On Slavery

by David O Jones

The following information was prepared as testimony for the Tennessee House State & Local Government Committee in 2009.

The language of HJR 7, sponsored by Rep. Brenda Gilmore, in which the Tennessee Legislature is to express a "solemn apology" (or "profound regret"), is both inflammatory and expresses a biased view of Southern history.

Paragraph three (3) states that "Africans forced into slavery were brutalized, humiliated, and dehumanized." While domestic slavery was and is a humiliating situation which very few would ever want to revive, the laws of Tennessee protected them from being "brutalized" and "dehumanized." **Tennessee law required slave-owners to feed, clothe, house, and provide medical attention to their slaves.** The decisions of the Tennessee Supreme Court in upholding the conviction of men who violated those laws is evidence that those laws were taken seriously. (9 Tenn 156-William Fields v. State of Tennessee. Nashville, January 1829; 29 Tenn 268-Lunsford and Davie v. Baynham, Nashville, December, 1849; 30 Tenn 171-Wherley v. The State. Nashville, December, 1850; and many others.)

Later, in paragraph six (6), it is stated, "the system of slavery, having been sanctioned and perpetuated through the laws of Tennessee and the United States, ranks as the most horrendous depredation of human rights in our nation's history." I would counter that the forced removal of the Cherokee known as "The Trail of Tears" in which 4,000 of 15,000 Cherokee died takes on all comers as "the most horrendous depredation of human rights in our nation's history."

Paragraph seven (7) states, "the Civil War, which was fought over the slavery issue." Renowned historians do not agree on the cause of that war, therefore the statement cannot be used as a basis in fact for any argument.

A final objection from a specifically Biblical point of view. Paragraph eleven (11) asks government to repent. Government can't repent, only individual souls can repent.

<u>Positive argument for Tennessee:</u>
In 1860, out of a total white population of 8 million people, only 385,000 were slaveholders (or 4.8%). And according to the 1830 census, more than ten thousand slaves were owned by free-Blacks in the states of South Carolina, Louisiana, Virginia, and Maryland.

Fact #1. **Yankees controlled slavery.** The center for the slave trade was Newport, Rhode Island. In 1850, the port boasted a fleet of 170 slave ships each of which could carry 60 to 150 slaves across the Atlantic. They carried approximately 20,000 slaves per year.

FACT #2. **The earliest activists in abolishing slavery were Southerners.** The first paper published exclusively in the interest of freeing slaves was "The Emancipator" published in 1820, in **Jonesboro, Tennessee**. By 1826, there were 143 emancipation societies in the United States and 103 of those were in the South. In 1817, the American Colonization Society was founded by slave-holders from Kentucky, Virginia, and Maryland to provide an opportunity for Africans to return to their native soil.

This attachment is intended to set the record straight as far as THE PRACTICE OF SLAVERY IN TENNESSEE

(as reflected in the records of the Tennessee Supreme Court)

Regarding the killing of a slave.

9 Tenn 156 - WILLIAM FIELDS v. STATE OF TENNESSEE. Nashville, January, 1829.

[David Jefferies of ***Maury County*** was found guilty of manslaughter in the death of a negro slave, Peter. He appealed the verdict on the grounds that TN statute outlawed murder of a Negro, but not manslaughter.]

In a Unanimous Decision of the Court, Judge Whyte wrote:

"Our act of Assembly of 1799, ch. 9, sec. 1, enacts, "that if any person shall wilfully and maliciously, with malice aforethought, kill any negro, or mulatto slave whatsoever, on due and legal conviction thereof, in any superior court of the district wherein such offence shall have been committed, he shall be deemed guilty of murder, as if such person so killed had been a free man, and shall suffer death without benefit of clergy, any law, usage or custom to the contrary notwithstanding."

"The judgment rendered in the present case… is the same judgment that would have been rendered against the plaintiff in error, if the subject of the homicide had been a free man, instead of a negro slave. There is no law authorizing any distinction between the two cases."

In a Concurring opinion, Judge Peck wrote:

"I have been taught that Christianity is part of the law of the land. The four gospels upon the clerk's table admonish me it is so every time they are used in administering oaths. If the mild precepts of Christianity have had the effect to ameliorate the condition of this order of people, is it expected that we must recede from the improvement obtained, retire more into the dark, and become in government partly Christian and partly pagan because we own pagans or savages for our property?"

Regarding the freeing of a slave

22 Tenn 90 - GREENLOW v. RAWLINGS. Jackon, April, 1842.

"At a court begun and held for the ***county of Shelby***, on the 1st Monday, in February, 1837, present John Pope, etc., a petition from Isaac Rawlings, for the purpose of emancipating William Isaac Rawlings, was produced to the court, and it appearing from the report of the back of said petition made by John Pope, chairman of this court, that to grant said petition would be consistent with the interest and policy of this State, and that **bond and security [$150] had been given according to law**, it is therefore ordered and adjudged that said William Isaac Rawlings be hence-forth and forever set at liberty, thereby to enjoy all the rights and privileges of freedom."

