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THE SLAVE CODE OF TEXAS

by

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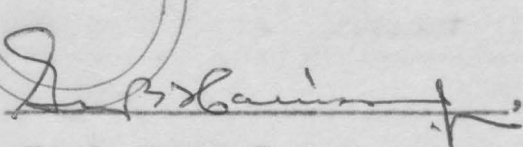
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This certifies that the attached thesis, The Slave Code of Texas, written by Mr. W. E. Lockhart, and consisting of a compilation of the laws passed by the "Empire of Mexico", "Federal Republic of Mexico", "The State of Coahuila and Texas", "The Republic of Texas", "The State of Texas" (Prior to Secession), "The State of Texas" (As a member of the Confederate States of America); and "The State of Texas" (Subsequent to Secession) for the regulation and control of the institution of Negro Slavery, is hereby approved as Partial Fulfillment of the Requirements for the Degree of Master of Arts from Baylor University.

(Signed)


Head of the Department of
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THE SLAVE CODE OF TEXAS

Introduction

"He who harbors a runaway slave shall suffer death."

--Code of Hammurabi (2240 B. C.)

"****the mandatory must be responsible for the administration of the territory, subject to conditions which will guarantee freedom of conscience and religion subject to the maintenance of public order and morals, the prohibition of such abuses as the slave trade, the arms traffic, and the liquor traffic."

--Woodrow Wilson (Constitution of the League of Nations)--1919.

From Hammurabi to Woodrow Wilson is a long historical leap. Yet before Hammurabi and subsequent to Woodrow Wilson, the question of human slavery has arisen to perplex the law makers of every people. We cannot trace the origin of slavery. When the curtain of history was first lifted, it was found to be an institution hoary with age; and, as the archeologists proceed with their excavations and investigations they merely add time to the age of the institution of bondage and deduce new proofs of the fact that slavery has been coexistent with the history of the human race. Probably if we could determine the first war or the first famine, we should be near its origin. Where the first warrior spared the life of his captive, and that captive being grateful for the prolongation of his life served his captor; or when the first famine drove the nomadic tribesmen to a foreign land where they offered their services in exchange for food is to be found the genesis of an institution beyond any other

perplexing to mankind.

The Southern Gentlemen seeking a justification for the continued enslavement of the African Race went to the Holy Bible and classical history. They found ample precedent in each. Slavery existed among the Hebrews throughout their national life, yet here we find the institution in a mild form neither of debasement nor cruelty. The words "slave" or "Slavery" occur only a few times in the Bible, but the word "servant" is used in that sense many times. These servants together with the cattle formed a portion of the estate of the head of the family or tribe (Gen. xxiv. 35, xxvi 14; Job i, 3.) There was also a traffic in slaves (Gen. xxxvii, 28) which was carried on by the Phoenicians. The wealthy nomad chiefs owned many slaves, Abraham having 318 that were his hereditary property (Gen. xiv, 14). In the national period the traditional legal principles were observed, as in the Babylonian code of Hammurabi; but the Jewish code exercised a more humane influence. The recollection of their own bondage in Egypt taught them to be considerate and humane to their servants (Deut. v, 15). Throughout Jewish history slavery was one of the consequences of war, and since warriors were more likely to be killed than captured, the majority of the captives were women who were the prize booty of the military expeditions. (1)

(1) Stille, Charles J.--Slavery in Schaeff-Herzog Encyclopedia, Vol X, Pages 449-453.

Both David and Solomon employed non-Israelitish slaves in public works, the latter monarch having 153,600 bondsmen (I Kings ix, 20 seq.; II Chron. ii, 17-18). It was a capital crime to deprive a man of his liberty and sell him (Ex. xxi, 16). But thieves caught in the act were sold into slavery unless they made restitution (Ex. xxii, 3). Herod was guilty of a serious infringement of hereditary law by selling a thief into foreign slavery. A Jewish creditor might seize both the family and the person of his debtor and sell him (Amos ii, 6), though this was not sanctioned in the Pentateuch. In the case of Israelitish slaves the duration of the bondage was limited to six years only, all native slaves being freed on the Sabbatical year. In the Year of Jubilee all native slaves were freed, but the bondage was perpetual so far as aliens were concerned. The Essenes and Therapeutae alone rejected all slavery, since they regarded the system as irreconcilable with the brotherhood of mankind, and consequently unnatural. (1)

It was formerly claimed that Christianity exerted a strong influence for the abolition of bondage, but the more modern view holds that abolition was purely economic in process in which religion had no part. In Greece slavery reached its climax following the Persian wars, when a single rich Athenian could lease a thousand slaves for the Thracian mines; and in Rome near the close of the Republic tens of thousands were sold daily at Delos.

The ancient world never dreamed of a civilization without slaves; and Christianity simply accepted slavery as a necessary constituent of ancient civilization, nor is there the slightest evidence that it either condemned slavery as a principle or sought to abolish it. Christ deals with the relation between master and slave in his parables (Mark xviii, 34; Luke xii, 42 sqq, Matt. xviii, 23 sqq); and Paul expressly declared that Christianity made no change in existing conditions, and that a slave should remain one even though freedom were offered to him (I Cor. vii, 21; Philemon 16.). The Christian church seems to have been interested only in the faith of the slave, leaving his legal position to the care of the state. It made no attempt to abolish slavery. Even the church itself owned slaves until in the Middle Ages, and vigorously asserted her rights over them; but the church does deserve credit for her insistence on humane treatment of slaves and her efforts to make the masters responsible for the morality of the servants.

Monasticism differed from the early church on this question, assailed slavery and finally overthrew it. In the twelfth and thirteenth centuries slavery disappeared from northwestern Europe, but the system of serfdom continued long afterward. Conrad II, Emperor of Germany, in 1031 forbade all traffic in slaves, and the synod at London in 1102 repeated the prohibition. Personal slavery did not revive on a large scale until shortly after the discovery of America. (1)

(1) Stille--Slavery in Schaeff-Herzogg Encyclopedia--
Page 450.

It will be a surprise to many to learn that the responsibility for the revival of slavery lies at the door of the Roman Catholic Church. In response to a strong economic demand, Pope Nicholas V gave full Papal sanction for the resumption of the slave trade. On June 18, 1452 he issued a bull authorizing Alphonzo V of Portugal, to attack and subdue any or all Saracen, Pagan, and other infidel communities whatsoever, to reduce their inhabitants to perpetual servitude, and to take possession of all their property. Anyone who attempted to infringe or defeat this grant would incur the wrath of Almighty God and of the blessed Peter and Paul, Apostles. (1) The next day Nicholas issued another bull in reference to the extension of Christianity in these regions.

***** "Illorumque personas in perpetuam servitutem redigendi consedimus facultatem." (2)

The first African slaves had been brought to Portugal in 1452, but the system was only in its infancy. What might not the world have been saved if the vicar of God had forbidden instead of authorizing it? Although the Church is credited with promoting the abolition of slavery in the middle ages; it is difficult to see how she can be cleared of having powerfully contributed to renew it. This bull of Nicholas V. was sanctioned, word for word, by Leo X, November 3, 1514; and in less than 150 years, five million Africans had been captured and placed in servitude, most of them being shipped to the American colonies. (3)

(1) Raynaldus--Bullarum Collectio, Vol. 18, p 423.

(2) Ibid. 425 ff.

(3) For full discussion of Catholic responsibility in revival of slavery see Bourne's "History of the Demarcation Established by Pope Alexander VI", American Historical Report, 1891.

The next prominent Catholic to become closely involved with slavery was Christopher Columbus. The first American slave ship was not westward bound and loaded with negroes, but was a Spanish vessel carrying Indians eastward for the Portuguese and Spanish markets. The following paragraphs quoted from Washington Irving's "Life and Voyages of Christopher Columbus" will make this point quite clear:

"In these ships he sent also the men, women, and children taken in the Caribbee Islands, recommending that they should be carefully instructed in the Spanish language and the Christian faith."

"He proposed to establish an exchange of them as slaves, against the live stock, to be furnished by merchants to the colony. The ships to bring such stock were to land nowhere but at the Island of Isabella, where the Carib captives would be ready for delivery. A duty was to be levied upon each slave for the benefit of the royal revenue. In this way the colony would be furnished with all kinds of live stock free of expense; the peaceful islanders would be freed from warlike and inhuman neighbors; the royal treasury would be greatly enriched; and a vast number of souls would be snatched from perdition."

"It is but just to add that the sovereigns did not accord with his ideas, but ordered the Carib Indians should be converted like the rest of the islanders; a command which emanated from the merciful heart of Isabella." (Page 242)

"The same ships which brought home the companions of Roldan, brought likewise a great number of slaves. Some, Columbus had been obliged to grant to these men by the articles of capitulation; others they had brought away clandestinely. Among them were several daughters of the Caciques, seduced away from their families and their native island by these profligates. Some of these were in a state of pregnancy and others had new-born infants. Isabella's sensibilities as a woman and dignity as a queen were instantly in arms. She ordered all the Indians to be restored to their country and friends."

"Unfortunately for Columbus, at this very juncture, in one of his letters he advised the continuance of Indian slavery for sometime longer." (Page 464)

"Among their various decrees on this occasion, we find the first trace of Negro slavery in the New World. It was permitted to carry to the colony Negro slaves born among Christians; that is to say, slaves born in Seville and other parts of Spain, the

children and descendants of natives brought from the Atlantic coast of Africa, where such traffic had for some time been carried on by the Spaniards and Portuguese. There are signal events in the course of history, which sometimes bear the appearance of temporal judgments. It is a fact worthy of observation that Hispaniola, the place where this flagrant sin against nature and humanity was first introduced into the New World, has been the first to exhibit an awful retribution." (Page 496)

The Catholic countries did not long enjoy a monopoly of the slave trade. The scarcity of labor in the New World, and the necessity for it, seem to have overcome all objections to the system of African slavery; and all European nations, Roman Catholic and Protestant, which had colonies in America, engaged in transporting slaves from the coast of Africa to this continent. For more than two centuries and a half no voice, either in the Church or out of it, was heard against the slave-trade and its consequences.

The first Englishman to become connected with negro slavery was Sir John Hawkins, who in 1562 organized an expedition of three ships, proceeded to the coast of Guinea, secured some three hundred Africans and transported them to Santo Domingo where they were sold to the Spanish colonists. This was a profitable venture, and on the return voyage he carried a cargo of the tropical island products--pearls, sugar, and cocoa nuts. In the year 1619 we find an entry in the diary of John Rolfe which reads, "*****and a Dutch manne of warre left us twenty Neegars". This was the first connection with the continental English colonies in which slavery became such a serious problem.

By the terms of the treaty of Utrecht England gained a monopoly of the slave trade, and by the Assiento Treaty with Philip the sole right of supplying the Spanish American colonies with slaves. (1) In the same year, 1713, an English company was organized for the purpose of supplying 144,000 negro slaves annually to America. Queen Anne retained one-fourth of the stock in this corporation and King Philip also a fourth. Thus the two monarchs of the most enlightened and powerful nations became personally interested in the negro slave trade. Public opinion in England approved both the treaty and the organization of the trading concern. (2)

The institution of negro slavery grew slowly at first in the southern colonies. The labor of the negroes was not unusually profitable, being first engaged in tobacco culture; but when cotton had become the leading crop and the invention of the steam engine, the cotton gin, and the rice husking machine thereupon increased the value of such labor. The institution revived and the trade increased enormously. By the time of Constitutional convention in 1787, the southern planters had come to look upon slavery as a dying institution and only South Carolina raised serious objection to restrictions upon the importation of negroes. But by 1819, when Missouri was seeking admission into the Union, slavery had become a political as well as an economic issue. The first legal restraint in the

(1) See Harper's Encyclopedia of American History, under "Slavery".

(2) Trevelyan--England Under the Stuarts, 511

United States upon the extension of slavery is found in the Ordinance of 1787. By the terms of this law, all the territory north of the Ohio was to remain free; but there was considerable violation of the ordinance.

Moses Austin and his son, Stephen F. Austin, the founders of the Anglo-American colonization in Texas were both slave owners. Moses Austin had used slave labor in his lead mines in Virginia and also in Missouri. When he came to Texas in the winter of 1820, he was joined by a travelling companion near Nacogdoches, and upon their arrival at Bexar, each was examined by the Spanish officials and required to sign a statement of his business and purpose in travelling through Spanish territory. This companion of Austin's stated in this examination that he was searching for four runaway negro slaves. Thus we see that negro slavery had really preceded the Anglo-Americans to Texas. (1)

Having sketched the progress of human slavery from early times to the settlement of Texas, it is now the purpose of this thesis to compile the laws which were enacted in an attempt to regulate this "peculiar Southern institution". Comments upon the laws will be given only when necessary for their complete understanding or to give their historical setting and significance. It is regretted that verbatim copies of the Mexican laws cannot be given, and in Chapter I, only the condensed statement taken from standard histories is available.

(1) Barker--Life of Stephen F. Austin, 26-27.

CHAPTER I

Mexican Laws on Slavery

"This question of slavery is a difficult one to get on with. It will ultimately be admitted, or the free negroes will be forced by law into a separate and distinct class--the laboring class. Either this or slavery in full must take place. Which is best? Quien sabe? It is a difficult and dark question."

--Stephen F. Austin to Mrs. Holley, July 19, 1831.

When the Spaniard or Mexican says "Quien sabe?" he means several things--he asks the question, "Who knows?", admits that he does not know, and also expresses the doubt as to whether or not anybody knows. Austin was sincere in his doubts as regards negro slavery. He seems to have changed his mind on this question quite frequently. In December of the same year in which he wrote to Mrs. Holley, he spoke of slavery as, "that curse of curses and worst of reproaches on civilized man; that unanswered and unanswerable inconsistency of free and liberal republicans." By 1833, however, he had completely surrendered this ideal, for we then find this expression in his correspondence: "I have been averse to the principle of slavery in Texas. I have now and for the past six months changed my views on that matter. Texas must be a slave country." (1)

Texan historians have been prone to charge that the Mexicans were not sincere in their efforts to abolish slavery. (2) There is some evidences that they were sincere and honest in these efforts. The Mexican statesmen were learning their political

(1) Barker--Life of Stephen F. Austin, 234

(2) Ibid. 52-65.

philosophy from the orators of the French Revolution. The fresh breeze laden with the sentiments of "Liberty, Equality, and Fraternity" had swept around the world. It appealed to the emotions of the Mexican; but, of course, he could not apply it to the poor Indian peon any more than the Southern planter could see its relation to his negro slave labor.

By royal order, in 1818, the Spanish monarch had strictly forbidden the importation of slaves or their sale in Mexico or any other Spanish colony. (1) The Dominican provincial of Chiapas, Father Matias Cordoba, gave freedom to the slaves on the estates of his order; and President Victoria had liberated, in the country's name, the slaves purchased with certain funds collected for that purpose, as well those given up by their owners to the patriotic junta. It is undeniably true that later the Mexicans used the slavery issue merely to obstruct immigration of Anglo-Americans, but these incidents are cited to prove that there was some abolition sentiment in Mexico as early as 1822.

When the Spanish authorities issued the grant to Moses Austin, authorizing him to settle colonists in Texas, they thereby recognized slavery, and later when Stephen F. Austin secured a ratification of that grant it contained the provision that each settler was to be allowed eighty acres of land for each slave. On December 11, 1821, Martinez, Jefe Politico of Texas, wrote to the Commandant General that the American colonists wanted to know the legal status of their slaves, since they would undoubtedly be ruined if the slaves were freed. (2)

(1) Bancroft--History of Mexico, 79 ff.

(2) Barker--Life of Austin, 145

The Colonization Committee of the Mexican Congress in its first report, July 16, 1822, deplored the existence of the slave-trade, stating that, "it dishonors the human race". They recommended that the slave-trade be prohibited, but they could not disregard property rights of the colonists already in Texas, therefore, they wished to permit the settlers to introduce their own slaves, with the understanding that children born in the Mexican Empire to those who arrived after the publication of the law should become free at the age of fourteen. Austin was in Mexico during the session of the Congress, and in writing to his colonists he discussed the pending colonization law: "As the law now is all slaves are to be free in ten years, but I am trying to have it amended so as to make them slaves for life and their children free at the age of twenty-one--but do not think I shall succeed in this point. The law will pass as it now is, and the slaves introduced by the settlers shall be free after ten years. Austin was mistaken. As finally passed the law read:

"After the promulgation of this law there shall be neither sale nor purchase of slaves who are brought to the empire; their children born in the empire shall be free at the age of fourteen."

This bill was finally signed on January 4, 1823, and published on January 7. The government which passed this law was soon overthrown, but it should be remembered that Austin secured the final confirmation of his Grant under such restrictions, and that the Texans are not entirely justified in charging that the Mexicans used the slave issue only in connection with the restriction of immigration.

The Constitution of the Republic of Mexico was finally adopted and signed on October 4, 1824.² On the question of slavery the Constitution was silent; but the constituent Congress passed the following law, July 13, 1824, prohibiting the slave-trade:

"Queda para siempre prohibido en el territorio de los Estados Unidos Mexicanos el comercio y trafico de esclavos, procedentes de cualquiera potencia-----Los esclavos que se introdujeran contra el tenor del articulo anterior, quedan libres con solo el hecho de pisar el territorio mexicano." (1)

The Mexican statesmen were unfortunate in the wording of their laws. They could not be precise, and had difficulty in covering all the phases of a question under consideration. Several questions arose in regard to the interpretation of the law quoted above. Did it apply to slaves who were being brought in by their masters? Did it touch at all the slaves already in Texas? It was finally interpreted as prohibiting trading in slaves only.

