H-Net Reviews
in the Humanities & Social Sciences

Thomas D. Morris. *Southern Slavery and the Law, 1619-1860.* Chapel Hill: University of North Carolina Press, 1996. x + 561 pp. $49.95 (cloth), ISBN 978-0-8078-2238-8.

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Published on H-Law (September, 1996)

Scholars of Southern slavery have long debated the degree to which slavery was a legal institution. Yet over the years the historiography on the subject has undergone a subtle shift. In Charles Sydnor's groundbreaking article, "The Southerner and the Laws," *Journal of Southern History* 4 (1938), the focus was on the degree to which law controlled Southern society and life. In the 1950s and 1960s the issue underlying historical works on the law of slavery changed from whether or not law was important to slavery to the way in which law served as a mechanism of racial control. Few could deny that racial control was at the heart of the "peculiar institution," and much that we now know about slavery comes from our investigation of the way in which law subordinated African American slaves. Yet by the late 1970s the emphasis changed once more, from noting the obvious degree of control to detailed studies that examined the operation of the criminal justice system in the South. The two best studies, those of Michael Hindus in *Prison and Plantation* (1980)and Edward Ayers in *Vengeance and Justice* (1984), each told us a bit more about the way the system worked. Yet only in the past ten years or so have legal historians taken the next step forward to examine not only racial control, but also the way in which the law of slavery worked. Thomas Morris's *Southern Slavery and the Law* represents the most recent, and perhaps the most definitive, effort to recapture the way in which law and slavery co-existed.

Morris tells the story of Southern slavery in four distinct parts. The first section of approximately sixty pages discusses the nature of racial slavery in the South and the philosophical problem this posed for the legal system. The second section of a hundred pages is an animated dialogue on the connection between slavery and property rights, property law, and contract law. The third section comprises two hundred pages in which Morris strives to describe how slaves were treated by the legal system in the matter of rules of evidence, jurisdiction, and due process. The third part of Morris's tome abounds with lengthy discussions of criminal trials of slaves, the question of rape as it worked out in racial and sexual relations, municipal codes, and how owners could be held civilly liable for the wrongs of slavery. The final section examines emancipation, and makes clear that owners' ability to divest themselves of slaves was not a property right that Southern courts sought to protect.

What then does Morris say about the nature of the Southern legal system? Morris suggests that on the one hand the legal system was clearly working for the benefit of slaveholders, and often twisting legal principles to do so. Yet the sort of control that Southern courts offered was filled with ambiguity, a cross-tug between the interest of slaveholders, public policy of Southern legislatures, and the problem of law itself. For example, just what did "moderate correction" of slaves mean in a literal sense? Here, deprived of clear guidance from Southern legislators, courts tended to give a broad interpretation of the power to correct to Southern slaveholders. Conversely, for all of the absolute power and control of slaveholders, they could not divest or "manumit" their property without approval of the court. And Southern courts, as Morris makes clear, were signally unwilling to manumit, regardless of what owners wanted to do with their property.

The ambiguity operating among various cross-pressures becomes even more clear when one is searching for a Southern "doctrine" as it was applied to slaves. Every Southern state had a different legal system, a different sort of judge sitting, and the rules that they were willing to apply differed greatly. While one can see broad trends cast across jurisdictions, one cannot help but be impressed with the degree of variation.

Perhaps most interesting is Morris's lengthy discussion of the tension that existed between the market and the plantation. Clearly, a plantation was a financial business, dedicated to the pursuit of profit. But the difficulty that some courts had in including slaves as an item to be sold for creditors suggests that the pursuit of profit was not absolute. Yet what truly stands out is the way in which the whole subject of slaves' volition, their very hu-

manity, could be played with from issue to issue. Southern courts manifestly refused over and over again to apply the fellow servant rule in slave hiring, and imposed liability on those hiring them out. Slaves were held to have enough sense of right and wrong, however, to be accused and found guilty in cases of theft, murder, and rape.

An interesting question remains about what happened to slaves when they made their way into court. Certainly a legal system that would not hear their testimony when it accused a white person could hardly be considered race-neutral. Slaves, Morris makes clear, came into courts as the ultimate outsiders, as people who were pawns in a system controlled by others. Nevertheless, he also seems to suggest that when slaves presented themselves, the legal system made efforts to provide a certain procedural fairness. Yet this fairness was limited by the nature of the legal system itself.

One cannot fail to be impressed by the amount of research that Morris contributes to the present scholarly debate. His endnotes comprise a full seventy-five pages, and he has made a vigorous effort to include as much local court material as was available. Nevertheless, his frequent use of appellate decisions makes one wary about whether he is giving a true sense of the way in which the system worked on a local level. Morris also fails to give a strong sense of the way in which slavery and law may have been different throughout the South. One wishes that he had explained how decisions in Piedmont areas were different from those in the Black Belt. Moreover, greater effort should have been made to describe how law was created in the South, and the ways in which Southern people molded the law of slavery in Southern legislatures.

Yet, though one wishes that Morris had given consideration to those questions, what he has done is quite remarkable. For those interested in the connections among law, race, and slavery this book will be required reading.

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Citation: Lewie Reece. Review of Morris, Thomas D., *Southern Slavery and the Law, 1619-1860*. H-Law, H-Net Reviews. September, 1996.
URL: http://www.h-net.org/reviews/showrev.php?id=619

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