BOOK BRIEFS

The Law of Freedom and Bondage: A Casebook. By Paul Finkelman. New York, London, and Rome: Oceana Publications, Inc., 1986. Pp. 281 $30.00-(Cloth) (Paper $15.00)

Reviewed by Judith K. Schafer*

Scholars interested in the impact of slavery on the United States during the antebellum period and the thorny legal issues that bondage raised in free and slave states will be pleased by the appearance of Paul Finkelman's *The Law of Freedom and Bondage: A Casebook.* Although less complete than Helen T. Catterall's classic five-volume *Judicial Cases Concerning American Slavery and the Negro,* Finkelman's book is useful because it is organized by topics rather than by states and because it includes statutes and other primary materials on the law of slavery as well as reports of cases. The author chooses to omit the leading federal cases dealing with slavery in favor of little known and less accessible state cases because slavery had its greatest impact on state law during the antebellum period. The selections show that the perpetuation of slavery necessitated the passage of specific statutes to maintain the institution and existing laws had to be interpreted to accommodate the peculiarities of the institution. The result of the author's efforts is a useful and interesting collection of important materials on the law of slavery.

Finkelman concentrates on four broad topics: the origin of slavery, the abolition of slavery in the North, manumission of slaves in the South, and the criminal law of slavery. The first section presents materials that show how early colonial courts grappled with the complex legal issues presented by the conflict between slavery and common law precedents. For example, although common law precedent held that children followed the condition of the father, colonial slave law required children to follow the condition of slave mothers. As early as 1740, South Carolina law held that "slaves shall follow the condition of the mother"[1], which came to be the law in all slave states.

In the section on the abolition of slavery in the North, Finkelman presents cases and statutes arising from the abolition of slavery in England, the gradual abolition of slavery in the northern states, the passage of the Northwest Ordinance, and the problem of the status of a slave who entered a free state and was freed by touching free soil. Southern courts increasingly denied the liberating effect of free soil as they became more defensive about the institution of slavery. This issue would finally be decided in the United States Supreme Court's landmark decision in *Dred Scott v. Sanford*[2].

The section on manumission deals with freedom suits based on transportation of a slave to a free state or territory as well as the growing tendency of

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1. P. FINKELMAN, THE LAW OF FREEDOM AND BONDAGE 7 (1986).
2. 60 U.S. (19 How.) 393 (1856).

many southern states to make emancipation increasingly difficult. Defenders of slavery came to believe that plantations could not be economically successful without slave labor, and therefore, emancipation would insure economic ruin. Manumission also meant admitting that slaves were not perfectly content in their servile status, an admission that made slaveowners uncomfortable. Free Blacks were also considered to be a disturbing influence on the slave population; many states required freed Blacks to leave the state following emancipation.

In the last section, the writer selects materials that involved slaves as perpetrators of crime as well as victims of violence. Finkelman presents a series of cases to show the problems faced by judges in their attempts to apply English common law to crimes committed by or committed against slaves. Some judges were unsure of whether slaves were persons under the law. If they were, masters could be charged with murder or manslaughter if they killed their slaves, a circumstance that would tend to undermine the power of the master over his slave property. An even thornier problem arose when slaves were the perpetrators of serious crimes. Obviously, slaves could not be tried by a jury of their peers or testify against Whites if the system of strict discipline were to be maintained. Given the possibility of coercion, could the confession of a slave be accepted at face value?

There are minor errors in this casebook. The publisher reversed pages 74-75, and Finkelman uses the ungrammatical *libre gens de couleur* to describe Louisiana's *gens de couleur libre*. However, such lapses are few and do not seriously detract from an enjoyable and useful book.

Finkelman strings his materials together with brief paragraphs that both clarify the issues at hand (often by a series of thought-provoking questions) and provide transitions to the next case report or statute presented. These commentaries, as well as a useful case index and an attractive paperback price make the book a good choice for courses on legal history and southern history alike.