On March 24, 1825, The State of Coahuila and Texas passed a colonization law of its own. In this law was a brief reference to slavery:

"In respect to the introduction of slaves, the new settlers shall subject themselves to the laws that are now, and shall hereafter be established on the subject." (2)

This was a clear reservation of the right to regulate slavery by law; but the Texans could never become accustomed to the rapid changes of laws under Mexican government. They might

(1) Rives--United States and Mexico, 43

(2) Laws of Coahuila and Texas, 139.

eat breakfast as royal colonists of Spain; partake of lunch under the rule of a Mexican Emperor; and come to supper as citizens of a federal republic. The Anglo-American makes his laws slowly and changes them gradually. Hence, the conclusion, early arrived at, that Mexicans were incapable and unfitted and undeserving of self-government.

The Constitution of the State of Coahuila and Texas was adopted in August 1826. Article 13, related to slavery and in its first draft provided:

"The State prohibits slavery absolutely and forever in all its territory, and slaves now in it shall be free from the day the Constitution is published in this capital." "A law shall regulate the mode of indemnifying those who owned them at the time of publication."

Austin and Baron de Bastrop united their influences and succeeded in securing a slight modification before final passage. As finally passed the constitution provided that children of slaves born after the publication of the constitution should be free from birth, and the introduction of slaves should be prohibited after six months. (1)

Many of Austin's colonists were of the opinion that slavery was essential to the prosperity of Texas, and now prepared to return to the United States.

Pursuant to the provisions of Article 13, a law was passed on September 13, 1827, providing the machinery for the operation of the constitutional requirements. This provided for a census by age name, and six of slaves in the state six months after publication of the constitution; and required all ayuntamientos

to keep a register of slave births and deaths and report to the Government every three months. The political chiefs made only half hearted efforts to inaugurate this registration of slaves, and very little attention seems to have been paid to this law. The colonists who were already on the ground were satisfied. They might now accept the status quo with reasonable assurance. There was a strong probability of a rapid increase in the value of their slaves because of the exclusion of others.

The Texans rapidly became adept in evasion of the Mexican laws passed to regulate or abolish slavery. The state legislature of Coahuila and Texas, May 5, 1828, passed the following law:

"Contracts made in foreign countries between immigrants and servants or day laborers or working men whom they introduce shall be legal."

This fully nullified the provisions against the importation of slaves. Several years prior to this law, the colonists had adopted a new method of selling slaves as shown by the contract made by Samuel and Elizabeth Pharr and William Pettus:

"November 16, 1824, Samuel and Elizabeth Pharr for a consideration of \$625, hire to William Pettus for a term of six years, Lissy, twenty-eight years old, and her son Willis, seven."

This of course was not selling slaves--merely hiring them.

Pizarro Martinez, Mexican Consul at New Orleans, describes the working of the law permitting indentured servants to be brought in with the colonists. He states that owners frequently made the declarations alone with the slaves in complete ignorance that such a document was in existence. He also cites a form of

contract in which the slave acknowledges the receipt of a sum of money in consideration of which he agrees to serve his master for a term of from seventy to ninety years. Such contracts were, of course, transferable; and practically resulted in the slave of the "indentured servant".

Under the provisions of this law, Austin's colony progressed peacefully and quietly, until in 1829 a wasp's nest was stirred up by Guerrero's decree absolutely abolishing slavery throughout Mexico except in the Isthmus of Tehuantepec. This decree was the first legislation that aroused general opposition among the Americans. Probably there were not more than a thousand slaves in Texas, but there was a principle involved. (1) Guerrero had risen from the lowest ranks of the Mexican people. He was uneducated, but General Tornel, his secretary and advisor, frankly hostile to the United States, and believing that immigration must be stopped, drew up the decree and placed it before the dictator. It was signed on September 15, 1829, in commemoration of Mexican independence. This decree reached Texas in a letter from Governor Viesca, October 16, 1829. Musquiz, Jefe Politico of Texas, decided not to publish the decree until Guerrero could be induced to except Texas from its provisions. He sent copies of the decree to Austin enjoining him to the strictest secrecy; but a copy reached the Alcalde at Nacogdoches, and the secret was soon out. John Durst, a citizen of Nacogdoches, unduly alarmed, wrote Austin: "In the name of God what shall we do--for God's sake advise me on the subject by return mail--we are ruined

(1) Winter, Nevin O.--Texas the Marvelous, 78-79.

forever should this measure be adopted." Austin advised caution and calmness, assuring Durst that the decree would be resisted if necessary. Governor Viesca accepted the arguments of Musquiz that such a decree would be a breach of faith and contracts with the original colonists and disturb the peace and good order of the colony. Viesca's brother was Secretary of Relations to Guerrero, and through his influence, on December 2, Texas was given the necessary exemption. All was once more quiet along the Brazos and the Sabine. The close of 1829 and the beginning of 1830 saw a great immigration pouring into Texas.

This peace and quiet was not destined to continue. On April 6, 1830, came the new colonization law of Mexico, prepared by Teran and Alaman; and deliberately intended to discourage all immigration into Texas. Article 10 of this law related to slavery.

Article X.--"No change shall be made with respect to the slaves now in the states, but the Federal Government and the Government of each state shall most strictly enforce the colonization laws, and prevent the further introduction of slaves." (1)

Other articles of the Law of April 6, 1830, were intolerable to the Texans. Revolution became inevitable. Governments rose and fell with a bewildering rapidity in Mexico, but Texas paid little attention to them. The war party continued to gain strength. In a sense the Revolution had begun, but the conservative element preferred to call it a struggle for the constitution of 1824.

(1) Dixon, Sam Houston--Romance and Tragedy of Texas History.

CHAPTER II

Laws of the Republic of Texas Relative to
Negro Slavery

"It would be idle to suppose that the colonists, the great majority of whom were from slaveholding states, and many of whom had brought their slaves to Texas with them, would not have legalized slavery in framing a constitution."

--George P. Garrison.

In compiling the laws of Texas which pertain to slavery care has been taken to include all laws which either directly or indirectly touch the institution. There are many indirect references such as "all free white persons", "all free men", and "free male person". Immediately after adopting the Declaration of Independence, the Convention turned its attention to the formation of a constitution, and in this constitution we find the early recognition of negro slavery.

CONSTITUTION OF THE REPUBLIC OF TEXAS

Section 6.--"All free white persons who emigrate to this republic, and who shall, after a residence of six months, make oath, before some competent authority that he intends to reside permanently in the same, and shall swear to support this constitution, and that he will bear true allegiance to the republic of Texas, shall be entitled to all the privileges of citizenship."

This section made it impossible for either slaves or free negroes to become citizens of the Republic of Texas. (1)

Section 9.--"All persons of color who were slaves for life previous to their emigration to Texas, and who are now held in bondage, shall remain in the like state of servitude; provided, the said slave shall be the bonafide property of the person so holding said slave as aforesaid. Congress shall pass no laws

(1) Gamel--The Laws of Texas, 1822-1897, 19, Vol. I.

to prohibit emigrants from bringing their slaves into the republic with them, and holding them by the same tenure by which such slaves were held in the United States; nor shall Congress have power to emancipate slaves; nor shall any slave-holder be allowed to emancipate his or her slave or slaves without the consent of Congress, unless he or she shall send his or her slave or slaves without the limits of the republic. No free person of African descent, either in whole or in part, shall be permitted to reside permanently in the republic, without the consent of Congress; and the importation or admission of Africans or negroes into this republic, excepting from the United States of America, is forever prohibited, and declared to be piracy."

It is not difficult to see the "joker" in the foregoing article. The Texans were left free to import slaves from the United States, claiming that this did not increase the total number of slaves and that the lives of slaves would be much better in Texas than in their former conditions in the United States. This was undoubtedly true when a slave was taken from a large plantation, and from under the control of the overseers, and placed with a Texas family. The framers of the Texas Constitution knew that the conscience of the world had turned against the slave-trade, and that they must prohibit such traffic if they were to gain the sympathy and assistance of foreign nations. (1)

Section 10.--"All persons (Africans, the descendants of Africans, and Indians excepted), who were residing in Texas on the day of the declaration of independence, shall be considered citizens of the republic, and entitled to all the privileges of such. All citizens now living in Texas, who have not received their portion of land, in like manner as colonists, shall be entitled to their land in the following proportion and manner." (Allotment of land follows.)

Under this section, neither slaves, their descendants, nor Indians could become either citizens or land owners.

The statesmen of the Republic of Texas were well informed; they clearly foresaw the need for gaining the sympathy and material assistance of the civilized nations; their two greatest needs, after gaining their independence from Mexico, would be recognition by foreign governments and the floating of loans. Neither could be gained if Texas openly championed slavery in all its phases. The constitution which they had adopted openly legalized slavery, but at the same time condemned the slave-trade. Now it was good statecraft to direct the attention of the world to the slave-trade rather than to the institution itself; therefore, immediately upon the adoption of the constitution, President Burnet, on April 3, 1836, issued the following proclamation: (1)

PROCLAMATION BY THE PRESIDENT

"Whereas the ninth article of the general provisions of The Constitution of the Republic of Texas provides that the 'importation or admission of Africans or Negroes into this Republic, excepting from the United States of America is forever prohibited and declared to be piracy', and

Whereas, the African slave-trade is equally revolting to the best feelings of our nature and to the benign principles of the Christian faith, is equally destructive to national morals and to individual humanity; and

Whereas, the most enlightened and powerful nations of Christendom are exerting both their moral influence and physical force to suppress that odious and obnoxious traffic; and

Whereas, it is the imperative duty and the high privilege of the Government of Texas, to contribute in all practicable and legitimate means, to the effectual prevention in its own jurisdiction, of a trade so atrocious and disreputable.

(1) Executive Records, Provisional Government, Vol. 35, 66-67.

"Therefore, I, David G. Burnet, President of the Republic of Texas, by and with the advice and consent of my cabinet, and in accordance with the ninth article of the Constitution aforesaid, do command and require all officers, naval and military, and all collectors and other functionaries of the Government to be vigilant and active in detecting and defeating any attempt to violate said article, and to seize, and arrest, and detain in safe custody, any person or persons that may be found violating or attempting to violate the same; and to stop, seize, take possession of, and detain any vessel or vessels with their equipment, tackle, etc., and any boat or other water craft of any description attached thereto, on board of which any Africans or Negroes so attempted to be imported in contravention of the said ninth article may be found and to detain any and all such negroes wherever found until the further decision of the Government can be had in relation thereto: provided that any officer making such seizure, etc. shall as soon as practicable, report the same, with the relative facts to the Secretary of the Navy."

(Signed) David G. Burnet

April 3, 1836.

That the foregoing proclamation was given immediate and wide publicity is proven by the correspondence in the files of Hon. Bailey Hardeman, Acting Secretary of State; and from which the letter of John Forbes is quoted:

"I had the honor of receiving today, your communication dated 3rd of April 1836, in which was enclosed a Proclamation for the suppression of the introduction of Africans or negroes into the Republic, excepting from the United States of America."

"In compliance with your request, I shall have the proclamation immediately carried to Nacogdoches, and have it published there or at Natchitoches as instructed." (1)

This proclamation and correspondence are inserted to prove that an honest effort was made, and made early, to enforce the provisions of the Constitution of the Republic. Probably it was intended for foreign consumption. "Quien sabe?"

The question which naturally arises at this point is:
 "What statutes did the Congress under the Republic of Texas
 pass to carry into effect the constitutional provisions on
 slavery, and in further regulation of the institution after
 independence from Mexico?"

LAWS PASSED BY CONGRESS UNDER THE REPUBLIC
 REGULATING SLAVERY

AN ACT
Punishing Crimes and Misdemeanors (1)

Section 6.--"Every person who shall steal or entice away any slave, out of or from the possession of the owner or owners of such slave, shall be deemed guilty of felony, and on conviction thereof, shall suffer death."

To some this may seem harsh, and to be somewhat Draconic in its nature. The Texans took this method of telling the abolitionists just what might happen to any one who interfered in local affairs to the extent of stealing their property. Stealing other kinds of property did not come under the death penalty.

AN ACT
Supplementary to an act, for the punishment of Crimes and Misdemeanors

Section 1.--"Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress Assembled, That if any person or persons shall introduce any African negro or negroes, contray to the true intent and meaning of the Ninth Section of the general provisions of the Constitution, declaring the introduction of African negroes into this republic, to be piracy, except such as are from the United States of America, and had been held as slaves therein, to be guilty of piracy; and upon conviction thereof, before any court having cognizance of the same shall suffer death, without benefit of clergy.

(1) Laws of the Republic, Volume I, p. 187.

Section 2.--"Be it further enacted, That if any person or persons shall introduce into the Republic of Texas, any Africans or any slave or slaves, from the United States of America, except such slave or slaves as were previously introduced and held in slavery in that republic, in conformity with the laws of that government, shall be deemed guilty of piracy, and upon conviction thereof, before any court having cognizance of the same, shall suffer death".

These sections fix the penalty for importing slaves in violation of the constitution, making this penalty a little more severe than that for stealing slaves by adding the clause, "without benefit of clergy". Section 2 was clearly intended to prevent the smuggling of slaves through the United States into the Republic of Texas. A short time afterwards the British Government charged that this law was being violated:

"Lord Palmerston then said, this Government was well aware of the growing importance of Texas. He however, advised me that it is important for the Government of Texas to look well to the slave-trade, and prevent the introduction of African slaves, and said that this Government had been informed that African negroes had lately been introduced into Texas from Cuba, by first landing them on the east bank of the Sabine and carrying them thence into Texas". (1)

JOINT RESOLUTION
For the Relief of Free Persons of Color

"Resolved, by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That all free Africans or descendants of Africans, who were residing within the Republic of Texas at the date of the Declaration of Independence, and their natural issue, are hereby granted and allowed the privilege of remaining in any part of the Republic as long as they choose; on the condition of performing all the duties required of them by law."

(Signed) B. T. Archer, Speaker of the
House of Representatives.

Approved,
June 5, 1837.

Jesse Grimes, President Pro tem.
of the Senate.

Sam Houston, President.

(1) Diplomatic Correspondence, Henderson to Irion,
January 5, 1838.

(2) Laws of the Republic, Volume I, p. 232.

Section 9.--"Be it further enacted, That it shall not be lawful for any person of European blood or their descendants, to intermarry with Africans, or the descendants of Africans; and should any person as aforesaid violate the provisions of this section such marriage shall be null and void, and the parties on conviction shall be deemed guilty of a high misdemeanor." (1)

No one can question the wisdom of this section. It was, and remains, highly necessary to prevent the amalgamation of the white and black races. The negro slave frequently caused trouble; the free negro was almost a nuisance; but the mulatto was the worst of all.

AN ACT
To Provide for the Punishment of Crimes and Misdemeanors
Committed by Slaves and Free Persons of Color (2)

Section 1.--"Be it enacted by the Senate and House of Representatives of the Republic of Texas, in congress assembled, That from and after the passage of this act, the following shall be considered capital offences when committed by a slave or free person of color, to wit: Insurrection or any attempt to excite it, poisoning or attempting to poison, committing rape or attempting it on any free white female, assaulting a free white person, with intent to kill, or with a weapon likely to produce death, or maiming a free white person, arson, murder, burglary, every and each of which offences shall be triable in the district courts, and upon conviction shall be punished with death."

Section 2.--"Be it further enacted, That it shall not be lawful for any free person of color, to inveigle or entice away from their owner or master, any slave or slaves, nor to aid or assist any slave or slaves in leaving this Republic, without the consent of the owner or such slave or slaves: nor shall it be lawful for any free person of color to conceal or render aid or assistance to any runaway slave, with the intent to prevent the return of such runaway to his or her owner, and upon conviction of any of the foregoing offences before the district courts, such free person of color shall be fined in the sum equal to the value of such slave or slaves, and on failure to pay the said fine shall be sold as a slave for life."

(1) The Laws of the Republic, Volume I, p. 234.

(2) The Laws of the Republic, Volume II, p. 43.

Section 3.--"Be it further enacted, That all other crimes and misdemeanors, known to the Common Law of England, committed by slaves, shall be triable before the county courts, and on conviction, shall be punishable at the discretion of said court, so as not to extend to life or limb."

Section 4.--"Be it further enacted, That upon complaint made upon oath to any member of the county court, of any offence not capital having been committed by any slave, it shall be the duty of said court forthwith to call a special term of said court for the trial of such slave, and when such special term may be called, it shall be the duty of the county court in conjunction with the sheriff to draw fifteen jurors, in the usual way to attend such term, and if any of them shall fail to attend, or from challenges the number of twelve should not be had, it shall be made up from the bystanders".

Section 5.--"Be it further enacted, That it shall not be necessary in such cases, that a bill be found by a grand jury, but the party shall be required to proceed to trial upon a charge made out and signed by the person lodging the information setting forth the offence with which such slave stands charged."

Section 6.--"Be it further enacted, That if any slave or free person of color shall use insulting or abusive language to, or threaten any free white person, upon complaint thereof before any justice of the peace, such justice shall cause such negro to be arrested, and upon conviction, the slave or free person of color, shall be punished by stripes not exceeding one hundred nor less than twenty-five".

