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TOWARD A MORE HUMANE OPPRESSION: FLORIDA'S SLAVE CODES, 1821-1861

by JOSEPH CONAN THOMPSON

As personal property capable of independent action, slaves posed a unique dilemma to antebellum Florida's ruling society. Statute law, which defined criminal behavior and affixed punishment for white criminals, could not be applied easily to the slaves lest whites compromise the hegemonic function of the law. A clear line of distinction between the two races was needed in order to maintain black subordination and race control. Had the ruling class consented to a body of laws that would have applied equally to both master and slave, that line might have been disconcertingly ambiguous. Any hint of equality under the law would have raised questions as to the viability of a slave-labor-based economy and the validity of the doctrine of white supremacy, the very institutions upon which southern society rested. In addition, these laws protected the delicate balance, the uneasy peace, if you will, struck between the races. In this regard, slave codes, as they came to be known, were seen as precautionary measures designed to forestall the likelihood of slave insurrection, petty thievery, miscegenation, escapes, and countless other infractions associated with the frustrations of an oppressed people. This essay examines the legal apparatus that white Floridians used to preserve their social, political, economic, and psychological hegemony. Clearly evident in both territorial and state statutes as well as the rulings of Florida's highest court was an effort to maintain a balance in the law, to curtail the slaves' ability to act independently while at the same time extending to the slave certain guarantees against maltreatment. Indeed, Florida's slave code was designed to control both slaves and masters. Behind this dual function of the law lay the belief that the institution of slavery remained most secure when the bondsman

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was neither tempted with excessive liberties nor taunted by inhumane cruelties.[1]

Florida's lawmakers drew upon models set by their fellow southern legislators when drafting their state's slave code. As a rule these enactments were harsher than the laws that governed white behavior. For example, Florida's slave code listed more felonies than did the regular statutes. Furthermore, the punishment meted out against offending slaves was generally more severe and often involved whipping or mutilation. By creating this code, Florida's lawmakers hoped to restrict the slaves' freedom of movement and limit their ability to communicate with one another. For instance, pass laws mandated that slaves receive some form of written permission before venturing off their master's property. Strict laws against instructing slaves to read, write, set type, or possess any sort of reading material were formidable legal barriers intended to prevent potentially seditious literature from reaching the bondsmen. Slaves could not legally carry or possess weapons of any sort, nor could they congregate in groups of eight or more without a white chaperon in attendance.

Between 1821 and 1861 most of Florida's slaves could be found working the cotton-rich plantations situated between the Suwannee and Apalachicola rivers, along the St. Johns River near St. Augustine, or harvesting sugar near the Manatee River south of Tampa. While slaves could be found as far south as Dade and Monroe counties, most of the whites in that area owned few if any bondsmen. In Florida, as in most southern states, masters enjoyed a great deal of latitude when disciplining their chattel. In practice most justice was carried out on the plantation, a fact that underscores the pre-bourgeois or manorial character of plantation life and the master's near-absolute control over his

1. Leslie A. Thompson, *A Manual or Digest of the Statute Law of the State of Florida, of the General and Public Character, In Force at the End of the Second Session of the General Assembly of the State, on the Sixth Day of January, 1847* (Boston, 1848), 183; Eugene D. Genovese, *Roll Jordan Roll: The World the Slaves Made* (New York, 1974), 26; Kenneth M. Stampp, *The Peculiar Institution: Slavery in the Ante-Bellum South* (New York, 1956), 212; Julia Floyd Smith, *Slavery and Plantation Growth in Antebellum Florida, 1821-1860* (Gainesville, 1973), 101; Stanley M. Elkins, *Slavery: A Problem in American Institutional and Intellectual Life* (Chicago, 1959), 53; Thelma Bates, "The Legal Status of the Negro in Florida," *Florida Historical Quarterly* 6 (January 1928), 161; Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (New York, 1982), 363.

