
Introduction

The world of Harriet Ames was not the world of republican companionate marriage or of plantation patriarchy. She and Solomon Page arrived in Mexican Texas from New Orleans just before the Anglo-Texan War of Independence. In keeping with the customary way of dealing with the shortage of Catholic priests, required by law to perform weddings if they were to be valid, the couple married contractually, or by bond, in the District of Brazoria. Like so many southern women and men seeking a fresh start in Texas, no sooner had the two established this makeshift marital relation than Solomon obtained for them the more than 4,600 acres of land available to settling spouses. Rather than help cultivate the new tract, which the pair owned coequally under the Hispanic regime, Solomon gambled away all their meager belongings. Shortly thereafter, he abandoned Harriet and her two small children to join General Houston's army. As Solomon decamped, Harriet made her feelings clear with the comment: "I hope . . . the first bullet . . . fired will pierce your heart, and just leave you time enough to think of the wife and children . . . you left to die of starvation in this wilderness."¹

Santa Anna's army soon approached, and Harriet joined the wild scramble to the east, commonly referred to as the "Runaway Scrape." During this chaotic episode she met the notorious Colonel Robert Potter. A former member of Congress from North Carolina, the colonel was known throughout the South for "Potterizing," or castrating, a Methodist preacher and seventeen-year-old boy whom he had suspected of having sexual relations with his wife. A singularly beautiful

woman, Harriet quickly stimulated Robert's interest. As the newly appointed Secretary of the Texas Navy, he persuaded Harriet to lodge with him on board ship in Galveston Bay. After rebuffing the entreaties of Solomon to return and learning that her unsolemnized bond marriage with him did not legally bind her in any case, she agreed to settle down with the colonel. She then sealed with him her second bond marriage. Following independence from Mexico, Robert applied for and obtained for them the full headright of land available to married men in the new Republic of Texas.²

For six years, the Potters worked their homestead in the Old Red River County. Along with Harriet's children, they established themselves in the area as a bona fide family. Solomon Page filed for divorce in 1840, but this caused the couple little concern. When Harriet received notice of the suit, Potter advised her to "give herself no trouble about the matter, but leave it with him and he would attend to it." Harriet easily discarded her failed "marriage" to Solomon, but dire events beset her and Robert in the spring of 1842. At that time, the colonel prevailed upon the Texas Congress to issue a requisition calling for the citizens of the republic to bring William Pinkney Rose to justice, dead or alive, for the murder of the Panola County sheriff. "Old Rose," leader of the Harrison County regulators, and John W. Scott, his son-in-law, decided to exact vengeance. They and nine other men descended upon the Potter homestead at dawn one morning. Harriet reminded the colonel that they had a cannon and plenty of firearms and urged him to stand with her and fight to the death. Instead, Robert fled on foot toward Caddo Lake, about a hundred yards behind the house. Diving into the water just steps ahead of his pursuers, he never had a chance. Scott shot the colonel dead when he came to the surface for air. Having loaded the small artillery piece with buckshot, Harriet accosted Rose and snarled, "If only I had a match to touch off this cannon, I would shoot your tongue down your throat." The regulators left her unmolested and departed, after Scott had impressed upon Rose that she was "too brave a woman to kill." Harriet held on to the land for many years, but was finally dispossessed. She died in New Orleans at the age of eighty-four, a gritty survivor of a violent and unruly frontier.³

Harriet's life with Robert was hardly amenable to republican matrimonial ideals or southern patriarchal gentility. It seems unlikely, however, that she ever gave much thought to how frontier pressures had

intertwined with the peculiar practice of marriage by bond, the Hispanic matrimonial regime, land-grant policies, and Anglo-Texan hegemony to shape her “domestic” life in distinctive ways. On the other hand, any jurist familiar with antebellum Texas would have rejected out of hand the proposition that the post-independence law relevant to families, sexual behavior, and kinship simply replicated that found in the urbanizing republican North or the more settled plantation South.

Historians writing about the family and its institutional context have provided important, yet circumscribed, approaches for an integrated study of the law relevant to frontier households and sexual intimacy in antebellum Texas. Beginning in the early 1960s, scholars committed to the “new social history” began relying on demographic information to assess the material existence and everyday lives of common people. This approach, however, viewed the law and the mechanisms of governance as essentially superstructural and thus deemphasized the legal system.⁴ In the late 1970s, historians turned their focus from the inner aspects of family life outward to the laws, state apparatuses, and policies that established normative relations within the family and sanctioned deviance among its members. While revealing the inextricable connection of state power, private life, and culture in nineteenth-century America, the new scholarship usually concentrated on treatise writers, appellate justices, and legislators. By the same token, these scholars often ignored how flesh-and-blood individuals actually interacted with the law and its institutions in particular social situations.⁵ In essence, legal historians interested in the family focused too much on the “top” in their effort to improve an approach that had concentrated too much on the “bottom.”

