOUNDING: HOW THE CIVIL WAR AND RECONSTRUCTION REMADE THE CONSTITUTION* (2019).

7. See generally ROBERT J. KACZOROWSKI, *FORDHAM UNIVERSITY SCHOOL OF LAW: A HISTORY* (2012).

8. See generally Robert J. Kaczorowski, *The Enforcement Provisions of the Civil Rights Act of 1866: A Legislative History in Light of Runyon v. McCrary*, 98 *YALE L.J.* 565 (1989).

9. *Patterson v. McLean Credit Union*, 491 U.S. 164 (1989).

10. Ch. 31, 14 Stat. 27 (1866).

11. See *Patterson*, 491 U.S. at 171.

12. See Kaczorowski, *supra* note 8, at 566–67, 570.

13. See *Patterson*, 491 U.S. at 175–78.

Finally—but finally only for the purposes of a short tribute—Bob could not have been a better mentor and colleague. Not just a scholarly role model, Bob was often a proactive advisor. Once I showed him what I thought was a very boring historiographical paper about the Founding that I was going to use for my own purposes. After reading it, he urged me to rewrite it slightly and by all means submit it to law reviews. I did, and it was accepted by one of the top journals.<sup>14</sup> It may still have been boring, but it remains one of my most heavily cited pieces. Likewise, Bob took pains to introduce me at various colloquia and conferences and to show me the ropes of how to participate. All of which are facets of a larger truth, which is that Bob is one of the warmest, friendliest, and most helpful guys one could ever hope to meet.

To bring things full circle, we will not only miss Bob Kaczorowski. We'll miss him more than we know.

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14. See generally Martin S. Flaherty, *History "Lite" in Modern American Constitutionalism*, 95 COLUM. L. REV. 523 (1995).