

The background of the cover is a textured, light brown surface. It is decorated with various sepia-toned illustrations of tools and a man. At the top left is a saw with a fish-shaped handle. Next to it is a round brush on a wooden post. To the right is a curved blade tool with a handle. Further right is a pitchfork. Below these are a small key-like tool and a circular metal ring. In the center, there is a pair of large pliers. Below the pliers is a wooden mallet with a square head. To the left of the mallet is a long-handled axe. Below the axe is a funnel-shaped object. At the bottom left is a small metal stand. To its right is a curved strap or whip. On the right side of the cover, there is a large illustration of a Black man standing, wearing a loincloth, looking towards the viewer. The title is centered in a red box on the left side of the cover.

THE LAWS OF SLAVERY IN TEXAS

Edited by Randolph B. Campbell

COMPILED BY WILLIAM S. PUGSLEY
AND MARILYN P. DUNCAN



The Laws of Slavery in Texas

HISTORICAL
DOCUMENTS
AND ESSAYS

Edited by
Randolph B. Campbell

Compiled by
William S. Pulsley
and Marilyn P. Duncan



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Larry McNeill, President, Texas Supreme Court Historical Society.*

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The Laws of Slavery in Texas

Texas Legal Studies Series

JASON A. GILLMER AND WILLIAM S. PUGSLEY, EDITORS

Texas's rich legal heritage spans more than three centuries and has roots in both Spanish law and English common law, but this dimension of the state's history is relatively unexplored. Books in the Texas Legal Studies Series, sponsored by the Texas Supreme Court Historical Society, will examine a range of topics, including state-specific studies and those with a regional or national focus.



Foreword

It is with special pride that I introduce this volume of readings. When the Texas Supreme Court Historical Society was established in 1990, the board of trustees identified several tasks that needed immediate attention: revitalizing the dormant Judicial Portrait Collection, interviewing retired justices, and preparing a narrative history of the court. With this book, we have taken the first step toward fulfilling the last of those objectives, an achievement of which our members may be justifiably proud.

Few states are favored with a history society dedicated solely to their state supreme court. This society is among about twenty such organizations in the country, and of those, it is one of the few that relies entirely on private donations. The society celebrates its twentieth anniversary on January 13, 2010, a date that links back to the morning in 1840 when the Supreme Court of the Republic of Texas heard its first case. Describing the work of that court and its successors, down to the present, is a responsibility the society has shouldered on behalf of the state.

I believe you will discover that this book about antebellum laws regarding slaves and free blacks in Texas accomplishes that objective admirably. The articles reprinted here rank among the best examples of Texas legal history. Thoroughly researched, thoughtfully organized, and exceptionally well written, each article has retained its relevance and integrity across the decades. Alongside the articles are noteworthy Supreme Court cases, which offer rare glimpses into the life of the litigants, as well as fifty-four years of constitutional provisions, decrees, and laws. All together, they make up an exemplary source of primary materials and historical analyses on this issue.

We could have filled another volume—on the same topic—with all the material uncovered in the course of our research, not to mention the other types of litigation that arose between 1820 and 1870, five of the most exhilarating decades in Texas history. It is no wonder this particular half century in the court's history

remains a perennial favorite among the state's legal historians. But these years constitute only a fraction of the state's three centuries of legal history. Despite years of accumulated research, we still know relatively little about the court and its operation during the nineteenth century, especially in comparison with the more complete legal histories that have been written for some other states. And practically nothing has been written about the evolution of the court during the twentieth century. These more recent stories are, in my opinion, every bit as interesting and relevant as those covered in this book. Having enjoyed a long and privileged association with the Supreme Court of Texas, I have witnessed or participated in many of the changes the court has undergone in personnel, organization, and judicial philosophy over the past seven decades. It is a rich and important history, worthy of study.

This book may be a first step down a very long road, but it is a journey that is much needed and long overdue. With the continued support of our members and contributors, the society will still be en route long after we are all gone. I am proud to have been there at the outset.