The preceding six sections constitute the penal code of the Republic of Texas which held the negroes to an obedience of the Common Law, but denied them all the privileges of the same; the Common Law, but denied them all the privileges of the same; for example, Section 5 speeds up justice by dispensing with the formal indictment by grand jury.

AN ACT

To Provide for the Foreclosing of Mortgages on Real and Personal Estates (1)

Section 2.--"And be it further enacted, That all mortgages on negroes and other personal property shall be foreclosed in the following manner: Any person or persons holding a mortgage on personal property, and wishing to foreclose the same,

shall make application to the chief justice of the county, and make affidavit before him of the amount of principal and interest due thereon, which affidavit shall be annexed to such mortgage, and thereupon, the clerk of the county court shall issue execution as in cases of judgment, which execution being delivered to the sheriff shall be levied upon the mortgaged property, and after being advertised for at least sixty days in some public Gazette, shall be set up and sold to the highest bidder; provided always, that if any disputes shall arise as to the amount due on such mortgage, the chief justice of the county court shall order the sale to be postponed upon the defendant's entering into bond and security in double the amount of the mortgage, for the delivery to the sheriff of the property so levied upon; and the same shall be returned to, and triable at the next term of the court, as in other cases."

There is nothing unusual in this act. All the southern states had classed the slaves as personality; and as such they were subject to mortgage and foreclosures like any other personal property of the owner.

AN ACT
To Punish Certain Offences Therein Named (1)

Section 1.--"Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That from and after the passage of this act, if any person shall be found guilty of harboring or clandestinely supporting any runaway negro slave, or negroes indentured for a term of years, or in aiding and assisting in so doing, on conviction thereof before a court of competent jurisdiction, he shall for such offence be fined in a sum of not less than five hundred nor more than one thousand dollars, shall be imprisoned not less than six months nor more than one year."

Section 2.--"Be it further enacted, That it shall be the duty of the district court to give this act in charge to the grand jury.

AN ACT
Concerning Free Persons of Color (2)

Section 1.--"Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That from and after the passage of this act, it shall not be lawful for any free person of color to emigrate to this Republic."

(1) First Session of the Third Congress, 1839, p. 46

(2) Laws of the Fourth Congress, 1840, p. 151.

Section 2.--"Be it further enacted, That if any free persons of color shall emigrate to this Republic, it shall be the duty of the sheriff, or any one of the constables of the county to which such emigration shall be made, to arrest such free person of color, after giving him ten day's notice, and bring him before the Chief Justice of the county, or Judge of the district; and it shall be the duty of the Chief Justice, or judge of the district, before whom such free person of color may be brought, to receive the bond of such free person of color in the sum of one thousand dollars, with the security of a citizen, to be approved by him, conditioned for the removal of such free person of color out of the limits of the Republic."

Section 3.--"Be it further enacted, That if any free person of color should be brought before any Chief Justice of any county, or District Judge, and shall not be able to give the bond as prescribed in the second section of this act, such Chief Justice, or District Judge, shall commit such free person of color to the public jail, with an order to the sheriff to expose him to public sale to the highest bidder, at the courthouse door of his county, after giving four weeks' notice of the same, in the nearest public journal, and at least four public places in his county; and the said purchaser shall and may exercise all the rights of ownership over said free person of color, for one year from such sale."

Section 4.--"Be it further enacted, And if any such free person of color, shall during the year of such slavery, be able to give his bond as contemplated in the second section of this act, to take effect at the end of his slavery, he shall be permitted to do so; but if he shall fail to render the bond, until after the expiration of his slavery, it shall be the duty of the purchaser to return him into the hands of the sheriff."

Section 5.--"Be it further enacted, It shall be the duty of the sheriff, upon the return of such free person of color, upon giving six weeks' notice in some public journal, and at least four public places in his county, to expose the free person of color so returned, at public sale, to the highest bidder; and such free person of color so sold shall remain a slave for life: Provided, That if any person of color so sold should be the property of any individual, he shall have his right of recovery by due course of law."

Section 6.--"Be it further enacted, All monies arising from the sale of such free person of color, shall be paid into the county treasury, subject to appropriation by the District Court for public purposes."

Section 7.--"Be it further enacted, Upon the forfeiture of the bond of any free people of color, the same shall be placed in the hands of the District Attorney for collection, who shall prosecute the same against the securities only; and the amount of sale, if such shall have been made, of the free person of color, shall, in all cases, be subtracted from the amount adjudged against the securities, and the remainder only shall be recovered from them."

Section 8.--"Be it further enacted, That two years shall be allowed, from and after the passage of this act, to all free persons of color who are now in this Republic, to remove out of the same; and all those who shall be found here after that time, without the permission of Congress, shall be arrested and sold as provided in this act."

Section 9.--"Be it further enacted, That it shall not be lawful for any master of a vessel, or owner thereof, nor for any other person or persons whatsoever, to bring, import, induce, or aid or assist in the bringing, importing, or inducing any free person of color within the limits of Texas, directly or indirectly; and any person so offending shall be deemed guilty of a misdemeanor, and on conviction shall be fined in the sum of not less than one nor more than ten thousand dollars: Provided, That cooks and other hands employed on board of vessels shall not be considered as coming within the provisions of this act."

Section 10.--"Be it further enacted, That the President of the Republic do issue his proclamation, commanding all free persons of color who are now in the Republic, to remove from the same before the first of January, 1842, and the Secretary of State publish this act a number of times in all the journals of this Republic."

A very appropriate caption for this act might be: "The Free Negro Code". Free negroes were a thorn in the side of the slave owner. Some of them settled down to work and were peaceable and law-abiding; but many, being freed from the control of their masters, assumed an air of superiority over the enslaved population. They were, as the southerner termed it, "uppity". And this the planter would not endure--a negro, free or slave must at all times be respectful.

AN ACT
Concerning Slaves (1)

Section 1.--Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That if any person shall hereafter sell to any slave, without the written consent of his or her master, mistress or overseer, any ardent spirits or intoxicating liquors, he or she so offending, shall forfeit and pay on conviction thereof, any sum not less than twenty nor more than two hundred dollars."

Section 2.--Be it further enacted, That if any person shall buy from any slave, any cotton, corn, meat or other valuable produce or article whatever, without the written consent of his or her master, or mistress, or overseer, he or she so offending, shall on conviction thereof, be fined in any sum not less than twenty nor more than two hundred dollars, with the value to the owner of any property sold."

Section 3.--"Be it further enacted, That if any person shall unreasonably or cruelly treat, or otherwise abuse any slave, he or she shall be liable to be sued in any court of competent jurisdiction, and on conviction thereof, shall be fined in a sum, not less than two hundred and fifty dollars nor more than two thousand dollars."

Section 4.--Be it further enacted, That if any person or persons shall murder any slave, or so cruelly treat the same as to cause death, the same shall be felony, and punished as in other cases of murder."

Section 5.--"Be it further enacted, That it shall be the duty of the District Judges, within said Republic, to carry into effect the foregoing provisions of this act."

Section 6.--Be it further enacted, That no slave in this Republic shall carry a gun or other deadly weapon without the written consent of his master, mistress or overseer; such arms or other weapons shall be liable to be taken by any person from any such negro, and all such property forfeited, if it does not exceed ten dollars in value; but any such property may be reclaimed by the owner on paying ten dollars to the person who may have so taken the same."

In connection with this act, attention is called to the fact that usually any law is based upon the necessities of the situation. Section 1, seems to be our first "prohibition" law. It reveals the necessity existing then, and it exists yet, of keeping liquor from negroes.

AN ACT
Concerning Certain Free Persons of Color

Section 1.--"Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That Samuel McCulloch, Jr., and his three sisters, to wit:--Jane, Harriett, and Mahaly, and their descendants, better known as the free children of Samuel McCulloch, Sr., now in the Republic of Texas, together with a free colored girl, known by the name of Ulde or Huldair, a member of said McCulloch's family, be, and the same are hereby from henceforth, exempted from all the provisions of "An Act Concerning Free Persons of Color", approved fifth of February, 1840".

Section 2.--"Be it further enacted, That the aforesaid free persons, be, and hereby from henceforth, are permitted and allowed to continue their residence within the bounds of the Republic of Texas."

This act is inserted here for the purpose of showing that the Texas slave holders were not unjust to negroes when they had proven their ability to earn their living and conduct themselves properly. Several other such laws were noticed in this investigation, proving that it was quite easy for a good free negro to secure exemption from a seemingly harsh law.

AN ACT
Prohibiting Forced Sale of Slaves under Execution (2)

Section 1.--"Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That hereafter no slave or slaves or indentured free person or persons, in the possession and ownership of the bona fide master, or heir or heirs, legatee or legatees of any intestate or deceased person, shall be subject to forced sales, by virtue of any writ of venditioni exponas, fieri facias, or execution of any kind; Provided, always, That the provisions of this act shall not be construed to extend to sales under or by virtue of any final decree or judgment of the courts of competent jurisdiction, where the same has been made or obtained in conformity to law, ordering the sale and distribution of the property of any intestate or deceased person's estate upon petition, as directed, being filed, praying for the same; Provided, nothing herein shall protect said property in the possession or ownership of defaulters to this Republic."

(1) Laws of the Republic, 1841, p. 4.

(2) Ibid. p. 51.

AN ACT
Regulating the Sale of Runaway Slaves (1)

Section 1.--"Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That where any slave is now in the jail of any county of the Republic, or shall hereafter be committed to the jail thereof as a runaway, a notice of the apprehension and commitment, with a full description of said slave, shall be published weekly in one of the Gazettes at the seat of Government, for the space of one month, and printed copies thereof shall be furnished to the clerk of the County Court of the county in which the commitment is made, to be carefully filed and preserved in his office, and it shall be the duty of the sheriff or jailor having custody of said slave, to ascertain as nearly as may be, the name of the owner thereof, and to address him or her by regular post, at least twice, giving a full description of said runaway, in such manner as may best lead to the discovery and restoration.

Section 2.--"Be it further enacted, That if said runaway slave shall not be claimed and proved by the owner thereof, within six months from the first publication of the commitment of said slave, as aforesaid, the Sheriff of the County in which the commitment was made, shall expose said slave to sale at public outcry at the Court house of his proper county, upon giving at least thirty days' previous notice of such sale, by advertising posted up in at least two public places in said county, and published in some gazette of the county in which the sale is to take place; or in the next nearest county having a gazette, and out of the proceeds arising from the sale of any runaway slave as aforesaid, the sheriff shall be entitled to the same commission and fees as are allowed in cases of execution, and the balance after paying all prison fees, or fees for the maintenance of said runaway while in custody. Clerk's fees, and expenses of advertising and apprehending, shall be paid into the county treasury for the use of the proper county; provided, that if the owner of any runaway slave thus sold, should prove his property in said slave within three years after said sale, the proper county shall pay to him the amount that shall have been paid into the county treasury, on account of the sale of said slave, but the right to any slave sold as aforesaid, shall be and remain vested in the purchaser under the sale made by the sheriff as aforesaid, any law to the contrary notwithstanding."

Section 3.--"Be it further enacted, That the sheriff making the sale of any runaway as aforesaid, shall then return a full and clear account and statement of such sale under his hand and seal, to the clerk of the county court, who shall record the same among the record of deeds.

Section 4.--"Be it further enacted, That all runaway slaves shall be lawfully apprehended by any person, and carried before the next justice of the peace, who shall commit them to the county jail, or the custody of the sheriff, or send them to the owner, if known, who shall pay for every slave so taken up, the sum of ten dollars to the person apprehending him or her, and all reasonable costs and damages: and if said owner shall fail or refuse to pay said reward and reasonable expenses, the person apprehending and delivering said runaway slaves as aforesaid, shall be entitled to have his action for the recovery of the same before any justice of the peace of the district or precinct in which said owner resides, or in which said slave is delivered up to the owner as aforesaid."

Section 5.--"Be it further enacted, That if any person or persons being convicted, harboring or concealing any negro or negroes belonging to any person or persons whatsoever, or suffering the same so to be, with his consent or knowledge, shall upon conviction of such offence, be fined in the sum not exceeding five hundred dollars, and shall be imprisoned not less than one calendar month, nor exceeding ~~six~~ calendar months, and shall be liable in damages to the party injured, to be recovered by action on the case, before any court having competent jurisdiction."

Section 6.--"Be it further enacted, That this act be in force and take effect from and after its passage."

AN ACT
To Repeal an Act Entitled: "An Act Prohibiting
Forced Sale of Slaves

"Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That "An act prohibiting forced sale of slaves under execution" approved January 27, 1841, be, and the same is hereby repealed."
 Approved 30th December 1841.

AN ACT
To Amend an Act Entitled: "An Act to Raise a Revenue by
Direct Taxation" Approved January 16, 1840. (1)

Section 1.--"Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That from and after the first day of April, 1842, the following shall be the rate of taxes on all property, capital, and other objects, hereinafter specified, together with the tax on licenses to pursue any vocation or calling herein mentioned:--On all slaves under ten years of age, twenty-five cents each; and on all between the ages of ten and sixty years, the sum of seventy-five cents."

(1) Laws of the Republic, Sixth Congress, 1842, p. 25.

AN ACT
Supplementary to "An Act Regulating the Sale of
Runaway Slaves", Approved January 5, 1841 (1)

Section 1.--"Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That it shall be lawful, hereafter, for any person, or persons, who may apprehend and commit to jail any runaway slave or slaves, on or west of the San Antonio River, to demand and receive the sum of fifty dollars for each and every slave, so apprehended, provided, said slave, or slaves so secured that the property come safely to the possession of the owner, to be paid upon the delivery of such slave or slaves to the owner thereof, or his authorized agent; and the person, or persons, apprehending such slaves, shall have a lien on the same, until the reward specified, as aforesaid, be paid."

Section 2.--"Be it further enacted, That in all cases where any slave or slaves shall be apprehended and delivered to the owner at his residence, it shall be lawful for the person, apprehending and delivering such slave or slaves, to demand and receive, for each slave so apprehended and delivered, in addition to the sum specified, as aforesaid, the further sum of two dollars for every thirty miles he may travel in going to and returning from the residence of said owner, the distance to be computed over the shortest route traveled at the time, and to have a lien upon the slave or slaves, for the payment of the same, as provided for in the first section of this act."

Section 3.--"Be it further enacted, That the provisions of the second section of this act shall extend to persons apprehending runaway slaves in any part of the Republic, provided, said slaves are delivered by the apprehender to the owner thereof, at his or her residence."

Section 4.--"Be it further enacted, That if no owner appears and claims any slave or slaves so apprehended, and the same be sold under the provisions of the act to which this is a supplement, then and in that case, it shall be the duty of the sheriff to pay over to the person, or persons, apprehending such slave, or slaves, the reward prescribed by the provisions of the first section of this act; provided, that the sheriff shall take, in writing, the testimony on which the claim to the reward is admitted, and that the same be filed in the office of the Clerk of the County Court."

Section 5.--"Be it further enacted, That this act take effect and be in force from and after its passage."

Mexico had become a haven for runaway slaves, and this act was passed to increase the rewards for captures on the border.
 (1) Laws of the Republic, Eighth Congress, 1844, p. 38-39.

CHAPTER III

LAWS PASSED BY THE STATE OF TEXAS (PRIOR TO
SECESSION) REGULATING NEGRO SLAVERYConstitutional Provisions

The constitutional and statutory regulations discussed in the preceding chapter were of brief duration, but, under them, the institution of negro slavery grew marvelously. When Guerrero issued his famous decree abolishing slavery in the Republic (of Empire) of Mexico, in 1829, there were not more than one thousand slaves in Texas. When the Republic of Texas accepted annexation and entered the Union as The State of Texas in 1846, there were 31,099 slaves rendered for taxes at a value of \$10, 142,198. (1)

President Anson Jones issued a proclamation on April 15, 1845, calling the Texas Congress into extraordinary session to consider the joint resolution of the United States Congress offering annexation to the Republic of Texas. He also issued another proclamation summoning another convention of the people at a slightly later date. The special session of Congress convened on June 16, and the convention of deputies elected by the people assembled on July 4, 1845 in accordance with the terms of the proclamation. On June 21, a joint resolution was passed, by unanimous vote, formally consenting to the terms of the joint resolution of the American Congress, and approving the proclamation of President Jones for the election of deputies to a convention for the adoption of a constitution for the State of Texas. (2)

(1) Texas Almanac, 1858, p. 180.

(2) Rives, United States and Mexico, Vol I, p. 716.

The convention assembled at Washington on the Brazos, and only one day was consumed in organization and the adoption of a resolution, without debate, accepting the terms of annexation. Only one vote, that of Richard Bache, a great-grandson of Benjamin Franklin, was cast in opposition; but Bache later signed the resolution, making it the unanimous act of the convention. The convention then proceeded to debate, peaceably the provisions of a state constitution which was completed and adopted also by unanimous vote on August 28, 1845. This constitution was approved by the people in an election on the second Monday in October. After it had been approved by the Congress of the United States, state officials were elected and on February 16, 1846, J. Pinckney Henderson was inaugurated as the first Governor of the State of Texas. (1)

We shall now consider the provisions of this constitution and the statutes passed pursuant thereto which pertain to slavery. The Bill of Rights indicated that the new form of government was composed of "freemen" only.

BILL OF RIGHTS

Section 2.--"All freemen, when they form a social compact, have equal rights; and no man, or set of men, is entitled to exclusive, separate, public emoluments or privileges, but in consideration of public services."