or her property. Florida's laws sanctioned branding, mutilation, and even death for certain crimes. However, most masters preferred to punish their slaves with whips specifically designed to inflict pain without leaving permanent scars, primarily because a scarred slave would be readily identified as "troublesome," thus depreciating his or her value. The pecuniary interests of the master further dictated that slaves not be imprisoned, for to do so would be to punish owners by temporarily denying them a productive asset. As the Civil War approached, the Draconian codes of the eighteenth century were gradually humanized. The revised code listed fewer capital crimes, and Florida's courts demonstrated a remarkable propensity for procedural fairness and justice when trying slaves. By 1845, the year Florida was granted statehood, the institution of slavery had been firmly established, so much so that legislators believed it to be secure enough to enact laws that protected slaves from arbitrary or excessive punishment.[2]

Slaves codes served a variety of functions, the most pressing of which was to protect the white community from slave insurrections. The fear of rebellion, a fear exacerbated by the emergence of northern abolitionism, periodically spurred Florida's lawmakers into action. News of a recent uprising, regardless of its location or magnitude, was quite often followed by further revisions to the state's slave code. The reaction to Nat Turner's revolt in 1831 provides an example of this post-rebellion legislation. Soon after the failed mutiny, Florida's territorial legislature passed an act that empowered slave patrols to seize and punish (up to thirty-nine lashes on the bare back) any slave found violating local pass laws. Additional legislation made the act of inciting slaves to revolt a capital offense and defined the murder of a slave in the act of rebellion as justifiable homicide. The former act reflected an increasingly alarmist body of Florida lawmakers who imagined that rabble-rousing abolitionists lurked behind almost every tree and under every stone.[3]

2. Edwin L. Williams, Jr., "Negro Slavery in Florida," *Florida Historical Quarterly* 28 (October 1949), 101, 107, 110; Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the 19th-Century American South* (New York, 1984), 134; Smith, *Slavery and Plantation Growth,* 60-61, 102; Elkins, *Slavery,* 49; Stampp, *Peculiar Institution,* 208-10; Genovese, *Roll Jordan, Roll,* 31-32.

3. John P. Duval, *Compilation of the Public Acts of the Legislative Council of the Territory of Florida Passed Prior to 1840* (Tallahassee, 1839), 62-63, 114-15;

Floridians also enacted laws designed to punish slaveholders whose carelessness was deemed a threat to his or her neighbors. Fines of up to $100 were levied against any master whose runaway slave was captured by patrollers. Defined in the Florida code as any slave who was absent from his or her quarters and whose whereabouts were unknown, runaways represented an expensive burden to the master. Once captured, the runaway was to be housed in the local jail at the owner's expense. In addition, a nominal sum was to be paid, again by the owner, to the individual or group responsible for apprehending the fugitive. Legislators believed that these laws would encourage masters to keep a watchful eye on their more spirited chattel. While some codes specifically protected slaves from maltreatment, the vast majority were intended to "clarify beyond all question, to rationalize, to simplify, and to make more logical and symmetrical the slave's status in society."[4]

Spanish Florida was home to so few slaves that its governors never saw the need to regulate the institution. Under British rule, however, the slave population experienced a substantial increase, necessitating the formulation of Florida's first slave code. The act was signed into law in May 1782, a year before Great Britain ceded Florida back to Spain. There exists no evidence to suggest that this particular code had a lasting impact on Florida's political culture. Nevertheless, there are certain basic similarities between the British and American codes, enough to warrant a brief look at the former code.

The British code projected the same desire to regulate the system and subjugate the slave, as evidenced in codes adopted in others parts of North America. British officials imposed stringent limitations on the bondsmen's movements and their ability to associate with other slaves. Likewise, masters were penalized for any number of infractions, including granting their slaves liberties beyond those proscribed by the law and, of a related nature, carelessly affording their bondsmen the opportunity to run away or transgress in any manner. Clearly, the uniform standards of slave codes are made manifest by the British model.

Smith, *Slavery and Plantation Growth,* 102; Thompson, *Manual of the Statute Law,* 490-91; Stampp, *Peculiar Institution,* 206.