Joe R. Greenhill
Chief Justice (ret.)
Supreme Court of Texas
Chair, Board of Trustees
Texas Supreme Court Historical Society



Project Director's Foreword

The history of slavery in the United States has been the subject of hundreds of works over the years, but with the important exception of Randolph B. Campbell's 1989 groundbreaking book, the literature on the history of slavery in Texas is sparse. The sparseness is particularly evident in the area of slave law. Most works on the legal dimensions of slavery focus heavily on the Old South, and Texas law is discussed either briefly or not at all. National scholars no doubt have paid scant attention to Texas slave laws because Texas was an atypical slave state. As the only slaveholding state with a national border—a long and rather porous border with the nonslaveholding nation of Mexico—and with prior incarnations as a Spanish colony, a Mexican state, and an independent republic, Texas enacted slave laws that were uniquely affected by geography and legal heritage.

A second reason for the paucity of legal analysis on Texas slave laws is the shortage of legally trained historians. The state has never fielded more than half a dozen practitioners at one time, despite the combined output from seven law schools and a resident pool of 77,000 practicing attorneys. Those few legal scholars who write on Texas subjects tend to gravitate to the rich treasure of republic-era papers housed in the Texas State Archives and to Spanish and Mexican documents found in the Bexar Archives. Efforts to arrange the Bexar Archives were first made during the Great Depression, when a great many Spanish-language legal documents were translated. Unfortunately, few of the historians who conducted that painstaking work had any professional legal training. Since then, the state's legal historians have been busily digesting the Spanish antecedents of state law and the activities of the Texas court through early statehood, and given time, they could easily fill a dozen volumes without sounding the bottom.

Over the past decade, it has been my privilege to serve as director of the Texas Supreme Court Historical Society's History Book Project. Our focus has been on preparing a comprehensive history of the Texas Supreme Court, a multivolume work that will fill a major gap in the state's legal history. The publication of this collection of Supreme Court case reports, legislative documents, and articles is

a major milestone for our project and an important addition to the literature on slave laws in Texas.

Joseph W. McKnight

Larry and Jane Harlan Faculty Fellow and Professor of Law

Southern Methodist University

Director, History Book Project

Texas Supreme Court Historical Society



Acknowledgments

The publication of this volume of documents results from the inspiration of Bill Pugsley and Marilyn Duncan of the Texas Supreme Court Historical Society. Bill and Marilyn developed the idea for such a volume, researched the subject, located the documents, suggested the organization of the volume, and handled all publication arrangements with the University of Texas Press. Bill and Marilyn made the part that I have played in creating this volume a pleasure. I thank both of them.

Randolph B. Campbell

The impetus for compiling this book came from Judge Craig T. Enoch, who urged us to “find the book you have in hand.” Joseph W. McKnight, director of the society’s History Book Project, steered our focus toward slave laws. We also appreciate the support of our president, Stephen G. Tipps, who linked the publication with the society’s twentieth anniversary, and Larry P. McNeill, the president-elect, who assured us that our chances of publishing a book on slave laws would be greatly improved if Randolph B. Campbell wrote the introduction. They were all correct. And we thank them for their counsel.

For the task of locating the source material for historical laws and decrees, journal articles, and court cases, we want to thank the reference librarians at the Legislative Reference Library, Margaret Schlankey at the Dolph Briscoe Center for American History at the University of Texas at Austin, and particularly Leslie Prather-Forbis and her associates at the underappreciated gem of a resource, the Texas State Law Library. Special thanks go to Susan Burneson, whose phenomenal sleuthing and persistence uncovered many lost details. We also want

to express our appreciation to Shannon B. Irion for quickly and accurately transcribing all the laws and cases and most of the articles into electronic format.

