Troubling Justice: Women and the Criminal Courts in the American South, 1865-1900

By

Hannah Katherine Hicks

Dissertation

Submitted to the Faculty of the

Graduate School of Vanderbilt University

in partial fulfilment of the requirements

for the degree of

DOCTOR OF PHILOSOPHY

in

History

August 12, 2022

Nashville, Tennessee

Approved:

Kimberly Mae Welch, Committee Co-Chair, Ph.D.

Arleen Marcia Tuchman, Committee Co-Chair, Ph.D.

Sarah E. Igo, Committee Member, Ph.D.

Teresa A. Goddu, Committee Member, Ph.D.

To my parents

and to the memory of

Mary Katherine Brodie Stroupe

TABLE OF CONTENTS

Acknowledgements

I love writing. But writing 116,000 words that make sense, make something like an argument, and draw on several thousand court records and other documents in a way that attempts to depict the experiences of the historical people involved, has been a tremendous challenge. This dissertation would never have been finished without the financial and research support of numerous institutions and fellowships and the equally important support of mentors, archivists, professors, colleagues, friends, and family.

Most of the research for this dissertation was completed at the South Carolina Department of Archives and History in Columbia. There, I was incredibly fortunate to be assisted by archivists who know their sprawling collections and their South Carolina history inside and out. Thanks to all the archivists at SCDAH for helping make the months I spent at their research tables a time filled with discoveries, and thanks especially to Elaine Rohr and Wade Dorsey. At the South Caroliniana Library, in the same city, I explored rare books and pamphlets as well as nineteenth-century church records with which I could have easily spent a year. Thanks especially to Henry Fulmer, McKenzie Lemhouse, and Todd Hoppock at the South Caroliniana Library for making my stay at U of SC pleasant and productive. Thanks also to the South Carolina Historical Society at the College of Charleston, the Rubenstein Library at Duke University, and the Charleston Public Library.

This dissertation has benefited enormously from the financial support and fellowships I received from a number of incredible institutions and organizations. These include the South Caroliniana Society and Library in Columbia, the Wilson Special Collections Library at UNC-Chapel Hill, the North Caroliniana Society and the North Carolina State Archives, and the American Historical Association. I also owe much to the American Society for Legal History, through which I participated in the Graduate Student Research Colloquium, had opportunities to present my work at conferences, and received small research and membership grants. Vanderbilt's History Department awarded me a Weaver fellowship to conduct summer research and a J. León Helguera Fellowship in 2020-2021. From Vanderbilt's College of Arts and Sciences and the Graduate School, I received the Louise A. Taylor Scholarship, a travel grant, and a Summer Research Award, all of which enabled me to spend more time in the archives. Thanks to Susan Hilderbrand for all your help, first in the History Department and then at the Graduate School.

I am especially grateful to the Robert Penn Warren Center for the Humanities at Vanderbilt, where I spent the final year of my PhD as American Studies Fellow. Thank you to Holly Tucker, Terry Tripp, Elizabeth Meadows, Phoebe Thompson, and Mary Gray Lindstrom. The guidance, structure, peer mentorship, and support I found in the RPW Center's lovely Vaughn home helped me to finish writing this dissertation just as surely as the crucial funding I received.

My fellow Fellows at the Robert Penn Warren Center have become better intellectual interlocutors and friends than I could have ever hoped for. For your critical insights into my

work, for listening, for commiserating, and for group texts featuring dog photos, I thank Courtney Brown, Miguel Chavez, Zach Feldman, Willnide Lindor, Eric MacPhail, and Taryn Marashi. Thank you to my friend Samantha Rogers for many walks around the Hillsboro neighborhood, for keeping me sane this past year with your emotional support, and for ridiculously delicious scones. Thanks also to Martina Schaefer, Johnathon Speed, and Abena Boakyewa-Ansah.

Many professors at Vanderbilt and other universities provided feedback on my work or the job market and generously offered their time, mentorship, and advice. Thank you to John Wertheimer, Emily Prifogle, Laurie Benton, Ari Bryen, Bill Caferro, Julia Cohen, Jeff Cowie, Emily Greble, Tom McGinn, Ole Molvig, Ruth Rogaski, Marshall Eakin, Dan Sharfstein, Samira Sheikh, Catherine Molineux, Katie Crawford, Pablo Gómez, and especially Teresa Goddu. An enormous thank you to Sarah Igo for generously stepping up to guide me at a difficult time in my graduate career and for offering sharp and crucial insights on my work as early as my first semester at Vanderbilt. At UNC Charlotte, thank you to Christopher Cameron, Peter Thorsheim, Heather Perry, Maren Ehlers, Dan Dupre, and Jennifer Munroe.

My mentors and co-dissertation directors deserve extensive thanks and standing ovations, for that matter. Although I started at Vanderbilt intending to study a different field and a different country, my very first meeting with Arleen Tuchman convinced me that I wanted to find a way to work with her. She enthusiastically taught me about the history of medicine in our seminars and personal discussions and guided me through my somewhat idiosyncratic exam field in the History of Medicine, Gender, and Sexuality. Throughout my time at Vanderbilt, Arleen has brought her vast knowledge and experience to bear on whatever project I was working on and whatever questions I was struggling with. Without Arleen, my forthcoming journal article would never have been more than a transcription of a strange and fascinating court case and my rambling musings on what it all meant. A remarkably skillful writer and critical reader, she has a true gift for finding the heart and flow of a piece and always helped me get the details right as well. As a mentor, she has talked me through my numerous doubts about my dissertation and what I was doing. She took me under her wing at a time when everything felt chaotic even as, like all the best mentors, she has taught me to speak up, articulate things more clearly and with more confidence, and learn to better advocate for myself.

When I met Kim Welch, I knew I wanted to study something in the nineteenth century and that was about it. It was Kim, along with Sarah Igo, who co-taught our graduate legal history seminar, who introduced me to legal history and its fascinating possibilities for studying historically marginalized people and voices. When I suggested writing my dissertation on women and crime in Northeastern cities, where the previous scholarship had focused, Kim said, "Why not look at the South?" Immediately, I loved the idea. Without Kim's guidance, this dissertation would be something completely different—or unfinished altogether. Moreover, Kim has been incredibly generous with her time, her advice, her insights into my project and what was important about it, and always, how it might be strengthened. Like Arleen, she has continuously encouraged me, telling me about an amazing range of opportunities and assuring

me that they are more than worth applying for. I have had the pleasure of working with Kim on the Vanderbilt Legal History Colloquium as well as serving as her TA during two semesters. So, I have seen firsthand how her students and her mentees, like myself, greatly appreciate her genuine passion for her work and her warmth and sincerity.

While my mentors have been lifesavers these past six years, I would never have completed this project—or done much of anything—without the loving and unfaltering support of my family. Even though they did not always know what I was doing in graduate school, they were always certain I was doing it right and would see it through. Their belief in me has helped me overcome many obstacles. My sister Ava has always listened with a sympathetic ear to my dissertation writing woes and responded with her characteristic optimism (and in her highly characteristic "lingo"). Thank you to Zoey, Bonnie, and especially my faithful friend Loki—although you cannot read, you understand a lot. Diane Baker and the Baker family have provided welcome distractions in the form of Jane Austen movie parties and walks in the woods. Ivy Baker always made me smile and regaled me with stories about the animals we both love. My Marmie, Lynne Jonas, and Richard Jonas have always supported me and invited me to many visits at their home, now and when I was young and liked to explore for abandoned structures and arrowheads in the woods by their farm.

My parents Jeff and April Hicks deserve their own paragraph. No one else's parents, I have discovered, are so kind, funny, loving, and unfailingly interesting. From the time when I was a little girl who caused concern in school because she would not stop reading to pay attention to the teacher to when I made the unexpected announcement that I hoped to do a PhD in History, they have always embraced my peculiarities and encouraged me to pursue my dreams. During these past six years, they have supported me (and little Loki) through everything, providing untold amounts of emotional and financial support, hosting countless "dog parties," and assuring me I could achieve my goals if I worked hard, the way they always have.

Finally, this dissertation is dedicated to my parents and to the memory of Mary Katherine Brodie Stroupe. Spending so much of my childhood, as well as her final years, with my grandmother made me think about the past and whose pasts are told and whose are not told in ways I had not before. A strong-willed woman from rural Georgia who later moved to North Carolina, she fought through many struggles and worked hard for decades to raise her children. I was inspired to think more deeply about ordinary southern women whose names and stories people had not thought about in decades or a century because I still think about her every day, and I know I always will.

Abstract

This dissertation examines Black and White women's experiences as complainants and defendants in South Carolina's county-level criminal courts between the end of the Civil War and the turn of the twentieth century. Drawing on more than 1,500 archival court records, it focuses on how women's active roles in the criminal courts of post-Civil War South Carolina alter our narratives about the nineteenth-century U.S. South, the history of race, gender, and incarceration, and women's relationship to the law. Specifically, "Troubling Justice" troubles the traditional narrative of a rapid and inevitable transition between slavery and mass incarceration for African Americans in the South. I argue that local sources demonstrate a more complicated picture. Freedwomen, despite their recent history of legal enslavement, used magistrate hearings and the criminal courts to resolve conflicts, negotiate for change, and call the powerful to account. Even after the fall of Reconstruction, racist statutes in the courts never went uncontested by African Americans and their White political allies, or by ordinary women who sought to use the law to protect themselves and their families. The case files of women on trial, too, demonstrate that despite their disadvantages, these defendants marshaled their resources, social networks, legal knowledge, and understanding of their society to defend themselves using both legal and extralegal strategies. Reading local nineteenth-century court records enables us to hear women's voices more clearly than scholarship based on appellate court decisions or incarceration records alone. Hearing them not only complicates our stories about race, gender, and criminal law in the post-Civil War South, but helps us see women in the nineteenth-century southern criminal justice system not as passive subjects of a hegemonic legal system, but as resourceful and resilient actors.

LIST OF FIGURES

Figure

Introduction

On New Year's Eve, 1883, two young African American women, Jeannette Carter and Hannah Brown, attended a church service at Mother Emanuel African Methodist Episcopal Church in Charleston, South Carolina. The historical church, founded in 1817 as one of the first Black churches in the South, was located on Calhoun Street in the heart of the city and boasted a membership of nearly four thousand congregants.[1] But on this occasion, Reverend Lewis Ruffin Nichols found his service interrupted. As church secretary R.V. Howard later testified before a local justice, Jeannette Carter and Hannah Brown created "a disturbance in the said church during the service" by talking together while the pastor was speaking. Howard testified that he tried "to get the women to stop talking during the service and leave, [but] they refused to desist." "Suppose if I don't you will put me out," Hannah Brown scoffed. When Howard "put [his] hands on Hannah Brown, she said 'take your damned hand off.'" Jeannette Carter said, "let us go out of this damned church" and started to leave, but according to Howard, "Hannah Brown cursed me a damned son of a bitch and threatened to cut me." Church member Tobias Campbell left and located a police officer, who arrested the two women as they left the church.

In his subsequent deposition before Trial Justice William Elfe, church secretary Howard charged the women with "disorderly conduct," swearing that they had "created a disturbance in said church by cursing, swearing, and using indecent and blasphemous language, interrupting and causing the service to be stopped by their disorderly behavior." Brown and Carter found themselves lodged in the Charleston City Jail. Carter was able to make her bail of two hundred dollars with the assistance of a man named J.S. Walker. Within a few days, however, church

[1] Bernard E. Powers Jr, *Black Charlestonians: A Social History, 1822-1885* (Fayetteville: University of Arkansas Press, 1994), 206.

secretary Howard and Rev. Nichols sent a letter to Charleston's county solicitor requesting that the case against the two women be dropped. "By the action already had in these cases, we have accomplished all we desired," Rev. Nichols wrote, "Namely, to let persons know that our laws are strong enough to protect the people in their peaceable worship. We therefore desire that the cases against these defendants be dropped." The solicitor complied with the complainants' wishes and dropped the case. Hannah Brown was released from jail.[2]

The case file documenting Jeannette Carter and Hannah Brown's conflict with leaders in the Mother Emanuel AME Church may, at first, appear trivial. But in fact, the incident reveals much about important aspects of life in the post-Civil War South: the nature of religious authority, race and gender, the law and where it intersected with ordinary people's lives, and Black women's assertations of their rights. Hannah Brown asserted her right to attend the church service by refusing to leave, and she resisted Howard's attempts to physically force her from the church. Meanwhile Jeannine Carter declared, in no uncertain language, that she *would* leave the church, but by her own free will. The two formerly enslaved women both asserted their autonomy and behaved in ways that were characterized by the male church leaders and some of the congregants as "disorderly" and deserving of legal punishment.

At the same time, the case demonstrates several points about the legal system that challenge our pre-existing narratives and assumptions about criminal law in the post-Civil War United States. Over the past few decades, scholars have portrayed nineteenth-century southern criminal courts and especially the carceral system as perhaps the most racially oppressive southern institutions. Historical studies with titles such as *Slavery by Another Name, No Mercy Here,* and *Roots of Disorder* have confidently characterized the South's post-Emancipation

[2] *State vs Jeannette Carter and Hannah Brown*, Charleston County Court of General Sessions, box 34, folder #5044, South Carolina Department of Archives & History (hereafter SCDAH).

prisons, penitentiaries, and especially convict labor camps as the direct heirs of antebellum slavery and forerunners of twentieth-century racialized mass incarceration.[3] This straightforward slavery to mass incarceration narrative has undergone further simplification and popularization in films such as Ava DuVernay's documentary *13th* and widely-read books such as Michelle Alexander's *The New Jim Crow*, a culturally important book that nevertheless oversimplifies mass incarceration and offers little discussion of women of color.[4]

Another wave of historians have reconsidered Reconstruction's limited and often short-lived accomplishments.[5] Many of these Reconstruction studies focus on extralegal violence and discuss criminal law more broadly, taking it for granted that the South's criminal courts constituted simply "another tool of racial control," as Richard Zuczek put it.[6] This scholarship by historians of Reconstruction and scholars of race and criminal law in U.S. history has illuminated injustices in the nineteenth and twentieth-century South, linking contemporary carceral regimes

[3] See, for example, Douglas A. Blackmon, *Slavery By Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Doubleday, 2008); Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity* (Chapel Hill: University of North Carolina Press, 2016); 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); Henry Kamerling, *Capital and Convict: Race, Region, and Punishment in post-Civil War America* (Charlottesville: University of Virginia Press, 2017); Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the Nineteenth-Century American South* (Oxford: Oxford University Press, 1984); Christopher Waldrep, *Roots of Disorder: Race and Criminal Justice in the American South, 1817-80* (Urbana: University of Chicago Press, 1990). All of these books were extraordinarily helpful to me in my research and reading. I only mention some of their titles as an indication of the existing narratives, in which there is plenty of truth, despite my argument that they need nuancing.

[4] Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2010); *13th*, directed by Ava DuVernay (Kandoo Films, 2016).

[5] Post-revisionist Reconstruction histories often emphasized the conservatism of Reconstruction, the lack of land distribution, for example, as well as continuities between the New and Old South. See Luke E. Harlow, "The Future of Reconstruction Studies," *Journal of the Civil War Era* 7, no. 1 (March 2017), 3-6. Eric Foner struck a middle ground between emphasizing the achievements of Reconstruction and its unfulfilled promises in Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper Collins, 1988), and this has proved influential on subsequent studies, although the focus on limitations rather than the revolutionary potential of Reconstruction remains. Historians have also recently drawn attention to the gap between freedom and equality. See, for example, Kate Masur, "The Problem of Equality in the Age of Emancipation," in *Beyond Freedom: Disrupting the History of Emancipation*, ed. David W. Blight and Jim Downs (Athens: University of Georgia Press, 2017).

[6] Richard Zuczek, *State of Rebellion: Reconstruction in South Carolina* (Columbia, South Carolina: University of South Carolina Press, 1996), 35.

and inequalities with past ones and considering the shortcomings of efforts to create a more just society as well as their successes. However, the historical narrative of an inevitable and relatively uncontested transition from slavery to mass incarceration in the U.S. South soon after the Civil War is in desperate need of revisiting.

This dissertation draws on local court records concerning women from South Carolina to argue that criminal courts in the post-Civil War South were not solely tools of racial and social control. Rather, they could also be sites of negotiation, communal investigation, pursuit of contested meanings of justice, and forums in which marginalized people, particularly poor White and Black women, turned to seek recourse for wrongs.

Local records also reveal resourceful, often successful self-defense on the part of women accused of crimes. Women defendants marshaled their resources, social networks, legal knowledge, and understanding of their society to defend themselves using both legal and extralegal strategies. Testimony from local criminal courts demonstrates that women like Hannah Brown and Jeannette Carter were far from passive subjects of the law, before and after their arrests.

The case against Brown and Carter also shows that, unlike historians such as Eugene Genovese who characterized law as inherently a tool of the dominant, ruling class, African American pastor Rev. Nichols did not regard the law as a hegemonic system entirely opposed to the interests of Black people.[7] In Mother Emanuel that day, a church member summoned the

[7] Genovese, formerly a Marxist historian, adopted the notion of "hegemony" from Italian Marxist thinker Antonio Gramsci, who used the word to describe the ideological domination of the bourgeoisie. Genovese employed "hegemony" to describe the planter class's economic and ideological rule in the U.S. South, including their use of law, which he characterized as a tool in planters' arsenal for maintaining hegemony, exerting and reinforcing their authority. See Kimberly Welch, *Black Litigants in the Antebellum American South* (Chapel Hill: UNC Press, 2018), 230-1 (n22); Ariela Gross, "Reflections on Law, Culture, and Slavery," in Winthrop D. Jordan, ed, *Slavery and the American South: Essays and Commentaries* (Jackson: University Press of Mississippi, 2003), 57-92. Gross noted that "law" and "social life" should not be understood as separate spheres and that "resistance" was by no means

police to arrest the two women for their "disorderly conduct." Nichols himself wrote to the county solicitor that he wanted the case against Carter and Brown dropped, since he and the church had succeeded in their goal in having the women arrested: "to let persons know that our laws are strong enough to protect the people in their peaceable worship." His reference to "our laws," while incongruous with much of the existing scholarship on criminal law in the post-Civil War South, is revealing. Pastor Nichols and at least some of his fellow church members clearly viewed the criminal law and its local enforcers, the police, as a potentially useful channel for conflict resolution.[8] He understood, too, that as a complainant he possessed considerable power in deciding whether the prosecution against Brown and Carter would proceed any further. Indeed, the White county solicitor to whom he and church secretary Howard wrote promptly dropped the case at their request. Neither was this incident, occurring six years after the demise of Reconstruction in 1877, a rarity.

To the contrary, my research demonstrates that Black as well as poor White South Carolinians often turned to local courts as a way of resolving conflicts and seeking amends for wrongs committed against them. During Congressional Reconstruction, roughly 1868-1876 in South Carolina, hundreds of freedwomen who until recently had been legal property sought to use the law to further and defend their interests against neighbors, relatives, and strangers who abridged on their autonomy and their bodies. Conviction rates remained low throughout the 1865-1900 period which this dissertation covers, and parties frequently settled outside of court, asking for cases to be dropped just as Rev. Nichols did in 1883.

---

something that only occurred outside of the legal arena. See also Manisha Sinha, "Eugene Genovese: The Mind of a Marxist Conservative," *Radical History Review* 20 (2004), 1-27; Mindie Lazarus-Black and Susan E. Hirsch, ed, *Contested States: Law, Hegemony, and Resistance* (New York: Routledge, 1994), in which scholars, including Sally Engle Merry, eroded the concept of legal hegemony by asserting that contestability is a crucial part of law.

[8] For Rev. L.R. Nichols, see Powers, *Black Charlestonians*, 178.

As my later chapters discuss, such settlements and particularly the role of complainants dwindled in the late nineteenth century, especially after the fall of Reconstruction and the "Redemption" of the state by White Democrats in 1877. The Democratic-controlled legislature criminalized previously legal behavior such as sex between unmarried people and severely increased penalties for many crimes, particularly racialized property crimes such as larceny and arson. So, too, did the police and officials begin to play a larger role in prosecutions, as the legal system shifted from being a more communal one where complainants could often determine how far a criminal case went in the court system to something more closely resembling (but still quite distant from) our modern criminal court system.

Still, "Troubling Justice" seeks to disrupt the narrative of a rapid and inevitable transition from slavery to Jim Crow injustice and mass incarceration by emphasizing that this was a gradual, constantly contested, and not predetermined process in the post-Civil War South. Hannah Brown and Jeannette Carter, as well as Rev. Nichols, witnessed dramatic changes in their lifetimes. All born in the 1850s, they saw the rise and fall of the Confederacy and the upending of ex-Confederate South Carolinians' attempts to pass "Black Codes" reestablishing slavery in all but name by a Republican-dominated Congress determined to create real change in South Carolina and its sister states. They might have spoken to federal soldiers, including African American soldiers, in the streets of Charleston and attended Republican political rallies—certainly the Mother Emanuel church was active in civil rights from its foundation.[9]

The criminal courts were far from immune to the changes wrought by Reconstruction. Rather than the fossilized antebellum institutions they have sometimes been presented as, the

[9] Readers today will likely recognize Mother Emanuel as the site of Dylan Roof's 2015 racially motivated mass shooting, in which nine people, including the church's pastor, were killed. The church was once burnt for the role played by some of its members in Denmark Vesey's 1822 slave rebellion. See Manisha Sinha, *The Slave's Cause: A History of Abolition* (New Haven: Yale University Press, 2016), 143.

three Charlestonians would have seen African American men, previously unable to even testify against White people in court, sitting on juries and acting as trial justices (magistrates) in the 1860s and 1870s, not to mention the election of Black men to Congress. While women like Carter and Brown could not vote, they did gain the rights to testify in court, to own property and make contracts, to marry spouses of their choice, and to bring forth legal complaints, as many Black women did. The Republican representatives at South Carolina's 1868 Constitutional Convention, the first Black-majority assembly in the nation's history, integrated the state's courts and abolished the death penalty for all crimes except "willful murder."[10]

At the same time, the dissertation's title has a double meaning: what passed for justice in even Reconstruction South Carolina was indeed often "troubling." Courts were frequently powerless or at times unwilling to prevent extralegal racial and political violence. As historians have shown, such violence was endemic in parts of the South, including in South Carolina, during and after Reconstruction.[11] It was through such extralegal violence that White men who supported General Wade Hampton in the 1876 election rallied in armed bands masquerading as rifle clubs to "Redeem" the state for White supremacy in 1876-1877. In this political fraud accomplished largely through intimidation and violence, South Carolina was not an exception. Rather Democrats knowingly followed the "Mississippi Plan," a reference to Mississippi's White conservatives' expulsion of their own Reconstruction state government through terrorizing

[10] *The Constitution of South Carolina: Adopted April 16, 1868, and the Acts and Joint Resolutions of the General Assembly Passed at the Special Session of 1868-1871* (Columbia, 1871), 175. For the representative demographics of the Convention, see Rubin, *South Carolina Scalawags*, 26.
[11] See Zuczek, *State of Rebellion*; Stephen Budiansky, *The Bloody Shirt: Terror after Appomattox* (New York: Viking, 2008); Carole Emberton, *Beyond Redemption: Race, Violence, and the American South after the Civil War* (Chicago: University of Chicago Press, 2013); Lou Faulkner Williams, *The Great South Carolina Ku Klux Klan Trials, 1871-1872* (Athens: University of Georgia Press, 2004).

tactics.[12] After "Redemption" in 1877, criminal courts throughout South Carolina became more likely to try and convict African Americans, and sentences for racialized property crimes became severe. For men, being convicted of a petty crime meant disenfranchisement, even before South Carolina succeeded in disenfranchising practically all African American men in the State Constitution of 1895.[13] My dissertation, however, centers on Black and White women.

Historians of the legal and carceral systems in the U.S. South have until recently ignored or generalized about women's roles in criminal courts. Historians of Reconstruction have, on the other hand, produced innovative scholarship on the role of race and gender in Reconstruction over the past few decades.[14] Yet the many scholars interested in African Americans women's activism and lives during Reconstruction, for example, have largely overlooked criminal court records as sources that might reveal much about Black women's politics. This is understandable, given the existing slavery to mass incarceration narrative. Indeed, those few historians who have examined women in the southern criminal justice system after the Civil War have tended to base

[12] Andrew Slapp, "The Spirit of '76: The Reconstruction of History in the Redemption of South Carolina," *Historian* 63 (Summer 2001), 769-86. For a highly detailed description of the contested gubernatorial election between Hampton and Daniel Chamberlain and the electoral fraud in South Carolina—on which hinged the presidential election between Rutherford B. Hayes and Samuel Tilden—see Richard and Belinda Geigel, "To Vindicate the Cause of the Downtrodden': Associate Justice Jonathan Jasper Wright and Reconstruction in South Carolina," in *At Freedom's Door: African American Founding Fathers and Lawyers in Reconstruction South Carolina* (Columbia: University of South Carolina Press, 2000), 51-65.

[13] Pippa Holloway, "A Chicken-Stealer Shall Lose His Vote: Disfranchisement for Larceny in the South, 1874-1890," *Journal of Southern History* 75, no. 4 (November 2009), 944-945.

[14] For seminal work in this area, see Glenda Gilmore, *Gender and Jim Crow: Women and the Politics of White Supremacy in North Carolina, 1896-1920* (Chapel Hill: University of North Carolina Press, 1996); Martha Hodes, "The Sexualization of Reconstruction Politics: White Women and Black Men in the South after the Civil War," *Journal of History of Sexuality* 3, no. 3 (January 1993), 402-17; Elsa Barkley Brown, "Negotiating and Transforming the Public Sphere: African American Political Life in the Transition from Slavery to Freedom," *Public Culture* 7 (1994), 107-146. See also Crystal Feimster, *Southern Horrors: Women and the Politics of Rape and Lynching* (Cambridge: Harvard University Press, 2009); Thavolia Glymph, *Out of the House of Bondage: The Transformation of the Plantation Household* (Cambridge: Harvard University Press, 2003); Hannah Rosen, *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South* (Chapel Hill: University of North Carolina Press, 2009); Laura Edwards, *Gendered Strife and Reconstruction: The Political Culture of Reconstruction* (Urbana: University of Chicago Press, 1997). For an excellent historiographical essay on the subject, see Catherine A. Jones, "Women, Gender, and the Boundaries of Reconstruction," *Journal of the Civil War Era* 8, no. 1 (March 2018), 111-31.

their research on prison records, rather than court records.[15] But as is ever the case, by looking at different sources, we can see different stories.

My dissertation departs from most existing scholarship about women (and men) as criminal defendants by privileging court records over prison records. I focus on court documents such as arrest warrants, testimony taken by trial justices and clerks, notes by circuit judges, letters sent between parties involved in the case, and (when available) statements by defendants themselves. Such sources enable us to better see women defendants as historical actors rather than merely subjects of the law, and certainly not as the "docile bodies" that Michel Foucault described in his work on nineteenth-century prisons.[16]

Moreover, this project diverges from existing scholarship by examining women's experiences across boundaries of race and class. This is "a Southern history across the color line," as Nell Irvin Painter put it.[17] In writing about Black and White women in this study, rather than Black or White women alone, I nevertheless strive to remember Evelyn Higginbotham's maxim that "for black and white women, gendered identity was reconstructed and represented in very different, indeed antagonistic, racialized contexts."[18] In doing so, I also build on the work of southern historians such as Thavolia Glymph, Crystal Feimster, and Stephanie Jones-Rogers. These scholars have also shed light on Black and White southern women's cross-racial relationships, cooperative ones as well as frequently fraught, conflicted, and even violent relationships and interactions. They have shown that where White women found both legal

---

[15] Tabitha LaFlouria, *Chained in Silence: Black Women and Convict Labor in the New South* (Chapel Hill: University of North Carolina Press, 2015); Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity* (Chapel Hill: University of North Carolina Press, 2016).
[16] Michel Foucault, *Discipline and Punish* (New York: Pantheon Books, 1977).
[17] Nell Irvin Painter, *Southern History Across the Color Line* (Chapel Hill: University of North Carolina Press, 2002).
[18] Evelyn Brooks Higginbotham, "African-American Women's History and the Metalanguage of Race," *Signs* 17, no. 2 (Winter 1992), 251-274.

disabilities and informal privileges in womanhood, Black women found intersectional oppressions and violence.[19]

Unsurprisingly, for example, I found that African American women composed the vast majority of South Carolina's female prison population, especially in the penitentiary. White women were more likely to be sentenced to county jails for the same offenses. Black women represented more than 90% of the women charged with property crimes such as larceny and arson, although the statistics were somewhat more balanced for violent crimes. Looking at letters between prosecutors and defendants, newspaper accounts, and other sources, it becomes clear that White women could make use of a greater number of social and financial resources, including privacy, familial connections, and the ideological uses of White womanhood, to avoid prosecution. Black women, on the other hand, found themselves in a society where Blackness was equated with criminality—as indeed, it had been since colonial times in the United States.[20] In post-Civil War South Carolina, where many Whites expressed resentment and violence towards Black people and worked to keep them mired in economic dependency despite Black political strides during Reconstruction, this racialization of crime was exacerbated at times.

Yet, I balance my goal of elucidating Black and White women's different resources and treatment in the legal system with a goal of shedding light on what Black and White women did share. By this I mean gendered and, in the context of most women who found themselves in court, class-based oppression. The gendered realities of unequal relationships with male partners, economic dependency and often poverty, pregnancy, childbirth and childrearing, disenfranchisement, and a lack of occupational and educational opportunities meant that poor

[19] Feimster, *Southern Horrors*; Thavolia Glymph, *Out of the House of Bondage*; Stephanie Jones-Rogers, *They Were Her Property: White Women as Slave Owners in the American South* (New Haven: Yale University Press, 2019).
[20] Jeannine Marie DeLombard, *In the Shadow of the Gallows: Race, Crime, and American Civic Identity* (Philadelphia: University of Pennsylvania Press, 2014).

White women and Black women in post-Civil War South Carolina had more in common than the racial and gender ideologies of the time would have us believe. Probably they had more in common than they themselves realized. Examining women's strategies in court and, indeed, glimpsing their everyday lives through their testimonies in court, makes this visible, where too often class has been obfuscated or equated with race in southern history.[21]

This project also draws on the work of historians of the working classes who have re-theorized what courts classified as crime.[22] Rather than categorizing women who appeared in courts as particularly "unruly" females, this study reinterprets such women as representative. Most crimes emerged out of ordinary circumstances, particularly the realities of racial oppression, gendered hardships and legal disabilities, and poverty. Accordingly, I consider women's actions in light of their deprivations, the multiple oppressions they faced on the basis of gender, class, and/or race, the circumstances revealed by the court and census records, and their own words and histories.

Due to the nature of local court records, these words and histories are often fragmented and frustratingly incomplete. For example, case files rarely provide the reasoning behind juries' convictions or acquittals. They also require intensive research. The approximately 1,500 court records that I draw on in this study are stored in dusty, oversized boxes in South Carolina's state

[21] For an example of a recent book which addresses this historical and scholarly problem, see Keri Leigh Merritt, *Masterless Men: Poor Whites and Slavery in the Antebellum South* (New York: Cambridge University Press, 2017). In her latest book, Thavolia Glymph concludes by noting that "the stories of poor white women" offer another, largely untold narrative about the Civil War, like those of Black women that have only recently been studied. See Thavolia Glymph, *The Women's Fight: The Civil War's Battles for Home, Freedom, and Nation* (Chapel Hill: UNC Press, 2020). I believe there is also a dearth of scholarship on middle-class Black southerners during and after Reconstruction, particularly studies of how families were able to obtain and keep land and acquire wealth.

[22] See Robin Kelley, *Race Rebels: Culture, Politics, and the Black Working Class* (New York: The Free Press, 1994) and Kelley, "We Are Not What We Seem: Rethinking Black Working-Class Opposition in the Jim Crow South," *Journal of American History* 80, no. 1 (June 1993), 75-112; Leigh-Anne Francis, "Steal or Starve': Black Women's Criminal Work in New York City, 1893 to 1914," *Journal of Women's History* 32, no. 4 (Winter 2020), 13-37; Saidiya Hartman, *Wayward Lives, Beautiful Experiments: Intimate Histories of Riotous Black Girls, Troublesome Women, and Queer Radicals* (New York: W.W. Norton & Co, 2019).

archives, usually in trifolded packets that have clearly not been opened since they were first folded. During my months of research for this project, I never left the archives at the end of the day without dirt and pencil lead under my fingernails.

Figure 1

Despite the challenges involved in accessing and interpreting them, local court records enable us to see historically marginalized women as legal actors rather than subjects, and to understand the complexities of law as a contested process rather than merely a hegemonic system. Like other legal historians, I am particularly interested in the many places where women's ordinary lives intersected with the law. And here I understand "the law" not as a hegemonic force or a fixed body of knowledge, but as, to paraphrase the legal scholar Hendrik Hartog, "an arena of conflict" that was local, communal, and frequently contested or reshaped by

historical actors.[23] In studying law as a contested arena that held potential for marginalized people, I draw on the rich scholarship and methodologies of legal historians such as Laura Edwards, Hendrik Hartog, Bianca Premo, Kimberly Welch, Ariela Gross, Dylan Penningroth, Melissa Milewski, and Michelle McKinley.[24] Over the past few decades, these legal historians have delved into court records from the most local levels to learn more about "law on the ground" and marginalized people's claims-making in courts. In this study, I examine Black and White women's claims-making as well as how they defended themselves in court. The question, "how did defendants defend themselves?" is an obvious, yet somewhat overlooked one in historical scholarship whose answers are most visible in local court records rather than appellate court records or prison records. I find that women ably defended themselves using a variety of legal and extralegal strategies.

In addition to court records, this project draws extensively on census records and church records. These were useful for learning more about women, their families, and their communities.[25] Newspapers taught me much about the context of local politics and sometimes described women's appearances in court, though court transcripts were rarely published except in the most sensational cases. At times, newspapers were the only surviving documents about

[23] See Hendrik Hartog, "Pigs and Positivism," *Wisconsin Law Review* (1985), 899-935, for a discussion of law as what Hartog defines as "an arena of conflict within which alternative social visions contended, bargained, and survived" (934-5).

[24] See Hartog, "Pigs and Positivism" and Hartog, "Four Fragments on Doing Legal History, or Thinking with and against Willard Hurst," *Law and History Review* 39, no. 4 (November 2021), 835-65; Welch, *Black Litigants in the Antebellum American South*; Laura Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2013) and many other works by Laura Edwards listed in the bibliography; Bianca Premo, *The Enlightenment on Trial: Ordinary Litigants and Colonialism in the Spanish Empire* (New York: Oxford University Press, 2017); Ariela Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Cambridge: Harvard University Press, 2008); Dylan Penningroth, *The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 2003); Melissa Milewski, *Litigating Across the Color Line: Civil Cases Between Black and White Southerners from the End of Slavery to Civil Rights* (New York: Oxford University Press, 2017); Michelle McKinley, *Fractional Freedoms: Slavery, Intimacy, and Legal Mobilization in Colonial Lima, 1600- 1700* (Cambridge: Cambridge University Press, 2016).

[25] Most of these church records are housed in the South Caroliniana Library in Columbia. See the bibliography.

trials in counties whose court records have since been lost. Pardon petitions, governors' pardon books, and penitentiary records were also helpful for finding out more about the experiences of women who were convicted, their lives while incarcerated, and their efforts to secure pardons. Court records, however, provided the starting points for my research into most court cases.

I privilege court records as sources because they enable us to envision and understand the women at the center of these stories as historical actors rather than incarcerated subjects alone. I take arrest warrants, witness testimony, and defendants' statements as the most important sources, enabling women to speak for themselves when possible. These sources also allow me to begin with women's first appearances in court, which was usually in a preliminary hearing held before a trial justice. The term "trial justice" and the court system of post-Civil War South Carolina requires some explanation.

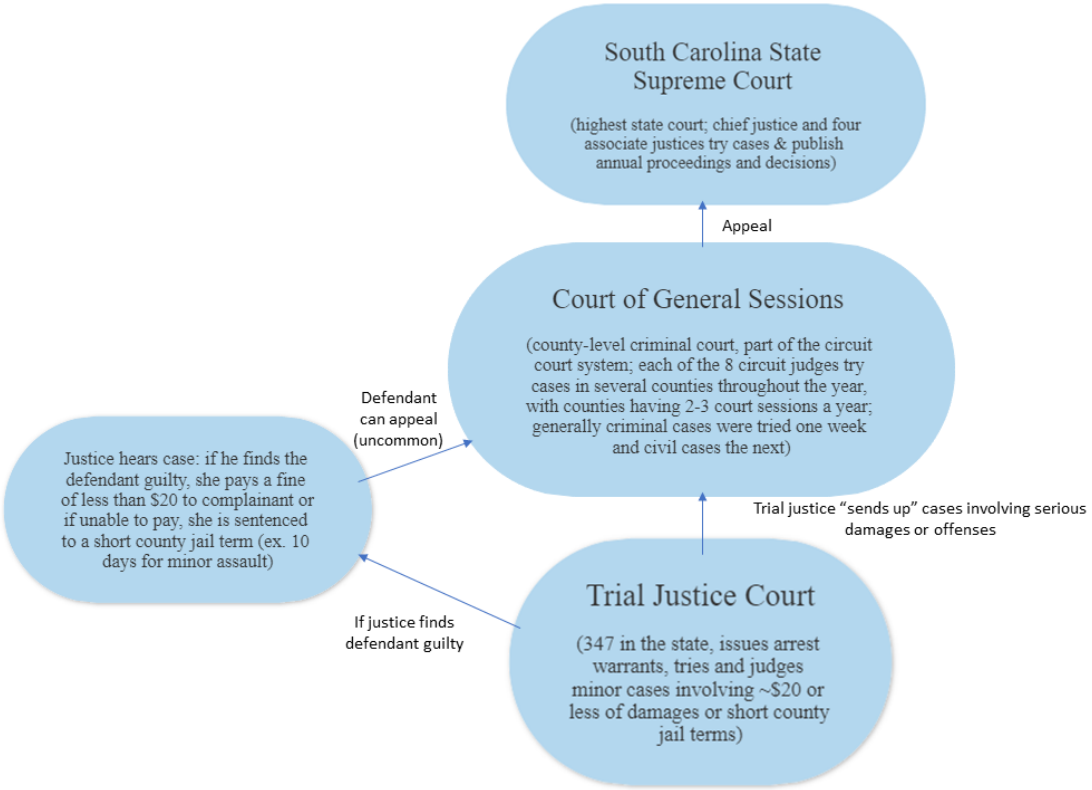


Figure 2

The chart above provides a visualization of the criminal court system. I will also briefly outline it here. As archivists familiar with the records wryly told me, South Carolina's criminal courts were "never very streamlined," so some explanation of the system is necessary to understand how criminal prosecutions proceeded.[26]

The most local court in nineteenth-century South Carolina was the trial justice court and this was where all criminal proceedings began in this era. With roughly 347 justices in the state, these men maintained makeshift courts in most towns of any size. Appointed by the governor on the advice of the legislative General Assembly, trial justices came from varying backgrounds and frequently held other occupations in addition to their judicial responsibilities. During Reconstruction, approximately 5% of justices were African American, with their numbers being higher in the Black majority Lowcountry region. In later decades, the number of Black trial justices was negligible, as most men were driven from their positions after Reconstruction.[27]

Any person of age could come to a trial justice's office (or often simply their home or place of business) and act as an informant about a crime that had taken place. When they swore out an arrest warrant before a justice by making an affidavit, that person became a prosecutor or prosecutrix, to use the feminine form of the word. A citizen complainant initiated a criminal complaint, be it a charge of assault, larceny, or arson. Typically, though not always, they were also the victim of the crime. Only lethal crimes did not have a citizen prosecutor behind them. In this study, I will use the term "complainant" to reduce confusion, although sources I quote and

[26] Indeed, trial justice courts still exist in South Carolina in the form of magistrate courts. Much the same as in the nineteenth century, these magistrates have jurisdiction to try cases with damages not more than $500 or carrying sentences of 30 days in jail or less. Nor is South Carolina unusual in this: other states with magistrate courts today include West Virginia, Georgia, Ohio, and Pennsylvania.

[27] For the statistics about trial justices, see Rubin, *South Carolina Scalawags*, 95.

people of the time would have used "prosecutor," "prosecutrix," or "the prosecution" to refer to these citizen complainants.

A complainant paid one dollar to swear out a warrant before a trial justice, who then could send his constable to arrest the offending party. The justice would then do one of two things: he would try the case himself, or he would preside over a preliminary hearing and then "send up" the case to the higher, county-level court. A trial justice could set bail for defendants in the county jail. He could also try minor offenses with damages less than one hundred dollars or carrying a jail sentence of three months or less. In practice, justices sometimes "sent up" cases anyway. If he did try a minor case, however, and found the defendant guilty, the defendant had a right to appeal to the county-level court, thus guaranteeing them a right to trial by jury.

Whether the case was destined for the higher court or not, the justice held a hearing. Both the complainant and the defendant told their sides of the story with their respective witnesses, whom they had considerable responsibility for enlisting and gathering. Sometimes an attorney for one party or both was present; sometimes, they were not. If the trial justice "sent up" the case to the county-level criminal court, he would document the case, at times recording testimony or his opinion, and then submit these documents to the county solicitor (district attorney) and a grand jury.

From this point, the court system becomes much more familiar and needs less explanation. If the grand jury found a "true bill" in a prosecution, it went forward to the county-level criminal court. These courts were called in South Carolina the Courts of General Sessions. Court week was held twice or three times a year (for populous Charleston County), with circuit judges elected by the General Assembly trying civil and then criminal cases. There were eight circuit judges during the 1865-1900 period, all prominent White men in the state with varying

levels of legal training.[28] The defendants had a jury trial, and the county solicitor usually acted as the prosecuting attorney. Defendants who were convicted could request a new trial or appeal to the state supreme court. Those sentenced to jail time served it either in the county jail or in the state penitentiary. The penitentiary, built in 1867, stood in the capital city of Columbia.

As today, South Carolina in the late nineteenth century was a predominately rural state with small towns and a few cities, chiefly Columbia and Charleston. During Reconstruction, the entire state underwent considerable changes, but local conditions and politics varied a great deal. For this project, I focused on counties with extant records that differed in region, local politics, and racial demographics, so as to avoid biasing my study towards, for example, the more frequently studied South Carolina Lowcountry. Here I will briefly discuss these South Carolina counties whose court records I studied in detail for this project, to better establish a sense of place(s) for readers. The six South Carolina counties whose court records concerning women I transcribed are Richland, Charleston, Clarendon, Laurens, Oconee, and Marlboro.

[28] In fact, William J. Whipper, a prominent Black Republican and lawyer, was elected but did not serve as a circuit judge for the Lowcountry circuit in 1874. Governor Daniel Chamberlain refused to appoint him despite his election by the General Assembly. He charged Whipper with corruption, although Whipper's race undoubtedly played a major role in the general outcry at his election among White conservatives. Tellingly, the day of his election and the resulting scandal were referred to as "Black Thursday." See Rubin, *South Carolina Scalawags,* 98-102.

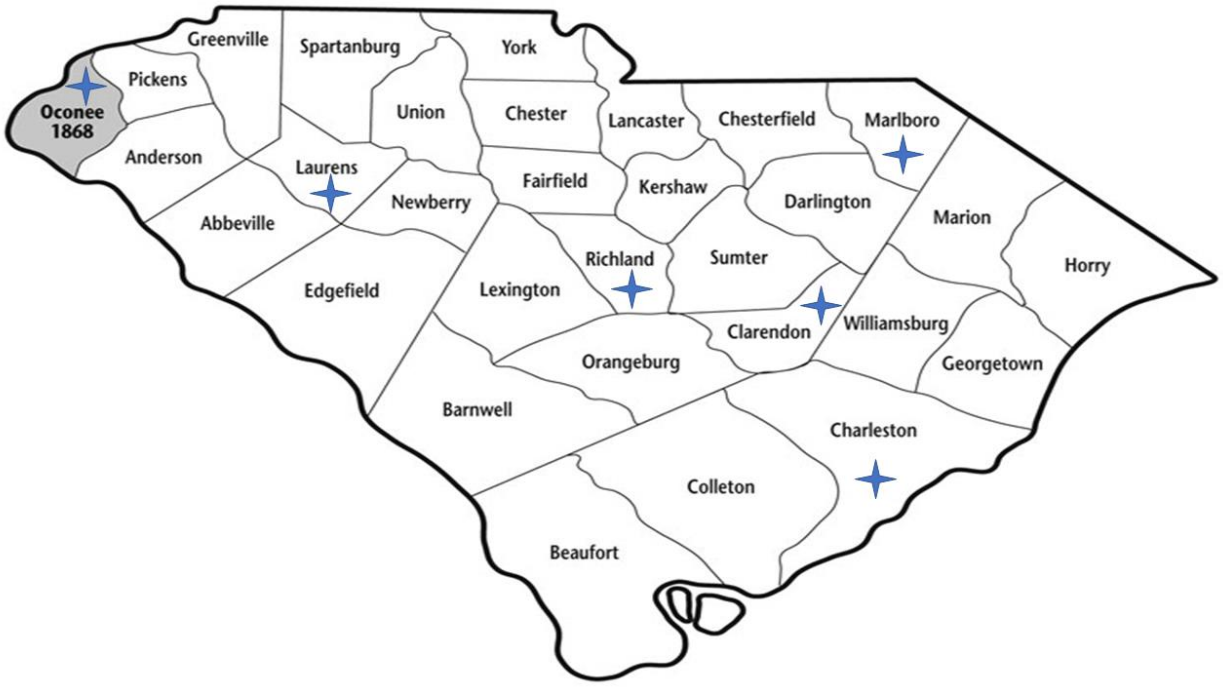


Figure 3

Richland, the seat of Columbia, was an urban county with a large rural population, including thousands of White and Black agricultural laborers who lived outside city lines. It was a hub of Reconstruction, occupied by federal soldiers until 1877. Black trial justices, local politicians, and jury members were active in Richland, just as they were in Charleston, another Reconstruction hub with a Black majority and a history of free Black activism, economic institutions, and politics.[29] Like Richland, Charleston was also far from entirely urban—rather the large county also encompassed numerous "parishes," "plantations," and islands.[30]

The physical and human devastation of the city where South Carolina seceded from the Union—Columbia—and the city where the first shots of the Civil War were fired—Charleston,

[29] A local history of Richland County that I found especially helpful was John Hammond Moore, *Columbia and Richland County: A South Carolina Community, 1740-1990* (Columbia: University of South Carolina Press, 1992).
[30] Local histories of Charleston include Walter J. Fraser, Jr, *Charleston! Charleston!: The History of A Southern City* (Columbia: USC Press, 1989); Bernard E. Powers, *Black Charlestonians: A Social History, 1822-1885* (Little Rock: University of Arkansas Press, 1994); Wilbert L. Jenkins, *Seizing the New Day: African Americans in Post-Civil War Charleston* (Bloomington: University of Indiana Press, 1998); Jeff Strickland, *Unequal Freedoms: Ethnicity, Race, and White Supremacy in Civil War-Era Charleston* (Gainesville: University Press of Florida, 2015).

at Fort Sumter, off the coast—was immense. During the years that mark the beginning of this study, Charleston and Columbia were both half-city, half-ruin. Columbia was devastated and charred by Union forces during General William Tecumseh Sherman's Carolinas campaign in early 1865. Columbia's mayor reported that perhaps 150 civilians died in the final weeks of the war—not due to gunfire, but rather starvation.[31] Although federal relief efforts in the form of a famine bill helped, food insecurity remained common in many parts of the South due to the war's crippling effects on agricultural production.[32]

The city of Charleston and its environs, too, experienced physical devastation during the war. An English visitor to the city just after Lee's surrender lamented that, "Fully two-thirds of this once beautiful and thriving city has been reduced to ashes, the other third, fronting the sea having been so riddled by shot and shell during the last eight months as to be virtually uninhabitable."[33] In addition to Union bombardment, Charleston suffered an immensely destructive fire in 1861, called the Great Fire. Parts of the "Burnt District" remained scarred and unrestored for years. And in 1886, the area would undergo a natural disaster: one of the largest earthquakes ever recorded on the East Coast.[34]

As historians have shown, people experienced not only devastation of the built environment, but also crises of health and human suffering, homelessness and fugitivity, and

[31] Joan E. Cashin, *War Stuff: The Struggle for Human and Environmental Resources in the American Civil War* (New York: Cambridge University Press, 2018), 157.
[32] Ibid., 163.
[33] Lorien Foote, *Rites of Retaliation: Civilization, Soldiers, and Campaigns in the American Civil War* (Chapel Hill: UNC Press, 2021), 142.
[34] Susan Miller Williams and Stephen G. Hoffius, *Upheaval in Charleston: Earthquake and Murder on the Eve of Jim Crow* (Athens: University of Georgia Press, 2011).

profound dislocation. These immense challenges characterized many women's daily lives and environments, especially in the early years of Reconstruction.[35]

However, many freedwomen and other women who flocked to Charleston and Columbia after the Civil War also sought new opportunities for employment, reconnection, intimacy, autonomy, and excitement in the occupied, rebuilding cities. As Elsa Barkley Brown has demonstrated, African American women participated in Reconstruction-era politics through church activities and organizations, parades, political and communal gatherings, and voluntary associations, despite their formal disenfranchisement.[36] Widowed and young White women seeking new partners, reconnection with family, or work, whether by choice or necessity, also poured into the cities from rural areas.

The remainder of the counties whose court records this dissertation draws upon are primarily rural areas such as those from which many women migrated to Columbia or Charleston. Marlboro County, in the Pee Dee River region, sits near the northeastern border with North Carolina. More than any other county included in my study, Marlboro had (and has) a significant Native American population. Pee Dee people as well as Lumbee lived in the county. Many were sharecroppers and some are recognizable in the court records thanks to their distinctive surnames, such as the Lumbee surnames "Locklear" and "Oxendine."[37] In many

---

[35] Megan Kate Nelson, *Ruin Nation: Destruction and the American Civil War* (Athens: University of Georgia Press, 2012); Jim Downs, *Sick from Freedom: African-American Illness and Suffering during the Civil War and Reconstruction* (Oxford: Oxford University Press, 2012); Drew Gilpin Faust, *This Republic of Suffering: Death and the American Civil War* (New York: Knopf, 2009); Tera Hunter, *To 'Joy My Freedom: Southern Black Women's Lives and Labors after the Civil War* (Cambridge, Mass: Harvard University Press, 1997); Amy Murrell Taylor, *Embattled Freedom: Journeys Through the Civil War's Slave Refugee Camps* (Chapel Hill: UNC Press, 2018); Joan E. Cashin, *War Stuff: The Struggle for Human and Environmental Resources in the American Civil War* (New York: Cambridge University Press, 2018).

[36] Brown, "Negotiating and Transforming the Public Sphere."

[37] Between 20-30% of Lumbees today may bear the Locklear/Lochlear surname. Richard O'Mara, "Among Lumbees, Locklear is the Name of the Game," *Baltimore Sun*, October 12, 1993. As Malinda Maynor Lowery usefully discusses, Lumbee people were sometimes listed as "mulatto," "black," "mixt," "colored," or not referred to by race at all in nineteenth-century records. See Lowery, *Lumbee Indians in the Jim Crow South: Race, Identity, and the Making of a Nation* (Chapel Hill: UNC Press, 2010), 280.

cases, however, clerks and other record-keepers did not note whether a person was of Native American ancestry. Primarily a rural, cotton-growing county, Marlboro had a slight Black majority as well as multiracial citizens.[38] Although racial and political violence were rarer in Marlboro than in the upcountry, Black citizens in the county did face White violence as well as the cycles of exploitation involved in sharecropping. In September 1876, for example, the county's "colored citizens" petitioned Governor Daniel Chamberlain to inform him of systematic attacks by armed bands of White men who sought to suppress the Republican vote in the 1876 election.[39]

Clarendon County, whose county seat was the town of Manning, was also rural and agricultural, like most of the nineteenth-century South. Located in the east-central region of the state, the county elected Black politicians during Reconstruction, such as State Senator J.D. Warley, but also had a history of racial unrest and terrorism. Election-related violence perpetrated by White Democrats against White and Black Republicans included whippings and murders of politicians.[40] A half-century after the close of my study, civil rights activists would challenge the county's segregated school system in *Briggs v. Elliott* (1952), one of the cases folded into the landmark Supreme Court case *Brown v Board of Education* (1954).[41]

Laurens County was an upcountry county not far from the city of Greenville, which due to railroad inroads and local migration became an industrial and cotton mill hub by the turn of the century. Laurens had a slight White majority. The county saw significant election-related

[38] A helpful but obviously dated guide to Marlboro County is J.A.W. Thomas, *A History of Marlboro County* (Atlanta: Foote & Davis Co, 1897). It discusses some of the largest families and plantations in the county, including a few prominent Black businessmen and families.
[39] Zuczek, *State of Rebellion*, 174.
[40] "The Murder of a Colored County Commissioner in South Carolina," *New York Times*, May 1, 1871; W.E.B. DuBois, *Black Reconstruction in America* (New York: Harcourt Brace, 1935), 603.
[41] There is a play about the almost-forgotten case written by Ossie Davis. See Ossie Davis and Alice Bernstein, ed, *The People of Clarendon County* (Chicago: Third World Press, 2007).

violence during Reconstruction, including the Laurens or Laurensville Riot of 1870, in which more than 2,000 Whites seized the town of Laurensville. The riot—in truth, a localized coup—led to the death of ten to twelve people, including a Black state legislature representative and a White Republican judge.[42] Even apart from such riots and armed rebellions, numerous African Americans were lynched in Laurens, including Judy Metts, a Black woman whose story is discussed in Chapter Five. In fact, Laurens was one of the South Carolina counties *most* beset by terrorism and violence during Reconstruction. In the early 1870s, Laurens became one of the upcountry counties that the Grant administration placed under martial law and investigated during the "Ku-Klux Trials" related to widespread Klan violence against African Americans and White Republicans in the region.[43] As early as 1866, before the official formation of Ku Klux bands in the region, a Freedmen's Bureau agent described "bands of armed men" patrolling the public roads to "prevent the Freedmen from hiring themselves to any one but their former owners." "Through fear," the agent wrote, such White men sought to keep freedpeople "in a condition worse than slavery."[44] In the notorious election of 1876, too, more than a thousand Black voters were kept from the polls in Laurens by Democratic force and fraud.[45]

[42] Du Bois, *Black Reconstruction*, 676-77. Du Bois mentioned Laurens and Edgefield as two of the most racially fraught counties during Reconstruction in South Carolina. He quoted an eyewitness who had written that "armed men make it their business to traverse these counties and maltreat Negroes without any avowed definite purpose in view." Du Bois noted these some of these men were Ku Klux Klan members, while others called themselves "regulators." For the Laurens Riot, see "The Ku-Klux reign of terror: Synopsis of a portion of the testimony taken by the Congressional investigating committee," no. 5 (broadside, 1872), Library of Congress Ephemera Collection, portfolio 237, folder 8; October 25, 1980, *Daily Phoenix* (Columbia, SC). See also Zuczek, *State of Rebellion*, 88-9.
[43] U.S. Congress, *Joint Committee to Inquire into the Conditions of Affairs in the Late Insurrectionary States, Ku-Klux Conspiracy: Testimony, Volumes 3, 4, & 5* (Washington, DC: US Government Printing Office, 1872).
[44] Zuczek, *State of Rebellion*, 30.
[45] Ibid., 108-9.

Figure 4

Finally, Oconee County had until 1868 been part of neighboring Pickens County. The westernmost county in South Carolina, it was mountainous and rural. The county's White citizens had few enslaved people before the Civil War, the local economy being more dependent on sheep, livestock, and the railroad that ran through the county than cotton.[46] The Black population was small and Black men rarely served in political office during Reconstruction. Although to a much lesser extent than Laurens, rural Oconee experienced racial and political violence. In 1867, for example, an attack by local White men on a local Black debating society and Union League led to the death of a White man and a mass indictment of local African Americans.[47] I found incidences of extralegal violence, including nightrider violence against

[46] The best secondary source about Oconee County as well as Pickens, Greenville, and Anderson Counties has been W.J. Megginson, *African American Life in South Carolina's Upper Piedmont, 1780-1900* (Columbia: University of South Carolina Press, 2006). Also helpful were David Carlton, *Mill and Town in South Carolina, 1880-1920* (Baton Rouge: LSA Press, 1982), and Stephen A. West, *From Yeoman to Redneck in the South Carolina Upcountry, 1830-1915* (Charlottesville: University of Virginia Press, 2008).

[47] Megginson, *African American Life*, 213-261. In fact, the incident intersects with Sarah Calhoun's 1866 trial for infanticide. See Chapter Three.

interracial couples. An insular community, Oconee also was home to some German immigrants, particularly in the county seat of Walhalla.

Focusing on these six counties has been necessary due to the depth and breadth of research involved in reading, transcribing, and interpreting local court records. In addition, limiting my study to six counties has enabled me to learn more about local politics and history in each county, which has enriched my reading of the legal sources. However, at times I also discuss cases from other parts of South Carolina or other southern states that I discovered in newspapers or other sources and subsequently investigated. Yet a focus on the local(s) is a strength of the study rather than a weakness. The diversity of the counties in terms of population and a mix of rural and urban spaces allows us to somewhat extrapolate about other parts of the rural and urban South. As the following chapter outline shows, this dissertation is similarly wide-ranging in the breadth of types of court cases that it encompasses, with each chapter focusing on a different category of criminal trials.

The first chapter, "She Prays a Warrant," centers on Black women as complainants in South Carolina's criminal courts during Reconstruction. I argue that ordinary Black women who acted as complainants not only seized upon, but deftly and determinedly expanded the revolutionary potential of Reconstruction. By turning to the criminal courts for recourse and financial restitution for wrongs committed against them, protection, and as a forum for conflict resolution, Black women insisted upon being heard and treated as citizens despite the contested and limited nature of Black and, indeed, women's citizenship. Moreover, reading Reconstruction-era court records enables us glimpses of Black women's politics, including their ideas about emancipation, race relations, labor, womanhood, and marital relationships between newly free people.

Chapter Two focuses on assault cases. I argue that contrary to assumptions in earlier scholarship and prevailing historical stereotypes, interpersonal violence was not merely the province of particularly "unruly" southern women. Rather, it was commonplace, and assault constituted the most common offense of which Black and White women were charged. Taking this fact as a starting point, Chapter Two examines local legal culture in the post-Civil War South, with an emphasis on how "conflicts" ranging from labor conflicts to domestic violence to fights between neighbors became "cases" in the criminal courts. Through careful reading of court records and the documents that sometimes accompany them in case files, principally letters, I argue that the striking prevalence of abandoned or "dropped" cases in local courts in fact reflects significant resolution of conflicts before they reached a full trial. Black and White women were active negotiators in such cases. They offered monetary "satisfaction" to complainants in exchange for an end to a prosecution, bargained with officials, and, when necessary, marshalled witnesses and gendered courtroom narratives to argue they had employed violence for reasons of justified self-defense.

Chapter Three, "Mother and Murderess," deals with a more serious type of violent crime: infanticide. I argue that investigating infanticide remained a highly communal and essentially ambiguous process in post-Civil War South Carolina. Coroners, coroners' juries, midwives, physicians, and female witnesses played crucial roles in coroners' inquests and criminal trials. I argue that experiential and gendered knowledge, including that offered by ordinary women who had access to intimate spaces and experience with childbirth and children, continued to prove valuable and persuasive to coroners' juries and trial juries alike. Despite communities' consideration of different kinds of knowledge in determining and interpreting infanticide, the ambiguity surrounding infant death led to low conviction rates for accused women, who also

sometimes benefited from communities' and officials' mercy for mothers in pitiable situations. Increasingly by the last two decades of the nineteenth century, however, Black women accused of infanticide were less likely to benefit from such mercy. Despite community protests, South Carolina executed a Black woman, Anna Tribble, for infanticide in 1892, and several other Black women narrowly escaped the noose.

Chapter Four, "Appropriated to Her Own Use and Benefit," focuses on theft. To a greater extent than Chapter Three, this chapter addresses change over time in terms of how women were punished as well as how legislators and officials framed and racialized legal categories of larceny. I argue that women most frequently stole food, clothing, livestock, crops, and other objects that they sought to incorporate into their own households or, in the apt phrasing of some indictments, "appropriate" the items "to her own benefit." Theft was thus gendered, and the objects women stole generally reflected their material deprivations. Most accused women were poor, and most convicted (more than 90%) were Black. I suggest that White women benefited from more room for extralegal negotiation which enabled them to resolve most such incidents outside of court. In addition, the intense racialization of larceny in the post-Civil War South made officials and neighbors reluctant to frame White women's actions as theft. This racialization of theft intensified in the late nineteenth century, as White Democratic legislators disenfranchised Black men for petty theft and passed severe "mandatory minimum sentences." Nevertheless, Black women accused of theft still advocated for themselves in court, negotiating with complainants and officials, constructing narratives that displaced suspicions onto others, and performing penitence in the courtroom in strategic ways that moved juries and officials.

Chapter Five focuses on another category of property crime: arson. As with theft, more than 90% of the women tried for arson in this period were African American. I argue that

legislators' and officials' increasingly severe punishment of arson after Reconstruction reflected southerners' understanding of arson as African American protest against economic exploitation, including sharecropping, crop liens, eviction, and individual violations of trust and fairness on the part of White landlords. Indeed, these perceptions of arson were somewhat based in reality. I found that most cases centered on Black women who allegedly set fire to the property of landlords or employers, often after a particular conflict occurred. Very few women sought to use arson as an instrument of murder, as demonstrated by their decision to set fire to outbuildings rather than dwelling houses. The smaller number of cases involving White women as defendants, too, suggest economic motives. Therefore, I take arson as an opportunity to demonstrate that women were not only determined and capable legal actors, but also economic actors subject to the same struggles, hard choices, and feelings of despair and anger as their male relatives. Indeed, arson was sometimes a collective act where women and men were indicted together.

The sixth and final chapter, "Illicit Acts," focuses on a crime for which men and women were always indicted together: adultery and fornication. The last chapter in the dissertation and the last chronologically, Chapter Six sheds light on an aspect of the post-Reconstruction "Redemption" South that has received little scholarly attention. This is the wave of interlocking laws passed by White "Redeemers" during the late 1870s to criminalize adultery, premarital sex (fornication), interracial marriage, and, in the case of South Carolina, divorce. I argue that legislators passed these highly racialized, gendered laws to impugn the recent era of Reconstruction and Black citizenship more broadly. Officials and legislators also targeted couples composed of Black men and White women as the foremost subjects of the new laws. An analysis of "law on the ground," however, reveals that communities interpreted, employed, ignored, and contested the laws in complex ways. For example, some women appropriated the

adultery law by bringing complaints against wayward husbands who had deserted them. Accused couples enacted creative strategies to avoid indictment and escape conviction, including crossing county or state lines, racial "passing," and characterizing their relationship as economic rather than sexual. On the other hand, I argue that examining adultery and fornication cases where men and women were charged together throws into sharp relief the harsher circumstances that women faced in these cases. Poor Black and White women were less able than men to make bail or pay fines. They faced gendered stigma in their communities, were separated from dependent children, and often gave birth or nursed newborn infants in the deadly conditions of the penitentiary. By paying attention to women, the sexualized and gendered as well as racialized bent of the shift towards a Jim Crow legal system becomes evident, where once it was obscured.

Indeed, attention to the local, the marginalized, and the repressed reveals undercurrents and new dimensions to what we think we know about the workings of law and women's lives in the post-Civil War South. At times, the sheer diversity of women's lives and experiences in court as I explored them in the archives has felt overwhelming. In the thousands of folded case files jammed into dusty boxes, I found women quarreling over laundry, suffering assaults while selling seafood in the city market, offering herbal cures to patients, living in a variety of familial arrangements, defending themselves against brutal domestic violence, prosecuting those who had harmed their children, slipping coins from patrons' pockets as they slept in their family's inn, and engaging in sex work in urban and rural environments. The court records speak of women assaulting their domestic employees, helping neighbors escape police custody, bringing legal complaints against men who had raped them, picking extra vegetables from the fields where they labored as sharecroppers, interrupting court proceedings to correct the judge, abandoning infants they could not afford to raise, stealing pigs to feed their family, and breaking into wealthy

homes. I happened across a woman charged with practicing racial discrimination in her ice cream parlor, women socializing with friends in the city while wearing clothes appropriated from a neighbor's laundry line, and women setting fire to the barns of exploitative landowners.

The overall impression is of a vibrantly colorful, endlessly intricate tapestry of women engaged in continuously renegotiating, testing, and defiantly treading over the racial, gender, and class boundaries of their society. In my heart, I am a storyteller and a lover of stories, and nothing has made my heart beat with more excitement than finding a defendant's statement or a letter she sent from her home or jail cell. Hearing the voices of women who often could not read or write preserved in all their righteous indignance at their mistreatment, their sensible explanations of their actions, or even in their resolute, rebellious silence—when "the prisoner has nothing more to say in her defense," as judges sometimes noted with disapproval—has been the greatest pleasure of this project.

As Sophie White writes in her study of eighteenth-century court testimonies by enslaved people in French Louisiana, "…we only catch sight of them for brief moments in time. Yet here were real people who lived full lives. We are the richer for having encountered them, however fleetingly."[48] I have tried to keep women, their words, and their endlessly resourceful strategies for fighting to define their own lives as best they could at the center of my work.

[48] Sophie White, *Voices of the Enslaved: Love, Labor, and Longing in French Louisiana* (Chapel Hill: UNC Press, 2019), 226.

Chapter One

"She Prays a Warrant":
Black Women and the Criminal Courts in Reconstruction South Carolina

On March 20th, 1870, a young African American woman named Elizabeth Boyd entered a store and purchased an orange. Finding the orange "unfit to be eaten," she returned to the store's proprietor, a White man named Andrew Brookbanks, to ask for her money back "whereupon," as Elizabeth Boyd later testified before Charleston County's Court of General Sessions, "Brookbanks struck [her] a violent blow in the face with his clenched hands, and then did further seize hold of [her] in a violent manner. I will break your damn neck," Brookbanks threatened. Elizabeth Boyd responded by swearing out an arrest warrant against Brookbanks for assault and battery at the nearest trial justice's office. The Justice sent the case up to the county-level Court of General Sessions, where Boyd and two men who had been in Brookbanks' store at

the time of the assault testified against Brookbanks before a jury of Black and White men. The jury found Brookbanks guilty of assaulting Elizabeth Boyd. The judge sentenced him to pay a fine of fifteen dollars and court costs or be imprisoned in the county jail for thirty days. Brookbanks paid.[1]

The story of Elizabeth Boyd's successful prosecution of a White merchant for assault and battery is both unexceptional and extraordinary. Like most of the hundreds of other Black women who swore out arrest warrants during Reconstruction who sought recourse for damage to their persons or property, claimed legal protection, or attempted to use the law to settle personal disputes, Elizabeth Boyd had lived most of her life as human property. For her, her everyday criminal complaint must have felt revolutionary indeed.

Historians who have studied post-Civil War criminal courts in the South and especially Black southerners' presence in those courts have most often focused on continuities from the antebellum period. They have looked mostly at the post-Reconstruction period and the appellate courts. There, scholars have examined the experiences of Black defendants and the rampant injustice that Black southerners experienced under racist statutes. In addition, scholars have rightly emphasized the oppressive nature of the new penitentiaries and convict labor institutions which White conservatives created during Presidential Reconstruction and especially in the decades afterwards.[2] My own research on women's experiences as defendants in South Carolina's postbellum criminal courts demonstrates that Black women, unprotected by the

[1] *State vs A. Brookbanks*, Charleston County Court of General Sessions Indictments, box 20, folder #1706, South Carolina Department of Archives and History (hereafter SCDAH).

[2] See, for example, Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the Nineteenth-Century American South* (Oxford: Oxford University Press, 1984); Christopher Waldrep, *Roots of Disorder: Race and Criminal Justice in the American South, 1817-80* (Urbana: University of Chicago Press, 1990); Tabitha LaFlouria, *Chained in Silence: Black Women and Convict Labor in the New South* (Chapel Hill: University of North Carolina Press, 2015); Henry Kamerling, *Capital and Convict: Race, Region, and Punishment in post-Civil War America* (Charlottesville: University of Virginia Press, 2017).

chivalry that White men in power afforded to White women accused of most crimes, faced persistent discrimination in court. They received increasingly harsh sentences for petty offenses, especially, as I discuss at greater length in Chapters Four, Five, and Six, after White Democrats replaced Republicans in power following the end of Reconstruction.

Yet, this is only part of the story. In this chapter, I seek to shed light on women, specifically Black women in South Carolina during Reconstruction, who acted as complainants in criminal court proceedings, bringing and pursuing complaints against individuals, White and Black, whom they charged with having infringed upon their person or property. I found that hundreds of Black women, most of them freedwomen, swore out arrest warrants, which began with the formulaic phrase "she prays a warrant for the arrest of." In doing so, and in pursuing these cases, Black women acted as complainants in criminal cases during Reconstruction. They turned to local trial justices and the newly desegregated local criminal courts, usually as a means of claiming legal protection from or recourse for physical violence to their bodies and those of their children. Through these criminal complaints, Black women made courageous and radical claims to citizenship.

By taking action against those who infringed upon their bodies, their rights, and their property, Black women not only demanded that legal officials and institutions and their communities recognize their rights to integrity and autonomy—they also asserted their newly won, if highly contested and uncertain, status as citizens.[3] Drawing on experiences with

[3] For shifting and contested notions of citizenship in the nineteenth century U.S, including the question of women's (incomplete) citizenship and debates surrounding Black citizenship after Emancipation, see, for example, Barbara Y. Welke, *Law and the Borders of Belonging in the Long Nineteenth-Century United States* (Cambridge: Cambridge University Press, 2010); Hannah Rosen, *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South* (Chapel Hill: University of North Carolina Press, 2009); Nancy Isenberg, *Sex and Citizenship in Antebellum America* (Chapel Hill: UNC Press, 1998); Kate Masur, *Until Justice Be Done: America's First Civil Rights Movement, from the Revolution to Reconstruction* (New York: W.W. Norton, 2021).

institutions such as the Freedman's Bureau and interactions with the Union Army in contraband camps and on plantations, Black women understood themselves as having a new relationship with the federal state and with local government institutions, including trial justices and county courts. Their new citizenship was incomplete, marred as it was by gendered legal disabilities prohibiting them from voting, holding office, and sitting on juries as well as persistent discrimination by those who still sought to treat them as slaves. Yet Black women pushed courts and officials to recognize their claims as citizens and their right to restitution for wrongs committed against them. Importantly, they did so in the public forum of local criminal courts, where not only juries and officials but also spectators—those friendly to Black Americans' long struggle for freedom and justice and those opposed—witnessed them as legal actors and citizens.

Indeed, court records are underexplored sources for examining women's politics and how they represented them. From some legal documents, we can glimpse Black women's ideas what emancipation and freedom should look like, their hopes for the transformation of racial and economic relations, and their notions of justice. Through their actions and their words in court, Black women took a stance on the primary questions of the day. What would race relations look like after slavery? Did the equality guaranteed in the Fourteenth Amendment mean simply equality before the law, or a broader social equality? What would gender relations look like between newly freed husbands and wives, between employers and employees? And what about everyday interactions between Black and White people interacting in the public sphere? Although their circumstances and the conflicts in which they found themselves varied greatly, it is clear that Black women during Reconstruction demanded that freedom have fuller meanings.

1.1 Freedwomen as Citizen Complainants

During Reconstruction, the criminal legal system in the South underwent dramatic and too-often overlooked transformations. Prior to the Civil War, enslaved people and in fact, all people of color were tried in courts separate from those where White people were tried. In South Carolina, these were called Courts of Magistrates and Freeholders. During the antebellum period, these women were tried in South Carolina's county-level Courts of Magistrates and Freeholders, a separate court system specifically designed for White landholders to try enslaved people as well as free people of color. A Court of Magistrates and Freeholders constituted two justices of the peace and at least three White male freeholders. Once someone initiated a legal complaint, a justice issued a warrant for the arrest of the defendant and he or she was taken into custody, typically by a local constable. The justice then called a second justice and summoned a panel of White freeholders to serve as a sort of jury in the case. Unlike in antebellum Courts of General Sessions, enslaved people and free people of color could testify in Magistrates and Freeholders trials. However, there were few procedural rules or protections for the accused. Most trials only lasted one day, and sentences were rapidly carried out. Until 1833, those convicted of capital crimes such as arson and murder were usually burnt at the stake as a horrific example to other slaves. After 1833, hanging replaced burning.[4] Although South Carolina was the first to create Courts of Magistrates and Freeholders, similar racialized court systems prevailed in other southern states, including Louisiana, Virginia, and Georgia.[5]

[4] Lowry Ware, "The Burning of Jerry: The Last Slave Execution by Fire in South Carolina?" *South Carolina Historical Magazine* 91, no. 2 (April 1990), 100-106; see also *Abbeville Press and Banner* (Abbeville, S.C.), July 2, 1879.

[5] Daniel J. Flanigan, "Criminal Procedure in Slave Trials in the Antebellum South," *Journal of Southern History* 40, no. 4 (November 1974), 537-564. Historians have recently drawn upon the records of the Courts of Magistrates and Freeholders in innovative ways, using them to study not only enslaved rebellion and resistance but also violence among enslaved communities and friendship among enslaved men, as evidenced by the large number of men tried in groups for leaving the plantation at night to gamble, drink, and hunt. See Sergio A. Lussana, *My Brother Slaves: Friendship, Masculinity, and Resistance in the Antebellum South* (Lexington: University Press of Kentucky, 2016); Douglas R. Egerton and Robert L. Paquette, ed., *The Denmark Vesey Affair: A Documentary History* (Gainesville: University Press of Florida, 2017).

Immediately after the Civil War, too, the often ex-Confederate men who took back up the reins of government sought to remake the system in the image of antebellum law. Among other things, the now-notorious "Black Codes" that White southerners passed required African Americans to sign mandatory contracts with White employers and obtain licenses to practice non-agricultural trades or else be arrested for vagrancy. Apprenticeship laws allowed Whites, often former slaveholders, to keep Black children from their parents, should their parents be deemed unsuitable in any way. Whites could force "apprentice" children as old as twenty-one to labor under the guise of teaching them a useful trade. Formerly enslaved people were forbidden to carry firearms. And, as in the antebellum period, they were formally banned from testifying in court against a White person unless the case was a civil one that involved a Black person's property. All criminal cases involving Black defendants were to be tried in special district courts created for that purpose—in imitation of the Courts of Magistrates and Freeholders.[6]

Disgusted by the Black Codes and the violence against freedpeople in the former Confederacy, the military commander of the Carolinas, Major General Daniel Sickles, nullified the Black Codes.[7] Republicans in Congress, realizing that a more radical reconstruction of the South was needed, passed the Reconstruction Acts and began a more intensive process of transforming the former Confederacy. The Congressional Reconstruction Acts of 1867 repealed the Black codes, made Black male suffrage the law of the land, and passed laws to protect Black laborers from slavery-like exploitation (though inadequately, as it turned out). The Republican-dominated Congress also passed the watershed Fourteenth Amendment. The amendment,

[6] Bernard E. Powers Jr, *Black Charlestonians: A Social History, 1822-1885* (Fayetteville: University of Arkansas press, 1994), 81-85. See also James Lowell Underwood, "The South Carolina Constitution of 1868," in *At Freedom's Door: African American Founding Fathers and Lawyers in Reconstruction South Carolina* (Columbia: University of South Carolina Press), 5.
[7] Powers, *Black Charlestonians,* 85.

bookended by the Thirteenth Amendment abolishing slavery and the Fifteenth Amendment, which provided constitutional guarantee to the Reconstruction Acts that guaranteed Black male suffrage, would have a powerful effect on civil rights struggles for many marginalized groups in the century and a half to come. Essentially, it provided equality for all Americans before the laws, with this right to equality to be protected and defended by the federal government. The Fourteenth Amendment therefore granted unprecedented power to the state to protect citizens' rights. Moreover, it gave individual citizens and groups of citizens—principally African Americans in the former slave South—a new relationship with the federal government.[8]

Among the less-discussed rights that Black Americans gained was the right to testify in court, including against Whites. By October 1866, civil courts had largely been reestablished and Black witnesses were testifying in them.[9] Aided by the presence of federal troops, southern states held elections and conventions to write new constitutions.

In South Carolina, Congressional Reconstruction ushered in a more democratic era than any in the state's history. South Carolina's antebellum legislature had been dominated by coastal planters. But the 1868 Constitutional Convention was the first in the nation's history to have a Black majority, in keeping with state demographics. The Convention passed legislation enabling universal male suffrage and eliminating property qualifications for voting and holding office. They provided free public education for all children and granted property rights to married women. They passed debtor relief and made legislative representation proportional to population rather than wealth. They created provisions for divorce through the state's courts and they

[8] See Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (New York: W.W. Norton, 2019).
[9] Ibid., 86. In some counties, such as Clarendon County, the local courts were not fully reestablished until early 1867. In the meantime, criminal cases were usually tried in provost courts. Charleston's "district court" was up and running in 1866, although the records from 1866 are sparse.

integrated these courts, eliminating separate courts for people of color. Delegates repealed corporal punishment and the death penalty for all crimes except "willful murder."[10]

With the advent of Congressional Reconstruction and the ratification of the new State Constitution in 1868, the Constitutional Convention abolished South Carolina's Courts of Magistrates and Freeholders and integrated the court system. For the first time in the state's history, Black South Carolinians exercised the legal rights to sit on juries, file complaints, testify, and initiate legal proceedings against Black and White people who had wronged them. While freedwomen still could not sit on juries or cast their votes, court records demonstrate that they took full advantage of their new citizenship and legal rights in their roles as not only litigants in civil cases, as Melissa Milewski has recently shown, but also as complainants who initiated proceedings in criminal trials.[11]

Sally Engle Merry and other scholars of legal cultures have demonstrated that ordinary citizens bring their conflicts with other citizens to the law when they feel entitled to draw upon legal institutions and officials for support in resolving their conflicts and when they feel that they can obtain justice. After Emancipation, freedpeople developed a legal consciousness that intersected with many aspects of their everyday lives. By legal consciousness, I mean that they developed a belief in law as well as a sense that they were entitled to use the legal system. Furthermore, like the working-class New Englanders in Merry's anthropological study, Black

[10] For divorce, see Underwood, "The South Carolina Constitution of 1868," 11.