4. Quote taken from Elkins, *Slavery,* 52. Additional material from Genovese, *Roll, Jordan, Roll,* 41; Smith, *Slavery and Plantation Growth* 103; Duval, *Compilation of Public Acts,* 221; and Bates, "Legal Status of the Negro," 160.

But one can only speculate as to the correlation between the act of 1782 and Florida's later statutes.[5]

Florida became a United States territory in 1821, but circumstances did not warrant the adoption of a body of criminal statutes governing its black inhabitants until 1828. At that time the territorial council enacted a law that came to form the basis for all subsequent slave-related legislation right up to emancipation. Even the so-called St. Joseph Constitution, drafted in 1839 and put into force in 1845 when Florida achieved statehood, did not substantively alter the 1828 code. Entitled "An Act relating to Crimes and Misdemeanors committed by Slaves, free Negroes, and Mulattoes," the 1828 code consisted of sixty-three sections defining a variety of criminal offenses and the appropriate penalties. It also included the legal definition of a slave and the circumstances under which one could be manumitted. With the passage of time, Floridians altered these codes in order to suit the demands of a changing social, political, and economic order. As sectional hostilities intensified, the white ruling class tightened its grip on the peculiar institution, a fact reflected in the law. The significance of this legislation mandates an in-depth examination of its pronouncements as well as any subsequent legislation adopted to revise it.[6]

The first six sections of the Act of 1828 address the problem of determining who shall be deemed a slave. In Florida, as in the rest of the South, a child inherited the status of its mother. This inhibited the growth of a class of free mulattoes. These bastard children, the issue of illegal liaisons (miscegenation was prohibited by law), were social outcasts, pariahs whose presence served as reminders of the inherent contradictions between the moral pronouncements of the ruling race and its actual behavior. The law required free blacks to pay an annual head tax of $10, register with local magistrates, and select a white guardian to function as their representative in all legal matters. In

5. For an excellent analysis of the British slave codes see William H. Siebert, "Slavery in East Florida, 1776-1785," *Florida Historical Quarterly* 3 (January 1932), 139-61. See also Williams, "Negro Slavery," 94-95.

6. Duval, *Compilation of the Public Acts,* 216, 228. *Journal of the Proceedings of* a *Convention of Delegates to form A Constitution for the People of Florida, Held at St. Joseph, December 1838* (St. Joseph, 1839); Stampp, *Peculiar Institution,* 207; Williams, "Negro Slavery," 182; Siebert, "Slavery in East Florida," 150; Bates, "Legal Status of the Negro," 169; Thompson, *Manual of the Statute Law,* 507-12, 531-45.

1829 manumission was outlawed, and a provision in the St. Joseph Constitution of 1839 gave the General Assembly power to prohibit the in-migration of free blacks and mulattoes.[7] These aggressively prohibitive statutes prompted some free blacks to enter bondage on their own volition, a practice facilitated by legislative action in 1858. In short, successive legislative acts underscored a willingness on the part of the ruling race to segregate society into two clearly defined categories: free whites and enslaved blacks.[8]

The first six sections of the 1828 code also governed the sale and importation of slaves. No slave convicted of a crime was permitted to enter Florida. Owners guilty of violating this article could be fined as much as $250 and ordered to remove the slave from the territory. In 1839 the St. Joseph Constitution specifically denied the General Assembly the power to emancipate slaves. Indeed, a reading of the slave code unmasks what antebellum white Floridians perceived to be the ideal black: he was obsequious, industrious, docile, loyal, and most importantly, enslaved.[9]

