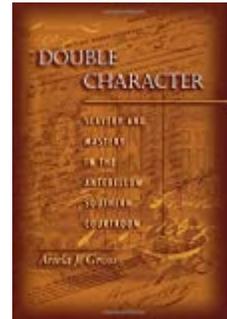




Ariela J. Gross. *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom.* Princeton: Princeton University Press, 2000. xi + 263 pp. \$47.50 (cloth), ISBN 978-0-691-05957-0.



Reviewed by Bruce W. Eelman (Department of History, Siena College)

Published on H-South (August, 2002)

A Warranty for Life

A Warranty for Life

In his seminal study of slavery in western culture, David Brion Davis found that all slave societies wrestled with “the essential contradiction in thinking of a man as a thing.”[1] Since then, a rich scholarship on American slave law has explored the blurred lines between the slave as legal property and the slave as person. By sampling warranty and hire cases in five states of the Deep South—Georgia, South Carolina, Alabama, Mississippi, and Louisiana—Ariela J. Gross looks to provide a yet deeper examination of “the paradoxes that arose from slaves’ double identity as human subjects and the objects of property relations at one and the same time” (p. 3). Gross conflates the duality of slavery through her use of the concept of “double character.” Beyond the slaves’ dual nature as person and property, Gross finds further binaries between the character of masters and slaves; between the character of southern honor and the commercial marketplace; and between the character of written law and customary rights. In the process, she presents a multi-faceted story that dissects the very nature of racial ideology in the Old South.

Gross begins with an examination of the interconnectedness between slavery and law in the antebellum South. In most cases, southern lawyers either were planters or aspired to be planters. Added to this high incidence of slaveholding was the fact that the majority of a lawyer’s business was commercial litigation which usually meant disputes over slave sales or hires. Gross reminds us that in the antebellum Deep South, slave markets were buzzing due to the rapid expansion of the cotton belt and the ready supply of slaves from the Upper South.

In most slave sales, the seller included an express warranty that the slave was “sound in body and mind and slave for life” (p. 33). If a buyer found a defect in the condition or character of the slave after purchase, the buyer could bring suit for breach of warranty. A central element in the warranty trials, Gross suggests, was the contest over honor. Gross draws on Bertram Wyatt-Brown’s concept that white southerners upheld a tradition of honor through the use of cultural masks. The slaveowner wore the mask of the beneficent paternalist, the slave was to wear the mask of the contented servant.

Slave warranty cases, however, had the potential to tear away these masks through open discussion of habitual slave runaways, ill-treatment at the hands of the master, or deceit on the part of the seller. “[T]he unmasked slave,” Gross observes, “might have the power to unmask the master” (p. 55).

Both buyer and seller looked to preserve their honor at trial. Paternalism was one ingredient in a slaveowner’s honor. Lawyers for the defense often contended that the slave in question was physically and morally sound under the seller’s twin role as provider and disciplinarian. Thus, it was the actions of the buyer that accounted for a slave’s poor performance. Buyers charged sellers with lying about a slave’s condition and blamed the prior owner for problems with slave property. Yet Gross is careful to note that the paternalism she finds in warranty trials was not pre-bourgeois in form. Indeed, paternalist rhetoric was used at these trials to determine legal responsibility and monetary damages for defective slave property.

Honor in the Old South could not exist without the presence of its opposite, dishonor. Gross finds that warranty trials were carefully structured to maintain the dishonored position of black slaves. This was achieved most notably through the ban on slave testimony. “A culture that made a man’s word his badge of honor,” Gross observes, “stripped people of honor by denying them words” (p. 62). Slaves were further dishonored at warranty trials by having to bare their bodies to prove the existence of disease or maltreatment. Gross contends that these efforts to ensure dishonor were part of a larger goal “to remove agency from enslaved people” (p. 89). Lawyers for both sides of a warranty case argued that slaves did not independently choose to run away or resist work. Instead, Gross finds that the courtroom adhered to a “theory of slave ‘vice’ [which] removed agency from the slave and portrayed the slave as an extension of his master” (p. 83). Either excessive discipline or overindulgence could usually explain slave vice. In some cases, habitual runaways or hostile slaves were diagnosed with diseases of the mind and body. Southern doctors became experts at reading slaves’ bodies for signs of ill-treatment, disease, or deception on the part of the slave. “In order to

rid the courtroom of even the specter of slaves’ agency,” Gross argues, “doctors asserted their professional authority as the highest experts on slave bodies” (p. 141).

However, masters were never wholly successful in preventing slave agency. Gross finds that “[i]t was impossible to hear suits about the condition of human beings without hearing from the human beings themselves” (p. 69). Although slave testimony itself was banned, testimony from other witnesses made clear the independent thoughts and actions of slaves. Witnesses testified that slaves ran away to be with family, to avoid a potential sale, or to return to a former master. In each of these cases, slaves made their own conscious decisions.

Gross’s repeated use of the term “agency” is, at times, problematic. At each stage of the trial, from the actions of the judges and lawyers to witnesses and juries, Gross finds a consistent effort to deny slaves’ agency. Indeed, she even extends her analysis to include laws against slave access to alcohol “as a way to remove agency—and honor—from slaves” (p. 146). It seems equally likely that whites imposed these prohibitions because they feared the effects alcohol would have on slave productivity and the chances of rebellious behavior. Gross’s concept of agency is not clear and would benefit from a more direct discussion of the historiography of human agency.

One other minor issue relates to changes in the nature of warranty trials over time. In the statistical appendix, Gross’s numbers point to a significant rise in the percentage of verdicts for slave buyers in the 1850s. In the text, however, Gross does not clearly wrestle with the question of how warranty trials were affected by the sectional tensions of the last antebellum decade.

These are small quibbles. Ariela Gross has made a substantial contribution to our understanding of slavery and the law in the Old South. Her work should stand as a model for integrating legal, social, and political history while still telling a coherent and compelling story.

Note

[1]. David Brion Davis, *The Problem of Slavery in Western Culture* (Ithaca: Cornell University Press, 1966), p. 58.

If there is additional discussion of this review, you may access it through the network, at:

<https://networks.h-net.org/h-south>

Citation: Bruce W. Eelman. Review of Gross, Ariela J., *Double Character: Slavery and Mastery in the Antebellum*

Southern Courtroom. H-South, H-Net Reviews. August, 2002.

URL: <http://www.h-net.org/reviews/showrev.php?id=6697>

Copyright © 2002 by H-Net, all rights reserved. H-Net permits the redistribution and reprinting of this work for nonprofit, educational purposes, with full and accurate attribution to the author, web location, date of publication, originating list, and H-Net: Humanities & Social Sciences Online. For any other proposed use, contact the Reviews editorial staff at hbooks@mail.h-net.org.