In preparing the collection of readings, we sought to include new material written especially for this book. Unfortunately, the constraints of the publishing schedule and manuscript length prevented the inclusion of this type of material. Nevertheless, we are indebted to Professor Jason A. Gillmer of Texas Wesleyan School of Law in Fort Worth, Professor Juliet E. K. Walker of the University of Texas at Austin, and Professor Joel Dinerstein of Tulane University in New Orleans for agreeing to contribute commentaries—on very short notice. Concerns over manuscript size prevented the inclusion of both John E. Fisher’s excellent article on free black laws and an extensive case study on *Westbrook v. Mitchell* by William K. Kroger of Baker Botts in Houston. A special word of thanks also goes to Professor Emeritus A. E. Keir Nash of the University of California at Santa Barbara for providing written comments about his article for our use.

We are fortunate to have had a talented team of professionals at the University of Texas Press guide the publication of our book: sponsoring editor Bill Bishel, manuscript editor Lynne Chapman, graphic designer Derek George, and assistant marketing manager Nancy Bryan. We also appreciate the contributions made by freelance copyeditor Kip Keller, who combed through the final manuscript and smoothed out the rough edges, and Linda Webster, who produced the index.

And finally, we express our deep gratitude to Mike Campbell, who, despite a heavy teaching load at the University of North Texas and administrative responsibilities at the Texas State Historical Association, set aside time to guide two novices through the intricacies of Texas slave law, polish their rough outline until it illuminated the topic, and produce a magnificent introduction and set of commentaries that demonstrate, once again, why he remains the foremost scholar in the field.

William S. Pugsley and Marilyn P. Duncan



A Note on Editorial Style

In weaving together material published over a span of two centuries, we chose to preserve as many features of the source documents as possible. As a result, we set aside standard editorial policies regarding spelling, grammar, and usage in the interests of making faithful transcriptions of the original texts. Stylistic variations are particularly striking in the eighteenth-century legal documents, since consistency of spelling and punctuation was not yet a convention in printed materials. Proper names and other words in these laws and cases are often spelled in various ways, even within a single document. For example, Wylie Martin's first name appears alternately as "Wylie," "Wiley," "Wyly," and "Wily" in the Republic of Texas *Senate Journal* entries related to the act passed in his name. Archaic spellings and grammatical constructions abound, and commas and dashes are used in ways that look odd to the modern eye.

Similarly, the scholarly essays in this volume retain the institutional styles of the publications in which they originally appeared. Therefore, certain names and terms that appear frequently in the book, although consistent within a particular essay, are not consistent from essay to essay: "Texas Supreme Court" is alternately "Texas supreme court" and "Texas state supreme court," for example, and the names of other judicial and legislative bodies appear in both upper and lower case. Designations for a black person living outside of slavery include "free black" (the modern term), "free Negro," "free negro," "free person of color," and "free-man." Grammar and punctuation styles also differ among the journal articles, reflecting the conventions of the original publishers as well as the eras in which the articles were written. With minor exceptions, we reproduced the body of the articles without making editorial changes, except to correct obvious typographical errors. The endnotes were edited more substantially in the interests of clarity and consistency. For example, Roman numerals were changed to Arabic in all journal citations, and consecutive references to the same source were changed to "Ibid." In the book chapter from *An Empire for Slavery*, we removed references

to other chapters (in both the text and the endnotes) to avoid confusion with other chapters in this volume.

Throughout the book, primarily in the legal documents, ellipses are used to indicate the omission of blocks of text unrelated to the topic of slavery. In the case study on *Gess v. Lubbock*, the two concluding paragraphs that appeared in the original version were removed because they were not directly related to the case study. Ellipses that appear in the text of the articles, mostly in quoted material, were part of the original works.

In the material original to this volume—the front matter, general introduction, article introductions, and bibliography—we have followed the stylistic guidelines in *The Chicago Manual of Style* (fifteenth edition) and *Merriam-Webster's Collegiate Dictionary* (eleventh edition).



The Laws of Slavery in Texas



INTRODUCTION

Human Chattels

THE LAWS OF
SLAVERY IN TEXAS

Randolph B. Campbell





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