[11] Melissa Milewski, *Litigating Across the Color Line: Civil Cases Between Black and White Southerners from the End of Slavery to Civil Rights* (New York: Oxford University Press, 2017). For litigation by free people of color and enslaved people in antebellum Mississippi and Louisiana, see Kimberly Welch, *Black Litigants in the Antebellum American South* (Chapel Hill: UNC Press, 2018). Welch finds that African Americans used creative and social strategies as well as the language of property to advocate for themselves in civil courts.

men and women learned from their experiences how to approach law and what problems in their lives might be amenable to be resolution through law.[12]

Energized by the triumph of Black and White Republicans in passing a democratic new State Constitution in 1868 that granted Black men the right to vote and all Black people the right to testify in court, encouraged by the sight of Republican trial justices going about their work and Black men serving on juries, many Black women appear to have been confident in the promises of Reconstruction and the justice offered to them through its legal institutions. This was especially true in urban counties such as Richland and Charleston, hubs of Reconstruction occupied by federal soldiers, where freedwomen from rural areas settled in droves after Emancipation.[13]

When they acted as complainants, Black women first swore out warrants against individuals who had wronged them before a trial justice, who then held a preliminary hearing to determine if the case should be "sent up" to the county-level Court of General Sessions. In the legal culture of postbellum South Carolina, the complainant, usually called the prosecutor or prosecutrix in the documents, was largely responsible for naming and enlisting witnesses to testify against the defendant. Often, she continued to play a major role in the prosecution even during the defendant's General Sessions trial. If the defendant who had wronged her was found guilty, the complainant would receive the fine levied upon the defendant and obtain a kind of

[12] See Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-class Americans* (Chicago: University of Chicago Press, 1990); Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998).
[13] See especially Wilbert L. Jenkins, *Seizing the New Day: African Americans in Post-Civil War Charleston* (Bloomington: Indiana University Press, 1998); Julie Saville, *The Work of Reconstruction: From Slave to Wage Laborer in South Carolina, 1860-1870* (Cambridge: Cambridge University Press, 1994).

justice for the injury against her.[14] Frequently this referred to a literal injury, as freedwomen prosecuted others for assault and battery in a majority of the cases that I studied.

1.2 "Without Just Cause or Provocation": Freedwomen's Prosecutions for Assault

Most Black women who swore out arrest warrants during Reconstruction in South Carolina named assault and battery as the offense committed against them. Court records demonstrate that Black women faced a disheartening amount of violence in their everyday lives. Their depositions on arrest warrants and, when available, their trial testimonies tell stories of domestic violence at the hands of male partners, commercial encounters with Whites who casually physically assaulted them for perceived "insolence," and ongoing conflicts with female neighbors or co-workers with whom they sometimes competed for workspace and resources. A number of Black women also acted as complainants against defendants who they accused of assaulting their children. This was a particularly grievous offense in the eyes of formerly enslaved women who, until quite recently, had possessed no legal rights of guardianship over their own children.[15] Arguments and mistreatment probably escalated into legal prosecutions in a small number of incidents, but court records provide us with a glimpse of both the conflicts Black women faced in their daily lives and how they sought to resolve them using extralegal and legal means.

In the early years of Reconstruction, as South Carolina freedwomen from the countryside travelled to the cities of Charleston and Columbia in search of paid work, family members they

[14] Laura F. Edwards, "Status Without Rights: African Americans and the Tangled History of Law and Governance in the Nineteenth-Century U.S. South," *American Historical Review* 112, issue 2, April 2007), 371-4.
[15] For guardianship, including early attempts by ex-Confederate southern governments to apprentice out freedpeople's children against their will, see Catherine Jones, "Ties That Bind, Bonds That Break: Children in the Reorganization of Households in Postemancipation Virginia," *Journal of Southern History* 76, no. 1 (February 2010), 71-106; Giuliana Perrone, "Back into the Days of Slavery': Freedom, Citizenship, and the Black Family in the Reconstruction-era Courtroom," *Law and History Review* 37, no. 1 (January 2020), 1-37.

had been separated from during slavery, and better lives, conflicts between Black women often came before the law for resolution.[16] In these early years, too, Black women likely felt most able to bring their complaints to courts and obtain a fair judgment. In a typical example from Charleston, a young freedwoman named Louisa Phillips swore out an arrest warrant for assault against two other Black women, Ellen Shivetz and Mary Shot, in 1869. Phillips described how they "took hold of her and tore her clothes in several places." She showed the trial justice the tears in her clothing and the clerk added, in the formulaic language of warrants, that Phillips stood "in fear of further molestation from them" if they were not arrested. A constable did arrest Shivetz and Shot but, like most defendants before Charleston's Reconstruction-era Court of General Sessions, which had low conviction rates in comparison to contemporary criminal courts, they were acquitted.[17]

Occasionally, seemingly trivial conflicts between women made it to court or, at least, a preliminary hearing before a trial justice. In 1869, Julia Shiver, a Charleston freedwoman, swore out a warrant for assault against another Black woman, Julia Reeves. "The said Julia lives in the same house with her, and [because] the deponent put [Julia Reeves's] wash off the fence, the said [Reeves] called her a striking hussy." "Whereupon," the warrant continues, "the said Julia Reeves struck the deponent a blow with her fist." However, Julia Shiver eventually dropped the case, perhaps having made amends with the other Julia.[18]

In relatively minor or brief conflicts like these, it was not uncommon for the parties to reach an agreement outside of court. Sometimes Black women, and other complainants in nineteenth-century South Carolina courts, used the threat of legal prosecution or an actual arrest

[16] Powers, *Black Charlestonians*, 101.
[17] *State vs Ellen Shivetz and Mary Shot*, Charleston County Court of General Sessions Indictments, box 17, folder #288, SCDAH.
[18] *State vs Julia Reeves*, Charleston County Court of General Sessions Indictments, box 18, folder #1192, SCDAH.

warrant as a strategy for forcing the offending party to give them "satisfaction" for the insult to their dignity or encourage them to behave better. In this legal culture, the complainant retained a certain amount of control over how far the case proceeded. She could typically ask the solicitor to discontinue the case at any time before it went to trial, as long as the offense was not a dire one, such as an assault that later led to a victim's death.

While prosecutions against neighbors were common (and usually dropped before they went to trial), Black women also swore out assault warrants against relative strangers, Black and White. Black women going about their business as merchants in the city market, shopping, or simply walking in the street reported suffering violence at the hands of dissatisfied customers, Whites who deemed them "insolent" or "saucy," or simply cruel passersby. In 1869, Charlestonian Elizabeth Drayton swore out a warrant against a White man who casually assaulted her "while [she was] employed in Spring Street in selling crabs." Drayton testified that she "was stopped by one Augustus Punott, who enquired on the price of the crabs. On her telling him, he without just cause or provocation assaulted and gave her a severe blow in the eye with a large piece of iron, which caused a severe confusion and deprived her of the temporary use of her eye." Punott was indicted for his assault on Drayton, but not convicted.[19]

Like Louisa Phillips, who showed the courtroom "the tears in her clothing" caused by Ellen Shivetz and Mary Shot's assault on her, the clerk indicated that Elizabeth Drayton gestured to her still blackened eye.[20] Black women who acted as complainants in these cases not only described the violence they had suffered in often visceral language; they often exhibited and gestured to the marks upon their bodies or clothing. In so doing, they demanded legal redress for the assaults upon their bodies—bodies which, a few years before, had been legally enslaved and

[19] *State vs Augustus Punott,* Charleston County Court of General Sessions Indictments, folder #329, SCDAH.
[20] *State vs Ellen Shivetz and Mary Shot.*

subject to corporal punishment at the whims of slaveholders and overseers. For freedwomen, such beatings and injuries by White strangers and Black acquaintances alike must have felt intolerable; they refused to take such violent treatment lightly. Rather they went to court in large numbers to obtain restitution and, perhaps just as importantly, to assert their bodily integrity, autonomy, and what Barbara Welke has called their legal personhood, the recognition and protection of their right to their bodies and their labor.[21]

Like that of Elizabeth Drayton, a complaint brought by Judy Brown of St. Thomas Parish (a part of Charleston County) suggests that freedwomen might suffer violence during ordinary social and commercial transactions. In her deposition, Judy Brown described how she bought a bag of potatoes from a White woman, Sarah Coward, in a plantation store belonging to Coward's husband. Judy Brown soon returned to ask Sarah Coward whether she had not paid for more potatoes than she had received. Coward asked if Brown meant to "call her a liar." When Brown insisted that she had not received "the right measure" of potatoes, Coward broke off a "pine stick" and chased her from the property, beating her all the while. Unusually, Sarah Coward fully admitted to the assault before the trial justice's court and even implied she would have liked to continue beating Judy Brown. In her statement, Coward described how she "took up a pine stick with which she beat [Brown] until she got around the corner of the house," at which point the stick broke. Coward then "saw a stick which she picked up, but before she got up again to Judy Brown, [Judy Brown] got away from [the] deponent." The middle-aged White merchant's wife clearly thought she need not worry about admitting to assaulting a Black woman whom she had deemed "insolent" for questioning her integrity. Indeed, for unclear reasons, the case was

[21] See Welke, *Law, Citizenship, and Personhood in the Long Nineteenth Century*, 1-3. Kidada E. Williams discusses the importance of African Americans' testimony about racial violence in Williams, *They Left Great Marks Upon Me: African American Testimonies of Racial Violence from Emancipation to World War I* (New York: New York University Press, 2012).

dropped. Coward never stood trial beyond the preliminary hearing, though it is possible that she was shaken by having to appear in court due to Judy Brown's complaint. Perhaps Brown also felt she had made her point and asked the county solicitor (district attorney) to drop the case, as sometimes happened. The remaining documents do not offer further answers, but there is much to unpack in this case.[22]

Indeed, the interactions between Judy Brown and Sarah Coward give us a glimpse of their competing ideas about what freedom should look like for Black people. Coward expressed her vision of what emancipation should look like when she "broke off a stick" from a nearby tree and beat a Black sharecropper, Judy Brown. According to the arrest warrant she swore out against her assailant, Judy Brown had merely asked Sarah Coward if she had given her "the right amount of potatoes" at the store counter. In this case, therefore, Judy Brown understood herself as a customer asking a question of Sarah Coward, the storeowner. Coward, on the other hand, evidently interpreted Judy Brown's question as a lack of the racial deference she believed Brown should show a White lady. She whipped Judy Brown, as she would have done to an enslaved person who defied her. Yet in going to a trial justice, Judy Brown asserted herself as a freedwoman, not a slave—a a freedwoman who could prosecute someone who committed violence against her. In other words, Judy Brown presented herself as a citizen, a person with rights, and the equal, not the inferior, of Sarah Coward.

Other court records related to assault cases illustrate the immense obstacles and everyday disrespect and violence that Black women faced as they strived to live fuller meanings of freedom. For example, Chloe Gaillard of Charleston, a fifty-year-old freedwoman, swore out an arrest warrant for Thomas Tobin, a young White man, after he "came up [to her] and struck her

[22] *State vs Sarah Coward*, Charleston County Court of General Sessions Indictments, box 20, folder #1680, SCDAH.

several times over the shoulders with a stick" for unknown reasons, or perhaps no reason at all.[23] Many Black women reported suffering violence in the streets, enacted by strangers with callous casualness. In 1868, Sarah Brown complained that she had been "walking along the alley" to her house "with a demi-john of oil on her head" when two young White men, Edward Welch and George Blair, "attacked her by grabbing her legs without warning, injuring her and breaking the demi-john." Although the men were arrested after Brown reported the assault, their case was dropped before it went to trial.[24]

When a case was dropped, it was not always an indication that officials dismissed the complainant as petty or declined to help a Black woman; rather, sometimes officials settled relatively minor disputes during hearings or parties involved in conflicts sought reconciliation through other means. In a case from Greenville in 1866, a freedwoman named Clara Anderson swore out an arrest warrant against a White teenager boy named Calhoun Nichols for assault. She was aided by a Freedmen's Bureau agent who directed her to the nearest trial justice after she told him about the incident. Anderson and Nichols had both been hired to clean a local church in Greenville, but Nichols insisted that Anderson call him "Mr. Nichols," although, the official involved noted, "he called her Clara." Clara Anderson refused, calling him "Nichols," "whereupon he struck her." The trial justice before which Clara Anderson complained about the assault held a hearing about the matter. The Freedmen's Bureau agent described the outcome of the case: "in consideration of his youth and the fact that he begged Clara Anderson's pardon, paid her ten dollars damages and the Magistrate's costs, I allowed the case to be dropped, warning

[23] *State vs Thomas Tobin*, Charleston County Court of General Sessions Indictments, box 17, folder #266, SCDAH.
[24] *State vs Edward Welch and George Blair,* Charleston County Court of General Sessions Indictments, box 17, folder #445, SCDAH.

him however that he had no right to call other people, not in his employ, by their Christian names and require them to address him as a Master."[25]

Although the assault case that Clara Anderson brought was dropped, the trial justice was nevertheless responsive to her complaint. Calhoun Nichols paid her damages and court costs and was required to apologize to her. Moreover, the Freedmen's Bureau agent scolded him for trying to require Clara Anderson to treat him as her social superior.

This case and others like it suggest the problems inherent in drawing too many conclusions from docket statistics alone, something I largely refrain from doing in this dissertation. Often the documentation is not sufficient for us to simply assume that a "dropped case" means that the complaint was dismissed without another form of reconciliation or redress being sought or achieved. To the contrary, officials and the parties involved alike often sought to resolve conflicts before they reached the level of a General Sessions trial, especially in the case of minor assaults or verbal disagreements. Like the dispute between Calhoun Nichols and Clara Anderson, many of these conflicts involved questions of social hierarchy, race, and differing expectations about what freedom should look like for Black people.

For example, some freedwomen swore out assault warrants after their employers abused them or sought to use corporal punishment against them. Given what historians such as Thavolia Glymph and Stephanie Jones-Rogers have demonstrated about White women's frequent and sometimes brutal violence towards enslaved women in the antebellum household, it is perhaps unsurprising that freedwomen working as domestics most often accused White women

[25] This case is documented in Freedmen's Bureau, *Report of Outrages Committed by Whites Against Freedmen in the Bureau District of Greenville, SC, during the Month of December 1866*, Freedmen's Bureau Online.

employers of assault on their persons.[26] In 1869, a young Charleston freedwoman named Anne Brown charged her White employer, Margaret McEvoy, with assault. She swore that McEvoy, "with whom she had been staying as a servant," "did strike her with her hands" and after "throwing a basin of water upon her last evening," again struck her, this time "with a glass lamp." She named a Black man, Thomas Morrison, as a witness to the violence, and received a small fine from McEvoy after her conviction.[27]

Freedwomen also swore out arrest warrants in response to assaults on their children. In doing so, they laid claim to their rights to the legal protection, guardianship, and the authority as mothers that they had sorely lacked during slavery. In Lucy Breckinridge's Civil War era diary, the elite young White woman described seeing her nephew Jimmy "chasing poor, little Preston," an enslaved boy, "all over the yard with a great stick, and [my] sister not making him stop but actually encouraging him" while Preston's mother Viola watched. "I shall never forget Viola's expression of suppressed rage," Breckinridge wrote.[28]

Indeed, records I found in South Carolina's antebellum Courts of Magistrates and Freeholders demonstrate that some enslaved women not only despised Whites' mistreatment and dehumanization of their children and watched it with "suppressed rage"—they struck back. Some women risked severe punishment to protect their children. In 1859, a Laurens County Court of Magistrates and Freeholders sentenced an enslaved woman named Dicey to suffer forty-five whip lashes after she struck her White mistress for threatening to whip her young child. The

[26] Thavolia Glymph, *Out of the House of Bondage: The Transformation of the Plantation Household* (New York: Cambridge University Press, 2003); Stephanie Jones-Rogers, *They Were Her Property: White Women as Slave Owners in the American South* (New Haven: Yale University Press, 2019).
[27] *State vs Margaret McEvoy*, Charleston County Court of General Sessions Indictments, box 17, folder #1160, SCDAH.
[28] Lucy Breckinridge, *Lucy Breckinridge of Grove Hill: The Journal of a Virginia Girl, 1862-1864*, ed. Mary Robertson (Columbia: University of South Carolina Press, 1994), 219.

child had been slow to obey a command to wash the dishes. When the White woman declared she would get her whip, Dicey, who was also in the kitchen, immediately struck the woman "about the face."[29] The pain and ignominy of seeing other people physically punish their children was not an experience that freedwomen intended to suffer again after Emancipation.

Indeed, Black women frequently swore out warrants against White and Black individuals who assaulted their children or infringed on their rights as parents by attempting to punish them. In these cases, juries often sided with the complainant as a mother seeking to protect her child. In 1871, a Charleston freedwoman named Emma Gibbs swore out a warrant against her employer, a White woman named Honora Comer, for assaulting her son Thomas, "striking him a severe blow on his head with a granite dish [and] inflicting a severe wound." Emma Gibbs' son showed the wound on his head in court. After testimony by Emma Gibbs and three other female witnesses who had been present in the house or witnessed the aftermath of the injury, the jury found Honora Comer guilty. The judge ordered her to pay a fine of five dollars or spend ten days in jail, the standard sentence for simple assault.[30] In the arrest warrant pictured below (figure 5), a freedwoman named Julia Robertson swore out an affidavit against Annie Harman, also Black, for assaulting her daughter Sophy, "a minor," "with a certain umbrella" in the street, to Sophy's "great hurt and injury."[31]

[29] *State vs Dicey, a Slave,* Laurens County Magistrates and Freeholders Court Records, folder 39, SCDAH.
[30] *State vs Honoria or Honora Comer,* Charleston County Court of General Sessions Indictments, box 21, folder #2135, SCDAH.
[31] *State vs Annie Harman*, Charleston County Court of General Sessions Indictments, box 23, folder #2959, SCDAH.

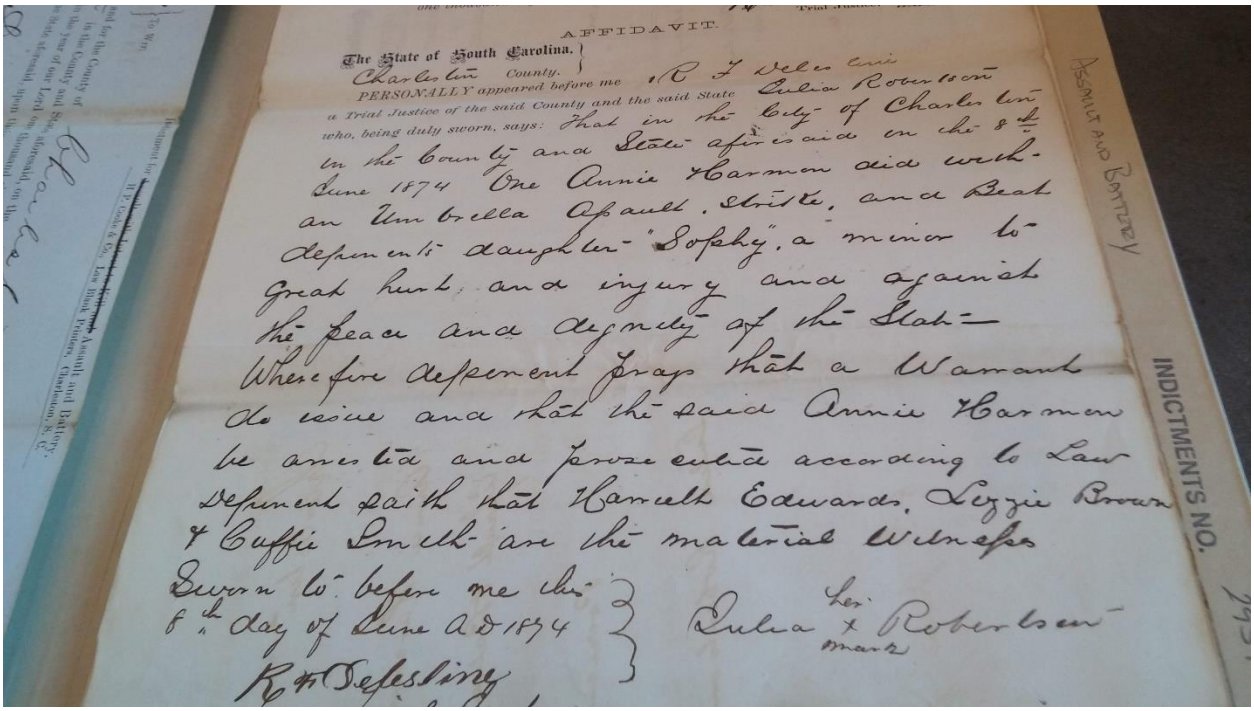


Figure 5

Like Black women who prosecuted individuals for harming their children, women who swore out warrants against husbands and male partners for assault in the form of domestic violence sought to use the power of the law to protect themselves, escape abusive situations, or as a means of making violent partners change their ways. In one of rural Clarendon County's first documented cases after the Civil War, a young freedwoman named Eave Canty (alias Brunson) accused her husband George Brunson, a freedman, of assault and battery with intent to kill after he beat her and caused her to miscarry. In court, Eave Canty described the brutal violence that she had suffered at George's hands. She testified that he "did kick her in the abdomen… and he threw her down and turned her clothes over her head and strick her with a board. The board split," so George then picked up "a hickory stick and got on her and beat her over the head with the stick, which caused her to miscarry her child." A jury found George Brunson guilty and sentenced him to a year in the penitentiary.

However, Eave Canty demonstrated an astonishing capacity for forgiveness when she successfully petitioned the governor to mitigate her husband's punishment. The lawyer paraphrasing her words wrote that she did not "desire him to be severely punished" and did not believe he had "understood fully the consequences of his rash acts" when he beat her. One wonders how Eave's successful prosecution of George and her later pardon petition on his behalf changed the couple's relationship. Unfortunately, the court documents are silent in this regard.[32] This case and others like it point to the difficult choices faced by women like Eave who depended on their husband's earnings as well as their own to make ends meet. Furthermore, Eave's successful petition shows her recourse to law (not once, but twice).

While many Black and White South Carolinians—and Americans altogether, for that matter—had long considered wife-beating to be a husband's prerogative, men who badly injured women or caused them to miscarry were frequently convicted in the post-Civil War courts.[33] Increasingly by the second half of the nineteenth century, the shame of appearing in court as a wife-beater could have social and legal consequences for men. This was linked to the rise of judicial paternalism in courts as well as emerging ideas about the state's greater responsibility to protect citizens. As Susan Pearson has argued, courts and reformers in the late nineteenth century also increasingly campaigned to protect women and children from domestic violence.[34]

When Black women made criminal complaints against male partners for abuse, courts often were receptive—in contrast to what historians have sometimes assumed about southern

---

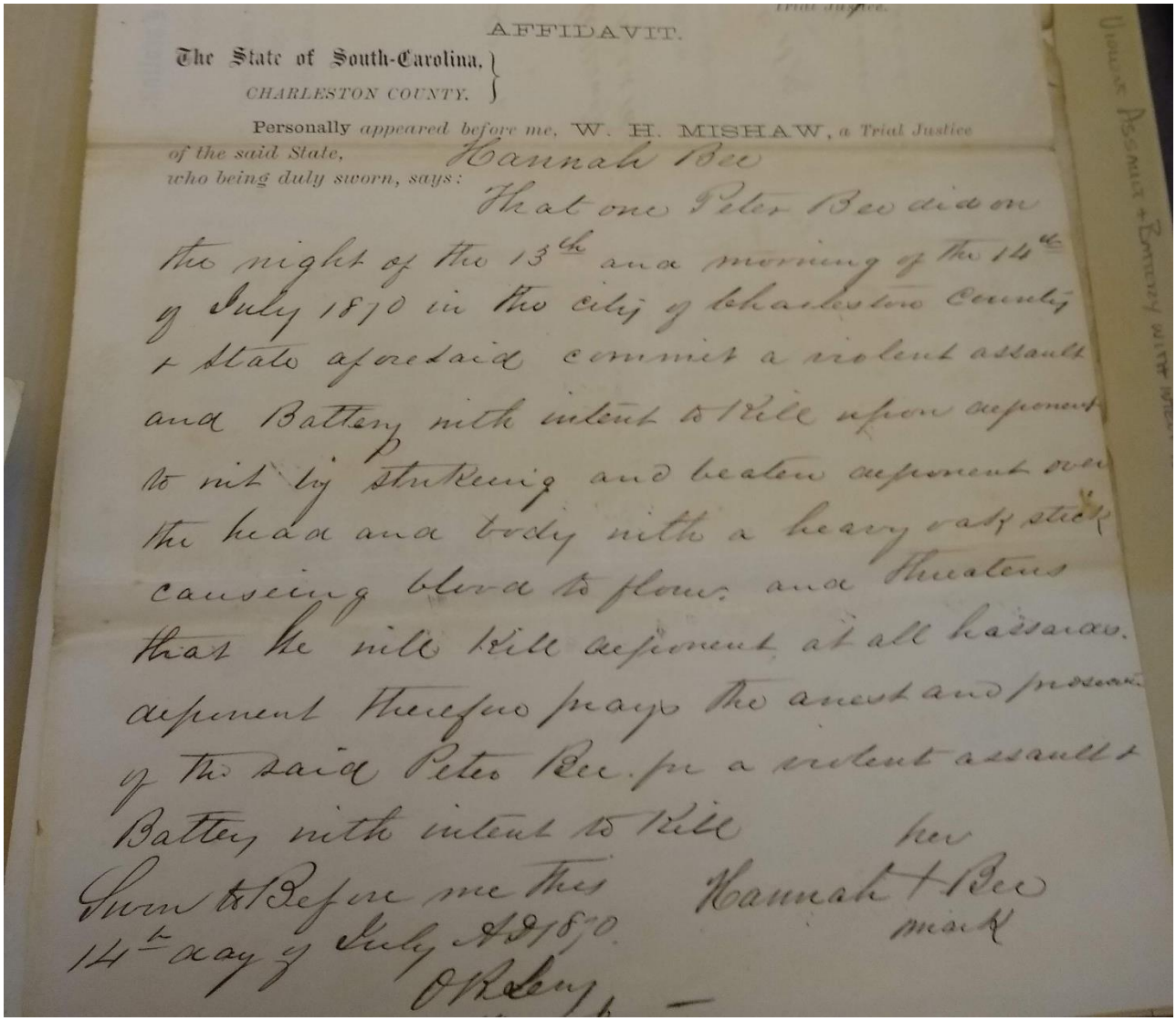
[32] *State vs George Brunson*, Clarendon County District Court Indictments, SCDAH.

[33] See Hendrik Hartog, *Man and Wife in America: A History* (Cambridge: Cambridge University Press, 2000), 104-5; Reva B. Siegel, "Rule of Love: Wife Beating as Prerogative and Privacy," *Yale Law Journal* 105, no. 8 (June 1996), 2117-2207.

[34] Susan J. Pearson, *Rights of the Defenseless: Protecting Animals and Children in Gilded Age America* (Chicago: University of Chicago Press, 2011); Peter W. Bardaglio, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth-Century South* (Chapel Hill: UNC Press, 1995).

courts' complete lack of interest in protecting Black women from domestic violence.[35] In 1870, Hannah Bee of Charleston swore out a warrant against her husband Peter for assault and battery with intent to kill after he violently beat her with a stick, causing "blood to flow." In her affidavit, she swore that Peter "threatens he will kill [her]." Hannah enlisted a doctor to appear at Peter's General Sessions trial. The doctor testified that he had treated Hannah for a severe "fracture of the left clavicle" after Peter beat her, and Hannah showed the fading bruises to the court. Peter Bee was convicted and sentenced to one year in the penitentiary. Unlike Eave Canty, Hannah did not petition the governor to show her husband mercy. She could not so easily forgive the violence he had committed against her.[36]

[35] See, for example, Kali Gross, "African American Women, Mass Incarceration, and the Politics of Protection," *Journal of American History* 102, no. 1 (June 2015), 26-8.
[36] *State vs Peter Bee*, Charleston County Court of General Sessions Indictments, box 20, folder #1702, SCDAH.



AFFIDAVIT.

The State of South-Carolina,
CHARLESTON COUNTY.

Personally appeared before me, W. H. MISHAW, a Trial Justice of the said State, Hannah Bee who being duly sworn, says:

That one Peter Bee did on the night of the 13th and morning of the 14th of July 1870 in the city of Charleston County & State aforesaid commit a violent assault and Battery with intent to Kill upon deponent to wit by striking and beating deponent over the head and body with a heavy oak stick causeing blood to flow and threatens that he will kill deponent at all hazards. deponent therefore prays the arrest and prosecution of the said Peter Bee. for a violent assault & Battery with intent to Kill

her
Hannah + Bee
mark

Sworn to Before me this 14th day of July A.D. 1870.

O Reilly

Figure 6

What Hannah Bee and other wives did in swearing out warrants against their husbands for domestic violence took a considerable amount of courage, especially considering that they were acting as complainants against men with whom they lived and, given the lesser financial opportunities open to Black women, men on whom they may have depended for support. Freedwomen who called upon the law to bring justice to strangers or acquaintances who had committed sexual assault upon their bodies, too, risked ostracization, shame, further violence, and even death to bring the violence they had suffered to the law and before the public.

1.3 Before Recy Taylor: Black Women's Testimonies about Sexual Assault and Legal Demands for Justice

Black women's criminal complaints against men for sexual assault stand as particularly striking evidence of their strength, courage, and conviction that they deserved justice in spite of the overwhelming obstacles that nineteenth-century women, and especially Black women, faced when they initiated legal prosecutions for rape. The laws of the antebellum South had treated enslaved women as legally "un-rapeable," subject to the sexual whims and violence of White slaveholders as well as other men.[37] Whites justified the sexual and reproductive exploitation of enslaved women by casting Black women as sexually insatiable "jezebels" who seduced White men and lacked the innate sense of "chastity" and "true womanhood" with which White women were supposed to be endowed. In truth, however, White slaveowners' sexual exploitation of enslaved women was rampant in the antebellum South.[38] And after Emancipation, as Hannah Rosen has demonstrated in her book, White terrorist groups such as the Ku Klux Klan wielded rape and sexualized violence against Black women as a gendered weapon of racial terror aimed at oppressing and humiliating both African American women and men.[39]

After Reconstruction, Black women could no longer be raped with impunity under the law and formally possessed the same rights as White women to charge men with rape. There was some Civil War era precedent for convicting White men of raping Black women, too. As Thavolia Glymph has shown, the Union army and the provost courts court-martialed and

---

[37] Amy Louise Wood, ed, *The New Encyclopedia of Southern Culture: Violence* (Chapel Hill: University of North Carolina Press, 2011), 145-8; Crystal Feimster, *Southern Horrors: Women and the Politics of Rape and Lynching* (Cambridge: Harvard University Press, 2011).

[38] See Deborah Gray White, *Arn't I A Woman: Female Slaves in the Plantation South* (New York: Norton, 1985), 29-46; Catherine Clinton, "Bloody Terrain: Freedwomen, Sexuality, and Violence during Reconstruction," *Georgia Historical Quarterly* 76, no. 2 (Summer 1992), 313-332.

[39] Hannah Rosen, *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South* (Chapel Hill: University of North Carolina Press, 2009).

convicted a number of White Union soldiers of raping Black women.[40] This precedent likely had the effect of encouraging Black women to report sexual assault after the war.[41]

Yet, as in other areas of the law, rights and legal protections did not always translate into justice for Black women. Prior to 1962, before which rape was a capital crime in South Carolina unless the jury recommended the defendant to mercy, the state executed seventy-five Black men and five White men for raping White women. No man, Black or White, was executed for assaulting a non-White woman. This statistic alone suggests that many White juries and officials continued to view Black women as "unrapeable" even as Democrats in the later decades of the nineteenth century intensified their usage of imagery and narratives of Black rapists who sought to prey on White women—narratives that had a very real impact on the lives of Black men—for political gain.[42]

Local court records, too, reveal very little accountability for men's sexual assaults on Black women. In the rare cases when juries did convict a man for the rape of an African American woman, the victim was usually quite young, and the defendant was invariably African American himself. In 1873, a Marlboro County freedwomen named Betsey Webb charged

---

[40] Glymph, *The Women's Fight*, 109-110.

[41] Thanks to Amy Greenberg for this suggestion.

[42] Daniel Allen Hearn, *Legal Executions in North and South Carolina, 1866-1962* (Jefferson, NC: McFarland, 2015). I found the figure by examining various statistics and charts in the book. For "rape myth" narratives, see Glenda Gilmore, *Gender and Jim Crow: Women and the Politics of White Supremacy in North Carolina, 1896-1920* (Chapel Hill: University of North Carolina Press, 1996). Diane Miller Sommerville and Martha Hodes have both argued that these narratives and imagery were largely a post-Civil War, and even post-Reconstruction, phenomenon. Based on my research with legal records and newspapers, I tend to agree, and do not see such cultural narratives becoming influential until the last two decades of the nineteenth century. If anything, White conservatives during Reconstruction were more concerned about freedmen legally marrying White women and thus blurring antebellum racial boundaries and socially elevating themselves and their children—what was sometimes called "social equality." See Diane Miller Sommerville, *Rape and Race in the Nineteenth-Century South* (Chapel Hill and London: UNC Press, 2004); Martha Hodes, *White Women, Black Men: Illicit Sex in the Nineteenth-Century South* (New Haven: Yale University Press, 1997). For White conservative fears about "social equality," see Kate Masur, "The Problem of Equality in the Age of Emancipation," in *Beyond Freedom: Disrupting the History of Emancipation*, ed. David W. Blight and Jim Downs (Athens: University of Georgia Press, 2017), 80-5. See also Chapter Six of this dissertation, "Illicit Acts."

Nelson Webb, an African American man who worked as a sharecropper on the same land as her family, with the rape of her ten or eleven-year-old daughter Jackey Ellen Jacobs. The jury found Nelson guilty, and the judge sentenced him to twenty years in the penitentiary.[43] Jackey Ellen's youth likely contributed to this outcome. Even for Whites who preferred to cast all Black women as naturally lascivious, she was too young to be characterized as a willing sexual partner.

As Saidiya Hartman writes in her history of Black women's intimate lives in the early twentieth century, *Wayward Lives, Beautiful Experiments*, nineteenth-century juries judged sexual assault cases on the widely held principle that "previous immorality meant a man could do whatever he wanted [to a woman]." This was the case for any "female not in the class of those deserving protection," including poor White women and women whose communities determined that they had "loose" reputations. But "colored girls," Hartman adds, "were always presumed to be immoral," at least by the White men who held most offices even during the Reconstruction era.[44] Unless they were very young indeed, like Jackey Ellen Jacobs, White trial justices and White-dominated juries continued to treat Black women and girls as essentially, if not legally, "unrapeable."

This is demonstrated by the fact that even the most clearly "respectable" adult Black women rarely saw their assailants punished. In 1870, for example, a married freedwoman named Polly Young swore out a warrant against Wilson Pinckney, an African American neighbor and a "good for nothing mean low rascal," as Young put it. Pinckney had entered Polly Young's house while her husband was away and "ravished" her as she slept. Young and her husband, a farmer,

---

[43] *State vs Nelson Webb*, Marlboro County Court of General Sessions Indictments, folder #970, SCDAH. Nelson Webb and Betsey Webb were not necessarily related by blood, and indeed, the surviving documents do not indicate that they were. They may have simply both taken the names of their former slaveholders and continued to live on the same land, as was not uncommon for freedpeople in the rural post-Emancipation South.

[44] Saidiya Hartman, *Wayward Lives, Beautiful Experiments: Intimate Histories of Riotous Black Girls, Troublesome Women, and Queer Radicals* (New York: W.W. Norton & Co, 2019), 26-9.

gathered seven witnesses who testified that they had seen Pinckney slipping out of her house and heard her shouting after him. Nevertheless, at the next term of Charleston's criminal court, Wilson Pinckney's jury found him not guilty.[45]

In a similar case from Clarendon County in 1876, complainant Mary Nelson, a married Black woman, accused Sam DuPree, a Black man, of attempting to rape her in her bed while her husband was doing construction work on a nearby road. Nelson gave a harrowing description of how DuPree "beat and ill-treated and wounded her," pressing "his knees on her while she was in bed" before Nelson managed to "scare him off" by struggling and yelling. Yet the county solicitor dropped the case against DuPree.[46]

I discovered several cases in which South Black women accused White men of rape during Reconstruction and succeeded in having the men arrested. Their refusal to be silent about the terrible ordeals they had experienced even in the face of widespread White harassment of African Americans, not to mention most freedwomen's economic dependence on White employers and landlords, stands as a testament to freedwomen's hope that the law could serve as a tool of the marginalized to call the powerful, including powerful rapists, to account.

In a horrific case from Marlboro County in 1872, twenty-year-old freedwomen Lucinda Jackson swore out a warrant against a young White man, John Goubold, for rape. In the affidavit, she described how Goubold came to her house at night and called her "to come out." When she refused, Goubold "broke open the door" and "drew a knife on her mother" Nancy before carrying Lucinda from the house and raping her in the fields. The grand jury found "no bill" in Goubold's case, dropping it from the docket. The trial justice to whom Lucinda complained did have him arrested and briefly jailed before the grand jury's decision allowed him to go free. As

[45] *State vs Wilson Pinckney*, Charleston County Court of General Sessions Indictments, box 20, #1742, SCDAH.
[46] *State vs Sam DuPree*, Clarendon County Court of General Sessions Indictments, May Term 1876, box 2, SCDAH.

in several other cases of this nature, the grand jury's reasoning is not clear. How could they dismiss a complaint of rape when there were several witnesses? Absent documents that recorded their rationales, the best explanation is simply that these dropped cases involving sexual assault reflect the troubling pattern outlined by other scholars in which Black women in these circumstances were either disbelieved, silenced, or dismissed.[47]

In other words, although Black women during Reconstruction were no longer "unrapeable" under the law, my research supports the conclusions of other historians, notably Danielle L. McGuire, in finding that men, and especially White men, were largely not held accountable for their sexual violations of Black women after the Civil War.[48] Apart from the wartime provost courts held by Union officials, I have not yet found a nineteenth-century case where a White man was convicted of raping a Black woman in South Carolina.

Black women surely knew, especially after the first hopeful years of Reconstruction, that their chances of seeing their rapist convicted were slim, especially if he was a White man. Doubtless many Black women never reported being raped for precisely this reason. Others likely also feared retaliation or ostracization. Their silence is rational and understandable. Therefore, it is all the more striking that women like Lucinda Jacobs and Mary Nelson did tell their stories and strive hard to hold their assailants accountable. Decades before Recy Taylor, a twenty-five-year-old African American woman who spoke out about her experience of being kidnapped and raped by White men while walking home from church in 1944, some Black women testified about what was likely the most harrowing experience of their lives.[49]

---

[47] *State vs John Goubold*, Marlboro County Court of General Sessions Indictments, box 3, #1048, SCDAH.
[48] Danielle L. McGuire, *At the Dark End of the Street: Black Women, Rape, and Resistance- a New History of the Civil Rights Movement from Rosa Parks to the Rise of Black Power* (New York: Knopf, 2010).
[49] Danielle L. McGuire discusses Recy Taylor's story at length in McGuire, *At the Dark End of the Street*.

1.4 Black Women as Complainants in Theft Cases

While Black women frequently acted as complainants in cases involving crimes against their person and the persons of their children, they were considerably less visible as complainants for property crimes such as theft. Larceny was the charge in about 34% of indictments during this period, but Black women did not often initiate these cases. In part, this is because Black men tended to initiate these charges on behalf of their wives or female relatives. This was also the case for White women, whose husbands or fathers frequently appeared in the trial justice's office to report that the woman's property had been stolen. While Reconstruction led to an expansion in married women's property rights, this trend in the court records suggests that many men, Black and White, still viewed their wives' and female relatives' property as an extension of their own.[50]

Occasionally, however, African American women and especially single women did act as complainants in cases of theft. In 1880 Charleston, a "mulatto" widow named Catherine Springs prosecuted a working-class Black woman named Marcia Davis for burglary, accusing her of having stolen seventy-five dollars' worth of jewelry. Springs responded to the defense attorney's questions about her wealth by asserting that "she has and keeps much, being the proprietress of a store." The attorney's surprise reflects how few women of color in Reconstruction Charleston owned substantial property, much less a store. Catherine Springs was a rarity.[51]

When most Black women swore out arrest warrants concerning larceny, it was usually for the theft of wearable property such as clothes and other apparel. Historians Tera Hunter and

[50] South Carolina's 1868 Constitutional Convention led to significant reform in married women's property rights in the state, which had some of the most regressive women's property laws in antebellum America. Sara Nell Chatfield, "Multiple Orders in Multiple Venues: The Reform of Married Women's Property Rights, 1839-1920" (PhD Dissertation, UC Berkeley, 2014), 88.

[51] *State vs Marcia Davis*, Charleston County Court of General Sessions Indictments, box 31, folder #4580, SCDAH.

Patricia Hunt have noted the importance of clothing to freedwomen in particular as markers of their newly-won freedom, identity, and an important means of individual expression.[52] Of free women of color in the antebellum period and their penchant for beautiful garments, Amira Chakrabarti Myers poignantly writes, "In arraying themselves as they did, they made a ringing, nonverbal declaration that they had the right to dress as they wished, and as they wished to be seen: as ladies, not laborers."[53]

As Laura Edwards has recently argued, even impoverished women and other people who owned practically no property could make legal claims to "the clothes on their back." For poor Black women, textiles represented both property and an important source of financial currency and collateral that they firmly sought to retain and protect.[54]

Accordingly, Black women seem to have frequently acted as complainants in cases involving the theft of their clothing, their highly personal property, rather than letting their husbands or male relatives initiate charges as they might for other forms of property. In 1870, for example, a married freedwoman named Betsey Fishburn swore out a warrant against a White man named Isaac Schwartz in Charleston. She testified that he had cornered her on King Street and "did forcibly take from her some cloth and a handkerchief and scarves of the value of four dollars." The case went to trial, though the jury ultimately found Schwartz not guilty.[55] In 1872,

---

[52] Patricia Hunt, "The Struggle to Achieve Individual Expression Through Clothing and Adornment: African--American Women Under and After Slavery," in *Discovering the Women in Slavery: Emancipating Perspectives on the American Past,* ed. Patricia Morton (Athens: University of Georgia Press, 1996), 227–40; Tera W. Hunter, *To 'Joy My Freedom: Southern Black Women's Lives and Labors After the Civil War* (Cambridge: Harvard University Press, 1997), 26-8. See also Chapter Four on theft, for a more thorough discussion of the importance of clothing for freedwomen as markers of their identities.

[53] Myers, *Forging Freedom*, 116.

[54] Laura Edwards, *Only the Clothes on Her Back: Clothing and the Hidden History of Power in the Nineteenth-Century United States* (Oxford and New York: Oxford University Press, 2022).

[55] *State vs Isaac Schwartz,* Charleston County Court of General Sessions Indictments, box 20, folder #1744, SCDAH.

Charleston complainant Nancy Bryan accused a fellow freedwoman, Pauline Hart, of stealing "a shawl of the value of two dollars" from "her possession" while she wore it in the street.[56]

As with other types of prosecutions, Black women were more likely to bring larceny grievances against other women into the legal arena. Perhaps they felt more confident about prosecutions against fellow women, particularly women of the same race and class as themselves.

Because they often did involve neighbors, these cases give us glimpses into the conflicts between Black women living in often close quarters and seeking to embrace freedom and enjoy their lives in their own ways. In 1870, Roxanna Simon of Charleston swore out a warrant for the arrest of Fanny Washington, a fellow freedwoman who lived in the same boardinghouse, for the theft of "twenty-two dollars," a considerable sum that Simon had been saving up for several years. Simon testified that Washington had taken her savings "from a trunk in her room" and used it to buy "dresses and other wearing apparel." Then, Simon said, Washington kept the "said apparels concealed until she was prepared to escape with these when she left the neighborhood and went to Monck's Corner," a town near Charleston. Only after Washington left did Simon discover the theft and swear out a warrant against her. In her defendant's statement, however, Fanny Washington successfully cast doubt on this story. She suggested that the money had been taken "when [Roxanna Simon] had a religious meeting at her house," for "her room was public to every body." Washington's jury acquitted her.

Whichever woman was telling the truth, their testimonies shed fascinating light on the two young freedwomen's different aspirations for their future as well as their conflicts with one another. Washington complained that Simon's religious meetings had everyone going in and out

[56] *State vs Pauline Hart*, Charleston County Court of General Sessions Indictments, box 21, folder #2181, SCDAH.

of the women's rooms "so much that they went into [my] room and carried off some small articles." Meanwhile Simon insinuated that Washington could never have gotten the money to buy her new dresses from her boyfriend Joe Brown, who "had but twenty-five cents."[57]

Conclusion

Black women had considerably less success in acting as complainants in criminal cases after the end of Reconstruction in 1877 and the White conservative "Redemption" of the South. In 1877, U.S. troops withdrew from South Carolina and Congress and the federal government essentially abandoned the project of reconstructing the often-unrepentant Whites of the state which had been the first to secede from the Union. In 1876, violent paramilitary "Red Shirts" terrorized African American voters, keeping them from the polls and ensuring that Wade Hampton, a former Confederate officer, became Governor and later, a Senator.

Many Black and White Republican trial justices sympathetic to African American women were ousted from their positions, sometimes through accusations of official misconduct, and sometimes through threats of violence. This is what happened to Francis L. Cardozo, an immensely talented Black Republican educator and official then serving as state treasurer. Though he had been reelected (despite massive Democratic electoral fraud), Governor Hampton's secretary sent Cardozo and other Black officials letters threatening litigation and violence if they did not resign.[58] Sometimes Democrats employed both methods: Probate Judge Samuel Lee, a Black Republican in Sumter County, was forced to go into hiding in 1878 due to

[57] *State vs Fanny Washington*, Charleston County Court of General Sessions Indictments, box 20, folder #1841, SCDAH.
[58] Burke, "The USC School of Law," 101.

local Whites' threats on his life. He was subsequently charged with and convicted of official misconduct because he had closed his office—to go into hiding.[59]

Such justices were replaced by Democratic justices who were less likely to "send up" Black women's complaints, especially if they were against a White person. On the benches of the circuit courts, too, conservative judges took or retook seats. For example, Judge A.P. Aldrich, removed from the bench in 1867 for his refusal to allow African Americans to testify against Whites in his court, reclaimed his position as a circuit judge.[60] Meanwhile Black justice Jonathan Jasper Wright, the United States' first African American appellate judge, was pressured to resign from the state's highest court after seven years of service. He subsequently took up private practice in Charleston.[61] Black politicians like Alonzo Ransier, who had served as Lieutenant Governor, General Assembly member, a Congressman in the U.S. House of Representatives, and held numerous appointments in the city of Charleston, can sometimes be found working as day laborers or carriage drivers in the 1880 Census. Ransier, for example, was working as a laborer in 1880.[62] Prince Rivers, the formerly enslaved trial justice and Union veteran praised by the Black citizens of Edgefield County for his fair conduct in office, was driving carriages for a living.[63]

---

[59] Richard and Belinda Gergel, "To Vindicate the Cause of the Downtrodden," 65. For Samuel Lee, see Burke, "The USC School of Law," 98.

[60] See Stephen Kantrowitz, *Ben Tillman and the Reconstruction of White Supremacy* (Chapel Hill: University of North Carolina Press, 2000); Edward L. Ayers, *The Promise of the New South: Life after Reconstruction* (Oxford: Oxford University Press, 1993). Richard Zuczek discusses Judge Aldrich, an arch-conservative and well-known public figure at the time who has received little scholarly attention, in Zuczek, *State of Rebellion: Reconstruction in South Carolina* (Columbia: University of South Carolina Press, 2009), 35.

[61] Summers, *The Ordeal of the Reunion*, 250-3. For Jonathan Jasper Wright, see Richard Gergel and Belinda Gergel, "To Vindicate the Cause of the Downtrodden': Associate Justice Jonathan Jasper Wright and Reconstruction in South Carolina," in *At Freedom's Door*, 36-71.

[62] Powers, *Black Charlestonians*, 116.

[63] Eric Foner, "South Carolina's Black Elected Officials," 173-4. Historian Stephen Berry is currently completing a biography of Prince Rivers for UGA Press. See Chapter Two for the Edgefield citizens' petition regarding Prince Rivers.

In addition to these political transformations, which had highly concrete impacts on African Americans' lives, livelihoods, and ability to exercise their rights as citizens, Black women's prosecutions declined because the legal culture of South Carolina began to change by the 1880s. Slowly but surely, the fraction of prosecutions based on complaints levelled by private citizens, especially by women against other women, declined and the number of prosecutions brought by officials increased. The police increasingly took it upon themselves to swear out warrants against suspects and provide information that led to their indictment. Although they continued to swear out arrest warrants, especially in cases of assault and battery, African American women complainants played much smaller roles in the less communal legal culture of the late nineteenth and especially the early twentieth century.

Still, Reconstruction-era court records stand as a testament to freedwomen's resilience and courage, and to the hope they shared during Reconstruction, a hope that the law would be on their side. Local court records provide us with invaluable glimpses into Black women's everyday lives, including the immense obstacles they confronted and the resilient and creative ways in which they sought to overcome them. Black women's legal victories were often symbolic; they did not always receive the justice or recompense that they asserted was owed to them. As was common for all criminal prosecutions in this period, grand juries frequently dismissed their complaints altogether.[64]

Yet, anyone who sat in the courtroom or read newspaper accounts of trials in Reconstruction-era South Carolina would have been amazed at how things had changed since the

[64] It is worth noting again that the majority of cases in post-Civil War South Carolina were dropped or dismissed. Similar rates of nolle prosequi and cases being dropped or returned as "no bill" by grand juries can be found for cases brought by White complainants. It was simply an aspect of this legal culture. See Chapter Two and Chapter Three for more about how the parties involved sometimes used criminal complaints and preliminary hearings as a method of conflict resolution or making a point in an ongoing conflict. Conviction was not always the complainant's ultimate goal, especially as complainants could request for cases to be dropped fairly easily unless the charge led to someone's death.

Civil War. In an 1871 article, the *Charleston Daily News* scoffed at the "excuse for assault" offered by a man named Patrick White, on trial at a preliminary hearing for severely assaulting a young Black woman, Alice Darling. "On the trial," the article reads, "the prosecutrix showed marks of violence upon her person, and the defendant admitted that he had struck her, but excused himself by saying she was out of her head and crazy, and therefore it made no difference." But this was not the old antebellum regime, when Black women could be assaulted with complete impunity and had no legal standing to defend themselves or seek recourse for wrongs done to them. Rather, as the *Daily News* reported, Patrick White was "convinced of his error by the Trial Justice, who found him guilty."[65]

[65] "Excuse for Assault," *Charleston Daily News* (Charleston, S.C.), September 2, 1871. Patrick White's race and identity are not clear from the article.

Chapter Two

"Flourishing Her Parasol in a Threatening Manner": Assault and the Legal Culture of the Post-Civil War South

The court dockets were full, and so were the courtrooms. Charlestonians male and female, Black and White, wealthy and poor alike, crowded the courthouse steps, shivering in the February cold, and shuffled inside to watch as the first court week of 1869 began in earnest. Judge Platt presided over the trial of a Black woman named Sylvia Smith, accused of assaulting White, middle-aged Mary Hamilton, who Smith said had beaten her child.[1] A White woman called Elizabeth Lee stood trial alongside her landlord Benjamin Hernandez for an assault on Melissa Hunt, a freedwoman that Hernandez employed to do laundry for his boarders.[2] Ann Williams was charged with having struck John Capers with a brick; she claimed she'd seen him "in company with another young woman."[3] Irish-born James Hillard testified in a case against his landlady Mary Leary, saying she had physically intervened in a domestic dispute between him and his lover "that had nothing to do with her."[4] The people listened as Mary Simmons described how Jane Rallings had accused her of stealing, used racial slurs against her, and struck her in Charleston's bustling city market.[5] A jury acquitted Mary and Susan Kelly of an assault on James Kelly, believing the sisters' story that James had first begun beating his wife Mary "with his fists," forcing Mary and her sister Susan to act in self-defense.[6] Although they

[1] *State vs Sylvia Smith*, Charleston County Court of General Sessions Indictments, box 17, folder #252, SCDAH.
[2] *State vs Elizabeth Lee and Benjamin Hernandes alias Hernandez,* Charleston County Court of General Sessions Indictments, box 17, folder #1165, SCDAH.
[3] *State vs Ann Williams*, Charleston County Court of General Sessions Indictments, box 17, folder #410, SCDAH.
[4] *State vs Mary Leary*, Charleston County Court of General Sessions Indictments, box 17, folder #280, SCDAH.
[5] *State vs Jane Rallings*, Charleston County Court of General Sessions Indictments, box 18, folder #1196, SCDAH.
[6] *State vs Mary and Susan Kelly*, Charleston County Court of General Sessions Indictments, box 17, folder #302, SCDAH.

were not all ultimately tried in court, forty-six women were indicted for assault and battery in Charleston's criminal Court of General Sessions during February 1869. Indeed, women's trials for assault and battery constituted 52% of all the cases on the docket that term.[7]

While the winter of 1869 may have been an unusually litigious season for the women of Charleston, none of the cases tried were extraordinary. As historians have only recently begun to acknowledge and investigate, women were frequently involved in everyday interpersonal violence, to a much greater extent than either the gender ideologies of the day or the records of appellate courts would have us believe.[8] When we examine sources from local criminal courts, such as the trial justice courts and county-level courts of post-Civil War South Carolina, we see Black and White women accused and accusing others of a wide range of violent acts, from "flourishing [a] parasol in a threatening manner" to fighting back against an abusive husband to resisting arrest with a knife to beating a neighbor senseless with a brick.[9]

[7] There were fifty-eight cases on the dockets in Charleston's Court of General Sessions during the February 1869 term. Of these, thirty cases involved women indicted for assault and battery. In a few cases, women defendants were indicted alongside men, and in nearly half the cases, two or more women were indicted together.

[8] Several historians have recently examined women's interpersonal violence through the lens of social and, more rarely, legal history. Most of this work has been in the early modern European context. See Sanne Muurling, *Everyday Crime, Criminal Justice, and Gender in Early Modern Bologna* (Boston and Leiden: Brill, 2021); Manon van der Heijden, *Women and Crime in Early Modern Holland* (Boston and Leiden: Brill, 2016); Manon van der Heijden, "Future Research on Women and Crime," *Crime, Histoire, & Sociétiés* 21, no. 2 (2017), 123-33; Manon van der Heijden and Marion Pluskota, "Leniency versus Toughening? The Prosecution of Male and Female Violence in 19th Century Holland," *Journal of Social History* 49, no. 1 (Fall 2015), 149-67; Elizabeth Ewan, "Disorderly Damsels? Women and Interpersonal Violence in Pre-Reformation Scotland," *Scottish Historical Review* 89, no. 228 (October 2010), 153-71. For the U.S., see Erica Rhodes Hayden, *Troublesome Women: Gender, Crime, and Punishment in Antebellum Pennsylvania* (University Park: Pennsylvania State University Press, 2019); Kali Nicole Gross, *Colored Amazons: Crime, Violence, and Black Women in the City of Brotherly Love* (Durham: Duke University Press, 2006). For assault cases in nineteenth-century New York, see Joshua Stein, "Privatizing Violence: A Transformation in the Jurisprudence of Assault," *Law & History Review* 30, no. 2 (May 2012), 423-448.

[9] The quotation comes from *State vs Catherine Harvey*, Charleston County Court of General Sessions Indictments, box 38, folder #6784, SCDAH.

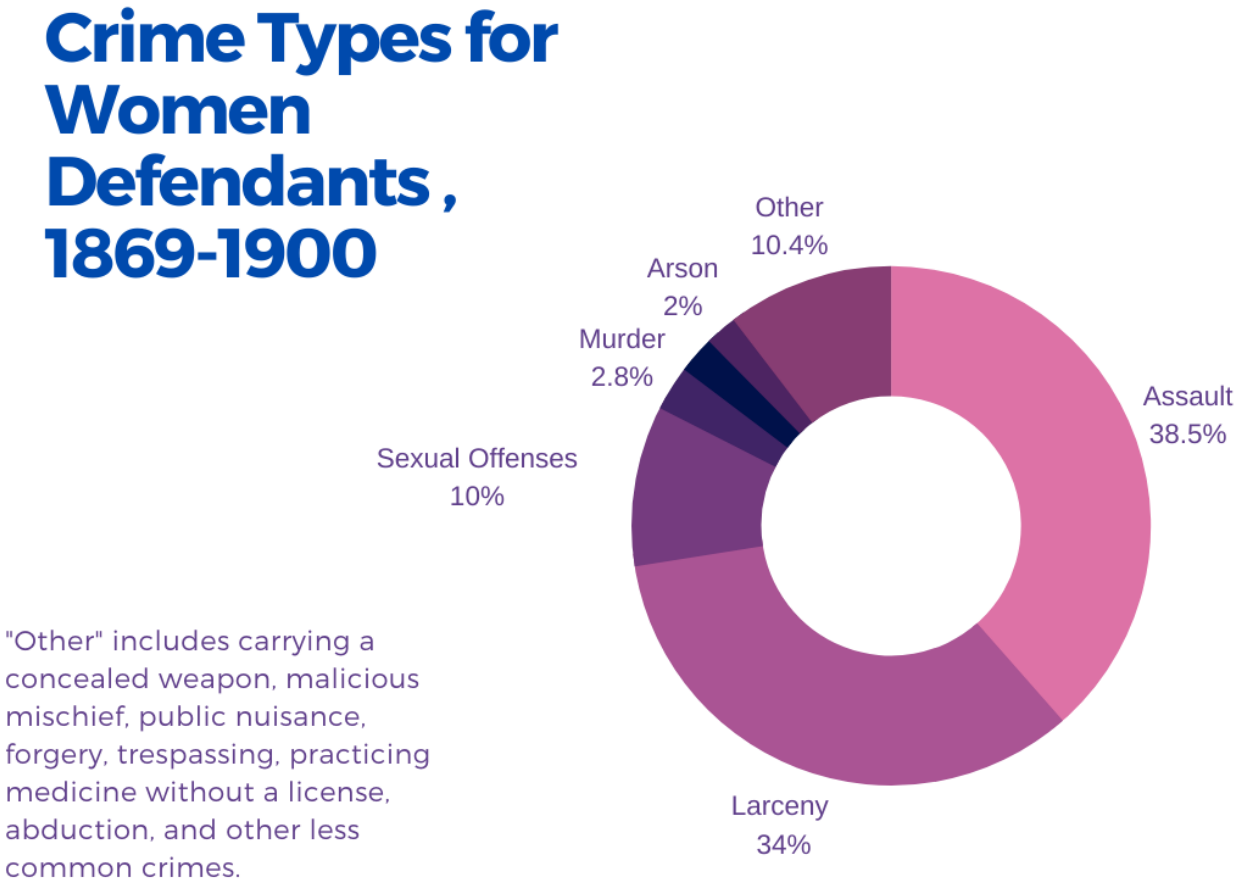


Figure 7

Although women's trials for murder were indeed rare enough to serve as media and public spectacles, this chapter demonstrates that women's non-lethal violence was positively commonplace.[10] As Figure 7 above shows, 38.5% of the women defendants in my study of six South Carolina counties between 1865 and 1900 were accused of assault and battery, making it the largest category of crime for women. While much research remains to be done on the under-

[10] There is a sizeable historiography on individual women as murderers and defendants in murder trials and a still larger historiography on infanticide—see chapter three on infanticide. For women and murder, see for example, Ann Jones, *Women Who Kill* (New York: Beacon Press, 1980); Lisa Duggan, *Sapphic Slashers: Sex, Violence and American Modernity* (Durham: Duke University Press, 2000). For media and sensationalism around women's murder trials, see also Carole Haber, *The Trials of Laura Fair: Sex, Murder, and Insanity in the Victorian West* (Chapel Hill: UNC Press, 2015); A. Cheree Carlson, *The Crimes of Womanhood: Defining Femininity in a Court of Law* (Urbana-Champaign: University of Illinois Press, 2008); Camille Nash, *Death Comes to the Maiden: Sex and Execution, 1431-1933* (New York: Routledge, 2014). The historiography on the Lizzie Borden trial is too extensive to include here.

studied legal category of assault, the existing historiography suggests that this was not a novel development in the post-Civil War period or exclusive to the South. In her study of antebellum Pennsylvania, for example, Erica Rhodes Hayden found that assault was the most common criminal accusation against women defendants.[11] And although about 68% of women defendants in the assault cases that I examined were Black, this was far lower than the 90% or higher figure for property crimes. White women, particularly poor and working-class White women, frequently stood accused of violence as well.[12]

Yet assault prosecutions involving women only occasionally drew commentary from local newspapers, probably because they were common and unremarkable compared to more sensational crimes. Furthermore, like men's trials for assault, women's usually did not result in a jury trial. In many cases, only arrest warrants and scribbled testimony from preliminary hearings preserve the details of the everyday conflicts and altercations in which women found themselves.

This is because trial justices, officials, and the parties involved frequently succeeded in resolving the conflict that had brought them to the law before the case reached the level of a full-blown trial in the county-level courts. Most assault prosecutions were handled locally by trial justices, who heard the parties' testimony and passed judgement, giving the defendant a fine of five to ten dollars or a short jail term if found guilty. The complainant received a portion of this fine. In more serious cases, the trial justice "sent up" the prosecution to the Court of General Sessions. Even then, in 64.5% of the 400 assault cases I found in six counties which were "sent up," the defendant never went to trial. Although sometimes the grand jury chose not to proceed with a case (in about 15% of assault prosecutions), about half of the total cases were dropped at

[11] Hayden, *Troublesome Women*, 10.
[12] This figure excludes cases where I could not positively identify the defendant. It was often difficult or impossible to learn more about women with common names (ie 'Mary Smith'), especially in urban counties with larger populations.

the request of the parties involved. As I discussed in the previous chapter on Black women as complainants during Reconstruction, complainants in the legal culture of post-Civil War South Carolina retained a large amount of control over prosecutions that they initiated. They were typically able to request the county solicitor (district attorney) to drop their case at most stages of the prosecution.

In addition, complainants did not necessarily seek convictions in all cases. In some scenarios, they may have instead hoped for monetary "satisfaction," sought to use the law as a method to convince defendants to apologize or make amends, or saw their prosecution as a way of asserting and defending their honor and status. At times, an arrest warrant or an indictment acted as a bridge to reconciliation for a complainant and a defendant, as the defendant took the forewarning and changed their behavior.

Furthermore, letters preserved in county-level case files demonstrate that other parties also mediated to resolve conflicts before they reached the courts, intervening with the parties to arrange monetary settlements or verbal apologies. Neighbors, family members, employers, religious ministers, Freedmen's Bureau officials, and, of course, trial justices and attorneys appear as mediators in these letters, which usually asked the county solicitor to drop the case and explained the agreement that had been reached.

Like the legal officials Laura Edwards discusses in her pathbreaking study of the post-Revolutionary Carolinas, these mediators sought to preserve "the peace," the social order, rather than harshly punish individuals for their conflicts with other citizens or strictly conform to state legal codes.[13] Edwards demonstrates that localized legal practice, with its greater concern for "keeping the peace" and inclusion of people who lacked conventional rights, such as women and

[13] Laura Edwards, *The People and their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2013).

people of color, persisted throughout the early nineteenth century despite legislators' attempts to codify and standardize state law. Complicating historians' arguments about the development of a centralized law earlier in American history, she argues that only the later antebellum and post-Civil War period saw a shift towards a legal culture centered around (White men's) individual rights and centralized state law that largely replaced local legal custom.[14]

My research in post-Civil War South Carolina's local criminal courts suggests this was a more gradual process than Edwards indicated. I found that notions of communal justice and preserving the peace persisted and continued to sporadically guide people involved in local criminal court cases right up until the end of the nineteenth century and the close of this study.

However, examining assault prosecutions involving women reveals that significant changes did occur in the legal culture between 1865 and 1900. Over the course of this period, assault cases became less likely to reach the level of the Courts of General Sessions, whose dockets became increasingly overloaded with cases, especially by the 1890s. As Joshua Stein describes in his study of assault prosecutions in nineteenth-century New York, violence became somewhat "privatized," as injured parties were encouraged to seek redress for violence in civil rather than criminal courts.[15] In South Carolina, this usually meant the county-level Courts of Common Pleas, where I found assault prosecutions in the last two decades of the nineteenth century which would have once been tried in criminal courts. As Stein argues, people increasingly viewed assaults as infractions against individuals rather than the communal "peace" or public order.[16] This conclusion fits with Edwards' argument about the emergence of an

[14] Ibid., 259.
[15] Stein, "Privatizing Violence," 424-6.
[16] Ibid., 427-8.

individual rights paradigm in the law replacing a legal culture centered around preserving the peace.

Yet, my research suggests this shift occurred several decades later and was more gradual, piecemeal, and contested in South Carolina than either Edwards or Stein (who located the "privatization of violence" in the late antebellum period for New York) have argued.[17] Ordinary women continued to swear out arrest warrants for assault before trial justices, even if justices increasingly referred them to the civil courts or did not "send up" their complaints. As ever, looking at local legal records complicates narratives and timelines and emphasizes the importance of local custom and variations. Furthermore, the shift of assault prosecutions from criminal to civil courts was likely less important to ordinary people than it may be, in retrospect, to historians studying the ideology behind legal change and notions of public and private.

The fact that the last two decades of the nineteenth century saw a decrease in citizen prosecutors for assault and other types of crime is more telling. As police increasingly initiated prosecutions by obtaining warrants from justices themselves, the criminal legal system became less accessible to marginalized people and swearing out warrants became more of a "top-down," institutionalized process than it had been in the past.

This chapter builds up to these major changes by first focusing on what assault prosecutions involving women reveal about the legal culture of the post-Civil War South. It also elaborates on the previous chapter by exploring the kinds of conflicts in which Black and White women became involved, how these conflicts became violent, when and how violence escalated into legal prosecutions, and how women and other legal actors worked to seek reconciliation or

[17] Ibid., 426.

redress after interpersonal violence. In those cases that did go to trial, claiming self-defense was, perhaps predictably, the most common strategy that women defendants employed.

While likely only a fraction of violent conflicts involving women reached the level of a trial justice hearing, never mind the county-level criminal courts, the court records concerning assault nevertheless provide invaluable insights into women's daily lives in the decades after the Civil War. Ordinary Black and White women employed their fists and whatever makeshift weapons were handy to defend themselves from violence at the hands of strangers, neighbors, partners, and relatives alike. A number of women testified that they habitually carried a razor, and a few toted pistols. Domestic violence was sadly commonplace, and these conflicts sometimes found their way to the criminal courts. Other women employed violence to revenge themselves against insults, assert status, or defend their honor or that of their family. However, while women's assaults "exhibited a logic unique to their perpetrators," as Kali Gross has written, that logic could on occasion be cruel and calculating.[18]

Indeed, the final section of this chapter addresses the issue of women's trials for assault as evidence of not just self-defense and resistance to oppression or women's use of violence in conflicts, but of some women's outright cruelty and brutality. I conclude that while most trials originated from everyday domestic and labor conflicts that evolved into "cases" due to the actions of the parties involved, a small number of Black and White women in postbellum South Carolina did enact premeditated violence, particularly against individuals they deemed weaker or more vulnerable than themselves. I discuss cases involving women who abused and "ill-treated" children, women who assaulted others with apparently murderous intent, and women whose violence was fueled by racism. Women in post-Civil War South Carolina and elsewhere utilized

[18] Gross, *Colored Amazons*, 100.

physical violence for self-defense, as a method of conflict resolution, as a form of resistance against oppression, and, occasionally, as a way of purposely inflicting pain, punishment, or revenge.

2.1 Antebellum Assault and Civil War Changes and Continuities

When writing about southern women in the Civil War and Reconstruction eras, historians have often emphasized change over continuity, asserting that the war irrevocably changed both Black and White women's lives, particularly by politicizing them and breaking open the domestic "sphere" of women in the home. Certainly, the war led to profound dislocation for women across race and class which brought them closer to violence—and more likely to need to employ it. During the war, Black women left plantations or households where they had been enslaved and made their way to Union lines and contraband camps. In contraband camps, they found uneasy refuge, as some women met with violence in the form of abusive Union soldiers or Confederate raiders, illness in the form of the diseases that circulated throughout the war-torn South, or were turned away by unsympathetic Union officers.[19] White women, including elite White women, became refugees fleeing the Union armies, a sight that jarred many in the Confederacy.[20] As Stephanie McCurry has studied in detail, working-class White women led bread riots in Confederate cities such as Richmond and Salisbury, North Carolina, breaking into stores and granaries and wielding weapons as they took food their families desperately needed.[21] A small number of southern women, particularly free and enslaved Black women working as

[19] For contraband camps, see Glymph, *The Women's Fight*, chapter six; Amy Murrell Taylor, *Embattled Freedoms: Journeys through the Civil War's Slave Refugee Camps* (Chapel Hill: University of North Carolina Press, 2018); Jim Downs, *Sick from Freedom: African American Illness and Suffering during the Civil War and Reconstruction* (New York: Oxford University Press, 2012).
[20] Glymph, *The Women's Fight*, chapter one.
[21] McCurry, *Confederate Reckoning*, 167-207; Katherine R. Titus, "The Richmond Bread Riot of 1863: Class, Race, and Gender in the Urban Confederacy," *Gettysburg College Journal of the Civil War Era* 2, no. 6 (2011), 86–146.

domestics for Confederates, acted as spies who risked their lives to convey crucial military information.[22] Poor and yeomen White women became both subject to violence and compelled to defend themselves when Confederate officials harassed them in their searches for Unionist and deserter relatives.[23] Other White women violently resisted the confiscation of their crops and granaries.[24]

Yet it would be a mistake to read the stacks of indictments against women for assault in the years immediately after the Civil War and assume that they represent a surge in women's violence wrought by the upheaval and hardships of war alone. As Thavolia Glymph has recently written, "the often unstated but powerful assumption that the Civil War represented a whole new experience for American women holds a powerful interpretative sway in the historiography." But many of the challenges women faced in the war's aftermath were also, as Glymph notes, "deeply familiar."[25] As with women's participation in local legal culture and women's politics, the Civil War and the upheaval it wrought certainly shaped the ways in which women's conflicts occurred and how they brought them to court. For one thing, Black women would not have been tried in the South Carolina Courts of General Sessions before Reconstruction. But the fact of women's everyday violence and their appearance in court in assault cases were not new.

To the contrary, a glance at the dockets of South Carolina's pre-Civil War courts reveal that it was not uncommon for Black and White women to stand trial for assault. Early court records demonstrate that White women were indicted for violence. In a colonial record from

---

[22] Lyde Cullen Sizer, "Acting her Part: Narratives of Union Women Spies," in Catherine Clinton, ed, *Divided Houses: Gender and the Civil War* (New York: Oxford University Press, 1992); McCurry, *Confederate Reckoning*, 86-90; 103.
[23] Glymph, *The Women's Fight*, 77-8; McCurry, *Confederate Reckoning*, 114-125.
[24] Glymph, *The Women's Fight*, 67.
[25] Glymph, *The Women's Fight*, 11. For a similar discussion of change versus continuity in the women and the Civil War and Reconstruction historiography, see Laura Edwards, The Legal World of Elizabeth Bagby's Commonplace Book: Federalism, Women, and Governance," *Journal of the Civil War Era* 9, no. 4 (December 2019), 509-10.

1769, Agnes McDonald was accused of "assaulting a constable."[26] Mary Cole was convicted of assault in 1769 and tried again in 1771, though she was acquitted that time.[27] These surviving early records likely represent only a fraction of those lost to time and contain few details about the dozens of women accused or their trials, but it is nevertheless important to acknowledge them. The variety among their surnames, ranging from the English "Cole" and the Scottish "McDonald" to the French "Sarah Moqueraux" and the possibly German "Mary Magdalen Deeg" points to the diversity of colonial South Carolina and the women indicted.[28] Nevertheless, it is safe to speculate that like most women tried in criminal courts in later periods, the majority of these colonial defendants were not elite White women, but rather poor and working-class.

Antebellum records are slightly more eloquent and demonstrate that White women continued to stand trial for assault once South Carolina became a state in the new republic. So did free and enslaved women of color, though they were tried in the Courts of Magistrates and Freeholders with few procedural protections and harsh corporal punishments should they be convicted, as I discussed in Chapter One.

White South Carolinians frequently took conflicts that escalated into violence to the county-level criminal courts, as evidenced in part by the number of antebellum grand juries who complained about the "petty assault cases" constantly flooding the dockets. In 1820, for example, a Fairfield District grand jury wrote a complaint "respecting the frequency of prosecution of cases of assault and battery," as did Laurens District that same year.[29] In 1858, a grand jury in

[26] "No Indictment Against Agnes McDonald for Assaulting a Constable," South Carolina Criminal Journal vol. 1, 18, SCDAH.
[27] For Mary Cole, see South Carolina Criminal Journal vol. 1, 18-9; 26; 31; 89-91; 121-5, SCDAH.
[28] For Sarah Moqueraux, see South Carolina Criminal Journal vol. 1, 203; for Mary Magdalen Deeg, see ibid., 215.
[29] Fairfield District Grand Jury Presentment, November 1820, Grand Jury Presentments, item #9, SCDAH; Laurens District Grand Jury Presentment, November 1820, Grand Jury Presentments, item #13, SCDAH. For the diversity of colonial South Carolina, see Myers, *Forging Freedom*, 29. In the eighteenth century, South Carolina was home to French and Irish Catholics, Protestants (including French Hugenots, Anglicans, and Scottish Presbyterians), and

Edgefield District was still complaining that magistrates should be "given increased power over cases involving riot and assault" so that fewer assault cases would reach the General Sessions courts.[30] A Charleston grand jury in 1860 recommended the state "not pay costs" in such "frivolous cases crowding the court dockets" where "no indictment is issued," an indication of some people's disdain for the "frivolous" assault prosecutions and their persistent popularity.[31]

Did grand juries consider assault cases "petty" in part because they frequently involved women? It is one possibility, though, as with postbellum assault prosecutions, complaints of assault against women were by no means summarily dismissed as trivial. As Jack Kenny Williams noted in his history of crime in antebellum South Carolina, women were among the accused in about 15% of indictments before the Courts of General Sessions, which only tried White defendants.[32] My own research generally accords with this figure, though it seems that women's trials for assault often came in droves during a single court term, followed by court terms with fewer or no cases involving women. For example, seven women were indicted for assault in Darlington District in 1846-47.[33] During Charleston's spring 1860 court term, a year before the outbreak of the Civil War, a "Mrs. Hutton" was found guilty of assault and battery and ordered to pay a fine of $50.[34] During the same term, "Mrs. E. Holmes" was convicted of assault and fined $100.[35] In January of 1861, four White women were convicted of "rioting" and fined

Sephardic Jews as well as enslaved and free Africans of a variety of religious and ethnic backgrounds who came from the West Indies or directly from West and Central Africa via the Middle Passage.

[30] Petition of Inhabitants of Edgefield District, Asking Magistrates Be Given Increased Power Over Cases Involving Riot and Assault, The Limit on Claims Be Raised, and Witnesses and Parties to Suits Give Surety," Petitions to the General Assembly, item #00098, SCDAH.

[31] Charleston District Grand Jury Presentment, 1860 Grand Jury Presentments, item #2, SCDAH.

[32] Jack Kenny Williams, *Vogues in Villainy: Crime and Retribution in Antebellum South Carolina* (Columbia: University of South Carolina Press, 1959), 20-1.

[33] Ibid., 21.

[34] "State vs Mrs. Hutton," Charleston County Court of General Sessions Criminal Journals, vol. 2, 38, SCDAH.

[35] Ibid., 90.

ten dollars each for their assault on a police officer.[36] From these sparse records, it is usually unclear who initiated the cases against the women by swearing out warrants for their arrest.

Although the population of free people of African descent was small in early South Carolina outside of Charleston, free women of color were occasionally tried for assault in the Courts of Magistrates and Freeholders. In her study of antebellum North Carolina, Victoria Bynum found that the same free Black women were tried for "fighting" in rural counties several times, indicating high community surveillance of free women of color.[37] While antebellum records from South Carolina do not suggest the same recidivism for free women of color, the punishments for free people of color who were convicted were similarly harsh as for enslaved people. In Kershaw District in 1844, a "free negro" named Charlotte Rogers was convicted of "assaulting and stabbing with a dirk or knife." She was sentenced to forty lashes on the back, to be administered twenty at a time and a week apart. In the meantime, Rogers was imprisoned in the local jail.[38]

By contrast, most enslaved people were subject to slaveholders' discipline before that of the courts, as generally only the most severe cases or those involving some breach of the public peace came before the magistrates and freeholders. Enslaved women tried for assault in these courts during the antebellum period were accused of violence against White people, usually White people other than the women's legal owners. In 1854, for example, an enslaved woman named Violet was convicted of "striking a white person," for which she was sentenced to receive

[36] Ibid., 129; 165.
[37] Bynum, *Unruly Women*, 80-1.
[38] *State vs Charlotte Rogers*, Kershaw County Court of Magistrates and Freeholders Indictments, box 4, folder #108, SCDAH.

one hundred lashes and spend two weeks in jail.[39] In 1862, Isbel of Laurens District stood trial for an "assault on a white woman," but because the woman never appeared to testify against her, she was acquitted.[40] Other cases in which slaveholders considered enslaved women's violence serious enough to try them in court involved attempted insurrections or murder. During the Civil War, a Spartanburg District Magistrates and Freeholders court convicted and severely whipped an enslaved woman named Sally for "assault and battery with intent to kill and insurrecting rebellious conduct."[41]

Enslavement meant that violence and the threat of violence against their bodies and those of their loved ones shaped enslaved women's lives, but the criminal courts had less to do with this violence before the Civil War. Only with the war's end and Reconstruction did Black women appear in the now integrated criminal courts as both defendants and as complainants with the right to accuse others. White women, too, continued to act as complainants and defendants for assault prosecutions more than any other category of crime.

As I will discuss, post-Civil War assault cases demonstrate women's politics and responses to the dynamic racial, political, and economic developments of the era between the end of the war and the close of the nineteenth century. Yet, as we have seen, women's everyday use of interpersonal violence was not novel, nor was their presence in courts. For the poor and working-class Black and White women who constituted the majority of complainants and defendants in assault cases, continuities as well as changes marked their experiences.

---

[39] *State vs Violet*, Spartanburg District Court of Magistrates and Freeholders, SCDAH. Under the 1740 South Carolina Slave Code, striking or attempting to strike "a white person" was a serious offense. Peter C. Hoffer, *Cry Liberty: The Great Stono River Slave Rebellion of 1739* (Oxford: Oxford University Press, 2010), 42.
[40] *State vs Isbel*, Laurens District Court of Magistrates and Freeholders, box 2, folder #78, SCDAH.
[41] *State vs Sally*, Spartanburg District Court of Magistrates and Freeholders, SCDAH. Unfortunately, I could not find out more about this incident.

