INFORMATION TO USERS

This manuscript has been reproduced from the microfilm master. UMI films the text directly from the original or copy submitted. Thus, some thesis and dissertation copies are in typewriter face, while others may be from any type of computer printer.

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleedthrough, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send UMI a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

Oversize materials (e.g., maps, drawings, charts) are reproduced by sectioning the original, beginning at the upper left-hand corner and continuing from left to right in equal sections with small overlaps.

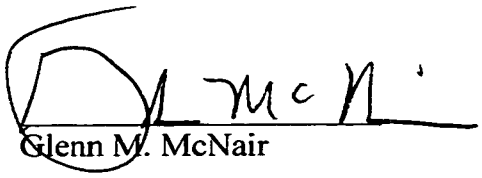
Photographs included in the original manuscript have been reproduced xerographically in this copy. Higher quality 6" x 9" black and white photographic prints are available for any photographs or illustrations appearing in this copy for an additional charge. Contact UMI directly to order.

ProQuest Information and Learning
300 North Zeeb Road, Ann Arbor, MI 48106-1346 USA
800-521-0600

UMI®

CIRCULATION AGREEMENT

In presenting this dissertation as a partial fulfillment of the requirements for an advanced degree from Emory University, I agree that the Library of the University shall make it available for inspection and circulation in accordance with its regulations, governing materials of this type. I agree that permission to copy from, or to publish, this dissertation may be granted by the professor under whose direction it was written, or, in his absence, by the Dean of the Graduate School when such copying or publication is solely for scholarly purposes and does not involve potential financial gain. It is understood that any copying from, or publication of, this dissertation which involves financial gain will not be allowed without written permission.



Glenn M. McNair

Justice Bound: Aframericans, Crime, and Criminal Justice in Georgia, 1751-1865

By

Glenn M. McNair
Doctor of Philosophy

Department of History

James L. Roark
Adviser

Leslie M. Harris
Committee Member

Dan T. Carter
Committee Member

Accepted:

Dean of the Graduate School

Aug 5, 2001
Date

Justice Bound: Aframericans, Crime, and Criminal Justice In Georgia, 1751-1865

By

Glenn M. McNair
B.S., Savannah State University, 1988
M.A., Georgia College & State University, 1996

Adviser: James L. Roark

An Abstract of
A dissertation submitted to the Faculty of the Graduate School of Emory University in partial fulfillment of the requirements for the degree of Doctor of Philosophy

Department of History

2001

ABSTRACT

"Justice Bound: Aframericans, Crime and Criminal Justice in Georgia, 1751-1865," is an examination of criminal law, criminal procedure, slave patrols, courts, and plantation mechanisms of judgment and punishment. After presenting the institutional functions of these components of the criminal justice system I provide a demographic and/or biographical overview of representative persons who administered the system. I also examine the actual operation of the system, how Aframericans were treated by it, how effective it was in meeting its goals and objectives, and what forces shaped and changed it. To date, no study has examined each of these major components of a system of criminal law and justice for colonial and antebellum Aframericans and their relationship to each other. Such partial examination has resulted in an incomplete understanding of contemporary criminal justice reality because each part of the system relied on the others for its proper functioning. I also explore Aframerican crime in order to determine who were its perpetrators and victims, and why and how it was committed. At the end of this systemic examination I argue that Aframericans in Georgia engaged in much of their criminal activity as a direct result of the conditions they were forced to endure as slaves and socially degraded free blacks in a violent region. Once they had committed acts defined as criminal Aframericans were thrust into an illegitimate but extremely efficient criminal justice system that treated them far more severely than their white counterparts. This system was driven by the imperatives of chattel slavery and white supremacy.

JUSTICE BOUND, AFRAMERICANS, CRIME, AND CRIMINAL JUSTICE IN GEORIGA, 1751-1865

By

Glenn M. McNair
B.S., Savannah State University, 1988
M.A., Georgia College & State University, 1996

Adviser: James L. Roark, Ph.D

A dissertation submitted to the Faculty of the Graduate School of Emory University in partial fulfillment of the requirements for the degree of Doctor of Philosophy

Department of History

2001

TABLE OF CONTENTS

LIST OF TABLES

LIST OF TABLES—(Cont.)

LIST OF TABLES—(Cont.)

INTRODUCTION

From the moment they set foot on the shores of North America as slaves Africans posed a huge problem for those who had brought them there. From the start they resisted their enslavement at every turn; means had to be devised in order to ensure that they stayed in place, labored efficiently and posed no significant threat to the white populations that held them. Slaves were introduced to their new masters by the force and violence of the Middle Passage, and it was force and violence that served as the ultimate means of controlling the enslaved populations. While other means of coercion would come to be used to control Aframericans, behind all of them were the whip, the shotgun and the noose. Force and violence kept the black population within the boundaries of slavery, but they could not solve a great many other problems that human bondage produced. These blunt instruments of social control could not be used effectively and continuously to settle issues of ownership and they could not regulate interactions between slaveowners, non-slaveowners and the state. They could not resolve disputes over paternity and inheritance, and they could not be used to establish culpability when Aframericans engaged in behavior that threatened the interests of society. For these matters, and a host of others, law was required.

The English colonists had no historic legal precedent for slavery so they were free to craft laws that met their needs. Law added legitimacy to the "peculiar institution" that made it theoretically much easier to control relations between slave owners, between masters and slaves, and between bondspeople and the public at large. The civil law served to regulate commercial transactions involving slaves and provided remedies for a variety of private wrongs where slaves were the victims or perpetrators. The criminal law was

designed to control black behavior that threatened the interests of white society. It also protected black lives by establishing penalties for slave murder and putting in place trial procedures, which meant that the lives of bondsmen could not be taken pell mell by the state. The problem was that while the system of laws had obvious advantages for whites, there were very few for blacks. As a result tremendous tension developed between slaves, free blacks and the law, the criminal law in particular. Over the course of several centuries hundreds of thousands of Aframericans broke the laws, forcing their societies to change the laws, alter behavior, and to devote increasing amounts of energy to public and private surveillance and law enforcement. The criminal law was a battleground between blacks and whites in colonial and antebellum America.

Historians have realized the importance of the relationship between slavery and the criminal law and have devoted considerable time and energy to it. Prior to the 1980s scholars studying slavery relied upon non-quantitative approaches in studying Aframericans, slavery and the criminal law.[1] Most research consisted of examining statutes in order to determine the priorities of the society and to describe what was

---

[1] Four classic works on southern slavery defined the non-quantitative approach to slaves, free blacks and criminal justice. They are Ulrich Bonnell Phillips, *American Negro Slavery: A Survey of the Supply, Employment and Control of Negro Labor as Determined by the Plantation Regime*, 2d ed. (Baton Rouge: Louisiana State University Press, 1966); Stanley M. Elkins, *Slavery: A Problem in American Intellectual Life* 2d ed. (Chicago: University of Chicago Press, 1968); Kenneth Stampp, *The Peculiar Institution: Slavery in the Antebellum South* (New York: Vintage Books, 1956); and Eugene G. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Vintage Books, 1976). Each of these monographs provided significant insight into slaves and criminal justice. These monographs influenced subsequent state and local studies of slavery and criminal justice. In Georgia studies which followed the narrative approach are Ralph Betts, Flanders, *Plantation Slavery in Georgia* (Cas Cobb, CT: John E. Edwards, Publisher, 1967); Donald L. Grant, *The Way it Was in the South: The Black Experience in Georgia*. Edited with a Foreword by Jonathan Grant (New York: Carol Publishing Group, 1993); Joseph P. Reidy, *From Slavery to Agrarian Capitalism in The Cotton Plantation South: Central Georgia, 1800-1880* (Chapel Hill: University of North Carolina Press, 1992); Julia Floyd Smith, *Slavery and Rice Culture in Low Country Georgia, 1750-1860* (Knoxville: University of Tennessee Press, 1985); Betty Wood, *Slavery in Colonial Georgia, 1730-1775*

considered legal or illegal, acceptable or unacceptable, black behavior. Historians would then marshal anecdotal evidence from individual cases to demonstrate how and why slaves and free blacks violated these laws. Most works would then conclude with a discussion of how Aframericans were punished for their criminal transgressions. The best of these studies were able to reveal a great deal about slaveholder ideology, showed how the criminal law was supposed to work in theory, and what it was designed to accomplish. They also showed the range of black criminality and white responses to it. Social and cultural historians concluded that the criminal law was a patently unjust tool designed to further the ends of slavery and white supremacy.

The prevailing view of slavery and the criminal law was challenged in 1970 with the pioneering research of legal scholar A.E. Keir Nash. Nash examined appellate court decisions from around the Old South and concluded that Aframericans received a surprising degree of judicial fairness and due process protection in state supreme courts.[2] Many black defendants appealed their convictions to these courts on a variety of technical legal grounds, and a higher than expected percentage of them were successful. Nash's research forced scholars to re-think their assessment of Aframericans and the criminal law. If the law was in fact a tool of black oppression, why would appellate courts protect the rights of blacks so assiduously, especially those convicted of capital crimes? Were the efforts of southern state courts the product of their genuine concern for black welfare, or

---

(Athens: University of Georgia Press, 1984) and Jonathan M. Bryant, *How Curious a Land: Conflict and Change in Greene County, Georgia, 1850-1885* (Chapel Hill: University of North Carolina Press, 1996).

[2] A.E. Keir Nash, "Fairness and Formalism in the Trials of Blacks in State Supreme Courts of the Old South," *Virginia Law Review* 56 (1970): 64-100; A.E. Keir Nash, "A More Equitable Past? Southern Supreme Courts and the Protection of the Antebellum Negro," *North Carolina Law Review* 48 (1970): 197-241; A.E. Keir Nash, "The Texas Supreme Court and the Trial Rights of Blacks, 1845-1860," *Journal*

was black due process protection the product of a southern commitment to legal formalism or a desire on the part of slaveholding jurists to protect white property interests? A number of works were produced to answer these questions and to support and challenge Nash.[3]

Despite providing significant insight into Aframericans, crime and criminal justice, both the legal and cultural approaches had shortcomings that prevented them from presenting a complete picture of black criminal justice reality. By studying the slave codes as written socio-cultural historians failed to appreciate the fact that the law as it was actually enforced was often an entirely different matter. There were statutes on the books that were simply never enforced, and there were behaviors that were certainly detrimental to society which were never criminalized. There were also acts that were made criminal that were rarely committed by Aframericans. Statutes reveal a great deal about what elites feared and sought to protect, but very little about social reality "on the ground." Historians' reliance on anecdotal evidence of black criminal activity presented similar difficulties. By examining only a relative handful of individual cases scholars could never say with any degree of certainty how rare or representative these acts were. As a result it was impossible to generalize about a number of important issues relating to Aframerican criminal activity. One could not determine with any degree of accuracy who

---

of American History 58 (1971): 622-42; and A.E. Keir Nash, "Reason of Slavery: Understanding the Judicial Role in the Peculiar Institution," *Vanderbilt Law Review* 32 (1979): 7-218.

[3] Mark V. Tushnet, *The American Law of Slavery, 1810-1860* Princeton, NJ: Princeton University Press, 1981); Daniel J. Flanigan, *The Criminal Law of Slavery and Freedom* (New York: Garland Publishing, Inc., 1987); Daniel J. Flanigan, "Criminal Procedure in Slave Trials in the Antebellum South," *Journal of Southern History* 40 (1974): 405-24; Patrick Brady, "Slavery, Race and the Criminal Law in Antebellum North Carolina: A Reconsideration of the Thomas Ruffin Court," *North Carolina Central Law Journal* 10 (1978): 248-60; and A. Leon Higginbotham, Jr., *In the Matter of Color: Race and the American Legal Process, the Colonial Period* (New York: Oxford University Press, 1978).

the majority of victims and offenders were, under what circumstances most crimes occurred, or how these crimes were committed and why. All that could be said with a reasonable amount of certainty was that the individual acts had occurred under specific sets of circumstances and produced particular results. What constituted overall patterns of crime and criminal justice were largely unknown.

The work of legal scholars like Nash was incomplete for similar reasons. Appellate opinions served a relatively limited purpose. Judges wrote opinions to settle disputes in individual cases and to articulate principles that would govern the adjudication of similar disputes in the future. These opinions thus serve as an excellent window into the history of various legal principles and doctrines, the ideologies underlying them, the social and judicial philosophies of courts and individual judges and something of the values of the societies the courts represented. But appellate opinions fail to tell us much about the reality of crime and criminal justice for the same reason that statutes fail to do so: they suggest how matters should have been handled but they do not reveal how these matters actually were handled. Black defendants were supposed to enjoy certain rights in local courts; but did they? Scholars celebrate the fact that many Aframerican appellants won their cases in the supreme courts. But how many were re-convicted at trial? If a high percentage of appellate victors were nevertheless convicted, how valuable were these due process rights in reality? Appellate opinions were also written to persuade, like polemics of a sort. So their accuracy as indicators of actual conditions can always be called into question. Finally, they do not tell us anything about what transpired in the myriad local cases that never reached the chambers of the highest state courts.

Beginning in the 1980s scholars began to create a much more in-depth portrait of Aframericans and criminal justice. Using the methods of social history researchers began to quantify trial data in order to reveal patterns that were obscured by the anecdotal approach.[4] Historians were able to determine which crimes were prosecuted most frequently, who was victimized and prosecuted, which crimes were punished most and least severely, and how patterns of criminality changed over time. The best of these studies also retained much of the anecdotal/narrative approach in order to demonstrate the tremendous variety of the criminal justice experience. Some used the data obtained about blacks to compare to whites in order to make larger judgments about southern criminal justice in general. But there was more that could have been done. First, there was not much monograph-length research. Most of the studies of black criminality were small sections of larger works on white crime. Second, these works usually only involved a relatively small sample of cases. Finally, most did not examine the inner workings of the court systems that rendered the judgments on which their cases were based. There was little or no serious exploration of criminal procedure (the bailiwick of legal historians) nor were there many attempts to explore jury composition or the backgrounds of local judges and lawyers who presided over these cases. These were all critical factors in

---

[4] Michael Hindus, *Prison and Plantation: Crime, Justice and Authority in Massachusetts and South Carolina, 1767-1878* (Chapel Hill: University of North Carolina Press, 1980); Arthur F. Howington, *What Sayeth the Law: The Treatment of Slaves and Free Blacks in the State and Local Courts of Tennessee* (New York and London: Garland Publishing, Inc., 1986); Derek N. Kerr, *Petty Felony, Slave Defiance and Frontier Villainy: Crime and Criminal Justice in Spanish Louisiana, 1770-1803* (New York: Garland Publishing, Inc., 1993); Donna J. Spindel, *Crime and Society in North Carolina, 1663-1776* (Baton Rouge and London: Louisiana State University Press, 1989) and Jack Kenny Williams, *Vogues in Villainy: Crime and Retribution in Antebellum South Carolina* (Columbia: University of South Carolina Press, 1959). By far the best quantitative and narrative study of slave crime is Philip J. Schwarz, *Twice Condemned: Slaves and the Criminal Laws of Virginia, 1705-1865* (Baton Rouge: Louisiana State University Press, 1988. It is the only study that is entirely devoted to slave crime.

determining the nature of criminal justice for black defendants. We are now at a place in the scholarship where we can approach completeness.

What is necessary to capture the totality of the Aframerican experience is a holistic, "criminal justice" approach. Criminal justice has been defined as "...the structure, functions and decision processes of those agencies that deal with the management and control of criminal offenders—the police, courts and corrections."[5] It is the responsibility of the police to detect and investigate crimes and to apprehend offenders. The courts are charged with establishing the guilt or innocence of arrested offenders and to mete out punishment. Corrections agencies must then carry out these punishments in order to achieve the goals of rehabilitation or deterrence, or both. In the context of blacks in the slave South the police function was carried out by slave patrols; judgment and punishment were rendered in state courts. There was no correctional apparatus per se, but punishment was designed to achieve the ends of correctional institutions. The plantation also played a critical role in Old South criminal justice for blacks. Masters created their own laws that had to be obeyed, they held their own courts and handed down and inflicted their own punishments. Most Aframerican criminals in the colonial and antebellum South faced this masters' justice.

It is important to study all of these institutions collectively because they worked together to create the reality of criminal justice for black offenders. Any complete study of criminal justice must begin with an examination of the criminal law, which formed the foundation of the entire criminal justice edifice. The law determined which behaviors were prohibited. Police entities enforced these laws and apprehended those who broke

them. And the courts, in the form of judges, juries and lawyers, determined guilt or innocence and handed down punishment. (Masters, mistresses and overseers filled these roles on the plantation.)

In order to perform the research task outlined above an interdisciplinary approach is necessary. Study of modern criminal justice phenomena involves borrowing heavily from legal studies in order to examine criminal law and criminal procedure, from political science to explore constitutional and political issues surrounding criminal justice, and from sociology in order to determine how social institutions affect the administration of justice.[6] To study criminal justice issues in the past requires all of these skills as well as those of the trained historian. Cultural-legal historian Ariela Gross believes that scholars have been reluctant to embrace the interdisciplinary approach needed to bring the criminal justice past to life because of the way legal and cultural historians are trained. In her own experience of trying to bridge the two worlds Gross recalls being constantly asked by professors whether she would be "using legal records to study society" or to study the "history of law." Gross argues powerfully and persuasively that this is a false dichotomy.[7] As I have tried to demonstrate above, it is impossible to understand the reality of criminal justice in the past without bringing to bear the skills and angles of vision of both the legal and cultural historian.

This dissertation is an attempt to create a work of cultural-legal history that builds upon the work of previous histories. It will consist of an examination of criminal law,

---

[5] James A. Inciardi, *Criminal Justice* (New York: Academic Press, Inc., 1984), ix.
[6] Ibid.
[7] Ariela Gross, "Beyond Black and White: Cultural Approaches to Race and Slavery," *Columbia Law Review* 101, no. 3 (April 2001): 640-45.

criminal procedure, and the functions of the police, courts and corrections as they related to Aframericans in Georgia in the years between 1751 and 1865. The heart of the project will be a quantitative and anecdotal examination of 417 local and appellate cases representing—to the best of my knowledge--all that remain extant. This exploration will be buttressed by an analysis of the informal plantation institutions that complemented the state criminal justice system and that were the principal agencies for control of the black population. After presenting the institutional functions of these components I will provide a demographic and/or biographical overview of representative persons who administered or participated in the system. I will examine Aframerican capital crime in order to determine who its victims were, who committed it and why.[8] At the end of the study the reader will know what the law was for Aframericans in Georgia, how it changed over time, how such violations occurred, who committed them and why, how and by whom were black offenders judged, and how and why they were punished.

[8] Capital crimes have been chosen as the subject of this study because they represented the greatest threat to Georgia society. Additionally, capital crimes were tried in courts that were required to keep records; therefore they provide the best opportunity for a thorough examination of the criminal justice system.

CHAPTER 1

"FOR THE BETTER ORDERING AND GOVERNING OF NEGROES AND OTHER SLAVES": THE LAW AND AFRAMERICANS IN GEORGIA

> "Whereas an Act was passed by his Majesty in Council in the Eighth Year of his Reign...by which Act the Importation and Use of Black Slaves or Negroes in the said Colony was absolutely prohibited and forbid under the Penalty therein mentioned And Whereas at the time of passing the said Act the said Colony of Georgia being in its Infancy the Introduction of Black Slaves or Negroes would have been of dangerous Consequence but at present it may be a benefit to the said Colony and a Convenience and Encouragement to the Inhabitants thereof to permit the Importation and Use of them into the said Colony under proper Restrictions and Regulations without Danger to the said Colony....Therefore We the Trustees for establishing the Colony of Georgia in America humbly beseech your Majesty that it may be Enacted And it be Enacted that the said Act and every Clause and Article therein contained be from henceforth repealed and be made void and of none Effect."[1]

With those words in 1750 Georgia ended a unique experiment in freedom and joined the other colonies in British North America in the enslavement of Africans. When the province was settled in 1733 it was not planted for the profit of the Crown and its inhabitants, as was Jamestown in 1607, nor was it to have been a haven for persecuted Christians like Plymouth in 1620. Instead Georgia was to have been a second chance at life for the poor, criminal and dispossessed of England. In the minds of the philanthropic Trustees who founded the colony these unfortunate men and women would be allowed to inhabit a fertile land where, in addition to abundant food crops, they would produce valuable trade goods like silk, wine, and dyes, ensuring their prosperity and well-being. There would be no truly rich or truly poor, just simple folk building decent lives in an idyllic wilderness. In addition to serving as a refuge for the poor, the colony would also

---

[1] Allen D. Candler, ed., *Colonial Records of the State of Georgia* (Atlanta: Charles P. Byrd, 1910), 1: 56-57.

act as a military buffer between the English colonies on the East Coast, the Spanish settlements in Florida, and the French territories to the West.

There would also be no slavery in Georgia. The Trustees believed that slavery contributed to the moral dissipation of the population, making whites lazy, corrupt and cruel. Moreover, the experience of other colonies proved that chattel slavery produced tremendous inequalities in wealth that led to a host of other social ills. The founders also reasoned that the crops that would be produced in Georgia did not require the type of gang labor for which Africans were so useful. Finally, the presence of a large number of slaves would create a huge internal security problem, the last kind of trouble needed in a military settlement.

When the colonists arrived they did not find the idyll promised by the Trustees; instead they found a wilderness. There were forests to be cleared and swamps to be drained and reclaimed; towns had to be built and the soil was not nearly as fertile as the imaginations of the Trustees. And the environment was hot and malarial; far from being a place that fostered good health, coastal Georgia was a place that killed. Georgians looked to their neighbors in South Carolina and saw the prosperity that African slavery produced, and groups of settlers began to lobby for the introduction of slavery. Desiring to end the pro-slavery movement before it started, in 1735 the Trustees enacted the legislation that banned slavery in the province.

But that was not the end of the matter. In the years after 1735 the fortunes of the colonists continued to wane and increasing numbers of them became convinced that slavery was the only panacea. During the 1740s pro-slavery forces mounted a campaign to legalize the institution. The Trustees resisted these efforts, and the Malcontents (pro-

slavery advocates) turned to Parliament, which initially sided with the Trustees. But as the decade progressed an improved military and diplomatic environment, the death or resignation of a number of key Trustees, the ever-increasing illegal importation of slaves into the province (many brought by South Carolina immigrants), and continuing pressure from the Malcontents made the legalization of slavery virtually inevitable. On August 8, 1750, the Trustees abandoned their idealized humanitarian enterprise and repealed the ban on slavery, effective January 1, 1751.[2]

Having cleared away the barriers to the formal introduction and expansion of slavery, the Trustees were next tasked with creating a legal edifice to support it. They did so in the act that legalized African enslavement. The Trustees crafted a legal code that was designed to ensure that human bondage would be conducted in a fashion that was safe and productive for white Georgians and humane for their black slaves. One of the first provisions of the slave code of 1750 established a quota for the slave population. Every person "inhabiting and holding and cultivating Lands" within the province would be allowed to import four male slaves per white male servant they employed who was between sixteen years and sixty-five years of age and capable of bearing arms. This code section was clearly designed to avoid the insurrectionary dangers posed by a large slave population, like those experienced in neighboring South Carolina. In 1738 a slave rebellion spread into Georgia when a group of rebels crossed the Savannah River and killed several whites and destroyed their property. Then in 1739 another band of slaves revolted at the Stono River and murdered twenty whites. This insurrection struck fear in

---

[2] The best discussion of the evolution of slavery may still be found in Betty Wood, *Slavery in Colonial Georgia, 1730-1775* (Athens: University of Georgia Press, 1984).

the hearts of not only South Carolinians, but Georgians as well.[3] Once in the colony all slaves had to be registered. The skills that bondspeople would be allowed to acquire was strictly limited. No artisan was allowed to train a slave to his trade; Georgia bondsmen were to be confined to "manuring and cultivating" their master's lands. The Trustees could see the social difficulties posed by black servants who possessed highly sought-after skills; such slaves would have a higher degree of mobility, greater influence with fellow bondsmen and just enough ego to be potentially ungovernable. While lawmakers were unwilling to train slaves to the trades, they did offer incentives for teaching them how to cultivate silk, an impractical and ultimately futile enterprise pursued by the Trustees from the founding of the colony. In addition to provisions designed to protect white persons and interests, the code had several provisions designed to ensure the well being of blacks. Any master who inflicted "Chastisement endangering the Limb of a negro," for a first offense was to be fined "five pounds Sterling Money." A second offense would result in a fine of ten pounds or more. Anyone accused of killing a slave would be tried "according to the Laws of Great Britain."[4]

The Trustees were not only concerned with the bodies of Georgia bondsmen, but their souls well. Slave owners who did not "permit or even oblige" their Aframerican servants to receive religious instruction on the Sabbath were to be fined ten pounds Sterling, a higher sanction than that imposed for endangering a slave's limbs. What is unique about the slave code of 1750 when compared to those of the other colonies is that it was concerned largely with the misbehavior of whites, and not black bondsmen. The only provision that applied to Aframerican behavior—and it applied to whites as

---

[3] Julia Floyd Smith, *Slavery and Rice Culture in Low Country Georgia, 1750-1860* (Knoxville: University of Tennessee Press, 1985), 183.

well—was one that outlawed interracial sex and marriage. Beyond this section there were no prohibitions against slave criminality of any kind.

In *Slavery in Colonial Georgia*, Betty Wood argues that the Trustees designed the slave code of 1750 to accomplish two objectives: to permit slavery and to "curb white behavior." Neither the Trustees nor the colonists bothered to explain why there was only one code provision relating to Aframerican criminal misbehavior. Wood does not believe that this omission was an oversight, but rather, was a realization on the part of the Trustees that the colonists themselves were in the best position to draft legislation regarding the realities of slave management. The absent Trustees also thought that proscriptive legislation might not be necessary if the slave population could be kept sufficiently small and under rigorous white surveillance. Slaves would also be less likely to engage in rebellious criminality if they were treated humanely, hence those code provisions designed to control white cruelty and to provide for a decent standard of living for the enslaved. This combination of "white firepower and humanitarian treatment" was to make a rigid and all-encompassing slave code unnecessary. This logic reflected the naiveté and inexperience of the Trustees and Georgia slaveholders. Until the mid-1740s when slaves began to be illegally imported into the colony, Georgians based their understanding of Aframerican behavior on second-hand accounts from South Carolina; most of them had no direct experience with the operations of a slave socio-economic system. But after 1750 the rapid growth of the slave population and an influx of experienced slave masters from South Carolina and the West Indies changed the rather innocent notions of the fledgling slave colony. They were replaced with the

---

[4] Candler, *Colonial Records*, 1:57-60.

timeworn methods of those who had handled men and women in chains for several generations.[5]

In 1755 Georgians passed an act "For the better Ordering and Governing of Negroes and other Slaves in this Province." This legislation was promulgated in direct response to black criminality, which to some in the colony was getting increasingly out of hand. Legal difficulties with the code of 1750 also made a new code necessary. Even though the Trustees had approved it the legislation had never received the imprimatur of the Board of Trade nor the Privy Council; Georgians relied upon their old code but they did so illegally. (It made no practical difference for black offenders because they could not appeal to authorities in England.) In crafting the new code Georgians turned to the more experienced South Carolinians. The new code was a near-verbatim copy of the 1740 code of their eastern neighbor.[6]

The wholesale adoption of South Carolina's code meant that Georgia law would reflect the priorities of that colony. To the extent that needs and conditions in the two colonies were approximately the same the borrowed code saved Georgia the time and energy that would have gone into crafting their new law from the minimal foundation laid by the Trustees in 1750. However, in areas where the two colonies differed, the needs of Georgians went unmet. This code also signaled the end of the Trustees' authority and their desire to make slavery a beneficial institution for those held in its tyrannical grip; it was an acknowledgment that slaves and free blacks were indeed

---

[5] Wood, *Slavery in Colonial Georgia*, 85-86, 111-12.

[6] Ibid., 112-13; Kenneth Coleman, *Colonial Georgia: A History* (Millwood, NY: KTO Press, 1989), 228. The South Carolina slave code of 1740 may be found in John D. Cushing, comp., *The First Laws of the State of South Carolina,* (Wilmington, DE: Michael Glazier, Inc., 1981), 1:163-75.

dangerous people. This body of law was designed to control every significant aspect of black life and formed the foundation of all slave law that followed it.

The first goal legislators sought to achieve was the control of blacks' movements. No slave in the city of Savannah or any other town was allowed outside the city or town limits without a written pass from his or her master; no rural slave was to leave the plantation without such a pass. Any slave caught abroad without a pass or a white person responsible for his or her proper conduct could be whipped, not to exceed twenty lashes. If an Aframerican refused to answer questions posed by any white person about his or her travel or destination he or she could be "moderately corrected" on the spot. If the slave assaulted or struck the inquisitor he or she could be "Lawfully killed." Slaves could not travel the roads in groups of more than seven, unless accompanied by a responsible white person; those who violated this provision would receive twenty lashes. There were limits to the punishment that could be meted out under these circumstances. If a bondsperson were "Bruised, Maimed or Disabled" the offender would be fined six shillings. If the beating resulted in the slave being unfit to work the assailant was required to pay a per diem of twenty shillings per day the slave was unable to work. Justices of the peace were empowered to recruit as many persons as necessary to break up any assembly of Aframericans that threatened the peace or security of the neighborhood. In the same vein masters who allowed their slaves to convene meetings or to "beat Drums blow Horns or other Loud Instruments" were to be fined. This provision reflected the fear that these African forms of communication could be used by slaves to convey their "wicked Designs and purposes."[7]

---

[7] Candler, *Colonial Records*, 18:105-07, 131.

While being concerned with slave unrest, legislators paradoxically relaxed the slave population quota. "Every Owner of Twenty Slaves" was required to have one "White Servant upon his plantation Capable of bearing arms and every Owner of fifty Slaves shall have Two white servants as above and for every Twenty five Slaves above fifty one White Servant" capable of bearing arms. Any farm or plantation with at least one slave had to have at least one white person in residence.[8] There are several possible explanations for the relaxation of the slave population quota. Legislators may have believed that the closer surveillance contemplated by the new code would allow fewer white men to control a larger number of blacks. They may have also reasoned that since white immigration was not keeping pace with African importation there was no need to hinder economic expansion for the sake of maintaining an impossible ideal.[9]

Slaves were also prohibited from bearing firearms unless they were in possession of a license that permitted them to hunt that was written by their masters. No license was required if the hunting took place under the direction of a white person at least sixteen years of age. Bondsmen were allowed to carry arms to their masters unsupervised—provided they had a license to do so.[10] While the slave code of 1755 strictly controlled black possession and use of firearms, Georgians enacted legislation that authorized slaves to be armed and recruited into the militia. This bizarre state of affairs was an acknowledgment of the precarious situation of a province bordered on two sides by hostile Spanish and French settlements with a white population too small to defend itself. The militia act was also recognition of the fact that there was no single mode of black behavior; while some slaves were certainly dangerous and untrustworthy, others

---

[8] Ibid., 18:136-37.
[9] Wood, *Slavery in Colonial Georgia*, 116.

had proved themselves loyal enough—or restrained and isolated enough---to be entrusted with white lives. The slave code was also designed to control black economic activity by barring blacks from trading or hiring themselves out, except under certain limited conditions and under the master's direction. [11]

The provisions of the code most germane to this study were those that defined capital crimes. Any "Slave free Negro Mulato Indian or Mestizo" who burned or destroyed any "Stack of Rice corn or other grain" produced in the colony was guilty of a felony. Any person in the subject classes who burned or destroyed "any Tar kiln Barrels of pitch Tar Turpentine or Rozin" or any other goods manufactured in the province was similarly guilty. And any such person who stole a slave was also guilty of a felony. All these felonies were punishable by death. Any slave convicted of homicide, except by "misadventure" or at the direction of his master, was to be executed. Likewise, any slave or member of an "inferior" class who attempted to incite or participate in a slave insurrection was also to be put to death. (Lesser participants could be spared if the example of the execution of fewer of them would deter others.) Those who committed non-lethal assaults on whites, for first and second offenses, were to be subject to whatever punishment the presiding justices sought fit, provided that it did not extend to "Life or Limb." But the rebellious bondservant who committed a third such offense was to be killed by the state. If a white person was wounded, maimed or bruised, even during a first offense, the law required that the offender be executed. And any person of color who attempted to poison anyone was guilty of a capital felony.[12]

---

[10] Candler, *Colonial Records*, 18:117-18.
[11] Wood, *Slavery in Colonial Georgia*, 117-18.
[12] Candler, *Colonial Records*, 18:112-13, 119-20, 125-29.

Georgia legislators did not entirely abandon concern for black well being when crafting the slave code of 1755. If anyone murdered his slave, or that of another, he was guilty of a felony with the benefit of clergy; the felon thus avoided a death sentence. If the first time killer was not the owner he was simply required to make restitution. If an individual killed a second time he was deemed a murderer and subject to the laws of England, yet he would be required to forfeit "no more of his Lands and Tenements Goods and Chattels than may be Sufficient to Satisfy the owner" of the slain slave. If the killing occurred while lawfully correcting the slave, the killer was only required to forfeit the sum of fifty pounds Sterling. And in case any person willfully "cut the Tongue put out the eye castrate or Cruelly Scald burn or deprive any slave of any Limb or Member" he or she was obliged to render a fine of ten pounds sterling.[13]

The slave code of 1755 regulated behavior between blacks and whites in Georgia for ten years. In 1765 several revisions were made to the code which reflected the increasing value of slaves and slavery to the province, and the knowledge that Aframericans were engaging in behaviors which were threatening to society but for which there were no legal prohibitions. Several new sections increased the penalties for unlawfully injuring or killing a slave. Under the code of 1755 anyone who killed a slave, for his or her first such offense was only required to compensate the slain slave's owner. But in the new code a first time murderer, in addition to having to make restitution, was deemed "altogether and forever uncapable [sic] of holding any place of Trust, or exercising enjoying or receiving the profits of any Office, place of employment, civil or Military" within the colony. Before 1765 anyone who killed a slave in the "sudden heat of Passion and without an ill intent" was only required to pay

[13] Ibid., 18: 132-33.

a fine of fifty pounds sterling; this fine was trebled to a maximum of one hundred fifty pounds. Those who intentionally maimed and mutilated slaves by removing limbs or body parts had only been required to forfeit ten pounds under the old code; the new fine for such cruelty was fifty pounds sterling. Georgia legislators were making the point very clear that slave lives could not be taken cheaply, not because they were intrinsically valuable, but because black labor was increasingly becoming the lifeblood of the colony.[14]

While lawmakers were concerned about protecting the lives of slaves, they did not forget their own. Several provisions were put in place to control previously unrecognized forms of black criminality. It had been unlawful to destroy or burn grains and naval stores manufactured in the colony; now destroying or setting fire to these items regardless of their points of origin was a capital felony. The actions that constituted poisoning were expanded and incentives offered to those slaves who would inform on their fellows who were involved in or contemplated committing this potentially murderous act. Any Aframerican who furnished, procured, or administered a poison was guilty of a felony; the same held true for persons who instructed slaves in the use of any "Poisonous Root, Plant, Herb or other sort of poison whatever." No slave would be allowed to administer medicine to another unless under the direction or supervision of a white person. Any black person who had knowledge of a poisoning and did not reveal it was to be put to death; conversely, slave informants would be paid twenty shillings per year as long as he or she resided in the colony. The elaborate anti-poisoning provisions of 1765 were not in response to an increase in such misbehavior by black Georgians, but in frightened anticipation of it. The colonists regularly received

[14] Ibid., 18:682-83.

news reports of slaves poisoning and striking out violently against their masters in other colonies and the Caribbean. One such account from Jamaica reported that a band of renegade slaves had broken into the home of their master and "cut off his hands, then his arms, then his feet, and legs, and then broke his thighs. They afterwards killed three of his children." Fears of black violence of this nature were heightened by the rapid increase of Georgia's slave population. From 1750 to 1766 the number of Aframericans in the colony increased from five hundred to approximately seventy-eight hundred. The relative increase in the black population was probably of even greater concern. In the early 1750s Aframericans accounted for twenty percent of the total population; by 1765 this percentage had doubled. The final revision involved increasing the penalty for assault on a white person. Before 1765 blacks who struck whites could do so on three occasions before being sentenced to the gallows; after the code had been amended a second assault would result in death.[15] The slave code of 1765 represented the final break with the humanitarian ideals of the Trustees. Gone were those provisions concerning slave maintenance and spiritual instruction. The only salutary remnants of the earlier codes were the list of unacceptable punishments and a prohibition against slaves working on the Sabbath.[16]

In 1767 the colonists were shocked to learn that once again their slave code had been disallowed by British authorities because of an unacceptable definition of slaves as chattels rather than real property. This difference in definition had great potential consequences. Some contemporary legal authorities believed that if slaves were defined as real property, like land, it would mean that they were bound to the land and could not

---

[15] Ibid., 18:660-63; Wood, *Slavery in Colonial Georgia*, 126.
[16] Wood, *Slavery in Colonial Georgia*, 124-25.

be sold or disposed of away from it. Owners had the right to the labor of their slaves but not to their bodies. However, as chattels they could be disposed of like other items of personal property. Authorities in England did not oppose codes that defined slaves as chattels because these codes were potentially more harmful to the interests of slaves, but rather, because these they clashed with existing property law.[17] Disallowance of the slave code caused considerable distress in the colony. In the words of Governor James Wright: "The Negro Law is so absolutely Essential to our Local Circumstances, that without a Law to keep our Slaves in Order, no Man's life or Property would be safe a Moment. In Short our very existence depends upon it." Wright disregarded the instructions of his superiors and kept the invalid code in effect for another year. After further consultations with the Board of Trade, Georgians crafted a new slave code that went into effect in 1770.[18]

Despite revisions the slave codes of 1755 and 1765 were still largely concerned with white misbehavior and failed to prohibit a significant number of criminal acts. In 1770 black Georgians could steal anything, kill each other (except by poisoning) break into or burn any building or dwelling and rape any woman, all without violating the criminal laws of the province. Was this legislative oversight just that, an oversight, or did it reflect a lack of Aframerican criminal behavior in these areas? If the testimony of slaveholders from around the colonial South is to be believed slaves certainly stole, killed each other, broke into buildings and raped women, both white and black. Perhaps these criminal acts did not occur with sufficient frequency to warrant the intervention of

---

[17] Coleman, *Colonial Georgia*, 229; Thomas D. Morris, *Southern Slavery and the Law, 1919-1865* (Chapel Hill and London: University of North Carolina Press, 1996), 64-65; M. Eugene Sirmans, "The Legal Status of the Slave in South Carolina, 1670-1740," *Journal of Southern History* 28, no. 4 (November 1962), 465. South Carolina also experienced legal difficulty in arriving at the proper definition of "slave."

the court system, or maybe masters thought they had sufficient power to control their slaves and keep these incidents to a minimum. Legislators moved to close these loopholes when the slave code was again revised in 1770. As a result of this code it was a capital felony to "commit or attempt to commit a rape on any white person whomsoever, to "maliciously kill any slave or other person," to "steal any goods or chattels whatsoever" or to "break open, burn or destroy any dwelling house or other building whatsoever." These felonies were added to those that already existed.

Two additional crimes were added to the catalog of capital offenses in subsequent decades. In 1816 the legislature made it a crime to assault a free white person with intent to kill or with a weapon likely to produce death. This law closed a loophole in the 1770 code that mandated death for maiming or wounding a white person or for striking one a second time. Under this law an Aframerican who attempted to strike a blow or cause serious injury but failed would escape punishment because the existing law required an injury or actual physical contact. For example, a slave who had lawful possession of a firearm could shoot at his master with intent to kill; yet if he missed he was guilty of no crime. The same could be said of a bondswoman who attempted to strike her overseer with an axe; unless the axe struck him she could not be punished according to the law. Clearly no slave society could allow such behavior to fall outside the boundaries of the law. Concern about black rebellion was responsible for the second new provision. In 1829 it became a capital crime for a black Georgian to "circulate, bring, or cause to be circulated or brought into this state...any written pamphlet, paper or circular for the purpose of exciting to insurrection, conspiracy or resistance among slaves, negroes or free persons of color of this state..." This legislative enactment was a

---

[18] Wood, *Slavery in Colonial Georgia*, 128-29.

direct, immediate and panicked response to the discovery in Georgia of David Walker's fiery, abolitionist polemic, *An Appeal to the Coloured Citizens of the World.*[19]

While no longer concerned with black well being per se, the code of 1770 did retain minimal provisions to protect African-American lives—and white property. The code mandated that an individual who killed a second slave was guilty of murder, and would be put to death. Someone who killed a slave in the heat of passion would be required to pay the slave's appraised value, and not the one hundred fifty pounds of 1765.[20] The code of 1770, with some periodic minor revision, would serve as the backbone of the formal criminal justice system through the end of the Civil War.

The letter of Georgia's colonial slave law was quite severe, as were those of the other slave states. U.B. Phillips argued that colonial codes were so severe because of colonial traditions of self-government. A distant monarch may have passed "such legislation as his ministers deemed proper, undisturbed by the wishes and apprehensions of colonial whites." However, locally elected officials responsive to the hopes and fears of their constituents reflected "more fully the desire of social control" and therefore erred "on the side of safety." As one West Indian writer noted:

> "Self preservation, that first and ruling principle of human nature, alarming our fears, has made us jealous and perhaps severe in our *threats* against delinquents. Besides, if we attend to the history of our penal laws relating to slaves, I believe we shall generally find that they took their rise from some very atrocious attempts made by the negroes on the property of their masters or after insurrection or commotion which struck at the very being of the colonies. Under

---

[19] Candler, *Colonial Records*, 19, pt.1:220; Oliver H. Prince, *A Digest of the Laws of the State of Georgia* (Milledgeville, GA: Grantland & Orme, 1822), 461; William A. Hotchkiss, *A Codification of the Statute Law of Georgia* (Savannah, GA: John M. Cooper, 1845), 839. For the impact of David Walker's *Appeal* on the South and in Georgia see Peter P. Hinks, *To Awaken My Afflicted Brethren: David Walker and the Problem of Antebellum Slave Resistance* (University Park, PA: Pennsylvania State University Press, 1997); Elizabeth Cary Howard, "The Georgia Reaction to David Walker's *Appeal*" (MA thesis, University of Georgia, 1967); and Glenn M. McNair, "The Elijah Burritt Affair: David Walker's *Appeal* and Partisan Journalism in Antebellum Milledgeville," *Georgia Historical Quarterly* 83, no. 3 (Fall 1999): 448-78.
[20] Candler, *Colonial Records*, 19, pt 1: 244-45.

> these circumstances it may very justly be supposed that our legislatures when convened were a good deal inflamed, and might be induced for the preservation of their persons and properties to pass severe laws which they might hold over their heads to terrify and restrain them."[21]

While the letter of the law was quite strict, in practice it was not nearly so, in large part because masters failed to enforce it. They permitted slaves to gather in illegal assemblies, to travel without passes, to trade without licenses, to purchase liquor, to hire their own time and to hunt with firearms. Newspaper editors constantly complained about the lax enforcement of the codes. Masters behaved in this fashion because, as masters, they resisted any outside forces that impinged upon their prerogatives as the supreme arbiters of all matters on their estates. As a result, there was always an uneasy tension between slaveowners and the criminal law.[22] Administering the entirety of the slave codes would also have required an immense bureaucracy, something that the individualistic South would never countenance.[23] Eugene Genovese also argues that the slave codes were not strictly enforced because they were not supposed to be. The slave codes created a legal system which was expansive enough to be pressed into service in the event of serious Aframerican unrest, but which need not be as rigidly adhered to in times of quiet.[24]

The brutal nature of the slave code was ameliorated when Georgia made several changes to its criminal laws in the first decades of the nineteenth century. In 1811 the legislature proposed overhauling its criminal code for whites in order to bring it more in

---

[21] Ulrich Bonnell Phillips, *American Negro Slavery: A Survey of the Supply, Employment and Control of Negro Labor As Determined by the Plantation Regime*, 2d ed. (Baton Rouge: Louisiana State University Press, 1969), 495.
[22] Kenneth M. Stampp, *The Peculiar Institution: Slavery in the Antebellum South* (New York: Vintage Books, 1956), 228-29.
[23] Phillips, *American Negro Slavery*, 501.
[24] Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Vintage Books, 1976), 40-41.

line with changes that had occurred in criminal justice theory in the preceding quarter century; at the same time lawmakers agreed to make changes in the criminal law for blacks as well. While the measure to reform the system for whites stalled for several years, a new tribunal was created for the trials of Aframerican defendants. In 1816 legislators again attempted to reform the state's criminal law for whites; this time they succeeded and Georgia became the first state to craft a modern penal code in America, one which combined both common and statute law. In this watershed year and the decade and a half that followed it Georgia's representatives and senators made changes in the criminal code for slaves and free blacks as well.[25]

The most significant change in the slave code was the redefinition of a number of capital crimes. In 1816 burglary and arson replaced the earlier crimes of burning any goods or buildings and breaking into any dwelling house. Burglary was defined under the penal code as "breaking and entering into the dwelling or mansion of another, with intent to commit a felony." This was a much narrower standard than that of 1770; a black defendant had to not only break into a dwelling, but to enter it with the intent to commit a serious crime. Theoretically, under the old law merely breaking down a door was sufficient to warrant a trip to the gallows. Similarly, under colonial law setting fire to any building or a significant range of commodities warranted a death sentence. Under the revised code arson was defined as the "malicious and wilful [sic] burning the house, or outhouse of another." Again, a more restrictive definition of a crime saved black lives. The definition of arson was further narrowed in 1829. Slaves and free persons of

---

[25] *Journal of the Senate of the State of Georgia* (Milledgeville, GA: S & F Grantland—Printers to the State, 1812), 126-27; Erwin C. Surrency, "The First American Criminal Code: The Georgia Code of 1816," *Georgia Historical Quarterly* 63, no. 4 (Winter 1979): 420-434; William B. McCash, *Thomas R.R. Cobb, 1823-1862: The Making of a Southern Nationalist* (Macon, GA: Mercer University Press, 1983), 58.

color could only be convicted of arson if they burned a house in a town, or an *occupied* house, *at night* in a rural area. The structure of this arson law reflected the reality that it was far more threatening to life and property to set a fire in a town where the danger of the fire spreading was great, than in a rural area where structures were separated by significant distances. The law also had the effect of raising the bar for convicting black defendants of arson. This salutary definition of the crime remained on the statute books until 1861, when the definition was returned to that of 1816. Perhaps Georgians were concerned about the damage that could be wrought by insurgent black arsonists during a civil war.

The slave code of 1770 was also made less harsh by reducing the number of crimes that mandated a death sentence. In 1816 all theft crimes were removed from the list of capital felonies. In 1821 assault with intent to kill, maiming a free white person, burglary, arson and attempted poisoning were all still considered death penalty offenses. However, the presiding inferior court justices could administer other punishments they deemed to be "proportionate to the offence, and that best promote the object of the law, and operate as a preventive for like offences in the future." As a result the only crimes that demanded a death sentence were insurrection or attempted insurrection, rape or attempted rape of a white female, murder and poisoning. The list of mandatory capital crimes was further reduced when attempted rape was moved into the category of discretionary capital felonies. Black lives were in all likelihood also spared when the legislature finally defined insurrection in 1861. To be convicted a defendant had to have engaged in behavior which consisted of "combined resistance to the lawful authority of the master or the State, with intent to the permanent denial thereof, when the same is

manifested or intended to be manifested by acts of violence—the mere resistance of a slave, or his attempt to escape, or actual escape, from the master, shall not constitute insurrection." [26] This rather narrow definition certainly made it more difficult to charge and convict slave defendants. All of the legislative acts that made it more difficult to execute slaves were enacted to protect an increasingly valuable source of labor. With the closing of the international slave trade to America in 1808 and the cotton boom that began shortly before, slave prices rose dramatically and continued to do so for the remainder of the antebellum period; killing slaves became an increasingly expensive proposition—especially after 1793 when Georgia stopped compensating the owners of executed slaves.[27] Providing increased legal protection for slave lives would also enable Georgians and other southerners to deflect abolitionist criticism as the antebellum period progressed. As a result, humanitarian concern for Aframericans would have to rank somewhere near the bottom of the list of motives for the amelioration of the slave codes.

All southern slave states had codes that were similar in goals and provisions to those of Georgia. These codes established the property rights of owners, supported the disciplinary prerogatives of masters, provided safeguards for the white community against slave insurrection and other Aframerican violence, and held slaves and free blacks morally responsible and punishable for actions which violated the codes. The similarity in the codes was due in large part to the newer slave states adopting the codes of their forebears in human bondage. Just as Georgia had initially adopted South

---

[26] Oliver H. Prince, *A Digest of the Laws of the State of Georgia* (Athens, GA: Oliver H. Prince, 1837), 804-05; Thomas R.R. Cobb, *A Digest of the Statute Laws of the State of Georgia* (Athens, GA: Christy, Kelsea & Burke, 1851), 789, 792; R.H. Clark, T.R.R. Cobb and D. Irwin, *The Code of the State of Georgia* (Atlanta, GA: John H. Seals, 1861), 918.

Carolina's code, Tennessee adopted North Carolina's, and Kentucky and Mississippi borrowed heavily from Virginia. The Gulf States modeled their codes after South Carolina and Georgia. Louisiana was the only state not to borrow from the others. As a former French colony Louisiana based its slave code on the Code Noir decreed by Louis XIV in 1724. The similarity in codes was also the product of the universal regulatory structures necessitated by chattel slavery; the institution itself required certain kinds of laws.[28]

---

[27] Amy P. Burgess, "Slave Prices 1830 to 1860," (MA thesis, Emory University, 1933).

[28] Stampp, *The Peculiar Institution*, 206; Phillips, *American Negro Slavery*, 493. For the relevant laws of the other slave states see John D. Aiken, *A Digest of the Laws of the State of Alabama*, 2d. (Tuscaloosa: D. Woodruff, 1836); John D. Ormond, Arthur P. Bagley and George Goldthwaite, *The Code of Alabama* (Montgomery: Britain and DeWolf, State Printer, 1852); E.H. English, *A Digest of the Statutes of Arkansas* (Little Rock: Reardon and Garritt, 1848); Josiah A. Gould, *A Digest of the Statutes of Arkansas* (Little Rock: Johnson and Yerkes, 1858); John D. Cushing, *The Earliest Printed Laws of Delaware, 1704-1741* (Wilmington, DE: Michael Glazier, Inc., 1978); John D. Cushing, *First Laws of the State of Delaware* (Wilmington, DE: Michael Glazier, Inc., 1981); *Revised Statutes of the State of Delaware* (Dover, DE: S. Kimmey, 1852; Leslie Thompson, *A Manual and Digest of the Statute Law of the State of* Florida (Boston: Little, Brown, 1847); William Littell and Jacob Swigert, *A Digest of the Statute Law of Kentucky* (Frankfort, KY: Kendall and Russell, 1822); C.S. Morehead and Mason Brown, *A Digest of the Statute Laws of Kentucky* (Frankfort, KY: A.G. Hodges, 1834); Richard H. Stanton, *The Revised Statutes of Kentucky* (Cincinnati: R. Clark and Co., 1860); Henry Bullard and Thomas Curry, *A New Digest of the Statute Laws of Louisiana* (New Orleans: E. Johns, 1842); *Civil Code of the State of Louisiana* (New Orleans: Published by a Citizen of Louisiana, 1825); *The Laws of the Territory of Louisiana* (St. Louis, MO: Joseph Charles, 1808); Levi Pierce, Miles Taylor and William W. King, *The Consolidation and Revision of the Statutes of the State, of a General Nature* (New Orleans: Printed at the Bee Office, 1852); U.B. Phillips, *The Revised Statutes of Louisiana* (J. Claiborne, 1856); Wheelock H. Upton and Needler R. Jennings, *The Civil Code of the State of Louisiana, with Annotations* (New Orleans: E. Johns and Co., 1838); John D. Cushing, *Laws of the Province of Maryland* (Wilmington, DE: Michael Glazier, Inc., 1978); William Kilty, Thomas Harris and John Watkins, *The Laws of Maryland, from the End of the Year 1799* (Annapolis: J. Green, 1819); Virgil Maxcy, *The Laws of Maryland* (Baltimore: Philip H. Nicklin and Co., 1811); Otho Scott and Hiram McCullough, *The Maryland Code* (Baltimore: J. Murphey and Co., 1860); T.J. Fox Alden and J.A. Hoesen, *A Digest of the Laws of Mississippi* (New York: Alexander H. Gould, 1839); A. Hutchinson, *Code of Mississippi, from 1798to 1848* (Jackson: Price and Hall, 1848); *The Revised Code of the Laws of Mississippi* (Natchez: Francis Baker, 1824); *The Revised Code of the Statute Laws of the State of Mississippi* (Jackson: E. Barksdale, 1857); Charles Hardin, *The Revised Statutes of the State of Missouri* (Columbia: James Lusk, 1856); William C. Jones, *The Revised Statutes of the State of Missouri* (St. Louis: J.W. Dougherty, 1845); John D. Cushing, *The Earliest Printed Laws of North Carolina, 1669-1751* (Wilmington, DE: Michael Glazier, Inc., 1977); John A. Haygood, *A Manual of the Laws of North Carolina* (Raleigh: J. Gales and W. Boylan, 1808); Bartholomew F. Moore and Asa Biggs, *Revised Code of North Carolina* (Boston: Little, Brown, 1855); *Revised Code of North Carolina* (Raleigh: n.p., 1854); *Revised Statutes of the State of North Carolina* (Turner and Hughes, 1837); Thomas Cooper and David J. McCord, *Statutes at Large of South Carolina* (Columbia: A.S. Johnston, 1826-41); James L. Petigru, *Portion of the Code of Statute Law of South Carolina* (Charleston: Evans and Cogswell, 1860-62); John Haygood and Robert L. Cobbs, *The Statute Laws of the State of Tennessee* (Knoxville: F.S. Heiskell, 1831); Return J. Meigs and William F. Cooper, *The Code of Tennessee* (Nashville: E.G. Eastman and Co., 1858);

Erratically enforced public laws alone were clearly not sufficient to control Aframerican criminal conduct. Historian Joseph P. Reidy argues that there was a clear division of responsibility between masters and the state for the control of slave criminality. Masters were to maintain law and order within the boundaries of their farms or estates and the state—in the persons of slave patrols—handled slaves outside the fence rails. Georgia masters preferred to dispense justice themselves and only turned to the courts as a last resort. This reluctance was designed to safeguard their authority from outside encroachment. In Genovese's words the authority of masters formed a "perfectly proper system of complementary plantation law."[29]

Masters never met in congress in order to determine the rules that would govern black behavior on their farms and plantations. And even though they read many of the same agricultural and plantation management journals, considerable variation in plantation law from one place to another was possible, and probably the norm. Ex-slaves recalled a number of different rules but taken together they were nearly as all encompassing as the slave codes. Georgia bondsmen were prohibited from leaving their plantations without passes, "talking back" to whites, hitting other slaves, "fussing, fighting and ruckussing," lying, stealing, owning or possessing firearms, selling or buying anything without the master's consent, attending any secret meeting, harboring or assisting any runaway, abusing any farm animal, and mistreating any member of

---

Edward Scott, *Laws of the State of Tennessee* (Knoxville: Heiskell and Brown, 1821); Oliver C. Hartley, *A Digest of the Laws of Texas* (Philadelphia: Thomas, Cowperthwait and Co., 1850); Williamson S. Oldham and George W. White, *A Digest of the General Statute Laws of the State of Texas* (Austin: J. Marshall and Co., 1859); *The Code of Virginia* (W.F. Ritchie, 1949); William Waller Hening, *The Statutes at Large: Being a Collection of All the Laws of Virginia, from the First Session of the Legislature in the Year 1619* (Richmond: W. Gray Printers, 1819-23); *The Revised Code of the Laws of Virginia* (Richmond: Thomas Ritchie, 1819); *The Statutes at Large of Virginia from 1712 to 1806* (Richmond: Samuel Shepard, 1835).

one's family.[30] This striking similarity between public and plantation law meant that slaves were expected to conduct themselves in proper fashion whether on or off their plantations, and that they were subject to both public and private chastisement for violation of this complimentary set of laws.

The public enforcement arm of the criminal justice system was the slave patrol. The state's patrol system was established by a legislative act of 1757. The rationale for its existence was explained in the act's preamble: "...It is absolutely necessary for the Security of his Majesty's Subjects of this Province, that Patrols be established under proper Regulations, in the settled parts thereof, for the better keeping of Negroes and other Slaves in Order and prevention of any Cabals Insurrections or other Irregularities amongst them..." The captain or commanding officer of each militia company was required to summon his junior officers and divide the militia districts into as many smaller sub-divisions as could be effectively patrolled by the unit, as long as this sub-division did not exceed "twelve miles in extent." All plantation owners as well as all the "other Inhabitants," "Alarm Men" and "Foot and Horse" members of the militia were commanded to make themselves available for service on the patrols, though substitutes could be hired. Slave-owning women and white male servants were also required to participate in patrols; masters were required to provide their servants with "a Horse and furniture for service." Georgia was not alone in requiring women to serve on slave patrols; South Carolina did so as well. While female South Carolina slave owners were required to ride the roads on patrols there is no evidence that they did so; apparently

---

[29] Joseph P. Reidy, *From Slavery to Agrarian Capitalism in the Cotton Plantation South: Central Georgia, 1800-1880* (Chapel Hill and London: University of North Carolina Press, 1992), 46; Genovese, *Roll, Jordan, Roll*, 47.

women made use of the provision of the South Carolina patrol act which permitted the hiring of substitutes.[31] Since Georgia had a similar provision it is likely that few if any women served on patrols; there is no evidence to suggest that they did. All eligible persons were placed on a patrol list held by the militia captain; at each muster not more than seven persons would be chosen for patrol duty. Those chosen provided for themselves, "one good Gun or Pistol in Order, a Cutlass and a Cartridge Box with at least six cartridges, in it...." Patrols could visit the plantations in their districts whenever they chose as long as they did so at least once per month. Slaves caught outside "the Fences or cleared Ground of their Owners Plantations" without a pass or not in the company of a responsible white person could be whipped. Additionally, patrollers could search any white person's house if they reasonably believed that a runaway slave was harbored therein, as well as "any disorderly tipling-House or other House suspected of harbouring, trafficking or dealing with Negroes....". The act of 1757 served as the foundation for the patrol system through the end of the antebellum period. There were several minor revisions to the code. In 1765 the number of persons that would constitute a patrol increased from seven to ten, patrollers were required to visit each plantation at least once every two weeks, and service was confined to those between sixteen and sixty years of age. In 1824 women were forbidden from riding on patrols, and in 1845 the minimum period between plantation patrol visits was increased from fourteen to fifteen days.[32]

---

[30]George P. Rawick, ed., *The American Slave: A Composite Autobiography* (Westport, CT: Greenwood Publishing Co., 1972), v. 12, pt. 1:14-15.

[31] Candler, *Colonial Records*, 18: 225-33; Sally E. Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas* (Cambridge: Harvard University Press, 2001), 2. Hadden's work is the most thorough study of slave patrols to date.

[32] Prince, *Digest of the Laws*, 441-44; Cobb, *Digest of the Laws*, 1017.

Patrols existed in every slave state and were very similar in function and design to those of Georgia. Some states required them while others simply authorized local communities to form them. Patrols generally consisted of a captain and three others appointed for a period of a few months. They were required to ride the roads and inspect the farms and plantations every few weeks or so.[33] For example, in Virginia county courts were required to appoint patrols for terms not to exceed three months. The purpose of these patrols was to visit "all negro quarters and other places suspected of having therein unlawful assemblies" and to "arrest such slaves as may stroll from one plantation to another without permission." Alabama demanded that every slaveholder under sixty and every non-slaveholder under forty-five to serve on patrols. These patrols were required to visit plantations at least once per week during their terms of service.[34]

Despite their ubiquity and necessity slave patrols were not effective in controlling the black population. In areas with large slave populations greater concern about slave unrest and violence made patrols more active and efficient; in other areas patrols were used sporadically and service on them was viewed as an unwelcome chore. Slaveholders themselves often balked at the responsibility of patrol duty and paid substitutes to stand in for them; elite members of society routinely avoided patrol duty.[35] For example, Robert Toombs paid fines annually over the course of a number of years because he refused to serve as a patroller. In Wilkes County the names of a

[33] Genovese, *Roll, Jordan, Roll*, 618.
[34] Stampp, *The Peculiar Institution*, 214.
[35] Ibid.

number of the county's most prominent citizens appeared on the rolls as defaulters.[36] With masters and the upper classes intent on avoiding patrol duty the responsibility fell to non-slaveholders, principally young men who saw patrolling as a form of recreation.[37] Avoidance of patrol service and the youthful inexperience of patrollers led to extremely low levels of efficiency. One Georgia planter lamented: "Our patrol laws are seldom enforced, and even where there is a mock observance of them, it is by a parcel of boys or idle men, the height of whose ambition is to 'ketch a nigger'" This sentiment was constantly echoed by Georgia grand juries.[38] Effectiveness was certainly not aided by what might be described as fraternization with the enemy; the very whites who constituted the patrols aided slaves in breaking many of the laws they were mandated to enforce. Slaves sold goods they had stolen from their masters to poor whites; slaves and yeomen drank, gambled and stayed out past curfew together.[39]

Patrol inefficiency was also the product of the sheer magnitude of the task placed before them. John Hope Franklin and Loren Schweninger argue "it was virtually impossible to maintain surveillance over the black population day and night in all parts of a county. There were too many places to hide and too many hours at night for runaways to move across the countryside, visiting, drinking and stealing." The same might be said of non-runaways as well.[40] In Greene County slaves moved about nearly at will. Since three-fourths of the county's slaves lived on farms with fewer than twenty

---

[36] Ralph Betts Flanders, *Plantation Slavery in Georgia* (Chapel Hill: University of North Carolina Press, 1933), 277.
[37] Smith, *Slavery and Rice Culture*, 185.
[38] Flanders, *Plantation Slavery*, 278; Genovese, *Roll, Jordan, Roll*, 618.
[39] Genovese, *Roll, Jordan, Roll*, 22. For an excellent discussion of interracial criminal activity in coastal Georgia see Timothy James Lockley, *Lines in the Sand: Race and Class in Lowcountry Georgia, 1750-1860* (Athens and London: University of Georgia Press, 2001).
[40] John Hope Franklin and Loren Schweninger, *Runaway Slaves: Rebels on the Plantation* (New York and Oxford: Oxford University Press, 1999), 155.

slaves there was little opportunity to develop independent communities; therefore, slaves were required to establish significant relationships with those on other farms or plantations. This necessity-born mobility and the failure of patrols to control it was the subject of much local consternation. In November 1853 the county grand jury "deplored the laxity and supineness evidenced in our regulations...so as to render our patrol laws a dead letter." Even after John Brown's failed insurrection attempt Greene County citizens failed to shoulder the responsibility of patrol duty. In 1860 the grand jury once again remarked on the poor performance of slave patrols, observing that, "the patrol law is very loosely enforced in our county."[41]

Complaints against the abuses of slave patrols were nearly as ubiquitous as those lamenting their inefficiency. Non-slaveholders often disliked masters as much as slaves, and took out their frustrations against both. Masters repeatedly took patrollers to court for trespassing on their plantations or physically abusing their bondspersons.[42] Numerous ex-slaves recalled the efforts of masters to keep patrollers away from the plantations. According to Lewis Ogletree of Spaulding County, "It wasn't any use for the 'patty-role' to come to Marse Crowder's 'cause he would not permit him to tech one of his darkies." Anna Parkes remembered a patrol pursuing a slave belonging to one J.D. Ingram onto the Ingram plantation. Ingram commanded the patroller to "turn around and leave his premises." The patroller refused and continued his pursuit; Ingram picked up a rifle and shot the patroller dead. Ingram remarked to his wife, "Well Lucy, I guess the next time I speak to that scoundrel he will take heed." Even prominent Georgians like Alexander Stephens and Chief Justice Joseph Henry Lumpkin refused to

---

[41] Jonathan M. Bryant, *How Curious a Land: Conflict and Change in Greene County, Georgia, 1850-1885.* (Chapel Hill: University of North Carolina Press, 1996), 29.

allow patrols onto their plantations, the law be damned. This high-handedness on the part of masters even extended to sworn peace officers. Former bondswoman Minnie Davis remembered an incident when the town marshal came to her plantation to whip her mother because the latter had written notes stating that she had whiskey for sale. The master would not allow her to be touched.[43]

When patrols failed to turn up runaways masters sought the services of professional slave catchers, men who specialized in tracking fugitive bondspersons. These trackers charged by the day and the mile for expeditions that might last for days or weeks. The ten to fifty dollars a successful capture would produce was considered a princely sum for the poor whites who constituted this class of the criminal justice apparatus. One such man was Oliver P. Findley of Greene County. In 1847 Findley captured three runaways belonging to a county planter. He charged the master thirty-five dollars, which included a five-dollar fee for whipping one of the fugitives. Slave catchers of greater experience and reputation could demand higher compensation; John Upp of Middleburg, Virginia, received $150 for returning a runaway after a two-week pursuit.[44]

Specially trained bloodhounds were used to aid the slave catchers in their pursuits. The dogs were caged and "never allowed to see a negro except while training to catch him." They were given the scent of a black person's article of clothing and taught to follow the scent; slaves were often sent out on staged escapes to provide practice for the dogs. They were hired out at $5.00 per day for tracking and $10.00 to $25.00 per day

---

[42] Stampp, *The Peculiar Institution*, 215.
[43] Rawick, *American Slave*, v. 12, pt. 1:257-58; v. 13, pt. 3: 147, 158, 167-68.
[44] Franklin and Schweninger, *Runaway Slaves*, 156-57.

for actually catching fugitive slaves.[45] Former slave Hannah Murphy recalled seeing slaves chased by hounds: "I seen many mens runnin' away from de bloodhouns'. Sometimes we chillins be in the quarter playin' and a man would come runnin' along fast, breathin' hard, so skeared! De hounds be behind him."[46] Slave hounds were fierce, and if not restrained at the end of a pursuit would tear a man or woman to pieces. An ex-slave recalled seeing one of his fellows who had been caught by the "nigger hounds." His "skin was cut and torn in any number of places and he looked like one big mass of blood."[47]

The use of slave-catching dogs and the damage they could cause to slave property was an issue before the Georgia supreme court. In 1852 Gardner Davis hired Stephen, a slave owned by Mariana Moran, for one year. During the course of the year Stephen absconded and Davis hired a slave catcher to pursue him with dogs. During the ensuing chase Stephen fell into a river and drowned. Moran sued Davis for Stephen's value. At the close of the civil trial the presiding judge instructed the jury that "under ordinary circumstances the owner, the hirer, or overseer of a slave, has the right to pursue the slave if he runs away, with such dogs as may track him to his place of concealment...provided it be done with such dogs as cannot lacerate or wound or materially injure the slave; and if in doing so, harm should befall the slave, the hirer or overseer will not be responsible for the injury." In the view of the court the only way liability would attach under such circumstances was if the dogs used were improperly

---

[45] Ibid., 160-61; William K. Scarborough, *The Overseer: Plantation Management in the Old South* (Baton Rouge: Louisiana State University Press, 1966), 91.
[46] Rawick, *American Slave*, supp. ser. 1, v. 4, pt. 2: 466.
[47] Ibid., v. 13, pt. 3: 182; Franklin and Schweninger, *Runaway Slaves*, 161.

trained for the task. The jury found in favor of Davis, and Moran appealed the case to the supreme court.

In upholding the verdict of the lower court Chief Justice Joseph Henry Lumpkin relied upon the slave code of 1770 and related legislation which made it lawful for "every person" to apprehend fugitive slaves. Based on this general principle and an absence of relevant legislation Lumpkin ruled that it was certainly allowable to use properly trained dogs to capture runaways. The reason for this latitude was financial. Lumpkin noted that the South had "lost, already, upwards of 60,000 slaves worth between 25 and 30 millions of dollars." So instead of "relaxing the means allowed by law for the security and enjoyment of this species of property, the facilities afforded for its escape...constrains...us to redouble our vigilance and to tighten the chords that bind the negro to his condition of servitude—a condition which is to last, if the Apocalypse be inspired, until the end of time..."[48] According to the Georgia supreme court practically any means could be used to recapture runaways, as long as they did not lower the fugitive's capital value.

The brutality of slave patrols and slave catchers was a source of considerable trepidation in the slave community. Slaves were routinely beaten if they were found off their plantations without passes; some patrols simply came onto plantations to beat bondsmen for the sheer amusement of it. Others whipped slaves with the "flimsiest of excuses" for doing so. Many slaves were afraid of reporting the abuses of the patrols to their masters because they feared retribution. Numerous slaves likened patrols to the Ku Klux Klan; in fact, one former slave noted that the same men who had manned the

[48] *Moran v. Davis*, 18 GA 722 (1855).

patrols before the Civil War donned the white robes of the KKK after it.[49] Historian Sally Hadden has confirmed this slave observation for Virginia and the Carolinas.[50]

Despite their fear of patrols slaves resisted them. They developed early-warning systems to sound the alarm when patrols approached; they built trapdoors in their cabins to allow slaves without passes to escape. They placed vines across the roads to trip the horses of advancing patrollers. When caught some slaves fought violently to escape their pursuers. One Georgia slave, Adam, was caught off his plantation at the cabin of his girlfriend. Adam turned over a pot of boiling lard onto the patrollers and made good his escape. Another slave was attending a secret prayer meeting when patrollers broke into the house; a quick-thinking slave thrust a shovel into the fireplace and withdrew a good quantity of cinders and ash and threw them into the faces of the patrol. In the ensuing confusion all the slaves escaped. In some jurisdictions slave resistance proved so problematic as to alarm the white citizenry and to require additional security measures.[51]

Aframericans were not thought to be citizens or benign residents of Georgia but dangerous internal enemies that the law and the white populace had to keep in a constant state of subordination. Residing outside the body politic also meant that the slave legal personality was defined differently than that of the white citizen. The imperatives of chattel slavery mandated that slaves be treated as both persons and property. The essence of chattel slavery of course was the buying and selling of human beings as articles of property, the same as horses or wagons. But this logic could not be

---

[49] Rawick, *American Slave*, v. 12, pt. 1: 86; v. 12, pt. 2: 75; supp. ser. 1, v. 3, pt. 1: 96; supp. ser. 1, v. 4, pt. 2: 345, 576.
[50] Hadden, *Slave Patrols*, 207-220.

extended to the criminal law because, regardless of what the most virulent racists would like to have believed, slaves were volitional human beings; failure to recognize this simple reality would have meant that slaves could not be held accountable for their actions. So the humanity of bondspersons had to be recognized, but only within certain limited contexts. Full recognition of black humanity would have undermined the central tenet of American slavery: that slaves were simply the extensions of their masters' wills. Thus an elaborate legal fiction was created, one in which slaves were simultaneously persons and property. This fiction of animate chattel is captured in a conversation between T.R. Gray and Nat Turner in William Styron's *The Confessions of Nat Turner*: "... The point is that *you* are *animate* chattel and animate chattel is capable of craft and connivery and wily stealth. You ain't a wagon, Reverend, but chattel that possess moral choice and spiritual volition. Remember that well. Because that's how the law provides that animate chattel like you can be tried for a felony, and that's how come you're gonna be tried next Sattidy." He paused and then said softy without emotion: "And hung by the neck until dead."[52] The chief justice of Georgia's supreme court more formally expressed this sentiment in 1855. In *Cleland v. Waters* Joseph Henry Lumpkin opined that "slaves are property—*chattels* if you please; still they are rational and intelligent beings. Christianity considers them as such and our municipal law, in many of its wise and humane provisions, has elevated them far above the level of brutes."[53]

As both human beings and things slaves found themselves in an extremely complicated and disadvantageous relationship with the guiding principles of law.

---

[51] Rawick, *American Slave*, v. 13, pt. 3: 79-80; supp. ser. 1, v. 3, pt. 1: 5; Genovese, *Roll, Jordan, Roll*, 618-19.
[52] Genovese, *Roll, Jordan, Roll*, 28-29.
[53] *Cleland v. Waters*, 19 GA 41 (1855).

America's courts were based on the common law. Common law has been defined as "those principles and rules of action...which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs, and in this sense particularly the ancient unwritten law of England."[54] In the context of criminal law and procedure the common law defined the relationship between the accused and the criminal justice system; it determined the definition of crimes, the rights defendants enjoyed before the courts, and the punishments which were meted out to those convicted of violations of the law.

The application of common law principles to Aframericans varied over time and from place to place. The common law did not apply to early slave offenders. Since slavery did not exist under English common law it could not be used as a basis for the creation of slave law; therefore, whites had a relatively free hand in drafting legislation which met the needs of their slaveholding societies, and not those of the enslaved Aframerican population.[55] As a result a separate body of law in the form of slave codes developed to govern the actions and define the rights of blacks in white communities. Georgia's leading antebellum legal authority Thomas R.R. Cobb thought this entirely appropriate. In Cobb's view a separate slave code was necessary because the penal statutes were only applicable to those who could be deprived of freedom; slaves were not free people so they were not subject to the laws of free people.[56] This of course does

---

[54] *Black's Law Dictionary*, 5th ed., s.v. "Common Law."
[55] Philip J. Schwarz, *Twice Condemned: Slaves and the Criminal Laws of Virginia, 1705-1865* (Baton Rouge: Louisiana State University Press, 1988), 13.
[56] Thomas R.R. Cobb, *An Inquiry into the Law of Negro Slavery in the United States of America to which is prefixed An Historical Sketch of Slavery*. With an Introduction by Paul Finkelman (Athens and London: University of Georgia Press, 1999), 263.

not explain why free blacks in Georgia were also subject to the slave codes. The most logical explanation for treating Georgia free blacks as slaves before the criminal law was a desire to compress the two groups into one single category in order to foster and preserve white supremacy.

While all southern states developed separate penal statutes for Aframericans, by the end of the antebellum period most allowed the common law to inform those codes in order to provide the most basic protection for slave lives—and property values. North Carolina had a full-fledged debate in several cases over a number of decades in order to arrive at the proper relationship between the slave and the common law; the reasoning in these cases and the principles articulated therein were generally representative of those that occurred in other states. In *State v. Boon* the defendant Boon, a white man, appealed his conviction for the murder of a slave. Judge John Hall argued that the position of slave was not analogous to that of English villeins, who were protected by the common law. Instead their status in law was the result of positive legislation; thus the murder of a slave was not a crime unless a specific statute prohibited it. Chief Justice John Louis Taylor took an opposite tack to Hall's "continental doctrine." Calling on natural law theory Taylor averred that no man had the right to take the life of another except in self-defense, even that of a slave. He went on to assert that such total dominion over the life of another was not necessary for the proper functioning of slavery and that to allow it would be an affront to "reason, religion, humanity and policy..." Variations in these two positions would be argued in the North Carolina supreme court for decades and slaves would gradually come to receive the protections of the common law as a result. Tennessee adopted common law protection for slaves in

the 1829 case *Fields v. State*; Alabama did so in an appellate case in 1843, Texas followed suit in 1847 and the Louisiana supreme court ruled in favor of common law protection four times during the 1840s and 50s. According to legal scholar A.E. Keir Nash only South Carolina and Georgia rejected common law protection.[57]

Georgia took its minority stand in *Neal v. Farmer.* In 1851 Nancy Farmer brought suit against William Neal in the superior court of Greene County to recover damages for the loss of one of her slaves who had been killed by Neal. Farmer proved the killing and Neal put up no defense; the jury found in Farmer's favor and awarded her $825.00. Neal moved for a new trial, arguing in relevant part that Farmer failed to prosecute him in criminal court before initiating a proceeding in civil court, a prerequisite under the common law. The court denied Neal's request for a new trial because the murder of a slave was not a felony under the common law; therefore, a prior criminal proceeding was not necessary. Neal appealed to the Georgia supreme court, arguing that the murder of a slave was a felony under English common law. Apparently Neal was willing to risk execution after a belated criminal trial in order to avoid losing $825.00. Neal argued that under law the "killing of any person in the peace of the King" was murder and a felony; since slaves were persons the murder of a slave was a felony. Neal's attorney attempted to buttress his argument by claiming that slavery did exist in England before the Norman Conquest, and after it in the form of villenage. Farmer's counsel reiterated the argument presented in the lower court that slavery as practiced in Georgia never existed in England. Justice Eugenius Nisbet sided with Farmer. He held that while slavery under Saxon rule was certainly like chattel slavery in Georgia it occurred before

[57] A.E. Keir Nash, "Fairness and Formalism in the Trials of Blacks in The State Supreme Courts of the Old South." *Virginia Law Review* 56 (1970), 66-76.

