

Slavery and Freedom in Texas: Stories from the Courtroom, 1821-1871

Rob Baker
robertbaker@gsu.edu

Follow this and additional works at: <https://digitalcommons.lsu.edu/cwbr>

Recommended Citation

Baker, Rob (2018) "Slavery and Freedom in Texas: Stories from the Courtroom, 1821-1871," *Civil War Book Review*: Vol. 20 : Iss. 4 .
DOI: 10.31390/cwbr.20.4.05
Available at: <https://digitalcommons.lsu.edu/cwbr/vol20/iss4/5>

Review

Baker, H. Robert

Fall 2018

Gillmer, Jason A. *Slavery and Freedom in Texas: Stories from the Courtroom, 1821-1871*. University of Georgia Press, \$27.95 ISBN 9780820351636

Jason A. Gillmer has interpreted all manner of legal records to tell the stories of people—enslaved and free—who would not otherwise have made the newspapers, or the political record. Gillmer is frank that he intends to deploy narratives free of cumbersome scholarly apparatus, and he delivers on this promise. The stories in this narrative are fascinating, perplexing, sometimes entertaining or shocking. And they tell us a good deal about race and law in the antebellum era.

Chapter two opens with a murder. “Charles Brady shot Miles on the last day of March 1854,” writes Gillmer, in as fine an opening sentence as one might hope to pen (p. 53). Not that Brady was ever charged with murder. Instead, he was fired by the plantation owner, a widow named Temperance (Tempe) Price. Brady sued for payment on his contract, and Price countersued for Miles’s value. A black man’s life in Texas in 1856 turned out to be worth a good deal in time, effort, and money—at least insofar as white people were arguing about who owed whom exactly what. As for Miles, he had no rights to vindicate in court, and no one to speak for him. Instead, lawyers for Price and Brady argued before a jury about whether the legal system’s higher purpose was to protect slaveholders’ property rights or to preserve white supremacy. This was particularly important for Brady, who had unloaded two barrels of buckshot into Miles while Miles was running away. Charles Brady could make no legitimate defense that he felt threatened at the time he murdered Miles. And so, his lawyer argued that Miles’s insubordination was a general threat to social order, and one that Brady had the inherent right to check, even with deadly force. The jury disagreed, and returned a judgment for Price. The Texas Supreme Court upheld the verdict on appeal.

Miles’s story is important for many reasons. It recalls Frederick Douglass’s story of the slave Demby, who sought refuge in the river from a beating by the overseer and,

tragically, paid for it with his life. And Miles had a history too—Gillmer spends no small time reconstructing Miles's early life, his removal from North Carolina to Alabama, and finally to Texas. We learn of his diet, of his clothes, and other details of his life on the Texas frontier. Such details have little to do with the black-letter law, but they have everything to do with how the law worked. When the jury decided the overseer Charles Brady's case in Texas, they were negotiating between plantation owners and the poor whites who worked for them, between the expectation of Blacks' subordination and the frank acknowledgment that Black peoples had rights too. It was between these ever-present contradictions that the law did its work, and did so in the hands of jurors and local judges who had to reconcile local experiences with larger ideas.

If neither Miles's fate nor the legal issues it raised are surprising to students of slavery, then perhaps some of Gillmer's other cases will be. There are two stories of interracial marriages in this book. The first concerned a rugged frontier loner by the name of John Clark. He had built up his own fortune first from his own labor, and then by leveraging his profits into slaves. He also bought a wife—Sobrina. What we know of her we primarily know through a court case brought by her children, who claimed to be John's lawful heirs (John Clark died intestate). During the trial, numerous witnesses testified as to the arrangements between Sobrina and John. They lived in the same cabin, ate at the same table, and slept in the same bed. She superintended in his absence and was to do no other labor. Despite being legally the property of John Clark, Sobrina would be declared by a jury to be his common-law wife, and his children the rightful heirs to his property.

John and Sobrina's children might have won their court case, but they were never able to extract their inheritance from the mess of legal problems that accompanied it. Part of the problem was that John Clark died intestate. But David Webster of Galveston did leave a will, and in it he emancipated his slave Betsy and left her his entire estate. This raised prickly legal problems in Texas in 1857, as the state had required that emancipation be accompanied by removal from the state. Webster's will contemplated no such act. Was Betsy really free? Thanks to a pair of smart lawyers, she maintained her freedom and her estate.

Sexual exploitation is a well-known facet of slavery, but so too were liaisons that defied our understanding of that exploitation. Annette Gordon-Reed wrestled with the famous relationship between Thomas Jefferson and Sally in her Pulitzer Prize winning *The Hemmingses of Monticello*, and Gillmer does his best to tease from the sources some understanding of how such interracial relationships worked. Gillmer proves himself a careful reader, whether interpreting court records or autobiographical reflections about frontier life. Texas slaveholders like John Clark and David Webster both consummated love relationships in a time when society frowned upon their practice and the state forbade it. That David Webster was able by law to leave Betsy his estate—and that ethical lawyers took up her cause and argued it successfully—is a powerful story.

If these stories remind us of the power of the community to subvert the realities of white supremacy in law, Gillmer insists we should also know its limits. In a moving chapter, Gillmer tells us the story of the Ashworths, a free black family that settled in the Texas borderland just before the war for Texas independence. The family became rooted in the community and quite well respected. When Texas won its independence and then adopted laws essentially criminalizing the free black community, local grandees took a petition to the Texas legislature on the behalf of the Ashworths and other free blacks. The petition was successful, and the Texas legislature passed the “Ashworth Act” in 1840 to exempt all free blacks who had been living in Texas at the time of independence from having to leave the new republic. But such happy moments in racial solidarity were not to last. The Ashworths feuded with some of their neighbors, and the county exploded into violence. Quite quickly it acquired a racial tinge, and endangered the Ashworths’ (and all free black families’) tenuous grip on their land and living. They ultimately quit Texas altogether, victims of an illiberal legal regime that not even powerful whites could bend to accommodate their free black neighbors.

Even though a legal history, the book is free of jargon and sophistry. The stories in here will speak to a wide audience, and will be of use to anyone with an interest in the lives of frontier peoples, the daily negotiations of race, or a more organic understanding of how law and legal institutions actually work.

H. Robert Baker is associate professor of History at Georgia State University. He is the author of The Rescue of Joshua Glover: A Fugitive Slave, the Constitution, and the Coming of the Civil War and Prigg v. Pennsylvania: Slavery, the Supreme Court, and the Ambivalent Constitution.