Florida's lawmakers took care to see to it that slaves remained shut out of the marketplace. Seven of the sixty-three sections denied slaves the right to participate in the capitalist economy. The law forbade them from selling their labor, owning property (both real and personal), or trading without the written permission of their owners. Heavy penalties awaited both buyer and seller, regardless of race, if convicted of trading on the "black market." In practice whites could expect a more lenient form of correction. Selling intoxicating liquor to a slave was a particularly serious crime. Cognizant of the unruly behavior and violence associated with strong drink, the legislature ordered that any individual found guilty of this offense should pay a fine of $10 or be subjected to thirty-nine lashes across the back. Obviously this statute was intended to deny slaves access to alcohol by punishing potential suppliers. Section 45 of the 1828 code stated that slaves who bartered, bought, or sold anything of value were to receive a maximum of thirty-nine lashes. Part of

7. Dorothy Dodd, ed., *Florida Becomes A State* (Tallahassee, 1945), 325.
8. Dodd, *Florida Becomes A State*, 170-71; Duval, *Compilation of Public Acts*, 216, 225, 228-29, 310; Bates, "Legal Status of the Negro," 164, 170-71; Smith, *Slavery and Plantation Growth*, 118; Williams, "Negro Slavery," 183.
9. Duval, *Compilation of the Public Acts*, 216; Dodd, *Florida*, 325.

the reasoning behind this penalty lay in the belief that much of what a slave had to sell had been illegally procured. Theoretically, if a slave could not own property then anything they sold could not have been their own. Unscrupulous whites often enticed slaves to pilfer from their masters by promising to buy all that the slave could steal. Lawmakers recognized this and adopted legislation designed to end it. Certain sections of the 1828 code enumerated those items that a slave could not trade. These included agricultural products, particularly staple crops. White masters feared their slaves' larceny would have a pernicious effect on their yield and, in turn, upon their margin of profit. Despite legislative diligence, Florida's "black market" flourished.[10]

Slaves were also barred from owning property. The idea of a slave owning anything seemed ludicrous to the ruling race. This simple exercise in logic– the understanding that one cannot own property if one is property– was not lost on planters. Their law books affirmed this concept, and the courts concurred. Private ownership among the slaves, one Florida judge declared, tended "to make other slaves dissatisfied . . . and thereby excite . . . a spirit of insubordination." Sometimes masters allowed slaves to keep a horse, a few pigs, or even a boat, but only at the owner's discretion. Slaves could never be the genuine owner of anything. Any slave who claimed ownership of material goods could, by law, be forced to surrender said property to the court. In turn the court would sell the goods– the proceeds of the transaction to be divided between the prosecutor and the state treasury. The slave received nothing.[11]

Despite laws denying slaves the right to hire out their labor for wages during their off hours, the practice proved fairly common throughout the South, particularly among those black artisans whose skills were in high demand. Free-born artisans objected to the lax enforcement of these laws, claiming that slaves worked at artificially depressed wages in order to attract business. These protests had some merit, for slaves usually had no over-

10. Duval, *Compilation of the Public Acts*, 124, 217, 219, 225, 227, 234; Florida *Acts and Resolutions of the General Assembly of the State of Florida . . . 1854*, 43 (hereinafter, Florida Acts . . . along with a reference to the appropriate year); Florida *Acts . . . 1848-49*, 70; Genovese, *Roll, Jordan, Roll*, 535-38; Stampp, *Peculiar Institution*, 126.

11. Duval, *Compilation of the Public Acts*, 209, 225, 227.

head, and it was possible for them to cut prices without affecting their profit margins. One Florida legislator agreed, warning that hiring out caused a "relaxation of discipline and . . . the forgetfulness of duty, gives them possession of money and affords them a means of debauchery and cannot but lead to the ultimate ruin of the slave, if not more disastrous consequences to the community."[12] It was their fear for the safety of the white community, not their concern for the well-being of the slave, that moved lawmakers to action in 1855. In that year the city of St. Augustine repealed a city ordinance that sanctioned the practice of "hiring out." The next year the state followed suit by imposing heavier fines on owners convicted of violating the old statute. At the heart of these measures lay the pervasive desire to restrict the mobility of slaves. Regulating competition in the marketplace was a secondary concern.[13]