England came into existence in any relevant form, and it would serve no purpose to delve into the "mists and fog and darkness" of that bygone age to find answers to contemporary questions. As to villenage as a form of slavery Nisbet ruled that the institution had ceased to exist over one hundred fifty years before the founding of Georgia; therefore, the common law protections afforded to villeins could not apply to slaves because these laws were long since obsolete. In dictum Nisbet went on to say that even if the laws of villenage were operative the positions of slave and villein were not analogous; villeins possessed certain civil and political rights and were subjects of the king, unlike slaves who possessed no civil and political rights at all. The supreme court also held that bringing slaves under the protective umbrella of the common law would undermine slavery:

> "It is theoretically everywhere, and in Georgia experimentally true, that two races of men living together, one in the character of masters and the other in the characters of slaves, cannot be governed by the same laws. Whatever rights humanity, or religion, or policy, may concede to the slave, they must, in the nature of the relation, be often different from those of the master. The forms of proceeding, and the rules of evidence for their protection, as well as the penalties for their violation, must necessarily in many instances, be different. The civil rights of the master do not appertain to the slave. Of these he has none whatever. The rights personal, if they might be so designated, of the slave, are, some of them, essentially different from those of the master, and cannot, therefore be the subject of a common system of laws. *They must be defined by positive enactments, which, whilst they protect the slave, guard rights of the master.* [Italics in original] If the Common Law be applicable to a state of slavery, it would seem to be applicable as much in one as another particular. If it protects the life of a slave, why not his liberty? And if it protects his liberty, then it breaks down, at once, the *status* of the slave...It is absurd to talk about the Common Law being applicable to an institution which it would destroy."[58]

In Georgia the common law protected the lives and interests of masters, not slaves. Aframericans were shielded from the punitive aspects of the law only by the largesse of whites.

Free blacks in Georgia did not fare much better in the legal and social order. In 1790 the free black population of Georgia stood at 398; by 1860 the group had grown to 3,500, a fraction of the state's total Aframerican population of 465,698.[59] In addition to being included in the slave codes, free blacks were also subject to a number of other legal restrictions. They were barred from possessing firearms and serving on juries or in the militia.[60] (It is extremely ironic that slaves were allowed to possess firearms under certain conditions and free blacks were not.) Free persons of African descent were also not entitled to the rights of citizenship. According to the supreme court of Georgia, "free persons of color have never been recognized here as citizens; they are not entitled to bear arms, vote for members of the legislature, or to hold any civil office. They have always been considered in a state of pupilage, and have been regarded as our wards...they have no *political* rights..."[61] Free black men and women were children who were incapable of exercising the rights of citizenship or of protecting themselves.

In the minds of white Georgians Aframericans were an inferior social group whose sole purpose was to labor. Given this status they were not afforded the normal rights and protections of law; instead they found themselves subject to legislation that protected them only as property but which held them accountable for their actions as human beings. The position of free blacks in Georgia was no better: they were not citizens, had few civil rights and were subject to the slave codes. As outsiders blacks were seen as the criminal population, a group to be watched, suspected and controlled. In Georgia and the rest of the slave south the criminal law was used as a tool to

---

[58] *Neal v. Farmer*, 9 GA 555 (1851).
[59] Smith, *Slavery and Rice Culture*, 194.
[60] Flanders, *Plantation Slavery*, 239. Flanders incorrectly stated that slaves were not allowed to possess firearms.

reinforce racial and status hierarchies.[62] Aframericans who rejected the legitimacy of its laws or who simply could no longer stand to be bound by them challenged this system from its beginnings.

---

[61] *Cooper and Worsham v. The Mayor and Aldermen of Savannah*, 4 GA 68 (1848).

[62] Critical race theorists argue that this racist-elitist use of the law continues to the present. The seminal essays in the critical race theory movement may be found in Kimberle Crenshaw, Neil Gotanda, Gary Peller and Kendall Thomas, eds. *Critical Race Theory: The Key Writings That Formed the Movement* (New York: The New Press, 1995).

CHAPTER 2

"THE ENEMY WITHIN:" AFRAMERICANS AND CRIME

"When arguing for ourselves, we lay it down as a fundamental, that laws, to be just, must give reciprocation of right: that without this, they are merely arbitrary rules of conduct, founded in force, and not in conscience..."[1]

--Thomas Jefferson

In the opening passage Jefferson describes the ideal relationship between citizens and the law. In order for the law to function properly and to be respected and obeyed all must be protected by it and subject to it. If the legal system operates equitably it has legitimacy; the people not only accept the legal power structure but also believe that it is right to do so. The key to the proper relationship between the people and the law is the belief that the interests of the authorities and the subject are identical, or nearly so; as long as the people believe—correctly or incorrectly—that their life chances are improved, "tolerably maintained, or largely unaffected," challenges to the system will be few.[2] But if, as Jefferson posits, the relationship between the subject and the law is maintained not by "reciprocation of right" but by "force," then the dynamic changes. There is no legitimacy and thus there is no moral obligation to obey.

Such was the situation of Aframericans in Georgia from the dawn of the Revolution through the end of the Civil War. They had no part in crafting or enforcing the criminal law, neither formal nor informal. They were subject to the laws but rarely protected by them. But how did Aframericans respond to this lack of moral obligation? Kenneth Stampp asks the operative question: "How accountable was a slave to a legal code which

---

[1] Thomas Jefferson, *Notes on the State of Virginia*, edited with an Introduction and Notes by William Peden (Chapel Hill: University of North Carolina Press for the Institute of Early American History and Culture at Williamsburg, Virginia, 1955), 142.

gave him more penalties than protection and was itself a bulwark of slavery?" Stampp answered, "This much at least can be said: many slaves rejected the answers which their masters gave to such questions as these. The slaves did not thereby repudiate law and morality: rather, they formulated legal and moral codes of their own." [3] In other words, slaves felt bound to respect the behavior demanded by legal codes when it benefited them individually and collectively, and chose to reject them in many instances when they did not. In reality, however, did the illegitimacy of the criminal justice system mean that blacks were not morally bound to obey its tenets and instead formed a full-fledged alternative morality? Many Aframericans did develop a different notion about the sanctity of white personal property; since whites had stolen Africans from their homelands and denied them the rights of property ownership white claims to their chattels was not sacrosanct. Armed with this logic slaves deprived their masters and other whites of their goods with distressing regularity, at least from the white perspective. For some Aframericans this different understanding of white property rights and the immorality of slavery were sufficient to quell any feelings of guilt, but for others it never did. Some slaves knew that the property crimes they felt obligated to commit were wrong in both white and black value systems and they were morally conflicted as a result.

There was no such distinction made regarding the value of human life, but blacks—like their white counterparts—engaged in a wide range of violent behaviors with both

---

[2] Austin T. Turk, *Political Criminality: The Defiance and Defense of Authority* (Beverly Hills, CA: Sage Publications, 1982), 30-34.

[3] Kenneth Stampp, *The Peculiar Institution: Slavery in the Antebellum South* (New York: Vintage Books, 1956), 125. James Baldwin described the relationship between blacks and the criminal law this way: "In any case, white people, who had robbed black people of their liberty and who profited by this theft every hour that they lived, had no moral ground on which to stand. They had the judges, juries, the shotguns, the law—in a word, power. But it was criminal power, to be feared but not respected, and to be outwitted in any way whatever." James Baldwin, *The Fire Next Time* (New York: Dell Publishing, 1962), 36-37.

fellow blacks and whites as their victims. When Aframericans engaged in violent behavior they were acting under the influences of a violent American culture, an especially violent southern culture, and in response to the unique circumstances of their enslavement and social degradation. White Georgians feared Aframerican capital crime, and with good reason. According to Philip Schwarz each action of a free or enslaved Aframerican which threatened white personal or collective safety and property had the potential—and even the clear power—to weaken or destroy slavery; acts of black criminality also forced whites to change their personal and collective behavior and the law. When blacks and whites confronted each other in courtrooms and on plantations over violations of the formal and informal criminal law they did so from diametrically opposed points of view. They faced each other in the majority of instances with different goals and values; whites, through law, force, custom and tradition, sought to keep blacks in a state of personal and racial subordination and blacks sought to resist this dominion at every turn.[4] This resistance often took forms thought criminal by whites.

The Overall Distribution of Criminal Prosecutions

Capital trial records offer a view into the nature and extent of felony crimes committed by Aframericans, and the seriousness with which these offenses were taken by the criminal justice system. Capital offenses threaten the most cherished interests of any society and thus in this instance provide one of the best windows onto what white Georgians hoped to preserve through law and what they feared most about Aframericans. But these records must be analyzed with care. They are incomplete; therefore, it is impossible to use them to determine the rates of specific crimes. This evidentiary

[4] Philip J. Schwarz, *Twice Condemned: Slaves and the Criminal Laws of Virginia, 1705-1865* (Baton Rouge: Louisiana State University Press, 1988), 3.

shortcoming is exacerbated by the fact that numerous crimes went unreported for a host of reasons. This "dark figure" (number of unknown and unreported crimes) is lower in cases of serious persons crime because there were usually victim/witnesses. And in the case of murder bodies were rarely concealed so such cases normally came to the attention of authorities. Capital trial records are also skewed towards persons crimes, especially as one proceeds from the colonial through the antebellum periods, because more persons crimes were made capital than property crimes. With these caveats in mind an examination of trial documents reveals much about the judicial priorities of Georgia's criminal justice system and the nature of black criminality. The overwhelming majority of cases brought before Georgia courts, nearly 70 percent, were persons crimes like murder, attempted murder, rape, attempted rape, manslaughter, poisoning and the like. Property crimes (burglary, arson, robbery, larceny) constituted 24.5 percent of all prosecutions, and crimes against public order (escape from jail, aiding runaways, failing to register as a free black and insurrection) constituted the remaining 5.5 percent. (. 7 percent of the offenses are unknown. See Table 2.1)

Statistical studies of black crime in other colonial and antebellum jurisdictions allow us to place the criminal activities of Aframericans in Georgia in perspective. In one study of North Carolina, fifty-nine slaves were executed between 1755 and 1770. Nearly one quarter had been charged with murder or attempted murder. A parallel study of the years from 1748 to 1772 found that 115 slaves had been executed or castrated. Fifty percent were punished for persons crimes and the remaining forty-seven percent for theft, arson and running away.[5] Between 1800 and 1865 in South Carolina 296 slaves were executed;

[5] Donna J. Spindel, *Crime and Society in North Carolina, 1663-1776* (Baton Rouge and London: Louisiana State University Press, 1989), 55, 65.

Overall Distribution of Prosecutions by Crime Type 1755-1865

		Frequency	Valid Percent
Valid	Unknown	3	.7
	Persons Crimes	289	69.3
	Property Crimes	102	24.5
	Crimes Against Public Order	23	5.5
	Total	417	100.0

Table 2.1

fifty-eight percent of them were put to death for having committed crimes against persons.[6] In Virginia 626 slaves were hanged between 1785 and 1865; of those 432 were executed for persons crimes, while only 84 lost their lives as a result of property crimes convictions.[7] These studies strongly suggest that Georgia shared the judicial priorities of the other slave states.

While trial records in Georgia are certainly incomplete it is clear that Aframericans committed few serious crimes relative to their numbers in the population. It could be argued that this dearth was a result of the docility of the slave/black personality or the effectiveness of the criminal justice apparatus. In reality this low rate of serious crime was the product of the natural variation in personality types characteristic of all societies; no population is composed entirely of individuals who are prepared to risk life and limb to defy an unjust system. On the other hand no society of the exploited consists only of folk who are co-opted or spiritually and psychologically broken. Most oppressed people find ways to resist their exploitation and denigration that fall short of noticeable violations of the criminal law, and which allow them to live tolerable lives. Some of those who find this arrangement unacceptable—at least momentarily—turn to serious crime.[8]

A statistical overview of the distribution of criminal prosecutions tells us what black criminals did and the seriousness with which the society viewed those criminal acts, but it does not tell us how the crimes were committed, who were its perpetrators and victims,

---

[6] Michael Hindus, *Prison and Plantation: Crime, Justice and Authority in Massachusetts and South Carolina, 1767-1878 (Chapel Hill: University of North Carolina Press, 1980),* 157.
[7] Schwarz, *Twice Condemned*, 43-44.
[8] Betty Wood, *Slavery in Colonial Georgia, 1730-1775* (Athens: University of Georgia Press, 1984), 193.

the socio-economic conditions which fostered them and the impact they had on the community as a whole. For that we must to turn to an analysis of the individual crimes. We begin with the property crimes.

Crimes Against Property

Theft and Larceny

> "Larceny or theft...shall consist of—1st. Simple theft or larceny; 2d. Theft or larceny from the person; 3d. Theft or larceny from the house; 4th. Theft or larceny after a trust or confidence has been delegated or reposed.... Simple theft or larceny is the wrongful and fraudulent taking and carrying away by any person, of the personal goods of another, with intent to steal the same. Theft or larceny from the person...is the wrongful and fraudulent taking of money, goods, chattels or effects, or any article of value from the person of another, privately, without his knowledge, in any place whatever, with intent to steal the same. Larceny from the house, is the breaking, or entering any house with an intent to steal, or after breaking, or entering said house, stealing therefrom any money, goods, chattels, wares, merchandise, or any thing or things of value whatever."[9]

Larceny occupied a minuscule portion of all criminal prosecutions, only 1.4 percent. This again is a reflection of the fact that only capital crimes were tried in Georgia's inferior and superior courts. After 1816 there were no death penalty theft crimes, but a few black defendants were nevertheless tried in capital tribunals after this date, for reasons unknown. (See Table 2.2) All of the victims in these cases were obviously white since blacks could not legally own property. (See Table 2.3) The vast majority of thieves were slave men, a little over eighty-three percent; no free black was ever charged with felony theft or larceny. (See Table 2.4) Money was the most frequently stolen item, as suggested by the cases of two slaves named John. On the evening of November 17, 1816, John, the property of William McGehee one of Baldwin County's largest slaveholders,

[9] Thomas R.R. Cobb, *A Digest of the Statute Laws of the State of Georgia* (Athens, GA: Christy, Kelsea & Burke, 1851), 791, 794.

Overall Distribution of Prosecutions by Crime 1755-1865

		Frequency	Valid Percent
Valid	Unknown	2	.5
	Murder	147	35.3
	Attempted Rape	19	4.6
	Attempted Murder	79	18.9
	Arson	43	10.3
	Poisoning	7	1.7
	Burglary	52	12.5
	Other Persons Crime	6	1.4
	Other Property Crime	1	.2
	Rape	17	4.1
	Attempted Poisoning	3	.7
	Mayhem	2	.5
	Manslaughter	6	1.4
	Escape	1	.2
	Larceny	6	1.4
	Free Black Violation	5	1.2
	Insurrection	4	1.0
	Aiding a Runaway	11	2.6
	Robbery	6	1.4
	Total	417	100.0

Table 2.2

Victim Status by Crime

			Victim Status			
			Unknown	White Male	White Female	White Person (Gender Unknown)
Crime	Arson	Count	1	9	1	32
		% within Crime	2.3%	20.9%	2.3%	74.4%
		% within Victim Status	1.3%	6.7%	2.0%	36.0%
	Burglary	Count		27		25
		% within Crime		51.9%		48.1%
		% within Victim Status		20.1%		28.1%
	Other Property Crime	Count		1		
		% within Crime		100.0%		
		% within Victim Status		.7%		
	Larceny	Count		3	1	2
		% within Crime		50.0%	16.7%	33.3%
		% within Victim Status		2.2%	2.0%	2.2%
Total		Count	78	134	49	89
		% within Crime	18.7%	32.1%	11.8%	21.3%
		% within Victim Status	100.0%	100.0%	100.0%	100.0%

Table 2.3

Defendant Status by Crime

			Defendant Status			
			Slave Male	Slave Female	Free Male	Total
Crime	Arson	Count	31	12		43
		% within Crime	72.1%	27.9%		100.0%
		% within Defendant Status	8.8%	27.3%		10.3%
	Burglary	Count	45	2	5	52
		% within Crime	86.5%	3.8%	9.6%	100.0%
		% within Defendant Status	12.8%	4.5%	26.3%	12.5%
	Other Property Crime	Count		1		1
		% within Crime		100.0%		100.0%
		% within Defendant Status		2.3%		.2%
	Larceny	Count	5	1		6
		% within Crime	83.3%	16.7%		100.0%
		% within Defendant Status	1.4%	2.3%		1.4%

Table 2.4

stole a $100.00 bank note belonging to Dr. John Fort from the home of William D. Jarratt, one of Milledgeville's most prominent citizens. In 1822 another slave John was convicted of stealing $15.00 from Appleton Rosseter, a justice of the Baldwin inferior court.[10] After cash black Georgians stole clothing, combinations of food, clothing and money, and finally food alone. (See Table 2.5) This preference for money is surprising since historians have long associated slave theft with items of necessity like food and clothing rather than personal aggrandizement. For example, between 1706 and 1739 the majority of Virginia's slave defendants were convicted of major and minor theft involving food, clothing, axes and firearms. Even those bondspeople convicted of capital theft crimes were alleged to have stolen these basic items.[11] Were Georgia slaves sufficiently well cared for that money supplanted items of necessity on the priority list of thieves? Or was the black market so successful that there were a variety of goods that could be secured with cash? While these alternatives were certainly possible the available evidence suggests a more likely explanation. In Georgia crimes committed on the plantation were handled there; only those acts that affected outside interests usually found their way into court. Bondspeople who felt under-provisioned generally stole from their masters' plantation stores so they were judged and punished on their home estates. Those slaves who ventured out to commit crimes probably did so in order to improve their material circumstances in significant ways. When these slaves were caught stealing non-subsistence goods off their plantations they were tried in state courts.

The dearth of felony larceny prosecutions disguised a nagging societal problem. According to slaveholders petty thefts committed by slaves were a universal problem.

---

[10] Glenn M. McNair, "The Trials of Slaves in Baldwin County, Georgia, 1812-1838" (master's thesis, Georgia College & State University, 1996), 75-77.

Types of Stolen Goods

		Frequency	Valid Percent
Valid	Money	8	12.1
	Clothing	7	10.6
	Food	2	3.0
	Combination of Food, Clothing or Money	4	6.1
	Other	4	6.1
	Unknown	41	62.1
	Total	66	100.0
Missing	Not Applicable	351	
Total		417	

Table 2.5

[11] Schwarz, *Twice Condemned*, 73-75.

Field hands stole and killed hogs and robbed corncribs; house servants unlawfully appropriated whiskey and wine, jewelry and anything else they could get away with. Runaways stole from their masters in order to aid their flights to freedom, taking money, horses, food and clothing. Some slaves took stealing seriously, treating it as a business enterprise. Stolen goods that could not be consumed directly were traded to free blacks and poor whites. Southern court dockets were filled with prosecutions for unlawful trading between slaves and free people.[12] Poor whites were not the only ones who cooperated with slave thieves; shopkeepers and overseers were involved as well. In 1826 the Chatham County grand jury complained that, "the trade in old iron recently commenced in this city, which holds out a temptation to our slaves to render articles of value useless and purloin plantation tools is always certain of finding a ready sale for such articles." These items were clearly not those customarily "owned" by slaves, and those shopkeepers who engaged in this trade certainly would have known this. Iron master William Williams published fourteen affidavits attesting to his honesty after having been accused of trading in stolen iron with slaves. The involvement of shopkeepers in a black market with bondspeople led to the formation of the Savannah River Anti-Slave Traffick Association in 1846. Overseers were also implicated in illicit commerce. William Grimes mentioned that his overseer, whom he described as "very poor," secretly purchased goods that slaves had stolen on the plantation.[13]

While the theft and trade of non-consumable goods was the more significant problem for the society as a whole, it was the theft of food that caused the greatest inconvenience and consternation for yeoman farmers and slave owners. Many masters

[12] Stampp, *Peculiar Institution*, 125-26.

attributed slave theft of foodstuffs to underfeeding; "scientific" planters therefore presented adequate provisioning as a solution to the problem. Slaves had a different interpretation of the matter. While many slaves were satisfied with the *quantity* of food provided by their masters, they were often displeased with its *quality* and variety. As a result some bondsmen stole simply to vary their diets and to provide an occasional treat for their under-stimulated palates. Ex-bondsman Walter Rimm remembered that they had "good eats" but in order to have better fare they had to steal from "de white folks." Mrs. M.E. Adams recalled that slaves stole hogs to supply their Saturday night barbecues. [14]

As the antebellum period progressed slave theft became so ubiquitous that the majority of masters simply came to accept it as an inevitable reality, a cost of doing business. As good paternalists they viewed stealing as the regrettable behavior of their wayward slave "children." Historian Joe Gray Taylor described the situation this way: "Thieving habits on the part of the slave were not unforgivable... The slaveholder might look with a relatively tolerant eye on thefts from the smokehouse or his larder so long as the black thief consumed his loot, but he was less tolerant when goods were purloined for trading purposes." Some even found the situation humorous. One Mississippian remembered, "It so happened that if I took a special fancy for any pig, some rogue took an equal fancy for the same; and somehow or other, he continued to strengthen his fancy by 'nine points of the law'." For others theft was no laughing matter. A Georgia planter lamented in 1834: "1830-1831-1832-1833-I have every year experienced from

---

[13] Timothy Lockley, *Lines in the Sand: Race and Class in Lowcountry Georgia, 1750-1860* (Athens & London: University of Georgia Press, 2001), 112-15.
[14] Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Vintage Books, 1976), 603-04.

some unknown scoundrel the robbery of my garden—I have every year planted a few watermelons for the eating of my little family—my wife, two young daughters, son and myself...Certainly it cannot be a servant of my own. I cannot bear the thought that I have among my servants a wretch so depraved of every sense of gratitude to his mistress and myself as to break open the garden fence in order to rob my small patch of ten or fifteen small watermelons..."[15] In this instance the master was more upset at the slave thieves' violation of the paternalistic relationship between master and slave than he was at the loss of the food.

While slaves may have been denounced and punished by their masters for "stealing," such "taking" (the term used by bondsmen to describe theft from their owners) was not considered a crime in the quarters, and those who stole were not generally considered disreputable--as long as they respected the "property" of their slave fellows. In the slave mind theft from the master simply meant transferring one item of the master's property for the benefit of another. Frederick Douglass described the phenomenon as "taking his meat out of one tub, putting it in another."[16] At least some masters understood that those who had no property rights were less inclined to respect those of the persons and of the society who had denied them. In *Notes on the State of Virginia,* Thomas Jefferson wrote: "That disposition to theft with which they have been branded, must be ascribed to their situation, and not to any depravity of the moral sense. The man, in whose favor no laws of property exist, probably feels himself less bound to respect those made in favour of others."[17]

---

[15] Ibid., 599-601.
[16] Stampp, *Peculiar Institution*, 126-27.
[17] Jefferson, *Notes*, 142.

Slave attitudes on the immorality and impropriety of theft were also undermined when masters encouraged slaves to steal on their behalves. Some ex-slaves recalled that on their plantations masters taught their bondspeople to steal pigs and other easily transported items from neighboring farms. Such behavior clearly made it impossible for slaveholders to argue that all theft was wrong. It also did not help matters that slaves were not held accountable at law for criminal activities undertaken at the master's command. Theft at the master's behest also had the effect of creating a certain degree of plantation solidarity among blacks and whites who made up the plantation community; it became a case of "us against them," with "them" being all those outside the plantation fence line, even if the victims of the criminality were white.[18]

Since bondspersons made a distinction between "taking" and "stealing" the operative question is, "How frequently did they steal from each other?" Since slaves could not legally own property there are no court cases relating to such thefts and masters rarely kept records of "trials" on their estates. It is therefore impossible to know with any degree of accuracy how frequently such theft occurred. However, it is clear from available sources that stealing among slaves was certainly a problem on some farms and plantations. For example, on one Georgia plantation when one slave stole from another the driver was required to take an equal quantity of "goods and chattels" from the thief to make good the loss; the offender would be punished if he could not compensate the victim. Violations of the slave theft code occurred even when the slave victim did not own the property in question. A slave blacksmith killed a fellow slave for stealing the

[18] Genovese, *Roll, Jordan, Roll*, 605; George P. Rawick, ed, *The American Slave: A Composite Biography* (Westport, CT: Greenwood Publishing Co., 1972) v. 13, pt. 4, 185.

keys to his shop; the shop nor the keys legally belonged to the slave but to his master.[19] But his owner's recognition of his custody of the keys and control of the shop was sufficient to establish a level of ownership in the blacksmith's mind.

A number of historians have defended the taking/stealing distinction, arguing that it was a legitimate form of resistance and a valuable tool for survival that had been used historically by oppressed groups.[20] But as Eugene Genovese perceptively points out in *Roll, Jordan, Roll*, this necessity-born behavior did not constitute a full-blown alternative morality. Some slaves, even those who committed such thefts, believed that what they were doing was wrong, not only in the eyes of whites but in their own. As more and more slaves joined the ranks of Christendom it became increasingly difficult to justify behavior that conflicted with standards of morality they generally held under other circumstances. Some slaves admitted to stealing but felt no pride in having been compelled to do so. "See old Marse and Missus give us such little rations led her slaves to stealin'... We knowd hit was de wrong thing to do but hunger will make you do a lot of things." Charles Grandy, an ex-slave from Virginia felt guilty about theft "'Cose we knowed it was wrong to steal, but de niggers had to steal to git sompin' to eat. I know I did." Others were angered by the need to steal and blamed whites: "White fo'ks allus talkin' 'bout nigger roguish, nigger roughish, an ef it hadn't been fo' dem, nigger wouldn't know nothin' bout stealin...." For still other slaves stealing was simply wrong, a sin and no option: "De Lawd say, 'Dey shall not steal'...Fuddermore, in de 'pistle ob de 'postle Isaiah, he say, 'Be a clean vessel ob de Lawd God." For slaves the

---

[19] Genovese, *Roll, Jordan, Roll*, 606-07; James O. Breeden, ed, *Advice Among Masters: The Ideal in Slave Management in the Old South* (Westport, CT: Greenwood Press, 1980), 51.

taking/stealing distinction was a means of holding their moral universe together, in much the same way that masters turned to Christian paternalism in order to justify their enslavement of fellow human beings. Slave attitudes about theft ultimately ran the gamut from total indifference to white mores to guilt that reflected both "humankind's capacity for righteousness" under the most extreme circumstances and the power of "hegemonic morality."[21]

Burglary

> "Burglary is the breaking and entering into the dwelling or mansion house of another, with intent to commit a felony. All out-houses contiguous to, and within the curtilage or protection of the mansion or dwelling house—a hired room or apartments in a public tavern, inn or boarding house, shall be considered as the dwelling house of the person or persons occupying and hiring the same. Burglary may be committed in the day or night."[22]

While Georgians generally took Aframerican petty theft more or less in stride, burglary was an entirely different matter. Burglary was a forcible violation of a white man's home, potentially threatening the health and safety of his family; it was a dangerous and possibly costly affront to southern ideas of patriarchal manhood. Burglary was the most prevalent form of property crime, accounting for 12.5 percent of all prosecutions. (See Table 2.2) No masters or mistresses were identified as burglary victims; this suggests once again that such theft crimes were handled internally in the majority of instances. (See Table 2.6) The overwhelming majority of burglars were men. Slave males made up over eighty-six percent of the offender population;

---

[20] Two of the most prominent historians to do so are Kenneth Stampp and Herbert Aptheker. See Stampp, *The Peculiar Institution*, 126-27; and Herbert Aptheker, *American Negro Slave Revolts*, 4th ed. (New York: International Publishers, 1963), 141-42.
[21] Genovese, *Roll, Jordan, Roll*, 607-09; Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the 19th Century American South* (New York and Oxford: Oxford University Press, 1984), 127-30.
[22] Cobb, *Digest of the Laws*, 790.

Victim's Relationship to Defendant by Crime

			Victim's Relationship to Defendant			
			Slave Acquaintance or Kin	Master, Mistress, or Overseer, etc.	White Person (Relationship Unknown)	Free Black Acquaintance or Kin
Crime	Murder	Count	35	23	24	2
		% within Crime	41.7%	27.4%	28.6%	2.4%
		% within Victim's Relationship to Defendant	97.2%	52.3%	10.5%	100.0%
	Attempted Rape	Count			19	
		% within Crime			100.0%	
		% within Victim's Relationship to Defendant			8.3%	
	Attempted Murder	Count		7	51	
		% within Crime		12.1%	87.9%	
		% within Victim's Relationship to Defendant		15.9%	22.3%	
	Arson	Count		3	38	
		% within Crime		7.3%	92.7%	
		% within Victim's Relationship to Defendant		6.8%	16.6%	
	Poisoning	Count		4	2	
		% within Crime		66.7%	33.3%	
		% within Victim's Relationship to Defendant		9.1%	.9%	
	Burglary	Count			52	
		% within Crime			100.0%	
		% within Victim's Relationship to Defendant			22.7%	
	Rape	Count		1	16	
		% within Crime		5.9%	94.1%	
		% within Victim's Relationship to Defendant		2.3%	7.0%	

Table 2.6

free men accounted for another 9.6 percent and slave women 3.8 percent. No free women were accused of burglary. (See Table 2.4)

There is relatively little detailed evidence about the character of antebellum Georgia burglaries. What evidence there is suggests that the case of Daniel Bonds was typical. During the second week of October 1839, Bonds left his plantation in order to attend a camp meeting, leaving his slave hireling Edmond on the premises. When Bond returned he found that seven dollars in silver coins were missing and accused Edmond of breaking into his home and affecting the theft. Bond's evidence was largely circumstantial: Edmond had been seen purchasing a watermelon and flashing silver coins at the same camp meeting that Bond had attended, and that he had paid a debt owed to a fellow slave with a silver dollar. This circumstantial evidence alone was not enough to convince Bond. He then took the unusual step of seeking out a fortune teller who divined that Edmond was indeed the burglar. Edmond and his owner responded by attempting to show that he had received the money from other sources. Based on this circumstantial evidence Edmond was convicted.[23]

The victims of black burglars were often prominent persons. In the summer of 1825 a slave criminal once again allegedly victimized William D. Jarratt (whose home was the site of John's thievery in 1816). George, a Jones County slave, was accused of having broken into Jarratt's home and stealing clothing and a watch valued at $100.00. At trial George was exonerated. Politicians were not beyond the reach of slave thieves. In November 1822 state senators John Fort (who was the actual victim of John's theft from the Jarratt home) and Francis Scarlett were in Milledgeville for the annual

legislative session. On the evening of the 22nd George, a slave belonging to Monroe County resident John L. Ponder, broke into the home of John Downer, one of the town's leading tavern keepers, and stole clothing and money belonging to Fort and Scarlett valued at $150.00. George was hanged for his crime.[24] In these examples slaves victimized two prominent white men twice. Were these men easy marks in the eyes of central Georgia's more daring criminals? It appears so.

The historical record is silent as to the means and methods of black burglars. As in the cases described above we only know that they broke into and entered certain buildings. Still, a 1797 burglary trial gives us a glimpse into the daring and skill of slave burglars. On January 14, 1797, William Marbray and his family were asleep in their St. Mary's home when, at about 1:00 a.m., Marbray was awakened by the sounds of people yelling from the street. When he went to the window a neighbor informed him that "some negroes" had attempted to steal a boat. After conversing with his neighbors for a time Marbray decided to go back to bed. Before turning in he decided to inspect the fire in the bedroom fireplace. While doing so he looked up and saw that a formerly closed trunk was open. He asked his wife had she left the trunk open; she replied that she had not. At this point Marbray concluded that he had been robbed. Mrs. Marbray got out of bed in order to get dressed, but she could not. Her clothes had been stolen! Marbray went downstairs and found his four servants asleep; he also found that a door and window had been broken open. The thieves had somehow managed to enter a house filled with people and to steal goods without waking a soul. The two thieves, slaves

---

[23] E. Merton Coulter, "Four Slave Trials in Elbert County, Georgia," *Georgia Historical Quarterly* 41 (1957): 242-44.
[24] McNair, "Trials of Slaves,", 77-80.

Frank and Abram, were apprehended when one of them was seen wearing Marbray's waistcoat a short time after the crime. This bit of braggadocio cost them their lives.[25]

Arson

> "Arson is the malicious and wilful burning of the house, or out-house of another....The crime of burning shall be complete where the house is consumed or generally injured."[26]

In *The Peculiar Institution*, Kenneth Stampp argued that arson was most common crime after theft. Thomas Morris has challenged this assertion for several jurisdictions, and it was certainly not the case in Georgia.[27] Arson accounted for just over ten percent of all prosecutions, making it the fourth most prosecuted crime after murder, attempted murder and burglary. (See Table 2.2) If non-capital theft crimes were included arson would fall even further down the list of criminal prosecutions. Despite the relatively small number of arson prosecutions, this crime nevertheless struck fear into the hearts of white southerners. Anytime there were mysterious fires it was thought that the arsonist was an Aframerican bent on destruction.[28] Arson had the potential to not only destroy property and land, but lives as well. Arson was also associated with insurrection scares; during 1829 a series of unsolved arson fires convinced citizens of Savannah that slaves were on the verge of revolt.[29] Such fears were not confined to low country Georgia. In South Carolina the idea that blacks frequently turned to arson to exact revenge on their white oppressors was nothing short of an obsession. Most fires were

---

[25] Georgia Slave Trials, Telamon Cuyler Collection, MSS 1170, Box 71, Folder 12, Hargrett Library, University of Georgia. (Hereinafter cited as Georgia Slave Trials)
[26] Cobb, *Digest of the Laws*, 789-90.
[27] Thomas D. Morris, *Southern Slavery and the Law, 1619-1865* (Chapel Hill: University of North Carolina Press, 1996), 331.
[28] Genovese, *Roll, Jordan, Roll*, 613.

followed by a rumor that a slave or free black had started it. In Charleston, between 1796 and 1798 a number of slaves were arrested, tried and convicted on the flimsiest of evidence for having conspired to fire the city. The same kind of persecution occurred in 1816 and worsened in the years after 1830. This fear was out of all proportion to the number of fires that occurred, and which could be attributed to black arsonists.[30] Since arson was such a difficult crime to detect and could occur practically anywhere at any time, it was never too far from the consciousnesses of white—or black—Georgians.

As with all other crimes arson was a largely male affair. Just over seventy-two percent of the defendants in arson cases were slave men. No free men or women were charged with this crime. What is most surprising is the role of slave women in arson. Slave women allegedly committed over twenty-seven percent of all arsons; a similar percentage of all women were tried for arson, second only to murder. (See Table 2.4) This high percentage of women accused of arson was not a Georgia phenomenon. In Virginia between 1740 and 1785 twenty-eight percent of those convicted of arson were women. When compared to percentages of women tried or convicted for crimes other than poisoning, these figures were high.[31] Female preference for arson as a means of attack may be found in the nature of the offense. Arson is a crime of stealth that does not require weapons or physical strength; all that is required is a match, combustible material and opportunity. Arson allowed a slave woman to strike those in authority—usually men—without having to face the often greater physical power and weaponry these men possessed, although a great many women did do so. Adeline is a case on

---

[29] Glenn M. McNair, "The Elijah Burritt Affair: David Walker's *Appeal* and Partisan Journalism in Antebellum Milledgeville," *Georgia Historical Quarterly* 83, no. 3 (Fall 1999), 451.
[30] Jack Kenny Williams, *Vogues in Villainy: Crime and Retribution in Antebellum South Carolina* (Columbia: University of South Carolina Press, 1959), 44.

point. In 1849 she was hired out by her Elbert County master to serve Wyatt T. Royal. After a time Adeline asked Royal for a few days vacation, which Royal flatly refused. Shortly thereafter Adeline allegedly told another female slave that Royal "would lose more than he would gain by being so mean." On May 1st witnesses reported seeing Royal's house ablaze and Adeline near it; a bundle of clothes and splinters of kindling wood were also found in the area where Adeline had been seen. This evidence was enough to result in a conviction in the Elbert County inferior court.[32]

Like Adeline, other slaves turned to fire in order to strike out against those who enslaved and exploited them. Arson has been used by oppressed peoples throughout history as a tool of protest and revenge.[33] Seven percent of the arson victims can be identified as masters, mistresses or overseers; the actual number of such victims is probably higher because the incomplete nature of some of the available records often makes it impossible to determine the relationship between the victims and defendants. (See Table 2.6) Logic also suggests that a larger number of the victims—perhaps a majority—were masters or mistresses because there would rarely be other whites who would regularly warrant such serious retribution, and the home plantation setting was perfect for clandestine fires. While nothing would be thought of a slave moving freely about his or her plantation, a slave wandering around town or someone else's farm in the middle of the night was another matter. Additionally, slaves who committed off-plantation arsons would run a greater risk of being caught or convicted; as we will see in a later chapter, the conviction rate for arson was quite low.

---

[31] Schwarz, *Twice Condemned*, 116.
[32] Coulter, "Four Slave Trials," 245.
[33] Genovese, *Roll, Jordan, Roll*, 613.

The most extreme example of arson-as-revenge occurred in Newton County, and may have been the work of Georgia's first black serial arsonist. In October 1862 a cotton gin house, a meetinghouse and a private residence were all burned in the span of a few days. The most serious of the fires was that which occurred at the plantation home of John W. Hunton. On the evening of October 18th the Hunton house was set afire with Hunton's wife, three children, a family friend and at least one servant inside. No one was killed but there was significant property damage. Albert, a slave owned by Jesse M. Harralson told several slaves at a corn shucking "that he would not be satisfied until Hunton's house was burned up & Mr. Hunton in it." Albert was whipped and beaten by Hunton and several other men over the course of two days in order to secure a confession. Albert initially stated that the Hunton fire had been set by two of Hunton's slaves, but after several more beatings he admitted that he had acted alone.[34] No motive was ever offered for Albert's rebellious acts; one can only surmise that pent-up frustrations over having been abused by a system which treated him as a thing had some role to play. Perhaps wartime conditions convinced Albert that the time for action had come. Southern slaves were not alone in relying on the torch to exact their revenge; northern slaves also used arson to strike back against their masters and the engendered the same kind of fear among whites in the North as it did in the South.[35] Aframericans continued to use arson as means of protest and revenge against racial oppression in Georgia long after slavery ended.[36]

---

[34] *State v. Albert*, Records of the Superior Court of Newton County, March 17, 1863, Drawer 11, box 3, vol. 3, Georgia Department of Archives and History (GDAH).
[35] Don R. Gerlach, "Black Arson in Albany, New York, November 1793," *Journal of Black Studies*, 7, no. 3 (March 1977): 301-12.
[36] Albert C. Smith, "Southern Violence Reconsidered: Arson as Protest in Black Belt Georgia, 1865-1910," *Journal of Southern History* 51, no. 4 (November 1985): 527-64.

While arson might have been viewed as protest by its perpetrators, fellow slaves may have had a different view depending on what was burned. If a slave burned down a carriage house or some other building with little or no economic value fellow slaves might have been sympathetic. But if the arsonist burned a ginhouse, smokehouse or corncrib the response might have been different; as a result they might be deprived of food or the master might strike out at the entire slave force in revenge to compensate for the loss in cotton revenue and the additional expense associated with securing new provisions.[37] As with other aspects of Aframerican criminality there was not one particular view about arson.

Revenge was not the only motive for slave arson. Arson could also be used to cover other crimes. In the pre-dawn hours of May 28, 1856, Sampson led fellow slaves Andy, Aleck and Marion in a daring burglary. The group had waited until the night of the 28th in order to burglarize a storehouse in Lumpkin County owned by Truman Sanford; they had chosen this night because there was no moon and Sanford would be out of town. Marion provided the group with horses "borrowed" from his master in order to carry the stolen goods. Andy was to leave open the gate where the horses were secured in case someone noticed the horses missing before they returned. It would appear as if they had wandered from their pen. (The same man owned Andy and Marion.) The thieves broke into Sanford's store and took a variety of goods and then set the place on fire to cover the burglary. The group then hid the goods in several locations in a wooded area in order to retrieve them once the inevitable clamor that would follow the event had settled down. This well-conceived scheme may have worked had their horses not left tracks

[37] Genovese, *Roll, Jordan, Roll*, 615.

leading to Sampson's plantation where the stolen goods were found. Andy was ultimately questioned and he confessed, implicating himself and his accomplices.[38]

Crimes Against Persons

Crimes against property were certainly of concern to white Georgians but this concern was not so great as to make it the principal priority of the criminal justice system; that role was reserved for crimes against persons. Slavery was maintained by force and all involved parties knew it; no matter how benign and benevolent the paternalism of slave masters, the "peculiar institution" was maintained by the whip, the revolver and the shotgun. Knowing that their system was maintained by violence whites feared violent crime more than almost any amount of property crime. They were right to fear because Aframericans often struck out in violence, some of it lethal. Black violence was a product, by and large, of white violence. There were a number of causes for white southern violence. First of all, antebellum America was a violent place. Much of this can be attributed to disproportionate numbers of young, single men in the nineteenth-century United States. In all societies this demographic group has historically accounted for the lion's share of homicides, assaults, riots and the like. As far back as 1636 American men have led women in every category of crime (with the exception of prostitution); this pattern held true across regions. Nineteenth-century America had more single, young men than the European, African and Asian nations from which they came; as an immigrant nation the United States had a more or less constant influx of such men in the years prior to 1846.

---

[38] *State v. Sampson*, Records of the Superior Court of Lumpkin County, August 6, 1856, Drawer 149, box 50, (GDAH). Slaves also committed arson at the behest of whites, often in order to secure insurance proceeds. See Genovese, *Roll, Jordan, Roll*, 613.

The nation's demographic tendency towards violence was heightened by certain cultural factors like the cult of honor, or environmental conditions like the frontier.[39] Distinctly American conceptions of manhood and corresponding changes in the law also led to increases in violence. Under English common law those who were attacked were under a "duty to retreat." This doctrine held that a person was not allowed to defend him or herself with deadly force unless two conditions had been met: 1) that he or she had retreated or attempted to avoid the confrontation, that he or she had "retreated to the wall at one's back" before striking back; and that 2) deadly force was the only available means of ending the threat. The idea behind this doctrine was that the State should hold a monopoly on the use of deadly force and that the courts should be the venue where personal disputes were resolved. The "duty to retreat" did not survive long in America. Frontier conditions, and the rugged, masculine individualism bred by them, led to an abandonment of the concept; in the American mind a man should not be forced to retreat, to act as a coward, in order to avoid a fight if his life were threatened. In the words of Oliver Wendell Holmes, "A man is not born to run away."[40] When American men were attacked they struck back, often with deadly results.

The South was infected by the virus of American violence and suffered more gravely from it. Rates of violent crime between the nineteenth-century North and South were striking. In Massachusetts between 1833 and 1838 violent crime accounted for only 17.4 percent of all offenses brought before the courts. In marked contrast such crimes constituted 61.5 percent of all cases adjudicated in South Carolina between 1800 and

---

[39] David T. Courtwright, *Violent Land: Single Men and Disorder from the Frontier to the Inner City* (Cambridge: Harvard University Press, 1996), 2-3, 10.
[40] Richard Maxwell Brown, *No Duty to Retreat: Violence and Values in American History and Society* (New York: Oxford University Press, 1991), 3-4, 17.

1860. In Ohio County, Virginia, the differential between violent crime and property crime was even more disturbing. In 1800 there were ninety-one indictments for assault and battery and three for murder; there was only one indictment for robbery and two for burglary. In Adams County, Mississippi, one of the richest districts in the South, 175 cases of assault appeared on the dockets of various courts while only 45 property crimes found their way into the criminal justice system. This pattern of regional violence persisted for the remainder of the century. In 1878 Kentucky, South Carolina and Texas had murder rates between 12.2 and 28.8 homicides per hundred thousand inhabitants; this figure was only 1.4 for Massachusetts.[41] In explaining national homicide trends in America sociologists John Shelton Reed and Raymond D. Gastil have theorized that much of the increase in national homicide rates in the twentieth century can be attributed to the "southernization" of the nation, that is, that southerners took their much higher levels of murder and other personal violence with them when the migrated to other parts of the country.[42]

A number of theories have been advanced to explain the uniquely violent South. In *The Mind of the South*, W.J. Cash opined that southern violence was a product of the frontier, which lacked the kinds of external restraints that characterized settled areas. This frontier tendency towards violence was exacerbated by the presence of plantation slavery, which depended on violence for its existence and maintenance. Cash goes on to argue, less convincingly, that white violent behavior was the result of white attempts to imitate the "romantic and hedonistic Negro personality." In critiquing Cash's

---

[41] Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (Oxford and New York: Oxford University Press, 1982), 367.

formulation Sheldon Hackney rightly notes that this personality, if it existed at all, was a product of black subordination and dependency at the hands of whites.[43] Scholars have also noted that other regions passed through the frontier stage without nearly the levels of personal violence evinced in the Old South. Cash was on much safer ground when he made the link between slavery and violence. The necessity of maintaining order through violence must have had a traumatic effect on both victims and perpetrators. Thomas Jefferson observed that, "There must doubtless be an unhappy influence on the manners of our people produced by the existence of slavery among us. The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the other. Our children see this, and they learn to imitate it...The parent storms, the child looks on, catches the lineaments of wrath, puts on the same airs in the circle of smaller slaves, gives a loose to his worse passions, and thus nursed, educated and daily exercised in tyranny, cannot but be stamped by it with odious peculiarities."[44]

The necessity for violence in the maintenance of slavery was compounded by the cult of honor, which scholars now generally agree must be considered as a major cause for regional differences in violence.[45] As we shall see below, this link between slavery, honor and violence explains much of Aframerican persons crime. While violent crime was clearly prevalent in the antebellum South, it occasioned very little public concern. From time to time public officials made pronouncements condemning personal mayhem

---

[42] Richard Maxwell Brown, "Southern Violence—Regional Problem or National Nemesis? Legal Attitudes Toward Southern Homicide in Historical Perspective," in *Crime and Justice in American History*, vol. 7, pt. 1, *The South*, edited with an Introduction by Eric H. Monkkonen (Munich: K.G. Saur, 1992), 19-20.
[43] Sheldon Hackney, "Southern Violence," in *Crime and Justice in American History*, vol. 7, pt. 1, *The South*, edited with an Introduction by Eric H. Monkkonen (Munich: K.G. Saur, 1992), 116.
[44] Jefferson, *Notes*, 162.

but to the general public, "Irish discussions with sticks" were no cause for alarm. Judges, juries, and lawyers were not concerned with the levels of violence, but with the fact that court cases involving such matters took up too much time.[46]

Little in the West African experience prepared slaves for the levels of personal violence they would encounter in America. While Africans participated in warfare there was very little violence or aggression among members of the same community.[47] This less violent African personality was altered by experiences in the antebellum South, for the worse. In *The Lineaments of Wrath: Race, Violent Crime and American Culture*, James W. Clarke argues that modern-day black-on-black crime is a product of the Aframerican community's exposure to, and victimization as a result of, white supremacist violence. According to Clarke, the most accurate predictor of future violence is a violent past; those who are victims of, or witnesses to, violence are those most likely to engage in such behavior. During slavery whites relied upon violence or the threat of violence in order to maintain control of their slave forces and to settle disputes among themselves. Such casual resort to violence led to a culture among both blacks and whites that deviated sharply from traditional or Christian notions of the proper place of violence in human intercourse, thus hardening the hearts of all to violence and communally sanctioning its use.[48] Southern violence begat black violence.

---

[45] Brown, "Southern Violence," 20.
[46] Williams, *Vogues in Villainy*, 31-32.
[47] Roger Lane, *Murder in America, A History* (Columbus: Ohio State University Press, 1997), 44.
[48] James W. Clarke, *The Lineaments of Wrath: Race, Violent Crime, and American Culture* (New Brunswick, NJ: Transaction Publishers, 1998), 5-6, 35-36, 42.

Rape

"Rape is the carnal knowledge of a female, forcibly and against her will."[49]

Rape and attempted rape constituted 4.1 and 4.6 percent of all cases, respectively, making them the fifth and sixth most frequently prosecuted crimes. (See Table 2.2) This low incidence of rape prosecution was characteristic of the colonial and antebellum South, for both white and black offenders. In colonial North Carolina only six Aframericans were convicted during the entire period.[50] In Virginia from 1785 to 1865 only fifty-eight defendants were convicted.[51] The figures for white-offender rapes were also low. In his study of antebellum South Carolina Jack Kenny Williams found that rape accounted for only one-half of one percent of all indictments.[52] While there were statistically few rape cases they were taken quite seriously. During the colonial period rape was a capital offense for both white and black men, but as the antebellum period progressed states eliminated the death penalty for whites but retained it for blacks, for reasons that will be made apparent below.[53]

The relatively small number of black offender rape cases is subject to several different interpretations. Some scholars have argued that this clearly indicates that Aframerican men rarely committed rapes. Others have suggested that these low numbers do not reflect the actual numbers of rapes because many white women would have been too ashamed to acknowledge that black men had violated them. Still others

---

[49] Cobb, *Digest of the Laws*, 787.
[50] Spindel, *Crime and Society*, 109.
[51] Schwarz, *Twice Condemned*, 209. The low number of cases that resulted in convictions in these two jurisdictions is telling because of the extremely high conviction rate for rape; given the high conviction rate the number of total cases could not have been much larger than the total number of cases that resulted in convictions.
[52] Williams, *Vogues in Villainy*, 34.

assert that the figures as they exist are too high, that some women cried rape in order to conceal consensual relationships and to protect their reputations; one study of Virginia rapes revealed that fully half of them were based on evidence so weak that whites testified on behalf of slave defendants and alleged that the relations were consensual.[54] Recent scholarship indicates that consensual sexual relations between black men and white women were far more prevalent than had been previously surmised, lending credence to the conclusions of the Virginia study.[55]

Nearly all black rapists were slave men; only one free black man was accused of attempted rape. (See Table 2.7) Their victims were all white women; only one of these women could be identified as a member of the defendant's master's family. (See Table 2.6) There are several reasons for this pattern. First, attacking a woman on the plantation was a sure way of being identified, convicted and hanged. Second, mistresses were generally not vulnerable. Research on colonial Virginia strongly suggests that white women who were raped by slave men were those who lacked a male protector and were therefore the most vulnerable. Twenty percent were identified as "young," widows," or "spinsters." More than half appear with no identification, an important legal omission in colonial courts. Only eight victims, or 18 percent, were identified as the wives of named men. Without statistics on the number of adult, white females in Virginia who were spinsters, widowed or divorced it is difficult to determine if twenty percent is a disproportionate number of unattached victims. However, if only half of the

---

[53] Diane Miller Sommerville, "The Rape Myth in the Old South Reconsidered," *Journal of Southern History* 61, no. 3 (August 1995), 492-93.
[54] Schwarz, *Twice Condemned*, 304.
[55] See Martha E. Hodes, *White Women, Black Men: Illicit Sex in the Nineteenth Century South* (New Haven: Yale University Press, 1997) and Martha E. Hodes, ed., *Sex, Love, Race: Crossing Boundaries in North American History* (New York: New York University Press, 1999).

Defendant Status by Crime

			Defendant Status			
		Statistics	Slave Male	Slave Female	Free Male	Free Female
Crime	Murder	Count	125	19	3	
		% within Crime	85.0%	12.9%	2.0%	
		% within Defendant Status	35.5%	43.2%	15.8%	
	Attempted Rape	Count	18		1	
		% within Crime	94.7%		5.3%	
		% within Defendant Status	5.1%		5.3%	
	Attempted Murder	Count	73	2	3	1
		% within Crime	92.4%	2.5%	3.8%	1.3%
		% within Defendant Status	20.7%	4.5%	15.8%	50.0%
	Poisoning	Count	3	4		
		% within Crime	42.9%	57.1%		
		% within Defendant Status	.9%	9.1%		
	Rape	Count	17			
		% within Crime	100.0%			
		% within Defendant Status	4.8%			
	Manslaughter	Count	6			
		% within Crime	100.0%			
		% within Defendant Status	1.7%			
	Insurrection	Count	4			
		% within Crime	100.0%			
		% within Defendant Status	1.1%			

Table 2.7

women whose status is not specified were unattached and they were combined with those women who were probably unattached it would result in a figure of 48 percent, clearly a disproportionate number of socially vulnerable women.[56] The wives of slave owners were not in this vulnerable class; they were among the most protected in the community.

Aframerican men accused of rape in the antebellum South were not subjected to the lynchings and other rituals of blood which often characterized such accusation in the post-Civil War period; instead, they were tried and the verdicts and punishments handed down by local courts were received by the white public with relative equanimity.[57] Despite the fact that the historical record clearly indicates that charges of rape against Aframericans were relatively rare, and that there were very few extra-judicial lynchings associated with the crime, numerous scholars and intellectuals have nevertheless argued that white southerners were under the damaging influences of W.J. Cash's "rape complex," a collective psycho-social disorder characterized by the sexual insecurity of white men, the veneration of white feminine virtue, and the fear of a mythical, prodigious black male virility.[58] Diane Miller Sommerville challenges this view, arguing that the judicial equanimity displayed in rape cases from around the region demonstrates that southern whites were not obsessed to the point of irrationality by the thought of black-on-white rape. She accuses historians who have described Old

---

[56] Schwarz, *Twice Condemned*, 161.
[57] Peter W. Bardaglio, "Rape and the Law in the Old South: 'Calculated to excite indignation in every heart'," *Journal of Southern History* 60, no. 4 (November 1994), 751.
[58] For examples see Ibid., 752; Winthrop D. Jordan, *Black Over White: American Attitudes Toward the Negro, 1550-1812* (Chapel Hill: University of North Carolina Press, 1968), 148, 152; Lawrence J. Freidman, *The White Savage: Racial Fantasies in the Postbellum South* (Englewood Cliffs, NJ: Prentice Hall, 1970), 11; Earl E. Thorpe, *The Old South: A Psychohistory* (Durham, NC: Seeman Printery, 1972); and Peter H. Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 through the Stono Rebellion* (New York: Knopf, 1974), 236-37.

southerners as hysterical when it came to interracial rape cases of reading postbellum attitudes and behaviors back into the antebellum situation. While Sommerville's work serves as a necessary corrective to certain scholarly excesses, it is perhaps more accurate to say that while antebellum white men (and those before them) were obsessed with the thought of black men engaging in sexual intercourse with white women, they had sufficient confidence in the judicial system to allow the cases to run their courses. Given the phenomenally high conviction rates for rape their confidence was well placed; lynching was not necessary when the black culprit was almost certain to hang. These higher than average conviction rates also suggest that whites were more concerned with this crime than others, even murder.[59]

In discussing rape and slave women U.B. Phillips noted that there were very few trials for this crime and speculated that the lack of trials for such offenses did not indicate that they did not occur, but simply that masters adjudicated these matters themselves.[60] Phillips appears to have overlooked a rather obvious legal fact: raping a slave woman was not generally a crime. For most of the colonial and antebellum periods in the majority of slave states it was not against the law for a white man to rape a slave woman. To make the rape of a slave woman a crime would have been to eliminate the sexual prerogatives of masters, overseers, white men generally and even slave men. Scholars have amply documented the sexual abuse slave women suffered at the hands of a variety of white men.[61] General rape statutes protected free women of

---

[59] Sommerville, "Rape Myth," 485-88.
[60] Ulrich Bonnell Phillips, *American Negro Slavery: A Survey of Supply, Employment and Control of Negro Labor as Determined by the Plantation Regime*. 2d ed. (Baton Rouge: Louisiana State University Press, 1966), 458.
[61] See Deborah Gray-White, *Ar'n't I a Woman? Females Slaves in the Plantation South* (New York and London: Norton Books, 1985); Herbert G. Gutman, *The Black Family in Slavery and Freedom, 1750-1925*

color but prosecutions were few and far between. In the Old South no white could ever rape a slave woman at law, but there were isolated cases of slave men being charged with raping slave women and free women of color. Slaves were indicted for raping slave women on two occasions in colonial Westmoreland County, Virginia; one slave was convicted and executed and the other was acquitted. In 1797 another Virginia slave, Peter, was executed for the rape of a free mulatto woman; in 1829 Lewis, a Mecklenburg County slave, was hanged after being convicted of raping a free black woman. Virginia appears to be exceptional. Rape among black people was not generally recognized because all people of African descent were thought to be naturally promiscuous, and because law did not recognize slave marital relationships so relations between slave men and women were left to the discretion of individual owners.[62] And even when slave women were raped it was not viewed as a crime against the woman but as a trespass against the property interests of her owner.[63] On the eve of the Civil War a number of southern jurists, theologians and scholars began to express concern about the lack of legal protection for black women against sexual violence. Georgia acted on this concern in 1861 when it amended its penal code to define rape as the unlawful "carnal knowledge of a woman, *whether slave or free*, forcibly and against her will."[64] Despite this revolutionary change in the law of slavery no Aframerican man was ever charged with the rape of a black woman in Civil War Georgia.

(New York: Pantheon Books, 1976); Elizabeth Fox-Genovese, *Within the Plantation Household: Black and White Women of the Old South* (Chapel Hill: University of North Carolina Press, 1988) and Jacqueline Jones, *Labor of Love, Labor of Sorrow: Black Women, Work, and the Family from Slavery to the Present* (New York: Basic Books, 1985). The story of one black woman who struck back and killed her master for the sexual violence he inflicted upon her is chronicled in Milton A. McLaurin, *Celia, a Slave* (Athens: University of Georgia Press, 1991)

[62] Morris, *Southern Slavery*, 305-07.

[63] Bardaglio, "Rape and the Law," 756.

[64] Ibid., 759-60.

The essence of rape is the lack of consent. Determination of consent turns on the credibility and character of witness and defendant, the behavior of both parties before, during and after the alleged act, and any witnesses or physical evidence that sheds light on the willingness, or lack thereof, of the victim to engage in the sexual act. In the most straightforward cases it comes down to whom the jury is willing to believe on the issue. Such was the case in *State v. Washington* in 1855. Delilah Ward alleged that she was walking from a cousin's house to her home when she was accosted by Washington, who grabbed her by the arm and led her into a swamp area. According to Ward, Washington threw her to the ground and threatened to kill her if she did not consent to sexual intercourse; she did not struggle and Washington engaged in coitus with her. After the act Ward promised to meet Washington at a nearby cow pen to give him some items of clothing if he would let her go, which he did. Ward retrieved the clothing items and went to the cow pen with a male cousin but Washington did not appear. In succeeding days Ward was told that if she swore by her account in court Washington would be hanged; Ward refused to do so at the preliminary hearing and would only do so at the trial. Washington had a similar account of the events. He admitted to waiting for Ward and accosting her on the road; he said that he had done so because several white boys told him that if he did so she would be willing to have sex. They convinced him that they had done so successfully. When he asked Ward for sex she refused and begged him to let her go, promising to provide the clothes if he did so. Washington allowed her to leave. There was no proof of sexual intercourse or physical injury to Ward. The encouraging white boys were never called as witnesses at trial, and no one questioned

why Ward offered to bring her alleged assailant clothing or why she did not immediately tell someone that she had been raped. Washington was hanged.[65]

Having alibi witnesses and alternative suspects were oftentimes not enough to buttress a slave defendant's credibility and to secure an acquittal. In May 1862, Edwin was charged with rape in the superior court of Chatham County. At trial he introduced five black witnesses and one white one who stated that he was with them at the time of the crime; three additional white witnesses corroborated facts that tended to prove his innocence. The prosecution's entire case hinged on the testimony of the victim, who had never seen her assailant before the attack. Despite the seemingly overwhelming exculpatory evidence, Edwin was convicted and sentenced to hang. Edwin motioned for a new trial, arguing that the verdict was contrary to the evidence. In ruling against Edwin the trial judge held that a greater number of defense witnesses was not conclusive proof of innocence; it was up to the jury to decide who was in the best position to know the information put forth and for them to judge the credibility of witnesses. This was not the end for Edwin, however. He was granted a second trial because new evidence had been uncovered that on the morning of the assault a runaway slave had been chased through the area who bore a striking resemblance to Edwin; this avenue was deemed worthy of further exploration. The case was continued for over a year and disappeared from the record.[66]

In both these instances white female victims were believed and black slave men were not. This was not simply the product of an automatic willingness to believe a white

---

[65] *State v. Washington*, Records of the Superior Court of Thomas County, May 28, 1855, Drawer 4, box 45, (GDAH).

woman over a black man; the presumption of white female truthfulness was certainly there, but it was a rebutable presumption. Testimony regarding the character of the victim was allowed during the trial of black defendants. The testimony of lower class white women, especially those known to be promiscuous or to consort with slaves and free blacks, was not usually sufficient to result in a conviction, or if there was a conviction the sentence was often a moderate one. This is a particularly damning characterization of poor white women (and black men) because the general presumption was that sexual intercourse with a black man was so abhorrent to the sensibilities of a white woman that only the most depraved sort of woman or a prostitute could ever engage in it.[67] The nexus between feminine promiscuity and untrustworthiness was expressed as follows by the Georgia supreme court in 1847:

"No evil habitude of humanity so depraves the nature, so deadens the moral sense, and obliterates the distinctions between right and wrong, as common, licentious indulgence. Particularly is this true of women, the citadel of whose character is virtue; when that is lost, all is gone; her love of justice, sense of character, and regard for truth."[68]

In the minds of the justices of the Georgia supreme court a woman who engaged in sexual intercourse outside the confines of marriage was considered a lost soul, a person incapable of telling the truth. And a white woman's credibility was called into even greater question if her lover had been black. Married women of the upper class were thought to be above such licentious liaisons. The virtue of wives was taken for granted and considered a critical part of their husbands' honor. As a result rape was also a crime against male honor. Female sexuality was viewed as the property of white men, much

---

[66] *State v. Edwin*, Records of the Superior Court of Chatham County, May 13, 1862, Drawer 68, box 43, (GDAH).
[67] Morris, *Southern Slavery*, 314-15.
[68] *Camp v. State*, 3 GA 417 (1847), 422.

like the slaves they owned, and protection of property was the key to retaining social status. Rape was the theft of a woman's virtue and in the white patriarchal world it was also the theft of her husband's honor.[69] Thus the rape of a woman of the slaveholding class was of greater societal concern than that of the women of the lower, less honorable classes. The case of Nancy Fleetwood demonstrates how this class bias operated.

On August 8, 1847, Wesley, a slave, was charged with attempted rape on a white female in the inferior court of Elbert County. Nancy Fleetwood alleged that she was at home alone around midnight on an unspecified Saturday when someone began yelling outside for her. Before she could answer or respond the person broke into the house and attempted to grab her; she managed to escape the person's grasp and ran out the door. The assailant chased her, grabbed her, and attempted to throw her to the ground. The pair continued to struggle and in the moonlight she was able to see that it was a black man, one she recognized as Wesley. The assailant fled barefoot into the night. Fleetwood ran to her brother Thomas' home and told him what had happened. Thomas went back to the scene of the assault where he found foot tracks; he followed those tracks to an area near the house where Wesley was staying. Fleetwood entered the cabin and found Wesley apparently asleep, approximately fifteen minutes after the attack. Wesley was taken to a nearby farm where Nancy was waiting and she identified him as her attacker. At trial Nancy Fleetwood said that she recognized Wesley because she had seen him on several prior occasions; testimony from the preliminary hearing was introduced which indicated that she had only seen him once before. Other witnesses were introduced who testified that Fleetwood had told them that she was unsure about

[69] Bardaglio, "Rape and the Law," 754-55.

her identification of Wesley. Thomas Fleetwood swore that when he found Wesley asleep he was wearing shoes. A white man testified that he had been drinking with Wesley at the time the assault was allegedly committed. Fleetwood's character was also called into question. Evidence was introduced which showed that she was unmarried, poor and illiterate. Wesley's defense counsel questioned her about "keeping company" with a number of different men. Based on this evidence Wesley was acquitted. That was fortunate indeed: at the preliminary hearing he had been convicted and sentenced to death.[70]

The conduct of victims after their alleged assaults also had a great deal to do with their credibility before antebellum juries. One of the key evidentiary rules in southern rape law was the requirement that the victim "levy a hue & cry, or to complaine thereof presently to some credible person as it seemeth." Failure to do so could jeopardize the prosecution. The assumption was that "the forcible violation of her person so outrages the female instinct, that a woman, not only will make an outcry for aid at the time, but will instantly, and involuntarily...seek some one to whom she can make known the injury and give vent to her feelings." If a woman did not respond in that fashion it was assumed that the act was consensual.[71] A few cases will demonstrate this principle in action.

Eliza Mitchum was walking down a rural road approximately one hundred yards from her Newton County home when Jeff, a runaway slave, jumped her from behind. According to Mitchum Jeff forced her to the ground, at which point she screamed

---

[70] Coulter, "Four Slave Trials," 244-45; *State v. Wesley*, Records of the Inferior Court of Elbert County, September 7, 1847, Drawer 2, box 76, (GDAH).
[71] Morris, *Southern Slavery*, 304-05.

several times. Her assailant then choked her into silence and raped her. After the attack Mitchum stumbled to her sister's house, where she reported what had occurred. At trial the principal evidence against Jeff were the bruises on Mitchum's throat, the testimony of a neighbor that he had heard a woman's screams at the time the assault allegedly took place, Mitchum's immediate reporting of the assault and Jeff's confession to a constable. Jeff's attorney attempted to counter by offering an alternative interpretation of the only piece of independent physical evidence: the imprint of a woman's back in the sand on the roadway. Defense counsel argued that while the imprint was clear, there were no footprints in the sand or other evidence to suggest that a struggle had taken place; in other words, Eliza Mitchum lay down on the ground and submitted to the sexual act voluntarily. The jury was unconvinced and Jeff was convicted and sentenced to hang.[72] In the minds of the male jurors Eliza Mitchum had responded to the violation of her person in the way that a respectable woman should: by crying out, fighting and immediately notifying others of the crime.

The requirement to notify others of the crime was viewed a bit differently when the victim was a minor. Just before Christmas 1862, twelve-year-old Elizabeth Echols left her home and was walking down a rural road in search of persimmons. On her way she saw Ned, a slave she knew from a nearby plantation, laying in the grass near a fence just off the road. Ned approached her and asked her if she would engage in sexual intercourse with him; Echols responded that "she would see him dead first." Ned grabbed her, threw her to the ground, lifted her dress and raped her. Afterward he walked her to a nearby river where he washed her bloody dress and undergarments and

[72] *State v. Jeff*, Records of the Superior Court of Newton County, September 27, 1850, Drawer 11, box 2, (GDAH).

placed them on a stump to dry. Ned told her not to tell anyone what had happened or he would kill her; he then attempted to bribe her by giving her a plug of tobacco. Echols went home without her undergarments because they were not dry and did not tell anyone about what had happened; the next day she went back to the stump and retrieved her underwear. Echols ultimately told her mother but it is not clear from the record exactly when; the assault occurred on Sunday, and in part of her trial testimony Echols stated that she told her mother on Wednesday. Later in her testimony she stated that she told her mother on Monday when her mother scolded her for leaving her underwear at the river. On that Monday Ned, wracked by guilt, confessed his crime to a fellow slave. His account differed only in the fact that he said he never threatened to kill Echols in order to secure her silence; according to Ned he asked her not to reveal what had occurred because he would be killed if she did. Echol's behavior after the fact was not questioned even though it differed markedly from Mitchum's; she did not fight back or cry out and she waited for several days to report the crime. She also did not run away immediately after the fact but stayed in Ned's company. Her conduct was viewed differently because she was a minor and that fact, along with Ned's confession, was sufficient to secure a conviction in Walton County superior court. Ned was hanged.[73]

It is impossible to say with any degree of certainty why slave men committed rape. An examination of the case evidence provides no motive other than the desire to experience the power and domination that psychologists and criminologists have come to associate with the personalities of rapists. Two cases suggest other possible motives.

---

[73] *State v. Ned*, Records of the Superior Court of Walton County, May 8, 1863, Drawer 127, box 42, (GDAH).

Mental instability may have played a role in Noah's 1857 rape of sixteen-year-old Martha Butler. Noah had been hired to work on the farm where Martha lived with her aunt Sarah Abury. After his one-year term of service had expired Noah came by the farm two days before the assault. On the day of the rape, July 15th, Butler and her aunt were seated in the kitchen when Noah arrived. He appeared agitated and asked the two women did they "know what he came back for." When they responded in the negative Noah replied, "Look out death is at hand." Both women screamed and ran, Martha out the door and across a field with Noah in pursuit and Sarah Abury in the opposite direction to find help. Abury screamed at Noah to come back and he yelled an unintelligible response. Approximately one-quarter mile from the house Noah caught up with Butler and told her "they had to do as man and wife." The pair struggled, with Butler cursing Noah; Noah yelled that she would do as he asked or die. Noah forced Butler to the ground and raped her. Butler then ran to a neighbor and told her that she had been raped. After his arrest Noah reported that he had been experiencing chest pains, that he had "the goat's curse" and that he was not in his "right mind." A physician examined him and described him as "deranged." A witness who knew Noah testified that prior to the assault he seemed to have "as much judgment as any negro." Noah's decision to attack a woman who knew him well in the presence of another witness who could positively identify him, as well as his behavior prior to the rape, strongly suggest that he was acting under some form of mental delusion or incapacity. This infirmity carried no legal weight and Noah was hanged on October 9, 1857.[74]

[74] *State v. Noah*, Records of the Superior Court of Meriwether County, August 19, 1857, Drawer 12, boxes 59 and 60, (GDAH).

Several explanations, from sociopathology to self-defense, come into play in the most brutal rape on record. On September 21, 1853, Martha Stowe left her father's Franklin County home. As she walked down the road three slave men, a father and his two teenage sons, watched her from a field. These men were lying in wait for her, having been told by a slave woman that she would be leaving the farm and heading down that road at that particular hour. They planned to kill her. When Stowe passed them Lank, the father, jumped from his hiding place and knocked her down. Jerry, the eldest son, stomped her neck. The second son Daniel helped his father and brother carry their victim into the woods. Once there Lank and Jerry began stomping her; Daniel was reluctant to join in but was ordered to do so by his father. At some point one of the men stabbed her in the genital area and another poured nitric acid down her throat. On September 23, her father and two sisters found Martha Stowe dead in the woods. Her neck, stomach and vaginal area were severely bruised and she had bleed profusely from the genital stab wound. Why had these three men committed such a heinous, seemingly sexualized, premeditated murder? Evidence introduced at trial indicated that Lank had had the nitric acid for some time before the crime and that he had told a witness that he planned to go on a rape spree, making these men sadistic sexual sociopaths. Another more intriguing motive is suggested by a comment Lank made to the slave woman who told him of Martha Stowe's travel plans. He told her that Stowe was "in a family way and had to be murdered." Why would a white woman have to die because she was pregnant? The most logical answer is that she carried the child of Lank or one of his sons. The birth of this bi-racial child born of a slave father could have cost one of these men his life at the hands of an angry father, or the state if a charge of rape had been

lodged in order to protect Martha Stowe's honor. Perhaps in the minds of Lank and Jerry it was either her life or one of theirs. Which of these motives is true will never be known and in the end it did not matter; Lank, Jerry and Daniel were hanged.[75]

Assault with Intent to Kill

> "An assault is an attempt to commit a violent injury upon the person of another."[76]

When a violent assault of the kind described above combined with a desire on the part of its perpetrator to affect the death of his or her victim, the crime was assault with intent to kill or murder. The offense of assault with intent to kill did not appear on Old South statute books until the early nineteenth century and replaced earlier statutes that prohibited various kinds of serious physical attacks on white people. Georgia was one of the first states to pass a law on the offense and did so in 1816; other states followed suit in subsequent years. Despite having this law on the books it was rarely used in states outside Georgia; according to Thomas Morris there was not a single case in the antebellum records of Texas, North Carolina, Louisiana or Delaware.[77] But nearly nineteen percent of all cases prosecuted in Georgia were for violations of this statute. (See Table 2.2)[78] As with other crimes assault with intent to kill was a largely male affair. Slave men were prosecuted in 92.7 percent of the cases; just over a quarter of all bondsmen were charged with this crime. Free men were charged in 3.8 percent of the

---

[75] *State v. Lank*, Records of the Superior Court of Franklin County, October 26, 1853, Drawer 177, box 17, (GDAH); *State v. Jerry*, Records of the Superior Court of Franklin County, October 26, 1853, Drawer 177, box 17, (GDAH) and *State v. Daniel*, Records of the Superior Court of Franklin County, October 18, 1853, Drawer 177, box 17, (GDAH).
[76] Cobb, *Digest of the Laws*, 787.
[77] Morris, *Southern Slavery*, 293-95.
[78] Assault with Intent to Commit Murder is described in tables as Attempted Murder for the sake of simplicity.

assault cases, followed by slave women who appeared in court in 2.5 percent of the cases. Only one free woman was indicted for assault with intent to kill. (See Table 2.7)

The vast majority of the victims of homicidal assault were whites whose relationship to their assailants could not be determined. Twelve percent of the victims in these cases were masters, mistresses, and overseers, and again, this figure might actually be higher because it is generally not possible to determine the exact nature of the relationship between the parties in most cases. (See Tables 2.6 and 2.7) Violent clashes between slaves and whites in authority over them often occurred when whites attempted to discipline bondspeople. In September 1864 A.J. Bryan was called to a Macon County plantation in order to help discipline Elias, a slave who had beaten a woman earlier in the day. When Bryan arrived several white men joined him; they reported that Elias was in his cabin. When they entered the room they found Elias standing in a corner. Despite fearing that Elias might be armed, Bryan grabbed him by the collar. Elias called for help and Ben, Sam and Redmond came into the house, all armed with axes. A tense standoff began. Sam and Redmond began swinging their axes, forcing the white men to retreat; at this point Elias brandished a previously secreted knife. One of the white men had a gun and wanted to shoot; Bryan commanded them not to. The would-be disciplinarians continued to try to get out of the house. They succeeded but a knife and axes had cut two of them before they could make good their escape.[79]

In January 1852, James Stripling hired Wade from his master William Grigg to cut and split fence rails. After three days Stripling concluded that Wade had only done one

[79] *State v. Elias*, Records of the Superior Court of Macon County, September 14, 1864, Drawer 164, box 19, (GDAH).

day's work and that he had also stolen some small items from around the farm. For these infractions Stripling decided to whip Wade and approached him while he was working in a field. Stripling commanded Wade to take off his shirt and to submit to the whipping; Wade refused, picked up his axe and began to walk across the field. Stripling followed and ordered Wade to stop; Wade told him "not to push on him." Stripling then asked a boy who was standing nearby to bring his unloaded gun; the boy brought an axe instead. At this point Wade began to climb over a fence; Stripling pulled him off the fence, and Wade's axe fell on the other side of the fence. When the boy arrived with the axe Stripling instructed him to throw this axe over the fence so that there would be no weapons on the side of the fence where the three of them stood. Stripling then ordered the boy to help him grab Wade, who pulled out a knife and said he would stab the boy if he came any closer. The boy stopped and Wade jumped the fence, picked up his axe and walked on. Stripling jumped the fence, caught up with Wade and grabbed him by the arm and demanded that he submit to the whipping; this time Wade said that he would comply, but only if he were allowed to keep his shirt on. Stripling replied that since he had been so abusive he would have to take the whipping with his shirt off; Wade jerked loose and walked away once again. Stripling pursued Wade until the two came to a nearby farm when the former tried to grab the latter again; Wade brandished his axe and threatened to strike Stripling if he came any closer. Stripling asked the farm wife to provide him with an axe, which she did. Stripling approached Wade with the axe, and Wade drew back his own axe in self-defense. Stripling swung his axe at Wade several times, missing on each occasion. Finally Wade had had enough, and he began to swing at Stripling, forcing him to retreat behind a tree. Wade then walked away—and

Stripling pursued. When the pair reached the next farm Stripling asked for a gun and was promptly provided a double-barreled shotgun by the lady of the house. Wade began to approach Stripling in the house; Stripling pulled the shotgun's trigger but the weapon misfired. Wade charged Stripling with his axe. Somehow Stripling managed to get behind Wade and to grab him by both elbows. Wade then began swinging the axe over his shoulder, striking Wade in the head. While the two struggled Mrs. Lane, the resident of the house, struck Wade with an axe, knocking him down and ending this fight to the death.[80]

This case reveals the attitudes whites and blacks had about violence and where the boundaries lay between obedience and assault. Initially Wade refused to be whipped at all but changed his mind if he would be allowed to keep his shirt on during the beating; Wade had initially denied that Stripling had the *right* to discipline him but later agreed to be disciplined under conditions of his choosing. Stripling clearly felt that Wade's insubordination demanded a thrashing and that he would give it to him at all costs and under conditions he determined. Other whites, in this case the boy and the farm women, could be pressed into service and operate under the overseer's authority in order to bring Wade under control; insubordinate slaves were a danger to all whites, so the outsiders willingly joined in. The willingness of all parties to use deadly weapons speaks volumes about the violent nature of the culture; it is particularly noteworthy that a white woman—though one from the non-elite classes—was willing to confront a slave in a violent encounter.

---

[80] *State v. Wade*, Records of the Superior Court of Thomas County, May 25, 1852, Drawer 4, box 45, (GDAH).