Michael Grossberg’s *Governing the Hearth* marked an important departure in this line of inquiry. He perceived a substantial shift in the nineteenth century from patriarchal family norms to more egalitarian household relations—a result of republican idealism. In his view, the nineteenth century was the time when jurists, legislators, and commentators fundamentally redirected governance of the home. Legal changes attendant on industrialization and urbanization created a new distribution of power among spouses and their children, and between the household and the state. Under this “republican family” orientation, the rights and status of its members were made more equal.

Society viewed marriage in more consensual terms, and consequently men and women based their marriages on companionate ideals. As husbands shouldered responsibilities in the marketplace, wives became custodians of a restricted “domestic sphere.” Spouses placed a new emphasis on romantic love, reciprocal obligations and duties, mutual respect, and the importance of child-rearing. The United States bench, a “judicial patriarchy,” correspondingly assumed the primary burden of state intervention to inculcate and support this new version of the family.⁶

While perpetuating the nearly hermetic study of lawmakers, rule structures, and cultural ideals, Peter Bardaglio argued that Grossberg’s conceptualization has questionable relevance to the Old South. Building on the theory of southern exceptionalism, his *Reconstructing the Household* constituted the first effort to analyze comprehensively domestic relations and the law governing them in the nineteenth-century southern states.⁷ This work particularly emphasized the inapplicability of Grossberg’s explanation to a society that often defined the household to encompass not only white family members but also slaves and their children, including those who had slave-owning patriarchs as fathers. Given the inherent inequities of this arrangement, a middle-class, egalitarian system of family government hardly explained the development of southern domestic relations and pertinent law.⁸

Bardaglio argued that the antebellum South saw itself as the defender of the traditional patriarchal household. In this conception, the broader Victorian culture encouraged more equality and affection among southern spouses and their children. The family, however, remained the chief vehicle for the exercise of authority. As in the colonial period, the rule of fathers and husbands, a powerful ethos of male honor, and strong kinship bonds continued to provide the key sources of order and stability, reducing the role of the state in household regulation. Reflecting the conclusions of Catherine Clinton and Bertram Wyatt-Brown, Bardaglio maintained that southern family relations consequently rested more on hierarchy and dependence than on egalitarianism and consent. The sexual access of slave-holding men to their wives and bondwomen forged patriarchy as a system shaping both race relations and gender. With the support of their planter allies, southern lawmakers worked to maintain this arrangement. While imposing legal changes on society that marginally liberalized the law

of slavery, married women's property, divorce, and child custody, they worked systematically to secure the dominance of both common and elite white men.⁹

A growing body of research reveals the inadequacy of a monolithic patriarchal model to describe antebellum southern family mores and the relevant law.¹⁰ Several works in the past fifteen years show that analyses built exclusively on planter hegemony and the cult of male honor are too blunt to account for the considerable variety in family relations within particular regions and among various groups. Victoria Bynum's *Unruly Women*, for example, showed how both white and black women in the North Carolina Piedmont Region resisted male dominion and the efforts of courts to enforce ideals of domesticity.¹¹ Bynum's work revealed that differences in wealth, class, kinship affiliation, local economies, and neighborly relations figured heavily in the pattern of female resistance and independence. Suzanne Lebsock's *The Free Women of Petersburg* examined well-to-do white women in Petersburg, Virginia, from 1784 to 1860.¹² A significant number of these women found work for wages and acquired separate estates in marriage, or otherwise refrained from matrimony and thus experienced increasing independence. This assertive female response to agricultural depressions arose in the face of an antifeminist and patriarchal culture.