So, too, did the communal nature of local trial justice and county-level courts, with their emphasis on preserving what Laura Edwards has called "the peace" over individual, rights-centered justice continue to prove a useful paradigm into the post-Civil War period.[42] In another continuity, women continued to exert significant influence on prosecutions in which they were involved, as both complainants and defendants. The following section focuses on Black and White women's roles as defendants, complainants, and witnesses who initiated and actively shaped the course of assault prosecutions and what their presence as resourceful legal actors demonstrates about the legal culture of the postbellum South.

2.2 Reconciliation, Redress, and "Satisfaction": Assault Prosecutions and Legal Culture

As defendants and as complainants in local criminal courts, women played principal roles and assumed considerable responsibilities. Indeed, in the nineteenth century South, they were expected to do so. Complainants, or prosecutrixes, had to swear out an arrest warrant before a trial justice to initiate a case, gather witnesses for preliminary hearings and criminal trials, and act as the principal witness and force behind the prosecution. In assault prosecutions, if a complainant failed to show up, a hearing or trial would not usually proceed in her absence. The case might be dropped, or the woman's attorney or the county solicitor might make inquiries to determine why she had not appeared.

Defendants, too, had certain responsibilities in handling their defenses. They had a right to counsel, and the court would appoint an attorney for poor defendants. Some attorneys monopolized the criminal court business, defending the accused for relatively inexpensive fees.

[42] Edwards, *The People and Their Peace*.

Yet the defendant herself was also expected to make efforts if she hoped to win an acquittal. She named witnesses and of course worked with her attorney to craft her defense. Court records suggest that officials expected defendants to go beyond naming witnesses—they were also responsible for enlisting them to testify. Some women who could not make bail even did so from the county jail, a feat made easier by the fact that some jails instituted a policy of "prison bounds." People incarcerated for relatively minor offenses could sometimes leave the jail during certain hours to run errands or go to work if they returned to their cell by nighttime.[43]

Even those women not permitted to leave jail seem to have deputized police as well as relatives and visitors to send messages on their behalf. Emma Holmes of Charleston, a Black woman, went from her jail cell to the trial justice's office to explain that she "could not safely to go to trial" without several material witnesses for her defense. The justice doubted that she had "used due diligence to procure the attendance of said witnesses." Fortunately, Holmes' attorneys Samuel J. Lee and William J. Bowen, African American law partners who did much business in the 1880s and 1890s, sent a letter explaining what she sought to prove by each witness's testimony. The justice sent his constable in search of the four missing witnesses.[44]

Such hunts for witnesses and personal interactions were necessary because many women defendants and their would-be witnesses were illiterate. Susan Rothele, a poor White woman charged with larceny in Oconee County who had been in the county jail, lamented in her appeal that she had not received a fair trial because she had been "unable to properly manage her own

[43] Thanks to the archivists at SCDAH for explaining the surprising concept of "prison bounds" or "jail bounds." Lawrence M. Friedman notes the system's continued use in the early nineteenth century in Friedman, *Crime and Punishment in American History* (New York: Basic Books), 81, though evidently it lasted longer than this in some places.

[44] *State vs Emma Holmes*, June Term 1884, Charleston County Court of General Sessions Indictments, box 34, folder #5082, SCDAH. For Lee and Bowen, see John Oldfield, "The African American Bar in South Carolina," 120-22. Lee was a very skilled lawyer, winning the majority of his cases in the criminal courts and even arguing in the state supreme court.

case on account of being unable to read or write." The judge who had convicted her denied her appeal, however, noting that the "missing" witnesses she named did not appear because she had not requested them to do so. He was unlikely unimpressed with her excuse because many illiterate defendants "managed" their cases.[45]

While women defendants and complainants were expected to exercise "due diligence" in their legal roles, they went far beyond this. They strategically initiated, pursued, and negotiated in criminal prosecutions to seek justice, redress, reconciliation, or what people of the time often called "satisfaction." Satisfaction was not quite revenge, but somewhere between redress and reconciliation. It suggested that one had accomplished what one desired or received what one felt was owed, and the rupture in a relationship had been mended, whether amiably or not. Sometimes what was owed was monetary restitution; at other times, an apology would suffice. "I have satisfied myself with her," is what a complainant often wrote to ask the county solicitor to request him to drop a prosecution.

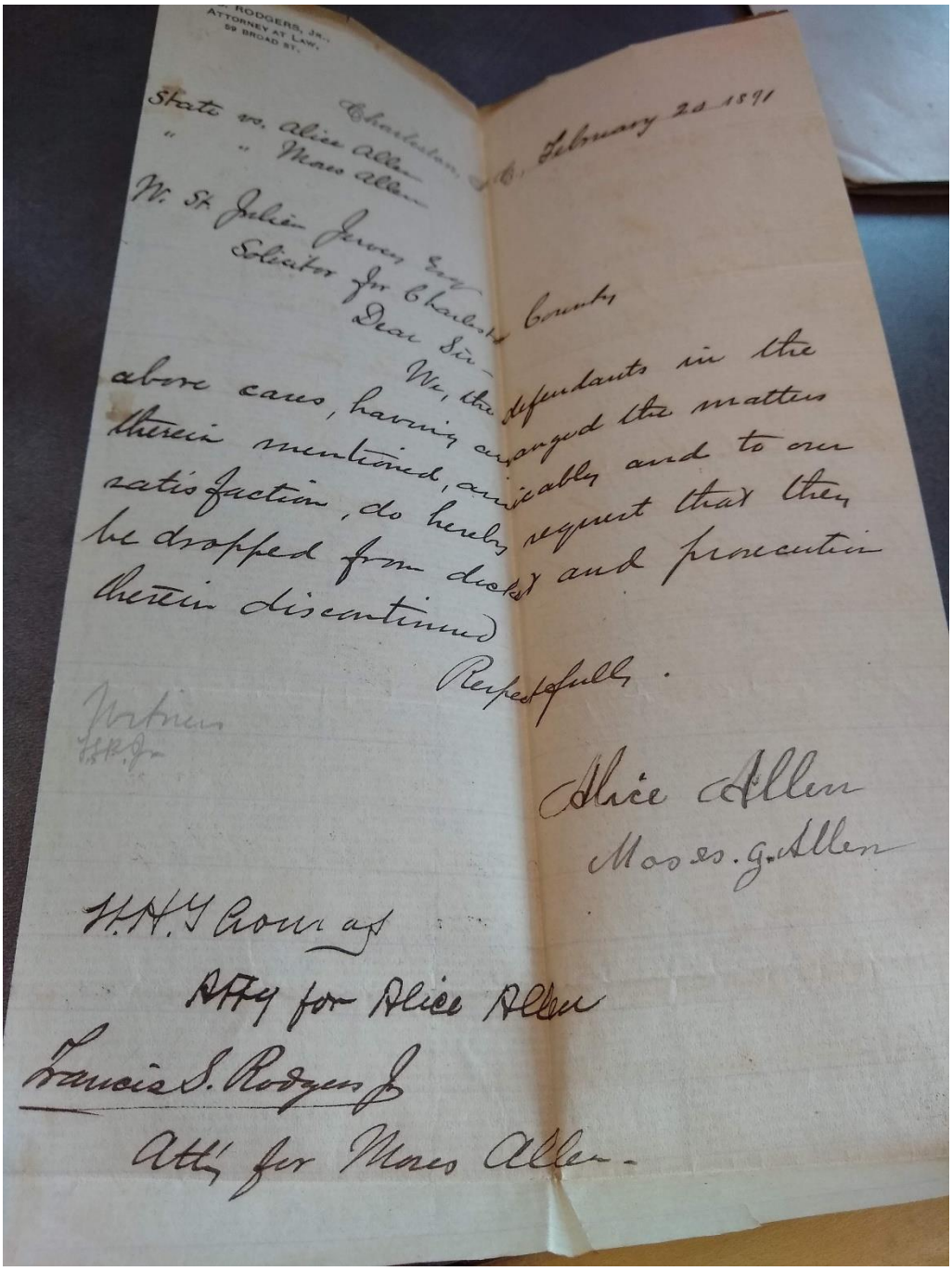
The plethora of "nolle prosequi" notations, indicating a dropped case, on court dockets in the post-Civil War South demonstrate that parties involved in criminal prosecutions frequently satisfied themselves with one another before a full trial took place. The notes and letters preserved in certain case files give us clues as to how they did so. Clearly, complainants sometimes employed prosecutions as a method of bringing defendants to the bargaining table, so to speak. Defendants, in turn, negotiated with prosecuting parties as well as officials, neighbors, and others who served as mediators in legal conflicts to reach satisfaction and avoid conviction.

Complainants could request cases to be dropped even when the violence involved was quite serious. In 1891, Alice and Moses Allen of Charleston, a White married couple, charged

[45] *State vs Susan Rothele*, July Term 1873, Oconee County Court of General Sessions Indictments, box 1, SCDAH.

one another with assault. Subsequently, they wrote to the county solicitor to request that both prosecutions be dropped. This was after Moses had Alice arrested for "shooting him with a pistol in the fleshy part of the cheek" in the middle of the street and after Alice, upon enlisting friends to pay her bail, promptly initiated a counter prosecution against Moses. She testified that she had only shot her husband because he had made a "cowardly assault" on her with a whip. A month later, the couple and their respective attorneys sent a letter to the county solicitor. "Dear sir," the Allens wrote, "We, the defendants in the above cases, having assuaged the matters therein mentioned, amicably and to our satisfaction, do hereby request that they be dropped from the docket and prosecution therein discontinued." Charleston's county solicitor obliged.[46]

[46] *State vs Alice Allen*, February Term 1891, Charleston County Court of General Sessions Indictments, box 38, folder #6972, SCDAH.



RODGERS, JR.,
ATTORNEY AT LAW,
59 BROAD ST.

Charleston S.C. February 20 1891

State vs. Alice Allen
" " Moses Allen

W. St. Julien Jervey Esq
Solicitor 1st Circuit Charleston County

Dear Sir—

We, the defendants in the above cases, having arranged the matters therein mentioned, amicably and to our satisfaction, do hereby request that they be dropped from docket and prosecution therein discontinued

Respectfully.

Alice Allen
Moses. G. Allen

H.A.G. Rowe as
Atty for Alice Allen
Francis S. Rodgers Jr
Atty for Moses Allen.

Figure 8

A citizen complainant could even request that a case be dropped after a grand jury had already determined to proceed with the case. Letters preserved in case files indicate that citizen prosecutors and defendants frequently met to discuss the events after the prosecution was already in motion. In 1890, Lizzie Brown of Charleston requested that her prosecution of Grace Lewis

and Richard Robinson, evidently brothel owners, for the abduction of her daughter Mary be dropped. "I am satisfied that the intentions were not wrong," the attorney recording Lizzie Brown's words wrote. Clearly Lewis and Robinson had explained themselves, or else paid Lizzie Brown to have the case dropped—but they likely did so because she had initiated a prosecution against them.[47]

Swearing out an arrest warrant against someone was an excellent way to obtain their full attention, particularly for marginalized people who may have otherwise lacked the social clout to convince a person who had wronged them to make amends. Some witness testimonies suggest that, indeed, the prosecutrix had first sought monetary "satisfaction" or redress from the defendant before she resorted to taking the matter to the law. One complainant in a Richland County case admitted to threatening a defendant to the effect that "if she did not pay money [to her], she'd go to jail."[48]

Thus, people's refusal to engage in extralegal remedies sometimes led to prosecutions, just as prosecutions themselves could make someone more amenable to resolving a conflict outside of court. This was true even with crimes more serious than a simple assault. In a complex arson case not discussed in Chapter Four, Clarendon County planter Henry Coleman described his surprise at finding his tenant Esther Congers, a Black female tenant farmer, living with another of his tenants. "Why don't you know that they burnt my house down?" Congers said. She proceeded to name two men and one woman who she believed were responsible. According to the planter, Congers "promised she would go to the trial justice and tell him this." The next time they met, however, Congers told him "she would rather build a new house" and had

[47] *State vs Grace Lewis alias Jenkins and Richard Robinson*, November 1890 Term, Charleston County Court of General Sessions Indictments, box 38, folder #6810, SDDAH.
[48] *State vs Alice Walton*, October Term 1889, Richland County Court of General Sessions Indictments, #2193, SCDAH.

obtained promises of money from the men involved in the arson. Evidently irritated when this money and the new house failed to quickly materialize, Henry Coleman seems to have begun to suspect that Esther Congers herself had played a role in burning the house where she lived, which she had rented from him. He swore out an arrest warrant against both the men and women she had named as responsible for the arson and against Esther Congers. The grand jury declined to proceed with the case, however, probably because there was little evidence to suggest who was responsible for the house burning.[49]

Esther Congers' response to her landlord Coleman suggests that she was reluctant to go to the trial justice and preferred to resolve matters outside of a legal forum. Certainly, some men and women were less litigious than others or outright distrust legal authorities. People in rural areas sometimes seem to have put off going to the nearest trial justice's office, although at 347 justices in the state of South Carolina, they were widely geographically distributed.[50] Generally, a town of any size had a trial justice. Rural Clarendon County, for example, had six justices in 1878.[51] Cities like Charleston and Columbia had dozens of trial justices.

One effect of this was that complainants could often strategically choose which trial justice they approached with a complaint. Even in rural counties, grand juries and officials sometimes griped that citizens played favorites with trial justices. They travelled further to make a complaint with a justice they thought would be more responsive. In 1886, a grand jury in mountainous Oconee County complained that:

[49] *State vs Malvina Davis, Esther Congers, Robert Davis, and John Clark*, February Term 1885, Clarendon County Court of General Sessions Indictments, box 4, SCDAH.
[50] Rubin, *South Carolina Scalawags*, 95.
[51] Clarendon County Grand Jury Presentment, September Term 1878, SCDAH.

> While we know that trial justices have jurisdiction throughout the county, we believe they are appointed in the different townships for the convenience of persons in such communities... we recommend that trial justices throughout the county refuse to take up cases in the territory or community of other trial justices without a good and valid reason for so doing.[52]

The grand jury's complaints likely fell on deaf ears, however, as people continued to travel the extra distance to make reports to trial justices they favored over others—and to avoid those they distrusted. In the tight-knit communities of the nineteenth-century South, women as well as men would have known a public official's reputation. Even if they were illiterate and did not read the local papers, they would have heard others speak about their interactions with officials, and they likely knew them by sight as well. In an era when electoral politics manifested in local gatherings, picnics, parades, and other meetings along with the newspapers and more homosocial environments such as taverns, women also probably knew an official's politics.[53]

In the Reconstruction South, where struggles over African American civil rights constituted a major part of politics, this included justices' fairness or lack thereof towards Black people in their courts. In 1869, Prince Rivers, a formerly enslaved man from Beaufort, S.C. who had gone on to be a sergeant in South Carolina's first unit of Black soldiers, was appointed as magistrate in Edgefield County, where he had moved after the war. When White residents petitioned the governor for his removal, more than 100 Black citizens of the county sent a letter opposing the petition. "While we are not disposed to argue that Prince Rivers is the very best

[52] Oconee County Grand Jury Presentment, March 1886, Oconee County Court of General Sessions Indictments, box 3, SCDAH.
[53] Elsa Barkley Brown, "Negotiating and Transforming the Public Sphere."

man that might have been appointed to fill the office of magistrate, he is able to rise above existing prejudices and to administer justice under the law with an even hand," they wrote.[54] The Black citizens' letter got to the heart of the matter. For most Black people in the Reconstruction South, who had long experienced enslavement, prejudice, and violence, fairness and impartiality were more valuable qualities in a justice than an advanced education. And in this era, few justices had much legal training.

Some justices and judges earned a reputation for fairness even from those who otherwise opposed them on account of racism or political opposition. Others were unfairly accused of corruption; others were corrupt, to varying extents. Politics played a key role in their appointments, and however impartial he might wish to be, the politics of an individual trial justice or judge could certainly influence his ruling on a case. Yet so could the judge's personality, background, his opinions of the parties, and of course, the reputation, actions, and persuasiveness of the people involved in the trial.

Indeed, judges and trial justices often defy easy categorizations. This is particularly true if they had a long career on the bench. Judge Thomas Jefferson "T.J." Mackey comes to mind. As a young man, T.J. Mackey fought in the Mexican-American War and the Seminole Wars, followed by a brief foray into recruiting men for a filibuster army in Nicaragua in the 1850s. Mackey served as an engineer in the Confederate Army. After defeat, he returned to Charleston, where he immediately became a vocal proponent of federal Reconstruction. Like many White Republican South Carolinians, he seems to have viewed the lowcountry elite's key actions in precipitating Confederate secession as a terrible mistake that should never be repeated. Though he had no legal training, he was appointed to serve as a trial justice and elected as a member of

[54] Eric Foner, "South Carolina's Black Elected Officials," 173-4.

Charleston's City Council in 1868. In 1869, Mackey shot and nearly killed his nephew and fellow Charleston City Council member, apparently because his nephew had implied that he was a liar. For this shooting Mackey was tried before the City Council for "misconduct in office," but ultimately never indicted in a criminal court, perhaps because he claimed to have been under the influence of morphine he had taken for a toothache. Having survived this scandal relatively unscathed, Mackey became a circuit judge and a Republican leader in South Carolina. After the "Redemption" of the state, he quickly switched to the Democratic party and briefly continued his judicial career.[55]

T.J. Mackey was a colorful character and perhaps something of an opportunist, but like other officials and judges he cannot easily be placed in a neat "Democrat" or "Republican" box, nor a "pro" or "anti"- Black civil rights box. Jesse Williams, a formerly enslaved man who told a WPA interviewer about his life in Winnsboro, South Carolina during Reconstruction, described his memories of Mackey: "Did I know Judge Mackey? 'Sho I did! While he was a settin' up dere on de bench in de court house, he have all de people laughin'." Williams recollected how Mackey's court had tried a White man, Mr. Lindsey, for beating up a Black Republican. To Williams' surprise, Lindsey entered a plea of guilty. All the Republicans in the packed courtroom "was a grinning with joy" when Mackey ordered the defendant to rise. However, Williams continued:

> Wid a solemn face and a solemn talk, [Judge Mackey] wound up wid: 'Derefore, de court sentence you to de State Penitentiary at hard labor for a period of ten years (Then him face light up, as he conclude), or pay a fine of one dollar!' De

[55] For T.J. Mackey, see Rubin, *South Carolina Scalawags*, 114; Powers, *Black Charlestonians*, 243.

> white folks holler: 'Three cheers for Judge Mackey!' De judge git up and bow and say: 'Order in de court.' As dere was no quiet to be got, clerk 'journed de court. De judge take his silk beaver hat and gold headed cane and march out, while de bailiffs holler: 'Make way! Make way for de honorable judge!' Everybody took up dat cry and keep it up long as de judge was on de streets. Oh, how dat judge twirl his cane, smile, and strut.[56]

Considering this incident juxtaposed with another that I found in Charleston County's court records sheds light on the contradictory nature of Judge Mackey and, indeed, other men on the bench. In 1881, Judge Mackey tried the criminal case of Patsey Wethers, a young Black woman accused of an "assault with intent to kill" on her middle-aged Black neighbor, Louisa Aucrum. Wethers was evidently in the habit of taking Louisa Aucrum's young daughter up to her room and playing with her. When Aucrum protested, she testified, Wethers cursed her and picked up a stone as if to hit her. Patsy Wethers' testimony strongly suggests she was rather simple-minded, but the jury convicted Patsy Wethers. Yet Judge Mackey passed a familiar sentence upon her: "a fine of one dollar."[57] In other words, he again imposed the lowest possible fine on the defendant. Earlier in his political career in Charleston, Mackey fought for Black fire

[56] Federal Writers' Project, *Slave Narratives: A Folk History of the United States from Interviews with Former Slaves: South Carolina, Part 4* (WPA), 202-5. Narratives like Williams' lead me to wonder why some scholars have questioned the utility of WPA narratives. While it is certainly true that formerly enslaved people sometimes told interviewers what they thought they wanted to hear, WPA narratives nevertheless are some of our best sources for hearing the voices of the formerly enslaved and for learning about everyday life and politics during their lifetimes. Although some interviewers had their own biases, the gift for storytelling and the vivid memories that many of the men and women they interviewed had nevertheless shines through in the WPA narratives. Jesse Williams did not openly agree with or condemn Mackey's actions in the story he told his interviewer, instead using the mask of humor to make an indirectly critical comment on the judge's behavior and injustice even during Reconstruction.
[57] *State vs Patsy Weathers alias Wethers*, February Term 1881, Charleston County Court of General Sessions Indictments, box 31, folder #4507, SCDAH.

companies in the city to be organized and paid on an equal basis with Whites.[58] And although Jesse Williams' story suggests that Mackey enjoyed courting White public opinion, he also did not shy away from controversy. In 1878, he essentially nullified South Carolina's recently passed criminal adultery statute by releasing people from jail who were being held under the new law. As I discuss in Chapter Six, conservative papers castigated Mackey for this.[59]

T.J. Mackey's actions demonstrate the extent to which local actors and officials' decisions often failed to conform to a neat pattern. Mackey might dismiss a White man's violence against a Black Republican with a smile, or he might show mercy to a young Black woman with an intellectual disability even when the jury did not. In telling the more sweeping story of Reconstruction and the decades afterwards, historians too often forget that people, including officials, were complicated, capricious, contradictory, and sensitive to local circumstances.

Complainants and defendants alike understood this, however. Familiar with the local politics of judges and trial justices as well as their history of rulings, to some extent, women sometimes appealed a justice's sentence. Others complained about a judge's ruling in their pardon petition. A number of women who were convicted of simple assault by trial justices and sentenced to fines or short terms in the county jail appealed their sentences to the county-level Courts of General Sessions.

This was particularly common during Reconstruction, when many White conservatives resented trial justices for what they perceived as justices' Republican political leanings. Appointed as they were by Reconstruction governors, trial justices had a reputation for being less conservative than the judges on the higher circuit bench, who were a mix of White moderates

[58] Powers, *Black Charlestonians*, 243.
[59] See Chapter Six, "Illicit Acts."

from both political parties and White Republicans. Although the roughly 347 trial justices working throughout South Carolina were certainly not all Republicans—indeed, some were simply prominent men in their local communities who were not involved in politics—ordinary women seem to have known the politics of individual justices very well.

For example, White women understood that some White and Black Republican trial justices' decisions to fine or imprison them for their assaults on Black people might be overturned by a more conservative higher court judge. They appealed accordingly. In 1874 Charleston, trial justice H. Caulfield convicted a White woman named Ellen Johnson of simple assault; she was to be fined five dollars and costs or spend fifteen days in jail. The complainant against her was Rachel Stevens, a Black woman who worked as a laborer. She charged that Johnson had struck "her over the head with a parasol." Johnson, however, appealed her case to the circuit court. Charleston's grand jury subsequently did not find a bill against her, causing the prosecution to be dropped.[60] In a similar case from Charleston in 1877, Ellen Flynn, also White, appealed her conviction for an assault on prosecutrix Julia Harrington, a Black woman. The grand jury also did not proceed with the case against her.[61]

Such cases aside, appealing a trial justice's ruling was generally rare. Defendants tried for the minor crimes which justices were authorized to try themselves (usually those involving one hundred dollars or less of damages) typically did not want to risk appealing to the county-level court, where they might face more severe punishment, not to mention wider social stigma.[62]

---

[60] *State vs Ellen Johnson*, October Term 1874, Charleston County Court of General Sessions Indictments, box 24, folder #3056, SCDAH.

[61] *State vs Ellen Flynn*, June Term 1877, Charleston County Court of General Sessions Indictments, box 27, folder #3734, SCDAH.

[62] The duties and jurisdiction of trial justices and circuit judges are not well explained in the existing scholarly literature. I found a rule book for judges and one justice's defense of the system in the form of a long pamphlet more helpful. See *Rules of practice of the circuit courts of the state of South Carolina: Adopted at the general session of the justices of the Supreme Court and the judges of the circuit courts, 16 December, 1870 (*Charleston: Walker,

Such court appearances also ultimately cost more money. For example, it may have been cheaper for Ellen Flynn to pay her five-dollar fine than to appeal her conviction by drawing on the services of an attorney from the local firm Foreman, Burst, and Bryan.[63]

The fact that most of the appeals came from White women convicted of assaults on Black women during Reconstruction suggests there were political factors at play. Perhaps women like Flynn and Johnson were indignant at having to pay even a relatively small fine as redress to a Black woman. They apparently preferred to appeal and, as they may have seen it, defend their honor in a court less likely to convict them. Furthermore, their knowledge of local officials helped them to enact such strategies.

On the surface, the county solicitor certainly played an outsized role in determining which cases the circuit court would pursue. He was the equivalent of what we would call a district attorney, the man who oversaw the prosecution of criminal cases and handled all the paperwork and procedures. In practice, though, my research shows that the county solicitor was unlikely to drop a case with which the grand jury chose to proceed. As we have already seen, he was equally likely to drop a case if the complaint requested it. In short, the county solicitor did exercise his discretion, but he usually did so at the request of someone else.

As we might expect, the people who most commonly wrote to the county solicitor about a case were the defendant and the complainant. Yet other parties frequently wrote to the county solicitor, too, indicating both communal interest in the stakes involved in ongoing cases and people's belief that they might influence the outcome of prosecutions.

Evans, & Cogswell, 1871), South Caroliniana Library, and Thomas M. Cathcart, *The Trial Justice System of South Carolina: An Answer to Some of the Criticisms Passed upon Officers of This Class* (Winnsboro, SC, 1884), South Caroliniana Library.

[63] *State vs Ellen Flynn.*

Sometimes employers intervened on behalf of defendants or to defend their own interests. In 1870, Charlestonian freedwoman Mary Fraser swore out an assault arrest warrant against another Black woman, Mary Middleton. Within a few days after the preliminary hearing, however, the county solicitor entered a *nolle prosequi* for the case after he received a note stating that Mary Fraser "consented to having all charges dropped and to cease having anything further to do in the case." The note was written and "witnessed" by her employers Cecilia and William Gibbs, who signed the letter below where Fraser made her mark. Quite possible the Gibbs disapproved of their employee Mary Fraser's acting as complainant in a prosecution.[64]

Another possibility is that her appearances at court were taking her away from her work. In an 1879 Richland County case involving a Black sharecropper who had seriously assaulted another woman, the county solicitor received a note from a concerned "friend," a White man of local prominence who asked him to drop the case. "My only interest in the transaction," the man wrote, "is that the witnesses are the employees of one of my friends who needs them back badly and they are gone and hardly able to maintain work here."[65] While some White employers acted as character witnesses for defendants, others resented how going to court took employees or agricultural workers away from their work. Clearly, planters, employers, and friends of friends could involve themselves in cases. But more commonly they did so at the request of the defendant.

Many women defendants were as adept at enlisting witnesses and people to help them post bail as complainants were at securing witnesses. Character witnesses—people who knew the

[64] *State vs Mary Middleton alias Forrest*, June Term 1870, Charleston County Court of General Sessions Indictments, box 19, folder #1671, SCDAH.
[65] *State vs Abby Green*, October Term 1879, Richland County Court of General Sessions Indictments, #1138, SCDAH. W.S. Monteith was a former Confederate, a landowner, and an attorney in Columbia. I believe he was the author of the letter, although his signature is difficult to read and there were a number of prominent Monteiths in the area. In fact, there are Black and White Monteith families in Richland County, a common occurrence.

woman and could attest to her good character—were also important. Black women tended to enlist pastors or else White employers or landlords to certify their good character. They understood all too well that most juries, especially in rural counties, were still largely composed of White men who valued the word of prominent White people over that of Black witnesses.

Some Black women of even modest means drew on an impressive number of connections. One woman, Rebecca Jane Maxwell, worked as a nurse for a wealthy White family in Charleston, the Tuppers. When the Tupper family accused her of poisoning the infant, Maxwell convinced the trial justice of her innocence. In his note to the county solicitor, the trial justice wrote that he found nothing to warrant the charges. "The defendant has excellent attorneys, and a host of friends to vindicate her," he added. Indeed, Rebecca Jane Maxwell paid her $200 bail with the assistance of a local White physician. She drew on her extensive and well-connected social network, her "host of friends." And as the trial justice predicted, she was vindicated in court.[66]

As central and well-known figures in their communities, physicians like the one who helped Maxwell pay her bail frequently played supporting roles in local criminal courts. Of course, physicians served as medical witnesses in court and as examining physicians during coroner's investigations of suspicious deaths. But they also frequently acted as mediators for women involved in criminal prosecutions.

In addition to providing testimony about the extent of women's injuries *in court,* as I discussed in Chapter One, some physicians wrote doctor's notes to keep accused women *out of court*. Middle-class White women seem to have been particularly adept at using this strategy, though they were not the only ones. In 1892, Anna Simmons, a Black woman in Charleston, was

[66] *State vs Rebeca Jane Maxwell,* June Term 1893, Charleston County Court of General Sessions Indictments, box 40, folder #7560, SCDAH.

convicted of assault in her absence. Afterwards, she successfully petitioned for a new trial. Her doctor sent a note to the effect that she had missed her court date because she had been under his treatment for a complaint of "nervous dyspepsia," a stomach ailment.[67]

Other women's doctors testified or wrote notes to convince the court that their patients lacked *mens rea*, or criminal intent, due to mental illness. Margaret Hughs of Oconee County, a young White woman, pleaded guilty to shooting a gun at Adeline Gasaway, a White woman she believed was sleeping with her husband. However, her doctor testified and convinced the court that "there was a want of sound mental reasoning on the part of Margaret Hughs." The county solicitor wrote: "wishing to save the county the expense of a full examination and the uncertainty that existed of her being received into the asylum and kept for any length of time, this case is *nolle prosequi*." In short, Hughs benefited from an informal insanity defense without being examined by physicians in a formal lunacy inquiry or being committed to an asylum.[68]

A few women used doctors' notes so persistently that they escaped appearing in court altogether. "Madame" Lula Strauss of Charleston was used to being summoned to court, since the middle-aged White woman ran a brothel where occasional outbreaks of violence occurred. In November 1895, however, she became the defendant in an assault prosecution initiated by Anna Beasley, a Black woman who lived in Strauss' Clifford Street brothel. Beasley testified that Strauss had hit her with a rock and subsequently struck her "in the head with a whip, causing [Beasley] severe bodily harm." Strauss was "carried to the station house" and attended her preliminary hearing, but afterwards released on bail. She managed to defer her February 1896

[67] *State vs Anna Simmons*, February Term 1892, Charleston County Court of General Sessions Indictments, box 39, folder #7340, SCDAH.

[68] This feud enveloped several White Oconee County families in the mid-1870s and centered on local women's disapproval of unmarried Adeline Gasaway's apparent affair with the married William Hughs. See Chapter Five for a discussion of Rose Corbin's arson trial for burning the Gasaway family's burn. For this assault prosecution against Margaret Hughs, see *State vs Margaret Hughs*, November Term 1875, Oconee County Court of General Sessions Indictments, box 1, SCDAH.

court date with a note from her doctor, Dr. L.D. Barbot, who wrote that "Miss Lula Strauss is grieviously ill with puriitis and has been confined to her house since January 1896." Probably he meant pruritis, a dangerous condition that can be associated with syphilis. Strauss' doctor sent another note before the next court term, in late 1896, deferring the case once more. In December 1896, Ella Wade, a White woman who had gone on bond for Lula Strauss, came to the court to cancel her bond. She informed the county solicitor that "she believed that Lula intended to leave the county before the next term of court." Indeed, Lula Strauss left Charleston without having stood trial for her assault of Anna Beasley and the case was struck off in February 1897.

Lula Strauss' strategy of using physicians' notes to escape standing trial worked. A savvy woman who had appeared in court before and who was accustomed to navigating the law as a Charleston "madame," she also leveraged her status as a White woman (albeit a disreputable one). She took it for granted that the county solicitor would continue to defer her case rather than making a "lady" appear in court while ill. Despite Ella Wade's warning that Strauss intended to flee the county, the solicitor evidently did not act to stop this from happening.[69]

Strauss's case serves as a good reminder that although Black and White women were equally resourceful in drawing on their connections, knowledge, and legal and extralegal strategies to manage their cases, they possessed varying levels of resources. White womanhood could serve as a useful defense in itself, laden as it was with ideological weight in the post-Civil War South. White women were ideally virtuous, passive, chaste, and worthy of men's protection. As "ladies," they were cast as superior to the rough world of politics, work, and other areas of the public sphere, even if this certainly was not true in practice.

[69] *State vs Lula Strauss,* November Term 1895, Charleston County Court of General Sessions Indictments, box 42, folder #9004, SCDAH.

For an elite White woman, it "would be disagreeable to appear in the court room" as a wealthy White woman from Columbia complained in 1894. She had the larceny case against her domestic servant dropped to avoid going to court as a witness.[70] The courtroom was a highly public space, something of a spectacle for people of all classes.[71] The ideology of (White) womanhood in the nineteenth century, meanwhile, called for women to center their lives around the home. Perhaps this shame of appearing in a "disagreeable" public space before many eyes was what led some White women of means to skip their court dates. They simply did not show up. This, too, was a strategy, although it most often backfired unless the woman took the precaution of having a physician write a note. Several women were convicted in their absence.

Tellingly, most of the White women who appeared in court and who appear in this dissertation were poor or working-class women with lesser claims to being "ladies" with the associated privileges. Many were immigrants or the children of immigrants. This is especially true for minor crimes like assault and petty larceny. If a White woman was suspected of murder or infanticide, her financial means, reputation, and connections might not save her from being indicted, although even then, such means were useful. Among the women who stood trial for assault and larceny, the more common crimes, women of Irish descent are overrepresented. This is likely a reflection of recent Irish immigrants' poverty as well as anti-Catholic and anti-Irish

[70] *State vs Emily Jenkins*, June Term 1894, Richland County Court of General Sessions Indictments, box 45, folder #2681, SCDAH.

[71] For the nineteenth-century courtroom as spectacle, see Melissa A. Hayes, ""Sex in the Witness Stand: Erotic Sensationalism, Voyeurism, Sexual Boasting, and Bawdy Humor in Nineteenth-Century Illinois Courts," *Law and History Review* 32, no. 1 (February 2014), 149-202. Hayes writes, "In the very public space of the courtroom, prurient spectators might hear about the intimate goings-on of neighbors, acquaintances, or strangers, while newspaper reporters culled the next day's salacious headlines."

prejudice, which, like anti-immigrant prejudice in general, was probably more widespread in the urban South than historians have recognized.[72]

Even so, Black women experienced burdens in association with their womanhood, whereas White women, even immigrants, experienced privileges as well as disabilities. Black women were subject to all the legal disabilities of White women in the nineteenth century, including the remains of legal coverture, husbands' rights to their wives' earnings and labor and their right to legally represent wives as heads of the household. Moreover, Black women were also burdened with pervasive stereotypes which figured them as inherently criminal: unruly, violent, lascivious, and untrustworthy. Kali Gross covers this ground well in her study of Black women and crime in Philadelphia.[73] So do Talitha LaFlouria and Sarah Haley in their discussions of how White and Black womanhood were ideologically juxtaposed by officials in the Jim Crow Georgia prison system in ways that punished and stigmatized Black women.[74]

After the fall of Reconstruction, these psychological burdens grew as Black women and men experienced fear and uncertainty about the future. Reverend Benjamin J. Porter, a Black clergyman and former political leader in South Carolina, spoke for many when he said that in 1877, Black people had been "hurled from the pinnacle of fame to the depths of degradation."[75] While economic equality had remained out of reach for most Black South Carolinians during Reconstruction, the sense that the tide had turned on them was palpable. The federal government would no longer protect them; the state government was in the hands of White conservatives

[72] The question of the extent of anti-Catholicism and anti-Irish prejudice in the U.S. South certainly deserves more historical attention. For some existing scholarship, see Dennis C. Rousey, "Catholics in the Old South: Their Population, Institutional Development, and Relations with Protestants," *U.S. Catholic Historian* 24, no. 4 (Fall 2006), 1-21; Thomas Haddox, *Fears and Fascinations: Representing Catholicism in the American South* (New York: Fordham University Press, 2005).
[73] Gross, *Colored Amazons*.
[74] Haley, *No Mercy Here*; LaFlouria, *Chained in Silence*.
[75] Powers, *Black Charlestonians*, 255.

who saw little place for Black citizenship. The memory of slavery and fears for the future converged on them, leading some to turn to African emigration plans and others to despair.[76]

In the following section I delve more deeply into several cases involving Black women defendants that demonstrate that womanhood, race, labor, and politics were tightly interwoven for ordinary Black women in the decades after Reconstruction. Although the defendants in these cases do not stand out as the most legally savvy in advancing their interests, each of them speaks to the frustrations and, indeed, justified anger of Black women in moments when they chose to do something, wisely or not, about the multiple oppressions and hardships they experienced.

2.3 "She Talked Like She Was Mad": Black Women and Racial and Economic Conflicts

Black women appeared as complainants in more than twice as many assault cases as White women. As Chapter One demonstrates, freedwomen and their daughters and granddaughters faced violence with sobering regularity in their everyday lives. This is not only clear from prosecutions in which they appeared as complainants, but also from cases where they were defendants. This is because some Black women did not just swear out arrest warrants and testify against those who committed violence against them; they struck back.

The racial and gender politics of the Reconstruction and post-Reconstruction eras played a prominent role in such assault prosecutions, demonstrating once again that women understood their everyday actions as having political meaning. Like Sarah Coward, the planter's wife who tried to whip freedwoman Judy Brown for questioning her in Chapter One, some White women attempted to assert their authority over African Americans using violence or antebellum forms of "discipline" such as whipping for unsatisfactory work performance or perceived insolence.

[76] Ibid.

While some swore out arrest warrants, as Judy Brown did, other Black women reacted violently to mistreatment, Whites' attempts to physically punish them, or insults to their status as free women.[77] Some women made a statement in court to tell their side of the story; others did not.

Yet by carefully reading even these cases "against the bias grain," we see that what courts categorized as assault sometimes also constituted a Black woman's resistance to racial and labor-based oppression.[78] In 1885 Oconee County, planter W.D. James charged Etta and Billy Grier, married Black sharecroppers who lived "on his place" with "assault and battery of a high and aggravated nature." In his testimony, James painted a picture of Etta as the main aggressor and himself as a reasonable landlord who had "paid her more than she had worked." He described coming home in the evening to learn from his wife, Lila James, that "the calf had not been watered," something the Griers were evidently supposed to do as per their labor contract. According to James, he went to the Griers' house. The rest of his testimony is as follows:

> Whereupon [Etta Grier] struck me over the head with a stick, using both hands, which knocked me against the surfacing. I caught the stick with my left hand and held it, and she called for Billy to come hit me. He come with a piece of plank and struck me on my right arm, the blow apparently being aimed at my head. Billy Grier then run out the door and I then twisted the stick out of Etta Grier's hands and knocked her down with it. I then throwed an old bench at her, but don't think I hit her. When Billy Grier hit me, Etta Grier said hit him and run to Ben

[77] *State vs Sarah Coward.*

[78] Here I draw upon Marisa Fuentes' methodology of reading archival and legal sources "against the bias grain" in Marisa J. Fuentes, *Dispossessed Lives: Enslaved Women, Violence, and the Archive* (Philadelphia: University of Philadelphia Press, 2016). It should be noted that Fuentes' sources often completely erase her historical actors, enslaved women in eighteenth-century Barbados, rather than simply misrepresenting them or limiting their voices.

> Sherman, that he has arrangements made for him. When I throwed the bench, Etta run out of the house and I followed her about twenty steps and knocked her down again. I also had several bruises on my person.

Subsequently, Etta Grier appeared at the home of Ben Sherman, a fellow sharecropper. She must have been hurt from James' blows, as he admitted to having "knocked her down" several times. James Hall, a Black man present in the house, testified that he saw Etta there and "she talked like she was mad." When Hall asked her about the stick in her hands, Etta "said she had it to defend herself with and she was going to do it again." Hall urged Sherman not to let Etta stay, and "she went out" into the night, turned away from the refuge she had sought with Sherman. It is unclear where Billy Grier ended up, as he was not present during this encounter.

Etta Grier gave no statement about her own actions, but Hall's testimony suggests that she believed she was defending herself from James. And indeed, she had suffered more violence from him than she enacted, as even James' testimony makes clear. Furthermore, according to James Hall, Etta Grier "talked like she was mad."

The last testimony in the case was that of Lila B. James, planter J.D. James' wife, and Lila's perspective unwittingly provides additional insight into why Etta Grier was so "mad." Like many planters' wives before and after the Civil War, Lila was not a passive lady in the house but rather an active manager of laborers.[79] Lila clarified that earlier on the day of the conflict between her husband and the Griers, "Billy Grier refused to work as per contract," so she "gave him one light lick (as being paddled), whereupon Etta Grier come running with her fist

[79] See Thavolia Glymph, *Out of the House of Bondage: The Transformation of the Plantation Household* (Cambridge: Cambridge University Press, 2003); Stephanie Jones-Rogers, *They Were Her Property: White Women as Slave Owners in the American South* (New Haven: Yale University Press, 2019); Christine Walker, *Jamaica Ladies: Female Slaveholders and the Creation of Britain's Atlantic Empire* (Chapel Hill: UNC Press, 2020).

drawn and said 'I dare you to strike me. I am the one to hit, for if you do, I intend to beat you to death, for the Devil is in me." Lila said that the Griers did not actually repay her violence with violence in kind, but Etta "passed my door several times during the day" and Billy "made a threat (not remembered) with an oath."

Taking the three testimonies together and reading them "against the bias grain," we learn much about this conflict despite the typical absence of a defendant's statement explaining her actions from her perspective. When Etta Grier saw Lila James whipping her husband Billy, twenty years after their emancipation from slavery, she ran at James, daring the planter's wife to strike her instead. After the incident, she and Billy returned to their house and Lila James to her house. By the time W.D. James went down to confront the Griers, Etta was likely frightened of the consequences of their actions. Whether she hit James with a "stick" when he opened the door or whether James actually hit her first cannot be known. Given that James' wife was evidently well-accustomed to whipping Black laborers for disobedience, it is quite possible that James approached the Grier house with the intention of whipping Etta or her husband. Or perhaps Etta, sick and tired of the way her employers' treatment of her and her husband echoed that of enslavement, already had the stick "to defend herself," as she later told James Hall.

If she "talked like she was mad," then Etta Grier had good reason. Perhaps the Oconee County grand jury thought so, too—they dismissed the case against Etta and Billy Grier. It may well have been clear that Etta had suffered more violence from James than she had committed, or Lila James' whipping of Billy may have constituted "just cause or provocation" for violence in the grand jury's opinion. Etta's act of defiance was also an act of justified anger. While the court record does not offer a longer history of the Griers's relationship with the James's, the picture presented is not that which W.D. James tried to paint, of an irrationally angry, violent, and lazy

Black woman who worked less than her long-suffering employer paid her. Rather, a careful reading of the testimony grants us rare insight into not only a labor and racial conflict in the rural postbellum South, but also a Black woman's frustrations and her reaction to oppression.[80]

Such frustrations and tensions also materialized in an 1891 labor conflict in a rural area of Richland County. The complainant, planter Joseph Bates, accused Lizzie Waring, a middle-aged Black woman, of assaulting him with a knife "without just cause or provocation." In his testimony at Waring's preliminary hearing, Bates described arriving with a wagon and a man named "Moore" at Lizzie Waring's house. She was a sharecropper on his land, referred to as Bates Plantation. Bates told Waring and her son to leave, as he was going to evict her and "put Moore in the house." Waring, "sitting on the stoop," warned him not to do it. Bates attempted to climb the steps, whereupon Waring shoved him. Bates "broke a switch from the tree at the door" and Waring, he testified, "come at me with a knife, cutting at me, cutting at my coat in several places, cutting me until they pulled her away." Afterwards, Bates said, "I struck her with the chair leg and cut her with a knife. They pulled her away and I told them I would kill her if they did not take her away from me."

"They" were Thomas Miller and Preston Ogrin, Black sharecroppers who pulled Lizzie Waring off Joseph Bates and who also testified at the preliminary hearing. Thomas Miller gave a slightly different order of events. He said that Bates "went out and cut a limb" after Waring refused to vacate the house for Moore to move in. Then, "Lizzie Waring made back in the house and came out and went at Mr. Bates with a knife. Mr. Bates says, 'Tom you see this woman come at me with this knife,' and she says, 'You got a stick to beat me with.'"

[80] *State vs Etta and Billy Grier or Greer*, June Term 1885, Oconee County Court of General Sessions Indictments, box 3, SCDAH.

Like Etta Grier, Lizzie Waring moved to defend herself rather than have a White landlord beat her like an enslaved person or let her loved one be beaten. Also like Etta Grier, Waring ultimately suffered more violence than she enacted on Bates. Thomas Miller described how Bates "struck her on the head with a chair leg" and "cut her on the neck with a knife" after the two Black men had already restrained her. Preston Ogrin largely corroborated Miller's testimony and said that he had had to ask Bates to stop attacking Waring: "he attempted to knock her again, I saying I would not knock her anymore, Mr. Bates. He said, 'Well, keep her away from me; if she comes to me anymore, I will kill her." This testimony suggests Lizzie Waring had received dangerous injuries, particularly from the knife wound on her neck.

Finally, the case file of Lizzie Waring includes a brief statement from Waring herself.

> Lizzie Waren [sic] being duly sworn says, "Mr. Bates went to a tree to cut a switch. I went up to him and cut him with a knife. I intended to kill him and would have killed if the knife had been longer, if he had come by himself. He could not have whipped me… he cut at me with a knife.

Unlike many women who testified as defendants in assault cases, Lizzie Waring did not aim to claim self-defense as such. Instead, she admitted she had attempted to kill Bates not for his determination to evict her and her son, but for his move to whip her, which was reminiscent of slavery. Waring's declarative statement, "he could not have whipped me," echoes Etta Grier's angry shout, "I dare you to strike me!" One imagines the wounded Lizzie Waring testifying in court, perhaps with her young son watching, glaring defiantly at Bates. Lizzie Waring was past courtroom strategies and penitent

performances, or even a claim of self-defense that she could well have used given the extent of her injuries.

Lizzie Waring's story illustrates that Black women who resisted eviction or being replaced in their work could face violent retribution from planters as well as criminal prosecution. Waring was convicted of aggravated assault with intent to kill, though the jury "recommended her to the mercy of the court," suggesting they sympathized with either Waring's plight or the severe injuries she had suffered. The judge sentenced her to six months in the penitentiary or a fine of seventy-five dollars and costs. I could not discover which fate befell her, though she had been unable to pay her jail bond of two hundred dollars.[81]

As with cases involving Black women who prosecuted Whites for punishing or mistreating their children, labor conflicts demonstrate that the legacies, humiliations, and trauma of slavery loomed large for Black women like Etta Grier and Lizzie Waring. They also show that women were not afraid to resist and that women played active roles in labor and racial conflicts. Rather than urging the menfolk on, some women took the lead in such conflicts.

Although they knew Whites would not hesitate to use violence against Black women on account of their sex, Black women nevertheless acted fiercely to resist oppression and aid others. In a particularly spectacular yet harrowing incident of solidarity from 1881 Clarendon County, ten mostly middle-aged Black women banded together to keep a member of their prayer circle, Jerry Murray, from being arrested for "violating a labor contract." The two White police officers, though armed with pistols that "accidentally went off," they testified, were driven from the house after the women at the prayer meeting fended them off with "benches and chairs." The homeowner, Lucy Ragin, "stuck" the officer "with a bench or chair" after he announced he had a

[81] *State vs Lizzie Waring or Waren*, March Term 1891, Richland County Court of General Sessions Indictments, box 42, folder #2277, SCDAH.

warrant for Jerry Murray's arrest. The other women followed suit, leading other White men to enter the house and attempt to "quiet the girls," as witness Rufus Plowden testified. Meanwhile Jerry Murray escaped into the street, sarcastically "crying out, 'Bob Davis, you and Sam Williams come here and arrest me. I want to lie up in Manning jail!" Although the officers' pistols had gone off—whether accidentally or not—the women drove the officers out of the house. Yet Jerry Murray was subsequently captured and arrested, and the ten women were tried and found guilty of "riot, assault and battery, and aiding the escape of a prisoner." They were fined five dollars each.

Although witness Rufus Plowden puzzledly noted that the "girls" "seemed to be very angry," the ten women certainly understood the racial and economic dimensions of Jerry Murray's plight. Likewise, they were familiar with the increasingly punitive framing of a "breach of labor contract" after Reconstruction. Census records show that far from being a "girl," prayer meeting hostess Lucy Ragin was forty-six years old at the time. She was the wife of a Black farmer, Elijah Ragin, who owned his farm and house. Her teenaged daughter Martha, also indicted for the riot, worked as a "farm laborer" under her father's supervision. The boarders Lucy Ragin and her husband took in, including Julia Murray, likely also worked on the farm. Clarissa Bertrand was fifty-seven and married to a farmer. Several of the younger women, including Lucinda Sessions, also listed their occupations as "farm laborer" in the 1880 census.[82]

Such women were intimately familiar with farming, the exploitation faced by sharecroppers like Jerry Murray, and recent legislation which sought to give White landowners and planters tighter control over Black and poor White laborers. They were political actors and understood themselves as such. (As Bernard Powers has noted, "during Reconstruction,

[82] *U.S. Census of 1880.*

economic and political issues were so closely related that it was sometimes impossible to address the one without simultaneously confronting the other.")[83] The fact that the women's act of resistance occurred at a prayer meeting is perhaps coincidental, but also points to the strength and kinship that some Black women drew from religion. Ensconced in their own space and absorbed in religious affairs, they easily transitioned to waging a small-scale political fight on behalf of one of their members when the police officers arrived.[84] Such women acted to defend their neighbors from being arrested for crimes with economic and racial roots.

Other women who were themselves in dire economic straits used violence to protect their property when police officers tried to levy it. Indeed, a significant 5% of assault prosecutions from this period involved women who resisted the arrest of a family member, lover, or neighbor, or sought to prevent a constable from levying her property. In each of these cases, police officers rather than private citizens acted as informants who brought the women's actions to a trial justice.

In 1869 Clarendon County, the site of the prayer meeting attendees' defense of Jerry Murray, two young Black women were charged with an assault on William Burk, a White police officer. Burk had recently levied property from the home of Dickson and Sylva Reed, married Black farmers in the small town of Fulton. This property came in the form of a milk cow, which Burk subsequently transported to his own farm. He shortly emerged from his house, however, to find seventeen-year-old Mary Reed and her sister Chany attempting to tear down the fence and

[83] Powers, *Black Charlestonians*, 130.

[84] *State vs Julia Murray, Lucy Ragin, Clarissa Betraud, Rosetta Betraud, Leverty Betraud, Martha Ragin, Robert Williams, Linda Lewis, Charlotte Brock, Sidney Singleton, and Lucinda Sessions alias Williams*, Clarendon County Court of General Sessions, February Term 1882, box 2, SCDAH. The officers pinpointed Linda Lewis, Lucy Ragin, Julia Murray, and "the Betraud girls" as Jerry's fiercest defenders. For Black women empowering themselves through religion even during slavery, see, for example, Brenda E. Stevenson, "Marsa Never Sot Aunt Rebecca Down: Enslaved Women, Religion, and Social Power in the Antebellum South," *Journal of African American History* 90, no. 4 (October 2005), 345-67.

retrieve the cow. According to Burk, the two young women assaulted him with sticks and "threatened to burn his place" if he sold the cow at public auction for their father's debts.

While we do not have their side of the story, teenagers Mary and Chany were clearly furious at the levying of their family's property and maybe also at the taking of the cow specifically. They may well have harbored affection for the unnamed cow, which for many farming families is like a family pet—especially since children are often assigned to milk cows. Whether due to their youth, their parents' intervention on their behalf, or the lack of a serious assault on William Burk, Mary and Chany Reed were indicted by a grand jury but acquitted at their trial.[85]

Other women tried to make certain that officers never got the chance to levy their property. In 1877, when constable David Odom, a White Republican man, went to "make a levy for the case of James McDonald" on a Marlboro County farm, he was met at the gate by Ann McDonald. Ann was the forty-two-year-old mother of twenty-year-old James, a White man who worked as a "farm laborer" for his father, Neill McDonald. Whenever the constable Odom attempted to enter the gate to make the levy, he testified, Ann "threatened to shoot him if he went in at the gate," "raising a gun at him in a shooting attitude." Odom added that Ann's husband Neill "encouraged his said wife in the attempts to shoot this deponent." Although a second witness appeared against them at their trial, Ann and Neill McDonald were both acquitted of "assault and resisting a public officer."[86]

[85] *State vs Mary and Chany Reed*, August Term 1869, Clarendon County Court of General Sessions Indictments, box 1, SCDAH. Chany was indeed female, despite her more masculine name. She appears in later censuses working as a cook in western South Carolina.

[86] *State vs Ann and Neill McDonald*, January Term 1877, Marlboro County Court of General Sessions Indictments, box 4, #1218, SCDAH. Political opposition may have played a role, as Odom was from a White Republican family in the area.

Although Ann McDonald was the rare White woman accused of resisting an officer, her case serves as a reminder that poor and middling White southerners also suffered in the economic and agricultural depressions of the postwar period. White women, too, understood themselves as economic and political actors, just as Lila James had when she whipped Billy Grier for not adhering to his work contract with her husband. Although they were less likely to be indicted for their actions—White planter's wife Lila James was not indicted after she casually testified about "paddling" a grown Black man--, White women's self-defense, violence to protect their property or loved ones, and attacks on others are visible in local court records.

The image of Ann McDonald "raising a gun" at constable David Odom "in a shooting attitude" raises the question of whether women carried firearms. In an era and a region where bearing arms was framed as a masculine privilege of citizenship, was Ann McDonald typical? And in a political climate where White Democrats loudly opposed Black militias and Black men took up arms to protect Republican governments beset by White paramilitary forces, what did it mean for a woman to wield a gun? The following section addresses these questions.

2.4 Women's Weapons

Firearms were commonplace in the nineteenth-century South. Indeed, the high levels of interpersonal and lethal violence in the region compared to the rest of the country were (and are) blamed on the high percentage of men who carried concealed weapons.[87] This tradition of carrying firearms came under fire during Reconstruction when, as Carole Emberton has argued,

[87] See, for example, John Hammond Moore, *Carnival of Blood: Dueling, Lynching, and Murders in South Carolina, 1880-1920* (Columbia: University of South Carolina Press, 2006), 1-8; for a postbellum sociological perspective on the relationship between southern violence and firearms, see H.V. Redfield, *Homicide, North and South* (1880), although Redfield placed less emphasis on firearms than later sociologists. For the 20th and 21st century South and high rates of interpersonal violence, see Michael D. Makowsky and Patrick L. Warren, "Firearms and Violence under Jim Crow," unpublished Ostrom Workshop at Indiana University paper, 2021; Eugenio Weigand Vargas, "Gun Violence in America: A State-by-State Analysis," Center for American Progress, 2019.

the Second Amendment and popular conceptions of the right to bear arms became a source of great contention in the South. During the military occupation of the Carolinas, for example, Major General Daniel Sickles placed restrictions on the use of personal firearms and even banned the sale of knives and firearms in Charleston due to repeated outbreaks of political violence.[88] Likewise, Sickles ordered the disarming of Charleston police and prevented the formation of dozens of White militia groups in South Carolina. He did so on the basis that such men were unreconstructed rebels who refused to carry the U.S. flag and could potentially rise up against the military, igniting another sectional conflict.[89]

Such perceived infringements on the right to bear arms and the right to self-defense infuriated White Democrats, as did the Reconstruction-era creation of "Black" state militias. As Stephanie McCurry and Sally Hadden have demonstrated, militia membership was central to politics in the antebellum South.[90] White men drilled, met sociably, and planned for how to counter enslaved rebellions. The militia was practically a byword for White masculinity. Therefore, when Reconstruction leaders banned militias other than those raised by the state and began raising "Black" militias to protect Reconstruction governments in areas beset by White conservative violence, this marked what many White men would have seen as an inversion of the antebellum order. Not coincidentally, paramilitary groups as well as secretive terrorist organizations like the Ku Klux Klan closely mimicked antebellum militias and slave patrols in their White male membership, their nighttime patrols, and their donning of arms and uniforms.

[88] Carole Emberton, "The Limits of Incorporation: Violence, Gun Rights, and Gun Regulation in the Reconstruction South," *Stanford Law & Policy Review* 17, no. 3 (2006), 616-18.
[89] Ibid., 616-19. For the disarming of the Charleston police, see Powers, *Black Charlestonians*, 76.
[90] See Stephanie McCurry, *Masters of Small Worlds: Yeoman Households, Gender Relations, and the Political Culture of the Antebellum South Carolina Low Country* (New York: Oxford University Press, 1995); Sally Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas* (Cambridge: Harvard University Press, 2001).

Black men, too, highly valued their right to bear arms to protect their families and viewed gun ownership as symbolic of free manhood. During Reconstruction, Black men joined state militias in droves. (Of course, the "Black" militias were not actually restricted to Black membership, but rather primarily composed of Black men because Black men volunteered their services to Reconstruction governments and White men rarely did. In some states with a sizeable population of White Unionists and Republicans, like North Carolina, White men joined the militias' ranks, but this was rare in South Carolina).[91]

Even apart from militias, carrying a concealed pistol was so common in southern states that state government frequently passed legislation attempting to restrict the carrying of concealed weapons. Even apart from the notorious dueling traditions most common before the Civil War, White men's tendency to carry pistols frequently led to gun violence that erupted in the heat of the moment. Observers noted this correlation as early as the colonial period, and it led to the South's not-undeserved reputation as an especially violent region.[92] In his study of nineteenth-century coroner's reports, Stephen Berry found that guns were used in 52% of homicides (a significant figure, but still less than today's figure of 68% for the United States as a whole). Unfortunately, the study does not have comparable information for non-lethal assaults.[93]

Given how strongly both Black and White southern men associated the right to bear arms with manhood in this period, it is perhaps unsurprising that Black and White women were much less likely to carry or wield firearms. A modest 9.5% of the combined assault and murder cases with women defendants in my sample involved the use of a gun. 65% of those cases had a White

---

[91] Emberton, "The Limits of Incorporation," 614-21; see also Rubin, *South Carolina Scalawags*, 35.
[92] See, for example, Isaac Weld, *Travels Through the States of North America (*London: John Stockdale, 1799), 192. British visitor Weld commented that brutal fights were common in Virginia, and he was assured by elite Virginians that "the people are still more depraved" in Georgia and the Carolinas. For an overview of descriptions of violence in the early South, see Elliott J. Gorn, "Gouge and Bite, Pull Hair and Scratch': The Social Significance of Fighting in the Southern Backcountry," *American Historical Review* 90, no. 1 (February 1985), 18-43.
[93] Stephen Berry, "Acts: Homicide," CSI Dixie, https://csidixie.org/acts/homicide (2014).

female defendant. This suggests that, as scholars of Reconstruction and "Redemption"-era violence have argued, Black people were less likely to have access to firearms compared to Whites, among whom gun ownership was "practically universal."[94] This is especially relevant because in most of the prosecutions, the woman does not identify the gun as her own, but rather as a family firearm or rifle.

Other women defendants wielded guns in assaults or murders that seem to have been premediated, suggesting they had carried the gun for a specific purpose. In 1875, Mrs. C.E. Ruckh of Charleston, a White woman, was indicted for an assault against Newton White, a Black policeman. It was court week and Newton White was scheduled to testify against Mr. Ruckh in a criminal trial. Before he could, as he later testified before a trial justice at *Mrs. Ruckh's* criminal preliminary hearing, Mrs. Ruckh "drew a pistol and presented it to his head." Clearly, she had come prepared with the pistol to threaten Newton White.[95] Like their male counterparts, women were more likely to wave a pistol around or "raise it in a shooting manner," as Ann McDonald and Mrs. Ruckh did, than actually fire.

Although women rarely carried concealed firearms, they were much more likely to carry a knife or razor. As Kali Gross has noted, carrying a concealed knife on her person was more common for women who feared for their safety, especially Black women who were vulnerable to sexual assault and, as we have seen, assault in general.[96] Indeed, 16.8% of the assault and murder cases I studied involved a woman wielding a knife, slightly less than double the 9.5% of prosecutions where the weapon was a gun.

---

[94] Rubin, *South Carolina Scalawags*, xvi.
[95] C.E. Ruckh's trial was for assault and battery, petty larceny, and resistance against an officer of the peace. She was eventually acquitted *State vs Mrs. C.E. Ruckh*, February Term 1875, Charleston County Court of General Sessions Indictments, box 24, folder #3214, SCDAH.
[96] Kali N. Gross, "African American Women, Mass Incarceration, and the Politics of Protection," *Journal of American History* 102, no. 1 (June 2015), 32-33.

Sex workers were particularly prone to carrying knives; they were in a dangerous occupation, vulnerable to male johns and moving around potentially unsafe areas at night. In 1891 Charleston, a sex worker named Mary Brown was convicted of a violent assault with a razor on another sex worker, Rosa Fraser. Brown was sentenced to pay fifty dollars in fines or spend six months in the penitentiary.[97]

However, some sex workers clearly saw the need for better protection in the form of a firearm. Claudia Melnot of Charleston, charged in 1882 with "assault and battery with a concealed weapon and intent to kill," seemed to be accustomed to pistols. Charged with pointing a pistol at two other young White women who lived with her, Melnot answered the trial justice's questions about the pistol she had used and where it had come from: "The pistol was left in my house. By Miss Morris about two or three weeks ago. I had it in my own pocket about two or three weeks ago. No, I hadn't won the dress since." However, she swore "that the pistol was not loaded." In this house filled with women, tacitly understood in the court testimony to be a brothel, a pistol might be carelessly left behind by one woman and picked up by another, who carried it and then temporarily forget it in the pocket of her dress.[98]

A prosecution against Mary Fricks of Oconee County, also White, for "carrying a concealed weapon" and "keeping a disorderly house" demonstrates why women involved in sex work sometimes found it necessary to carry pistols. One witness testimony in the 1885 case established that Fricks kept a pistol on a shelf in her room and "put it in her belt" at night when men visited the rural brothel where she lived and worked alongside her friends Adaline and Alice Hardin. The witness, who lived a quarter of a mile from the brothel, also described the three

[97] *State vs Mary Brown*, November Term 1891, Charleston County Court of General Sessions Indictments, box 39, folder #7159, SCDAH.
[98] *State vs Claudia Melnot,* June Term 1882, Charleston County Court of General Sessions Indictments, box 33, folder #4770, SCDAH.

women running to his house in the middle of the night with their two small children. Adeline said that "the men at her house had been beating her, threating to kill her." Another male witness testified that Mary Fricks had stayed at his house for a few days rather than return to the brothel: "she said those boys cut up so much at Ad's, she was afraid to stay there." Although the three women were the ones that the court held responsible for the happenings in the "disorderly" house, the local men who came nightly to play cards and drink in the women's house sometimes frightened and physically abused their hostesses, taking advantage of their vulnerability as sex workers and poor women who lived alone in a remote area. It is no wonder that Fricks carried a pistol for protection.[99]

Still, only about a quarter of women tried for assault were said to have employed knives or firearms. At least 31% of assault prosecutions involved no weapons at all.[100] Rather women fought or defended themselves with their hands, punching and slapping, shoving, pulling hair, and "tearing at clothes." The frequency with which complainants mentioned the latter reflects how seriously the complainants, most of whom were poor or working-class women, took damaged clothing. As I discuss in Chapters One and Three, dressing apparel often constituted poor women's sole property.

In roughly another 30% of assault prosecutions, women did employ weapons—and they used whatever items they had on hand. For women working in the household, this was often a heavy pan, pot, chair, or fire poker. An 1892 case in Charleston saw Helen Bergmann, a White woman who went by the nickname Nelly Bly and even signed her bond as such, tried for striking

[99] *State vs Adeline Hardin, Alice Hardin, and Mary Fricks alias Sponager*, June Term 1885, Oconee County Court of General Sessions Indictments, box 3, SCDAH.

[100] I suspect that many of the cases in the "unknown" category also constituted conflicts where no weapons were involved. "Unknown" means that no weapon was listed and there was no indication of the assault being hand-to-hand alone. With sparse documentation for many prosecutions, this was not uncommon, but a lack of a mention of a specific weapon could also indicate that none was involved.

Mollie Sanders, also White, on the head with a glass tumbler and striking her "in the neck with a fork." Allegedly she did so while shouting, "You damn bitch, I'll put your eyes out!" The prosecution against the colorful Nelly Bly was discontinued.[101]

Catherine Harvey of Charleston was one of a half-dozen women tried for assaulting someone with boiling water from her kitchen. Harvey, a White woman, was married to James Harvey, a thirty-year veteran of the Charleston police force in 1889. As such, her case received a modest amount of attention in local newspapers. Harvey was indignant to "read about her guilty verdict in the paper," since she had been tried in her absence. Marching to the court with her husband to appeal the verdict, Harvey testified that she had indeed poured boiling water over complainant Mary Kilroy, "scalding and wounding her," but she had had good reason. She described Kilroy, a former tenant of hers, coming drunk to her house at night and asking for a man who was not there: "Kilroy, flourishing her parasol in a threatening manner, abused [me] and refused to leave." Harvey proceeded to take "boiling water, that had been on the stove in a tin pan" and throw it over Kilroy, scalding her. Although Catherine Harvey offered character witnesses who attested to her being a "respectable, peaceable, and quiet woman" and a physician who testified that she had "a nervous temperament," she was found guilty at her second trial as well. Perhaps the jury were unimpressed with the threat Mary Kilroy and her parasol had presented. The judge sentenced Harvey to a fine of $100 or a month in the county jail. In keeping with the gradual migration of assault prosecutions to civil courts by the later nineteenth century, the records note that Kilroy also sued Harvey for damages in a civil court.[102]

[101] *State vs Nelly Bly alias Helen Bergmann*, February Term 1892, Charleston County Court of General Sessions Indictments, box 39, folder #7213, SCDAH.
[102] *State vs Catherine Harvey*, November Term 1889, Charleston County Court of General Sessions Indictments, box 39, folder #6784, SCDAH.

"Sticks" broken off from a nearby tree represented one of the most common weapons employed by women—they were the primary weapon in a whopping 11.5% of cases. Quite simply, they were the weapon of choice to defend oneself in a pinch or give someone a beating. A stick or switch broken off from a tree clearly had cultural significance, despite its commonplace nature. It seems to me that people—men and women, Black and White—used a switch as a weapon against those they deemed inferior or sought to make feel inferior. The legacy of whipping during slavery played a significant role here. Lizzie Waring's furious reaction to seeing planter Joseph Bates "break off a stick" to beat her speaks to this.[103]

When facing a man with greater physical strength, a woman had to use whatever tool was on hand to defend herself. Given women's relative lack of access to firearms, heavy household objects and tools were often their best bet for self-defense. In an 1877 case from Edgefield County, a White woman named Alice Ryan was tried for the murder of her husband Lee Ryan, a farmer with whom, witnesses testified, "she lived disagreeably." While Alice testified that her husband had come home drunk and passed out dead in the house, the coroner found wounds on his head that he believed were "inflicted by some iron instrument and that too in a heated state," appearing to have been "done with a pot." Another witness testified that Alice had previously been cooking collard greens in a pot. While it is generally better to refrain from playing historical detective, it is easy to guess that Alice may have used the heated pot to defend herself from her drunken husband. Despite the coroner's suspicions, she was acquitted at her trial.[104]

Other assault prosecutions involving couples demonstrate that some women refused to comply with patriarchal laws and customs that favored husbands over wives as custodians of their children. Although the "tender years" doctrine officially made mothers the default

[103] *State vs Lizzie Waring.*
[104] Edgefield County Coroner's Book of Inquisitions, 1877-1885, SCDAH, 386-7.

caretakers for children in the event of a divorce throughout much of the United States beginning in the 1880s, such legal guidelines did not universally take effect or benefit mothers. Indeed, South Carolinians at the time could not even obtain divorces, leaving the presumption of fathers' rights over their children during marriage intact for couples who were *de facto* separated. As Peter Bardaglio noted, such post-Civil War doctrines therefore "modified but did not eliminate patriarchal authority."[105]

Child custody battles for separated couples therefore could escalate to violence and multiple litigations. In 1884, a Charleston civil court gave Henry Morris, a Black cooper, custody of his daughter after he separated from his wife Margaret Morris. Henry had previously charged Margaret and a man called George Lomack with adultery in a criminal case.[106] In June 1884, Margaret and Henry's four-year-old daughter Carrie was permitted to visit her mother at her family's home on Calhoun Street. When Henry returned to retrieve Carrie, however, Margaret and her relative Jane Noble refused to give her up. Henry later testified that the two women assaulted him "with a piece of iron" and managed to drive him out of the house. Margaret shortly responded to Henry's assault prosecution with a counter prosecution against him.[107]

Local court records also reveal many conflicts between men and women who were not romantically involved. Indeed, although women were about twice as likely to be accused of assaulting another woman as they were to be charged with violence against a man, a man charging a woman with assault was by no means rare.[108] 94 of the 400 assault cases I surveyed

[105] Peter W. Bardaglio, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth-Century South* (Chapel Hill: UNC Press, 1995), 137-8.
[106] See Chapter Six, "Illicit Acts," for adultery.
[107] *State vs Margaret Morris alias Noble*, June Term 1884, Charleston County Court of General Sessions Indictments, box 34, folder #5061, SCDAH.
[108] Elizabeth Ewan found a similar pattern in pre-Reformation Scotland—women were about twice as likely to be accused of assaulting a member of their own sex. See Ewan, "Disorderly Damsels?," 161. Likewise, men were more likely to be accused of assaulting another man in post-Civil War South Carolina.

involved a male complainant accusing a woman, slightly less than 1/4th. These prosecutions involved a roughly equal number of Black male and White male complainants and, as usual, intraracial prosecutions were more common than interracial ones.[109] Nor did officials necessarily dismiss alleged assaults by women against men as trivial, particularly when weapons were involved. And these weapons were whatever women had on hand.

2.5 "I Aimed to Do It": Women, Violence, and Brutality

Clearly, women in nineteenth-century South Carolina resorted to violence during situations as diverse as labor conflicts, domestic disturbances, racially-motivated violence, and fights over the space where they lived and worked. In most cases where testimony has survived, the woman defendant or another witness offered a direct explanation, a motive, for her violence. As we have seen, some women on trial for assault had struck back against racial oppression.

Other women had less sympathetic, yet still comprehensible, motives. Fueled by emotion, they reacted violently in the heat of the moment. "You were walking with my Bill in the way," Mattie Smith allegedly shouted as she "beat and bruised" her romantic rival Lavinia Miller with "a certain iron fork" in 1887 Clarendon County.[110] "I cut her. I cut Grace," teenaged Sarah Libbins sobbed into her father's arms after she slashed her one-time friend Grace Brown with a razor in 1880 Charleston. The two had quarreled after Grace's hog repeatedly got into Sarah's potato patch, and Grace struck Sarah with a stick. Furious, Sarah drew her razor and cut her

[109] Note that it was quite rare for a Black man to accuse a White woman of assault or, indeed, any crime. Doing so would be potentially dangerous for a Black man in southern society, where Black men were increasingly lynched for "insults" to White women by the latter decades of the nineteenth century and, in some regions, earlier than this. I found only a few exceptions, such as three Black men's Reconstruction-era prosecution against a White woman businessowner for barring African Americans from her ice cream garden in Charleston and Black policeman Newton White's previously mentioned prosecution against Mrs. C.E. Ruckh for threatening him with a pistol.
[110] *State vs Mattie Smith*, April Term 1887, Clarendon County Court of General Sessions Indictments, box 4, SCDAH.

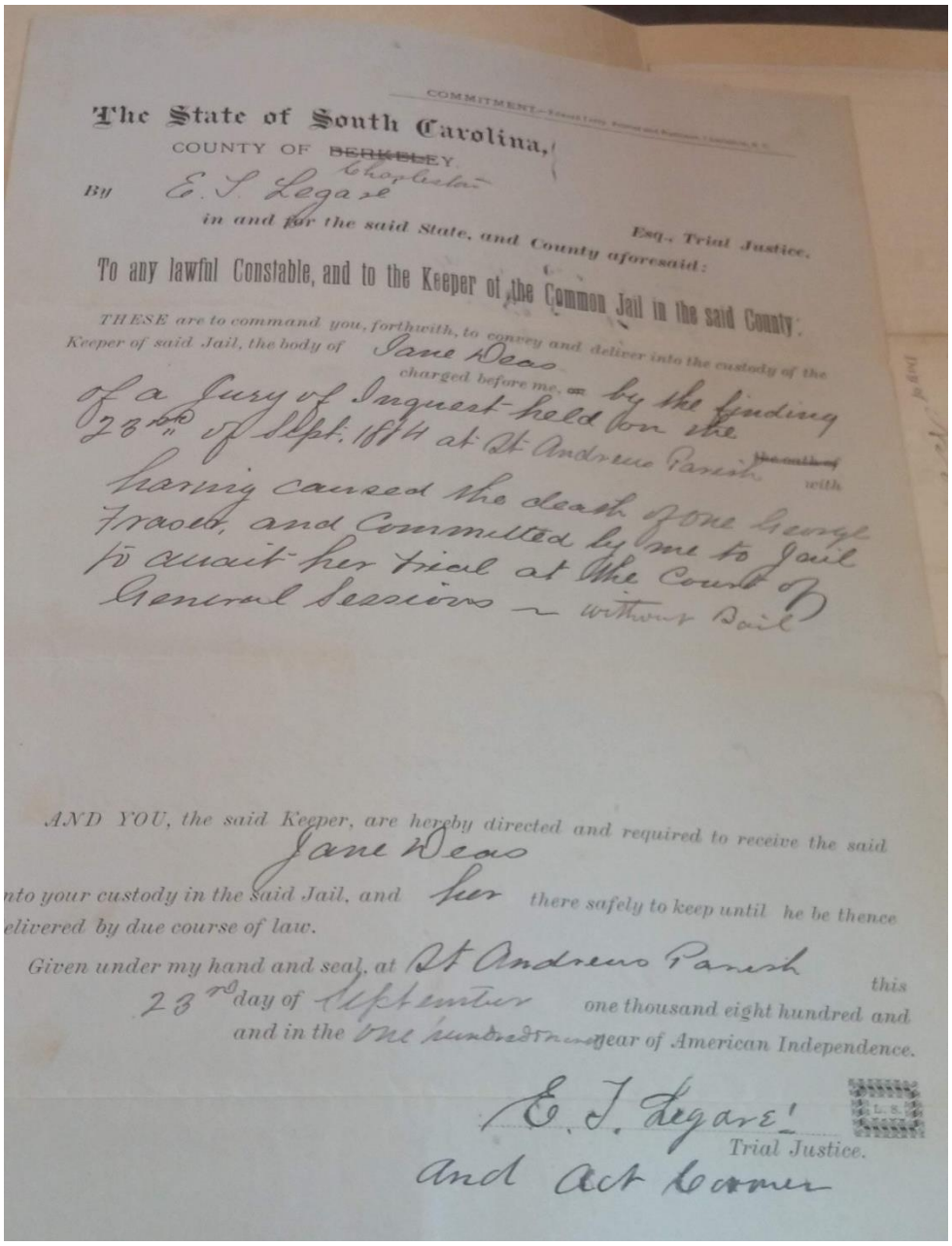
friend, an action she seems to have regretted even before a judge sentenced her to pay ninety dollars in court fines and costs for the assault.[111]

Yet, a minority of women who appear in South Carolina's postbellum court records unmistakably exhibited what Kali Gross has referred to as "a disturbingly low threshold for violence."[112] Like Hannah Mary Tabbs, the Philadelphia freedwoman and murderess who is the subject of Gross' microhistory *Hannah Mary Tabbs and The Disembodied Torso*, some women employed "cunning, deceit, and cold-blooded ruthlessness" to achieve their ends or exact revenge on those they felt had wronged them.[113] A small number displayed varying degrees of outright sadism, attacking the most vulnerable members of their households or communities, perhaps having been the victims of violence themselves at some point in their lives.

A handful of women were indicted for abusing children, usually vulnerable wards or orphans who were under their care. In Charleston, a young African American woman named Elizabeth Fraser swore out a warrant against Jane Deas, also Black, after she discovered that Deas had starved and abused her son George, whom Elizabeth had left in Deas' care. "I did not think Aunt Jane would do my child this way," Elizabeth told the trial justice, stunned, as she described how Deas had punished George using a hot "smoothing iron" and cut the boy's tongue with an unknown instrument. Elizabeth Fraser said that Deas had helped raise her, and she had thought it would be safe to leave her son with Deas while she left the city for work. What had occurred in Jane Deas' life to change her from the woman that Fraser remembered from her own

[111] *State vs Sarah Libbins*, June Term 1881, Charleston County Court of General Sessions Indictments, box 32, folder #4630, SCDAH.
[112] Gross, *Colored Amazons*, 4.
[113] Kali N. Gross, *Hannah Mary Tabbs and the Disembodied Torso: A Tale of Race, Sex, and Violence in America* (Oxford: Oxford University Press, 2016), 3.

childhood? We simply cannot know from the documents. Sadly, we do know that George later died from his injuries, causing the case to become a murder trial. Jane Deas was convicted.[114]



COMMITMENT.

The State of South Carolina,

COUNTY OF ~~BERKELEY~~ Charleston

By E. J. Legare Esq., Trial Justice,

in and for the said State, and County aforesaid:

To any lawful Constable, and to the Keeper of the Common Jail in the said County:

THESE are to command you, forthwith, to convey and deliver into the custody of the Keeper of said Jail, the body of Jane Deas charged before me, on by the finding of a Jury of Inquest held on the 23rd of Sept. 1884 at St Andrews Parish ~~the within~~ with having caused the death of one George Traeth, and Committed by me to Jail to await her trial at the Court of General Sessions — without Bail

AND YOU, the said Keeper, are hereby directed and required to receive the said Jane Deas into your custody in the said Jail, and her there safely to keep until he be thence delivered by due course of law.

Given under my hand and seal, at St Andrews Parish this 23rd day of September one thousand eight hundred and and in the One hundred and year of American Independence.

E. J. Legare L. S.

Trial Justice.

and act Coroner

Figure 9

[114] *State vs Jane Deas*, November Term 1884, Charleston County Court of General Sessions Indictments, box 34, folder #6020, SCDAH. Deas' sentence is unclear from the surviving documents.

Similarly, Catherine White, a middle-aged White woman with children of her own, stood trial after a neighbor reported that she "did assault, strike, beat, and bruise" Richard Simmons, her seven-year-old ward, "so as to endanger his life." For unclear reasons, White was eventually acquitted.[115]As with Jane Deas' case, Catherine White was accused of abusing a child who was not her own, but who was in her charge.