Violence could break out between blacks and whites under a variety of circumstances but principally during disputes of one kind or another. On April 1, 1859, Ansel Shackleford was seated in his home when he heard his dogs barking outside. He went out onto his back portico and saw Phil standing there. Shackleford asked the slave what he was doing there; he replied that Mrs. Shackleford owed him 25 cents for some fruit she had purchased from him. Shackleford said that he knew nothing about it and that he would have to come back later. (Mrs. Shackleford would later admit to buying the fruit but said that she paid Phil in full with meat and meal.) Shackleford then asked Phil if he would take an umbrella and go down to the courthouse and retrieve his son. Phil replied that he could not because he was waiting for a horse at the stables. Shackleford grabbed an umbrella and went to get his son; Phil walked with him. During the walk Shackleford noticed that Phil's shoes made a squeaking noise as he walked. When they got to an intersection Shackleford went toward the courthouse and Phil toward the stables. When Shackleford reached the courthouse steps he heard a shot ring out. Thinking that it was young boys playing a prank of some sort he turned around to inquire. A second shot was fired, striking Shackleford just above the left knee. Realizing that he had been shot Shackleford ran in the direction of his assailant. As the unseen man ran away Shackleford heard the squeaking of his shoes, the same sound Phil's shoes made. Phil was arrested and four rounds of shot were found on his person. A search of the house of a slave woman whom Phil visited frequently turned up shot and gun caps; this woman said she saw Phil with a pistol just after Christmas. This evidence was sufficient to convict Phil of assault with intent to murder a free white person.[81]

---

[81] *State v. Phil*, Records of the Superior Court of Upson County, May 6, 1859, Drawer 144, box 10,

Poisoning was considered an especially heinous form of assault with intent to kill and was feared by whites throughout the South; masters and mistresses often lived in fear of being poisoned by their black servants. This obsession was not confined to the Old South; slave owners in the Caribbean shared this great concern as well. Both whites and blacks had prior cultural bases for understanding the power of poison. The English had long regarded poisoning as a heinous crime; during the reign of Henry VIII poisoning was classified as treason, punishable by boiling to death. Poisoning of a master by a servant was considered petit treason, punishable by burning or decapitation. In Africa sudden deaths not attributable to witchcraft were explained by poisoning. Shamans and tribal judicial authorities routinely turned to poison to maintain their authority and mystique.[82]

Poisoning accounted for only 1.7 percent of all criminal prosecutions, but like all slave violence—especially that which was directed at owners—its effects extended far beyond actual numbers. (See Table 2.2) The situation was quite different in colonial Virginia; slaves there were especially found of poison as a means of dispatching enemies. Between 1740 and 1785 more slaves were put on trial for poisoning than any other crime except theft.[83] And in a reversal of patterns for other criminal offenses, the majority of black Georgia poisoners were women. Fifty-seven percent of all those charged with the crime were slave women. (See Table 2.7) This is entirely logical. As with arson, poisoning required no physical strength or weapons, just sufficient quantities of poison and access to food. Since most cooks were slave women they had the greatest access to Big House food. This potentially deadly relationship between

---

(GDAH).

[82] Genovese, *Roll, Jordan, Roll*, 616; Schwarz, *Twice Condemned*, 97.

slave women and food is reflected in the victim statistics; almost sixty-seven percent of poisoning victims were masters, mistresses or overseers. No slaves were poisoned in Georgia, which was in marked contrast to a number of other Old South states. This does not mean that slaves did not poison each other. Poisoning was largely an intra-plantation crime (given the need for ready access to food) and such offenses, even murder, were generally adjudicated and punished there. (See Table 2.8)

Several cases will demonstrate how slaves attempted to use poison to kill. On October 15, 1863, James Steele sat down to breakfast on his Cherokee County estate, joined by his wife Sarah and son Robert. His slave cook Mariah had prepared fried ham, bread and coffee. After partaking of a bit of the meal Steele noticed himself feeling weak and disoriented; his family reported feeling the same. He continued to feel "insensible" until almost dusk, having no memory of the rest of the day. Feeling better Steele attempted to stand at his bedside but fell to his knees feeling nauseous; he vomited and lapsed into unconsciousness. When he awakened Samuel McConnell and a Dr. Young were in his home. What Steele did not remember was that someone had sent for McConnell and Young because the entire family had taken ill and spent the day wandering around the yard in a delirium, laughing and picking up sticks, followed by a dutiful slave. Young administered medications and the family recovered. An investigation into the poisoning was begun immediately. A slave reported that Sam, a Steele slave, had been seen before breakfast putting his hand over the coffee pot. Sam was a field hand and was rarely in the kitchen except at mealtime. Sam was also reported to have said that he did not

---

[83] Ibid., 95.

Victim Status by Crime

			Victim Status							
		Statistics	Unknown	Slave Male	Slave Female	White Male	White Female	Free Black Male	White Person (Gender Unknown)	Black Person (Status & Gender Unknown)
Crime	Murder	Count	50	35	3	38	8	2		11
		% within Crime	34.0%	23.8%	2.0%	25.9%	5.4%	1.4%		7.5%
		% within Victim Status	64.1%	97.2%	100.0%	28.4%	16.3%	100.0%		68.8%
	Attempted Rape	Count					19			
		% within Crime					100.0%			
		% within Victim Status					38.8%			
	Attempted Murder	Count	21			34	1		23	
		% within Crime	26.6%			43.0%	1.3%		29.1%	
		% within Victim Status	26.9%			25.4%	2.0%		25.8%	
	Poisoning	Count	1			3	1		2	
		% within Crime	14.3%			42.9%	14.3%		28.6%	
		% within Victim Status	1.3%			2.2%	2.0%		2.2%	
	Rape	Count					17			
		% within Crime					100.0%			
		% within Victim Status					34.7%			
	Attempted Poisoning	Count							3	
		% within Crime							100.0%	
		% within Victim Status							3.4%	
	Manslaughter	Count		1						5
		% within Crime		16.7%						83.3%
		% within Victim Status		2.8%						31.3%

Table 2.8

intend to live under Steele's dominion another year and that he would "have his day." Sam was arrested. At the jail Sam was questioned by no less a personage than Georgia governor Joseph E. Brown; under Brown's questioning Sam said that he would tell the truth about what had occurred. He admitted to having the poisonous seeds, but stated that he had given them to the cook. What might have been a conspiracy to murder a master during wartime was not explored; the cook was not charged and Sam was convicted and hanged on April 1, 1864.[84]

On the morning of October 6, 1859, the family of Benjamin Williams sat down for breakfast in their Harris County plantation home. They were served fried ham, bread, coffee and other items. John Williams ate a piece of the ham and noticed that it tasted bitter; he drank a bit of coffee and noticed that it too was bitter. He commented on the acrid taste of the food to the other family members and they all remarked that their food had a bitter taste as well. Benjamin Williams speculated that they had been poisoned. To test the theory the family dog was given a large chunk of bread; before the bread was half eaten the dog "dropped dead in his tracks." Family members then reported feeling weak and ill. Sarah the cook was brought in and questioned. She admitted to preparing the food. Benjamin Williams asked if she had drawn the water that was used in the preparation of the meal; she replied that she had not but used water that was already in the well bucket. A neighbor and a doctor were alerted and both came to the house. The doctor administered various medications to the family and Sarah was questioned again; she admitted to possessing "white powders" and took the neighbor to their hiding place beneath a fence rail. She also said that William Howell, a local white

[84] *State v. Sam*, Records of the Superior Court of Cherokee County, March 8, 1864, Drawer 12, box 68, (GDAH).

man had been to the house the night before. Analysis revealed the powder to be strychnine. At trial Howell admitted that while he had given Sarah the strychnine, he had poisoned the well water without her knowledge; she had refused to do so. Despite Howell's confession Sarah was convicted and hanged.[85] This case is especially interesting because of its interracial nature; a free white man and a black slave woman had conspired to kill a white family. Interracial cooperation in serious crime was rare. Was this a business arrangement of some sort? Did Howell hire Sarah in order to eliminate an enemy or a rival? Or was Howell's motivation more personal? Were he and Sarah lovers? The latter alternative seems to be the most probable one. Howell was willing to risk his own life in order to save Sarah's. This hardly seems the behavior of a mercenary sort who would hire a slave to do his bidding. This case thus sheds more light on the complex nature of interracial relationships in the slave South.

Manslaughter

> "Manslaughter is the unlawful killing of a human creature, without malice, either express or implied, and without any mixture of deliberation whatever; which may be voluntary, upon a sudden heat of passion, or involuntary, in the commission of an unlawful act, or a lawful act without due caution and circumspection... In all cases of voluntary manslaughter, there must be some actual assault upon the person killing, or an attempt by the person killed to commit a serious personal injury on the person killing. Provocation by words, threats, menaces, or contemptuous jestures [sic] shall in no case be sufficient to free the person killing from guilt and crime of murder. The killing must be the result of that sudden, violent impulse of passion, supposed to be irresistible: for if there should appear to have been an interval between the assault or provocation given, and the homicide, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and be punished as murder... Involuntary manslaughter shall consist in the killing of a human being without any intention to do so; but in the commission of an

[85] *State v. Sarah*, Records of the Superior Court of Harris County, October 14, 1858, Drawer 165, box 16, (GDAH).

> unlawful act, or a lawful act, which probably might produce such consequence in an unlawful manner."[86]

Manslaughter, of all the serious crimes, was the one most affected by the institution of slavery. Only six Aframericans were charged with the crime, all of them slave men. All of the victims in manslaughter cases were black. (See Tables 2.7 and 2.8) One could conclude from these figures that Aframericans did not kill each other or whites during the course of heated confrontations, which would certainly be unusual given the violent nature of southern life. This strange statistical profile is explained by the imperatives of chattel slavery and white supremacy. Aframericans killed each other during the course of conflicts that met the criteria for manslaughter but they were normally charged with murder and convicted of the reduced charge of manslaughter. By convicting slaves of the lesser crime their lives were spared, and their value as property and labor was preserved. There were no white manslaughter victims because the murder of a white person had to be murder or justifiable homicide; there could be no middle ground. Manslaughter cases turned on the issue of provocation; one person could commit an act which was of such a nature that a person who struck out in deadly fashion in response was thought less culpable. To acknowledge that whites could provoke slaves to an extent that would justify a violent response would place bondspeople in a position to judge white actions and would legitimize a certain amount of black violence. No rational slave society could exist with such legal loopholes. Conversely, whites could commit manslaughter against slaves; most manslaughters committed by whites occurred during the course of whippings. Confrontations between slaves and whites during incidents of corporal discipline crystallized all of these issues. Slaves could be severely

[86] Cobb, *Digest of the Laws*, 783-84.

beaten by masters, mistresses, overseers and they could not strike back. Those who killed slaves during the course of a beating could avail themselves of the manslaughter statute in order to avoid the gallows. Slaves could also be lawfully killed if they engaged in insurrectionary behavior. An examination of a number of key cases will show how courts interpreted these principles.

Newton Camp was convicted of manslaughter in Marion County for the beating death of a slave, Willis. On June 12, 1858, Camp (a white man in some authority over Willis, perhaps as overseer) beat Willis with a leather carriage trace, causing severe injuries that resulted in the slave's death. The grand jury charged Camp with manslaughter but in the body of the indictment used language that detailed the elements of murder. The jury found camp guilty of "involuntary manslaughter, in the commission of a lawful act, which probably might produce such a consequence in an unlawful manner." Camp appealed his conviction on several grounds, the most significant of which were: that the indictment charged no crime recognized by law, that the killing of a slave was either justifiable homicide or murder, not manslaughter; that the indictment accused the defendant of manslaughter but described the elements of murder, and that the jury did not find the defendant guilty of any crime punishable by state law. The supreme court dismissed the first argument, that manslaughter could not be committed against a slave, by referring to the penal code which stated that "the killing or maiming of a slave shall be put on the same footing of criminality as the killing of a white person." As to the second allegation of error, the High Court again ruled against Camp. Under the common law if a grand jury returned a true bill for manslaughter on an indictment for murder the indictment was void, the rationale being that the grand jury was not entitled

to speculate on the issue of malice, the only substantive difference between the two crimes. The Georgia justices were unconvinced by this logic, first because it would prevent grand juries from returning true bills on indictments which charged separate counts of murder and manslaughter, and because the defendant was actually benefited by the structure of the indictment because he could not be convicted of murder regardless of the substance of the indictment because it specifically charged manslaughter. The final objection was dismissed; the court reasoned that the language of the jury's verdict was sufficiently close to the penal code to allow the trial court to pass the proper sentence.[87] This decision allowed legal whippings to occur but to be punished if they resulted in death; to rule that fatal whippings could be considered justifiable homicide would have given overzealous overseers and masters free rein to brutalize slaves, to destroy or ruin valuable property. At the same time slaves did die as a result of whippings; to make such deaths murder, a capital offense, might have made whites less willing to apply the lash. Manslaughter in this instance cheapened black lives and allowed whippings with a certain verve to continue. Once again the law was interpreted to suit the imperatives of slavery. We shall see just how far this interpretation could be taken.

The attitude of Georgia juries toward the beating death of slaves is perhaps best expressed in *Jordan v. State*. Randal Jordan was overseer on the Dougherty County plantation of John H. Dawson. Mariah was a thirteen-year-old slave girl who lived there. On July 23, 1853, Jordan decided to whip Mariah for reasons unknown. According to a fellow overseer Jordan began to whip her with a large leather lash, one

[87] *Camp v. State*, 25 GA 689.

designed to cause severe pain without breaking the skin as a cowhide whip would. He struck the young girl again and again for perhaps half an hour, administering between four hundred and one thousand lashes. The witness overseer yelled for Jordan to stop, but he continued. The unfortunate girl's father ran to her aid, only to be struck by the same lash that was being used on his daughter. Nearby slaves screamed out that Mariah was being killed; Jordan continued to apply the strap. Finally when Mariah lay still on the ground, not breathing, white froth spilling from her lips, Jordan stopped his bloody chastisement, but only to say that he thought she was "possuming." When Mariah failed to cease her "possuming," Jordan sent for a doctor and ordered the prostrate girl be taken to the master's house. When the doctor arrived the young girl was, in his words, "perfectly dead." The doctor opined that it was the worse beating he had ever seen, that a number of the lashes had cut to the bone; so much for a whip that was not designed to break the skin. Jordan was convicted of voluntary manslaughter, not murder. The supreme court was outraged by this lenient verdict. In the words of Justice Charles McDonald: "I have looked in vain through the evidence for a single mitigating circumstance in this case to reduce the crime below the grade of murder. The prisoner had power over the slave. He exercised it most cruelly, inflicting on her a beating, from four hundred to a thousand blows, which showed in the language of the law an abandoned and malignant heart." Despite their disgust with the jury's verdict the justices were powerless to alter the result because jurors were the ultimate triers of facts; if they found mitigating circumstances their judgment had to stand.[88]

[88] *Jordan v. State*, 22 GA 545.

"Killing a slave in the act of revolt, or when the said slave forcibly resists a legal arrest, shall be justifiable homicide."[89] Under Georgia law a slave could be lawfully killed if he or she were in a state of "rebellion" or "insubordination." In March 1857 overseer Allen Fambro stabbed and killed Jim, the slave of his employer, Richard Williams. Williams sued Fambro for Jim's value in Pike County superior court. Fambro argued that he had killed Jim while he was engaged in an act of insubordination; while he could not offer proof of Jim's alleged act of rebellion he did seek to offer evidence of the slave's dangerous character. A previous overseer would have testified that on one occasion Jim was sick; when the overseer ordered him to report to the fields Jim refused, stating that his master did not force him to work when he was ill. The witness overseer struck Jim in the face with his closed fist and left to get his whip. When he did Jim went outside and got his axe and went back into the house; the overseer did not re-enter the house and Jim had to be talked out by his master. On another occasion the same would-be-witness overseer attempted to whip Jim for playing cards. Jim swore that he "would be damned" if he was going to let the overseer whip him and picked up a stick; the overseer ordered that Jim be tied up, and then he whipped him. Over the next few months this overseer whipped Jim three times; he resisted twice and swung at the overseer once. The trial court refused to allow this evidence to support Fambro's own claim of slave rebellion and ruled in Williams' favor. Fambro appealed and the supreme court ruled that prior acts of insubordination should have been allowed to aid the defense theory of insubordination and to lessen the damages awarded because a

[89] Cobb, *Digest of the Laws*, 785.

rebellious slave was certainly not as valuable as a submissive one.[90] Jim's desire not to be whipped was used as a justification for his murder.

While whites could avail themselves of the manslaughter statute during confrontations that grew out of corporal punishment incidents, slaves could not. In 1854 Jim was convicted of killing his overseer during a fight that was precipitated by the overseers' desire to punish him. At trial Jim's attorney asked that the jury be given an instruction to the effect that, if Jim had been attacked by the overseer with a weapon likely to produce death he was justified in killing his assailant, or if a master or overseer inflicted unmerciful or unreasonable punishment upon a slave and the slave struck back in a moment of passion, the resulting homicide was manslaughter and not murder. The Georgia supreme court rejected the common law rule. Justice Ebenezer Starnes reasoned as follows: "Our laws refuse this indulgence to the passion of the slave, to his sense of provocation, and command him to restrain it, when chastised by his master; because, to allow it, would be to make him the judge, (and to suffer him to act upon his judgment) as to the reasonableness or unreasonableness of the extent and degree of that patriarchal discipline which the master is permitted to exercise—would be to place him continually in a state of insubordination, and to encourage servile insurrection and bloodshed. Our law thus wisely lessens the privileges of the comparatively few, for the greatest good of the whole." The Court went on to conclude that slaves need not take matters into their own hands because Georgia law prohibited "immoderate chastisement"; therefore, slaves could turn to the courts for protection.[91] How they would do so against the wishes of the masters who victimized them was not explained.

---

[90] *Williams v. Fambro*, 30 GA 232.
[91] *Jim v. State*, 15 GA 535 (1854).

Of course others could charge a master after he had killed a slave, but putting a master on trial after the fact was of no consequence to a dead slave.

With the exception of North Carolina, all other slave state supreme courts which addressed the issue reasoned as Georgia had and refused to hold that provocation could reduce murder to manslaughter in cases involving slave defendants. The North Carolina supreme court reached its unusual result in *State v. Will, (a slave)*. Will was involved in an argument with his overseer and "made off" in the middle of it; the overseer shot him in the back. Will tried to continue running but was overtaken by the overseer Baxter and several other slaves. In the ensuing scuffle Will pulled a hidden knife and stabbed Baxter in the arm; the overseer died as a result of the wound. Will was found guilty of murder and sentenced to hang. Judge Gaston of the supreme court first ruled that the murder of the overseer was not a justifiable homicide because in running away he was guilty of a "breach of duty." Nevertheless his conduct fell short of "resistance" or "rebellion" and certainly did not justify Baxter's subsequent brutal actions. To conclude that a slave could not be moved to murderous passion by an act of inhumanity by his master or one clothed with the master's authority" would not be fitting in a "Christian land" of "civilized people." Since there was no statutory law on the issue of provocation or the mistreatment of slaves Gaston turned to the common law. This law declared that "passion, not transcending all reasonable limits, to be distinct from malice...The prisoner is a human being, degraded indeed by slavery, but yet having organs, dimensions, senses, affections [and] passions like our own." As a result the supreme court found that Will had exhibited neither express nor implied malice and that his killing of Baxter was manslaughter, not murder. Why was North Carolina willing to

allow slaves to decide which acts were suitable provocation to kill when the other slave states were not? Thomas Morris argues that North Carolina's result differed from the other states because it did not have a law that protected slaves from cruel treatment; therefore, slaves could not rely on the law to protect them in such instances as Justice Starnes had argued in *Jim v. State*. Even if Morris is correct this did not make much difference to most North Carolina slaves because the decision was not reached until 1834.[92]

In order to keep slaves in due subjection most states concluded that the law could not allow slaves to judge and act upon the violent actions of masters, mistresses and overseers. But what of the violent provocation of whites who were not in positions of authority over slaves? Could slaves meet violence with violence in confrontations with any white persons where the white aggressive force was less than deadly? In Georgia the answer was no. In *John v. State* in 1854 Chief Justice Joseph Henry Lumpkin ruled that, "manslaughter...cannot exist under our law, as between a slave and a free white person, where the former is the slayer. That every such killing is murder or justifiable homicide. It is supposed, that where a slave is under absolute and inexorable necessity, to take the life of a white man to save his own, who has no right to punish or control him in any manner whatever, that such killing will be excusable. And it may be so. I have formed no very definite opinion upon this subject. But a stern and unbending necessity forbids that any such allowance should be made for the infirmity of temper or passion on the part of a slave, as to reduce or mitigate his crime from murder to manslaughter."[93] In other words, a slave could kill a white person in order to save his

[92] Morris, *Southern Slavery*, 279-84.
[93] *John v. State*, 16, GA 200 (1854).

own life—and his master's property—but had to accept violent attack which fell short of that which threatened his or her life. Georgia was in line with most of the other slave states with this ruling. North Carolina and Tennessee were the only two states that expressly ruled that a homicide where whites not in authority over the slave defendant could be reduced from murder to manslaughter providing there was sufficient provocation. But even in these two states what constituted provocation differed from the standard applied in cases involving whites. Since slaves occupied the lowest societal rung, since they were already considerably "degraded," acts which would be considered provocation for whites like assault or battery were insufficient. Only if the physical attack were fairly serious in nature could it be considered mitigating provocation and that determination was left to individual juries. In an examination of several thousand cases from around the South Thomas Morris could not find a single case where a trial jury reduced a charge from murder to manslaughter.[94] Apparently southern juries did not believe that there was anything a white person could do—short of attempted murder—which would justify a lethal attack by a slave.

The imperatives of chattel slavery clearly mandated that slave violence not be countenanced under most circumstances. But what of free blacks? In most respects free blacks were treated as slaves were under the law; the goal was to keep them in as near-slave status as possible. But one Georgia county deviated from time-honored principles and acknowledged that free blacks could commit manslaughter against whites. The issue was decided in *State v. Michael Davis*. Milledge Gay had a reputation in his Newton County neighborhood for being "extremely cruel to his negroes"; that

[94] Morris, *Southern Slavery*, 290-92.

reputation and the cruelty that gave birth to it would cost him his life. In March 1857 Gay found a hole in the wall of his smokehouse and concluded some of his meat had been stolen. (There was no conclusive evidence that anything had been taken at all.) He surmised that Michael Davis, a free person of color, had committed the theft. Gay said that if he caught up with Davis he would send him "to the other side of the Jordan." He did find Davis; he tied him to his horse, struck him with a bridle and took him to a location and whipped him with seventy-five switches. Apparently he released the free man because later he went back to find him in order to whip him again. Gay tied Davis' hands and was leading him along the road back to the scene of the first whipping when the pair came upon a snake. Gay decided to kill the snake, and Davis decided to kill Gay. Davis picked up a lightwood stick and pretended to help Gay kill the snake. Once the snake was dead Gay turned his back on Davis who struck Gay on the head with the stick. He struck Gay several more times after he was on the ground. Still conscious, Gay threatened to kill him; Davis struck him again and left him on the road to die. Davis was put on trial in Newton County superior court, and he was convicted of manslaughter and sentenced to the lash. The jury convicted Davis of manslaughter largely based on Gay's reputation for cruelty and his mistreatment of Davis.[95] This local court ruling was not binding on other jurisdictions and the issue of free blacks and manslaughter was never brought before the supreme court. While it is not possible to accurately predict how an appellate court would rule on a given issue, given the Georgia supreme court's commitment to slavery and white supremacy it is hard to imagine it siding with a free black like Davis on this issue. In most instances the goal was to treat free blacks like

[95] *State v. Michael Davis*, Records of the Superior Court of Newton County, March 1859, Drawer 11, box 3, (GDAH).

slaves under the criminal law; but in Newton County a free black man was allowed to respond as a white man would under similar circumstances.

The great majority of Old South verdicts in slave-on-slave homicide cases was manslaughter, not murder. In his study of selected counties, Morris found that outside of Virginia there were only thirteen murder convictions, two second-degree murder convictions and forty-two convictions for manslaughter. Morris suggests that this dearth of murder convictions reflects the fact that most homicides occurred during fights, the classic scenario for manslaughter.[96] This conclusion is supported by the relatively few Georgia cases where the evidence is extant. But could this lack of murder convictions also be the result of juries acting on racial stereotypes? Aframericans were thought to be unusually passionate people who were naturally disposed to act before thinking; such people were not constitutionally suited for actions that required forethought or premeditation. (However, when whites were killed it was thought that these acts demonstrated "malice aforethought and a "malignant heart.") Or given their "savage" natures Aframericans killing one another was to be expected and nothing that the society should be overly concerned about, especially since such violence did not threaten the existing order. Under such circumstances executing a slave murderer would be folly because to do so would result in an additional collective loss of slave manpower. Most black-on-black homicide cases often met the classic definition of manslaughter; such was the case of Redding Evans and James Smith.

Redding Evans, a free person of color, was involved in a sexual relationship with the wife of James Smith. Smith was fully aware of the relationship because the three

---

[96] Morris, *Southern Slavery*, 300.

occasionally slept in the same bed together. On one occasion Evans ordered Smith out of bed because he wanted to be alone with Smith's wife. The two men fought and Evans bested Smith. At other times the two men quarreled over chickens and corn and were heard to make threats against each other's lives. On Christmas day 1859 Smith went to his wife's house (the two were now living apart) because he had heard that Evans was planning to run off with his wife and he wanted to take his children. Evans arrived several minutes after Smith. When Smith saw Evans he leveled a single-barreled shotgun at him and fired, striking Evans in the side. Evans pulled a revolver and shot five times at Smith, wounding him in the side, on the arm, and twice in the abdomen. Smith later died of his injuries and Evans was convicted in Miller County superior court of manslaughter. The court ruled that the shooting was not self-defense because Smith had fired the single round in his weapon; therefore, he was no longer a threat and was apparently in the act of retreating when Evans fired the fatal shots.[97] One man had killed another during a violent confrontation as rivals for the affections of a woman; it was this kind of sudden passion and provocation that manslaughter statutes had historically contemplated.

Murder

> "Murder is the unlawful killing of a human being in the peace of the State, by a person of sound memory and discretion, with malice aforethought, either express or implied...Express malice is that deliberate intention, unlawfully to take away the life of a fellow-creature, which is manifested by external circumstances capable of proof...Malice shall be implied, where no considerable provocation appears, and where all circumstances of the killing show an abandoned and malignant heart."[98]

---

[97] *Evans v. State*, 33 GA 4.
[98] Cobb, *Digest of the Laws*, 783.

Murder was the most frequently prosecuted crime, accounting for over 35 percent of all indictments and accusations, nearly twice that of the nearest crime, attempted murder. (See Table 2.2) This high percentage of prosecutions is not surprising; murder was the most serious individual crime that could be committed and the most difficult to conceal. Thirty-four percent of Georgia's murder victims were not identified in the record. If Georgia was typical of Old South states, and there is no reason to believe that it was not, these unknown persons were white. Of those whose identities are known, nearly twenty-six percent were white men, 23.8 percent were slave men, 5.4 percent white women and two percent were slave women. Seven and one half percent of all victims were Aframericans whose sex and status were unknown. (See Table 2.8) In Georgia apparently the majority of murder victims were white; the same was true of Virginia. Between 1785 and 1829 two-thirds of Virginia murder victims were white; seventy-one percent of slaves executed between 1785 and 1831 were put to death for killing whites. In the period from 1785 to 1864 one-hundred-seventy-one whites died at the hands of slaves, or nearly fifty-six percent of the total number killed by bondsmen.[99]

The true nature of homicide cases is revealed by the relationship between the murderer and his victim. Of those whose relationship to the defendant could be determined almost forty-two percent were slave relatives or acquaintances; 27.4 percent were masters, mistresses, or overseers. Nearly twenty-nine percent were white persons whose relationship to the defendant is not known. Just over two percent of murder victims were free black kin or acquaintances. (See Table 2.6) The high percentage of friend/relations murders is to be expected because murder has historically been a crime

[99] Schwarz, *Twice Condemned*, 231-33.

that grows out of close personal interaction; stranger-on-stranger murder has been the exception rather than the rule. The frequency of black-on-black murder in the South was in marked contrast to the North. In antebellum New York City less than four percent of all offenders or murder victims were black; years would often pass between black intraracial killings.[100] Like New York, the actual number of blacks who committed murder in Philadelphia was relatively low; of the 190 homicides committed in the city between 1839 and 1859, only twenty-five were perpetrated by African-Americans. [101] The higher rate of southern black violence was yet another reflection of the region's propensity for violence. The significant representation of whites in authority over slaves was, as we shall see below, a product of the intense and often violent confrontations that occurred between slaves and masters.

Most Aframericans accused of murder were slave men; these men accounted for eighty-five percent of homicide defendants. Slave women made up the next largest group at nearly thirteen percent, followed by free black men at two percent. No free women were charged with murder. (See Table 2.7) Of all crimes murder was the one most likely to involve co-conspirators. (See Table 2.9) In Virginia black-on-black murder was almost universally an individual affair; between 1740 and 1785 there was only one example of a pair of slaves acting in concert to kill another.[102] Group

---

[100] Eric H. Monkkonen, *Murder in New York City* (Berkeley: University of California Press, 2001), 138.
[101] Lane, *Murder in America*, 116-17. This low number of murders actually reflects a significant statistical overrepresentation, given the comparatively small size of city's black population. However, the overrepresentation is reduced considerably if computations are based on the number of killers as opposed to the number of homicide incidents. In many murders involving whites there were several offenders who acted in concert to kill a single individual; there was only one such case involving more than one black offender.
[102] Schwarz, *Twice Condemned*, 154.

Co-Defendants by Crime

			Number of Co-Defendants			
			1.00	2.00	3.00	4.00
Crime	Murder	Count	21	13	4	5
		% within Crime	14.3%	8.8%	2.7%	3.4%
		% within Number of Co-Defendants	35.6%	50.0%	33.3%	83.3%
	Attempted Murder	Count	4		4	
		% within Crime	5.1%		5.1%	
		% within Number of Co-Defendants	6.8%		33.3%	
	Arson	Count	2	3	4	
		% within Crime	4.7%	7.0%	9.3%	
		% within Number of Co-Defendants	3.4%	11.5%	33.3%	
	Poisoning	Count	1	1		
		% within Crime	14.3%	14.3%		
		% within Number of Co-Defendants	1.7%	3.8%		
	Burglary	Count	17	4		
		% within Crime	32.7%	7.7%		
		% within Number of Co-Defendants	28.8%	15.4%		
	Rape	Count	2			
		% within Crime	11.8%			
		% within Number of Co-Defendants	3.4%			

Table 2.9

criminality was confined to acts against whites and not fellow slaves. The same was true of Georgia; only four crimes where blacks were the victims involved more than one offender. (See Table 2.10) In all likelihood this pattern is explained by the fact that most murders occurred spontaneously during conflicts that only involved the two principals. When killings were premeditated they normally involved a group of slaves with a collective grievance; there were rarely occasions when groups of slaves were adversely affected by a single slave to the point where they decided to act together to eliminate this person. The nature of slavery dictated that there were any number of whites who would find themselves in this kind of deadly and adversarial relationship with slaves; in theory all masters, mistresses and overseers found themselves in this position.

The most common weapons used in murders and serious assaults were clubs, knives, axes and hands and feet. (See Table 2.11) This distribution of weapons was typical of antebellum America among whites and blacks, North and South. The knife or razor was the weapon of choice of black murderers in antebellum Philadelphia; only one defendant used a firearm. (Firearms were a much more common item in the rural, frontier South than in the urban, developed North.)[103] In South Carolina the majority of murders (perpetrated by both whites and blacks) was committed with a knife or club rather than a gun. For example, in the Horry District stabbing led shooting by a ratio of five to three. In Edgefield twenty-four of thirty-seven murders were committed with weapons other than firearms. When South Carolinians were not using knives or clubs to kill each other they chose rocks, axes and an array of poisons.[104] In Georgia firearms

[103] Lane, *Murder in America*, 117.

Presence of Co-Defendants by Victim Status

			Victim Status				
			Slave Male	White Male	White Female	White Person (Gender Unknown)	Black Person (Status & Gender Unknown)
Number of Co-Defendants	1.00	Count	2	22	4	11	2
		% within Number of Co-Defendants	3.4%	37.3%	6.8%	18.6%	3.4%
		% within Victim Status	5.6%	16.4%	8.2%	12.4%	12.5%
	2.00	Count		9	3	10	
		% within Number of Co-Defendants		34.6%	11.5%	38.5%	
		% within Victim Status		6.7%	6.1%	11.2%	
	3.00	Count		9		3	
		% within Number of Co-Defendants		75.0%		25.0%	
		% within Victim Status		6.7%		3.4%	
	4.00	Count		6			
		% within Number of Co-Defendants		100.0%			
		% within Victim Status		4.5%			
Total		Count	36	134	49	89	16
		% within Number of Co-Defendants	8.6%	32.1%	11.8%	21.3%	3.8%
		% within Victim Status	100.0%	100.0%	100.0%	100.0%	100.0%

Table 2.10

Weapons Used in Murders and Attempted Murders

		Frequency	Valid Percent
Valid	Hands/Feet	23	19.5
	Knife or Axe	28	23.7
	Gun	20	16.9
	Club (Fence Rail, Tree Branch, etc.)	30	25.4
	Poison	11	9.3
	Other	6	5.1
	Total	118	100.0
Missing	Not Applicable	124	
	Unknown	175	
	Total	299	
Total		417	

Table 2.11

[104] Williams, *Vogues in Villainy*, 35-36.

were used in twenty cases, or 16.9 percent of the total. This figure of nearly seventeen percent is surprisingly close to overall figures for antebellum America. One study of 795 prominent murders reveals that firearms were used in 18.1 percent of the cases before 1846. (This figure nearly doubled to 34.9 percent by 1860.) According to historian Michael Bellesiles the rather limited use of firearms in antebellum assaults and murders was a result of their greater expense, unavailability and inefficiency. [105] However, the significant use of firearms by Aframerican murderers strongly suggests that firearms were more accessible to slaves than is commonly thought, and that whites were acting on a real rather than perceived threat when they passed legislation to limit black access to them.

Scholars have put forth a number of theories to explain black-on-black violence in the slave South. Some have argued that such violence was a direct result of the stresses and frustrations created by living in a racially oppressive society. Blacks could not take out the aggression created by negative interaction with whites on whites because doing so would result in extremely negative sanctions; therefore, Aframericans were left no choice but to take out their frustrations on each other.[106] The entire purpose of the formal and informal components of the criminal justice system was to keep Aframericans restrained and compartmentalized, to keep their movements under the strictest control. This severe restraint created an unbearable tension within each black person; the natural response to such internal tension was to desire physical, spiritual and psychological release. This desire often manifested itself in an aggressive lashing out against the surroundings that was initially directed at those closest at hand. This process

[105] Michael A. Bellesiles, *Arming America: The Origins of National Gun Culture* (New York: Alfred A. Knopf, 2000), 354.

occurs in any situation where individuals are confined and placed under severe physical and emotional stress. Frantz Fanon described the situation of colonized North Africans: "The colonized man will first manifest this aggressiveness which has been deposited in his bones against his own people. This is the period when the niggers beat each other up, when the police and magistrates do not know which way to turn when faced with the astonishing waves of crime..."[107]

Other historians have chosen not to focus on the psychological causes of violence but the more pedestrian ones. According to Genovese conflicts between men and women over relationship issues were the most common causes of violence among slaves, followed by stealing and gambling. He offers a persuasive explanation for what might ordinarily be termed "jealous" behavior among slave men. These men could not protect their womenfolk from abuse at the hands of whites; therefore, some felt an added duty and sense of responsibility for the protection of the chastity and well-being of women when they were threatened by other slave men, even when such protection was unwanted or unnecessary. Philip Schwarz also speculates that a portion of slave murders (what portion will remain forever unknown) was committed out of jealousy.[108] This of course was neither unusual nor confined to Aframericans; throughout recorded history and across cultures men and women have killed each other for this reason.

As we will see in the cases that follow, black Georgians did kill each other as a result of the frustrations and stresses engendered by slavery, out of jealousy, and over money. On a summer morning in 1853 Phil returned to his home on the Fisher plantation in

---

[106] Hackney, "Southern Violence," 117-18.
[107] Fanon, *Wretched of the Earth*, 52.
[108] Genovese, *Roll, Jordan, Roll*, 631-32; Schwarz, *Twice Condemned*, 153.

Muscogee County carrying a jug of liquor he had purchased the night before. He was approached by another Fisher slave, Neil, who accused Phil of stealing the money from him to buy the liquor. Phil denied the accusation and said that he had gotten the money from a bystander; the bystander denied having loaned Phil the money. Neil grabbed the jug, wanting to take it in recompense for his stolen money. Phil jerked the jug away and walked off; Neil walked after him. When the men confronted each other again both drew weapons, Neil a plough handle and Phil a wooden club. Phil struck first and knocked Neil to the ground, where he clubbed him several more times. A second slave stepped in between the two and Phil walked away. Neil got up and caught up with Phil. The two scuffled again; Neil pulled a Bowie knife and stabbed Phil several times. He died a week later. The two had lived on the same plantation and had not had any prior arguments or disagreements.[109]

Elbert and Mat were both slaves owned by the Georgia Railroad Company. On a Friday evening in late September 1862 the two men got into an argument over some money Mat had lost. Elbert told Mat that a third slave had taken the money, when this slave denied the accusation Mat searched Elbert's pocketbook. Mat found a three-cent piece in the pocketbook that he was convinced was his; he confronted Mat and he too denied taking the money. The two argued and nothing more became of the incident. On Sunday night the two men again crossed paths in the railroad yard and the missing money was once again the subject of an argument. According to Elbert's confession, Mat grabbed a pickaxe in order to attack Elbert; Elbert retrieved an axe and struck Mat on the head before he could be hit. According to the rail yard supervisor pick axes were

[109] *State v. Neil*, Records of the Superior Court of Muscogee County, June 29, 1853, Drawer 80, box 64, (GDAH).

not left out in the yard; based on his confession and the rail yard supervisor's testimony Elbert was convicted of murder.[110]

Throughout human history men have killed other men for the affections of women; Georgia slaves were no different. In the spring of 1863 Troup County slaves Willis and Isaac went fishing at a local creek; Willis was armed with an axe—an unusual implement for fishing but not for murder. When Isaac sat on the bank and turned his back to concentrate on fishing Willis walked up behind him and coolly struck him twice on the head with his axe. At his trial a slave witness testified that more than a year before the killing Willis said that "he would be the death of Isaac and that he would be yet if it took him five years." When the slave witness asked why he was angry at Isaac he would not say. An answer is suggested by the circumstances surrounding the murder. It was not an accident that Isaac and Willis were fishing on that fatal day; Isaac had been asked to catch some fish by a local slave girl. She told Willis about this fishing trip, and he went along to seize the opportunity to kill the man he clearly hated. After the deed had been done he went back to the girl. She asked him if he had done as he had "promised." Clearly she knew what Willis planned to do and helped him to accomplish the deed. Had Isaac been an unwanted suitor, an ex-lover who would not accept the end of the relationship, or just someone that the girl did not like and wanted to get rid of? Of course we will never know, but it is likely that Willis killed Isaac to please a woman he cared for deeply; for that, and the murder it produced, he was hanged. The femme fatale was not charged.[111]

---

[110] *State v. Elbert*, Records of the Superior Court of Newton County, March 1863, Drawer 11, box 3, (GDAH).
[111] *State v. Willis*, Records of the Superior Court of Troup County, May 1863, Drawer 155, box 22, (GDAH).

Slaves also killed each other out of a desire for revenge. On a July day in 1847 John Trammel was walking along a trail that led beside a gold pit in Habersham County. Trammel glanced down into the pit and saw a dead, black body half-submerged in the dirty water. He examined the body and found that it was a man with a dollar-sized wound in his head. The dead man was Nelson Young, a local slave who had been hired to work the gold pit. But Young did not fall victim to one of the myriad accidents that were commonplace at nineteenth century mining sites; another slave, one who shared his name, Nelson, had murdered him. Young's death was the product of long-standing animosity between himself and his killer. Three years prior to the murder the killer had been severely beaten by Young and his brother Luke. Over the years Nelson had been heard on a number of occasions threatening Young's life. On the summer night in 1847 when Young disappeared both men had been seen in the area of the gold pits, although not together and not at the same time. Young was reported missing and a search was commenced. Nelson was asked about Young's whereabouts; he replied that Young was visiting with a woman or "in hell." Some time later Nelson found himself in an argument and told his antagonist that if he persisted he would "end up like" Young. When asked to elaborate Nelson replied that he would "knock his brains out with a hand spike." Several days later Nelson told someone that, "he would not be surprised to find him [Young] at the upper end of the plantation in a gold pit." These rather careless or guilt-induced statements were enough to seal Nelson's fate. He was hanged.[112]

Scholars have correctly identified most of the principle reasons that slaves and free blacks killed each other but they have generally overlooked one: honor. Aframericans in

Georgia were as much affected by the code of honor as their white counterparts and conducted themselves in the same violent fashion because of it. Honor has been defined as "a system of beliefs in which a man has exactly as much worth as others confer upon him. Good opinion is won or lost by the way he handles himself in conflicts. To fail to respond to a challenge or insult is to lose face and therefore surrender self-esteem. In such circumstances insult is intolerable."[113] The general consensus among historians of the Old South is that honor played a key role in explaining violence in the region. What distinguished southern honor from that of other regions was not its depth but its breadth. In other places honor was replaced by middle-class sensibilities that led young men to turn away from physical violence as a means of resolving personal disputes; this tendency was strengthened through parental and religious training. Southerners were affected by these trends to a degree but a commitment to slavery and white supremacy forced white men to constantly assert personal domination over the slave population and violence was the principal means of doing so. As a result the code of honor retained its prominent position far longer and over a much broader segment of the population than in the North.[114]

Aframericans were also infected with the contagion of honor as a result of their experiences in Africa and the Old South. All traditional Sub-Saharan African societies were informed by honor; in areas where large-scale slavery existed honor was the

---

[112] *State v. Nelson*, Records of the Superior Court of Habersham County, June 29, 1853, Drawer 80, box 64, (GDAH).
[113] Courtwright, *Violent Land*, 28.
[114] Lane, *Murder in America*, 351; Ayers, *Vengeance and Justice*, 9-33. Since honor demanded a certain level of personal violence both officials and the public accepted such violence as long as it did not constitute a threat to the community at large. Wyatt-Brown, *Southern* Honor, 369-73. One scholar of antebellum crime notes that honor-related violence was so commonplace in the South that murder and assault were difficult to distinguish from affairs of honor. Paul Dolan, "The Rise in Crime in the Period

dominant value. The classic examples are Bornu and Hausaland in pre-European Nigeria, the Amhara of Ethiopia and the nineteenth century Ashanti. The cult of honor was exaggerated in these societies because they lacked the kinds of highly developed and well-defined class structures which would have provided competing alternative bases of identity; the less centralized and stratified the society the greater the emphasis on individual prestige.[115] According to historical sociologist Orlando Patterson no group of slaves ever accepted the notion that they were dishonorable. In fact, a desire for the recognition of slave honor was the catalyst for slave revolts in the Greco-Roman world in the second and first centuries B.C., in the dead lands of lower Mesopotamia in the late ninth century and in many Caribbean and Latin American slave societies between the seventeenth and nineteenth centuries.[116] Eugene Genovese recognizes slave honor in *Roll, Jordan, Roll* when he describes slave culture as a shame culture, one where one's sense of self was derived from the opinions of others. To illustrate his point Genovese told of one particularly honor-bound bondsman. This slave, who had never been whipped by his master, was falsely accused of negligence that resulted in an injury to the master's child. The slave took an axe and chopped off his right hand and exclaimed, "You have mortified me, so I have made myself useless. Now you must maintain me as long as I live." Hurt pride had caused this man to disable himself for life. In 1866 her former mistress tried unsuccessfully to persuade Sue not to follow her husband off the plantation. Exasperated at Sue's refusal to relent the ex-mistress sharply demanded that she leave immediately; she quickly added that the slave couple could return

---

1830-1860," in *Crime and Justice in American History*, vol. 9, pt. 1, *Violence and Theft*, edited with an Introduction by Eric H. Monkkonen (Munich: K.G. Saur, 1992), 203.
[115] Patterson, *Slavery and Social Death*, 82-83.
[116] Ibid., 97.

immediately if things did not work out for them. Sue replied, "No, ma'am, I'll never come back, for you told me to go." Sue had been insulted.[117] Slave preoccupation with honor might also be explained by their position in the southern hierarchy. Slaves occupied the lowest rung of the societal ladder. The status of each slave relative to others depended on his or her ability to defend what little status the slaveholding society allowed. All slaves were forced to cling to family, skills, reputation or honor as the cornerstones of their status and identity. When other slaves attacked any of these the entire edifice of identity was threatened. While white honor was based on independence, and that of slaves was based on the lack of such independence, both varieties were equally deadly, as we shall see in the next several cases.[118]

On June 8, 1837, Elbert County slaves Peter and Ben got into an argument because the latter wanted an explanation of "the tales" the former had been telling about him. Peter denied fabricating anything and said he "would be damned if he would not die...before he would be scandalized." Ben attempted to grab Peter, who stabbed him in the left side with a knife; Ben fought back, striking Peter eight or nine times before he was stabbed again. Peter then grabbed a chair and struck Ben; he stopped the attack only when his master ran into the cabin and hit him with a piece of wood. Ben died on the spot and Peter was tried and convicted of murder.[119] One slave had called another a liar, the same kind of allegation that compelled white men to resort to pistols and Bowie knives. Historian Elliot J. Gorn argues that words have a special power in oral cultures like the Old South. In such cultures print seems more distant and abstract than speech,

---

[117] Genovese, *Roll, Jordan, Roll*, 120-23.
[118] Schwarz, *Twice Condemned*, 251-52.
[119] *State v. Peter*, Records of the Inferior Court of Elbert County, June 30, 1837, Drawer 2, box 76, (GDAH); Coulter, "Four Slave Trials," 241-42.

resulting in literate peoples separating thought from action. The opposite is true of the spoken word; non-literate persons make less of a distinction between words and action, giving speech a great deal of power because "ideation and behavior" are closely linked. In a non-literate slave society whose members descended from the oral cultures of West Africa, words that attacked honor were just as damaging as actions of a similar character.[120]

Honor also played a role in the death of Meriwether County slave Stephen. Stephen came upon a game of marbles being played between slaves Nathan and John; Stephen asked to join in and Nathan said no and told him to go away. Stephen went into Nathan's cabin to talk with his sister. After a time Nathan's sister called to him, saying that Stephen was annoying her. Nathan ignored her and continued playing. When the game ended John went into the house and asked Stephen to leave. During their conversation Nathan entered and told Stephen that he had "imposed" on him and his sister. Stephen denied the allegation, replying that Nathan was a "damned liar" if he said he imposed on him. The two continued to make the honor-threatening denunciations against each other. Finally, Stephen asked Nathan if he thought he was "afraid to give you [Nathan] the damn lie here tonight." Nathan said, "See that you don't do it." Stephen walked up to Nathan and said, "You are a damn liar." According to John, "by the time the words was out" Nathan had grabbed an axe and struck Stephen on the left side of his head. He died of his wound several weeks later.[121]

---

[120] Elliot J. Gorn, "'Gouge and Bite, Pull Hair and Scratch': The Social Significance of Fighting in the Southern Backcountry," in *Crime and Justice in American History*, vol. 9, pt. 2, *Violence and Theft*, edited with an Introduction by Eric H. Monkkonen (Munich: K.G. Saur, 1992), 354.

[121] *State v. Nathan*, Records of the Superior Court of Meriwether County, August 1850, Drawer 12, box 59, (GDAH).

Honor conflicts among slave men also resulted in the deaths of innocents. In October 1851 a group of Bibb County slaves, among them Johnson, Jim, Austin and Henry, were loading hay into a loft using a block and tackle. Jim stood in the loft while Johnson and the others pulled on the rope from below. While raising a bale of hay the rope broke; Jim slid down the rope and began to yell at Johnson, saying that he should not have been pulling on the rope. The two began to pull on the rope and a fight broke out. Jim, the larger of the two men, threw Johnson to the ground several times and held him there. Johnson finally begged to be let up. He went into a nearby house and the other slaves began to disperse. Johnson came back out into the lane carrying a pistol; he waited for Jim to return. After a short while he saw the silhouette of a black man approaching; thinking that it was Jim he fired several times. It was not Jim, but Austin, who was struck and killed by Johnson's well-aimed shots. When Johnson found out what he had done he was extremely remorseful because he and the dead man had been friends. He confessed to his crime and said that he deserved to hang for it. Why would Johnson kill a man over a broken rope? According to Johnson Jim "imposed upon" him and "that he would shoot anybody that imposed upon him," including his former friend Jim.[122] This is the same sort of independence and pride that caused southern white men to kill each other.

The oppressive conditions of slavery also led to several instances of infanticide. Historically infanticides have been of two types, neonaticide and filicide. Neonaticide is the parental murder of an infant within 24 hours of its birth. Filicide is parental murder of a child older than one day. Most filicides are considered altruistic suicides. In

[122] *State v. Johnson*, Records of the Superior Court of Bibb County, June 19, 1852, Drawer 183, box 12, (GDAH).

altruistic suicide cases parents kill their older children because they cannot bear the thought of abandoning them when they commit suicide, or believe that their children's lives are so miserable that they would have greater peace in death.[123] Slave women who killed their children committed acts that are most appropriately classified as altruistic suicides. These women killed their children prior to killing themselves so that none of them would have to suffer under slavery any longer. [124] Others killed their children in order to save them from a lifetime of the sort of abuse that they had endured. These motives are readily apparent in several Georgia slave infanticide cases.

The first case of slave infanticide in the historical record occurred at the end of the eighteenth century. On August 17, 1796, a Savannah slave women threw her two sons, ten and five years of age, into a well in the city's Johnson Square and then jumped in after them. The bodies were taken out a short time later and all three were dead. According to newspaper accounts the motive for the murder/suicide "had not been learnt" at the time of the reports.[125] While it was never learned why this unknown bondswoman took her life and those of her children it clearly fit the pattern of altruistic suicide. In the two other cases involving Georgia slave women the motives were quite clear. On a winter day in 1858 the bodies of two black children, girls named Amanda and Fanny, were found floating in a Dade County spring, the youngest was only seven months old. These girls were slaves, and so was their murderer and mother, Rene. She had not killed her children in a fit of rage or postpartum depression; she killed them

---

[123] Peter C. Hoffer and N.E.H. Hull, *Murdering Mothers: Infanticide in England and New England, 1558-1803* (New York: New York University Press, 1981), 147-49, 154-55.

[124] The most noted case of slave infanticide occurred in Ohio in 1856. Margaret Garner, a fugitive slave from Kentucky, slit the throat of one of her infant children when slave catchers confronted her. The case became a cause celebre for both pro and anti-slavery forces. It was also the factual basis for Toni

because she did not want them to be slaves. Rene and her children were slaves on the plantation of Ephraim Gross. According to Rene, Gross and his wife mistreated them; in fact, on the day she decided to kill her children Gross had whipped her. She did not have complete access to her children; the plantation mistress kept them while Rene labored in the fields. While Rene was silent as to the specifics of the abuse she and her children suffered at the hands of the Grosses, they were sufficient for her to conclude that "she would rather that they were dead" than to continue to allow them to be victimized. After being beaten by Gross she decided that the tyranny had to end for her and her children. She took them and fled into the woods, to the spring. She tried drowning her children but they would not die, so she took an axe, cut their throats and left their small bodies in the water. Rene' was acquitted of her horrible crime even though she confessed.[126] Was the jury moved by the story of Rene and her children? It is just as likely that a master had already lost two slaves and the jury did not want to see him lose a third slave, or the future slaves she might produce.

In March 1860, Caroline Lankford accused her twenty-six year old house girl Becky of stealing bread dough. This accusation apparently disturbed the bondswoman tremendously because she thought she might suffer the fate of another Greene County slave who had been accused of theft: her mouth had been sewn shut. The next morning Caroline's daughter went to the family's well to retrieve a bucket of water. When she grabbed the well rope she noticed that it hung limp; when she looked into the well she saw that there was a person at the bottom of it. Mary Lankford called to her father, who

---

Morrison's acclaimed novel, *Beloved*. See Steven Weisenberger, *Modern Medea: A Family Story of Slavery and Child-Murder from the Old South* (New York: Hill and Wang, 1998).

[125] *Georgia Gazette*, 18 August 1796.

came immediately and climbed down into the well; he found Becky there, still alive, and pulled her out. It was at that moment that James Lankford saw what must have been a shocking, horrifying sight; there were three dead children at the bottom of the well, the youngest one only a year old. Becky was imprisoned for six months awaiting trial. According to authorities Becky confessed several times, offering two motives for the infanticides. Both motives are powerful condemnations of slavery. In one confession Becky allegedly said that she was so angered by her mistress' accusation that she decided to damage the family financially by killing her three children; she had jumped into the well to make sure that her children drowned. In the other account Becky was simply "tired of life" and wanted to end her suffering; she committed the murders because she "didn't want to leave any children behind her."[127] Another women chose death for her children rather than a life of bondage and servitude. She was sentenced to hang.

Becky's conviction might have been the exception rather than the rule in Old South infanticide cases. In Fauquier County Virginia, Sally was put on trial for beating her infant son to death; she was acquitted. In Richmond Jenny was tried in for the murder of her child and found not guilty; so was Nancy in Petersburg. Matilda was charged with infanticide in Chambers County, Alabama, in 1847; she too was acquitted. And in September 1848 Harriet was indicted for beating her baby to death with a stick; her case never came to trial. Acquittals in such cases made excellent economic sense; if a slave mother was executed not only would her master have lost her and her child, but her

---

[126] *State v. Rene*, Records of the Superior Court of Dade County, December 9, 1858, Drawer 131, box 57, (GDAH).
[127] Jonathan M. Bryant, *How Curious a Land: Conflict and Change in Greene County, Georgia, 1850-1885.* (Chapel Hill: University of North Carolina Press, 1996), 35-37.

future reproductive capacity as well.[128] Further research into slave infanticide cases will be necessary before a definitive link can be made between acquittals and economic self-interest.

While whites were certainly concerned about the deaths of slaves they were far more concerned with losing their own lives at the hands of their slaves. Slave murderers were thought to be of two types. The first was the "bad nigger." The "bad nigger" was a unique and enigmatic plantation character. He or she was a slave who broke with convention, disregarded the white man's law, and was not afraid to strike out against anyone—black or white—who was bold or stupid enough to cross him or her. Many masters owned at least one bondsman whom they feared would kill them if given the chance. A Georgia planter described Jack, his carpenter, as "the most notoriously bad character and worse Negro of the place." He was "the only Negro ever in our possession who I considered capable of Murdering me, or burning my dwelling at night, or capable of committing any act." "Bad niggers" refused to submit to discipline. All sources on the plantation experience mention slaves who refused to allow masters and overseers to whip them. They existed in every part of the South; every district, if not every plantation, had at least one or two. Whites believed that these men and women had to be handled with extreme severity. As one overseer told Frederick Law Olmstead: "Some negroes are determined never to let a white man whip them and will resist you, when you attempt it; of course you must kill them in that case."[129]

---

[128] Morris, *Southern Slavery*, 301.
[129] Genovese, *Roll, Jordan, Roll*, 619, 625-26; Stampp, *Peculiar Institution*, 130; Lawrence W. Levine, *Black Culture Black Consciousness: Afro-American Folk Thought From Slavery to Freedom* (New York: Oxford University Press, 1977), 407-20.

Response to "bad niggers" in the quarters was contradictory. On the one hand slaves applauded and revered anyone who was bold enough, man or woman enough, to stand up for themselves in a system that punished such defiance swiftly and severely. Ex-slaves often spoke admiringly of "bad niggers" they had known or heard about. Robert Falls proudly recalled that his father was "so bad to fight and so troublesome" that he had been sold no fewer than four times. His mother was equally incorrigible: she was sold but the slave trader brought her back when they found that they could not handle her. Sarah Wilson recalled Uncle Nick, a slave who regularly fought whites and stole food to feed hungry slaves. On the other hand these desperadoes did not usually distinguish between white and black, and slaves often found themselves the victims of the "bad nigger's" unpredictable rage. Ex-slave James Lucas remembered them as "mean slaves, de same as dey was mean masters." The modus operandi of the breed was summed up nicely by one former slave woman: "He am big and 'cause he so, he think everybody do what him say." Slaves often found themselves in need of protection from these plantation bullies. The "bad nigger" was also ultimately a tragic figure and a bad example; many found themselves physically and emotionally broken or dead, a negative object lesson for all.[130]

While such characters were certainly terrifying, the ones whites should have feared more were those they considered "good" slaves, those who displayed no outward signs of animus or aggression. Sometimes these seemingly trustworthy and innocuous slaves would suddenly lash out in violence, without warning, normally in response to some provocation. The act that initiated the violent backlash might have been one committed many times before, but on this occasion it was more than the bondsperson could bear.

---

[130] Genovese, *Roll, Jordan, Roll*, 627.

Whipping, or other attempts at discipline, was the most common spark for this explosion.[131] Each time an overseer attempted to whip a slave he potentially took his life in his hands. In February 1850 Thomas Heath, overseer on the plantation of Harry Harris in Meriwether County, approached Monroe and ordered him to join several other slaves in milling logs on another part of the plantation. Monroe refused, saying that he did not wish to be "running all over the plantation." Heath pulled out his whip and lashed Monroe; Monroe grabbed a large stick that was lying nearby and struck Heath on the head. The overseer attempted to get up from the ground and Monroe struck him again. Heath died from his head wounds. Monroe was described as a good and peaceful slave; he and Heath had had no prior difficulties.[132]

Other Georgia overseers suffered similar fates at the hands of slave men. In 1829 three slaves murdered Malcolm Dickerson, an overseer on a Green Island plantation; he was struck on the head with an axe and buried in a marsh. The same fate awaited the overseer on the Dougherty County estate of William S. Holt. This overseer was planning to whip a slave when the slave fled into a swamp area. The overseer ordered two slaves to aid him in the subsequent search. The group caught up with the fugitive slave, but then all three slaves proceeded to jump the unsuspecting overseer. They disemboweled him and dumped his body in the marsh. Overseer Patrick Carrol was killed in 1860 when he ordered a slave to complete a task; the two argued and the slave struck and killed Carrol with a fence rail.[133]

---

[131] Stampp, *Peculiar Institution*, 131.
[132] *State v. Monroe*, Records of the Superior Court of Meriwether County, August 1850, Drawer 12, box 59, (GDAH).
[133] Ralph Betts Flanders, *Plantation Slavery in Georgia* (Chapel Hill: University of North Carolina Press, 1933), 265. One of the most intriguing overseer murder cases in the history of the Old South, one which presents all of the elements related to violence between slaves and whites in authority may be found in

Like slave men, slave women could strike out with homicidal violence in order to avoid physical abuse. Sarah was laboring on her Meriwether County plantation when the overseer, Jenkins, approached her. He demanded that she put down the fence rail she was holding because he intended to whip her; she complied and Jenkins struck her with a switch. It broke. In a fury Jenkins tried to strike Sarah with a second switch and once again it broke. He then jumped behind Sarah and grabbed her. While Jenkins held her she reached back over her shoulder and struck Jenkins in the shoulder area. Jenkins fell away. Witnesses did not immediately realize what had happened, until they saw the blood pouring from Jenkins' shoulder and the knife in Sarah's hand. Jenkins bled to death in a matter of minutes; she had severed his carotid artery. Witnesses later reported that they had seen Sarah "fingling with that knife" before; on that fateful day in 1858 it was put to much more serious use.[134]

Encounters between bondsmen and slave patrols could also result in death. In September 1858, militia captain William Bone contacted Thomas Bagby, John Howard and several other men to patrol the Bibb County campground. A camp meeting was in progress, and it was reported that slaves were selling liquor there; Bagby and his fellow patrollers were to find the liquor vendors and whip them. Upon arriving at the campground the patrollers found two slaves selling liquor right away; these two men were apprehended and whipped. Bagby broke away from the main group in order to seek out other offenders. He found Jacob, a local slave, and bought liquor from him. Bagby then attempted to whip Jacob, who broke free and ran. The patrollers caught up

---

Michael Wayne, *Death of an Overseer: Reopening a Murder Investigation from the Plantation South* (New York and Oxford: Oxford University Press, 2001).

[134] *State v. Sarah*, Records of the Superior Court of Meriwether County, February 1858, Drawer 12, box 60, (GDAH).

to Jacob and grabbed him, aided by the two slaves who had just been beaten. During the scuffle one of the slaves yelled that Jacob had a knife and both slaves released him. Bagby continued to fight with the frightened and hysterical slave. Jacob got his knife hand free and stabbed Bagby in the abdomen; he died several days later. Jacob was hanged for his crime.[135]

Many slaves surely fantasized about killing their masters, and some waited for the opportunity to do so. Such an opportunity came for one group of Laurens County slaves in the summer of 1860. On the day before Independence Day their master William Rogus lay asleep, the casualty of a drinking spree; as a result his wife had left him, at least for the day. Dick, Nelly, Caroline, Josephine and Bibb knew this might be the only chance they would have to kill their owner; no other white people were around and their victim was drunk so he would not put up much of a fight. Nelly stood guard outside the house while the other four entered Rogus' bedroom. Dick entered first and surprisingly found that his master was awake; he asked Dick why he was there. Dick said nothing and rushed to the bed and began to strangle Rogus while his accomplices held their victim's hands and feet. After a time Rogus fell motionless. Not convinced that the man was in fact dead, Dick and one of the women placed a length of homespun around his neck and pulled until they were sure he was dead. One of the women then placed a bottle of laudanum on the bed in order to create the impression that Rogus had died from an overdose of the opium derivative. Their work done, the group went back to the field pretending as if nothing had happened. But a dead master with neck injuries and

---

[135] *State v. Jacob*, Records of the Superior Court of Bibb County, November 15, 1858, Drawer 183, box 15, (GDAH).

no other persons in the vicinity but his slaves provided the authorities with rather obvious suspects. Under questioning they all confessed and were hanged as a result.[136]

Like William Rogus, Edna McMichael died when at least one of her slaves decided that she had had enough and chose to end her oppression. One evening in November 1853, Warren, a seventeen-year-old McMichael slave, learned that his master Elijah would be leaving the next morning on a trip to town; there would be no other whites around except his mistress. He concluded that this would be a great time to kill her. He went to Ailey, Mrs. McMichael's fourteen-year-old house girl. He told her that "if he were in her place or had the opportunity" he would kill their mistress; Ailey replied that she would be hanged if she did. Warren answered that "he would have but one time to die," suggesting that he would rather die than to continue living under her rule. Ailey refused to aid Warren in his homicidal scheme. On the morning of the killing Warren again approached Ailey and said that he would kill Mrs. McMichael if Ailey would tell him when their master had left for town. The record does not provide the slave girl's reply, but later that day Edna McMichael approached Ailey, who was weaving in the kitchen, and asked her why some of the threads of the garment she was weaving were broken. When Ailey replied that the supply of thread had been exhausted McMichael said that she would hit Ailey if she did not mend it and slapped her face. Ailey stood up and grabbed McMichael by the throat, threw her to the floor and strangled her to death. When she realized what she had done she called in the other slaves; they said nothing. Did she kill as part of Warren's premeditated scheme or did she simply snap when she once again fell prey to her mistress' abuse? We will never know. For reasons

---

[136] *State v. Dick, Nelly, et. al.*, Records of the Superior Court of Laurens County, October 1861, Drawer 123, box 60, (GDAH).

unexplained Elijah McMichael sold his three slaves in the weeks following his wife's murder. When they became suspects only Ailey could be located. She hanged alone.[137]

No matter how congenial relations appeared to be between master and slave the relationship was ultimately maintained by violence. In circumstances of such constant tension violence could erupt unexpectedly, catching both assailant and victim by surprise. That is what occurred between Aaron and his mistress Sheleneth Allums. Aaron had been a slave on Allums' estate his entire life. He was described by the son of his master as an "obedient slave" who was of "entirely sound mind"; this made the events of January 11, 1857, all the more shocking to all concerned. On that day Aaron choked his mistress, bashed in her skull with a rock and left her to die in a field. He returned to the site of his crime and found his victim trying to crawl home. He picked her up and helped her walk to the plantation house; he then went to find a doctor to treat her wounds. Mistress Allums died of her wounds three weeks later. Why had Aaron attempted to kill his mistress? She was planning to destroy his animal traps and in a fit of anger he struck out. In that moment Aaron could take no more of having every significant decision in his life being made by someone else. After the assault he returned to the apparently non-violent man he had been, but it was too late. Aaron was executed; slavery had cost two people their lives.[138]

Sometimes slaves killed their masters as part of escape plans. On the night of June 14, 1853, Frank crept into the darkened bedroom of his master W.H. Graham. In the moonlight-illuminated room Frank could see that his master was asleep, lying on his left

---

[137] *State v. Ailey*, Records of the Superior Court of Jasper County, April 28, 1854, Drawer 35, box 61, (GDAH).

side facing the wall. This position would prevent Graham from seeing his approach. Frank walked over to the bed, raised the axe he was carrying and struck Graham behind the right ear. Frank fled the Stone Mountain plantation bound for Atlanta, leaving his dying master and slavery behind. He was captured a short while later and confessed to Graham's murder.[139]

Even children were not immune to the violence that plagued slave Georgia. On March 24, 1852, Burrell, an eleven-year-old slave belonging to Pliny Sheffield, took his master's four-year-old son John and four other slave children into the woods to play. This was probably not unusual; Burrell was John's nurse, and had been since the boy was old enough to require one. Pliny Sheffield described Burrell as "a good nurse" who was both "sensible" and "shrewd." Exactly what happened in the woods on that day we will probably never know, but John Sheffield would end that day with a fatal head wound. When questioned by his master Burrell said that John had been playing in a tree and fell; he then said his young master had been injured when a tree fell on him. Pliny, the elder Sheffield, did not believe the boy nurse. He chained him to a fence in the yard and whipped him. Burrell's story remained unchanged. Sheffield beat him some more. Burrell continued to say that a falling tree had killed John. The next day Sheffield jailed Burrell without a warrant. He remained imprisoned for two months. The jailer reported that he had heard Burrell say on several occasions that he had killed his young master with an axe, but that it was an accident. These confessions were allegedly made spontaneously because the jailer never questioned the slave boy. The jailer did admit

---

[138] *State v. Aaron*, Records of the Superior Court of Troup County, May 1857, Drawer 155, box 20, (GDAH).

that he had beaten the slave, but only once. Burrell also allegedly confessed to another white man who had visited him in jail. At trial a slave woman testified that Burrell did have an axe on the day of the incident. A doctor testified that if a tree had caused the wound there would have been scratches on the dead boy's face; there were none. Did John Sheffield die as a result of some boyish rough-housing, a tree falling, or was he killed in cold blood by a black child who was already psychologically overwhelmed by having to live his life as a human being and a thing? A jury could not answer these questions based on the evidence put before it and Burrell was acquitted.[140]

Slaves killed their masters, mistresses and overseers in order to escape punishment, slavery or in a moment of uncontrollable rage. While violent assaults on whites in authority were relatively infrequent occurrences their impact on plantation communities was far greater than their actual numbers would suggest. As Eugene Genovese has noted, "Murder did not have to occur often: one nearby, perhaps no closer than a neighboring county and perhaps only once in a decade, made a deep impression on masters as well as slaves." This was certainly true if the crime was of a particularly grisly nature. On May 6, 1860, Joe, a Screven County slave, killed Reuben Blackburn, a white man. Joe struck his victim on the head with an axe, causing a wound three inches long and two inches deep. The slave then proceeded to beat and strangle the already dying man. Finally he set Blackburn on fire. Masters were clearly concerned about this kind of violence and were definitely alarmed when they learned of the murder of a fellow slaveowner or overseer, and yet they paradoxically convinced themselves that

---

[139] *State v. Frank*, Records of the Superior Court of DeKalb County, July 11, 1853, Drawer 177, box 9, (GDAH).

they were perfectly safe among their slaves. They routinely left doors unlocked, allowed slaves to possess firearms, axes and other deadly implements, and even considered slaves their protectors against outside dangers. Statistically their confidence was well-placed because murders of masters, mistresses and overseers were relatively rare; nevertheless, their fear of slave violence was a recognition of the violence inherent in the system and of the precarious psychological balancing act required to be a master in such an always potentially volatile setting.[141]

Crimes Against Public Order

Serious crimes against public order were those collective acts that had the potential for destabilizing society or the criminal justice system: insurrection, aiding runaways, failing to register as free blacks or entering the state illegally as a free black, and escape from jail. Despite the seriousness of these crimes they rarely occurred or found their way into Georgia courts; they accounted for only 5.5 percent of all prosecutions. (See Table 2.1) When these prosecutions did occur they often did so in one jurisdiction over a relatively short period of time, suggesting momentary concern or panic. For example, five of the eleven cases of enticing slaves to run away occurred in Lincoln County between 1814 and 1819; these five defendants were involved in only three incidents.[142] Of the five defendants charged with violating free black laws two were charged in a single incident in Warren County and the other three were tried on the same day in

---

[140] *State v. Burrell*, Records of the Superior Court of Thomas County, May 1852, Drawer 4, box 45, (GDAH).

[141] Genovese, *Roll, Jordan, Roll*, 615-17; *State v. Joe*, Records of the Superior Court of Screven County, October 13, 1860, Drawer 112, box 4, (GDAH).

[142] *State v. Bob*, Records of the Inferior Court of Lincoln County, May 19, 1814, Drawer 81, box 23, (GDAH); *State v. Pollard*, Records of the Inferior Court of Lincoln County, July 1818, Drawer 81, box 23, (GDAH); *State v. Hall*, Records of the Inferior Court of Lincoln County, July, 1818, Drawer 81, box 23, (GDAH); *State v. Tobe*, Records of the Inferior Court of Lincoln County, April 6, 1819, Drawer 81, box 23,

Taliaferro County in 1857.[143] This demonstrates that the kinds of criminality that had the potential of disrupting the slave system directly were a rarity.

Insurrection was by far the most serious crime against public order. Four slaves were charged with insurrection; three were not convicted and one was pardoned.[144] There were no convictions because the acts did not meet the statutory definition of the crime. In March 1861 Willis was charged with insurrection in the superior court of Wilkes County because he attempted to "injury and kill" several white men using a handgun; Willis entered a plea of guilty to battery and was sentenced to receive 195 lashes over the course of fifty days.[145] There is only one documented incident of successful slave insurrection in Georgia, and it occurred in St. Andrew's Parish in 1774. Approximately one dozen newly arrived Africans killed their overseer and his wife and mortally wounded a white carpenter on the plantation of one Captain Morris. The band then marched to a nearby plantation and seriously wounded its owner Angus M'Intosh; one of M'Intosh's slaves seized the opportunity to gain his freedom and joined the rebels. Moving on through the neighborhood they attacked one Roderick M'Leod and murdered his son. Parties unknown ended the bloody march later that day.[146]

(GDAH) and *State v. Buck*, Records of the Inferior Court of Lincoln County, April 6, 1819, Drawer 81, box 23, (GDAH).

[143] *State v. Julia Ann Loach* , Records of the Superior Court of Warren County, April 2, 1861, Drawer 103, box 443, (GDAH); *State v. Susan Loach*, Records of the Superior Court of Warren County, April 2, 1861, Drawer 103, box 443, (GDAH); *Richard Gunn v. Allen James*, Records of the Superior Court of Taliaferro County, September 4, 1857, Drawer 109, box 8, (GDAH) *Richard Gunn v. William Lesley*, Records of the Superior Court of Taliaferro County, September 4, 1857, Drawer 109, box 8, (GDAH) and *Richard Gunn v. Wilson Lloyd a.k.a. James Lloyd James*, Records of the Superior Court of Taliaferro County, September 4, 1857, Drawer 109, box 8, (GDAH).

[144] *State v. Robin*, Records of the Superior Court of Chatham County, September 1822, Drawer 90, box 33, (GDAH); *State v. Shadrach*, Records of the Superior Court of Chatham County, September 1822, Drawer 90, box 33, (GDAH) and *State v. John*, Executive Minutes, November 2, 1829-November 4, 1834, Drawer 50, box 50, (GDAH). The fourth case was *State v. Willis*; see next note.

[145] *State v. Willis*, Records of the Superior Court of Wilkes County, March 26, 1861, Drawer 42, box 72, (GDAH).

[146] Wood, *Slavery in Colonial Georgia*, 191-92.

While there was only one insurrection that resulted in the deaths of whites there were a number of insurrection scares that kept the white community's nerves on edge. On October 4, 1831, a rumor swept through Milledgeville that a large number of slaves were in rebellion less than a dozen miles from the city; they were allegedly en route to seize weapons from the state arsenal. The governor dispatched the militia and private citizens armed themselves and took to the streets. The rumor proved to be unfounded but three slaves and a free black minister were seized on suspicion of being involved in the conspiracy. They were later released after no evidence could be found to substantiate the insurrection or to link them to the "plot." Two weeks after the Milledgeville scare another occurred in nearby Dublin. Six slaves were arrested and accused of attempting to stir their fellow slaves to revolt; four were hanged. Four years later a plot for rebellion was uncovered along the Florida border; several lumbermen from Maine allegedly instigated this plot. In 1835 the mayor of Savannah investigated rumors that insurrectionary literature was being distributed to the slave population and that a mass revolt was imminent; only a few pamphlets were found at the post office. In that same year Monroe County whites also began to hear rumors that abolitionist literature was being distributed to the slave population of nearby Macon. Rumors of insurrection also began to spring up and continued into the fall. These rumors were given a measure of substance when a group of slaves at a camp meeting formulated loose plans to stage a revolt on the upcoming election day, when most white men would be preoccupied with the voting and under the influence of alcohol. The plot was discovered and its principal instigator was hanged. In Augusta a slave was executed in 1841 after having been accused of hatching a plot to seize the arsenal, fire the city and

massacre the citizenry. An insurrectionary scheme was investigated in Atlanta in 1851. The most serious scare occurred in Crawford County in November 1860. At the instigation of a local tinsmith, a group of slaves would rise up and take over the county when all the white men would be at Knoxville, the county seat, casting their votes on Election Day. The plan was revealed to the authorities by one of the slave conspirators and the tinsmith was hanged.[147]

Slaves who remained in bondage did not consistently engage in the kinds of collective, widespread violence and criminality that whites feared most; runaways were a different matter. First of all, running away was not only a form of resistance; it was also grand theft.[148] Since this form of theft was an ongoing phenomenon white communities were always without a portion of its labor force and capital value. Running away also hindered the efficiency of the criminal justice system; many fugitives took their leave not simply to secure their freedom but to avoid punishment for criminal acts. All across the South slaves who had committed assaults, murders, rapes, thefts, arson or engaged in the black market economy fled detection or punishment. On April 27, 1791, a slave named King shot and killed a relative of his owner; after the murder he fled and was ultimately captured, but only after he severely wounded one of his pursuers. He was gibbeted alive.[149] A different fate awaited Scipio, who committed one of the most notorious murders of the colonial period. In the spring of 1763 Scipio murdered his master Alexander Crawford and disappeared. A reward was offered for his capture and posted in the *Georgia Gazette* for several months; Scipio was never heard from again.

---

[147] Phillips, *American Negro Slavery*, 482; Flanders, *Plantation Slavery*, 274-76; Joseph P. Reidy, *From Slavery to Agrarian Capitalism in the Cotton Plantation South: Central Georgia, 1800-1860* (Chapel Hill & London: University of North Carolina Press, 1992), 28-29.
[148] Schwarz, *Twice Condemned*, 136.

Other bondspersons absconded because they had tired of slave life and committed crimes after they were captured. During the 1850s six slaves, four males and two females, were put on trial for the murder of their Greene County master; one of these slaves had just been captured after lying out for several months. Without warning this bondsman grabbed a knife and stabbed his master fifteen times. Just like their counterparts who stayed put, runaways used clubs, knives, axes, hoes and hatchets in their assaults. [150]

The runaways who were most feared were those who banded together and formed maroon communities. Maroon camps made up of fugitive slaves existed throughout the slave South in the Carolinas, Louisiana, Virginia and Mississippi. Georgia was not spared the scourge of bands of fugitive slaves; the swampy areas along the Savannah River were favorite places for these black banditti. In 1771 Governor James Habersham reported that "a great number of fugitive Negroes had committed many robberies and insults" between Savannah and Ebenezer. Despite Habersham's lament and the dispatch of colonial militia, maroons were still committing depredations against white communities in 1772. Later a group of 300 Aframericans who had fought with the British during the Revolution chose to remain in Georgia once the British withdrew. They called themselves the "King of England Soldiers" and lived in a secluded area from which they launched raids that resulted in the deaths of whites on both sides of the Savannah River. The band continued its activities until militia defeated it in 1786.[151]

---

[149] *Georgia Gazette*, 28 April; 5, 26 May 1791.

[150] Ibid., 7 October 1763; Allen D. Candler, *Colonial Records of the State of Georgia* (Atlanta: Charles P. Byrd, 1910), 9:55; John Hope Franklin and Loren Schweninger, *Runaway Slaves: Rebels on the Plantation* (New York and Oxford: Oxford University Press, 1999), 77-79.

[151] Julia Floyd Smith, *Slavery and Rice Culture in Low Country Georgia, 1750-1860* (Knoxville: University of Tennessee Press, 1985), 188.

