

Homicide Justified: The Legality Of Killing Slaves In The United States And The Atlantic World

Mary Block

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Recommended Citation

Block, Mary (2017) "Homicide Justified: The Legality Of Killing Slaves In The United States And The Atlantic World," *Civil War Book Review*. Vol. 19 : Iss. 4 .

DOI: 10.31390/cwbr.19.4.11

Available at: <https://repository.lsu.edu/cwbr/vol19/iss4/6>

Review

Block, Mary

Fall 2017

Fede, Andrew T. *Homicide Justified: The Legality of Killing Slaves in the United States and the Atlantic World.* Georgia University Press, \$69.95 ISBN 9780820351124

Homicide: A Matter of Law and Practice

In his book, *Homicide Justified*, Andrew Fede compares slave homicide laws in the slave societies of ancient Rome, the colonial West Indies, British North America, and the United States. Fede, a law partner in a New Jersey firm and an adjunct professor of law at Montclair State University, has written two other books on slavery in the southern United States. Homicide is the broad overarching term used to denote the taking of a human life. Murder is a specific kind of homicide that indicates the killing was premeditated, intentional, and malicious. Not every homicide is illegal and, in fact, may be permissible as in the case of self-defense and even required as in the case of blood vengeance or blood feud. Fede asserts there is no consensus among scholars as to what a master's liability was for slave homicide. Using the southern United States as his primary model, he notes that Ulrich B. Phillips declared whites that killed slaves were treated the same as if they had killed another white person while Kenneth Stamp and Stanley Elkins argued the law legitimized slave killing, especially when masters did the killing. Fede uses a law in the books and a law in action approach to show that for the southern slave states both assertions are correct.

Fede begins his study discussing slave homicide in the Roman Republic. As Judy Gaughan has proven, murder was not a crime in the Roman Republic, that is to say it was neither a public wrong nor a matter for the state. It was a private issue settled between families. In the case of a slave killing, a master sought damages under *Lex Aquilia* where property owners claimed compensation for the loss. Damages were assessed at the highest value during the prior year. Thus, in the Roman Republic murdering a slave was a tort or a private wrong rather than a crime. The exception to the rule was if the slayer was the master. Masters were

free to treat and dispose of their property as they saw fit and could not be held liable if they killed their own slave. Things changed during the era of the Roman Empire as masters saw their once absolute rights incrementally restricted. An early law of the Empire prohibited masters from selling their slaves to fight wild beasts in the arena. Later the law forbade abandoning a slave who was ill and designated the crime as murder. Some later Emperors decreed that killing a slave was a crime unless the slayer had a good reason to do so.

The slave law of homicide in the Roman Empire became more fully developed during the reign of Constantine who issued an edict defining three classes of slave homicide. First, masters saw no punishment for accidental killings if the death occurred during an ordinary chastisement where there was no intent to kill. Second, masters could be held liable if they intentionally killed their slaves while punishing them. Third, masters could be held liable for killing their own slaves if the disciplinary method fell under one of the prohibited punishments listed in the “gruesome catalogue” of abuses. Laws restricting a master’s right to kill his own slave were part of a larger effort to regulate property rights. These laws were designed to protect the slave owner’s heirs. Unfortunately, Fede could not find enough cases pertaining to slave homicide to be able to draw conclusions as to how the law in the books was put into action.

Visigoths were Germanic peoples whose kings ruled Spain from 415 to 711. Slavery reached its peak in Visigoth Spain in the sixth and seventh centuries and flourished in areas where the Roman Empire had collapsed. Visigoths were tribal and followed custom, which meant they used blood feud to avenge murder. Masters had an unlimited right to kill their slaves, as slaves were property and nothing more. Later Visigoth kings created law codes that were an amalgam of Roman law and German custom. Kings sought a monopoly on violence, but made exceptions legitimizing certain kinds of private violence. The law codes limited a master’s right to kill a slave by requiring him to get a court order first. Visigoth law codes legalized slave killing in cases of self-defense or if death occurred in the course of punishment. If the killing was the product of malice, the master could be deprived of the right to testify in court, exiled for life, compelled to do penance, or deprived of his property, which would be transferred to his nearest heirs. If the killer was not the owner of the slave, then the master could seek compensation. Visigoth law influenced Spanish law generally, but it is not clear whether it had any effect on slave homicide law specifically.

The slave laws of Spain, Portugal, and France came to the Americas as part of conquest. Slavery was not common in Spain. It flourished mostly in urban centers and most slaves were female. In Castile, the *Partidas* defined three kinds of homicide: wrongful, justified, and accidental. If not done in self-defense, the killing of a slave was punished the same as killing a free person, which meant five years banishment. This Spanish law of slave homicide came to the Americas with the Spanish conquerors. In neighboring Portugal, the slave homicide laws were the same as Spain's and the Portuguese brought their slave laws to Brazil when they conquered that land. In Brazil it was a capital crime for anyone, including a master, to intentionally murder a slave. In March of 1685, King Louis XIV issued the *Code Noir*, the first slave code for the French Atlantic in the Americas. Article forty-three of the code authorized colonial officials to punish owners and overseers who murdered slaves, though killers could be absolved of punishment under certain circumstances such as slave insurrection or in the course of disciplining the slave. Fede says the *Code Noir* was implemented in New France, but there are not enough extant cases to be able to draw conclusions about how the slave law of homicide was deployed.

Despite the fact that there is no tradition of slavery in English common law, British settlers in the Atlantic islands and British North American mainland presumed it was acceptable to enslave natives and Africans. Gradually, an imperial law of slavery developed as local assemblies adopted and adapted slave laws from Spain and Portugal. Judges then developed a common law of slavery. Laws pertaining to slave homicide, however, were not taken from Iberian law, but rather were developed locally. The Barbadian legislature enacted the first slave code in 1661, and it quickly spread throughout the British Atlantic island colonies. After 1750, the Barbadian slave code made its way to the British colonial mainland. Clause twenty of the Barbadian law gave masters the right to kill a slave who had run away or misbehaved. Killing a slave for any other reason could be punished with a fine. If a third party murdered a slave, he had to pay double to slave's value, but if the killing was accidental, the master determined the compensation. Barbadian slaves did not possess the right of self-defense, except to defend their masters. Scholars commonly presume the mainland British colonies adopted the Barbadian slave code wholesale, but Fede found that only South Carolina adopted the homicide part of the code. The other colonies incorporated slave killings into the common law of homicide. In theory, killing a slave was equal to killing a free person and would be punished as such. That means a master would be executed for the intentional killing of his slave. In

practice, Fede found that the exceptions swallowed the rule. Murders of slaves that occurred in the course of discipline, insurrection, and self-defense were readily accepted and master acquitted for the killings. Few white men were executed for the killing of a slave in the North American British Empire.

After independence, states attempted slave law reform, including the homicide laws. The tendency was to equate the murder of a slave with the murder of a free white man, but the practice allowed for so many exceptions that only a few masters were executed for killing their own slaves. Almost all of these men were outcasts in their own communities. Virginia, South Carolina, and Texas each executed one master. Tennessee executed two men who were not masters. As the nation expanded westward, the slave homicide laws of the new states were like those of the old. American slave law proclaimed in the books that slaves were entitled to the same protections as whites, but in practice the law operated to serve the master's economic interests. *Homicide Justified* gives us a comprehensive examination of the law of slave homicide from ancient times to the abolition of slavery in the United States.

Mary R. Block

Professor of History

Valdosta State University

Mary R. Block has published articles and book chapters on Anglo-American rape law in early modern England and nineteenth-century America. She teaches a course on the History of Murder.