Prosecutions under the "Act to Punish Persons from Ill-treating Children," the Reconstruction-era child welfare act passed in 1874, tended to occur in urban counties. They usually involved horrified neighbors who had noticed a woman's cruelty towards a child. One little girl in Charleston, Millie English, was examined by a physician at the City Hospital after a female neighbor accused her guardian Amelia Moore of ill-treating Millie. The physician described Millie as having many abrasions and scars and bruises and even "a depression" around her ankle "as if made by a cord having been tied around it." As the neighbor had reported, Amelia Moore had evidently been keeping Millie tied up in her house. The judge sentenced Amelia Moore to two years in the penitentiary.[116]

Children were vulnerable and subject to their guardian's control, and so could be easy targets for women who were driven to exercise their anger or despair on others. The 1874 act criminalizing the ill treatment of children, which as Susan Pearson has written was part of a nationwide legal shift which saw child and animal welfare becoming a priority for legislators, recognized this and sought protective government intervention.[117]

---

[115] *State vs Catherine White*, June Term 1881, Charleston County Court of General Sessions Indictments, box 32, folder #4606, SCDAH.
[116] *State vs Amelia Moore*, June Term 1895, Charleston County Court of General Sessions Indictments, box 41, folder #8111, SCDAH.
[117] Susan J. Pearson, *Rights of the Defenseless: Protecting Animals and Children in Gilded Age America* (Chicago: University of Chicago Press, 2011). In South Carolina, too, the earliest prosecutions for ill-treating children coincided with the first prosecutions for ill-treating animals—usually mules and horses—in the late 1870s and early 1880s. I found few convictions for the latter crime, however.

Yet the tiny number of prosecutions under South Carolina's act in rural counties and the small number of mothers indicted suggests that this society continued to regard parents' methods of raising and discipling their children as their own prerogative. On the rare occasions when mothers were accused of ill-treating their children, as young African American mother Alma Cook was in 1884 Marlboro County, officials tended to drop the cases against them.[118]

There were probably other children in harrowing situations like that of Millie English and George Fraser—and women like Jane Deas and Catherine White who abused children—who never appeared in court. At least, not until it was too late. In 1870 Laurens County, Amanda Auld was convicted of manslaughter for the death of her stepdaughter Aggy, "a colored girl said to be about thirteen years of age." The doctor brought in to see Aggy in her final days said the girl was badly wounded and burnt, and replied, "Mandy," when he asked who had hurt her. A Black neighbor testified that "he has seen the said Amanda whip the deceased very severely… when asked her reasons for treating the child in such manner, she would reply that she was the meanest child ever borned of woman."[119]

Some White women who assaulted African Americans appear to have been driven by the kind of racial hatred and oppressive desire to put Black people in their economic and social "place" that historians once commonly assumed to be the domain of White southern men alone. Although scholars influenced by Lost Cause narratives once characterized antebellum White southern women as ministering angels of the plantation who mitigated the brutality of the institution of slavery, historians such as Thavolia Glymph, Christine Walker, and Stephanie Jones-Rogers have since demonstrated that White women in western slave societies owned and

[118] *State vs Alma Cook*, June Term 1884, Marlboro County Court of General Sessions Indictments, box 6, #1564, SCDAH.
[119] *State vs Amanda Anderson alias Auld*, February Term 1870, Marlboro County Court of General Sessions Indictments, box 29, #1320, SCDAH.

sold enslaved people in their own right and often physically abused them under the guise of punishment.[120] Likewise, research by Crystal Feimster and other historians has revealed that after the Civil War, White women sometimes participated in acts of racial violence such as lynchings and supported terrorist groups like the Ku Klux Klan and the Red Shirts.[121]

Delving into South Carolina's county-level court records, we find evidence that some White women treated African Americans, particularly the Black women and children who they employed, with callous brutality in their personal, everyday interactions with them, just as they had during the antebellum period. One example is Honora Comer's 1871 trial for assaulting Thomas Gibbs, the son of her Black employee Emma Gibbs, discussed in Chapter One.[122]

In some situations, we can only guess or surmise that White women's racist attitudes towards African Americans probably played a role in their violence; in others, the surviving testimony removes all doubt. In 1869, a freedwomen named Mary Simmons swore out an arrest warrant for assault against Jane Rallings, a White woman. Simmons testified that Rallings "met her in the [Charleston City] Market" and accused her of stealing from her. When Simmons denied it, Rallings struck her in the face and said, "you damn niger lyer, I will beat it out of you." After striking Simmons "in the face and head," Rallings "ran off." It is interesting that Rallings seems to have realized (although belatedly) that she could not strike Simmons with impunity anymore—indeed, nine witnesses who had been in the market that day testified against her at her

---

[120] See Thavolia Glymph, *Out of the House of Bondage;* Stephanie Jones-Rogers, *They Were Her Property*; Christine Walker, *Jamaica Ladies.* Walker's book also examines free women of color who became slaveholders.
[121] See Crystal Feimster, *Southern Horrors: Women and the Politics of Rape and Lynching* (Cambridge, MA: Harvard University Press, 2009); Karen Cox, *Dixie's Daughters: The United Daughters of the Confederacy* (Gainesville: University of Florida Press, 2003); Kate Côté Gillin, *Shrill Hurrahs: Women, Gender, and Racial Violence in South Carolina, 1865-1900* (Columbia: University of South Carolina Press, 2014).
[122] *State vs Honora Comer*, June Term 1871, Charleston County Court of General Sessions Indictments, box 21, folder #2135, SCDAH.

preliminary hearing. Although the case was eventually dropped, one imagines Jane Rallings may have experienced a shock when her assault on the freedwoman carried legal repercussions.[123]

The role of racism was quite clear in Margaret Maddox's 1871 trial for assault with intent to kill in Columbia. Maddox, a twenty-six-year-old native-born White woman, rented rooms in her house to boarders. On May 24th, 1870, Maddox clashed with her boarder Philis Green, a married African American washerwoman about Maddox's age who had several young children. According to Green's testimony, Maddox became enraged with Green after the other woman refused to loan her "a hair pin." Maddox marched off to the station house and returned with a constable, demanding that Green "move out of the house." The constable, perhaps disgruntled with the trivial nature of the dispute, left without forcing Green to do anything. Maddox was furious. Like many White southern women during Reconstruction, she seems to have had a difficult time comprehending that she could no longer command Black people.

Rebecca Nelson, a White woman who was in the house that day to collect a debt from Maddox, testified that she heard Margaret "abusing [Green] for every thing but a lady all day." She saw Maddox pick up a table knife and throw it at Green, declaring "that she intended to kill the damn black witch." Nelson took Philis Green's side in the argument, telling Maddox "to let Mrs. Green alone." But Maddox next called her daughter Susan "to fetch her a brick out of the fireplace." "I intend to kill one of them damn little nappy head Negroes," she told Nelson, who watched in horror as Maddox threw the brick out of the window, where Philis Green's son Remus, a toddler, was playing. The brick struck Remus. Philis Green looked around and saw "blood slicking from her child's head." "You have killed my child," she screamed at Maddox as she ran to Remus. "I aimed to kill the little negro," Maddox retorted.

[123] *State vs Jane Rallings*, June Term 1869, Charleston County Court of General Sessions Indictments, box 18, folder #1196.

Philis Green swore out a warrant against Margaret Maddox at the office of William Beverly Nash, an African American trial justice who had recently been elected to the state senate.[124] Nash sent the case up to the county court, where Rebecca Nelson, Philis Green, and two male witnesses who had seen the brick strike Remus all testified. Out on bail, Maddox did not answer the summons to appear at her trial. In her absence, she was convicted of assault with intent to kill by a racially integrated jury. The judge sentenced her to pay fifty dollars in fines and the costs of the prosecution or spend three months in the county jail.

Margaret Maddox could not afford to pay her fine. In a letter to the judge, penned by her attorney and dictated by her, she pleaded that she had been "too ill to attend her sentencing" and could not be imprisoned "because she was delivered of a child." She said that she had been deserted by her husband and did not know "his whereabouts." Furthermore, she was the "sole dependence of support" for her ten-year-old daughter Susan and her newborn infant, who would suffer if she was imprisoned. Yet Maddox seems to have served her sentence in the county jail despite her pleas for clemency.

Margaret Maddox's story belies historians' assumptions that women in the United States "have simply never been a violent lot."[125] So, too, does it push back against notions that White women played merely supporting roles in sustaining and enacting White supremacy. Historians have made much of White woman who gave "cries of shrill hurrahs" during White supremacist rallies and sewed costumes for KKK members.[126] Yet local court records are some of our best post-Civil War sources for discovering moments when White women went far beyond this in their assaults on Black people and Black dignity, sometimes through literal assaults. And while

[124] Monroe N. Work, et al, "Some Negro Members of Reconstruction Conventions and Legislatures and of Congress," *Journal of Negro History* 5 no. 1 (January 1920), 97, see entry on William Beverly Nash.
[125] Friedman, *Crime and Punishment in American History*, 213.
[126] Cox, *Dixie's Daughters*; Gillin, *Shrill Hurrahs*.

Philis Green may have succeeded in winning financial restitution from Margaret Maddox through the local court, the court could not return her son's health.

A decade later, Maddox was employed as a cook in another family's home. Philis Green had moved to a new address and worked as an attendant at the nearby South Carolina Lunatic Asylum.[127] Remus Green does not appear in the census record with his mother Philis. Nor does the child Margaret Maddox had around the time of her trial, who would have been nine in 1880 had they lived. Did both children die? One, perhaps, from his head injury, and the other due to being confined with Maddox in the unsanitary environment of the county jail? The two women, who surely loathed one another, ultimately both suffered tragedies as a result of Margaret's assault on Remus. Although her actions were horrifically cruel, Margaret Maddox, as a marginalized person in her society, seems to have had more in common with Philis Green than she might like to think. She was also poor, struggling to support young children while pregnant with another child, and, in her case, doing so without the support of her errant husband.

While Maddox's letter provides unusually stark documentation of her poverty and status, she was not unusual among southern women after the Civil War in the deprivations and struggles she faced—nor, as we have seen, in her fateful decision to employ violence during a conflict. Indeed, in the next chapter I place women's theft in the context of both these deprivations and the racial and labor politics of the times.

Conclusion

Women's violence and their presence in local courts as defendants and complainants in cases involving violence was commonplace. Evidence from docket books filled with dropped

[127] *State vs Margaret Maddox or Mattocks,* Richland County Court of General Sessions Indictments, #316, SCDAH.

cases suggests that women often employed assault prosecutions as a means to bring the defendant to the bargaining table to pay them for damages, to encourage better behavior, or assert their status by proving to the defendant that an assault upon her was unacceptable. Likewise, defendants actively sought to mitigate the effects of being accused or indicted for assault by negotiating with prosecutors, enlisting other mediators, or arguing that they had acted in self-defense. This was a legal culture in which resolution, whether through reconciliation or the "satisfaction" of the parties involved, often mattered more than the letter of the law.

However, this legal culture was no more static than was the world in which it existed. Historians frequently ghost over the years between the end of Reconstruction, roughly 1877, and the turn of the century, by which time a Jim Crow regime was more clearly established in the South. Yet the 1880s and early 1890s were decades of considerable change in the political and legal culture of the South, as shown by the case of South Carolina.

Importantly, police forces became gradually more institutionalized and prosecutions initiated by police informants gradually outstripped those made by citizen prosecutors. Police constables increasingly initiated prosecutions by giving their information and swearing out arrest warrants before trial justices. While in the Reconstruction period testimony shows police actually telling citizens to go to the trial justice and swear out a warrant, police increasingly empowered themselves to do this by the 1880s and especially the 1890s.[128] This was true for assault as well as other crimes such as larceny. With increased police authority and a gradual shift away from the citizen prosecutor model, local criminal courts became less responsive to citizens' complaints and ideas about what kind of cases belonged in these courts changed.

[128] *State vs Alice Myers* in this chapter, for example.

On the surface, prosecutions against women for assault dramatically declined in South Carolina in the last decade of the nineteenth century. Indeed, as I discuss in Chapter Six, women more commonly appeared in court on adultery and fornication charges than any other, as legislative and local concerns honed in on morality crimes.[129] In the dramatic example of Clarendon County, no women were charged with assault between 1888-1900 and very few women acted as citizen complainants in assault cases. This is in part due to the migration of assault prosecutions to civil courts, as well as a shift towards policing women's sexuality rather than their disorderly, violent behavior, and the increase in police-initiated prosecutions rather than citizen prosecutors.

Figure 10

[129] See Chapter Six.

White officers (and most South Carolina police officers were White after Reconstruction, except in Charleston) may have trivialized and failed to report Black women's complaints due to gendered racism.[130] Likewise, male police officers may well have dismissed interpersonal violence that women experienced as quite severe and injurious, especially because women's legal conflicts were twice as likely to be conflicts with other women as with men. As we have seen, though, this violence was by no means trivial or harmless.

The more "bottom-up" legal culture of the Reconstruction period enabled women, including Black women and White women of little means, to act more expansively as defendants and complainants, drawing on their legal and social knowledge and connections to advance their interests in local criminal courts. Importantly, officials for the most part shared their vision of the lower-level courts as places where conflicts could be solved, rather than solely places where people could be punished. During Reconstruction, the opportunities for Black women both to initiate complaints and to have a fair trial in courts, were greater than in the decades to come. The politics of individual officials and justices mattered, as did broader conceptions of who the government was meant to be *for* and who it was not. And the "Redemption"-era conservatives and their successors, the more virulently White supremacist Ben Tillman and his government, had a vested interest in using the criminal justice system to incarcerate, disenfranchise, and discredit Black Americans.[131]

---

[130] Charleston's police force remained integrated until roughly the 1890s, when the remaining Black men on the force were largely dismissed. As late as 1878, about 1/3rd of the force were Black men, including officers such as detectives as well as patrolmen. John Oldfield, "On the Beat: Black Policemen in Charleston, 1869-1921," *South Carolina Historical Magazine* 102, no. 2 (April 2001), 153-168.

[131] Ben Tillman's demagogic and openly White supremacist approach to politics can be contrasted with the more conciliatory and subtle (but nevertheless White supremacist) politics of Wade Hampton and the so-called "Bourbon" politicians, who like the wealthy Hampton, were from more elite social backgrounds. Hampton could be courteous and even kind to individual African Americans, and historians are divided on how much he supported the violence and fraud committed in his name (though he certainly was not unaware of it). Sometimes he called for Red Shirts to stand down, as during the 1877 gubernatorial controversy in Columbia. On the other hand, there was "Pitchfork"

Still, before these changes took place, assault prosecutions constituted the most common context in which a Black or White woman in post-Civil War South Carolina found herself in a criminal courtroom. This is striking and suggests both how little we still know about women in local courts in this period and how much work remains to be done. Local court records provide glimpses of interpersonal violence and everyday conflicts which shed light on aspects of women's lives that historians have only recently begun to explore. Today, reading, thinking, and writing about these court records gives voice to women who history has otherwise forgotten.

Ben Tillman, who encouraged lynching and openly admitted that state election laws passed during his term were discriminatory. Tillman's political heir Cole Blease was cut from the same mold as Tillman. Blease's base, however, were not farmers but poor White mill workers, a group who did not fully emerge during the time span of this dissertation except in a few industrializing areas and therefore make few appearances here. For Ben Tillman, see Stephen Kantrowitz, *Ben Tillman and the Reconstruction of White Supremacy* (Chapel Hill: UNC Press, 2000).

Chapter Three

"Mother and Murderess":

Infanticide

In the summer of 1866, the South was in the throes of dramatic change. Presidential Reconstruction had not yet given way to Congressional Reconstruction and the ratification of the Fourteenth and Fifteenth Amendments. But Emancipation and military occupation, not to mention the loss of thousands of human lives and the devastation of the state's built and environmental landscapes during wartime, had drastically altered life. For the majority of South Carolina's population, African American freedpeople, the future seemed to hold both potential for exciting change and reason for wariness. The oppressive Black Codes passed by ex-Confederates in government had just been overturned by an act of Congress, the Civil Rights Act of 1866, and no one was quite sure what would take their place.[1] For many among the recently defeated White minority, this change in the winds spelled trouble. Newspapers complained about newly mobile freedpeople and their demands for fairer labor contracts, the possibility of Black men voting, and the purported fall of the racial and sexual mores that had characterized antebellum civilization.

Amid all the uncertainty, excitement, and fear, a Pickens County grand jury indicted a White widow named Sarah Calhoun for infanticide. Newspapers across the state seized upon the sensational story, including the fact that the father of the infant, who was eventually tried alongside Calhoun, was a freedman. The *Keowee Courier* described how Calhoun had been

[1] Wilbert L. Jenkins, *Seizing the New Day: African Americans in Post-Civil War Charleston* (Bloomington: University of Indiana Press, 1998), 52-55; Henry Kamerling, *Capital and Convict: Race, Region, and Punishment in Post-Civil War America* (Charlottesville: University of Virginia Press, 2017), 24-8.

arrested for allegedly drowning her seven or eight-day-old child, adding, "a freedman, Floyd, was arrested on a charge of complicity in the crime; but he was either released by or carried off with the [Union] garrison recently on duty at Walhalla. Good citizens believe that Floyd is guilty of complicity in the crime, and that he should not be allowed to escape merited punishment."[2] Floyd Craig (the newspapers usually omitted his new surname) evidently had left Walhalla in the custody of Union soldiers, yet he was sent back in time to stand trial alongside Sarah Calhoun in Pickens County. Ultimately, the jury acquitted Floyd Craig due to the lack of evidence against him and convicted Sarah Calhoun. While awaiting her sentence, Sarah Calhoun found herself imprisoned in the Pickens County jail. She must have been worried about her fate. In nineteenth-century South Carolina, the penalty for murder, including infanticide, was death by hanging.[3]

Yet like a myriad of other White and Black women in the post-Civil War criminal court system, Sarah Calhoun fought to improve her position even after her conviction. Calhoun was imprisoned alongside a group of about twenty Black men, members of the local Union League. They were about to stand trial for the murder of a White man named Miles Hunnicutt, a murder that had occurred during an interracial riot involving Union Leaguers and White men who had attempted to spy on the meeting. In the two-room jailhouse, Calhoun evidently overheard the men discussing the riot, including which of them had actually shot Hunnicutt. Calhoun recognized an opportunity. She alerted the jailer and began negotiating with local and federal officials for her own pardon in exchange for the crucial information she had gathered. Calhoun

[2] June 23, 1866, *Keowee Courier* (Pickens County, S.C.).

[3] *The Constitution of South Carolina: Adopted April 16, 1868, and the Acts and Joint Resolutions of the General Assembly Passed at the Special Session of 1868-1871* (Columbia, 1871), 175. The antebellum penalty for "willful murder," including infanticide, had been capital punishment, and it remained so during and after Reconstruction.

succeeded in obtaining bail and, in 1868, a full pardon from the governor after she testified in the Hunnicutt murder trial.[4]

Sarah Calhoun's story is full of twists and turns. Yet her case highlights the importance of local actors, community circumstances, and women defendants' own determination and skill in advocating for themselves before, during, and even after their trials. This was true not only for minor crimes like simple assault and larceny, where we might assume people would be more willing to negotiate, but also for grave offenses like infanticide.

Scholars have tended to paint historical infanticide with a rather broad brush, characterizing it as the common resort of unmarried and impoverished women to avoid the social stigma and financial burdens of unwed motherhood in societies where women faced sexual double standards and greater poverty.[5] Although this general profile of accused mothers may

---

[4] Calhoun acted in self-preservation, as she had been sentenced to hang. However, her testimony arguably saved men's lives, since she pinpointed one man, Nat Frazier, as the shooter rather than all twenty who were going to be tried for the murder. U.S. War Department, *Annual Reports of the War Department, Volume One* (Washington, DC: Government Printing Office, 1869), 434-7. For a slightly different version of the story, see W.J. Megginson, *African American Life in South Carolina's Upper Piedmont, 1780-1900* (Columbia: University of South Carolina Press, 2006), 218-228.

[5] Most historical studies of infanticide focus on the social context of infanticide and the treatment of accused mothers. See Felicity Turner, "Rights and the Ambiguities of Law: Infanticide in the Nineteenth-Century U.S. South," *Journal of the Civil War Era* 4, no. 3 (September 2014), 351; Felicity Turner, "Narrating Infanticide: Constructing the Modern Gendered State in Nineteenth-Century America," PhD Dissertation, Duke University (2010); 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); Pilczyk, "So Foul A Deed"; Henrice Altink, "I Did Not Want to Face the Shame of Exposure: Gender Ideologies and Child Murder in Post-Emancipation Jamaica," *Journal of Social History* 41, no. 2 (Winter 2007), 355-387; Elna C. Green, "Infanticide and Infant Abandonment in the New South: Richmond, Virginia, 1865-1915," *Journal of Family History* 24 (1999), 187-211; Elaine Farrell, "Infanticide of the Ordinary Character': An Overview of the Crime in Ireland, 1850–1900," *Irish Economic and Social History* 39 (2012), 56-72; Jeff Forret, "The Prisoner Thinks a Great Deal of Her Virtue': Enslaved Female Honor, Shame, and Infanticide in Antebellum Virginia," in *The Field of Honor: Essays on Southern Character and American Identity*, ed. John Mayfield and Todd Hagstette (Columbia: University of South Carolina Press, 2017), 217-230. Other scholars have examined the insanity defenses in infanticide trials, which I will also address in a section of this chapter. See Simone Caron, "Killed by Its Mother: Infanticide in Providence County, Rhode Island, 1870 to 1938," *Journal of Social History* 44, no. 1 (Fall 2010), 213-237; Pauline Prior, "Murder and Madness: Gender and the Insanity Defense in Nineteenth-Century Ireland," *New Hiberna Review* 9, no. 4 (Winter 2005), 19-36; Loughnan, "The Strange Case of the Infanticide Doctrine." Other studies which more briefly discuss infanticide include Cynthia Greenlee, "Due to Her Tender Age: Black Girls on Trial in South Carolina, 1885-1920," PhD Dissertation, Duke University (2014), 105-119; Cheryl Hicks, *Talk With You Like A Woman: African American Women, Justice, and Reform in New York, 1890-1935* (Chapel Hill: University of North Carolina Press, 2010), 137-147; Sarah Haley,

hold true across time and space to some extent, examining local records reveals that infanticide trials were far more nuanced, regionally-specific, and varied in terms of defendants and case outcomes than previous scholarship has shown.[6] The course and context of Calhoun's infanticide trial, for example, was marked by the contentious sexual and racial politics of early Congressional Reconstruction, her interracial relationship with Floyd Craig, conflicting authorities in the form of local officials in Pickens County and federal Union officers, and, of course, Sarah's own actions in negotiating for and securing her pardon.

While some women shaped or engineered pardon petitions, others used the medical ambiguity of infanticide, friendly witnesses, and gendered narratives to defend themselves in court or in the coroner's investigations that preceded formal trials. Many women argued that their baby had been stillborn or had died of illness or natural causes. They explained hasty burials of infants as the result of natural grief or their desire to spare family members the sight of the dead child. Whether true or not, their narratives were clearly strategically constructed.

In considering such ambiguous acts, communities and courts paid attention not to the marital status and race of a defendant alone, but also to what her neighbors, especially her female neighbors, said about her reputation, her state of mind and experience with pregnancy, her preparations for the birth, and her behavior during or after childbirth. In contrast to what historians such as Kathleen Brown have written about the declining influence of "juries of matrons" and of women's experiential medical testimony in courts by the eighteenth century, I found that coroners and courts alike continued to take women's testimony seriously throughout

---

No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity (Chapel Hill: University of North Carolina Press, 2016), 46-55.

[6] In this chapter, I follow the usual convention of defining infanticide as the killing of a child younger than one year. See Susan Hatters Friedman and Phillip J. Resnick, "Child Murder by Mothers: Patterns and Prevention," *World Psychiatry* 6, no. 3 (October 2007): 137-141; Michelle Oberman, "Mothers Who Kill: Coming to Terms with Modern American Infanticide," *American Criminal Law Review* 34, no. 1 (1996), 3.

the late nineteenth century.[7] They considered evidence from experiential bodies of knowledge, taking into account not only the testimonies of licensed physicians, but also the words of midwives and other women. Indeed, coroners' juries particularly valued ordinary women's experiential knowledge of pregnancy, childbirth, and proper neonatal care.

This is because in the post-Civil War South, infanticide trials, like all criminal trials, were still highly communal affairs. In infanticide cases, neighbors, officials, and medical experts possessing various kinds of experience, knowledge, and authority participated in the initial coroner's inquisition in which fourteen men and a coroner travelled to the scene of a suspicious death to examine the body and interview anyone who might have knowledge about the death.[8]

Communities and officials who undertook investigation of infant deaths also recognized that newborns were delicate in this era of high infant mortality.[9] Close knowledge of the woman's situation and reproductive health were crucial in a period when the lines between a late, or even early, miscarriage, an abortion, a stillbirth, and an infanticide remained extremely blurred for both ordinary people and medical experts. Physicians employed specific techniques and tests in their postmortem examinations of infants, floating their lungs and checking for tell-tale signs of physical trauma and bruising around the head and neck.[10] Yet even postmortems did

---

[7] Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs*, 97-100; 187-8. Brown argues that increased "uniformity of legal standards eroded the influence of female speech and local customs over the judicial process" in early eighteenth-century Virginia. Laura Gowing locates the devaluation of women and midwives as guardians of gendered knowledge as early as the late seventeenth century. See Laura Gowing, "Knowledge and Experience, cerca 1500-1750," in *The Routledge History of Sex and the Body*, ed. Sarah Toulalan and Kate Fisher (New York: Routledge, 2013).

[8] The more common term in the nineteenth-century United States was "coroner's inquest." South Carolina coroners, however, called them "inquisitions," and I follow the custom here.

[9] Infant mortality rates in the U.S. remained high well into the Progressive Era. Johanne Schoen found that about 10% of White and 20% of African American babies born in the US in 1915 died within a year of their birth. Johanne Schoen, *Choice & Coercion: Birth Control, Sterilization, and Abortion in Public Health and Welfare* (Chapel Hill: University of North Carolina Press, 2005), 25.

[10] For the hydrostatic test, see Ian C. Pilarczyk, "So Foul A Deed: Infanticide in Montreal, 1825-1850," *Law and History Review* 30, no. 2 (May 2012), 598.

not necessarily produce irrefutable evidence that an infant had been killed, as difficult births could leave similar marks. Uncertainty pervaded most coroner's inquisitions into suspected infanticides.

In the courtroom, too, juries and newspaper writers reporting on trials referred to the difficulties of determining whether infanticide had taken place, an uncertainty that, together with women's defense narratives that strategically drew on these ambiguities, explains the state's consistently low conviction rates for infanticide. My research uncovered 106 cases of infanticide in South Carolina between 1865 and 1900 that reached the level of a criminal indictment, with indictments averaging 2-5 per year and accounting for about 2.3% of women's indictments overall. While in a significant minority of cases I could not discover the verdict, juries convicted mothers on trial for infanticide only 14% of the time in cases where the verdict is clear. This is much lower than the state's 34% conviction rate for women accused of murder.[11]

Like women's convictions for all categories of crime in postbellum South Carolina, infanticide convictions increased during the 1880s and 1890s, after the White Democratic "Redemption" of the state which inaugurated an increasingly punitive and racialized turn in the state's criminal justice system.[12] As Felicity Turner argues in her study of infanticide in post-Civil War America, White officials, newspapers, and communities sought to racialize infanticide after the Civil War as a way of impugning African American families and naturalizing racial difference. Turner argues that they did this through community surveillance of young, especially unmarried Black women and by using infanticide as a means to cast individual Black defendants

[11] My sample of infanticide cases come from both the archival court records of the six counties that I focused on and newspaper articles covering cases from throughout South Carolina. For the latter cases, archival court records have sometimes not survived.

[12] See also Stephen Kantrowitz, *Ben Tillman and the Reconstruction of White Supremacy* (Chapel Hill: University of North Carolina Press, 2000); Edward L. Ayers, *The Promise of the New South: Life after Reconstruction* (Oxford: Oxford University Press, 1993).

and Black women more generally as naturally "unfeeling" or bad mothers. By extension, she writes, "local communities then challenged the authority of all African Americans, not only women, to claim the same civil and political rights as White southerners."[13]

Indeed, newspaper accounts and local court records demonstrate that White South Carolinians racialized infanticide and that incidents of suspected infanticide became moments in which to draw upon broader discourses of race and racial inferiority. Black women were the defendants in nearly 78% of infanticide cases in post-Civil War South Carolina, and they were more likely to be convicted than White women. Only two White women received penitentiary sentences for infanticide, whereas thirteen Black women were committed to the penitentiary. One, Anna Tribble, was executed for the crime.[14]

Yet despite White southerners' racialization of infanticide and the generally harsher sentences dealt to Black women, Black women often successfully defended themselves in infanticide cases. True, their race was a mark against them in many White juries' and officials' books. Black women's lesser access to the privacy enjoyed by some White women likely contributed to their higher rates of indictment in the first place, as did their work as domestic servants, a position which required them to share intimate space with White employers who might report them for infanticide. In contrast, my evidence suggests that young White women often had the assistance of their families in covering up their infant's birth and death within the home.

Yet local records demonstrate that in practice, reputation, class, marital status, and the strength of a woman's defense also mattered a great deal. Black women as well as White used

[13] Turner, "Rights and the Ambiguities of Law," 351; Turner, "Narrating Infanticide," 4-5.
[14] June 23, 1866, *Keowee Courier* (Pickens County, SC); October 27, 1866, *Keowee Courier*; November 3, 1866, *Charleston News and Courier* (Charleston, SC).

the medical and social ambiguity of infanticide in their narratives about what had caused the death of their infant. They enlisted and benefited from the testimony of friendly witnesses, principally neighbors and family members, and especially their own mothers. They might also receive support from physicians who admitted the uncertain cause of a child's death, testified that the death had been natural, or, in a small but significant portion of cases, gave the expert opinion that the defendant's mental state had led her to kill her child. Never mere docile subjects of the legal system, Black and White women were the principal actors in the long list of community members and officials who played a part in post-Civil War infanticide trials.

This chapter examines women's infanticide trials as the complex and troublingly ambiguous community events that they were. I discuss the specific context of infanticide in the postbellum South, including people's ideas about what motivated mothers to kill their newborns and, when possible, what accused women themselves had to say on the subject. Delving into testimonies from dusty coroner's inquisition books, I explore the multiple sources of medical authority in infanticide investigations, such as the continued importance of midwives and ordinary women as witnesses with access to the intimate space of the birthing room. Finally, I demonstrate that infanticide was less homogenous than previous scholarship has indicated. Pushing back against historians' assumptions that infanticide constituted an act that unmarried women committed "alone and in secret" to avoid sexual stigma, I shed light on the role of grandmothers (defendants' mothers) as frequent accomplices or co-defendants in infanticide trials and the relative prevalence of married and widowed women as defendants. Similarly, I highlight communities' willingness to attribute a Black or White woman's infanticide to legitimate mental illness rather than simply her criminal desire to hide sexual behavior.

5.1 The Social Context of Infanticide

Although a Columbia newspaper covering Sarah Calhoun's 1866 infanticide trial declared that it was "a crime heretofore unknown in South Carolina," South Carolinians after the Civil War were just as familiar with infanticide as Americans as a whole. White women stood trial for infanticide in antebellum courts with some regularity. In an 1857 case from Edgefield District, a married White woman named Matilda Reynolds stool trial for the murder of her infant. She was said to have given the child, believed to be "of mixed race," a lethal amount of laudanum. Witnesses in the coroner's inquisition pinpointed the infant's race as Reynolds' motive for killing him, testifying that "the child was very dark from its birth."[15]

Similarly, historians of American slavery have demonstrated that White planters discussed what they believed were high rates of secretive infanticide by enslaved women.[16] Some of these complaints probably stemmed from the fact that the death of enslaved infants represented a loss of property for slaveholders. And given their living circumstances, natural infant mortality for enslaved newborns was extremely high.[17] Yet some enslaved women certainly did kill their children, sometimes as a way of saving them from a life of enslavement. This was what Margaret Garner, whose story is immortalized in Toni Morrison's novel *Beloved*, did in 1856 when she killed her daughter rather than see her recaptured into slavery.[18]

---

[15] *State vs the Body of the Infant of Matilda Reynolds,* Edgefield District Coroner's Inquisitions Book, pgs 128-131, SCDAH. The outcome of this case is unclear; Reynolds was at least imprisoned in the county jail for some months before her trial.

[16] Wilma King, ""Mad" Enough to Kill: Enslaved Women, Murder, and Southern Courts," *Journal of African American History* 92, no. 1 (Winter 2007), 42-3; Forret, "The Prisoner Thinks A Great Deal of Her Virtue," 223; Marie Jenkins Schwartz, *Birthing A Slave: Motherhood and Medicine in the Antebellum South* (Cambrdige: Harvard University Press, 2006), 208-9.

[17] Deidre Cooper Owens, *Medical Bondage: Race, Gender, and the Origins of American Gynecology* (Athens: University of Georgia Press, 2017), 76-8, 135-6 (n. 14). Cooper Owens, providing an overview of the scholarly findings on enslaved infant mortality, notes that scholars have estimated that as many as 40-60% of enslaved children in the antebellum period died within their first five years of life.

[18] Toni Morrison, *Beloved* (New York: Knopf, 1987); Steven Weisenburger, *Modern Medea* (New York: Macmillian, 1998).

It is possible that Anaca, an enslaved woman whom a Union District, South Carolina court executed in 1824, may have had a similar motive when she allegedly killed her two children.[19] Perhaps Dol, an enslaved woman hanged in Pendleton District in 1817 "for the murder of her child," did as well. Unfortunately, we can only speculate, because the sole surviving records about both women's actions are slaveholders' petitions to the state for compensation following the enslaved women's executions for infanticide.[20]

In her study of enslaved women's religious cultures and "womb ethics," Alexis Wells-Oghoghomeh notes that:

> In the absence of the legal and social power to protect themselves and their children, some women chose to claim the sole aspect of (pro)creative power to which they still had access: the power to extinguish new life. The thwarting of the reproductive cycle through abortion and filicide constituted a pointed subversion of the enslaving system and a bold reclamation of reproductive power.[21]

Yet just as the resistance paradigm cannot accurately encompass all actions of enslaved people under slavery, some enslaved women who committed infanticide doubtless possessed complex motives other than thwarting slaveholders or reclaiming their reproductive power.[22] Mental illness, a desire to avoid sexual stigma, the desire to save their children from

---

[19] Petition of Ellis Palmer, Petitions to the General Assembly, item #01888, SCDAH.
[20] Petition of Thomas Adams, Petitions to the General Assembly, item #00056, SCDAH. Alexis Wells-Oghoghomeh notes another case, that of an enslaved women named Clarissa who was sold from the state after she was accused of killing her daughter, Rachel. Wells-Oghoghomeh, *The Souls of Womenfolk*, 76.
[21] Wells-Oghoghomeh, *The Souls of Womenfolk*, 71.
[22] For an essay on the limits of resistance as a paradigm for writing the history of enslaved people, see Walter Johnson, "On Agency," *Journal of Social History* 37, no. 1 (Autumn 2003), 113-124; see also Marisa Fuentes, *Dispossessed Lives: Enslaved Women, Violence, and the Archive* (Philadelphia: University of Pennsylvania Press, 2016), 7-12.

enslavement, or women's attempts to rid themselves of a child born of a traumatic sexual assault may have all motivated women. The relative lack of enslaved women's direct testimony in court documents from the antebellum period precludes scholars from drawing easy conclusions about their motivations. Indeed, even after the Civil War, when Black and White women stood trial in newly integrated courts, such testimony was always strategic and subject to mediation and the genre of courtroom narratives.[23]

We can, however, compare accused women's circumstances and broadly see that race and class, including their implications for access to privacy, played a major role in determining both women's options for dealing with children they were unprepared to care for and whether women would find themselves indicted for infanticide. As Elna C. Green and Felicity Turner have also argued, Black women in the post-Emancipation South were more likely to be surveilled and accused of the crime.[24] Writing about post-Civil War Richmond, Green points out that race also shaped the options available to women who gave birth out of wedlock. Most orphanages, including the few that existed in South Carolina in this period, only accepted White children or children over the age of one or two years. White women generally had more financial resources to place the unwanted infant with a family; if the child was interracial, the father's Black family seems to have often adopted the child.[25] (The reverse was almost unheard of, because a White man's family did not generally adopt his child with a Black woman). Several court records allude to White women who were not prepared to raise a child giving it to "a

[23] For legal testimony as narrative, see Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tales* (Stanford: Stanford University Press, 1987). See also Kimberly Welch, *Black Litigants in the Antebellum American South* (Chapel Hill: UNC Press, 2018); Ariela Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Cambridge: Harvard University Press, 2008).
[24] See Green, "Infanticide and Infant Abandonment in the New South"; Turner, "Rights and Ambiguities of the Law."
[25] For another example, see *State vs Maria Oppermann and Elias Henderson* in the chapter "Illicit Acts."

colored woman up the street" who they or their families would pay to adopt and raise the child, whether it was interracial or White.[26] Black mothers might also find relatives or friends to raise a child for them, but their financial circumstances often prohibited them from paying for a child to be adopted and thus limited their options.

Some of the women who appear in court records simply left their child by a well-traveled road or a body of water, an indication that they hoped someone would adopt the infant but knew no one they could ask to do so. In 1880, twenty-year-old Usley Taylor, a Black woman who had recently left her family in Columbia to work in Newberry County, stood trial for abandoning her infant in a "gulley" by the road. Though she was indicted for murder, Taylor's jury found her guilty only of manslaughter. This was an unusual intermediate outcome in a South Carolina infanticide case and an indication that the jury recognized her intent had not been murderous. Taylor received a sentence of three years in the penitentiary.[27]

Many young Black women worked in positions after Emancipation that made it both more likely they would become pregnant out of wedlock and more difficult for them to escape detection if they did unintentionally lose or deliberately kill their newborn. Domestic workers especially were subject to surveillance from employers. In addition, domestics worked away from the watchful eyes of family and neighbors, in private homes where they were vulnerable to sexual assaults which could result in an unwanted pregnancy.[28]

---

[26] This quote comes from *State vs Rosa Steinmeyer*, Charleston County Court of General Sessions Indictments, October Term 1896, box 42, SCDAH.

[27] September 8, 1880, *Newberry Herald* (Newberry, S.C.); November 17, 1880, *Newberry Herald*.

[28] Historians have found that domestic servants were overrepresented in nineteenth-century infanticide investigations in regions as diverse as Rhode Island, Ireland, and Jamaica. Caron, "Killed by Its Mother," 218; Altink, "I Did Not Want to Face the Shame of Exposure," 360; Pilarczyk, "So Foul A Deed," 621; Farrell, "Infanticide of the Ordinary Character," 992-3.

In a case from Charleston in 1869, a fifteen-year-old African American girl called Louisa Ladson stood trial for the murder of the infant she had delivered alone in a privy outside her White employer's home. In the coroner's inquisition testimony, her employer Ellen Kerrison described how Ladson, whom she paid "to wash and cook and act as house servant," had "complained of a pain in the stomach" while ironing. Kerrison "mixed her a hot brandy," but Ladson continued to go "back to the privy very often, and after her return, [Kerrison] came to the conclusion that she had given birth to a child." When Kerrison asked her "what had become of the baby," Ladson insisted that she "had not seen it and that if she was in that way she did not know it." Kerrison dismissed Ladson for the day and later "found the afterbirth," presumably in her house or in the street. Later someone visiting the privy discovered the body of "a mulatto babe" "in the privy vault." The police arrested Louisa Ladson for the murder of the child. The physician in the coroner's inquisition found that the infant had been born alive and suffocated. Soon, though, a grand jury found no bill in her case and Ladson was released from the Charleston County Jail. While the surviving documents do not reveal the grand jury's motives, uncertainty about whether the infant had really been born alive ("doctors differ" was a maxim in such cases) and young Louisa's own apparent astonishment at what had happened may have played a role in their decision.

Indeed, there is little reason to doubt that Louisa was telling the truth about her own lack of knowledge about her pregnancy. Ellen Kerrison mentioned nothing about Louisa appearing visibly pregnant in her testimony; she seems to have been surprised when Louisa returned from the privy looking as though "she had given birth to a child." In addition, Ladson had been open about her stomach pains rather than trying to disguise them from Kerrison.[29] Like contemporary

[29] *State vs Louisa Ladson*, Charleston County Court of General Sessions Indictments, November Term 1869, box 18, folder #1345, SCDAH.

women who have "cryptic pregnancies" and unexpectedly give birth on the toilet, she seems to have mistaken her labor pains for stomach pains, hence her trips to the privy.[30] The fifteen-year-old's doubt that "she was in that way" also suggests a lack of knowledge about pregnancy. Her age and the description of the infant as "a mulatto babe" could indicate that Ladson's child was the result of an interracial sexual assault. Perhaps Ladson, suffering from trauma from the event, desperately wanted to believe that she was not "in that way." As Tera Hunter has shown, African American domestic workers, isolated in another family's house, were vulnerable to sexual assault from White male employers and other men.[31]

Both domestic workers and field laborers, the most common occupations for Black women after the Civil War, could suffer financially if they became pregnant or had a child. As Marie Jenkins Schwartz has noted, freedwomen suffered disadvantages from post-Emancipation labor contracts that charged them for sick leaves and defined pregnancy as sickness.[32] Unmarried domestic workers with children also struggled to find work, much less childcare, and it was not uncommon for employers to dismiss women who became pregnant or had a child out of wedlock. Lizzie Goldsmith, a young Black "farm laborer" accused of throwing her four-month-old child into a creek in 1889, confessed that she had committed the act "so as to have a better chance to get work."[33] Few employers were willing to hire or sign a labor contract with an unmarried woman with an infant.

The importance of class and poverty in infanticide cases can be seen in the financial positions of most White women accused of infanticide in the post-Civil War period. While Black

---

[30] Caroline Lundquist, "Being Torn: Toward a Phenomenology of Unwanted Pregnancy," *Hypatia* 23, no. 3 (2008), 136-55. Lundquist discusses "cryptic" and "denied" pregnancies.
[31] Tera W. Hunter, *To 'Joy My Freedom: Southern Black Women's Lives and Labors after the Civil War* (Cambridge: Harvard University Press, 1997), 28.
[32] Schwartz, *Birthing A Slave*, 302-7.
[33] "Deliberate Infanticide," January 17, 1889, *Charleston News and Courier*.

women were more likely to be destitute and dependent on employers' goodwill for their survival, some White women found themselves in similarly precarious situations. This was particularly true for White women who did not have social or familial connections. Kitty Malone of Laurens County is a good example. In 1885, a grand jury indicted White, twenty-six-year-old "Kitty Malone, spinster" for killing her child "by some means and act to the jurors unknown." Census records show that Malone lived alone without family nearby and worked as a "farm laborer." She was in an unusually vulnerable position for a White woman in the rural South, who most often lived with family until they married.[34]

Other White defendants, such as Maggie Bowen, a White "mill girl" from Anderson County who stood trial for strangling her newborn, and Emma Strain, evidently a sex worker in Lexington County, shared with their Black counterparts a need to earn their own income. In their positions, an infant would likely constitute a burden, a deterrent to gaining or keeping work, and a drain on their precarious financial resources. A local newspaper castigated Emma Strain, who resided in a brothel, as "an inhuman mother" who had "abandoned one child and killed another." It seems that when observers could link infanticide to habitual sexual misconduct, they expressed less sympathy towards the accused mother.[35]

Indeed, sexual shame and fear of social ostracization outweighed fear of financial repercussions and poverty as motives that *contemporaries* believed incited women to kill their newborns. Similarly, some women stood accused of having killed their infants to hide the living evidence of clandestine affairs. Clara Bullock of Laurens County, a young Black woman, stood

[34] Malone was indicted but found not guilty. I wondered if she was a recent immigrant, because Irishwomen were overrepresented as defendants in South Carolina's criminal courts. However, her parents were both born in the United States, indicating Irish origin further back in the family history. *State vs Kitty Malone,* Laurens County Court of General Sessions Indictments, February Term 1885, box 32, SCDAH; February 12, 1885, *Yorkville Enquirer* (Yorkville, S.C.).

[35] "Woman's Worse than Weakness," September 18, 1993, *Charleston News and Courier*.

trial with her alleged paramour, a married Black teacher referred to as J.T. Jennings, after her infant died and the local community cried foul play. As soon as the affair became known, "the clamor of the colored people was so great that Jennings tendered his resignation as a teacher," a local paper noted. In a strange turn of events, Jennings alone was convicted, though he seems to have succeeded in obtaining a new trial.[36]

The case serves as a good reminder that it was not only White southerners who surveilled their White and Black neighbors for signs of sexual misconduct and criminal behavior. Surveillance of women was not always a top-down affair. Black communities also employed shame, gossip, and the law to reprimand their neighbors for bad behavior.[37] In *State vs Mary and Mary Jane Gilchrist*, an 1892 case from Edgefield County, the coroner was summoned to investigate an alleged infanticide after "the negro women of the place," suspecting a local woman of infanticide, searched everywhere for a missing child's body.[38] In 1886, several Black residents in Newberry County accused a young Black woman named Wealthy Williams of infanticide after a child was found in a local well. Neighbors pinned suspicions on Williams due to her appearance of having lost a good deal of weight recently and her reputation.[39]

When an accused woman had a "bad" or "loose" reputation in her community, she was far more likely to be convicted and commentators and juries generally treated her with less sympathy. Anna Tribble, the only woman hanged for infanticide in this period, was a young

---

[36] Unfortunately, these particular court records have not survived in Laurens County's Indictments. See instead July 20, 1893, *Charleston News and Courier*; July 26, 1893, *Newberry Herald and News*; July 25, 1893, *Laurens Advertiser* (Laurens, S.C.). The final outcome of the case is frustratingly unclear. I could not find evidence that Jennings was executed or imprisoned for infanticide, but nor could I find evidence that he was acquitted in his new trial. He was, however, one of very few men convicted for infanticide during this period, though a mistrial was declared.

[37] See also Forret, "The Prisoner Thinks A Great Deal of Her Virtue" for the antebellum period, though I believe he takes the words of observers in these cases about enslaved women's motives too much at face value at times.

[38] *State vs the Dead Body of Infant of Mary Jane Gilchrist,* Edgefield County Coroner's Inquisitions, SCDAH; "Charged with Infanticide," March 29, 1893, *Charleston News and Courier*.

[39] Greenlee, "Due to Her Tender Age," 110-111.

Black woman with a reputation for sexual promiscuity. Newspapers referred to Sarah Calhoun, with whose story this chapter began, as "a woman of low birth."[40] Personal reputation mattered in such cases, as with all criminal trials, but particularly for a crime that people strongly associated with sexual misconduct and shame.

A physician conducting a postmortem on an infant in 1868 began editorializing on infanticide during his report to the coroner: "some use the resort to hide their shame; others do the same to shun case [sic] and toil." While the physician certainly underestimated the "toil" that many poor women undertook to survive and working women's difficulties finding work when they had young children, he accurately summarized contemporary beliefs about what drove women to infanticide: sexual shame and a desire to avoid the work of motherhood.[41] Such observers usually underestimated the role of financial hardship and the difficulties of finding employment for working-class women with infants. But, having likely participated in other coroner's inquisitions into infanticides, the physician clearly considered himself an expert on the subject.

The following section will examine coroner's inquisitions more closely, with special attention to the multiple sources of medical authority and the roles of a diverse range of local actors, including women, in determining what had befallen a deceased infant.

5.2 Investigating Infanticide: Medical Expertise and Ambiguity

[40] November 3, 1866, *Charleston News and Courier*; Greenlee, "Due to Her Tender Age," 113.
[41] *State vs the Dead Body of the Infant of Emma Gaillard*, Horry County Coroner's Inquisitions, SCDAH.

In nineteenth-century South Carolina, an infanticide inquisition always began with the discovery of a body.[42] The "inquisition books" of county coroners, massive leatherbound volumes that coroners dutifully lugged to the scenes where bodies had been discovered, describe many inquisitions over the bodies of infants. They provide excellent insight into these infanticide investigations as well as people's notions of medical expertise and medical knowledge.

While today coroners and forensics units have expanded into specialties and subspecialties and experts largely work out of laboratories, the nineteenth century coroner travelled extensively within his county conducting inquisitions on the corpses of people who may have met with foul play. In fact, he received fees partly according to how many miles he travelled to reach a body. Though he often had a medical background, this was not a requirement. In many cases the nearest trial justice would lead an inquisition in the official coroner's stead as "acting coroner" whether he had medical expertise or not, because a quick response was key when corpses were involved. Therefore, the several dozen Black trial justices who served their counties during Reconstruction sometimes served as acting coroners.[43] In addition, a number of Black men served as official coroners during the late 1860s and 1870s and even in the years after Redemption. For example, Renty Franklin Greaves, a freedman and former Union soldier, was several times elected coroner for Beaufort County in the 1880s.[44] To be sure, however, the majority of county coroners in post-Civil War South Carolina were White

[42] English common law had since the seventeenth century permitted mothers to be prosecuted for infanticide even if the child's body was missing, and some U.S. states occasionally followed this custom. However, I found no example of a defendant being tried in the absence of a body in South Carolina where, after all, infanticide was always prosecuted as common law murder, even if it was in practice understood differently than the murder of an adult.
[43] Hyman Rubin estimated the percentage of Black trial justices in South Carolina during Reconstruction as slightly less than 5% at any given time. See Rubin, *South Carolina Scalawags*, 95.
[44] For Greaves, see Giselle White-Perry, "In Freedom's Shadow: The Reconstruction Legacy of Renty Franklin Greaves of Beaufort County, South Carolina," *Prologue* 42, no. 3 (Fall 2010).

men of some social standing, just as they had been when the colonial government created the position of coroner back in 1706.[45]

Coroner's juries, on the other hand, were fairly egalitarian groups of men whom the legal system trusted with the highly communal and experience-based process of determining how a person had died. After he was called to investigate a body, the coroner issued a summon that compelled all witnesses, a coroner's jury of "fourteen honest men" aged twenty-one and older, and, usually, a physician to attend the inquisition. Anyone who failed to show up could be fined. Inquisitions took place where the body had been discovered. There the coroner swore in the fourteen members of his jury, making them promise to "enquire" as to "what manner [the person] here lying dead, came to his death" and "deliver a true verdict thereupon, according to such evidence as shall be given, and according to your knowledge, so help you God."[46]

Coroner's juries typically signed their names beneath the inquisition verdict and their signatures reveal that frequently as many as half of the men on the jury were illiterate. This is not to say they lacked knowledge, however. The repetition of names over years and even decades indicates that many men served on local coroner's juries several times during their lifetime. They also would have likely known the dead person. Sometimes a majority of the jury were Black, especially when the victim was Black. Unlike petit juries and grand juries, which reverted to nearly all White in some counties after the end of Reconstruction, coroner's juries remained diverse in terms of race and class—with the important exception, of course, that women could not serve on coroner's juries.

Nevertheless, women played essential roles as witnesses in murder and, especially, infanticide inquests, in which they provided gendered, experiential knowledge about childbirth,

[45] Stephen Berry, "Meet the Coroners," CSI Dixie [https://csidixie.org/judges/meet-coroners].
[46] See county coroner's inquisition books at SCDAH.

infants, and pregnancy as well as intimate knowledge about the mother suspected of infanticide and her circumstances. Coroner's inquisition records suggest that coroners preferred to interview women about alleged infanticides and that community members also valued women's experiential knowledge of children and childbirth. In fact, women constituted the majority of witnesses called in infanticide inquisitions. They had access to intimate spaces such as a room where a woman gave birth, where men were generally less welcome. But female neighbors who interacted with the suspected mother less frequently also testified about their knowledge of a case. And because they usually later appeared on lists of witnesses for formal trials, it is evident that local women's knowledge and their socially approved access to intimate spaces such as other women's bedrooms also enabled them to serve as convincing witnesses in the county-level criminal courts.

Inquisition records demonstrate that communities and coroners considered ordinary women who had given birth themselves and who knew the mother under suspicion to have crucial knowledge. Moreover, such women confidently volunteered their knowledge. In an 1885 case from Richland County, a White planter heard rumors that one of the Black sharecroppers who worked on his land, Mary Silas, had killed her newborn. He sent his wife, Lizzie Mattey, to investigate. In her later testimony before the coroner, Lizzie Mattey described how she "turned the cloth from the child's face and saw its forehead was bruised and the skin was broken." She also asked Mary Silas about the infant's death: "she told me it was born alive, but she killed it in her sleep but did not go to do it."

Mr. Mattey's deputizing of his wife to investigate the infanticide suggests that he considered her, as a mother who had borne children herself, a more knowledgeable and socially appropriate person to examine the infant's body and inquire into what had happened than

himself. As a woman, she had better access to the intimate space of the room where Mary Silas had recently given birth and lost her child than her husband did. The coroner's jury also asked Lizzie Mattey more questions than Mr. Mattey, even though he was the one who had summoned the coroner. Lizzie Mattey also testified as a witness in the county-level trial. There, Mary Silas and her husband Ben were acquitted, perhaps because the evidence suggested accidental overlaying rather than an intentional killing.[47]

In some cases, such as the 1881 trial of Sallie Strange, a White woman from Richland County, all the witnesses in the coroner's inquisition and the subsequent criminal trial were female. The only exception was the physician who had conducted the postmortem. This preponderance of female witnesses in infanticide trials made sense for a crime concerning women and women's affairs.[48]

Therefore, while historians have argued that licensed physicians "assumed control of inquests" in the eighteenth century or perhaps earlier at the expense of female witnesses and midwives, coroner's inquisitions remained highly communal affairs in South Carolina throughout the nineteenth century.[49] Knowledge was somewhat decentralized in the investigation process, with different witnesses providing diverse types of knowledge and sometimes drawing competing conclusions. In fact, juries and even physicians themselves doubted doctors' abilities to consistently determine the truth about what had happened to a dead infant using medical science alone.

People recognized that physician's postmortem examinations could lead them to incorrect conclusions. Bodies had often decayed by the time someone discovered them and infanticides

[47] *State vs Mary and Ben Silas*, Richland County Court of General Sessions Indictments, June Term 1885, SCDAH.
[48] *State vs Sallie Strange*, Richland County Court of General Sessions Indictments, October Term 1881, #01317, SCDAH.
[49] Turner, "Narrating Infanticide," 19.

were especially ambiguous. A bruise on an infant's head may have been the result of violence on the mother's part or merely a difficult, perhaps fatal, delivery. Bruises around the neck could indicate that an infant had been strangled, as at least 25% of the alleged infanticide victims in the records were said to have been. But even markings around the neck could be from labor or an umbilical cord wrapped around the child's neck. Inexperienced mothers who gave birth alone sometimes delivered standing up, which could cause the newborn to fall on its head. About 17% of infants whom coroners and physicians examined showed evidence of head trauma ranging from light bruising to a skull "split entirely in two pieces."[50] Another 17% of infants appeared to have drowned in bodies of water or a well, 15% died due to exposure, 12% were said to have died of some form of suffocation, and only two cases involved alleged poisoning.

Physicians' tests to determine live birth, such as the hydrostatic or lung floatation test, were highly ambiguous and far from exact. An Edgefield County physician conducting a hydrostatic test described how he performed his exam on the body of an infant which had been discovered in a sack in a sawmill "with a string around its neck":

> April 14, 1895. Examined the dead body of an Infant. It was a well formed child and had lived or reached the proper age and age [sic] to be born into the world. I opened the thorax and removed the lungs and found that they both readily floated in water. The fact that the lungs floated indicated to my mind that the child lived after birth.[51]

[50] *State vs Martha and Mille Gunthorpe*, December 14, 1883, *Easley Messenger* (Easley, S.C.). These statistics come from my analysis of 106 South Carolina cases and only include those where the alleged cause of death was stated in the sources.
[51] *State vs the Dead Body of the Child of Laura and Anna White*, Edgefield County Coroner's Inquisitions, SCDAH.

Like physicians' methods in coroner's inquisitions as a whole, the hydrostatic test had its merits and its weaknesses. In practice, infants' unexpanded lungs sometimes floated even if they had been stillborn, and some lungs that had been exposed to air did not float.[52] Moreover, many infants died of natural causes after their birth or during labor. Physicians often struggled to decide and sometimes clashed when more than one medical expert was involved.

Reporting on *the State vs Rhoda and Anna Holman*, an 1893 case from Barnwell County, a newspaper reporter grumbled about the "considerable expert medical testimony" in the courtroom. "The doctors differed as usual," the reporter wrote. They had argued about whether a "fracture" on the infant's head was from a deliberate infanticide or if "the baby had fallen on its head." Evidently more suggestive to the exasperated reporter was the fact that the infant "had been buried soon after birth surreptitiously."[53]

Context was indeed key in determining a cause of death and assigning guilt, because medical tests alone led to ambiguous conclusions. A physician writing about a case of infanticide or a late-term abortion (tellingly, he could not positively determine which) in 1868 lamented the ambiguities involved in identifying infanticide or abortion. "It would appear reasonable to suppose the child was Still born in the absence of any proof to the contrary," he was forced to conclude.[54]

Indeed, women on trial for infanticide commonly defended themselves by arguing that their child had been stillborn. Some women surely took advantage of the ambiguities and uncertainties of medical science to obtain an acquittal for an act they had committed. Others doubtless told the truth but had difficulty convincing others because they had quickly buried or

---

[52] Pilarczyk, "So Foul A Deed," 598; Chris Milroy, "Neonatal Deaths, Infanticide, and the Hydrostatic (Floatation) Test: Historical Perspectives," *Academic Forensic Pathology* 2, no. 4 (2012): 338-345.
[53] July 18, 1893, *Charleston News and Courier*.
[54] *State vs the Dead Body of the Infant of Emma Gaillard*, Horry County Coroner's Inquisitions, SCDAH.

disposed of the body, an action that communities viewed as highly suspicious. In an 1869 case from Kershaw County, a coroner and his jury investigated a young, unmarried Black woman named Peggy Bedenbaugh for the murder of her newborn, which a neighbor had found buried in the corner of a cotton field. Peggy's mother Delia Brantley testified that Peggy "admits it was hers," but denied she had killed the child. "It was born dead and as she did not know what to do with it, she took it and buried it, not thinking it worthwhile to carry it to the house as it was dead," Brantley said. Peggy Bedenbaugh might well have told the truth, but her status as an unmarried woman, her haste to bury the body, and her evident denial of her pregnancy to neighbors (she claimed she was merely wrapping up more than usual due to "cold") all drew communal suspicions and led to her indictment by a grand jury.[55] In such cases, knowledge of a woman's situation and reproductive history could prove at least as useful as medical expertise.

Midwives were authoritative communal figures who could provide both medical knowledge, specifically experiential, gendered knowledge of reproduction as well as general healing skills, and contextual information about the suspect in an infanticide inquisition. Although medical historians have emphasized licensed physicians' and "man-midwives'" crusades to become the primary childbirth experts and attendants by pushing out midwives and casting them as ignorant or dangerous, historians examining the U.S. South have noted the persistent presence of midwives in the region.[56] Many Black and White southern women,

---

[55] *State vs the Dead Body of the Infant of Peggy Bedenbaugh,* Kershaw County Coroner's Inquisitions, SCDAH. I could not find the verdict in Bedenbaugh's case, but suspect she was acquitted due to a lack of mentions about her in the newspapers that usually covered pardon petitions and penitentiary sentences.

[56] For midwives, see, for example, Judith Walzer Leavitt, *Brought to Bed: Childbearing in America, 1750-1950* (New York: Oxford University Press, 1986); Charlotte G. Borst, *Catching Babies: The Professionalization of Childbirth, 1870-1920* (Cambridge: Harvard University Press, 1995); Laurel Thatcher Ulrich, *A Midwife's Tale: The Life of Martha Ballard, Based on Her Diary, 1785-1812* (New York: Knopf, 1990); Leslie J. Reagan, "Linking Midwives and Abortion in the Progressive Era," *Bulletin of the History of Medicine* 69, no. 4 (Winter 1995), 569-98. For midwives in the South, see Alicia Bonaparte, "The Satisfactory Midwife Bag"; Yulonda Eadie Sano, "Protect the Mother and Baby: Mississippi Lay Midwives and Public Health," *Agricultural History* 93, no. 3 (Summer 2019), 393-411.

especially in rural areas, had all their babies delivered by a midwife or called one to assist with difficult births. Licensed physicians and the South Carolina State Board of Health did attempt to regulate and reform African American "granny midwives," intensifying their efforts in the postwar period.[57] Yet midwives continued to assist with births in rural Black communities.

Testimony from coroner's inquisitions demonstrates that midwives exerted an authoritative presence during inquests, where they provided crucial information about women's specific situations as well as observations based on their considerable experiential knowledge of reproduction and childbirth. In *State vs Dafney and Jeannine Maxwell*, Black midwife Mary Crump was the only witness who provided information about the condition of Jeannine and her child shortly after Jeannine gave birth. She therefore provided an essential part of the timeline for understanding what had happened in this case of suspected infanticide.[58]

In a more extensive testimony, Elizabeth Mustaphor, a White Charlestonian midwife, testified in an 1880 coroner's inquisition into an alleged infanticide by Wilhelmina Pohlman, a German-born live-in domestic worker. Mustaphor's narrative provides a fascinating glimpse into this aspect of her work as a midwife, how people reacted in the aftermath of an apparent infanticide, and the midwife's considerable expertise and authority in such incidents. Therefore, her testimony is excerpted here at some length:

> [Deponent Elizabeth Mustaphor] says she is a midwife about thirty years, was called to the house of Mr. Law about midday and on the 26 of November 1879. Mrs. Law asked deponent to go upstairs with her to see Wilhelmina. When they

[57] Wangui Muigai, "Something Wasn't Clean: Black Midwifery, Birth, and Postwar Medical Education in *All My Babies*," *Bulletin of the History of Medicine* 93, no. 1 (2019), 82–113.
[58] *State vs Dafney and Jeannine Maxwell.*

got there the door was locked. Mrs. Law knocked at the door, Mrs. Law went around to the next room window to look in, but Wilhelmina came to the door and opened it. [The midwife Mrs. Mustaphor] and Mrs. Law went in the room and saw a quantity of blood upon the floor. Wilhelmina said that she had a violent pain in her stomach. [Mrs. Mustaphor] said to her, "stand up straight," and as she did so, [the midwife] shook Wilhelmina's stomach and while doing it, the afterbirth dropped upon the floor. Wilhelmina said that she felt so much better since that dropped. [Mrs. Mustaphor] took the afterbirth into her hands and showed it to Mrs. Law and pointed to where the navelstring was cut within about two inches of the afterbirth. Wilhelmina still denies that she had a child, but that had come just so from her. [The midwife] said to Mrs. Law we must go downstairs to look into the privy for the child, they did so taken a candle with them, but found no trace of it. Mrs. Law left [Mrs. Mustaphor] afterwards upstairs until she would come from downstairs where she went to get a cup of water for deponent to clean up the blood. While Mrs. Law was gone, [the midwife] asked Wilhelmina where was the child. She answered she had none. [Mrs. Mustaphor] said no more until Mrs. Law returned. She said to Mrs. Law, "there is a child here, that could not come without a child." She [Mustaphor] was recalled about 9 o'clock that evening and informed by Mrs. Law that Wilhelmina was bloating. [Mrs. Mustaphor] answered that was natural, as she had a baby and Mrs. Law would find it if she looked properly and told her to look in the closet of her room. The next morning, Mrs. Law told [Mustaphor] that she found the baby in the closet of her room. Mrs. Law asked [Mustaphor] if she wished to see the baby,

she said yes, and done so, the baby was in the bed in Wilhelmina's room. Wilhelmina was during this in the next room on the children's bed. Mrs. Law said as soon as she found the child she sent for the coroner.[59]

Elizabeth Mustaphor's testimony describes an experienced and highly capable midwife (and an observant witness) at work. Compared to the sympathetic but somewhat naive Mrs. Law, Mustaphor knew almost exactly what had happened in Wilhelmina Pohlman's room. Upon seeing Pohlman's condition and hearing her describe her pains, she "shook" the afterbirth out and told Mrs. Law that they should check the privy for the missing newborn. Indeed, as the case of Louisa Ladson suggests, the nearest privy was a likely place for a desperate woman to give birth. Not finding the child, she and Mrs. Law returned to Pohlman's room, where Mustaphor cleaned up the blood and quietly asked Pohlman what she had done with the child. However, the midwife seems to have had a sense that she ought not to interfere too far in such a matter; her job was to attend to the mother. She left the house but, called back "that evening," informed Mrs. Law that she would likely find the baby's body in the closet of Pohlman's room, where Mrs. Law did discover it and summon the coroner.

Mustaphor's thirty years of work as a midwife had enabled her to amass a considerable body of experiential knowledge about childbirth and how to care for mothers after delivery. She also appears to have known two of the most likely places where an urban domestic worker would attempt to hide a murdered or stillborn baby: the privy and the closet of her room.

[59] *State vs Wilhelmina Pohlman*, Charleston County Court of General Sessions Indictments, February Term 1880, box 30, folder #4341, SCDAH.

Her accurate assessment of the situation suggests that infanticides were probably more common than court records or official indictments indicate, as it seems certain that Elizabeth Mustaphor had dealt with such a dynamic before. Her testimony conveys a practiced confidence in her own knowledge and a bit of exasperation towards the rather clueless Mrs. Law. Ultimately, Elizabeth Mustaphor never testified against Wilhelmina Pohlman in Charleston's Court of General Sessions, because Pohlman never stood trial. She was so ill after the birth that, as her employer Mr. Law testified, the coroner agreed not to "take her away" "until she got better." The next morning, the well-meaning Mrs. Law "went upstairs with breakfast for her," only to find that Wilhelmina had absconded during the night. Charleston police never captured her.[60]

Elizabeth Mustaphor was not the only midwife who confidently volunteered her experiential medical knowledge during a coroner's inquisition. In an 1893 case from rural Oconee County, an African American midwife named Fannie Pugh pinpointed a possible suspect based on her local knowledge and experiences as a midwife. The situation was quite different from the inquisition about Wilhelmina Pohlman's dead newborn, because the coroner in *State vs Lou Goodine* was forced to search for the mother of a dead infant that had evidently been rotting in a well for several months in the summer.

Coroner's inquisitions show that such discoveries of infant bodies beside bodies of water, in wells, or buried in shallow graves were relatively common and often did not result in indictments. In the absence of helpful witnesses or clear suspects, coroner's juries were sometimes forced to conclude that the child had come to its death "at the hands of its unknown mother."

[60] Ibid.

In this case, a young Black woman, Mary Stevens, discovered the decaying body of an infant when she pulled it up from a well while drawing water for her employer, "Mrs. Walker." "I called Mrs. Walker," Stevens testified, "and she said she could not help me. I sent for Aunt Fannie Pugh. She came and helped me out." Once again, a woman confronted with a possible infanticide turned to the local midwife for assistance.

"Aunt" Fannie Pugh, a Black midwife "about forty" who worked as a farm laborer and lived with her husband and young son, testified about how she removed the infant's body from the well and examined it. Furthermore, she believed she had an idea who the child's mother might have been: "Jim Goodine's wife," a young Black woman named Lou Goodine. Pugh narrated her experience attending Lou Goodine as a midwife several months before, about the time she believed the baby found in the well had been born:

> [Lou Goodine] had sent for me the next day after she had been delivered of a child. She told me it had passed and I asked her where it was and she said she had left it up in the woods. I think this was in June… I and Mrs. Amanda Allen went up in the woods and looked for the child. We did not find it. We did not find any sign of it. [Lou Goodine] lives about 300 or 400 yards west of the well.

When cross-examined by the coroner, Fannie Pugh affirmed that "I do not know of any other [pregnant] women who lived near the well at the time that Lou was delivered of the child." Pugh even went above and beyond the coroner's probable expectations by suggesting a piece of evidence that the coroner had not considered. She noted that the cloth in which the infant's body

was wrapped when it was discovered looked as though it had been used for "straining wine," and added that the Goodines had recently made wine.

However, Lou Goodine defended herself by offering a counternarrative to the effect that she had suffered a miscarriage in June after only about two months of pregnancy. Lou described losing a "foetus" as "big as my fist" and testified that she had "left the foetus up in the woods." Her husband Jim supported her, testifying that he had gone to look at the miscarriage once Lou told him about it and found "but little blood and water." The physician in the inquisition, Dr. H.S. Mobley, supported the couple's statements with his own: "A foetus two months old in a woman about twenty-two years of age who had never been pregnant before would not show so as to be noticed by an ordinary observer. It would not be scarcely anything at all. You could hardly tell that it was a foetus," he testified. Therefore, if Lou Goodine's account of her miscarriage was accurate, then the "full term" child from the well could not have been hers.

The coroner's jury still had their suspicions, though. Very likely Fannie Pugh's firsthand knowledge of Lou's situation and of all the pregnant women in the area gave her testimony considerable credence. The coroner's jury accused Lou Goodine of the murder of her child, though a grand jury subsequently decided not to proceed with her case. Clearly, during coroner's inquisitions in which a physician and a midwife, or even a physician and a savvy witness, clashed, the doctor's medical license might do less to sway a coroner's jury than a convincing narrative and firsthand, experiential knowledge of the situation.[61]

As with many other infanticide cases, the truth of what happened to the child in the well remains as murky as the grand jury's reasoning, which they rarely recorded. Lou Goodine, a young married woman who had no children yet, and a respectable, literate African American

[61] *State vs Lou Goodine*, Oconee County Court of General Sessions Indictments, February Term 1893, box 6, SCDAH.

woman at that, seems like an unusual suspect for an infanticide investigation. Perhaps her marital status gave the grand jury pause. On the other hand, as the following section will discuss, post-Civil War South Carolina communities and courts investigated and tried married and widowed women for infanticide with surprising frequency.

5.3 Not the Usual Suspects: Married and Widowed Defendants in Infanticide Trials

Although Ian Pilarczyk, surveying infanticide investigations in nineteenth-century Montreal, wrote that "married women were virtually invisible in the annals of infanticide prosecutions," this was not the case in post-Civil War South Carolina.[62] In fact, a significant minority of accused women defy our expectations and several historians' conclusions about infanticide in that they were neither young and unmarried, nor childless. This is curious, but the poverty in which many married women lived in postbellum South Carolina could partially account for the deviation. Writing about Montreal, Pilarczyk noted that "most fundamentally, [married women] did not face the despondency associated with unmarried motherhood."[63] But this was not always so for southern women and especially Black southern women, who often worked regardless of their marital status.[64]

As Cullet Wright, a middle-aged Black mother of five young children accused of abandoning her sixth in 1877, said in her confession, "I could not be burdened with a baby." Already struggling to care for children, Wright and other married mothers in similar situations

[62] Pilarczyk, "So Foul A Deed," 624.
[63] Ibid.
[64] According to census data from 1870, more than 51% of Black women above the age of 17 worked outside of the home in Charleston, compared to less than 15% of White women. See Wilbert L. Jenkins, *Seizing the New Day: African Americans in Post-Civil War Charleston* (Bloomington: Indiana University Press, 1998), 172. In more rural counties, where most adults listed their occupations as "farmer" or, more commonly, "farm laborer," the percentage of Black women who worked outside of the home was likely even higher.

may have acted due to financial hardship, their need to work long hours to support their family, and a lack of childcare. Some, like Wright, seem to have abandoned infants in the hope that someone who could afford to care for the child would discover them. While sometimes abandoned babies may have been found and adopted, in most of the recorded incidences the infant had died by the time someone came across them.[65]

Spousal desertion was also an epidemic in South Carolina, where couples could not obtain a legal divorce except briefly during Reconstruction. The state's draconian stance towards divorce, which the "Redemption" General Assembly reinstated in 1878, in fact led to spousal desertion. Those wishing to leave their spouses, unable to obtain a divorce, often simply left them or set up house with someone else. Therefore, some women who appear to be married in the legal or census records on which I rely may have been living apart from their husbands when infanticide allegations surfaced against them, leading their communities and legal officials to treat them like unmarried women.[66]

Some married or widowed women with children pointed to their living children as a means of trying to defend themselves from accusations of infanticide. Sallie Williams of Richland County, a Black farm laborer and the recently widowed mother of at least three children, expressed outrage when Trial Justice L.J. Radcliffe came asking her about rumors that she had killed and buried a newborn. "She denied most particularly that she had had a child," Radcliffe wrote. "As an illustration she pointed to her grown daughter and other children and

[65] For Cullet Wright, see "A Ghastly Crime," July 21, 1877, *Charleston News and Courier*. For a similar case, see *State vs Emma Brown and Richmond Ellerbe*, Marlboro County Court of General Sessions Indictments, February Term 1889, #1771, SCDAH.

[66] In 1872, South Carolina's Reconstruction legislature succeeded in passing the state's first divorce law. A mere 157 couples obtained divorces on the grounds of adultery or desertion between 1872 and 1878. In that year, in another example of the "Redemption" South Carolina legislature passing statutes that sought to control citizens' and especially women's reproduction and sexuality, White Democrats repealed the divorce law. Remarkably, the state only passed a new law permitting divorce on narrow grounds in 1949. In this, South Carolina stood alone among the states. I discuss these laws at length in Chapter Six, "Illicit Acts."

said to me, do you see them? If I should have wanted to disposed of them, I could have done." To another witness Williams protested that "if she was dog enough to do such a thing, then she was lady enough to bring it to the world." The coroner eventually did find an infant buried "in a state of decomposition" on which he could not find "any distinguishing mark of violence." Sallie Williams then confessed that the infant was hers, but said "it had been born dead… and the reason why she hid it was because she did not want her daughters to see it." Williams went to trial, but her jury acquitted her. Like other defendants, she used the ambiguity of infanticide to her advantage in her defense, though her story was perhaps true.[67]

Other women, such as Flora D. Godwin, a White woman who kept a boarding house in 1880s Marlboro County, were widows for whom the arrival of a child so long after their husband's death would have looked suspicious indeed.[68] Communities seemed to have gossiped a good deal about widows' extramarital affairs and disapproved of them just as they did affairs between unmarried people. As historians have noted, cultural stereotypes about widows tended to cast them as lusty, "merry widows." They were sexually experienced single women and sometimes, women with property who might now pick and choose their lovers.[69]

In Godwin's case, her lover Austin Bouchier, a White man from up north, seems to have unwittingly revealed to half of Oconee County that he had gotten the widowed Godwin, who had two children from her marriage, pregnant. A local doctor, C.T. Weatherly, described how Bouchier "came to me and wanted medicine to cause an abortion, as he said he was in a scrape

---

[67] *State vs Sallie Williams*, Richland County Court of General Sessions Indictments, October Term 1878, #1052, SCDAH.

[68] For other cases of widows on trial for infanticide, see *State vs Sarah Calhoun*; *State vs Amanda Price*, Oconee County Court of General Sessions Indictments, November 1899 Term, box 6, SCDAH.

[69] See, for example, Jan Bremmer and Lourens Van Den Bosch, eds, *Between Poverty and the Pyre: Moments in the History of Widowhood* (New York: Routledge, 1995). In earlier times, inheriting widows had been frequent targets of witchcraft accusations, some of which possessed a sexual cast. See Carol Karlsen, *The Devil in the Shape of a Woman: Witchcraft in Colonial New England* (New York: WW Norton, 1987).

with a negro girl over the creek." Dr. Weatherly, however, "suspecting he was in a scrape up at Mrs. Godwin's and wanting to catch him" instead gave Bouchier "a small bottle of fluid, extract of licorice." The enterprising Dr. Weatherly then played detective. He testified that he later found the "bottle or one like it up at Mrs. Godwin's" when he investigated there.

The case, which tragically ended with Flora Godwin's death and Bouchier's dramatic flight from the state, also hints at the very different consequences for a White man who impregnated an unmarried Black woman compared to an unmarried White woman.[70] Austin Bouchier thought nothing of asking Dr. Weatherly for an abortifacient to resolve "a scrape with a negro girl," but another witness testified that Bouchier said he had to leave South Carolina because "he was blamed for a scandal that had been reported on Mrs. Godwin." Had the "negro girl up the creek" truly been the one pregnant by Bouchier rather than the White, widowed Mrs. Godwin, he probably would not have faced legal consequences or social stigma.

Indeed, I did not find any cases in which a White father was blamed or even named in connection with an infanticide where the accused mother was a Black woman. And, as the adultery chapter attests, adultery prosecutions of White male-Black female couples were quite rare. White officials and communities either looked the other way at such liaisons or blamed the Black woman involved, just as they had in antebellum times and would for decades to come.[71]

However, it must be said that few alleged fathers of any race stood accused of infanticide alongside or in place of the child's mother. As the next section discusses, female relatives and,

---

[70] Godwin died in February 1884, about a month and a half after she evidently gave birth. She was forty-three years old. Her death certificate and the court documents are silent on her cause of death. We certainly cannot rule out suicide, given the evident scandal of the affair and her indictment in court only days before her death. However, she may have succumbed to lingering postpartum complications or simply an illness. *State vs Flora D. Godwin and Austin Bouchier*, Marlboro County Court of General Sessions Indictments, box 4, #1521, SCDAH.

[71] Deborah Gray White, *Arn't I A Woman?: Female Slaves in the Plantation South* (New York: W.W. Norton, 1985), 30-46; Danielle L. McGuire, *At the Dark End of the Street: Black Women, Rape, and Resistance- a New History of the Civil Rights Movement from Rosa Parks to the Rise of Black Power* (New York: Knopf, 2010).

more specifically, the would-be grandmothers of infants constituted by far the largest group of people indicted as accomplices to infanticide.

5.4 "Alone and in Secret?": Grandmothers and Infanticide

Historians such as Elna C. Green, Simone Caron, and Felicity Turner have previously emphasized the solitary nature of infanticide and the social isolation of accused mothers.[72] Sociologist and legal scholar Michelle Oberman, who has written extensively about mothers who kill their newborns in the contemporary United States, has also found that most accused women attempted to conceal their pregnancies from their families and friends and dealt with childbirth alone.[73]

To an extent, my research supports these scholars' conclusions that women who committed infanticide tended to deliver and kill their infants "alone and in secret," as the formulaic language of nineteenth-century indictments would have it. Many cases of infanticide indeed involved young, unmarried women who worked as domestics or field laborers. Their financial stability was tenuous at best, and they knew that employers might fire or refuse to hire an unmarried mother. Many probably feared the social ostracization that would stem from raising an illegitimate and, sometimes, interracial child. We can assume, based on the work of sociologists like Oberman, that at least some young mothers who lived with their parents or other

[72] See Green, "Infanticide and Infant Abandonment in the New South"; Caron, "Killed by Its Mother," 220-222; Turner, "Narrating Infanticide," 130-132; Pilczyk, "So Foul A Deed," 620.
[73] Oberman, "Mothers Who Kill," 28-9; 50.

relatives feared punishment or negative reactions from their families if their sexual transgression became known.[74]

However, accused women did reportedly turn to family members, namely their own mothers, or the would-be grandmothers of their newborns, for assistance in childbirth and allegedly even the act of infanticide itself. Of the 106 infanticide cases I found in post-Civil War South Carolina, grandmothers were indicted in fifteen (14%). They were, in fact, three times more likely to be indicted in infanticide cases than the father of the murdered infant (indicted in only five cases).