Groups of Old South maroons were often able to remain together for years, some for more than a generation. They survived by hiding out in isolated, heavily wooded or swampy areas. In every state there were outlaw bands of between ten and twenty outlying slaves; the largest of these groups, one that hid out in the Great Dismal Swamp, consisted of several thousand members.[152]

These runaways were often forced to turn to violence in order to avoid capture, either to escape pursuers or in the commission of crimes to support themselves during periods of maroonage.[153] One such band of maroons operated in coastal Georgia at the end of the eighteenth century. In May 1797, Lewis was put on trial for murdering one white man and robbing three others. Lewis' crimes grew out of his membership in a group of runaways who were committed to maintaining their freedom at any cost. In 1795 Lewis ran away because he was being mistreated by the plantation overseer and joined a maroon band that lived in Martin's Swamp. A runaway named Sharper, who was known by the others as Captain Cudjoe, led the community. It consisted of at least twenty fugitive slaves, including a number of women. The band lived by growing rice and stealing grain and livestock from neighborhood plantations. They also conducted raids to liberate other slaves. Soldiers protected the group, armed slaves commanded by Cudjoe. Lewis was well received by the other runaways and after a time became second in command, earning the title of Captain Lewis. One day in the spring of 1797 Lewis was walking across a field when he came upon John Casper Herman, a white man that he knew. Herman asked where Cudjoe's camp was because he was in need of food. Lewis led Herman to camp. Cudjoe was incensed that Lewis had brought a white man

[152] Franklin and Schweninger, *Runaway Slaves*, 86.
[153] Ibid., 83-85, 90.

into their midst; he ordered that the white intruder be killed and Herman was executed without ceremony by one of the slave soldiers. Lewis was outraged by the act and broke ranks with Cudjoe. At some point thereafter patrollers raided the camp; a gun battle ensued and two slaves were killed. A member of the patrol caught up with Lewis and the small group of runaways who decided to leave with him; the soldiers killed several of the group and forced the others to return with them. While trying to steal a calf on a plantation Lewis was captured by two slaves.[154]

Criminal Activity as a Form of Resistance

Historians have long debated slave resistance and have stopped short of considering some acts legitimate resistance because the acts lacked a political dimension, because they were not a collective response to slavery, or because they did not represent a threat to the entire slave regime. But as James Scott correctly observes that only "under the most extraordinary historical circumstances" when the "near total collapse" of existing structures of power and domination occurs can we expect to see truly open action or discourse from subordinates.[155] Such expressions of discontent also occur when the oppressed constitute a significant majority of the population. These conditions existed from time to time in the Caribbean and slaves rebelled. (These conditions rarely occurred in North America.) Nevertheless crime has generally been thought of as of non-political activity. But Cesare Lombroso, founder of modern criminology, defined political crime as, "any action that attacks the legal system, the historical and social traditions of a society, or any part of the existing social fabric, and which consequently

---

[154] Georgia Slave Trials.
[155] James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven: Yale University Press, 1990), 102.

collides with the law."[156] So in a broad sense all crime can be described as political resistance because criminal prohibitions represent the defense of some of the most cherished values of those in power, as well as their interests and beliefs.[157] This is especially true if those who are subject to the criminal laws have no voice in making them, and if the law rarely protects them, as was the case with Aframericans in Georgia.

But did this make every slave or free black criminal a political rebel? When one thinks of black political rebels one conjures up images of Gabriel or Denmark Vesey, oppressed Aframericans whose plots had a clear, collective political agenda. The vast majority of black Georgia criminal defendants did not display this kind of overt political consciousness. However, this lack of collective political consciousness should not negate the political effects of criminal activity. Philip Schwarz argues that slave codes were enacted for political purposes and therefore black violations of those laws were "political in effect even when they were not politically motivated."[158] If we consider politics as the contestation of power within a given sovereign body, acts of criminality on the plantation (which was viewed conceptually and ideologically as a sovereign entity and often functioned as such) were certainly political. When slaves engaged in behavior which threatened or altered the power arrangements on their farms or plantations they engaged in political behavior, whether they conceived of it in those terms or not. Premeditated and collective murder of a master or mistress would certainly fall into this category.[159]

---

[156] Stephen Shafer, *The Political Criminal: The Problem of Morality and Crime* (New York: Free Press, 1974), 2.
[157] Ibid., 19.
[158] Schwarz, *Twice Condemned*, 34.
[159] Ibid., 140-43. Determining premeditation from the extant evidence is often a difficult task. When slaves used farm implements to kill those acts could have been spontaneous or premeditated; on the other hand,

The political dimensions of the situation are made clear when we look at the criminal justice system through the eyes of white Georgians. When whites designed the criminal laws for themselves they did so in a way that created a dual system of obligations and protections based on mutual consent. This was not true in the system they created for Aframericans. They erected a system that was designed to keep blacks in subjection and to ensure a one-sided distribution of power; the criminal law was designed to control blacks, not to protect them. This lack of a protective element separated black from white criminal law and gave it the tyrannical quality Thomas Jefferson deplored. The goals of the law were undisguised and explicitly political; when blacks broke the law they threatened this power arrangement. Whites knew it and struggled desperately to keep them from doing so. Black criminality was political.

---

when they used knives, guns or poison to kill premeditation is more easily inferred because in many instances these weapons had to be surreptitiously obtained and concealed.

CHAPTER 3

"SOME CONVENIENT METHOD AND FORM OF TRYAL": MECHANISMS OF JUDGMENT

In colonial and antebellum Georgia tens of thousands of Aframericans committed acts that violated the directives of masters and the enactments of the legislature. The most serious of these prohibited acts represented clear threats to the physical, emotional, psychological and social well being of white Georgians. Whites had to devise means to assess the culpability of those free and enslaved blacks who did not conform their behavior to accepted norms, and to mete out appropriate punishment to those who so distinguished themselves. On plantations the master acted as judge, prosecutor, defense counsel, jury and ultimately, executioner. In these proceedings the only rights black defendants possessed were those the master saw fit to give them. The overwhelming majority of Aframericans who ran afoul of the "criminal law" found themselves subject to this form of summary justice. Beyond the plantation fence line the relatively few black Georgians who violated state criminal law faced mechanisms of judgment that were akin to, and ultimately part of, the same court system which judged and punished whites.

During the colonial and early national periods Aframerican defendants were judged by special tribunals made up of a small number of justices of the peace and freeholders; by the opening salvoes of the Civil War Aframerican defendants were tried in the same courts and under the same criminal procedure as whites. Twelve-man juries determined their guilt or innocence and they were afforded most of the same protections as their Caucasian counterparts, including legal representation by some of the finest attorneys in the state. The men who sat in judgment of black offenders were men who were acting

within the boundaries of roles set out for them by their hierarchical slaveholding society. Well-to-do slaveholders were the justices of the peace and judges of the inferior, superior and supreme courts; these men presided over trials, listened to appeals and sentenced Aframerican defendants. Juries composed largely of non-slaveholding yeoman determined the criminal culpability of defendants, or the lack thereof. These men, the same men who rode the slave patrols, joined their social betters in court to ensure that the threat represented by the black Other would be held in check, and that relative racial unity between the classes of white society would be maintained. The structure, evolution, and personalities of this system of public and private judgment and punishment are the subjects of this chapter.

Judge, Jury and Executioner: The Master's Justice

The Old South ideal of mastery was one in which the planter/slaveowner was ultimately a judge, a judge of productivity, fecundity, deference, sociability, health and all other matters related to the smooth functioning of his economic and social enterprise. It was his principal responsibility to assess the behaviors of all his dependents and to take positive corrective or punitive action when the situation—in his view—demanded it. This process of judgment certainly extended to acts that violated the plantation criminal code which he himself crafted. As legislator he was most familiar with the meaning of this criminal code and its goals; and as a result he was best qualified to interpret and implement it. Historian Philip J. Schwarz describes slave owners and their agents as "the first rule-makers, the corrections officers, and even sometimes the executioners." He notes that, like monarchs, masters had to "answer to few people," ruled in "almost

complete privacy" and were ultimately the supreme authorities on their plantations.[1] While this ideal was rarely achieved, it nevertheless represented the goal toward which all masters strove.

Slave narratives in Georgia and elsewhere are replete with examples of masters and overseers rendering judgment and sentencing slaves to the lash—or worse. In best case scenarios a trial of sorts took place. On one Georgia estate the master brought forth one or two of the involved parties as witnesses. He interviewed these persons in the presence of the accused, who would then be allowed to correct their testimony and to establish his or her innocence through other testimony. The driver usually provided this additional testimony; if the driver were absent and the case an important one the hearing would be postponed until the driver could be produced. After hearing the evidence on both sides the master rendered his judgment as to the defendant's guilt or innocence and passed sentence. Slaves of course were expected to accept this verdict because the master was both "lawgiver and judge" as well as, in the paternalist ideal, "protector and friend."[2] On rare southern plantations slaves were involved in the judging process. On Jefferson Davis' Mississippi estate no slave could be punished unless convicted by a jury of his or her slave peers. Overseers were prohibited from using the lash to correct recalcitrant bondspersons unless they had been found guilty at trial.[3] At the other end of the spectrum were masters and overseers who dispensed with even the appearance of process: an act was committed in the presence of the "judge," and he responded immediately with the lash, with no allowance for arguments in rebuttal or mitigation.

---

[1] Philip J. Schwarz, *Twice Condemned: Slaves and the Criminal Laws of Virginia, 1705-1865* (Baton Rouge: Louisiana State University Press, 1988), 8.
[2] James O. Breeden, ed., *Advice Among Masters: The Ideal in Slave Management in the Old South* (Westport, CT: Greenwood Press, 1980), 41.

As most Aframericans in Georgia were slaves, they were subject to this form of summary judgment. Most of the crimes slaves committed were on the plantation, and masters dispensed justice there. Slave owners even adjudicated serious crimes like murder on their estates.[4] It is telling in this regard that most slaves, when queried on the subject, could not recall a single instance of a fellow slave ever being put on trial or jailed by the state for a crime committed on the plantation. As one ex-slave put it, "I never heard of or knew of a slave being tried in a court for anything." Another recalled that, "Marster never had to take none of his Niggers to court or put 'em in jail neither; him and de overseer sot 'im right."[5] It is impossible to know with any degree of certainty the thousands and thousands of cases that were handled within the fence rails of the plantations and beyond the prying eyes of the public, but as South Carolina planter, statesman and pro-slavery ideologue James Henry Hammond reminds us: "...on our estates we dispense with the whole machinery of public police and public courts of justice. Thus we try, decide, and execute the sentences, in thousands of cases, which in other countries would go into the courts."[6] In Georgia and the other slaveholding states criminal justice, in the vast majority of instances, was a private matter.

The generally private nature of slave criminal justices begs the question, "Why was the state ever involved in criminal prosecutions at all?" To involve the state in plantation matters was to cede a measure of power to an entity other than the master; this clearly went against the ideal of mastery as understood by most planters. There were several

---

[3] Christopher Waldrep, *Roots of Disorder: Race and Criminal Justice in the American South, 1817-80* (Urbana and Chicago: University of Illinois Press, 1996), 10.
[4] George P. Rawick, ed., *The American Slave: A Composite Autobiography* (Westport, CT: Greenwood Publishing Co., 1972), v. 12, pt. 1, 310; v. 13, pt. 4, 129; supp. ser. 1, v. 3, pt. 1, 64.
[5] Ibid., v. 12, pt. 1, 3, 5.

reasons for involving the state in criminal matters. First, the courts were a means of eliminating conflict between white men. In this study there is not a single case of a slave being put on trial for committing a crime on his own plantation, other than the murder or attempted murder of masters or others in authority over slaves. This clearly suggests that plantation crime was handled there. Crimes that were committed by slaves in town or on the estates of others represented potential conflict between masters, or more ominously, non-slaveholding whites. Could one master allow another to punish his slave without symbolically diminishing his own power? Would the punishing master be held accountable if the slave were injured? Could masters trust other individuals to judge their slaves fairly? What would happen if the interests of a yeoman were damaged by a slave and the failure of the master to make adequate recompense caused the non-slaveholder to take matters into his own hands? Could a hierarchical society based on slave ownership stand to have such potential tensions regularly exposed? The criminal and civil courts were the most sensible way of avoiding these potentially dangerous questions. In the minds of slaveholding legislators it was best for slaveowners to surrender a measure of individual power in certain limited circumstances in order to ensure that their collective power remained secure. As Eugene Genovese has argued, slaveholders as a class exercised power on two levels. On one level they exercised power collectively as a class, "even against their own individual interests" through control of state power. On the other they exercised power individually over their respective slave forces. Genovese argues that this duality in power exists in all systems of class rule because the,

---

[6] William Harper, James Henry Hammond, William Gilmore Simms and Thomas Roderick Dew. *The Pro-Slavery Argument as Maintained by the Most Distinguished Writers of the Southern States* (Philadelphia: Lippincott, Grambo, & Co., 1853), 130-31.

> "collective judgment of the ruling class...cannot be expected to coincide with the sum total of the individual interests and judgments of its members; first because the law tends to reflect the will of the most politically coherent and determined fraction, and second, because the sum total of the individual interests generally...pulls against the collective needs of a class that must appeal to other classes for support at critical junctures."[7]

Slave masters were also willing to trust the state criminal justice apparatus because as a class they generally controlled it; they were the justices of the peace and judges of the various courts who passed judgment on slaves. The intimate relationship between public and private criminal justice is suggested by the fact that masters used the public apparatus to achieve the private ends of punishment. Georgia masters sent their unruly slaves to the workhouse in Savannah to be punished; other masters sent their slaves to the public stocks for plantation misbehavior. In one instance a master beat his female slave severely, striking her in the head with a piece of iron. He then ordered her to be taken to the county jail for "safe-keeping." The jailer was so shocked by the woman's appearance that he demanded that the master retrieve her. She was taken back to the plantation where her incensed master poured cold water into her fractured skull. She died shortly thereafter.[8] In sum, masters were willing to turn their slaves over to the courts because it happened rarely and only in instances which could prove problematic for their system of white supremacy, and because those who administered the system could be counted on to protect their class and racial interests.

Trials of Aframericans During the Colonial and Early National Periods

> "And Whereas Natural Justice forbids that any person of what Condition so ever should be Condemned unheard and the Order of Civil Government requires that

---

[7]Eugene D. Genovese, *Roll, Jordan Roll: The World the Slaves Made* (New York: Vintage Books, 1976), 46-47.

[8]Rawick, *American Slave*, v. 13, pt. 4, 293, 295-96. For a discussion of the workhouse as a tool of private punishment see Chapter 5.

> the due and Equal Administration of Justice some Convenient Method and form of Tryal [sic] should be established."[9]

With these words in 1755 Georgia embarked on the journey toward creating a system for adjudicating the criminal cases of Aframerican defendants. In order to decide upon the proper form of such a system Georgia turned to sister states more experienced in the ways of human bondage. As with much else concerning "the peculiar institution," Virginia was at the forefront in creating a criminal justice system for black defendants accused of capital crimes. In 1692 the House of Burgesses passed an "Act for the more speedy prosecution of slaves committing Capitall [sic] Crimes." Under this act slaves accused of capital offenses would be tried by several local justices of the peace acting under the authority of commissions of oyer and terminer issued by the governor expressly for the slave in question. These proceedings would take place without the benefit of a jury. This law was passed in order to ensure that slave death penalty cases would be handled swiftly and without the expense associated with trials in the General Court or in other special tribunals, as had previously been the case.[10]

In 1715 North Carolina legislators passed a law which created a tribunal like that of Virginia in order to try cases involving slaves, but with a difference: the addition of a "jury." These courts would consist of three "justices of the Precinct Court" and three freeholders who would act as a jury of sorts. In 1740 South Carolina followed suit and established a tribunal consisting of two magistrate/justices and between two and five freeholders; a quorum would exist when two justices and one freeholder were present, or two freeholders and one justice. In these South Carolina justice-freeholder courts the freeholders had the same decision-making authority as the justices; there was no

[9] Allen D. Candler, ed., *Colonial Records of the State of Georgia* (Atlanta: Charles P. Byrd, 1910), 18:108.

distinction between the application of legal rules and fact finding. Delaware and Tennessee adopted and used similar systems until 1789 and 1835, respectively.[11]

In establishing its first tribunal for the trials of slaves Georgia turned directly to her wealthy and more experienced neighbor, South Carolina. Georgians modeled the slave code of 1755 on the South Carolina slave code of 1740. Under this code slaves accused of capital offenses were to be tried before a tribunal consisting of two justices of the peace and between three and five freeholders in the district in which the crime was committed. In 1765 the number of freeholders was increased to between five and seven. The size of the tribunal was again expanded in 1770 to include "two or more justices" and "a jury of not less than seven freeholders."[12] This steady increase in the number of justices and freeholders during the colonial period suggests that Georgians, unlike the other southern colonists, were increasingly concerned about placing a greater numbers of layers of judgment, and therefore protection, between their slaves and the gallows. Since Georgia was a new slave state with an incredible need for such labor the value of slave lives was perhaps greater than that of the established slave colonies like Virginia, which was beginning to generate a slave surplus by the late eighteenth century.

---

[10] Schwarz, *Twice Condemned*, 17.

[11] Thomas D. Morris, *Southern Slavery and the Law, 1619-1865* (Chapel Hill: University of North Carolina Press, 1996), 215; Arthur F. Howington, *What Sayeth the Law: The Treatment of Slaves and Free Blacks in the State and Local Courts of Tennessee* (New York and London: Garland Publishing, Inc., 1986), 140; Donna J. Spindel, *Crime and Society in North Carolina, 1663-1776* (Baton Rouge and London: Louisiana State University Press, 1989), 20.

[12] Candler, *Colonial Records*, 18:108-09, 656, 659, 19: 216-17, 219. Betty Wood argues that with the enactment of the slave code of 1770 free blacks returned to the ambiguous legal position of 1755. This is correct, as the slave code of 1770 clearly makes provision for the trials of free blacks and mulattos. Betty Wood, *Slavery in Colonial Georgia, 1730-1775* (Athens: University of Georgia Press, 1984), 128.

Surprisingly, there was no mention made in the slave codes of 1755 for the trial of free blacks. While there were perhaps only one hundred such persons in the colony at the time, white Georgians had to develop procedures for their trial and punishment. This oversight was corrected in the slave code of 1765. This legislation mandated that free blacks who swore allegiance and affection to the colony and its inhabitants would have all of the rights and privileges of a white person born of British parents. Betty Wood speculates that this position was assumed in order to attract more free blacks to the colony as laborers because the number of white immigrants was unacceptably low. The potentially salutary effects of this act were short-lived; the slave code of 1765 was never approved by the Board of Trade and therefore did not become law. In the code of 1770 the provision that had granted the same legal rights to free blacks as free whites had been deleted and another added: free blacks would thereafter be tried "in like manner as is hereby directed...for the trial of crimes and offenses committed by slaves..." For whatever reason, the value white Georgians placed on the lives and rights of free black Georgians in 1765 had been lost by 1770; as a result their freedom meant less.

Slaves born in Africa would not have been entirely unfamiliar with the judicial process in Georgia. While each West African society and its judicial proceedings were different, there were similarities that bound them together and made them like their counterparts in the West. Africans had due process, or regular procedures for determining guilt or innocence, and a uniform set of punishments. Most had a clear idea of what constituted a criminal offense either through the Koran, in Islamic areas, or oral tradition in regions that practiced traditional religions. There were multi-level

court systems where the seriousness of the offense determined the court in which a case would be tried. Village headmen handled less serious cases. The headmens' principal task was conflict resolution. They maintained the peace, returned stolen property and ensured just compensation in such matters, just like justices of the peace. Village justice was administered by a single headman, a group of them, a single headman with an advisor, or some combination of the three. District courts adjudicated more serious offenses and those involving parties from different villages. In a number of societies there were appeals from district courts to higher courts, and in others professional advocates represented parties before these courts. In these tribunals rules of evidence ensured that those who sat in judgment considered only the best evidence. While Africans put on trial in Georgia were perhaps unfamiliar with the specific practices and personages of their new land, they were well acquainted with the principles driving the system that judged them.[13]

By the end of the eighteenth century Georgia and the other slaveholding states had all devised systems of judging Aframericans accused of capital crimes that consisted generally of justices of the peace and freeholders. These tribunals were not designed to extend the maximum amount of legal protection to black lives but rather, to dispense justice swiftly and efficiently. But as the new century dawned and the importance of slavery for the economic health and well-being of the region and the nation became more clear, southern legislators took steps to ensure that slave lives would be afforded even greater protection.

The Trials of Aframericans After 1800

[13] Philip Schwarz, *Slave Laws in Virginia* (Athens: University of Georgia Press, 1996), 23-25.

In 1798 Georgia ratified a new constitution that reorganized the state's judicial system. The judicial power of the state was vested in the county superior court and such inferior courts as the legislature might deem necessary. The superior court was granted jurisdiction in all criminal cases committed in the county and in all cases involving titles to land. This court was also to serve as the court of final appeal for matters adjudicated in the inferior courts. The inferior courts in each county were authorized to adjudicate all other civil cases. The superior and inferior courts were required to meet twice per year in the seat of each county. The new constitution also changed the procedures for the selection of justices of the peace and the jurisdiction of their courts. The county justices were nominated by the inferior courts and commissioned by the governor. Two justices were assigned to each county militia captain's district. Justices of the peace were empowered to handle all civil disputes where the amount in question was less than thirty dollars. [14]

This reorganization of the court system had a profound impact on the criminal justice process for Aframericans because in 1811 the jurisdiction for the trial of capital offenses was taken from the justices of the peace and given to the inferior court. The process began much as it had in the past, with a complaint being made to a county justice of the peace. This justice would then issue a warrant for the arrest of the black defendant and notify two or more fellow justices to assemble for a hearing within three days of his having received the initial complaint. At this point the process differed significantly from its former incarnation. The purpose of this hearing was not to determine the guilt or innocence of the suspect in a capital case, but to determine the

[14] Georgia Constitution (1798), art. III, secs. 1, 6.

appropriate level of jurisdiction. After hearing witnesses and evidence the assembled justices were to determine if the alleged acts were in fact capital in nature. If they were not, the justices were authorized to hand down punishments "not extending to the taking away of life or member." If the offense was capital the justices of the peace were required to file a notice with a justice of the inferior court within three days after the termination of their own proceedings, stating that a capital crime had been committed which fell within the jurisdiction of the inferior court. (This notice was also to include a list of witnesses.) The defendant was then committed to the county jail to await trial. Upon receipt of the notice from the justices of the peace, the initial inferior court justice was required, again within three days, to notify the sheriff of the county to summon a jury of free white men for a trial. At trial an accusation laying out the time, place and nature of the crime was read to the defendant. The jury was then sworn and the evidence of both sides was presented to them, (the same rules of evidence as those used in cases against whites were to be applied) after which they returned a verdict of guilty or not guilty. The court then immediately pronounced a sentence of death or some other punishment "not amounting to death." The county was required to pay all costs associated with the prosecution of slaves that resulted in a death sentence, as well as those costs associated with the execution. In non-capital cases the owner of the convicted slave paid the court costs.[15]

The decision to move the capital trials of free and enslaved Aframericans to the inferior court represented a significant leap forward in the protection of slave lives. Black defendants would now have their fates decided by a jury of twelve men rather

---

[15]Oliver Prince, *A Digest of the Laws of the State of Georgia* (Milledgeville, GA: Grantland & Orme,

than a panel of seven freeholders. The state would be required to provide a list of charges and witnesses and a summary of the evidence. Legal counsel could be made available if a slave's owner saw fit to provide it; free blacks were left to their own devices in this regard. Finally, slave defendants were granted double jeopardy protection. A legislative act of 1803 provided that "no slave shall be put on trial twice for one and the same offence."[16]

Theoretically the most important of the new trial rights granted to blacks by the legislature was the right to trial by jury. Joseph Henry Lumpkin, the first chief justice of Georgia's supreme court, asserted that jury trials were essential guarantors of liberty. Lumpkin declared that

> "In criminal proceedings, trial by jury cannot be too highly appreciated or guarded with too much vigilance. So long as this palladium and *Habeas Corpus* remain unimpaired, life and liberty are safe from passion, prejudice or oppression, no matter from what quarter they emanate. What security to innocence, and what humane arrangement of the law, that punishment can only be inflicted by the unanimous decision of twelve of our honest and impartial neighbors..."[17]

Sir William Blackstone, perhaps the most renowned authority on the English common law, averred that "the truth of every accusation, whether preferred in the shape of indictment, information or appeal, should afterwards be confirmed by the unanimous suffrage of twelve of his equals and neighbors, indifferently chosen, and superior to all suspicion." Blackstone believed that summary trials conducted by justices of the peace,

---

1822), 459-60.

[16] Augustin Smith Clayton, *A Compilation of the Laws of the State of Georgia, Passed by the Legislature Since the Political Year 1800, to the Year 1810, Inclusive* (Augusta, GA: Adams & Duyckinck, 1812), 133.

[17] *Flint River Steamboat Company v. Foster.* 5 GA 194 (1848).

courts of conscience and commissioners of revenue, while more efficient, worked against this principle and the liberties of the defendant.[18]

Americans, both North and South, considered juries composed of local men to be vital to a fair trial because these men knew the defendant and were in the best position to have personal knowledge of the facts of the cases. Moreover, they also knew of the character, reputation and circumstances of the defendant. The Massachusetts Declaration of Rights of 1780 stated that, "In all criminal proceedings, the verification of facts, in the vicinity where they happen, is one of the greatest securities of the life, liberty and property of citizens." No less an advocate for liberty than Patrick Henry argued that the great advantage of local jurors was that they were "neighbors...acquainted with [the defendants'] characters, their good or bad conduct in life, to judge of the unfortunate man who may be exposed to the rigors of government." Neighborhood jurors were also best because they also knew the witnesses, and were thus in the best position to judge the veracity of their testimony. In the words of James Wilson, Pennsylvania delegate to the Constitutional convention: "When jurors can be acquainted with the characters of the... witnesses...they not only hear the words, but they see and mark the features of the countenance; they can judge the weight due such testimony." While the ideal in juries began to move toward the model of impartiality in the nineteenth century this evolution was a gradual one so that the basic character of juries remained the same through the end of the Civil War.[19]

---

[18] William Blackstone, *Commentaries on the Laws of England* (Oxford: Clarendon Press, 1769; repr. of first edition with supplement, Buffalo, NY: William S. Hein & Co., Inc., 1992), 1:343-44.

[19] Jeffrey Abramson, *We, The Jury: The Jury System and the Ideal of Democracy* (New York: Basic Books, 1994), 27-28.

The local jury was a potentially mixed blessing for Aframericans, especially slaves. On the one hand the jury members knew of the good character and reputation of some slaves and this probably worked to their advantage just as it did for white defendants. On the other hand Aframerican defendants charged with crimes were exposed to the outrage of the community-at-large, sentiments that would perhaps have been muted in a smaller panel made up of paternalistic slaveholding judges and a handful of freeholders. Scholars generally view the advent of jury trials as a salutary reform and lower conviction rates support this assertion. However, whether a jury was beneficial or not in an individual case depended on the nature of the crime, the character of the defendant and the power and influence of the slave's owner or free black's guardian.

Georgia was not alone in deciding to extend greater procedural protection to its enslaved population. The first jury trials appear to have been in Maryland in the first years of the eighteenth century; jury trials appeared next in Delaware in 1789. Toward the end of the century North Carolina mandated that the non-justice members of its trial panels be composed of five *slaveholders*, thus ensuring that those who sat in judgment of slaves understood the subject matter of their deliberations intimately; Tennessee also required that its non-jurists be slaveowners as well. North Carolina abandoned its three justice-five slaveholder tribunal in 1793; from that year forward such trials were adjudicated in the regular county court, unless the court would not meet within 15 days of the time the crime was committed. In that case three justices would hold the trial with a regular jury. The justices were finally removed from the capital trial process altogether in 1816.[20] Tribunals in Tennessee, Mississippi and Alabama followed similar

[20] Morris, *Southern Slavery*, 215 217.

evolutionary paths. The number of slaveholders serving on Tennessee trial panels increased from four to nine in 1815; these nine slaveholders served with three justices of the peace, making the court a twelve-member affair. In these courts there was no division of judicial responsibilities; both slaveholders and justices were responsible for fact-finding and the application of law. In 1819 the justices were removed from the determination of matters of fact, leaving that responsibility to the slaveholders. At this same time the number of slaveholders who made up the "jury" was increased to twelve. The status of the non-justices varied over the years. The slaveholder requirement was eliminated in 1815 but was reinstated in 1819. In 1825 non-slaveholders could serve along with those who owned slaves if they were not challenged by the prosecution or defense. When the trials of slaves were moved to the circuit court in 1835, the jury was made up of all persons who were competent to serve on the jury for a white defendant.[21] Between 1822 and 1833 magistrates in Mississippi, acting under Oyer and Terminer commissions, heard cases before twelve-man juries. In 1852 Alabama changed its practice of trying felony cases before two or three magistrates sitting before a regular jury (begun in 1836) and moved trials to the regular county court. Jury trials in felony cases became the norm by the end of the antebellum period, but in some states juries were only impaneled in capital cases. Virginia, South Carolina and Louisiana were the only slave states that continued to try black defendants in courts consisting of justices of the peace and freeholders or slaveholders. Legal historian Thomas D. Morris argues that jury trials ensured a higher degree of procedural rationality in states that used them than in those which relied on the justice-freeholder system.[22]

---

[21] Howington, *What Sayeth the Law*, 140, 196.
[22] Morris, *Southern Slavery*, 216-19.

In 1850 the procedure for trying Aframericans for criminal offenses in Georgia changed for the final time. Black suspects were still required to appear before justices for a preliminary hearing in order to determine if the alleged offense was of a capital or non-capital nature. If the offense was found to be one punishable by death the justices did not send the defendant to the inferior court for trial. Instead they put the offender in jail and they submitted a report outlining their findings and the evidence in the case to the attorney or solicitor general on the first day of the next term of the superior court. As prosecutor for the superior court the solicitor or attorney general was then required to prepare a bill of indictment for presentation to the county grand jury. If no complaining victim appeared to testify before the grand jury the task of presenting the case fell upon the solicitor general, who would make the case using the report and evidence from the justices' preliminary hearing. If a true bill were found the offender would be put on trial in the superior court under the same provisions of the penal codes as for whites.[23]

The most important of the post-1850 trial rights the law granted to black defendants was the requirement that they be accused by the county grand jury when suspected of a capital offense. Blackstone considered the grand jury, like the petit jury, to be one of the principal guarantors of liberty: "...No man should be called to answer to the king for any capital crime, unless upon the preparatory accusation of twelve or more of his fellow subjects, the grand jury..."[24] The grand jury, like its trial counterpart, was of mixed value to black defendants. A true bill of indictment required the concurrence of well over a dozen people, making it a vastly better protector of black lives than the judgment

[23] Thomas R.R. Cobb, *A Digest of the Statute Laws of the State of Georgia* (Athens, GA: Christy, Kelsea & Burke, 1851), 1018-19.

of three justices of the peace. However, grand jurors were subject to the same prejudices as trial jurors and the grand jury played a prominent role in the defense of slavery. As the voice of southern opinion and protector of community values, antebellum grand juries actively participated in the defense of the region's "peculiar institution." Such a body had as its principal object the protection of their slaveholding society, and not equal justice for black defendants.[25] But the fact that the prosecutor had to convince a large body of citizens from different classes to indict the defendant increased the odds that there would not be a formal charge--unless the crime was of an especially heinous nature and public opinion was firmly aligned against the defendant.

The Right of Appeal

The right to appeal to a higher court was the most important right available to antebellum Aframericans. This right varied from state to state. In Louisiana there was no provision for appeal for technical errors. (This was not entirely based on race; whites did not have this right until 1847.) While slaves in Maryland, Virginia and South Carolina had a right of appeal, they could not appeal to their state's highest court. After 1839 South Carolina slave defendants were allowed to appeal to a single judge of the supreme court but possessed no right to a hearing by the full court. Around the South Aframericans generally had a right to appeal to the highest court in the county unless the trials were conducted in special tribunals like those of Virginia and South Carolina.[26]

---

[24] Blackstone, *Commentaries*, 4:343.
[25] Richard D. Younger, *The People's Panel: The Grand Jury in the United States, 1634-1941* (Providence, RI: Brown University Press, 1963), 166-78.
[26] Morris, *Southern Slavery*, 226.

In Georgia an appellate process was initially proposed in the invalid slave code of 1765. The act allowed for a stay of execution in capital cases so that the defendant might appeal his conviction and sentence to the governor's council or commander in chief. In 1770 requirements for appeals were made more stringent, as the owner of the slave defendant was required to post a security bond to ensure his or her subsequent appearance and to cover the costs of the delay of the execution.[27] This appeals process remained in place until the procedures for the trial and punishment of Aframericans was revised in 1811. Under this code either party had the right to appeal any decision of the inferior court to the superior court. The aggrieved party was first required to submit an allegation of error to the inferior court; if the appeal was denied by the inferior court the complaining party was allowed to appeal to a judge of the superior court after giving twenty days notice to the opposing party. If this judge agreed that the complaint of error was worthy of judicial consideration, he filed a writ (order) of certiorari to the justices of the inferior court commanding that the superior court be provided a certified copy of the trial record at the next term of the higher court. When the bill of exceptions (alleged errors) was filed with the inferior court the sentence was suspended for forty days; once the writ of certiorari had been issued the sentence was further suspended until the superior court rendered its final decision. If the superior court found in favor of the defendant he was granted a new trial, discharged or received some other form of judicial relief. For those slaves whose death sentences were upheld there was one last avenue of reprieve. In 1816 the general assembly amended the code of 1811 to allow

[27]Candler, *Colonial Records*, 18: 657, 19 (pt. 1): 218.

Aframericans convicted of capital crimes and sentenced to death to appeal to the governor for pardons.[28]

Since the Georgia judicial system was of common law origin, precedent played a tremendous role in the process. However, the decision of individual county superior courts and state judicial circuits were not binding on each other. As a result, there was no uniform system of precedent. In states with supreme courts this problem was resolved through the decisions of this highest court. Georgia attempted to solve the problem without resort to a supreme court through an annual convention of superior court judges. At these conventions, which were mandated by the Judiciary Act of 1799, judges met to make rules for the administration of their courts and to set precedent. The judiciary act was amended in 1801 to terminate the practice of precedent setting but judges continued to do so informally during rule-making sessions.[29] These annual meetings continued until the creation of the supreme court in 1845, but did not effectively solve the problem of having multiple independent judicial bodies. Like much else about the criminal justice system this failure to provide a uniform system of precedent was both a blessing and a curse. Court decisions that would have negative impacts on defendants in one county would not be binding in another, which clearly benefited some defendants. However, the same was true of beneficial decisions; defendants in other counties were denied them. This situation continued until Georgia created its own supreme court.

---

[28] Rhodom A. Greene and John W. Lumpkin, *The Georgia Justice* (Milledgeville, GA: P.L. & B.H. Robinson, Printers, 1835), 415; Prince, *Digest of the Laws*, 461.
[29] Warren Grice, *Georgia Bench and Bar: The Development of Georgia's Legal System*, (Macon, GA: J.W. Burke Co. Publishers, 1931), 97-101, 263-64.

The establishment of a supreme court in Georgia was the subject of protracted debate and controversy. Many legislators did not want a state supreme court because they feared that such a court could undermine their legislative prerogative, as the federal supreme court had done under the tenure of John Marshall. For decades governors submitted proposals for the creation of such a court to the general assembly and each year these proposals were rejected, until 1834. In that year the legislature finally passed a bill that amended the constitution in order to allow the creation of a court of final appeal. Nevertheless, it was not until 1845 that a bill was passed which mandated the creation of the court. This bill provided for three judges who would be elected by the legislature. John McPherson Berrien, U.S. attorney general during the Jackson Administration, was the first choice for chief justice; Berrien declined because the post required arduous circuit riding. The general assembly then turned to Joseph Henry Lumpkin, who accepted the position. The first court was rounded out with justices Eugenius Nisbet and Hiram Walker.[30]

The procedure for taking a case to the supreme court was rather straightforward. The defendant was required to submit, before the first day of the supreme court term, to each of the judges and the court reporter, a copy of the bill of exceptions, a note on the points of law intended to be made at the hearing, a statement of the facts in the case and a list of legal authorities on which the defendant planned to rely.[31] Once in possession of these documents the Court was prepared to consider the case.

Those Who Sat in Judgment

[30] Ibid., 267-68; Mason W. Stephenson and D. Grier Stephenson, Jr., "To Protect and Defend": Joseph Henry Lumpkin and the Supreme Court of Georgia, and Slavery," *Emory Law Journal* 25 (1976): 580-81.

The machinery of criminal justice described above changed considerably over the course of the little more than a century between 1755 and 1865. During the colonial period the system was designed to be simple and efficient and offered few protections to black defendants. The system Aframerican defendants faced in 1861 was vastly different; it offered the black accused nearly all of the same procedural protections as his or her white counterpart. But the protections of the criminal justice system were abstractions, as their drafters intended. In reality the nature and quality of justice depended on the abilities, prejudices and interests of those who administered it. For most of the period those justices and judges who ran the tribunals before which slave and free black defendants appeared were laymen who owed their positions not to legal acumen, but to wealth and neighborhood reputation. By the late antebellum period jurists who were trained in the law had replaced these men. The juries that judged black defendants were composed of yeomen, men who did not possess slaves or much wealth, but who found themselves cooperating with and being influenced by judges and justices who were their social betters. Finally, Aframerican lives were defended by lawyers who represented a cross section of the state bar, from attorneys from whom history has never heard, to statesmen who were leaders in the region and in the nation.

Justices of the Peace

Justices of the peace in the colonial and antebellum periods were not generally lawyers but laymen. They were usually "solid" citizens, middle-aged or older, with what those around them considered to be a strong sense of justice. The position of

---

Thomas D. Morris erroneously states that the Georgia supreme court was not established until the 1850s. See Morris, *Southern Slavery*, 226.

[31] Grice, *Georgia Bench and Bar*, 274.

justice of the peace was described by an antebellum jurist as "an honorable and responsible office and opens an ample field for a gentleman to exert his talents by maintaining good order in his neighborhood."[32] Under the constitution of 1798, county justices of the peace were nominated by the inferior courts and commissioned by the governor. They served on "good behavior" and could be removed by indictment or conviction in superior court for "malpractice in office," for any "felonious or infamous crime," or by the governor with the consent of two-thirds of both houses of the general assembly.[33] The social standing and the respect these men garnered are suggested by the experiences of Baldwin County justices John Mathews, John W. Devereux and Goodwin Myrick. Matthews at various times served as county sheriff, jailer, secretary pro tempore of the county commissioners, school board functionary, intendant (mayor) pro tempore and state legislator. Devereux was commissioner of the state penitentiary and postmaster. And Myrick was one of the leaders of the state militia.[34]

Despite the high regard in which justices of the peace were held by both their neighbors and contemporary commentators on criminal justice, proceedings before these men were irregular, and their lack of legal training and their prejudices could work against the black defendant. Proceedings before justices of the peace were often held in private homes or outdoors under trees. As a group the justices eschewed both formality and technicality in their "courtrooms" in favor of common sense and fair play, which meant that the fates of the defendants were based less on law and more

---

[32] Ibid., 87, 90.
[33] Constitution of Georgia (1798), art. III, sec. 6.
[34] Glenn M. McNair, "The Trials of Slaves in Baldwin County, Georgia, 1812-1838," (master's thesis, Georgia College & State University, 1996), 59-60. Milledgeville, the largest town in Baldwin County, was the state capital and after Savannah had perhaps the largest number of attorneys. As seat of state

upon what individuals thought appropriate based on their own or community standards of justice. Historian U.B. Phillips notes that courts made up of justices and freeholders were given to "vices in plenty," specifically, that the judges were not trained in law and subject to the still warm passions of the victim's community. But as champion of Old South, Phillips argues that these failings were mitigated by the fact that the men who constituted these courts were "intimately and more or less tolerably acquainted with negro nature in general, and usually doubtless with the prisoner on trial." As a result neighborhood jurors would be more favorably disposed toward the defendant than an impartial panel of strangers. Their judgment would be based more on common sense than the "particularities of the law." But their task was unfortunately compounded by the "rambling, mumbling, confused and baffling character of plantation negro testimony...."[35] Phillips presumes that the paternalism of southern white men, many of them slaveholders, was sufficient to safeguard the rights and lives of black defendants—especially those who were difficult to comprehend as a result of their "mumbling."

While justices of the peace were well regarded in their communities and noted for their honesty and integrity, their lack of legal training opened the door to injustice and limited the responsibility legislators were willing to vest in them. Legal historian Daniel Flanigan notes that the absence of trial transcripts makes it impossible to accurately assess the quality of justices of the peace. But the fact that several states required the concurrence of other white men before a justice was allowed to pass

---

government and home to a significant number of lawyers, Baldwin might be considered a model of Georgia criminal justice, with less developed communities lacking a similar level of judicial sophistication.

sentence suggests that slaveholders questioned their judgment and competency. Conversely, according to Flanigan, the justices may have been susceptible to the undue influence of masters. A lack of confidence in the legal abilities of justices is clearly suggested by the fact that they were not allowed to preside over capital cases; masters would not allow their slaves to be put to death based on the judgment of these honorable but largely untrained men.[36]

Justices of the Inferior Courts

Much of what has been said of justices of the peace can also be said of justices of the inferior court. These justices were appointed by the general assembly, commissioned by the governor, and held their offices during "good behavior." They could be removed by the governor with the consent of two-thirds of both houses of the legislature, or upon conviction. In 1819 the constitution was amended so that the people could elect inferior court justices. There were five justices in each county, and most were not trained attorneys. These justices received no compensation during the early period but served "for the honor of it." Later they fixed their own salaries at not less than $50 and no more than $200 per annum.[37]

According to an early historian of Georgia slavery, Ralph Betts Flanders, justices of the inferior court were not usually individuals trained in law and were hardly competent to deal with complex legal issues, particularly those which appeared in capital cases. Like Phillips, Flanders suggests that this lack of legal training was offset

---

[35] Grice, *Georgia Bench and Bar*, 87; Ulrich Bonnell Phillips, *American Slavery: A Survey of the Supply, Employment and Control of Negro Labor As Determined by the Plantation Regime* 2d. ed. (Baton Rouge: Louisiana State University Press, 1966), 504.
[36] Daniel J. Flanigan, *The Criminal Law of Slavery and Freedom*, (New York: Garland Publishing, Inc., 1987), 89, 110.

by the fact that it was very likely that the justices knew the black defendant and were therefore more likely to show mercy in sentencing. But some contemporaries took a less sanguine view. This dearth of legal training and the resulting miscarriages of justice led to a movement to have slave trials moved to the county superior courts. In a message to the legislature in 1849 Governor George W.B. Towns expressed the problem this way. "To impose upon them [Justices] the responsibility of deciding complicated and vexed questions of law involving human life, is, to my mind, unjust to them as a Court, and not the most reliable mode of attaining the ends of justice by a fair trial in the due course of law." In Towns' view inferior court trials were not only unfair to the defendant but to the judges as well.[38]

While justices of the inferior court were not trained in law, like the justices of the peace they were nevertheless highly respected members of their communities. In Baldwin County between 1812 and 1838 the seventeen justices of the inferior court between them held nine state offices, eight county offices, four city-wide offices, seven leadership positions in the state militia, one national office and six additional positions of significant civic responsibility. The most accomplished Baldwin justice was David B. Mitchell. After serving a stint in his youth as clerk to former governor William Stephens, Mitchell was elected solicitor general of his militia district, state legislator, appointed major-general in the state militia, and finally, he was elected governor in 1809. After his service as governor he was appointed agent to the Creek Nation by president James Monroe. After fulfilling his responsibilities to this office

---

[37] Constitution of Georgia (1798), art. III, sec. 1.
[38] Ralph Betts Flanders, *Plantation Slavery in Georgia* (Chapel Hill: University of North Carolina Press, 1933), 235, 254.

Mitchell retired and became a justice of the inferior court.[39] What the justices lacked in legal acumen they made up in, at least in the minds of their white constituencies, character, good judgment and leadership ability.

Judges of the Superior Court

By moving the capital trials of Aframericans to the superior court in 1850 Georgia legislators placed their fates in the hands of judges with a considerable degree of legal acumen. Superior court judges were, in the main, trained attorneys and members of the Georgia bar. The state constitution mandated that the judges of the superior court were to be elected for three-year terms, removable by the governor with the consent of two-thirds of both houses of the legislature, or by impeachment and conviction.[40] Not only were these men jurists, they were also state and national political leaders. Thirty-eight superior court judges represented Georgia in the U.S. House and Senate, and nine went on to serve as governor. Former judges William H. Crawford and Henry R. Jackson served as U.S. Secretary of State, and James M. Wayne sat on the United States Supreme Court for over thirty years.[41] Under the judicial leadership of these trained judges Aframerican defendants received the highest degree of procedural protection in the entire era of slavery.

Justices of the Georgia Supreme Court

The legal rights of black defendants were defined and protected or ignored by the justices of the state supreme court. The court consisted of three justices appointed by the legislature; one justice served for six years, a second for four years and the final

---

[39]McNair, "Trials of Slaves," 54-55.
[40]Constitution of Georgia (1798), art. III, sec. 1.
[41]Grice, *Georgia Bench and* Bar, 294.

justice for two. They served on good behavior and like their counterparts in the superior and inferior court they could only be removed by the governor with the consent of two-thirds of both houses of the legislature, or upon criminal conviction. In order to be eligible for appointment to the high court an individual had to have been licensed to practice law in the state for at least ten years.[42]

The first three justices of the Georgia supreme court were Joseph Henry Lumpkin, Eugenius A. Nisbet and Hiram Walker. Prior to ascending to the supreme court Warner had been a school teacher, attorney, state legislator, superior court judge and finally, a member of the United States Congress. Like Warner, Nisbet had been an attorney, state legislator and member of Congress. The dominant figure on this first supreme court was its chief justice Joseph Henry Lumpkin, who is credited with shaping much of the state's law after 1845. Lumpkin was born December 23, 1799, and began his college education at the University of Georgia; after several years he matriculated at the College of New Jersey (Princeton) where he graduated in 1819. He was admitted to the Georgia bar in 1820 and went on to represent Oglethorpe County in the Georgia House of Representatives from 1824 to 1825. Lumpkin ran a successful law practice until he was elected to the supreme court. The inaugural trio of Lumpkin, Nisbet and Warner was described by a contemporary as an "Illustrious Triumvirate, founders of the jurisprudence of Georgia...! Pioneers of a great work, they have done it well. Strongly and deeply the foundations are laid. The arch on which the structure of our written law reposes on three columns, each unique and dissimilar yet blending into harmonious unity Corinthian, Gothic, Doric. What a strong and beautiful composite they make!"[43]

---

[42]Cobb, *Digest of the Laws*, 447.
[43]Grice, *Georgia Bench and Bar*, 268-69; Stephenson, "To Protect and Defend," 579 (n.1).

In most respects Georgia appellate judges were like their fellows in the North. Like northern jurists, southern judges believed that the law could serve as an instrument of social policy. While maintaining a firm grasp on the common law, judges nevertheless overturned selected ancient doctrines and created new ones in order to affect their vision of the good society. This level of judicial activism put Old South judges at odds with political figures who thought that such initiative was an attempt to curtail the power of the legislature. As a result the judiciary clashed frequently with lawmakers. Like their northern fellows, southern justices exercised their power of judicial review early and often, which again exacerbated tensions with advocates of governmental decentralization. (The principal example of this kind of animosity was the fight to create the supreme court of Georgia.) Where southern jurists differed from their northern brethren was on the issues of race and slavery. Southern commitment to the "peculiar institution" and the animosity generated by sectional politics forced Old South judges to create doctrine on matters of race and property which varied sharply from those of the northerners.[44]

Juries

During the colonial period the "juries" for the trials of Aframericans in Georgia were composed of various numbers of freeholders (those having title to real property). While we know the required quantum of such jurors, the law does not say any more about their qualifications or how they were selected. The situation is a bit clearer after 1811. During the regular terms of the inferior court the justices selected a venire of not less than twenty-six nor more than thirty six white men in order to serve on the trial of an

[44] Timothy S. Huebner, *The Southern Judicial Tradition: State Judges and Sectional Distinctiveness, 1790-*

Aframerican defendant; only men who were eligible to vote for state legislators were eligible for jury service. On the day of trial the sheriff summoned twenty-four of these men; if any prospective jurors failed to appear the difference could be made up from men in and around the courthouse. The "owner or manager" of the slave defendant was allowed to challenge seven of the assembled jurors and the prosecution, five. The remaining twelve men would act as the trial jury.[45] While no specific mention is made of who was allowed to challenge jurors on behalf of free blacks, one can reasonably assume that it was the defendant, his counsel, or his state-mandated guardian.

Georgia was unique in the early national period in that slave trial jurors were not required to be slaveholders themselves. North Carolina and Tennessee mandated that all jurors be slaveholders, and Alabama and Mississippi insisted that at least some jurors on each panel held slaves. In Louisiana and South Carolina, the freeholders were required to be slaveholders as well.[46] Daniel Flanigan argues that tensions between slaveholders and non-slaveholders were responsible for the practice of requiring that only slaveholders sit on juries during the trials of slaves. Planters feared that yeoman animosity against them would result in convictions that would cause them considerable losses in slave property. Flanigan cites North Carolina Supreme Court Chief Judge John Taylor in this regard. In Taylor's view the slaveholder jury requirement "was intended to surround the life of the slave with additional safeguards, and more effectually to protect the property of the owner...That the master could have the assurance of an equitable trial by persons who had property constantly exposed to similar accusations, and who would not wantonly sacrifice the life of a slave, but yield it only to a sense of

---

1890 (Athens and London: University of Georgia Press, 1999), 2-3.
[45]Prince, *Digest of the Laws*, 460; Cobb, *Digest of the Laws*, 546.

justice, daily experience is sufficient to convince us. The property of a man is more secure when he cannot be deprived of it except by a jury, part of whom, at least, have the kind of property to lose."[47] On its face this argument is perfectly logical, especially if legislators had reason to believe that yeomen did not share their concerns or views about slave property. That was not the case in Georgia, where lawmakers believed that yeomen were sufficiently invested in slavery and white supremacy to render verdicts that served their collective best interests.

North Carolina and Florida were the only states that required that jurors be disinterested parties. A North Carolina law of 1793 required that jurors "shall not be connected with the owner of such slave, or the prosecutor, either by affinity or consanguinity." An 1829 Florida statute stated, "No person having an interest in a slave shall sit upon the trial of such slave." In other jurisdictions no express provisions were made; presumably the problem of biased jurors would be handled by jury challenges.[48] Under the common law there were two kinds of jury challenges, principal challenges, or challenges for cause, and peremptory challenges, or those not based on specific, articulated reasons. Either the prisoner or the state made challenges for cause. Objections were be made on the grounds that the juror was *propter noris respectum, propter defectum, propter affectum or propter delictum.* (The prospective juror was dishonorable, prejudiced, a criminal or had some other discernible defect.) In criminal cases the prisoner was allowed thirty-five peremptory challenges, one short of three full juries. The rationale behind this large number of challenges was to ensure that the desire of the prisoner for an unbiased jury might be fully indulged, while at the same time

---

[46]Morris, *Southern Slavery*, 218.
[47]Flanigan, *Criminal Law of Slavery*, 110-11.

guaranteeing that the challenge process was not used to delay proceedings indefinitely. There were two rationales for allowing peremptory challenges to the defendant. First, individuals are capable of discerning prejudices in others without being able to base this assessment on some legally acceptable fact. In Blackstone's view a defendant was entitled to strike a juror on this basis because he was entitled to "have a good opinion of his jury, the want of which might totally disconcert him; the law wills not that he should be tried by any one man against who he has conceived a prejudice, even without being able to assign a reason for such dislike." Second, if a juror was challenged for cause and was nonetheless accepted, he might harbor a prejudice against the defendant for having challenged him; therefore, peremptory challenges were necessary to remove such people from the jury. [49]

Black defendants in Georgia were allowed to challenge jurors under the act of 1811; however, the act does not specify whether these challenges were peremptory, for cause, or a combination of the two. After Aframerican capital trials were moved to the superior courts in 1850, the number of peremptory challenges increased for both the defendant and the state, twenty for the former and ten for the latter.[50] In the other southern states challenges for cause entered the judicial process for slaves late in the antebellum period, with most states not allowing them until the 1850s; (Tennessee was an exception, allowing black defendants the same number of peremptory and challenges for cause as white defendants.) Challenges for cause were usually based on the suspicion that jurors

---

[48]Morris, *Southern Slavery*, 219.
[49]Blackstone, *Commentaries*, 4:344-47.
[50] Cobb, *Digest of the Laws*, 835.

were biased or unqualified. Peremptory challenges were another matter; they were initially not extended to slave defendants at all.[51]

Despite the use of peremptory challenges juries might still contain biased jurors because the challenges were insufficient to remove all such persons from panels. In 1856 the jury panel was exhausted in the trial of Bob in Chatham County; twenty-four new jurors were summoned and Bob was ultimately found guilty and sentenced to hang. Thomas D. Morris argues that masters and counsel used challenges for cause infrequently because they had to live in the neighborhood with the challenged jurors. This reluctance to challenge left the way clear for prejudiced jurors to be impaneled. Daniel Flanigan also believes that it was nearly impossible to field an unbiased jury: communities were small and slave crime was often of such a nature as to excite the passions of the neighborhood, and changes of venue were rarely granted.[52]

Since the goal of antebellum jury selection was not an impartial jury but its opposite, a body of individuals who knew something of the crime, criminal and community, juries emerged which would be wholly unacceptable in the context of a modern trial. Petit juries contained individuals who were related to each other, were relatives of justices, jurors in similar proceedings, victims of black criminality, witnesses in prior proceedings and even judges! This pattern is exemplified by juries selected for the trials of slaves in Baldwin County between 1812 and 1838. During these years fourteen trials made it through the process of jury selection. In these trials six jurors served on more than one trial, often the very next trial to take place before the court. Jurors in three trials had the same surname, indicating that they might have been related. Several jurors

[51]Morris, *Southern Slavery*, 221-23.

shared a unique surname, Bivens, with justice William Bivens of the inferior court. Two justices, William Ball and Miles Greene served as jurors in cases before the inferior court, both before and after they served as justices of that court. Finally, one justice, Appleton Rosseter was the victim of a theft committed by a slave who was later convicted in the court on which he served. Rosseter would later go on to preside over theft and burglary cases involving slave defendants.[53] The same types of irregularities occurred in other counties as well. On juries in Campbell, Hancock, Columbia, Jones and Greene counties several jurors had the same surnames.[54] If impartiality were the standard a number of these jurors would have been immediately disqualified.

Georgia followed regional practice in its jury selection procedures. In his study of antebellum South Carolina trials Michael Hindus found that juries were drawn from a relatively small pool of white men in each county. While men were only supposed to serve on juries once every few years, Hindus found that a small group of the same men appeared regularly in the trials of Aframericans. Juries in South Carolina were also often composed of family members sitting on the same juries; in other instances jurors had the same last names as the magistrates. On other occasions jurors had the same last names as the victims. These associations clearly opened the door to bias against black defendants in trials Hindus describes as "procedurally incestuous."[55] In his examination

---

[52] Ibid., 222-23; Flanigan, *Criminal Law of Slavery*, 111-13.
[53] McNair, *Trials of Slaves*, 65-85; The Records of the Baldwin County Inferior Court are housed at the Georgia Department of Archives and History (GDAH), drawer 199, box 25.
[54] *State v. Mason*, Records of the Superior Court of Campbell County, August 12, 1861, Drawer 107, box 73, (GDAH); *State v. Simon*, Records of the Superior Court of Greene County, March term 1853, Drawer 33, box 67, (GDAH); *State v. Israel*, Records of the Inferior Court of Hancock County, April 18, 1849, Drawer 121, box 46, (GDAH); *State v.Elias*, Records of the Superior Court of Columbia County, September 8, 1858, Drawer 192, box 26, (GDAH); and *State v. Adam*, Records of the Inferior Court of Jones County, September 3, 1835, Drawer 76, box 72, (GDAH).
[55] Michael S. Hindus, *Prison and Plantation: Crime, Justice and Authority in Massachusetts and South Carolina, 1767-1878* (Chapel Hill: University of North Carolina Press, 1980), 154-55.

of slave trials in Williamson County, Tennessee, Arthur Howington found that there was a significant amount of repetition among the members of both the court and the jury. Eight justices appeared in more than one case. In the eight trials examined thirty-two different jurors could have been called but only twenty-six were; two jurors sat on three different trials. Unlike Michael Hindus, Howington did not find that juries consisted of individuals who might have been family members or related to the owners of the slave defendants.[56] Given the racial prejudices of the time and selection practices which allowed a considerable degree of potential partiality, one can reasonable ask if any jury verdict for an Aframerican defendant could have been considered "fair."

Lawyers

Aframericans did not have to face the apparatus of justice alone. While nothing is known about blacks' use of attorneys during the colonial and early national periods, by the middle to late antebellum period lawyers were representing slave and free black defendants before the bar. The attorneys who represented Aframericans were a mixed lot, from relative unknowns like Yelverton P. King and Miles W. Lewis to statesmen like Alexander Stephens and Robert Toombs. The Georgia bar and its members evolved in much the same manner as their counterparts in the North and was considered just as skilled. When facing the increasingly complex legal system black defendants who were not represented by counsel were at a distinct disadvantage.

In the beginning the legal profession was not deemed to be especially necessary in Georgia and the other colonies because they were to be utopian communities that would function without significant resort to the legal process or trained lawyers. There was also no reliable body of law that required interpretation and a dearth of courthouses as well.

---

[56]Howington, *What Sayeth the Law*, 120-21.

In the minds of the earliest settlers civil and criminal justice, to the extent that they were necessary, would be administered by honest laypersons. These attitudes resulted, in many colonies, in antipathy toward lawyers which produced legislation designed to control them. Over time the colonists came to realize that their utopian vision was far from reality, and a class of lawyers began to emerge to serve growing legal needs. This evolution was uneven throughout the colonies and some would not develop significant legal institutions until the end of the seventeenth century; by this point most colonies had established regular courts. This new legal apparatus required lawyers qualified to administer it and men trained themselves to the task. As the numbers of lawyers increased they began to exert their influence in town meetings and state legislatures. By the Revolution most Americans had changed their opinion of lawyers and the role they should play in the society.[57]

Georgia lagged behind the other colonies in the development of a trained bar. As a frontier colony under the governance of a philanthropic group of trustees, Georgia in the years before 1752 was undeveloped at best. The functions of several English courts were rolled into the General Court, which consisted of three lay judges (called bailiffs) and a recorder. These jurists were not trained in law and dispensed justice with what one legal scholar describes as, "ignorance, prejudice and favoritism." Some of these magistrates could not write and were charged with "setting aside the laws of England, making false imprisonments, wrongfully discharging grand juries, threatening petty juries, blasphemy, irreverence, drunkenness, obstructing the course of law, and other great and heinous offenses." With the exception of William Stephens, governor from 1743 through 1751,

---

[57]Anton-Hermann Chroust, *The Rise of the Legal Profession in America* (Norman: University of Oklahoma Press, 1965), 1:331-33

there was not a single trained lawyer in the colony. After Georgia became a royal colony in 1752 the common law began to assert itself and a small bar began to develop, especially in Savannah where a number of English solicitors and barristers had chosen to settle. Three classes of lawyers developed: those trained at the inns of court in London, those who had served as clerks in England, Ireland or the other colonies, and those who were untrained but who were nevertheless admitted to the bar as a result of influence within the legal community.[58] In the years following the Revolution law as a profession held a greater appeal for southerners than northerners. In a region where classical training and oratory were held in especially high regard, law, with its emphasis on such skills, served as an "effective stepping stone to political and social success." With law as an effective entree to social and political success southern lawyers brought a level of competitiveness to the profession and to politics unknown to previous generations or other regions. Over the course of the next several decades more and more Georgians found themselves drawn to the profession; they ultimately formed the core of a well-trained and respected bar.[59]

While a minority of Georgia lawyers was liberally educated or received some training at East Coast law schools, the great majority was apprenticed to established attorneys. Legal historian Warren Grice described the process this way: "The embryo disciple of Blackstone would make his home with his preceptor, read texts under his direction, act as his amanuensis, submit to quizzing by the elder, daily or weekly, learn in a practical way how to digest legal documents, witness the interviews between counsel and client, assist

[58]Ibid., 1:325-28.
[59]Ibid., 2:86-87; Grice, *Georgia Bench and Bar*, 256.

in the preparation of his cases; and absorb as well as read law."[60] The experience of would-be Georgia lawyers was not unique, in fact it was the norm in the colonial and early national periods. There was no classroom instruction in law in America until 1779; in that year George Wythe began courses at the College of William and Mary, thus establishing the nation's first law school. A number of other such law schools appeared in the nineteenth century, the most prestigious of which was that directed by Judge Tapping Reeve in Litchfield, Connecticut. Despite being at considerable remove from Reeve's institution, more Georgia lawyers were trained at Litchfield on a per capita basis than from any other state. Academic legal training in Georgia began in 1843 when Joseph Henry Lumpkin accepted a professorship in law at the University of Georgia. Lumpkin's other legal and judicial responsibilities kept him from expanding the professorship into a full-fledged law school. This goal was achieved in 1859 when Lumpkin partnered with his son-in-law Thomas R.R. Cobb and attorney William Hope Hull to form the Lumpkin Law School at the university.[61]

Despite having the means for training attorneys most counties did not have a bar during much of the antebellum period. This dearth was compensated for with circuit riders, attorneys who traveled from county to county in order to attend court sessions. The life of the circuit-riding attorney was a hard one. They hit the roads at the beginning of each court session, staying away from their homes and families from six to nine months. Since a number of counties were without courthouses and judges, superior court judges made the rounds as well. Because judges and lawyers traveled together, ate

---

[60]Grice, *Georgia Bench and Bar*, 261.
[61] Ibid., 256, 352; Jay F. Alexander, "Legal Careers in Eighteenth Century America," in *The Legal Profession: Major Historical Interpretations*, ed. Kermit L. Hall. (New York and London: Garland Publishing, Inc., 1987), xxi, 3; Huebner, *Southern Judicial Tradition*, 76,

together and stayed at the same taverns, they developed bonds which made the bar a "brotherhood."[62] While these circumstances made for a close-knit relationship between judges and lawyers, it also opened the door for improper influence and prejudice among them. Positive relations between prosecutors, judges and defense attorneys is not detrimental per se; however, when the defendant class is an alienated racial Other with little that binds them to the men who would control their fate, such camaraderie serves only to tip the already shaky scales of justice that much closer toward injustice.

Judges, Juries and Slavery

Slavery played a monumental role in the judging of Aframericans in Georgia. First, the overwhelming majority of black defendants were bondspeople, and this status brought with it special considerations for those who would sit in judgment. In the minds of whites, as discussed above, slaves were a racially different people possessing characteristics that predisposed them to violence, theft and deception. Those who owned slaves, as North Carolina justice John Taylor argued, were in the best position to assess these racial differences and to pass judgment accordingly. Slaves were different from white defendants not only in race but also in their value as property. Even though whites were all citizens the fate of individual criminals mattered largely only to themselves and their families. Not only were the destinies of slave defendants of considerable value to themselves and their kin, they were also of great value to their owners and to the society that benefited from their labor. Finally, in a society where power was based on land and the ownership of slaves the slaveholding status of the judges who administered the courts and the citizen-jurors who decided the fate of slave defendants would seem to be of considerable importance, as Justice Taylor argued above. Those who administered the

[62]Grice, *Georgia Bench and Bar*, 244.

criminal justice system were slaveholders, while the juries who determined the guilt or innocence of slave defendants were not. Ostensibly this state of affairs offered the possibility for class conflict but no such conflict materialized. In court slaveholders and yeomen operated harmoniously to protect their racial, public safety and economic interests.

As men who relied on status in the community to acquire and hold their positions, justices of the peace secured this status, in part, through slave ownership. In Baldwin County for example, justices John Mathews, John W. Devereux, Nathaniel Waller, Goodwin Myrick, James Humphreys and William Searcy were all slaveholders. In addition to owning slaves, a number of these men sold slaves in order to satisfy personal debts. In 1815 Mathews sold a slave girl, Hannah, to satisfy a public debt. In 1815 Devereux was forced to sell nine slaves to pay a creditor; in 1817 he offered to sell his bondsman Job to pay a debt to the state of Georgia, and in 1818 he placed his slave Phoebe on the auction block for similar reasons. Nathaniel Waller also resorted to the sale of slaves to fend off creditors; in 1812 he sold a female slave for that purpose. When not selling slaves for their own benefit the justices sold them for others. In 1818 Goodwin Myrick offered a number of slaves for sale as executor of the estate of a deceased Baldwin County woman.[63] Selling slaves to satisfy personal debt tells quite a bit about the character of these men. According to Thomas D. Russell court-ordered sales of this kind were extremely disruptive of slave family life, far more so than commercial sales.[64] If these men had any special regard for slaves that might manifest itself in court it did not show itself in their treatment of their own slave families.

---

[63] McNair, "Trials of Slaves," 60-61.

Like their lower court counterparts, the justices of the inferior court were also involved in the "peculiar institution." The majority of the justices who presided over the trials of slaves in Baldwin County were themselves slaveholders. Justices, Amos Young, William Bivens, Harris Allen, Augustin Harris, William Rutherford, William Ball, Robert G. Crittenden, Myles Green, Thomas Moughan, Samuel Beecher and David B. Mitchell were all slave masters. Moughan was the largest slaveholder with fifty-eight (closely followed by Mitchell with fifty-four) and Young the smallest, with only six slaves listed in his household in 1820. Justices of the Baldwin County inferior court also participated in the sales of slaves to satisfy personal debts, both as debtors and creditors. Daniel Wilson sold one of his slaves to quash a levy. In 1821 Elias Harris sold one of his female slaves to meet a financial obligation to fellow inferior court justice Appleton Rosseter. Harris Allen lost one of his slaves because of a debt owed to a resident of the county. Justice and former governor David B. Mitchell was forced to sell thirty-seven slaves to satisfy creditors; William Carnes and Charles Williamson were compelled to sell slaves for this reason as well. And justice William Y. Hansell lost numerous slaves under the auctioneer's hammer as a result of personal debt.[65] While Baldwin was but one of Georgia's many counties, there is no reason to believe that it was exceptional in the patterns of slave ownership of its judicial officials, as is clearly demonstrated by the ownership patterns of superior court judges.

By the 1850s election to the superior court depended on two factors: legal acumen and social status, which was determined in large part by slave ownership. A random sample of sixteen superior court judges from around the state reveals that fourteen of the sixteen

---

[64] Thomas D. Russell, "Articles Sell Best Singly: The Disruption of Slave Families at Court Sales," *Utah Law Review* 4 (1996): 1161-1209.

men were slave owners. The two judges who could not be confirmed as slave owners could not be located in the census records of 1850 or 1860; therefore, it is possible that these men were slaveholders as well since their status cannot be definitively determined. The slave holdings of these men ranged from five in the households of Osborne Lochrane and Carlton B. Coles, to thirty-six on the plantation of William Law of Chatham County.[66] This pattern of slave ownership is observable among the justices of the supreme court as well.

A justiceship on the state supreme court was the highest legal office to which any individual could aspire. As might be expected only the most highly respected persons could be hope to be elected to such offices and slave ownership was necessary to attain this station. Of the ten men who served as justices on the supreme court from its inception in 1845 to the end of the Civil War, nine of these men definitely were slaveholders and the tenth probably was. The slaveholdings of the justices ranged from the twelve of Charles J. McDonald, to the thirty-seven of Eugenius Nisbet; the mean average was seventeen.[67] When Georgia slaves appealed their cases to the state's highest court, slaveholders like their masters heard their pleas.

---

[65] McNair, "Trials of Slaves,"55-57.

[66] The superior court judges selected for this sample are Henry M. Jackson (Chatham Co.), John W.H. Underwood (Floyd Co.), Joel Branham (Putnam Co.), Augustus R. Wright (Cass Co.), Francis N. Cone (Greene Co.), John J. Floyd (Newton Co.), John McPherson Berrien (Cass Co.), William Law (Chatham Co.), Angus M.D. King (Monroe Co.), Herschel V. Johnson (Baldwin Co.), Edward Y. Hill (Troup Co.), Christopher B. Strong (Houston Co.), Thomas W. Harris (Houston Co.), Carlton B. Cole (Bibb Co.), Osborne Lochrane (Bibb Co.), and Washington Poe (Twiggs Co.). Their status as slave owners was determined through examination of *Population Schedules of the Seventh Census of the United States, Slave Schedules,* (Washington, DC: U.S. Census Office, 1850) and *Population Schedules of the Eighth Census of the United States, Slave Schedules,* (Washington, DC: U.S. Census Office, 1860).

[67] The ten justices of the supreme court were Joseph Henry Lumpkin, Eugenius Nisbet, Hiram Warner, Ebenezer Starnes, Iverson L. Harris, Henry L. Benning, Charles J. McDonald, Linton Stephens and Charles J. Jenkins. Their status as slave owners was determined through examination of the *Seventh Census, Slave Schedules,* and *Eighth Census, Slave Schedules*. Stephen's slave owning status may be found in James D. Waddell, ed., *Biographical Sketch of Linton Stephens* (Atlanta: Dodson & Scott, 1877), 95. The single justice who cannot be confirmed as a slaveholder, Richard F. Lyon, does not appear in the censuses of 1850

While the administrators of Georgia justice were generally slaveholders, the jurors who decided the fates of black defendants generally were not. A random sample of approximately ten percent of all cases that went to juries for disposition reveals that no jury was composed of a majority of slave owners.[68] Additional support for this conclusion may be found by examining the trials of Aframericans in the inferior court of Baldwin County. Between 1812 and 1838 fourteen juries were selected, of those none was composed of more than six slave owners. Two juries contained no masters at all and three trials had only one slaveholder each. The mode average for slave owners serving on juries was only three.[69]

The fact that Georgia juries were made up of those who did not own slaves is not unusual when one considers how juries were selected. According to the constitution of

---

or 1860, leaving open the possibility that he was a slave master as well. Given the pattern of slave ownership among the other justices it is highly likely that Lyon was a slave owner as well.

[68] The following cases were used in the random sample: *State v. Mason*, Records of the Superior Court of Campbell County, August 12, 1861, Drawer 107, box 73, (GDAH); *State v. John*, Records of the Superior Court of Fayette County, April 17, 1865, Drawer 94, box 11, (GDAH); *State v. Simon*, Records of the Superior Court of Greene County, March term 1853, Drawer 33, box 67, (GDAH); *State v. Becky*, Records of the Superior Court of Greene County, September term 1860, Drawer 33, box 70, (GDAH); *State v. Frank*, Records of the Inferior Court of Hancock County, October 14, 1843, Drawer 121, box 46, (GDAH); *State v. Israel*, Records of the Inferior Court of Hancock County, April 18, 1849, Drawer 121, box 46, (GDAH); *State v.Elias*, Records of the Superior Court of Columbia County, September 8, 1858, Drawer 192, box 26, (GDAH); *State v. George and John*, Records of the Superior Court of Columbia County, March 7, 1860, Drawer 192, box 26, (GDAH); *State v. Hardtimes*, Records of the Inferior Court of Chatham County, March 1821, Drawer 90, box 33, (GDAH); *State v. Thomas*, Records of the Inferior Court of Chatham County, March, 1821, Drawer 90, box 33, (GDAH); *State v. Harry*, Records of the Inferior Court of Jones County, December 19, 1833, Drawer 76, box 72, (GDAH); *State v. Adam*, Records of the Inferior Court of Jones County, September 3, 1835, Drawer 76, box 72, (GDAH); *State v. Jesse*, Records of the Superior Court of Decatur County, April 29, 1856, Drawer 130, box 1, (GDAH); *State v. John Boon*, Records of the Inferior Court of Putnam County, September 28, 1822, Drawer 1, box 17, (GDAH); *State v. Jerry*, Records of the Superior Court of Houston County, October 28, 1853, Drawer 158, box 38, (GDAH); *State v. Edmund*, Records of the Superior Court of Taylor County, April 9, 1856, Drawer 164, box 43, (GDAH); *State v. Rose*, Records of the Superior Court of Taliaferro County, February 26, 1861, Drawer 109, box 37, (GDAH); *State v. George Moss*, Records of the Superior Court of Taliaferro County, November 20, 1861, Drawer 109, box 37, (GDAH); *State v. Johan*, Records of the Superior Court of Monroe County, September 10, 1857, Drawer 2, box 33, (GDAH); *State v. Tucker*, Records of the Superior Court of Richmond County, April 14, 1864, Drawer 145, box 15, (GDAH); *State v. Pressley*, Records of the Superior Court of Oglethorpe County, October term 1855, Drawer 46, box 26, (GDAH); and *State v. Amos*, Records of the Superior Court of Lincoln County, October 26, 1864, Drawer 88, box 55,

1798 the only requirements for voting for state legislators (the same requirement for jury service) was that individuals be "citizens and inhabitants of the state, and shall have attained the age of twenty-one years, and have paid all taxes which may have been required of them...for the year preceding the election."[70] Each county was required to maintain a list of all persons who met these qualifications. The clerks of the superior and inferior courts were responsible for correcting the jury lists each year. The clerk, in the presence or under the direction of one or more judges of the court, compiled a list of all those qualified to serve as grand and petit jurors. Each name was placed on an individual slip of paper and placed in the grand or petit jury compartment of a wooden "jury box." The box was then locked and the key kept in the possession of the clerk, a judge, or other designated person. Two months before the beginning of a trial term the box was unlocked in the presence of the clerk and judges. Between twenty-three and thirty-six names were drawn from the grand jury compartment, and from forty-eight to seventy-two from the petit jury compartment. These men would make up the venire from which the grand and petit juries for the term would be selected.[71]

This process, if adhered to, would result in a random selection of jurors from the adult, white male population at large; in Georgia that population consisted overwhelmingly of non-slaveholders. In 1860 there were 41, 084 slave owners in a white population over twenty years of age of 258,561. If women were removed from this population (no women served on Georgia juries) that figure is reduced to 132,509.[72] Given this figure the

---

(GDAH). The slaveholding status of each juror may be found in the tax digests of each county for the year in which the trial occurred. These records are housed at the (GDAH).

[69] The slaveholding status of Baldwin County jurors is discussed in McNair, "Trials of Slaves," 65-85.

[70] Georgia Constitution (1798), art. IV, sec. 1.

[71] Cobb, *Digest of the Laws*, 546-47.

[72] These figures are found in *Agriculture of the United States in 1860 compiled from the Original Returns of the Eighth Census* (Washington, DC: Government Printing Office, 1864), 70-71, 247.

percentage of slave masters eligible for jury service could have been no higher than thirty-one percent; the actual figure is certainly lower because there were female slaveholders and those who had not attained their majority. So the percentage of male masters over twenty-one years of age in Georgia was probably closer to twenty-five percent. A random selection made from a population where only a quarter of the inhabitants held slaves (even though figures for some individual counties was higher) would generally result in juries without slaveholder majorities.

The fact that Georgians relied upon non-slaveholders to determine the guilt or innocence of slave defendants has considerable bearing on one of the great debates in southern historiography: the degree of conflict or cooperation between masters and yeomen. Scholars have devoted a great deal of attention to class relations between slaveholders and yeomen, with some arguing that there was considerable conflict between the two groups, and others arguing that was significant congruency in interests and world views among them.[73] By allowing the fates of slaves to be decided by yeomen slaveholders in the legislator were expressing confidence in the unity of all white men based on racial supremacy and the economic well being generated for them by slavery.[74]

---

[73] Significant works on class relationships among Southern whites are Genovese, *Roll, Jordan, Roll*; Lacy K. Ford, *The Origins of Southern Radicalism: The South Carolina Upcountry, 1800-1860* (New York: Oxford University Press, 1988); Steven Hahn, *The Roots of Southern Populism: Yeoman Farmers and the Transformation of the Georgia Upcountry, 1850-1890* (New York: Oxford University Press, 1983); Stephanie McCurry, *Masters of Small Worlds: Yeoman Households, Gender Relations, and the Political Culture of the Antebellum South Carolina Lowcountry* (New York: Oxford University Press, 1995); and Michael P. Johnson, *Toward a Patriarchal Republic: The Secession of Georgia* (Baton Rouge: Louisiana State University Press, 1977).

[74] A number of recent works discuss the construction of whiteness and the psychological advantages of white supremacy, among them David R. Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (New York: Verso, 1991); David R. Roediger, *Towards the Abolition of Whiteness: Essays on Race, Politics and Working Class History* (London and New York: Verso, 1994); Grace Elizabeth Hale, *Making Whiteness: The Culture of Segregation in the South, 1890-1940* (New York: Pantheon Books, 1998); Ruth Frankenberg, *White Women, Race Matters: The Social Construction of Whiteness* (Minneapolis: University of Minnesota Press, 1993); and Matthew Frye Jacobson, *Whiteness of*

Yeoman jury service also buttressed the cult of honor that was the backbone of southern social relations.[75] Potential conflict between masters and yeomen was muted because both groups participated in the process of judging Aframericans and resolving conflicts caused by them. Georgia lawmakers were not alone in this confidence in yeoman jurors, as most other slave states did not mandate that slave masters be included on slave trial juries.

Throughout the history of slavery in Georgia when most black defendants committed crimes they were judged and punished by masters on plantations, far from the prying eyes—and regulatory powers—of the outside world. The level of fairness and protection these defendants received was entirely up to individual masters; some were quite conscientious in this regard and others much less so. A small minority of Aframericans who committed serious crimes found themselves in front of formal tribunals. These courts ranged from the crude but efficient justice-freeholder courts of the colonial period to the less efficient, more protective superior courts of the late antebellum period. In the higher courts Aframerican defendants had many of the same procedural protections as white defendants; unfortunately, these protections were tainted by race and status prejudice. In the end these systems provided as much protection as necessary to secure the interests of individual masters and the society at large; the goal was the well being of whites, and not slaves or free blacks. How effective these court systems were in achieving their objectives is the subject of the next chapter.

