

Slavery, Law of

Laws regulating slavery are as old as slavery itself, and only in the latter half of the 20th century has the world been without widespread legal forms of slavery. American laws of slavery had their origin in Roman law. They came together piecemeal and not systematically. Slavery in the United States involved municipal, state, and federal law. Centuries of Anglo-American common law affected the quotidian lives of slaves across America. Slavery dominated life in the south, and a substantial body of law made slavery functional, institutionalized, and pervasive. The relation of slavery to law is highly complex because slavery implicated many areas of the legal system from criminal law to property law, because it developed over time and in response to changing social conditions, and because it entailed many levels of government from the local to the national. In 1654, John Casor of Northampton County in Virginia, a black man, became the first legally recognized slave in America when his master, Anthony Johnson, a black colonist who had become a free man, prevailed over Casor in a court matter regarding Casor's claim of freedom. The court found that Johnson had a legitimate claim to ownership over and control of Casor. The court decision officially recognized slavery as a valid institution.

Books of history, morals, law, and economics began to address slavery extensively during the 18th century, when Europeans, particularly those in the New World, sought to reconcile the paradox that their society celebrated liberty yet perpetuated slavery. In America, the development of slavery along racial lines was more pronounced than in slave societies in previous eras and regions. In early America, moreover, the institution of slavery retained elements of medieval laws and ethos holding that, as Augustine proclaimed, slaves should be treated as brothers in Christ and that a baptized slave had to be manumitted. But these ideas gradually faded as the American system of slavery hardened during the course of the 18th century and reached the height of its intensity during the 19th century.

Slave Codes

Individual states had their own slave codes that, among other things, defined who qualified as

slaves, detailed punishments for assisting escaped slaves, regulated relationships between whites and slaves, prohibited sexual intercourse between different races, and explained the rights of masters over their slaves. Children of slaves followed the condition of their mother into bondage. Laws regulating slavery were mostly consistent at the state level, but they varied from state to state. In 1740, South Carolina became the first state to forbid the education of slaves. Other states followed suit, usually making slave education punishable by fine. Slaves were typically flogged for learning how to read or write. By law, masters could dictate to slaves the type of work slaves were to perform, the amount or kind of clothing slaves could wear, and the rights of property slaves could enjoy.

To varying degrees, slave codes authorized violence as a technique for punishing slaves. Branding and whipping were frequently employed forms of punishment. Other forms included slitting the nose or an ear. Slave codes generally treated slaves as persons in criminal matters but as property in all other matters. Some civil cases, interpreting these slave codes, deemed slaves to have the legal status of a horse or a buggy. The North Carolina case *State v. Mann* notoriously declared that the "power of the master must be absolute to render the submission of the slave perfect." Courts treated slaves differently from time to time and place to place. In *Ford v. Ford*, a Tennessee case, the court wrote, "A slave is not in the condition of a horse or an ox. His liberty is restrained, it is true.... But he is made after the image of the Creator. He has mental capacities, and an immortal principle in his nature, that constitute him equal to his owner but for the accidental position in which fortune has placed him." State laws criminalized black rape of white women but did not criminalize the reverse. In South Carolina, according to that state's Negro Act, the murder of a slave by a white man constituted a misdemeanor only. Criminal trials against slaves were not always held in courtrooms; sometimes, they were held in stores or taverns.

One slave code—the one passed by the Louisiana legislature in 1806—took away slaves' rights to institute any legal action whatsoever. These laws eliminated slaves' previous right to petition the courts for sale away from abusive masters. These same slave codes authorized the criminal

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prosecution of any individual who mutilated, maimed, or severely mistreated a slave. Nevertheless, Louisiana appellate courts rarely heard appeals in criminal trials for cruelty against slaves. If a slave did not prevail in his initial cause of action, he had little recourse available to him.

Property and Criminal Laws

Property and contract law dominated rules about buying and selling slaves. Many if not most slave sales took place at court sales or slave auctions—public spectacles meant to degrade and ensure the perpetuation of white supremacy. A slave trader might have been sued for fraud or for breach of warranty for selling a “defective” slave. A slave owner might have sued a hirer or overseer for maiming a slave. Some states criminalized the use of leased slaves on the grounds that the hirer or overseer had destroyed or impaired property. Some states designated slaves as freehold property to distinguish slaves from chattel property. Freehold property was property that was not severable from an owner’s estate. Cases for fraud and deceit reached the courts when buyers of slaves sued sellers for falsely alleging—often in writing—that purchased slaves had a good character and did not, for example, drink, steal, or run away. Slaves were included in divisions of assets in probate court or for foreclosure of property. Masters could also use slaves to hold liens.

In the courtroom, as elsewhere, slaves were treated differently than whites. Slaves generally could not testify against whites in courts of law because they did not count as people unless they were being punished. This was not always the case. During the period of American history from the Revolutionary War to the 1820s, some courts admitted evidence of slaves in both capital and noncapital cases. A slave’s testimony usually was admissible only if two witnesses were present to corroborate the slave’s account. Some laws required slaves to take an oath that they were Christians before being allowed to testify. One South Carolina law required preliminary examinations of all potential slave witnesses, after which the judge would decide which evidence would be admissible during trial.

Manumission laws regulated and in some cases restricted the freeing of slaves by their owners. Vermont was the first state to require manumission of

slaves within its territory. A typical manumission law might have mandated that owners post bond for each slave he freed. It also might have required owners to petition local courts and to provide notice of manumission. Manumission laws sometimes but not always required manumitted slaves to leave the state in which they had been enslaved. News of slave rebellions, both real and fictional, resulted in stricter manumission laws. Plotting slave rebellions was a prosecutable offense.

