
**JUDGES
AND SLAVES**

In memory of Professor Wiktor Osiatyński

An immoral law makes it a man's duty to break it, at every hazard. For virtue is the very self of every man. It is therefore a principle of law that an immoral contract is void, and that an immoral statute is void. For, as laws do not make right, and are simply declaratory of a right which already existed, it is not to be presumed that they can so stultify themselves as to command injustice (...) Here is a statute which enacts the crime of kidnapping,—a crime on one footing with arson and murder. A man's right to liberty is as inalienable as his right to life.

Ralph Waldo Emerson

JERZY ZAJADŁO

JUDGES
AND SLAVES

SKETCHES FROM
THE PHILOSOPHY OF LAW

TRANSLATED BY
DAVID MALCOLM

IN COOPERATION WITH
JERZY ZAJADŁO

GDAŃSK UNIVERSITY PRESS

GDAŃSK 2019

Reviewer
Professor Wiktor Osiatyński

Technical editing
Agnieszka Kołwzan

Cover and Title Page Design
Karolina Zarychta
www.karolined.com

Typesetting and Page Layout
Michał Janczewski



All images used in this book are in the public domain

This publication is financed from the statutory resources of
the Faculty of Law and Administration of the University of Gdańsk,
from the resources of the Rector of the University of Gdańsk,
and from the statutory resources of the Department of the Theory and Philosophy of
the State and of Law, Faculty of Law and Administration of the University of Gdańsk

© Copyright by University of Gdańsk
Gdańsk University Press

ISBN 978-83-7865-890-0

Wydawnictwo Uniwersytetu Gdańskiego
ul. Armii Krajowej 119/121, 81-824 Sopot
tel./fax 58 523 11 37, tel. 725 991 206
e-mail: wydawnictwo@ug.edu.pl
www.wyd.ug.edu.pl

Internet bookstore: www.kiw.ug.edu.pl

Printed and bound by
Zakład Poligrafii Uniwersytetu Gdańskiego
ul. Armii Krajowej 119/121, 81-824 Sopot
tel. 58 523 14 49; fax 58 551 05 32

Contents

INTRODUCTION

The Constitution – A Covenant with Death and an Agreement with Hell 9

1. Prosecutors, Vindicators, and Historicists 11
2. Thomas Jefferson: American Sphinx 17
3. A Pro-Slavery Constitution – Despite Everything 24
4. History and Paradigms 29

CHAPTER I

Justice William Murray, 1st Earl of Mansfield:
Somerset v. Stewart and *Gregson v. Gilbert* 37

1. Lord Mansfield 39
2. *Somerset v. Stewart* 47
3. The Massacre Aboard the *Zong* 52

CHAPTER II

Justice William Cushing: *Commonwealth v. Jennison* 65

1. “A Mortal Wound” 67
2. The *Quock Walker Cases* 72
3. Four Riddles 75
4. The Paradigmatic Dimension 84

CHAPTER III

Justices George Wythe and St. George Tucker: *Hudgins v. Wright* 89

1. The Case of *Hudgins v. Wright* 91
2. George Wythe and St. George Tucker 95

CHAPTER IV

Justice John Marshall: The Case of *The Antelope* 101

1. The Sea and Slaves 103
2. The Case of *La Jeune Eugenie* 107
3. The Case of *The Antelope* 109

CHAPTER V

Justice Lemuel Shaw: *Commonwealth v. Aves* 115

1. Judicial Disobedience 117
2. *Commonwealth v. Aves* 122
3. Justice Lemuel Shaw 127

CHAPTER VI

Justices Thomas Ruffin and William Gaston: *State v. Mann* and *State v. Will* 133

1. Thomas Ruffin and William Gaston 135
2. *State v. Mann* and *State v. Will* 140
3. Pierre Bourdieu's Reflexive Sociology 146

CHAPTER VII

Justice Joseph Story: *Prigg v. Pennsylvania* 155

1. The Fugitive Slave Clause in the 1787 Constitution 157
 2. The Law on Fugitive Slaves of 1793 159
 3. From Compromise to Conflict 162
4. The Paradigmatic Importance of the Verdict 163
 5. The Facts and the Verdict 166
 6. Justice Joseph Story 171
7. The Paradigmatic Dimension of Dilemmas of Judicial Conscience 177

CHAPTER VIII

Justice Joseph C. Hornblower:
State v. The Sheriff of Burlington and *The New Jersey Slave Case* 179

1. Chief Justice Joseph C. Hornblower 181
2. *State v. the Sheriff of Burlington* 186
3. *The New Jersey Slave Case* 189

CHAPTER IX

Justice Levi Woodbury: *Jones v. Van Zandt* 191

1. On the Subject of the Underground Railroad 193
2. The Literary Equivalent – John Van Trompe 198
 3. *Jones v. Van Zandt* 201
4. Justice Levi Woodbury 203

CHAPTER X

Justice Roger B. Taney: *Dred Scott v. Sandford* 207

1. The *Dred Scott v. Sandford* Decision – Lawful or Shameful? 209
 2. Who Was Dred Scott? 211

3. Promising but Ultimately Unfavorable Beginnings 214
4. The Tragic and Ultimately Unsuccessful Finale 216
5. Justice Roger B. Taney 219

CHAPTER XI

Justice John McLean and Justice Benjamin R. Curtis:
Dissenting Opinions in the *Dred Scott v. Sandford* Decision 225

1. Justice John McLean 227
2. Justice Benjamin R. Curtis 229

CHAPTER XII

Justice Joseph Rockwell Swan: *Oberlin – Wellington Rescue* 233

1. The Unusual Oberlin College 235
2. *Oberlin – Wellington Rescue* 236
3. Two Different Reactions 238
4. The Trials 240

CHAPTER XIII

Justice Abram D. Smith: *Ableman v. Booth* 243

1. The Defiant Citizens of Wisconsin 245
2. The Cases *Booth I*, *Booth II* and *Booth III* 248
3. The *Ableman v. Booth* Case 251

EPILOG

The Thirteenth Amendment of the Constitution 253

BIBLIOGRAPHY 263

INDEX OF PERSONS 283

INDEX OF CASES 288