ARTICLE THIRD Legislative Department

Section 1.--Every free male person who shall have attained the age of twenty-one years, and who shall be a citizen of the United States, or who is at the time of the adoption of this Constitution by the Congress of the United States, a citizen of the Republic of Texas, and shall have resided in this State one

year next preceding an election, and the last six months within the district, county, city or town in which he offers to vote, (Indians, not taxed, Africans and descendants of Africans excepted) shall be deemed a qualified elector."

Section 2.--"All free male persons over the age of twenty-one years, (Indians, not taxed, Africans and descendants of Africans excepted) who shall have resided six months in Texas, immediately preceding the acceptance of this Constitution by the Congress of the United States, shall be deemed qualified electors." (1)

These two sections are inserted here to show that slaves, Indians, and free negroes were not to be citizens or electors in the new state.

ARTICLE EIGHTH

Slaves

Section 1.--"The Legislature shall have no power to pass laws for the emancipation of slaves, without the consent of their owners; nor without paying their owners, previous to such emancipation, a full equivalent in money, for the slaves so emancipated. They shall have no power to prevent emigrants to this State, from bringing with them such persons as are deemed slaves by the laws of any of the United States, so long as any person of the same age or description shall be continued in slavery, by the laws of this State; provided, that such slave be the bona fide property of such emigrants: Provided, also, that the laws shall be passed to inhibit the introduction, into this State, of slaves who have committed high crimes in other States or territories. They shall have the right to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge. They shall have full power to pass laws, which will oblige the owners of slaves to treat them with humanity; to provide for them, necessary food and clothing; to abstain from all injuries to them, extending to life or limb; and in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves taken from such owner, and sold for the benefit of such owner or owners. They may pass laws to prevent slaves from being brought into this State as merchandise only."

Section 2.--"In the prosecution of slaves for crimes of a higher grade than petit larceny, the Legislature shall have no power to deprive them of an impartial trial by petit jury."

(1) Laws of Texas, Volume II, p. 5.

Section 3.--"Any person who shall maliciously dismember or deprive a slave of life, shall suffer such punishment as would be inflicted, in case of the like offence had been committed upon a free white person, and on the like proof, except in case of insurrection of such slave."

It is noted here that this constitution omits all references to the slave-trade. Such provisions were not necessary, because Texas was now a member of the Federal Union, and the Constitution and laws of the United States were deemed sufficient to take care of such traffic. Perhaps recognition was no longer needed and danger of an invasion from Mexico was a thing of the past.

STATUTES OF THE STATE OF TEXAS (PRIOR TO SECESSION)

AN ACT

To Prevent Slaves from Hiring Their Own Time, or
Their Owners from Hiring Them to Other Slaves,
free Negroes or Mullattoes (1)

Section 1.--That the owner of the slave shall be fined in a sum not to exceed one hundred dollars for each offence."

Section 2.--"That all slaves going at large shall be taken up and taken before a justice of the peace."

Section 3.--"That if the justice of the peace receives satisfactory evidence of slaves at large within his county, he shall issue warrant and bring such offenders before him."

Section 4.--"That such slaves shall be committed to the county jail."

Section 5.--"That upon payment of costs and fine that may have accrued by master, said slave may be discharged."

Section 6.--"That the justice of peace may report the committing of any slave under this act to the next session of the county court."

Section 7.--"That the county court shall give notice of slaves committed since the last session of the same and order the clerk of the county court to publish same."

(1) Laws of the First Legislature, p. 195.

Section 8.--"That the slave advertised according to section 7 if not proven by any owner, the court shall order sale on a certain day not less than three months nor more than six months, and that publication be made in some newspaper published in the State, at least for three months next before the said day of sale, and the sheriff shall sell the said slave for cash, under the same regulations that govern sales under execution, unless the said slave be proven away by the owner, under provisions of section 5 of this act."

Section 9.--"That all fines arising under this act shall be paid to the county treasury, after paying the costs of apprehending, trying, committing, advertising, and five per cent to the sheriff for selling, and all other costs necessarily accruing. All such monies are to be subject to the orders of the county court for county purposes."

Section 10.--"That if any person, within five years after the sale of a slave under this act, shall come forward and make satisfactory proof to the county court, that said slave was his property at the time of such sale, the court shall order the county to pay out of any money in the treasury not otherwise appropriated, to said person, the balance of such sale after deducting all costs and fine that had accrued against the same."

AN ACT TO AMEND AN ACT

"That the third section of an Act, entitled an Act Concerning Slaves, approved February 5th, 1840, be so amended as to read as follows, to wit: That if any person or persons shall cruelly or unreasonably treat or abuse any slave belonging to him, her, or them, or to another or others, he, she, or they and each of them shall be liable to indictment or presentment, as for misdemeanor, in the District Court, and on conviction thereof, may be fined for each and every such offence, not less than twenty dollars, nor more than five hundred dollars." (1)

AN ACT

Authorizing and Requiring the County Courts to
Regulate Roads and Appoint Overseers (2)

Section 7.--"It shall be the duty of the overseer of any road to give two days previous notice by summons in person or in writing, left at their respective places of abode, to all free male persons, as well as to the owners, overseers, or employers of slaves liable to work on the roads in his precinct, to meet at such time and place as he shall designate, and bring with them such tools to work with on the roads as he shall direct; all slaves refusing to appear may be fined in the sum of one dollar for each and every day he fails to attend, the fine to be collected from his owner, overseer, or employer."

(1) Laws of the Second Legislature, p. 29.

(2) Ibid., pp. 99-102.

Section 13--"Any slave, his master, or overseer may by calling on the road overseer any time before the day appointed to work on roads and paying the amount for which he or they might be liable for failure to appear, be exempt from such work or from penalty.

Section 15.--"All male slaves between the ages of fifteen and fifty shall be among those liable to work on the roads."

In a great many ways the slave in Texas was treated as a citizen. The provisions in the preceding articles, compelling the slaves between fifteen and fifty to work on the public roads show that the people expected the negroes to discharge the duties required of other men. This was justified on the ground that good roads were essential to the welfare and prosperity of the slave, through the welfare and prosperity of his master, of course.

Joint resolutions of legislatures are not, in certain senses laws; but they frequently reveal a certain mental attitude of the people of a state which materially affects their acts in the passage of other laws. To amplify this, one joint resolution on the subject of slavery is inserted below.

JOINT RESOLUTION, ON THE "PROVISO", SLAVERY, THE
TARIFF, AND THE WAR AGAINST MEXICO (1)

Section 1.--"Resolved, That any attempt on the part of the Congress of the United States to interfere with the domestic and internal policy of the States or territories, is unwarranted by the Constitution of the United States, and in violation of the rights of the States. The "Proviso", if submitted to, would prevent the slaveholding States from enjoying the full benefits of any territory which may be hereafter acquired by the United States. The Constitution of the United States recognizes slavery, as one of our domestic institutions, and we acknowledge no right to abolish it, but that which belongs to the slaveholding States themselves. We will not submit to

(1) Laws of the Second Legislature, p. 133.

any law, which prohibits the citizens of the Southern States from taking their property to any territory which may be acquired from Mexico. We are willing to submit to the compromises of the Constitution, but we will never submit to a usurpation of power which robs us of our rights."

"Resolved further, That we deny the right of the Congress of the United States, to pass any law prohibiting any State, that may hereafter be admitted into the Union, from coming in, either with or without slavery, as the popular voice of such State may determine. This principle we will not yield."

The following law, and several others quoted in this chapter, reveal the fact that the law makers of the State considered the old laws under the Republic to be in full force until repealed or amended.

AN ACT TO AMEND AN ACT

"That the sixth section of an act entitled "An Act Concerning Slaves" approved 5th February, 1840, be amended so as to read as follows: (1)

"That any slave who may be found away from the premises of his owner, overseer, or employer, on Sunday, or after the hour of ten o'clock, p. m. or any other day, without a written permit or with such permit at places other than those described in the permit, or away from the route usually travelled in going to and returning from the place to which the permit extends, the said slave shall be liable to be taken up by any patrol, justice of the peace or individual, in case taken up by a patrol, the said patrol shall inflict as punishment not more than ten lashes; if the patrol deemed more than ten lashes were needed, he should take the slave to a justice of the peace, who upon notice from the master, shall adjudge the number of stripes which shall be inflicted, not exceeding nine; should the master be unknown, or should he reside at a greater distance from the place where the justice of the peace resides than it is to the nearest country jail, the said justice shall commit the slave to the said county jail, and cause notice to be given in writing to the master, the master to be entitled to said slave upon the payment of all reasonable costs and charges not exceeding ten dollars."

"That it shall not be permissible for any slave to own firearms, and that any owner, overseer, or employer who shall knowingly permit any slave owned by him to carry firearms at

Other places than the premises of said owner, overseer, or employer shall be fined not less twenty-five dollars nor more than one hundred dollars, and all costs, the firearms to be forfeited to the use of the county, and the negro to receive not less than thirty-nine nor more than fifty lashes."

"That any slave found with any articles of trade in his possession offering the same for sale without a written permit to sell, shall be adjudged by any justice of the peace before whom he may receive not more than thirty-nine lashes, and the articles of trade forfeited and sold to pay the costs, excess to be paid into the county treasury."

"That any slave attempting to take the life of any white person or slave by poison or otherwise shall be delivered to the civil authorities by the owner, overseer, or employer; in case of refusal to deliver slave or to assist or connive at the escape of such slave, the owner, overseer, or employer shall be fined not more than one hundred nor more five hundred dollars in addition to penalties imposed on accessories before or after the fact: Provided, that nothing herein contained shall be so construed as to interfere with or in anywise affect the right of incorporated towns and cities in this State in making and enforcing their own police regulations, except as far as it relates to the carrying of firearms."

AN ACT

To Enable Part Owners of Slaves to Obtain Partition Thereof (1)

Section 1.--"That part owners of slaves and other personal property may be compelled to make partition between them."

Section 2.--"That the separate value of the slaves to which each party claiming partition may be entitled, shall be ascertained by the verdict of the jury."

Section 3.--"Where partition of slaves is ordered, execution shall be issued to the proper county officer where the property may be, commanding him to put the parties in possession of the property allotted to each respectively."

Section 4.--"When slaves will not admit of partition in kind, the jury shall so find by their verdict and ascertain the proportion of the value of such slaves."

Section 5.--"Officers of the county in which the property is situated, in cases covered by section four, may be empowered to sell the property and pay over the proceeds of the sale to the parties according to the judgment of the court."

Section 6.--"This act shall not affect partition of estates of deceased persons among the heirs and legatees."

(1) Laws of the Fourth Legislature, p. 20.

AN ACT
To Indemnify the Owners for the Loss of
Slaves Executed for Capital Offences (1)

"When a slave, the property of a citizen of the State, shall be convicted of a capital offence, the jury rendering the verdict shall assess the value of such slave; in case the punishment to the slave is death, the master shall receive from the State Treasury one-half of the appraised value, the appraisement not to exceed one thousand dollars, provided the owner shall not attempt to evade or defeat the execution of the law on said slave, nor shall a slave be so paid for, who may be condemned for any offence, in the commission of which his owner was either principal or accessory."

AN ACT
Concerning Offences Committed by Negroes (2)

Section 1.--"That if a free negro plot murder or by any means cause bodily injury to a white person with intent to kill, he shall be punished at the discretion of the jury, either with death, or by confinement in the penitentiary, not less than three nor more than ten years."

Section 3.--"That if a free negro attempt to marry a white female or take from any person having lawful charge of her a white female child under twelve years of age, he shall be punished by death."

Section 4.--"That if a free negro commit any other offence not specified in this act, he shall be punished as a free white person."

Section 5.--"That if a slave plot or conspire to rebel or make insurrection, or commit offence for the commission of which a free negro is punishable with death, or by confinement in the penitentiary for not less than three years, he shall be punished with death."

Section 6.--"That if a slave commit an offence for which a free negro might be punished by confinement in the penitentiary for a period less than three years, such slave shall be punished by stripes, not exceeding fifty, at the discretion of the jury."

Section 7.--"That if a slave commit an offence, the commission of which, by a free person, is punishable as a misdemeanor, he shall be punished by stripes not exceeding thirty-nine."

(1) Laws of the Fourth Legislature, p. 33.

(2) Laws of the Fourth Legislature, Second Session, p. 14.

Section 8.--"That a negro shall be punished with not exceeding thirty-nine stripes, for the commission of the following offences: (1) for using provoking language or menacing gestures to a white person; (2) for punishing a slave without the consent of his master, any pass, permit or token of his being from home without authority; (3) if he keep or carry fire-arms, sword, or other weapon, or balls, or ammunition, besides forfeiting any such articles in his possession; (4) if guilty of being in a riot, or making seditious speeches; (5) if he sell or attempt to sell, or prepare, or administer any medicine, except by his master's order, in his family, or in the family of another with the consent of such other, and except also, when a free negro administers medicine in his own family, or in the family of another person with the consent of such other."

Section 9.--"That the word negro, in this or any other statute of this State, shall also be construed to mean mulatto and every person who has one-fourth part or more of negro blood shall be deemed a mulatto."

Section 10.--"That the punishment of a negro by stripes shall be at the discretion of the jury as not to affect life and when assessed by a justice shall not exceed fifty lashes."

Section 11.--"That the trial of negroes charged with felonious homicide, or any offence punishable with death, shall be in the District Courts, where the proceedings shall be as in the case of white persons."

Section 12.--"That on any indictment of a negro in the District Court, the accused may be found not guilty of the offence charged, but guilty of any offence of which a free white person might be found guilty on such indictment, and the jury may find and assess such punishment against him as the offence would justify, if the negro had been charged therewith in the county court as is hereinafter provided."

Section 13.--"That the county courts of each county, to consist of the Chief-Justice, and two commissioners, at least, or of three commissioners at least, in case of disability or absence of the Chief-Justice or vacancy in that office, shall be a criminal tribunal for the trial of negroes and slaves charged with felony, except in the cases provided for in the two preceding sections."

Section 14.--"That such trials shall be on sworn information, or charge in writing entered of record, but without a grand jury, or a presentment or indictment."

Section 15.--"That free negroes charged with any offence in the county courts, and slaves charged with offences punishable by death, shall be entitled to trial by jury of twelve good and lawful men, freeholders of the county, and shall have the same right of challenge allowed by law to white persons."

Section 16.--"That no one interested in a slave charged with crime shall sit on his trial as a member of the court or as a juror."

Section 17.--"That in criminal cases before the county court, if no counsel be employed by private persons, the court may employ some competent attorney who shall be entitled to compensation agreed upon to be paid out of the county treasury."

Section 18.--"That on trial of slaves for felony the court shall assign counsel to defend, if none be employed, and allow fee not to exceed one hundred dollars, which shall be paid by the owner of the slave."

Section 19.--"That a regular term of the county court for trial of negroes may be had on the first Monday in every month."

Section 20.--"That ~~the clerk~~ of the county court shall be the clerk of the tribunal established by this act, and shall be entitled to receive the same fees and compensation that the clerk of the district court would be entitled to receive for similar services."

Section 21.--"That trial, upon showing of good cause, may be continued from term to term, not exceeding two continuances."

Section 22.--"That on a charge against a negro for felony, the court or jury may find the accused not guilty of the offence charged, but guilty of any offence for which a free white person might be found guilty on an indictment for such felony, and may assess the punishment therefor where it is not fixed by law, and give judgment accordingly."

Section 23.--"That if a slave or negro condemned to death escape and be retaken, the jailor or sheriff shall promptly inform the said court of the fact, and the court shall cause the sentence to be carried into effect on a day appointed by it."

Section 24.--"That a slave shall be tried for a misdemeanor by a justice of the county in which the offence is committed."

Section 25.--"That a free negro shall be tried by such justice for a misdemeanor punishable by stripes. For any other misdemeanor, he or she may be tried in the county court, but a justice of the peace before whom a free negro is charged with misdemeanor punishable by fine and imprisonment, or either, may try him or her and inflict such punishment as he would inflict on a slave for the same offence, or commit or recognize him for trial at the next court of the county."

Section 26.--"That in the case of a negro convicted of a misdemeanor by a justice, the decision may be removed by certiorari to the county court by the negro, if free, or if he be a slave, by his owner; such negro shall, unless let to bail, be committed by the justice to jail, until the next term of such court, and the witnesses shall also be recognized to appear at the same time."

Section 27.--"That every such certiorari shall be tried in the county court without pleadings in writing and without continuance, except for good cause shown."

Section 28.--"That the chief justices of the several counties shall have power to issue writs of certiorari in any case arising under this act."

AN ACT

Making Appropriation for the Indemnification of
the Owners of Slaves Executed for Crimes (1)

"That the sum of five thousand dollars is hereby appropriated for the indemnification of the owners of slaves executed since the 24th day of January, A. D. 1852. That this appropriation be made for the purpose of carrying out the provisions of an act entitled to indemnify the owners for the loss of slaves executed for capital offences, approved January 24, 1852."

AN ACT

Supplemental to An Act Concerning Crimes and
Punishments, Approved March 20, 1848. (2)

Section 4.--Every person who shall unlawfully sell any free person for a slave, or hold any free person as a slave against his will, knowing the person so sold or held to be free, shall be punished by confinement to hard labor in the penitentiary not less than one year nor more than ten years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not exceeding one year."