Scholarship utilizing an expanded conception of gender has laid the groundwork for a history of family and law in the antebellum South that transcends the reductionist patriarchal paradigm. In the last decade, feminist historians have made gender central to theoretical thinking about social history. As early as 1975, however, Natalie Davis suggested that investigation of the ways that societies and institutions have constructed gender should consider women and men equally. Especially since the publication of Joan Wallach Scott's *Gender and the Politics of History*,¹³ numerous historians have utilized the postmodern and poststructuralist theories of Jacques Derrida and Michel Foucault to deconstruct gender regimes defining femininity and to question the notion of an unchanging definition of maleness. These historians have "problematized" masculinity and male sexuality, opening them up to closer scrutiny and examining much more carefully their transformations across time and space.¹⁴

In *A Family Venture*, Joan Cashin built on advances in the study of gender to explore planter women and men who migrated to the Old

Southwest.¹⁵ This work showed that the loss of extended family networks in the seaboard South and a socially unchecked “manly independence” on the frontier induced radical alterations in sex roles and in the traditional paternalistic relationships of planter couples and their slaves. Cashin’s book undoubtedly relied on an interpretive framework more sophisticated than that which earlier historians of southern women and the family had used. It did not, however, explore thoroughly the relationship between frontier conditions, the relationships of settling women and men, and the law. Nor did it examine the mores of the preponderant yeoman class or the fundamental social and legal transformations occurring in Texas as white insurgents from the United States displaced Mexican authority there in the mid-1830s.

Investigations of modern imperialism and the work of postcolonial theorists suggest that a thorough study of families and the law in the Old South should transcend the traditional focus on white society and African-American slaves. Three decades ago, Philip Mason’s *Patterns of Dominance* described the sexual and reproductive implications of racial ordering for an array of colonized groups in the Americas, Africa, and Asia during the age of European imperial expansion.¹⁶ George M. Fredrickson’s *White Supremacy* identified these processes among enslaved blacks and whites in the Old South.¹⁷ While more recent postcolonial scholars often emphasize the impossibility of objective historical analysis and the invalidity of “univocal” narrative, their work has reinforced the determination of researchers to question hegemonic discourses and reinstate the marginalized within historical writing.¹⁸ Postmodern scholars and those working in the empirical humanist tradition have thus provided the conceptual means for a description of the sexual relationships, family mores, and pertinent legal regimes that developed on the multiracial southwestern frontier during the antebellum period. Such an approach, furthermore, usefully emphasizes that “family” included not only legal spouses and their children but also couples and blood kin whose connections were not necessarily contained neatly within the discrete racial and legal categories shaping conceptions of appropriate social organization.

New historical methodology concentrating on gender suggests that investigations of the Old South have unnecessarily delimited scholarship dealing with the family, sexual mores, and their relationships to the law. Feminist historians have emphasized the need to explore the construction of gender through the examination of topics not tradi-

tionally associated directly with women, such as high politics and the myriad uses of public power.¹⁹ Several recent works examining sex roles in the multicultural colonial South have expanded the matrix of analysis by combining the study of legal discourses, race, and class.²⁰ Most research on legal development and the family in the Old South, however, has dealt primarily with the private laws and institutions explicitly affecting the relationships of white family members and, to a lesser extent, their slaves. A more comprehensive study would also examine the ways state power, in behalf of nominally public purposes, interacted with the law of domestic relations to shape family norms, sexual mores, and gender among the full array of racial groups that inhabited the expanding antebellum South.

Developing approaches in legal history indicate the insufficiency of a model of law and society in the Old South that concentrates on the ways patriarchal lawmakers systematically protected their economic interests and imposed their dominance and ideals on the lower orders. Historians have come to recognize, first of all, that antebellum southern law retained autonomous Anglo-American common-law principles in the face of economic forces associated with slavery and the initiatives of elites.²¹ Legal historians have increasingly emphasized, furthermore, that nineteenth-century United States law and society changed synergistically, rather than simply "from the top down."²² Building on the work of S. F. C. Milsom, English legal historian Robert C. Palmer revealed the often unanticipated patterns of social and legal change, rooted in a dynamic interaction among society, government, courts, legal practitioners, and litigants.²³ No study of the Old South, however, has examined the development of law, society, and the family from this perspective. Much less has there been heretofore an attempt to describe legal change relevant to families, sex roles, and race that includes the ecology and demography of the antebellum southern frontier within an interactive framework.

A substantial body of scholarship indicates a rough description of antebellum Anglo-Texan families and the law relevant to them. Traditional studies show that white southerners arriving in Texas after 1821 built a loosely organized and precarious social order based on land greed and rampant individualism. A number of historians have revealed the exceptional unruliness of frontiersmen in antebellum Texas and, more recently, the unusual autonomy of women settling there.²⁴ Joseph W. McKnight and others have identified how the Hispanic

community property regime and homestead exemption laws met the needs of early settlers.²⁵ Few scholars, however, have attempted to reconcile these findings or describe the entire array of law relevant to the sexual and marital relationships of Anglo-Texan men and women.