Runaway slaves represented a severe financial strain on their masters. Based upon 1860 averages, the flight of a prime field hand could cost an owner as much as $1,500. Perhaps more disturbing, at least to most white Floridians, were the ubiquitous fugitives– both real and imagined– who might commit acts of petty thievery or encourage other slaves to join them. To combat this subversion to the state's economy and racial order, the slave code was amended to encourage whites to keep a tighter rein on their slaves. Florida law demanded that a master pay as much as $500 in order to recover a captured runaway. In addition, the unsuccessful runaway received the maximum number of "stripes" (100 lashes) allowed by law. Slave patrols had the authority to pursue runaways onto private property if necessary. They were also sanctioned to administer punishment, disperse illegal gatherings, and seize contraband. Relative to these statutes were those that prescribed the most severe forms of punishment for slave stealing. Whether the offender had acted as a noble-hearted abolitionist or as an ordinary thief, white Floridians regarded slave stealing as a despicable practice. Whites convicted of this offense either paid a fine of $1,000 or received thirty-nine lashes. In either case the guilty party was branded with the letters "ss." If the offender were black, however, he or she could receive

12. Clarence Carter, ed., *Territorial Papers of the United States: Territory of Florida,* 26 vols. (Washington, 1934-1962), XXVI, 916.
13. Florida *Acts . . . 1855,* 30; Florida *Acts . . . 1856,* 24-25; Smith, *Slavery and Plantation Growth,* 109.

the death sentence. As with all other slave ordinances, Florida's laws against stealing slaves became more rigid with the passage of time.[14]

The variety of violent crimes and crimes against property enumerated in Florida's slave codes reflected the standard Judeo-Christian ethic common to western legal traditions. The principal differences between the laws pertaining to whites and slaves were in the types and severity of punishment. In an age of enlightened penology, white criminals could expect to be fined or sentenced to a penitentiary to be reformed. Slaves, on the other hand, were too valuable to place behind bars. Their punishment was swift, painful, and inflicted with little thought given to the moral reformation of the offender. Capital crimes included murder, conspiracy to rebel or to commit murder, assault with intent to kill, poisoning with intent to kill, and attempted murder. In each case the law was resolute; the guilty slave was to be put to death. The courts could exercise discretion in other instances where death was listed as an option. Maiming, manslaughter, arson, robbery, burglary, and attempted rape fell within this category. Trespassing, possession of firearms, sedition, unlawful assemblage, rioting, verbal assault, larceny, perjury, and consulting or advising to murder came under the heading of crimes in which corporal punishment remained the sole recourse of judge and jury.[15] Amendments to the codes support the contention that slave laws evolved to safeguard against insurrection by placing greater restrictions on the slaves. An example of this strategy can be found in Section 9 of the 1828 code and the subsequent repeal of that section in 1831. The original law permitted slaves to carry firearms provided that they had acquired the necessary permit from the local justice of the peace. The wisdom of allowing slaves to arm themselves came into question around the time of Nat Turner's rebellion. Apprehensive legislators struck down the provision, declaring that henceforth slaves could carry

14. Duval, *Compilation of the Public Acts,* 62-63, 65, 115, 221-23; Thompson, *Manual of the Statute Law,* 174-75; Florida *Acts . . . 1850,* 132-33; Florida *Acts . . . 1854,* 52-53; Florida *Acts . . . 1861,* 38-43; Bates, "Legal Status of the Negro," 165-66.

15. Ayers's *Vengeance and Justice* offers an excellent analysis of nineteenth-century penology and penitentiary reform. See also Duval, *Compilation of the Public Acts,* 216-28.

neither arms nor ammunition unless in the company of their masters.[16]