---

a Different Color: European Immigrants and the Alchemy of Race (Cambridge: Harvard University Press, 1998).

[75] Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (Oxford and London: Oxford University Press, 1982), 365.

CHAPTER 4

"THE WORSE SYSTEM THAT COULD BE DEVISED": THE OPERATIONAL EFFICIENCY OF THE CRIMINAL JUSTICE SYSTEM

Georgia legislators created a criminal justice system that granted masters wide latitude in adjudicating and punishing the vast majority of Aframericans who committed crimes on their estates. They also established formal judicial mechanisms for the trial and punishment of the most serious black offenders. This system was designed to control Aframerican criminality. Did it do so efficiently? Criminologist Herbert Packer has defined efficiency within the context of criminal justice as "the system's capacity to apprehend, try, convict and dispose of a high proportion of criminal offenders whose offenses become known."[1] The criminal justice system black Georgians faced operated with deadly efficiency. When culprits were detected on the plantation their "trials" and punishments could all take place within a matter of minutes, with no avenue of appeal. In the formal system black defendants charged with capital crimes fared little better; despite increasing legal protections they were convicted at a fairly high rate, one that far exceeded that of white defendants. Once convicted, defendants had the opportunity to appeal their convictions on a rather limited number of grounds. A significant number of defendants won their appeals, but this was not a cause for celebration. A handful was exonerated; many others were re-convicted, and some were hanged. For the black defendant Georgia's mechanisms of criminal justice truly constituted what South Carolina jurist John Belton O'Neall decried as "the worse system that could be devised."[2]

---

[1]Herbert L. Packer, *The Limits of the Criminal Sanction* (Stanford, CA: Stanford University Press, 1968), 158.

[2] Thomas D. Morris, *Southern Slavery and the Law, 1619-1865* (Chapel Hill: University of North Carolina Press, 1996), 209.

Types of Criminal Justice Systems

Over the course of its history Georgia's formal criminal justice system evolved from one administered by lay persons with very few procedural protections for defendants' lives to one conducted under the auspices of trained jurists and replete with a full panoply of due process rights. Historians of criminal justice have described this evolution, which occurred throughout the slave South, as one from systems that emphasized speed, efficiency and certainty of punishment to those concerned more with cloaking the lives of black defendants with procedural protection. Criminologist Herbert Packer's models of criminal justice systems offer a more effective way of evaluating this evolution. Packer argues that systems may be generally characterized as Crime Control models or Due Process models. The Crime Control model has as its principal goal "the repression of criminal conduct."[3] This reduction in criminality is accomplished by having a pre-judicial investigative process which creates the great probability that those who make it to court are in fact guilty; the judicial process is there only to catch the few cases which effective investigation might have missed. In this model the defendant is presumed guilty. This presumption of guilt results in a judicial process with relatively few stages, few procedural rights for the defendant, and no appellate process, or a very limited one. In Packer's words "the process must not be cluttered up with ceremonious rituals that do not advance the progress of a case."[4] Under the Crime Control model informal procedures are preferred to formal ones. But informality is not enough; there must be uniformity as well. Packer envisions "an assembly-line conveyor belt down which moves an endless stream

[3]Packer, *Limits of the Criminal Sanction*, 158.
[4] Ibid., 159

of cases ...never stopping carrying the cases to workers who stand at fixed stations..." [5] This process should result in a large volume of cases and high levels of final convictions in a minimum amount of time, with the guilty plea being the preferred vehicle of conviction. The heart of this system is the pre-judicial investigative phase, with the trial - serving as a less vital formality.

While certainly concerned with the suppression of crime, the Due Process model is concerned more with the protection of individual rights and the limitation of state power.[6] Due Process proponents question the reliability of pre-trial investigative processes, appreciate the opportunities for abuses of power inherent in a system where the determination of guilt or innocence occurs outside of the courtroom (and the eyes of impartial observers), and believe that the trial and appellate processes are vital to making a determination of criminal culpability. Here the defendants are innocent until proved guilty, and preventing the misbehavior of the state is as important as punishing the misconduct of the defendant. Well-regulated pre-trial investigative procedures, a formal accusatory body, access to defense counsel, and a fairly extensive right of appeal characterize the Due Process model.[7] Given its priorities the successful Due Process model would result in fewer cases adjudicated, lower conviction rates, and more appeals.

If one were to concentrate exclusively on the formal system one could conclude that the evolution from freeholder tribunals to regular county courts is best described as a move from Crime Control models to Due Process models, as legal historian Arthur

---

[5] Ibid.
[6] Ibid., 165.
[7] Ibid., 163-71.

Howington has concluded for Tennessee.[8] But this characterization of the evolution of Aframerican criminal justice systems does not fit the realities of Georgia. While the early systems had fewer stages and levels of procedural protection, had limited avenues of appeal and disposed of cases with dispatch, they cannot properly be defined as Crime Control models. The central feature of the Crime Control model is a pre-judicial investigative apparatus that is designed to weed out weak cases and to secure confessions before the defendant ever appeared in court; in Georgia no such apparatus existed. Judicial proceedings were initiated in most instances by the accusation of private citizens; there were certainly suspect interviews conducted by various authority figures but nothing remotely approaching the mechanism Packer describes. Most black defendants found themselves in court on the un-investigated accusation of some white person. Also, in a proper Due Process model the number of cases would decline as the procedural protections increased because the trials themselves would become more time consuming. The exact opposite happened in Georgia; more and more cases found their way into courts as time went by.

Ultimately Georgia's criminal justice system is best described as a hybrid, one that combined the goals and methods of both models in relatively equal measure in order to produce a highly effective crime control apparatus. The plantation component of the system relied heavily on the Crime Control model, quickly disposing of a high volume of cases with a great degree of informality, few procedural protections and no appeals. The formal system handled the relatively few cases that involved serious violations that threatened interests off the plantation, and did so with a higher degree of procedural

[8]Arthur F. Howington, *What Sayeth the Law: The Treatment of Slaves and Free Blacks in the State and Local Courts of Tennessee* (New York and London: Garland Publishing, Inc., 1986), 116, 152-53.

protection, greater deliberation and avenues of appeal. Together these system components were designed to handle a massive volume of cases with speed, efficiency, and certainty of punishment, all with an eye toward protecting the property interests of the master class and the safety of the public at large.

Conviction Rates

The truest mark of the efficiency of any criminal justice system is its ability to identify and convict the society's criminal malefactors. The very essence and design of the plantation system of justice ensured its efficiency; there were no jurors to be selected, no lawyers to be procured, no mandatory continuances, no statutorily defined waiting periods between conviction and the execution of sentence, and no appeals. As a result, once criminals were identified they were quickly tried and punished with the master's mercy as the only means of mitigation or appeal. The true efficiency of this system would be revealed if we knew the ratio of slaves accused of plantation crimes to those "convicted"; unfortunately the records do not exist for such a comparison. But if the testimony of masters and ex-slaves is believed, few slaves who committed prohibited acts that came to the knowledge of the overseer or master, and which could be proved to their satisfaction, escaped unscathed.

The formal court system did produce records that make it possible to gauge its efficiency. The most direct measure of system efficiency is the simple conviction rate, the ratio of guilty verdicts and pleas to the total number of cases that reached the trial stage. If the system has worked as it should, weeding out the weak and frivolous cases before trial, the simple conviction rate should be relatively high. Between 1755 and 1865 the simple conviction rate for black defendants tried in Georgia courts was an impressive

75.1 percent. (See Table 4.1) This figure was even higher at certain times, or for certain crimes. During the period between 1755 and 1811, nearly 94 percent of Aframericans who were put on trial were convicted. (See Table 4.1.2) Between 1812 and 1849 Aframericans put on trial for arson, attempted rape, murder, and attempted murder, were convicted at rates of eighty percent, eighty percent, eighty-six percent, and ninety-four percent, respectively. And every black man charged with rape during this era was convicted. (See Table 4.1.3) Conviction rates were considerably higher for those charged with persons crimes as compared to those accused of property crimes and those against public order. (See Table 4.1.4)

The sex and status of the defendant had a startling impact on simple conviction rates. Slave men were the group of defendants most likely to be convicted, with a simple conviction rate of nearly eighty-one percent. While the rate of conviction for slave men was significantly higher than average, the figure for slave women was dramatically lower than average; the simple conviction rate for bondswomen was only forty-four percent. (See Table 4.1.5) This disparity is best explained, in part, by the difference in the types of crimes committed by slave men and women. While the largest single group of women was charged with murder, a crime with a simple conviction rate of over eighty-six percent, the majority were charged with arson, burglary, poisoning, and theft crimes which were difficult to prove and which resulted in conviction rates significantly lower than the average. (See Table 4.1.6) But differences in crimes do not entirely explain differing conviction rates; it appears that there was a greater reluctance on the part of Georgia juries to convict women. In the six crime categories where both slave men and women were put on trial, slave men were convicted at higher rates in four of them;

Simple Conviction Rate 1755-1865

		Statistics	
		Frequency	Valid Percent
Valid	Plea of Guilty	29	9.7
	Verdict of Guilty	195	65.4
	Verdict of Not Guilty	72	24.2
	Mistrials	2	.7
	Total	298	100.0

Table 4.1

Simple Conviction Rate 1755-1811

		Frequency	Valid Percent
Valid	Verdict of Guilty	31	93.9
	Verdict of Not Guilty	2	6.1
	Total	33	100.0

Table 4.1.2

Simple Conviction Rates by Crime 1812-1849

			Crime				
			Murder	Attempted Rape	Attempted Murder	Arson	Rape
Disposition	Plea of Guilty	Count	1		2		
		% within Disposition	33.3%		66.7%		
		% within Crime	4.5%		11.8%		
	Verdict of Guilty	Count	18	4	14	4	3
		% within Disposition	27.7%	6.2%	21.5%	6.2%	4.6%
		% within Crime	81.8%	80.0%	82.4%	80.0%	100.0%
	Verdict of Not Guilty	Count	3	1	1	1	
		% within Disposition	14.3%	4.8%	4.8%	4.8%	
		% within Crime	13.6%	20.0%	5.9%	20.0%	
Total		Count	22	5	17	5	3
		% within Disposition	24.7%	5.6%	19.1%	5.6%	3.4%
		% within Crime	100.0%	100.0%	100.0%	100.0%	100.0%

Table 4.1.3

Simple Conviction Rates by Crime Type 1755-1865

			Crime Type			
			Unknown	Persons Crimes	Property Crimes	Crimes Against Public Order
Disposition	Plea of Guilty	Count		26	1	2
		% within Disposition		89.7%	3.4%	6.9%
		% within Crime Type		12.2%	1.5%	12.5%
	Verdict of Guilty	Count	3	147	40	5
		% within Disposition	1.5%	75.4%	20.5%	2.6%
		% within Crime Type	100.0%	69.0%	60.6%	31.3%
	Verdict of Not Guilty	Count		39	24	9
		% within Disposition		54.2%	33.3%	12.5%
		% within Crime Type		18.3%	36.4%	56.3%
	Mistrials	Count		1	1	
		% within Disposition		50.0%	50.0%	
		% within Crime Type		.5%	1.5%	
Total		Count	3	213	66	16
		% within Disposition	1.0%	71.5%	22.1%	5.4%
		% within Crime Type	100.0%	100.0%	100.0%	100.0%

Table 4.1.4

Simple Conviction Rates by Defendant Sex and Status 1755-1865

			Defendant Status				
			Slave Male	Slave Female	Free Male	Free Female	Total
Disposition	Plea of Guilty	Count	28	1			29
		% within Disposition	96.6%	3.4%			100.0%
		% within Defendant Status	10.9%	4.0%			9.7%
	Verdict of Guilty	Count	179	10	6		195
		% within Disposition	91.8%	5.1%	3.1%		100.0%
		% within Defendant Status	69.6%	40.0%	40.0%		65.4%
	Verdict of Not Guilty	Count	49	13	9	1	72
		% within Disposition	68.1%	18.1%	12.5%	1.4%	100.0%
		% within Defendant Status	19.1%	52.0%	60.0%	100.0%	24.2%
	Mistrials	Count	1	1			2
		% within Disposition	50.0%	50.0%			100.0%
		% within Defendant Status	.4%	4.0%			.7%
Total		Count	257	25	15	1	298
		% within Disposition	86.2%	8.4%	5.0%	.3%	100.0%
		% within Defendant Status	100.0%	100.0%	100.0%	100.0%	100.0%

Table 4.1.5

Simple Conviction Rates by Crime and Defendant Sex and Status 1755-1865

				Crime							
Defendant Status			Statistics	Murder	Attempted Murder	Arson	Poisoning	Burglary	Larceny	Free Black Violation	Total
Slave Female	Disposition	Plea of Guilty	Count				1				1
			% within Disposition				100.0%				100.0%
			% within Crime				25.0%				4.0%
		Verdict of Guilty	Count	5		3	1	1			10
			% within Disposition	50.0%		30.0%	10.0%	10.0%			100.0%
			% within Crime	50.0%		50.0%	25.0%	50.0%			40.0%
		Verdict of Not Guilty	Count	4	1	3	2	1	1		13
			% within Disposition	30.8%	7.7%	23.1%	15.4%	7.7%	7.7%		100.0%
			% within Crime	40.0%	100.0%	50.0%	50.0%	50.0%	100.0%		52.0%
		Mistrials	Count	1							1
			% within Disposition	100.0%							100.0%
			% within Crime	10.0%							4.0%
	Total		Count	10	1	6	4	2	1		25
			% within Disposition	40.0%	4.0%	24.0%	16.0%	8.0%	4.0%		100.0%
			% within Crime	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%		100.0%
Free Female	Disposition	Verdict of Not Guilty	Count							1	1
			% within Disposition							100.0%	100.0%
			% within Crime							100.0%	100.0%
	Total		Count							1	1
			% within Disposition							100.0%	100.0%
			% within Crime							100.0%	100.0%

Table 4.1.6

women were convicted at a higher rate in only one category, arson. The most telling statistic is that for murder. In that crime category—the most serious—slave men were convicted at a rate of nearly eighty-five percent; the simple murder conviction rate for slave women was only fifty percent. (See Table 4.1.7) It is clear that juries were willing to convict slave men and sentence them to death, while they hesitated to consign slave women to this fate. Perhaps they were concerned that a dead slave woman represented a loss not only of her labor, but of any children she might have. Or perhaps Georgia men were reluctant to see women hanging from the ends of ropes in public.

The disparity in conviction rates between slave men and women is remarkable, but the difference between the enslaved and their free counterparts is even more so. Free men were convicted at the comparatively low rate of only forty percent. Free women fared even better; the two women who were brought before the courts were not convicted. (One was not indicted by the grand jury and the second was acquitted.) (See Table 4.1.5) The disparity in conviction rates between the free and enslaved is once again explained by the differences in the crimes with which the two groups were charged. The majority of free men and women were charged with crimes with lower than average conviction rates. (See Table 4.1.8)

Overall simple conviction rates declined as the period progressed, from a high of nearly ninety-four percent in the colonial and early national periods, to a low of 71.1 percent in the period ending in 1865. (See Tables 4.1, 4.1.9, and 4.1.10) The increased procedural safeguards put in place during the antebellum period explain this decline. So, a black defendant in Georgia had, on average, a better than seven in ten chance of being convicted once he or she was put on trial. Slave men were the most likely to be convicted

Simple Conviction Rates by Crime and Defendant Sex and Status 1755-1865

Defendant Status			Statistics	Crime					
				Murder	Attempted Murder	Arson	Poisoning	Burglary	Larceny
Slave Male	Disposition	Plea of Guilty	Count	7	15			1	
			% within Disposition	25.0%	53.6%			3.6%	
			% within Crime	7.2%	28.3%			3.1%	
		Verdict of Guilty	Count	75	32	8	1	25	2
			% within Disposition	41.9%	17.9%	4.5%	.6%	14.0%	1.1%
			% within Crime	77.3%	60.4%	44.4%	50.0%	78.1%	66.7%
		Verdict of Not Guilty	Count	15	6	9	1	6	1
			% within Disposition	30.6%	12.2%	18.4%	2.0%	12.2%	2.0%
			% within Crime	15.5%	11.3%	50.0%	50.0%	18.8%	33.3%
		Mistrials	Count			1			
			% within Disposition			100.0%			
			% within Crime			5.6%			
	Total		Count	97	53	18	2	32	3
			% within Disposition	37.7%	20.6%	7.0%	.8%	12.5%	1.2%
			% within Crime	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Slave Female	Disposition	Plea of Guilty	Count				1		
			% within Disposition				100.0%		
			% within Crime				25.0%		
		Verdict of Guilty	Count	5		3	1	1	
			% within Disposition	50.0%		30.0%	10.0%	10.0%	
			% within Crime	50.0%		50.0%	25.0%	50.0%	
		Verdict of Not Guilty	Count	4	1	3	2	1	1
			% within Disposition	30.8%	7.7%	23.1%	15.4%	7.7%	7.7%
			% within Crime	40.0%	100.0%	50.0%	50.0%	50.0%	100.0%
		Mistrials	Count	1					
			% within Disposition	100.0%					
			% within Crime	10.0%					
	Total		Count	10	1	6	4	2	1
			% within Disposition	40.0%	4.0%	24.0%	16.0%	8.0%	4.0%
			% within Crime	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Table 4.1.7

Simple Conviction Rates by Crime and Defendant Sex and Status 1755-1865

Defendant Status			Statistics	Crime							
				Murder	Attempted Rape	Attempted Murder	Burglary	Free Black Violation	Aiding a Runaway	Robbery	Total
Free Male	Disposition	Verdict of Guilty	Count	2		1	1		1	1	6
			% within Disposition	33.3%		16.7%	16.7%		16.7%	16.7%	100.0%
			% within Crime	66.7%		100.0%	25.0%		50.0%	100.0%	40.0%
		Verdict of Not Guilty	Count	1	1		3	3	1		9
			% within Disposition	11.1%	11.1%		33.3%	33.3%	11.1%		100.0%
			% within Crime	33.3%	100.0%		75.0%	100.0%	50.0%		60.0%
	Total		Count	3	1	1	4	3	2	1	15
			% within Disposition	20.0%	6.7%	6.7%	26.7%	20.0%	13.3%	6.7%	100.0%
			% within Crime	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Free Female	Disposition	Verdict of Not Guilty	Count					1			1
			% within Disposition					100.0%			100.0%
			% within Crime					100.0%			100.0%
	Total		Count					1			1
			% within Disposition					100.0%			100.0%
			% within Crime					100.0%			100.0%

Table 4.1.8

Simple Conviction Rate 1812-1849

		Frequency	Valid Percent
Valid	Plea of Guilty	3	3.4
	Verdict of Guilty	65	73.0
	Verdict of Not Guilty	21	23.6
	Total	89	100.0

Table 4.1.9

Simple Conviction Rate 1850-1865

		Frequency	Valid Percent
Valid	Plea of Guilty	26	14.8
	Verdict of Guilty	99	56.3
	Verdict of Not Guilty	49	27.8
	Mistrials	2	1.1
	Total	176	100.0

Table 4.1.10

and free women the least, with free men and women faring better overall. The chances of being convicted were significantly higher if the defendant were put on trial for persons crimes like rape, murder or attempted murder, and less so if he or she were tried for a property crime or one against public order.

The simple conviction rate, however, only tells part of the story. The true mark of the efficiency of any criminal justice system is the effective conviction rate, or the ratio of convictions to all indictments or accusations. This rate represents the chance of conviction any defendant faces the moment he appears before the court to be accused of a crime. The difference between simple and effective conviction rates is explained by pre-trial factors that cause grand juries not to indict or prosecutors to abandon cases before trial, among them, arrests without sufficient cause, frivolous prosecutions or overcharging. By considering these factors and jettisoning weak cases before trial, grand juries and prosecutors are, in effect, rendering pre-trial acquittals. In doing so courts avoid the expense, both in time and money, of trying cases which are, in all likelihood, going to result in acquittals.[9] In an ideal criminal justice system this rate would be relatively close to the simple conviction rate because the pre-judicial screening process, especially in a Crime Control system, would filter out cases that had little chance of being successfully prosecuted. The reality of course is different because of crowded dockets, reluctant witnesses or complainants, newly discovered evidence and a host of other factors which cannot be calculated before the defendant is brought before the bar. Therefore, an effective conviction rate of at least fifty percent or more is representative of a very efficient system. Georgia's overall effective conviction rate for the period between

[9] Michael Stephen Hindus, *Prison and Plantation: Crime, Justice and Authority in Massachusetts and South Carolina, 1767-1878* (Chapel Hill: University of North Carolina Press, 1980), 90-92.

1850 and 1865 was 43.4 percent, that is, nearly half of the defendants who appeared before the courts, regardless of crime, status or sex, were convicted. (See Table 4.2) It is impossible to accurately calculate effective conviction rates before 1850 because of the nature of the accusation process and record keeping during these years. In the colonial and early national periods very few trial records remain; the conviction data was obtained from appeals to the legislature or executive by convicted offenders or newspaper articles that recounted the executions of those convicted of capital crimes. Therefore the nature of these sources skews the analysis toward conviction and the dearth of court records makes it impossible to know how many persons appeared before the courts but were never formally charged. The data for the early antebellum period is similarly flawed. Initial accusations were made before justices of the peace in the period from 1812-1849; unfortunately these courts were not courts of record so the results of proceedings there were not written down. Accordingly, the only cases that appear in the record are those that were forwarded to the inferior courts for trial, again making it impossible to know with any degree of certainly the percentage of persons who were never charged. The superior court records after 1850, however, reflect both true and no bills, making it possible to accurately calculate effective conviction rates.

As with simple conviction rates effective conviction rates varied significantly by crime and crime type. The rate for post-1850 persons crimes was significantly higher than those for property crimes and those against public order. (See Table 4.2.1) There was also considerable variation among individual crimes. The highest effective conviction rate of all, 64.3 percent, was for rape, indicating the seriousness with which Georgia juries

Effective Conviction Rate 1850-1865

		Frequency	Valid Percent
Valid	Unknown	52	18.1
	Plea of Guilty	26	9.0
	Nolle Prosequi	24	8.3
	Verdict of Guilty	99	34.4
	Verdict of Not Guilty	49	17.0
	Not Indicted	36	12.5
	Mistrials	2	.7
	Total	288	100.0

Table 4.2

Effective Conviction Rates by Crime Type 1850-1865

			Crime Type			
			Persons Crimes	Property Crimes	Crimes Against Public Order	Total
Disposition	Unknown	Count	38	14	1	53
		% within Disposition	71.7%	26.4%	1.9%	100.0%
		% within Crime Type	17.5%	23.0%	10.0%	18.4%
	Plea of Guilty	Count	24	1	2	27
		% within Disposition	88.9%	3.7%	7.4%	100.0%
		% within Crime Type	11.1%	1.6%	20.0%	9.4%
	Nolle Prosequi	Count	15	7	2	24
		% within Disposition	62.5%	29.2%	8.3%	100.0%
		% within Crime Type	6.9%	11.5%	20.0%	8.3%
	Verdict of Guilty	Count	86	9	1	96
		% within Disposition	89.6%	9.4%	1.0%	100.0%
		% within Crime Type	39.6%	14.8%	10.0%	33.3%
	Verdict of Not Guilty	Count	31	15	4	50
		% within Disposition	62.0%	30.0%	8.0%	100.0%
		% within Crime Type	14.3%	24.6%	40.0%	17.4%
	Not Indicted	Count	22	14		36
		% within Disposition	61.1%	38.9%		100.0%
		% within Crime Type	10.1%	23.0%		12.5%
	Mistrials	Count	1	1		2
		% within Disposition	50.0%	50.0%		100.0%
		% within Crime Type	.5%	1.6%		.7%
Total		Count	217	61	10	288
		% within Disposition	75.3%	21.2%	3.5%	100.0%
		% within Crime Type	100.0%	100.0%	100.0%	100.0%

Table 4.2.1

considered carnal violations of their womanhood. Murder followed rape in the rate of effective conviction; nearly fifty-four percent of all those whose cases were presented to grand juries on this charge were ultimately convicted. The lowest rates were to be found among the property crimes; the conviction rate for arson was only 13.9 percent. (See Table 4.2.2) This low conviction rate once again reflects the difficulty of identifying and prosecuting those who set clandestine fires. Arsonists were not only difficult to convict, they were also the hardest to charge; thirty-three percent of those brought before the grand jury were not indicted. (See Table 4.2.2) If they were willing and able black Georgians could burn down structures of all kinds and descriptions with little chance of being punished for it.

Effective conviction rates varied significantly based on the sex and status of the defendant. Slave men were convicted at a rate of forty-seven and one-half percent, a rate very near the average. The effective conviction rate of slave women on the other hand was only 21.6 percent. This rate is more than two times lower than the rate for enslaved men, and as we will see below, is very close to the rate for white men. Perhaps the most interesting component of the effective conviction rate for slave women is the extremely low at which they confessed their guilt: only two percent of slave female defendants entered guilty pleas, while slave men did so at a rate five times higher. Free men were convicted at a lower rate than slave men and women, and free women were not convicted at all.[10] (See Table 4.2.3)

[10] Only two free women were charged at all, and for relatively minor crimes, so this conviction rate should not be thought to represent some extreme lenience toward this group of defendants.

Effective Conviction Rates by Crime 1850-1865

			Crime						
		Statistics	Murder	Attempted Rape	Attempted Murder	Arson	Poisoning	Burglary	Rape
Disposition	Unknown	Count	20	1	13	5		6	2
		% within Disposition	37.7%	1.9%	24.5%	9.4%		11.3%	3.8%
		% within Crime	17.9%	7.1%	22.0%	13.9%		27.3%	14.3%
	Plea of Guilty	Count	6	1	14		1	1	
		% within Disposition	22.2%	3.7%	51.9%		3.7%	3.7%	
		% within Crime	5.4%	7.1%	23.7%		16.7%	4.5%	
	Nolle Prosequi	Count	6	1	3	2	1	5	1
		% within Disposition	25.0%	4.2%	12.5%	8.3%	4.2%	20.8%	4.2%
		% within Crime	5.4%	7.1%	5.1%	5.6%	16.7%	22.7%	7.1%
	Verdict of Guilty	Count	54	5	15	5	2	4	9
		% within Disposition	56.3%	5.2%	15.6%	5.2%	2.1%	4.2%	9.4%
		% within Crime	48.2%	35.7%	25.4%	13.9%	33.3%	18.2%	64.3%
	Verdict of Not Guilty	Count	16	5	6	11	2	4	2
		% within Disposition	32.0%	10.0%	12.0%	22.0%	4.0%	8.0%	4.0%
		% within Crime	14.3%	35.7%	10.2%	30.6%	33.3%	18.2%	14.3%
	Not Indicted	Count	9	1	8	12		2	
		% within Disposition	25.0%	2.8%	22.2%	33.3%		5.6%	
		% within Crime	8.0%	7.1%	13.6%	33.3%		9.1%	
	Mistrials	Count	1			1			
		% within Disposition	50.0%			50.0%			
		% within Crime	.9%			2.8%			
Total		Count	112	14	59	36	6	22	14
		% within Disposition	38.9%	4.9%	20.5%	12.5%	2.1%	7.6%	4.9%
		% within Crime	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Table 4.2.2

Effective Conviction Rates by Crime 1850-1865

			Crime							
		Statistics	Attempted Poisoning	Mayhem	Manslaughter	Escape	Larceny	Free Black Violation	Insurrection	Aiding a Runaway
Disposition	Unknown	Count		1	1		2			
		% within Disposition		1.9%	1.9%		3.8%			
		% within Crime		100.0%	16.7%		100.0%			
	Plea of Guilty	Count			1				1	1
		% within Disposition			3.7%				3.7%	3.7%
		% within Crime			16.7%				100.0%	50.0%
	Nolle Prosequi	Count			2	1		1		
		% within Disposition			8.3%	4.2%		4.2%		
		% within Crime			33.3%	100.0%		20.0%		
	Verdict of Guilty	Count			1					1
		% within Disposition			1.0%					1.0%
		% within Crime			16.7%					50.0%
	Verdict of Not Guilty	Count						4		
		% within Disposition						8.0%		
		% within Crime						80.0%		
	Not Indicted	Count	3		1					
		% within Disposition	8.3%		2.8%					
		% within Crime	100.0%		16.7%					
Total		Count	3	1	6	1	2	5	1	2
		% within Disposition	1.0%	.3%	2.1%	.3%	.7%	1.7%	.3%	.7%
		% within Crime	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Table 4.2.2

Effective Conviction Rates by Defendant Staus 1850-1865

			Defendant Status				
			Slave Male	Slave Female	Free Male	Free Female	Total
Disposition	Unknown	Count	46	5	2		53
		% within Disposition	86.8%	9.4%	3.8%		100.0%
		% within Defendant Status	19.3%	13.5%	18.2%		18.4%
	Plea of Guilty	Count	26	1			27
		% within Disposition	96.3%	3.7%			100.0%
		% within Defendant Status	10.9%	2.7%			9.4%
	Nolle Prosequi	Count	19	3	2		24
		% within Disposition	79.2%	12.5%	8.3%		100.0%
		% within Defendant Status	8.0%	8.1%	18.2%		8.3%
	Verdict of Guilty	Count	87	7	2		96
		% within Disposition	90.6%	7.3%	2.1%		100.0%
		% within Defendant Status	36.6%	18.9%	18.2%		33.3%
	Verdict of Not Guilty	Count	34	10	5	1	50
		% within Disposition	68.0%	20.0%	10.0%	2.0%	100.0%
		% within Defendant Status	14.3%	27.0%	45.5%	50.0%	17.4%
	Not Indicted	Count	25	10		1	36
		% within Disposition	69.4%	27.8%		2.8%	100.0%
		% within Defendant Status	10.5%	27.0%		50.0%	12.5%
	Mistrials	Count	1	1			2
		% within Disposition	50.0%	50.0%			100.0%
		% within Defendant Status	.4%	2.7%			.7%
Total		Count	238	37	11	2	288
		% within Disposition	82.6%	12.8%	3.8%	.7%	100.0%
		% within Defendant Status	100.0%	100.0%	100.0%	100.0%	100.0%

Table 4.2.3

The most intriguing factor affecting effective conviction rates was the defendants' relationships to their victims. Not surprisingly those most likely to be convicted were those who victimized masters, mistresses, and overseers. What is startling is the fact that slaves were convicted at a higher rate for victimizing their own kind than their masters. (See Table 4.2.4) This seems to stand the logic of slavery on its head, making slave lives and interests more valuable than those of their masters. Was it possible that the lives of laborers were more valuable than those for whom they toiled? Not likely. The answer is probably that the overall costs of convicting a slave for a crime against his master was higher than that for victimizing a slave. A capital charge that was the product of a crime against a master or mistress was the surest way to the gallows, and thus represented a great potential loss to individual masters and, theoretically, the society as a whole. Perhaps juries were reluctant to convict if the crime was a non-lethal assault or property crime. Jurors would not have had this reservation if a slave were the victim; a capital charge against one slave for killing another (the only slave-on-slave crime charged) did not necessarily result in an execution. This kind of charge resulted, in nearly half of the cases where enslaved black men were the victims, in a reduction of the charge to one of a non-capital nature, thus ensuring that the slave would be punished and the economy would not lose another hand. (See Tables 4.3 and 4.3.1) Given this propensity to reduce charges juries were significantly more willing to convict, and slaves were more willing to plead guilty. This practice had the effect of protecting white property while cheapening black lives.

Effective Conviction Rates by Defendant's Relationship to Victim 1850-1865

			Victim's Relationship to Defendant		
			Slave Acquaintence or Kin	Master, Mistress, or Overseer, etc.	White Person (Relationship Unknown)
Disposition	Unknown	Count	2	1	30
		% within Disposition	5.9%	2.9%	88.2%
		% within Victim's Relationship to Defendant	8.7%	3.3%	22.2%
	Plea of Guilty	Count	3	3	10
		% within Disposition	18.8%	18.8%	62.5%
		% within Victim's Relationship to Defendant	13.0%	10.0%	7.4%
	Nolle Prosequi	Count		3	12
		% within Disposition		17.6%	70.6%
		% within Victim's Relationship to Defendant		10.0%	8.9%
	Verdict of Guilty	Count	16	19	36
		% within Disposition	21.9%	26.0%	49.3%
		% within Victim's Relationship to Defendant	69.6%	63.3%	26.7%
	Verdict of Not Guilty	Count	1	3	25
		% within Disposition	3.0%	9.1%	75.8%
		% within Victim's Relationship to Defendant	4.3%	10.0%	18.5%
	Not Indicted	Count	1	1	21
		% within Disposition	4.3%	4.3%	91.3%
		% within Victim's Relationship to Defendant	4.3%	3.3%	15.6%
	Mistrials	Count			1
		% within Disposition			100.0%
		% within Victim's Relationship to Defendant			.7%
Total		Count	23	30	135
		% within Disposition	11.7%	15.2%	68.5%
		% within Victim's Relationship to Defendant	100.0%	100.0%	100.0%

Table 4.2.4

Charge Reduction by Victim Status 1755-1865

			Victim Status			
		Statistics	Slave Male	Slave Female	Free Black Male	Black Person (Status & Gender Unknown)
Charge Reduction	Unknown	Count	2			2
		% within Charge Reduction	3.6%			3.6%
		% within Victim Status	6.7%			18.2%
	Yes	Count	14		2	7
		% within Charge Reduction	29.2%		4.2%	14.6%
		% within Victim Status	46.7%		100.0%	63.6%
	No	Count	14	2		2
		% within Charge Reduction	9.5%	1.4%		1.4%
		% within Victim Status	46.7%	100.0%		18.2%
Total		Count	30	2	2	11
		% within Charge Reduction	12.0%	.8%	.8%	4.4%
		% within Victim Status	100.0%	100.0%	100.0%	100.0%

Table 4.3

Charge Reduction by Victim Status 1850-1865

			Victim Status			
			Slave Male	Slave Female	Free Black Male	Black Person (Status & Gender Unknown)
Charge Reduction	Unknown	Count	2			2
		% within Charge Reduction	3.8%			3.8%
		% within Victim Status	9.1%			20.0%
	Yes	Count	9		2	7
		% within Charge Reduction	26.5%		5.9%	20.6%
		% within Victim Status	40.9%		100.0%	70.0%
	No	Count	11	1		1
		% within Charge Reduction	12.2%	1.1%		1.1%
		% within Victim Status	50.0%	100.0%		10.0%
Total		Count	22	1	2	10
		% within Charge Reduction	12.5%	.6%	1.1%	5.7%
		% within Victim Status	100.0%	100.0%	100.0%	100.0%

Table 4.3.1

Simple and effective conviction rates in Georgia were very similar to those in other states. The simple conviction rate for slave defendants in Michael Hindus' study of South Carolina was seventy percent. The highest conviction rates were for assault and related crimes; the lowest rates were for property crimes like burglary and arson which were harder to detect and which required eyewitnesses. Men were convicted in 67.7 percent of cases that went to verdict; for women the figure was 60.2 percent.[11] In colonial New York nearly sixty-nine percent of Aframerican bondsmen accused of crimes were convicted. This was an amazingly high effective conviction rate, but given the dearth of available procedural protections, not a surprising one. The overall conviction figures for slaves would have been even higher but for a low conviction rate of fifty-five percent for theft crimes; the same was true of Georgia.[12]

Tennessee represented an interesting contrast to Georgia, South Carolina and New York; there the conviction rates were considerably lower. Arthur Howington's study of Tennessee consisted of 198 prosecutions of 163 slaves between 1825 and 1861. Only 40 (20 percent) of these prosecutions ended in convictions in capital cases. Eighteen, or nine percent, ended in convictions for non-capital offenses. Therefore only twenty-nine percent of prosecutions (58 cases) ended with a conviction of any kind. Sixty-eight cases resulted in acquittals on the capital charge either by the grand or petit juries. (34 percent) Twenty-eight percent of the cases (55 total) ended in acquittals of all charges. Sixty-five capital cases were dismissed (33 percent) and fourteen (7 percent) were declared mistrials. Only twenty-two defendants went to the gallows. The rates of conviction were highest in the cases of murder of whites, but this conviction rate was only fifty percent.

---

[11] Hindus, *Prison and Plantation*, 144-45.

The rate was considerably higher if the white victim were a master, mistress or other authority figure. Eight slaves were charged with the murder or attempted murder of these persons; six were convicted and hanged. Twenty-eight slaves were charged with the murder of whites who were not figures in authority over the defendants; six were convicted of murder and two of manslaughter. Twenty-six slaves were accused of attempting to kill other whites; two were convicted of attempted murder and two for lesser offenses. Figures are similar for free black defendants. For all crimes of violence against whites the conviction rate was only twenty-two percent (of eighteen cases). Conversely, when the victim was black the conviction rate was sixty-six percent. (Of fifteen cases.)[13] This mirrors the experience in Georgia and probably occurred for the same reasons.

In general blacks accused of capital crimes in Georgia stood a fifty-fifty chance of being convicted at the time of accusation; once at the trial stage the conviction rate jumped to approximately seventy-five percent. In isolation these figures do not seem so onerous, but when compared to those of white defendants the impressive efficiency of the system is made manifest. Historian David J. Bodenhamer examined 4007 criminal cases involving white defendants in four antebellum Georgia counties, Liberty, Murray, Bibb and Musocgee. In the counties studied only 27 percent of all true bills ever reached a decision based on the merits of the case. The remaining cases were either dismissed by the prosecutor (25.5 percent), or simply disappeared from the record (47.5 percent). Felony cases made it to verdict more frequently than misdemeanors and, not surprisingly, crimes against persons were prosecuted more vigorously than those against property.

---

[12] Douglas J. Greenberg, *Crime and Law Enforcement in the Colony of New York, 1691-1776* (Ithaca, NY: Cornell University Press, 1974), 72-74.

Once a case made it to trial the defendant had little chance of acquittal as seventy percent of trials resulted in guilty verdicts. The simple conviction rate for misdemeanors was 73 percent, compared to 66 percent for more serious crimes. Those charged with crimes against persons were convicted in seventy-four percent of the cases, while those charged with property crimes were found guilty 79 percent of the time. The effective conviction rate tells a different tale of system efficiency. Less than nineteen percent of cases presented to the grand jury ultimately resulted in conviction; an effective conviction rate nearly thirty percentage points lower than that for black defendants.[14] In antebellum Georgia a white person charged with a crime had little chance of ever being convicted of anything.

Conviction figures for several other states were comparable to those of Georgia. In colonial North Carolina only half of the bills of indictment resulted in trials; almost one third disappeared from the system.[15] In his study of criminal justice in colonial New York, historian Douglas Greenberg found that only 47.9 percent of all cases resulted in guilty verdicts. Fifteen percent of defendants were acquitted and the remaining thirty-seven percent of the cases were never resolved at all.[16] Antebellum South Carolina's rates of simple and effective conviction were similar to those of Georgia. The state's simple conviction rate was a little over 70 percent, but the effective rate was only 25 percent. Rates in Indiana, a Midwestern state, were much like those of the southern states. In his study of Marion County, Indiana, Bodenhamer found that twenty-five percent of true bills handed down by the grand jury disappeared before trial; thirty percent of the remaining

---

[13] Howington, *What Sayeth the Law*, 210-13, 241.
[14] David J. Bodenhamer, "The Efficiency of Criminal Justice in the Antebellum South," in *Crime and Justice in American History*, vol. 11, pt. 1, ed. Eric H. Monkkonen (Munich: K.G. Saur, 1992), 5-9.

cases went to trial but were dismissed before verdict. So fewer than half of Indiana's antebellum criminal indictments reached verdicts; this figure was even lower in the 1840s when the effective conviction rate dropped to thirty percent. System efficiency was not sufficiently affected by the seriousness of the crime, with felony prosecutions comprising slightly more of those cases which failed to reach a verdict. Once a trial was taken to verdict the Indiana defendant had little chance of acquittal. Seventy-five percent of the cases that went to trial on the merits resulted in guilty verdicts; the felony conviction rate was eighty-three percent. Bodenhamer concludes that "inefficiency plagued" criminal justice in antebellum Marion County, Indiana.[17] The conviction statistics of the southern states, Indiana and colonial New York are in sharp contrast to those of colonial and antebellum Massachusetts. In that state the simple conviction rate was over eighty-eight percent, with the effective conviction rate being an impressive 69.6 percent.[18]

Bodenhamer offers several explanations for the inefficiency of Georgia's criminal justice system for whites. First, Georgia's jails were in such poor condition and their jailers so ill-trained that defendants simply escaped before trial. Second, courts met only twice per year so cases which clogged the dockets simply fell between the cracks. This overtaxing of the system was compounded by a rapid expansion of civil litigation that squeezed criminal cases to the margins. Tardy or defaulting jurors further delayed proceedings. The process of initiating prosecutions resulted in inefficiency; all that was required to begin a criminal prosecution was for an individual to make a complaint. This complaint was presented to a magistrate to determine if there was sufficient cause to

---

[15] David J. Bodenhamer, and James W. Ely, Jr. Eds. *Ambivalent Legacy: A Legal History of the South* (Jackson: University of Mississippi Press, 1984), 20.
[16] Greenberg, *Crime and Law Enforcement*, 71.

proceed; if there was the case was forwarded to the grand jury. The ease with which prosecutions were initiated thus invited frivolous prosecutions. Once in the grand jury these bogus complaints were sent to trial rather than being no-billed. Finally, the mere act of being charged with a crime served the social purpose of deterring the criminal by shaming him in the community; it was not necessary for the case to go to verdict.[19]

In explaining why the criminal justice system for whites was so inefficient, Bodenhamer goes a long way toward explaining why the system for blacks was so much more efficient. First of all, many slave defendants were held in the custody of their masters pending trial; the owner was held accountable for the appearance of the bondsperson in court and the master was fined if the slave failed to be present at the appointed hour. Slaves and free blacks who were held in jail found it much more difficult to escape to safety, as evidenced by the difficulties experienced by runaway slaves generally.[20] Second, since very few Aframericans ever appeared before the courts on serious charges dockets were rarely crowded, at least with regard to black defendants. Additionally, prior to 1850 special tribunals convened to try each individual case. After the mid-century the few cases of black defendants received precedence over those of white defendants, as evidenced by the few continuances required to dispose of cases. Finally, since the cases in this study were capital crimes with easily identified victims, there were few, if any, frivolous charges. Masters had a special interest in making sure that such charges never made it to court; the lives of their slaves—and hence a significant amount of their money—was at stake.

---

[17] Bodenhamer, "Efficiency of Criminal Justice," 10; David J. Bodenhamer, *The Pursuit of Justice: Crime and Law in Antebellum Indiana* (New York: Garland Publishing, 1986), 131-35.
[18] Bodenhamer, "Efficiency of Criminal Justice," 10.
[19] Ibid., 11-12.

Conviction rates for black defendants would also be higher if they were forced to labor under evidentiary rules that made it more difficult for them to mount effective defenses. The biggest evidentiary disadvantage for slaves in British North America and the Caribbean was that their ability to testify in court was severely limited. During the early colonial period they could not testify at all in capital cases, and for the entire history of the Old South they could not testify against whites. Under the common law witnesses were generally competent to testify unless it could be demonstrated that they were parties to the issue, deficient in understanding, insensible to the obligations of the oath or if they had a pecuniary interest in the outcome of the proceedings. (The common law rules regarding parties and pecuniary interest were modified by statute in the U.S. to allow the testimony of these persons under certain circumstances.)[21] Thus in a criminal proceeding there were only two criteria that had to be met to establish testimonial eligibility: mental competence and the ability and willingness to be bound by an oath. Insensibility to the oath was the most relevant consideration in the trials of non-Christian Aframericans. According to nineteenth century evidence expert Simon Greenleaf, "The very nature of an oath presupposes that the witness believes in the existence of an omniscient Supreme Being, who is "the rewarder of truth and avenger of falsehood;" and that, by such a formal appeal, the conscience of the witness is affected. Without this belief, the person cannot be subject to that sanction, which the law deems indispensable test of truth...Atheists, therefore, and all infidels, that is, those who profess no religion that can bind their consciences to speak truth, are rejected as

---

[20] For a discussion of these realities see John Hope Franklin and Loren Schweninger, *Runaway Slaves: Rebels on the Plantation* (New York and Oxford: Oxford University Press, 1999).
[21] William Blackstone, *Commentaries on the Laws of England* (Oxford: Clarendon Press, 1769; repr. of first edition with supplement, Buffalo, NY: William S. Hein & Co., Inc., 1992), 1:447-48.

incompetent to testify as witnesses." A witness is competent to testify "if he believes in the being of God, and a future state of rewards and punishments." Greenleaf avers that moral competency is presumed in "a Christian land where God is generally acknowledged..." The burden of proof is on the opposition to prove this deficiency. The testimony of non-Christian religionists was accepted but the oath that was administered was one accepted by their faith.[22] So using Greenleaf's logic any black person who was mentally competent and who could be bound by an oath of whatever religious tradition was fit to testify in a criminal trial; this, however, was not the practice.

Slave testimony began to be admitted early in the eighteenth century when legislators realized that some slave crimes, especially insurrection and related plots, would go unpunished if slaves were not allowed to testify. Several methods evolved to ensure the credibility of black testimony. During the colonial period two rules were used in evaluating slave testimony. The "two-witness rule" found in Deuteronomy 17:6, stated that no person could be put to death except upon the sworn testimony of two witnesses; therefore another witness was required to corroborate the testimony of a single black witness in any capital case. The second guarantor of black truthfulness was the oath. The oath was thought to ensure truthfulness because religious people believed that a false oath would bring about immediate divine retribution, or at the very least, would jeopardize admission to Heaven. (As noted above slave testimony was initially disallowed because slaves were not Christians.) The only testimony that was allowed without an oath was the confession of the defendant.[23]

---

[22] Simon Greenleaf, *A Treatise on the Law of Evidence*, 15th ed. (Boston: Little, Brown & Co., 1892), 1:447-48; 506-07.
[23] Morris, *Southern Slavery*, 230-32.

Over time the "two witness rule" and the requirement for oath taking were relaxed and ultimately replaced by that of "pregnant" or corroborating circumstances. Aframerican testimony would be allowed, but only if supported by other circumstances or testimony that ensured its truthfulness. The South Carolina slave code of 1735 provides an example. "The confession of any slave accused, or the testimony of any other slave or slaves, attended with circumstances of truth and credit, shall be deemed good and convincing evidence on the trial of any slave or slaves for any of the crimes aforesaid, or any other crimes, capital or criminal; of the strength of which evidence, the said justices and freeholders who try the same, are hereby made sufficient and competent judges." By 1740 the law had been changed so that the evidence of "any slave, without oath, shall be allowed and admitted in all causes whatsoever, for or against another slave accused of any crime or offense whatsoever; the weight of which evidence being seriously considered, and compared with all other circumstances, attending the case, shall be left to the consciences of the justices and freeholders." There was no longer a requirement for pregnant circumstances but the suggestion of it was still there.[24] As with much else about Georgia slave law, the state followed South Carolina and adopted its rules for the admission of black testimony. In the slave code of 1755 legislators wrote that, "The evidence of any Slave without Oath shall be allowed and admitted in all Causes whatsoever for or against another Slave accused of any Crime or Offense whatsoever the Weight of which Evidence being Seriously considered and compared with all other Circumstances attending the Case shall be left to the Conscience of the Justices and Freeholders." This rule also applied in cases involving the criminal acts of "any Free Negroes Indians Mulato [sic] or Mestizos..." In the slave

[24] Ibid., 235.

code of 1765 this language was changed to read "the evidence of any...Slaves not instructed in the profession of the Christian Religion and Baptized without oath shall be taken..." This clearly suggests that Christian slaves would be allowed to testify under oath. Reference to both Christianity and oath taking were removed from the slave code of 1770, thus returning to the basic language of the 1755 code.[25]

The pregnant circumstances requirement appeared briefly in Virginia, Kentucky, Tennessee, Mississippi and Alabama. Georgia did away with any mention of circumstances in 1816: "Any witness who believed in "God and a future state of rewards and punishments" could be sworn and give testimony in the trial of a slave or free person of color. By the nineteenth century slave testimony, whether sworn or unsworn, was sufficient to convict or acquit other blacks.[26]

While allowed to testify against each other and certain "inferior" classes, Aframericans could not testify against whites, thus putting them, in many instances, "beyond the reach of the law."[27] This prohibition also had the effect of making black testimony of any kind against any defendant less credible in the minds of white judges and juries. The rule against black testimony was changed in the Caribbean as the British moved toward abolition; the testimony of Christian slaves who could

---

[25] Allen D. Candler, ed., *Colonial Records of the State of Georgia,* 32 vols. (Atlanta: Charles P. Byrd, 1910), 18:111-12, 658; 19: (pt. 1), 218-19. Abolitionist William Goodell argued that allowing Aframericans to testify against Native Americans and each other without oaths meant that such testimony would or should not have had the same credibility as that received under the authority of the divine. Blacks could be convicted based on evidence which had not been subjected to the ultimate test, while whites could not. In addition, slaves were often granted their freedom in certain instances for testifying against other slaves, thus creating a significant incentive for false or misleading testimony. William Goodell, *The American Slave Code in Theory and Practice: Its Distinctive Features Shown by Its Statutes, Judicial Decisions and Illustrative Facts* (N.p: American & Foreign Anti-Slavery Society, 1853; Reprint. New York: Negro Universities Press, 1968), 315. Stroud concurred. Stroud, *Sketch of the Laws*, 93.
[26] Morris, *Southern Slavery*, 237; Oliver Prince, *A Digest of the Laws of the State of Georgia* (Milledgeville, GA: Grantland & Orme, 1822), 461.
[27] Morris, *Southern Slavery*, 229; Goodell, *American Slave Code*, 301-03.

demonstrate that they understood the significance of an oath was allowed. Such testimony would not be allowed in capital cases involving whites however. No change was ever made in the Old South.[28] In *American Slave Code* abolitionist William Goodell offered a most persuasive explanation for southern intransigence. "It would be an absurdity for chattels to come into Court to bear testimony against their owners! They could not *be* "chattels to all intents, constructions, and purposes whatsoever." They could not *remain* chattels at all. The power to testify against owners and overseers would imply the right of protection from assaults by them. The slave, to REMAIN, a slave, said Judge Ruffin, must be sensible that there is NO APPEAL from his master." If slaves were allowed to testify against their masters plantation discipline would have been undermined slaves would have been on a plane closer to their masters. The same logic would apply to other whites as well since, according to Goodell, racial subordination was another goal of the legal system.[29] Allowing Aframerican testimony would have undermined this secondary goal as well.

Pro-slavery ideologues did not reject the rationale for, or effect of, denying black testimony and offered one more: African inferiority. Georgia jurist Thomas R.R. Cobb averred that under the common law only free men were deemed sufficiently trustworthy to be sworn under oath, the prerequisite of all credible testimony and one of the rights of free people; as a result slaves of whatever race were not considered to be "oathesworths." Cobb noted that for this reason the prohibition against slave testimony was not confined to the Old South but existed in the slave societies of the French and British Caribbean, Latin America, as well as within the Catholic and Jewish religious

---

[28] Morris, *Southern Slavery*, 229.
[29] Goodell, *American Slave Code*, 303-04; 307-08.

traditions. He also pointed out that Aframerican testimony was prohibited by statute in the non-slaveholding states of Ohio, Indiana and Illinois. Slave testimony would also hamper the effective operation of slavery by disrupting the master-slave relationship. Such testimony was also incredible because of the morally deficient nature of African peoples: "That the negro, as a general rule, is mendacious, is a fact too well established to require the production of proof, either from history, travels or craniology." Cobb buttressed this contention by citing a similar conclusion by another commentator on slavery who argued that the testimony of slaves should always be viewed as less credible because of the "general presumption against his moral character, especially in the article of veracity."[30] In other words, African peoples of whatever stripe were inveterate liars. Virginia planter-statesmen Landon Carter expressed the general view of black untrustworthiness in 1777. In a letter that is insulting to both blacks and women he wrote: "Do not bring your negroe to contradict me! A negroe and a passionate woman are equal as to truth or falsehood; for neither thinks of what they say."[31] The natural untrustworthiness of blacks even found its way into courtroom trial strategy. In South Carolina it was a favorite trial tactic for an attorney to accuse a witness of being a mulatto, which meant that he or she could not testify against a white person. Once this accusation was made a hearing was immediately convened to resolve the matter, often resulting in delays and embarrassment of the witness.[32]

---

[30] Thomas R.R. Cobb, *An Inquiry into the Law of Negro Slavery in the United States of America to which is prefixed An Historical Sketch of Slavery,* with an Introduction by Paul Finkelman. (Athens and London: University of Georgia Press, 1999), 226-30; 233.
[31] Morris, *Southern Slavery*, 232.

[32] Jack Kenny Williams. "The Criminal Lawyer in Antebellum South Carolina," in *The Legal Profession: Major Historical Interpretations*, ed. Kermit L. Hall. (New York and London: Garland Publishing, Inc., 1987), 650-51.

Honor also had a role to play in the prohibition against slave and free black testimony. While pro-slavery theorists do not discuss the issue directly, a race and honor-based slave society could never allow the testimony of the racially inferior slave group because to do so would be to undermine the honor upon which much of the system was based. In an honor-driven social system a man's word (women were not thought to possess honor) was his bond; his reputation rose or fell based on the weight others attached to his public and private declarations. Thus any courtroom testimony publicly placed the honor of one man against that of another, with each man considering himself the equal of the other. Slaves—and by association free blacks—had no place in this order. In *Slavery and Social Death* Orlando Patterson argues that in cultures where honor is operative honor is more precious than life; persons of honor choose death over dishonor. Since slavery began with the slaves choosing bondage over death, slaves chose a lifetime of dishonor.[33] In this ideological universe the word of the dishonored could never be seriously considered alongside that of those who possessed honor; therefore, in the context of the Old South honor demanded that black declarations could never directly challenge white ones. This mandate extended beyond the courtroom and into the daily rituals of dominance and subordination that took place between blacks and whites.[34]

Abolitionists like George M. Stroud responded to Cobb and others by arguing that even if the inadmissibility of slave testimony was valid, there was no argument that could convincingly be made for the exclusion of the testimony of free blacks. Stroud

---

[33] Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1982), 78.
[34] Bertram Wyatt-Brown, *Southern Honor: Ethics & Behavior in the Old South* (New York: Oxford University Press, 1982), 363.

considered this denial without "precedent in any other country...whether civilized or savage." He went on to say that the testimony of freedmen was admissible under civil law, and such testimony was even admitted against whites in civil trials in the West Indies.[35]

While Georgia was like the other Old South states with regard to Aframerican testimony, the state differed in one significant respect: Georgia was the only slave state which recognized the rule of evidence which forbade the introduction of the testimony of a spouse. In 1863 William, a Thomas County slave, was put on trial for the murder of another slave man. During the course of the trial the prosecution attempted to introduce the testimony of William's wife Ann in the case against him. Defense counsel objected on the ground that under law a wife could not be compelled to testify against her husband. The defense motion was overruled and William was convicted; the case was appealed to the supreme court. The Court ruled in William's favor and overturned his conviction. In his opinion Justice Richard F. Lyon reasoned that after the capital trials of Aframericans were moved to the superior courts all of the rules of evidence that applied in the cases of whites would apply in the trials of slaves and free blacks; accordingly, spousal testimony was inadmissible. Lyon also made note of the fact that in the state code, "The contubernal relation among slaves shall be recognized in public sales whenever possible, and in the criminal courts where it becomes important to the advancement of justice." While Georgia did not recognize slave marriages per se, the state did recognize the "marriage relation" between slaves.[36] The other slave states followed the logic of Alabama's supreme court: "That whilst we admit the moral

---

[35] Stroud, *Sketch of the Laws*, 49.
[36] *William v. State*, 33 GA Supp. 85 (1864).

obligation, which natural law imposes, in the relation of husband and wife, among slaves, all its legal consequences must flow from the municipal law. This does not recognize, for any purpose whatever, the marriage of slaves..."[37]

Unable to speak fully for themselves, black defendants had to rely upon their masters and attorneys. A factor that certainly contributed to higher black conviction rates for some defendants was the lack of defense counsel. Of the 417 defendants in this study, only eighty-one are known to have gone to trial with an attorney. (See Table 4.4)[38] This lack of legal representation occurred because in Georgia masters were not required to provide counsel for their slaves. In *Lingo v. Miller* in 1857 the Georgia Supreme Court ruled that:

> "There are laws that impose various obligations on the master, but this obligation [to provide counsel] is not among them...Nor does it seem that there is any great need, that such an obligation as this, should be imposed on the master. *Every* master has an interest to prevent his slave from being punished, an interest which increases with the increase of the punishment to which the slave is exposed...This being so, it may be pretty safely assumed, that if in any case, the master refuses to employ lawyers for his slave, the case is one in which the master ought not be required to employ them.[39]

According to the supreme court the decision to provide counsel was optional and based on the master's best judgment. Cobb disagreed and argued that what the supreme court considered a right was actually an obligation born of the master's responsibility as

---

[37] Daniel J. Flanigan, *The Criminal Law of Slavery and Freedom, 1800-1868* (New York and London: Garland Publishing, 1987, 122.

[38] These figures are far from accurate because of the nature of record keeping. Most clerks did not record whether counsel represented the defendants. When mention of attorneys is made in the record I have included those cases in my computations. I have also included all cases where appeals were made on technical, legal grounds, under the assumption that most such appeals would generally have been made by a lawyer. It is probably safe to assume that wealthy planters provided counsel for their slaves accused of crimes, while less well-to-do slave owners who could not afford them did not. While there were probably more slave defendants with attorneys than I have indicated, the figure was probably not near one hundred percent.

Presence of Defense Counsel 1755-1865

		Frequency	Percent	Valid Percent
Valid	Unknown	335	80.3	80.3
	Yes	81	19.4	19.4
	No	1	.2	.2
	Total	417	100.0	100.0

Table 4.4

[39] *Lingo v. Miller* 23 GA 187 (1857).

paternalist: "It being the duty of the master to protect the slave, and furnish him everything necessary to that protection, he cannot abandon him when charged with an offense."[40] The state was not required to provide counsel when masters refused to do so until the 1850s, well after Tennessee and a number of other slave states. Georgia also provided attorneys to indigent white defendants, one of the few southern states to do so.[41] (It would be over a century before the supreme court of the United States ruled that all defendants were entitled to legal representation.)

The failure to have an attorney certainly worked against the black defendant, especially after the courts began to be administered by legal professionals. Going to trial with an attorney was of considerable benefit to black defendants. Those with lawyers entered few guilty pleas, were indicted less often, had more of their cases dismissed before trial, had more mistrials, and were acquitted more often than average. (See Table 4.4.1)[42]

Post-Conviction Remedies

Aframericans convicted in Georgia's criminal justice system were not without avenues of redress. From the colonial period forward they could apply to the governor for pardons or clemency; after 1798 convictions could be challenged in the superior courts on technical grounds, and after 1845 these appeals could be taken to the supreme court. Under the Crime Control model such forms of appeal are of limited utility. The guiding assumption is that those who appear before courts are guilty; the few innocents are

---

[40] Cobb, *Law of Negro Slavery*, 268.
[41] Flanigan, *The Criminal Law of Slavery*, 118; R.H. Clark, T.R.R. Cobb and D. Irwin, *The Code of the State of Georgia* (Atlanta, GA: John H. Seals, 1861), 917; Howington, *What Sayeth the Law*, 193-94..
[42] Fifty-five percent of those who had attorneys were found guilty, a higher than average rate. This figure is deceptive. As discussed in a preceding note, the determination as to which defendants had attorneys came largely from those who filed appeals; therefore the figures are skewed toward those who had been found guilty.

Case Dispositions and the Presence of Defense Counsel 1755-1865

			Defense Counsel			
			Unknown	Yes	No	Total
Disposition	Unknown	Count	47	7		54
		% within Disposition	87.0%	13.0%		100.0%
		% within Defense Counsel	15.0%	8.6%		13.7%
	Plea of Guilty	Count	26	3	1	30
		% within Disposition	86.7%	10.0%	3.3%	100.0%
		% within Defense Counsel	8.3%	3.7%	100.0%	7.6%
	Nolle Prosequi	Count	21	7		28
		% within Disposition	75.0%	25.0%		100.0%
		% within Defense Counsel	6.7%	8.6%		7.1%
	Verdict of Guilty	Count	122	45		167
		% within Disposition	73.1%	26.9%		100.0%
		% within Defense Counsel	39.0%	55.6%		42.3%
	Verdict of Not Guilty	Count	59	16		75
		% within Disposition	78.7%	21.3%		100.0%
		% within Defense Counsel	18.8%	19.8%		19.0%
	Not Indicted	Count	37	1		38
		% within Disposition	97.4%	2.6%		100.0%
		% within Defense Counsel	11.8%	1.2%		9.6%
	Mistrials	Count	1	2		3
		% within Disposition	33.3%	66.7%		100.0%
		% within Defense Counsel	.3%	2.5%		.8%
Total		Count	313	81	1	395
		% within Disposition	79.2%	20.5%	.3%	100.0%
		% within Defense Counsel	100.0%	100.0%	100.0%	100.0%

Table 4.4.1

discovered during the trial so no appeal is necessary. Not only do appeals slow down the process by inviting delays, they introduce an element of uncertainty into the system. To curb appeals in Crime Control systems time limits are instituted, impediments are put in place as to the kinds of cases that may be appealed, or exorbitant fees are demanded for the initiation of appeals. The Crime Control rationales were dominant on the plantation and during the colonial period. The opposite logic applies under the Due Process model. Since mistakes and abuses can occur at all levels of the process, there must always be a means of correcting them. In addition to protecting the rights of individual defendants, the appellate process should also protect future defendants by establishing legal precedents that check state power. This second function is perhaps the most important in the minds of Due Process proponents.[43] This form of appeal was available after the court system was reorganized at the turn of the nineteenth century, although a binding system of precedents was not established until the creation of the state supreme court.

Aframerican appeals were heard by jurists who found themselves serving two masters. Timothy Huebner argues that southern appellate judges were the products of both sectional and national forces. As southerners they were shaped by a regional political culture that served the interests of slavery, white supremacy, decentralized authority and sectional identity. At the same time they were also influenced by a national legal culture, one that advocated judicial independence, relied upon common sources of authority, and promoted a professional consciousness. According to Huebner this "political sectionalism and legal nationalism" was at the core of the southern judicial tradition. Even though the numbers of cases involving slavery were relatively small, Old South judges were preoccupied with questions of slavery and race. Decisions on these matters were

determined by sectional politics and paternalism. When slavery came under attack, whether through Aframerican actions like Nat Turner's rebellion and the southern dissemination of David Walker's *Appeal,* or abolitionist attacks during debates over the Missouri Compromise or the Wilmot Proviso, judges felt compelled to defend "the peculiar institution" in court, and handed down decisions which did so. Part of the rationale for this defense was contained in the paternalist ideal. Southern judges championed chattel slavery in much the same was that pro-slavery ideologues did; they argued that African peoples were biologically inferior and condemned by God to serve as the slaves of whites. Since blacks and whites were to be forever bound in this relationship it was incumbent on both parties to conduct themselves in a manner that would benefit both groups. For their part Aframericans were to submit and labor; whites were required to take care of the material, emotional and sometimes spiritual needs of those left in their charge. The ethos is best captured in the idea of benevolent stewardship.[44]

The person who perhaps best illustrates the tensions inherent in one who was required to be both paternalist master and principled judge was Joseph Henry Lumpkin, the first chief justice of the Georgia supreme court. As discussed in the preceding chapter Lumpkin was a slave owner, and in the words of one of his former slaves, a good one. Anna Parkes recalled that,

"Ole Marster and Ole Miss, dey took ker of us. Dey sho wuz good white folkses, but den dey had to be good white folkses, kaze Ole Marster he wuz Jedge Lumpkin, and de Jedge wuz bound to make evvybody do right, he gwine do right his own self 'fore he try to make udder folkses behave deyselves. Ain't nobody, nowhar, as good to dey Negroes as my white folkses...Ole Marster splained dat us wuz not to be 'shamed of our race. He said

---

[43] Packer, *Limits of the Criminal Sanction*, 228-31.
[44] Timothy S. Huebner, *The Southern Judicial Tradition: State Judges and Sectional Distinctiveness, 1790-1890* (Athens: University of Georgia Press, 1999), 1, 8-9.

warn't no "niggers" he said we wuz "Negroes," and he 'spected his Negroes to be de best Negroes in the whole land.[45]

Lumpkin's apparently humane treatment of his slaves was the product of his commitment to social reform and paternalism; he believed that human beings and their institutions could, and should be, improved. In addition to being one of Georgia's leading jurists, Lumpkin was also an active leader of several social reform movements. He became a fervent evangelical after his conversion at a Methodist camp meeting during the 1820s. Like his northern counterparts, Lumpkin's evangelicalism went hand in hand with a desire to reform society. After pledging to abstain from alcohol Lumpkin became president of the Oglethorpe County Temperance Society in 1829; he also represented the state at the first National Temperance Convention. Lumpkin was also a proponent of economic diversification. While fully supporting the South's cotton economy, Lumpkin believed that the regional economy would be even stronger if cotton mills were built in order to end southern reliance on northern ones. Lumpkin even expressed early opposition to slavery, although he had completely reversed his position by the time he became chief justice. By then Lumpkin had come to believe that slavery was divinely ordained and a positive good for both races if they upheld the mutual obligations that were at the heart of his paternalistic vision.[46]

Lumpkin's view of slavery as a benevolent institution enabled him to champion human bondage and to use his position on the Court to protect it. Scholars Mason Stephenson and D. Greer Stephenson, Jr. argue that under Lumpkin's leadership the Georgia supreme court was "an active arm of government committed to the preservation

---

[45] George P. Rawick, ed., *The American Slave: A Composite Autobiography* (Westport, CT: Greenwood Publishing Co., 1972), v. 13, pt. 1, 155.
[46] Huebner, *Southern Judicial Tradition*, 72-75, 86-87.

of the slave system."[47] It was before men like Lumpkin that black defendants appeared to plead for their lives.

Appeals

Attorneys for Aframericans who were convicted of capital crimes could challenge their convictions on technical grounds in the superior and supreme courts. These challenges were based on a number of different issues, but most were challenges to the jurisdiction of the courts, the form and substance of indictments and verdicts, the composition and impaneling of juries, the admissibility of confessions, and the culpability of co-defendants.

Several defendants' attorneys challenged the jurisdiction of the courts in which their clients were convicted. In 1842 Peter, a slave, was convicted of murder in one of the state's inferior courts. His defense counsel argued that the prosecution did not introduce any evidence which demonstrated that Peter's case, as a capital one, had been reviewed by the county justices of the peace and sent to the inferior court as required by law. In reversing Peter's conviction and ordering a new trial, superior court judge John Schley reasoned that since the inferior court had no original or trial jurisdiction over offenses committed by slaves other than those turned over to it by the justices of the peace (as required by the act of 1811) evidence of the preliminary proceedings before the justices should have been introduced. This evidence could take the form of written inclusion in the indictment or recital at trial. Once introduced in this fashion the fact that the preliminary hearings did take place had to be proved before the jury.[48] Another slave had his conviction overturned, in part, because of this technical shortcoming. In that case

[47] Mason W. Stephenson and D. Grier Stephenson, Jr. "To Protect and Defend": Joseph Henry Lumpkin and the Supreme Court of Georgia, and Slavery." *Emory Law Journal* 25 (1976): 583.

Judge, a Houston County slave convicted of murder in 1849, alleged that the jurisdiction of the court had not been established because the prosecutor failed to introduce proof of the preliminary proceedings. The supreme court agreed and Judge was granted a new trial.[49] A second slave who appeared before the supreme court in 1851 alleging the same technical violation of his due process rights was not quite as fortunate. Anthony's defense counsel argued that his conviction for the manslaughter of a free black man was invalid because proof of the preliminary proceedings had not been introduced at his trial in the superior court of McIntosh County. But in challenging the conviction in this way Anthony's attorney failed to appreciate all of the ramifications of the 1850 transfer of Aframerican capital cases from the inferior to the superior courts. Initial allegations of capital wrongdoing still had to be made before the inferior courts, but once it had been determined that the offense was capital in nature the case was not automatically transferred to the inferior court but was sent instead to the solicitor general for presentation to the county grand jury. A true bill from the grand jury then became the basis upon which trial in the superior court stood. The preliminary proceedings did not grant jurisdiction to the superior courts; that authority had been given directly to these courts by statute in 1850. Anthony's conviction was affirmed.[50]

Defense attorneys were not the only ones who attempted to use jurisdictional boundaries to their advantage; in 1858 a prosecutor attempted to do so as well. Slaves Lavinia and Wilkes were acquitted in the inferior court of Baldwin County for working for individual profit and returning to Georgia after having been to a free state, respectively. The prosecutor appealed both cases to the county superior court, where both

---

[48] *State v. Negro Man, Peter*, Dudley Rep. 46 (1842).
[49] *Judge v. State*, 8 GA 173 (1850).

acquittals were affirmed; the case was then appealed to the supreme court. In sustaining the decision of the Baldwin superior court, Chief Justice Lumpkin held that the common law forbade a second trial for the same offense after acquittal, and he saw no reason why "this great principle...should not be applicable to slaves and free persons of color, as well as to white persons." (Lumpkin also noted that a double jeopardy provision for Aframericans had been on the statute books since 1803.) The Baldwin prosecutor responded that public policy considerations demanded that issues relating to manumission and quasi-freedom be handled differently. Lumpkin was unconvinced by the argument and stated simply that, "the State has passed no statute making the discrimination called for." In addition to quashing the appeal on double jeopardy grounds, Lumpkin also held that there was no statute that allowed the state to file a writ of error in a criminal case. Lavinia and Wilkes were free—to return to their lives of bondage.[51]

Defense attorneys attacked the form and substance of their clients' indictments in order to have their convictions overturned. Blackstone stated that indictments had to have a "precise and sufficient certainty." By English statute the indictment was required to state the "christian name, sirname, [sic] and addition of the state and degree, mystery, town or place, and the county of the offender" in order to positively establish his identity. The time and place of the crime had to be specified generally. These facts did not have to be exact; as long as the place was within the jurisdiction of the court and the time was before the indictment was presented, the indictment would withstand challenge. There were occasions when the time had to be more precisely rendered, as in cases where a

---

[50] *Anthony v. State*, 9 GA 264 (1851).
[51] *State v. Lavinia and Wilkes*, 25 GA 311 (1858).

statute of limitations of some sort applied. The offense itself had to be set forth with "clearness and certainty." In some instances particular jargon had to be used in the indictment. For example, in treason the acts had to have been done "treasonably and against his allegiance." Felony crimes had to be been done "feloniously" and, in cases of rape, the term "ravished" was necessary. Also in indictments for murder, the length and depth of the wound had to be provided so that the court could judge whether the wound was in fact of a mortal nature. In cases of larceny the value of the stolen item(s) had to be included in order to determine if the crime was a grand or petit larceny.[52]

Two Georgia slaves seized upon these technical requirements to challenge their death sentences. Stephen was indicted by the Houston County grand jury and charged with rape and attempted rape. At trial his attorneys objected to the two count indictment, arguing that the prosecutor had to choose one charge or the other because the jury was being asked to decide two distinct issues. The court ultimately decided in favor of the defendant Stephen and the solicitor general chose to proceed with the rape count only. Stephen was found guilty on the lesser charge of "attempt to commit a rape." His attorneys appealed the case to the supreme court arguing in part that the attempted rape charge should never have been read to the jury at all. While their reasoning is not stated in the record, it is obvious that they believed the attempt charge was planted in the jury's mind by the reading of that count of the indictment; but for this recitation Stephen would have been acquitted. Chief Justice Lumpkin, again writing for the court, was not persuaded by the arguments of Stephen's defense counsel. He reasoned that the prosecution should not have been required to choose between counts at all because "the two offenses charged in the indictment, being of the same nature, requiring the same plea, the same judgment and

[52] Blackstone, *Commentaries*, 4:301-02.

the same quantum of punishment, the State might have proceeded to trial on both counts at the same time." Lumpkin's judgment is sound. The two charges in this case were sufficiently similar in nature, with the attempt being a lesser-included offense within the rape, that the defendant had sufficient notice in order to prepare a defense to both charges. Lumpkin did concede that the trial judge had erred in not addressing these issues before the jury was sworn and the indictment read to them; however, "if the second count ought to have been permitted to stand, then it is no error in the Court to refuse to strike it out at any stage of the trial." [53]

Stephen's attorneys had not yet finished their attack on the indictment. They next alleged that the indictment did not charge the defendant with "any crime of which a slave can be committed." They argued that the indictment simply charged rape, instead of rape of a free white woman. This focus on the language of the indictment sent Lumpkin into a diatribe of sorts: "Will the age of technicalities never pass away? Shall the law, affecting [sic] the dearest interests of men, their property, life and character, "coming home to their businesses and bosoms," never become a popular science?" He went on to say that, "The Legislature, in 1833, declared that every accusation should be deemed sufficiently technical and correct...provided it stated the offense in the terms and language of the Code, or *so plainly*—(what a pregnant clause!) that the nature of the offense charged, might be easily understood by the Jury." In Lumpkin's view the indictment against Stephen clearly met this criteria. He was charged with the rape of Mary Daniel, a free white female, in Houston County on October 31, 1851, and that he attempted to rape said Daniel on the same day. According to the chief justice, if the indictment were defective at all it was because of "redundancy"; there was too much information. The indictment

[53] *State v. Stephen*, 11 GA 255 (1852).

clearly stated in two places that the victim was a white female. "What man of rational understanding could fail to comprehend the offense for which this negro was prosecuted? *And this alone is the criterion of sufficiency.* On these particular grounds Stephen's conviction was affirmed.[54]

In 1854 John's attorneys attempted to save his life by mounting a similar challenge to his indictment. He had been found guilty of the murder of a white man, Mark Swinney of Bibb County. His attorneys argued that the conviction should be overturned because the indictment failed to state that Swinney was a white man. Lumpkin ruled that in Georgia it was presumed that any slave or free black indicted for murder was indicted for the killing of a free white person. The only time that it was necessary for the status of the victim to be included in the indictment was in "the exceptional cases." (Lumpkin did not describe what these exceptional cases were.) John's conviction was affirmed.[55] Indictments were routinely quashed in most of the slave states because of technical shortcomings. The Georgia supreme court lamented such fastidiousness, as evidenced by Lumpkin's discussion in *Stephen v. State*, but it too observed the technical rules of indictment drafting. While courts complained about technicalities they believed it was the responsibility of the legislature to relax indictment requirements. During the antebellum period the Tennessee legislature did so but few states chose to follow suit before the Civil War.[56]

Attorneys for slaves like Anthony and Stephen also challenged their client's convictions on the propriety of the jury verdicts themselves and of the reasonable doubt relied upon to achieve them. As discussed above, Anthony was charged with murder in

---

[54] Ibid.
[55] *John v. State*, 16 GA 200 (1854).

the death of a free person of color and was convicted of the non-capital offense of manslaughter. In addition to challenging the sufficiency of the indictment, Anthony's defense counsel also argued that his conviction should be reversed because the superior court jury could not return a guilty verdict because manslaughter was not a crime for which the superior court had jurisdiction. After 1850 the superior courts had jurisdiction over the *capital* offenses committed by Aframericans; since manslaughter was not a capital crime the jury could not return a verdict of guilty on that charge. Lumpkin was unmoved. He reasoned that Anthony had been indicted for murder, a charge for which the superior courts did have jurisdiction, and that it was entirely proper for a jury to convict of the lesser offense of manslaughter even though that crime had not been charged in the indictment. The authority to punish for manslaughter was granted to the superior courts by acts of 1821 and 1850. Lumpkin quoted the relevant part of the 1850 act: "That in case of conviction *upon bill of indictment...the Judge shall pass sentence in conformity with laws now of force, imposing penalties and providing for the passing of sentence in such cases.*" Since the penal code did not address manslaughter committed by an Aframerican upon an Aframerican (as discussed in chapter two, a slave could not commit manslaughter upon a white person) courts should refer to an 1821 act that provided for punishment in such cases. Under that law a slave or free person convicted of manslaughter was to be whipped and branded. This law was the only one which referred to manslaughter by slaves and was thus the law "of force" at the time of Anthony's conviction, making it proper for the jury to render a verdict and for the court to pass sentence.[57]

---

[56] Flanigan, *Criminal Law of Slavery*, 107-08.
[57] *Anthony v. State*, 9 GA 264 (1851).