Far from being clueless about their daughters' conditions, grandmothers played a prominent role. Even in cases where neighbors' suspicions of infanticide did not lead to anything beyond an inquisition into an infant's death, coroners and coroner's juries focused on the would-be grandmother of the deceased baby. Sometimes they targeted her as a potential accomplice, asking questions about her plans for helping her daughter care for the infant or her knowledge about childbirth, especially if the mother claimed the infant had been stillborn or had died shortly after birth.

In most of these cases, the grandmother found herself indicted alongside the mother of the dead child as an accomplice to the homicide. In *State vs Dafney and Jeannette Maxwell*, a case from Oconee County, neighbors and the coroner's jury seem to have immediately suspected Dafney Maxwell's involvement in the death of her daughter Jeannette's infant because Dafney alone assisted in the delivery, without "calling" for anyone, as her midwife neighbor Mary

[74] Ibid., 65-8. Interestingly, none of the defendants who gave statements mentioned their fears of familial disapproval or punishment, but that does not mean such a dynamic was absent, especially since many young women accused of infanticide lived with their parents or other relatives.

Crump complained.[75] Similarly, Rhoda and Anna Holman of Barnwell County stood trial for the murder of Anna's infant together in 1893. Like Jeannette, Anna was a young, unmarried Black woman who lived with her mother. The two women were acquitted.[76]

The phenomenon of indicting mothers *and* grandmothers for infanticide extended to White women. "Mrs. Martha Gunthorpe and her daughter Mattie, a young lady about grown," as a local newspaper referred to them, stood trial in Pickens County in 1883 after neighbors discovered a dead infant with a fractured skull "buried behind the chicken house" in their yard. The paper opined that the women belonged to "a very good family" and the evidence against them was "strong." It seems that the discovery of the infant's body brought to light an earlier affair between the unmarried Mattie and a White man. Both women were eventually acquitted.[77]

Sometimes coroners and communities blamed grandmothers for the death of an infant due to perceived neglect. They seem to have believed that the grandmother, if not her inexperienced daughter, should have known better how to care for a newborn. In *State vs Rhoda and Anna Holman*, the coroner's jury and grand jury both placed some of the blame for the infant's death on the grandmother Rhoda after Anna's infant died from a skull fracture caused by "falling on its head." The youth of Anna, described as a "colored girl about sixteen or eighteen," probably influenced their interpretation of the incident.[78] In 1872, Rosa and Sylvia Jackson, an African American mother and daughter, found themselves indicted in Abbeville County after twenty-year-old Rosa's newborn died. Sylvia drew neighbors' suspicions after they saw her

[75] *State vs Dafney alias Daffney and Jeannette Maxwell*, Oconee County Court of General Sessions Indictments, November Term 1881, box 2, SCDAH.
[76] July 18, 1893, *Charleston News and Courier*.
[77] December 14, 1883, *Weekly Union Times* (Union County, S.C.); February 8, 1884, *Weekly Union Times*.
[78] July 18, 1893, *Charleston News and Courier* (Charleston, S.C.).

burying the infant behind a nearby garden and the coroner's jury decided that the infant had died "due to the neglect of the grandmother." Sylvia alone stood trial, though she won an acquittal.[79]

Nor was Sylvia Jackson the only grandmother who stood trial for the infanticide of her daughter's child while her daughter escaped indictment. In an 1892 case whose outcome I could not discover, Jane Gilchrist of Edgefield County, a Black woman, confessed to killing her daughter Mary Jane's newborn infant while Mary Jane rested after the birth.[80] A Clarendon County jury tried Rachel Levine alone for the murder of her daughter Frances' infant, said to be the "colored child" found dead in a well in 1899, after Frances evaded capture and left the county. She was acquitted.[81] In 1884, Lizzie Mills of Spartanburg County, also African American, became the sole person convicted in the murder of her married daughter Mary Mackey's infant. Sentenced to hang and then to life imprisonment at hard labor in the penitentiary, Lizzie Mills eventually received a gubernatorial pardon in 1888, four years after her conviction.[82]

Even in cases where she was not a suspect, coroner's juries and petit juries still treated the grandmother as a likely source of information about her daughter's condition, health, and state of mind. While they could not be as impartial as a local midwife, grandmothers were important witnesses. Not only were they women who had given birth and so considered knowledgeable about pregnancy and childbirth, they also were likely to have the defendant's trust. Like the female relatives who attempted to assist sisters and cousins with abortions in

---

[79] August 28, 1872, *Abbeville Press and Banner* (Abbeville, S.C.); November 6, 1872, *Abbeville Press and Banner*.
[80] *State vs the Dead Body of Infant of Mary Jane Gilchrist,* Edgefield County Coroner's Inquisitions, SCDAH; "Charged with Infanticide," March 29, 1893, *Charleston News and Courier*. I suspect Jane Gilchrist was convicted and imprisoned.
[81] *State vs Rachel and Frances Levine*, Clarendon County Court of General Sessions Indictments, May Term 1899, box 5, SCDAH.
[82] Pardon Petition of Lizzie Mills, Pardon Book for Governor Hugh Smith Thompson, 185-6, SCDAH; September 6, 1888, *Charleston News and Courier*.

Cornelia Dayton's scholarship on eighteenth-century New England, would-be grandmothers were often privy to their daughters' most personal lives, serving as confidantes and advisors about matters that young women did not dare to share with others.[83] Experienced coroners knew this as well.

Indeed, grandmothers rarely disappointed their questioners. In inquisitions and jury trials, they provided commentary on their daughters' menstrual cycles, history of pregnancy, and experiences of childbirth, at which they alone often attended. They always gave testimony that supported their daughter's innocence; I found no occurrence of a grandmother purposely implicating her daughter in an infanticide or bringing accusations against her.

Mary Peters, whose daughter Mary Peters, Jr, shared her name, was likely the most crucial witness to testify in her daughter's defense in Richland County's Court of General Sessions in 1885. Suspicion had fallen on Mary Peters, Jr, an African American woman of about twenty who lived with her parents, after a neighbor found an infant's body hidden "under a log in the creek." The neighbor followed "a bare track" and "bloodstains" from the creek to the Peters' house where, he knew, Mary Peters, Jr, was rumored in the neighborhood to have been "in the family way." Mary Peters, Sr, a woman about forty, countered this evidence by insisting that her daughter "was always terribly sick with her monthlies, and that she knew nothing about whose baby it was in the creek." Mary Peters, Sr, was one of a paltry three witnesses who testified in her daughter's defense (the others being Mary Jr's father, Caleb, and Mary Jr herself), yet the newspaper covering the trial reported that the jury "was out only in a few minutes" before returning a verdict of "not guilty." Mary Sr's counternarrative—that her daughter had only gone

[83] Cornelia Dayton, "Taking the Trade: Abortion and Gender Relations in an Eighteenth-Century New England Village," *William and Mary Quarterly* 48, no. 1 (January 1991), 19-49.

down to the creek to deal with difficult "monthlies"—probably created a reasonable doubt in the jurors' minds as to Mary Jr's guilt.[84]

In *State vs Rosa Steinmeyer*, a rather convoluted case that unfolded in Charleston in 1896, Rosa Steinmeyer's mother offered testimony which successfully displaced the guilt onto her daughter's paramour, William H. Easterlin. According to Mrs. Steinmeyer's testimony (the documents and newspaper accounts do not give her first name, except that she was a White woman from an "old family" of some means), her daughter Rosa, pregnant by "a friend of the family," ran away from home in October 1896. When Mrs. Steinmeyer finally "discovered" her daughter living in another part of the city, she evidently "made it a habit to go to her daughter at night to lend her assistance and tend her in her confinement," though "she did not go to her in the daytime." In her testimony, Steinmeyer described her grandchild's birth: "it was a hearty girl, strong and lusty and [it] cried with such vigor that the neighbors might have heard it." On the following day, William H. Easterlin, who admitted to being the child's father, came and "took the child" after giving Rosa "his solemn promise that he would have it properly cared for" by "a colored woman up the street." According to Mrs. Steinmeyer, that was the last she saw of the child until a Black man walking by the railroad tracks discovered its body lying in a mill pond a few days later and alerted a trial justice.

Although she was clearly ashamed of her unmarried daughter's pregnancy, visiting her in secret at night, Mrs. Steinmeyer emphasized her motherly devotion to her daughter and, indeed, her newborn granddaughter. She used her narrative about the events as a means of countering the charges that she and her daughter had been involved in the infant's death. She described helping

[84] *State vs Mary Peters, Jr*, Richland County Court of General Sessions Indictments, October Term 1885, #1756, SCDAH; October 10, 1885, *Charleston News and Courier.*

her daughter care for the infant and "taking her daughter back into her house" as soon as Easterlin had left with the child.[85] In this case, her strategy worked.

Likely in part due to the Steinmeyers' Whiteness and class status, the newspapers accepted Mrs. Steinmeyer's narrative as an explanation for the infant's death. It was the rare case of the media covering a White man as the probable murderer of a child rather than a poor White woman or, even more frequently, a Black woman, and the papers seized on Easterlin as the culprit with unusual vigor. Perhaps White Charlestonians simply did not want to imagine two respectable White women from "an old family" being involved in an infanticide. Cast as the seducer of innocent Rosa Steinmeyer, the father William Easterlin was committed to jail without bail and tried alone for the infanticide. The newspapers, following the "profound sensation" of the case closely, expressed surprise when a jury eventually acquitted him due to lack of evidence, but, as we have seen, the outcome was typical.[86]

Other grandmothers attempted to head off the delivery of their daughter's illegitimate child by helping them to procure an abortion. In 1881 Oconee County, a jury convicted Lucretia Cain, a middle-aged White widow, and her African American neighbor Julia Simmons of "administering deleterious drugs with intent to procure a miscarriage" for Cain's thirteen-year-old daughter Lucy, evidently the victim of a rape. The two women stood accused of brewing a tea containing a laundry list of herbal abortifacients—"black pepper tea, puccoon root tea, cotton seed tea, bluestone mistletoe tea, and hartshorn"—and giving it to Lucy. The incident came to light after Lucy's male relative Richard Cain (an in-law of the widowed Lucretia) found out

[85] See *State vs Rosa Steinmeyer*; "Sensation," October 3, 1896, *Charleston News and Courier.*

[86] "Charging with Murdering His Illegitimate Child," September 30, 1896, *Manning Times* (Manning, S.C.); "Sensation," October 3, 1896, *Charleston News and Courier*; November 18, 1896, *Yorkville Enquirer* (Yorkville, S.C.).

about the abortion from Lucy and reported the women to a trial justice, but most such abortions probably remained secret.

Middle-class White women, not burdened by excessive community surveillance and with ampler resources and access to privacy, rarely stood trial for inducing a miscarriage. Thus, this trial was a rarity. One can imagine it was a sensation in the rural county.[87]

The unusual Cain case aside, it is a strange irony that court records concerning infanticide reveal incidences of motherly love on the part of grandmothers, albeit motherly love expressed through alleged deception and violence.[88] A number of would-be grandmothers who appeared in infanticide trials and coroner's inquisitions expressed little feeling for the newborn; their concerns were for the grown or teenaged daughters they had raised. Jane Gilchrist, tried for murder after she took her daughter's newborn out of the house and it was later found dead in a creek, testified that she had committed the act "to conceal her daughter's shame," because the

[87] *State vs Lucretia R. Cain, Julia Simmons, Ann Simmons, and James Delaney*, Oconee County Court of General Sessions Indictments, March Term 1881, box two, SCDAH. Explaining this case at length would require several pages or more. From what I was able to piece together by drawing on other court documents and census records, Lucretia and Lucy, a White widow and her daughter, lived on their farm near a Black tenant farmer from New York, James Delaney, his wife Ann Delaney neé Simmons, and Ann's sister Julia Simmons. In 1880, the middle-aged James Delaney, who may have been mentally or physically ill (an 1880 census lists him as "sick" with "neuralgia," a vague term in this period) stood trial for "the abduction and deflowering" of thirteen-year-old Lucy. He was sentenced to the penitentiary for seven years. A few months later, Lucy's mother Lucretia Cain, Julia Simmons, and perhaps James' wife Ann Delaney (she was tried but not convicted) seem to have brewed an abortifacient tea, given it to Lucy without revealing its purpose, and succeeded in inducing Lucy's miscarriage. Lucy's relative (probably her uncle) Richard Cain brought the matter to the attention of a trial justice. Lucretia Cain ended up spending two years in the penitentiary for inducing the miscarriage and Julia Simmons received one year. An earlier arrest warrant for Lucretia Cain for assault suggests that she had previously tried to beat Lucy in order to induce a miscarriage. A rather litigious woman herself, Lucretia had in the past charged several of her neighbors with petty offenses such as stealing a bell from her sheep's collar. The teenaged Lucy married soon after her mother was sent to the penitentiary.

[88] Even Lucretia Cain perhaps believed she was acting to spare her daughter the burdens of unwed motherhood at age fourteen, although the records suggest that Lucy did not voluntarily consent to the abortion. She testified against her mother. A rare variation involving a father convicted for killing his daughter's infant can be found in *State vs Grace and Travis Alford*, Marlboro County Court of General Sessions Indictments, May Term 1876, #1138, SCDAH. Travis Alford, the African American father of young, unmarried Grace, was convicted of the manslaughter of Grace's newborn by means of exposure, while Grace was acquitted.

child was "illegitimate."[89] While Jane Gilchrist sought to strategically defend her actions to the court, there is no need to discount her explanation entirely.

Census records reveal that many of these grandmothers were young themselves when they gave birth to their daughters. Sylvia Jackson, for example, was an enslaved teenager, in truth a child at twelve or thirteen years old, when she had her daughter Rosa in 1852.[90] She and other women like her may have feared their daughter was not ready for the burdens of unwed motherhood or worried she would encounter social ostracization. As with mothers themselves, the motives of grandmothers who played a role in the infanticides of their daughters' children were complex, influenced by highly individual situations and emotions, the necessity of working and the difficulties and costs of caring for children, and in some cases, mental illness.

5.5 "An Unfortunate Creature": Infanticide and Insanity

Discussions of mental illness played a role in infanticide more than any other category of crime in post-Civil War South Carolina.[91] Suspicions of mental illness appear in 9.5%, or 10/106, of the infanticide cases I studied.[92] If commentators and juries sometimes showed sympathy to women accused of infanticide, then this was doubly the case for women that communities perceived to be "of unsound mind" or "insane." Often communities and officials

[89] *State vs the Dead Body of Infant of Mary Jane Gilchrist,* Edgefield County Coroner's Inquisitions, SCDAH; "Charged with Infanticide," March 29, 1893, *Charleston News and Courier*.
[90] 1870 US Census.
[91] For gender, crime, and mental illness, including insanity defenses, in the nineteenth century, see Pauline Prior, *Madness and Murder: Gender, Crime, and Mental Disorder in Nineteenth-Century Ireland* (Dublin: Irish Academic Press, 2008); Elaine Abelson, "The Invention of Kleptomania," *Signs* vol. 15, no. 1 (1989): 123-143; Carole Haber, *The Trials of Laura Fair: Sex, Murder, and Insanity in the Victorian West* (Chapel Hill: University of North Carolina Press, 2013); Nancy Theriot, "Diagnosing Unnatural Motherhood: Nineteenth-Century Physicians and 'Puerperal Insanity,'" *American Studies* 30, no. 2, (Fall 1989): 69-88.
[92] It is quite possible, even probable, that mental illness entered the discussions around other accused women as well. Of the 106 cases I studied, nearly half of them only survive in brief newspaper accounts.

treated women they saw as insane as "unfortunate creatures" who deserved care and supervision, not execution or harsh punishment in the penitentiary.[93]

However, as with other offenses, a strong racial double standard existed. White women accused of infanticide and suspected of harboring mental illness invariably found themselves sent to the South Carolina Lunatic Asylum, later called the State Hospital, where they received the best care possible in such an overcrowded and unsanitary institution.[94] Officials sent some African American women accused of infanticide to the asylum as well, forgoing criminal trials, or acquitted them due to suspicions of insanity or "feeblemindedness." In other incidences, though, strong suspicions of mental illness were not enough to save Black women from the penitentiary or even the noose. Most notoriously, Newberry County hanged Anna Tribble, a young Black farm laborer, in 1892 despite community petitions and expert opinions that attempted to draw attention to her "very little intellect" and "semi-insanity."[95]

From the mid-nineteenth century, a discourse of "postpartum insanity" or "puerperal mania" emerged among physicians in Europe and the United States. As Nancy Theriot writes in her article on the illness as a social construction, "puerperal insanity" or "mania" was a distinctively mid-to-late-nineteenth-century disease that only later gave way to our contemporary "postpartum depression." Physicians often diagnosed women based on unmaternal behavior,

---

[93] The phrase comes from an article about Jennie Fyall, whose death sentence for infanticide the governor commuted to life imprisonment in 1880. See June 4th, 1880, *Orangeburg Democrat* (Orangeburg, S.C).

[94] The population of the South Carolina Lunatic Asylum, founded in 1821 and later called the South Carolina State Hospital, expanded considerably during the 1865-1900 period even as the state struggled to fund it. In 1870, 245 patients lived in the Asylum, but by 1900, the rechristened State Hospital held 1,040 people, including a separate building for women and segregated facilities for African Americans. Black patients in particular suffered from appallingly high mortality rates due to the inferior case they received in segregated facilities. See Peter McCandless, *Moonlight, Magnolias, and Madness: Insanity in South Carolina from the Colonial Period to the Progressive Era* (Chapel Hill: University of North Carolina Press, 1996).

[95] "The Sessions Court," July 13, 1892, *Newberry Herald and News* (Newberry, S.C.); "A Respite Granted," September 7, 1892, *Newberry Herald and News*; "Colored Woman Hanged for Infanticide," October 8, 1892, *Charleston News and Courier*; Greenlee, "Due to Her Tender Age," 107-8.

such as rejecting newborn or older children, an aversion to the strictly defined role of wife and mother, or perceived attempts to harm children. Experts distinguished three main types: mania during pregnancy, after parturition or birth, and during lactation, with the second variety being the most common.[96]

Although physicians in Britain and the northeastern United States produced the most influential texts on "puerperal mania," court and asylum records and newspapers demonstrate that experts and educated people in the U.S. South also knew these psychiatric categories.[97] Many White and Black women admitted to the South Carolina Lunatic Asylum between the 1870s and the 1900s (the period when "puerperal insanity" as an illness flourished in the medical literature) were committed after they demonstrated what their families and experts perceived as unmaternal behavior. Lou Simms of Anderson County, for example, arrived at the asylum after family and doctors found that she had neglected her children and exposed them to danger. A note in the asylum registry claims that Alice Biddle, twice admitted to the asylum and released, evinced "a particular desire to murder children," and Sallie Chapman of Cheraw County was admitted after she attempted to kill her child.[98] Instead of interpreting these women's actions as merely criminal or evidence of poor parenting, doctors and women's families saw them as manifestations of madness.

While ordinary South Carolinians probably had not read psychiatric treatises such as Bostonian physician Horatio Storer's influential 1871 book *The Causation, Course, and*

---

[96] Nancy Theriot, "Diagnosing Unnatural Motherhood," 69-70.

[97] For a few of these influential texts, see Horatio Storer, *The Causation, Course, and Treatment of Reflex Insanity in Women* (Boston: Lee and Shepard, 1871); David Dudley Field, *Emotional Insanity* (New York: Russell Brothers, 1873); Henry Maudsley, *Body and Mind: An Inquiry into their Connection and Mutual Influence* (London: Macmillian & Co, 1870).

[98] Greenlee, "Due to Her Tender Age," 116-8. Pauline Prior notes that a majority of women committed as "criminal lunatics" in Ireland between 1850 and 1900 stood accused of killing or harming children, which suggests that the link between unmaternal acts of violence against children and female madness were widespread in the West in the second half of the nineteenth century. Prior, "Murder and Madness," 19-36.

Treatment of Reflex Insanity in Women, they also demonstrated a willingness to interpret unmaternal behavior, including infanticide, as possible evidence of insanity.[99] Pickens County officials sent Rebecca Lewis, a White woman of unknown marital status, to the State Asylum in 1887 after she killed her young child. The local paper described her as a "crazy woman," saying "she acknowledges killing the child, but says if she had not done so she and the child both would have been destroyed by a great noise she heard coming, and to save herself she killed her infant child."[100] The tragic story brings to mind contemporary incidences of postpartum psychosis.[101] Although officials briefly committed Lewis to the county jail, she did not remain there long or stand trial before going on to an asylum.

The same was true of Sallie Dawson, another White woman from Pickens County. Dawson, a farmer's wife who killed her two young children with an axe in 1891, never stood trial, but received a diagnosis from local physicians that sent her to the State Asylum. Her plight attracted further attention from newspaper readers after she attempted to escape from the train transporting her to the asylum in Columbia. Dawson, described in the paper as "the insane mother," managed to evade the custody of the Pickens County official and the "colored woman" escort who were taking her to Columbia long enough to leap out the window of the unmoving train. The young woman ran to the nearby Saluda River, where the officer accosted her amidst her threats "to drown herself" in the river if he did not let her go home. The officer recaptured Dawson and she became an unwilling inmate of the State Asylum.[102]

---

[99] Storer, *Reflex Insanity in Women*.

[100] June 22, 1887, *Fairfield News and Herald* (Fairfield, S.C).

[101] See Jessie Manchester, "Beyond Accommodation: Reconstructing the Insanity Defense to Provide an Adequate Remedy for Postpartum Psychotic Women," *Journal of Criminal Law and Criminology* 93, no. 2 (Winter 2003), 713-52; Rebecca Hyman, "Medea of Suburbia: Andrea Yates, Maternal Infanticide, and the Insanity Defense," *Women's Studies Quarterly* 32, no. 4 (Fall 2004), 192-210.

[102] March 19, 1891, *Anderson Intelligencer* (Anderson, S.C.).

While police and legal officials appear to have treated most White women gently in cases of suspected infanticide and insanity, African American women of questionable mental soundness who stood accused of the same crime received treatment along a spectrum that varied from sympathy to condemnation to, tragically, execution. Newspapers, too, reported quite differently on Black women's insanity and infanticides. In September 1883, the *Newberry Herald* published a story about "Betsy Jones, colored," who killed her infant by "taking it by the heels and beating its body and head against whatever object might be near her." Despite this graphic account of Betsy as a brutal mother, the paper added that she had "been sent to the Lunatic Asylum" without standing trial, an indication that some Black women whose communities deemed them mentally unwell met similar fates as White women like Sallie Dawson and Rebecca Lewis.[103]

Coroner's inquisition and court records from *State vs Irene McRae* (1871) suggest that the Marlboro County coroner's jury and legal officials involved in the case extended some measure of sympathy to McRae, a young married Black woman accused of infanticide. The coroner and his jury of men, most of them African American, interviewed McRae the day after neighbors reported that she had "cut her child's throat with a knife and buried it." McRae's statement was less than coherent. The coroner asked her to clarify several times: "she then being asked was she sure that she was the one that cut the child throat, she said yes because there was no body there at the time to cut it but me. She does not know whether the child was born alive or not." When asked again "what she meant by cutting the child's throat," McRae "said she did not know." Her father-in-law Frank Alford testified that Irene continued to try to hide the infant's

[103] September 13, 1883, *Newberry Herald*.

corpse after he dug it up from where Irene had buried it and placed it in a box in their house: "Irene took the child and raise up the floor and put it under the house."

The case is unusual in that Irene McRae essentially admitted to cutting the newborn's throat, but she did not necessarily intend to admit her guilt. As an inexperienced mother who gave birth alone, "with no body there at the time," it is possible that she sliced the infant's throat by accident while trying to cut an umbilical cord wrapped around its neck. This could explain her conviction in her statement that somebody had "to cut it." Alternatively, Irene McRae may have been suffering from mental illness. The physician she enlisted to testify in her trial, Dr. J.T. Jennings, likely spoke about McRae's mental state. A jury acquitted her of all charges, presumably due to this informal insanity defense.[104] The coroner's jury's gentle treatment of Irene in their questioning, too, suggests they viewed her as sympathetic, pitiable, rather than merely criminal. I could not find evidence that the asylum in Columbia admitted McRae after her trial. She may have simply been released back to her family.

Pardon petitions for women convicted of infanticide demonstrate that other Black women suspected of being mentally unsound received less leniency in the legal system than McRae and Betsy Jones. In 1880, a jury convicted Jennie Fyall, an unmarried twenty-year-old Black woman from the small coastal city of Georgetown, of infanticide. Although the judge scheduled her execution, several hundred community members and "the most respectable and influential citizens, both black and white," petitioned the governor to pardon her. "The unfortunate woman, from what we can learn, is not at present, and has not been for months past, in her right senses,"

[104] No record of Dr. Jennings' testimony in Irene McRae's case survives, but as he was not the physician who conducted the post-mortem on the infant's body (that was Dr. J.L. Jordan), it is extremely likely that he gave expert testimony related to McRae's health and state of mind. This is even more probable because McRae and her family specifically requested that Dr. Jennings, a local practicing physician, "be bound over to testify" in her defense. In addition, as McRae essentially admitted to cutting the infant's throat, only an informal defense of mental incapacity would have resulted in her acquittal. *State vs Irene McRae*, Marlboro County Court of General Sessions Indictments, May Term 1871, #932, SCDAH.

a newspaper editorializing the case remarked, "and she seems to be a decidedly more suitable subject for the Lunatic Asylum than the gallows. Under these circumstances we think it would be little less than inhuman to execute the sentence of the law, which presumed, at the time which sentence of death was pronounced upon the unfortunate creature, that she was insane."[105] Here the editor seemed to be subtly criticizing the judge in the case, the notoriously harsh Judge A.P. Aldrich, for sentencing Fyall to hang even though her mental illness had been demonstrated by the defense or was otherwise apparent.

Yet while the citizens' petition saved Jennie Fyall from the gallows, the county sent her to the penitentiary rather than the asylum, a pattern notable in the trials of several other Black women who were convicted of infanticide despite evidence or suspicions of mental illness. Later that same year, Maria Eady of Williamsburg County narrowly escaped a death sentence for infanticide after citizens of the county and some jury members from her trial submitted a similar petition to the governor on her behalf. The brief petition recommended clemency for Eady on the grounds that she was "subject to epileptic fits, and of weak mind." Governor Johnson Hagood commuted her sentence to life in the penitentiary, where she presumably got to know Jennie Fyall, whose trajectory in the criminal justice system was similar to her own.[106] A brief note in the penitentiary superintendent's 1885 annual report indicates that Fyall died from typhoid pneumonia later that year, at the age of twenty-five.[107]

Petitioners also protested the death sentence a judge passed on Anna Tribble, a twenty-year-old Black woman convicted for the murder of her newborn in 1892, but Tribble met a

---

[105] June 4, 1880, *Orangeburg Democrat* (Orangeburg, S.C).

[106] Pardon Petition of Maria Eady, Pardon Book for Governors Hagood and Thompson, 1, SCDAH.

[107] In addition to Jennie Fyall, an appalling 13% of the South Carolina penitentiary's inmates, or 90 men and women, died that year, mainly due to outbreaks of contagious respiratory diseases. See *Report of State Officers, Board and Committees to the General Assembly of the State of South Carolina* (Columbia: State of South Carolina, 1885), 605.

harsher fate than even Jennie Fyall or Maria Eady. She became the first woman to be legally executed in Newberry County in twenty years. As Felicity Turner mentions in her study of infanticide, Tribble's hanging coincided with the execution of Caroline Shipp, another young Black woman, for infanticide in Gaston County, right across the North Carolina border.[108]

The 1890s saw an escalation of southern states' increasingly punitive policing and harsh sentencing of African Americans, including women. The uptick in South Carolina's legal executions of Black women, while numerically small, should be seen as part of this shift towards Jim Crow justice (or injustice).

In Anna Tribble's case, officials demonstrated an unwillingness to consider Tribble's circumstances, including what members of her community interpreted as a serious deficit in her mental capacity. "We are satisfied that if she committed the crime that she did so without knowing the enormity of the crime," the petitioners stated in their letter to Governor Benjamin Tillman. They added, "it is general impression of the community at large that she is a negro of very little intellect, and in fact too stupid to realize what she has done as an infraction of the law... Whilst she cannot be classed as an idiot or imbecile, yet her mind is of such a low type as to almost free her from guilt." In their characterization of Anna Tribble as "a negro of very little intellect," the petitioners, who included in their ranks experts such as a Clemson College professor and a physician, clearly drew upon notions of African Americans' innate intellectual inferiority.[109]

---

[108] Turner, "Narrating Infanticide," 183-4. Turner wrote that Caroline Shipp was White, but newspaper articles refer to her as Black. See, for example, January 25, 1892, *Asheville Daily Citizen* (Asheville, N.C.); "In the Matter of Commutations," December 17, 1891, *State Chronicle* (Raleigh, N.C.); January 8, 1892, *Charlotte Democrat* (Charlotte, N.C.).

[109] For the racialized (and gendered) nature of discourses of insanity and "feeblemindedness" at the turn of the century, see Laura Briggs, "The Race of Hysteria: "Overcivilization" and the "Savage" Woman in Late Nineteenth-Century Obstetrics and Gynecology," *American Quarterly* 52, no. 2 (June 2000), 246-273; Gregory Michael Dorr, "Defective or Disabled?: Race, Medicine, and Eugenics in Progressive Era Virginia and Alabama," *Journal of the Gilded Age and Progressive Era* 5, no. 4 (October 2006), 359-392.

Yet the community did attempt to save Tribble from the gallows, though their efforts proved tragically unsuccessful. Governor Ben Tillman refused to pardon Tribble or commute her sentence. And while Newberry County's former sheriff was among the men who signed Tribble's pardon petition, the *new* sheriff presided over her execution by hanging on October 7th, 1892.[110] It is difficult to imagine a more telling sign of the increasingly punitive state and even local officials' harsher treatment of African American defendants and convicts, to say nothing of Ben Tillman's punitive rhetoric on Black crime and the coming changes in the 1895 State Constitution, which essentially disenfranchised Black men.[111]

Taken together, the cases of Anna Tribble, Maria Eady, and Jennie Fyall suggest that communities and, to an extent, medical experts such as physicians who signed the women's pardon petitions remained more willing than legal and governmental officials to view Black women on trial for infanticide as potentially mentally ill "unfortunate creatures" rather than merely criminal "murderous mothers." Whites often evinced a tendency to interpret Black women's lack of mental soundness as innate intellectual deficiency rather than temporary insanity or "puerperal insanity," as they might suppose if the defendant was White. Nevertheless, White and Black South Carolinians demonstrated varying measures of sympathy for such women in their communities, even as state and county officials in the last two decades of the nineteenth century increasingly ignored their circumstances in favor of more draconian punishment.[112]

---

[110] Greenlee, "Due to Her Tender Age," 105-118. See also "The Hanging of Anna Tribble," October 12, 1892, *Newberry Herald and News*; October 12, 1892, *Watchman and Southron* (Sumter, S.C.).

[111] See Stephen Kantrowitz, *Ben Tillman and the Reconstruction of White Supremacy* (Chapel Hill: University of North Carolina Press, 2000), 198. As Kantrowitz shows, Tillman, who later became a Senator, went so far as to encourage lynching and played an instrumental role in calls for the 1895 Constitutional Convention. For exactly how disenfranchisement of Black men was accomplished, mainly through the "Byzantine complexity" of voting laws and processes which were applied to Black voters but not White voters, see Underwood, "The South Carolina Constitution of 1868," 11-12.

[112] Felicity Turner finds a similar decline in courts' and the states' leniency towards women accused of infanticide in North Carolina, Illinois, and Connecticut beginning after the Civil War. The notable shift in South Carolina appears

Conclusion

The increasingly punitive post-Reconstruction turn in the criminal justice system that primarily targeted African Americans and state and county-level efforts to punish the sexuality of unwed women, also exemplified in the 1878 adultery and fornication statute and the 1883 act outlawing abortion, influenced officials' and juries' draconian treatment of Black women accused of infanticide in particular. Communities and officials subjected young, unmarried women and especially unmarried African American women to surveillance. This likely led many to be indicted for the natural death of infants or for more ambiguous incidences of overlaying.[113]

Still, communities' suspicions and condemnations of women accused of infanticide did not always translate into harsh punishment, and especially not the punishment encoded in South Carolina's criminal statutes against murder: death by hanging. Between 1865-1900, only poor Anna Tribble in 1892 met this terrible fate, and not without protests and petitions by community members, medical experts, and newspaper editors throughout the state.[114] Even when the governor commuted women's sentences to life in the penitentiary, as he did in at least thirteen cases, a later governor usually pardoned the convicted woman after she had served an average of four to five years. In other incidences, communities, medical experts, and, to a lesser extent, officials gave credence to evidence that the defendant suffered from some mental illness that had influenced her to commit infanticide. If White, these women usually went to the State Asylum; if

---

to occur later (in the late 1880s-early 1890s) than Turner argues in the three states she focuses on in her dissertation, and I find the shift to be more ambiguous, if still clearly detectable. Turner, "Narrating Infanticide," 4.

[113] Turner, "Rights and Ambiguities of the Law," 2-3. A possible example of overlaying is *State vs Mary and Ben Silas.*

[114] "The Sessions Court," July 13, 1892, *Newberry Herald and News* (Newberry, S.C.); "A Respite Granted," September 7, 1892, *Newberry Herald and News*; "Colored Woman Hanged for Infanticide," October 8, 1892, *Charleston News and Courier*; Greenlee, "Due to Her Tender Age," 107-8.

Black, her fate was more uncertain. But White as well as Black southerners generally recognized that Black mothers might also act due to mental illness and, indeed, difficult social circumstances.

From midwives to grandmothers and other family members to trial justices and coroners and neighbors sworn in as members of the coroner's jury, infanticide investigations and trials remained communal affairs in post-Civil War South Carolina. By examining highly local records, we see that infanticide on the ground defies simple assumptions and narratives about why women acted as well as guilt or innocence and which actors determined case outcomes. Defendants, too, varied in their circumstances and status to a greater extent than historians have generally assumed. While poverty united most women accused and especially those convicted of infanticide, and Black women faced higher conviction rates and increased surveillance, local newspaper and court records provide glimpses into the reality that middle-class White women also committed infanticide. They were simply much less likely to be suspected or indicted for the crime.[115]

Convictions for infanticide and harsh sentences on the part of state and county officials escalated in the late 1880s and the 1890s, in accordance with South Carolina legislators' more punitive framings of other crimes and higher convictions rates overall. Yet juries continued to acquit more often than not. I have argued that this was primarily due to the persistent ambiguity of evidence in infanticide cases and women defendants' strategic use of these ambiguities in defending themselves.

[115] One thinks, for example, of *State vs Martha and Millie Gunthorpe*, in which a middle-class White woman and her mother were indicted for infanticide only years after the fact, when someone who had moved onto their old property discovered an infant's remains. The trial revealed that many people in the area had heard rumors about the alleged infanticide, such as the timing and the father's identity, but these only came to light after the discovery of the remains. Even then, the Gunthorpes were acquitted.

Chapter Four

"Appropriated to Her Own Use and Benefit": Theft

In the autumn of 1898, William Haselden Ellerbe, South Carolina's Democratic governor, received a petition for executive clemency. Labeled "the most humble petition for pardon of Ida Byas," the envelope included a letter to Ellerbe from Byas' attorney, a note from her pastor, and a petition signed by thirty Black and White men from Columbia recommending her pardon. Although her attorney penned the petition, Ida Byas addressed the governor directly in the letter. She introduced herself as "a humble negro woman who has lived in the city of Columbia all her life." She described how her husband "had cruelly deserted her and left her to take care of and support their only child, a boy of between four and five years of age." As the boy's "only means of support," Ida said, she "had been heretofore accustomed to earn such support for herself and the child by hiring herself out as a servant."

In November 1897, however, Byas was arrested for burglary, specifically for having broken into "the kitchen of [her employer] Mr. J.W. Williams" at night and "stolen some groceries of the value of five dollars," including flour, bacon, lard, and a bottle of syrup. She told how she struggled to make bail, spending three months in jail before she could raise the sufficient sum with the help of friends. At her trial in June 1898, a jury found Byas guilty of burglary, but recommended her to the mercy of the court. "The presiding judge imposed the lightest sentence the law provides for such offense," but this, Byas lamented, "was that your petitioner be confined in the State Penitentiary for the period of five years."

Having described her plight, Byas proceeded to convince the governor that she was not only a hardworking mother, a woman worthy of mercy, but perhaps an innocent woman as well.

"Without in any [way] impugning or intending to attack the said virdict," she "most humbly and respectfully" called his attention to the fact that the only convincing testimony against her had been that of Amy Wine. Amy Wine had "lived in the same room" where Byas slept, the room where "the stolen articles" had been found. Byas meant to suggest that Amy Wine was instead responsible for the theft. Furthermore, she continued, unless the governor pardoned her, her life would be "blasted by the stigma of this conviction, and her child without means of support, without parental care and protection."

The letter was bound together with a petition signed by thirty male citizens of Columbia who swore that until her arrest, Ida Byas had "born a good reputation for honesty and good behavior." Byas had also enlisted Richard W. Baylor, her pastor and a leader in Columbia's Black Baptist community, to attest to her good reputation: "I have never known any thing against her character." Even the complainant in the case, Byas' former employer J.W. Williams, recommended clemency. "I think she has suffered enough to satisfy me," he wrote, doubtless referring to the months that Byas had spent in the Richland County jail while awaiting her trial.

Despite the strength of the petition, the community support behind it, and Ida's strategic and moving appeals to his "kindness of heart," Governor Ellerbe wavered on whether to grant the executive pardon. He referred the petition back to Richland's county solicitor, who decided that Ida Byas' sentence should be commuted from five years in the penitentiary to one year, a decision that still left her young son without support.[1]

By the turn of the century, when Ida Byas submitted her pardon petition, South Carolina and other southern states had passed strict laws mandating harsh penalties for property crime and

[1] Pardon Petition of Ida Byas, Pardon Petitions for Governor Ellerbe, folder 40, South Carolina Department of Archives and History; *State vs Ida Byas*, Richland County Court of General Sessions Indictments, June Term 1898, box 47, folder #3232, SCDAH.

especially burglary. This was what Byas meant when she said the judge had sentenced her to "the lightest sentence the law provides"—a lengthy five years in the penitentiary at hard labor. As historians have demonstrated, African American men accused of even petty theft could be permanently disenfranchised by the 1890s. Many were sentenced to labor in brutal conditions on chain gangs, in penitentiaries, or in deadly convict labor camps.[2] As Tabitha LaFlouria and Sarah Haley have recently shown, Black women faced high conviction rates, lengthy and unhealthy incarceration, and forced participation in convict labor regimes, too.[3] Property crime and particularly theft, which Whites had since colonial times figured as an offense to which enslaved African Americans had a particular "disposition," constituted the crime for which most Black men and women were tried and convicted.[4] Indeed, in my survey of court records from six South Carolina counties, I found that 34% of women defendants from 1865-1900 were tried for theft.

Importantly, more than 90% of defendants were Black women.[5] The racialization of property crime in post-Civil War South Carolina was such that larceny prosecutions against Black men and women dwarfed those against White people. In 1881, for example, the city of Charleston reported that only 18 White men and 3 White women had been convicted of larceny that year, compared to 305 Black men and 51 Black women. While the city's statistics were not always exact, this report nevertheless suggests that about *seventeen times* as many Black women

---

[2] See Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the Nineteenth-Century American South* (Oxford: Oxford University Press, 1984); Christopher Waldrep, *Roots of Disorder: Race and Criminal Justice in the American South, 1817-80* (Urbana: University of Chicago Press, 1990); Matthew Mancini, *One Dies, Get Another: Convict Leasing in the American South* (Columbia, University of South Carolina Press, 1996); Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso, 1996).
[3] Tabitha LaFlouria, *Chained in Silence: Black Women and Convict Labor in the New South* (Chapel Hill: University of North Carolina Press, 2015); Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity* (Chapel Hill: University of North Carolina Press, 2016).
[4] In fact, more women were indicted for assault and battery in South Carolina, but more women were ultimately convicted for larceny. Assault cases tended to be resolved or dropped before trial, as I discuss in Chapter Two.
[5] This does not include cases for which I could not positively identify the defendant's race due to a common name or multiple possibilities for a woman's identity.

as White women were convicted of larceny. However, the same source notes that 399 Black women and 99 White women were arrested by the Charleston City Police in 1881. Clearly, White women were being arrested, but for crimes other than serious theft.[6] In part, this chapter addresses the racialization of property crime as a gendered phenomenon, by comparing and contrasting the experiences of Black women and the predominately poor White women who represented about 10% of women charged with theft (despite representing about 40% of the state's female population).

Yet studying incidents of larceny visible in local court records, like incidents of assault and cases where women acted as complainants, also illuminates Black and White women's politics. As Robin D. G. Kelley has written, politics "are not separate from lived experience or the imagined world of what is possible."[7] For women living through the tumultuous, uncertain times of Emancipation, Reconstruction, and the gradual, contested shift to Jim Crow, much did indeed seem possible. And when regional and state politics turned against the rights of African Americans and the laboring classes, when agricultural hard times became more common than good times, when employers refused to pay them what they were owed, women worked to ensure the material futures of themselves and their families by whatever means possible.

I argue that most women accused of theft "appropriated" items "to their own use and benefit," as indictments sometimes phrased it, to attempt to improve their lives and those of their families. They rarely hawked stolen items, but rather kept and made good use of them. Cases of

[6] *Charleston City Yearbook for 1881*, South Carolina Historical Society. I do not rely on these yearbook statistics overly much in this dissertation, in part because I do not think they were carefully compiled. Several yearbooks, for example, state that 0 White women were convicted of assault and battery that year when I know otherwise from the General Sessions Court indictments. The yearbook statistics may even have been doctored for ideological reasons.
[7] Robin D. G. Kelley, "We Are Not What We Seem: Rethinking Black Working-Class Opposition in the Jim Crow South," *Journal of American History* 80, no. 1 (June 1993), 78.

theft also demonstrate that women continued to work for their own "benefit" in the legal system, operating as actors rather than as mere passive subjects of a racist carceral system.

Like Ida Byas, a cook, most women indicted for larceny in post-Civil War South Carolina were Black women who worked as poorly paid domestics or agricultural laborers. In a continuity with the enslaved women who stole from White slaveholders as part of what Stephanie Camp described as their "politics of resistance," Black women occasionally "took" items from their employers or landlords.[8] Most commonly, they were accused of taking food, household items, or clothing, things that women then sought to incorporate into their own households, family kitchens, and wardrobes. Underpaid and exploited for their labor, many women likely perceived themselves as simply taking what they had earned but not received. Other impoverished women, Black and White, stole food, crops, or livestock to feed themselves and their families.

Like the pig owners in Hendrik Hartog's essay "Pigs and Positivism," who maintained and asserted their customary rights to keep pigs on the streets of nineteenth century New York City despite laws criminalizing their actions, many women accused of theft had clashed with employers and landlords over what they might acceptably "take" under informal rules of custom, rather than formal law.[9] My analysis here also owes a debt to Robin D. G. Kelley's work in recasting workplace theft as a form of "working class opposition" which challenges bourgeois and upper-class notions of what constitutes stealing.[10] Leigh-Anne Francis has gone a step

[8] Stephanie Camp, *Closer to Freedom: Enslaved Women and Everyday Resistance in the Plantation South* (Chapel Hill: UNC Press, 2004), 2. For theft, see especially 69, 89-91.
[9] Hendrik Hartog, "Pigs and Positivism," *Wisconsin Law Review* (1985): 899-935.
[10] Robin Kelley, *Race Rebels: Culture, Politics, and the Black Working Class* (New York: The Free Press, 1994), 18–20.

further and written about theft by Black women in turn-of-the-century New York as supplemental labor in the informal economy.[11]

While I found that rates of recidivism (repeat offenses) were much lower in post-Civil War South Carolina than among the women Francis focuses on in New York, I follow Francis, Hartog, and Kelley in interpreting theft as both working-class opposition to low wages and a way of asserting customary rights, particularly in the case of domestic workers. The common custom of "pan-toting" by African American cooks led to women's indictment for larceny, as employers accused women of taking too much from their employers' cupboards back to their own kitchens. Ida Byas is certainly a case in point. She was arrested for stealing food that she used to cook in her employer's home each day.[12] White women employers' custom of paying domestic workers "in-kind," in gifts or hand-me-downs rather than wages, also encouraged frustrated women to take what employers had promised but not given to them. This was particularly true of clothing, which freedwomen were frequently accused of stealing from female employers and former female enslavers in the months and years after the Civil War. Setting up new independent households with their families and crafting new identities as free women who claimed both citizenship and respectable womanhood, freedwomen valued clothing as visible markers of their new income, identities, and status.

In another type of battle over formal law and customary rights, some Black and White women were indicted for the petty theft of crops in the fields where they labored or for selling items under lien to creditors. In the post-Civil War South, farmers and sharecroppers placed their crops and other property under lien each year to survive in the dismal agricultural economy,

[11] Leigh-Anne Francis, "Steal or Starve': Black Women's Criminal Work in New York City, 1893 to 1914," *Journal of Women's History* 32, no. 4 (Winter 2020), 13-37.
[12] Pardon Petition of Ida Byas.

descending into debt. Women as well as men sometimes asserted the right to sell the crops they had grown regardless of the lien, leading to their criminal indictment.

Although rates of recidivism were never high for Black or White women in post-Civil War South Carolina, a smaller portion of women indicted for theft appeared to have stolen as one element of their work. Larceny prosecutions initiated by flustered men reveal glimpses of female sex workers who stole from johns' pockets. A few women boarding house keepers stood trial for larceny and breach of trust, taking extra money from guests or refusing to return money.

Whether a rare career thief or a domestic servant unjustly accused of having taken something from her employer's house, county-level court records demonstrate that women continued to act for "their own benefit" after they had been arrested for theft. Since women usually knew the people they had allegedly stolen from, they enlisted relatives or friends to negotiate with these citizen prosecutors. Literate women intervened with prosecutors directly by writing letters from jail. Adopting a penitent tone, professing innocence, or reminding employers of their loyal service, women and their allies strategically and sometimes successfully convinced prosecutors to drop the case against them.

When these tactics failed, women on trial deftly defended themselves in court using legal strategies, courtroom performances, and carefully constructed narratives. Some, like Ida Byas, pinned the blame on third parties and emphasized their respectability as hardworking women who dutifully and lovingly supported their children. Although court testimonies do not often describe defendants' behavior during hearings or trials, comments by judges, newspaper reports, and pardon petitions suggest that women performed gendered respectability, penitence, and at times racial deference to sway juries and judges. Those who did not—particularly, as I will discuss, young Black girls and teenagers who had not yet learned to employ such strategies as

well as older women—could face conviction and harsher sentences. Even after conviction, however, women shaped their pardon petitions by enlisting people to vouch for them and presenting their story to the governor in ways that justified their actions or explained their innocence.

However, such strategies became less successful in the last two decades of the nineteenth century due to the rise of a White Democrat-controlled government that legislated a decrease in the amount of discretion allowed to judges and the rise of what were effective "mandatory minimum" sentencing laws. In the final part of this chapter, I argue that southern legislators and officials in the last two decades of the nineteenth century framed and racialized the legal category of burglary, in particular, to severely punish Black women as well as Black men for even petty theft. The reframing of minor theft as burglary, like the reestablishment of arson as a capital crime and the passage of the 1879 laws criminalizing adultery and fornication, constituted a major plank in the criminal legal system's post-Reconstruction transformation into a Jim Crow institution.

3.1 "A Servant in His Employment": The Politics of Domestic Service in Postbellum South Carolina

After the Civil War, domestic service in the homes of Whites constituted the most readily available work for African American women until well into the twentieth century. Even as native and immigrant White women began in the textile mills that gradually sprung up across the piedmont South in the late nineteenth century, the racial prejudices of factory owners and White female workers alike prevented all but a few African American women from obtaining

employment in these industries.[13] Thus many Black women, along with some poor White women, had few options but to seek employment as domestics in White households. This was true for women in southern cities like Charleston as well as women who lived in small towns. In rural Oconee County, for example, 35-38% of African Americans in the largest towns of Center, Walhalla, and Westminster worked in domestic service in 1880.[14] Most worked as cleaning maids, nurses for young children, or cooks. Other women's employers made them take on a burdensome combination of all three roles in the same household.

In the years immediately following Emancipation, freedwomen who worked as domestics frequently lived in the same households with their employers, a living situation many disliked because it resembled slavery, forcing them to remain on-call at all hours and limiting their time with family. In South Carolina, ex-Confederates actually tried to codify the around-the-clock presence of Black domestics into law. One of the state's notorious 1865 Black Codes had declared that "servants...in all the domestic duties of the family shall at all hours of the day and night and on all days of the week promptly answer all calls, and obey and execute all lawful orders and commands of the family in whose service they are employed."[15] Although Congressional Reconstruction led to the abolishment of the Black Codes, some White employers maintained this mentality.

As Thavolia Glymph and Tera Hunter have demonstrated, the post-Emancipation household was fraught with racial and gender politics. It was often the site of contests of power

[13] Tera Hunter, *To 'Joy My Freedom: Southern Black Women's Lives and Labors after the Civil War* (Cambridge, Mass: Harvard University Press, 1997), 118.
[14] W.J. Megginson, *African American Life in South Carolina's Upper Piedmont, 1780-1900* (Columbia: University of South Carolina Press, 2006), 320.
[15] Rebecca Sharpless, *Cooking in Other Women's Kitchens: Domestic Workers in the South, 1865-1960* (Chapel Hill: University of North Carolina Press, 2010), 66. For the Black Codes, see Chapter One.

between White female employers and Black domestic workers.[16] Employers, some of whom had once owned their African American employees, paid women low wages or else paid them "in kind," giving them gifts of hand-me-down clothes in lieu of wages. Such "in kind" payments irritated some women, not just because they were receiving employers' castoffs, but because some employers failed to fulfill their promises. Hannah Langston, a Black domestic servant in Laurens County, defended her theft of her White employer's dress by explaining that the woman had promised to give it to her. "Mrs. Duncan had told her she would fix the silk dress for her to wear, but she had never worn it, nor had it been fixed," the clerk recording her words noted.[17]

Domestic workers generally preferred to "live out" in their own homes with their families and receive monetary wages so that they could choose what to do with their money. Indeed, by the 1870s, most Black domestics did so, having leveraged their new mobility as freedwomen, including the ability to quit and find new positions, to set the terms of their employment to an extent.[18] Even with these positive changes, domestics continued to work long, laborious hours for low wages and in constant proximity with White employers who expected them to show racial deference in all that they did. And many women began this work early in life. The youngest domestics, often teenagers, typically worked as cleaning maids or nurses for small children, while cooks tended to be older.

Cooks received slightly better wages than cleaners or nurses, but generally had to arrive at the house very early in the morning to start breakfast and then remain at work until after dinner. In her history of African American cooks in the South, Rebecca Sharpless finds that

---

[16] Hunter, *To Joy My Freedom*; Thavolia Glymph, *Out of the House of Bondage: The Transformation of the Plantation Household* (New York: Cambridge University Press, 2003).
[17] *State vs Hannah Langston and Louisa Pitts*, Laurens County Court of General Sessions Indictments, box 32, SCDAH.
[18] Hunter, *To 'Joy My Freedom*, 50-59; Sharpless, *Cooking in Other Women's Kitchens*, 89-92.

cooks commonly worked twelve to thirteen hours a day, even missing church and meals with their families to prepare food for their employers.[19] Many cooks engaged in "pan-toting," taking leftover food that they had cooked for employers home to their families. Rather than a breach of the rules, this was customary and even considered part of cooks' remuneration for their work.[20]

Yet as the story of Ida Byas suggests, a number of cooks and domestics did run into trouble for pan-toting; some employers did swear out larceny warrants against their cooks for this otherwise customary right. Many women were indicted for taking very little. In 1894, a Black cook named Elizabeth Johnson was charged with housebreaking and larceny for stealing a meager amount of food: "syrup of the value of fifty cents, meal of the value of fifty cents, and grits of the value of fifty cents."[21] Because pan-toting was common and domestics worked for miniscule wages, it must have been easy for hungry women or those with hungry children to justify taking extra food from their employer's cupboard, even if courts did not accept their justifications. In all their actions, women domestics sought to support themselves and their families, to maintain dignity, and perhaps to take what they felt they were owed but not given. This was particularly true for Black women, many of whom had engaged in thankless and unremunerative labor for decades before Emancipation.

Indeed, whether because of low wages, poor treatment, overwork, or a desire to avoid becoming "tied" to one family in a situation resembling slavery, domestic workers changed households frequently. White southern women continually complained of the difficulty of "keeping good help," comparing freedwomen unfavorably to the enslaved women who had, of

[19] Sharpless, *Cooking in Other Women's Kitchens,* 70.
[20] Ibid., 74.
[21] *State vs Elizabeth Johnson*, Richland County Court of General Sessions Indictments, box 45, folder #2697, SCDAH.

course, been forced to stay with the same family.[22] However, as Tera Hunter writes in her history of Black working women in Atlanta, domestic workers employed quitting as an effective strategy in response to poor compensation, long hours, or, at times, the physical and sexual abuse that women faced working in strange households.[23]

Court records suggest that some women who quit domestic positions tried to take things with them when they left. Lizzie Mettz, a young White woman, stood trial for the theft of her employer's "double case gold watch" in Columbia. Witnesses testified that Mettz said she had hoped to pawn the thirty-five-dollar watch "to raise money to go to Charlotte."[24]

At other times, however, domestics' employers blamed them for lost items or for thefts that others might have committed. Although it is impossible to determine how frequently employers unjustly accused domestics, evidence suggests that it was not uncommon. In Lexington County, a judge sentenced fifteen-year-old Louisa Esley, who had been employed as a nurse for a White family, to life imprisonment in the penitentiary for burglary in 1880 after a large amount of money went missing from the house. There was no direct evidence of Esley's guilt; she had been sleeping in a room with her young charge all that night. Nevertheless, she was convicted and sentenced to life in the penitentiary—an astonishingly brutal sentence. Esley spent five years in prison until a man confessed to committing the burglary for which she had been convicted. Finally, the governor pardoned her.[25]

---

[22] Wilbert L. Jenkins, *Seizing the New Day: African Americans in Post-Civil War Charleston* (Bloomington: Indiana University Press, 1998), 44.

[23] Hunter, *To 'Joy My Freedom*, 28. See also Powers, *Black Charlestonians*, 103, for the same phenomenon in Charleston, and Kelley, "We Are Not What We Seem," 76. Kelley notes that some Black domestic workers also threatened to quit or quit just before employers were to host important social events at their homes, threatening strikes in exchange for better pay and conditions.

[24] *State vs Lizzie Mettz alias Metts,* Richland County Court of General Sessions Indictments, box 46, folder # 2815, SCDAH.

[25] Pardon Petition of Louisa Esley, Pardon Book of Hugh Smith Thompson, 258-9, SCDAH.

The wealthy White Tupper family of Charleston prosecuted two of their domestic workers on little evidence. Within one year, they accused their baby's African American nurse of attempting to poison the child and swore out a warrant against another Black domestic, May Gaillard, for the theft of a pair of diamond earrings valued at four hundred dollars. "There is no direct proof of the defendant's having committed larceny," the trial justice in the latter case duly noted, "but… Mr. Tupper having gone to every method to try and find them still entertains the suspicion that she is guilty." Despite the lack of evidence against her, a jury found May Gaillard guilty, and the judge sentenced her to two years in the penitentiary. The accused nurse was more fortunate, winning an acquittal in court.[26]

The suspicions of the Tupper family serve as a reminder that while some domestic workers did indeed resort to theft, all domestic workers must have worried that their employers might accuse them. Misplaced money, earrings, or clothes could spell trouble for the woman who cooked and cleaned in the house for wages just as easily as if she had stolen the things. Indeed, it was not unknown for employers to accuse domestics of theft out of spite. In her 1968 memoir, civil rights activist Anne Moody recounted how when she was a teenager, her White female employer accused Moody and her brother of stealing from her house. Moody felt this was because the woman resented Moody's friendship with her son.[27] In such circumstances, employers may have concocted charges of theft for an excuse to dismiss a domestic employee or, more nefariously, sought to have them arrested and jailed.

[26] See Chapter Two for the case of the accused nurse, Rebecca Jane Maxwell. *State vs May Gaillard*, Charleston County Court of General Sessions Indictments, November Term 1893, box 40, folder #7734, SCDAH; *State vs Rebecca Jane Maxwell*, Charleston County Court of General Sessions Indictments, June Term 1893, box 40, folder #7560, SCDAH.
[27] Anne Moody, *Coming of Age in Mississippi* (New York: Dial Press, 1968), 167-70.

Laundresses, too, found themselves subject to occasional accusations of theft. Sometimes clothing that customers gave to a laundress for washing was never returned to them, suggesting that the laundress had appropriated the clothing for herself or her family. Other laundresses purposely withheld customers' clothing as a strategy to induce clients to give them fair compensation for their labor.

In 1899, Patience Jamison, a young Black woman, testified in her larceny trial about how she had been employed by the owner of a prominent hotel in Columbia to wash the hotel's linens. "Upon taking the last work to the hotel," she was not paid and so "she told the proprietor that she would not bring the wash she then had took until she was paid." The hotel owner promptly swore out an arrest warrant against her as well as a search warrant. Jamison claimed that the constables who searched her house not only confiscated the linens she had been keeping until the client paid for her laundry services, but also "a lot of other things which belonged to her," which she was charged with having stolen. Jamison was illegally tried without legal counsel, convicted, and sentenced to four months in the penitentiary or to pay a fine of fifty dollars. Upon her appeal, the judge granted her a new trial, the outcome of which I could not discover.[28]

Frustrated with working long hours for scant compensation and little to no opportunity for upward mobility, working women sometimes appropriated items from their employers' homes to attempt to improve their lives. Customary rights such as pan-toting and "in-kind" payments created conflict between White employers who interpreted these actions as theft and predominantly (though not solely, as we have seen) Black domestics who viewed "taking" extra food or clothing as justified by their toil. After food, clothing constituted the most common type

[28] *State vs Patience Jamison alias Boykins,* Richland County Court of General Sessions Indictments, October Term 1899, box 48, folder #3367, SCDAH.

of item which women stood accused of having stolen. The following section examines women's theft of clothing in greater detail.

3.2 Women, Identity, and the Theft of Clothing

Historians such as Tera Hunter and Laura Edwards have noted the importance of clothing to freedwomen as markers of their newly-won freedom, identity, womanhood, and individual expression.[29] Civil War diaries and early Reconstruction newspapers alike described freedwomen appropriating their former mistress' dresses and jewelry, searching abandoned Confederate homes for clothing, and walking around public spaces with parasols and fine clothing.[30] Some of these accounts surely reflect White southerners' horror at the idea of freedwomen going about their business dressed as "ladies," a sight they took as a sign of an antebellum world turned upside down. (White northerners sometimes expressed the same derision. Catherine Noyes, who had purportedly dedicated herself to instructing freedpeople in the Sea Islands, scoffed at "the most ludicrous toilettes" that freedwomen wore to church).[31]

Court records from Reconstruction South Carolina suggest that freedwomen both highly valued clothing as visible signs of their personhood and personalities and did sometimes appropriate others' clothing for themselves. For example, a White woman charged two young freedwomen in Marlboro County, Patsy McLaurin and Harriet Stewart, with "larceny of clothing" in 1867. The complainant claimed the two had stolen fifty dollars' worth of

[29] Patricia Hunt, "The Struggle to Achieve Individual Expression Through Clothing and Adornment: African--American Women Under and After Slavery," in *Discovering the Women in Slavery: Emancipating Perspectives on the American Past*, ed. Patricia Morton (Athens: University of Georgia Press, 1996), 227–40; Hunter, *To 'Joy My Freedom*; Laura Edwards, *Only the Clothes on Her Back: Clothing and the Hidden History of Power in the Nineteenth-Century United States* (Oxford and New York: Oxford University Press, 2022).
[30] See Hunt, "The Struggle to Achieve Individual Expression Through Clothing and Adornment."
[31] Glymph, *The Women's Fight*, 194.

inexpensive clothing, including cotton shirts and dresses, from her and two other White women. The constable found McLaurin and Stewart in the "abandoned smokehouse" where they had been living. He also found the clothing. As was often the case for poor women and newly free women, the clothing seems to have been the only thing they had in their possession.[32] It is worth noting, also that many freedpeople appropriated clothing and other items from houses abandoned when White Confederates fled before the Union armies.[33] Perhaps this was a factor in McLaurin and Stewart's case, explaining how they took clothing from several different women's homes.

While freedwomen represented the majority of women tried for the theft of clothing during the early years after the Civil War, poor White women also appeared as defendants in these cases. Nancy Redman of Oconee County, a poor, elderly White woman spent three months in the county jail after a White man accused her of taking "two cotton dresses belonging to [his] wife" from his "trash place." Although his wife had already discarded the inexpensive dresses, the complainant and his wife were evidently enraged to see Redman wearing them.[34] Charleston's early Reconstruction court dockets (documenting 1866-1868) list a number of White women who stood trial for larceny in the early months and years after the war.[35]

As with other types of crime, the White women prosecuted for larceny tended to be poor and first- or second-generation immigrants rather than native-born White women. This disparity reflected immigrants' greater financial and material deprivations and their lesser ability to resolve conflicts outside of court. Immigrants also had fewer important social connections and ties in the community, an important factor for defendants in their fight for acquittals. Indeed,

---

[32] *State vs Patsy McLaurin and Harriet Stewart*, Marlboro County Court of General Sessions Indictments, box two, cases #848 and #867, SCDAH.
[33] Thavolia Glymph, *The Women's Fight*, chapter one.
[34] *State vs Nancy Redman*, Oconee County Court of General Sessions Indictments, March Term 1870, box one, SCDAH.
[35] Abstracts of Criminal Cases from 1867-1868, Charleston County District Court Records, SCDAH.

given immigrants' overrepresentation as defendants in criminal courts, the broader question of whether native-born White southerners saw recent immigrants as "White" in the same sense as themselves deserves further exploration. I found great diversity in the court and census records of southern cities like Charleston, where many immigrant women from regions ranging from China to Italy to Ireland to Bohemia worked as boardinghouse keepers and, at times, domestics in other families' homes. Comparative studies such as Danielle T. Phillips-Cunningham's work on southern Black and Irish domestic workers as recent migrants in the U.S. North are much needed. Indeed, Phillips-Cunningham discusses workplace theft by Irish and Black domestics.[36] In my research, I found that most of this theft was not of valuables, but of more commonplace items such as clothing.

The majority of women on trial for larceny were accused of having stolen either food or clothing. During the aftershocks of the tremendously destructive Charleston Earthquake of 1886, the city police arrested ten African American women for stealing clothing and bedding from unoccupied houses.[37] Domestic workers regularly "borrowed" their female employers' clothing and even burglars who broke into stores or homes chose to take clothing and linens more than any other type of item. Francina James of Richland County, for example, was indicted for breaking into a store in Columbia and stealing "one piece of silk of the value of twenty dollars, one piece of India linen of the value of three dollars," and another silk valued at six dollars.[38]

Although some women, especially among the handful of habitual burglars (most of whom operated in Columbia), surely chose to take clothing and linens because they were easy to

[36] Danielle T. Phillips-Cunningham, *Putting Their Hands on Race: Irish Immigrant and Southern Black Domestic Workers* (New Brunswick: Rutgers University Press, 2019).
[37] Susan Miller Williams and Stephen G. Hoffius, *Upheaval in Charleston: Earthquake and Murder on the Eve of Jim Crow* (Athens: University of Georgia Press, 2011), 70.
[38] *State vs Francina James*, Richland County Court of General Sessions Indictments, June Term 1896, box 46, folder #2876, SCDAH.

transport, conceal, and trade, testimony from the court records demonstrates that many women sought to "appropriate" the clothing into their own wardrobes. Witnesses often testified that the defendant had been seen wearing the stolen clothes.

Other women worked with the clothing and linens they had taken to create new clothing. In an era when working women saw dressmaking as one of the best possible occupations for a woman, especially a Black woman, women embraced the creativity of dressmaking and altering clothing to suit their style.[39] Clothing was a necessity, of course, but many women also viewed it as a means of personal expression.

In the aforementioned case of Francina James, White storeowner William S. Moore testified that he knew James had stolen the fabrics after he saw her "in a dress made out of the silk." A Black woman testified that James had also given her friend Hannah Rivers "some silk to make a girl's dress" and that James' friend Charlotte Held had been seen wearing "a shirt waist which she said Francina James had given to her." Clearly, Francina James had made good use of the valuable fabrics, sewing and gifting them to friends, rather than simply hawking them. She pleaded guilty to the theft, and the judge sentenced her to six months in the penitentiary.[40]

Some women defended themselves of charges of stealing clothing by asserting that they had only intended to borrow the apparel for a special occasion. In 1889, Mary Muchaplease, a young Black domestic from Oconee County, stood trial for having stolen "one cherry colored satin sailor's waist dress" after its owner Mary Maxwell left it lying on her bed. She testified that

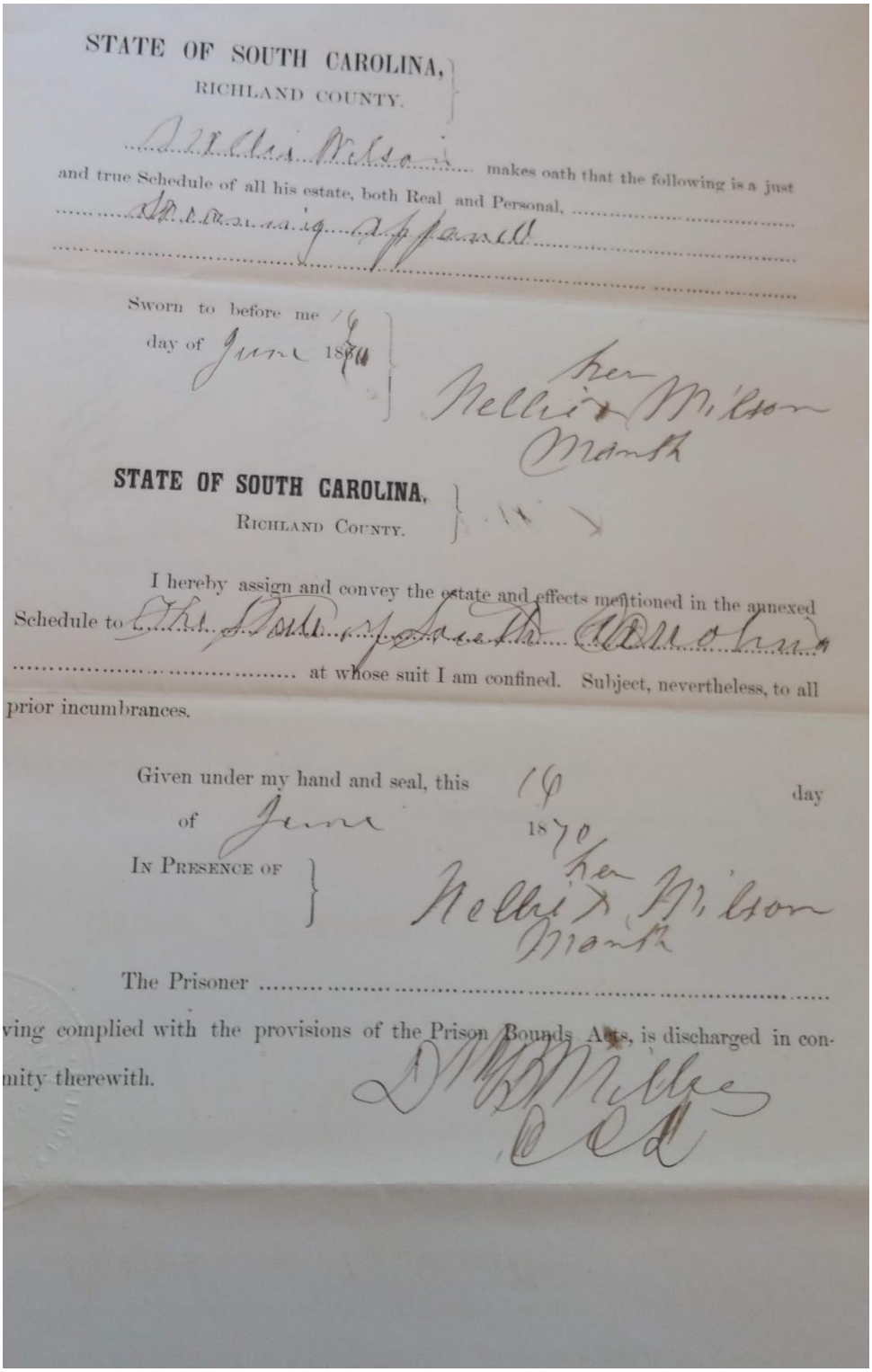
[39] Hunter, *To 'Joy My Freedom*, 26-28. Elizabeth Keckley, who became a dressmaker for Mary Todd Lincoln, is perhaps the most famous example of a freedwomen who found financial success as a dressmaker. See Elizabeth Keckley, *Behind the Scenes: Thirty Years a Slave, and Four Years in the White House* (New York: Oxford University Press, 1989).
[40] *State vs Francina James*.

she had gone to a party wearing the dress.[41] Other women borrowed clothing from their fellow boarders' trunks without asking permission, took clothing drying on lines in their neighbor's yards, shoplifted fabrics from stores, and picked up dropped scarves in the street.

For poor women in the postbellum South, clothing represented not only a necessity of life, but a means of individual expression and a marker of identity and womanhood in a society whose elites often sought to denigrate their womanhood. Black women and poor White women aspired to own and wear clothes that advertised their femininity, their sense of style, and their status or the status to which they aspired. The documents that recorded a woman's admittance to the state penitentiary usually noted what property she owned in case it needed to be levied to pay her court costs. Most clerks simply wrote "the clothes on her back" or "dressing apparel," as in the figure below (Figure 11). Nellie Wilson's only personal effects consisted of "dressing apparel," probably the clothes she wore at the time. Thus, for many women, their clothes were the only property to which they could lay claim.[42]

[41] *State vs Mary Muchaplease*, Oconee County Court of General Sessions Indictments, November Term 1889, box four, SCDAH.

[42] Laura Edwards has recently written about the importance of textiles as a category of property that was accessible even to enslaved people, married women, and other marginalized groups in the antebellum period. Laura Edwards, *Only the Clothes on Her Back: Clothing and the Hidden History of Power in the Nineteenth-Century United States* (Oxford and New York: Oxford University Press, 2022).



STATE OF SOUTH CAROLINA,
RICHLAND COUNTY.

Nellie Wilson makes oath that the following is a just and true Schedule of all his estate, both Real and Personal, Wearing Apparel

Sworn to before me this 16 day of June 1870

her
Nellie X Wilson
mark

STATE OF SOUTH CAROLINA,
RICHLAND COUNTY.

I hereby assign and convey the estate and effects mentioned in the annexed Schedule to The Sheriff of Richland County at whose suit I am confined. Subject, nevertheless, to all prior incumbrances.

Given under my hand and seal, this 16 day of June 1870

IN PRESENCE OF

her
Nellie X Wilson
mark

The Prisoner having complied with the provisions of the Prison Bounds Acts, is discharged in conformity therewith.

D. B. Miller
C.C.

Figure 11

Although most women stood trial for the larceny of items, others were accused of having stolen money. Here, too, women's alleged offenses were closely connected with their work and the circumstantial opportunities and hardships their work involved. This was particularly true for sex workers, women in a dangerous and stigmatized trade who sometimes took advantage of their intimacy with male customers to take money from their persons. Boarding house keepers, although viewed as more respectable women, also came into contact with customers' money and faced accusations of larceny or breach of trust. The following section focuses on these categories of theft.

3.3 "Robbed in Bed": Sex Workers, Boarding House Keepers, and Larceny

Given the drudgery and low wages that characterized employment as a domestic, it is unsurprising that some women chose or were driven to work in hospitality, broadly defined, instead. For middle-class White women, keeping a boarding house or running a hotel represented a socially respectable method of earning an income. Some African American women also had the financial capital to open hotels or large boarding houses. And women of all races and classes rented rooms in their houses to boarders. Other women ran brothels, less respectable businesses where men could purchase sex from women that often doubled as saloons. Some women engaged in sex work, exchanging sex with men for money or items such as food or cigarettes.

Editorials and crime reports from South Carolina newspapers suggest that White sex workers sometimes worked in brothels run by Black proprietors and vice versa.[43] For example, John Page of Charleston, a Black man, ran a bar where men could congregate with White prostitutes.[44] And although it may be unsurprising to learn that women plied this trade in the

[43] See, for example, "Crusade Against Disorderly Houses," *Charleston News and Courier*, September 10, 1888.
[44] Powers, *Black Charlestonians*, 254.

busy port city of Charleston, "houses of ill fame" were also present in the most rural parts of South Carolina, such as western Oconee County.

As the court records attest, some women boarding house keepers and sex workers used the nature of their work, namely their close encounters with men who might be drunk or unwary, to steal customers' money and possessions. In her study of Black women convicted of crimes in turn-of-the-century Philadelphia, Kali Gross identifies a similar method of theft that she calls "the badger game." Drawing on records from Philadelphia courts and prisons, she shows that a number of Black women in Philadelphia employed prostitution as a trick to steal from would-be White johns. They promised White men sex in exchange for money and then robbed the men once they were alone, either with the help of others or using physical force or weapons. Interestingly, Gross found that the stigma of White men pursuing sex with Black women led to acquittals for many of the "badger women" because authorities decided not to pursue the matter in the belief that the johns deserved what they got. In other situations, johns were surely too embarrassed to report the theft.[45]

I found court records concerning women who were accused of using similar methods to rob men, especially in Charleston. Sex workers stood trial for stealing from sleeping johns, brothel owners were accused of stealing from their customers' rooms, and boarding house owners were tried for what the law termed "a breach of trust" by refusing to return money that a customer had left in their safekeeping. As with the Philadelphia cases that Gross discusses in her study, few of these prosecutions resulted in convictions for the women defendants, probably in part because of the stigma surrounding interracial sex that Gross mentions.[46] Another

[45] Kali N. Gross, *Colored Amazons: Crime, Violence, and Black Women in the City of Brotherly Love, 1880-1910* (Durham: Duke University Press, 2006), 78-84.
[46] Ibid.

explanation stems from the fact that, in a house filled with intoxicated people renting rooms or arriving and leaving with women, it was often difficult to ascertain the guilty party.

In an 1897 example of "the badger game," a White man referred to as Mr. A.F. Ray met a Black woman named Ida Nelson on Market Street in Charleston. On her "solicitation," Ray followed Nelson back to a house, where he met three young men that Nelson identified as her brothers and a young woman that she introduced as her sister. Ray followed both Ida Nelson and her "sister," in fact a friend of Nelson's whose proper name was Lula Brown, into their room. Brown promptly asked him "Ain't you going to buy some beer?" Ray did so. Brown next asked him to give them some money for cigarettes, which he did. Then, after he had "laid on the bed with Lula Brown not over five minutes," Brown left the room, taking the lamp and leaving Ray alone with Ida Nelson. As Ray put it, "I lay on the bed with her to the satisfaction of nature."

As he was "buttoning up" his pants, however, Ray felt in his right pocket and discovered that "a role of bills" was missing. "My God I have been robbed," he exclaimed. "You don't think I took the money, do you?" Ida asked innocently. She offered to let him search her. Realizing that he had been duped, Ray demanded that she find "her sister" Lula Brown and bring back his money, or he would "have the place pulled." Nelson then departed, leaving Ray to stumble outside and call for someone to bring a constable. "Detective McMonors said that he would do all he could to get my money," he later told the trial justice during Lula Brown and Ida Nelson's preliminary hearing. But the case, like most involving theft by sex workers, was soon discontinued. The trial justice and A.F. Ray himself were uncertain which of the women were responsible, and what role, if any, the three men in the house had played in the theft. As it turned out, the three were brothers, but they were as unrelated to Nelson and Brown as the two women were to each other. The "sisters" were able to make their bail of one hundred dollars and Ida

Nelson signed her name on her bond.[47] However, although it seems that she may have continued to play "the badger game," her good fortune turned. While Lula Brown seems to have acquired work as a laundress, the same census shows that Nelson was a prisoner in the county jail in 1900.[48]

Across the board, women in post-Civil War South Carolina had very low rates of recidivism, but those few women arrested multiple times did tend to be sex workers. Doubtless this was in part because officials and communities were hyper-aware of their behavior and surveilled them. Mary Fricks, a White woman who lived in Oconee County during the 1870s and 1880s, found herself continually indicted for petit larceny as well as adultery and "keeping a house of ill fame."[49] Maria Lawrence, a Black sex worker in Charleston who went under the curious nickname of "Tiptoe Martin," was arrested for larceny several times in the 1880s and 1890s. She was sentenced to a year in the penitentiary in 1890, after a constable testified that he found her "struggling with the man she had stolen money from" while another woman aided her.[50]

While "Tiptoe" was evidently a well-known character on Princess Street (an 1888 *News and Courier* editorial referred to her as "the Queen of the Street"), most of the women I encountered in court records do not seem to have been professional prostitutes in the modern sense of the term.[51] Like Lula Brown and like the sex workers Timothy Gilfoyle describes in his

[47] *State vs Lula Brown, Ida Nelson, and Elias Green*, Charleston County Court of General Sessions Indictments, February Term 1897, box 42, folder #8954, SCDAH.
[48] *1900 U.S. Census.*
[49] See, for example, *State vs Mary Fricks alias Sponager*, Oconee County Court of General Sessions Indictments, June Term 1885, box two, SCDAH.
[50] *State vs Maria Lawrence alias Tiptoe Martin and Sarah Sutcliffe*, Charleston County Court of General Sessions Indictments, June Term 1890, box 38, folder #6859, SCDAH.
[51] Tiptoe received this epithet in "A Pitiful Story of Low Life," *Charleston News and Courier*, September 15, 1888. The editor reported that she had been arrested, but that her "return to her haunts is daily expected."

study of prostitution in New York City, *City of Eros*, most of these women alternated between prostitution, other employment, and living with men.[52] Although Charleston's *News and Courier* published scathing tirades against the "denizens" of Princess Street and other urban slums in the 1880s and 1890s, sex work in South Carolina in this period was more a patchwork affair compromised of individual meetings, whether in private homes, the backrooms of salons, or well-known brothels. Impoverished by low wages and a lack of opportunities, some women took advantage of the few resources available to them, engaging in sex for money as needed and sometimes seeking to take more from men's wallets than the johns had anticipated.