(1) Laws of the Fifth Legislature, p. 10.

(2) Ibid., p. 59.

Section 6.--"Murder or manslaughter committed upon the body of a slave shall be punished in the same manner as murder or manslaughter committed upon the body of a free white person."

AN ACT

Supplemental to An Act Concerning Crimes and Punishments, Approved March 20, 1848.

Offences Against Slaves and Slave Property (1)

Section 46.--"If any person advise or conspire with a slave to rebel or make insurrection, or with any person to induce a slave to rebel or make insurrection, he shall be punished with death, whether such rebellion or insurrection be made or not."

Section 47.--"The master of any steamboat or other vessel who shall carry or cause to be carried out of any county a slave, without the consent of the owner or employer, with intent to deprive the owner of such slave, or who shall knowingly receive on board any runaway slave, and permit him to remain on board without proper efforts to apprehend him, shall be confined in the penitentiary not less than two nor more than ten years."

Section 48.--"Every person who shall steal, take and carry away or entice away any slave, the property of another, shall be punished by confinement to hard labor in the penitentiary not less than three nor exceeding fifteen years."

Section 49.--"Every person who shall attempt to steal or entice away a slave from the owner or employer, shall be confined in the penitentiary not less than one nor more than ten years."

Section 50.--"If a free person advise any slave to abscond from his master or employer, or aid such slave to abscond, by procuring for or delivering to him a pass or other writing, or by furnishing him money, clothes, provisions or other facility, he shall be confined in the penitentiary not less than three nor more than five years."

Section 51.--"If any master of a vessel or other person shall knowingly import or be caught bringing any slave who shall be a fugitive from justice, or shall have been sold or convicted for crime beyond the limits of this State, he shall be confined in jail not less than six months, and fined one hundred dollars."

Another joint resolution of the Texas Legislature on the question of slavery is inserted to demonstrate that the Texans had changed their views somewhat upon national legislation, and that they were now willing to submit to laws passed by the national Congress to which they had previously resolved that they would never submit.

Joint Resolution (1)

Resolved, "That this State regards the act of Congress passed in 1850 admitting California into the Union, fixing the boundary of Texas, etc., as a question fully settled so far as related to the question of slavery and that Texas is opposed to any change in those laws affecting their principles on the great questions which have so unhappily divided the Northern and Southern States of the Union.

"That the State of Texas regards the fugitive slave law of 1850 as a measure of constitutional right and justice to the slave-holding States, and will look upon the repeal of this law or its modification as an invasion of her constitutional rights.

"That the State of Texas regards the late act known as the Kansas-Nebraska Act as a measure founded in the true spirit of the Federal Constitution, and will look upon the repeal or modification of this law as an invasion of her constitutional rights.

AN ACT

To Prevent Slaves from Carrying Guns or
Other Dangerous Weapons (2)

Section 1.--"That no slave shall carry a gun on the premises of owner without the written permit from the owner.

Section 2.--"That no slave shall carry a gun or other deadly weapon beyond the premises of owner or employer unless accompanied by owner or some white person authorized by the owner."

Section 3.--"That any gun or weapon found on a slave contrary to above provisions may be forfeited to person finding such slave with the weapon, provided the weapon is valued at not more than twenty dollars. Any such property may be reclaimed by the owner upon payment of twenty dollars."

(1) Laws of the Sixth Legislature, pp. 83-84

(2) Laws of the Sixth Legislature, Adjourned Session, 81.

AN ACT
To Amend the Ninth Section of an Act
Approved February 5, 1840
Concerning Free Persons of Color (1)

"That it shall not be lawful for any master of a vessel or owner thereof, nor any other person to bring, induce or aid or assist any free person of color within the limits of the State of Texas, directly or indirectly. Any person so offending is subject to a fine not less than one hundred dollars nor more than two thousand dollars."

AN ACT
To Permit Free Persons of African Descent to
Select Their Own Masters and Become Slaves (2)

"That it shall be lawful for any free person of African descent over fourteen years of age, now in this State, to choose his or her master, and become a slave; provided said slave shall not be subject to forced sales for any debt incurred or judgment rendered against the chosen master prior to the period of enslavement."

Section 2.--"That said person desiring to become a slave shall file a petition with the District Court of the county in which he or she resides."

Section 3.--"That the Court shall, upon appearance in open court of both petitioner and person designated in the petition as the desired master, proceed to examine each separately, as well as witnesses to said petition; that if upon examination the court shall be satisfied that there is no fraud nor collusion the petition shall be granted, and the condition of the petitioner shall in all respects be the same as though such petitioner had been born a slave to the master so chosen."

Section 4.--"That in case the petitioner be a female with children under fourteen years of age and shall in her petition ask that such children become the slaves of the same person chosen by her as master, it shall also decree such children to be slaves of the same owner; provided that where the children's mother shall be deceased the next friend of such children shall have authority to proceed in the same manner as the mother might do under this act."

Section 5.--"The District Attorney shall be entitled to a fee of ten dollars for each examination, which shall be costs in the proceedings, and all such costs shall be paid by the master to whom the slave may be decreed."

(1) Laws of the Seventh Legislature, p. 75.

(2) Laws of the Seventh Legislature, p. 283.

The foregoing act is both interesting and instructive in that it proves that there was such a thing as voluntary slavery in Texas. If the abolitionists of the North knew about this, they were probably terribly shocked at the thought of Texas failing to provide orphanages or asylums for the care of the destitute children of free persona of color. There was a radical difference in the points of view; the Texans seemed to think that a destitute child would be much better off when placed as a slave in the household of a southern planter than when condined in an orphanage; but to the northern type of mind, a state of slavery would always and under all conditions be intolerable.

AN ACT (1)
To Encourage the Reclamation of Slaves Escaping
Beyond the Slave Territories of the United States

Section 1.--"That any person capturing or causing to be captured a slave or slaves escaping beyond the limits of the slave territories of the United States and delivering such slave or slaves to the Sheriff of Travis County shall be entitled to receive from the Treasury of the State thirty-three and one-third percent of the value of such slave or slaves."

Section 2.--"That any person capturing a slave or slaves, as provided above, shall after arriving within the limits of this State in the first organized county which he may reach, go before a Judge of the District Court, Chief Justice, Notary Public, or Clerk of the District or County Court, and make proof to the satisfaction of such officer, by at least two witnesses, that the slave or slaves so captured were taken beyond the limits of the slave territory of the United States, whereupon such officer shall certify to the fact of said proof, under his hand and seal, if he have one, and deliver the same to the party so appearing before him. Upon arriving at the City of Austin, in the County of Travis, the captor shall deliver such slave or slaves to the Sheriff of said county,

who shall without delay summon two free-holders, citizens of said county, to appraise such slave or slaves under oath, and he shall append to the certificate of proof, said appraisement together with his certificate that they have been delivered to him and are in his custody, and upon presentation of the same to the Comptroller, that officer shall issue his warrant on the Treasurer, for the amount of said thirty-three and one-third percent of the appraisement, to be paid out of any money in the Treasury not otherwise appropriated."

Section 3.--"That it shall be the duty of said Sheriff to advertise such slave or slaves in the official paper of the State for three months, giving therein a full description of the same, appraised value, and name of the reputed owner; should the owner appear, he shall be entitled to receive the same upon payment of the one-third appraised valuation with interest thereon at the rate of eight percent per annum and also five percent of the appraised value of said slave shall remain in the Treasury as an accumulating fund to be applied to the purposes contemplated in this act, and all other legal charges."

Section 4.--"That should the owner fail to prove property and pay charges, it shall be the duty of the Sheriff to advertise such slave or slaves for sale, giving thirty days notice in some newspaper in the city of Austin, and at the expiration of such period shall sell the said slave or slaves at auction to the highest bidder for cash; and after paying all the necessary and legal charges shall pay the remainder over to the Treasurer who shall reimburse the State for the amount originally paid for their apprehension, and shall retain the remainder subject to the order of the owner or owners of such slaves

Section 6.--"That any person capturing a slave as contemplated by the preceding sections of this act shall deliver the same to the owner in any portion of this State, shall be entitled to receive the same compensation as if delivered to the Sheriff of Travis County and shall be entitled to hold possession of such slave or slaves as security therefor until paid."

This suggests a valuable historical question for research: Did any citizen of Texas ever go within the limits of a free state, capture a fugitive slave, return him to Travis County, and receive a reward of one-third the value of the slave? I regret that time does not permit me to answer or investigate such proposition. "Quien sabe?"

On August 28, 1856, the Legislature of Texas approved the "Penal Code" which was a collection of and re-enactment of all the criminal laws that had been passed by preceding legislatures. Since these laws are, in most part, only repetitions of the laws already quoted in this thesis, only such sections as seem to contain new or valuable historical interest will be quoted below. This "Penal Code" is unusually long and complicated, containing many definitions and much matter pertaining only to court procedure--interesting and valuable perhaps to the student of law; but containing very little historical value.

THE PENAL CODE OF TEXAS (1)

Article 796.--"An offence committed by a slave is known as a felony when the punishment therefor is death or branding. An offence committed by a free person of color, is known as a felony when the punishment for the same is death, branding, or imprisonment in the penitentiary; all other offences committed by either of these classes of persons, are called petty offences."

Article 797.--"The District Court alone has jurisdiction to try felonies committed by either slaves or free persons of color; the jurisdiction for the trial of petty offences, belongs to the courts of Justices of the Peace, Mayors and Recorders."

Article 801.--"A slave or free person of color when tried for penal offence, is in law a person, but his personal rights are to be controlled by the provisions of this Part of the Penal Code, and are subject to rules different from those which would be applied in the case of a free white person, arising from the peculiar position of these classes of persons in society.

Article 802.--"But if the chastisement be unreasonable and excessive, the killing will be manslaughter."

(1) Acts of the Legislature, August 28, 1856.

Article 804.--"Patrols or others, authorized by law to punish slaves, may inflict moderate chastisement, and the rights and duties of a slave, under such circumstances, are governed by the same rules which would apply to the case of the master enforcing lawful obedience."

Article 806.--"A free person of color residing in the State in violation of law, is, in all respects, upon a footing of equality, as to his personal rights, with a slave."

Article 807.--"In every case of offences committed by slaves against the person of free persons of color, or of free persons of color against the persons of slaves, the parties are deemed to stand upon terms of equality."

Article 808.--"If it shall appear on trial of any slave or free person of color, for the killing of, or personal injury to a white person, that the person killed or injured was in the habit of association with slaves or free negroes, and by his general conduct placed himself upon an equality with these classes of persons, the rights of the slave or person of color are to be governed by the same rules which would apply if the offence had been committed upon the person of a slave or person of color, except in cases where the person injured is a minor, under the age of eighteen years."

Article 809.--"The preceding Article does not apply where the injury was done to the master of the slave, or to any member of the family of the master."

Article 811.--"Slaves are not punishable by fine, or by imprisonment in the penitentiary or house of correction."

Article 812.--"There shall be four types of punishment for slaves: death, branding, standing in the pillory, and whipping."

Article 813.--"The punishment of death is inflicted by hanging, in the same manner as in the case of free white persons."

Article 814.--"The punishment of branding is inflicted by ~~with a~~ hot iron, in the shape of the letter "C", upon the left cheek."

Article 815.--"The punishment of branding shall be so inflicted as to produce no greater pain than that which is unavoidable, and in such manner only as to leave an indelible impression, and not to lacerate the cheek."

Article 816.--"The punishment of whipping is inflicted upon the bare back, and when not specially directed otherwise, it shall in all cases be construed to mean thirty-nine lashes."

Article 818.--"If in any county a public Pillory be erected by the County Court, punishment by standing in the Pillory may be substituted for all offences punishable by whipping, or, in aggravated cases, the punishment of the Pillory may be added to that of whipping."

Article 820.--"The following offences, when committed by slaves, shall be punished by branding: burglary, robbery; assaults with intent to commit murder, rape, or robbery; attempts to commit arson, or rape; assault with a deadly weapon upon a white person in any case except self-defence; theft, manslaughter."

Article 821.--"All offences not specially enumerated, when committed by slaves, shall be punished by whipping, which may be public or private, at the discretion of the jury or court."

Article 822.--"Free persons of color are subject to the following punishments: Death, branding, imprisonment in the penitentiary, whipping or standing in the pillory, and labor upon any public works of a county."

Article 824.--"Arson, robbery, aiding in an insurrection of slaves, rape of a free white female, when committed by a free person of color, shall be punished by death, or by imprisonment in the penitentiary, for life, or a term of years."

Article 825.--"For any of the offences named in the two preceding Articles, if the defendant be sentenced to the penitentiary, branding may be also added as a part of the punishment."

Article 828.--"A free person of color found guilty of theft to the amount of twenty dollars or more, shall be punished by whipping, and shall, in addition thereto, be subject to be compelled to work upon the road or any public work of the county where he is convicted, under the direction of the County Court, for a term not exceeding six months."

TITLE XVII--CHAPTER VI--SECTION IV (1)
Justifiable Homicide of a Slave

Article 564.--"Homicide committed upon a slave is justifiable in the following cases:

1. When the slave is in a state of insurrection.
2. When a slave forcibly resists any lawful order of his master, overseer, or other person having legal charge of him, in such manner as to give reasonable fear of loss of life,

(1) Penal Code of Texas, pp. 110-111.

or great bodily harm, in enforcing obedience to such order.

3. Where a runaway slave forcibly resists a person attempting to arrest him, in such manner as to cause reasonable fear of loss of life, or of great bodily harm, in making such arrest.

4. Where a slave forcibly resists any lawful order of any patrol or officer of the law, in such manner as to cause reasonable fear of loss of life, or great bodily harm in executing such order.

5. When a slave uses weapons calculated to produce death, or in any case other than those in which he may lawfully resist with arms, under the provisions of Part III of this Code."

Article 565.--"A slave is said to be in a state of insurrection when he is acting in concert with at least four others, and they are armed with the intention of freeing one or more of their number from a state of slavery."

Article 566.--"Flight on the part of a slave, except when in a state of insurrection, does not justify homicide by either the master or any other person; and the killing of a slave under any other circumstances except those above enumerated, is the same offence as the killing of a free white person."

TITLE 12--CHAPTER 1 Unlawful Marriage (1)

"Article 386 shall hereafter read as follows: If any white person shall, within this state, knowingly marry a negro, or a person of mixed blood, descended from negro ancestry, to the third generation inclusive, though one ancestor of each generation may have been a white person, or having so married in or out of this state, shall continue within this state to cohabit with such negro, or such descendant of a negro, he or she shall be punished by confinement in the penitentiary, not less than two nor more than five years."

CHAPTER 7 Trading with Slaves

"Article 668 shall hereafter read as follows: If any person who deals in intoxicating liquors, either by wholesale or retail, shall sell to a slave without the written consent of his master, mistress, overseer, or employer, any intoxicating liquors, or shall give to any such slave, and without such written consent, any intoxicating liquors, he shall be fined, not less than fifty nor more than two hundred dollars."

PART III--TITLE 2
Rules Applicable to Offences Against the
Person When Committed by Slaves or
Free Persons of Color

"Article 802 shall hereafter read as follows: The offences enumerated in Title 17 of the second part of the Penal Code, when committed by slaves or free persons of color, against a free white person, are subject to different rules from such as are prescribed in defining such offences when committed by a free white person, and the guilt or innocence of the accused is to be ascertained by a consideration of the following general principles:

1. The right of the master to the obedience and submission of his slave, in all lawful things, is perfect, and the power belongs to the master to inflict any punishment upon the slave not affecting life or limb, and not coming within the definition of cruel treatment, or unreasonable abuse, which he may consider necessary for the purpose of keeping him in such submission, and enforcing such submission to his commands; and if, in the exercise of this right, with or without cause, the slave resists and slays his master, it is murder.

2. The master has not the right to kill his slave, or to maim or dismember him, except in cases mentioned in Article 564 of this Code.

3. A master, in the exercise of his right to perfect obedience on the part of the slave, may correct in moderation, and is the exclusive judge of the necessity for such correction; and resistance by the slave, under such circumstances, if it results in homicide, renders him guilty of murder.

4. The insolence of a slave will justify a white man in inflicting moderate chastisement, with an ordinary instrument of correction, if done at the time when the insolent language is used, or within a reasonable time after; but it will not authorize an excessive battery, as with a dangerous weapon.

5. The rules respecting manslaughter, as given in the second part of this Code, apply only to equals, and not to the case of offences of slaves, or free persons of color, against free white persons.

6. An assault and battery, not inflicting great injury, committed by a free white person upon a slave, will not be sufficient provocation to mitigate a homicide of the former by the latter, from murder to manslaughter, although in a case where the law does not expressly justify such assault and battery.

7. That amount of personal injury is a legal provocation, of which it can be pronounced, having due regard to the relative condition of the white man and slave, and the obligation of the latter to conform his passions to his condition of inferiority, that it would provoke well disposed slaves into a violent passion, and the existence of such provocation will reduce the homicide to manslaughter.

8. If a slave, by insolence, provoke chastisement, and then slay the person chastising him, it will be murder.

9. In the following cases it is lawful for a free white person to inflict chastisement upon a slave by moderate whipping:

(a) If a slave, without the consent of the white person, be found upon his premises at night.

(b) If the slave, against the orders of the white person, be found upon his premises at any time.

(c) If a slave be found using improper language, or guilty of indecent or turbulent conduct in the presence of white persons.