Stephen also tried to have his conviction for attempted rape overturned on similar grounds. Just as they had challenged the indictment because it failed to state that the victim was a white woman, Stephen's attorneys argued that the verdict was not valid for the same reason. The court once again ruled against Stephen. The justices averred that the jury had found Stephen guilty of attempt to commit a rape. What rape? "Of course that charged in the indictment, on Mary Daniel, a free white female," a fact that, as they had pointed out in striking down the earlier challenge, had been stated in the indictment twice. Stephen's defense counsel again attempted to argue that rape and attempted rape were two separate offenses so they should have been tried separately and separate verdicts rendered. And for the second time this argument proved unpersuasive; the Court ruled that a conviction for attempt to commit a crime is proper if the jury has before it evidence which would warrant such a finding.[58] This latter ruling was in keeping with the precedent set in the 1849 case *Alfred v. State*. Alfred had been put on trial in the Cass County inferior court for the rape of a four-year-old white girl. After all the evidence had been heard the trial judge was of the opinion that there was insufficient evidence to convict Alfred of rape, and charged the jury that "there would be no impropriety in a verdict of guilty of an assault and battery, if they thought he was not guilty of the crime charged." The jury returned a verdict of guilty on the rape charge. Alfred's attorneys appealed, arguing that the verdict was contrary to both law and evidence and the charge of the court. In sustaining Alfred's conviction the supreme court ruled that as long as there is "some" evidence upon which the verdict might be based the verdict would be allowed to stand. The justices went on to say that while they sympathized with Alfred's plight (apparently they thought the evidence against Alfred especially weak as well) they

[58] *Stephen v. State*, 11 GA 225. (1852)

could find no legal reason for setting aside the verdict and sparing his life. They could only suggest that he appeal to the governor for a pardon. Alfred was hanged.[59]

Masters and attorneys attempted to save slave lives by questioning jury charges regarding the definition and application of reasonable doubt, the standard of proof required to sustain a conviction in a criminal case. In 1856 Jesse, a slave, was charged with rape and attempted rape in the superior court of Decatur County. Jesse's attorneys asked that the jury be instructed that if there was a reasonable doubt in the minds of the jurors as to whether the crime was committed at all they should acquit Jesse. They also asked that the jury be allowed to entertain doubts "from any cause," not just from the evidence. The judge refused to deliver these charges as proposed and instructed the jury as to the definition of reasonable doubt. The judge described it as one "as in the ordinary business of your every-day life, would stay you from acting; as would satisfy you that you were wrong..." Jesse was convicted and his attorneys appealed, in part, on the ground that the judge refused to deliver the charges as requested. The supreme court sided with the trial judge, but added that he provided the jury with a discussion of the effects of reasonable doubt and not of the kinds of evidence necessary to sustain such doubt. The court reasoned that without proper guidance on the nature of the required evidence jurors could entertain and create doubts from anywhere; having reasonable doubt alone was not sufficient to convict. To withstand judicial challenge reasonable doubt had to have been based on the evidence presented, and no other source. Upon this basis and several others, Jesse's conviction was reversed and a new trial ordered.

In another case John, a slave, killed another slave in 1862 in a dispute over the former's wife. There were no eyewitnesses to the slaying and the only evidence at trial

---

[59] *Alfred v. State*, 6 GA 483.

was circumstantial. Nevertheless John was convicted of the murder; his attorneys appealed, arguing that the verdict was against both the law and the evidence. The court sustained John's conviction. In doing so they ruled that circumstantial evidence was sufficient to overcome reasonable doubt. Justice Lumpkin argued that

> "Evidence includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. None but mathematical proof is susceptible of that high degree of evidence called demonstration, which excludes all possibility of error...The true question therefore is, in all criminal trials whether dependent upon positive or circumstantial evidence, not whether it is possible that the conclusion at which the testimony points may be false, but whether there is sufficient proof of its truth to satisfy the mind and conscience beyond a reasonable doubt."[60]

In the mind of Lumpkin and his associates, this test had been more than met by the circumstantial evidence presented against John.

Several slaves attempted to quash their convictions by claiming that other parties participated in their crimes, making them innocent or less culpable. These challenges were raised under the law of parties and accessories to crime. Under the common law of the time an individual could be convicted as either a principal or an accessory. Principals were in two degrees. In the first degree he or she was the "actor, or absolute perpetrator of the crime." In the second degree he or she was "present, aiding, and abetting the fact to be done." Presence could be actual or constructive. Actual presence is self-explanatory. Constructive presence occurred when the individual was sufficiently close to the scene of the crime to be considered present, and he or she aided the principal in the criminal enterprise. Next in order of culpability were accessories. An accessory was one who was not present during the act, but was in "someway concerned therein, either *before* or *after* the act committed." An accessory before the fact "procured, counseled or commanded

---

[60] *John v. State*, 33 GA 257 (1862).

another" to commit a crime. An accessory after the fact knew that a felony had been committed and "received, relieved, comforted or assisted" the felon. The felony had to be complete at the time the assistance was given. For example, if A mortally wounded B, and C rendered aid before B died, C was not an accessory to B's murder.[61] Two Georgia slaves brought appeals based on these doctrines.

The Greene County superior court grand jury indicted Thornton in 1858, alleging that he procured another slave to kill a white man. Thornton was convicted of accessory before the fact in murder and sentenced to death. Thornton's counsel appealed the verdict, arguing that a slave could not be convicted of accessory before the fact in murder because there was no such crime in the slave code. The supreme court saw itself as having to answer two questions: 1) Can a slave commit the crime of accessory before the fact in murder; and 2) if so, is this crime punishable by death? In deciding the case the court relied upon the slave code of 1821 and the penal code of 1817. Under the slave code of 1821 the murder of a free white person was declared to be a capital offense when committed by a slave or a free person of color. (This offense had always been a capital crime; the 1821 law was the most recent codification.) The court then proceeded to ask if the crime of murder included within it the crime of accessory before the fact; to answer this question the justices turned to the penal code of 1817. The second division of this code indicated that those who aided or abetted the commission of crimes would be considered principals in the second degree. The code provided no punishment for this crime. Justice Benning, writing for the court, argued that this omission did not mean that the legislature did not intend to punish this crime; after all, they had devoted an entire division of the penal code to it. The court turned to the common law and held that

[61] Blackstone, *Commentaries*, 4:34-38.

principals in the second degree should receive the same punishment as those in the first degree. This decision was in keeping with accepted doctrine and Thornton's conviction and death sentence were affirmed.[62]

The next year the supreme court was once again compelled to address the issue of accessories to crime. Hill and a second slave were convicted of the murder of a white woman, Margaret Sadler, in the superior court of Decatur County. From the evidence presented it was clear that Hill had not struck the fatal blow nor even touched the victim; his co-defendant had killed her. But in his instructions to the jury the trial judge told the jurors that if they were satisfied that the deceased had come to her death at the hands of any person, that the killing was murder, and that if the defendant Hill had been present and aided and assisted in the killing then he was guilty of murder. In a short opinion upholding the conviction Chief Justice Lumpkin simply restated the common law doctrine articulated in *Thornton*: "The stroke of one is the stroke of all. They are all principals in law and principals in deed." Hill's attorneys argued that at most Hill was guilty as a principal in the second, rather than the first degree. Lumpkin ruled that this was a distinction without a difference because the punishment for both was the same. In his dissenting opinion Justice Linton Stephens disagreed. Stephens argued that, while it was true that the difference in degrees was irrelevant when it came to punishment, it was vitally important in trial preparation. Hill's indictment simply charged him with murder. Stephens reasoned that by not specifying that Hill was being charged as a principal in the second degree, as an accessory rather than the perpetrator, the Decatur county grand jury was not giving him sufficient information and notice to mount a defense. By way of example Stephens pointed out that presence may be both actual and constructive; a man

[62] *Thornton v. State*, 25 GA 301 (1858).

is charged with murder appears in court without a defense because he knows that he did not kill the victim nor was he in the victim's presence at the time of his death. But at trial he finds that testimony will be introduced which shows that he spoke earnestly with the perpetrator before the crime and watched its commission. Had this hypothetical defendant been charged as a principal in the second degree he would have known what to expect and would have prepared a defense. In Stephens' view this is the situation in which Hill found himself; unfortunately Stephens' was the minority opinion.

The law of parties was applied in rather straightforward fashion when all parties were black; an entirely different—and more complicated—state of affairs existed when one or more of the involved parties was white. Black-white criminal complicity raised the specter of class and racial upheaval and generated all sorts of questions about the relationship between law, slavery and white supremacy. For example, the penal statutes for whites did not cover slaves; therefore, if a criminal conspiracy required a certain number of persons and the final person was a slave, no involved white person could be prosecuted. If three persons were required to make a riot and there were two whites and a slave, the whites could not be charged. A problem of similar nature arose in the punishment of accessories. A white person could act as an accessory before the fact in a crime committed by a slave. Both could be tried in separate tribunals, but a problem presented itself at sentencing. Under the common law an accessory before the fact was punished as a principal. In many instances the punishment for the principal was death when the defendant was black, but if the principal were white the sentence would be a lesser one. For example, assault with intent to murder was a capital offense when committed by a slave, but only mandated imprisonment if committed by a white person.

The supreme court addressed the question of punishment in *Simmons v. State* in 1848. Dudley Simmons was convicted in the superior court of Putnam County for receiving stolen goods from a slave in violation of an 1840 act. Prior to Simmons' trial Bob, the slave alleged in the indictment to have stolen the watch that was subsequently sold to Simmons, was acquitted of larceny. Simmons' attorneys argued on appeal to the supreme court that under the common law an accessory could not be convicted if the principal had been found not guilty. The state responded that the 1840 act created a new offense, one in which neither common law principles nor those of the penal code regarding accessories applied. The supreme court disagreed, arguing that the purpose of the act was not to change the rules regarding proof in cases involving parties, but to ensure that white men were not punished more severely than black men. Under the slave code larceny was punishable by corporal punishment which did not extend to life or limb; under the penal code a white man could be sentenced to a term of imprisonment not less than two nor more than five years. So if Simmons were convicted as an accessory to Bob's crime he would have received a stiffer punishment than if he had committed the crime himself. (Of course severe punishment would have made the point that complicity with slaves was more dangerous than similar criminal cooperation with whites.) Since the 1840 law was enacted only to prevent such undesirable results, and not to change the common law principals regarding parties, those principals were applicable in Simmons' case. Under them Bob's guilt had to be established before Simmons could be found culpable. His conviction was reversed.[63]

Problems also arose if the act committed were a crime for one status group and not another. This scenario presented itself in *Grady v. State* in 1852. In that case Thomas

[63] *Simmons v. State*, 4 GA 465 (1848).

Grady was convicted under an 1850 law of procuring a slave to run away to a free state with two other slaves belonging to another man. The law read, in relevant part: "if any free white person shall attempt to procure a slave to commit a crime...he shall be presented for such attempt, and if found guilty, shall incur the same punishment as if such free white person had committed the same crime, which he had attempted to procure the slave to commit."[64] Grady appealed the verdict arguing that he could not be convicted because it was not a crime for one slave to steal another; therefore, being a party to such an act was likewise, no crime. The supreme court handled this clever argument and sticky problem by ruling that the legislators intended that the 1850 act referred to acts which were criminal when committed by white persons. According to Lumpkin the "very language of the law is the key to unlocking its meaning. It speaks of an attempt to procure a slave to commit a *crime;* [italics in original] but if the stealing of negroes, is not a crime by a slave, but is by a white man, then the statute *ex vi termini*, refers to such acts only as are by law, criminal in white men." Lumpkin went on to point out that this construction also prevents white persons from being punished as Aframericans. Grady's conviction stood.[65]

The criminal complicity of masters and their agents represented a special exception to the general law of parties. Under Georgia law if a slave committed a non-capital crime at the command or under the compulsion of his master or an agent thereof, the master or agent was punished and the slave held innocent because the latter was merely an extension of the will of the former.[66] According to Blackstone, this rule was similar to

---

[64] The supreme court upheld the principles articulated in this law in *Berry v. State*, 10 GA 511 (1851).
[65] *Grady v. State*, 11 GA 253 (1852).
[66] Cobb, *Law of Negro Slavery*, 265; Thomas R.R. Cobb, *A Digest of the Statute Laws of the State of Georgia* (Athens, GA: Christy, Kelsea & Burke, 1851), 780.

that regarding wives under the common law. Wives were not held criminally culpable for committing certain acts under the compulsion of their husbands; however, this excuse did not extend to "sons" or "servants." Servants were "as much free agents as their masters" and were therefore held accountable for their actions. (Blackstone does not comment on the liability of slaves because the common law was "a stranger to slavery.")[67] In order to be excused from criminal culpability the slave had to be acting under compulsion; it was not enough that the master was aware of or condoned the criminal behavior. In 1850 Joseph Pannell was convicted of selling liquor to a slave. In his defense Pannell claimed that the slave's master knew that he had come to him for liquor, and that the overseer was present at the time of the transaction. The supreme court ruled that the only way Pannell would escape punishment is if the slave had been sent by his master to procure the liquor for him, and not for the slave himself. His conviction was affirmed.[68]

Black defendants also lodged appeals based on the rules of evidence, and in that area none was perhaps as important as that of confessions. Under the common law the "evidence of verbal confessions of guilt" was to be "*received with great caution.* For, besides the danger of mistake, from the misapprehension of witnesses, the misuse of words, the failure of the party to express his own meaning, and the infirmity of memory, it should be recollected that the mind of the prisoner himself is oppressed by the calamity of his situation, and that he is often influenced by motives of hope or fear to make untrue confessions" According the Greenleaf, it was generally agreed that *deliberate confessions of guilt* were among the most effectual proofs in the law if it was shown that they were deliberate and voluntary. This understanding was based on the presumption that "a

[67] Blackstone, *Commentaries*, 4:28-29.
[68] *Pannell v. State*, 29 GA 681 (1860).

rational being will not make admissions prejudicial to his interest and safety, unless when urged by the promptings of truth and conscience."[69]

Voluntariness was determined through an examination of the circumstances surrounding the incriminating admission. The established practice was to inquire of witnesses whether the prisoner had been told that it would be better for him to confess, or worse for him if he did not, or whether language to that effect had been addressed to him. The key factor was whether the confession had been obtained "by the influence of hope or fear applied by a third person to the prisoner's mind."[70] Despite these criteria, T.R.R. Cobb was still reluctant to accept the confessions of slaves because of their inferior status as bondsmen and their natural untruthfulness as Africans. Cobb acknowledged that confessions were routinely admitted under the same circumstances as whites, but warned that "they should be received with great caution and allowed but little weight, especially when made to the jailor or arresting officers, for the habit of obedience in the slave compels him to answer all questions of the idlest curiosity, while his mendacious disposition will always involve even the most innocent in the most contradictory inconsistencies."[71]

Despite Cobb's cautions confessions were always admissible and were thought to be the most effective proof of the commission of a crime if they were deliberately and voluntarily made. If their social betters awed slaves as Cobb claimed, they rarely showed it by confessing. According to Thomas D. Morris, in eighteenth century Virginia only fifteen slaves confessed their crimes, and the numbers did not rise appreciably in the

---

[69] Greenleaf, *Law of Evidence*, 1:290-92.
[70] Ibid., 296.
[71] Cobb, *Law of Negro Slavery*, 271.

nineteenth century.[72] Georgia defendants rarely confessed or pleaded guilty; only thirty pleaded guilty during the colonial and antebellum periods. (See Table 4.4.1) This unwillingness to admit guilt may have been the product of black intransigence and common sense, or masters' refusal to allow slaves to do anything that might jeopardize their lives and value as chattels. Since there were so few confessions before the 1720s one wonders how much crime was ever prosecuted because confessions were the only kind of admissible slave testimony.

The Georgia supreme court first outlined the guidelines for the admissibility of Aframerican confessions in *State v. Stephen* in 1852. As was discussed above, Stephen had been convicted of attempting to rape a mentally challenged, ten-year old white girl. Part of the evidence against him was a confession that he had made to John W. Johnson, a white man in whose custody he had been temporarily left by the arresting constable. Without prompting Stephen began to discuss the crime with Johnson. He admitted to attempting to rape the victim but said that another slave had talked him into it. At this point Johnson cautioned him that he should be "careful how he talked, for that it might cost him his life." Despite this warning Stephen continued to unburden himself. There was no evidence that Johnson had made any threats or promises. In upholding the admissibility of this confession Chief Justice Lumpkin articulated standard common law doctrine: "A confession, whether made upon official examination or in discourse with private persons, which is obtained from the defendant, either by the flattery of hope or by the impression of fear, *however slightly the emotion may be implanted*, IS NOT ADMISSIBLE EVIDENCE. For the law will not suffer a prisoner to be made the

[72] Morris, *Southern Slavery*, 239-40.

instrument of his own conviction." In the view of the Court, no such undue influence had been exerted upon Stephen at the time of his confession.[73]

The supreme court revisited the issue of voluntariness in *Jim v. State* in 1854. Jim had been convicted of murdering a white man in Lee County. While tied up at the plantation gin house, Jim confessed details of the crime to a white man. Jim's attorneys challenged the confession, arguing that as a slave Jim was bound to answer all questions put to him by a white man—especially if that man had authority over him--and that being bound constituted undue duress. Justice Ebenezer Starnes refused to accept the proposition that slaves were bound to answer any question put before them regardless of the personal cost such responses might exact. "It may be true, that it is proper for a slave, always to answer, respectfully, the questions of a white man; but if this be so, it does not follow, that where no improper effort is made to extort confessions from him, he is obliged to make confessions to any white man who questions him...To do so would lead to very troublesome and injurious consequences..." In this case the court did not believe that Jim simply being tied at the time of his confession constituted undue duress.

The Court skillfully avoided the defense's third contention, that slaves were required to answer all questions but to them by those in authority, by concluding that no evidence had been introduced to show that the witness occupied such a position.[74] In doing so they upheld Jim's conviction and avoided an extremely thorny issue. If slaves were truly extensions of their masters' wills, as pro-slavery theorists argued, then how could these will-less creatures ever produce a voluntary confession? Cobb argued that the slave is "bound, and habituated to obey every command and wish" of his master. "He has no will

---

[73] *Stephen v. State*, 11 GA 225 (1852). Italics and emphasis in original.
[74] *Jim v. State*, 15 GA 535 (1854).

to refuse obedience, even when it involves his life. The master is his protector, his counsel, his confidant. He cannot, if he will, seek the advice and direction of legal counsel. Every consideration that induces the law to protect from disclosures confidential communications made to legal advisers, applies with increased force to communications made by a slave to his master. Moreover, experience shows, that the slave is always ready to mould his answers so as to please the master, and that no confidence can be placed in the truth of his statements." In Cobb's view "such communications should be excluded from the jury..."[75]

Southern jurists did not go as far as Cobb might have liked, but they were suspicious of slave confessions made to those in authority over them. In *Wyatt (a slave) v. State* the Alabama supreme court ruled that confessions made to masters should be considered with "caution, whether the confessions of guilt are made by a slave in interviews had with his master, or one having dominion over him, were not elicited or controlled by the relation, and predicated upon the fear of punishment or injury, or upon hope of some benefit to be gained by making them." In *Simon (a slave) v. State* the Florida supreme court urged similar caution. The fact that the confession in this case was made to the defendant's master should be "entitled to the most grave consideration. The ease with which this class of our population can be intimidated, and the almost absolute control which the owner...[has] over the will of the slave, should induce the Courts at all times to receive their confessions with the utmost caution and distrust." The Mississippi high court took a different tack in *Sam (a slave) v. State*. This court accepted Sam's admission to his master that he had burned a gin house. The court ruled that "the

[75] Cobb, *Law of Negro Slavery*, 272.

relation which a slave bears to the master, is certainly one of dependence and obedience, but it is not necessarily one of constraint and duress...It is not to be presumed that the master exercises an undue influence over his slave to induce him to make confessions tending to convict him of a capital offense..."[76]

Exactly how far inquisitors could go in securing confessions without putting the defendant under duress is revealed in *Sarah v. State.* In 1859 it was suspected that Sarah and a white man, probably her lover, had attempted to poison her master and his family. Sarah was whipped and confessed the crime to her master. Later in the day she was asked about the crime by a white neighbor; this confession was admitted at trial. Sarah's experience was not unique; slaves were routinely beaten, hanged by their thumbs and tortured in other ways to extract information. Sarah's attorneys attempted to quash the confession by arguing that it had been given under duress. Under a Crime Control model of criminal justice the use of coercion in and of itself is not sufficient to render a confession inadmissible; instead the finders of fact must determine whether the statement is factually accurate or whether the coercion was such as to make it more likely than not that the statement is false. In other words, if the statement is true how it was obtained is largely irrelevant. Justice Lumpkin operated under a similar assumption. "What if the negro had been whipped by her master the morning before she made the confession, as proven by the witness, that does not make her voluntary confessions...subsequently objectionable." In Lumpkin's view one thing had nothing to do with the other; no further explanation was provided—other than that defense counsel should have raised its objection earlier in the proceedings.[77] Lumpkin's decision in this case has been strongly

[76] Morris, *Southern Slavery*, 242-44.
[77] *Sarah v. State*, 28 GA 576 (1859); Packer, *Limits of the Criminal Sanction*, 189.

criticized. Legal scholars Mason Stephenson and D. Grier Stephenson, Jr. argue that Lumpkin was a hypocrite; he had ignored his own logic from *Stephen v. State* to arrive at a decision he liked.[78] Lumpkin's reasoning was not entirely off base. Under the common law confessions were admissible if it could be demonstrated that the influence of the promises or threats had been "totally done away with" before the confession was made or the evidence received.[79] One wonders if the influence of numerous stripes of a cowhide whip could ever be "totally done away with." Lumpkin apparently thought so, and Sarah was hanged.

By far the issue that was the subject of the largest number of appeals was jury selection. Attorneys for thirteen Aframerican defendants challenged their convictions in the supreme court by arguing that the jurors were biased against them or improperly selected. The process of jury selection was not one in which the defendants themselves had a role or opinion. In 1849 Anthony, a Cass County slave, was put on trial in the inferior court for allegedly attempting to rape a four-year-old girl. Under acts of 1811 and 1816 between twenty-six and thirty-six jurors had to be impaneled for trials of capital offenses. After twenty-three jurors had been selected Anthony's owner waived selection of the remainder and agreed that the first twelve men whose names had been called would try his slave. Anthony was convicted. His owner appealed the case, arguing that his waiving of the remaining jurors was improper. The attorney for the owner argued that "the slave being property, and supposed to be merely passive, the Court is bound to see that he had the legal number of Jurors summoned for his trial, and that his owner could not waive his right..." The supreme court held that in crafting the 1811 law the legislature

[78] Stephenson and Stephenson, "To Protect and Defend," 591-92.
[79] Greenleaf, *Law of Evidence*, 1:300.

wanted owners to select juries on behalf of their slaves, as evidenced by their having granted owners the right of challenging jurors. In the minds of the lawmakers no master would knowingly and willingly make a decision against his slave because "the interest which the owner has in his slave...[and] his personal attachment for him will always prompt him to be vigilant in securing and protecting all the rights of his slave..." In this instance the owner obviously thought that taking the first twelve jurors was the best way to secure those interests. The fact that Anthony had no say in his own interest was of no concern to the Court, and his conviction was upheld.[80]

Like Anthony, several slaves challenged their convictions by asserting that the procedure for selecting jurors had not been strictly adhered to. In 1855 attorneys for Pressley objected to his conviction for murder because the name of one of the jurors called was different from that which appeared on the list of potential jurors that had been provided to the defense. The error was immediately corrected and Pressley's lawyers made no objection at the time. The supreme court ruled that this error was a harmless one which cost the defendant no loss of rights, and that, by law, the time to object to the composition of the jury was before a verdict had been rendered, not after.[81]

After his trial for murder Rafe's attorneys objected to the jury selection procedure, arguing that the clerk of the inferior court had not properly compiled a list of qualified jurors, that the names of those selected were not placed in the jury box in the presence of a superior court judge, the names of the petit jury had not been drawn from the proper compartment of the jury box, and that the jury venire was not the one selected at the last term of the court. All these acts were violations of the letter of the jury selection statute;

---

[80] *Anthony v. State*, 6 GA 483. (1851).
[81] *Pressley v. State*, 19 GA 192 (1855).

in the minds of the defense these violations made the selection of an impartial jury impossible. In addition to the potential violations invited by the procedural irregularities, the defense alleged that one juror expressed a legally unacceptable bias against their client. In responding to these allegations Justice Charles McDonald acknowledged the technical violations of the statute, but held that "the Statutes for selecting Jurors, drawing and summoning them, form no part of a system to procure an *impartial* jury to parties. They establish a mode of distributing jury duties among persons in the respective counties, subject to that kind of service, and of setting apart those of supposed higher qualifications for the most important branch of that service; they provide for rotation in Jury service..." McDonald went on to rule that the irregularities in this case did not defeat these goals and that an act of 1856 ensured that biased jurors would not be selected.

The 1856 act mandated that three questions be asked of jurors whose impartiality was suspect: "Have you, from having seen the crime committed, or heard any part of the evidence delivered on oath, formed and expressed any opinion in regard to the guilt or innocence of the prisoner at the bar?" If the juror answered this question in the negative he was asked, "Have you any prejudice or bias resting on your mind, for or against the prisoner at the bar." If the juror also answered this question in the negative he was then asked, "Is your mind perfectly impartial between the State and the accused?" If this question was answered in the affirmative the juror was considered competent as a matter of law. In capital cases a fourth question was asked, "Are you conscientiously opposed to capital punishment?" Those unopposed were competent to sit on a capital jury. Evidence

could be introduced by either side to show that the prospective jurors answers were false.[82]

At Rafe's trial a juror stated that he had formed an opinion about the case, but that it had not been based on his having seen the crime or heard testimony under oath; his opinion had been based solely on rumor. The trial judge ruled that the juror was competent to assume his seat and defense counsel sought to overturn the conviction as a result of this decision. Justice McDonald ruled that as structured the act of 1856 was sufficient to ensure impartiality if followed, as it was in this case. Having a prior opinion about the case not based on personal knowledge or evidence was not, in an of itself, an impediment to jury service because "men of the soundest heads and purest hearts, and without the slightest prejudice against the perpetrator of a crime might pass an hypothetical opinion in his case, predicated on a rumor, and still be competent to do ample justice upon hearing testimony falsifying the rumor." If the juror were willing to have his opinion changed based on evidence and testimony he was fit to sit in judgment.[83] This view of impartiality was not confined to Georgia. In neighboring Tennessee, jurors were dismissed if they had "heard the circumstances" of a case and had formed an opinion as a result thereof. However, if an opinion had been formed upon rumor only, the juror need not be rejected.[84] Rafe's conviction was affirmed.

The questions contained in the act of 1856 were the only ones that could be asked of a prospective juror in order to ascertain his level of partiality. In 1861, Monday, a slave,

---

[82]Clark, Cobb and Irwin, *Digest of the Laws*, 894-95.

[83] *Rafe v. State*, 20 GA 60 (1856). The act of 1856 expanded and incorporated an act of 1843 in which the first two questions were posed. The 1843 act was the basis for two 1854 appellate decisions against slave defendants who argued that prospective jurors were biased against them. The rationales for these decisions were the same as those articulated in *Rafe v. State*. See *Jim v. State*, 15 GA 535 and *John v. State*, 16 GA 200. I have decided to discuss *Rafe* at length rather than the two cases which preceded it because *Rafe* provides the most thorough explication of the impartiality principles.

was put on trial for murder in Sumpter County. His defense counsel questioned a juror's level of bias by asking if he had spoken with the prosecutor in the case and expressed to him an opinion about it. The state objected, arguing that only those questions from the 1856 act could be asked. The trial judge agreed and, on appeal, so did the supreme court.[85] The Court also ruled in *Henry v. State* that it was entirely appropriate for these questions to be explained at length to a juror under voir dire in order to ensure his understanding of them.[86]

Aframericans in Georgia had the right to appeal their convictions to higher courts on a number of different grounds and their masters did so for them, but did they benefit substantially from having this right? Of the 224 convicted defendants, thirty-eight filed appeals; of those eighteen were successful in securing new trials. (See Table 4.5) This success ratio of nearly fifty percent seems impressive, but the reality was far different. Of the eighteen defendants who received new trials, only six were acquitted or released because of mistrials. So the majority of those who won their appeals may have been ultimately convicted. Of those twelve slaves, one received lashes, three received a combination of whipping and mutilation, and five were hanged; the fates of three remain unknown. (See Table 4.5.1) Two hundred twenty-four Aframericans were convicted in Georgia's courts; the appellate process spared only six. Black defendants had the right of appeal; it just did them very little good.

In his study of Tennessee, Arthur Howington found a higher rate of appellate success. Thirty-three slave defendants took their cases to the supreme court. Once there they fared relatively well; twenty-three of the defendants had their causes sustained by the high

---

[84] Howington, *What Sayeth the Law*, 173.
[85] *Monday v. State*, 32 GA 672 (1861).

Results of Appeals 1755-1865

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Successful Appeal	18	4.3	47.4	47.4
	Unsuccessful Appeal	20	4.8	52.6	100.0
	Total	38	9.1	100.0	

Table 4.5

Punishments of Successful Appellants 1755-1865

		Frequency	Percent	Valid Percent
Valid	Lashes	1	5.6	11.1
	Hanging	5	27.8	55.6
	Combination	3	16.7	33.3
Missing	Unknown	3	16.7	
	Not Guilty	6	33.3	
Total		18	100.0	

Table 4.5.1

[86] *Henry v. State*, 33 GA 441 (1863).

court. These figures compared favorably with those of white defendants; in fact, the Court reversed a higher percentage of black convictions than white, 70 percent to 53 percent.[87] However, these figures might be as deceptive as those in Georgia; we do not know what happened to these defendants at their new trials. Perhaps they were re-convicted, as in Georgia.

Pardons

Defendants who did not file appeals, or whose appeals failed to exonerate them or ameliorate their punishments had a final venue of appeal: the governor. Applying to the chief executive for a pardon or clemency could have been a hopeless enterprise or a very successful one, depending on when the request was made; during the colonial period such pleas fell on deaf ears, while success was practically guaranteed during the antebellum years. As a result of an analysis of the state records of colonial Georgia, A. Leon Higginbotham concluded that the Governor's Council did not grant the appeal of, or extend mercy to, a single slave who appealed to it as a result of a criminal conviction.[88] For example, in 1767 the owner of a slave convicted of robbery asked that his life be spared; his plea was denied. In 1768, Dickson's owner appealed the slave's conviction for the murder of a free black man; in a unanimous decision the Governor's Council ruled that his death sentence should be carried out. In 1771 the owner of a slave convicted of breaking into a store appealed his conviction and begged the Council to allow him to

---

[87] Howington, *What Sayeth the Law*, 165-66.

[88] A. Leon. *In the Matter of Color: Race and the American Legal Process, The Colonial Period* (New York: Oxford University Press, 1978), 256. My own examination of the records corroborates Higginbotham's findings.

transport the slave out of the colony; again, the board ruled that the slave should be hanged.[89]

By the antebellum period the situation had changed dramatically; twenty-four black defendants applied for some form of relief and all but one received it.[90] Most defendants were pardoned outright, with no conditions; others had portions of their sentences reduced. For example, Hatten was convicted of assaulting a white man with intent to murder in 1820 and sentenced to receive 100 lashes and to be branded on the cheek with the letter "A"; the branding portion of the sentence was suspended. In another instance Charles was similarly convicted for assaulting a white person and sentenced to receive 117 lashes; Governor John Clark reduced the number of lashes to thirty-nine. Whites received similarly lenient treatment, although blacks actually fared much better. Between 1836 and 1843, one hundred twelve whites petitioned governors William Schley and George R. Gilmer for pardons; ninety-six of these requests were granted. In the years from 1854 to 1857 two hundred eleven whites asked to be pardoned; Herschel V. Jenkins honored the requests of all but forty-nine of them. Jenkins granted the pardons for a number of reasons: insufficient evidence of guilt, poor health, old age or extreme youth, or because they were from good families and could be expected to reform themselves.[91]

---

[89] Candler, *Colonial Records*, 10:246, 631; 11:305.

[90] Executive Minutes, November 2, 1802-January 1, 1806, Drawer 50, roll 45, (GDAH); Executive Minutes, September 23, 1806-November 9, 1809, Drawer 50, roll 46, (GDAH); Executive Minutes, November 9, 1809-April 30, 1814, Drawer 50, roll 47, (GDAH); Executive Minutes, May 2, 1814-February 28, 1821, Drawer 50, roll 48, (GDAH); Executive Minutes, 1822-1827, Drawer 50, roll 49, (GDAH); Executive Minutes, November 2, 1829-November 14, 1834, Drawer 50, roll 50, (GDAH); "Executive Pardons from February 20, 1836 to August 31, 1843," Record group 1-4-16, Accession no. 93-1789A, Location no. 2761-12, box 1, (GDAH); "Pardons 1854-1857," Record group 1-4-16, Accession no. 93-1789A, Location no. 2761-12, box 2, (GDAH).

[91] Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the Nineteenth Century American South* (New York: Oxford University Press, 1984), 64-65, n.2.

The situation was much different in Tennessee. Under the Tennessee constitution the governor had the right "to grant reprieves and pardons after conviction." Arthur Howington identified only three slave defendants who were so pardoned.[92] Georgia governors were generous in granting pardons and suspending punishments because it was in keeping with the paternalistic ethos of the slaveholding leaders of the state. One of the most valued characteristics of the powerful paternalist was his ability to be merciful, to bestow favor on those beneath him when they were in no position to force the issue; this *noblesse oblige* allegedly guaranteed the loyalty of those who received it. Given the success ratio of antebellum pardons, it is surprising that such a small number of the owners of black defendants saw fit to make use of them.

Aframericans who committed crimes against the laws of Georgia found themselves facing a formidable criminal justice apparatus. On plantations justice was swift and sure, with only the master's sense of justice and mercy standing between a slave and the lash—or worse. The few slaves who committed crimes that affected interests outside the boundaries of the plantation met a criminal justice system that was a fitting compliment to that administered by masters. Almost half of the defendants who were even charged with crimes were convicted; three-fourths of those who went to trial were found or pleaded guilty, a rate significantly higher than that of white defendants. In the eyes of the criminal justice system slave men were considered the most dangerous and were convicted at the highest rate, as were those defendants of either sex who committed crimes against the persons of others. Once convicted defendants could file appeals in several courts based on certain common law principles and various statutory provisions, but to little avail. Slave defendants more profitably turned to the governor, who extended

[92] Howington, *What Sayeth the Law*, 10.

his mercy to nearly all who applied; unfortunately, this was not an avenue masters sought to pursue regularly. In the end the vast majority of black criminal offenders who were identified were tried and convicted in plantation or state courts. The Georgia criminal justice system was very efficient indeed.

CHAPTER 5

"HE CAN ONLY BE REACHED THROUGH HIS BODY": AFRAMERICANS AND THEORIES OF PUNISHMENT IN THE OLD SOUTH

Having been accused, arrested, tried, convicted and exhausted their appeals in Georgia's criminal justice system, only one act remained to be played out for Aframerican defendants: that of punishment. As with other aspects of the criminal justice process this final stage was shaped by the Aframerican's status as slave-person-thing (or non-citizen in the case of free blacks). As human beings Aframericans were thought to possess the same general moral faculties as whites and were thus held accountable for their criminal acts; however, the punishments they were forced to endure were radically different. As the colonial period gave way to the antebellum, thinking on the nature and methods of punishment changed, with theorists promoting systems of punishment that were thought to be more humane. In the main Aframericans were not beneficiaries of these salutary reforms. They continued to be subjected to draconian punishments that were fast becoming anachronisms for whites.

Scholars have made note of the continued use of barbaric punishments for Aframericans both on and off the plantation, and yet none have offered an explanation which places the punishment of Aframericans within the larger schemas of punishment utilized in Georgia, the United States and the rest of the Western world. While it is tempting to attribute the mistreatment of black offenders to the prevailing racist ethos (which certainly played a large part), the far more convincing explanation lies in contemporary thinking on the nature of crime and punishment and the fact that

Aframericans, while subject to punishment, did not fit within that paradigm. Left outside the emerging consensus on the need for humanity in punishment black men and women were beaten, burned, castrated, mutilated, exiled, hanged and left to what most thinkers regarded as the most cruel punishment of all: perpetual involuntary servitude. While Aframerican offenders continued to fall prey to the lash (and worse) white convicts were being rehabilitated in prisons, the institution which represented the crowning achievement of the reformers' zealous efforts. Paradoxically lifetime black bondage incorporated within it the same mechanisms of discipline utilized in penitentiaries and championed by enlightened thinkers. Southerners did not recognize nor associate the means they employed to discipline their slave forces with the vaunted improvements in the techniques of punishment applied to whites, yet they were. And white offenders who were subjected to them, much to the chagrin and embarrassment of reformers, were no better for having had the experience than black slaves. How this strangest of developments occurred and the consequences of it for the punishment of black Georgians are the foci of this chapter.

Conceived in Sin

Colonial Georgians, like other early Americans, believed that criminal behavior was the product of mankind's sinful nature; after Adam and Eve's fall from grace it was impossible for human beings to entirely eliminate or control their evil and anti-social tendencies and therefore crime, like poverty, would always be with us. Given this orientation the emphasis in punishment was not on reform but retribution, suffering for one's sins. The purpose of punishment was not to change the character or nature of

offenders but rather to terrorize them so that they would not think of committing the prohibited acts; accordingly the body and not the mind or the soul, was the center of punishment.[1]

Colonials regularly used a variety of punishments that centered on the body. Fines and whipping were the most common forms of punishment for whites; fines were the appropriate sanction for those with property they valued, and whipping for those without. The stocks, branding and banishment were used along with fines to punish minor offenders. While physically uncomfortable the principal advantage of the stocks was the psychological impact on the offender. They were held up to ridicule by members of their own close-knit communities; in such communities shame was a powerful instrument of punishment. Public shaming was also the rationale for compelling offenders to wear letters that informed the community of the nature of their crimes. For example, adulterers were required to wear a red letter "A" around their necks; similarly, drunkards had to adorn themselves with the letter "D" in like fashion. Branding offered similar physical and psychological advantages. Branding and whipping were also used in conjunction with banishment to punish strangers and to remove them from the community.[2] In

---

[1] David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston: Little, Brown & Co., 1971), 15, 18; Samuel J. Walker, *Popular Justice: A History of American Criminal Justice* New York: Oxford University Press, 1980), 13; Thomas G. Blomberg and Karol Lucken, *American Penology: A History of Control* (New York: Aldine De Gruyter, Inc., 2000), 25-26.

[2] Rothman, *Discovery of the Asylum.*, 48-50; Bradley Chapin, *Criminal Justice in Colonial America, 1606-1660* (Athens: University of Georgia Press, 1983), 50-55. Blomberg and Lucken, *American* Penology, 29-32. For examples of the stocks, pillory, branding and exile as punishments in colonial and early national Georgia see *Georgia Gazette*, 3 April 1783; 11 March, 2 December 1784; 16 October 1788; 4 August 1791; 13 September 1792.

Georgia criminal offenders were also subject to ear-cropping, an extremely painful and disfiguring form of corporal punishment where a portion of the ear was cut off.[3]

Imprisonment was not regularly used as a form of punishment; jails were used simply to house those awaiting trial or to repay debts. Colonial jails were usually homes, without any special security measures. The jailer and his family lived in the gaol and often took meals with the prisoners. Inmates were not chained or restrained in any way and they did not wear uniforms. They were free to roam about the jail/house as they pleased. Jails were so much like private residences that some feared that they would actually attract inmates.[4]

Much of the reluctance on the part of colonial officials to use incarceration as a form of punishment was due to the expense associated with constructing and maintaining jails.[5] Throughout the colonial period Georgia officials lamented the lack of proper jails and the poor condition of those that did exist. In 1755 the city jail in Savannah was a "small, Wooden Building wherein all Sorts of Offenders were promiscuously confined..." In 1768 conditions in the jail were such that the jailer could not make a "Distinction between the Felon and the unfortunate Debtor—That by Reason of the Number at Times Obligated to be confined together great sickness had ensued and several had died That the Hardships suffered in general were too tedious and melancholy to relate." Nor was it within the power of the jailer to "remedy the Evil or redress the Case of the unhappy Sufferers." Given this state of affairs it is not surprising that this description was part of a

---

[3] James C. Bonner, "The Georgia Penitentiary at Milledgeville, 1817-1874," *Georgia Historical Quarterly* 55, no. 3 (Fall 1971), 304.
[4] Rothman, *Discovery of the Asylum*, 55-56.
[5] Ibid., 52-53; Chapin, *Criminal Justice in Colonial America*, 52.

request for funds to improve the facility.[6] Poor construction and overcrowding also led to numerous escapes. In 1784 persons unknown broke into the jail at Savannah and released two murderers. In 1785 a murderer and a horse thief overpowered the jailer (after having freed themselves from their leg irons) at the gaol in Savannah and disappeared into the night. Murderer Beverly Allen was recaptured in 1794 after having escaped from the jail at Augusta, only to be liberated from the jail in Elbert County by his brother and several accomplices. Jails were attacked not only to free prisoners, but also to do away with them altogether: in 1785 "some evil minded person or persons" burned the Augusta jail to the ground[7]

Capital punishment acted as the final deterrent. Executions served the dual purposes of incapacitation and deterrence; the offender would be forever deprived of the opportunity to commit other crimes and his death would serve as a grim warning to others among the criminally inclined. Beyond hurting the offender, public executions also served to restore the symbolic balance of power and communal harmony disturbed when the criminal committed his act. A criminal act was considered an act against the sovereign; executions were a way of reestablishing the disparity in power between the criminal and the sovereign in order to firmly establish the superiority of the latter.[8] Colonials were put to death for a variety of different offenses. White Georgians regularly lost their lives for horse and cattle theft, "negro stealing," counterfeiting, robbery, murder

---

[6] Allen D. Candler, ed., *Colonial Records of the State of Georgia* (Atlanta: Charles P. Byrd, 1910), 7:215; 10:394.
[7] *Georgia Gazette*, 12 February 1784; 28 July, 27 October 1785; 26 June 1794.
[8] Rothman, *Discovery of the Asylum.*, 51; Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Pantheon Books, 1977), 48-49.

and a host of other crimes.[9] Even theft and disrespect for parental authority could be capital offenses. [10] The use of capital punishment for a wide range of criminal offenses created a system that many came to believe was unjust because some crimes were punished far more severely than reason and humanity dictated.

In addition to balancing the scales of justice before God, punishment served the ancillary function of reducing crime. In the colonial scheme of criminal justice the roots of crime were internal and not external or societal; therefore, neither the society nor the individual were expected or required to change. Colonial societies relied on three institutions to control crime, the family, the church and close community relations. The family was to rear children who respected law and authority. The church would monitor family discipline and adult behavior. Community members and neighbors would complete the triangle of prevention by watching their neighbors closely in order to apply appropriate social pressure at the first sign of deviant behavior.[11] In colonial Georgia and elsewhere on mainland British North America crime prevention fell squarely upon the shoulders of the community, not the state.

Aframericans in the Colonial Scheme of Punishment

For the most part Aframericans were viewed as whites were in the colonial scheme of punishment. Blacks were thought to be volitional beings capable of moral choice who were certainly burdened by as much sin as the average white person, perhaps more. In a

---

[9] For just a few examples of capital punishment in colonial and early national Georgia see Candler, *Colonial Records*, 10:245; 11:434; 12:352, 376-78; *Georgia Gazette*, 28 June 1764; 14 January 1767; 11 November 1769; 21 December 1784; 15, 22 March, 1 November 1787; 16, 23 October 1788; 5 March, 17 September 1795.
[10] Rothman, *Discovery of the Asylum*, 18.
[11] Ibid., 16-18.

1727 letter to colonial slaveholders Edmund Gibson, bishop of London, instructed masters and mistresses to "consider Them, not merely as slaves, and upon the same Level with the Labouring Beasts, but as *Men*-Slaves and *Women*-Slaves, [italics in original] who have the same Frame and Faculties with yourselves, and have Souls capable of being made eternally happy, and Reason and Understanding to receive Instruction in order to do it." With regard to the shared humanity of blacks and whites Morgan Goodwin remarked, "Methinks that the consideration of the shape and figure of our Negroes Bodies, their Limbs and Members, their Voice and Countenance in all things according with other Men's together with their Risibility and Discourse (man's Peculiar faculties) should be sufficient conviction." In *The Negro Christianized*, Puritan divine Cotton Mather described Africans as "Rational Creatures" whom God had made the servants of others.[12] Even Thomas Jefferson, who considered slaves inveterate thieves, believed that any moral shortcomings exhibited by slaves were the product of their circumstances, and not some innate propensity for immorality.[13] Georgia legislators believed slaves were part of their religious universe and in the state's first slave code mandated that slaves be exposed to "all the spiritual benefits of Christianity" and required masters to ensure that "at some time on the Lords Day" slaves receive "Instruction in the Christian Religion." Failure to comply with this regulation would result in a fine of ten pounds Sterling.[14] While there

---

[12] Albert J. Raboteau, *Slave Religion: The "Invisible Institution" in the Antebellum South* (Oxford and New York: Oxford University Press, 1978), 101.

[13]Thomas Jefferson, *Notes on the State of Virginia*, edited with an Introduction by William Peden (Chapel Hill: University of North Carolina Press, 1955), 142.

[14] Candler, *Colonial Records*, 1:57; Betty Wood, *Slavery in Colonial Georgia, 1730-1755*. (Athens: University of Georgia Press, 1984), 82, 85. The provisions of the 1751 slave code that provided for religious instruction were rescinded in the slave code of 1755, not because slaves were incapable of receiving such instruction but because such instruction could undermine the master-slave relationship. See Wood, *Slavery in Colonial Georgia*, 114-15.

were certainly those who objected strenuously to this egalitarian view of African moral capacity and who argued passionately in favor of Aframerican inferiority, no one argued that blacks should not be held accountable for their criminal behavior.

Given this view of Aframericans as sinful people who were incapable of true reform, it is not surprising that they were subject to the same sorts of punishments as were whites. Black Georgians found guilty of crimes were routinely whipped, transported/banished as threats to the community, and hanged. These punishments would not have been entirely unfamiliar to African slaves as they were staples of criminal justice in West Africa as well.[15] Aframericans were not subject to fines or the shaming punishments. Colonial slaves did not possess significant sums of cash so they could not be fined. Individually and collectively Aframericans were bound to the community but they were not a part of the web of reciprocal communal obligations and benefits in the same ways as citizens; as a result shaming mechanisms did not apply to nor work on them. As "socially dead" people slaves—and by association and extension free blacks—had no honor to protect and therefore no shame to cultivate for purposes of punishment.[16] Punishment remained centered on the Aframerican body, which was in keeping with the slave's physical form being his or her principal source of societal value.

---

[15] Betty Wood, "Until He Shall Be Dead, Dead, Dead: The Judicial Treatment of Slaves in Eighteenth Century Georgia," *Georgia Historical Quarterly* 71, no. 3 (Fall 1987): 377-98; Philip Schwarz, *Slave Laws in Virginia* (Athens: University of Georgia Press, 1996), 26.

[16] Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1982), 10-11. Patterson argues that in the eyes of the master class slaves could have no honor because they lacked the social independence upon which honor depends. The slave "had no name to defend. He could only defend his master's worth and his master's name." As I have argued above (Chapter 2) I believe that slaves had a code of honor and acted upon it, even though masters or whites did not usually acknowledge it.

Like their white counterparts, black criminals were not imprisoned for their crimes, although a prison-like institution was established for them. In 1763 Georgia legislators authorized the creation of a workhouse "for the custody and punishment of Negroes." The workhouse was to serve as a place of confinement and punishment for "obstinate and disorderly" Afro-Georgians, as well as a temporary holding facility for unidentified or unclaimed runaway slaves. Once inside the walls of the workhouse slaves could be put to work, clapped in irons and subjected to "moderate whipping."[17] To all appearances then it would seem that black Georgians were in fact imprisoned for their crimes, but this was not so.

Aframericans were not sentenced to the workhouse by the state as punishment for their crimes but instead, were brought there at the discretion of individual masters. This lack of governmental involvement does not, in and of itself, mean that the workhouse was not a place of imprisonment within the colonial scheme of punishment. As I have argued above, this link between the public and private spheres is absolutely essential to understanding criminal justice for Aframericans during the era of slavery because the formal and informal systems operated together and formed a highly effective criminal justice apparatus. What this high level of private involvement does suggest is that the workhouse was used to further the interests of individual masters far more than to serve as a mechanism of criminal justice. This is evident from actual practice at the workhouse. First of all, the overwhelming majority of Aframericans were not sent to the workhouse for violations of the criminal law but were runaways held there until their masters reclaimed them, or they were slaves who were held for what was euphemistically

called "safe-keeping." Troublesome slaves were brought to the workhouse to be whipped, but the law mandated that a prisoner could only receive twenty lashes per day. No such limitation was placed on masters; therefore, an owner would be able to administer far more fearsome (and theoretically more effective) punishment than the state through its workhouse. The workhouse would be an effective place of corporal punishment for those slaveholders who did not want to dirty their hands, or who did not wish to sully their reputations by being associated with the kinds of severe floggings that might be required to bring recalcitrant bondsmen back in line. Finally, the short period of time most blacks spent in the workhouse also suggests that punishment through incarceration was not the ultimate goal. The sole existing record indicates that the average prisoner was there for less than a month; most were held for approximately one week—even those charged with serious crimes of violence.[18] (Obviously these prisoners were being held to await trial.) Such a short-term deprivation of "liberty" could hardly have been thought of as punishment for men and women who had been permanently denied their freedom. (This rationale did not apply to free blacks, who were not sent to the workhouse.) In sum, the Georgia workhouse was a place where runaways and other slaves were temporarily and safely kept until their masters came to retrieve them, where black criminals awaited trial (like white offenders), and a lesser number of incorrigible slaves were "moderately" beaten. Workhouse flogging was clearly a punishment, but nothing more than was

---

[17] Candler, *Colonial Records*, 18:558-66.

[18] For a thorough discussion of Georgia's workhouse see Betty Wood, "Prisons, Workhouses, and the Control of Slave Labour in Low Country Georgia, 1763-1815," *Slavery and Abolition* 8, no. 3 (December 1987): 247-71.

routinely administered on the plantation; therefore, from a theoretical standpoint it was not a different mode of punishment at all.

The prevention of slave and free black criminality was also largely a communal rather than a state function; with the exception of slave patrols there was no government-sanctioned agency charged with regulating the behavior of the black population.[19] The majority of Afro-Georgians were slaves and as such their proper behavior was the responsibility of individual masters, augmented by the general surveillance of whites in the neighborhood. This communal mode of crime prevention would have been quite familiar to those black Georgians who maintained knowledge and memory of Africa. In West Africa societies were based on complex networks of kinship and community, as a result crimes and criminal behavior were defined by those communities and were viewed as offenses against them. In many instances acts which constituted crimes were resolved through and by the kinsmen of the involved parties, without the formal intervention of the "state"; in other cases leading men of the various kin groups were selected to arbitrate disputes and to hand down punishments.[20] As in colonial America, the onus for crime prevention was on the family and the community at large rather than the impersonal state. The principal difference of course is that unlike their West African counterparts, black Georgians were subjects of community control and surveillance, not participants in it. (However, slaves were expected to report on the untoward activities of their fellows, which some certainly did.)

---

[19] For a discussion of the role and responsibilities of colonial slave patrols see Chapter 2.
[20] Schwarz, *Slave Laws in Virginia*, 20.

In instances where treatment differed between blacks and whites it was largely a matter of degree not kind, with blacks receiving a portion more of the barbaric punishments meted out to white criminals. This heightened degree of severity was deemed necessary because black criminality was viewed as especially dangerous, as such acts could augur the beginnings of slave unrest and rebellion like that which occurred in St. Andrew's Parish Revolt in 1774. To make the point that such dangerous behavior would not be tolerated, whites burned a number of colonial Georgia slaves for their crimes, including two of those involved in the St. Andrew's Parish Revolt. It was also occasional practice to display the heads of executed slaves on poles near the scenes of their crimes in order to deter others.[21]

Burning and decapitation were chosen as methods of deterrence because these sanctions were used historically by the colonists' English forebears to punish, disgrace and deter those convicted of treason (high or petit), witchcraft and heresy. Petit treason most closely approximated the crime committed when a slave killed his or her master and occurred when "wilfull murder is committed (in the estate Oeconomicall) upon any subject, by one that is in subjection, and oweth faith, duty and obedience, to the party murdered." Despite the factual similarity between petit treason and the murder of a master by his or her slave, this type of homicide was not generally considered petit treason at colonial law. In order for a murder to have been petit treason there had to have been a relationship of mutual trust and obligation between murderer and victim. Colonial lawmakers knew that slave obedience was based on force, and not on the paternalistic

system of mutual obligations that would allegedly characterize antebellum master-slave relations. As a result, the application of the law of petit treason to slave-master murders was never fully conceptualized and implemented. Nevertheless, colonists did punish a great many slaves who killed their masters as if they had committed petit treason.[22]

These executions and public displays were certainly more grisly than the average run of executions for whites but they must be considered against the backdrop of an Atlantic World where alleged witches were burned at the stake and European and West African criminals were condemned to be

> "hanged, others to having their hands cut off or their tongues cut out or pierced and then to be hanged; others for more serious crimes, to be broken alive and to die on the wheel, after having their limbs broken; others to be broken until they die a natural death, others to be strangled and then broken, others to be burnt alive after first being strangled; others to be drawn by four horses, others to have their heads cut off, and others to have their heads broken."[23]

---

[21] Wood, *Slavery in Colonial Georgia*, 191-92; Wood, "Until He Shall Be Dead"; Harold E. Davis, *The Fledgling Province: Social and Cultural Life in Colonial Georgia, 1733-1776* (Chapel Hill: University of North Carolina Press, 1976), 129.

[22] Thomas D. Morris, *Southern Slavery and the Law, 1619-1865* (Chapel Hill and London: University of North Carolina Press, 1996), 264-65, 276-77. In the Middle Ages burning was a punishment of complete extermination, one reserved for those who committed crimes that most angered the gods—witchcraft, incest, sodomy, heresy and suicide. Postmortem decapitation is a form of quartering, an ancient practice reserved for those guilty of high treason. Quartering was to be carried out in the following manner: "That the traitor is to be taken from the prison and laid upon a sledge or hurdle (in earlier days he was to be dragged along the ground tied to the tail of a horse) and drawn to the gallows or place execution, and then to be hanged by the neck until he be half dead, and then cut down, and his entrails to be cut out of his body, and burnt by the executioner; then his head is to be cut off, his body to be divided into quarters, and afterwards his head and quarters to be set up in some open place directed." For this quote see L.A. Parry, *The History of Torture in England*, with an Introduction by Sawyer F. Sylvester, Jr. (1934; reprint, Montclair, NJ: Patterson Smith, 1975), 104-108. The punishment for slaves convicted of petit treason, murder and arson in Maryland is nearly the same as that provided for traitors in England. The slave was "to have the right hand cut off, to be hanged in the usual manner, the head severed from the body, the body divided into four quarters, and the head and quarters set up in the most public places of the county were [sic] such act was committed." George M. Stroud, *A Sketch of the Laws Relating to Slavery in the Several States of the United States of America* (1856; reprint, New York: Negro Universities Press, 1968), 87. It is clear from the Maryland example that significant acts of violent slave resistance were viewed as acts akin to treason and were punished accordingly. The remaining citations for this note may be found in Hans Von Hentig , *Punishment: Its Origin, Purpose and Psychology* (Montclair, NJ: Patterson Smith, 1973), 80, 98; Harry Elmer Barnes, *The Story of Punishment: A Record of Man's Inhumanity to Man*. 2d ed. Rev. (Montclair, NJ: Patterson Smith, 1972), 233-36.

[23] Schwarz, *Slave Laws in Virginia*, 20; Foucault, *Discipline and Punish*, 32.

Immolation and postmortem decapitation seem almost humane in comparison to this litany of horrors.

In sum, Aframericans were thought to possess the same sinful natures as whites and were accordingly punished in the vast majority of cases in the same ways. In Georgia the whip was the most common instrumentality of punishment for non-felony offenders of both groups, and the gallows for those blacks and whites who committed more serious crimes.[24] Slaves were occasionally burned and their bodies mutilated postmortem in cases where the offenses were deemed to be particularly offensive to the community, but not as a matter of course.[25] In the Atlantic World punishment of criminals—black and white—was usually a very public, very bloody affair. These rituals of blood would come to an end for whites but blacks would continue to endure them for generations. Why?

---

[24] If one considers the use of the lash on plantations, which I believe is certainly appropriate since the plantation was the site of most black crime and punishment, it is certainly clear that this was the most common form of punishment. The plantation as a site of punishment will be discussed in greater detail below.

[25] There were four burnings of slaves during the colonial period. Three occurred in the same year, 1774 and were for serious offenses: two were involved in the St. Andrews Parish Revolt and one had set fire to his master's house. Postmortem decapitations were similarly rare. Betty Wood has identified four such occurrences and I have identified one other. These nine incidents represent a little more than a third of the approximately two dozen executions that have been identified for the colonial period. Wood notes that by the 1790s burning was no longer used as a method of execution. For details of the three immolations, three of the postmortem decapitations and Wood's conclusions on the declining use of burning see Wood, "Until He Shall Be Dead," 384, 387, 392, 395, 398. For the remaining decapitation see the *Georgia Gazette*, 6 June 1765. The rarity of extraordinary punishment is also evidenced by studies of slave crime in the South. Michael Hindus reports in his study of South Carolina that there was not one single incident of such barbaric punishment between 1767 and 1868. See Michael Hindus, *Prison and Plantation: Crime Justice and Authority in Massachusetts and South Carolina, 1767-1878* (Chapel Hill: University of North Carolina Press, 1980), 145-46. In his study of Virginia, Philip Schwarz identifies twenty-five incidents when the heads of slaves were publicly displayed, and seven incidents when the bodies of executed slaves were quartered postmortem. These thirty-two instances were out of a total of well over five hundred slaves executed between 1706 and 1809. See Schwarz, *Twice Condemned*, 15. Finally, Daniel J. Flanigan observes that in 1729 the Maryland legislature passed a law mandating that slaves convicted of murder or arson of a dwelling were to have their right hands cut off before being hanged, after which they were to be beheaded, quartered and their bodies put on public display. Daniel J. Flanigan, *The Criminal Law of Slavery and Freedom, 1800-1868* (New York and London: Garland Publishing, Inc., 1987), 12. While

The Decline of Torture and Public Spectacle

By the latter third of the eighteenth century both public corporal and capital punishment and community policing of deviant behavior fell into increasing disfavor in the West as methods of crime control and punishment for a number of practical and ideological reasons. First, rapid economic growth and expansion and the migrations that accompanied them began to weaken the close community ties and notions of hierarchy and mutual obligation that were essential to community crime control. Men and women no longer knew their places; strangers were an increasingly common presence in towns where once everyone had known his or her neighbors. Towns became cities, places where it was impossible to integrate newcomers into the old networks. Waves of African, German, Irish, Scots-Irish and French poured into formerly homogenous enclaves of white, English Protestantism. Georgia experienced similar population growth and the social dislocations that accompanied it. In 1751 Georgia's population was estimated at 1,735 whites and 349 blacks; by 1755 these figures had climbed to 4,500 and 1,855, respectively. By 1773 there were 18,00 whites and 15,000 blacks in the colony; in 1776 the total population was estimated at 45-50,000. The new immigrants were from a variety of ethnic and religious backgrounds. A group of Germans settled near Ebenezer, a group of slave-holding Puritans settled on the coast between the Savannah and Altamaha rivers. Acadians (French Catholics from Nova Scotia) set up residence near Savannah, and a congregation of Quakers established themselves near Augusta. Added to this religious diversity were ethnic settlers from France, Ireland and Scotland, as well as established

---

Maryland law provided for such punishments Flanigan provides no examples, therefore it is impossible to determine the extent of these practices.

colonists moving south from Pennsylvania, Virginia and the Carolinas in search of greater opportunity. And of course there were slaves hailing from West Africa, the West Indies and the other colonies. This rapid growth and demographic change paralleled that which was occurring in other colonies but was perhaps more unsettling for Georgia because it was a relatively new colony at the time these changes began to occur.[26] In the midst of this chaos it was simply impossible for crime to be controlled through the family, church and communal surveillance.[27]

Corporal and capital punishment also failed to produce the desired results. While public executions were designed to awe spectators and force them into docile submission, they had the actual effect of repulsing crowds and fostering identification with the criminal and a hatred of the state. As a result riots and other disturbances began to increase during executions, actions which were hardly likely to produce social harmony and tranquility.[28] Draconian public sanctions also led to an overall decline in punishment. Thomas Jefferson recognized the ultimately self-defeating nature of such punishments when he crafted "A Bill for Proportioning Crimes and Punishments" in 1778. Jefferson averred that, "forasmuch as the experience of all ages and countries hath shewn, that cruel and sanguinary laws defeat their own purpose, by engaging the benevolence of mankind to withhold prosecutions, to smother testimony, or to listen to it with bias; and

---

[26] Kenneth Coleman, *Colonial Georgia: A History* (New York: Charles Scribner's Sons, 1976; Millwood, NY: KTO Press, 1989); 223-228; Wood, *Slavery in Colonial Georgia*, 104.

[27] Rothman, *Discovery of the Asylum*, 57-59. For the negative effects of migration on colonial communities see Edward Ayers, *Vengeance and Justice: Crime and Punishment in the Nineteenth Century American South* (New York: Oxford University Press, 1984), 36; Richard L. Bushman, *From Puritan to Yankee: Character and the Social Order in Connecticut, 1690-1765* (Cambridge: Harvard University Press, 1967); Philip J. Greven, *Four Generations: Population, Land and Family in Andover, Massachusetts* (Ithaca, NY: Cornell University Press, 1970); and Darrett B. and Anita Rutman, *A Place in Time: Middlesex County, Virginia, 1650-1750* (New York: Norton, 1984)

by producing in many instances a total dispensation and impunity under the names of pardon and privilege of the clergy..."Colonial juries let prisoners go free rather than sentence them to death for petty theft.[29] The old methods of public, physical, retributive punishment were no longer perceived as being capable of producing the desired results.

Ideological transformation was of even greater importance than inefficiency in the decline of physical punishment. The late eighteenth century witnessed a revolution in social, political and economic thought that profoundly altered thinking on matters of crime and punishment. The Enlightenment has been characterized as "a vastly ambitious program...of secularism, humanity, cosmopolitanism, and freedom, above all, freedom in its many forms—freedom from arbitrary power, freedom of speech, freedom of trade, freedom to realize one's talents, freedom of aesthetic response, freedom, in a word, of moral man to make his own way in the world." Immanuel Kant saw the Enlightenment as "man's claim to be recognized as an adult, responsible being."[30] With its emphasis on secularism, human reason, personal accountability and empiricism, the Enlightenment undermined the central pillar of colonial punishment theory: sin. No longer were humans the hopelessly depraved creatures of John Calvin; instead they were rational beings capable of boundless improvement. If human beings were not innately criminal, then what were the causes of their criminality? If there was nothing wrong with the insides of men and women then the trouble had to arise outside of them. It suddenly became clear to

---

[28] Foucault, *Discipline and Punish*, 63; Rothman, *Discovery of the Asylum*, 60.
[29] Thomas Jefferson, *Writings*, edited by Merrill D. Peterson (New York: Literary Classics of America, Inc., 1984), 349.
[30] Peter Gay, *The Enlightenment: An Interpretation*, vol. 1, *The Rise of Modern Paganism* (New York: Alfred A. Knopf, 1966), 3.

thinkers on crime that the external environment must play a far more significant role in the development of socially deviant behavior patterns than had been previously surmised.

Post-Revolutionary theorists in America surmised that criminal behavior was the product of harsh laws and punishments inherited from England. These laws were not compacts between free men and women but rather, were the arbitrary whims of a despotic few. Americans embraced this notion because it was the perceived severe and arbitrary nature of English law and government that had forced them to rebel. These punitive laws actually encouraged criminality by forcing offenders to commit additional crimes in order to escape punishment for the first.[31] By the early nineteenth century authorities also attributed criminal behavior to one of the institutions which had long been called upon to prevent it: the family. The failure of parents and kinsmen to rear children to respect authority was thought to be one of the main causes of anti-social behavior. Orphans and others from what might be described as dysfunctional families made up the bulk of the criminal population. In many instances parents were thought to be evil, passing their vices on to their children. Burgeoning cities and towns added to the problems created by poor parenting by offering greater opportunities for all to engage in vice.[32]

Given these new realities, changing the external environment or the offender's internal reaction to it were the two ways to control crime. Accordingly, crime prevention and control would proceed on two fronts: changing the external environment and changing the offender, something that had heretofore been thought an impossibility. Society at

---

[31] Rothman, *Discovery of the Asylum*, 59-60.
[32] Ibid., 72-74.

large now had a responsibility to counteract the evils it produced, and a new schema of crime prevention and punishment had to be devised.

Cesare Beccaria on Crimes and Punishment

"In order that punishment should not be an act of violence perpetrated by one or many upon a private citizen, it is essential that it should be speedy, necessary, the minimum possible in the given circumstances, proportionate to the crime, and determined by the law."[33]

--Cesare Beccaria

In an impressive economy of language Cesare Beccaria summarizes the principles he presented in his treatise *On Crimes and Punishments*, principles that have guided penal reform and decision-making from the eighteenth century to the present. While many well-known Enlightenment figures (from Montesqieu and Rousseau to Voltaire and Thomas Jefferson) devoted themselves to reforming criminal justice systems in America and Europe, the lesser known Italian philosopher Beccaria was by far the leading figure in the movement to transform thinking on matters of crime and punishment. Born in 1738, Beccaria was the eldest son of a wealthy noble family. In his mid-twenties he became part of a group of intellectuals who called themselves the Accademia dei pugni, or Academy of Fisticuffs. The purpose of the group was to convince the Austrian rulers of Lombardy to adopt a far-reaching program of reforms and to focus attention on themselves as agents of this potential change. The heart of their reform plan was the destruction of a legal system based on custom, hereditary rights and the personal rule of the monarch and the nobility. They sought to replace the old system with a new one based on principles or regularity, rationality and equality for all that was firmly anchored

[33] Cesare Beccaria, *On Crimes and Punishments and Other Writings*, edited by Richard Bellamy, translated by Richard Davies and Virginia Cox (Cambridge and New York: Cambridge University Press, 1995), 113.

in the rule of law. In pursuance of this goal Beccaria penned *On Crimes and Punishments* in 1763.[34]

Before crafting a new philosophy of punishment Beccaria had to address the shortcomings of existing theories. He had to determine the proper limits of state authority and the correct purposes of punishment. There were two competing schools of thought. Contractarians (those who supported social contract theory) believed that the good of the individual outweighed that of society; therefore, there should be limited governmental intrusion into individual affairs. Utlilitarians believed the opposite, that the needs of the individual should be sacrificed to the greater good of society. The two groups also differed in their approaches to the rationale for punishment. Utilitarians believed that severe punishment should act as a deterrent to future criminal behavior, while contractarians argued that retribution was the only legitimate purpose for punishment. Both of these schools of thought had the same principal failings as the rejected colonial system: overly severe punishment on the one hand, and an atavistic desire for revenge on the other.[35]

Beccaria sought to combine the two schools through social contract theory. In his formulation each individual member of society surrendered a limited quantum of freedom in order to secure the other freedoms, and no more. The state would then use the accumulated surrendered freedoms in a way that would maximize the level of freedom for the greatest number of citizens. The sum of these voluntarily surrendered freedoms represented the right and the limits of punishment; any use of power beyond this limit

---

[34]Ibid., x-xi, xxiv-xxx.
[35] Ibid., xix-xxii.

was "no longer justice, but an abuse."[36] Ideally then, a balance would be struck between the needs of society and the individual. In Beccaria's contractarian utilitarianism the justification for punishment was utilitarian. Penal sanctions were to deter future wrongdoing, as retribution served no other purpose than to satisfy mankind's blood lust.[37]

Beccaria concluded that in order to ensure that punishments do not exceed prescribed limits they should approximate the level of societal harm caused by the proscribed act, the greater the harm to society the more severe the punishment. In like fashion he also believed that the punishment should cause a manner of suffering like that the criminal intended for his victim. Fines that damage their pecuniary interests should be used to punish thieves; those who are too poor to pay fines should surrender themselves for a period of labor for the public welfare. Violent criminals should receive corporal punishments. Thieves who effect their unlawful appropriations by violence should be subject to a mixed penalty of penal servitude and corporal punishment.[38]

Beccaria also advocated an end to the colonial practice of basing punishment on the offender's socio-economic status, a practice which often resulted in more affluent citizens paying fines for their criminal misbehavior while the poor were subjected to harsh corporal punishments. Such selective discipline defeated the notion that the authority to punish is derived from the voluntary surrender of liberties by *equal* members of society, thus de-legitimating the society's right to punish at all. As to the oft-raised objection that different classes of citizens had different sensibilities, and so should be punished differently, Beccaria argued, "the measure of punishment is not the sensitivity of the

---

[36] Ibid.., 11.
[37] Ibid., xxii-xxiii.

criminal, but the harm done to the public, which is all the greater when it is perpetrated by those who are more privileged."[39]

Armed with Beccaria's formulations reformers had a theory of punishment which promoted rationality, humanity, efficiency and legitimate governmental authority. What were lacking were methods that would enable society to accomplish the new goal it had set for itself: rehabilitation of the criminal offender.

The Birth of the Prison

Having accepted the challenge of remaking criminals into productive members of society criminal justice reformers of the early republic had to devise a means of controlling the environmental factors they had come to believe were responsible for anti-social behavior. Two options were available for consideration. First, the society at large could be changed to remove those privations and temptations that forced or lured men and women to crime. This solution, if possible, would certainly be the ultimate solution to the problem of crime, but it was clearly impractical as a means of addressing immediate concerns. The second alternative was to change the individual so that he could face his environment without turning to crime. The initial step in this process was to remove criminal offenders from their environments and place them in ones that were strictly controlled, and where the desired work of personal transformation could be performed. This place of isolation and reform was the penitentiary.

The prison movement began in New York and Pennsylvania in the 1820s and soon spread to the rest of the nation. New York's Auburn state prison was established between

---

[38] Ibid., 19, 31, 50, 53.
[39] Ibid., 22, 52.

1819 and 1823, followed by Ossining prison (the infamous Sing Sing) in 1825. Pennsylvania set up its first penal institution in 1826 at Pittsburgh, followed by a second prison in Philadelphia in 1829. Connecticut discontinued the use of an abandoned copper mine for incarcerating its prisoners and built its initial penitentiary at Wethersfield in 1827; Massachusetts followed suit and opened Charlestown prison in 1829. New Jersey, Ohio, Indiana, Wisconsin and Minnesota all constructed prisons within the next twenty years.[40] The South was not left behind in the movement to reform criminals. Georgia was one of the first states to consider building a penitentiary. The first legislation was proposed in 1804 and after lengthy debate and legislative wrangling the prison was finally completed in 1816. Maryland followed Georgia and opened the doors of its prison in 1829. Between 1834 and 1837 prisons were constructed in Louisiana and Missouri, and within the next five years penitentiaries were established in Alabama and Mississippi. Among Deep South states only North Carolina, South Carolina and Florida failed to participate in the prison-building movement.[41]

From the widespread construction of prisons throughout the region one could conclude that southerners were wholly convinced that the penitentiary was the ideal solution to the crime problem; that was not the case. Prisons were a highly controversial issue and the subject of constant debate in Georgia and throughout the slave south. The matter of contention was not the efficacy of prisons but rather how these institutions supported or threatened southern republicanism. At the heart of republicanism was the belief that voluntary association of free individuals was the only legitimate basis for

---

[40] Rothman, *Discovery of the Asylum*, 79-80; Hindus, *Prison and Plantation*, 163.
[41] Ayers, *Vengeance and Justice*, 34-35.

government, and that individuals surrendered only that amount of freedom necessary to guarantee an equal amount of liberty to others. Supporters of the penitentiary argued that prisons fit nicely into the republican ideal. First, imprisonment represented an effective punishment because it deprived citizens of that which they held most dear, freedom. In keeping with the republican ideal proponents averred that deprivation of freedom could be precisely measured in days, weeks, months and years to avoid abuse and to ensure that punishments were proportionate to the crimes. A republic was an aggregation of individuals who were voluntarily committed to the well being of their fellow citizens and the society; prisons offered a way to remove those individuals who were unwilling to sacrifice themselves for the greater good. The penitentiary also represented a move away from the cruel punishments southerners associated with the despotism of Europe and toward punishments that were consistent with a bold new nation based on humanity and reason. Finally, supporters of the penitentiary believed that the ultimate benefit of imprisonment was that it held out the possibility that the offender could be returned to society as a useful member.[42]

Those who opposed prisons argued that these institutions were a threat to the republican ideal. Prisons represented an expansion of governmental authority that was anathema to those southerners whose republicanism meant freedom from any intrusion by the state. And while the deprivation of freedom was thought to be the perfect punishment by prison supporters, detractors believed it to be too harsh a punishment because this particular deprivation made white men unfree and therefore on par with slaves. One critic argued that, "under the penitentiary system a free man is made to labor

directly under the lash as a slave, and is this not worse than death?" This was wholly unacceptable in a region where the social, racial and economic order was based on strict racial hierarchy. Prison opponents went on to conclude that incarceration was such a horrific punishment that southern juries would be reluctant to impose it.[43]

The arguments against the penitentiary rang true in southern ears and most in the region were opposed to the institution. On the only two occasions when prisons were put to public votes they were resoundingly rejected. In 1834 the Alabama legislature held such a vote after bills proposing construction of a prison were rejected in 1832 and 1833. Penitentiary supporters carried the day in the towns of Mobile and Huntsville by a vote of 2613 to 511. But when votes from rural districts were tallied the prison proposal was soundly defeated. A similar referendum occurred in North Carolina in 1846 and ended with similar results; only three counties of the seventy-four in the state returned majorities in favor of the prison.[44]

Despite being a numerical minority, prison supporters were influential men whose power carried the day. The most consistent support came from governors. These men were usually confined to short terms and held relatively little power but they could and did use their offices as "bully pulpits" to champion the cause of the prison. State legislators were another group of supporters whose efforts which led to construction of southern prisons. These lawmakers were members of the educated, slaveholding elite, men who fancied themselves as the cosmopolitan, enlightened self-styled champions of the southern way of life. These men felt that it was their duty to present the South in the

---

[42] Ibid., 40-41, 45.
[43] Ibid., 41-42, 47-48.

best possible light in order to deflect criticism away from slavery and any suggestion of regional backwardness. This of course placed the planter-legislators at odds with the yeomen majority, but as in other instances the plantocracy prevailed. Since the penitentiary was instituted without the consent of the majority it was yet another example of the undemocratic nature of southern politics.[45]

Inside Prison Walls

Once inside the walls of the prison the offender was theoretically isolated from the environmental stimuli that led to criminal behavior; the next phase in the rehabilitation process was to change offenders so that they would no longer be susceptible to the temptations of vice. But how? What means would be used to effect this transformation? What would be the target of the reform effort? The focus of rehabilitation would not be the body as it had been in the past, but the soul. As Michel Foucault has observed, "the expiation that once rained down upon the body must be replaced by punishment that acts in depth on the heart, the thoughts, the will, the inclinations. Suddenly it was the individual's personality, the internal forces which produced the actions which were judged, not so much the actions themselves."[46] The human soul had to be reshaped, and discipline was the tool that would accomplish this monumental task.