The penalties prescribed by Florida law were, by present-day standards, cruel and unusual; by any standard they were painful. The whip remained the preferred instrument of punishment. Each infraction of the law stipulated the exact number of stripes or lashes to be applied to the guilty party's bare back. Ordinarily that number was thirty-nine, a recognized allusion to the Roman custom mentioned in the Bible. Other forms of punishment proved less humane. A slave convicted of perjury, for instance, in addition to being whipped could have one of his or her ears nailed to a post. The slave would remain standing beside the post for one hour, at which time the mutilated ear would be severed from the head. Such graphic displays, commonly known as cropping, were intended to remind potential malefactors that retribution was often swift and brutal. Other forms of non-lethal punishment dictated by Florida law included branding and nose splitting. Capital punishment was an extreme measure that most owners preferred to forego. In the event that a slave was executed by the state, however, the master was entitled to fair compensation because Floridians recognized the execution of a slave as something akin to the seizure or condemnation of property.[17]

One should not confuse the letter of the slave code with the reality of its enforcement. Slavery was an institution based upon widely held assumptions regarding the relationship between whites and blacks, labor and capital, plain folk and gentry, and the individual and the state. All of these attitudes were ingrained in the characters of most white Floridians. The law simply mirrored their customs. While most laws merely reiterated local mores, others were nuisances, only to be enforced during times of social unrest or economic hardship. For example, slave owners generally consented to their slaves' weekly religious service unless cautioned by rumors of an insurrection plot. Then laws banning large gatherings were strictly enforced. Slave marriages, while prohibited by Florida law, were allowed by owners so long as his or her economic circumstances permitted the union. Otherwise the owner could disavow the marriage and

16. Duval, *Compilation of the Public Acts,* 218, 231.
17. Ibid., 216-28: Stampp, *Peculiar Institution,* 199.

separate the couple through sale. Some slaves kept rifles or livestock while others hired out their own time or traded with whites, often with their masters' knowledge and consent and always in violation of state ordinances. Noting these routine transgressions, a Florida Grand Jury in 1844 condemned "the great looseness or laxity that too generally prevails in the management of our slave population."[18]

Owners were bound by a sense of moral accountability– an obligation often called "paternalism"– to treat their slaves in a humane fashion. Community pressure further dictated that masters behave in a socially responsible manner, exercising discretion when chastising disobedient slaves. Owners were also bound by the law. The St. Joseph Constitution required them to provide their servants with a healthy diet, adequate clothing, medical care, and shelter. Custom further dictated that they care for the elderly and infirm. In Florida, masters could be charged with murder if their abuse caused the death of a slave. However, most masters appear to have been guided by common economic pragmatism when it came to handling their bondsmen. Slaves represented capital assets; therefore, their misuse or neglect made little economic sense. Florida's slave code only codified the majority's mores; the master class functioned in its own best interests, and no law could dictate otherwise.[19]

The patterns of legal change expressed in Florida's slave codes followed two divergent paths: the first led toward more restrictive legislation designed to limit the possibility of insurrection, while the second reflected a desire to protect the slaves. The former was largely the result of legislative action, the latter the work of the courts.[20]

An accused slave rarely saw the inside of a courthouse. Instead, the plantation proved the more familiar venue. Masters preferred this alternative for it reaffirmed their authority and

18. Quote taken from Carter, ed., *Territorial Papers of the United States, XXVI,* 916; Stampp, *Peculiar Institution,* 207, 228-29; Genovese, *Roll, Jordan, Roll,* 40.
19. Kermit L. Hall, ed., *The Law of American Slavery: Major Historical Interpretation* (New York, 1987), xiii; Genovese, *Roll, Jordan, Roll,* 26, 32, 37, 43, 47; Smith, *Slavery and Plantation Growth,* 102.
20. Genovese, *Roll, Jordan, Roll,* 32; Daniel J. Flanigan, "Criminal Procedure in Slave Trials in the Antebellum South," *Journal of Southern History* 40 (November 1974), 538.

protected them from the caprice of outside interference. However, laws and social customs constrained owners by placing limitations on the severity of punishment that one could administer to a recalcitrant bondsman. For example, particularly serious offenses such as murder, theft, and attempted rape automatically came within the jurisdiction of the state. Crimes committed by slaves in any place other than their master's property necessitated the intervention of a disinterested or impartial third party. Again, the state filled this role. Civil suits also fell within the realm of the state's authority.[21]