22 Tenn 569 - HINKLIN v. HAMILTON, and HINKLINS v. HINKLIN. Nashville, December, 1842.

"The act of 1829, provides "That where any person by his last will and testament shall have directed any slave or slaves to be set free, it shall be the duty of the executor or administrator, with the will annexed, to petition the county court accordingly; and, if the executor or administrator shall fail or refuse to do so, it shall be lawful for such slave or slaves to file a bill in equity by their next friend; and, upon its being made satisfactorily to appear to the court that said slave or slaves ought of right to be set free, it shall be so ordered by the court, upon bond,"

"We will do so, but declare that the right of freedom given to the complainants, …is perfect and complete,"

Regarding the physical neglect of a slave

29 Tenn 268 - LUNSFORD AND DAVIE v. BAYNHAM. Nashville, December, 1849.

"This is an action on the case in the circuit court of ***Montgomery county***, by Baynham against Lunsford and Davie...

"It appears from the proof that, on the first of January, 1847, the slave in question was hired to the plaintiffs in error "to work on the farm," for one year. Some six or seven days prior to the 25th of February, of the same year, the slave was taken ill. The disease was bronchitis, accompanied with fever, of which he lingered, gradually becoming worse, until his death, which happened on the 21st of March ensuing. Shortly before this attack, the slave was seen driving a wagon and team; the day was extremely wet and cold, and he was clad in some old clothes, so far worn that his arms and legs, up to his knees, were wholly uncovered; he had neither overcoat, blanket, or other covering to protect him from the severe inclemency of the weather. On the 25th of February, a week after the illness of the slave, a physician, who chanced to be passing, was requested by an agent of the plaintiffs in error; to call and see said slave; he did so, and found him lying on the floor on a blanket. The physician was not called again until the first of March, when he was sent for by Mr. Davie, one of the plaintiffs in error, to visit [269] said slave, and continued to visit him until his death. On this visit he found the slave much worse, and informed Mr. Davie that if he were not particularly attended to, he would die. But there was no one, at any time, to wait upon him, capable of nursing or attending to him; and whenever the physician visited him he found him unattended to. The physician thinks that, with proper attention, the slave would have recovered…

"**The law, as administered at this day, in most of the slave States, rigidly exacts from the hirer an observance of the duties of humanity**, and that measure of care and attention to the comfort and welfare of the slave, that a master, of a just and humane sense of duty, would feel it incumbent upon him to exercise in the treatment of his own servant. If the hirer fall short of this, his application to mitigate, or set aside, the finding of a jury, visiting upon him the penalty of his neglect, as it merits no favor, will find but little in view of the court."

Regarding physical attack upon a slave

30 Tenn 171 - WERLEY v. THE STATE. Nashville, December, 1850.

"Mayhem—Castration of Slave. The act of 1829, 23, 55 (Code, Sec. 4606), making it a felony to cut off the organs of generation of another, applies to offences committed by white men upon slaves, and, therefore, a master may be indicted and convicted, under this provision, for the castration of his own slave, and the act being unlawful, and deliberately done, the law will imply malice.

"The prisoner, Gabriel Worley, was convicted in the circuit court of ***Giles***, on a charge of mayhem, committed upon the person of his own slave, Josiah. The indictment avers, in substance, that said defendant unlawfully, maliciously, and feloniously did strike, with a razor, and cut off and disable the organs of generation of the said slave…

"**We utterly repudiate the idea of any such power and dominion of the master over the slave, as would authorize him thus to maim his slave for the purpose of his moral reform.** Such doctrine would violate the moral sense and humanity of the present age. We are of opinion that the act was unlawful, and that the malice sufficiently appears, if not in fact, at least by legal imputation…

"**The slave is to be regarded as a reasonable creature in being,** in the sense of the code, and as a person upon whom the offence before stated may be committed. We consider that this view of the subject not only accords with the reason and humanity of the law, but with the obvious intention of the code in question."

Regarding the physical safety of and justice for a slave

36 Tenn 397 - JANE G. JAMES v. SAMPSON CARPER. Jackson, April, 1857.

[In ***Hardeman County***, a slave was suspected of stealing some money and was severely beaten. It was later found that a white man had committed the theft.]