(d) If a slave be guilty of rude or unbecoming conduct in the presence of a free white female.

(e) If a slave use insulting language or gestures towards a white person.

(f) If a slave commit any wilful act, injurious to the property or person of a free white person, or of any member

(g) If a slave be found drunk, and making a disturbance in any public place, or upon the premises of a white person.

This completes the compilation of the laws passed by Texas' legislatures prior to secession. It should be noted that many of these laws were the result of undetttled social and economic conditions; and that most of them were called forth by the heat and passion of the abolition propaganda, for example, the law permitting a citizen of Texas to go into a free state, capture a fugitive slave and return him for a reward of one-third the value of the slave.

CHAPTER IV
Laws of Texas, (Under the Confederacy), Regulatory
of African Slavery

We now come to the consideration of the laws passed by Texas during the most turbulent period of her history--that of secession, civil war, and reconstruction. The question of secession had been submitted to the voters of Texas in a popular election held February 23, 1861; and the convention met and canvassed this vote on March 4, the day of Lincoln's inauguration. The result was forty-four thousand for secession to thirteen thousand against. Thus Texas had foreaken the leadership of Houston and now her destinies were to be cast with the other Southern States.

The change in government and laws, however, was slow and gradual. Houston could have retained his governorship by taking an oath to swear allegiance to the Confederate States. This he refused to do, and Lieutenant Governor Clark was installed as Governor, March 17. (1)

The Confederate States had adopted a provisional Constitution on February 8, 1861; but since Texas did not complete the process of secession until March 16, we shall consider here only the provisions of the regular constitution of the Southern Confederacy which was adopted March 11, 1861. This provisional constitution was almost exactly a copy of the Constitution of the United States, and the regular constitution, adopted March 11, only clarified and expressed the reasonable implications of the Federal Constitution on the control of slavery.

(1) Garrison, Texas, p. 288.

The existence of slavery was merely implied in the Federal Constitution, though the implication was undeniable. There had been left room to doubt the nature and extent of Federal control through Congress, over slavery. The framers of the Constitution of the Confederate States of America did not propose to leave any uncertainties and replaced implications with the plainest and simplest provisions.

CONSTITUTION OF THE CONFEDERATE STATES
OF AMERICA

Article I, Section 9, Slavery

"The importation of negroes of the African race from any foreign country, other than the slave-holding states and territories of the United States of America, is hereby forbidden and Congress is required to pass such laws as shall effectually prevent the same. Congress shall also have power to prevent the introduction of slaves from any state not a member of or territory not belonging to this Confederacy.

"No bill of attainder, ex post facto law, or law denying or impairing the right of property in negro slaves shall be passed."

Article IV, Section 2:

"The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states, and shall have the right of transit and sojourn in any state, of this Confederacy, with their slaves and other property; and the right of property in said slaves shall not be thereby impaired.

"No slave or other person held to service or labor in any state or territory of the Confederacy, under the laws thereof, escaping or lawfully carried into another, shall in consequences of any law or regulation therein be discharged from such service or labor, but shall be delivered up on claim of the party to whom such slave belongs, or to whom such service or labor may be due." (1)

Attention has been called to the radical differences between the constitution of the United States and the constitution of the Confederate States of America. That which was implied in the former, concerning slavery, was definitely expressed in the latter; the Southerners left no room for doubt, but deliberately legalized the institution. But when a comparison is made between the constitution of the State of Texas in the Federal Union and that under the Confederacy, a striking similarity is most observable. Each constitution denies equal political privileges to negroes and their descendants; each recognizes property in slaves; each prohibits the state legislature to pass emancipation laws; and there is also a striking similarity in the provisions concerning the free negroes. In order to give full scope for this comparison, the provisions of the state constitution, under the Southern Confederacy, are inserted in full, so far as they relate to negroes, either slave or free.

CONSTITUTION OF THE STATE OF TEXAS
CONFEDERATE STATES OF AMERICA

Article I, Bill of Rights (1)

Section 2.--"All freemen, when they form social compact, have equal rights; and no man, or set of men, is entitled to exclusive separate public emoluments or privileges, but in consideration of public services."

Article III, Legislative Department

Section 1.--"That all persons who were citizens of the State of Texas on the second of March 1861; all persons

(1) Gamel's Laws of Texas, Vol V., p. 3.

born after that time, of parents citizens of this State; all persons born in this State of parents residing in and entitled to acquire the rights of citizenship; all citizens of either of the Confederate States of America, or of any State which may hereafter be admitted into union with the Confederate States of America, on terms of equality with them, immigrating to and permanently residing in this State; all persons naturalized by the constitution and laws of the Confederate States of America and of this State, and permanently residing therein, (Indians not taxed, negroes and their descendants excepted), shall be citizens of the State of Texas."

Section 2.--"All free male citizens of this State, as defined in the preceding section, over the age of twenty-one years, who shall have resided in this State one year next preceding an election, and the last six months in the district, county, city, or town in which they offer to vote, shall be deemed qualified electors."

Section 29.--"The Legislature shall at their first meeting, and in the year 1848 and 1850, and every eight years thereafter, cause an enumeration to be made of all the free inhabitants, (Indians not taxed, Africans and descendants of Africans excepted), of the State, designating particularly the number of qualified electors; and the whole number of representatives shall, at the several periods of making such enumeration be fixed by the Legislature, and apportioned among the several counties, cities or towns, according to the number of free population in each; and shall not be less than forty-five nor more than ninety."

ARTICLE VIII Slaves

Section 1.--"The Legislature shall have no power to pass laws for the emancipation of slaves."

Section 2.--"No citizen, or other person residing in this State, shall have power by deed or will, to take effect in this State, or out of it, in any manner whatsoever, directly or indirectly, to emancipate his slave or slaves."

Section 3.--"The Legislature shall have no power to pass any law to prevent immigrants to this State, from bringing with them such persons of the negro race as are deemed slaves by the laws of any of the Confederate States of America. Provided, that slaves who have committed any felony may be excluded from this State."

Section 4.--"In the prosecution of slaves for crimes of higher grade than petit larceny, the Legislature shall have no power to deprive them of a trial by jury, except in cases arising under the laws concerning insurrection of slaves."

Section 5.--"Any person who shall maliciously dismember, or deprive a slave of life, shall suffer such punishment as would be inflicted in case the like offense had been committed upon a free white person, and on the like proof; except when such slave has committed, or attempted to commit rape on a white female, or in case of insurrection of such slave."

Section 6.--"The Legislature shall have power to pass laws which will oblige the owners of slaves to treat them with humanity."

We shall now pass on to a consideration of the statutes which were passed by the state legislature, Confederate States of America, of Texas pursuant to the provisions of the national and state constitutions which in any manner relate to the institution of negro slavery or negroes. In any such study or consideration, two points must be kept constantly in mind: first, that these laws were passed and administered only during a time of war; second, that all laws passed by the Texas legislature, United States of America, were considered to remain in full force and effect until they were repealed or modified by subsequent legislation or constitutional amendment.

There seems to be an increasing element of severity and increase in the harshness of penalties in the laws under the Southern Confederacy, particularly those relating to insurrection of slaves. This is probably accounted for by the war spirit, and not by any serious increase in the criminality of either slaves or free negroes.

AN ACT (1)
Providing for the Disposition of Runaway Slaves

Section 1.--"That as early as possible after the commitment of a runaway slave it shall be the duty of the sheriffs of the different counties of the State to cause an advertisement to be published in a newspaper printed nearest the county, or in a newspaper having the largest circulation in the county where the commitment is made, in which shall be a complete description of the slave and any other circumstances calculated to lead to the discovery of the slave by his owners; and if after six months, the owner should not apply for, prove and take out of jail such slave, paying such expenses as are now allowed by law, together with the expense of advertising, the Sheriff shall then convey and deliver such runaway slave to the keeper of the State Penitentiary, and the Sheriff shall at the same time deliver to the financial agent of the Penitentiary a certificate from the Justice of the Peace who committed such runaway slave to jail, stating the amount of charges legally incurred in apprehending and securing such runaway slave, and to whom the same is due."

Section 2.--"That the sheriff shall be allowed ten cents per mile in going to and returning from the Penitentiary as a full compensation for conveying such runaway slave thereto, an account of which he shall file with the financial agent."

Section 3.--"If any sheriff fail to convey any runaway slave to the penitentiary at the expiration of six months from the time of commitment to jail, such sheriff shall not make any charge for maintaining said runaway slave after that time."

Section 4.--"It shall be the duty of the keeper of the Penitentiary to receive such runaway slave into custody and advertise as prescribed above for sheriff or until such runaway slave is legally claimed and taken away; if the owner shall fail to come or send for said slave, the slave shall continue in the charge and service of the keeper of the Penitentiary for life: Provided that the owner may at any future time come forward and prove his property, pay the expenses which have accrued up to the time of the delivery of the slave to the keeper of the Penitentiary, and take the slave away."

Section 5.--"The keeper of the Penitentiary shall certify the delivery of the slave under the provisions of this act to the Controller of Public Accounts, who, upon presentation of such certificate, together with the properly authenticated account of the expenses which may have accrued from the apprehension and confinement of such slave up to the time of the delivery to the keeper of the Penitentiary, shall issue his warrant for the amount, in favor of the Sheriff, which amount shall be paid out of any money in the Treasury of the State, not otherwise appropriated."

Section 6.--"The keeper of the Penitentiary shall not be allowed to make any charge for receiving, keeping, or feeding any runaway slave committed to his custody, but such slave shall be put to labor as other prisoners."

Section 7.--"Before any runaway slave shall be delivered up to any person claiming the same, such claimant shall first prove by the affidavit of some disinterested witness, that such claimant has lost such a slave as the one described in the advertisement; that the runaway is the one he lost; and pay all expenses incurred in apprehending, securing, receiving, maintaining and advertising such runaway. The keeper of the Penitentiary shall deliver any runaway to the owner or his agent, upon his or their complying with the foregoing requisitions, and upon bond and security being given, should it be required by the keeper, to indemnify the keeper; and the financial agent shall demand and receive all expenses incurred in the apprehension, recovery, maintaining and advertising such runaway, which amount shall be paid into the State Treasury."

Section 8.--"The legally authorized agent of any person claiming a runaway slave, may claim, prove and receive such runaway in like manner as the owner is enabled to do by this act."

The preceding act proves conclusively the statement that the laws under the Confederacy exhibit an increasing harshness and increase of penalty. Heretofore the runaway slave was sold at public auction if he were not claimed by his master. Here the proposition placed before the runaway slave is not that of a mere change of masters; but involved the possibility of confinement for life in the state penitentiary, at hard labor, as a punishment for his attempt to escape.

AN ACT (1)

To Provide Against the Hostile Invasion of the State of Texas by Persons of Color

Section 1.--"That any person of color invading, or coming into the State of Texas during the present war between the Confederate States and the United States, with any armed force of the enemy, or for the purpose of waging war against the

(1) Laws of the Eighth Legislature, Extra Session, p. 20.

people of said State of Texas, or the people of any of the Confederate States, or of exciting insurrection amongst our slaves, or who being within the jurisdiction of said State, shall voluntarily join or be found in the ranks of our enemies, rendering them any character of service, or in any manner whatever giving them aid and comfort, shall be dealt with as is hereinafter provided."

Section 2.--"Upon the apprehension or capture of any such person by the authorities of the State, it shall be the duty of the State authority, having said person in custody, to notify the Judge of the District Court of his Judicial District of the fact, who shall thereupon designate a day, not less than ten nor more than twenty days after receiving such notification to examine into the truth of the accusation made; said examination to be had after due notice thereof to the prisoner in the county where said prisoner is detained, and if it shall appear that the prisoner comes under the provisions of the first section of this act, he shall be deemed to have forfeited his freedom, if he be free, and shall be ordered to be confined in the State Penitentiary at labor until the expiration of twelve months after the ratification of a treaty of peace between the Confederate States and the United States, and at the expiration of said period to be dealt with as hereinafter provided."

Section 3.--"It shall be the duty of the Secretary of State, within sixty days after the ratification of the treaty of peace aforesaid, to procure a complete list of all persons then remaining confined in the penitentiary under the provisions of this act, with a full description thereof, including the name, age, complexion, height and weight of such person, and any other peculiar mark by which they may be identified, together with the name and residence, if known, of the alleged owner of such, if any, as claim to be slaves; which said list he shall cause to be published eight successive weeks in newspapers, published in three different portions of the State, one of which shall be at the Capital of the State, and no two of which shall be published in the same congressional district."

Section 4.--"At the expiration of twelve months after the ratification of the treaty of peace, a list of all persons remaining in the Penitentiary under the provisions of this act, and not before then reclaimed as runaway slaves, shall be furnished by the Superintendent of the Penitentiary to the Secretary of State, and each person thus remaining shall be remanded to the custody of the Sheriff of the county wherein said Penitentiary is situated, who shall, within sixty days thereafter, expose said person to sale at public auction, before the court-house door of said county, to the highest bidder for cash, due notice of the person to be sold and the

time, place, and terms of said sale having been first given, by advertisement published eight successive weeks next preceding said sale, in newspapers published--one at the Capital of the State, and one in the county where said sale is to be made--or where no newspaper is published in said county, then in some newspaper published elsewhere in the State, and not at the Capital, having the largest circulation in the county wherein said sale is to be made."

Section 5.--"The purchase money for each and every person thus sold shall be paid by the purchaser to the Financial Agent of the Penitentiary, and out of the proceeds of said sale the Sheriff shall be entitled to receive the same commissions and fees as are by law allowed in cases of execution, and the balance, if any, after paying all costs, fees, and expenses arising out of the custody, maintenance, advertising and sale of the persons, after leaving the penitentiary, shall be paid into the State Treasury."

Section 6.--"The Sheriff making a sale of any person under the provisions of this act, shall forthwith thereafter make out in duplicate a full and clear account and statement of such sale under his hand, and return one to the Secretary of State and one to the Clerk of the County Court of the county wherein such sale was made, who shall record the same among the proper records of evidences of ownership of slaves."

Section 7.--"The provisions of the laws of the State authorizing free persons of color to choose their masters, or to leave the State, are hereby repealed as to all such persons now in the State, who have invaded the State since the beginning of the present war under the circumstances, or for the purpose specified in Section 1, of this act, and such persons shall be dealt with in all respects according to the provisions of this act: Provided, That it shall not be necessary to have any judicial examination of any such persons as are already confined in the Penitentiary, but such person shall be retained in such confinement for the term prescribed for other cases arising under this act as though they had been originally committed for that period."

Section 8.--"The owner of any slave held in custody under the provisions of this act may reclaim his property as a runaway slave at any time after said slave has passed into the custody of the State authorities, and before he has been sold: Provided, That the proceedings for the reclamation of such slave shall be had at the cost of the claimant, and before the Chief Justice of the county where said slave may be held in custody at the time said claim is made and be made a matter of record in said county court, but the right to any person, either slave or free, actually sold as aforesaid, shall be and remain vested in the purchaser under said sale, and the owner of any slave thus sold, shall only, upon proving his property in said slave within three years after said sale, be entitled to receive from the State Treasury the amount paid into said Treasury on account of the sale of said slave."

Section 9.--"The District Attorney, Sheriff, Clerk, and any other officer whose services may be required in any proceeding arising under the provisions of the second section of this act, or who may have already rendered service in any proceeding in the commitment of any person to the Penitentiary as contemplated in the provisions of the seventh section of this act, shall be allowed the same fees and expenses as are allowed in cases of felony."

The historical interest in this rather long and tedious statute lies in the fact that the members of the Texas Legislature were fully confident that the Civil War would end in an honorable treaty of peace, and that slavery would be permanently established. Governor Sam Houston seems to have been almost alone in his insistence that the South would be crushingly defeated. He prophesied a surrender rather than a treaty, and insisted that slavery was doomed. (1)

AN ACT (2)
To Define the Offence of Inciting Insurrection
or Insubordination of Slaves, and to Prescribe
the Punishment Therefor

"WHEREAS, in the prosecution of the unholy war now being waged by the United States against the Confederate States and the people thereof, our enemies are seeking to bring upon us a servile war by arming our slaves and placing them in the ranks of their armies, as well as otherwise, through the action of their government and the commissioned officers of their armies, inciting insurrection and insubordination: Therefore,

Section 1.--"That it shall be an offence, to be denominated inciting insurrection or insubordination of slaves, for any commissioned officer of the army, navy, or marine service of the government of the United States, during the present war between said United States and the Confederate States, to invade or enter upon, with hostile intent, the territory or soil of this State, or with like intent, to enter within the waters of this State."

(1) Garrison, Texas, p. 285 ff.

(2) Laws of the Ninth Legislature, Extra Session, p. 13.

Section 2.--"That any person guilty of inciting insurrection or insubordination, as in this act defined, shall, on conviction thereof, be punished by confinement in the Penitentiary not less than five nor more than fifteen years."

Section 3.--"This act not being intended to produce any conflict between the State authorities and the government or authorities of the Confederate States, in relation to the management of any matters growing out of the existing war, therefore, only such persons shall be subject to be tried under its provisions as may be, by the proper authorities of the Confederate States, delivered over to the civil authorities of this State, for the purpose of being so tried---and any person convicted under the provisions of this act, shall, at any time after such conviction, on demand made therefor by the President of the Confederate States on the Governor of this State, be delivered up to the proper authorities of the Confederate States."