From the outset the prison was to be a disciplinary mechanism which would change the offender's soul through strict control of his environment and his body. To accomplish these tasks prison officials relied upon isolation, silence, a strict routine, hard labor and

---

[44] Ibid., 49-50.
[45] Ibid., 52-55, 58.

the whip. Prison reformers in the nineteenth century believed that it was absolutely critical to isolate prisoners from the "unsavory" influences of the outside world. To this end newspapers and books were prohibited and visits were strictly regulated. The goal was to separate the convict from all association with the "world at large." Prisoners also had to be quarantined from the salubrious influences of one another; two systems of prison organization emerged to accomplish this. Under the Pennsylvania System prisoners were isolated from each other for the entire periods of their confinement; they were to eat, sleep and work alone in individual cells and in total silence. In this way there would be no opportunity for offenders to engage in mischief or to act as negative influences on one another. Left in silent isolation and cut off from all negative influences the prisoner would contemplate his moral deficiencies and the reasons for his societal downfall; after a period of such solitary contemplation the prisoner would begin the process of personal transformation. The Auburn System was organized around similar principles but to a lesser degree: prisoners would work together during the day--in silence-- and would only be isolated in their cells at night. While a fierce debate raged among proponents of each system as to which was most effective, in their salient features and objectives they were the same.[47]

Regimentation was the next ingredient in the rehabilitation formula. Reformers believed that individuals fell into crime because of a lack of strict routine and order in their lives; in prison their every hour would be filled with controlled, purposeful activity. Hard labor was at the center of the daily regimen. Labor was designed to break the

---

[46] Foucault, *Discipline and Punish*, 16-18.

inmate of idleness, one of the leading causes of criminality, and to make prisons self-sufficient, though they rarely were. The daily routine of New York prisoners is illustrative. The prisoners were awakened at 5:00 a.m. for two hours of work before breakfast. At 7:00 a.m. they ate breakfast, after which they returned to work for three hours and 45 minutes. At noon there was a break of one hour and 13 minutes for lunch, then it was back to work for four hours and 45 minutes. Prisoners worked an average of ten hours per day, from sunup to sundown, six days a week. Respect for the Sabbath and a lack of artificial light prevented the lengthening of the workday and week.[48]

Having conceived and created what was believed to be the perfect disciplinary mechanism did not guarantee that it would work. What was to be done with those inmates who failed to respond to rehabilitative discipline? After all, prisoners could fail to conform to the required discipline in myriad ways. They could fall outside time parameters through tardiness, interruption of assigned tasks, and feigned illnesses. They could fail to perform activities properly through inattention, negligence and a lack of zeal. They could break rules of proper behavior by being impolite or disobedient, by fighting, making improper gestures or failing to bathe. Or they could simply talk to each other. What mode of discipline was appropriate when discipline itself failed? Some prison officials believed the answer was more discipline and ordered the transgressing inmate to repeat the correct behavior over and over until it became second nature.[49] When this technique failed officials turned to the old standbys of the whip, the yoke, and the

---

[47] Rothman, *Discovery of the Asylum*, 82-88; 95-96; Foucault, *Discipline and Punish*, 238-39; Barnes, *The Story of Punishment*, 125-44.
[48] Rothman, *Discovery of the Asylum*, 103-104. For similar daily routines in European prisons see Foucault, *Discipline and Punish*, 6-7; 236..

ball and chain. Discipline had to be maintained, even if it meant turning to the very methods the prison was designed to replace. As one assistant warden at Ossining prison remarked in 1834, "Prisoners must be made to know that here they must submit to every regulation, and obey every command of their keepers." Discipline was at the heart of the reform effort and it had to be maintained, even if the cost to inmates was high.[50]

The Spread of Discipline

Despite the more than occasional use of the old barbaric methods the prison was considered an innovation, one that could serve as a model for addressing other social concerns. Like crime, poverty and insanity were the unfortunate products of poor social organization and discipline; if the techniques used in prison could solve the crime problem caused by such failings then the poor and insane could be reclaimed through them as well. This line of thinking led to the birth of the almshouse and the asylum. But the techniques of discipline had applications that spread beyond the walls of these closed institutions. The heart of discipline was not simply guards, walls, whips and work, but a system which fixed individuals in space, classified them, extracted from them the maximum in time and energy, trained their bodies, coded their behavior, maintained them in perfect visibility and produced a body of knowledge about them which would enable others to make them docile bodies suitable for specific purposes. Conceived in this way discipline could be used in practically any situation where a group of individuals had to be changed or molded to fit an ideal. The mechanisms of discipline spread from the prison, asylum and workhouse to the army, the hospital, the factory, the orphanage, to

---

[49] Foucault, *Discipline and Punish*, 178-80.
[50] Rothman, *Discovery of the Asylum*, 101-103.

moral improvement associations and our own corporation. Discipline began as a set of practices conducted in closed institutions; by the early nineteenth century it had spread throughout the society, free from the walls of the prison. In the beginning discipline had been reactionary, a response to negative behavior; now it was a positive good because it trained and improved the individual, the principle goal of all Western reform movements.[51]

The Decline of Corporal and Capital Punishment

The rise of discipline as the dominant means of punishment led to corresponding campaigns against corporal and capital sanctions. Crusades against these forms of punishment were part of larger nineteenth century reform movements that considered immoderate physical punishment, slavery, war, dueling and other forms of violence as "relics of barbarism," holdovers from an unenlightened past. Excessive corporal punishment violated the human and civil rights of those on whom it was inflicted. Human beings had an "inalienable right to human sympathy, kindness and respect."[52] Reformers did not believe that corporal punishment should be abandoned altogether, but rather, that it should not be arbitrary or extreme. The most important goal of reform was a well-ordered society; if whipping was necessary as a last resort to achieve this goal then so be it. The lash was thought especially appropriate for certain groups. Those from impoverished backgrounds were the products of poor parenting and corrupting influences; therefore, strict discipline might be needed to reform them. And while women were thought to be repositories of virtue and gentleness, those who prostituted themselves

[51] Foucault, *Discipline and Punish*, 209-10, 231, 297-98; Rothman, *Discovery of the Asylum*, 84.

or otherwise engaged in criminal behavior forfeited these positive assumptions. Aframerican women in particular were thought to be "shameless, depraved and abandoned."[53] The same was certainly thought of black men. In the minds of northerners whipping was a punishment associated with slavery and the oppression the institution visited on blacks. As a result flogging was not a fit punishment for free, democratic white men. This negative association is captured in Richard Henry Dana's experience as a seaman and his captain's views on the whip and his use of it: "You see your condition!.. I'll make you toe the mark, every soul of you, or I'll flog you all...You've got a driver over you! Yes, a slave driver—a negro driver! I'll see who'll tell me he isn't a negro slave."[54]

The campaigns against corporal punishment even reached into the prisons, where its use had been thought essential. Prison reformers argued that corporal punishment hampered the efficiency and professionalism of prisons because the hearts of those who received it were hardened; they were made angry and cruel and given a reason to seek revenge, not rehabilitation. For those prisons that relied on convict labor to secure their financial well being, flogging was particularly inefficient; severe beatings deprived penitentiaries of the labor of inmates and resulted in additional medical expenses. Reformers believed that treating inmates fairly and humanely would maximize prison efficiency.[55]

---

[52] Myra C. Glenn, *Campaigns Against Corporal Punishment: Prisoners, Sailors, Seamen and Children in Antebellum America* (Albany, NY: State University of New York Press, 1984), 39-41, 54-55.
[53] Ibid., 57-60.
[54] Ibid., 57.
[55] Ibid., 27-28, 45.

By the 1850s the campaigns against excessive corporal punishment began to produce results. The use of the whip and related instrumentalities in northern prisons had begun to decline. In 1850 Congress prohibited flogging in the United States Navy, thus bringing to an end a seafaring tradition dating back centuries. Corporal punishments were also used less frequently in northern public schools and middle-class homes.[56] Southerners were more ambivalent in their attitudes about corporal punishment. When Congress debated the abolition of naval flogging southern representatives fought to continue the practice. Historian Myra C. Glenn argues that this support was the product of slavery and the sectional rivalry it produced. The southern men saw attacks on flogging as veiled assaults on slavery and responded by labeling opponents as "radicals" and "fanatics," in much the same way as they labeled abolitionists. Living with slavery also produced a more cynical view of human nature and society. Human beings were not wholly rational creatures and therefore fear and physical punishment were the only true means of ensuring that individuals remained in the places assigned them; whipping was thus necessary to maintain the ideal hierarchical society.[57] While these southern congressmen supported flogging in the abstract, and for sailors in the navy, it was not supposed to be used for white men because it placed these men on the level with black slaves, a clearly unacceptable outcome.

The advent and rise of penal discipline also fueled movements to limit or abolish the death penalty. In *On Crimes and Punishments*, Cesare Beccaria argued that capital punishment violated both utilitarian and contractarian principles. The right to punish was

---

[56] Ibid., 135, 146.
[57] Ibid., 114-15, 125.

the product of the voluntary surrender of small amounts of personal liberty in order to secure the remaining freedoms. Beccaria reasoned that no man would agree to surrender his life, in essence all of his liberty, in order to protect it: "Who has ever willingly given up to others the authority to kill him? How on earth can the minimum sacrifice of each individual's freedom involve handing over the greatest of all goods, life itself?" Without the permission of the citizenry, which would not be given, executions were "an act of war on the part of society against the citizen that comes about when it is deemed necessary or useful to destroy his existence."[58] Beccaria also concluded that the death penalty failed on utilitarian grounds in that it produced no deterrent effect because it did not make a lasting impression on potential criminals. Beccaria averred that, "It is not the intensity, but the extent of punishment which makes the greatest impression on the human soul. For our sensibility is more easily and lastingly moved by minute but repeated impressions than by a sharp but fleeting shock.... It is not the terrible but fleeting sight of a felon's death which is the most powerful brake on crime, but the long-drawn-out example of a man deprived of freedom..."[59] Capital punishment was also an unreasonable sanction because, with the exception of murder, it was wholly out of proportion to the original criminal offense. Finally, the death penalty engendered scorn for the state and sympathy for its victim because, in Beccaria's view, it was yet another example of human savagery, one in which the roles of criminal and victim were effectively reversed: "It seems absurd to me that the laws, which are the expression of the public will, and which hate and punish

[58] Beccaria, *On Crimes and Punishments*, 66.
[59] Ibid., 67.

murder, should themselves commit one, and that to deter citizens from murder, they should decree a public murder."[60]

Enlightened Americans were persuaded by Beccaria's arguments and instituted campaigns to reform laws regarding the death penalty or, in several instances, to abolish it altogether. On March 3, 1787, concerned citizens of Philadelphia gathered at the home of Benjamin Franklin to hear Dr. Benjamin Rush, physician and signer of the Declaration of Independence, make the case against the death penalty; Rush read from his essay, *An Enquiry into the Effects of Public Punishments Upon Criminals and Upon Society.* In his *Enquiry*, Rush argued that executions as an expression of the public will had the effect of corrupting the morals of society. He also reasoned that death is an excessive punishment if the goal of punishment is to prevent the offender from committing additional crimes; imprisonment would keep society safe and held out the possibility that inmates might be rehabilitated and made into contributing members of society. Rush concluded by asserting that the death penalty was an atavistic holdover from a barbaric age which was wholly inconsistent with an enlightened, civilized one. Rush's widely publicized and highly controversial treatise is credited with having launched the first major movement against capital punishment in the United States.[61]

Another Philadelphian took a giant step toward the abolition of the death penalty in 1793. In that year Pennsylvania Attorney General William Bradford proposed the idea of degrees of murder in *An Enquiry How Far the Punishment of Death Is Necessary in Pennsylvania.* Bradford argued that the only purpose of punishment was the prevention

---

[60] Ibid., 68-70.

of crime by incapacitating the offender and deterring others by example. Bradford believed that those who committed first-degree murder were so depraved that redemption through imprisonment was not possible and therefore the death penalty was appropriate in those instances. First degree murder was the "willful, deliberate and premeditated killing" of another or a murder committed during "arson, rape, robbery or burglary." Other killings were the product of accident and/or less culpable states of mind; these individuals were suitable candidates for lesser punishment and rehabilitation. Bradford's ideas were incorporated into the Pennsylvania penal code in 1794 and the use of capital punishment was restricted to first-degree murder. Many other states quickly followed suit, making the death penalty applicable only to first-degree murder or other serious crimes, thus ending the practice of sentencing offenders to death for petty and less serious crimes.[62] After opening its prison in 1817 Georgia reduced the number of capital offenses from 160 to twenty.[63]

Pennsylvania was again in the forefront of reform by banning public executions in 1834; Rhode Island, New York, Massachusetts and New Jersey did so by 1835. States also gave juries the option of imposing sentences other than death for murder, starting with Tennessee and Alabama in 1841. Louisiana adopted a similar practice for all capital crimes in 1846. Michigan changed its laws and made death the mandatory penalty only for treason. Antebellum reform reached its peak when Michigan eliminated the death penalty altogether in 1846; Wisconsin and Rhode Island did the same in 1852 and 1853,

---

[61] Bryan Vila and Cynthia Morris, eds., *Capital Punishment in the United States: A Documentary History* (Westport, CT: Greenwood Press, 1997), 20-23.
[62] Ibid., 24-28. William Bradford would go on to become Attorney General of the United States; Rothman, *Discovery of the Asylum*, 61.

respectively. The lower legislative houses of Connecticut, Iowa and Ohio passed bills to end capital punishment that failed to pass in the upper chambers.[64]

By the 1850s theories and methods of punishment had changed considerably from the colonial period. In the earlier era corporal and capital punishments were routinely administered for a wide range of criminal offenses. These punishments were not designed to rehabilitate offenders but rather, to incapacitate and terrorize them and to deter others. The Enlightenment and the American Revolution produced changes in these rationales for punishment; in the aftermath of these revolutions the purposes of punishment were to temporarily incapacitate and to rehabilitate using the least amount of force possible. The prison became the laboratory in which these experiments in social engineering were to take place. Its methods of discipline spread to other closed institutions and ultimately into the society at-large. Concurrent with the rise of the prison was the decline of corporal and capital punishment; these changes were instituted in order to highlight the prison as the cornerstone of punishment and to bring the entire apparatus of punishment into the enlightened order envisioned by reformers. But did this new order of punishment include Aframericans?

Aframericans and Nineteenth-Century Penal Reform

In the main Aframericans did not benefit from the salutary criminal justice reforms of the Jacksonian era. Corporal and capital sanctions remained as staples of punishment and blacks were not incarcerated for their criminal acts. This exclusion was the result of

---

[63] Ayers, *Vengeance and Justice*, 43.
[64] Mark Costanzo, *Just Revenge: Costs and Consequences of the Death Penalty* (New York: St. Martin's Press, 1997), 8-9; Hugo Adam Bedau, ed., *The Death Penalty in America: Current Controversies* (New York and Oxford: Oxford University Press, 1997), 4-6; Walker, *Popular Justice*, 76.

Aframericans' status as slaves and non-citizens; for largely practical reasons they were no longer included in the dominant scheme of punishment as they had been in the eighteenth century.

Amelioration of the physically brutal systems of punishment that prevailed in the colonial period was largely the result of an altered understanding of the transformative capabilities of human beings. It would follow then that if Aframericans were essentially the same as whites the new technologies of punishment could be applied to them as well. At the same time the debate was occurring involving the correct nature of punishment, one was underway to determine the true nature of African peoples. From their earliest contacts with Africans through the end of the eighteenth century, Europeans and their descendants generally agreed that blacks were of the same species as themselves and possessed the same physical, moral and intellectual qualities, although of a decidedly inferior order and magnitude. This inferiority was not the product of God's original design, but was the result of millennia of exposure to an "uncivilized" and "savage" environment. The leading treatise on the subject was *Essay on the Causes of the Variety of Complexion and Figure in the Human Species*, by Princeton professor of moral philosophy Samuel Stanhope Smith. Writing in 1787, Smith argued that there was one single creation of all mankind as described in the Book of Genesis, and that all subsequent variation in racial attributes was the result of differences in what he called "climate," "state of society," and "habits of living."[65] In articulating this position Smith was lending his support to monogenesis (singular origin), the dominant eighteenth

[65] Winthrop D. Jordan, *Black Over White: American Attitudes Toward the Negro, 1555-1812* (Chapel Hill: University of North Carolina Press, 1968), 487.

century theory on the origin of the human species. Professor Smith concluded his work by averring that Africans could be improved, and in fact could actually become white, if they were exposed to the proper environmental forces. This conclusion was not as controversial as it might have been because Smith, like all other monogenesists, added in the 1810 edition of his work that the Caucasian was the original, superior racial stock from which all other peoples evolved.[66] Smith's environmentalism was in keeping with Enlightenment rationalism, and clearly indicated that blacks could be improved through environmental changes in the same ways as whites; therefore, the methods of discipline could have been effectively applied to Aframericans in southern prisons. His theory was considered the final word on the matter until the 1840s, when southern intellectuals found the need to challenge it.

By the late antebellum period the South felt the need to defend slavery against the abolitionist onslaught being mounted against it. One way to do so would be to argue for the irreversible inferiority of the Negro and to claim a separate origin from whites. One of the principal propagandists for this southern position was Alabama physician Josiah C. Nott. Relying on the anatomical investigations of Dr. Samuel George Morton of Philadelphia and Egyptologist George R. Gliddon, along with the findings of Swiss biologist Louis Agassiz, Nott made the polygenesists' case for separate origins of the black and white races. Anatomically Africans had smaller cranial cavities than whites, meaning that they were forever limited in their intellectual capacities. To refute the claim

---

[66] Ibid., 484, 486-88, 509, 514; George M. Fredrickson, *The Black Image in the White Mind: The Debate on Afro-American Character and Destiny, 1817-1914* (New York: Harper & Row, Publishers, 1971), 71-72; Carl N. Degler, *In Search of Human Nature: The Decline and Revival of Darwinism in American Social Thought* (New York and Oxford: Oxford University Press, 1991), 5.

that advanced civilizations like those of Egypt were the product of black ingenuity as abolitionists claimed, Nott cited Gliddon's cranial and archaeological examinations to prove conclusively that Egyptians were not Negroes. Finally, Nott used Agassiz's discovery that specific differences within the plant and animal kingdoms were not the product of separate responses of the same species to differing environments, but were rather entirely different *creations* produced by the environmental demands of the different regions. This proved that it was not only possible but also highly likely that separate creations were responsible for the superiority of whites and the inferiority of blacks.[67] Nott's propagandizing created quite a stir among southern evangelicals, who believed that such notions collided blasphemously with the scriptures, but was ultimately accepted by a number of leading pro-slavery intellectuals. Polygenesis provided nice rhetorical ammunition in the war of words between southern intellectuals and abolitionists but that, as pro-slavery jurist Thomas R.R. Cobb of Georgia noted, was of little practical consequence because "whether the negro was originally a different species, or is a degeneration of the same, is a matter indifferent in the inquiry as to his proper status in his present condition."[68] In other words, the nineteenth century Negro was inferior and would remain so for the foreseeable future and whites therefore were justified in enslaving him.

Despite the sometimes vociferous nature of the debates surrounding the origins of the African no theories emerged which suggested that blacks would not be amenable to the salubrious effects of prison discipline. Under Samuel Stanhope Smith's

---

[67] Fredrickson, *Black Image*, 74-76.
[68] Ibid., 82-83.

environmentalism Aframerican criminals would have certainly benefited from strictly controlled surroundings and routines in the same way as white offenders. And the polygenesis of Josiah C. Nott only attempted to explain and further legitimize Negro inferiority, not to suggest that blacks were any more inferior than they had always been in the minds of whites. In 1787 Thomas Jefferson concluded that Africans were lazy, dimwitted, guided by passion, and lacking in true artistic ability. Jefferson presaged Thomas R.R. Cobb, who in 1858 also concluded that blacks were an "indolent," "lascivious," "mendacious" group whose "mental capacity renders them incapable of successful self-development, and yet adapts them for the direction of a wiser race."[69] So despite the lack of an ideological rationale for excluding most Aframericans from penal reform blacks—with few rare exceptions--were not imprisoned in the South.[70]

Free persons of color were also rarely imprisoned. They made up less than one percent of the prison populations of Alabama and Mississippi in the 1850s and less than 8 percent in Tennessee and Kentucky; in Georgia there were no free black prisoners at all. Free blacks were not kept out of southern prisons because they could not be rehabilitated, but rather, because their presence would hinder the rehabilitation of whites. Imprisonment was a punishment designed for free, republican white men. Having blacks and whites in

---

[69] Jefferson, *Notes on the State of* Virginia, 138-41; Thomas R.R. Cobb, *An Inquiry into the Law of Negro Slavery in the United States of America to Which is Prefixed an Historical Sketch of Slavery*, with an Introduction by Paul Finkelman (Athens: University of Georgia Press, 1999), 36-46.

[70] Daniel Flanigan asserts that statutes in Louisiana, Arkansas and Maryland provided for the imprisonment of slaves. Flanigan notes that the imprisonment provision was removed from Arkansas statute books by 1856. In another note Flanigan observes that the secondary literature contains no evidence that slaves were ever imprisoned in Kentucky but he does not make this assertion in the main text of his study. The history of Maryland is more interesting. In 1809 the state legislature provided for imprisonment of slaves but repealed the law in 1818. In 1845 a group of slaves was convicted of insurrection and their owners importuned the governor to imprison rather than execute them, and the law was changed to allow the imprisonment of blacks. But by 1858 the governor complained that half the prison population was black

the same prisons symbolically raised the status of blacks and lowered that of whites, destroying their pride in the process. This lack of racial self-esteem would certainly have hampered efforts to remake white criminals into respectful, contributing members of the community.[71]

The reasons for not incarcerating black criminals were not ideological but were instead the product of the logic and imperatives of chattel slavery. Aframericans in Georgia and elsewhere in the South were there for one purpose and one purpose only, to labor. Anything that interfered with that purpose was not long tolerated. Quite simply put, imprisoning blacks would take them away from the fields, kitchens and shops where their labor was vital to the southern economy, culture and identity. Even if slaves were imprisoned, would this really have been a punishment for them? The essence of incarceration is the deprivation of freedom, and as one southern legal authority noted, "slaves have no rights to respect, no civic virtue or character to restore, no freedom to abridge."[72] And New South patrician Walker Alexander Percy opined that while white men viewed work and industry as virtues, blacks worshipped idleness; accordingly, prison was not thought of as punishment by Aframericans but as a refuge, "a place to lounge about with other loafers."[73] While Percy was referring to Aframericans during the era of Jim Crow, his point would not have been lost on antebellum southerners.

---

and the law was changed to permit slave criminals to be sold out of the state. Flanigan, *Criminal Law of Slavery*, 21-24, 419-20.

[71] Ayers, *Vengeance and Justice*, 61-62.

[72] David M. Oshinsky, *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press Paperbacks, 1996), 6.

[73] Ibid., 83.

With prisons off-limits to slaves and free blacks judicial authorities in Georgia were left no choice but to continue the corporal and capital punishments of the colonial era. T.R.R. Cobb explained it this way:

> The condition of the slave renders it impossible to inflict upon him the ordinary punishments, by pecuniary fine, by imprisonment, or by banishment. He can only be reached through his body, and hence, in cases not capital, whipping is the only punishment which can be inflicted...The extremes, death and whipping, being the only available punishments, it becomes necessary in forming the slave code, to throw all offenses under the one or the other.[74]

With only their bodies to offer up on the altar of punishment blacks were subject to a much wider range of corporal and capital punishments than whites. By the mid-1850s there were no crimes for which death was the *mandatory* penalty for whites in Alabama, (whites *could* be executed for six crimes) but there were at least eighteen such offenses for slaves. During the same time period Florida enumerated twenty-three punishments for which death was mandatory and three others where hanging could be prescribed. In Tennessee whites could be put to death for two offenses while slaves could be executed for eight criminal offenses; in Missouri there were four capital offenses for whites and four for slaves. Kentucky slaves were executed for eight offenses while whites were subject to the death penalty for only half that number of crimes; the figure for slaves and whites in South Carolina was thirty-six and twenty-six, respectively. Statues in North Carolina provided the death penalty for bondsmen convicted of forty offenses while whites faced death for committing thirty-six capital crimes. In Georgia there were twenty

---

[74] Cobb, *Inquiry into the Law*, 266. Cobb notes that other corporal punishments from the colonial period like cropping of the ears, slitting of the nose and castration were gradually abolished by the 1850s. This was not true in Georgia, Cobb's own state, where Aframericans were mutilated in these ways right through the end of the Civil War. This factual inaccuracy is certainly a deliberate attempt to present the southern criminal justice in the best possible light.

capital offenses for blacks (both free and enslaved) and thirteen for whites. Virginia topped all other southern states in capital punishments for slaves; while there was only one capital crime for whites, first-degree murder; there were *sixty-eight* such offenses for slaves.[75] In addition to the myriad capital penalties to which they could be subjected, black criminals in all slaveholding states faced whipping, branding, castration and other forms of physical punishment and mutilation, although to a lesser degree than during the colonial period.[76]

With Aframericans in the South facing punishment of the body rather than correction of the "soul," it would appear that they were not the beneficiaries of the "humanitarian" mechanisms of discipline. But this appearance is a deceiving one because black southerners were not only subject to the same instrumentalities of discipline as whites in the closed institutions of Jacksonian America, they had been for generations.

Imprisoned on the Plantation

"Hit wuz just lak bein' in jail, de way us had to stay on de place, 'cause if us went off 'an didn't have no ticket de pattyrollers would always git us, an dey evermore did beat up some of de niggers."[77]

--John Hill, Georgia ex-slave

John Hill recognized a reality that eluded the penal reformers of antebellum America and subsequent generations of historians, that the plantation was in fact a prison. Absent the walls the plantation used, in nearly every particular, the philosophy and means of the

---

[75] Stroud, *A Sketch of the Laws*, 77-87.
[76] Ibid., 87-88; Flanigan, *Criminal Law of Slavery*, 13-18; Cobb, *Inquiry into the Law*, 266.
[77] George P. Rawick, ed., *The American Slave: A Composite Autobiography* (Westport, CT: Greenwood Publishing Co., 1972), v. 12, pt. 2, 203. The WPA slave narratives are an especially good source for examining slave punishments because the topic was standard on questionnaires. Questions routinely asked included, "How were slaves punished?" and "How were crimes against the state punished when committed by slaves, and what was the procedure followed in these cases from time of arrest to final sentence?"

penitentiary to accomplish the goal of creating a good-natured, tractable and submissive labor force. Plantation masters adopted the mechanisms of disciple from the start of slavery in America, more than a century before penal reformers devised the same means for disciplining and correcting whites. The plantation did more than create a disciplined labor force; it was also the institution that was principally responsible for controlling crime. In 1980 Michael Hindus opined that prisons were thought unnecessary by white southerners because the criminal population in the region was black and already confined on the plantation.[78]

The slave was supposed to be a certain kind of man or woman. Like nineteenth century advocates for the disciplining of whites, slaveholders believed that Aframericans could be reformed in the same ways. One master put it this way: "The character of the negro is much underrated. It is like plastic clay, which may be moulded according to the

---

[78] Hindus, *Prison and Plantation*, xvii-xxviii, 125-26. The heart of Hindus' thesis is that the plantation was the functional equivalent of the prison for Aframericans. While making this argument Hindus does not compare the methodologies and philosophies of the two institutions; doing so would make his fine argument far more compelling. Given the superficial dissimilarities between the two institutions it is tempting to conclude that they were not alike at all; however, by looking below these surface elements to philosophy and technique, it is possible to see that slavery is akin to other systems of discipline. In 1959 Stanley Elkins made the controversial comparison between slavery and Nazi concentration camps. Elkins' critics challenged the analogy by arguing that concentration camps were far more severe and too dissimilar for comparison. Elkins anticipated this criticism and urged readers to reverse the order of classification: rather than attempting to view slavery as a type of concentration camp experience, historians should view the concentration camp as a "specialized and highly perverted instance of human slavery." In doing so it is possible to see how some of the basic elements of the enslavement (deprivation of freedom, classification, surveillance, regimentation, the use or threatened use of violence to influence behavior, etc.) could be altered and/or expanded to accomplish other, nearly unrecognizable ends. See Stanley M. Elkins, *Slavery a Problem in American Institutional and Intellectual Life*, 2d ed. (Chicago: University of Chicago Press, 1968), 104. The perspective Elkins advocates is useful when one considers that at bottom slavery is a system of discipline, utilizing techniques that can be put to a wide variety of uses. The prison-plantation comparison is also less challenging when one considers that the vast majority of criminal punishments in the Western world had their origins in slavery, first as the punishments for slaves, then citizens of the lower classes and finally the general public. For a through examination of this evolution see Thorsten J. Sellin, *Slavery and the Penal System* (New York: Elsevier Scientific Publishing, 1976). Viewed in this evolutionary context it is not surprising that slavery can be thought of as a precursor to imprisonment--even if no reformers or masters recognized it at the time. (They would later, as we will see below.)

skill of the moulder."[79] Just as in the penitentiary slaves were transformed by fixing them in space, classifying them, extracting from them the maximum in time and energy, training their bodies, coding their behavior, maintaining them in perfect visibility and creating a centralized body of knowledge through the process of observation.[80] These modalities of discipline were implemented through isolation, guards, strict routines and corporal punishment, just as they were in nineteenth-century prisons, asylums, work and almhouses, factories and the military.

The first principle of discipline is the isolation of the individual and fixing him or her in space. Prison wardens sought to remove offenders from the corrupting influences of the outside world and from each other, and slave masters attempted to do the same. In Georgia and other Old South states the slave patrol was the first element in the process of isolation. These patrols were responsible for ensuring that slaves were not abroad without permission and were authorized to use the lash to do so. Once inside the fence rails of the plantation slaves were further isolated from outside influences by being prohibited from reading, writing or intercourse with free blacks and poor whites. The interactions between bondspeople were monitored and religious meetings and other gatherings were prohibited or conducted under supervision.[81] The location and design of slave dwellings was done at the behest of the masters, and in such a way as to ensure effective surveillance and social

---

[79] James O. Breeden, ed., *Advice Among Masters: The Ideal in Slave Management in the Old South* (Westport, CT: Greenwood Press, 1980), 35. This book is a fine examination of the periodicals consulted by southern masters in order to educate themselves on the latest in staple crop agriculture and slave management and control. These journals included *The American Cotton Planter* (Montgomery, AL, 1853-61), *American Farmer* (Baltimore, MD, 1819-61), *Farmer and Planter* (Pendleton and Columbia, SC, 1850-60), *Soil of the South* (Columbus, GA, 1851-56), *Southern Cultivator* (Augusta, Athens and Atlanta, GA, 1843-61), *Southern Planter* (Richmond, VA, 1841-61) and *DeBow's Review* (New Orleans, LA, 1846-61). These were the principal southern agricultural and commercial journals.

[80] Foucault, *Discipline and Punish*, 231.

relations that were conducive to maximum labor productivity. Of course these measures could not and did not produce the same level of isolation as a prison, nor did they ensure that slaves were kept from corrupting influences as masters hoped. Slaves by necessity were exposed to outside influences when their labor demanded that they visit towns or other plantations. Carriage drivers and hired slaves were abroad often and brought back news from the outside world; house servants overheard the conversations of visitors and shared the news with their fellows. Slaves gathered in secret to have religious and other meetings and slipped off to meet with friends, lovers and spouses on other plantations when permission could not be secured from the master. And despite legal prohibitions some slaves did learn to read, and shared what they gleaned from newspapers and broadsides with others in the slave quarters.[82] But despite the porous nature of plantation "walls " they were there, and they did keep slaves away from "corrupting" influences to a significant degree.

In addition to being told where to live, where to go and with whom to associate, slaves were also clothed, fed and cared for just as inmates were in prison. On one Georgia plantation each slave man received two pairs of pants, several shirts, underwear, wool socks and a pair of heavy red "brogans" at the beginning of each year. (On special

---

[81] See Chapter One for a discussion of those provisions of Georgia law relating to these issues.

[82] Perhaps one of the best examples of collective resistance to the system occurred between South Carolina statesman and planter James Henry Hammond and the slaves on his plantation, Silver Bluff. Hammond acquired the plantation and 147 slaves when he married in 1831. Hammond immediately attempted to control every aspect of the slaves' lives, from the naming of their children to their daily work routines, religious lives and health care. The slave force resisted Hammond's efforts at employing this "despotic sway" by feigning illness, running away, "laying out," holding secret religious meetings, using their own medical remedies, addressing their children by their own names outside the presence of whites, and slowing down the pace of work. After a number of years Hammond was forced to concede defeat by backing away from his more autocratic practices. See Drew Gilpin Faust, *James Henry Hammond and the Old South, A Design for Mastery* (Baton Rouge: Louisiana State University Press, 1982), 69-105.

occasions they wore an issued one-piece jumpsuit called a "roundabout.") On the same plantation slave women were issued one or two dresses per year. Another Georgia ex-slave recalled that both men and women were provided with jeans in winter; in summer men were issued cottonades and canabergs while women were clothed in calicoes and other "light goods."[83] Georgia prison inmates were outfitted in similar fashion. In the early years of the penitentiary at Milledgeville each prisoner was issued a uniform made of "cheap blue cloth with broad white stripes on all the seams." In later years each man was given "one conventional jacket" with "vest and trousers," along with "two pairs of shoes, two pairs of course gum socks, and two shirts."[84] Dressed out in identical clothing like penitentiary inmates, it is not hard to see why ex-slave John Hill thought himself in prison.

The slave diet was also largely the responsibility of the master-warden. Ex-slave Henry Bland recalled that each slave family was given four pounds of meat, one peck of meal and some syrup per week. Breakfast and dinner were prepared for the slaves and carried to the fields. On a Putnam County, Georgia, plantation the weekly ration consisted of 3 ½ lbs. of meat, 1 peck of meal, one quart of syrup, one gallon of flour and one cup of lard.[85] This is comparable to what whites inmates ate in prison. Each person received 1 ¼ pounds of meal and ¾ pound of pork per day. This food allotment was supplemented by one pint of molasses each week—but only for six months of the year.[86] In the low country the basic slave diet was supplemented periodically with fruits, turnips, sweet

---

[83] Rawick, *American Slave*, v. 13, pt. 4, 184; vol. 13, pt.4, 207.
[84] Bonner, "Georgia Penitentiary," 307, 311-12.
[85] Rawick, *American Slave*, v. 12, pt. 1, 82, 128.
[86] Bonner, "Georgia Penitentiary," 307.

potatoes, peas, rice and rice flour, coffee, salted fish, beef, mutton, and molasses.[87] This diet was designed to provide the slave with sufficient calories to allow him to labor effectively. The slave provisioning routine varied from that of the prison in that on some plantations slaves were allowed to grow a portion of their own crops in order to reduce the expenses associated with slave upkeep. But this is not different in principle from those prisons that manufactured goods in order to lower prison maintenance expenses, or those prisons that leased convicts for the same purpose in the Reconstruction South.

Within any system of discipline there are observers, persons who are responsible for ensuring that the procedures of rehabilitation, correction and training are implemented, and that the information gathered through this process is collected, analyzed and disseminated in order to further the goals of discipline. In the penitentiary these persons are guards, in asylums they are orderlies, and on the plantation they were overseers and drivers. The overseer was responsible for the welfare and disciplining of the slaves, the care of livestock and farm equipment, and the production of crops; he made work assignments and supervised slaves in the fields in order to ensure that production quotas were met.[88] To slaves the overseer was "poor white trash" who stood over them all day with a gun; to the master-warden he was the enforcement arm of the plantation system of discipline.[89]

Slave drivers, or "nigger" drivers as the slaves knew them, assisted overseers. These men, slaves themselves, were responsible for close supervision of their fellow slaves in

---

[87] Julia Floyd Smith, *Slavery and Rice Culture in Low Country Georgia, 1750-1860* (Knoxville: University of Tennessee Press, 1985), 113.
[88] William K. Scarborough, *The Overseer: Plantation Management in the Old South*, (Baton Rouge: Louisiana State University Press, 1966), 67.

the fields. They got the slave force out to the fields in the morning, assigned tasks, set the pace of work and inspected the quality of that work at the end of the day. Drivers were also expected to serve as surveillance agents for the overseer in the quarters, although they often acted as double agents for the slaves. In exchange for serving in this unenviable position between master and slave, black drivers received additional rations of food, clothing, and occasionally better housing. They were also reprimanded and punished in private so that their authority among the other slaves would not be undermined.[90] In the penitentiary these prisoner-agents are the trustees, and they are rewarded and punished as drivers were on the plantation.

The overseer and driver were charged with maintaining the work routine, the heart and soul of the system of discipline. In addition to being the engine of profit, the work routine was essential to order and proper behavior. As one Tennessee newspaper editor put it: "Idleness is the fruitful parent of vice. Physical employment is a blessing and relief to those whose minds are listless, and whose resources of enjoyment are few. It is no favor to servants to give them little or nothing to do. If you would find surly, discontented, murmuring servants, seek out the idle ones."[91] This sentiment was certainly shared by prison administrators. Work was also the means of training slave bodies to their tasks. The first step in creating the work/daily routine in a system of discipline is the process of classification. On the plantation each slave was assigned a place in the plantation work order. The most fit men and women between fifteen and thirty were assigned to field gangs to perform the majority of the agricultural labor. A small minority who were

---

[89] Rawick, *American Slave*, v. 12, pt. 1, 108-09.
[90] Ibid., 83; v. 13, pt. 3, 129; Smith, *Slavery and Rice Culture* , 66-67.

thought to be especially inclined was trained as blacksmiths, coopers, carpenters, tanners, shoemakers, seamstresses, laundresses, weavers, spinners, cooks and house servants. Nine or ten year-olds were put to work gathering wood and toting water, cleaning the yards and driving livestock into barns or pens at night.[92] The daily routine of each slave was determined by his position in this system of classification.

The average slave was a field hand and his or her daily routine was most like that of a prison inmate. Georgia slaves were awakened each morning at dawn with the ringing of a bell or a horn blown by the overseer. The day began with breakfast, after which the slaves proceeded to the fields where they worked under the gun of the overseer until noon. A horn or bell sounded for the dinner break, which lasted for approximately one hour. The bondspeople then returned to work until sundown, when the slaves were marched from the fields back to the quarters.[93] During harvest each field hand was required to pick a set amount of cotton each day. On the plantations where ex-slaves Henry Wright and Henry Bland labored each slave was required to pick 200 lbs. of cotton per day; on a plantation near Clinton, Georgia, the picking quota was 300 lbs. of cotton per day. If these quotas were not met slaves could expect to be whipped.[94] With the exception of Sundays and holidays this was the daily routine of most bondsmen, a routine that was designed to change them from free men into a work force of docile, pliant slaves.

---

[91] Breeden, *Advice Among Masters*, 61.
[92] Rawick, *American Slave*, v. 12, pt. 1, 64; v. 13, pt. 4, 314.
[93] Ibid., v. 12, pt. 1, 23; v. 13, pt. 3, 47-49. This daily routine was the norm on plantations using the gang system. In the low country and on the Sea Islands of Georgia the task system was employed; under this system each slave was responsible for the planting, harvesting or cultivation of one-quarter acre of rice or sea island cotton. When the task was completed the slave's time was largely his or her own. Smith, *Slavery and Rice Culture*, 45. Clearly this routine was not as regimented as that of the gang system, but it only applied to a minority of the slave population in Georgia and the rest of the South.
[94] Rawick, *American Slave*, v. 12, pt. 1, 81, 163; v. 13, pt. 3, 229, pt. 4, 182.

The work regimen may have been successful in training the bodies of slaves but something more was needed to make them into the slaves envisioned by the master class. Physical training could make Aframericans work like slaves and the ever-present threat of physical violence could make them act like obedient servants in the presence of whites, but neither method could guarantee that the souls of bondspeople would be changed to fit the ideal; for that a new type of training mechanism was necessary: religion. After a protracted period of early reluctance slaveholders in Georgia and elsewhere realized that religion could be used to transform Aframericans into slaves, body and soul. Just like prison officials masters realized that Christian conversion could be used to reinforce the system of discipline; slaves would become obedient, submissive and happily resigned to their permanent inferiority. The key scriptural basis for this addition to the system was Paul's *New Testament* letter to the Ephesians:

> Servants, be obedient to them that are your masters according to the flesh, with fear and trembling, in singleness of your heart, as unto Christ; Not with eyeservice, as menpleasers; but as the servants of Christ, doing the will of God from the heart; With good will doing service, as to the Lord, and not to men: Knowing that whatsoever good thing any man doeth, the same shall he receive of the Lord, whether he be bond or free. And, ye masters, do the same things unto them, forebearing threatening: knowing that your Master also is in heaven; neither is there respect of persons with him.[95]

The Bible instructed slaves to be slaves not only in body, but in spirit as well. For this heartfelt submission they would be rewarded in the hereafter. In addition to eternal salvation, Christianity provided a sort of temporal equality of the spirit. Clergymen preached that masters were the servants of God just as slaves were; even masters had masters, so why should they as servants be reluctant to serve their temporal masters as

cheerfully as they served their heavenly one? In the Kingdom of God all men would be equal, all that was required to achieve this divine equanimity was a short period of inequality here on Earth.

Armed with this logic and the Bible, southern clergymen and masters began the process of converting Aframericans to Christianity. The center of the conversion movement was low country Georgia and South Carolina, where Charles Colcock Jones, one of the leading clerical proponents of conversion, directed much of his effort. Jones was not alone in his proselytizing; prominent Georgia and South Carolina planters like Charles Cotesworth Pinckney, Edward R. Laurens and Whitemarsh B. Seabrooks were conversion enthusiasts as well. Their efforts were largely successful as the plantation mission movement spread to all of the other slave states, where missionary societies and associations sprang up to increase the number of black Christians. In Georgia thousands of blacks joined Baptist and Methodist congregations, formed independent churches or worshipped in plantation brush arbors.[96] If the weight of cotton produced and length of church rolls were determinative, it would seem that masters and ministers had created the slaves they desired; but all was not as it appeared, and like prison inmates, slaves were far from what they were supposed to be.

Slaves rebelled in every imaginable way against the demands the plantation system of discipline made on their hearts, minds and bodies. Workers slowed down their efforts,

---

[95] Eph. 6:5-9 New Revised Standard Bible.

[96] Smith, *Slavery and Rice Culture*, 141-65. Much has been written about the Aframerican religious experience including Albert J. Raboteau, *Slave Religion: The "Invisible Institution" in the Antebellum South* (Oxford: Oxford University Press, 1978); Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Vintage Books, 1976); Janet Duitsman Cornelius, *Slave Missions and the Black Church in the Antebellum South* (Columbia: University of South Carolina Press, 1999); and Eddie S.

broke equipment, and feigned illness to avoid the routines of the field and shop; bondsmen ran away to escape bondage forever, while others simply slipped away for brief respites from the rigors of plantation life. Slaves who felt entitled to the fruits of their labor stole from their masters' kitchens and smokehouses, often selling the ill-gotten booty to lower class whites in their neighborhoods.[97] And when the demands of the system became more than individual or groups of slaves could bear, they struck out in violence. As trial records clearly indicate, Georgia slaves regularly killed their masters, mistresses, overseers and drivers when these authority figures stepped over carefully defined, though unwritten, boundaries.

Attempts to control the minds and souls of slaves were no more successful than attempts to control their bodies. Masters hoped that regimentation and religion would produce servile and loving black laborers but they did exactly the opposite; religion became a source of inspiration and rebellion. While Christianity demands submission, community, compassion and self-control, it also places great emphasis on justice, divine retribution and the power and equality of the individual spirit; it was to these values that Aframericans clung. Bondsmen may have nodded in seeming agreement when white pastors urged them to submit to their masters, but they rejected such views in their own secret religious services. Some did not even bother to hide their contempt from their white preachers. As Charles Colcock Jones recalled of one group of Georgia slaves:

> "I was preaching to a large congregation on the *Epistle of Philemon*: and when I insisted upon fidelity and obedience as Christian virtues in servants upon the

---

Glaude, Jr. *Exodus: Religion, Race and Nation in Early Nineteenth Century Black America* (Chicago: University of Chicago Press, 2000)

[97] For the first complete synthesis on runaway slaves see John Hope Franklin and Loren Schweninger, *Runaway Slaves: Rebels on the Plantation* (Oxford and New York: Oxford University Press, 1999)

> authority of Paul, condemned the practice of *running away*, one half of my audience deliberately rose up and walked off with themselves, and those that remained looked any thing but satisfied, either with the preacher or his doctrine. After dismission, there was no small stir among them; some solemnly declared 'that there was no such an Epistle in the Bible'; others, 'that they did not care if they ever heard me preach again!'"[98]

Blacks also believed in a heavenly reward, not the one whites envisioned, where earthly power relations would be continued, but a complete reversal. Emily Burke remarked of the slaves on one Georgia plantation, "...they believe and I have heard them assert the same, that in the life to come there will be white people and black people; but then the white people will be the slaves, and *they* shall have dominion over them. I never saw a negro Universalist; for they all believe in a future retribution for their masters, from the hand of a just God."[99] Slaves also believed that the Christian god would one day deliver them from bondage. While the *New Testament* story of Jesus' brief sojourn on Earth was the principal subject of reflection for white southerners, their black Christian brothers and sisters meditated on a man of the *Old Testament*, Moses. Slaves believed that the story of the Israelites' exodus from the slaveholding Pharaoh of Egypt was a prophecy that foretold of their own day of deliverance.[100] The Bible also offered inspiration, confirmation and direction to those black warrior-prophets who could not wait for freedom, men like Gabriel, Denmark Vesey, and Nat Turner.[101] Far from creating slaves,

---

[98] Raboteau, *Slave Religion*, 294.
[99] Emily Burke, *Reminiscences of Georgia in the 1840s, Pleasure and Pain* (Savannah, GA: Beehive Press, 1978, repr. 1991), 15.
[100] Genovese, *Roll, Jordan, Roll*, 252-55.
[101] For the connection between religion and rebellion with Gabriel, Vesey and Turner see Douglas R. Egerton, *Gabriel's Rebellion: The Virginia Slave Conspiracies of 1800 and 1802* (Chapel Hill: University of North Carolina Press, 1993); David Robertson, *Denmark Vesey* (New York: Alfred A. Knopf, 1999); and Stephen B. Oates, *The Fires of Jubilee: Nat Turner's Fierce Rebellion* (New York: Harper & Row, 1975).

religion stoked the fires of discontent in men and women who refused to accept perpetual enslavement.

Southern masters responded to this breakdown in their system of discipline with the only tool available to them, corporal punishment. Like prison officials around the nation, masters once again returned to the lash and the body when efforts to control the minds and souls of slaves failed. In patently Beccarian terms, punishment within the system of discipline was supposed to be a punishment of last resort, one that should be humane, and designed to correct the slaves' improper behavior and to serve as a deterrent to others. As one Georgia planter put it, "I think it is wrong to make them [slaves] believe that they are going to be whipped to death, or nearly so, for everything. If they form that opinion of you, and find, by experience, that you would as soon kill them as not, you may reasonably expect them to resist you to save their own lives."[102] Ex-slaves recalled that many Georgia masters failed to heed this sound advice. Georgia governor Joseph E. Brown routinely whipped his slaves for violations of plantation rules; George Washington Browning's owner was generally humane in whipping slaves, but on one occasion he lost his temper at a slave woman, Aunt Millie, who had been caught stealing. She was whipped until blood ran in streams down her back. Annette Milledge remembered that, "Sometimes dey would whoop dem terrible. Dey tied dem acros't a barrel and whoop dem until de blood run out. De leas' little thing dey whoop de hide off 'em."[103] When the whip failed to produce the desired results masters turned to other forms of corporal punishment. On one Georgia plantation the master hung recalcitrant

---

[102] Breeden, *Advice Among Masters*, 79, 81-85.

slaves by their thumbs from an overhead beam; other slaves were branded for infractions of plantation rules. The "Buck" was used to punish other bad bondsmen. The slave was made to squat and a large stick was placed behind his knees and his hands were tied to it; the man or woman would then be whipped in this most painful position.[104]

Despite the continual use of corporal punishment within the plantation system of discipline slaves never became what their masters hoped they would be. It is certainly true that slaves continued to produce ever-increasing amounts of staple crops and no successful large-scale revolt ever occurred, but bondsmen never ceased to resist their enslavement in every way that they could. In a word, the system failed in its goal of creating a self-perpetuating group of people who would never see themselves as anything more than inferior, submissive extensions of their masters' wills, individuals who were happiest when laboring for others. This failure of discipline was not confined to the plantation, but extended to the prison as well. By the 1850s prison reformers had become convinced that rehabilitation had failed; instead of making convicts into productive members of society prisons had the opposite effect by serving as incubators for criminality and corruption. Disillusionment did not take that long to develop in Georgia. The first year after the prison was opened legislation was introduced to close it because "there was no evidence of any improvement in the morals of the convicts, but on the contrary they were with few exceptions astonishingly dissolute, profligate and insolent." In 1827 a legislative committee reported that the prison had yet to become self-sufficient and continued to fail its mission of prisoner rehabilitation. In 1832 when the prison was

---

[103] Rawick, *American Slave*, v. 13, pt. 4, pp. 128-29; supp. ser. 1, v. 3, pt. 1, p. 114; supp. ser. 1, v. 4, pt. 2, p. 435.

burned to the ground it was suspected that the arsonists were inmates; the legislature passed an act to abolishing the institution. This act never went into effect and the prison was once again funded and rebuilt. When the prison was once again damaged by a fire thought to be the handiwork of prisoners Governor Joseph E. Brown again urged the legislature to close the penitentiary. It was left open but remained subject to intense criticism from government officials and the public as it had been since the first cornerstone was laid.[105] Foucault argues that prison rehabilitation was destined to fail because the "very type of existence it imposes on inmates" is "unnatural, useless and dangerous." Systems of disciple are designed to teach respect for law and order, and yet they are live examples of the abuses of power. As a result of his suffering a prisoner (or slave) becomes angry and does not reflect on his own shortcomings as the source of his sufferings but instead blames the state. (Or his master.) In the outside world a criminal offender might associate with only a small number of fellow criminals; in prison he is forced into intercourse with hundreds or perhaps thousands. Grouped together these anti-social individuals pool their criminal knowledge and resentments and emerge as a far greater threat to society than when they entered the penitentiary; the same could have been said of Aframerican slaves.[106]

Even though masters and prison authorities may have realized that their grand design had failed they did not replace it because they had no substitute that would provide comparable levels of peace, security and productivity. Southerners convinced themselves that their crime problem was safely tucked away on the plantation, and that only the

---

[104] Ibid., supp. ser. 1, v. 3, pt. 1, pp. 4, 63, 71.
[105] Bonner, "Georgia Penitentiary," 308-09, 317-18.

worse malefactors found themselves in the courts. Because these unfortunate men and women had already failed to be controlled by one type of prison, and their labor was too valuable to confine them to another, the only way the slave could be punished was, as T.R.R. Cobb so aptly noted, "through his body." For the remainder of the century Aframericans in Georgia and throughout the South would continue to face disproportionate corporal and capital punishment not because of the magnitude or nature of their crimes, but because of their status as the backbone of a massive, agricultural labor force. Just as in the dark days of slavery blacks were too valuable as laborers to be imprisoned—at least in the traditional penitentiary. Southern legislators solved this age-old conundrum by formally adopting the disciplinary practices of the plantation and making them into an official part of the criminal justice apparatus by creating one of the most dreaded of New South institutions: the prison farm. Black prisoners were sentenced to serve often-lengthy terms of incarceration on these staple-producing estates, living the same brutal, circumscribed lives they had as slaves. The connection between the prison and the plantation had finally been made.[107]

---

[106] Rothman, *Discovery of the Asylum*, 237, 240-42; Foucault, *Discipline and Punish*, 265-266.

[107] The most infamous of these prison-plantations was the Parchman Farm in Mississippi. This cotton plantation covered 20,000 acres and forty-six square miles. On its grounds were an infirmary, a post office, an administration building where new prisoners were processed, as well as a brickyard, a slaughterhouse, a vegetable canning plant, and of course, two cotton gins. The farm was divided into 15 field camps, each surrounded by barbed wire and at least a half-mile apart. Each prison had a barracks where prisoners were housed. A superintendent who conducted himself like a slave master of the past ran the camp; he lived in a Victorian mansion and was attended by convict servants. The superintendent was not chosen for his expertise in penology, but for his skills as an experienced farmer. A sergeant or overseer directed each camp. The sergeant-overseer was responsible for fixing work schedules, disciplining convicts, inspecting crops and setting the daily routine. The convicts were awakened by a steam whistle at dawn and marched to the fields where they picked the required 200 pounds of cotton (just as during slavery) under the watchful eyes and shotguns of the mounted sergeant-overseers. A small cadre of black trustee-shooters supported these white men. These men were convicts who were armed and among the most sadistic and feared in the camps. In exchange for their services as the New South equivalent of drivers, these men received better food and housing and they did not have to work in the fields. And just like in the penitentiary when prison

farm inmates failed to adhere to the rules of discipline they were whipped; the floggings were administered with a leather strap three feet long and six inches wide called "Black Annie." By 1915 Parchman was, in every particular, a self-contained antebellum plantation. One observer described the Mississippi prison farm as "the closest thing to slavery that survived the Civil War." The complete story of Parchman is told in David M. Oshinsky's, *Worse Than Slavery*. Georgia opened its own Parchman-style prison farm two miles west of Milledgeville in 1897. Bonner, "Georgia Penitentiary," 324.

CHAPTER 6

"UNTIL HE SHALL BE DEAD, DEAD, DEAD": THE PUNISHMENT OF AFRAMERICANS IN GEORGIA

The overwhelming majority of Aframericans who were sanctioned for their violations of the personal and property rights of others received those punishments on plantations, far beyond the eyes and ears of the public and of the present generation of historians. We will never know with any degree of certainty the complete nature and extent of their punishments. But the relative handful of black Georgians who were convicted in the state's courts left behind a record that allows us to see how they were disciplined and punished in official tribunals. These Aframericans were subjected to a rather limited range of corporal and capital punishments; they were whipped, whipped and mutilated, or hanged. Exactly which of these punishments a defendant would face and its severity was determined by a number of factors, among them, the category of crime for which the defendant was convicted, the type and nature of the crime within a given category, the status and sex of the defendant, the race, sex and status of the victim, and the relationship between the defendant and victim. How these factors operated is the subject of this chapter.

The Overall Distribution of Punishments

The majority of black defendants, fifty-four percent, were hanged; twenty-five percent were subject to punishments which combined whipping with branding (or some other form of mutilation) and/or transportation, and the remaining eighteen percent were whipped. (See Table 6.1) These figures are in marked contrast to two South Carolina districts, where 94.7 percent of black convicts were whipped. Just over ten percent of

Overall Distribution of Punishments 1755-1865

		Frequency	Valid Percent
Valid	Lashes	36	18.6
	Hanging	105	54.1
	Combination	50	25.8
	Other	3	1.5
	Total	194	100.0

Table 6.1

slaves found guilty in these Palmetto state courts received punishments other than the lash; seven were sentenced to death and nine were transported out of the state. South Carolina courts were not necessarily more lenient. The majority of the convictions were for non-capital offenses; therefore, punishment statistics are skewed toward the lesser punishments.[1]

The predominance of hanging as a punishment is one of the most intriguing and instructive aspects of Georgia's criminal justice system. Most black defendants suffered the fate of Henry Jackson, a slave convicted of raping a twelve year-old girl. A white witness, Catherine M. Huey tells his story:

> At an early hour this evening I dressed and prepared to accompany my brother and sister to Decatur...to witness the execution of Henry Jackson, a slave of Mr. William Jackson....By 10 o'clock a great many people thronged the streets and clustered around the old weatherbeaten log jail. Our little company had become quite a crowd before we reached the public square, where we slowly and carefully drove through the immense crowd of moving beings....For several hours I had been pleasantly situated and with good company, which caused time to pass almost imperceptibly....On one side of the gallows the white people had collected en mass [sic] and were talking gaily, while on the other side the colored people had assembled in squads waiting for the hour of execution. It was gratifying to the feelings to see the willingness of slave-owners to teach their slaves an important lesson by sending them here today....I looked and saw an ox-cart coming on which rode the unfortunate Henry, dressed in a suit of white, sitting by the coffin which was to encase his lifeless form....A Negro man ascended the stand and sang a hymn....At the conclusion of the singing he offered up a very appropriate prayer, which seemed to affect a great many....The convict desired to speak to the people and permission was granted him for fifteen or twenty minutes. His discourse was very affecting....At the conclusion of his speech, the officers began to fix for his execution....They first tied his feet together, then his hands and then adjusted his clothing. The sheriff permitted him to look over the vast multitude of people...then tied a white handkerchief over his face....The hangman's knot was adjusted around his neck...the rope was passed over the cross-bar of the gallows and tied securely....The sheriff...drew the cart, on which the convict stood, from under him, leaving the dangling form of the poor victim suspended in the air by a cord. When

[1] Michael S. Hindus, *Prison and Plantation: Crime, Justice and Authority in Massachusetts and South Carolina, 1767-1878* (Chapel Hill: University of North Carolina Press, 1980), 145.

> the form dropped from the cart, a loud groan went up from the people and they began to disperse.[2]

Executing the greater part of Aframerican defendants would seem to suggest a clear lack of regard for black lives, but the reality is far more complicated. Whites relied upon hanging as a punishment to send the unambiguous message that black criminality would not be tolerated; but there was one very important obstacle to full utilization of this crime control technique. Slaves were an extremely valuable commodity, one that could not be destroyed without dire financial consequences to individual masters and the master class as a whole.[3] As a result Georgia judges and juries had to balance the property interests of slaveowners against the whole public's interest in safety. Over the course of 114 years the scales began to tip increasingly in favor of the property interests of the slaveholding class. Between 1755 and 1811 a staggering sixty-eight percent of black defendants were hanged. This figure declined to 54.5 percent between 1812 and 1849, and ended at 51.7 percent by 1865. (See Tables 6.1.1, 6.1.2. and 6.1.3) This approximately twenty-six percent decline in the use of the noose as an instrumentality of punishment coincides with a number of factors that raised the costs of executing slaves. In 1770 the Georgia legislature passed an act that mandated that the owners of executed slaves be paid the appraised value of the deceased bondsman, provided this amount did not exceed 40 pounds sterling.[4] The purpose of this legislation was to encourage masters to present slave criminals for trial rather than attempting to conceal them or important evidence; this act also had the corresponding effect of removing the principal barrier to the execution of

---

[2] Mills Lane, ed., *Neither More Nor Less Than Men: Slavery in Georgia* (Savannah: Beehive Press, 1993), 180-82.

[3] I refer to slaves during this part of the discussion because, as I will show below, no free black was ever executed in Georgia.

Overall Distribution of Punishments 1755-1811

Punishment		Frequency	Valid Percent
Valid	Lashes	4	21.1
	Hanging	13	68.4
	Combination	2	10.5
	Total	19	100.0

Table 6.1.1

Overall Distribution of Punishments 1812-1849

		Frequency	Valid Percent
Valid	Lashes	15	27.3
	Hanging	30	54.5
	Combination	10	18.2
	Total	55	100.0

Table 6.1.2

Overall Distribution of Punishments 1850-1865

		Frequency	Valid Percent
Valid	Lashes	17	14.2
	Hanging	62	51.7
	Combination	38	31.7
	Other	3	2.5
	Total	120	100.0

Table 6.1.3

[4] Allen D. Candler, ed., *Colonial Records of the State of Georgia*, 32 vols. (Atlanta: Charles P. Byrd, 1910), 19:223-24. (pt. 1)

slaves. This compensation provision was repealed in 1793, thus raising the costs of putting slaves to death.[5] The closing of the slave trade in 1808 and the cotton boom that followed it led to an increase in slave prices that made executing bondsmen a more expensive proposition. In 1830 a prime field hand could be purchased for $700.00; by 1860 this figure had more than doubled to $1,800.00.[6] So during the antebellum period Georgia legislators, slave owners, judges and juries had a tremendous incentive to preserve slave lives because their individual and collective prosperity depended on them. This was accomplished by providing bondspeople with greater procedural protections in court and by using other forms of punishment. (States like Virginia chose to continue to compensate the owners of executed slaves and/or to allow convicts to be sold out of state.[7]) This shift in punishment strategy is reflected in the increased use of flogging and combination punishments. In the period from 1755 to 1850, flogging was the most used sanction after hanging. (See Table 6.1.1and 6.1.2) After 1850 combination punishments surpassed flogging to become the second most popular method of punishment. (See Table 6.1.3) The increased use of combination punishments suggests a desire to inflict a punishment more severe than flogging but less severe than death, thus achieving a rough balance between public safety and the contents of slaveholder pocketbooks.

While whites debated the relative merits of hanging, whipping, branding and which mix of the three would result in a reduction of crime, the potential victims of these deliberations formulated and held their own opposing views. Most slaves objected to the death penalty on scriptural grounds. Ex-slave Mary Carpenter stated unambiguously that

---

[5] John D. Cushing, comp., *The First Laws of the State of Georgia* (Wilmington, DE: Michael Glazier, 1981), 1:530.

[6] Amy P. Burgess, "Slave Prices 1830 to 1860" (Master's thesis, Emory University, 1933), 77.

"I don't believe in hangin' an sich, cauz the word o' God says: Thou shalt not kill." In the view of this slave woman killing a human being, regardless of the justification, was a sin and a crime. Other ex-slaves believed that in a world of sinners no one was qualified to judge and punish anyone else, that power belonged to God. Harriet Benton expressed this sentiment well, opining that, "As people sow, so shall they reap, it is not given to man to judge his fellow man." Anne Prather, who believed that "divine punishment" was mandated for major violations of the criminal law, seconded Benton in her assertion that man was in "no position to judge." Opposition to capital punishment and a belief in divine retribution did not mean that slaves were opposed to all forms of temporal retributive justice. Former slave Robert Kimbrough opposed state sanctioned execution but thought that various forms of physical and mental tortures should be employed in such a way as to compel the criminal to take his own life, "The culprit should bring his own blood down on his own head."[8] In a culture where the decisions of human beings most often went against them, it seems only natural for slaves to argue for divine protection, judgment and punishment.

Those Aframericans sentenced to the lash (alone or as part of a combination punishment) received a mean average of 179 lashes during the colonial and antebellum periods and a median of approximately 117. (See Table 6.2) Moses, a Jones County slave who was convicted in 1822 of stealing $90.00 in bank notes during a burglary, received the lowest number of lashes. He was sentenced to receive twenty-five lashes and

---

[7] Philip J. Schwarz, *Twice Condemned: Slaves and the Criminal Laws of Virginia, 1705-1865* (Baton Rouge: Louisiana State University Press, 1988), 20, 53.
[8]George P. Rawick, ed., *The American Slave: A Composite Autobiography* (Westport, CT: Greenwood Publishing Co., 1972), supp. ser., v. 3, pt. 1 49, 145; supp. ser. 1, v. 4, pt. 2, p. 367, 488.

Statistics

Number of Lashes

N	Valid	80
	Missing	337
Mean		179.9625
Median		117.0000

Numbers of Lashes 1755-1865

		Frequency	Valid Percent
Valid	25.00	1	1.3
	39.00	6	7.5
	45.00	1	1.3
	50.00	4	5.0
	60.00	1	1.3
	75.00	3	3.8
	78.00	2	2.5
	90.00	2	2.5
	100.00	5	6.3
	117.00	17	21.3
	150.00	8	10.0
	156.00	1	1.3
	195.00	3	3.8
	200.00	7	8.8
	234.00	2	2.5
	240.00	1	1.3
	250.00	2	2.5
	300.00	4	5.0
	350.00	2	2.5
	400.00	2	2.5
	434.00	1	1.3
	450.00	2	2.5
	500.00	2	2.5
	1200.00	1	1.3
	Total	80	100.0

Table 6.2

to be removed from the state.[9] The greatest number of lashes were laid upon the bare back of George, an Emanuel County slave convicted of attempting to kill a white man in 1856. The unfortunate George was imprisoned in the county jail for six months. The purpose of the incarceration was not to punish George, but to make him available for his true punishment. Each Tuesday for six months George was to receive 50 lashes on his bare back, for a total of at least 1200 lashes! He was then to be branded on the right cheek with the letter "M" and returned to his life of bondage.[10] Again, the average whipping sentence handed down in Georgia courts far exceeded those of two South Carolina districts where these sentences averaged a little over thirty-nine lashes for much of the antebellum period, although there were a few sentences of over one hundred lashes. By the 1850s this average had climbed to fifty-six lashes.[11]

The number of lashes varied based on when the punishment occurred in relation to the declining use of hanging. During the colonial period black Georgians received a mean average of 123 lashes per defendant, and a median of seventy-five. (See Table 6.2.1) These figures declined slightly after 1811, but skyrocketed to mean and median averages of 220 and 195 lashes, respectively, by 1865. (See Tables 6.2.2 and 6.2.3). This seesawing in lashes is explained by an increase in certain serious crimes after 1850, and the need for Georgia judges to stiffen punishments according. Between 1850 and 1865 prosecutions for murder increased from twenty-five percent of all crimes to 38.9 percent and attempted murder increased from 17.7 percent to 20.5 percent. Rapes rose from 3.1 percent of all criminal prosecutions to 4.9 percent (See Tables 6.3 and 6.3.1) These three

---

[9] *State v. Moses*, Records of the Inferior Court of Jones County, November 30, 1822, Drawer 76, box 72, Georgia Department of Archives and History, Atlanta, Georgia. (Hereinafter cited as (GDAH)).
[10] *State v. George*, Records of the Superior Court of Emanuel County, September 22, 1856, Drawer 113, box, 18, (GDAH).

Statistics

Number of Lashes

N	Valid	6
	Missing	27
Mean		123.1667
Median		75.0000

Number of Lashes 1755-1811

		Frequency	Valid Percent
Valid	39.00	1	16.7
	50.00	1	16.7
	75.00	2	33.3
	100.00	1	16.7
	400.00	1	16.7
	Total	6	100.0
Total		33	

Table 6.2.1

[11] Hindus, *Prison and Plantation*, 145-46.

Statistics

Number of Lashes

N	Valid	25
	Missing	71
Mean		114.5200
Median		117.0000

Number of Lashes 1812-1849

		Frequency	Valid Percent
Valid	25.00	1	4.0
	39.00	2	8.0
	45.00	1	4.0
	50.00	1	4.0
	60.00	1	4.0
	78.00	1	4.0
	90.00	1	4.0
	100.00	2	8.0
	117.00	11	44.0
	150.00	3	12.0
	500.00	1	4.0
	Total	25	100.0

Table 6.2.2

Statistics

Number of Lashes

N	Valid	49
	Missing	239
Mean		220.3061
Median		195.0000

Number of Lashes 1850-1865

		Frequency	Valid Percent
Valid	39.00	3	6.1
	50.00	2	4.1
	75.00	1	2.0
	78.00	1	2.0
	90.00	1	2.0
	100.00	2	4.1
	117.00	6	12.2
	150.00	5	10.2
	156.00	1	2.0
	195.00	3	6.1
	200.00	7	14.3
	234.00	2	4.1
	240.00	1	2.0
	250.00	2	4.1
	300.00	4	8.2
	350.00	2	4.1
	400.00	1	2.0
	434.00	1	2.0
	450.00	2	4.1
	500.00	1	2.0
	1200.00	1	2.0
	Total	49	100.0

Table 6.2.3

Distribution of Criminal Prosecutions 1812-1849

		Frequency	Valid Percent
Valid	Murder	24	25.0
	Attempted Rape	5	5.2
	Attempted Murder	17	17.7
	Arson	5	5.2
	Poisoning	1	1.0
	Burglary	23	24.0
	Other Persons Crime	1	1.0
	Rape	3	3.1
	Mayhem	1	1.0
	Larceny	4	4.2
	Insurrection	3	3.1
	Aiding a Runaway	6	6.3
	Robbery	3	3.1
	Total	96	100.0

Table 6.3

Distribution of Criminal Prosecutions 1850-1865

		Frequency	Valid Percent
Valid	Murder	112	38.9
	Attempted Rape	14	4.9
	Attempted Murder	59	20.5
	Arson	36	12.5
	Poisoning	6	2.1
	Burglary	22	7.6
	Other Persons Crime	3	1.0
	Other Property Crime	1	.3
	Rape	14	4.9
	Attempted Poisoning	3	1.0
	Mayhem	1	.3
	Manslaughter	6	2.1
	Escape	1	.3
	Larceny	2	.7
	Free Black Violation	5	1.7
	Insurrection	1	.3
	Aiding a Runaway	2	.7
	Total	288	100.0

Table 6.3.1

crimes were those most frequently punished with death but with the declining use of the gallows after 1850 alternate means of punishment had to be found. Combination punishments began to be used when executions first began to decline after 1811. While this punishment seemed to be a suitable substitute for hanging it had an intrinsic point of diminishing returns. The intensity of these punishments could only be heightened through more extensive physical mutilation in the form of branding, ear cropping and the like, or by increasing the number of lashes. Additional mutilation could ruin the value of a slave, but the number of lashes could be safely increased by spreading the punishment over a longer period of time (as was done in the cases of George, Moses and numerous others, including those described below), or by mandating that only certain kinds of whips be used. So while the gallows was used less in the late antebellum period, the whip was used more in order to augment combination punishments to a degree which was thought sufficient to deter the criminally inclined among the Aframerican population. While other slave states had used mutilation as a form of punishment during the colonial period, Georgia may have been alone in its continued and consistent use of these draconian punishments through the Civil War.[12]

Like George and Moses, defendants sentenced to combination punishments generally received a number of lashes, followed by branding (to indicate the crime for which the defendant had been convicted), having their ears cropped, or being transported out of the state. In 1862 Tom, a Columbia County slave, was convicted of murder. He was sentenced to receive fifty lashes on six successive Mondays until 300 lashes had been administered, after which he was to be branded on the right cheek with the letter "M" (for

[12] Daniel J. Flanigan, *The Criminal Law of Slavery and Freedom 1800-1868* (New York and London: Garland Publishing, Inc., 1987), 13-17; Hindus, *Prison and Plantation*, 145-46.

murder) and discharged.[13] Greene County slave Simon killed another slave in 1853 and was convicted of voluntary manslaughter. For his homicidal act Simon received thirty-nine lashes and was branded on the right cheek with the letter "M" and discharged. In 1850 King was convicted of arson. The Fayette County slave was sentenced to receive 50 lashes on four separate days in March and April. After the 200 stripes had been administered King was branded on each cheek with the letter "A."[14] In 1861 Talbot County slaves Jeff, Primus and Bill were convicted of burglary. Each slave was branded on the right cheek with the letter "B," and had his left ear cropped in the public square.[15] Convicted slave criminals were branded to that the public—and prospective buyers—would know of their dangerous characters.[16]

Three slaves received sentences other than hanging, whipping or a combination punishment. On April 18, 1865, slaves Caleb and Charlotte were convicted in Oglethorpe County superior court of assaulting a white man with intent to kill and poisoning a white child with intent to kill, respectively.[17] These slaves were not punished at all and their owners were simply required to pay unspecified court costs. This extremely lenient and unusual sentence was undoubtedly due to the fact that the Civil War was over and the

---

[13] *State v. Tom*, Records of the Superior Court of Columbia County, March 5, 1861, Drawer 192, box 26, (GDAH).

[14] *State v. King, a Slave*, Records of the Superior Court of Fayette County, March 16, 1850, Drawer 94, box 27, (GDAH).

[15] *State v. Jeff*, Records of the Superior Court of Talbot County, September 18, 1861, Drawer 126, box 7, (GDAH); *State v. Bill*, Records of the Superior Court of Talbot County, September 18, 1861, Drawer 126, box 7, (GDAH); *State v. Primus*, Records of the Superior Court of Talbot County, September 18, 1861, Drawer 126, box 7, (GDAH).

[16] Flanigan, *Criminal Law of Slavery*, 14-15; Ralph Betts Flanders, *Plantation Slavery in Georgia* (Chapel Hill: University of North Carolina Press, 1933), 263. Flanders argues that branding, ear cropping and other "mutilations of the body" were abandoned as the antebellum period progressed. Flanders, *Plantation Slavery*, 261. This is not correct. Physical mutilation remained a part of combination punishments through the end of the Civil War.

[17] *State v. Caleb*, Records of the Superior Court of Oglethorpe County, April 18, 1865, Drawer 46, box 28, (GDAH); *State v. Charlotte*, Records of the Superior Court of Oglethorpe County, April 18, 1865, Drawer 46, box 28, (GDAH)

defendants were no longer slaves. This sudden change in the status of the majority of Aframericans apparently created tremendous problems for the Georgia criminal justice system because a significant number of cases involving slaves in 1865 were never disposed of. A far less happy ending awaited Bibb County slave Milton. In 1863 Milton was convicted of attempting to rape a white woman. On the twenty-fourth of November a committee of surgeons was "...authorized and directed...to perform on the person of said Milton the surgical operation of castration as the penalty inflicted for the offense for which said boy stands convicted..."[18] A Georgia court had ordered that a black defendant's testicles and/or penis be removed as punishment for a crime, the first and only time this occurred. This grisly punishment was against state law; Georgia had never made castration a penalty for rape or attempted rape, while a number of other states had done so during the colonial period. (The practice had largely disappeared as a formal sanction in most jurisdictions by the antebellum period.) Perhaps sexual mutilation and incapacitation was far too lenient a punishment for a slave rapist, as one middle Georgia newspaper opined in 1827.[19]

Punishment and Categories of Crime

For purposes of this study (and most others of criminal justice), crimes are divided in several categories, generally crimes against persons, crimes against property and crimes against public order. The severity of punishment was significantly affected by the category of crime for which the defendant was convicted. The harshest penalty, death by hanging, was imposed most frequently upon those Aframericans convicted of persons crimes, while the least severe punishments were reserved for those who committed

[18] *State v. Milton*, Records of the Superior Court of Bibb County, November 21, 1863, Drawer 183, box 16, (GDAH).

crimes against public order. Over eighty-eight percent of those who were hanged were put to death for persons crimes, while only 10.6 percent of those executed were sent to the gallows for property crimes. No Aframerican lost his or her life for having been convicted of a crime against public order. (See Table 6.4) This distribution of capital punishments was similar to that of South Carolina. Of the 296 slaves executed between 1800 and 1855, nearly seventy-two percent lost their lives for having committed persons crimes.[20] Georgia and South Carolina were in marked contrast to colonial Virginia, where most slaves were put to death for property crimes. As the antebellum period progressed this Virginia trend was reversed and almost sixty-nine percent of those executed had been convicted of persons crimes, putting the state in line with Georgia and South Carolina.[21]

The use of combination punishments closely approximated that of hanging. Seventy percent of those who were sentenced to receive this punishment had been convicted of persons crimes, compared to only twenty-four percent for property crimes. Only three public order criminals were sentenced to combination punishment. Flogging was the final sanction in the triumvirate of punishment, and it too was imposed more frequently on those convicted of persons crimes. Nearly sixty-seven percent of those who felt the lash were those who had committed crimes against the persons of their fellow Georgians, while only twenty-five percent of property criminals and 2.8 percent of public order criminals were similarly punished. (See Table 6.4)

It is clear from the distribution of punishments that Georgia judges privileged life over property when it came to sentencing black defendants. These sentencing practices were a reflection of the values of a slave society. One of the principal fears of any such society

---

[19] Flanigan, *Criminal Law of Slavery*, 13, 16; Schwarz, *Twice Condemned*, 22.
[20] Hindus, *Prison and Plantation*, 157.

Punishment by Crime Type 1755-1865

			Crime Type				
			Unknown	Persons Crimes	Property Crimes	Crimes Against Public Order	Total
Punishment	Lashes	Count	2	24	9	1	36
		% within Punishment	5.6%	66.7%	25.0%	2.8%	100.0%
		% within Crime Type	66.7%	15.5%	28.1%	25.0%	18.6%
	Hanging	Count	1	93	11		105
		% within Punishment	1.0%	88.6%	10.5%		100.0%
		% within Crime Type	33.3%	60.0%	34.4%		54.1%
	Combination	Count		35	12	3	50
		% within Punishment		70.0%	24.0%	6.0%	100.0%
		% within Crime Type		22.6%	37.5%	75.0%	25.8%
	Other	Count		3			3
		% within Punishment		100.0%			100.0%
		% within Crime Type		1.9%			1.5%
Total		Count	3	155	32	4	194
		% within Punishment	1.5%	79.9%	16.5%	2.1%	100.0%
		% within Crime Type	100.0%	100.0%	100.0%	100.0%	100.0%

Table 6.4

[21] Schwarz, *Twice Condemned*, 15.

was that of insurrection; by punishing crimes against persons most severely whites hoped to eliminate—or certainly curb—slave tendencies towards violence. This concern with the preservation of life was not confined to white lives; as both persons and valuable property slave lives had to be protected as well. And as discussed previously, southern masters had also come to accept a certain level of property crime, especially various forms of theft, as one of the costs of engaging in this particular kind of commerce. These societal priorities are even more evident when one considers the types of crimes and the status of the defendants and their victims.

Punishment and Specific Crimes

Despite the dozens of crimes with which they could have been charged, Aframericans were only convicted and punished for twelve criminal offenses. These offenses were murder, attempted murder, rape, attempted rape, poisoning, manslaughter, robbery, arson, burglary, larceny, insurrection, and aiding runaways. Two slaves were punished for unknown offenses, and two for persons offenses that did not fit into other persons crime types. (Mayhem was an example.) The seriousness with which Georgians regarded these types of crimes is evidenced by the punishments inflicted upon those who committed them. Murder was clearly the most serious crime and it merited the most serious punishment, hanging. Nearly fifty-five percent of those hanged were executed for having committed murder and 69.5 percent of those who were convicted of this crime found themselves on the gallows. This rate of execution for murder was more than three times higher than that of South Carolina, where murder accounted for only 28.6 percent of all

executions.[22] Attempted murder was the next crime on the hierarchy of seriousness and accounted for 14.3 percent of all executions; over thirty-five percent of all Aframericans convicted of attempted murder were hanged. Almost twelve percent of all capital sentences were handed down for rape, and all black defendants convicted of rape were hanged. (See Table 6.5) While convictions for rape were far from certain, the punishment that could be expected was not. Single-digit percentages of blacks were executed for attempted rape, arson, burglary and poisoning. (See Table 6.5) No defendants lost their lives for having been convicted of manslaughter, larceny, insurrection or aiding runaways. (See Table 6.5) This distribution of punishments further demonstrates that crimes against persons were considered to be far more serious than those against property.

The hierarchy of perceived seriousness is also evident in the administration of combination punishments. Forty-two percent of those who received combination punishments had been convicted of murder or manslaughter, and a little more than twenty-five percent of all defendants convicted of these crimes received a punishment of whipping and branding or some other additional corporal sanction. Nearly one quarter of those convicted of attempted murder were sentenced to combination punishments; these defendants accounted for twenty percent of all combination punishments. Since no defendants convicted of rape received combination punishment, burglary replaced this offense in perceived seriousness. Almost thirty-two percent of all burglars were subjected to combination punishment, accounting for fourteen percent of the punishment category.