Slaves who knew of the court's reputation for fairness welcomed the intercession of the law, for it was in the courtroom that the slave stood the best chance for an impartial hearing. On the plantation justice was unchecked and arbitrary. Similarly, local justices of the peace offered little in the way of justice to the accused slave. Usually ignorant of legal subtleties or personally acquainted with the owner, slaves knew of their reputation for inconsistency and venality. Florida's Superior Court judges and Supreme Court justices, on the other hand, conformed to higher standards of practice. These men tended to be better educated and more responsive to public pressure than local justices. As a result, slaves could expect more justice from the state's higher courts.[22]

The courts accorded the slaves a remarkable degree of judicial courtesy, closely adhering to the standards of procedure and decorum used for whites. The explanation for this curious departure from day-to-day race relations, aside from the two aforementioned, illustrate the oxymoronic quality of the definition "human property." In order to hold slaves accountable for their crimes, the court had to recognize that they were capable of exercising free will. To acknowledge this was to acknowledge their humanity. Slaves, therefore, had to be granted the same rights and privileges enjoyed by any other defendant who stood before the bench. To do otherwise would have opened the court up to charges of hypocrisy. The courts obliged this masquerade, granting the slaves rights in order that they may be legally punished. But in the process slaves came to enjoy the benefits

21. Flanigan, "Criminal Procedure in Slave Trials," 538-39; Stampp, *Peculiar Institution*, 224.
22. Ayers, *Vengeance and Justice*, 134.

of jury trials, the right to counsel, and the protection of the Constitution.[23]

Unfortunately the courtroom was not entirely immune from the dictates of social custom. A black man's word alone was never sufficient to convict a white man of foul play. The white community would not countenance such a challenge in their daily lives, and they would not condone it in their courts. Consequently, no state, including Florida, allowed blacks to testify against whites. On occasion judges did allow a slave to enter a plea of "self-defense" for the murder of a white, but such was the exception rather than the rule. The possibility of an accused rapist receiving a fair hearing was even more remote; however, it did happen. In *State v. Charles* (a slave) the judge upheld a lower court ruling that dismissed an indictment for assault with an attempt to commit rape on the grounds that it did not specify the race of the alleged victim. Section 39 of the 1828 code, the pertinent statute, clearly stipulated race when describing both the victim and her alleged assailant. In another case of alleged rape, *Cato (a slave) v. State,* the Florida Supreme Court granted a retrial to a convicted rapist because of the questionable veracity and character of the state's witnesses. Writing for the majority, Judge Charles H. DuPont proclaimed that "It is the crowning glory of our 'peculiar institution,' that whenever life is involved, the slave stands upon as safe ground as the master." These two cases illustrate an attempt to provide justice for those slaves accused of even the most serious crimes.[24]

The perseverance of Cato's attorney demonstrates that some lawyers maintained their commitment to justice despite adverse public sentiment. Studies indicate that slaves generally received able representation. Indeed, the Florida Supreme Court, in the case of *Joe (a person of color) v. State,* granted a motion for a new trial because, among other things, the accused "lacked adequate council." Because slaves could not serve on juries, the likelihood of being tried by a true "jury of one's peers" was nil. In fact, slaves were adjudged by representatives of a superior caste. So,

23. Genovese, *Roll, Jordan, Roll,* 29-30; Flanigan, "Criminal Procedure in Slave Trials," 540, 546.

24. Quote taken from *Cato (a slave) v. State,* 9 Fla. 163 (1860); *State v. Charles (a slave),* 1 Fla. 298 (1847); Flanigan, "Criminal Procedure in Slave Trials," 556; Stampp, *Peculiar Institution,* 220, 222; Genovese, *Roll, Jordan, Roll,* 33-34.

despite efforts at impartiality during voir dire, they remained at the mercy of prejudicial juries.[25]