Section 4.--"This act is not designated to be in lieu of existing laws defining the exciting or insubordination of slaves, and shall not be construed in any manner to affect such laws."

AN ACT (1)

To Amend an Act to Amend an Act to Establish
a Penal Code, Approved August 26, 1856; Approved
February 12, 1858

Section 1.--"That Article 34 of "An Act to Amend an Act to Establish a Penal Code", approved August 26, 1856; approved February 12, 1858, be amended so as hereafter to read as follows: All free white persons who have less than one-eighth African blood come within the meaning of the term "Free white persons"; and all free white persons who have that, or a quarter proportion of African blood come within the meaning of the term, "Free persons of color". Slaves are all such persons of African descent as are held in slavery by the laws of this State, or any of the States or Territories of the Confederate States, or of any foreign country."

Section 2.--"That Article 349 of said act be amended so as to read as follows: Whenever, in the Penal Code or Code of Criminal Procedure, it is declared, that an officer is guilty of an offence, on account of any particular act or omission, and there is not, in the Penal Code, any punishment assigned for the same, such officer shall be deemed guilty of a misdemeanor and shall be fined not exceeding two hundred dollars."

Section 3.--"That said act be so amended by adding the following article thereto: If any person shall sell, give, or loan, to a slave or slaves, a gun, pistol, bowie knife, or dagger, or any gun-powder or percussion caps, without the written consent of his or her master, mistress, or overseer, he or she shall be confined at hard labor in the Penitentiary not less than two nor more than five years."

Section 4.--"That Article 745a, of said act, be amended as to read as follows: If any person shall receive or conceal property which has been acquired by another, in such manner as that the acquisition comes within the meaning of the term theft, knowing the same to have been so acquired, he shall be punished in the same manner as, by law, the person stealing the same would be liable to be punished: Provided, That if a free white person shall receive or conceal such property stolen by a slave or free person of color, he shall be punished in the same manner as, by law, a free white person stealing the same would be liable to be punished."

AN ACT (1)

To Amend an Act Entitled an Act to Amend an Act
to Establish a Code of Criminal Procedure for
the State of Texas, Approved August 26, 1856;
Approved February 15, 1858

Section 1.--"That Article 644 be amended so as hereafter to read as follows: The following persons only are incompetent to testify in criminal actions: A slave or free person of color shall not testify, except where the prosecution is against a person who is a slave or free person of color."

These amendatory acts have been inserted in proof of the statement that the laws of the State of Texas, United States, were considered to be in full operation until repealed or amended by the legislatures of the State of Texas, Confederate States of America.

(1) Laws of the Ninth Legislature, Extra Session, p. 18.

AN ACT (1)
To Punish Certain Offences Committed on Sunday

Section 1.--"That any person who shall compel his or her slaves, children, or apprentices, to labor on the Sabbath, the day known as Sunday, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not less than ten nor more than fifty dollars: Provided, That household duties, works of necessity and charity, shall not be prohibited by this act: Provided further, That this act shall not apply to any work done on sugar plantations during the sugar-making season, or any work that may be necessary to save any crop."

AN ACT (2)
To Prevent Slaves from Exercising Pretended Ownership Over Property

Section 1.--"That it shall be unlawful for any slave owner to knowingly permit any slave to have, or exercise, any pretended ownership or control, in his or her own right, over any horses, cattle, sheep or hogs, within this State. And where any such pretended right of ownership now exists, the master, or other person having the control of such slave, shall, within six months after the passage of this act, dispose of such property by sale or otherwise."

Section 2.--"The owner offending under the first section of this act, may be indicted and tried in the District Court, and upon conviction, shall be fined in any sum not exceeding the value of the horses, cattle, sheep, goats or hogs, over which such negro may exercise a pretended ownership, or on which such negro shall have a brand or ear mark."

There were to be no more additions to or amendments of "The Slave Code". The last legislature of Texas, Confederate States of America, had adjourned; Appomattox was just around the corner; Lee surrendered April 9, 1865. Every disaster which Sam Houston had predicted had now befallen Texas. Other laws were to be passed, but they were only to abolish, not to regulate the institution of negro slavery.

(1) The Laws of the Tenth Legislature, First Called Session, p. 36.

(2) Ibid. p. 4.

Sixty-one years had passed since the last amendment to the Constitution of the United States had been ratified. Congress proposed the Thirteenth Amendment on February 1, 1865; and the proclamation of its ratification was published on December 18, 1865.

CONSTITUTION OF THE UNITED STATES

ARTICLE XIII

Section 1.--"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 2.--"Congress shall have power to enforce this article by appropriate legislation."

In commenting upon this Thirteenth Amendment, one of our Federal courts said: "It trenches directly upon the power of the States and of the people of the States. It is the first and only instance of a change of this character in the organic law. It destroyed the most important relation between capital and labor in all the States where slavery existed. It affected deeply the fortunes of a large portion of their people. It struck out of existence millions in property. The measure was the consequence of a strife of opinions, and a conflict of interests, real or imaginary, as old as the Constitution itself. These elements of discord grew in intensity. Their violence was increased by the throes and convulsions of a civil war. The impetuous vortex finally swallowed up the evil, and with it forever the power to restore it." (1)

(1) Norton, The Constitution of the United States, p. 233

The year 1865 was the time of the deepest emotions of the American people. The nature of these emotions were, the worm-wood and gall of defeat to the South, and the exultation of victory to the North. The difference is not to be found in the quality, character, or morality of the people in the different sections. It is seen only in the opposite points of view.

The strongest feelings and deepest emotions of men are best expressed in prayer and poetry. The nature and depth of these emotions are exemplified in the following excerpts from two poems:

THE PRAYER OF THE SOUTH

"My homes are joyless, and a million mourn
Where many met in joys forever flown;
Whose hearts were light, are burdened now and torn;
Where many smiled, but one is left to moan.
And ah! the widow's wails, the orphan's cries,
Are morning hymn and vesper chant to me;
And groans of men and sounds of women's sighs
Commingle, Father, with my prayer to Thee.

Beneath my feet ten thousand children dead--
Oh! how I loved each known and nameless one!
Above their dust I bow my crownless head
And murmur: Father, still Thy will be done.
Ah! Father, Thou didst deck my own loved land
With all bright charms, and beautiful and fair;
But foemen came, and with a ruthless hand,
Spread ruin, wreck, and desolation there."

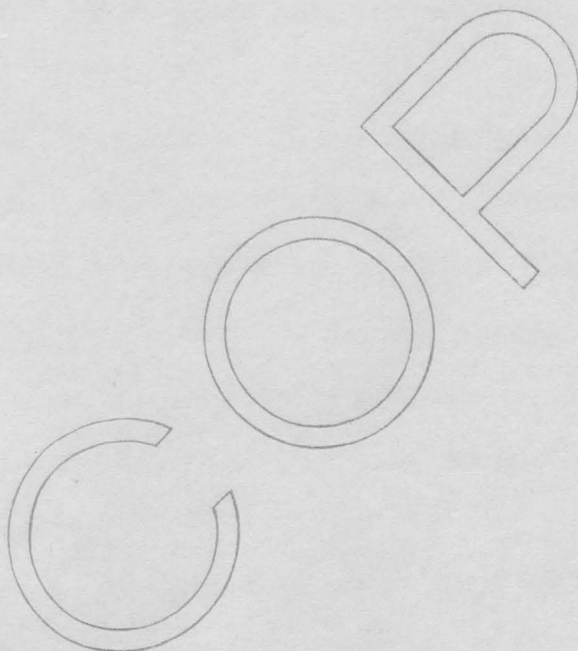
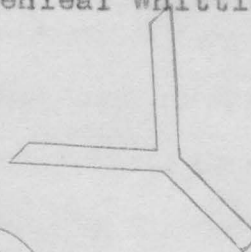
--Father Abram J. Ryan.

LAUS DEO

"Ring, O bells!
Every stroke exulting tells
Of the burial hour of crime.
Loud and long, that all may hear
Ring for every listening ear
Of Eternity and Time!

Let us kneel:
God's own voice is in that peal,
And this spot is holy ground.
Lord forgive us! What are we,
That our eyes this glory see,
That our ears have heard the sound!"

---John Greenleaf Whittier.



CHAPTER V

Conclusion

One of the first questions naturally to arise in a study of this code of slave laws is: How did the institution of negro slavery progress under the provisions of such regulations? Was it a growing, thriving, economic or social force? One so-called unbiased and intelligent observer, Frederick Law Olmstead, after a journey through Texas, was of the opinion that slavery in this state was dying out; that it was economically unprofitably; and that it was bringing to the Texans many social ills. (1)

On one occasion, hearing that a negro family had been broken by the sale of the wife of a slave, Olmstead visited the negro's cabin. He expected to find inconsolable sorrow; but, in reporting the occasion of his visit, he remarks: "The scamp was singing". It is possible that the loss of a wife might not be such an unmixed calamity as the gentleman from Massachusetts might suppose.

The table on the following page will show that Olmstead was mistaken in his conclusions. A dying institution could not possibly show the steady increase in both numbers and value as did negro slavery in Texas through the years 1846-1862. Neither can the gain be accounted for by the rapid increase in the white population of Texas, for in the decade, 1850-1860 the white population of the State increased 173.54 per cent

(1) Olmstead, A Journey Through Texas, in passim.

while the increase in the slave population for the same years was 213.89 per cent. (1)

THE INCREASE OF SLAVERY IN TEXAS
1846 to 1862 (2)

Year	Number of Slaves	Value
1846-----	31,099-----	\$10,142,198
1847-----	39,252-----	12,174,593
1848-----	40,610-----	13,398,490
1849-----	43,534-----	14,658,887
1850-----	49,197-----	17,776,500
1851-----	59,959-----	24,246,465
1852-----	68,794-----	28,628,990
1853-----	78,713-----	35,946,473
1854-----	90,612-----	46,501,840
1855-----	105,603-----	53,373,924
1856-----	113,736-----	58,389,400
1857-----	125,240-----	67,497,306
1858-----	132,495-----	69,915,133
1859-----	136,853-----	85,630,748
1860-----	122,977-----	*
1861-----	159,298-----	*
1862-----	184,205-----	*

* Data incomplete--Value not summarized--War conditions.

- (1) Miller, Financial History of Texas, p. 83
(2) Texas Almanac, 1858 to 1863.

A critical study of the preceding table of statistics will answer many questions concerning annexation and secession. The Texan slave holders were not blind to their own interests; that they would have been in stronger position had Texas remained an independent republic is only problematical; but certainly no Government in Great Britain could have commanded a vote of confidence in Parliament had it proposed a protectorate over Texas prior to the abolition of the slaves. Aberdeen was ready to bring pressure to bear on Mexico to force the recognition of the Independence of Texas on the conditions that annexation would be forever prohibited and the slaves gradually given their liberty. Thus we see that emancipation of their slaves was the price the Texans would have been compelled to pay for British protection and for a treaty of amity and commerce.

But would this price have been greater than that which they were ultimately compelled to pay? Probably not; for, when the Thirteenth Amendment was ratified and proclaimed, taxable property in slaves to the amount of \$137,191,886, constituting 38 per cent of the taxable property of the State was wiped off the tax assessors' books. (1) It is idle to speculate upon what might have happened "if". The great difficulty in such speculations and assumptions in this particular case lies in the inability of any Mexican government to have maintained itself if it had recognized Texan independence.

(1) Miller, Financial History of Texas, p. 165.

Another relevant question which should be discussed briefly is: Did slavery bring to the Texas people the same or similar perplexing social, political, and moral problems that it had engendered in the other Southern states? In many cases it did, and a few of these will be considered here. The authorities and sources which have been consulted in the preparation of this thesis agree, almost unanimously, that slavery was a great embarrassment to the Republic of Texas in her efforts to secure the recognition of the great nations and enter into treaties of commerce and amity with them; that it was the one great factor in the delay of annexation to the United States; that it constituted a strong retardation factory in the development of a system of public schools and general education for the people of Texas; and that it has left us with a number of social and economic problems which are yet unsolved. A brief treatment of these points will conclude the scope of this research.

That slavery would embarrass the diplomats of the Republic of Texas was foreseen by the Texan statesmen; and when J. P. Henderson was sent to Europe seeking recognition, the Secretary of State, Irion, gave him the following instructions;

"The recognition of the Independence of the Republic of Texas being the immediate and most important object of your mission, you will proceed with the least possible delay to London, for the purpose of submitting this subject to the consideration of His Majesty's Government.

"On the subject of Slavery you can say with candor and truth, admitting that its institution was cruel and impolitic, that, under existing circumstances, owing to the peculiar organization of the Government, the nature of the climate, the habits of the people and the locality of the country, it must continue as provided by the constitution and laws: at the same time it is a striking fact that the condition of slaves in this Republic is far more tolerable than in the United States, from whence alone they can be introduced, Why then should their emigration be discouraged? By emigration their condition is greatly ameliorated without increasing the number of slaves." (1)

This was certainly frank, but it did not secure recognition. What Henderson had hoped to secure in six months was not accomplished in less than six years. These instructions had little weight in the estimation of such skilled diplomats as Aberdeen and Palmerston, who delayed action on one pretext or another until finally they boldly told the Texan ministers that the suppression of the slave-trade to Texas was a "sine qua non" of recognition, and insisted that Texas enter into a treaty granting to Great Britain the right of search. At first the Texan diplomats opposed this, but they were compelled to yield. President Houston transmitted this treaty to the Senate for its approval on January 12, 1842. He made no recommendation, only a very brief statement: "I make no recommendation to your honorable body, being satisfied that all the examination and reflection necessary to judicious action will be given a subject of such delicacy and importance". (2) It was indeed both delicate and important.

Shortly after the exchange of ratifications of this treaty, Ashbel Smith, representing Texas at London, was able

(1) Irion's Instructions to Henderson--Diplomatic Correspondence--June 25, 1837.

(2) Houston's Special Message--Executive Records of the Republic of Texas, Vol. 35, p. 157.

to report to Secretary of State, Anson Jones: "I have the satisfaction to announce to you that the Ratifications of the Three Treaties concluded between Texas and Great Britain, were exchanged on the 27th of June at 3 o'clock P. M. at the foreign office, by Ashbel Smith on the part of Texas, and the Earl of Aberdeen on the part of Great Britain." (1) That Great Britain made good and frequent use of the right of search granted in these treaties is clearly established by the following quotations from the Diplomatic Correspondence of the Republic:

"It is the wish of Her Majesty's Government to be enabled, with the consent of the Government of Texas, to send to Trinidad or Demara any negroes who may be captured on board Texian vessels on the Coast of Brazil, under the treaty for the suppression of the Slave Trade." (2)

"The undersigned has the pleasure to state to Mr. Elliott that no objection exists on the part of this Government to the proposed arrangement, but on the contrary it is believed the proposed modification to the 16th article of said Treaty will be advantageous to all parties." (3)

"Enclosed warrants for the commanders of forty-seven British vessels to act under the treaty for the suppression of the slave trade." (4)

(1) Diplomatic Correspondence--Smith to Jones,
July 3, 1842.

(2) Ibid., Elliott to Jones, January 4, 1844.

(3) Ibid., Jones to Elliott, February 16, 1844.

(4) Ibid., Jones to Elliott, February 19, 1844.

The treaties referred to were the ones for the abolition of the slave trade and those of amity and commerce, one of which laid a preferential tariff discriminating against sugar which had been produced by slave labor. The slave trade treaties granted to England the right of search of any Texan vessel, and to remove and return to Africa any slaves that might be found on board. Nothing but the strong desire for and necessity for recognition could have induced the Texan diplomats to have consented to such treaties.

That the Texans evaded and violated these treaties and continued to bring in negroes from both Cuba and Barbadoes is clearly proven by the diplomatic correspondence. The John Taylor case is a typical example. He brought several negroes from the Barbadoes into Texas after securing their signatures to contracts as indentured servants, and then transferred these contracts to the planters in Texas for about five hundred dollars each. He was indicted in the British courts, convicted, and sentenced to prison. All the papers in this case were in the hands of Earl Aberdeen when he received a letter from President Lamar stating that he had recently received a letter from John Taylor of Barbadoes containing information of his prosecution for having transferred certain persons of color to Texas. He assures the Prime minister that it is impossible for such "indentured servants" to become absolute slaves under the existing laws of Texas; but he failed to call attention to the law prohibiting the residence of free persons of color in the Republic of Texas. Diplomacy would be a great game if it were not so transparent.

The institution of negro slavery retarded and came very near preventing the annexation of Texas to the United States. In April, 1844, President Tyler laid before the United States Senate a treaty which had been negotiated for the annexation of Texas. The consideration of this treaty was complicated by several political situations, but slavery and the extension of its territory was the dominant factor. The treaty was rejected by an overwhelming vote. Daniel Webster and other senators influenced by the abolitionists stated in the debates that they would never vote for any treaty or law that would increase slave territory. (1)

Since it required a vote of two-thirds of the senators to ratify a treaty, another method must be found if Texas were ever to be admitted. President Tyler next suggested that it would be legal to pass a joint resolution by a majority vote in both the Senate and House of Representatives providing for annexation. This was bitterly opposed as being unconstitutional and an infringement of the prerogatives of the Senate. But it now became apparent from the activities of the British diplomats in the presidential election that England had desires to keep Texas from annexation, and it was only this feeling that Texas would fall under the influence of Great Britain which produced a vote sufficient to pass the resolution. In the Senate the vote on the annexation resolution was twenty-seven to twenty-nine. If one senator had voted differently,

(1) Garrison, Texas, pp. 257 ff.

the resolution had failed; and Texas would have remained an independent republic, perhaps indefinitely. England had promised to guarantee such independence and also to compel Mexico to recognize it in a treaty of peace. Again we must reluctantly turn away from a consideration of "what might have been". Texas accepted the terms of the resolution, and became a state in the great American Union.