[22] Hindus, *Prison and Plantation*, 157.These execution figures are based on requests for compensation from the owners of executed slaves rather than court records; therefore, the actual execution figures might have

Punishment by Crime 1755-1865

			Crime			
			Murder	Attempted Rape	Attempted Murder	Arson
Punishment	Lashes	Count	4		16	
		% within Punishment	11.1%		44.4%	
		% within Crime	4.9%		38.1%	
	Hanging	Count	57	7	15	3
		% within Punishment	54.3%	6.7%	14.3%	2.9%
		% within Crime	69.5%	77.8%	35.7%	37.5%
	Combination	Count	21	1	10	5
		% within Punishment	42.0%	2.0%	20.0%	10.0%
		% within Crime	25.6%	11.1%	23.8%	62.5%
	Other	Count		1	1	
		% within Punishment		33.3%	33.3%	
		% within Crime		11.1%	2.4%	
Total		Count	82	9	42	8
		% within Punishment	42.3%	4.6%	21.6%	4.1%
		% within Crime	100.0%	100.0%	100.0%	100.0%

Table 6.5

differed because some owners might not have filed for compensation.

Punishment by Crime 1755-1865

			Crime			
		Statistics	Poisoning	Burglary	Rape	Manslaughter
Punishment	Lashes	Count		7		
		% within Punishment		19.4%		
		% within Crime		31.8%		
	Hanging	Count	2	8	12	
		% within Punishment	1.9%	7.6%	11.4%	
		% within Crime	66.7%	36.4%	100.0%	
	Combination	Count		7		2
		% within Punishment		14.0%		4.0%
		% within Crime		31.8%		100.0%
	Other	Count	1			
		% within Punishment	33.3%			
		% within Crime	33.3%			
Total		Count	3	22	12	2
		% within Punishment	1.5%	11.3%	6.2%	1.0%
		% within Crime	100.0%	100.0%	100.0%	100.0%

Table 6.5

Punishment by Crime 1755-1865

			Crime				
		Statistics	Other Persons Crime	Larceny	Insurrection	Aiding a Runaway	Robbery
Punishment	Lashes	Count	2	2	1		2
		% within Punishment	5.6%	5.6%	2.8%		5.6%
		% within Crime	66.7%	100.0%	100.0%		66.7%
	Hanging	Count					1
		% within Punishment					1.0%
		% within Crime					33.3%
	Combination	Count	1			3	
		% within Punishment	2.0%			6.0%	
		% within Crime	33.3%			100.0%	
Total		Count	3	2	1	3	3
		% within Punishment	1.5%	1.0%	.5%	1.5%	1.5%
		% within Crime	100.0%	100.0%	100.0%	100.0%	100.0%

Table 6.5

Arson closely followed burglary in the category, making up ten percent of the total punishments. While constituting a relatively small percentage of the punishment category, combination punishments were clearly preferred in arson cases; over 62 percent of the arsonists were punished in this way. Only one black defendant was sentenced to combination punishment for attempted rape, and small numbers of defendants received such punishment for manslaughter, other persons crimes and aiding runaways. (See Table 6.5)

Whipping was the least severe punishment and, as one might expect, it was used infrequently for more serious crime. The lash was only applied to the backs of 4.9 percent of those convicted of murder or manslaughter, not used al all for those convicted of rape or attempted rape, arson, poisoning, and manslaughter. Flogging was used primarily to punish those convicted of burglary and serious but non-lethal assaults, accounting for 19.4 percent and 44.4 percent of punishments in the category, respectively. (See Table 6.4) While the use of the whip for a lesser property offense like burglary is understandable, its use in cases of attempted murder is less so. The most likely explanation for this paradoxical outcome is that judges considered the nature of the injury and the status of the victim in individual cases before passing sentence. A slave who cut another slave across the chest could expect to receive the lash, while one who stabbed his master in the heart would not. Clearly the status of the victim must be considered before arriving at conclusions about punishment.

Punishment and the Status of the Victim

Logic dictates that in a society based on racial slavery crimes against the persons of the dominant racial group would be most severely punished; this logic held true for

colonial and antebellum Georgia. Over sixty-five percent of all punishments were administered for committing crimes against whites. The figures for capital punishment were even higher. Seventy-six percent of the Aframerican defendants who were hanged were put to death for having victimized white men, women and children, clearly indicating the premium placed on white lives. Conversely, blacks who victimized other blacks account for only 13.3 percent of all executions. No black defendant was executed for having committed a serious crime against a free black person. This suggests that this group was not of great societal value to those who passed judgment in the criminal justice system; if giving justice to a free black victim meant depriving a master of the valuable life of his slave, the odds were against such justice ever being dispensed. (See Table 6.6)

The connection between punishment and race is strengthened when one considers the use of the whip and combination punishments. In nearly seventy percent of the cases where the whip was used the victim was white; the victimization of blacks mandated this punishment in only 8.4 percent of cases. The relatively rare use of the lash for offenses against Aframericans would seem to indicate that crimes against them warranted severe punishment; this contention is borne out in the statistics for combination punishment. Combination punishments were meted out in approximately half of the cases where the victims were slave or free black men; those who victimized slave men accounted for the largest single group in this punishment category, twenty-six percent. (See Table 6.6) The use of combination punishments in cases of black-on-black crimes makes imminently good sense in a race-based slave society where the majority of such crimes occurred within the slave community. The number one concern, from the point of view of the master class, was the protection and preservation of slave property. This could be

Punishment by Victim Status

			Victim Status		
		Statistics	White Male	White Female	White Person (Gender Unknown)
Punishment	Lashes	Count	18		7
		% within Punishment	50.0%		19.4%
		% within Victim Status	23.1%		31.8%
	Hanging	Count	47	26	7
		% within Punishment	44.8%	24.8%	6.7%
		% within Victim Status	60.3%	86.7%	31.8%
	Combination	Count	12	2	8
		% within Punishment	24.0%	4.0%	16.0%
		% within Victim Status	15.4%	6.7%	36.4%
	Other	Count	1	2	
		% within Punishment	33.3%	66.7%	
		% within Victim Status	1.3%	6.7%	
Total		Count	78	30	22
		% within Punishment	40.2%	15.5%	11.3%
		% within Victim Status	100.0%	100.0%	100.0%

Table 6.6

accomplished by executing those slaves who killed or disabled others, but such executions would represent the loss of more slave lives. One Reconstruction era southerner put it this way: "If a man had two fine mules running loose in a lot and one went mad and kicked and killed the other he certainly would not take out his gun and shoot the other mule, but would work it..."[23] This homespun homily captures the prime directive of slave criminal justice: protect slave lives by punishing those slaves who victimized other slaves as severely as possible without hampering their ability to labor. Combination punishments filled this bill as well as any might under the circumstances.

The sex of the victim played a significant role in the patriarchal society that was colonial and antebellum Georgia. The most severe punishment awaited those who committed offenses against white men. Nearly forty-five percent of those who were executed lost their lives for having committed crimes against white men. The lives of white women were not held cheap, as 24.8 percent of all executions took place because white women had fallen prey to alleged Aframerican criminality. The high value placed on the lives of white women is evidenced by the fact that over eighty-six percent of those who committed crimes against white women were hanged, the highest percentage of any group. While twice as many blacks were executed for victimizing white men, death was far more certain for an Aframerican who criminally violated a white woman. (See Table 6.6)

Those who killed slave men followed those who committed crimes against white women in the percentage of overall executions, accounting for 11.4 percent of the total; this certainly makes sense given their generally greater economic value as laborers.

---

[23] David M. Oshinsky, *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press Paperbacks, 1996), 133.

(Table 6.6) In Georgia a prime male field hand usually cost one-fifth more than his female counterpart.[24] But these punishment figures might severely underestimate the value of slave women. Only two slave women fell prey to crime, and in both cases the perpetrators were hanged. This suggests that slave women were considered as valuable as slave men, perhaps more so. A definitive answer awaits additional study.

An integral part of the victim's status was his or her relationship to the defendant. While the exact nature of the relationships are unknown in the bulk of cases, enough is known to strongly suggest that who the victim and defendant were to each other had a significant effect on punishment. The two most important relationships were between slave defendants and those whites in authority over them, and slaves and fellow bondsmen. As has been discussed throughout this study fear of black-on-white violence—especially violence directed at the master class or its surrogates—was perhaps the overriding concern of the criminal justice system. While masters, mistresses, overseers and other whites in authority over slaves account for only 20.9 percent of all victims, the punishment of those who violated the personal and property rights of this class was severe. Over seventy-five percent of those who were convicted of crimes against the master class were hanged. Another 18.2 percent of such defendants were subjected to combination punishments and only 6.1 percent of this class of defendants was whipped. (See Table 6.7) It is evident from these figures that protection of the bodies, virtue, livelihoods and property of the master class was of paramount interest to Georgia's criminal justice apparatus. The statistics are also deceptive in that they underestimate the true percentage of victims from

[24] Burgess, *Slave Prices*, 76.

Punishment by Victim's Relationship to Defendant

			Victim's Relationship to Defendant			
			Slave Acquaintence or Kin	Master, Mistress, or Overseer, etc.	White Person (Relationship Unknown)	Free Black Acquaintence or Kin
Punishment	Lashes	Count	2	2	23	1
		% within Punishment	7.1%	7.1%	82.1%	3.6%
		% within Victim's Relationship to Defendant	7.4%	6.1%	24.0%	50.0%
	Hanging	Count	14	25	55	
		% within Punishment	14.9%	26.6%	58.5%	
		% within Victim's Relationship to Defendant	51.9%	75.8%	57.3%	
	Combination	Count	11	6	15	1
		% within Punishment	33.3%	18.2%	45.5%	3.0%
		% within Victim's Relationship to Defendant	40.7%	18.2%	15.6%	50.0%
	Other	Count			3	
		% within Punishment			100.0%	
		% within Victim's Relationship to Defendant			3.1%	
Total		Count	27	33	96	2
		% within Punishment	17.1%	20.9%	60.8%	1.3%
		% within Victim's Relationship to Defendant	100.0%	100.0%	100.0%	100.0%

Table 6.7

the slave-owning class. Nearly sixty-one percent of all crime victims were whites whose relationship to the defendants is unknown; certainly some of these white men and women were in positions of authority over their assailants. (See Table 6.7) Philip Schwarz speculates that in Virginia the majority of whites killed by slaves were authority figures.[25] While this study cannot shed definitive light on the magnitude of slave-on-master crimes, it does demonstrate that Georgia judges and juries regarded such crimes quite seriously.

The next most important type of relationship from the perspective of the criminal justice system was that which existed between slave offenders and slave victims. As discussed above, this relationship presented the system with a quandary: how to protect slave lives through punishment without devaluing slave property? What was required was a sanction that balanced severe punishment with a concern for slave lives. Georgians achieved this balance exactly by hanging approximately half of the slave defendants who victimized other slaves, and by subjecting the remaining fifty percent to combination punishments and flogging. It is important to note that the lash was only resorted to in slightly more than seven percent of the cases, suggesting that crimes against the lives/property values of slaves were not taken lightly and would be punished to the limits of economic feasibility. (See Table 6.7) Punishing a slave too harshly could diminish or eliminate his or her value entirely; but failure to punish slaves for assaults that might diminish the value of his or her slave victim could encourage such assaults, or at least make the costs of perpetrating them acceptable.

Before drawing any final conclusions about victim status and punishment we must consider the types of crimes that were committed against particular classes of victims. If a group found itself the victim of a type of crime that was thought especially serious, and

[25]Schwarz, *Twice Condemned*, 137-142, 232.

which was subject to harsher punishment, it can plausibly be argued that it was the type of crime and not the status of the victim that was the determining factor in choosing a punishment.

A cross-tabulation of crime type, victim status and punishment reveals that race, sex and status were key determinants in the punishment process. In crime type categories where both black and white men and women were represented, offenders who victimized whites were punished more severely than those who committed crimes against blacks; and those who were convicted of offenses against women were subject to harsher punishment than those whose victims were men. Aframericans who killed white men were put to death in 96.3 percent of the cases; for white women the figure was even higher: every black Georgian who killed a white woman was hanged. The same was true of those who raped white women; 100 percent of such offenders were killed by the state. These striking statistics clearly demonstrate that the lives and bodies of white women were considered the most sacred in Georgia. No defendant ever received lashes for the murder of a white man or woman. Combination punishment was used in only one case where the victim was a white man. This punishment was never used in cases involving white female victims. (See Table 6.8)

While the black murderers of whites could almost surely expect a death sentence, the same was not true for those who took the lives of Aframericans. Afro-Georgians convicted of killing slave men were only put to death in only 42.3 percent of the cases. The majority of such murderers received combination punishment and a small percentage only received the lash. The picture is quite different for those who killed slave women; in both cases where the victims were bondswomen their assailants were put to death. No

Punishment by Crime and Victim Status

Victim Status				Crime		
				Murder	Attempted Murder	Rape
White Male	Punishment	Lashes	Count		7	
			% within Punishment		38.9%	
			% within Crime		31.8%	
		Hanging	Count	26	11	
			% within Punishment	55.3%	23.4%	
			% within Crime	96.3%	50.0%	
		Combination	Count	1	3	
			% within Punishment	8.3%	25.0%	
			% within Crime	3.7%	13.6%	
		Other	Count		1	
			% within Punishment		100.0%	
			% within Crime		4.5%	
	Total		Count	27	22	
			% within Punishment	34.6%	28.2%	
			% within Crime	100.0%	100.0%	
White Female	Punishment	Hanging	Count	7		12
			% within Punishment	26.9%		46.2%
			% within Crime	100.0%		100.0%
	Total		Count	7		12
			% within Punishment	23.3%		40.0%
			% within Crime	100.0%		100.0%

Table 6.8

Punishment by Crime and Victim Status

Victim Status			Statistics	Crime: Murder	Crime: Attempted Murder
Slave Male	Punishment	Lashes	Count	2	
			% within Punishment	100.0%	
			% within Crime	7.7%	
		Hanging	Count	11	1
			% within Punishment	91.7%	8.3%
			% within Crime	42.3%	100.0%
		Combination	Count	13	
			% within Punishment	100.0%	
			% within Crime	50.0%	
	Total		Count	26	1
			% within Punishment	96.3%	3.7%
			% within Crime	100.0%	100.0%
Slave Female	Punishment	Hanging	Count	2	
			% within Punishment	100.0%	
			% within Crime	100.0%	
	Total		Count	2	
			% within Punishment	100.0%	
			% within Crime	100.0%	
Free Black Male	Punishment	Lashes	Count	1	
			% within Punishment	100.0%	
			% within Crime	50.0%	
		Combination	Count	1	
			% within Punishment	100.0%	
			% within Crime	50.0%	
	Total		Count	2	
			% within Punishment	100.0%	
			% within Crime	100.0%	

Table 6.8

Aframerican was hanged for killing a free black, once again suggesting the minimal value Georgia slaveholding society placed on the lives of those who were of no pecuniary value. (See Table 6.8)

The same pattern of racial bias appears in the statistics regarding attempted murder. Fifty percent of those who committed potentially life-threatening assaults on white men were executed; nearly 32 percent were whipped and 13.6 percent received combination punishments. The comparatively low execution rate and the liberal use of the lash seems to indicate that attempted murder was not taken as seriously as one might expect; this is not so. I believe that this distribution of punishments represents recognition of the varied nature of attempted murder. A slave man who stabbed an overseer could be charged with attempted murder, as could one who struck a patroller on the shoulder with a fence rail. Judges took into consideration the type of weapon, status of the victim and the nature of the injuries in each case and meted out punishment accordingly. A few examples will serve to make the point. On September 19, 1864, Elias, a Macon County slave, was convicted of stabbing two white men in the back with a knife; he was sentenced to hang. In Sumpter County in 1861 Monday pleaded guilty to attempting to beat a white man to death with his hands and feet. For his felonious assault he was sentenced to receive thirty-nine lashes on his bare back on three non-successive days; he was then to be branded on the right cheek with the letter "M." Troup County master Joseph W.B. Edwards was struck with a wagon standard by his bondsman William, who pleaded guilty to the crime. The slave assailant received thirty-nine lashes on four successive days. Finally, Caleb, the Oglethorpe County slave referred to above, beat and wounded a white man with a

walking cane and a Colt pistol. Caleb was convicted but not punished at all.[26] In the single case where an Aframerican was convicted of attempting to kill a slave man, the defendant was put to death. (See Table 6.8) This does not indicate that attempting to kill a slave man was more serious than actually killing one; this case appears to be an isolated anomaly.

Ultimately the race, sex, and status of the victim within Georgia's slaveholding society had a profound impact on the punishment of Aframerican defendants. Those who victimized whites were punished far more severely than those who committed crimes against blacks. Within the white demographic group the lives and bodies of women were the most valued; blacks who violated them could almost certainly expect to be hanged. Georgia judges and juries thought that crimes committed against whites in authority over slaves were especially damaging to the fabric of society; accordingly these crimes were punished with particular severity. While the lives and property of whites were held in high regard, those of free blacks were not. Crimes committed against them were rarely punished as seriously as those against the interests of whites or slaves. Bondsmen occupied a unique position within the scheme of punishment. On the one hand they were dangerous internal enemies the society had to protect itself against, which meant that they should have received the most extreme punishments the society could devise. But at the same time this menacing group was highly valuable to those they would victimize, so their lives and bodies had to be protected to an economically acceptable degree. As a result the criminal justice system struggled to devise sanctions that would be sufficiently

---

[26] *State v. Elias*, Records of the Superior Court of Macon County, September 19, 1864, Drawer 164, box 19, (GDAH); *State v. Caleb*, Records of the Superior Court of Oglethorpe County, April 18, 1865, Drawer 46, box 28, (GDAH); *State v. Monday, a Slave*, Records of the Superior Court of Sumpter County, April

painful to deter future criminality, but humane enough to protect the defendants bodies for future labor and reproduction.

Punishment and the Defendant's Status

The final factor to be considered in the calculus of punishment was the status of the defendant. If criminal sanctions were based largely on the societal value of the victims, did it matter who the offenders were? If blacks were thought to be the criminal class, did the sex of the defendant make a discernible difference? Slave men received the lion's share of all punishments dispensed by the criminal justice system. Over 93 percent of all defendants executed were enslaved men. Slave men received ninety-four percent of all combination punishments; and 86 percent of all lashes were laid on the backs of black male bondsmen. These figures could lead one to conclude that slave women would receive leniency since black men were hauled into court, convicted and punished with much greater frequency and severity. Such a conclusion is especially tempting because, as we have seen, slave women were convicted at a significantly lower rate than their men-folk. But the expected leniency does not appear. Once convicted slave women were punished in approximately the same percentages as slave men. Roughly fifty-five percent of both groups were hanged; 18.2 percent of female defendants were whipped, compared to 17.4 percent of men. A significant difference appears in the combination punishments category; slave men received this punishment in 26.4 percent of cases, while bondswomen were only subjected to them in 18.2 percent of their cases. (See Table 6.9) This discrepancy may be explained by the fact that slave men were convicted of a greater number of crimes for which combination punishments were administered, thus increasing

---

11, 1861, Drawer 133, box 8, (GDAH); *State v. William*, Records of the Superior Court of Troup County, May 25, 1859, Drawer 155, box 21, (GDAH).

Punishment by Defendant Status

			Defendant Status			
			Slave Male	Slave Female	Free Male	Total
Punishment	Lashes	Count	31	2	3	36
		% within Punishment	86.1%	5.6%	8.3%	100.0%
		% within Defendant Status	17.4%	18.2%	60.0%	18.6%
	Hanging	Count	98	6	1	105
		% within Punishment	93.3%	5.7%	1.0%	100.0%
		% within Defendant Status	55.1%	54.5%	20.0%	54.1%
	Combination	Count	47	2	1	50
		% within Punishment	94.0%	4.0%	2.0%	100.0%
		% within Defendant Status	26.4%	18.2%	20.0%	25.8%
	Other	Count	2	1		3
		% within Punishment	66.7%	33.3%		100.0%
		% within Defendant Status	1.1%	9.1%		1.5%
Total		Count	178	11	5	194
		% within Punishment	91.8%	5.7%	2.6%	100.0%
		% within Defendant Status	100.0%	100.0%	100.0%	100.0%

Table 6.9

the odds of such sanctions being imposed. These distribution figures suggest that while women were convicted less frequently than men, when they were found criminally culpable they were thought to be just as dangerous as their male counterparts and were punished accordingly. This contention is borne out by an examination of individual crimes.

There were only four crimes of which both slave men and women were convicted: murder, arson, poisoning and burglary. Murder was the most serious of these crimes and accounts for 66.7 percent of all punishment received by female slaves. In this category women were punished at a higher rate than men; eighty percent of women murderers were hanged, compared to only 70.7 percent of men. These figures suggest that female murderers were thought to be a greater threat to the society at large. The same was true of South Carolina, where slave women who committed persons crimes were punished more severely than men.[27] The figures for arson are comparable for both sexes. Forty percent of enslaved male arsonists were executed, as were 33.3 percent of females. While the execution rate for men was 6.7 percent higher than that for women, the combination punishment rate was exactly that amount higher for women than for men. Given the small numbers involved (five incidents for men and three for women) the discrepancy is statistically insignificant, making it safe to assume that both groups of arsonists were considered equally menacing. A comparison of burglary figures would not be productive since only one female slave was convicted of this crime. (See Table 6.10) Only four free blacks were convicted of crimes during the period under investigation, making it impossible to draw statistically valid conclusions about their punishment. Two free black defendants were convicted of murder or manslaughter; one was whipped and the other

Punishment by Crime and Defendant Status

Defendant Status				Crime			
				Murder	Arson	Poisoning	Burglary
Slave Male	Punishment	Lashes	Count	2			5
			% within Punishment	6.5%			16.1%
			% within Crime	2.7%			25.0%
		Hanging	Count	53	2	1	8
			% within Punishment	54.1%	2.0%	1.0%	8.2%
			% within Crime	70.7%	40.0%	100.0%	40.0%
		Combination	Count	20	3		7
			% within Punishment	42.6%	6.4%		14.9%
			% within Crime	26.7%	60.0%		35.0%
	Total		Count	75	5	1	20
			% within Punishment	42.1%	2.8%	.6%	11.2%
			% within Crime	100.0%	100.0%	100.0%	100.0%
Slave Female	Punishment	Lashes	Count	1			1
			% within Punishment	50.0%			50.0%
			% within Crime	20.0%			100.0%
		Hanging	Count	4	1	1	
			% within Punishment	66.7%	16.7%	16.7%	
			% within Crime	80.0%	33.3%	50.0%	
		Combination	Count		2		
			% within Punishment		100.0%		
			% within Crime		66.7%		
		Other	Count			1	
			% within Punishment			100.0%	
			% within Crime			50.0%	
	Total		Count	5	3	2	1
			% within Punishment	45.5%	27.3%	18.2%	9.1%
			% within Crime	100.0%	100.0%	100.0%	100.0%
Free Male	Punishment	Lashes	Count	1			1
			% within Punishment	33.3%			33.3%
			% within Crime	50.0%			100.0%
		Combination	Count	1			
			% within Punishment	100.0%			
			% within Crime	50.0%			
	Total		Count	2			1
			% within Punishment	40.0%			20.0%
			% within Crime	100.0%			100.0%

Table 6.10

[27] Hindus, *Prison and Plantation*, 145.

received a combination punishment. Two other free black men were convicted of attempted murder and burglary; the former was hanged and the latter whipped. (See Table 6.10) If South Carolina was representative of Georgia and the other Old South states free blacks were punished less severely than slaves.[28]

It seems as if the status or sex of Aframericans did not make a significant difference when the time came to punish them. Women appeared before Georgia courts less frequently and were convicted less often than men, but once they were found guilty they were punished as severely as their male counterparts. At present it is impossible to say whether free blacks were treated any better or worse than slaves, as the numbers of free black convicts is small and no clear patterns emerge in their punishment.

Between 1751 and 1865 several hundred Aframericans were put on trial for limited variety of personal and property crimes; two hundred twenty-four of them were convicted. The majority of these men and women were hanged and the remainder were whipped and/or subjected to physical mutilation. Over the course of the one hundred fourteen years under investigation executions declined steadily and corporal punishments increased to fill the gap. This desire on the part of Georgia judges and juries to preserve black lives was not indicative of a greater recognition of Aframerican humanity, but the realization that economic necessity demanded that the lives of slave laborers not be wasted.

Those who committed offenses against persons were punished more severely than those who committed property crimes. Aframericans who took the lives of others or attempted to do so received the harshest punishments, followed by those who raped or attempted to rape white women. The status of the victims in these cases had a profound

---

[28] Ibid.

impact on the sentences that were meted out. The great majority of black defendants were put to death or mutilated for violating the persons or property rights of white men; the odds of receiving a death sentence increased substantially if the victim was a master, mistress or overseer. The lives and bodies of white women were most valued in Georgia; every Aframerican who murdered or raped a white woman was hanged. The lives of slave men and women were valued more than those of free black men and women and this was reflected in the punishments of those who victimized members of this marginal class; no one was put to death for committing a crime against free blacks. Among slaves, the few available cases suggest that the lives of slave women were more highly valued than those of slave men; those who violated these women were executed.

The sex of black offenders did not see to matter when it came to sentencing. While women were convicted at a lower rate than men, the sentences they received once convicted were as harsh as those handed down in cases where the offenders were male. The punishment of free blacks is less clear; the few cases that appear in the record suggest that their punishments were evenly distributed among the punishment categories. The one hundred ninety-four men and women who were whipped, branded and hanged at the command of Georgia courts is only the tip of a large glacier of criminal punishment. Countless others were beaten, branded, tortured and killed on plantations throughout the state. Their stories will remain forever unknown.

CONCLUSION

In 1733 a group of English philanthropists founded a colony that was supposed to be different from the others in British North America: it would be a haven and second chance at life for the misfortunate of England. There would also be no slavery. The founders believed that slavery would be unnecessary in the colony, and that it made white men evil, cruel and avaricious; those on whose backs a slave colony would be built, the Africans, would also suffer physically, spiritually and psychologically. The founders' idealized vision did not last long. Right from the start some colonists realized that creating a profitable civilization from a near-tropical wilderness was a great deal more work than they had been led to believe. These men and women began to lobby for the introduction of slavery. The founding Trustees initially banned slavery in order to keep their utopian vision alive, but to no avail. By 1750 intense lobbying and the illegal importation of slaves finally broke the will of the few remaining Trustees; human bondage was introduced in Georgia.

If the colony was going to have slaves there had to be laws to regulate the behavior of both masters and their bondspeople. The first code bore the mark of the Trustees; it was largely concerned with the misbehavior of whites. There were provisions designed to curb white cruelty and to provide a humane standard of living for slaves. There was only one provision which related to black criminality, and that was a prohibition against interracial sex and marriage, a prohibition that applied to whites as well. This relatively benign state of legal affairs changed in 1755 when Georgians revised their criminal code and modeled it after their more experienced slaveholding neighbor, South Carolina. This new Georgia code reduced the few protections for black lives and added a number of

capital felonies. This revised code also marked the end of the Trustees humanitarian approach. The code was amended several times during the colonial period, with each revision adding more restrictions of black life, harsher penalties for violations of the criminal law and fewer protections. In the end killing a slave was the only crime that could be committed against this class of Georgians. Free blacks fared no better; every provision of the slave code applied to them as well. Blacks were not only bound by state law, but by informal plantation codes devised by individual masters to act as a compliment to the formal law. While slave patrols were the official enforcement arm of state law, every white person had a vested interest in keeping the black population under constant surveillance and in a state of racial subordination.

As the antebellum period progressed the criminal code for Aframericans was ameliorated considerably; the number of capital offenses was reduced and judges were given the discretion to render punishments other than death for several other capital offenses. But this improvement in the state of the law was not a product of a delayed recognition of black humanity; instead, it was designed to strengthen and protect slavery. From Eli Whitney's invention of the cotton gin and the closing of the international slave trade to the end of the Civil War, slaves were an increasingly valuable commodity. As the antebellum period progressed demand for slaves exceeded supply and slave prices rose. Accordingly, state execution of slaves became a far more expensive proposition and means had to be devised to protect this highly valuable source of capital and labor. Some states chose to protect the property interests represented by executed slaves by offering compensation to their owners; but this amount rarely matched the fair market values of the dead slaves. Other states allowed the owners of slave felons to be sold or transported

out of state: again it was often difficult to gain fair market value—especially if the slave's criminal background became known. Georgia chose neither of these options. After a brief period of compensation during the late eighteenth century the owners of executed bondspeople received nothing, and they were not allowed to sell their convicted slaves out of state. Georgians had no choice but to make it harder for the courts to kill their slaves.

Monetary considerations were not the only ones responsible for amelioration of the criminal law. In the post-Enlightenment West criminal justice systems had been reformed in order to make them more rational and humane. As the issue of slavery began to divide the country pro-slavery advocates had to make slavery appear to be a modern, rational and humane system; putting Aframericans to death for stealing a barrel of turpentine did not aid this defensive, ideological campaign. By making the criminal law less harsh for blacks southern lawmakers were able to argue that their institutions were in keeping with the very best the world had to offer.

Of course this system looked entirely different from the Aframerican perspective. For the white population the criminal justice system was a more or less balanced set of rights and obligations: whites surrendered certain freedoms in order that others might be protected for the general welfare of all concerned. White citizens had a hand to play in crafting the laws through the efforts of their elected representatives. In the eyes of the white populace the criminal justice system generally had legitimacy. The system could have no legitimacy in the eyes of blacks. Aframericans had no voice in creating or enforcing the laws that governed them. The law only protected their lives—and value as property—and not their humanity, dignity or whatever "property" their owners might

deign to recognize. For Aframericans the criminal law was seldom more than another type of chain designed to keep them ever more securely bound.

Black Georgians broke the law. In spite of all the efforts at enforcement, judgment and punishment. Aframericans stole, burned, raped and murdered. Some did so in order to defy an unjust and illegitimate system, others did so because they could no longer hold up under the stresses slavery brought to bear, and still others were those souls who simply refused to live by rules laid down by others. Most of the victims of black crime who appeared in court were white, and victims of the most serious crimes, murder and attempted murder. Property crimes were punished less often, reflecting the reality that those who were not allowed to own property were not generally inclined to respect it; therefore a certain amount of this type of crime had to be expected and tolerated. Aframericans also victimized each other. The only capital crime that could be committed against a black person in Georgia was murder, and Aframericans killed each other from time to time. Most of these homicides grew out of personal disputes over money, women or honor, the same types of things that caused southern whites to take each other's lives. The overwhelming majority of black criminals were slave men; slave women were only significantly represented in arson and poisoning cases. Free black men and women rarely found themselves in court. Unlike their slave counterparts, they generally had no great individual value to anyone so there was no one to protect them. It was in their best interests to stay on the "right" side of the law.

Once Aframericans had broken the law they had to be judged. Just as with the criminal law, formal and informal institutions evolved to determine culpability in cases involving black defendants. During the colonial period defendants were tried before courts

consisting of justices of the peace and freeholders. These courts were characterized by a high degree of informality and the justices had little or no formal legal training. The emphasis was on speed and efficiency; as a result there were few procedural protections for black lives. As the colonial period turned to the antebellum, Aframerican defendants began to be tried in regular state courts. In these courts they appeared before highly trained jurists and were judged by twelve-man white juries. Most of these jurors were non-slaveholders, which is quite suggestive of the levels of trust and interest shared by all classes of white society and their commitment to slavery and white supremacy. In these state courts blacks received increasing levels of due process protection: by 1850 Aframerican defendants had most of the same trial rights as whites. Again, this improvement in the legal circumstances of black defendants was not born of an intrinsic recognition of their humanity, but of their value as property.

While Aframerican offenders found increasing levels of protection in the courts, there was no such change in that other venue of judgment: the plantation. A small minority of black criminals found themselves in state courts; the majority was judged by their masters and mistresses. On the plantation there were no procedural rules to be followed, no state mandated legal protections. Instead, each master or mistress dispensed justice as he or she saw fit. Some took the responsibility quite seriously and held trials complete with oaths and witnesses, while others were little more than the master hearing some portion of the story and passing judgment. There was no avenue of appeal other than the masters and mistresses, who saw themselves as the final arbiters of all matters on their estates.

The criminal justice system blacks faced in Georgia was a formidable one. While whites who were accused of crimes in state courts stood little chance of conviction, a near

majority of Aframericans who were even charged with crimes was convicted. Once a case reached the verdict stage approximately seventy-five percent of all accused were found guilty or entered guilty pleas. This was the overall average; those accused of certain persons crimes like murder, attempted murder and rape were convicted in nearly ninety-percent of the cases. The masters of those convicted of capital crimes had the option of appealing their slaves' cases and several dozen did. Half of these appeals resulted in new trials for the defendants, yet most were probably re-convicted. Only six defendants were exonerated as a result of the appellate process in the entire history of slavery in Georgia.

The formal court system was certainly efficient, but it paled in comparison to that faced by slaves on farms and plantations. In the courts black lives were protected to a degree by the rules of evidence and criminal procedure and the skillful machinations of trained lawyers; no such safeguards existed on the farms and estates of Georgia masters. It was up to individual masters to decide how alleged violations of criminal law would be handled and what procedures, if any, would be observed. In most cases justice was swift: a master or overseer observed a violation of "law" or learned of from informants and determined the culpability of the accused based on the testimony of available witnesses and evidence or his or her own instinct about the character of the defendant. The time from act to conviction could be a matter of minutes. Once a master had learned of a crime and established the identity of the alleged culprit there was nothing that stood between the offender and the master's justice. No court system, no matter how efficient, could compare. While only a small portion of Aframericans found themselves facing the state's machinery of justice, most Georgians knew of the master's justice and experienced it first

hand. The formal and informal criminal justice systems combined to ensure that crimes that became known were handled with deadly dispatch.

Once convicted Aframericans had to be punished, and like every other aspect of Georgia's criminal justice system punishment was shaped by the imperatives of chattel slavery. During the colonial period black offenders were subjected to a variety of corporal punishments, just like their white counterparts. But changes in theories of punishment in the late eighteenth century led to a move away from corporal and capital punishments and to the penitentiary. These reforms were based on the idea that sanctions that focused on the body were inefficient and atavistic holdovers from a barbaric past. Enlightened societies reformed their offenders; they did not brutalize them. Aframericans were not the beneficiaries of these salutary reforms. Slaves could not be taken from the fields, plantations, kitchens and shops of Georgia; their labor was simply too valuable. Theorists also reasoned that imprisonment would have no real effect on slaves; how could those who had no freedom ever be deprived of it? Rather than placing blacks behind bars Georgians and other southerners continued to beat, mutilate and hang Aframerican convicts.

Even though blacks were not imprisoned for their crimes they were nevertheless subject to the same techniques of discipline used in the nation's penitentiaries. The heart of prison discipline was isolation, strict routine, work, observation and religious indoctrination. All slaves—not just those Aframericans convicted of crimes—were subjected to these instrumentalities of discipline on their plantations. The plantation was not only a locus of economic production; it was also viewed as the principal institutional

means of keeping the state's criminal population, its black population, under strict control.

The majority of black Georgians convicted of serious crimes were hanged; the next largest group was subjected to combinations of whipping and mutilation and the smallest group was subjected to the lash alone. Those convicted of persons crimes were the most likely to be hanged and those who committed property crimes were least likely to lose their lives. This distribution of death reflected Georgia's deep concern about black violence and rebellion. Those who victimized white women were almost certain to hang; this clearly reveals the value placed on white womanhood. The vast majority of those hanged were slave men, although once convicted slave women were punished just as severely as slave men in most instances. Slaves who were punished on farms and plantations were not generally executed, although slaves were occasionally beaten to death. The vast majority of plantation convicts were whipped, branded or mutilated in some other fashion or placed in guardhouses. This informal punishment was far more extensive than that administered by the state.

Georgia created a formal criminal justice system that was nearly as elaborate as that which dispensed justice for whites. Scholars have been drawn to the procedural sophistication of southern slave courts, especially the strict adherence to rules of evidence and procedure exhibited by southern appellate court judges. Some historians have argued that this legal formalism constituted an unexpected level of judicial fairness.[1] While the

---

[1] A.E. Keir Nash, "Fairness and Formalism in the Trials of Blacks in The State Supreme Courts of the Old South," *Virginia Law Review* 56 (1970): 64-100; A.E. Keir Nash, "A More Equitable Past? Southern Supreme Courts and the Protection of the Antebellum Negro," *North Carolina Law Review* 48 (1970): 197-242; A.E. Keir Nash, "The Texas Supreme Court and the Trial Rights of Blacks, 1845-1860," *Journal*

level of due process extended to black defendants, especially slaves, is surprising it should not be confused with fairness of any sort. In order to be judged fair a judicial system must not only extend due process rights to defendant it must have legitimacy: the defendants must be presumed innocent, they must be allowed to participate in their own defense, they must be considered equals, and their peers must judge them. None of this applied to cases involving colonial and antebellum black defendants. The legal system had no legitimacy for blacks because they were not involved in the formulation and enforcement of the laws; and few of the statutes were designed to protect them. Aframericans were not really presumed innocent; they were presumed to be the criminal population in every southern state. They were not considered peers and no slaves or free blacks served on juries. Kenneth Stampp described the situation of southern blacks this way:

> "Nowhere, regardless of the constitutional requirements, was the trial of a bondsman apt to be like the trial of a freeman. Though counsel was guaranteed, though jurors might be challenged, though Negroes could testify in cases involving members of their own race, the trial of a slave was never the trial of a man by his peers. Rather, it was the trial of a man with inferior rights by his superiors—of a man who was property as well as a person. Inevitably, most justices, judges and jurors permitted questions of discipline and control to obscure considerations of even justice."[2]

The procedural rights that black defendants did possess were tainted by the imperatives of chattel slavery. They could have attorneys, but those attorneys had to be selected and paid for by owners or the state; black defendants had no voice in this

---

of American History 58 (1971): 622-42; A.E. Keir Nash, "Reason of Slavery: Understanding the Judicial Role in the Peculiar Institution," *Vanderbilt Law Review* 32 (1979): 7-218; and Daniel J. Flanigan, *The Criminal Law of Slavery and Freedom, 1800-1868*. (New York and London: Garland Publishing, 1987).

[2]Kenneth M. Stampp, *The Peculiar Institution: Slavery in the Antebellum South* (New York: Vintage Books, 1956), 226-27.

process. Juries could be challenged, but again, the defendant had nothing to say about who would or would not sit in judgment. Slaves were not even allowed to speak for themselves: there is no evidence that a single black defendant ever took the stand in his or her own defense. If one were to attempt to imagine an average trial in slave Georgia one would see a defendant who sat mute while white men decided who would sit in judgment, who would argue his or her case, or whether the defendant would be allowed to plead guilty or even speak. The only active role Aframerican defendants played in the judicial process was to endure whatever punishment white judges and juries handed down. When slaves appealed their convictions it was not they who decided but their masters. And even though rules of procedure and due process were strictly adhered to in most cases it did not really matter very much; most defendants were re-convicted and punished anyway. While scholars have hotly debated slave procedural rights, rights that only produce positive results in theory are of little value to those who allegedly possess them. When one considers that free blacks rarely had the resources to hire legal counsel to take advantage of available procedural rights one could conclude that in court their position was actually worse than that of their slave fellows; no free black filed a criminal appeal. These legal rights, as imperfect as they were, did not exist on plantations where most slave crime was adjudicated. Mentioning the word "fair" in connection with this process seems highly inappropriate. In Georgia justice was securely bound in the chains of slavery.

In colonial and antebellum Georgia the criminal justice system was designed to control the allegedly criminal black population and to protect valuable property. As cynical as this system was it was better than that which replaced it. As property slave lives had to be protected; after Emancipation this incentive was gone and blacks were

subject to the full weight of racial prejudice and violence. The freedmen were railroaded through courts with little or no observance of the procedural niceties of the antebellum period. They were convicted so that they could be sentenced to postbellum equivalents of the plantation, the prison farm. Those convicts who did not find themselves picking cotton as they had during slavery wound up in mines or turpentine field as victims of the convict lease system.[3] Once again labor considerations and economic profitability trumped justice in Georgia's criminal justice system. Moreover, mortality rates in these institutions were higher than those on Old South plantations. Many of those who were suspected of committing crimes were not "fortunate" enough to end up in court. These men and women were lynched.

In the 136 years since the end of slavery Aframericans have fought to end the practices of injustice that characterized relations between blacks and the criminal justice system. While there have been tremendous strides in this regard the picture remains bleak. In 1990 the non-profit Sentencing Project revealed that "on an average day in the United States, one in every four African-American men ages 20-29 was either in prison, jail or on probation/parole." This alarming statistic was even worse in Washington D.C. On an average day in 1991 forty-two percent of Aframerican men between 18 and 35 were in jail, prison or under some form of judicial supervision. It was estimated that approximately seventy-five percent of all 18 year-old black men in the District of Columbia would be jailed at least once before reaching age thirty-five. By the mid-1990s the United States was spending in excess of $200 billion annually on crime control, most

---

[3] The most through work on the convict lease system and prison farms in Georgia is Martha A. Myers, *Race, Labor & Punishment in the New South* (Columbus: Ohio State University Press, 1998).

of it directed at black and other minority populations.[4] Levels of police brutality against Aframericans remains disturbingly high and racial profiling, the practice of stopping and even arresting blacks largely based on race, is just now receiving significant social and political attention. Aframericans continue to be convicted and sentenced to death at levels far out of proportion to their numbers in the population. While historians certainly cannot lay the current tragic state of affairs firmly on the doorstep of colonial and antebellum criminal justice systems, we cannot ignore the fact that--like much else about race relations in America-- slavery and white supremacy had a significant role to play. As the twenty-first century begins Aframericans are still searching for criminal justice; they are still justice bound.

[4] Jerome G. Miller, *Search and Destroy: African-American Males in the Criminal Justice System* (Cambridge: Cambridge University Press, 1996), 4-7.

SELECTED BIBLIOGRAPHY

State and County Records

Georgia Department of Archives and History

Minutes of the Executive Department, November 2, 1802-January 1, 1806

Minutes of the Executive Department, September 23, 1806-November 9, 1809

Minutes of the Executive Department, November 9, 1809-April 30, 1814

Minutes of the Executive Department, May 2, 1814-February 21, 1821

Minutes of the Executive Department, 1822-1827

Minutes of the Executive Department, November 2, 1829-November 14, 1834

Records of the Inferior Court of Baldwin County

Records of the Inferior Court of Bryan County

Records of the Inferior Court of Chatham County

Records of the Inferior Court of Elbert County

Records of the Inferior Court of Hancock County

Records of the Inferior Court of Jones County

Records of the Inferior Court of Lincoln County

Records of the Inferior Court of Putnam County

Records of the Inferior Court of Screven County

Records of the Inferior Court of Taliaferro County

Records of the Superior Court of Baldwin County

Records of the Superior Court of Bibb County

Records of the Superior Court of Brooks County

Records of the Superior Court of Bulloch County

Records of the Superior Court of Burke County

Records of the Superior Court of Camden County

Records of the Superior Court of Campbell County

Records of the Superior Court of Carroll County

Records of the Superior Court of Cass County

Records of the Superior Court of Chatham County

Records of the Superior Court of Cherokee County

Records of the Superior Court of Clarke County

Records of the Superior Court of Clay County
Records of the Superior Court of Columbia County
Records of the Superior Court of Coweta County
Records of the Superior Court of Crawford County
Records of the Superior Court of Dade County
Records of the Superior Court of Decatur County
Records of the Superior Court of DeKalb County
Records of the Superior Court of Dooley County
Records of the Superior Court of Dougherty County
Records of the Superior Court of Early County
Records of the Superior Court of Elbert County
Records of the Superior Court of Emanuel County
Records of the Superior Court of Fayette County
Records of the Superior Court of Floyd County
Records of the Superior Court of Franklin County
Records of the Superior Court of Fulton County
Records of the Superior Court of Gordon County
Records of the Superior Court of Greene County
Records of the Superior Court of Habersham County
Records of the Superior Court of Hancock County
Records of the Superior Court of Harris County
Records of the Superior Court of Henry County
Records of the Superior Court of Houston County
Records of the Superior Court of Jackson County
Records of the Superior Court of Jasper County
Records of the Superior Court of Jefferson County
Records of the Superior Court of Jones County
Records of the Superior Court of Laurens County
Records of the Superior Court of Lee County
Records of the Superior Court of Liberty County
Records of the Superior Court of Lincoln County
Records of the Superior Court of Lowndes County
Records of the Superior Court of Lumpkin County

Records of the Superior Court of Macon County
Records of the Superior Court of Madison County
Records of the Superior Court of Marion County
Records of the Superior Court of McIntosh County
Records of the Superior Court of Meriwether County
Records of the Superior Court of Monroe County
Records of the Superior Court of Montgomery County
Records of the Superior Court of Morgan County
Records of the Superior Court of Murray County
Records of the Superior Court of Muscogee County
Records of the Superior Court of Newton County
Records of the Superior Court of Oglethorpe County
Records of the Superior Court of Polk County
Records of the Superior Court of Pulaski County
Records of the Superior Court of Randolph County
Records of the Superior Court of Richmond County
Records of the Superior Court of Screven County
Records of the Superior Court of Spaulding County
Records of the Superior Court of Stewart County
Records of the Superior Court of Sumpter County
Records of the Superior Court of Talbot County
Records of the Superior Court of Taliaferro County
Records of the Superior Court of Tatnall County
Records of the Superior Court of Taylor County
Records of the Superior Court of Terrell County
Records of the Superior Court of Thomas County
Records of the Superior Court of Troup County
Records of the Superior Court of Upson County
Records of the Superior Court of Walton County
Records of the Superior Court of Warren County
Records of the Superior Court of Washington County
Records of the Superior Court of Wilkes County

Manuscripts

Georgia Department of Archives and History

Executive Pardons from February 20, 1836 to August 31, 1843

Pardons, 1854-1857

University of Georgia

Telamon-Culyer Collection

Legal Treatises

Beccaria, Cesare. *On Crimes and Punishments and Other Writings*. Edited by Richard Bellamy. Translated by Richard Davies with Virginia Cox. Cambridge and New York: Cambridge University Press, 1995.

Black, Henry Campbell. *Black's Law Dictionary*. 5th edition. St. Paul, MN: West Publishing Co. 1979.

Blackstone, William. *Commentaries on the Laws of England*. 4 vols. Oxford: Clarendon Press, 1769. Reprint of First Edition with Supplement. Buffalo, NY: William S. Hein & Co., Inc., 1992.

Cobb, Thomas R.R. *An Inquiry into the Law of Negro Slavery in the United States of America to which is prefixed An Historical Sketch of Slavery*. With an Introduction by Paul Finkelman. Athens & London: University of Georgia Press, 1999.

Goodell, William. *The American Slave Code in Theory and Practice: Its Distinctive Features Shown by Its Statutes, Judicial Decisions and Illustrative Facts*. N.p: American & Foreign Anti-Slavery Society, 1853; Reprint. New York: Negro Universities Press, 1968.

Greenleaf, Simon. *A Treatise on the Law of Evidence*. 3 vols. 15th ed. Boston: Little, Brown & Co., 1892.

Stroud, George M. *A Sketch of the Laws Relating to Slavery in the Several States of the United States of America With Some Alterations and Considerable Additions*. 2d Edition. Np.:n.p., 1856; Reprint, New York: Negro Universities Press, 1968.

Statutes

Alabama

Aiken, John D. *A Digest of the Laws of the State of Alabama*, 2d. Tuscaloosa: D. Woodruff, 1836.

Ormond, John D., Arthur P. Bagley and George Goldthwaite, *The Code of Alabama*. Montgomery: Britain and DeWolf, State Printer, 1852.

Arkansas

English, E.H. *A Digest of the Statutes of Arkansas*. Little Rock: Reardon and Garritt, 1848.

Gould, Josiah A. *A Digest of the Statutes of Arkansas*. Little Rock: Johnson and Yerkes, 1858.

Delaware

Cushing, John D. *First Laws of the State of Delaware*. Wilmington, DE: Michael Glazier, Inc., 1981.

Cushing, John D. *The Earliest Printed Laws of Delaware, 1704-1741*. Wilmington, DE: Michael Glazier, Inc., 1978.

Revised Statutes of the State of Delaware. Dover, DE: S. Kimmey, 1852.

Florida

Thompson, Leslie. *A Manual and Digest of the Statute Law of the State of Florida*. Boston: Little, Brown, 1847.

Georgia

Candler, Allen D. ed. *Colonial Records of the State of Georgia*. Atlanta: Charles P. Byrd, 1910.

Clark, R.H., T.R.R. Cobb and D. Irwin. *The Code of the State of Georgia*. Atlanta, GA: John H. Seals, 1861.

Clayton, Augustin Smith. *A Compilation of the Laws of the State of Georgia, Passed by the Legislature Since the Political Year 1800, to the Year 1810, Inclusive*. Augusta, GA: Adams & Duyckinck, 1812.

Cobb, Thomas R.R. *A Digest of the Statute Laws of the State of Georgia*. Athens, GA: Christy, Kelsea & Burke, 1851.

Hotchkiss, William A. *A Codification of the Statute Law of Georgia*. Savannah, GA: John M. Cooper, 1845.

Prince, Oliver H. *A Digest of the Laws of the State of Georgia*. Athens, GA: Oliver H. Prince, 1837.

Prince, Oliver. *A Digest of the Laws of the State of Georgia*. Milledgeville, GA: Grantland & Orme, 1822.

Kentucky

Littell, William, and Jacob Swigert. *A Digest of the Statute Law of Kentucky*. Frankfort, KY: Kendall and Russell, 1822.

Morehead, C.S., and Mason Brown. *A Digest of the Statute Laws of Kentucky*. Frankfort, KY: A.G. Hodges, 1834.

Stanton, Richard H. *The Revised Statutes of Kentucky*. Cincinnati: R. Clark and Co., 1860.

Louisiana

Bullard, Henry and Thomas Curry. *A New Digest of the Statute Laws of Louisiana*. New Orleans: E. Johns, 1842.

Civil Code of the State of Louisiana. New Orleans: Published by a Citizen of Louisiana, 1825.

Phillips, Ulrich Bonnell. *The Revised Statutes of Louisiana.* J. Claiborne, 1856.

Pierce, Levi, Miles Taylor and William W. King, *The Consolidation and Revision of the Statutes of the State, of a General Nature.* New Orleans: Printed at the Bee Office, 1852.

The Laws of the Territory of Louisiana. St. Louis, MO: Joseph Charles, 1808.

Upton, Wheelock H. and Needler R. Jennings, *The Civil Code of the State of Louisiana, with Annotations.* New Orleans: E. Johns and Co., 1838.

Maryland

Cushing, John D. *Laws of the Province of Maryland.* Wilmington, DE: Michael Glazier, Inc., 1978.

Kilty, William, Thomas Harris and John Watkins. *The Laws of Maryland, from the End of the Year 1799.* Annapolis: J. Green, 1819.

Maxcy, Virgil. *The Laws of Maryland.* Baltimore: Philip H. Nicklin and Co., 1811.

Scott, Otho and Hiram McCullough. *The Maryland Code.* Baltimore: J. Murphey and Co., 1860.

Mississippi

Alden, T.J. Fox and J.A. Hoesen. *A Digest of the Laws of Mississippi.* New York: Alexander H. Gould, 1839.

Hutchinson, A. *Code of Mississippi, from 1798 to 1848.* Jackson: Price and Hall, 1848.

The Revised Code of the Laws of Mississippi. Natchez: Francis Baker, 1824.

The Revised Code of the Statute Laws of the State of Mississippi. Jackson: E. Barksdale, 1857.

Missouri

Hardin, Charles. *The Revised Statutes of the State of Missouri.* Columbia: James Lusk, 1856.

Jones, William C. *The Revised Statutes of the State of Missouri.* St. Louis: J.W. Dougherty, 1845.

North Carolina

Cushing, John D. *The Earliest Printed Laws of North Carolina, 1669-1751.* Wilmington, DE: Michael Glazier, Inc., 1977.

Haygood, John A. *A Manual of the Laws of North Carolina.* Raleigh: J. Gales and W. Boylan, 1808.

Moore, Bartholomew F. and Asa Biggs. *Revised Code of North Carolina.* Boston: Little, Brown, 1855.

Revised Code of North Carolina. Raleigh: n.p., 1854.

Revised Statutes of the State of North Carolina. Turner and Hughes, 1837.

South Carolina

Cooper, Thomas and David J. McCord. *Statutes at Large of South Carolina.* Columbia: A.S. Johnston, 1826-41.

Cushing, John D. *The First Laws of the State of South Carolina.* 2 vols. Wilmington, DE: Michael Glazier, Inc., 1981.

Petigru, James L. *Portion of the Code of Statute Law of South Carolina.* Charleston: Evans and Cogswell, 1860-62.

Tennessee

Haygood, John and Robert L. Cobbs. *The Statute Laws of the State of Tennessee.* Knoxville: F.S. Heiskell, 1831.

Meigs, Return J. and William F. Cooper. *The Code of Tennessee.* Nashville: E.G. Eastman and Co., 1858.

Scott, Edward. *Laws of the State of Tennessee.* Knoxville: Heiskell and Brown, 1821.

Texas

Hartley, Oliver C. *A Digest of the Laws of Texas.* Philadelphia: Thomas, Cowperthwait and Co., 1850.

Oldham, William S. and George W. White. *A Digest of the General Statute Laws of the State of Texas.* Austin: J. Marshall and Co., 1859.

Virginia

Hening, William Waller. *The Statutes at Large: Being a Collection of All the Laws of Virginia, from the First Session of the Legislature in the Year 1619.* Richmond: W. Gray Printers, 1819-23.

The Code of Virginia. W.F. Ritchie, 1949.

The Revised Code of the Laws of Virginia. Richmond: Thomas Ritchie, 1819.

The Statutes at Large of Virginia from 1712 to 1806. Richmond: Samuel Shepard, 1835.

Other Government Sources

Agriculture of the United States in 1860 compiled from the Original Returns of the Eighth Census. Washington, DC: Government Printing Office, 1864.

Georgia Constitution (1798).

Population Schedules of the Eighth Census of the United States, Slave Schedules. Washington, DC: U.S. Census Office, 1860.

Population Schedules of the Seventh Census of the United States, Slave Schedules. Washington, DC: U.S. Census Office, 1850.

Appellate Cases

Georgia Reports. Atlanta: Harrison Co., 1846-1865.

Other Published Primary Sources

Breeden, James O., ed. *Advice Among Masters: The Ideal in Slave Management in the Old South.* Westport, CT: Greenwood Press, 1980.

Burke, Emily. *Reminiscences of Georgia in the 1840s, Pleasure and Pain.* Savannah: Beehive Press, 1978. Reprint, 1991.

Douglass, Frederick. *Narrative of the Life of Frederick Douglass, An American Slave Written by Himself.* With an Introduction by Peter J. Gomes. New York, NY: Penguin Group, 1997.

Greene, Rhodom A and John W. Lumpkin. *The Georgia Justice.* Milledgeville, GA: P.L & B.H Robinson, Printers, 1835.

Harper, William, James Henry Hammond, William Gilmore Simms and Thomas Roderick Dew. *The Pro-Slavery Argument as Maintained by the Most Distinguished Writers of the Southern States.* Philadelphia: Lippincott, Grambo, & Co., 1853.

Jefferson, Thomas. *Notes on the State of Virginia.* Edited with an Introduction and Notes by William Peden. Chapel Hill: University of North Carolina Press for the Institute of Early American History and Culture at Williamsburg, Virginia, 1955.

Jefferson, Thomas. *Thomas Jefferson: Writings.* Edited by Merrill Peterson. New York: Literary Classics of America, Inc., 1984.

Journal of the Senate of the State of Georgia. Milledgeville, GA: S & F Grantland—Printers to the State, 1812.

Lane, Mills, ed. *Neither More Nor Less than Men: Slavery in Georgia.* Savannah: Beehive Press, 1993.

Rawick, George P., ed. *The American Slave: A Composite Biography.* Westport, CT: Greenwood Publishing Co., 1972.

Rogers, Berto, ed. *Opinions and Stories from the Georgia Courts and Bar.* Oxford, NH: Equity Publishing Corporation, 1973.

Vila, Bryan and Cynthia Morris, eds. *Capital Punishment in the United States: A Documentary History.* Westport, CT: Greenwood Press, 1997.

Newspapers

Georgia Gazette

Secondary Works

Books

Abramson, Jeffrey. *We, The Jury: The Jury System and the Ideal of Democracy.* New York: Basic Books, 1994.

Ayers, Edward L. *Vengeance and Justice: Crime and Punishment in the 19th Century American South*. New York and Oxford: Oxford University Press, 1984.

Baldwin, James. *The Fire Next Time*. New York: Dell Publishing, 1962.

Barnes, Harry Elmer. *The Story of Punishment: A Record of Man's Inhumanity to Man*. 2d ed. Montclair, NJ: Patterson Smith, 1972.

Bedau, Hugo Adam. *The Death Penalty in America: Current Controversies*. New York and Oxford: Oxford University Press, 1997.

Bellesiles, Michael A. *Arming America: The Origins of National Gun Culture*. New York: Alfred A. Knopf, 2000.

Blomberg, Thomas G. and Karol Lucken. *American Penology: A History of Control*. New York: Aldine De Gruyter, Inc., 2000.

Bodenhamer, David J., and James W. Ely, Jr., eds. *Ambivalent Legacy: A Legal History of the South*. Jackson: University of Mississippi Press, 1984.

Bodenhamer, David J. *The Pursuit of Justice: Crime and Law in Antebellum Indiana*. New York: Garland Publishing, 1986.

Brown, Richard Maxwell. *No Duty to Retreat: Violence and Values in American History and Society*. New York: Oxford University Press, 1991.

Bryant, Jonathan M. *How Curious a Land: Conflict and Change in Greene County, Georgia, 1850-1885*. Chapel Hill: University of North Carolina Press, 1996.

Bushman, Richard L. *From Puritan to Yankee: Character and the Social Order in Connecticut, 1690-1765*. Cambridge: Harvard University Press, 1967.

Chroust, Anton-Hermann. *The Rise of the Legal Profession in America*. 2 vols. Norman: University of Oklahoma Press, 1965.

Clarke, James W. *The Lineaments of Wrath: Race, Violent Crime, and American Culture*. New Brunswick, NJ: Transaction Publishers, 1998.

Coleman, Kenneth. *Colonial Georgia: A History*. New York: Charles Scribner's Sons, 1976; Millwood, NY: KTO Press, 1989.

Constanzo, Mark. *Just Revenge: Costs and Consequences of the Death Penalty*. New York: St. Martin's Press, 1997.

Cornelius, Janet Duitsman. *Slave Missions and the Black Church in the Antebellum South*. Columbia: University of South Carolina Press, 1999.

Courtwright, David T. *Violent Land: Single Men and Disorder from the Frontier to the Inner City*. Cambridge: Harvard University Press, 1996.

Crenshaw, Kimberle and Neil Gotanda, Gary Peller and Kendall Thomas, eds. *Critical Race Theory: The Key Writings That Formed the Movement*. New York: The New Press, 1995.

Davis, Harold E. *The Fledgling Province: Social and Cultural Life in Colonial Georgia, 1733-1776*. Chapel Hill: University of North Carolina Press, 1976.

Degler, Carl N. *In Search of Human Nature: The Decline and Revival of Darwinism in American Social Thought*. New York and Oxford: Oxford University Press, 1991.

Egerton, Douglas R. *Gabriel's Rebellion: The Virginia Slave Conspiracies of 1800 and 1802*. Chapel Hill: University of North Carolina Press, 1993.

Elkins, Stanley. *Slavery: A Problem in American Institutional and Intellectual Life*. 2d ed. Chicago & London: University of Chicago Press, 1968.

Fanon, Frantz. *The Wretched of the Earth*. Translated by Constance Farrington. With a Preface by Jean-Paul Sartre. New York: Grove Press, 1963.

Faust, Drew Gilpin. *James Henry Hammond and the Old South: A Design for Mastery*. Baton Rouge: Louisiana State University Press, 1982.

Flanders, Ralph Betts. *Plantation Slavery in Georgia*. Chapel Hill: University of North Carolina Press, 1933.

Flanigan, Daniel J. *The Criminal Law of Slavery and Freedom, 1800-1868*. New York and London: Garland Publishing, Inc., 1987.

Ford, Lacy K. *The Origins of Southern Radicalism: The South Carolina Upcountry, 1800-1860*. New York: Oxford University Press, 1988.

Foucault, Michel. *Discipline and Punish: The Birth of the Prison*. New York: Pantheon Books, 1977.

Fox-Genovese, Elizabeth. *Within the Plantation Household: Black and White Women of the Old South*. Chapel Hill: University of North Carolina Press, 1988.

Frankenberg, Ruth. *White Women, Race Matters: The Social Construction of Whiteness*. Minneapolis: University of Minnesota Press, 1993.

Franklin, John Hope and Loren Schweninger. *Runaway Slaves: Rebels on the Plantation*. New York and Oxford: Oxford University Press, 1999.

Fredrickson, George M. *The Black Image in the White Mind: The Debate on Afro-American Character and Destiny, 1817-1914*. New York: Harper & Row, Publishers, 1971.

Gay, Peter. *The Enlightenment: An Interpretation*. 2 Vols. New York: Alfred A. Knopf, 1966.

Genovese, Eugene D. *Roll, Jordan, Roll: The World the Slaves Made*. New York: Vintage Books, 1976.

Glaude, Eddie S., Jr. *Exodus: Religion, Race and Nation in Early Nineteenth Century Black America*. Chicago: University of Chicago Press, 2000.

Glenn, Myra C. *Campaigns Against Corporal Punishment: Prisoners, Sailors, Seamen and Children in Antebellum America*. Albany, NY: State University of New York Press, 1984.

Grant, Donald L. *The Way it Was in the South: The Black Experience in Georgia*. Edited with a Foreword by Jonathan Grant. New York: Carol Publishing Group, 1993.

Gray-White, Deborah. *Ar'n't I a Woman? Females Slaves in the Plantation South*. New York and London: Norton Books, 1985.

Greenberg, Douglas J. *Crime and Law Enforcement in the Colony of New York, 1691-1776.* Ithaca, NY: Cornell University Press, 1974.

Greven, Philip J. *Four Generations: Population, Land and Family in Andover, Massachusetts.* Ithaca: Cornell University Press, 1970.

Grice, Warren. *The Georgia Bench and Bar: The Development of Georgia's Judicial System.* Macon, GA: J.W. Burke Co. Publishers, 1931.

Gurr, Ted Robert. *Rogues, Rebels and Reformers: A Political History of Urban Crime and Conflict.* Beverly Hills, CA: Sage Publications, 1976.

Gutman, Herbert G. *The Black Family in Slavery and Freedom, 1750-1925.* New York: Pantheon Books, 1976.

Hadden, Sally E. *Slave Patrols: Law and Violence in Virginia and the Carolinas.* Cambridge: Harvard University Press, 2001.

Hahn, Steven. *The Roots of Southern Populism: Yeoman Farmers and the Transformation of the Georgia Upcountry, 1850-1890.* New York: Oxford University Press, 1983.

Hale, Grace Elizabeth. *Making Whiteness: The Culture of Segregation in the South, 1890-1940.* New York: Pantheon Books, 1998.

Hall, Kermit L., ed. *The Legal Profession: Major Historical Interpretations.* New York and London: Garland Publishing, Inc., 1987.

Higginbotham, A. Leon. *In the Matter of Color: Race and the American Legal Process, The Colonial Period.* New York: Oxford University Press, 1978.

Hindus, Michael Stephen. *Prison and Plantation: Crime, Justice and Authority in Massachusetts and South Carolina, 1767-1878.* Chapel Hill: University of North Carolina Press, 1980.

Hinks, Peter P. *To Awaken My Afflicted Brethren: David Walker and the Problem of Antebellum Slave Resistance.* University Park, PA: Pennsylvania State University Press, 1997.

Hodes, Martha E., ed. *Sex, Love, Race: Crossing Boundaries in North American History.* New York: New York University Press, 1999.

_____. *White Women, Black Men: Illicit Sex in the Nineteenth Century South.* New Haven: Yale University Press, 1997.

Hoffer, Peter C., and N.E.H. Hull. *Murdering Mothers: Infanticide in England and New England, 1558-1803.* New York: New York University Press, 1981.

Howington, Arthur F. *What Sayeth the Law: The Treatment of Slaves and Free Blacks in the State and Local Courts of Tennessee.* New York and London: Garland Publishing, Inc., 1986.

Huebner, Timothy S. *The Southern Judicial Tradition: State Judges and Sectional Distinctiveness, 1790-1890.* Athens: University of Georgia Press, 1999.

Inciardi, James A. *Criminal Justice.* New York: Academic Press, Inc., 1984.

Jacobson, Matthew Frye. *Whiteness of a Different Color: European Immigrants and the Alchemy of Race.* Cambridge: Harvard University Press, 1998.

Johnson, Michael P. *Toward a Patriarchal Republic: The Secession of Georgia.* Baton Rouge: Louisiana State University Press, 1977.

Jones, Jacqueline. *Labor of Love, Labor of Sorrow: Black Women, Work, and the Family from Slavery to the Present.* New York: Basic Books, 1985.

Jordan, Winthrop D. *White Over Black: American Attitudes Toward the Negro, 1555-1812.* Chapel Hill: University of North Carolina Press, 1968.

Kerr, Derek N. *Petty Felony, Slave Defiance and Frontier Villainy: Crime and Criminal Justice in Spanish Louisiana, 1770-1803.* New York: Garland Publishing, Inc.

Lane, Roger. *Murder in America, A History.* Columbus: Ohio State University Press, 1997.

Levine, Lawrence W. *Black Culture and Black Consciousness: Afro-American Folk Thought From Slavery to Freedom.* New York: Oxford University Press, 1977.

Lockley, Timothy James. *Lines in the Sand: Race and Class in Lowcountry Georgia, 1750-1860.* Athens and London: University of Georgia Press, 2001.

McCash, William B. *Thomas R.R. Cobb, 1823-1862: The Making of a Southern Nationalist.* Macon, GA: Mercer University Press, 1983.

McCurry, Stephanie. *Masters of Small Worlds: Yeoman Households, Gender Relations, and the Political Culture of the Antebellum South Carolina Lowcountry.* New York: Oxford University Press, 1995.

McLaurin, Melton A. *Celia, a Slave.* Athens: University of Georgia Press, 1991.

Miller, Jerome G. *Search and Destroy: African-American Males and the Criminal Justice System.* Cambridge: Cambridge University Press, 1996.

Monkkonen, Eric H. *Murder in New York City.* Berkeley: University of California Press, 2001.

Morris, Thomas D. *Southern Slavery and the Law, 1619-1865.* Chapel Hill and London: University of North Carolina Press, 1996.

Myers, Martha A. *Race, Labor & Punishment in the New South.* Columbus: Ohio State University Press, 1998.

Oates, Stephen B. *The Fires of Jubilee: Nat Turner's Fierce Rebellion.* New York: Harper & Row, 1975.

Oshinsky. David M. *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice.* New York: Free Press Paperbacks, 1996.

Packer, Herbert L. *The Limits of the Criminal Sanction.* Stanford, CA: Stanford University Press, 1968.

Parry, L.A. *The History of Torture in England.* With an Introduction by Sawyer F. Sylvester, Jr. Np. Np., 1934. Reprint, Montclair, NJ: Patterson Smith, 1975.

Patterson, Orlando. *Slavery and Social Death: A Comparative Study.* Cambridge: Harvard University Press, 1982.

Phillips, Ulrich Bonnell. *American Slavery: A Survey of the Supply, Employment and Control of Negro Labor As Determined by the Plantation Regime.* 2d. edition. Baton Rouge: Louisiana State University Press, 1966.

Pound, Roscoe. *Criminal Justice in America.* New York: Henry Holt & Co., 1930.

Raboteau, Albert J. *Slave Religion: The "Invisible Institution" in the Antebellum South.* Oxford and New York: Oxford University Press, 1978.

Reidy, Joseph P. *From Slavery to Agrarian Capitalism in the Cotton Plantation South: Central Georgia, 1800-1880.* Chapel Hill and London: University of North Carolina Press, 1992.

Robertson, David. *Denmark Vesey.* New York: Alfred A. Knopf, 1999.

Roediger, David R. *The Wages of Whiteness: Race and the Making of the American Working Class.* New York: Verso, 1991.

_____. *Towards the Abolition of Whiteness: Essays on Race, Politics and Working Class History.* London and New York: Verso, 1994.

Rothman, David. *The Discovery of the Asylum: Social Order and Disorder in the New Republic.* Boston: Little, Brown & Co., 1971.

Rutman, Darrett B. and Anita Rutman. *A Place in Time: Middlesex County, Virginia, 1650-1750.* New York: Norton, 1984.

Scarborough, William K. *The Overseer: Plantation Management in the Old South.* Baton Rouge: Louisiana State University Press, 1966.

Schwarz, Philip J. *Slave Laws in Virginia.* Athens: University of Georgia Press, 1996.

_____. *Twice Condemned: Slaves and the Criminal Laws of Virginia, 1705-1865.* Baton Rouge: Louisiana State University Press, 1988.

Scott, James C. *Domination and the Arts of Resistance: Hidden Transcripts.* New Haven: Yale University Press, 1990.

Sellin, Thorsten J. *Slavery and the Penal System.* New York: Elsevier Scientific Publishing, 1976.

Shafer, Stephen. *The Political Criminal: The Problem of Morality and Crime.* New York: Free Press, 1974.

Smith, Julia Floyd. *Slavery and Rice Culture in Low Country Georgia, 1750-1860.* Knoxville: University of Tennessee Press, 1985.

Spindel, Donna J. *Crime and Society in North Carolina, 1663-1776.* Baton Rouge and London: Louisiana State University Press, 1989.

Stampp, Kenneth M. *The Peculiar Institution: Slavery in the Antebellum South.* New York: Vintage Books, 1956.

Turk, Austin T. *Political Criminality: The Defiance and Defense of Authority.* Beverly Hills, CA: Sage Publications, 1982.

Tushnet, Mark V. *The American Law of Slavery, 1810-1860: Considerations of Humanity and Interest*. Princeton, NJ: Princeton University Press, 1981.

Von Hentig, Hans. *Punishment: Its Origins, Purpose and Psychology*. Montclair, NJ: Patterson Smith, 1973.

Waldrep, Christopher. *Roots of Disorder: Race and Criminal Justice in the American South, 1817-80*. Urbana and Chicago: University of Illinois Press, 1996.

Walker, Samuel. *Popular Justice: A History of American Criminal Justice*. New York and Oxford: Oxford University Press, 1980.

Wayne, Michael. *Death of an Overseer: Reopening a Murder Investigation from the Plantation South*. New York and Oxford: Oxford University Press, 2001.

Weisenberger, Steven. *Modern Medea: A Family Story of Slavery and Child-Murder from the Old South*. New York: Hill and Wang, 1998.

Williams, Jack Kenny. *Vogues in Villainy: Crime and Retribution in Antebellum South Carolina*. Columbia: University of South Carolina Press, 1959.

Wood, Betty. *Slavery in Colonial Georgia, 1730-1775*. Athens: University of Georgia Press, 1984.

Wyatt-Brown, Bertram. *Southern Honor: Ethics and Behavior in the Old South*. Oxford and New York: Oxford University Press, 1982.

Younger, Richard D. *The People's Panel: The Grand Jury in the United States, 1634-1941*. Providence, RI: Brown University Press, 1963.

Articles

Alexander, Jay F. "Legal Careers in Eighteenth Century America." In *The Legal Profession: Major Historical Interpretations*, ed. Kermit L. Hall. New York and London: Garland Publishing, Inc., 1987.

Bardaglio, Peter W. "Rape and the Law in the Old South: 'Calculated to excite indignation in every heart'." *Journal of Southern History* 60, no. 4 (November 1994): 749-72.

Bodenhamer, David J. "The Efficiency of Criminal Justice in the Antebellum South." In *Crime and Justice in American History*, vol. 11, pt. 1. Edited with an Introduction by Eric H. Monkkonen, Munich: K.G. Saur, 1992.

Bonner, James C. "The Georgia Penitentiary at Milledgeville, 1817-1874." *Georgia Historical Quarterly* 55, no. 3 (Fall 1971): 303-28.

Brady, Patrick. "Slavery, Race and the Criminal Law in Antebellum North Carolina: A Reconsideration of the Thomas Ruffin Court." *North Carolina Central Law Journal* 10 (1978): 248-60

Brown, Richard Maxwell. "Southern Violence—Regional Problem or National Nemesis? Legal Attitudes Toward Southern Homicide in Historical Perspective." In *Crime and Justice in American History*, vol. 7, pt. 1. *The South*. Edited with an Introduction by Eric H. Monkkonen. Munich: K.G. Saur, 1992.

Coulter, E. Merton. "Four Slave Trials in Elbert County, Georgia." *Georgia Historical Quarterly* 41 (1957): 242-44.

Dolan, Paul. "The Rise of Crime in the Period 1830-1860." In *Crime and Justice in American History*, vol. 9, pt.1, *Violence and Theft*. Edited with an Introduction by Eric H. Monkkonen. Munich: K.G. Saur, 1992.

Farmer, Francis Memory. "Legal Practice and Ethics in North Carolina, 1820-1860." In *The Legal Profession: Major Historical Interpretation*. Edited by. Kermit L. Hall. New York and London: Garland Publishing, Inc., 1987.

Fede, Andrew. "Toward a Solution of the Slave Law Dilemma: a Critique of Tushnet's "The American Law of Slavery." *Law and History Review* 2 (1984): 301-20.

Flanigan, Daniel J. "Criminal Procedure in Slave Trials in the Antebellum South." *Journal of Southern History* 40 (1974): 405-24.

Gerlach, Don R. "Black Arson in Albany, New York, November 1793." *Journal of Black Studies* 7, no. 3 (March 1977): 301-12.

Gorn, Elliot J. "Gouge and Bite, Pull Hair and Scratch: The Social Significance of Fighting in the Southern Backcountry." In *Crime and Justice in American History*, vol. 9, pt.2, *Violence and Theft*. Edited with an Introduction by Eric H. Monkkonen. Munich: K.G. Saur, 1992.

Hackney, Sheldon. "Southern Violence." In *Crime and Justice in American History*, vol. 7, pt. 1. *The South*. Edited with an Introduction by Eric H. Monkkonen. Munich: K.G. Saur, 1992.

Levesque, George A. "Black Crime and Crime Statistics in Antebellum Boston." In *Crime and Justice in American History*, vol. 9, pt.3, *Violence and Theft*. Edited with an Introduction by Eric H. Monkkonen. Munich: K.G. Saur, 1992.

McNair, Glenn M. "The Elijah Burritt Affair: David Walker's *Appeal* and Partisan Journalism in Antebellum Milledgeville." *Georgia Historical Quarterly* 83, no. 3 (Fall 1999): 448-78.

Nash, A.E. Keir. "A More Equitable Past? Southern Supreme Courts and the Protection of the Antebellum Negro." *North Carolina Law Review* 48 (1970): 197-242.

_____. "Fairness and Formalism in the Trials of Blacks in the State Supreme Courts of the Old South." *Virginia Law Review* 56 (1970): 64-100.

_____. "Reason of Slavery: Understanding the Judicial Role in the Peculiar Institution." *Vanderbilt Law Review* 32 (1979): 7-218.

_____. "The Texas Supreme Court and the Trial Rights of Blacks, 1845-1860." *Journal of American History* 58 (1971): 622-42.

Schafer, Judith Kelleher. "Slaves and Crime: New Orleans, 1846-1862." In *Local Matters: Race, Crime and Justice n the Nineteenth Century South*. Edited by Christopher Waldrep and Donald G. Nieman. Athens: University of Georgia Press, 2001.

Sirmans, M. Eugene. "The Legal Status of Slaves in South Carolina, 1670-1740." *Journal of Southern History* 28, no. 4 (November 1962): 462-473.

Smith, Albert C. "Southern Violence Reconsidered: Arson as Protest in Black Belt Georgia, 1865-1910." *Journal of Southern History* 51, no. 4 (November 1985): 527-564.

Sommerville, Diane Miller. "The Rape Myth in the Old South Reconsidered." *Journal of Southern History* 61, no. 3 (August 1995): 481-518.

Stephenson, Mason W. and D. Grier Stephenson, Jr. "To Protect and Defend": Joseph Henry Lumpkin and the Supreme Court of Georgia, and Slavery." *Emory Law Journal* 25 (1976)579-608.

Surrency, Erwin C. "The First American Criminal Code: The Georgia Code of 1816." *Georgia Historical Quarterly* 63, no. 4 (Winter 1979): 420-434.

Williams, Jack Kenny. "The Criminal Lawyer in Antebellum South Carolina." In *The Legal Profession: Major Historical Interpretations*. Edited by Kermit L. Hall. New York and London: Garland Publishing, Inc., 1987.

Wood, Betty. "Prisons, Workhouses, and the Control of Slave Labour in Low Country Georgia, 1763-1815." *Slavery and Abolition* 8, no. 3 (December 1987): 247-71.

Wood, Betty. "Until He Shall Be Dead, Dead, Dead: The Judicial Treatment of Slaves in Eighteenth Century Georgia." *Georgia Historical Quarterly* 71, no. 3 (Fall 1987): 377-98.

Younger, Richard D. "Southern Grand Juries and Slavery." *Journal of Negro History* 40 (April 1955): 166-78.

Theses

Burgess, Amy Potts. "Slave Prices 1830 to 1860." MA thesis, Emory University, 1933.

Howard, Elizabeth Cary Howard. "The Georgia Reaction to David Walker's *Appeal*." MA thesis, University of Georgia, 1967.

McNair, Glenn M. "The Trials of Slaves in Baldwin County Georgia, 1812-1838." MA thesis, Georgia College & State University, 1996.