Women who kept boarding houses, on the other hand, often did so for decades and enjoyed social respectability. They earned income through the "wifely" tasks of housework, cooking, and sometimes nursing sick boarders. However, women who kept boarders also dealt with conflicts over rent, eviction, and boarders' bad behavior.

Renting to boarders was by no means easy work and could be downright thankless. In 1884, Rachel Baker, an unmarried Black woman indicted for larceny and breach of trust in Charleston, defended herself against a Black man's charges that she had refused to give him back the fifty-three dollars he had given her. She explained to the court that she had spent months caring for the prosecutor, Daniel Times, and his young daughter while Times was ill. She had used the money Times gave her "to wash and cook for him and pay his rents." In addition, she became his lover after he made advances towards her, determining "to keep me as his wife," as she said. However, Times failed to keep his promise to Baker. After the two had "a falling out," he even charged her with having stolen the money she had spent while caring for him and his

[52] Timothy Gilfoyle, *City of Eros: New York City, Prostitution, and the Commercialization of Sex, 1790-1920* (New York: W.W. Norton, 1992), 59-60.

daughter. Accepting Rachel Baker's explanation, the county solicitor determined that there was "nothing in the case" against Baker and discontinued it.[53]

On the other hand, some women who rented to boarders do seem to have taken extra money here and there. The Willes, a family of German-speaking immigrants from Hanover who kept a large boarding house in Charleston in the 1880s and 1890s, were indicted several times for stealing from customers, although none of the family were ever convicted. In 1881, a White railroad engineer named Zack Gober swore out a warrant against Ann Wille and Josephine Schultz (née Wille) for stealing an impressive "one hundred dollars in gold" and "a silk handkerchief" from his person as he slept. At the same time, he charged Louisa Wille, the forty-nine-year-old matriarch of the family, with assault and battery with intent to kill. He swore that she had pointed a pistol at him and "threatened to blow his damn brains out" if he did not leave the house. Presumably this occurred after Gober accused the younger Wille women of theft. Gober later dropped both charges, however, declaring that he had been "entirely mistaken" and that the women were "entirely innocent of any offense."

Had Gober really simply misplaced the money and the handkerchief (which seems unlikely, given that he first testified that he felt Ann pull it from his pocket)? Or did the Wille women return it or reach an agreement with him before the case went to court, negotiating an extralegal arrangement? The latter scenario seems most likely. Evidence from such dropped cases indicates to me that White southerners were often willing to bargain or reach extralegal arrangements with other White people that they might have refused to make with African

[53] *State vs Rachel Baker,* Charleston County Court of General Sessions Indictments, November 1884 term, box 34, folder #6047, SCDAH.

Americans. This is doubtless another important factor in White women's lower rates of indictment and conviction for theft.[54]

Louisa Wille was again indicted in the Sessions Court in 1882, this time for breach of trust. A White man swore that he had entrusted "ten gold pieces" to her while staying at her boarding house, but that she had "appropriated to her own use and benefit" one of the gold pieces, which he never received back. This time Louisa went to trial, but the jury found her not guilty.[55] Taken together, the two incidents suggest that the Wille women likely did run a boarding house where customers might leave with their pockets a little lighter. Nor were they unique, as we have seen. And while domestic servant theft and larceny by sex workers and boardinghouse keepers were more common in the cities and towns, several dozen women in rural counties stood trial for "stealing from the field" or appropriating livestock such as chickens or pigs.

3.4 Larceny in the Fields: Theft of Crops and Livestock

Just as domestic servants sometimes took food from employers' kitchens and smokehouses and incorporated it into their own cupboards, most women who stole "from the field" seem to have used the stolen crops or livestock to feed themselves and their families. Other women sold crops or livestock that were under lien to creditors in order to make ends meet or make an important purchase. They may well have regarded these transactions as perfectly licit, considering that they and their families had grown the crops and fed the livestock

[54] For an example of a case where a White complainant refused to bargain with a Black family, see *State vs Ola Riley*, in the burglary section of this chapter. *State vs Josephine Schutz née Wille and Anne Wille*, Charleston County Court of General Sessions Indictments, June Term 1881, box 31, folder #4587; *State vs Louisa Wille*, Charleston County Court of General Sessions Indictments, June Term 1881, box 31, folder #4581, SCDAH.
[55] *State vs Louisa Wille*, Charleston County Court of General Sessions Indictments, February Term 1882, box 32, folder #4710, SCDAH.

themselves. In this way, such women were engaging in everyday acts of resistance and insisting on customary rights in ways similar to domestic workers and cooks like Ida Byas, who took home some of the food she used to prepare meals on a daily basis.

In a typical case of livestock theft from 1885, Elizabeth Whiteman of Oconee County and her brothers John and William (all White) pleaded guilty to the theft of a hog that "had gotten loose" and wandered far from the property of its owner. By the time the pig's owner somehow "tracked the hog to the neighborhood where the defendants live," Elizabeth had cooked the pig into "hams." Remarkably, the owner claimed to recognize these hams as "the meat of my hog." Elizabeth Whiteman, though not her brothers, received one month's imprisonment in the county jail.[56]

In part, these cases involved battles over customary rights, namely the right to let a pig wander versus the right to appropriate a loose animal for oneself.[57] Typically, the courts sided with the property owner. The women's haste to cook the hogs, as in Elizabeth Whiteman's case, suggests not just that they sought to hide the evidence of their guilt, but that they may have been hungry. Like most women accused of theft overall, most women tried for livestock theft were poor or working-class. They also tended to live in rural areas, although it was far from uncommon for nineteenth-century city dwellers to keep chickens or other animals.[58]

Some farmers and landlords prosecuted women for the theft of small amounts of crops. Freedwoman Rose Watson stood trial for stealing "a bushel of peas" in 1869, and two young Black women named Elsey Wilson and Emma Tomlin were indicted for the theft of six

[56] *State vs Elizabeth, John, and William Whiteman*, Oconee County Court of General Sessions Indictments, March Term 1885, box three, SCDAH.
[57] See again Hartog, "Pigs and Positivism." Here we see a somewhat different conflict involving law, custom, class, and pigs!
[58] Ibid.

watermelons valued at fifteen cents in 1888.[59] It is easy to imagine these defendants simply picking a handful (or an armful) of crops when they imagined no one was looking, particularly if they were malnourished. Because many women and their families worked as sharecroppers or farm laborers on landlords' property, they may have regarded taking small amounts of the crop as a customary right.

Selling crops under lien or under a sharecropping contract, sometimes prosecuted as larceny, was another common offense for which women as well as men stood trial. As W.J. Megginson notes in his history of Black life in upcountry South Carolina, sharecropping and farm tenancy were ubiquitous among African Americans in rural South Carolina and, increasingly, also among a large portion of Whites who did not own farmland. Laws forbade sharecroppers and tenants from selling any of their harvest before they had paid the landlord's share. If farmers had bought fertilizer, seeds, or other products by placing their crops under lien to merchants, this had to be paid as well.[60]

Thus, a farmer could be prosecuted for selling cotton or other crops that he or she had grown, tended, and harvested themselves if the crops were under some form of contract. This is what happened to a Black Oconee County couple named Thomas and Elane Cleveland in 1877. Their landlord swore out an arrest warrant after he noticed that three hundred pounds of seed cotton that they evidently owed him as per their sharecropping contract had gone missing from the cotton house in his yard. At the trial, a White man testified that Thomas and Elane Cleveland had sold him over two hundred pounds of cotton in exchange for shoes, hats, and other clothing. Another man testified that he had bought a few pounds of cotton from Elane, "paying for it in

[59] *State vs Rose Watson*, Marlboro County Court of General Sessions Indictments, August Term 1869, box two, SCDAH; *State vs Elsey Wilson and Emma Tomlin*, Clarendon County Court of General Sessions Indictments, February Term 1888, box four, SCDAH.
[60] Megginson, *African American Life in South Carolina's Upper Piedmont*, 395-7.

coffee and candy." Elane's sweet tooth evidently did her no favors at her trial. The jury decided that she alone was guilty and sentenced her to a month in the county jail.

Paired with Elizabeth Whiteman's case, in which she was convicted of hog stealing but her brothers were acquitted, this suggests that the defense of coverture had little meaning in post-Civil War South Carolina. Rather, a number of juries found women guilty but acquitted their male relatives. Perhaps this is because women were often responsible for making household purchases and, as in Whiteman's case, for food preparation.[61]

Such larceny cases and prosecution for selling property under a lien increased during the late 1870s and 1880s as sharecroppers and tenant farmers found themselves hit by year after year of bad harvests, economic hardship, and cycles of increasing debt. Some desperate women, like Sarah Andrews of Clarendon County, even sold valuable livestock under lien. Andrews sold her "red ox," Dilly, to a man without telling him that the ox was under lien to her landlord, who promptly charged her with selling property under a lien. She must have been desperate indeed to sell an ox so crucial to her economic well-being.[62]

Other cases reflect ongoing disputes between neighbors over property and livestock grazing boundaries, tenancy, and even the right to cross fields where crops were grown. Susan Rothele, a White woman in Oconee County, stood trial after a White man accused her of the petty theft of "a bell collar and buckle from one of his cows."[63] A White farmer prosecuted Ann Jamison, a middle-aged White farm laborer, for "maliciously and unlawfully" trekking through

[61] *State vs Elane and Thomas Cleveland*, Oconee County Court of General Sessions Indictments, March Term 1878, box two, SCDAH.
[62] *State vs Sarah P. Andrews*, Clarendon County Court of General Sessions Indictments, January Term 1877, box two, SCDAH.
[63] *State vs Susan Rothele*, Oconee County Court of General Sessions Indictments, July Term 1873, box one, SCDAH.

his cotton field with her two children in 1882, damaging "his growing cotton."[64] In a rural society where farming and cotton growing were still "King" despite falling cotton prices and years of bad harvests that impoverished many White and Black farmers, leaving them landless and indebted, people took such conflicts seriously indeed.

The surviving testimony is sparse for these sorts of trials, in which women were often tried under the category of petit or petty larceny. Clearly, though, a number of defendants were indicted for selling crops that they themselves had grown but which were under a crop lien. We can infer that these women may have defended themselves in court by arguing that they had grown the "stolen" crops by the sweat of their brows. Fortunately, case files documenting accusations of theft that involved greater amounts of property reveal more details of the strategies that women on trial for theft used to defend themselves. This is the subject of the next two sections.

3.5 Defendants' Strategies: Negotiating with Prosecutors

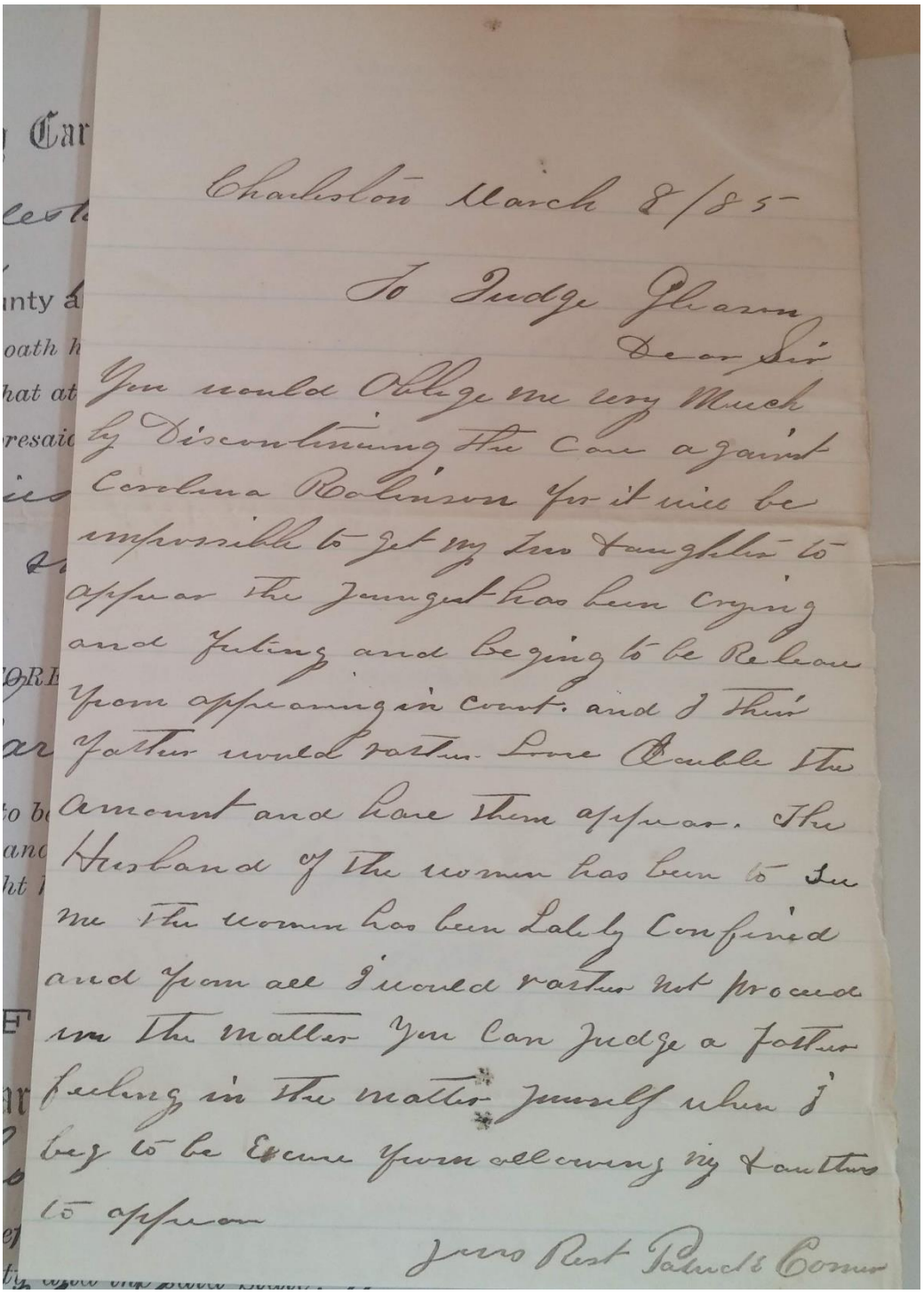
Women defendants in larceny trials utilized a variety of legal strategies, narratives, and extralegal means to try to sway the outcome of their trials. As discussed in Chapter One, some women first sought to avoid trial altogether by convincing the prosecutor to drop the case against them. Remarkably, they often did so while imprisoned in county jails, as the majority of women accused of larceny could not afford to make bail for some time. Some women deputized constables or friends to gather witnesses who could testify to their respectable character and honesty or provide them with alibis. Others sent husbands, parents, or other relatives to bargain with the prosecutor on their behalf. In a legal culture where prosecutors (complainants) initiated

[64] *State vs Ann Jamison*, Oconee County Court of General Sessions Indictments, November Term 1882, box three, SCDAH.

most criminal prosecutions by swearing out arrest warrants and subsequently exercised considerable control over how far the case would go in court, this was perhaps the most straightforward and the quickest strategy a woman might escape prosecution.

In an 1885 larceny case from Charleston, a White man named Patrick Connor charged Caroline Robinson, a Black domestic who worked in his home, with the theft of twenty-five dollars. Robinson was arrested and unable to make bail. Two days later, however, Connor wrote a letter to the county solicitor asking him to discontinue the case. His two teenaged daughters had been "crying" and "begging to be released from appearing in court," and were unwilling to testify against Caroline Robinson. Perhaps they sympathized with her. Perhaps they were afraid of appearing in court—giving testimony in court was not considered a respectable thing for an upper-class White woman to do, as I discuss later in this chapter. Furthermore, Conner explained in his letter, "the husband of the woman has been to see me. The woman has been lately confined, and from all I would rather not proceed in the matter."[65] Although Robinson's husband evidently did not make Connor sympathetic enough to Caroline Robinson to refer to her by something other than "the woman," he did succeed in convincing Connor to drop the case, in part by emphasizing Caroline's fragile health due to her pregnancy and, one imagines, by performing racial deference in order to accomplish his goal.

[65] *State vs Caroline Robinson,* Charleston County Court of General Sessions Indictments, June Term 1885, box 35, folder #6191, SCDAH.



Charleston March 8/85

To Judge Graham

Dear Sir

You would Oblige me very Much by Discontinuing the Case against Carolina Robinson for it will be impossible to get my two daughters to appear the youngest has been crying and futing and begging to be Release from appearing in Court and I think Father would rather Lose Double the amount and have them appear. The Husband of the woman has been to see me the woman has been Lately Confined and from all I could rather not proceed in the matter You can Judge a Fathers feeling in the matter yourself when I beg to be Excuse from allowing my daughters to appear

Yours Respt Patrick Connor

Figure 12

Other women's relatives also used gender ideologies and racial deference in strategic ways to persuade prosecutors to drop charges. After a White man named Phillip Gadsden accused his teenage daughter Florence of grand larceny, Archibald Miller, a Black day laborer,

approached Gadsden. He apologized on Florence's behalf and promised "to send his daughter out of the city [of Charleston] to get her out of the influences by which she was surrounded." Upon Archibald Miller's promise to send Florence to "her Uncle Fulmore in Sumter County," Gadsden agreed to drop the case against Florence. By relating to Phillip Gadsden as a concerned father and casting his daughter as a good girl surrounded by bad influences in the big city, Archibald Miller drew on narratives that somewhat transcended race, even as he also approached Gadsden with an apologetic attitude. Relatives' interventions often worked, perhaps because they could help complainants see defendants as real people embedded in family relationships.[66] Yet women advocated for themselves as well.

While the literacy rate for women accused of crimes in postbellum South Carolina remained quite low until about the 1890s, a younger generation of Black and White women were able to use their literacy as a tool in their efforts to vindicate themselves by intervening with their prosecutors. In 1890, the McGees, a White couple in rural Oconee County, accused their live-in White domestic Sallie Chastain of having stolen Mrs. McGee's watch. Chastain could not pay her bail, but she scribbled a letter to the McGees from the county jail. "I take the pleasure to rite you a few lines to let you no that I would be glad to see you all and talk with you a little while but it is not possible for me to see you soon," she wrote, with a hint of irony. "Mr. and Mrs. McGee I want to no whether you ever mist anything from your house or not. And Mrs. I want you to rite me all about it, whether I was an honest girl about your house. Rite to me as soon as you get this," she concluded.

There are multiple ways to read this letter: possibly Chastain meant to express her ignorance of anything having gone missing from the McGees' house. Perhaps she also hoped to

[66] *State vs Florence Miller*, Charleston County Court of General Sessions Indictments, November Term 1897, box 43, folder #9162, SCDAH.

induce guilt in the McGees for their treatment of her and her predicament in jail. She reminded them of her "honest" employment in their house. While her letter did not convince the McGees to drop the charges, Chastain's strategy may have proved effective in court. Although the trial justice who sent her case up opined that her guilt was "beyond question" based on the discovery of the watch in her possession, Sallie was found not guilty at her trial.[67]

Ella Williams, a Black domestic accused of breaking into her White employers' house in Columbia in 1900, also penned a letter to her employer prosecutors from the county jail:

> Dear Mrs. Whaley, I write to ask the murcy of you and Doctor while I now that I have treated you all wrong and had me in here for so doing if I could of placed the things back like they was when I find them ten minutes after I had did it I would of did so but could not. While we all doe things that are not write some time but if I can only get out of this I really will do nothing that is not write any more so Mrs. Whaley I write to ask if you and doctor will go my bond to get me out of gail i never will for get you if you will doe that for me. I am in pain from my knees to my shoulders from sleeping on the floor and it is so coal in here. Please mam do all you can for me.

Ella Williams' penitent tone, her evocation of the severe environment of the jailhouse and its painful effect on her, and her appeals to the Whaleys achieved their desired effect. The Whaleys paid her bail. Upon her release, Williams returned the things she had stolen and convinced Mrs. Whaley, who in turn convinced her husband, to drop the charges against her.

---

[67] *State vs Sallie Chastain,* Oconee County Court of General Sessions Indictments, July Term 1890, box four, SCDAH.

"For more than two years she has been my cook and house servant," Dr. Whaley told the county solicitor in his letter asking for the prosecution to be discontinued. "Her extreme penitence, confession, and return of what she has taken from me satisfies me… that the severe lesson she has received will arrest her career."

However, the fact that Whaley chose to add that Williams' crime "was due to her weakness and ignorance rather than to any innate depravity" points to the pervasive gendered racism that made calculated appeals to Whites' mercy like Ella Williams' letter effective.[68] While Whites viewed most White women as inherently worthy of some respect and mercy, most did not apply the same gendered ideas to Black women. Indeed, Whaley attributed Ella Williams' theft to her "weakness and ignorance" when she herself had noted that "we all doe things that are not write some time" and wrote that she would have liked to have returned the things "ten minutes" after she stole them. In her letter, Ella Williams appealed to the Whaleys' sense of morality and empathy as well as their pity. Like other women in her position, she also strategically leveraged their social connections and personal knowledge of the complainants. For example, she clearly knew that Mrs. Whaley would be more sympathetic than her husband.

Some women may have been entirely sincere, if still strategic, in their penitent letters to prosecutors or their insistence that they had not committed the theft. Others used both the racial and gender ideologies of their day and personal relationships with prosecutors to persuade them to ask officials to drop the complaint. As the case of the Wille women suggests, women with financial resources, and especially White women, had greater leverage in negotiating with prosecutors.[69] White prosecutors were more likely to view White women, especially middle-

[68] *State vs Ella Williams*, Richland County Court of General Sessions Indictments, April Term 1900, box 48, folder #3447, SCDAH.
[69] *State vs Josephine and Anne Wille*. The parties reached an agreement even after Louisa Wille evidently chased the complainant from the property with a gun.

class White women, as social equals with whom they could bargain. Moreover, most White women had better financial means to do so. When extralegal negotiations failed, however, Black and White women defendants turned to courtroom strategies.

3.6 Defendants' Strategies: Courtroom Narratives, Performances, and Pardon Petitions

Although some accused women and their allies succeeded in convincing prosecutors to drop the charges against them, others did not sway prosecutors or attempt to do so. These defendants instead used a variety of legal strategies in the courtroom. Some performed gendered respectability or penitence, emphasizing their difficult circumstances and justifying their actions. Others told strategic narratives about the crimes for which they stood trial, seeking to place blame elsewhere or create a reasonable doubt. Finally, some convicted women and their attorneys put their narratives and performances of penitence and respectability to paper by submitting petitions for executive clemency to the governor.

As Natalie Zemon Davis argues in her classic book *Fiction in their Archives*, talking about a crime, whether in a courtroom or in a pardon petition, requires that one "shape" a real event into a story, a coherent narrative with a beginning, middle, and end. Storytellers draw on literary or oral traditions, cultural tropes, and stock figures in crafting their narratives and making them resonate with their intended audience.[70] Often, as the scholarship of the Law and Literature movement has amply demonstrated, the story that the jury accepts is the one they find to be most coherent, believable, and culturally resonant rather than simply the one that is "true."[71]

---

[70] Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth Century France* (Stanford: Stanford University Press, 1987).

[71] See, for example, Robert M. Cover, "Foreword: Nomos and Narrative," *Harvard Law Review* 97 (1983-84), 4-68; Peter Brooks and Paul Gewirtz, eds., *Law's Stories: Narrative and Rhetoric in the Law* (New Haven: Yale University Press, 1996). See also Kimberly Welch, *Black Litigants in the Antebellum American South* (Chapel Hill: UNC Press, 2018), 30-35; 54.

Women defendants' testimonies indicate that many shrewdly understood both the art and value of crafting a narrative that would culturally resonate with their audience—White judges and typically White-dominated juries. Katy Alford of Marlboro County, a Black woman who was fifty years old when she stood trial for burglary in 1883, strategically drew on cultural tropes about race and gender in her statement to the trial justice at her preliminary hearing. Alford stood accused of stealing an astounding 120 pounds of bacon from the barn of Morris Covington, a White farmer who employed her as a farm laborer.[72] Covington testified that he had seen "Katy go in and out of the house twice the night the barn was broken open, once with a light." In her statement, Alford agreed that she had done so. But she told a different story about what she had done by the barn. She said that she had met "a black man by the crib door" who told her "that he was going to get some meat and would pay her five dollars if she would say nothing about [it]." When Alford did not agree to this proposal, she claimed that the man threatened her that "if she told he would kill her." She had no choice but to let him "get the meat out of the barn."

A Marlboro County grand jury found no bill in Katy Alford's case, suggesting that her narrative convinced them of her innocence and the likely guilt of the mysterious "black man by the crib door," whom Alford claimed to have never met before. Whether her story was true or not, she clearly drew upon rural Whites' fears about Black men roaming the countryside and breaking into barns. She also succeeded in casting herself as a victim, a loyal employee of Covington's who refused to accept the pay-off and had to be threatened to keep silent.[73]

[72] I suspect that complainants sometimes inflated the weight and amount of items stolen from their barns or smokehouses.

[73] *State vs Katy Alford*, Marlboro County Court of General Sessions Indictments, September Term 1883, box 6, case #1499, SCDAH. For a similar case, see *State vs Sallie Hill*, Marlboro County Court of General Sessions Indictments, September Term 1885, box 6, case #1627, SCDAH.

Indeed, a number of Black women on trial seemed to have strategically displaced blame onto shadowy, often unnamed Black men. They understood the racial and gender politics of their day very well. While White southerners did associate Black women with crime and especially with property crime, Black men bore the brunt of the criminalization of Blackness.[74]

Black women also translated their understanding of racial and gender ideologies into strategic courtroom performances that drew on "the politics of respectability."[75] Nineteenth-century court documents only reveal occasional, tantalizing glimpses of how women defendants physically behaved in the courtrooms of South Carolina. Where statements by the defendants have survived, we can read recorded testimonies in search of women's tone, but we can only guess at their physical gestures, posture, and the attitude they sought to convey. Yet women certainly employed not only rhetorical strategies in their trials, but also performances of femininity and respectability.

Women performed gendered respectability and penitence in the courtroom, often with positive results. In 1876, Governor Daniel Chamberlain immediately granted a pardon for Henrietta Reed, a young African American nurse convicted of grand larceny, after he received a petition from the judge and other citizens praising her "modest deportment" during her trial.[76] Julia Fraser, a Black woman convicted of larceny in Colleton County, also received a quick pardon in 1875. The judge wrote to Chamberlain to say that he "was touched by the evidence of

[74] Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2010). However, I would argue that Alexander's book goes too far and practically ignores the mass incarceration of women of color.
[75] For the politics of respectability, see Evelyn Brooks Higginbotham, *Righteous Discontent: The Women's Movement in the Black Baptist Church, 1880–1920* (Cambridge: Harvard University Press, 1993). See also Ariela Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Cambridge: Harvard University Press, 2008), 54; 100.
[76] Pardon Petition of Henrietta Reed, Pardon Book of Governor Daniel Henry Chamberlain, pg 64, SCDAH.

penitence and shame exhibited by the defendant."[77] Although in these cases courtroom performance did not win the defendants' outright acquittals, the language used in the pardons confirms that women's behavior at their trials had a significant impact on their legal fates.

On the other hand, women who failed or refused to perform respectability and penitence in court seem to have sometimes turned the jury or judge against them. These women refused to comply with the norms of courtroom behavior. Perhaps they were angry, scared, or felt they had been wrongly accused. They probably knew about courtroom strategies and recognized that behaving in certain ways, negotiating with officials or prosecutors, or telling narratives to counter the prosecution might improve their case outcomes. But for personal reasons, they were unwilling to play the game.

On the other hand, a subset of women on trial, Black girls under the age of eighteen, demonstrated varying levels of resistance to engaging in courtroom strategies and unawareness that certain strategies could potentially help them. Young, inexperienced, and often hauled into jail and then court for petty offenses for which White girls were hardly ever arrested, Black girls faced particular challenges and often harsh treatment.

3.7 "She is a Little Wretch of a Villain": Black Girls in the Courtroom

Court and pardon records indicate that Black girls and teenagers frequently found themselves figured as disorderly and unruly in the courtroom.[78] Tried and sentenced as adults

[77] Pardon Petition of Julia Fraser, Pardon Book of Governor Daniel Henry Chamberlain, pg 89, SCDAH.

[78] In her dissertation, Cynthia Greenlee finds that courts' treatment of Black girls on trial ranged from sympathy and allowance for youth to heavy condemnation, especially for violent offenses. I found variation as well, but I identified increasingly harsh treatment of Black girls and adolescents as defendants in the last two decades of the nineteenth century. Judges sometimes expressed a desire to teach the young defendants a lesson. In addition, girls often did not have the knowledge or resources to advocate for themselves as well as adult women. See Cynthia Greenlee, "Due to Her Tender Age": Black Girls and Childhood on Trial in South Carolina, 1885-1920," (PhD Dissertation, Duke University, 2014).

despite their youth throughout the nineteenth century in South Carolina and other southern states, they appear to have sometimes acted out in response to officials' lack of understanding or sympathy. Although the notion of childhood as a separate stage of life had grown in the cultural imagination of nineteenth-century America, Whites typically did not apply conceptions of childhood to the behavior of African American girls and boys. Rather than understanding Black children's conceptions of morality as incomplete and developing, officials and indeed most Whites treated Black children on trial as if they were small adults.[79]

"Impudent" behavior, a lack of deference or penitence, "pert" language, and a perceived failure to perform gendered and racial norms of obedience and submission could turn juries and officials against girls on trial. "She is a little wretch of a villain," Circuit Judge Hudson said of Axy Cherry, a ten or eleven-year-old African American girl whom he sentenced to hang in 1887. Cherry found herself charged with murder after the White infant she had been watching died under her care. Cherry's attorney subsequently convinced Judge Hudson to sign her pardon petition, where he noted that he did not believe Axy should be executed. However, the governor did not issue a full pardon. Instead, he sent the young girl to the penitentiary for five years.[80] In a grand larceny case in 1886, Judge A.P. Aldrich, who had been removed from the bench in 1867 for his refusal to allow Black jurors to serve in his court, sentenced a "young colored girl" named Rose Garrison to ten years of imprisonment in the penitentiary. In a pardon petition to the governor that was only granted after Garrison had already been imprisoned for five years, her attorney explained that Garrison had been "rather impudent and pert at the trial, which probably

[79] See Robin Bernstein, *Racial Innocence: Performing American Childhood from Slavery to Civil Rights* (New York: New York University Press, 2011); Tera Eva Agyepong, *The Criminalization of Black Children: Race, Gender, and Delinquency in Chicago's Juvenile Justice System, 1899-1945* (Chapel Hill: UNC Press, 2018).
[80] Pardon Petition of Axy Cherry, Pardon Petitions for Governor Ellerbe, SCDAH.

caused the Judge to be more severe in imposing the sentence than he otherwise would have been."[81]

In her study *Pushout: The Criminalization of Black Girls in Schools*, Monique W. Morris argues that Black girls in the school system and contemporary American society are subject to a kind of "age compression." "Along this truncated age continuum," she writes, "Black girls are likened more to adults than to children… this compression is both a reflection of deeply entrenched biases that have stripped Black girls of their childhood freedoms and a function of an opportunity-starved social landscape that makes Black girlhood interchangeable with Black womanhood."[82]

Unfortunately, little cultural progress seems to have been made in this respect; Morris could just as easily have been discussing the situation of Black girls in post-Civil War South Carolina. Sent out to work at a young age, usually as domestics in White homes, they had to work long hours for miniscule wages. Unlike White girls, who were rarely indicted in South Carolina's courts except in cases of murder and infanticide, crimes which could not be ignored, Black girls were not given much leeway for the inexperience and sometimes folly of youth.

This was especially true when the complainants against them were White and thus relatively uninvested in Black childhood. An especially troubling example can be found in thirteen-year-old Ola Riley's 1900 trial for burglary in Oconee County. In his testimony, White homeowner R.H. Meyers described leaving his house for a walk with his wife. On their way, they passed Ola and Thomas Riley, two of their Black neighbor Reuben Riley's children, "going up the hill" to their house. Meyers "cut through the woods" back to his unlocked house, where he

[81] Pardon Petition of Rose Garrison, Pardon Petition for Governor Richardson, SCDAH.
[82] Monique W. Morris, *Pushout: The Criminalization of Black Girls in Schools* (New York: New Press, 2016), 34.

heard Ola in "the front room." Seeing her start to climb out of the window, he "grabbed her by the leg and jerked her out on the ground." Ola "had a lap full of eggs in her apron and as she fell she busted them all over her clothes." Meanwhile he said he heard eleven-year-old Tom Riley "run out of the house." Meyers angrily "carried" Ola back to her parents, who assured him that they would give Ola "1,000 lashes for going in the house" and "make it up" to Meyers.

But Meyers refused to reach an extralegal understanding with the Riley family; instead, he swore out a burglary warrant against Ola and Tom Riley for the theft of two dozen eggs valued at thirty cents. The jury found Ola alone guilty, perhaps because she was the only one Meyers apprehended. The judge sentenced her to a year of labor in the penitentiary.[83] Although Ola's parents had tried to assure Meyers that they would physically discipline their daughter with "1,000 lashes" and repay him the thirty cents at which he valued the broken eggs, he rejected their attempts to frame her and her brother's offense as the misbehavior of children. Instead, he turned to a trial justice.

As with other areas of criminal law in postbellum South Carolina and, indeed, in our contemporary legal system, the moments when people choose to refer conflicts to the law reveal much about cultural ideas of criminality. Whereas a White girl her age would probably have been scolded and the victim of her theft would have reached "satisfaction" with her parents, Whites such as Meyers figured Ola Riley and Black girls like her as proper subjects for criminal court and appropriate inmates for the penitentiary. For this reason, part of Black girls' perceived disorderliness in the courtroom may have stemmed from their shock at finding themselves there.

[83] *State vs Ola and Thomas Riley*, Oconee County Court of General Sessions Indictments, November Term 1900, box six, SCDAH.

Ola Riley's trial unfolded in the last year that this study encompasses, 1900, and it also points to a major transformation in the ways in which people in South Carolina's legal culture framed and dealt with theft, in particular the crime of burglary. While the social context of theft and burglary appear to have changed little between 1865 and 1900, changing political regimes and attitudes meant that women faced different consequences depending on the political and legal climate in which they were indicted. The following section discusses the impact of such political changes in greater detail.

3.8 Burglary in the Post-Reconstruction South

In antebellum South Carolina, burglary had constituted a capital offense.[84] Enslaved people convicted of burglary by the rather makeshift slave tribunals referred to as Courts of Magistrates and Freeholders usually were executed or subjected to severe corporal punishment.[85] After the Civil War, the status of burglary as a capital crime was in flux (it depended largely on the discretion of the individual judge) until the delegates to the 1868 Constitutional Convention eliminated the death penalty for all crimes but murder. As discussed in Chapter One, they also outlawed the infliction of "corporal punishment upon any person whatsoever." As in other areas of their approach to criminal law, the Republican Reconstruction government wrote statutes that afforded a great deal of discretion to the judge. Although the representatives affirmed in the 1868 Constitution that "imprisonment for life should be substituted for the death penalty" in all previously capital crimes except for "willful murder," they allowed that "the period of

[84] Jack Kenny Williams noted that in 1813, 165 crimes carried the death penalty in South Carolina. By 1850, 22 crimes did. The state did significantly revise its draconian statutes during the antebellum period, although its rate of execution remained among the highest in the nation. See Jack Kenny Williams, *Vogues in Villainy: Crime and Retribution in Antebellum South Carolina* (Columbia: University of South Carolina Press, 1959), 100.
[85] See Chapter One.

incarceration" should depend on the circumstances of the crime and the "moral progress of the criminal" once he or she was incarcerated.[86]

In practice, Reconstruction-era judges did indeed attend to the circumstances of the theft and juries played an important role in determining sentencing because they had the power to "recommend" convicted defendants "to the mercy of the court." Women convicted of minor offenses such as stealing crops generally received small fines, while convictions for grand larceny and burglary meant she might spend one to five years (the most common sentence seems to have been two years) in the penitentiary. Although the Reconstruction-era penitentiary was hardly an ideal environment, it did not yet systematically employ convict labor. Pardon records also reveal that many women convicted of theft benefited from executive clemency, particularly during Governor Chamberlain's and Governor Moses Scott's terms.[87]

After Governor Wade Hampton's supporters "redeemed" South Carolina from Republican rule and President Rutherford B. Hayes removed the last federal troops from the state, effectively ending Reconstruction, the now White conservative-dominated General Assembly sought to increase the penalty for stereotypically "Black" crimes, including burglary and arson. However, there was considerable contention over what exactly the penalty for burglary should be. Legislative confusion characterized the next two decades, as South Carolinians debated whether burglary should be a capital crime, judges criticized what were effectively "mandatory minimum" sentencing laws, and the General Assembly amended the law

---

[86] *Proceedings of the Constitutional Convention of South Carolina, being held at Charleston, S. C., beginning January 14th and ending March 17th, 1868* (Charleston: Denny & Perry, 1868), 207.

[87] Governor Moses Scott was accused of selling pardons, though there is no convincing evidence of this. Some South Carolinians similarly maligned Republican Governor Daniel Chamberlain for his liberal use of executive pardons and my suspicion is that Chamberlain, an opponent of public spending for the penitentiary, sometimes sought to cut costs by pardoning prisoners. However, Chamberlain left a meticulously detailed pardon book documenting the 232 pardons he granted during his two terms as governor and his reasons for doing so. See Pardon Book of Daniel Henry Chamberlain, SCDAH.

several times. It seems likely that some men and women tried for burglary would have been uncertain what the legal penalty for their crime might be.

In May 1877, the General Assembly debated a bill that would make burglary, along with rape and arson, a capital crime, as they had been before Reconstruction. Yet several representatives expressed their opposition to this part of the bill. "I have never heard of such a thing as hanging a man for breaking into another's house," one representative declared. A White Republican representative compared South Carolina's proposed criminal laws unfavorably to that of the rest of the world, saying, "I have searched the criminal codes of the different states and of the world… and I have found no provisions in any of them such as are contained in this bill."[88] As the General Assembly continued to argue over the bill, leading citizens chimed in on the debate in newspaper editorials from across the state. Commentators particularly opposed the provision of the bill that would make breaking into an outbuilding punishable by death. "We cannot agree that a man should be hanged because he has broken into some outhouse within two hundred yards of the dwelling and stolen in the nighttime some five or ten dollars' worth of corn or bacon," the editor of the *Keowee Courier* wrote.[89]

In March 1878, the legislature finally reached a decision, amending the bill so that arson, rape, and murder would be capital crimes while a separate provision stated that those convicted of burglary would be "imprisoned in the state penitentiary with hard labor during the lifetime of the prisoner."[90] The enactment of this statute led to a number of men and women, including Louisa Esley, the fifteen-year-old nurse who was convicted for a burglary to which a man later confessed, being sentenced to the penitentiary for life. In Esley's pardon petition, the county

[88] "Condensed Report of Legislative Proceedings," May 17, 1877, *Edgefield Advertiser* (Edgefield, SC).
[89] "The Death Penalty," December 6, 1877, *Keowee Courier* (Walhalla, S.C.).
[90] *Acts and Joint Resolutions of the General Assembly of South Carolina, Passed at the Regular Session of 1883* (Columbia: Charles A. Calvo, 1884), 290.

solicitor noted "the punishment was certainly severe, but the presiding judge had no discretion, [because] it was the sentence of the law" when Esley had been convicted in 1880.[91]

In 1884, the Assembly changed the burglary statute yet again, adding a proviso that if the jury recommended the prisoner to the mercy of the court, the sentence would be reduced to "not less than five years" in the penitentiary.[92] This was the statute on the books when Ida Byas, the domestic worker and convicted burglar who petitioned Governor Ellerbe in 1898, was sentenced to five years in the penitentiary for stealing a few dollars' worth of groceries.

White conservatives enacted severe statutes against burglary and spent so much time debating it because they imagined burglary as a particularly reprehensible crime that always involved Black people violating the sanctity of a White home at night while the house's inhabitants slept. Tellingly, an 1879 proviso to the burglary statute stated that those convicted of "house-breaking in the daytime" would be sentenced to imprisonment in the county jail or the penitentiary "for a term not more than one year," rather than the minimum of five years for burglaries committed at night.[93] An 1883 editorial from Newberry, South Carolina put the matter even more bluntly: "common law burglary is looked upon as especially atrocious because it is committed in the dead hours of night, when all nature, except beasts of prey, is at rest, and because it is supposed to endanger the life of the lord of the castle—the owner of the dwelling house."[94]

Likewise, legislators and judges treated burglary with categorical severity, framing it as a predominantly Black crime. "Burglary is common among the negroes," Circuit Judge A.P.

---

[91] Pardon Petition of Louisa Esley, Pardon Book of Hugh Smith Thompson, 258-9, SCDAH.
[92] *Acts and Join Resolutions Passed at the Regular Session of 1883*, 290.
[93] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1879 and Extra Session of 1880* (Columbia: Calvo & Patton, 1880), 60-61.
[94] "For Life," July 19, 1883, *Newberry Herald* (Newberry, S.C.).

Aldrich wrote in an editorial. "It is a rare thing for a white man to be indicted."[95] Although Aldrich's racism is clear from the course of his career as a circuit judge, he was right that the vast majority of people tried for burglary were African American.[96]

This was partly because officials and courts consistently framed burglary, breaking and entering a home, as a crime that Black people, and not White people, committed. This pattern is particularly visible when we examine Black and White women. In six counties, I found no examples of a White woman being indicted for burglary between the years 1865 and 1900. However, I found several cases where White women *might* have been charged with burglary, had officials approached the case differently. In one example from Charleston, a White woman broke into another White woman's house "using false keys," but she was charged with larceny rather than burglary.[97] In 1884, Mary Ann Mahoney, another White Charlestonian, found herself charged with grand larceny rather than burglary, even though she was accused of having broken into a store and stolen roughly $350 worth of jewelry and a gun. Charleston's county solicitor dropped the case against Mahoney.[98] In contrast, Ida Byas, a Black woman, was convicted of burglary for having taken a few groceries from her employer's kitchen. The racialization of burglary in the courts belies the fact that White women sometimes broke into houses to steal, too. But officials and courts did not call their actions "burglary."

After Reconstruction, officials used increasingly punitive legal framing of burglary and sought to make the category encompass any theft, no matter how small, that involved entering a

---

[95] "The New Order of Things: Decrease of Crime in the State under Democratic Rule," March 18, 1877, *Edgefield Advertiser* (Edgefield, S.C.).

[96] Richard Zuczek discusses A.P. Aldrich in Zuczek, *State of Rebellion: Reconstruction in South Carolina* (Columbia: University of South Carolina Press, 2009). He consistently passed egregious sentences on African American defendants and, as Zuczek notes, openly instructed juries to acquit White men accused of killing African Americans in cold blood during the early postwar years. Zuczek, *State of Rebellion*, 35.

[97] *State vs Mary Rourke*, Charleston County Court of General Sessions Indictments, box 18, folder #1865, SCDAH.

[98] *State vs Mary Ann Mahoney*, Charleston County Court of General Sessions Indictments, November Term 1884, box 34, folder #6028, SCDAH.

home. This could even mean an unlocked house, a house where the defendant worked, or even an outbuilding where the "lord of the castle" was certainly not peacefully sleeping at night. In the case of Ola Riley, for example, the thirteen-year-old girl received a year in the penitentiary in 1900 for going into an unlocked house during the daytime and stealing eggs. Ida Byas was sentenced to five years for burglary in 1897 for "breaking and entering" into a kitchen where she worked. Judge Aldrich sentenced Clara Cummins and Harriet Scott, both young Black women, to ten years each in the penitentiary for the theft of two dresses in 1889.[99] Rose Peay's theft of four dollars' worth of food from a White man's barn was prosecuted as burglary because she broke in at night. Peay received 18 months in the penitentiary.[100]

In an especially egregious example of officials' increasingly punitive and racist framing of the crime of burglary, a judge sentenced Lucy Southerland of Oconee County, a Black girl who seems to have been quite young, to two years "at such labor as she is able to perform" in the penitentiary in 1886. Accused of burglary for going into an unlocked kitchen at 10:00 PM, taking "one tin bucket filled with lard," and bringing it back to show her sleeping parents, Southerland pleaded guilty to "compound larceny." The caveat "such labor as she is able to perform" points to Southerland's youth and perhaps physical delicacy or illness as well, but she received no mercy for her theft of lard from an empty kitchen.[101]

Indeed, despite White conservatives' legal framing of burglary as a crime committed "to the terror of the inhabitants" who slept in the house, female burglars nearly always entered empty

---

[99] *State vs Clara Cummins and Harriet Scott,* Richland County Court of General Sessions Indictments, March Term 1889, folder #2108, SCDAH.

[100] *State vs Rose Peay*, Richland County Court of General Sessions Indictments, October Term 1894, box 45, folder #2696, SCDAH.

[101] *State vs Lucy Southerland*, Oconee County Court of General Sessions Indictments, March Term 1886, box three, SCDAH. I was unable to find Lucy Southerland in the census, but I believe she was quite young based on the way she spoke in her recorded statement and her mention of showing the bucket of lard to her parents, who had been sleeping.

houses or outbuildings. Women may have been more reluctant than men to physically confront the inhabitants of a house. I found only one case in which women defendants appear to have broken into a house to steal knowing that the inhabitants were home.[102] Although women tried for larceny did occasionally use violence, as when Julia Hicks of Charleston "threw down" a young boy in the street and "robbed him of fifty cents," female burglars nearly always sought to steal in secret.[103]

Conclusion

Punitive and racist legal framings of larceny, convict labor, and disenfranchisement formed major planks of the oppressive Jim Crow regime that had spread across the South by the end of the nineteenth century. South Carolina's transition into a Jim Crow state took longer than most, due to the state's Black majority, the heavy role of federal forces and officials in reconstructing the first state to secede from the Union, and the strong leadership of Black Republican politicians, some of whom continued to hold political offices after the Democratic "Redemption" of the state. The beginning of Redemption saw White Democrats using their legal power to increase the penalties for larceny, including for burglary and the theft of livestock, which the General Assembly made a penitentiary offense in 1878. In 1882, the General Assembly amended the state constitution to restrict the suffrage rights of men who had been convicted of "burglary, larceny, perjury, forgery, and any infamous crime," crimes for which, as Judge Aldrich noted, White men were rarely indicted.[104] The ill-defined nature of "any infamous

[102] I discuss this case in greater depth in Chapter Two. *State vs Mary Hopkins, James McCall, Turner Smith, Taylor Smith, and Jane Smith*, July Term 1895, Oconee County Court of General Sessions Indictments, box 5, SCDAH. Two of the five burglars were women.
[103] *State vs Julia Hicks*, Charleston County Court of General Sessions Indictments, box 38, folder #6926, SCDAH.
[104] Pippa Holloway, "A Chicken-Stealer Shall Lose His Vote: Disfranchisement for Larceny in the South, 1874-1890," *Journal of Southern History* 75, no. 4 (November 2009), 944-945.

crime" also left much to the discretion of officials who might be more likely to prevent a Black man from voting for a crime that would not disenfranchise a White man. By the 1880s, even Black men convicted of petty theft could be disenfranchised for decades or the rest of their lives.[105]

Because nineteenth-century women had no suffrage rights to begin with, such amendments did not affect them. Yet, as this chapter and the work of other historians who have examined gender in relation to Jim Crow justice have demonstrated, it would be a mistake to think that increasingly racist legal framings of larceny, severe statutes, and penitentiary sentences only affected Black women by proxy.[106] Many Black women went to work in White households every day knowing that they might be accused of larceny if their employer misplaced something or if a theft occurred in the household, as fifteen-year-old Louisa Esley learned in 1880. The fearful knowledge that their employers and other Whites associated African American women, and indeed all African Americans, with petty theft must have weighed heavily on the shoulders of many women who never stole despite all the challenges that life in a deeply unequal society threw at them.

Those women who did appropriate and "take" things typically did so to stave off hunger and poverty, improve their financial and living circumstances, or to take compensation that they felt was justly owed to them or already belonged to them. The latter motivation is especially evident in cases where women were indicted for selling crops or livestock that were under a lien, when domestic workers "toted" extra food home from their employers' kitchens, or when

---

[105] Ibid., 950.

[106] See, for example, Tabitha LaFlouria, *Chained in Silence: Black Women and Convict Labor in the New South* (Chapel Hill: University of North Carolina Press, 2015); Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity* (Chapel Hill: University of North Carolina Press, 2016); Kali N. Gross, *Colored Amazons: Crime, Violence, and Black Women in the City of Brotherly Love, 1880-1910* (Durham: Duke University Press, 2006).

laundresses withheld customers' clothing until they were paid for their labor. A few career female thieves did operate in cities, but the vast majority of women were only indicted for larceny once in their lives. Their decisions to take extra food, sell crops under lien to clothe their children, or even pick up an employer's discarded "cherry-colored satin sailor's waist dress" to wear it to a party can be read as moments of "everyday acts of resistance" and working-class opposition.[107]

Importantly, court records demonstrate that Black and White women's efforts to make ends meet and better their lives and their families' lives extended to the courtroom; they did not simply accept their legal fates with bowed heads. Even from county jails, they bargained with prosecutors through intermediaries or letters and enlisted witnesses to testify in their defense. Women on trial related narratives that sought to plant doubt in the minds of jurors or justify their actions. They performed penitent femininity, racial deference, or gendered respectability as a means of influencing jurors and judges. Despite increasingly punitive statutes related to theft and officials' racialized enforcement of such laws, women defendants in post-Civil War South Carolina consistently and often successfully used extralegal and legal strategies to advocate for acquittal or lesser sentences.

[107] *State vs Mary Muchaplease*. See Kelley, "We Are Not What We Seem," 76.

Chapter Five

"She Should Burn it in Ashes":
Arson

On April 10th, 1878, a twenty-three-year-old African American farm laborer named Laura Thorn and her husband Eli stood trial on the charge of setting fire to a smokehouse. The smokehouse belonged to Daniel Nelson, an elderly White farmer on whose land Laura and Eli had until recently worked as sharecroppers outside of Columbia, South Carolina. At the turn of the year, the Thorns had decided not to renew their annual contract with Nelson. They determined to "move off the place" and find work elsewhere. As they drove up the road, however, Constable Joe Harris approached and informed them that the bushels of corn on their wagon were being confiscated to settle "a provisions debt" that they owed to Daniel Nelson. According to state witnesses, the Thorns became incensed and, eventually, incendiary. Reuben Walker, a fellow sharecropper, testified that he heard Laura Thorn say "that before the corn should do Mr. Nelson any good, she should burn it in ashes." On the night of February 25th, when Nelson's smokehouse caught fire and partially burned to the ground, Walker and several other neighbors recalled Laura's threat. They reported her words to Nelson, who initiated an arson prosecution against the Thorns. In Richland County's Court of General Sessions, Judge A.J. Shaw sentenced both Laura and Eli to fifteen years of hard labor in the state penitentiary. The Thorns appealed for a new trial. When the judge denied the motion, they and their attorney then attempted to file paperwork for an appeal to the South Carolina Supreme Court on the grounds that the guilty verdict was "against the weight of the testimony" in the case and that the

judge had prejudiced the jury against them with his instructions. However, both motions failed, and the Thorns were sent to the penitentiary.[1]

Although it was a relatively uncommon crime for women, arson played an outsized role in late nineteenth-century discourses about race and property crime. Legislators and officials repeatedly debated the proper punishment for setting buildings ablaze, alternating between recommending capital punishment and more situationally dependent sentencing. White southerners consistently racialized arson as a serious property crime that Black people committed against White property owners and landlords, a characterization that had some basis in reality. Arson did indeed constitute an act of economic and labor protest by Black southerners, especially against planters and landlords. Yet White southerners, too, committed arson, burning Black churches and schoolhouses.

I argue that arson was a racialized crime that revealed and tested tensions in communities as well as, in the case of women accused of arson, the reality of Black and White women as economic actors. Like infanticide, the subject of chapter five, arson often provoked significant communal investigation and negotiations about the meanings of a crime—in this case, the burning of a house or farm. Although contemporaries occasionally framed arson as an act of violence or attempted murder, I found that most women defendants stood accused of setting fire to barns, farm buildings, or smokehouses rather than dwelling houses. This supports my interpretation of arson as an act of protest against economic and labor exploitation, including, typically, specific grievances or wrongs. Although contemporaries figured arson as a Black crime, my examination of the case files of the few White women accused of arson suggests that their motives were also economic, including an intent to "ruin" a rival or a wealthier neighbor.

[1] *State vs Laura Thorn and Eli Thorn*, March Term 1878, Richland County General Sessions Indictments, case #993, SCDAH.

Only about 2% of women defendants in South Carolina's Courts of General Sessions between 1865 and 1900 stood trial for arson. In rural counties, however this figure was often significantly higher, about 5%, while arson did not feature as prominently in the dockets of more urban Richland County or Charleston.[2] Like Laura Thorn, most women indicted for arson in post-Civil War South Carolina were young and African American. They were typically farm laborers or domestic servants who owned little property and who were economically dependent on White employers or landlords. The majority were illiterate and signed court papers by making their marks. As in the Thorns' case, the evidence presented against defendants often consisted of rumors and repeated threats, especially since the crime of arson tended to destroy physical evidence.

Despite this, women indicted for arson were much more likely to find themselves convicted and serving harsh sentences than were women accused of crimes against the person such as assault and battery, the subject of chapter two, or even murder. The conviction rate for women tried for arson in South Carolina between 1865 and 1900 was 46.4%, while the female conviction rate for murder was about 34%. Among women indicted for arson whose cases actually made it to trial, juries found 68.4% of them guilty. Although none of the 32 acts of arson that I examined resulted in a loss of human life (several led to the death of livestock animals) and defendants overwhelmingly were charged with burning outbuildings rather than dwelling houses, postbellum juries and judges alike clearly dealt with convicted female arsonists more harshly than with murderesses. Why was this so?

[2] In Richland County, for example, arson accounted for only 1.6% of indictments for women. In rural Oconee County, on the other hand, 6% of women on the Sessions dockets stood trial for arson, or nearly four times the proportion in Richland. In this chapter and others, I also discuss trials from other South Carolina counties which I found in newspapers and looked at the archival case files for these trials when they were available. However, the cases from other counties discovered in newspapers are not included in the statistics relating to the percentage of defendants tried for arson, which are drawn solely from the archival court records in the six counties where I systematically looked at all surviving case files.

While racial tensions and racial ideologies influenced all defendants' experiences in South Carolina's criminal courtrooms, arson trials were perhaps the most outwardly fraught. They laid bare the resentment of Black men and women disenchanted with the unachieved promises of Reconstruction and with their continued economic marginalization and exploitation. 90.6% of the accused women in my sample whose race could be identified were Black and the identifiable victims were White in 93% of the cases. Furthermore, my research demonstrates that women's indictments for arson increased during times of political repression. While the county-level Courts of General Sessions saw very few arson cases in the late 1860s and early 1870s, the late 1870s saw a slew of arson cases involving women and a high conviction rate. Still more women were indicted and convicted for arson during the 1880s and 1890s compared to the period of Reconstruction, as Black women chafed under their economic marginalization and particularly the poverty and lack of financial and social mobility wrought by the systems of sharecropping and farm tenancy.

Arson represented a form of protest against economic injustice. Though burning barns was dangerous and destructive, some Black women who were sick and tired of the cycles of poverty, hard labor, debt, and exploitation that they and their families faced as sharecroppers or tenant farmers struck back against in the quiet of night. They used arson, a method they doubtless hoped would be discreet enough to keep them from being identified as the culprits.

In other cases, fires that Black women were accused and even convicted of having set were likely accidental or started by other perpetrators. While I do not attempt to reach a new verdict or determine women's guilt or innocence, I encountered several cases where the evidence against women defendants was especially flimsy. In some incidents, White community members watching the fire spotted a Black woman near the scene and accused her, leading to her

indictment. A landlord whose barn had been burnt might ruminate on the people who had reason to resent him and swear out a warrant against the person he had wronged most recently, although courts generally needed more solid evidence than that to convict. Still, communal racial profiling and the very oppressions they lived under meant that Black southerners, including Black women, were especially vulnerable to accusations of arson.

Although a small number of White women also stood trial for arson in this period, it appears that they were only indicted in cases where the evidence against them was simply too suggestive to be ignored. In each case, the woman was acquitted.[3] As with other types of crime, the White men who represented the majority in most juries (especially after Reconstruction) demonstrated a reluctance to convict White women and, indeed, a tendency to attempt to vindicate them.[4] My research in census records strongly suggests that White women accused of arson may have also been motivated by economic resentment, but newspapers and courtroom narratives never framed their crimes this way. Even though White women did participate as workers in the postbellum economy, often by necessity, courts and commentators did not choose to see White women as economic actors in this context, any more than they tended to view them as thieves. Quite simply, White people in this period racialized property crime, to the benefit of White women who may have otherwise been accused of arson or theft.[5]

Historians have paid surprisingly little attention to arson trials in the context of the post-Civil War South, despite their racially-fraught nature and the severity with which southern states

[3] See, for example, *State vs Rose Corbin*, November Term 1873, Oconee County General Sessions Indictments, box 1, SCDAH.
[4] The exception is adultery and fornication, as I discuss in Chapter Six.
[5] For more on southern White women entering the workforce, see Jane Turner Censer, *The Reconstruction of Southern White Womanhood, 1865-1895* (Baton Rouge: Louisiana State University Press, 2003), 1-26; Thavolia Glymph, *Out of the House of Bondage: The Transformation of the Plantation Household* (New York: Cambridge University Press, 2003), 185-8. See Chapter Four for larceny.

continued to punish convicted arsonists.[6] The existing scholarship has also not examined Black or White women's arson specifically.[7] One historian has speculated that women were overrepresented in prosecutions for "violent property crime" in the postbellum years, and Sarah Haley, in her study of Black women in Georgia's post-Civil War convict labor system, notes that arson was a common crime for which young Black women were imprisoned.[8]

However, historians have not yet paid attention to the roles that gender, race, and class played in arson and, especially, arson trials. Courtrooms and newspaper articles that discussed and disseminated information from courtrooms deserve special attention as important sites where racialized constructions of gender were produced, reproduced, and at times contested by women defendants and others. In addition, court documents that officials produced in tandem with witnesses and defendants, such as arrest warrants, indictments, and witness testimonies, reveal much about criminal law as a *process* that incarceration and appellate trial records do not. Local, archival court records can tell us how these women came to be accused of arson.

---

[6] In the *New Encyclopedia of Southern Culture*, for example, the entry on arson is only two pages, most of which is dedicated to discussing forest-burning for agricultural purposes and contemporary arson in the form of hate crimes. See Amy Louise Wood, ed, *The New Encyclopedia of Southern Culture, Volume 19: Violence* (Chapel Hill: University of North Carolina Press, 2011), 23-4. Philip N. Racine unpacks an enslaved woman's 1865 conviction for arson in Philip N. Racine, "The Slave Catherine and the Kindness of Strangers?"*South Carolina Historical Magazine* 113, no. 2 (April 2012),146-56. Marc McLeod has recently discussed arson in the context of twentieth-century Republican Cuba. See Marc McLeod, "Razing Cane: Making Sense of Arson in the Sugar Fields of Republican Cuba," *Agricultural History* 89, no. 4 (Fall 2015), 513-35.

[7] An exception is John Wertheimer's article about the young White girls institutionalized at Samarcand Manor Industrial Training School in North Carolina who infamously set fire to the reform school in 1931. Wertheimer observes that the girls' arson generated much discussion about "wayward girls," class, and race. Although the school was an institution characterized by gendered oppression and stifling conduct codes and most of the girls arrived there from impoverished households after being sent for minor status or moral offenses, the state of North Carolina proclaimed that it had treated the girls with chivalrous leniency by sentencing them to relatively short penitentiary sentences rather than seeking capital punishment. Though the incident occurred significantly later than the cases I discuss here, it is nevertheless a good example of the often contradictory and performative ways in which White men extended "chivalry" to White women (though not Black women). John Wertheimer, "Escape of the Match-Strikers': Disorderly North Carolina Women, the Legal System, and the Samarcand Arson Case of 1931," *North Carolina Historical Review* 75, no. 4 (October 1998), 435-460.

[8] Albert C. Smith, "Southern Violence" Reconsidered: Arson as Protest in Black-Belt Georgia, 1865-1910," *Journal of Southern History* 51, no. 4 (November 1985), 542; Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity* (Chapel Hill: University of North Carolina Press, 2016), 43.

What narratives did witnesses and prosecuting attorneys construct against them, and how did they respond in the courtroom? How did accused women seek to prove their innocence or, in the event that they were convicted, petition for a pardon? How did legislators and officials imagine arsonists, and what does the evolution of both state criminal legislation regarding arson and actual conviction rates for women reveal about southern criminal justice and courts after the Civil War and about racialized constructions of womanhood? In the remainder of this chapter, I work to answer these questions, using arson as a case study to more closely examine how late nineteenth-century southern communities investigated events, decided they were serious crimes, and acted to determine guilt and punish the guilty.

4.1 Antebellum Antecedents

After the Civil War, White and Black southerners alike recognized arson as a form of protest and retribution against economic exploitation which could be traced back to enslaved people's resistance against the White slaveholders who dehumanized them and exploited their labor. The colony's first slave code, proposed in 1690 and strongly influenced by the harsh slave codes of Barbados, from which some White South Carolina planters had emigrated, made "house burning" a capital crime.[9] In 1740, a new statute added that any Black person free or enslaved who burnt agricultural products such as "any stack of rice, corn, or other grain" would also be executed.[10] Therefore, in order to understand arson in post-Civil War South Carolina, it is

[9] "Acts Relating to Slaves, 1690," in David J. McCord, ed, *Statutes at Large of South Carolina, Vol. 7, Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers* (Columbia, S.C.: A.S. Johnston, 1840), 345. For the Barbados influence on South Carolina's slave code, see Amira Chakrabarti Myers, *Forging Freedom: Black Women and the Pursuit of Liberty in Antebellum Charleston* (Chapel Hill: UNC Press, 2011), 28.

[10] See "An Act for the Better Ordering and Governing of Negroes and Other Slaves in this Province," in David J. McCord, ed, *The Statutes at Large of South Carolina, Vol. 7*, 387-8.

necessary to examine arson's antebellum antecedents as a White discourse about enslaved people's unrest and potential to revolt, as well as enslaved women's trials for arson.

While arson by enslaved people constituted an ever-present fear among Whites in every slave state, South Carolina experienced more than its share of both paranoia related to arson and enslaved uprisings in which house-burning played a role. During the 1739 Stono Rebellion, one of the largest revolts by enslaved people in colonial British America, a group of more than seventy enslaved people gathered together, armed themselves with rifles from a store, and marched south of Charles Town. Their destination was Spanish-ruled Florida, where the Spanish had promised freedom to enslaved fugitives from the British colonies. The group never reached Florida. A White militia ended the rebellion by killing most of the rebels and selling the rest south to the Caribbean, though not before the rebels had killed at least 23 White people and razed six plantations.[11]

The following year, the colony passed new statutes specifically making the burning of outbuildings by a person of color a capital crime. In a lesser-known 1816 conspiracy in Camden, five enslaved men were executed for allegedly planning to burn the town to the ground.[12] During the 1820s, White South Carolinians' fears of Black insurrection reached an all-time high after word spread of the failure of a well-planned and extensive rebellion coordinated by the free carpenter Denmark Vesey in Charleston. In the aftermath of Vesey and his confederates'

[11] Peter Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 to the Stono Rebellion* (New York: Knopf, 1974); Peter C. Hoffer, *Cry Liberty: The Great Stono River Slave Rebellion of 1739* (Oxford: Oxford University Press, 2010).

[12] L. Glen Inabinet, "The July Fourth Incident' of 1816: An Insurrection Plotted by Slaves in Camden, South Carolina, in *South Carolina Legal History: Proceedings of the Reynolds Conference, University of South Carolina, December 2-3, 1977*, ed. Herbert A. Johnson (Columbia, 1980). This incident has received little attention.

execution in 1822, officials increased the militia presence in Charleston and slave patrols throughout the state.[13]

Enslaved women participated in these revolts and planned arsons-as-insurrections; indeed, rebellions and acts of coordinated arson specifically were not as male-dominated as historians have often assumed.[14] In her 2010 article "Not Killing Me Softly," Rebecca Hall reveals a hidden history of enslaved women's participation in revolts both in North America and onboard ships during the Middle Passage. She finds numerous women who were executed for their roles in insurrections and others who seem to have instigated and coordinated revolts.[15]

In colonial and post-revolutionary South Carolina, too, enslaved women occasionally played major and, for our purposes, incendiary roles in insurrections. In 1741, an enormous fire spread through Charles Town, razing hundreds of buildings. Local Whites pinpointed enslaved people as the arsonists and one enslaved woman was accused of having "set fire to a house with the evil intent of burning down the remaining part of the town."[16] Her co-conspirator was burned alive for the crime, and she was also condemned to die. Therefore, she likely shared his grim fate. In 1798, another enslaved woman, Mary, was executed for arson "by the Wardens of the City Council of Charleston," suggesting that the City Council considered her actions a threat to public safety.[17]

---

[13] Manisha Sinha, *The Slave's Cause: A History of Abolition* (New Haven: Yale University Press, 2016), 196.

[14] Eugene Genovese, for example, characterized revolts by enslaved people as "a specialized political and insurrectionary male responsibility." See Eugene Genovese, *From Rebellion to Revolution: Afro-American Slave Revolts in the Making of the Modern World* (Baton Rouge: Louisiana State University Press, 1979), 6.

[15] Rebecca Hall, "Not Killing Me Softly: African-American Women, Slave Revolts, and Historical Constructions of Racialized Gender," *Freedom Center Journal* vol. 2 (2010), 1-47.

[16] David V. Baker, *Women and Capital Punishment: An Analytical History* (New York: Farland, 2015), 89.

[17] Petition of Amos Pilsbury, Petitions to the General Assembly, Petition #11380109, SCDAH. Pilsbury petitioned the General Assembly on behalf of Edward Tash's estate for compensation for Mary's execution.

Although slaveholders and other White commentators associated armed insurrection with enslaved men despite women's occasional participation in such coordinated revolts, they often figured individual arsons as particularly "female" acts. Like poisoning and infanticide, other archetypally female crimes, arson could be committed in secret. It allowed an enslaved person or, as in some cases, a free woman of color, to confront, attack, or take revenge against someone without the use of physical strength. Historians have followed nineteenth-century commentators in noting (if not examining) arson as one of the acts of resistance which enslaved women were more likely to commit.[18] It remains to be seen if this gendered construction of arson as an especially feminine crime holds up to closer scrutiny.

My research suggests that although more enslaved men than women found themselves tried for arson, enslaved women and free women of color were indeed accused of arson at higher proportions than they were for other crimes. Although women only constituted about 14% of all defendants in trials before the Courts of Magistrates and Freeholders, South Carolina slaveholders' petitions to the state's General Assembly for reimbursement upon the execution of their human property suggest that women represented about 28% of the enslaved people who were executed for arson in pre-Civil War South Carolina.[19] This figure accords with Glenn McNair's research showing that enslaved women were accused in more than 27% of arson cases

[18] See, for example, Junius P. Rodriquez, *Encyclopedia of Slave Resistance and Rebellion, Volume 1* (Westport, CN: Greenwood Publishing Group, 2007), 27; Joshua D. Rothman, *Notorious in the Neighborhood: Sex and Families Across the Color Line in Virginia, 1787-1861* (Chapel Hill: University of North Carolina Press, 2003), 159; Glenn McNair, "Slave Women, Capital Crime, and Criminal Justice in Georgia," *Georgia Historical Quarterly* 93, no. 2 (Summer 2009), 135-58.

[19] My research suggests that women constituted about 14% of defendants in South Carolina's Magistrates and Freeholders Courts as a whole, with the caveat that many antebellum records were destroyed during or after the Civil War.

in antebellum Georgia.[20] Therefore, enslaved women were indeed overrepresented as defendants in both arson investigations and convictions.

South Carolina newspapers also reported incidents of enslaved women setting fires. Typically, women set fire to outbuildings such as stables, smokehouses, or gin houses, suggesting that they were motivated by a desire to retaliate against slaveholders and damage their economic status rather than a desire to kill them. In other cases, women seem to have started fires to create distractions while they attempted to escape enslavement. In 1814, a fifteen-year-old enslaved girl, Hannah, was accused of stealing from and setting fire to the house of the man who had enslaved her. She may well have been attempting to run away with the things she had taken, but she was caught and "tried, convicted, and executed" by slaveholders in Newberry District.[21]

On rare occasions, enslaved women were said to have used arson as an instrument of murder. In 1851, an unnamed enslaved cook in Fairfield District was said to have burned her master's infant to death "in its cradle" by setting fire to "the clothing around the child." She "absconded," but was later captured, tried by a Court of Magistrates and Freeholders, and, like Hannah, sentenced to hang.[22]

Antebellum governors occasionally pardoned or commuted the capital sentences of women convicted of arson, and these pardon documents provide us with rare glimpses of the women involved. In 1839, for example, a Court of Magistrates and Freeholders in Lancaster District found an enslaved woman named Rhoda guilty of arson. But upon petition by her owner,

---

[20] See McNair, "Slave Women, Capital Crime, and Criminal Justice in Georgia," 140. McNair's statistic is for women *tried* of arson, not executed for arson, whereas mine is based on petitions for compensation by the owners of enslaved people who had been executed. Yet they are very similar.

[21] Petition of Nicholas Summer, Petitions to the General Assembly, item #11381402, SCDAH.

[22] *Edgefield Advertiser* (Edgefield, S.C.), March 27, 1851. For the Courts of Magistrates and Freeholders, see Chapter One.

Governor Barnabas Kelet Henegan commuted Rhoda's sentence to "transportation beyond the limits of the state." However, as Rhoda's owner Jane Horton lamented in her 1841 petition to the General Assembly for compensation, Rhoda "died imprisoned in the Jail of Lancaster District" in May 1840, before she could be sold out of the state.[23]

In another case documented by Philip N. Racine, seventy-three White men in Civil War-era Spartanburg District petitioned Governor Andrew Magrath to pardon a seventeen or eighteen-year-old enslaved girl named Catherine who had been sentenced to hang for arson. While Catherine's fate is left uncertain by the surviving documents, the petitioners asked for clemency for Catherine on the grounds of "her youth and sex…[and] her ignorance and feeble state of mind" as well as "the provocation given her." The petitioners noted that Catherine's owner David Lipscomb was notoriously cruel to his slaves. Catherine had set fire to Lipscomb's barn and stables to "divert the attention of her master, who had been whipping her severely." A minister who visited Catherine after her conviction asked her if she would like to be pardoned and returned to her master. In response, Catherine replied that "death would be preferable to such treatment as she had been subjected to."[24]

Catherine's fate was bleak: the young woman would either be executed or handed back over to the master who had abused her so horribly that she had set a fire to "create an excitement" which would distract him from whipping her. Her sad case is a reminder that Courts of Magistrates and Freeholders prosecuted and executed enslaved people for their crimes but ignored the brutality of the slaveholders who exploited and abused them, often driving them to their actions.

---

[23] Petition of Jane Horton, Petitions to the General Assembly, Item #00017, SCDAH.

[24] Racine, "The Slave Catherine and the Kindness of Strangers?" I also examined the petition letter myself at SCDAH. See Governor Andrew Gordon Magrath, Letters Received and Sent, folder 25, SCDAH.

4.2 Arson after the Civil War: A Chronological Overview

In the wake of Emancipation, ex-Confederate South Carolinians in the state's provisional government immediately sought to use penal law and the criminal justice system as a method of controlling the behavior, movement, and labor of the newly free Black majority. While he advocated for abolishing capital punishment for some of the many crimes which had carried the death penalty in antebellum South Carolina, Unionist Governor James L. Orr argued that arson, along with murder and rape, should continue to be capital crimes. In September 1866, Orr called for the establishment of the state's first penitentiary. In 1867, the institution opened its doors in Columbia.[25]

An editorial in Spartanburg's *Carolina Spartan* bluntly explained why defeated Confederates perceived the penitentiary as a postwar necessity: "when the negroes were slaves, the depredations and thefts committed by them was generally punished by their masters on the plantations; and in our cities, under the jurisdiction of Magistrates, they were generally whipped. But this whipping it appears, is now all done away with by the Yankee 'Civil Rights Bill.'" The penitentiary was therefore built for the purposes of imprisoning and controlling freedpeople, as well as a projected increase of what the editor called "the lowest classes from the North."[26] Ex-Confederate legislators intended the newly centralized prison system to work in tandem with the

[25] Henry Kamerling, *Capital and Convict: Race, Region, and Punishment in Post-Civil War America* (Charlottesville: University of Virginia Press, 2017), 28-9. For Orr, see Rubin, *South Carolina Scalawags*, 2-11. Orr was technically a White Republican, but rather more moderate than many of his contemporaries and decidedly not progressive in matters of Black civil rights. Having served in the Confederate Congress, he was nevertheless appointed governor in 1865-68 due in part to his Unionism before the war. He was the governor who signed the state's notorious "Black Codes" into law, in fact.

[26] "A Penitentiary," *Carolina Spartan* (Spartanburg, S.C.), September 27, 1866.

provisional government's Black Codes, although the state's military governor soon abolished these codes.

However, while the penitentiary remained open, Radical Reconstruction in South Carolina led to some progressive reforms in the treatment of both defendants and convicted people, including arsonists. In January 1868, the South Carolina Constitutional Convention, the first Black majority legislative assembly in the nation's history, met in Columbia. The following year, the General Assembly abolished capital punishment "except in the case of willful murder." Rape and arson, two crimes that had previously carried a capital sentence, were "made punishable by hard labor in the Penitentiary for life, or for a period not less than ten years, according to the aggravation of these offenses."[27] During Reconstruction, therefore, circuit judges possessed discretion in sentencing convicted arsonists, according to specific circumstances and the "aggravation" of the crime. Although ten years was still a severe sentence, the legislative change was an important measure, since the crime of arson could range from burning an abandoned barn to setting fire to an occupied dwelling house.

Regarding women defendants, however, judges' discernment often went untested. Of the thirty-two arson trials in involving women during the 1865-1900 period, only six (or 19.3%) occurred between the beginning of Radical Reconstruction and 1877, when White conservatives "redeemed" the state from Republican control. Two of the trials resulted in a guilty verdict, but the women involved in both cases successfully appealed for a new trial, during which they were acquitted.[28]

---

[27] *The Constitution of South Carolina: Adopted April 16, 1868, and the Acts and Joint Resolutions of the General Assembly Passed at the Special Session of 1868-1871* (Columbia, 1871), 175. See also Chapter One for the 1868 Constitutional Convention.

[28] One of the two trials saw a large family, among them two women, indicted for burning a neighbor's barn. See *State vs America, Jerry, Riley, Aiken, Aurelia, and Lavinia Moore and Joseph Lee*, February Term 1876, Oconee

The White Democratic "Redemption" of the state in 1877 led to a striking increase in women's trials for arson. From six trials involving female defendants and no convictions throughout the whole period of Reconstruction, the years 1877-1879 alone saw seven arson indictments (all for Black women) and four convictions (57%) in the six counties whose records I examined.[29] This considerable uptick can be broadly interpreted as a result of embittered race relations as well as what we might call the "law and order" mentality and policies of the White Democrats who had recently regained power, granted that they frequently applied "law and order" tactics against Black people alone and engaged in extralegal violence themselves.

At both the state and local level, White conservatives rhetorically juxtaposed a new reign of tough justice and enforced peace with the supposed lawlessness of Reconstruction and the corruption of Republican officials.[30] A Clarendon County grand jury in 1878 rejoiced that "from every county of the state, [we have received] the same gratifying report of peace and quiet and a consequent decrease of lawlessness and crime, giving assurance and hope that, under God's blessing and an impartial administration of the law, prosperity and happiness will once again return to our people."[31] For such post-Reconstruction grand juries, finding "true bills" in the cases of Black men and women who might otherwise have not gone to trial for lack of evidence served as a way of making good their promises to control African Americans using the criminal justice system. This was a shift from Reconstruction-era tactics, when White conservatives had sought to intimidate Republicans and Black people through the use of organizations such as the

---

County General Sessions Indictments, SCDAH. Of the six total trials, two involved White woman defendants and four Black women.

[29] In one of the trials, *State vs Keziah Burke*, Burke was tried for both larceny and arson, but only found guilty of larceny. See *State vs Keziah Burke*, October Term 1878, Richland County General Sessions Indictments, case #1051, SCDAH.

[30] See Chapter Six as well.

[31] Clarendon County Grand Jury Presentment, September Term 1878, SCDAH.

Ku Klux Klan, rifle clubs, paramilitary forces such as the Red Shirts, and sheer mob violence. Of course, the irony that conservatives spoke of restoring peace and repairing a corrupt system when they had emerged victorious in the 1876 gubernatorial election by violently intimidating and murdering Black voters and Republican politicians cannot be overstated.[32]

In May 1877, the now conservative-dominated legislature began discussing a bill that would reverse the Reconstruction General Assembly's reform confining capital punishment to those convicted of murder. Conservative representatives proposed that burglary, rape, and arson should be punished with death. They further added that burning "gin houses, cotton presses, mill houses, stables, farms or outhouses" as well as shops should constitute arson under the law. The same bill included provisions that the larceny of livestock should be punished by five years in the penitentiary and another that sought to excuse those who committed "justifiable homicide" to avenge the seduction of a "wife, mother, sister, or ward" or who killed a suspected thief in the heat of passion. In short, "Redemption"-era legislators crafted the bill to increase the punishment for the stereotypically "Black" crimes of burglary, rape, arson, and the larceny of livestock even as it asked for leniency towards types of murder that White men were thought to be especially likely to commit.[33]

Representatives in the General Assembly admitted this in their lengthy debates on the bill, which reveal much about lawmakers' views of arson. Mr. Youmans, a White representative for the newly created, rural Hampton County argued that arson merited the death penalty. "In my

[32] Carole Emberton, *Beyond Redemption: Race, Violence, and the American South after the Civil War* (Chicago: University of Chicago Press, 2013), 175-184; Eric Foner, *A Short History of Reconstruction, 1863-1877* (New York: HarperCollins, 1990), 238-241.

[33] The bill foreshadowed the 1895 constitution, which disqualified voters for crimes that were stereotypically "Black," such as property crime and adultery and bigamy, but not for murder. For Democratic legislators, some of whom were, like Governor and future Senator Ben Tillman himself, veterans of the Hamburg Massacre of 1876 and other political violence targeting African Americans and Republicans, making murder grounds for disqualification would have perhaps disenfranchised them and some of their friends. See Underwood, "The South Carolina Constitution of 1868," 11-12.

section every morning when the people get up they look out of their windows to see if any of their houses have been burnt during the night," he declared. "I think the legislation should be so severe as to break up this practice of house-burning which has become entirely too common." William Dunlap Simpson, a future governor and future Chief Justice of the state supreme court, agreed: "a fiend in human form may go into your home and burn it down, and destroy your family, and there is no law to punish him except by sending him to the penitentiary." For Simpson and other conservatives in the Assembly, ten years to life in the ill-kept and disease-ridden penitentiary was evidently not severe enough. Samuel Keith, a Black representative from Darlington County, agreed with the bill as a whole. But he opined that burning "some of the buildings mentioned" should not be punished as harshly as burning an occupied dwelling house.