In the consideration of slavery as a retardation factor in the development of education in Texas it is very difficult to determine the degree to which slavery ~~as an institution~~ is to blame and what was the effect of the Civil War. Olmstead, in the late forties, seemed to attribute the general lack of public education in Texas to slavery alone. There was another powerful factor which he seemed to overlook entirely, and that was the land policy of both the Republic and the State. The large grants of land resulted in a widely dispersed population. If one Texan could see the smoke from his neighbor's chimney, he became convinced that the country was too thickly settled; and immediately began to formulate plans for moving further westward so as to secure "elbow room". That Texas did not develop a system of public education as quickly as other pioneer states, those formed from the Northwest Territory for example, is undeniable; and a large measure of this difference is, I think, due to the introduction of the Negro race as slaves. To show the general condition of education facilities in the State just prior to secession, I have introduced the

address of Rev. C. K. Marshall which was published in the Texas State Gazette, February 10, 1855:

"It is our duty an privilege to reform the errors of the North. We do not desire to be independent of the Northern States, but independent in the Union and equal with them. That is our position. What though you build railroads, construct lighthouses, and cut new channels in which to lead the Father of Waters; though your agriculture facilities be multiplied, in what way will any of these enterprises effect the interests of education? I say sir, that we cannot compete successfully with the Northern States in any commercial enterprise unless we have educated merchants to open direct communication with Europe, who will start our proud and noble steamers from Baltimore, Charleston, or New Orleans to the various ports of Europe.

"I hold that it is the prime object of this country to teach her sons correctly. We have not the means of education at home. Our planters are compelled to send their sons and daughters to Northern Colleges and Seminaries. This practice is most ruinous to the South. One of the professors of Yale has already said that he would shoulder his musket and march to any field to prevent the extension of slavery.--What may be expected of Northern colleges, when Yale sets such an example? Sir, I do not believe a young man can be safely educated in the North at the present time.

"Gracious Heavens! What feelings must exist in a family when a son or daughter returns from some of the Northern Institutions and earnestly beseeches his father to emancipate his slaves? These Northern fanatic professors have taught them that slavery is wrong. Their class-books are full of denunciations of the institution of slavery. They have taught them that it is wrong to do as Abraham and St. Paul did. I insist upon the correct training of the mind--its cultivation in the most enlightened manner. We have proposed a plan for the establishment of institutions at home necessary for the education of our people, and shall begin to realize their deep personal interest in the matter. When we can get the plan we propose adopted then we can successfully maintain our independent position towards the North. But, Sir, what has been the opinion of distinguished statesmen on this subject? I will read a letter from Thomas Jefferson showing the ruinous tendencies of the practice of sending our sons and daughters to Northern universities.--(Reads the extract.)

"I shall say no more with regard to our institutions of learning.

"On the subject of slavery I propose to say a few words. I regard it as very dangerous to lay before the youthful mind anything that will prejudice it against slavery. I believe the institution of slavery to be right--that God has established it and has civilized man through this institution. I believe that in fifty years time slavery will occupy twice as much territory as it now does. We do not ask any favors of the North--we simply ask to do our own work in our own way. They are educating our sons and daughters at home. Northern teachers are coming in upon us and poisoning our children's minds with fanatical opinions. Would you believe that one of the school books of this city is a work more objectionable than "Uncle Tom's Cabin"? It is an ultra abolition book." (1)

The speaker then spoke of the importance of introducing Southern school books into our schools and colleges. That we would, by educating our children at home, avoid an expenditure of five million dollars annually. He urged the necessity of publishing an entire series of school books adapted to the wants of the South. The eloquent speaker was enthusiastically applauded during the delivery of his very able speech, and left on the minds of his auditors a very high appreciation of his scholarship and oratorical attainments.--Editor's Note.

I might have been both amusing and instructive if the eloquent Mr. Marshall had read from a letter of Jefferson to Edward Coles, August 15, 1814, in which Mr. Jefferson says: "My sentiments on the subject of slavery of the negroes have long been in possession of the public, and time has only served to give them stronger root. The love of justice and love of country plead equally the cause of these people, and it is a mortal reproach to us that they have pleaded in vain."

(1) Eby, Education in Texas, Source Materials, p., 385

Mr. Marshall's advice was never heeded. The Civil War intervened with all its loss of life and property; and as a result Texas had no public, state supported, schools until 1871. The report of the State Superintendent of Public Instruction is given below for the purpose of displaying the educational conditions which existed in Texas ten years after secession of Texas.

Austin, Texas,
October 28, 1871.

Dear Sir:

Your favor of the 13th instant is received. I regret that I am compelled to make so short and unsatisfactory report of the schools in Texas. Until the present year we have been without any kind of organized system.

Numerous school laws have been passed by the different legislatures, but by far the greater part of them for the purpose chiefly of directing the bountiful school fund into other channels than that of educating the youths of Texas.

The public free schools opened on the 4th ultimo, for the first time in the history of Texas; hence I have no report for the scholastic year ending August 31, 1871. I send you a copy of the new school law, and the rules and regulations adopted by the Board of Education for the government of public free schools, which contain full information relative to the manner of conducting the schools.

As there was no superintendent for a long time previous to my appointment in April last, I found nothing, save the law passed this year by the legislature, as a nucleus upon which to organize a system. Owing to the vast territory of the State, with its poor mail facilities, I have received reports from but a small number of supervisors, and it is impossible to give the number of school teachers and pupils in the State. I have, however, sufficient returns to know that the system promises to be a success, notwithstanding the prejudice and strong opposition of a large portion of the people.

In the County of Travis the schools opened with 35 teachers and 1779 pupils; and in McLennan County with 39 teachers and 1768 pupils.

No school houses have been built by the State, but preparatory steps have been taken, and by the opening of the schools for the next scholastic year it is expected that a large number of houses will be completed. For the present they are rented, and generally for a nominal sum.

I give you a few instances of the maltreatment of teachers and burning of school houses.

At Brenham a lady teacher of a private school attended a political meeting of her friends, for which the patrons of her school withdrew their children.

A school-house near Calvert, in which was a colored school, was recently burned by unknown parties; also, a school-house in Colling County, and another in Houston County.

It is with great difficulty that houses can be procured for the colored schools in the State, on account of the great opposition to the education of the blacks; and it has been more difficult to find persons willing to teach such schools, as they have in all cases been ostracized from society. I am in hopes that the prejudice will die out, but fear it will not until the people who fought to keep the colored race in slavery are made to know that the rights of the colored people will be permanently protected by the strong arm of the Government.

--Report of J. C. DeGress, State Superintendent of Public Instruction, to Hon. John Eaton, Jr., Commissioner of Education, Washington, D. C.

In evaluating this report as an historical source, we must not fail to note that it arises during "Reconstruction Days"; that Mr. DeGress was one of the so-called "Carpet-Bag" officials. The opposition of the Texans to the northern white teachers who came into the state to teach negroes was natural. It was unavoidable. Texas has made wonderful, seemingly impossible, progress in her educational system since 1871; and her schools for the white children will compare favorably with

similar schools in any part of the United States. The cause for the low rating of Texas' public schools in educational surveys is to be found in the fact that schools for Negroes and those for Whites are rated collectively. It may be argued, quite logically, that the State should provide just as good schools for the negroes as she does for the whites. Perhaps someday she will so far as the native ability and characteristics of the two races will permit.

There is a multitude of factors all bearing upon and exerting influence upon public education in Texas, and it is impossible to say with definiteness that slavery has had this or that effect alone, or that it has exerted specific influences. It is impossible to hold so many factors constant while measuring the influence of slavery alone.

The residual social and economic problems from the institution of negro slavery are now to be considered in conclusion. Emancipation of the slaves did not emancipate the Southern people from the "White Man's Burden". Over five million African savages were transported to America and placed almost entirely among the white men of the South. This race has multiplied until now we speak of the negro as "America's Tenth Man".(1) By this it is understood that at the present population is one-tenth negroes. In Texas alone the percentage is much larger--sixteen per cent (2)

(1) Eleazer, Robert B.--America's Tenth Man

(2) Fort Worth Star Telegram, July 12, 1929.

We, in Texas, not only face a race problem wherein every sixth man is a negro; but we must also consider that this sixth man ranks high in both criminality and illiteracy. The following tables show conditions of criminality and illiteracy existing in the year 1913. More modern data was not available.

NEGRO CRIMINALITY IN THE SOUTH

Negro Prisoners

Year	Northern States	Southern States
1870-----	2,025-----	6,031-----
1880-----	3,774-----	12,973-----
1890-----	5,635-----	19,244-----
1904-----	7,527-----	18,550-----

Prisoners per 100,000 of Negro Population

Year	Northern States	Southern States
1870-----	372-----	136-----
1880-----	515-----	221-----
1890-----	773-----	284-----
1904-----	765-----	220-----

Relative Criminality of Races in the United States

Nationality	Commitments to Prison per 1000 of each Nationality, 1904
Mexicans-----	4.7-----
Italians-----	4.4-----
Negroes-----	2.7-----

(1) Work, Monroe N.--Negro Criminality, p., 74-80.

While the negro is not so criminally inclined as the Mexican or the Italian, according to the preceding table, he is far more criminal than the southern whites. In the Southern States, negro crime compared to white is in the ratio of 3.5 to 1. (1) Mr. Work also points out the correlation between negro crime and lynchings, remarking that at the time when negro crime had reached its highest lynchings were also most numerous; that both crime and lynchings have decreased since 1892; and that less than one-fourth of the lynchings were caused by assaults upon women. ~~The largest percent of~~ negro lynchings is for murder or attempted murder.

NEGRO ILLITERACY IN THE UNITED STATES (2)

Prior to abolition, conservative estimates place the illiteracy of the Negro race at between 95 and 97 per cent.

Class of Population	Percentage of Illiterates 10 Years of Age and Over			
	1910	1900	1890	1880
Total all classes	7.7	10.7	13.3	17.0
White	5.0	6.2	7.7	9.4
Negro	30.4	44.5	57.1	70.0
Indian	45.3	56.2		

The illiteracy of the Negro group is six times that of the white, and if we exclude the foreign born from the white group, it is ten times as great.

- (1) Work, Monroe N.--Negro Criminality, p. 76
 (2) Lichtenberger, J. P.--Negro Illiteracy, American Academy of Political Science, 1913.

It must be noted from the preceding table that the colored race has made an encouraging progress in reducing its illiteracy. A reduction from 70 to 30.4 per cent in thirty years--one generation--is remarkable; and is a token of better days ahead, both for the Negro and for the State in general.

Sectional Distribution of Negro Illiteracy (1)
1910

Section	All Classes	Native White of Native Parentage	Negro
United States-----	7.7-----	3.7-----	30.4
New England-----	5.3-----	.7-----	7.8
Middle Atlantic-----	5.7-----	1.2-----	7.9
East North Central-----	3.4-----	1.7-----	11.0
West North Central-----	2.9-----	1.7-----	14.9
South Atlantic-----	16.0-----	8.0-----	32.5
East South Central-----	17.4-----	9.6-----	34.8
West South Central-----	13.2-----	5.6-----	33.1
Mountain-----	6.9-----	3.6-----	8.0
Pacific-----	3.0-----	.4-----	6.3

Distribution of Negro Illiteracy by Ages

Age Period	Illiteracy by Ages, All Classes	Native White	Negro
10 Years and Over-----	7.7-----	3.0-----	30.4
10 Years to 14-----	4.1-----	1.7-----	18.9
15 Years to 19-----	4.9-----	1.9-----	20.3
20 Years to 24-----	6.9-----	2.3-----	23.9
25 Years to 34-----	7.3-----	2.4-----	24.6
35 Years to 44-----	8.1-----	3.0-----	32.3
45 to 64-----	10.7-----	5.0-----	52.7
65 and over-----	14.5-----	7.3-----	74.5

One interesting fact revealed in the table on sectional distribution is that the section containing the highest illiteracy of native born whites also has the highest percentage of negro illiteracy.

(1) Lichtenberger, J. P.--Negro Illiteracy, American Academy of Political Science, 1913.

Referring again to the table showing relative racial criminality, Page 87, it will be observed that both Mexicans and Italians are more criminal than the Negro; and likewise the criminality of the negroes resident in northern states is higher than that of the Southern negroes. This is probably due to negroes committing crimes in the South, escaping justice, and emigrating to the northern states. Texas also receives many escaped criminals from Mexico, hence the table may not reflect the truth for the races in the aggregate, but only for those resident in a given section. This shows that the "Negro Problem" is not the only racial problem confronting the State of Texas today. Admitting the perplexing problems, social, economic, and moral involved in this proximity of several races in the State, two questions naturally arise: What steps are the people of Texas taking which lead toward their solution? And are those steps adequate and the best possible under the circumstances to be used in that solution.

The answer to the first question is: nothing. We are only drifting in the hope that time will bring the solution. The second question should then be changed to: What steps should we take under the circumstances?

All admit that the high criminality should be lowered and that the illiteracy should be reduced, that is almost all; there are still some white people in Texas who think it is unwise to educate the negroes, but they constitute only a very small minority.

If the author of this thesis were a politician, or a statesman, he would advocate the following program leading to a solution of the residual problems of slavery:

1. The appointment of a Sociological Survey Commission, somewhat like the late lamented Educational Survey Commission, to be composed of experts in the field of social science; and permit them to study these questions for a number of years and report their findings to our State Legislature.

2. Pending the report of such commission, steps should be taken to increase the educational facilities for negroes, Mexicans, and other aliens, Especially should the facilities for industrial education be strengthened. We should have in Texas several agricultural and mechanical colleges to which negro students might be admitted. At present we have none. Under the law, Texas distributes her state available school funds on a per capita basis; but the matter of spending that money on white schools and colored schools is left to county boards of trustees and district boards. If this law is being violated, and I believe it is, a change should be made in the distribution agencies assuring an equitable division of the funds. From my personal experience, I know that the negroes in East Texas especially feel keenly this unequal distribution.

3. Provide, as far as possible, for equality of justice and economic opportunity for all races; but allow no social intercourse whatever between the races. All inter-racial

intercourse should be on a purely business basis. There must always be, in the South, separate schools, churches, lodges, and societies; and each race should be permitted to direct its own social life.

4. The white race should provide a better moral and religious leadership of the inferior races. And they can best do this by re-uniting and carrying on their work in co-operation. The Methodists and Baptists are seriously handicapped by the fact that throughout all the years since the Civil War they have been divided into a Southern and Northern branch. The denominational schools and colleges for the negroes have been supported in Texas mainly by contributions coming from the Northern branches of these churches. A true spirit of Christian co-operation would result in better training, especially of ministers to serve the colored churches.

It has been stated previously, Page 90, that Texas as a state is doing nothing toward the solution of her social science problems; but it cannot be denied that some good recommendations for action have been made. One of such came recently through an able editorial in the newspaper of the largest circulation in Texas--The Ft. Worth Star Telegram. This is so appropriate that it is quoted here in full.

Justice and Humanity

"The State of Texas can not ignore the implications of the facts contained in the proposal for the taking over by the State of the negro orphanage at Gilmer. The facts are that the State has not an institution for orphaned negro children, while it does operate such for white children; that negroes comprise sixteen percent of the population of the State, and that negro

(1) Ft. Worth Star Telegram, July 12, 1929--Editorial.

owners pay taxes on property whose value exceeds \$100,000,000. By all the rules of justice and equity, as well as simple humanity, the State ought to remedy its discrimination at the earliest possible moment. The negro orphans' home at Gilmer is the work of one man, the aged negro preacher Dickson, who personally has raised the funds to maintain the institution. At present there are approximately one hundred negro children in the institution. The old man is becoming incapacitated by age and can no longer keep up the work of soliciting funds and management of the institution. The crisis for the orphanage is at hand. It cannot continue to exist except as a state institution.

"The property, valued at some \$20,000, is offered to the State entirely free of debt or deficit. A number of citizens have agreed to "make up a pot" and pay off all arrears. The State Board of Control has worked out a plan which requires no more than \$60,000 for maintenance for the biennium. The Senate has passed the bill taking over the orphanage and making it a state institution. Unless Texas ~~is to stand~~ convicted of a disregard for humanity and justice utterly cynical and utterly reproachful, the House of Representatives at Austin must enact the bill.

"The measure is to be brought up again in the new called session. Let the Legislature consider that the greatness of the State and the humanity of its people does not permit any other course than its speedy adoption."

The editor of this great daily newspaper might have added that the only provision that the State of Texas has made for the care of orphaned negro children is the law quoted on Page 48, passed by the Seventh Legislature, Section 4 of which permitted the mother or next friend of negro children to select a master for such orphans and place them again in slavery. Since the abolition of slavery, and consequently the repeal of that law, the negro orphans have been cared for only by the counties or by private or church philanthropy.

The principles of justice and humanity will exert a far-reaching and potent influence in the solution of the social science problems of any state or nation. We await with interest the action of the Legislature and our Governor.

THE END

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