Traditional studies and contemporary research suggest the outlines of a transracial pattern of intimacy and social-legal ordering that developed in Texas during the four decades preceding the Civil War. The pioneering work of Harold Schoen in the late 1930s and, more recently, Ann Patton Malone's *Women on the Texas Frontier* explored the sexual involvements of black women and white men in Texas amid hardening institutional and social restraints stemming from Anglo-American racism and slavery.²⁶ Jane Dysart similarly analyzed the legal and extra-legal relationships of Hispanic women and men within the increasingly dominant group between 1830 and 1860. Arnolfo De León's *They Called Them Greasers* examined racist Anglo-American attitudes undergirding this development.²⁷ Historians have given very little attention, however, to the larger patterned interrelationship of Texas public and private law, families, sexual behavior, and gender. Nor have they examined how frontier conditions, slavery, and white supremacy affected sexual relationships and family mores within the distinctive multiracial and multicultural setting of the state.

In an ethnically complex and rapidly transforming frontier polity, circumstances like those Harriet Ames encountered produced problematic family norms that would test singularly the skills and creativity of Texas lawmakers. Her pioneering career and adventures with Robert Potter were certainly spectacular. Her relationships with both Solomon Page and Potter, however, highlight some of the more distinctive features of Anglo-Texan matrimony. Like the colonel, many homesteaders from the more settled South easily escaped failed marriages. In a poorly organized society with little public surveillance, pragmatic immigrants—often fleeing debt—established and terminated their own marital relations with limited consideration of legal niceties. In primitive conditions, the practical benefits of marriage and, for much of the period, the lure of inexpensive land being sold in larger portions to those with spouses prompted hastily arranged and unstable unions. Stressful circumstances, the inaccessibility of courts and officials, and the scant regard for marital pro-

cedures also encouraged informal coupling and uncoupling, illicit cohabitation, bigamy, and adultery. Like Page, immigrant southern men were frequently self-absorbed and devoid of a sense of family obligation. More than a few, like Potter, were violent and jealous of their wives. On the other hand, many homesteading women, like Ames, were more mesquite than shrinking violet and certainly tough enough to meet the challenges of the frontier. In an erstwhile Mexican province inhabited by wary Tejanos, often hostile Indians, and immigrant Ameses, Pages, and Potters, Anglo-Texan law relevant to sex and the family would have to be different from that of the more civilized states of the nation. In order for invading Anglos, eager to reinforce slavery and secure their dominance, to establish a functional law of domestic relations and sexual intimacy, it had to be pragmatic, neither imported nor idealistic.

The present study will show how frontier society and public institutions both shaped and responded to family and sexual norms in antebellum Texas in ways radically different from those of the urbanizing North and the more settled states of the slave South. Republican idealism, patriarchy, and racism certainly affected the development of society and family life in Texas from 1823 to 1860. The frontier, however, channeled these influences in extraordinary ways, which often resulted in unintended social and legal patterns. Stressful living conditions, institutional disarray, land-grant rules designed to promote rapid settlement, and a dysfunctional law of matrimony made settling Anglo-Texan families highly unstable, as did the often self-indulgent and sexually promiscuous behavior of Anglo-Texan men. Post-independence law adjusted to a double standard that permitted these men sexual liberty with Indian, Tejano, and black women but made relatively scarce Anglo women accessible to them usually only through marriage. Even so, pioneer conditions, land policy, and the Hispanic matrimonial property regime prompted homesteading spouses to work cooperatively and often ruthlessly as conjugal joint venturers, grounding their marriages in survival and economic imperatives rather than in republican family ideals.

With only tenuous connections between common folk and the legal system, Texas law relevant to sex and the family developed reciprocally with frontier social transformation. To a large degree, the law developing after Anglo-Texan independence was progressive and pragmatic, bolstering Anglo families and their property rights. Building on and

deviating from Hispanic legal principles, the law empowered Anglo-Texan women to function in their autonomous marital roles, ensured them the material rewards of their arduous settlement efforts, and provided them relief from abusive and neglectful husbands. In pioneer circumstances, patriarchal authority gave ground to female autonomy. Legal rules accommodated both the frontier conditions inducing extra-marital sexual relations among women and men and the practical considerations discouraging marital dissolution. Innovative domestic relations law and rules relevant to sexual behavior, however, also worked within a larger institutional construct of Anglo-Texan supremacy to position Anglo families atop a racial-caste hierarchy that subjugated slaves and subordinated free blacks, Indians, and Tejanos.

Homesteads Ungovernable