Other representatives bluntly insisted that the bill would be too harsh on "the colored people." One legislator argued that African Americans in South Carolina were "at heart a kind race" whom the former chief executive and "his agents" had "been encouraging to burn and rob and ruin for political ends," invoking the familiar Civil War and Reconstruction-era narrative that freedpeople rebelled against and left their former masters because the Yankees had driven them to it. Thomas Hamilton of Beaufort County, a Black representative and a former Republican under Governor Chamberlain who pragmatically changed his political affiliation upon the rise of Wade Hampton and the Democrats, warned that if the bill passed, "it would look like you [the newly elected Democratic representatives] were jeopardizing the rights of the laboring classes."[34] Hamilton obliquely referred to race as well as class, but another dissenting

[34] Thomas Hamilton's political career is discussed in Brian Kelly, "Black Laborers, the Republican Party, and the Crisis of Reconstruction in Lowcountry South Carolina," *International Review of Social History* 51, no. 3 (2006), 375-414.

representative spoke more directly: "the passage of any measure that will be considered as directed against a particular race would be most impolitic."[35]

Nevertheless, after repeated heated discussions in the General Assembly, the bill passed in January 1878 with the stipulation that the jury might "make a special verdict recommending the prisoner to the mercy of the court." If the jury did so, the presiding judge was to sentence the convicted person to the penitentiary rather than death.[36] Arson was once again a capital crime in South Carolina, at least on the statute books. Despite occasional attempts to lessen the penalty, it would remain so for decades to come.

After Reconstruction, more women found themselves indicted and convicted of arson. This was particularly true of the 1880s, a decade of falling cotton prices, crop failures, widespread economic woes, and the increase of sharecropping, crop liens, and debt among both Black and White farmers. Of the nine women tried for arson during the 1880s, three were found guilty and sentenced to the penitentiary. All three were Black. The 1890s saw seven arson indictments for women, of which four led to guilty verdicts, all for Black women.

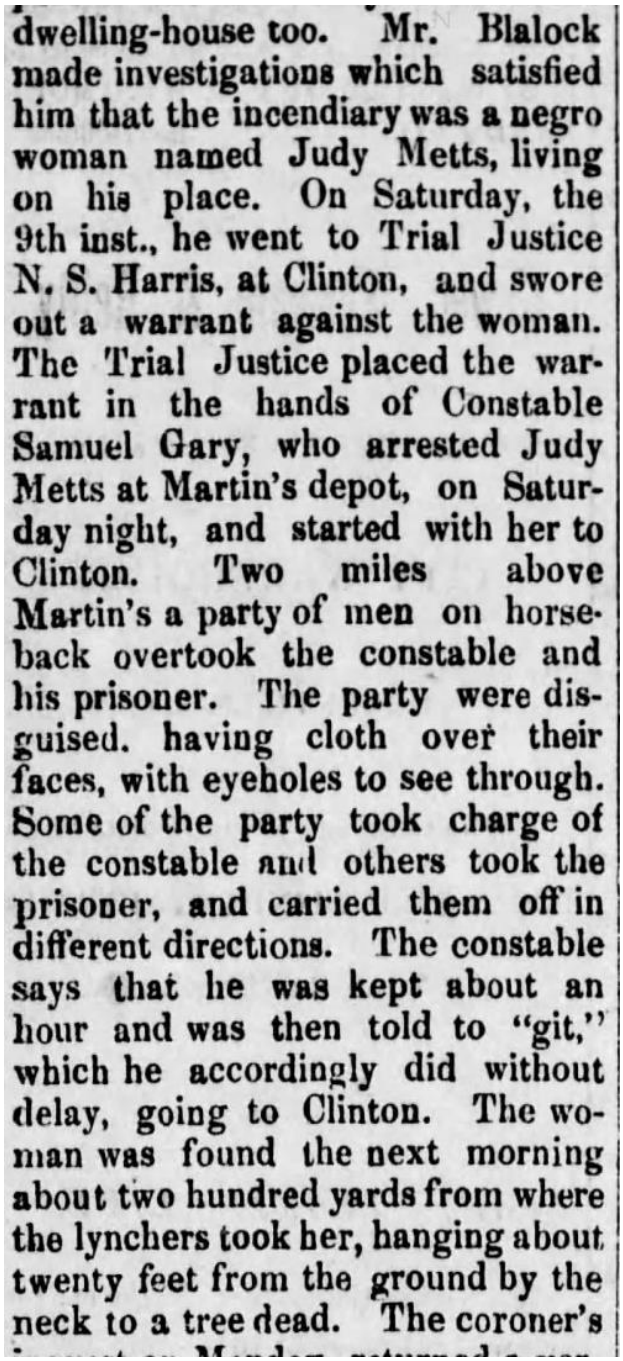
Although each of the eight women convicted of arson between 1878 and 1900 might have suffered the death penalty under the 1878 statute, all eight ultimately found themselves sentenced to the penitentiary, pardoned, or in one case, sent to the state asylum. South Carolina juries, while quick to convict Black women of arson, generally hesitated to hang women of any race. In each case after 1878, the jury recommended the defendant to the mercy of the court, thus ensuring that the judge sentenced them to ten years or more in the penitentiary instead of execution.

---

[35] "Condensed Report of Legislative Proceedings," *Edgefield Advertiser* (Edgefield, S.C.), May 17, 1877.
[36] The proceedings were reported in "Legislative Notes," *Anderson Intelligencer* (Anderson, S.C.), January 24, 1878.

Tragically, at least one woman in postbellum South Carolina did die as the result of an arson accusation. Judith "Judy" Metts, a thirty-five-year-old African American mother of six children, was killed due to a neighbor's suspicion that she had burned his barn, yet she never saw the inside of a courtroom. In Laurens County in 1881, a White farmer named J.S. Blalock swore out a warrant for Metts' arrest for arson, claiming she had set fire to his barn. For unclear reasons, Blalock believed Metts was responsible and that she had also intended to burn his house. A rural constable arrested Metts under the warrant. But as he transported her back to the town of Clinton, a "crowd of men on horseback and in disguise" seized Judy Metts and carried her off.[37]

[37] The clearest account of the lynching comes from "the Martin's Depot Lynching," *Newberry Herald* (Newberry, S.C.), April 20, 1881.



dwelling-house too. Mr. Blalock made investigations which satisfied him that the incendiary was a negro woman named Judy Metts, living on his place. On Saturday, the 9th inst., he went to Trial Justice N. S. Harris, at Clinton, and swore out a warrant against the woman. The Trial Justice placed the warrant in the hands of Constable Samuel Gary, who arrested Judy Metts at Martin's depot, on Saturday night, and started with her to Clinton. Two miles above Martin's a party of men on horseback overtook the constable and his prisoner. The party were disguised. having cloth over their faces, with eyeholes to see through. Some of the party took charge of the constable and others took the prisoner, and carried them off in different directions. The constable says that he was kept about an hour and was then told to "git," which he accordingly did without delay, going to Clinton. The woman was found the next morning about two hundred yards from where the lynchers took her, hanging about twenty feet from the ground by the neck to a tree dead. The coroner's

Figure 13

In the morning, her body was found hanging from a tree on the road to Clinton. Although Charleston's *News and Courier* denounced the lynching as "mob law" and the state offered a reward for "the White men who lynched Judy Metts," the perpetrators were never apprehended.[38]

[38] *Charleston News and Courier*, April 19, 1881; *Abbeville Press and Banner*, July 27, 1881.

4.3 "He has Good Cause to Suspect and Does Suspect": Assigning Blame for Arson

Statutes and conviction rates and other statistics can provide us with a broad view of South Carolinians' changing attitudes towards arson as well as women's crime as a whole. However, they provide little insight into the defendants, the communities in which they lived, or how women's trials proceeded inside and outside of the courtroom. In the following sections, I focus on the trials themselves with an emphasis on how communities assigned blame for and investigated incidents of arson, how complaints became indictments, and how both women defendants and their accusers constructed narratives of innocence or guilt for the courtroom.

When a property owner in nineteenth-century South Carolina awoke in the night to the scent of smoke or trekked across a field in the morning to find their barn burned to the ground, their first action (after putting out the fire) was often to scour the area for signs of the perpetrator. Physical evidence was notoriously difficult to acquire in arson cases, because much of the crime scene went up in flames. Nevertheless a few women appear to have done a poor job covering up their tracks.

In the 1889 case of *State vs Eliza Colclough*, which eventually went up to the South Carolina Supreme Court, Mr. L.S. Barwick, a White planter, testified that on the night of January 16th, 1889, he and his family woke to "the light of a burning house." Reaching the blaze, they found that two barns containing substantial amounts of hay, fodder, and corn were on fire. It was too late to do more than prevent "the other houses taking fire"—evidently Barwick owned a other outbuildings or perhaps had nearby tenant laborers' houses on his land. As soon as the danger had passed, Barwick and his neighbor William Broadway went "in search of some clue to the party who burned" the barns. Broadway, "satisfied that it was the work of an incendiary, as

the lateness of the hour and the distance from the dwelling made it almost impossible for it to have taken fire in an accidental manner," found "a small woman's track" leading from the ashy ruins of the barns. He and Barwick followed it to the house of Eliza "Betsey" Colclough, a forty-four-year-old Black tenant farmer's wife and the mother of four children. As the party neared the house (joined now by Rufus Lackey, the White farmer who rented land to the Colcloughs), Eliza Colclough "came out of the house with shoes on." Seeing the three men approach, she retreated into the house and then returned to the door, "barefooted."

The men demanded to see Colclough's shoes so that they could "measure them to a track." Colclough complied, presenting them with a pair of shoes. However, Barwick later testified, "they were not of the same kind, one being button shoes and the other a laced one; these were old, torn-up shoes." Lackey insisted that Colclough get the "new shoes" he had lately seen her wearing and accused her of having set the fire, but she insisted that "she had been in her own house all night" and "could prove it by her brother Jim." Unfortunately for Colclough, her younger brother Jim, who lived nearby with Eliza's father Nelson Parks, was not prepared to provide an alibi. When questioned by the three White men, he innocently replied that "he had not been there [to Eliza's house] in two weeks." Barwick promptly swore out a warrant against Colclough the following day, initiating a drawn-out prosecution which began in a Clarendon County trial justice's office but would eventually see her appeal to the State Supreme Court.[39]

A similar communal investigation unfolded in Oconee County on the night of July 26th, 1884, when a White farmer named John Nesmith was awakened by his children telling him that they "saw a light" outside. Alarmed, John and his wife Harriet rushed out of bed to find that their stand-alone kitchen was on fire. They fought the fire, only just managing to extinguish it as it

[39] *State vs Eliza Colclough,* February Term 1889, Clarendon County General Session Indictments, box 4, SCDAH.

spread to their dwelling house. The Nesmiths were too preoccupied to immediately search for evidence of a possible culprit, but others in the neighborhood were not.

In a trend found in the testimonies of many arson trials, community members took it upon themselves to search for an arsonist. A.P. Mason and a party of seven other White men were fox hunting in the area that night "when they heard cries of fire." The party rode up close to "the house burning" and Mason noticed one of the Nesmith's Black neighbors, Clara Sutson, "coming up to the house." Mason suspiciously asked Sutson, a married woman about twenty-eight years old, where her teenage brothers, George and Pompey Henderson, were. She replied that they had already gone up to the Nesmiths' house, but Mason "did not see them there." Retracing the path they would have taken, he and some other members of the fox hunting party "saw tracks leading from the back of the burning house through a crop patch and on to the house" where the Henderson family lived. (Clara Sutson seems to have been visiting her parents Jack and Martha and her five younger siblings at the time). Mason and his fellow hunters reported the tracks to John Nesmith, who swore out a warrant for Clara Sutson and her brothers George and Pompey the next day. "He has good reason to believe and does believe" that "Clara, Pompey, and George Henderson were responsible," the affidavit proclaimed.

But even during the preliminary hearing, John and Harriet Nesmith admitted that they did not know who had set the fire. "I think the kitchen must have been set on fire by some persons, but I don't know who," John said vaguely. Despite the lack of evidence against the siblings, the trial justice sent the Hendersons' prosecution up to the Court of General Sessions, where the Grand Jury found a true bill for Clara Sutson and her brother Pompey. In accordance with the highly circumstantial nature of the evidence—the Henderson brothers might easily have gone up

to the burning house after the fire started, as Clara said they had, and then returned—the jury finally acquitted Clara and Pompey in their county-level trial.

That the accusations against them made it so far through the criminal justice system at all, however, speaks volumes about how easily White southerners might accuse Black people of arson. Seeing a Black woman making her way toward the fire, just as he was himself, the fox hunter Mason demanded to know what she was doing and where her family had gone. Of course, it is possible that Mason and the other witnesses had some other reason for suspecting the Hendersons of having set fire to the Nesmiths' kitchens.

Court transcripts and census records cannot reveal all of people's social relationships and interactions with one another. Often, the people in the courtroom were privy to local knowledge and rumors that historians, unfortunately, are not. In this case, however, the Nesmiths' own doubts that the Hendersons were responsible for the fire and the trivial nature of the evidence makes the charges against them appear flimsy.[40]

The role of rumor is especially evident in a highly sensational 1888 investigation which one reporter nicknamed the "Anderson Arson Cases." In this case, local suspicions regarding a series of arsons in the town of Anderson pivoted towards Mattie E. Keese. Keese became the target of the investigation after a detective employed by the town council evidently tracked her shoe prints from the scene of a burnt stable back to the boardinghouse that Keese owned and operated. Like Eliza Colclough, Mattie Keese, a middle-aged White woman, seems to have realized her mistake and attempted to rid herself of the evidence. A witness in her trial testified that Keese had brought her the shoes in question. Giving the woman "a gold ring and some

[40] *State vs Clara Sutson and Pompey Henderson*, November Term 1884, Oconee County General Sessions Indictments, box 4, SCDAH.

clothes," Keese "told her to claim the shoes as belonging to herself."[41] Like Cinderella's glass slipper, shoes supposedly matching tracks found at the scene of the crime were sometimes entered into evidence during women's trials for arson.

However, in most arson cases, physical evidence either worked in conjunction with rumors and local knowledge about interpersonal relationships or was absent, leaving victims and community members to base their suspicions on hearsay, rumor, and the occasional eyewitness testimony. In 1872, for example, a young Black woman named Alice Stuard was indicted for attempting to burn the dwelling house of Jeremy Sergeant, a Black day laborer. Sergeant swore in his affidavit that he knew Stuard was responsible because she had "said publicly that she would burn his house" in the presence of several neighbors.[42]

In 1893, an elderly Black woman named Lucy Robinson, her husband Jim, and his relative George were accused of having started an immensely destructive fire. Shortly after a fire razed a barn, stable, and chicken house of a White farmer called James P. Lewis, Lewis heard reports that Lucy Robinson had been telling houseguests "not to give George any more liquor, for he talked too much now... Lucy said to George to keep his mouth shut and not to talk any." Hearing these rumors, Lewis recollected that "he and Jim Robinson had some trouble about a wagon" months earlier. This wagon, along with twenty-two bushels of corn, four horses, thirteen sheep, five cows, three hogs, fifteen chickens, and one road cart, had been destroyed in the fire. Lewis swore out a warrant for arson against the Robinsons based on these rumors and his previous labor-based conflict with George Robinson. The Robinsons, a couple about seventy years old, professed utter surprise at their summons to the preliminary hearing. "The burning has

[41] "A Sensation in Anderson," *Newberry Herald* (Newberry, S.C.), June 28, 1888.
[42] *The State vs Alice Stuard*, October Term 1872, Charleston County General Sessions Indictments, box 22, folder #2430, SCDAH.

not been mentioned here until today," Lucy said. She "denied most persistently her cautioning Jim and George to keep their mouths shut." The Robinsons made their bail of $300 each and an Oconee County grand jury dropped the case against them at the next term of court.[43]

The testimony in Laura and Eli Thorns' 1878 trial is another example of a prosecution fueled by repeated threats, rumors, and communal knowledge of a personal grudge that was itself rooted in an unequal economic relationship. While there was no physical evidence linking them to the burning of Daniel Nelson's barn, the Thorns were convicted because several witnesses testified that Laura told them she would "put the corn in ashes" before Nelson would profit from the corn he had confiscated from her and her husband. In addition, they had a clear motive, revenge for economic exploitation and a personal wrong, which the county solicitor was able to turn into a convincing narrative about why the Thorns had burned Nelson's barn.[44]

4.4 Constructing Narratives of Guilt and Innocence

As in the Robinsons' preliminary hearing and the case of Laura and Eli Thorn, determining a motive was key in arson trials, especially since more direct and physical evidence was often lacking. In suspicious fires where there was no obvious culprit, a woman might be prosecuted because victims and their communities knew that she harbored a grudge against the victim or had recently been wronged by them. Even if the defendant had been seen carrying fire from her hearth to her landlord's barn, the prosecuting attorney made it his business to present the jury with a convincing narrative about why the woman had committed arson.

[43] *State vs Lucy, James, and George Robinson*, Oconee County General Sessions Indictments, box 5, SCDAH.
[44] *State vs Laura Thorn and Eli Thorn*.

Conversely, although South Carolina counties' habit of preserving the testimony of state witnesses but not witnesses for the defense means that their words are less likely to be available to us today, women on trial and their legal counsel constructed narratives about their innocence based on ideologies about gender, alibis, and their good reputations, attested to by their own witnesses. In *State vs Bell Hutchins and Sloan Oglesby,* Oconee County solicitor and former South Carolina Governor James L. Orr prosecuted a case against Bell Hutchins (sometimes called Hudgins) and Sloan Oglesby for setting fire to the dwelling house of a young White woman named Tecoa Greene. During the 1885 trial, Greene testified that she had heard Hutchins, a "mulatto" woman "employed as a cook" in her home, get up in the morning "earlier than she was accustomed to" and go into the store which adjoined her home. Greene fell back asleep but soon woke to "smoke in the house." The fire spread quickly from the store where Greene believed it had originated and Hutchins, rushing out of the house with Greene and Greene's young son, did not have time to retrieve her clothing from "her room over the store." Greene said, however, that the following day she saw Hutchins "had on a different apron of hers from what she had on at the time of the burning." Greene also thought that the night before the fire, "[Hutchins] went upstairs to where her things were more than usual," suggesting that Hutchins had moved her things before purposefully starting the fire. C.A. Smithson, a clerk who worked in Greene's father's store, testified that he suspected the store's cash drawer had been robbed before the fire: "there had been eight or ten silver dollars in there before the fire," but afterwards they found only "ashes and rubbish."

After she was arrested, Bell Hutchins told a different narrative about what had happened at Tecoa Greene's house that day. Having had the misfortune to be arrested by "special constable" William Dillard, a White man who also ransacked the homes of women suspected of

adultery, Hutchins may have offered the following story under physical or verbal intimidation. She told Dillard and John Dickson, another special constable, that in the early morning just before the fire, "she saw Sloan Oglesby in Mrs. Greene's backyard."[45] When Hutchins got up and went into the store for flour, Sloan followed her. She stayed in the store about five minutes and "she saw him twice come out of the store, carrying some white bundles as if flour or shortening... he told her he only wanted to get in the store to get money." After the fire, Hutchins, who evidently never saw the origin of the flames, went to Oglesby's house, where he asked her "what Mr. Parker," a neighbor, "thought of the fire." Then, according to Hutchins, "Sloan told her he did not want her to him [sic] anymore, that he had the money and a good turn of goods."

While Tecoa Greene and other witnesses attempted to cast her as a domestic servant who had planned and lit a dangerous fire in order to hide the evidence of her thievery, Bell Hutchins insisted that she was more sinned against than sinning. In her narrative of events, her only crime was to care so much for Sloan Oglesby that she let him into the Greenes' store even though she suspected he wanted to steal money or goods. She had no knowledge of the fire until she smelled the smoke and, after everything, Sloan broke off their relationship, revealing that he had used her to get "the money and a good turn of goods." While her story may have been true, partially true, or false, Hutchins deliberately constructed her narrative to make herself sympathetic and make Sloan Oglesby into the villain. She was also using ideas about gender in a particular way here, insisting that she, an innocent woman, had been duped by love.

[45] Chapter Six discusses the intersection between whitecapping, increased communal regulation of sexual immorality and especially interracial relationships during the late nineteenth century, and formal legal institutions to a much greater extent. Dillard and Dickson, for example, operated as "special constables" under the protection of a trial justice called Rufus A. Mathewson, who also helped to protect them when a White woman and her brother prosecuted them for assault in the form of pistol-whipping.

Yet prosecuting attorney James L. Orr, a veteran lawyer and former governor, was skillful at constructing narratives of guilt in building cases against defendants. During the trial, he called twelve state witnesses to testify against both Oglesby and Hutchins, who employed separate attorneys and seem not to have reconciled. While Hutchins had offered her narrative about the arson as an alternative to Tecoa Greene's that did not badly implicate her, Orr essentially combined the two narratives to cast blame on Hutchins *and* Oglesby. Rather than a guileless woman fooled by a greedy man, as she sought to present herself, Orr characterized Hutchins as one half of a team of arsonists and thieves, the other half being Oglesby, who was originally implicated only by Hutchins' version of events, not having been seen at the scene of the fire by other witnesses. The jury found both Oglesby and Hutchins guilty of arson. Judge Ernest Ford Cochran sentenced them each to fifteen years in the penitentiary at hard labor.[46]

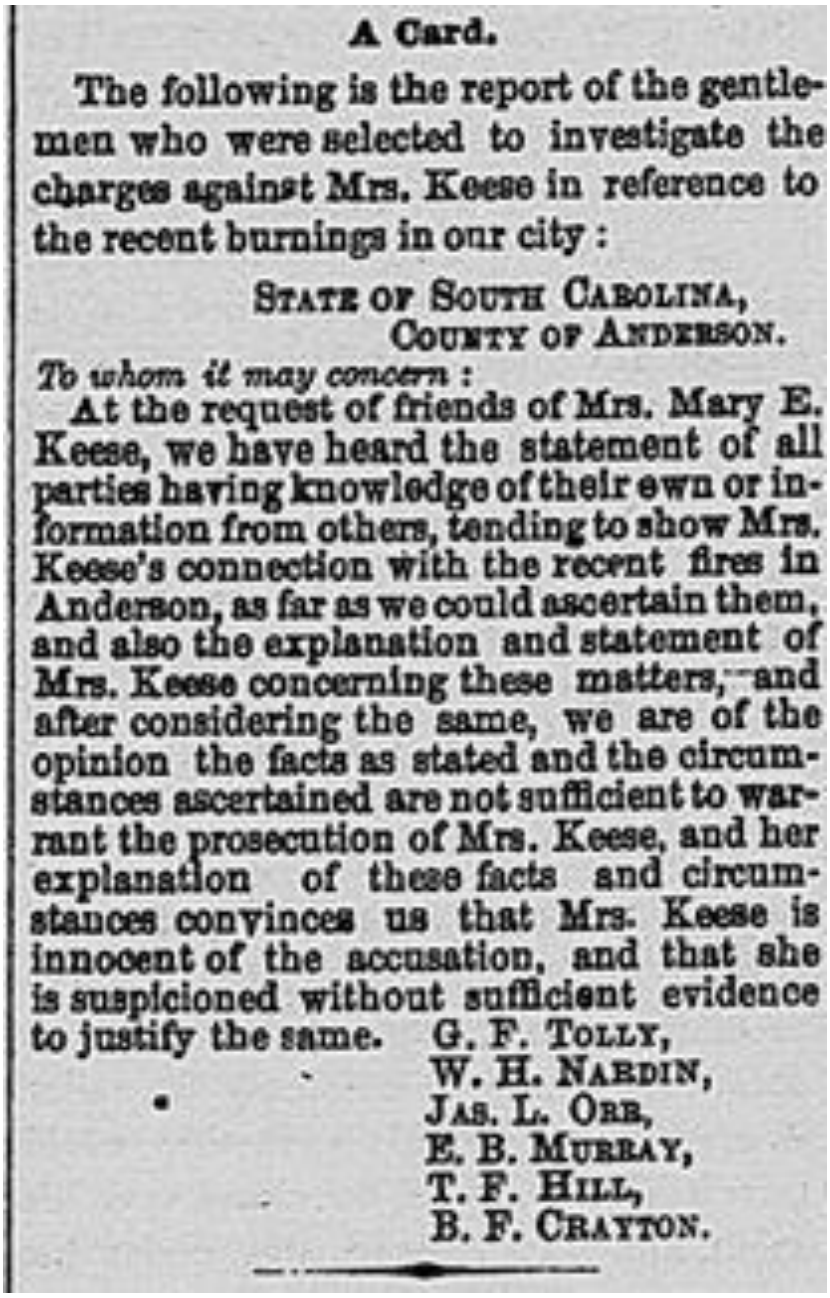
As with defendants for other crimes, women charged with arson also worked to leverage their good reputation, social connections, or racial status to assert their innocence against such narratives of guilt. Some Black women on trial called White employers or former employers as witnesses to attest to their good character and history of faithful employment, a legal strategy they knew would go far with juries composed of mostly White men. This was not possible for all defendants. In many arson cases, the woman's employer was the person whose property she is said to have burnt. And sometimes, the defendant was too young to have formed connections with influential people. This was especially true of arson, where defendants were younger than the average female defendant in postbellum South Carolina courts.

---

[46] *State vs Bell Hutchins and Sloan Oglesby*, June Term 1885, Oconee County General Sessions Indictments, box 3, SCDAH. Interestingly, a reporter from the Columbia Register interviewed Bell Hutchins in 1888 during her penitentiary term. Seeing her in the prison yard, he assumed light-skinned Bell Hutchins was a White woman and asked her about the treatment White women received in the penitentiary. She described fights among women and guards who beat "colored women" as well as the occasional White woman. The article is reprinted in "The Management of the Penitentiary Shows How Convicts are Trated," *Abbeville Press and Banner*, February 29, 1888.

Leveraging social relationships and reputation, as well as the ideologies about womanhood and gender relations that nineteenth-century South Carolinians called chivalry, was a more accessible tactic for White women accused of arson. In previously mentioned "Anderson Arson Cases" of 1888, suspicions fell on a White boarding housekeeper named Mattie Keese, a woman of a "highly esteemed" family. When rumors spiraled around Anderson that Mattie had harbored grudges against two families whose properties had caught fire and that she had been seen at one of the crime scenes, a group of five well-respected White men took it upon themselves to investigate the rumors before Keese was ever arrested or indicted. The panel, which included former Governor James L. Orr and Anderson mayor G.F. Tolley, published a card in the local paper declaring that having "heard the statement of all parties," they believed that "Mrs. Keese is innocent of the accusation." After a stable caught fire, police nevertheless arrested Keese, who ended up being charged with three counts of arson and one count of forgery.[47]

[47] *Abbeville Press and Banner*, May 30, 1888.



A Card.

The following is the report of the gentlemen who were selected to investigate the charges against Mrs. Keese in reference to the recent burnings in our city:

STATE OF SOUTH CAROLINA,
COUNTY OF ANDERSON.

To whom it may concern:

At the request of friends of Mrs. Mary E. Keese, we have heard the statement of all parties having knowledge of their own or information from others, tending to show Mrs. Keese's connection with the recent fires in Anderson, as far as we could ascertain them, and also the explanation and statement of Mrs. Keese concerning these matters, and after considering the same, we are of the opinion the facts as stated and the circumstances ascertained are not sufficient to warrant the prosecution of Mrs. Keese, and her explanation of these facts and circumstances convinces us that Mrs. Keese is innocent of the accusation, and that she is suspicioned without sufficient evidence to justify the same.

G. F. TOLLY,
W. H. NARDIN,
JAS. L. ORR,
E. B. MURRAY,
T. F. HILL,
B. F. CRAYTON.

Figure 14

Even then, Mattie Keese was "allowed to have her liberty" and "remain at her own home" although "no bond was given in two cases," the *Anderson Intelligencer* reported. "No person charged with three felonies has ever been treated with more sympathy and tender regard than Mrs. Keese," the paper said. "She has the sympathy of all our citizens."[48] When Keese

[48] "Conclusion of the Investigation," *Anderson Intelligencer*, July 12, 1888.

finally stood trial, having convinced the solicitor to delay the trial for several terms, the jury acquitted her of all four charges "without leaving their seats."[49]

Clearly, respectable White womanhood constituted a strong defense in of itself, a fact also illustrated in the 1873 trial of Rose Corbin for arson in Oconee County. Corbin, a middle-aged White widow, was charged with having burned a barn belonging to a White farmer named Daniel Gasaway and his large family. The barn had contained "two thousand bundles of flour, one hundred pounds of tobacco, and fifteen bushels of corn," a substantial loss. The witness testimony against Corbin was damning to say the least. She had repeatedly and loudly threatened to do harm to the Gasaways and especially Elizabeth Gasaway, who was evidently having an affair with a man called William Hughs.[50] Witness Harriet Gilliam, a White woman, described Corbin leaving her house at about midnight on the night the Gasaways' barn was burned, taking "a chunk of fire" from her house as she went. "I heard Mrs. Corbin say that if the Gasaways did not let her alone, she would fix them, and she would not go to the house to do it," Gilliam testified, explaining that "Mrs. Corbin and Miss Elizabeth Gasaway had fallen out because Mrs. Corbin was jealous of Mr. Hughs and her…She said she would destroy the Gasaways." "Mrs. William Harricutt" testified that Corbin had said she would kill Elizabeth and that she "carries a pistol for her." Corbin's hatred for Elizabeth Gasaway had caused such trouble in the past that Daniel and Elizabeth Gasaway had actually sworn out a peace warrant against Corbin and her daughter Mandy Corbin only days before the fire. "They have threatened to shoot me and my daughter and burn our property," Daniel Gasaway swore in the affidavit. The two Corbin women were forced to post a peace bond of two hundred dollars.

---

[49] "Circuit Court," *Anderson Intelligencer*, July 4, 1889.

[50] See Chapter Two for Margaret Hughs' assault on her husband's lover Elizabeth Gasaway. The conflict involved multiple prosecutions. It is unclear if Rose Corbin was also a lover of William Hughs or if she merely resented Elizabeth Gasaway's adultery on behalf of Mrs. Hughs.

Elizabeth Gasaway testified that she had seen Rose Corbin the night of the fire, a rarity in an arson case. Hearing "the dogs barking," Elizabeth ran outside to the burning barn and "met Mrs. Rose Corbin coming from the fire." Elizabeth said that Corbin "rubbed against me as she passed and said, 'what did I tell you I would do for you? And see what I have done." Elizabeth claimed to have seen "a chunk of fire sticking in a crook in the corner of the barn" that evidently matched the description of the fire taken from Harriet Gillam's house.

Despite the evidence against her, Rose Corbin and her counsel called no less than twelve witnesses in her defense during her trial. In addition, seven White men from Oconee and Pickens Counties signed a character statement to advocate for her. "We have never heard or known anything against her character as to truth and honesty," the men stated, adding that Corbin was "a law-abiding woman, peaceable and quiet in the community, and never heard her accused of any house-burning." While the men who signed Corbin's character statement were not as eminent or respectable as the politicians and legal officials who signed Mattie Keese's fifteen years later, her status as a White woman of some means—she owned a farm—enabled her to receive the benefit of the doubt from her community and jury in ways that poor Black and White women accused of arson did not. Corbin was acquitted.[51]

4.5 After the Trial: Appeals, Pardons, and the Penitentiary

Conviction rates for women who stood trial for arson in post-Civil War South Carolina rose to their greatest height, 57% during the late 1870s, fell slightly to 33% during the 1880s, and rose again to 57% during the last decade of the nineteenth century. Both grand juries and trial juries demonstrated a tendency to find guilt. Grand juries "sent up" approximately 66% of cases

[51] *State vs Rose Corbin*.

to be tried in court. And once women made it to trial, they were found guilty about 68% of the time.

A minority of women were able to successfully obtain a new trial, appeal to the South Carolina Supreme Court, or receive executive clemency from the governor. Laura and Eli Thorn, for example, availed themselves of all three of these methods in succession. After the judge refused to grant them a new trial when they motioned for one, they attempted to appeal to the State Supreme Court, which declined to hear their case. Finally, they tried and failed to appeal to Governor Wade Hampton for executive clemency.

Although the Thorns attempted to do so, Eliza Colclough of Clarendon County was the only woman who actually appealed an arson conviction to the South Carolina Supreme Court during the 1865-1900 period. A derogatory newspaper account of her preliminary hearing mentioned that Colclough, who the paper called "by no means an extensively modest amazon" informed the trial justice that she had often been in trial justice's courts "and knew all the law on the subject."[52] Whether she meant that she had often been in courts as a defendant, witness, complainant, or some combination of the three, Colclough claimed legal knowledge based on her experiences.

Unfortunately, she did not have a chance to employ her legal knowledge in her 1889 General Sessions trial. The county solicitor and Judge J.J. Norton evidently proceeded with the trial despite the fact that Colclough and her legal counsel had answered that they were "not ready" for trial, had not managed to finish enlisting her four witnesses on her behalf, and did not receive an indictment or a jury list until the moment the jurors were called in. While defendants and their attorneys were typically allowed a minimum of three days to prepare for trial after they

[52] "Arson near Packsville," *Manning Times* (Manning, S.C.), January 23, 1889.

were given a copy of the indictment and the jury list and judges frequently allowed motions for cases to be continued, this did not happen in Colclough's case. Her State Supreme Court appeal indicates that after the solicitor made the state's case, Colclough's counsel again asked for a continuance. The judge overruled the motion and "no testimony was offered by the defense" whatsoever. The jury found Colclough guilty, and she was sentenced to ten years in the penitentiary. Colclough's counsel moved for a new trial, again on the grounds that they had not been granted the customary three days to prepare, which the judge again refused, and Colclough appealed to the State Supreme Court on the same grounds.

The South Carolina Supreme Court found that Colclough had "no sufficient ground of complaint to warrant this court to grant a new trial." "In addition," they added, "we think that the defendant waived, by her conduct, whatever right she may have had, both as to the indictment and the jury panel."[53] The State Supreme Court's quick affirmation of the lower court's conviction and their statement about Colclough's conduct as an accused arsonist meaning that she had no right to see documents central to her case demonstrates that the highest justices in the state had little sympathy for a Black woman arsonist on trial. Nor do state officials seem to have much sympathy for female arsonists in the penitentiary.

If convicted, a woman sent to the penitentiary might eventually be pardoned due to executive clemency, but such pardons were highly dependent on the whims of the current governor and the willingness of local men to sign and support a petition. Although the pardon might be sent in the woman's name and crafted with her input, most pardons were distributed by their attorneys or other prominent White men on the woman's behalf. Furthermore, petitioners

[53] *Reports of Cases Heard and Determined by the Supreme Court of South Carolina, Volume 31* (Columbia: R.L. Bryan Company, 1890), 157-61.

almost always asked for a Black woman to be pardoned based on extenuating circumstances, such as her poor health, her pregnant state, the number of children she had at home, or her "ignorance," rather than the belief that she had been wrongly convicted or punished too severely.

Unlike pardon petitions for male inmates of the penitentiary, petitions for women of any race very rarely mentioned the woman's good conduct while imprisoned as an argument for their pardon. This is a curious gendered pattern detectable in pardon petitions from throughout the nineteenth century, and one which transcends race. I found evidence suggesting that penitentiary guards sometimes disciplined women, especially Black women, by beating or whipping them.[54] Yet petitioners and even penitentiary superintendents scarcely mentioned women's conduct in prison, focusing instead on their health while imprisoned. In general, the discourse surrounding women in the penitentiary included little discussion of *reforming* the women, in contrast to the reformatory schools for (mainly White) girls that appeared in the South around the turn of the century, which I discuss in this dissertation's epilogue[55]

In fact, even young penitentiary inmates, such as Rose Perrin, an eleven or twelve-year-old African American girl sentenced to ten years of imprisonment for arson in 1896, sometimes struggled to secure pardons. Governor John Gary Evans ignored Perrin's attorney's pleas to commute her sentence for a year before the newly inaugurated Governor Ellerbe finally commuted Perrin's imprisonment to one year in the Newberry County jail, so that the young girl should not be in "constant association with criminals" of the hardened penitentiary variety.[56]

---

[54] "The Management of the Penitentiary Shows How Convicts are Trated," *Abbeville Press and Banner*, February 29, 1888.

[55] See for example, Karin L. Zipf, *Bad Girls at Samarcand: Sexuality and Sterilization in a Southern Juvenile Reformatory* (Baton Rouge: Louisiana State University Press, 2016). In the North, the reformatory impulse had appeared much earlier, as the root word of *penitentiary* itself suggests. The southern penitentiaries which state governments founded after the Civil War opened in a different era and shared little logic with earlier Northern penitentiaries such as the (in)famous Eastern State Penitentiary in Pennsylvania.

[56] Pardon Petition for Rose Perrin, Pardon Papers of Governor William H. Ellerbe, box 6, folder 7, SCDAH.

Eleven members of the jury, the presiding judge, and twenty other male citizens had signed Rose Perrin's petition.

Lena Chapman, another Black girl who was convicted of arson in 1896, was less fortunate. After she spent two years in the Chesterfield County jail and then the penitentiary, a number of constables and officials from Chesterfield petitioned Governor Ellerbe to pardon her on the grounds that, being twelve years old, "she had no conception of the severity of the offense." However, Ellerbe either refused to grant her pardon or did not do so quickly enough. The prison's 1899 report to the General Assembly shows that Lena Chapman died in the penitentiary of what the hospital physician called "purpura hemorrhagiea," probably a disease involving inflammation of the blood vessels which results from respiratory infections such as those that were rampant in the penitentiary.[57] She was fifteen years old.

Like Lena Chapman and like Rhoda, the enslaved woman who died in the Lancaster County jail in 1839 before she could be transported out of the state, many other women became ill in the disease-ridden and unhealthy environment of the penitentiary in Columbia. Eliza Colclough, who despite all her efforts never had the opportunity to present her defense in court, died in the penitentiary in February 1894 of "chronic pneumonia." She had served less than half of her sentence and was one of fifty-four prisoners who died that year.[58]

In a few cases, a governor eventually pardoned women on account of their "ill health" or the contagiousness of a disease such as tuberculosis. Milly Smith, a Black woman who still worked as a farm laborer in her old age, entered the penitentiary in 1877, at the age of sixty-seven, for consenting to let arsonists store stolen goods in her house. She left it nearly seven

[57] Pardon Petition for Lena Chapman, Pardon Papers of Governor William H. Ellerbe, box 2, folder 5, SCDAH.
[58] *Report of State Officers, Boards, and Committees to the General Assembly of the State of South Carolina* (Columbia, 1894), 689.

years later in 1883, "an old woman in feeble health" and unable to work, after Governor Hugh Smith Thompson pardoned her.[59] Inmates who were unable to labor frequently received pardons, as the superintendent of the penitentiary and other officials saw them as a drain on state resources.

By the 1890s, women in the penitentiary in Columbia lived in a separate "women's building" on the upper floor of the prison's commissary building. Prior to this, prison officials had attempted to enforce a "proper and rigid separation between the sexes" in daily life, with varying degrees of success.[60] Pardon petitions and penitentiary reports to the General Assembly reveal that many Black and White women inmates were pregnant or nursing small children, although some were already pregnant when admitted. Almost all engaged in some form of labor while imprisoned, whether it be doing the inmates' laundry, working in the penitentiary's shoe and hosiery factories, or working outside of the penitentiary's walls.

The Reconstruction government in South Carolina briefly experimented with convict leasing, which the legislature reenacted in1878 under the governorship of Wade Hampton. Although the state never developed convict leasing to the same extent as other southern states such as North Carolina, Georgia, or Mississippi, some women labored alongside male convicts in convict camps, working in horrendous conditions for railroads, phosphate mining companies, or as farmhands. In 1882, for example, a Mr. Dilbert contracted with the penitentiary, who leased him "sixty-six men and thirty-eight women and boys."[61] Unfortunately, the records do not name these women. However, given what we have learned from recent scholarship on Black women

[59] Pardon Petition of Milly Smith, Pardon Book for Governors Hagood and Thompson, 183-4, SCDAH.
[60] *Report of State Officers, Boards, and Committees to the General Assembly of the State of South Carolina* (Columbia, 1870-71), 118.
[61] *Report of State Officers, Boards, and Committees to the General Assembly of the State of South Carolina* (Columbia, 1882), 477.

and convict labor, it is likely that the vast majority of the women in South Carolina's convict labor camps were Black women.[62]

Other women survived their long prison sentences. Some returned to the same communities in which they had been convicted. The teenaged Rose Perrin, for example, married shortly after her executive pardon and raised four children in Abbeville County, where she had been sentenced for arson. Bell Hutchins married within a year of her release in 1891 and spent the next few decades living and working on a tenant farm with her husband in Lancaster County. They had eight children.[63]

Conclusion

In post-Civil War South Carolina, arson constituted a form of Black protest against Whites' economic exploitation. As this chapter has demonstrated, Black women played substantial roles in these protests. One of the striking features of women's arson trials as opposed to, for example, trials for assault or larceny, is that women were often indicted and tried alongside other Black men and women. While, as I have shown, African Americans could find themselves indicted merely due to Whites' suspicions and association of arson with Black protest, other arsons do appear to have planned and carried out by small groups of men and women. About 28% of the women indicted for arson in South Carolina during the 1865-1900 period were tried alongside accomplices. In 55% of those cases, women were tried with family

[62] LaFlouria, *Chained in Silence*; Sarah Haley, "Like I Was A Man': Chain Gangs, Gender, and the Domestic Carceral Sphere in Jim Crow Georgia," *Signs* 39, no. 1 (Autumn 2013), 53-77. Haley finds that Jim Crow Georgia's carceral system actually codified "female" and "women" in the early 1900s so that White women did not have to engage in convict labor while Black women did. South Carolina's convict labor system was much more haphazard and less extensive than Georgia's, but it seems likely that most of the South Carolina women assigned to convict labor (rather than doing more domestic or gendered work inside the penitentiary) were also African American.
[63] Pardon Petition of Bell Hudgins and Sloan Oglesby, in *Report of State Officers, Board and Committees to the General Assembly of the State of South Carolina* (Columbia, 1891), 9.

members or in-laws who had experienced exploitation at the hands of the same White landowners. More rarely, acts of arson echoed the large-scale resistance of enslaved people during the antebellum period, such as the Stono Rebellion and the Camden arson conspiracy of 1816. An example is the 1877 conviction of sixty-seven-year-old Milly Smith and several other African American men and women for allegedly setting fire to numerous houses in the town of Darlington.[64]

African Americans did not possess a monopoly on arson in South Carolina, whatever White legislators, grand juries, and communities may have asserted. White women such as Rose Corbin and Mattie Keese stood trial for setting fire to the homes and property of other Whites during this period. While the discourses surrounding the trial and courtroom testimonies did not frame these arsons as acts of economic retaliation or resentment, these factors may well have played a role in White women's arson as well as Black women's. Through further research I found that Mattie Keese, for example, set fire to the properties of White neighbors who were financially better off than her. Her alleged victims included a wealthy merchant's widow whose stables Keese rented for her boarding house, a rich broker and his wife, and a successful merchant.

However, these trials were rarer than Whites' use of arson against African Americans as a form of political and economic repression, intimidation, and violence. While White southerners had occasionally burnt Black institutions during the antebellum period, such as the 1822 destruction of the AME church that Denmark Vesey and some of his fellow rebels had attended in Charleston, arson as a weapon of racial terror and White supremacy was a largely post-Civil War phenomenon.[65] White conservative vigilantes in South Carolina and elsewhere in the South

[64] See Pardon Petition of Milly Smith.
[65] Sinha, *The Slave's Cause*, 196.

burnt Black churches and schools as a means of trying to suppress African Americans' political action, gatherings, and even their efforts to educate their children.[66] In a particularly egregious example, Whites set fire to a Black schoolhouse in Yorkville, South Carolina four times during the early 1870s, then blamed the arsons on local Black people. The Ku Klux Klan and other White vigilantes also targeted the homes, farms, and other property of successful Black families who they deemed to have risen above their economic, social, or political "place." Unlike African Americans who carried out collective arsons, White vigilantes of this kind were rarely indicted even during Reconstruction.[67]

Arson was therefore utilized both as a weapon of White supremacy and terrorism and as an act of Black protest and retaliation against individual Whites' economic exploitation. Yet Black South Carolinians, including Black women, were disproportionately blamed, convicted, and incarcerated for arson with escalating punitiveness in the decades following Reconstruction.

[66] Leon F. Litwack, *Trouble in Mind: Black Southerners in the Age of Jim Crow* (New York: Alfred A. Knopf,1998), 86-105.
[67] Stephen Budiansky, *The Bloody Shirt: Terror after Appomattox* (New York: Viking, 2008), 134.

Chapter Six

"Illicit Acts":

Adultery and Fornication Prosecutions in post-Reconstruction South Carolina

On April 4, 1879, a South Carolina newspaper reported on the indictment of "eight persons presented by the grand jury for adultery" in Chester County. "The prevalence of the great crime of adultery, and especially among the colored people, is one of the alarming signs of the times," the paper lamented. "But for the intervention of restrictive legislation and the stern enforcement of the law… [it] will end in the overthrow of all social order and peace, and force upon the country a licentious and lustful population, neither knowing, doing, or caring to discharge the high duties of honorable citizenship."[1]

In fact, adultery only became a crime in South Carolina in 1879, after the state's first post-Reconstruction "Redemption" legislature passed a statute criminalizing adultery and fornication. It was the first criminal statute to address adultery in the state's history and called for fines of up to $500 or a year in the penitentiary for men and women convicted of "habitual" premarital or extramarital sex.[2] The adultery and fornication statute closely followed South Carolina's newly reinstated ban on divorce, which Democrats had passed in December 1878. This act repealed the short-lived provisions for divorce enacted during Reconstruction in 1872.[3] Later in 1879, the White Democrat majority managed to pass a statute outlawing interracial

[1] "The Law and Adultery," *Weekly Union Times* (Union County, S.C.), April 4, 1879. At least three South Carolina newspapers reprinted the article.
[2] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina…1881-82* (Columbia, SC: James Woodrow, State Printer, 1882), 328 (SEC 2588-2590). The difference between adultery and fornication as defined in the law is that adultery occurred when one or both partners were married.
[3] "An Act to Regulate the Granting of Divorces," *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, 1871-72* (Columbia, SC: Republican Printing Co., State Printers, 1872), 30.

marriage under threat of a $500 fine or lengthy imprisonment.[4] Together, these highly political laws regulating sexual relationships formed an interlocking group that South Carolina law books classified under the heading "Crimes Against Chastity, Morality, and Decency."

This chapter concludes my study of women in the criminal courts after the Civil War and builds upon recent scholarship on the racial and sexual politics of Reconstruction to the Jim Crow period in the South.[5] Focusing on the somewhat overlooked period between the end of Reconstruction and the legal entrenchment of Jim Crow and the disenfranchisement of African American men in the 1890s, I argue that South Carolina's laws criminalizing extramarital and especially interracial unions constituted reactionary political measures by White conservative legislators. White conservatives juxtaposed proclamations of moral order with images of Reconstruction, during which couples could obtain divorces between 1872 and 1878 and Black men held political and legal offices, as a period rife with corruption, the disruption of "natural" gender and racial hierarchies, and the creeping threat of "social equality" or "miscegenation." White conservative legislators and local officials used the new sexual conduct statutes and the renewed ban on divorce to rhetorically differentiate the "Redeemed," White Democrat-led political and social order from an imagined recent past, Reconstruction. In doing so, they also

---

[4] "An Act to Prevent and Punish the Intermarrying of Races," *Acts of the General Assembly of South Carolina… 1879* (Columbia, SC: Calvo & Patton, 1880), 3.

[5] For seminal work in this area, see Glenda Gilmore, *Gender and Jim Crow: Women and the Politics of White Supremacy in North Carolina, 1896-1920* (Chapel Hill: University of North Carolina Press, 1996); Martha Hodes, "The Sexualization of Reconstruction Politics: White Women and Black Men in the South after the Civil War," *Journal of History of Sexuality* 3, no. 3 (January 1993), 402-17; Elsa Barkley Brown, "Negotiating and Transforming the Public Sphere: African American Political Life in the Transition from Slavery to Freedom," *Public Culture* 7 (1994), 107-146. See also Crystal Feimster, *Southern Horrors: Women and the Politics of Rape and Lynching* (Cambridge: Harvard University Press, 2009) for Jim Crow. For the post-Emancipation period and Reconstruction, see Thavolia Glymph, *Out of the House of Bondage: The Transformation of the Plantation Household* (Cambridge: Harvard University Press, 2003); Hannah Rosen, *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South* (Chapel Hill: University of North Carolina Press, 2009); Laura Edwards, *Gendered Strife and Reconstruction: The Political Culture of Reconstruction* (Urbana: University of Chicago Press, 1997). Although she focuses more on the Western U.S than the South, this chapter also owes a debt to Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (New York: Oxford University Press, 2009).

sought to powerfully impugn African Americans' domestic relations and by extension, African Americans' capacity "to discharge the high duties of citizenship."[6]

Finally, legislators and officials used the laws to attempt to control White women's sexuality, especially the sexuality of White women who lived and slept with Black men. As Kathleen Brown argued in her study of race and gender in colonial Virginia, the regulation of White women's sexuality and punishing White women who had sex with non-White men were integral to defining race and racializing slavery in the seventeenth and eighteenth centuries.[7] In the post-Reconstruction era, too, I argue that conservative South Carolina officials singled out White women and Black men who lived as couples for particularly harsh punishments that blurred the lines between extralegal and legal behavior. Only gradually and piecemeal did the Jim Crow narrative of the Black male rapist—and by extension, narrative of the vulnerable White woman who sought and needed White male protection—emerge as dominant. In the intervening years between the Civil War and the beginning of the "nadir" of American race relations in the 1890s, however, Whites expressed at least as much concern about White female-Black male interracial couples as about interracial rape.

Unlike other chapters of this dissertation, "Illicit Acts" necessarily focuses on the period following January 1879, when South Carolina's General Assembly passed its first law criminalizing adultery and fornication. However, I begin with a discussion of the state's antebellum position on divorce and South Carolina's general noninterference in domestic affairs, which on paper contrasts sharply with the post-Redemption state's legislation against numerous sexual offenses. Yet I find general ideological consistency in conservative South Carolinians'

---

[6] "The Law and Adultery," *Weekly Union Times* (Union County, S.C.), April 4, 1879.
[7] Kathleen M. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill: UNC Press, 1996), 1-2; 197.

upholding of White men's "mastery" over families, marriages, and the sexuality of those they deemed dependents.[8] Drawing on church records from the antebellum and Reconstruction periods, I explore the nature of church disciplinary hearings as extralegal courts which condemned illicit sexual behavior decades before such affairs regularly appeared in criminal courts. The sharp decline of church disciplinary hearings coincided, not coincidentally, with the passage of the new statutes making the regulation of sexual morality the province of the state.

I briefly discuss Reconstruction-era changes in the divorce law, which enabled a small but significant number of couples to obtain legal separations for the first time in the state's history, before turning to the "Redemption" General Assembly's championing of the new statutes regulating sexual behavior and their coverage in the newspapers. From there, I shift from a top-down perspective to a bottom-up consideration of how local officials and ordinary people reacted to and employed the laws. Examining the blurred boundaries between legal arrest and prosecutions and extralegal violence toward unmarried and especially interracial couples, I find that officials in some communities often acted in ways we might typically associate with vigilante groups.

I argue that interracial couples composed of Black men and White women faced the most scrutiny from neighbors and officials. Interracial couples were disproportionately represented among couples tried and convicted under the adultery and fornication laws. Officials and citizens who prosecuted interracial couples demonstrated particular concern with the implications of interracial unions for wealth and property, especially property that could potentially pass to heirs of African descent. And despite political rhetoric about the chivalry afforded to White women in

[8] McCurry, *Masters of Small Worlds*.

South Carolina, officials extended little mercy to poor White women accused of adultery, especially when their partners were Black men.

In fact, my research demonstrates that Black and White women accused and convicted under the sexual conduct laws experienced both longer terms of incarceration than men and particular gendered struggles during their imprisonment. The majority of accused women were poor and so had little financial means or access to credit that would allow them to pay their bail or, if convicted, their hefty fines. Many pardon petitions for convicted women mentioned that the woman's male co-defendant, whether Black or White, had "paid up" and gone free while she remained imprisoned. Single mothers also faced separation from their dependent children during their imprisonment. Pregnant women spent their confinement in the unhealthy environment of the penitentiary or county jail, leading to illness or death. Others were incarcerated with their nursing infants. With their wellbeing and that of their children at stake, women and their partners fought adultery prosecutions hard, despite the interlocking laws arrayed against them.

Once again, examining local court records reveals a complicated picture of how people employed and contested criminal laws in practice. While some counties rigorously enforced the new sexual conduct statutes, targeting interracial couples composed of Black men and White women, others ignored them or enforced them in a patchwork manner. Couples themselves used various extralegal and legal strategies to avoid prosecution and conviction. Some crossed state or county borders to escape arrest, "passed" as the same race as their partner, or negotiated with officials to drop the case against them. In court, defendants on trial argued that their marriage was legitimate, or claimed that their domestic relations were that of an employer and an employee rather than a cohabiting couple. Sometimes poor wives, including African American women, initiated adultery prosecutions against unfaithful husbands, using the law as a tool to

negotiate for better treatment. In short, despite the "Redemption"-era legislators' repressive intentions and the gradual turn towards Jim Crow (in)justice, local actors employed or contested the statutes and their underlying ideologies in ways that continued to reflect the messy contradictions of law and lived experience.

6.1 Antebellum Antecedents: State Nonintervention and Church Disciplinary Hearings

During the antebellum period, South Carolina maintained a radically conservative position on marriage. While other southern states gradually passed laws enabling couples to obtain divorce either through the courts or acts of the legislative assembly, by the outbreak of the Civil War, South Carolina remained the only state with no provision for divorce. The General Assembly could not grant divorces through special legislative acts; couples could not obtain divorce through the courts.[9] As Stephanie McCurry demonstrates in her study of antebellum social and gender relations, *Masters of Small Worlds*, South Carolina law reflected the hierarchical and patriarchal nature of a slave society where planters controlled most institutions but White male yeomen farmers also enjoyed rhetorical and legal "mastery" over the dependent members of their households. This included enslaved people, but also women.[10]

In other words, the state (namely the planter class who largely controlled state government) sought to uphold patriarchy and White men's "mastery" by keeping domestic affairs out of the courts. This was true even in the case of interracial marriage, which South Carolina, unlike other southern states such as North Carolina and Virginia, did not legally

[9] Hudson, "South Carolina's Unique Stance on Divorce," 75-6; Funk, "Let No Man Put Asunder," 134.
[10] McCurry, *Masters of Small Worlds*, 1-16.

forbid.[11] Some White planters lived openly with enslaved or free Black mistresses or wives, a situation which occasionally led to heated battles over inheritance within families. Unions between White women and Black men also existed.[12] Laws criminalizing adultery and fornication did not appear in the antebellum statute books. Extramarital sexual relationships, including coercive relationships with enslaved women, constituted a prerogative for White masters.[13] The same was not true, however, for Black men or women of any race.

Rather than the power of the state, antebellum South Carolinians employed patriarchal and familial authority, social convention, and religious institutions to regulate sexual conduct and domestic affairs. Revolutionary and antebellum era church records reveal that evangelical churches devoted considerable energy to investigating disciplinary complaints against members of their congregations. Church committees met at least once a month to discuss, interview, formally admonish, and at times, "exclude" or excommunicate church members who had violated communal codes of conduct.[14] These church courts coexisted alongside and sometimes reinforced the decisions of the legal courts; some churchgoers were excluded after they appeared in the criminal courts or in ugly civil court battles with fellow church members. The church

---

[11] Jones and Wertheimer, "Pinkney and Sarah Ross," 331. Jones and Wertheimer attribute SC's lack of a ban on interracial marriage to strong "social taboo" in the state, but I believe McCurry's "mastery" thesis applies here as well; the state did not want to infringe on White men's rights to keep or marry Black mistresses. Such a ban would also have been inconsistent with South Carolina's general position on not regulating or intervening in the domestic institution of marriage. Finally, antebellum South Carolina (like antebellum Louisiana) had a larger number of free people of color with mixed African and European descent than did other southern states.

[12] Cynthia Kennedy-Haflett, "A Moral Marriage: A Mixed-Race Relationship in Nineteenth-Century Charleston, South Carolina," *South Carolina Historical Magazine* 97, no. 3 (July 1996): 206-226; Martha Hodes, "The Sexualization of Reconstruction Politics: White Women and Black Men in the South after the Civil War," *Journal of the History of Sexuality* 3, no. 3, Special Issue: African American Culture and Sexuality (January 1993): 402-417.

[13] Brenda E. Stevenson, "What's Love Got to Do With It?: Concubinage and Enslaved Women and Girls in the Antebellum South, 159-188, in *Sexuality and Slavery: Reclaiming Intimate Histories in the Americas*, ed. Daina Ramey Berry and Leslie M. Harris (Athens: University of Georgia Press, 2018); Camp, "The Pleasures of Resistance," 540-41; White, *Arn't I A Woman*, 37-9.

[14] Robert Elder also draws upon church minutes and disciplinary records in Elder, *Dual Citizens and a Twice Sacred Circle: Women, Evangelicalism, and Honor in the Deep South, 1784-1860* (Chapel Hill: University of North Carolina Press, 2016), 81-110.

conferences who tried disciplinary cases were composed entirely of White men. The White women who usually made up the majority of an evangelical church's membership nevertheless did not have votes in the church conference. As Stephanie McCurry and Christine L. Heyrmann have argued, southern evangelicalism tended to reinforce, rather than push back against, southern institutions such as slavery and submission to patriarchal authority by the antebellum period.[15]

Church records show that antebellum church conferences routinely disciplined women for extramarital affairs, fighting with their husbands, or "lewdness" such as provocative dancing or dressing. Churches also excommunicated women at higher rates than men and, importantly, demonstrated less willingness to readmit or "restore" excommunicated women to fellowship. Beech Branch Baptist Church, located in what is today Hampton County, excluded 14% of their White female members during the antebellum period for various, usually sexual offenses, compared to less than 9% of White men.[16] Gum Branch Baptist Church in Darlington County, formerly known as Lynche's Creek Baptist Church, excluded 22% of their female members in the antebellum years.[17] In 1857, for example, Gum Branch Baptist excluded Emmeline Spears for "fornication" without admonishing or naming her male partner.[18] A year later, they excluded "Sister Brown" "for leaving her husband."[19] A strong sexual double standard operated. Although church conferences brought men to task for offenses such as fighting, dueling, "playing a fiddle

[15] McCurry, *Masters of Small Worlds*, 142-3; 209-214. Christine Heyrmann, *Southern Cross: The Beginnings of the Bible Belt* (Chapel Hill: University of North Carolina Press, 1998), 212-249. Heyrmann observes that even evangelical denominations that originally valued the contributions of women and preached against slavery, such as the Methodists, adapted their message in order to win converts in the South.

[16] Beech Branch Baptist Church Record Book, South Caroliniana Library. These numbers are based on member lists at the beginning of the church minute books. Clerks usually noted if a church member had been excluded and, if applicable, later restored.

[17] Gum Branch Baptist Church Record Book, 1796-1887, South Caroliniana Library.

[18] Gum Branch Baptist Church Record Book, 214.

[19] Ibid., 220.

on the Sabbath," drinking (in Baptist churches), or non-attendance at meeting, churches rarely investigated complaints of adultery or other sexual misconduct against men.

Enslaved and free Black people who were members of predominantly White evangelical churches faced the highest rates of discipline in church conferences. Although they could not vote on church decisions and often occupied ill-constructed benches at the back of the church, Black congregants frequently found themselves before church conferences to be disciplined.[20] In the case of enslaved people, church conferences frequently disciplined, admonished, and excluded them for disobedience and misconduct. In 1827, Gum Branch Baptist Church formally rebuked Hannah and Priscilla, two enslaved women "belonging to Lovet Young" for "disputing together" and "not attending meeting," a circumstance over which they surely had little control. In 1834, the church excluded Priscilla for acting "grossly disordily."[21]

In fact, enslaved and free Black women appear to have faced the most scrutiny and the harshest discipline from churches during the antebellum period. The minutes of Mechanicsville Baptist Church in Darlington County reveal that the church excluded 29 free and enslaved Black women during the antebellum period, most of them for sexual offenses such as adultery and bastardy.[22] In 1831, Gum Branch Baptist Church investigated the case of Dicy Suggs, a free Black woman whom church conference members accused of "leaving her husband." Dicy testified that she had been coerced into marrying her husband "Suggs," but the church, recording that they saw "no special signs of repentance" during her hearing before the conference, excommunicated her. Dicy was restored to fellowship three years later when the church finally

[20] Nolen L. Brunson, "History of Beech Branch Baptist Church (Hampton County), 1759-1959" (unpublished manuscript, 1959), South Caroliniana Library.
[21] Ibid., 30; 75.
[22] Mechanicsville Baptist Church Record Book, South Caroliniana Library.

accepted her confession of guilt.[23] In 1838, Gum Branch Baptist "took up the case" of "Mary, a black woman, who is a member with us, who has no husband" for being "in a family way." "She is ripe for exclusion," the clerk recorded, and the church conference acted accordingly.[24]

While the court-like church conferences did not carry legal penalties, church disciplinary hearings did have serious consequences for excluded women in particular. Exclusion from a church carried a considerable stigma in close-knit antebellum communities. It meant social ostracism from neighbors, support networks, and former friends who were church members in good standing. Nor could an excluded person simply join a church in a neighboring town. Most evangelical churches required a "letter of dismission" or dismissal before they accepted a new congregant. Such letters were supposed to attest to the person's previous good moral conduct, and churches certainly did not issue them to excommunicated members. In rural communities with few institutions for social welfare, churches provided resources, financial relief, or help rebuilding damaged homes to their poorest members. Excluded people could no longer receive such aid.

Indeed, a church's power to influence the lives of congregants could be considerable, especially in the case of poor women who depended on the church for charity. In 1847, Gum Branch Baptist Church appointed a committee of three White men to investigate an unspecified "ugly report" against "Sister Clary Stephens," a White widow. The committee recommended that Stephens be "laid under the censure of the church" and then excluded. The following year, Clary

[23] Gum Branch Baptist Church Record Book, 79; 104-5.

[24] Ibid., 106. The way in which antebellum church clerks often referred to Black church congregants is itself noteworthy. Rather than writing "Sister Brown" or "Sister Barsheba Blackwell," as they would for White women, church clerks often used complicated constructions such as "Mary, a black woman, who is a member with us" for free Black congregants. Enslaved people were often referred to as "the property" of a White church member or simply given the epithet "a slave." Clearly Black people might be fellow congregants in White-led evangelical churches, with their owner's blessing, but Whites did not consider them to be "brothers" or "sisters."

Stephens managed to get "readmitted to fellowship" after she "made acknowlledgement and lived ordily," a phrase which suggests her alleged misconduct was probably sexual in nature. She then petitioned the church "to help her to live, the church having here to fore helped her from time to time." The church conference, however, was only willing to offer Clary Stephens conditional assistance. Joseph Norwood, one of the men who had originally investigated the rumor against Stephens, recommended that Clary Stephens' children "be bound out to such persons as would rase them all religious." The church adopted the resolution. Deeming Clary Stephens to be an unfit mother based on her previous sexual misconduct, the church attempted and perhaps succeeded in leveraging charity in order to separate her from her children.[25]

6.2 Church Discipline after the Civil War

After the Civil War, the worst tendencies of church disciplinary hearings evolved into harsh discipline and mass exclusions of Black congregants, who were now freedpeople. Few South Carolina churches held conferences during the Civil War, when most White male members were away with Confederate forces.[26] But after the war, some evangelical churches started new "colored conferences" where Black congregants met separately under the authority of White male church leaders. Church minutes show that most of the business of these colored conferences involved excluding freedpeople for misconduct. Between 1865 and 1870, Beech Branch Baptist Church excommunicated 27 "colored members," largely due to adultery accusations. During one meeting in October 1867, Beech Branch excommunicated two Black

[25] Gum Branch Baptist Church Record Book, 152-7.

[26] An astonishing 86-88% of South Carolina's eligible White men aged 17-50 served in the Confederate army, the highest percentage of any Confederate state. Some Unionist men reported being pressed to join or threatened with violence if they did not. Rubin, *South Carolina Scalawags*, xx.

women and one Black man for adultery.[27] Sometimes Black men reported rumors about other Black men or women, and sometimes White people, including former masters, complained about formerly enslaved people. Notably, the increase in disciplining and exclusions of freedpeople coincided with a decrease in the number of White congregants who appeared in the church minutes for alleged misconduct.

Racial tensions increased at Beech Branch Baptist in 1868, when several Black men who "assisted the deacons" petitioned for the right to exhort and preach on church grounds. The church conference denied their request, "in view of the present unenlightened condition of our colored members, and the general disorder and laxity of discipline." At the next meeting, the colored conference excommunicated two Black men and two Black women for adultery. Rebellion and change were in the air, but so was a desire to stifle them. That same autumn, the White women of the church and several prominent White men, including the pastor, began to call for church voting privileges for White women. The church conference denied this motion as well. The following year, they made a formal resolution: "it is resolved that the government of this church shall be and remain with the white male members. The officers shall be choosen from among the white male members and the right and title to property shall rest in the white male members."[28] Although Beech Branch Baptist's records provide unusually clear documentation of the gendered and racial conflicts wrought by the postbellum years and White men's determination to reserve religious authority for themselves, similar patterns are visible in other church minute books.[29]

[27] Beech Branch Baptist Church Record Book, 41.
[28] Ibid., 47-52.
[29] See, for example, Gum Branch Baptist Church Record Book; Mechanicsville Baptist Church Record Book, South Caroliniana Library.

By the late 1870s, White-led evangelical churches throughout the South had undergone significant changes. Freedpeople who had remained with the church they had attended while enslaved or joined White-dominated churches after the war had largely migrated to the Black churches that freedpeople joined or built from the ground up after Emancipation. Beech Branch Baptist, for example, dismissed or excluded most of their Black members during the 1870s and held their last "colored conference" in 1884.[30]

The decline in interracial congregations coincided with a gradual decline in church disciplinary hearings and exclusions throughout White and, indeed, Black evangelical churches. Although my preliminary research suggests some Black Protestant churches also held church disciplinary hearings and sent committees to investigate bad behavior, what little historians have written about Black church discipline suggests it declined by the Jim Crow era.[31] White-dominated Baptist churches like Beech Branch that had once excluded and restored several members each month now rarely investigated claims of misconduct. Beech Branch's minutes from the 1880s mostly chronicle the church's struggles to collect money to pay a regular pastor. Conferences ceased even to cite members for non-attendance, and the church excluded only a handful of people between 1880 and 1910.[32] Why was this?[33]

---

[30] Brunson, "History of Beech Branch Baptist Church."

[31] Surprisingly few historians have discussed church disciplinary hearings in Black churches. See Adele Oltman, *Sacred Mission, Worldly Ambition: Black Christian Nationalism in the Age of Jim Crow* (Athens: University of Georgia Press, 2008), 169-70. A Black church disciplinary committee features prominently in one court case, briefly discussed in this dissertation's epilogue: *State vs Leah Prince*, Clarendon County Court of General Sessions Indictments, May Term 1885, box 4, SCDAH.

[32] Beech Branch Baptist Church Record Book, 91-152.

[33] As Christopher Waldrep has noted, the reasons for the decline in church discipline are probably several. He points to a loss of cohesiveness in church communities, and simply a shift in "the public's mood" away from strict Calvinism and towards sentimentalism. I believe that the shift from communal and church policing of morality to state (and, at times, organized extralegal) policing probably played a larger role. See Waldrep, "So Much Sin," 535-7.

In a shift that radically broke with South Carolina's long tradition of legal non-interference in marital and domestic affairs, the state and county courts took on a more patriarchal role in the years after Reconstruction. White conservative "Redeemers" championed and passed laws outlawing divorce (briefly available during Reconstruction), interracial marriage, and, for the first time in the state's history, adultery and fornication. Church disciplinary hearings and excommunications declined, but people who might once have answered to church committees for rumors of adultery and sexual misconduct now could find themselves indicted in criminal court and sentenced to the county jail or the penitentiary.

Like antebellum and post-Civil War church conferences, county-level officials and the state targeted African Americans. Although Black men and women had deserted White-led churches in droves for Black-led congregations, they remained subject to the authority of the now-White-conservative-controlled state. Beech Branch Baptist's 1868 conflict, in which the White male conference members denied Black congregants the right to hold leadership positions on account of their "general disorder and laxity of discipline," foreshadowed White conservative rhetoric from the late 1870s onwards, in which Whites used claims of Black sexual and familial disorder, embodied in adultery trials, to disempower, imprison, and disenfranchise Black citizens.[34]

While by the Jim Crow era, White conservatives had adopted a new rhetorical focus on Black men as potential rapists of helpless White women, Black and White women also found themselves accused of morality crimes such as adultery and fornication.[35] Furthermore, the gendered problems faced by antebellum women like Clary Stephens, forced to bond out her

[34] Beech Branch Baptist Church Record Book, 47-52.
[35] See Gilmore, *Gender and Jim Crow*; Hodes, "The Sexualization of Reconstruction Politics"; Feimster, *Southern Horrors*.

children after her church condemned her for not "living ordily," continued to lay an especially heavy burden on women accused of sexual misconduct.[36]

6.3 Legislating the Sexual Conduct Statutes

In 1872, South Carolina's General Assembly succeeded in passing the state's first divorce law, allowing for divorce on the limited grounds of adultery or desertion. Between 1872 and 1878, 157 couples obtained divorces from civil courts.[37] While the limited divorce law and the repeal of the Presidential Reconstruction-era ban on interracial marriage had a small practical impact compared to other more sweeping changes during Congressional Reconstruction, White conservative hatred of these laws would come to play an outsized political role during the "Redemption" of South Carolina that followed the election of 1876.

The story of the Presidential Election of 1876, the Compromise of 1877, and the withdrawal of federal troops from the South is well-known. In South Carolina, one of several southern states still under Republican government in 1876, White vigilantes who had sporadically terrorized White and Black Republicans for years felt energized by the violent Democratic seizure of Mississippi in 1875. Forming paramilitary "rifle clubs" known as Red Shirts, they embarked on a state-wide campaign of violent intimidation of Republican voters. Following a contested gubernatorial election, Governor Wade Hampton took office in April 1877 after federal troops and former Republican Governor Daniel Chamberlain withdrew. A White

[36] Gum Branch Baptist Church Record Book, 152-7.
[37] Janet Hudson, "Divorce," in *the South Carolina Encyclopedia* (2016), https://www.scencyclopedia.org/sce/entries/divorce/.

Democratic majority took seat in the General Assembly, inaugurating what White Democrats called the "Redemption" of South Carolina from Reconstruction.[38]

As these "Redeemers" sought to symbolically differentiate the new Democratic regime from Reconstruction, they worked to impugn Reconstruction and Black citizenship as a whole. They swiftly passed legislation repealing the state's short-lived divorce law (in 1878), criminalizing "habitual" premarital and extramarital sexual relationships (in early 1879), and banning interracial marriage (in late 1879). In the case of the divorce law, antebellum South Carolina had been unique in prohibiting divorce by 1860.[39]

In reinstating the divorce ban, White Democrats argued they were returning the state to a pre-Reconstruction period during which the laws upheld the sanctity of the family. Repealing the Reconstruction divorce law was "in the moral interest of the state and should receive prompt attention," one paper proclaimed soon after the "Redeemers" took office.[40] Other conservative papers advocated for the repeal by pointing to supposed epidemics of divorce in Northern, Republican-led states. "There is one divorce in the State of Maine to every twelve marriages… 'What God hath joined together let no man put asunder' is not in the Maine Bible," one editor smugly remarked.[41]

The 1879 law criminalizing adultery and fornication was novel compared to Democrats' repeal of the divorce law, in that it was the first such law in South Carolina's history. Perhaps surprisingly, the 1879 law that criminalized interracial marriage was a South Carolina first as

[38] For "Redemption" in South Carolina, see Baker, *What Reconstruction Meant*; William J. Cooper, *The Conservative Regime: South Carolina, 1877-1890* (Columbia, South Carolina: University of South Carolina Press, 2005); Andrew Slap, "The Spirit of '76: The Reconstruction of History in the Redemption of South Carolina," *Historian* 63 (Summer 2001), 769-86.
[39] Janet Hudson, "Divorce."
[40] *Keowee Courier* (Walhalla, SC), November 1, 1877.
[41] *Newberry Herald* (Newberry, SC), May 15, 1878.

well. Yet both laws were part of a larger wave of such laws in the post-Reconstruction South and the U.S. Alabama, for example, not only criminalized adultery and fornication in 1882, but the state supreme court ruled that courts could sentence convicted interracial couples harsher than same-race couples.[42] Georgia, Mississippi, and Alabama quickly banned interracial marriage between "whites" and "negroes." Enforcement increased in states where adultery statutes were already in place, as the 1880s-1890s saw a sharp rise in adultery and fornication prosecutions nationally.[43]

In South Carolina and in other southern states, White conservatives used the new statutes as rhetorical tools to boost support for their party by differentiating their rule of "law and order" from the "radical rule" of Reconstruction and to combat the threat of racial "social equality." As Kate Masur has noted, "social equality" carried powerful negative connotations for Whites after the Civil War. Most often a by-word for interracial marriage or "miscegenation," in the racist parlance of the day, "social equality" also meant African Americans' elevation to polite society, political office, land ownership, and inheritance.[44] Intermarriage and specifically Black men's marriage to White women raised the specter of Black men assuming the full range of political and social rights that had been reserved for White men.

Conservative South Carolinians admitted that the laws criminalizing interracial marriage and adultery and fornication partly intended to prevent "social equality" and curb Black men's rights and status. In January 1879, the *Keowee Courier* called for a ban on interracial marriage,

---

[42] Pascoe, *What Comes Naturally,* 7.

[43] JoAnne Sweeny, "Undead Statutes: The Rise, Fall, and Continuing Uses of Adultery and Fornication Criminal Laws," *Loyola University Chicago Law Journal* 46, no. 1 (Fall 2014), 150. Sweeny writes that prosecutions declined after the Civil War except for a few "aberrations," but her own data suggests they increased in the late nineteenth century.

[44] Kate Masur, "The Problem of Equality in the Age of Emancipation," in *Beyond Freedom: Disrupting the History of Emancipation*, ed. David W. Blight and Jim Downs (Athens: University of Georgia Press, 2017), 80-5. As Masur emphasizes, it was not merely southern Whites who resented the idea of "social equality." Northerners exhibited such racism in the wake of the Civil War, too.

arguing that it "should be a law in every Southern state." "The intermarriage of the races is as yet confined to a few incidences and these are confined in the lowest strain of society," the paper declared. "The negro now never expects nor to any extent desires such a privilege. May the evil not spread and gradually rise into higher circles either by actual intermarriage or the accumulation of wealth in the hands of the offspring? Should it not be curbed at once?"[45]

Not content to limit African Americans' upward social mobility, White conservatives also employed the laws to rhetorically impugn African American citizenship by casting sexual immorality as a sign that Black people were undeserving of the "high duties of citizenship."[46] "The law… which punishes parties for living together in adultery has failed to meet the approbation of a large number of the colored people," one conservative paper remarked in 1879. "It interferes materially with their domestic arrangements."[47] Conservatives fumed after Judge T.J. Mackey criticized and attempted to nullify the law, reporting that he had released "some thousands of negroes in jail for adultery" in Edgefield and Lexington counties.[48]

While the description of "some thousands" in jail for adultery during one court term is certainly exaggerated, South Carolina's county-level criminal courts did eventually try and convict perhaps thousands of couples under the laws criminalizing adultery and fornication and, more rarely, interracial marriage. The statutes and the discourse surrounding them had great symbolic power in castigating Black citizenship and Reconstruction and certainly influenced the "increasingly sexual cast" of racist Jim Crow narratives in the 1890s and early twentieth century.[49] Yet, although communities' enforcement of the sexual conduct laws was patchwork,

---

[45] *Keowee Courier*, January 9, 1879.
[46] See, again, "The Law and Adultery," *Weekly Union Times* (Union County, S.C.), April 4, 1879.
[47] *Anderson Intelligencer* (Anderson, SC), January 30, 1879.
[48] *See Anderson Intelligencer,* October 16, 1879, for an article that was widely reprinted; see also *Orangeburg Democrat* (Orangeburg, SC), October 31, 1879. For T.J. Mackey, see Chapter Two.
[49] Masur, "The Problem of Equality," 84-5.

localized, and contested, the laws were far from simply symbolic. They devastated the lives of real people, too.

6.4 Enforcing the Sexual Conduct Laws

White conservatives in the South Carolina legislature and elsewhere hoped and expected that local officials and communities would widely enforce the new sexual conduct laws. Indeed, some communities, constables, and grand juries, particularly in rural, White-majority areas and in the upcountry counties, swore out dozens of warrants against their neighbors under the laws and indicted and convicted them in court throughout the 1880s and 1890s. Other counties utilized the laws in a patchwork manner.

At times, petit juries' support for convicting defendants in adultery and fornication cases exceeded officials' enthusiasm for prosecuting them. I found that only 35% of indictments for adultery and prosecution ultimately resulted in convictions, but juries convicted defendants in 82% of the trials that came before them.[50] Interracial couples composed of Black men and White women faced high rates of arrest, indictment, and conviction (juries convicted them nearly 90% of the time). In practice, I found that Black and White women suffered the most under the sexual conduct laws, as they were less able than men to pay their bail and conviction fines. Incarcerated women also faced gendered struggles related to reproductive health and dependent children.