Courts made efforts to compensate for the slaves' legal vulnerability by making the appropriate allowances. Court-appointed attorneys were one such concession. Another was its willingness to challenge the admissibility of coerced confessions. Overzealous interrogators often employed torture and intimidation in order to compel suspect slaves to admit complicity in a crime. In *Simon (a slave) v. State* the Florida Supreme Court reversed a lower court's conviction because the latter had based its ruling upon a confession obtained through coercion. The presiding justice wrote that he could find "few cases . . . where stronger influences were brought to bear . . . to extract a confession."[26]

The courts tended to construe the slave code quite literally, and sometimes this strict construction worked to the advantage of the slave. Paraphrasing Justice Albert G. Semmes in *Bryan v. Dennis*, the term "slave" had to appear in the wording of a law in order for that law to be applicable to slaves. In this particular case the ruling ordered that a family of slaves claiming freedom was, according to the law, still slaves. Although this particular ruling proved unfavorable to the litigants, it set a precedent for literalism that became a protective blanket for slaves against arbitrary legal action. In *Luke (a slave) v. State* Justice Leslie Thompson ruled that slaves could be punished only in the manner prescribed in the slave code. Thompson argued that "in order to punish a slave for a 'common law' offense, the court must examine the pertinent slave code," thereby insulating the slave against indiscriminate punishment. In *Francis (a slave) v. State* the Florida Supreme Court upheld the constitutionality of the slave code. In each of these cases, decided in the early 1850s the justices ruled the slave code was the only law applicable to the enslaved. Clearly, Florida slaves benefitted from the high court's predilection for constitutional and statutory literalism.[27]

A Florida Supreme Court ruling in 1860 declared that a slave could only be charged with those crimes enumerated in

25. *Joe (a person of color) v. State*, 6 Fla. 591 (1856).
26. *Simon (a slave) v. State*, 5 Fla. 285 (1853); Flanigan, "Criminal Procedure in Slave Trials," 559-60.
27. *Bryan v. Dennis*, 4 Fla. 445 (1852); *Luke (a slave) v. State*, 5 Fla. 185 (1853); *Francis (a slave) v. State*, 6 Fla. 306 (1855).

the Florida slave code. The case in question involved a slave named Clem Murray who had been convicted of running an illegal gaming house. His attorney appealed the decision on the grounds that the relevant offense was not listed in the state's slave code and therefore could not be "extended to them [slaves] unless specifically named."[28] Writing for the majority in the case of *Clem Murray (a slave) v. State*, Justice William A. Forward concurred, arguing that slaves were not "covered by the word 'person' in the penal statute [white code] except by necessary implication." The court, in deciding for Murray, sought to protect the slave from unrestrained persecution. By 1860 the courts had become the guardians of the slaves' legal rights.[29]

Florida's slave code served to regulate and stabilize the "peculiar institution." It functioned as well as any body of law that enjoys the overwhelming support of its populace. The primacy of popular consensus in determining the scope and direction of the law is evident in the history of Florida's slave code. As demonstrated here, the exigencies of the era forced lawmakers to reexamine their priorities. An increasingly vocal anti-slavery movement in the North coupled with an almost obsessive fear of slave rebellion distorted the perceptions of many of Florida's lawmakers who determined that their slave code was too lax and therefore unable to prevent unrest and rebellion. In an effort to rectify this weakness, strict limitations were placed upon the slave's ability to act independent of his or her owner. But enlightened legislators and court officials paternalistically clothed their chattel in laws and court decisions that were designed to protect the slave's humanity. Referring to the treatment of slaves, the Florida Supreme Court declared in 1859 that a person who leased slaves should "bestow that degree of care and attention which a humane master would bestow on his servant." The statement served as both a warning to those who might abuse the slaves of another and as a mirror reflecting an image the courts held of how the slave should be treated.[30]

28. *Clem Murray (a slave) v. State*, 9 Fla. 246 (1860).
29. Ibid.
30. *Tallahassee Railroad Co. v. Macon*, 8 Fla. 299 (1859).