"**If a slave commits a criminal offense while in the service of the hirer**, it would be sufficient cause to discharge him. And if the hirer desires to have him punished for such offence, the law has pointed out the mode, and he has the right to pursue it, but **he has no right to become himself the avenger of the violated law**, much less to depute another person in his stead. And for a battery committed on the slave under such circumstances the owner may well maintain an action against the wrong-doer in which the jury would be justified in giving exemplary damages in a proper case…

"It is the duty of the owner to protect the person of his slave**, and, in a lawful mode, to seek redress for injuries done to him…"**

Regarding the humanity of a slave

37 Tenn 455 - J.M. KIRKWOOD et al v. GEORGE MILLER. Jackson, April, 1858.

[In ***Gibson County***, a slave was killed because it was believed that he was intending to start a rebellion.]

"The Legislature has been very careful in guarding slaves against the cruelty and violence of those having no interest in, or authority over them. They are property—but have souls and feelings, and claims upon humanity. Those who take it upon themselves, in these periods of groundless panic, to slay and destroy, without the sanction of law, must do so at their peril. Every description of mob-law, and reckless, invasion of the rights of others, should be visited with the highest penalties."

Additional references to Tennessee statute

50 Tenn 653 – WM. B. ANDREWS v. HENRY PAGE et als. Nashville, December, 1870.

"**The emancipation proclamation, issued by Mr. Lincoln on the 1st day of January, 1863, had no effect in this State**, because Tennessee was not one of the States embraced in it, as was held in Gholson v. Blackman, 4 Cold., 586, 587. That case might also have rested upon the broader and firmer ground, that **the President of the United States had no constitutional authority to issue the proclamation**, and that **it was issued in direct violation of the Constitution of the United States**, which was then universally understood as legalizing slavery in the States where it existed, as well as of the joint resolution adopted by Congress on the 25th of July, 1861, which disavowed all purpose of interfering with the rights or established institutions of the States in rebellion. See McPherson's History of the Rebellion, 286.

"While the institution of slavery existed, it was generally held, in the slaveholding States, that the marriage of slaves was utterly null and void, because of the paramount ownership in them as property, their incapacity to make a contract, and the incompatibility of the duties and obligations of husband and wife with the relation of slavery:… But we are not aware that this doctrine ever was distinctly and explicitly recognized in this State…. **Wantonly to beat or abuse the slave of another, was indictable** under the act of 1813, c. 56, Car. & Nic., 678. **If indicted for a capital offense, and the master failed to employ counsel, it was the duty of the court to assign counsel for his defense at the expense of the master**, [661] by act 1835, c. 19, Car. & Nic., 683. **If employed in the master's business in apparel so tattered and torn as indecently to expose the person, the master was indictable for lewdness**: Britain v. State, 3 Hum., 203, 204. **Slaves could be witnesses for and against each other, as well as for and against free persons of color**, under the act of 1839, c. 7, Nic. Sup., 131; Code, 3808, 3809.

"**The willful murder of a slave, whether committed by the master or any other person, was punishable in the same manner as the like offense against a white person was**

punishable: Act of 1799, c. 9, s. 1, Car. & Nic., 676, 677; Act of 1829, c. 23; s. 2; Ibid, 316; Code, 4597.

"…described by Judge McKinney, in Jones v. Allen, l Head, 626: He says: "We are not to forget, nor are we to suppose, that it was lost sight of by the Legislature, that, **under our modified system of slavery, slaves are not mere chattels, but are regarded in the two-fold character of persons and property; that, as persons, they are considered by our laws as accountable moral agents, possessed of the power of volition and locomotion**, and that certain rights have been conferred upon them, by positive law and judicial determination, and other privileges and indulgences have been conceded to them [663] by the universal consent of their owners. By uniform and universal usage, they are constituted the agents of their owners, and are sent on their business without written authority; and in like manner they are sent to perform those neighborly good offices common in every community. **They are not at all times in the service of their owners, and are allowed by universal sufferance, at night, on Sundays, holidays, and other occasions, to go abroad, to attend church, to visit those to whom they are related by nature, though the relation be not recognized by municipal law; and to exercise other innocent enjoyments, without its ever entering the mind of any good citizen to demand written authority of them.** The simple truth is, such indulgences have been so long and so uniformly tolerated, that public sentiment upon the subject has acquired almost the force of positive law:

"By the act of 1787, c. 6, s. 3, a free negro, or a mulatto, was prohibited, under a penalty, from intermarrying with a slave, "without the consent of his or her master, had in writing."… **Christian masters and mistresses often consented to, and were present at, the celebration of marriages between their slaves and that the ceremony was frequently performed by white ministers, as well as by ministers of their own color.**

"The Act of May 26, 1866, s. 5, declares "that **all free persons of color, who were living together as husband and wife, in this State, while in a state of slavery, are hereby declared to be man and wife, and their children legitimately entitled to an inheritance in any property heretofore acquired,** or that may be hereafter acquired, by said parents**, to as full an extent as white children are entitled** under existing laws of the State."