Even after the Civil War, all southern states enacted Black Codes, which were regulations maintaining an unofficial, de facto system of slavery. Black Codes replaced slave codes in form and function. Black Codes controlled such activities as migration and labor among former slaves. Although these codes allowed former slaves the right to marry and own property, they also mandated labor contracts, the violation of which entailed criminal penalties involving, among other things, physical labor. Black Codes also prevented blacks from testifying against whites in courts of law.

Federal Laws

The most famous laws about slavery developed at the national rather than at the state level. They involved the admission of new states into the Union, an issue that mobilized proslavery and antislavery activists alike. Promulgated by the Congress of the Confederation, the Northwest Ordinance of 1787, also known as the Freedom Ordinance, created the Northwest Territory and prohibited slavery in that region. The Missouri Compromise of 1820 prohibited slavery in the former Louisiana Territory north of the 36°30’ parallel. The compromise did not prohibit slavery in the proposed state of Missouri. The Kansas-Nebraska Act, which created the territories of Kansas and Nebraska, repealed the Missouri Compromise and allowed settlers to those regions to vote to allow or abolish slavery there. Passage of this act resulted in violent border disputes that came to be known as “Bleeding Kansas.”

The international slave trade was banned in America according to Article One, Section Nine, Clause One of the U.S. Constitution. This provision was a heated topic during the Philadelphia Convention of 1787, which designed the Constitution to replace the Articles of Confederation.

The Philadelphia Convention also established that three-fifths of the slave population would count for tax and apportionment purposes. Many southerners had wanted to count slaves as full people in order to secure for the southern states a greater power in national affairs.

The Fugitive Slave Act of 1793 was a precursor to the Fugitive Slave Act of 1850. The Fugitive Slave Act of 1793 provided for the return of slaves who had fled slave states for free territory. The Fugitive Slave Act passed by Congress in 1850 required citizens and authorities in non-slave states to return runaway slaves to their masters in slave states. The 1850 act was meant as a compromise between southern slaveholders and northern free-soilers. By making northerners complicit in the institution and perpetuation of slavery, the 1850 act forced northerners to either accept or refuse slavery as a systemic practice.

Dred Scott v. Sandford was probably the most notable U.S. Supreme Court ruling on slavery. Decided in 1857, with southern Chief Justice

Roger B. Taney writing for the majority, the opinion maintained that Congress did not have the power to create citizenship for slaves, that slaves were not citizens as contemplated by the U.S. or Missouri constitutions, that the Missouri Compromise was unconstitutional, and that the right of property in slaves was affirmed in the Constitution. One of many catalysts for the Civil War, the court's decision denied people of African descent the right to citizenship and constitutional protection. It established that individuals of African descent were not citizens of the United States. In 1873, the Supreme Court declared in the *Slaughter-House Cases* that the Fourteenth Amendment, one of three Civil War amendments, overruled the *Dred Scott* decision.

The Civil War amendments, also known as the Reconstruction amendments, are the three amendments to the U.S. Constitution that, respectively, abolished slavery, guaranteed equal protection and due process to people of all races, and guaranteed voting rights for black men. The Thirteenth



In December 1860, a group of abolitionists, including Frederick Douglass and William Lloyd Garrison, met at Tremont Temple in Boston to commemorate the anniversary of John Brown's execution: Brown was an American revolutionary abolitionist. Some Bostonians took over the proceedings, passed resolutions to condemn John Brown's raid, and expelled the abolitionists.

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Amendment passed in the Senate in 1864 and in the House in 1865. It was adopted in December 1865. Section One of the Thirteenth Amendment reads "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction." Section Two of the Thirteenth Amendment reads "Congress shall have power to enforce this article by appropriate legislation." The Thirteenth Amendment effectively abolished slavery in America.

Adopted in 1868, the Fourteenth Amendment served as the basis for overturning discriminatory state laws, such as a West Virginia statute prohibiting blacks from serving on juries. The Supreme Court ruled this West Virginia statute unconstitutional in *Strauder v. West Virginia* (1880). The Fourteenth Amendment includes the citizenship clause, the privileges or immunities clause, the due process clause, and the equal protection clause. All of these clauses are important to later Supreme Court decisions based on race. The court relied on the equal protection clause in its decision in *Strauder*. The citizenship clause was deemed to have reversed the *Dred Scott* decision by providing that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." The Fourteenth Amendment effectively secured new rights for former slaves.

The Fifteenth Amendment, ratified in 1870, prohibited both states and the federal government from denying voting rights because of a citizen's race or status as a former slave. Section one of the Fifteenth Amendment reads "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." Section Two of the Fifteenth Amendment reads "The Congress shall have power to enforce this article by appropriate legislation." The Fifteenth Amendment effectively established voting rights for all male people of color.

The Emancipation Proclamation was law by executive order. Issued by President Abraham Lincoln on January 1, 1863, the Emancipation Proclamation freed all slaves in the states that made up the Confederate States of America. The

Emancipation Proclamation did not free any slaves in the border states: Delaware, Maryland, Missouri, and West Virginia. Slavery remained legal in these states until the passage of the Thirteenth Amendment.

Allen Mendenhall
Auburn University

See Also: 1777 to 1800 Primary Documents; 1801 to 1850 Primary Documents; 1851 to 1900 Primary Documents; *Dred Scott v. Sandford*; Fugitive Slave Act of 1850; Race, Class, and Criminal Law; Race-Based Crimes; Racism; Slavery; *Strauder v. West Virginia*; Supreme Court, U.S.

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Smith, Susan

Susan Leigh Vaughan Smith was sentenced to life in prison for murdering her two children in 1994. Initially, Smith had claimed that an African American man stole her car and kidnapped her sons. Subsequently, she admitted to drowning her two