In some areas, local officials and communities alike leapt to enforce the adultery and fornication laws beginning in 1879. In Richland County, a circuit judge reported that the grand jury rooms were "crowded with hordes of informers eager to put the statute in motion against

[50] Most often, the county solicitor dropped or chose not to proceed with the case, sometimes due to defendants' extralegal strategies of avoiding prosecution, as I discuss in the next section.

their neighbors."[51] The *Keowee Courier* of Oconee and Pickens counties mentioned that several citizens had even written to their editor about local adulterers. "We recommend [that] those reporting these cases to us will report the same to a Trial Justice, so that the cases may be properly prepared for trial in this court," the paper instructed.[52]

Indeed, the happenings in Oconee County, South Carolina's westernmost county and one of the six whose legal records I surveyed in full for this study, exemplifies the fervor, racial prejudice, and, at times, violence with which local officials and community members executed the adultery and fornication laws. I found large numbers of prosecutions in counties as geographically diverse as Clarendon, Richland, and Marlboro and evidence of extralegal violence towards alleged adulterers, particularly interracial couples, in Edgefield, Laurens, Fairfield, York, and other counties. Indeed, upcountry counties like Fairfield, Laurens, and York stood out as especially violent, just as they had been during Reconstruction, when the Grant administration had to place parts of the region under martial law due to Ku Klux Klan violence.[53]

However, my close study of Oconee County permits me to conclude that many of its legal officials enacted violence on accused adulterers, coerced confessions from suspects, and actively sought out people in interracial relationships for punishment. Between 1880 and 1900, the small, rural county indicted 52 couples for adultery or fornication and convicted them in 58% of cases. At least 28% of the couples indicted were made up of Black men and White women and all but one of these couples found themselves convicted. Local magistrates such as Joseph W. Shelor and Rufus Mathewson personally investigated and initiated interracial adultery

[51] *Newberry Herald*, November 5, 1879.
[52] *Keowee Courier*, March 13, 1879.
[53] Lou Faulkner Williams, *The Great South Carolina Ku Klux Klan Trials, 1871-1872* (Athens: University of Georgia Press, 2004).

prosecutions. In one incidence, Shelor accused his White neighbor Alice Glover of adultery after he saw her gazing at the stars with Limerick Gadsden, a Black man, in her yard.[54]

Mathewson, a trial justice in the railroad town of Westminster, worked closely with four "special constables" who mainly participated in the arrests of couples for adultery and fornication. Harrowing testimonies describe the constables breaking into houses at night, violently searching cupboards for evidence of cohabitation, and pursuing Black men and White women in their nightshirts on horseback. On one occasion, a White woman attempted to prosecute them for pistol-whipping her and her brother.[55] The suspiciously high number of confessions that defendants gave (in an era when courts were only beginning to employ plea bargaining) suggests the constables probably coerced confessions from suspects or threatened them.

Oconee County's grand juries, too, routinely presented couples for indictment under the sexual conduct laws. Community members, often employers or landlords but also neighbors, swore out arrest warrants. Oconee's small African American population acted as complainants in far fewer of these cases.[56] Oconee's officials and people were unusually draconian in enforcing the sexual conduct statutes. Yet the atmosphere of terror that interracial and unmarried couples must have felt going about their everyday lives demonstrates that the highly political laws had oppressive and life-altering consequences for marginalized people.

---

[54] *State vs Alice Glover and Limerick Gadsden*, March Term 1887, Oconee County Court of General Sessions, box 3, SCDAH. Statistics are based on my research in Oconee County General Sessions Indictments, SCDAH.
[55] *State vs John Dickson, Thomas Carter, William Stoddard, and John Harvey*, March Term 1886, Oconee County Court of General Sessions Indictments, box 3, SCDAH. The grand jury found no bill against the men.
[56] In most areas of South Carolina's upper Piedmont, including Oconee, African Americans constituted less than 30% of the population. W.J. Megginson, *African American Life in South Carolina's Upper Piedmont* (Columbia: University of South Carolina Press, 2006), 5-8.

Court records and contemporary observers alike testified to the highly racialized enforcement of the sexual conduct laws virtually everywhere in South Carolina. Except in rare cases, grand juries, police, and neighbors simply did not prosecute wealthy White men or women. The relative lack of White men and Black women in court for adultery, too, did not escape public notice. In 1879, the *Orangeburg Democrat* commented on the indictment of a Black man and "a White woman with three mulatto children" in their county court. "[Is] adultery any worse between a negro man and a white woman than between a negro woman and a white man? Is the law any respecter of persons and colors? Is the law to be impartially administered and all miscreants punished?" the paper asked pointedly.[57] The answer was clear. As in the antebellum period, Southern communities and courts turned a blind eye to White men's sexual abuse of African American women and to consensual relationships that violated laws as well.[58]

Although White couples, Black couples, and interracial couples all faced prosecution under the new laws, African Americans and poor White women suffered the brunt of legal punishment in practice.[59] In 1887, a reporter covering a preliminary hearing in Newberry County described a common scenario: "Justice Blease had before him Tuesday a white man and a negro woman, charged with living together in adultery. They were sent up to await trial at the Session's court. The white man gave bond, $1,000 to appear for trial, and the negro woman went to jail in default of [her] $300 bond."[60] Poor women had little financial means to secure bail, and so often

[57] *Orangeburg Democrat*, September 12, 1879.

[58] For an excellent overview of the sexual exploitation and abuse that Black women experienced during enslavement and for generations after Emancipation, see Danielle L. McGuire, *At the Dark End of the Street: Black Women, Rape, and Resistance* (New York: Knopf, 2010).

[59] In contrast to other types of crime, White women in the six counties whose records I studied extensively were actually more likely to be convicted than Black women. This can be partially explained by officials' and juries' condemnation of White women who had sexual relationships with Black men, as many of the convicted White women were in interracial relationships. In some cases, officials and judges seem to have punished poor White women particularly harshly, prosecuting them several times or sentencing them to longer penitentiary terms than the Black men with whom they were convicted.

[60] *Newberry Herald and News*, December 8, 1887.

languished in the county jail while they awaited trial. Their alleged partners rarely made bail for them.

If convicted, women were also more likely to be sent back to the county jail or to the penitentiary in default of their fines. On the surface, judges convicted partners equally for adultery and fornication. In reality, White men were financially better able to pay fines than Black men and poor women. An 1898 pardon petition for Hattie Adamson, a Black woman confined in the penitentiary for adultery, lamented that her partner, "the white man who was, perhaps, more responsible for her sin than herself," had "paid his fine and is free."[61]

An 1898 pardon petition for Jane Cameron of Williamsburg County, a White woman sentenced to six months in the penitentiary for adultery, told a similar story.[62] The petitioners believed that Cameron, who was "now big with child," had been "the dupe and victim of her co-defendant Eddie McAllister," an older, married White man. "Eddie McAllister has arranged to pay his fine and will soon be at liberty, leaving his victim and companion in crime to bear her punishment alone," the petitioners wrote. They noted that the pregnant Cameron had already been confined in the county jail for three months prior to her trial, along with her two children, the youngest of whom was six months old. "She seems to be greatly distressed at the thought of her separation from this helpless infant," the petition said.[63]

Jane Cameron was only one of many single mothers whose jail sentences separated them from their dependent children. Hattie Adamson's lawyer described how she had "a large family

[61] Pardon Petition of Hattie Adamson, Pardon Papers of Governor William H. Ellerbe, box 1, folder #2, SCDAH. Ellerbe refused to grant Adamson's pardon.
[62] See also Pardon Petition of Martha Young, Pardon Book of Governor Johnson Hagood, pgs. 62-3, SCDAH. The petitioners described Young, a White woman, as "a poor mountain girl" whose co-defendant William Steward, a White man, had "paid his fine and been released." Young received a pardon halfway into her six-month sentence.
[63] Pardon Petition of Jane Cameron, Pardon Papers of Governor William H. Ellerbe, box 1, folder 42, SCDAH. Cameron received a pardon after her community sent a second petition. For a similar example, see Pardon Petition of Eliza Jane Horn, Pardon Papers of Governor William H. Ellerbe, box 4, folder 9, SCDAH.

of helpless little children" whom she could not support from the penitentiary.[64] Henrietta Airs, a Black woman whom a judge sentenced to the penitentiary in 1884 in default of a modest $100 fine, was separated from her "two children, aged one year and three years," who were left "wholly dependent upon charity for support."[65] Other women, like Frances Jameson of Pickens County, a young Black woman, were imprisoned with their children. Jameson, "the mother of seven children" according to her pardon petition, was confined in the notoriously unhealthy penitentiary with her twin infants.[66]

Some pregnant women were forced to give birth in the county jail or penitentiary or became sick during their pregnancies. The Penitentiary Board of Directors requested a gubernatorial pardon for Martha Viner, a White woman, in 1883 on the grounds that she "has been in the hospital almost continuously since her arrival" three months before. "She is in about the eighth month of her pregnancy [and] is liable to be confined at any time," the directors noted.[67] Pregnant women, who could not meet the demands of hard labor and required special medical care, sometimes were pardoned because they constituted "a drain on state resources." This was what the penitentiary superintendent wrote of pregnant Mary Morris, a fourteen-year-

[64] Pardon Petition of Hattie Adamson.

[65] Pardon Petition of Henrietta Airs, Pardon Book of Governor Hugh Smith Thompson, pg. 249, SCDAH. See also Pardon Petition of Phebe Barker, in *Reports and Resolutions of the General Assembly of the State of South Carolina, 1886* (Columbia: James H. Woodrow, 1886), 24.

[66] Jameson did receive a pardon. Pardon Petition of Frances Jameson, Pardon Book of Governor Hugh Smith Thompson, 220-2, SCDAH. See also Charleston *News and Courier*, October 2, 1884; *Charleston News and Courier*, October 9, 1884.

[67] Pardon Petition of Martha Viner alias Jenkins, Pardon Book of Governor Hugh Smith Thompson, 137, SCDAH. See also Pardon Petition of Martha Simmons, in *Reports and Resolutions of the General Assembly of the State of South Carolina, 1893* (Columbia: James H. Woodrow, 1893), 22. Simmons, a young White woman, remained imprisoned while the White man convicted with her, whose family "were in comparatively good circumstances," paid his fine.

old Black girl convicted of adultery with a married man, who nevertheless had been laboring "in the prison yard" for months.[68]

[68] Morris received a pardon. Her young age (thirteen at the time that she became pregnant) suggests that some girls tried for adultery may have been the victims of rape, although courts did not see it that way—especially, one expects, when the girl in question was Black. Pardon Petition of Mary Morris, in *Reports and Resolutions of the General Assembly of the State of South Carolina, 1888* (Columbia: James H. Woodrow, 1888), 205.

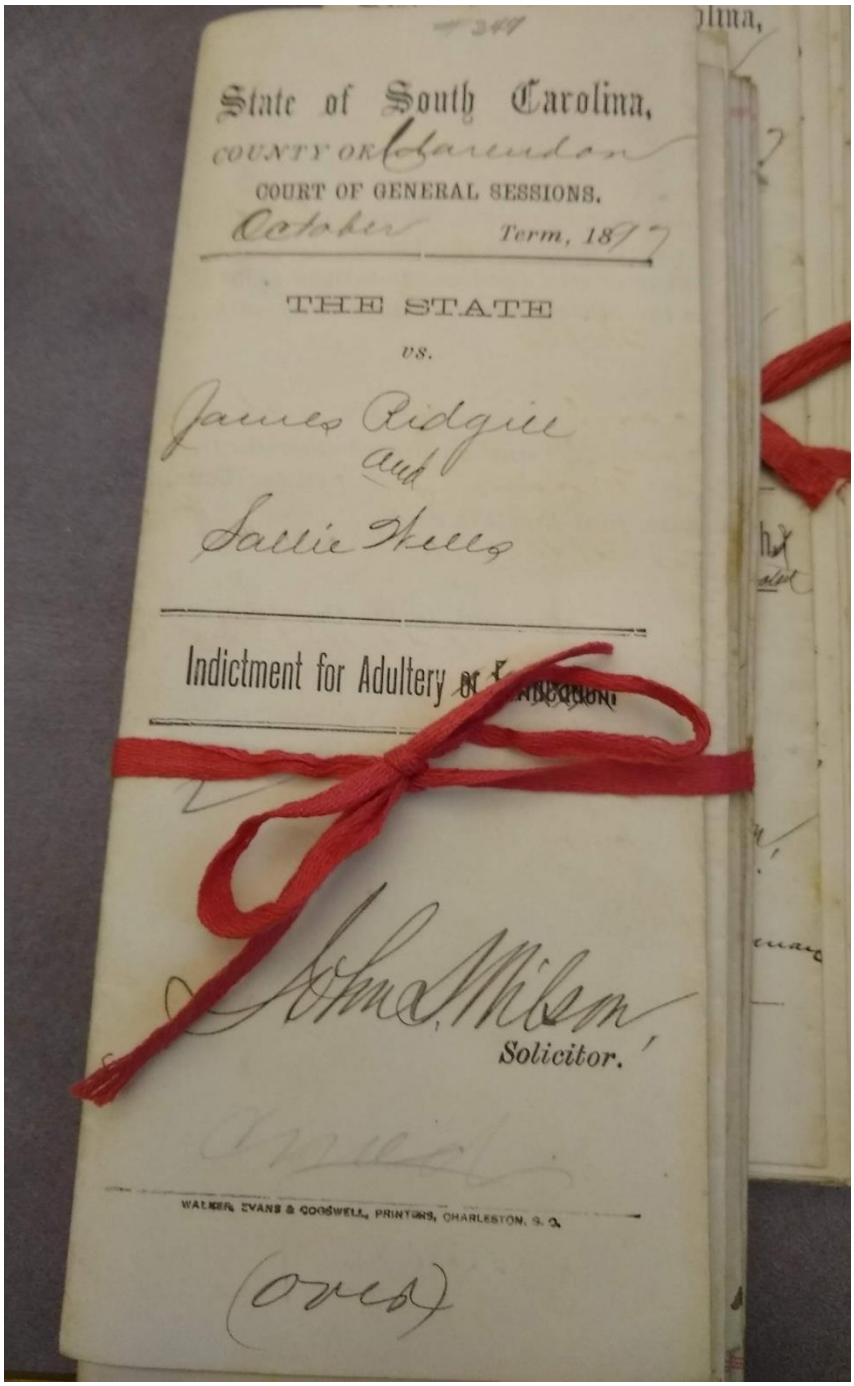


Figure 15

It was simply more difficult for women, who earned less money and often had to care for dependent children, to pay their fines. However, women did not submit passively. Rather, women as well as men contested the sexual conduct statutes in court, evaded prosecution using extralegal means, and at times turned the laws into tools to advance their own interests.

6.5 Contesting and Appropriating the Sexual Conduct Laws

Despite the intentions of White conservative legislators, local enforcement of South Carolina's post-Reconstruction sexual conduct statutes against adultery and fornication, divorce, and interracial marriage was far from hegemonic. Examining local records, we see glimpses of how ordinary and marginalized people regularly defied the laws, employed extralegal and legal strategies to evade condemnation and punishment, and, at times, appropriated the laws for their own purposes.

Notably, although employers, landlords, police, and grand juries swore out the majority of arrest warrants for adultery and fornication in South Carolina (76%), Black and White wives initiated a small but significant portion of adultery prosecutions (12%) against husbands who had recently deserted them or "taken up" with another woman.[69] Prosecutions by wives rarely resulted in convictions, but many wives likely never intended to send their husband to the penitentiary or force him to pay a fine. Indeed, most wives who legally accused their husbands of adultery did so because they wanted their wayward husbands to break off an adulterous relationship and provide their families with material support.

In 1889, Sarah Davis of Richland County, a middle-aged African American woman, swore out a warrant against her husband Aurelius Davis and Harriet Davis, an unmarried Black woman with whom Aurelius had been cohabiting. Sarah and two witnesses, Black men and

[69] Husbands also swore out adultery warrants against their wives and the men with whom they were allegedly involved. Here I chose to focus on wives as complainants because they strategically used the law to negotiate for better conditions and better behavior from husbands in the marital relationship where wives generally had less power. In other words, the law became a tool for the marginalized to use in their everyday lives in the hands of these women. The breakdown of the statistics for prosecutors in adultery and fornication trials is: 36% of cases initiated by neighbors and especially landlords or employers, 23% initiated by grand juries, 11% by husbands, 12% by wives, and 18% initiated by police. Preliminary research suggests that police prosecutions increased in the twentieth century. In some cases, I could not determine the complainant's identity or relationship to the defendants, but I did not include these prosecutions in the statistics.

neighbors who knew the situation, testified before a local trial justice about her husband's unfaithfulness and, moreover, his cruel treatment of her. "I live on my father's place," Sarah said, explaining that Aurelius, her "lawful husband," had forced her out of their home. On a recent night, however, Sarah testified that she had returned to her old home and listened to Aurelius and Harriet inside, "peering through a crack in the door." "He give her some whiskey and they 'got at it' right by the fire hearth," Sarah testified. "I was looking right at them...I was so mad… I told [Harriet] to open the door and give me my husband." However, Aurelius "cursed and blackguarded" Sarah. "Later," Sarah testified, "Aurelius] came and abused me again and said he was going to take my hat and shoes and give them to Harriet."

Sarah Davis' testimony is similar to that of other wives who prosecuted their husbands and their lovers for adultery in her palpable anger and in the kind of narrative she told about a wronged wife (herself) and a cruel husband. Wives rarely complained about their husbands for adultery alone. Instead, women's testimonies described their husband's driving them from their family home, physically abusing them, or failing to provide material support. While she was furious with Aurelius, Sarah did not have the option of a divorce settlement from him in South Carolina and she had been turned out of her own house. Aurelius even threatened to take her possessions away from her and give them to his new lover.

Under these circumstances, Sarah Davis, an African American woman and a sharecropper's wife, chose to use a surprising tool, the "Redemption" legislature's statute criminalizing adultery, to attempt to compel her husband to change his ways. The court records are silent as to whether she succeeded. The prosecution ended when the grand jury chose not to proceed with the case.[70] Yet, possibly being arrested and brought to a hearing before a trial

[70] *State vs Harriet Davis and Aurelius alias Amelius Davis*, March Term 1889, Richland County Court of General Sessions Indictments, folder #2124, SCDAH.

justice where Sarah and his neighbors testified about his cruelty to his wife did lead to a change in Aurelius's behavior. Certainly, that is what Sarah Davis and other wives who swore out adultery warrants against their husbands hoped to accomplish.[71] In turning the repressive sexual conduct statutes into a tool to put pressure on their husbands and publicly call them to account, such women used the law to empower themselves as best they could. Where divorce settlements were not an option, prosecuting for adultery was one method a wife could use to try to convince her husband to do right by her and her children, if she had them.

Clearly, the legal ban on divorce in South Carolina did not reflect ordinary people's lived experiences and served to hurt deserted spouses, especially wives, more than it kept married couples together. While the state technically allowed no provision for divorce between 1879 and 1949, desertion, amicable parting, or "taking up" with another partner functioned as *de facto* divorce for couples, just as they had during the antebellum period. Testimony from adultery prosecutions suggests that many couples who had been previously married to other partners understandably put little stock in marriage licenses.

Instead, couples regarded cohabitation, affection, shared children, a reputation for being a couple, and at times the independent-dependent economic relation between husbands and wives as evidence of the legitimacy of their union. In an Oconee County case from 1896, African American tenant farmer Pat Scott's White landlord swore out a warrant against him for cohabiting with Eliza Hill, a Black woman. Upon seeing the two together numerous times, the landlord testified that he had "talked with Scott about his conduct." Pat Scott replied that though

[71] About 60% of wives who prosecuted their husbands and their partners for adultery were Black. All, Black and White, appear to have come from working-class backgrounds. Many middle and upper-class White South Carolinians viewed appearing in court (though not attending it as a spectator) as disreputable for White women of means, as discussed in Chapter Two and Chapter Four. Such women may have used their social and family networks to exert pressure on unfaithful or abusive husbands rather than going to the law.

he and Eliza had both been married before, he had been with Eliza for ten years and "intended to keep her." "I have heard Scott say he loved her," a state witness testified, and another said he had seen the two together "at a hot supper." Although both were still legally married to other partners, Pat Scott and Eliza Hill had lived together for a decade and publicly represented themselves as a married couple.[72]

For many couples, marriage was about everyday living rather than legal status or marriage certificates. In keeping with nineteenth-century ideas about dependent wives and husbands as providers, prosecutors in adultery trials often honed in on men's comments that they "kept" their female co-defendant, by which they meant that they cohabited with her and provided her with food to cook and other supplies. Regularly eating at the same table, too, as Scott and Hill did at the "hot supper," was an everyday ritual that signified a family relationship.

When couples ate together, prosecutors used this as evidence of the "habitual" nature of their relations. Mollie Patterson, a White woman, found herself indicted for adultery in 1883 after she naively admitted to a trial justice neighbor that she and the Black man and White woman with whom she lived "all lived together, cooked and ate together."[73] For White conservatives, Blacks and Whites eating together represented a taboo, a manifestation of the dreaded "social equality" they associated with the egalitarian aims of Reconstruction.

As adultery and fornication prosecutions sharply increased in some counties in the 1880s, couples who defied the letter of the law in their relationships took notice and employed various extralegal strategies to escape prosecution. Court records tell the stories of those who did not

[72] *State vs Eliza Hill and Pat Scott*, July Term 1896, Oconee County Court of General Sessions Indictments, box 5, SCDAH. The jury found the two guilty and the judge sentenced each to six months in the Penitentiary or to pay a $100 fine.
[73] *State vs Mollie Patterson and Alfred Buggs*, June Term 1883, Oconee County Court of General Sessions Indictments, box 2, SCDAH.

successfully evade the law entirely, but they do offer glimpses of the tactics that people used. For same-race couples where neither party had previously been married, the obvious solution to fornication charges was get married and negotiate with the county solicitor to drop the case. This is what Emma Dyon and George Jones, a young Black couple in Oconee County charged with fornication, did in 1895 when they quickly married upon hearing about the warrant for their arrest. Oconee's county solicitor dropped the case against the couple upon learning of their marriage.[74]

Some couples temporarily broke up their households while court was in session to avoid arrest. In 1882, Mattie Young, a young White woman in Oconee County, attempted to avoid being prosecuted for adultery by temporarily moving out of her lover William Stewart's house. "She brought her things just before court and put them in my house… so her things were not in [William Stewart's] house during the setting of the court," a witness at their trial testified. Mattie Young clearly knew that though she and William Stewart, a White farmer, had lived together for years "in a one room log cabin" and had three children together, some in the community and on the bench considered their relationship illicit due to Stewart's first marriage "eleven or twelve years ago." Unfortunately for the couple, they were eventually indicted and convicted despite their precautions.[75]

Interracial couples, who faced harsher community surveillance, resorted to various strategies, including meeting in secret, strategic adoption and guardianship of children, travelling over state and county lines, and "passing" as the same race as their partner. In a well-documented fornication case from 1883 Charleston County, German American domestic worker Maria

[74] *State vs Emma Dyon and George Jones,* October Term 1895, Oconee County Court of General Sessions Indictments, box 5, SCDAH.
[75] *State vs Mattie or Martha Young and William Stewart*, March Term 1882, Oconee County Court of General Sessions Indictments, box 2, SCDAH.

Oppermann testified about her long-term relationship with Elias Henderson, an African American porter. She described how the two "had connection" in the "dining room" of Oppermann's employer's house. "He never promised to marry me," she told Trial Justice William J. Elfe, who was questioning her.[76] "We were always friendly. I gave it to him willingly. We were always very affectionate." Fascinatingly, the clerk recording Oppermann's words crossed out the sentence, rendering it barely legible. "~~We were always very affectionate~~. My feeling was animal passions," the testimony amends. Did Justice Elfe press Maria Oppermann and encourage her to recant her previous statement? We cannot know, but the alteration is telling.

Such authorities preferred to attribute a White woman's affection for a Black man to her need for financial support, ignorance, or loose moral character. In an early conviction under the 1879 law criminalizing interracial marriage, officials argued that Melissa Smith, a White woman from Horry County sentenced to twelve months in the county jail for "intermarrying" with her Black husband, "was very ignorant and had been brought up as an associate of negroes."[77] White conservatives perceived consensual interracial relationships and affection such as Maria Oppermann and Elias Henderson had as subversive and potentially dangerous. Such affections belied what White conservatives would increasingly seek to present as the foundational rationale for the Jim Crow regime that fully took hold in the 1890s: Black men's predatory sexual

[76] The extensive testimony does not record Elfe's questions, but the witnesses' answers suggest that he questioned both Maria and Elias about whether their relationship was consensual multiple times, and asked where they met and how many times they were together. *State vs Maria Oppermann (alias Offermann) and Elias Henderson,* February Term 1884, Charleston County Court of General Sessions Indictments, box 34, folder #5054, SCDAH.

[77] Pardon Petition of Melissa Smith, Pardon Book of Governor Johnson Hagood, pg 78, SCDAH. Governor Hagood pardoned Smith four months into her sentence. A physician reported that her poor health would be "permanently injured, if not destroyed" if she remained in the unsanitary jail.

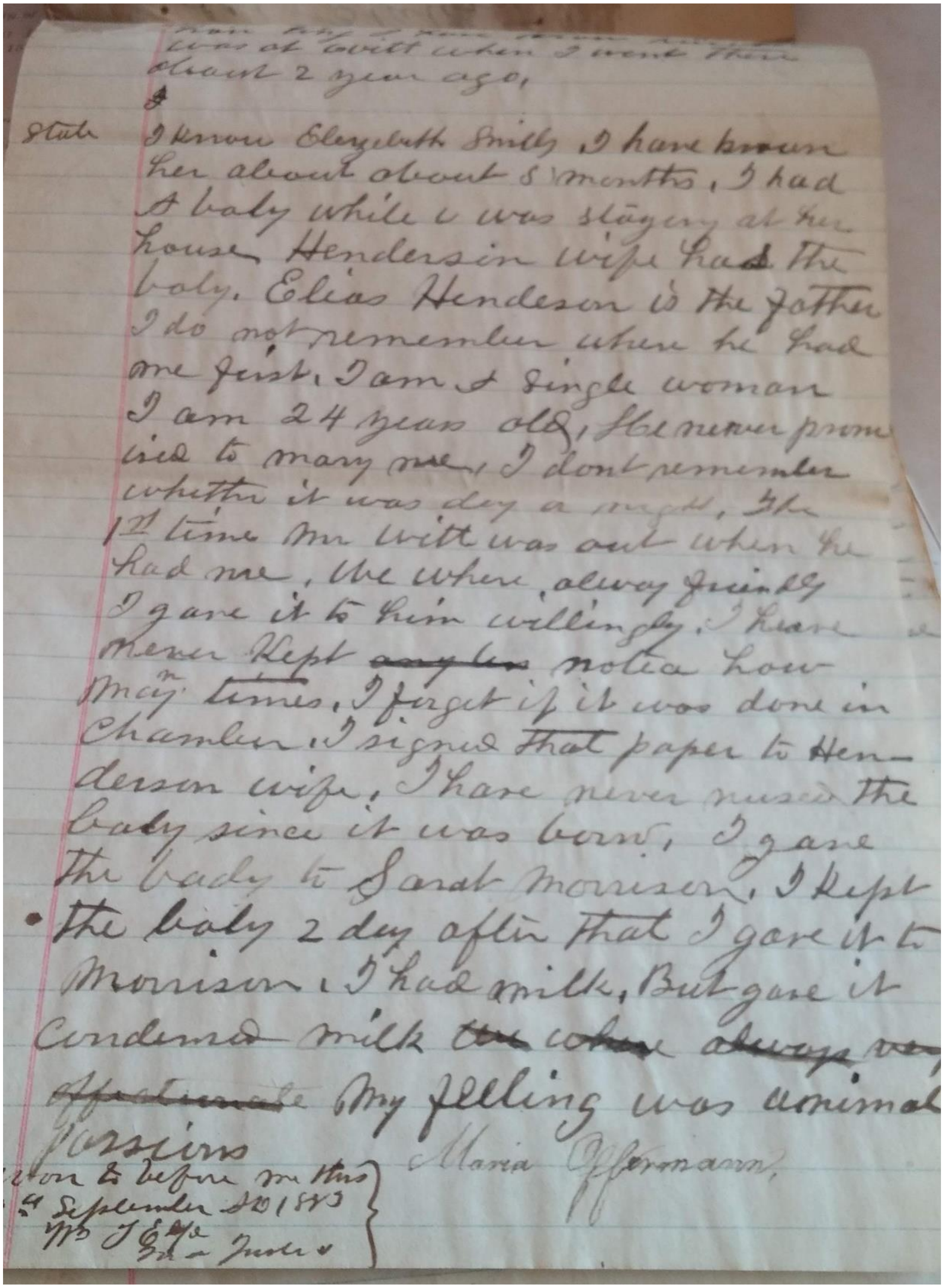
behavior towards White women and White women's need and desire for protection from Black men.[78]

Maria Oppermann and Elias Henderson managed to arrange matters so that Charleston's county solicitor eventually dropped the case against them, but with sad consequences for Maria. Community members had drawn legal attention to the situation after Maria gave birth to a baby girl whom she told neighbors was Elias' daughter. However, Maria and Elias were able to use extralegal means to escape further prosecution and conviction. Elias had quite recently married a Black woman, May Henderson, with whom he adopted his child with Maria Oppermann.

Maria Oppermann wrote and signed a note in which she legally gave her baby to Elias and May Henderson. The note reads, "This is to certify that I the undersigned, Maria Oppermann, have given my baby (a girl) born on the 8th of August, 1883, to May Henderson (colored) for adoption for life and I hereby give up all claims on the above named child now and forever." In Charleston County, where officials sporadically enforced the laws, Elias' marriage to a legally appropriate (Black) woman and his and his wife's adoption of his child with Maria Oppermann settled the matter.[79]

Yet while the case did not result in jail time or fines for Maria and Elias, Maria Oppermann was presumably separated from her child "forever." The little girl perhaps grew up never knowing her mother or the circumstances surrounding her birth and adoption. We can only speculate as to Maria Oppermann's feelings, or, indeed, May and Elias Hendersons'.

[78] See Gilmore, *Gender and Jim Crow*; Hodes, "The Sexualization of Reconstruction Politics"; Feimster, *Southern Horrors*.
[79] *State vs Maria Oppermann and Elias Henderson.*


was at Witt when I went there about 2 year ago,

State I know Elizebeth Smith, I have known her about about 8 months, I had A baby while I was staying at her house, Henderson wife had the baby. Elias Henderson is the father I do not remember when he had me first. I am a single woman I am 24 years old, He never promised to marry me, I dont remember whether it was day or night, The 1st time Mr Witt was out when he had me, We where always friendly I gave it to him willingly. I have never kept ~~anyless~~ notice how many times, I forget if it was done in Chamber, I signed that paper to Henderson wife, I have never nursed the baby since it was born, I gave the baby to Sarah Morrison, I kept the baby 2 day after that I gave it to Morrison, I had milk, But gave it condensed milk ~~we where always very affectionate~~ My felling was animal passions

Maria Offermann

Sworn to & before me this 4 September AD 1883 [illegible] Trial Justice

Figure 16

Some interracial couples defied South Carolina's 1879 statute outlawing interracial marriage by making their union official despite the discriminatory letter of the law. In March 1894, a Clarendon County grand jury made a presentment against John W. Hodge and Hester

Ann Hodge for "miscegenation." John Hodge, a White farmer from the rural area of Sammy Swamp and the son of a Confederate soldier, and Hester Ann Hodge née Gibbs, the daughter of free Black parents from neighboring Sumter County, found themselves indicted for "unlawfully intermarrying."[80] The jury found the couple guilty, but recommended Hester to mercy. The judge sentenced John Hodge to a year in the penitentiary or to pay a significant fine, $500. Hester, meanwhile, received a fine of $500. This unusual distinction in their sentences suggests that not only did the jury, who recommended her to mercy, feel some sympathy for Hester, but the judge clearly knew Hester was well-off enough to pay her costly fine.

In practice, juries and communities could not always easily separate their local familiarity with defendants from the severity called for by the law. While the court records do not provide us with much information about John and Hester's reputations in Clarendon County, they both came from established farming families in the Sammy Swamp area. Census records suggest that Hester may have been pregnant with their first child during the trial. Perhaps her pregnancy or her respectable reputation contributed to the jury's request for mercy towards Hester.

John and Hester Hodges' conviction for "unlawfully intermarrying" did not put an end to their relationship.[81] Census records demonstrate that they lived together as a married couple until Hester's death in 1940. After their 1894 conviction, the couple moved to nearby Williamsburg County. Hester, previously described as "mulatto" in the 1880 census, became "white" beginning

[80] John's father Irby Wells Hodge (died 1900) was a private in South Carolina's Fifth Cavalry unit. Hester's grandfather James Gibbs (born 1798) listed his race as "mulatto" and his occupation as "planter" in the 1850 census, suggesting he was a relatively wealthy man of color. Her father Frederick was a farmer. See 1880 and 1900 U.S. Census.

[81] I could not find John Hodge in penitentiary records and suspect that either he or Hester paid his five hundred dollar fine. Hester had family in neighboring Williamsburg County who may also have helped them.

in the 1900 census. Hester evidently began to "pass" as White to avoid further prosecutions. The Hodges moved at least three times over the years and had nine children.[82]

South Carolina's 1895 Constitution, a Jim Crow document which effectively disenfranchised Black voters throughout the state, sought to codify the 1879 law against interracial marriage by specifically declaring "unlawful and void" "the marriage of a White person" with a "person with one-eighth or more negro blood."[83] Yet in reality, as demonstrated by the case of John and Hester Hodge and historians' scholarship on the legal construction of race, racial categories were fluid and difficult to codify.[84]

Court records from Marlboro County, with its significant Native American population, hint at the challenges that courts faced in defining race. As John Wertheimer has shown, the Lumbee population in North and South Carolina posed a continual problem in that their very existence defied the "White-Black binary" of southern segregation laws. Many Lumbees had African as well as European descent. In the 1914 case *Tucker v Blease*, the South Carolina Supreme Court upheld the expulsion of three Lumbee boys from an all-White school. One witness, school board member John D. Coleman, demonstrated the arbitrary nature of such classifications in his testimony. He stated that the children were expelled because "it is generally

[82] Each of the Hodges' children were also listed as "white" in subsequent census records. See *State vs John W. Hodge and Hester Ann Hodge alias Gibbs*, June Term 1894, Clarendon County Court of General Sessions Indictments, box 4, #269, SCDAH.

[83] *Constitution of the State of South Carolina, Ratified December 4, 1895* (Abbeville, S.C: Hugh Wilson, Printer, 1900), 18.

[84] A rare example of reverse passing can be found in *State vs Alice Glover and Limerick Gadsden*. Census records show that Alice Glover, married to a Black barber in the little town of Wagener, S.C., was listed as "white" in 1870, "mulatto" in 1880, and "black" in 1900. For trials of racial determination, see Ariela Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Cambridge: Harvard University Press, 2008); see also John Wertheimer et al., "The Law Recognizes Racial Instinct": Tucker v. Blease and the Black—White Paradigm in the Jim Crow South," *Law and History Review* 29, no. 2 (May 2011), 471-495.

known that they are not of pure Caucasian blood," but also acknowledged that "these children have the appearance of white children.[85]

Several Lumbee and mixed-Lumbee couples stood trial for adultery or fornication in Marlboro County in the 1880s and 1890s. In June 1888, for example, a grand jury called for bench warrants for Laura Jane Clark and David Lochlear, accusing them of adultery. Both were young people in their twenties living in the rural area of Red Bluff whom the census identified as "mulatto," but who probably would have identified themselves as Lumbee.[86] In 1885, Nancy Lochlear and George Vinning, also young people from Red Bluff, were accused of adultery by Rebecca Lochlear, another Lumbee woman. However, census and court records categorized Nancy and George as "black," another indication of the nebulous nature of such racial categorizations. No bill was found in the case against Nancy Lochlear and George Vinning, or against Laura Jane Clark and David Lochlear.[87]

While some couples employed extralegal strategies such as marrying, moving, and breaking up households to avoid indictment, couples on trial constructed strategic defense narratives. Some defendants in adultery trials, particularly women, emphasized that their legal husband had deserted them. These women claimed that the hardships placed on them by their husband's desertion had driven them to "take up" with another man. This was the strategy that Grace Butler (alias Hardy), a White woman tried for bigamy, used in 1881 Charleston. She and her lawyer drew attention to the "great hardship" and "laboring and toiling" Grace had experienced after her first husband deserted her without leaving "any means of support." Grace

[85] See Wertheimer, "The Law Recognizes Racial Instinct," and for the court testimony, see *Southeastern Reporter*, Volume 81 (St Paul: West Publishing Co, 1914), 666-675.
[86] *State vs Laura Jane Clark and David Lochlair or Locklear*, June Term 1888, Marlboro County Court of General Sessions Indictments, box 7, #1741, SCDAH.
[87] *State vs Nancy Lochlear and George Vinning*, Marlboro County Court of General Sessions Indictments, June Term 1885, #1609, SCDAH.

represented her technically illegal remarriage to another man as a necessity in light of this desertion, and the county solicitor dropped the case against her.[88]

Other couples on trial used the ambiguity of cohabitation to argue that their relationship was merely a contractual one of employer and employee. In a Richland County fornication trial involving Richard Simons, a White widower, and Eliza Craft, also White, witnesses testified that Simons "kept" Craft and that they had three children together. However, Simons produced a contract stating that he had hired Craft for "two dollars a month" to cook and care for his children. The contractual nature of Eliza Craft's employment in Simon's house sat uneasily with the community's belief that they had children together, but the grand jury did not proceed with the case.[89]

Far from being passive subjects of the sexual conduct laws, ordinary South Carolinians used counternarratives in court, mobility, and creative domestic arrangements to evade arrest and conviction. Poor wives employed the adultery law as a tool to demand better treatment from unfaithful and unsupportive husbands, using the statute for different goals than White conservative legislators had anticipated. Despite the ban on divorce, people continued to "quit" partners, "take up" with new ones, and represent themselves and loved ones as families in public and in private. Although courts convicted thousands of people under the sexual conduct statutes in the late nineteenth and early twentieth century, the feelings of human hearts ultimately proved impossible to control.

---

[88] *State vs Grace Butler alias Hardy*, July Term 1881, Charleston County Court of General Sessions Indictments, box 31, folder #4584, SCDAH.

[89] *State vs Eliza Craft alias Eliza Brasell and Richard Simons*, October Term 1891, Richland County Court of General Sessions Indictments, box 44, folder #2368, SCDAH; see also *State vs Eliza Jarrett alias Jeffords and Brutus Pearson*, June Term 1890, Clarendon County Court of General Sessions Indictments, box 4, SCDAH.

Conclusion

After the fall of Reconstruction in South Carolina, White conservatives who had reseized political power quickly passed a series of interlocking laws and criminal statutes regulating sexual conduct and marital unions. White officials and grand juries selectively utilized the laws to punish people in extramarital and especially interracial sexual relationships. The law and its applications were clearly political. Indeed, the 1895 state constitution explicitly made a conviction for adultery or fornication (although not more serious crimes, like murder) grounds for disenfranchisement.[90] High conviction rates for adultery and fornication and newspaper editorials supportive of the post-Reconstruction legislation indicate that Democrats' attempts to racialize sexual behavior figured as aberrant and to associate Black political power and the era of Reconstruction with sexualized disorder and racial "social equality" had staying power.

In a post-*Loving v. Virginia* United States, it is tempting to view the law's complicity and, in fact, instrumental nature in enacting violence on those who challenged racial and sexual hierarchies as a phenomenon of the past. Yet legal change can be slow. Until 1949, South Carolina remained the only state where couples could not obtain divorce on any grounds. The state's ban on interracial marriage, passed by Redemption-era legislators in 1879 and elaborated on in South Carolina's 1895 constitution, remained in the constitution until 1999, when Black legislator Curtis Inabinett drew attention to it. Although the ban on interracial marriage was technically a "dead letter," unconstitutional due to the *Loving* decision, a fifth of South Carolina House members voted against the law's repeal. In November 1999, 62% of South Carolina's electorate finally succeeded in removing the ban. Yet the fact that 38% of the electorate voted

[90] Underwood, "The South Carolina Constitution of 1868," 12.

against the removal suggests that, as Peggy Pascoe put it, "if miscegenation law [is] a ghost of the past, [it's] a ghost with teeth."[91]

As of 2022, South Carolina's criminal statute against adultery and fornication, long used as a repressive if frequently contested legal mechanism for punishing people who defied the racial and sexual hierarchies of their society by simply living and loving as they wished, remains on the books.[92] Perhaps if South Carolinians knew the law's largely forgotten history in the decades after Reconstruction, they might seek to formally repeal it as well. Indeed, men and women continued to find themselves indicted and imprisoned under the adultery and fornication law in the twentieth century, long after the close of this study. As I discuss in the epilogue, the early twentieth century saw an escalation of punitive trends towards Jim Crow injustice as well as the growth of a reformatory movement which pathologized and institutionalized women and girls who were accused of committing even minor crimes.

[91] Pascoe, *What Comes Naturally*, 307-310. A similar situation unfolded in Alabama the following year, in 2000, when a large portion of the Alabama electorate (40%) voted to maintain the state's clause banning interracial marriage, which was ultimately repealed.

[92] Prosecutions under the laws would likely be found unconstitutional following the precedent of *Lawrence v Texas* (2003), but occasionally the unconstitutional statutes do play a role in the courts. See Gregory Yee, "How SC Law Criminalizing Premarital Sex Came into Play in a Recent State Supreme Court Case," *Charleston Post and Courier*, August 20, 2020; Sweeny, "Undead Statutes."

Epilogue: Looking Ahead, and Looking Back

In late 1890, Sarah Wilkinson filed a criminal complaint against her daughter Maria. Sarah, an African American dressmaker in the city of Charleston, testified before a trial justice that her daughter Maria was "continually being arrested for petty crimes" and that she, her mother, was "unable to control the defendant, who has become a common vagrant." Sarah made her mark on the affidavit, and the trail justice promptly had young Maria Wilkinson arrested and jailed for the crime of vagrancy. Within a few days, however, Maria paid bail and left the city jail. Unlike her mother Sarah, Maria signed her name on the bond—she was the beneficiary of education which had been all but impossible for a Black woman like Sarah in her own youth. By February 1891, the county solicitor discontinued the case against Maria Wilkinson. Perhaps Sarah Wilkinson relented and requested that the case be dropped.[1]

Although the unruly young Maria Wilkinson never stood trial in court, her case points to several developments in the relationship between women, the state, and criminal law that began to unfold in the last decades of the nineteenth century and intensified during the early twentieth century. Maria found herself arrested and jailed not for any specific property or violent crime, but rather for what would come to be called a status offense—vagrancy. So, too, did misbehaving girls and young women throughout the United States increasingly come under the scrutiny of reformers, legislators, and experts who sought to institutionalize and rehabilitate them. As Ruth Alexander and Mary Odem have demonstrated, and as the case of Maria Wilkinson attests, middle and working-class families also worried about and at times

[1] *State vs Maria Wilkinson*, Charleston County Court of General Sessions Indictments, February 1891 Term, box 38, folder #6994, SCDAH.

criminalized young women's behavior.[2] Distraught by young women's increased independence in a rapidly urbanizing world where many also pursued employment, earned their own income by working in factories or mills, and engaged in dating and premarital sex more openly than previous generations, desperate mothers like Sarah Wilkinson unwittingly contributed to the creation of what middle-class reformers called "the girl problem."[3]

Importantly, "the girl problem" was also "the woman problem," and the Progressive Era impulse to place truant girls and sexually active, unmarried "fallen" women in reformatories and prisons had southern dimensions as well. As we have seen, legislators in South Carolina and neighboring states made adultery and fornication new crimes in the last two decades of the nineteenth century. The ill-defined criminal charge of vagrancy, which officials had used against free Black people in the antebellum period, returned to the state's courts by the 1890s. Unsurprisingly, given their history, I found that vagrancy laws' primary targets were overwhelmingly African American.[4] Women tried under these laws were usually impoverished women who exhibited signs of mental illness, "roamed from place to place without employment," or, like Maria Wilkinson, continually disobeyed parental or local authority.

In Charleston, the site of Maria Wilkinson's arrest, Black girls and women charged with vagrancy sometimes found themselves sent to the House of Corrections. This institution, founded in 1856, initially admitted "drunken and disorderly persons arrested by the police," with a focus on young Black men and White immigrants. By the early 1880s, however, nearly all inmates

---

[2] Mary Odem, *Delinquent Daughters: Protecting and Policing Adolescent Female Sexuality in the United States, 1885-1920* (Chapel Hill: UNC Press, 1995), 47, 176-84; Ruth M. Alexander, *The Girl Problem: Female Sexual Delinquency in New York, 1900-1930 (*Ithaca: Cornell University Press, 1995). See also Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence, Boston, 1880-1960* (Champaign: University of Illinois Press, 1988).

[3] See Alexander, *The Girl Problem*; Odem, *Delinquent Daughters*; Kathy Peiss, *Cheap Amusements: Working Women and Leisure in Turn-of-the-Century New York* (Philadelphia: Temple University Press, 2001), chapter 7.

[4] Amrita Chakrabarti Myers, *Forging Freedom: Black Women and the Pursuit of Library in Antebellum Charleston* (Chapel Hill: UNC Press, 2011), 78.

admitted to the House of Corrections were Black women and girls. The admissions book lists their names and ages, and their occupations as "washerwoman," "servant," or, most commonly, "unemployed." These predominately young women's offenses were not theft or assault, for which they would have been committed to the city jail or tried in criminal court. Rather, officials sent them to the House of Corrections for offenses like vagrancy, disorderly behavior, public drunkenness, or suspected prostitution. Although few women stayed in the House of Corrections for longer than a month, records indicate that a number served several stints in the institution, performing manual labor on a nearby farm run by the city of Charleston and maintaining the grounds of the public cemetery, called Potter's Field.[5] Like Maria Wilkinson's arrest for vagrancy, the transformation in the population and mission of the Charleston House of Corrections demonstrates that historians have been too hasty to categorize the "girl problem" of the Progressive Era as a movement run by primarily White, middle-class, northeastern reformers that targeted White, working-class girls and women.

Moreover, looking at the South rather than the West and the Northeast leads us to question whether Progressive Era reformers' and legislators' rehabilitative, institutionalizing efforts did not significantly increase, rather than alleviate, the hardships faced by Black and White working-class women.[6] Southern states were slower to establish separate juvenile courts—the first of which began operating in Chicago in 1899—and reformatories for boys and girls.[7]

---

[5] Records of the Commissioners of the House of Corrections, 1868-1885, Charleston Public Library; *Charleston City Yearbook for 1881*, South Carolina Historical Society.

[6] For southern Progressivism, including historical debates about the extent to which it was a discrete phenomenon, and southern reformers, see William A. Link, *The Paradox of Southern Progressivism, 1880-1930* (Chapel Hill: UNC Press, 1997); Dewey Grantham, *Southern Progressivism: The Reconciliation of Progress and Tradition* (Knoxville: University of Tennessee Press, 1983); Glenda Gilmore, *Gender and Jim Crow: Women and the Politics of White Supremacy in North Carolina, 1896-1920* (Chapel Hill: UNC Press, 1996); Amy Louise Wood, "The South," in *A Companion to the Gilded Age and Progressive Era*, eds. Christopher McKnight and Nancy C. Unger (Sussex: Wiley Blackwell, 2017).

[7] Tera Eva Agyepong, *The Criminalization of Black Children: Race, Gender, and Delinquency in Chicago's Juvenile Justice System, 1899-1945* (Chapel Hill: UNC Press, 2018), 2.

Rather, juvenile offenders continued to face trial in the Courts of General Sessions and serve their sentences in county jails and penitentiaries. As the case of Ola Riley, the thirteen-year-old Black girl imprisoned in the penitentiary for one year for merely absconding from a White neighbor's house with a half-dozen eggs, suggests, the results of trying children as adults could be horrifying.[8] In fact, as I demonstrate in my chapters on arson and larceny, Black girls could face particularly severe sentencing due to judges' perceptions of their behavior as "insolent" and "pert" and a stated desire to arrest their nascent criminal careers.[9]

These punitive impulses cannot be divorced from the ongoing reformatory and judicial paternalist movements of the Progressive Era. Increasingly in the last decade of the nineteenth century and the first decades of the twentieth, Black girls and young women found themselves arrested and imprisoned not simply for petty property crimes, but for offenses like prostitution, disorderly behavior, and vagrancy. The criminalization of adultery and fornication, too, laid the heaviest burdens on Black women and poor White women.[10]

By the 1910s, southern states had begun opening reformatory and industrial "training" schools for girls, such as North Carolina's Samarcand Manor (in 1918).[11] In South Carolina, reformers and legislators supported the founding of maternity homes, such as the Florence Crittenton Home in Charleston. Others opened mixed maternity homes and detention centers such as the Door of Hope in Columbia (founded 1898) and the Rescue Home in Greenville, and nominally rehabilitative detention centers such as the Industrial School for Girls (founded 1919).

---

[8] *State vs Ola and Thomas Riley*, Oconee County Court of General Sessions Indictments, November Term 1900, box 6, SCDAH.

[9] See Chapters Four and Five on larceny and arson.

[10] See Chapter Six.

[11] For Samarcand Manor, otherwise known as the State Home and Industrial School for Girls, see Karen Zipf, *Bad Girls at Samarcand: Sexualization and Sterilization in a Southern Juvenile Reformatory* (Baton Rouge: LSU Press, 2016); John Wertheimer, "Escape of the Match-Strikers': Disorderly North Carolina Women, the Legal System, and the Samarcand Arson Case of 1931," *North Carolina Historical Review* 75, no. 4 (October 1998), 435-460.

Black girls were almost entirely excluded from these schools. Rather, school officials focused on White, working-class girls who were status offenders, engaging in premarital sex, disorderly behavior, or habitual drinking. A few private institutions, like the Anna Finnstrom Home in Columbia, housed both Black and White girls.[12]

In general, however, Black girls and women suffered all the punitive measures employed by reformers focused on the "girl problem" and benefited from none of their rehabilitative impulses. In 1918, South Carolina's State Board of Charities asserted that, "delinquent (White) girls are usually of weak nerves, weak mind, overwrought temperament, bad social backgrounds, or some other elements that makes for instability. By proper nutrition and sympathetic skilled training most of these girls can be built up, steadied, and sent out with a normal development into the world." The Board also mentioned their support of Colored Women's Clubs initiatives to open a similar school for African American girls, claiming, "the colored girl is a greater menace to society than the white girl. When she is in the ordinary jail her presence adds fuel to the already inflamed male prisoners, and after her release she goes out to ply as a trade that hitherto had been but an occasional pleasure. So this movement of the colored people is heartening to all those that work for the elimination of the social evil."[13]

In this statement we can see how, as other scholars have argued, White southerners imagined Black girls and women as innately more immoral, more sexually lascivious, and less easily rehabilitated than young White women.[14] Yet Black and White southern reformers did figure young Black girls' sexuality as a particular problem in a way they had not in the years following Emancipation. In large part, this was due to the federal crackdown on prostitution

[12] State Board of Charities and Corrections of South Carolina, *Quarterly Bulletin of the State Board of Charities and Corrections of South Carolina* vols. 4-5 (1918), 29-37.
[13] Ibid., 27.
[14] Wertheimer et. al, "Escape of the Matchstrikers," 456; Agyepong, *The Criminalization of Black Children*, 71.

during World War I. As Karen Zipf notes, much of the funding for women's and girl's reformatories in the era came from federal money that accompanied the criminalization of prostitution on the grounds that prostitutes were infecting U.S. soldiers with venereal disease.[15]

However, as the South Carolina State Board of Charities' report also suggests, it was not the state, but rather Black, middle-class women reformers who spearheaded the movement to establish reformatory schools for Black girls and young women. By 1925, North Carolina reformer Charlotte Hawkins Brown and the North Carolina Federation of Colored Women's Clubs had opened the Efland Home for Wayward Girls. This school rehabilitated Black girls convicted of minor, often sexual offenses.[16] South Carolina's Fairwold Industrial School for Delinquent Negro Girls and similar institutions opened only in the mid-twentieth century. Most immediately suffered from overcrowding.[17]

Nor did southern reformatories and training schools for White girls became renowned for their fulfillment of the Progressive rehabilitative ideal. The story of Samarcand Manor in North Carolina is a grim one, filled with White girls imprisoned in the detention center against their will, some of whom repeatedly attempted to burn down the manor. When they nearly succeeded, the girls were tried for the capital crime of arson, threatened with death sentences, and eventually reincarcerated.[18] Moreover, school and health officials sterilized an estimated 293 girls at

---

[15] See Karin Zipf, *Bad Girls at Samarcand*; Allan Brandt, *No Magic Bullet: A Social History of Venereal Disease in the United States Since 1880* (Oxford and New York: Oxford University Press, 1985), Scott W. Stern, *The Trials of Nina McCall: Sex, Surveillance, and the Decades-Long Government Plan to Imprison 'Promiscious' Women* (Boston: Beacon Press, 2018).

[16] In the 1940s, Charlotte Hawkins Brown obtained funding from the North Carolina General Assembly for a new industrial school for Black girls, the Dobbs School for Girls. Like other Black women reformers and club women, Hawkins Brown had been advocating for a school to rehabilitate delinquent Black girls for decades, beginning in the 1910s and 1920s with her privately-run Efland Home, before the state offered any substantial funding for her endeavors. See Lauren N. Henley, "Contested Commitment: Policing Black Female Juvenile Delinquency at Efland Home, 1919-1939," *Souls: A Critical Journal of Black Politics, Culture, and Society* 20, no. 1 (2018), 38-57.

[17] *South Carolina Industrial School for Negro Girls* (1964), box 268, Richland Library, Columbia, SC.

[18] See Zipf, *Bad Girls at Samarcand*; Wertheimer et al, "Escape of the Matchstrikers."

Samarcand between 1929 and 1950, years which marked the height of eugenic sterilizations in much of the United States.[19] Casting them as girls with "weak minds," as the South Carolina Board of Charities director had put it, the state and its agents coercively sterilized thousands of usually poor young women. They did so on the grounds that these young women would give birth to children with the same defective minds, children who would become a burden on the state[20] As Gregory Michael Dorr has reminded us, sterilization, too, was a "Progressive" impulse that continued well into the twentieth century and carried classist as well as racialized resonances in the South.[21]

In addition to facing indeterminate sentences, corporeal punishment, and the threat of involuntary sterilization, my research indicates that girls sent to South Carolina's less-studied reformatories suffered from criminal mismanagement and outright abuse in some institutions. South Carolina's Industrial Training School for (White) Girls is a tragic example. Throughout the early twentieth century, state officials commented on the overcrowding in the institution and the lack of staff to attend and supervise the White girls sentenced to the Training School. While absently going through an unmarked box in the state archives, I discovered documents related to a little-known state investigation of the Industrial Training School that occurred in 1942. White girls interviewed at the detention center testified that they had been repeatedly sexually assaulted by Reverend Huey, the superintendent. Other girls described the Training School as a kind of house of horrors, revealing how the school's staff gave them hypodermic "knock-out shots" which put them to sleep and "makes you crazy," as fifteen-year-old Emma Grey Dority put it.

[19] Zipf, *Bad Girls at Samarcand*, 154.
[20] State Board of Charities and Corrections of South Carolina, *Quarterly Bulletin of the State Board of Charities and Corrections of South Carolina vols. 4-5* (1918), 27.
[21] Gregory Michael Dorr, "Defective or Disabled? Race, Medicine, and Eugenics in Progressive Era Virginia and Alabama," *Journal of the Gilded Age and Progressive Era* 5, no. 4 (October 2006), 359-92.

The state responded to these revelations by replacing Reverend Huey with a new superintendent, "Mrs. Courtney." Importantly, the abuse at the school had initially come to light not due to a state-initiated investigation, but only after a girl named Peggy Ducker managed to go to a local constable and swear out an affidavit against Huey for sexually assaulting her.[22] Like earlier generations of marginalized southern women, she braved the threat of further physical violence and went to the law to call those who had abused her to account.

*

Quite simply, Jim Crow and Progressive Era legislators criminalized behaviors in women that mid-nineteenth-century southerners had considered ordinary, if somewhat disorderly, actions. Officials' and legislators' preoccupations with vice crimes such as adultery and fornication, prostitution, vagrancy, and status offenses, while not entirely new, intensified in rural and urban areas alike. The nationwide focus on the "girl problem" that developed more fully in the wake of World War I stands in sharp contrast to the Reconstruction years, when Black and White girls seldom appeared as defendants in even local courts except for serious crimes like murder and infanticide.

Moreover, expert commentators in the North and South began to discuss female criminality using new discourses that medicalized and pathologized women criminals as a *type* of woman. Eugenicists, psychologists, and reformers spoke of "born criminals" and "feebleminded women."[23] The influential criminologist Cesare Lombroso masculinized women who committed crimes, asserting that their facial features were less feminine, their jaws

[22] *Investigation by the Richland County Grand Jury into the Penal Institutions of South Carolina, on the 17th Day of April 1942*, 95-140, SCDAH.
[23] Rafter, *Partial Justice*, 44-65; Mary Odem, *Delinquent Daughters*, 98; Steven Noll, "A Far Greater Menace: Feebleminded Females in the South, 1900-1940," in *Hidden Histories of Women in the New South*, edited by Virginia Bernhard, Betty Brandon, Elizabeth Fox-Genovese, Theda Perdue and Elizabeth Hayes Turner (Columbia: University of Missouri Press, 1994), 31-51; Dorr, "Defective or Disabled?," 359-92.

"atavistic" and "primitive." For Lombroso, moreover, Black and "Red Indian" women had all the "virility" of "the savage woman," their supposedly primitive and criminal natures inscribed on their very bone structures.[24]

Unfortunately, these pernicious stereotypes of women criminals and female criminality from the Progressive and interwar eras have stayed with us to this day. So pervasive are the "mad, sad, and bad" archetypes of women accused of crimes and the idea that a woman who commits a crime must suffer from mental illness, that I began this project searching for such language.[25] I was surprised that the women I found in local court records rarely pleaded insanity, and that officials and witnesses did not medicalize women defendants' behavior. As is often the case with historians who have read some secondary literature on a subject but not yet investigated themselves, I was trying to read what I knew back onto the sources. I did not initially realize that I had been influenced by scholarship focused on a later period and was, indeed, falling into the same trap as other historians who have made this error.

The titles of scholarly books on historical women and criminal law are telling: *Unruly Women, Disorderly Damsels, Whores and Thieves of the Worst Kind, Troublesome Women*.[26] Similarly, the original working title for this dissertation was *Amazons and Viragos*. While I believed this title was attention-grabbing and ironic, I now realize it only reinforced negative stereotypes about women and crime. These include ideas that women accused of crimes were

[24] Cesare Lombroso and William Ferrero, *The Female Offender* (New York: D. Appleton & Co, 1898), 112-4.
[25] See, for example, Siobhan Weare, "Bad, Mad, or Sad? Legal Language, Narratives, and Identity Constructions of Women Who Kill Their Children in England and Wales," *International Journal for the Semiotics of Law* (April 2017), 201-22.
[26] Victoria E. Bynum, *Unruly Women: The Politics of Social and Sexual Control in the Old South* (Chapel Hill: UNC Press, 1994); Elizabeth Ewan, "Disorderly Damsals?": Women and Interpersonal Violence in Pre-Reformation Scotland," *Scottish Historical Review* 89, no. 228 (October 2010), 153-71; L. Mara Dodge, *Whores and Thieves of the Worst Kind: A Study of Women, Crime, and Prisons* (Dekalb: Northern Illinois University Press, 2002); Erica Rhodes Hayden, *Troublesome Women: Gender, Crime, and Punishment in Antebellum Pennsylvania (*University Park: Penn State University Press, 2019).

somehow exceptional, perhaps innately monstrous or different, unwomanly or masculine; that they were necessarily suffering from mental illness.

Less obvious but still ultimately problematic is the notion that historical women on trial were gender rebels, unruly women whose intent was to challenge patriarchal and racist norms in ways that we, looking back today, can celebrate. This mindset casts women charged with crimes as heroines of history, defiant outliers from the rank and file of women who meekly obeyed hegemonic laws. Though born from a desire to celebrate the variety and diversity of women's historical experiences, this view is also anachronistic. While there are exceptions, very few of the women who appear in the court records I read during my research identified themselves as advocates of women's rights.[27] Similarly, their contemporaries did not write about women in the criminal courts as if they were extraordinary or notably deviant women.

To the contrary, I hope this dissertation has demonstrated that the women who appeared in South Carolina's post-Civil War criminal courts were representative. Although their stories are alternatively fascinating, disheartening, and encouraging, and sometimes all of these at once, this fact only goes to show that ordinary lives *are* rich with complexities, with twists and turns. In the case of the predominately poor and working-class Black and White women in this dissertation, their lives were also rife with struggles and hardships.

During the immensely promising decade of Reconstruction, freedwomen not only exercised their newly won rights to testify and bring complaints in the criminal courts, but also pushed courts, legal officials, and juries to respond to their claims about the violence, theft, and

[27] Some women did, however, claim more expansive rights for themselves, including informal rights they were being denied on the grounds of sex. Leah Prince, a young Black woman from Clarendon County who insisted on representing herself in court, found herself charged with disturbing a religious meeting in 1885 after she demanded that she be allowed to serve on a church committee. Men traditionally excluded women from serving on church committees, but Leah Prince declared that "Jesus Christ could not keep her off the committee." *State vs Leah Prince*, Clarendon County Court of General Sessions Indictments, May Term 1885, box 4, SCDAH.

everyday disrespect and racial oppression they faced. Ordinary Black and White women appeared in local courts as both complainants and defendants, using the courts as a forum to resolve conflicts, seek redress, and obtain "satisfaction." Although illiteracy was the norm for such women, they often demonstrated considerable savvy in enlisting witnesses, crafting arguments, negotiating with prosecutors and other parties involved in the case, and strategically defending themselves using carefully constructed narratives and appeals to justice and mercy.

This was true even in cases where women's communities believed them guilty of serious crimes such as arson or infanticide. The investigations of these ambiguous crimes also reveal that ordinary women were frequent and respected witnesses during on-the-ground investigations and coroner's inquisitions into suspected crimes. They provided personal knowledge about the events as well as experiential, gendered medical knowledge, in the case of infanticide, where acquittals were by far the most common outcome.

The fall of Reconstruction led to southern states' political "Redemption" by White Democrat-dominated governments who passed new legislation criminalizing once legal behavior, such as interracial marriage, vagrancy, adultery, fornication, carrying concealed weapons, selling liquor without a license, and divorce (through bigamy and adultery charges). Many of these "new" crimes were sexual in nature or related to marital status. Therefore, when we look at local cases involving women, the sexualized and gendered as well as racialized bent of the shift towards a Jim Crow legal system becomes evident, where once it was obscured.

Yet despite the slew of new laws arrayed against them, and despite increasingly harsh minimum sentences for existing property crimes, Black and poor White women charged under these late nineteenth-century statutes continued to defend themselves in court and negotiate with community members to escape conviction, often with success. Continuities as well as profound,

punitive change marked their experiences. Today, their stories help us clearly see women in the post-Civil War criminal courts not as passive subjects of a monolithic legal system and not as apolitical people caught up in the whirlwind of the times, but rather as fully political, resourceful, and resilient actors.

Bibliography

Archival Sources

Library of Congress

"The Ku-Klux reign of terror: Synopsis of a portion of the testimony taken by the Congressional investigating committee," no. 5 (broadside, 1872). Library of Congress Ephemera Collection, portfolio 237, folder 8.

South Carolina Department of Archives and History (Columbia, S.C)

Abstracts of Criminal Cases from Charleston County District Court Records, 1867-1868.

Clarendon County District Court Indictments, 1867-1868.

Coroner's Inquisition Books: Edgefield County, Edgefield District, Horry County, Kershaw County, 1800-1900.

Court of General Sessions Criminal Journals: Edgefield District, Edgefield County, Charleston County, 1800-1870.

Court of General Sessions Indictments: Charleston County, Clarendon County, Laurens County, Marlboro County, Oconee County, Richland County, Union County, 1868-1900.

Court of Magistrates and Freeholders Court Records: Clarendon District, Laurens District, Kershaw District, Pickens District, Richland District, Spartanburg District, Sumter District, 1800-1865.

Grand Jury Presentments: Charleston County, Clarendon County, Fairfield County, Marlboro County, Oconee County, Richland County, 1865-1900.

Investigation by the Richland County Grand Jury into the Penal Institutions of South Carolina, on the 17th Day of April 1942.

Letters received and sent, Governor Andrew Gordon Magrath, 1864-1865.

Pardon Books of Governor Daniel Henry Chamberlain, 1874-1877.

Pardon Book of Governor Hugh Smith Thompson, 1882-1886.

Pardon Book of Governors Johnson Hagood and Hugh Smith Thompson, 1880-1884.

Pardon Book of Governor Johnson Hagood, 1880-1882.

Petitions to the South Carolina General Assembly, 1788-1900.

South Carolina Historical Society (Charleston, S.C)

City of Charleston Yearbooks, 1880-1900.

Coverly, Nathaniel. *Some Particulars Relative to John Fisher and Lavina Fisher, His Wife, who were Executed at Charleston, S.C., with Remarks on Crime and Capital Punishment.* Boston: Nathaniel Coverly, 1820.

Jervey, William St. Julian papers, 1878-1915.

Report of the Trial of Joshua Nettles and Elizabeth Cannon, for the Murder of John Cannon. Charleston: Charleston Courier, 1805.

South Caroliniana Library (Columbia, S.C)

Beech Branch Baptist Church Records (Hampton County, S.C), 1865-1918.

Cathcart, Thomas M. *The Trial Justice System of South Carolina: Answer to some of the criticisms passed upon officers of this class*. Winnsboro, S.C: News and Herald, 1884.

Gum Branch Baptist Church (alias Lynche's Creek Baptist Church, Darlington County, S.C) Records, 1796-1887.

Hart, Augustus Griffin. "Crime in South Carolina." M.A. Thesis, University of South Carolina, 1914.

James Edwin McDonald Papers, 1887-1905.

Brunson, Nolen. *History of Beech Branch Baptist Church (Hampton County), 1759-1959*. Unpublished manuscript, 1959.

Rules of practice of the circuit courts of the state of South Carolina: Adopted at the general session of the justices of the Supreme Court and the judges of the circuit courts, 16 December 1870. Charleston: Walker, Evans, & Cogswell, 1871.

Weems, Mason Locke. *The Devil in Petticoats, or God's Revenge against Husband Killing*. Edgefield, S.C: Edgefield Advertiser Printing, 1878.

Digital Primary Source Databases

1870, 1880, 1900 United States Federal Census. Ancestry.com [online database]. Lehi, UT:

Ancestry.com Operations Inc, 2010.

Race and Slavery Petitions Project. Digital Library by the University of North Carolina at Greensboro.

U.S. Freedman's Bank Records, 1865-1874. Ancestry.com [online database]. Lehi, UT: Ancestry.com Operations Inc, 2005.

U.S. Freedman's Bureau Records, 1865-1878. Ancestry.com [online database]. Lehi, UT: Ancestry.com Operations Inc, 2021.

Newspapers

Abbeville Banner (Abbeville, SC)
Abbeville Press and Banner (Abbeville, SC)
Aiken Courier-Journal (Aiken, SC)
Anderson Intelligencer (Anderson, SC)
Asheville Daily Citizen (Asheville, NC)
Bamberg Herald (Bamberg, SC)
Camden Chronicle (Camden, SC)
Carolina Spartan (Spartanburg, SC)
Charleston Advocate (Charleston, SC)
Charleston Daily News (Charleston, SC)
Charleston News and Courier (Charleston, SC)
Charlotte Democrat (Charlotte, NC)
Cheraw Gazette (Cheraw, SC)
Columbia Daily Phoenix (Columbia, SC)
Darlington Herald (Darlington, SC)
Easley Messenger (Easley, SC)
Edgefield Advertiser (Edgefield, SC)
Fairfield Herald (Fairfield, SC)
Georgetown Planet (Georgetown, SC)
Keowee Courier (Pickens County Courthouse, SC)
Kershaw Gazette (Camden, SC)
Laurens Advertiser (Laurens, SC)
Manning Times (Manning, Clarendon County, SC)
Marlboro Democrat (Marlboro, SC)
Newberry Herald (Newberry, SC)
News and Herald (Winnsboro, SC)
New York Times (New York, NY)
Orangeburg Democrat (Orangeburg, SC)
Orangeburg Times (Orangeburg, SC)
Pickens Sentinel (Pickens County, SC)
State Chronicle (Raleigh, NC)

Sumter Watchman (Sumterville, SC)
Times and Democrat (Orangeburg, SC)
Watchman and Southron (Sumter County, SC)
Weekly Union Times (Union County, SC)
Yorkville Enquirer (Yorkville, SC)

Published Primary Sources

Acts and Joint Resolutions of the General Assembly of South Carolina. Columbia: State Printer, 1869-1899.

Breckinridge, Lucy. *Lucy Breckinridge of Grove Hill: The Journal of a Virginia Girl, 1862-1864*. Edited by Mary Robertson. Columbia: University of South Carolina Press, 1994.

Bureau of Refugees, Freedmen, and Abandoned Lands. *Report of Outrages Committed by Whites Against Freedmen in the Bureau District of Greenville, SC, during the Month of December 1866*. Freedmen's Bureau Online.

Emery, E.B. *Letters from the South, on the social, intellectual, and moral condition of the colored people.* Boston: Beacon Press, 1880.

Hanckel, J. Stuart. *Report on the colored people and freedmen of South Carolina*. Charleston: Joseph Walker, 1866.

Keckley, Elizabeth. *Behind the Scenes: Thirty Years a Slave, and Four Years in the White House.* New York: Oxford University Press, 1989.

Lombroso, Cesare and William Ferrero. *The Female Offender.* New York: D. Appleton & Co, 1898.

Moody, Anne. *Coming of Age in Mississippi*. New York: Dial Press, 1968.

Proceedings of the Constitutional Convention of South Carolina, being held at Charleston, S. C., beginning January 14th and ending March 17th, 1868. Charleston: Denny & Perry, 1868.

Report of State Officers, Boards, and Committees to the General Assembly of the State of South Carolina. Columbia: State Printer, 1866-1900.

South Carolina Reports: Reports of cases and matters determined by the Supreme Court and Court of Appeals of South Carolina. Columbia: R.L. Bryan Company, 1868-1900.

Southeastern Reporter: *Cases argued and determined in the Supreme Courts of Georgia, North Carolina, South Carolina, Virginia, and West Virginia.* Volumes 3-31. St. Paul, Minnesota: West Publishing Company, 1887-1900.

U.S. Congress. *Joint Committee to Inquire into the Conditions of Affairs in the Late Insurrectionary States, Ku-Klux Conspiracy: Testimony, Volumes 3, 4, & 5*. Washington, DC: US Government Printing Office, 1872.

Wells-Barnett, Ida. *A Red Record: Lynchings in the United States*. Chicago: Donohue & Henneberry, 1895.

------. *Southern Horrors: Lynch Law in All Its Phases*. New York: New York Age Print, 1892.

Works Progress Administration. *Slave Narratives: A Folk History of Slavery in the United States from Interviews with Former Slaves: Volume IV, Georgia, Parts 1-4*. District of Columbia: Works Projects Administration, 1941.

------. *Slave Narratives: A Folk History of Slavery in the United States from Interviews with Former Slaves: Volume XIV, South Carolina Narratives, Parts 1-4*. District of Columbia: Works Projects Administration, 1941.

Secondary Literature

Abelson, Elaine. "The Invention of Kleptomania," *Signs* vol. 15, no. 1 (1989): 123-143.

Agyepong, Tera Eva. *The Criminalization of Black Children: Race, Gender, and Delinquency in Chicago's Juvenile Justice System, 1899-1945*. Chapel Hill: UNC Press, 2018.

Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: New Press, 2010.

Alexander, Ruth. *The Girl Problem: Female Sexual Delinquency in New York, 1900-19*30. Ithaca: Cornell University Press, 1998.

Altink, Henrice. "I Did Not Want to Face the Shame of Exposure: Gender Ideologies and Child Murder in Post-Emancipation Jamaica." *Journal of Social History* 41, no. 2 (Winter 2007), 355-387.

Ayers, Edward L. *The Promise of the New South: Life after Reconstruction*. Oxford: Oxford University Press, 1993.

------. *Vengeance and Justice: Crime and Punishment in the Nineteenth-Century American South*. Oxford: Oxford University Press, 1984.

Baker, Bruce. *What Reconstruction Meant: Historical Memory in the American South.* Charlottesville, Virginia: University of Virginia Press, 2007.

Baker, David V. *Women and Capital Punishment: An Analytical History*. New York: Farland, 2015.

Bardaglio, Peter W. *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth-Century South*. Chapel Hill: University of North Carolina Press, 1995.

Batlan, Felice. "Women's Legal History." In *Blackwell Companion to American Legal History*, ed. Sally Hadden. Hoboken, New Jersey: Blackwell Publishing, 2013, 190-208.

Beisel, Nicola and Tamara Kay. "Abortion, Race, and Gender in Nineteenth Century America." *American Sociological Review* 69, no. 4 (August 2004): 498-518.

Bernstein, Robin. *Racial Innocence: Performing American Childhood from Slavery to Civil Rights*. New York: New York University Press, 2011.

Blackmon, Douglas A. *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II*. New York: Doubleday, 2008.

Blair, William A. *The Record of Murders and Outrages: Racial Violence and the Fight over Truth at the Dawn of Reconstruction*. Chapel Hill: UNC Press, 2021.

Blesser, Carol, edited. *In Joy and In Sorrow: Women, Family, and Marriage in the Victorian South*. New York and Oxford: Oxford University Press, 1991.

Blumenthal, Susanna L. *Law and the Modern Mind: Consciousness and Responsibility in American Legal Culture*. Cambridge, MA: Harvard University Press, 2016.

Bonaparte, Alicia D. "The Satisfactory Midwife Bag: Midwifery Regulation in South Carolina, Past and Present Considerations." *Social Science History* 38, no. 1-2 (2014): 155-82.

Borst, Charlotte G. *Catching Babies: The Professionalization of Childbirth, 1870-1920*. Cambridge: Harvard University Press, 1995.

Brandt, Allan. *No Magic Bullet: A Social History of Venereal Disease in the United States Since 1880*. Oxford and New York: Oxford University Press, 1985.

Bremmer, Jan and Lourens Van Den Bosch, eds. *Between Poverty and the Pyre: Moments in the History of Widowhood*. New York: Routledge, 1995.

Briggs, Laura. "The Race of Hysteria: "Overcivilization" and the "Savage" Woman in Late Nineteenth-Century Obstetrics and Gynecology," *American Quarterly* 52, no. 2 (June 2000): 246-273.

Brooks, Peter and Paul Gewirtz. *Law's Stories: Narrative and Rhetoric in the Law*. New Haven, CT: Yale University Press, 1996.

Brown, Elsa Barkley. "Negotiating and Transforming the Public Sphere: African American Political Life in the Transition from Slavery to Freedom." *Public Culture* 7 (1994): 107-146.

Brown, Kathleen M. *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia*. Chapel Hill: University of North Carolina Press, 1996.

Brundage, W. Fitzhugh, edited. *Under Sentence of Death: Lynching in the New South*. Chapel Hill: University of North Carolina Press, 1993.

Budiansky, Stephen. *The Bloody Shirt: Terror after Appomattox*. New York: Viking, 2008.

Burton, Orville Vernon. *In My Father's House Are Many Mansions: Family and Community in Edgefield, South Carolina*. Chapel Hill: University of North Carolina Press, 1985.

Bynum, Victoria E. *Unruly Women: The Politics of Social and Sexual Control in the Old South*. Chapel Hill: University of North Carolina Press, 1992.

Camp, Stephanie. *Closer to Freedom: Enslaved Women and Everyday Resistance in the Plantation South*. Chapel Hill: UNC Press, 2004.

Carlson, Cheree A. *The Crimes of Womanhood: Defining Femininity in a Court of Law*. Urbana and Chicago: University of Illinois Press, 2008.

Carlton, David. *Mill and Town in South Carolina, 1880-1920*. Baton Rouge: LSA Press, 1982.

Caron, Simone. "Killed by Its Mother: Infanticide in Providence County, Rhode Island, 1870 to 1938." *Journal of Social History* 44, no. 1 (Fall 2010), 213-237.

Cashin, Joan E. *War Stuff: The Struggle for Human and Environmental Resources in the American Civil War*. New York: Cambridge University Press, 2018.

Chatfield, Sara Nell. "Multiple Orders in Multiple Venues: The Reform of Married Women's Property Rights, 1839-1920." PhD Dissertation, UC Berkeley, 2014.

Chesney-Lind, Meda and Lisa Pasko. *The Female Offender: Girls, Women, and Crime*. Thousand Oaks, California: SAGE Publications, 2013.

Clark, E. Culpepper. *Francis Warrington Dawson and the Politics of Restoration: South Carolina, 1874-1889*. Tuscaloosa, Alabama: University of Alabama Press, 1980.

Clinton, Catherine and Michele Gillespie, ed. *The Devil's Lane: Sex and Race in the Early South*. New York and Oxford: Oxford University Press, 1997.

Clinton, Catherine and Nina Silber, ed. *Divided Houses: Gender and the Civil War*. Oxford and New York: Oxford University Press, 1992.

Clinton, Catherine. *The Plantation Mistress: Women's World in the Old South.* New York: Pantheon, 1982.

Coggeshell, John M. *Liberia, South Carolina: An African American Appalachian Community*. Chapel Hill: UNC Press, 2018.

Cooper, William J. *The Conservative Regime: South Carolina, 1877-1890*. Columbia, South Carolina: University of South Carolina Press, 2005.

Cox, Karen. *Dixie's Daughters: The United Daughters of the Confederacy*. Gainesville: University of Florida Press, 2003

Cover, Robert M. "Foreword: Nomos and Narrative." *Harvard Law Review* 97 (1983-84), 4-68.

Curtin, Mary Ellen. *Black Prisoners in their World, Alabama, 1865-1900*. Charlottesville: University Press of Virginia, 2000.

Dailey, Jane. "Deference and Violence in the Postbellum Urban South: Manners and Massacres in Danville, Virginia." *Journal of Southern History* 63 (1997): 531-590.

Davis, Natalie Zemon. *Fiction in the Archives: Pardon Tales and their Tellers in Sixteenth-Century France*. Stanford: Stanford University Press, 1987.

DeLombard, Jeannine Marie. *In the Shadow of the Gallows: Race, Crime, and American Civic Identity*. Philadelphia: University of Pennsylvania Press, 2014.

De Vries, Mark Leon. "Between Equal Justice and Racial Terror: Freedpeople and the District Court of Desoto Parish during Reconstruction." *Louisiana History* 56, no. 3 (Summer 2015), 261-293.

Dodge, L. Mara. *Whores and Thieves of the Worst Kind: A Study of Women, Crime, and Prisons, 1835-2000*. Dekalb, Illinois: Northern Illinois Press, 2002.

Domby, Adam and Simon Lewis, ed. *Freedoms Gained and Lost: Reconstruction and Its Meanings 150 Years Later.* New York City: Fordham University Press, 2021.

Dorr, Gregory Michael. "Defective or Disabled?: Race, Medicine, and Eugenics in Progressive Era Virginia and Alabama," *Journal of the Gilded Age and Progressive Era* 5, no. 4 (October 2006): 359-392.

Downs, Jim. *Sick from Freedom: African-American Illness and Suffering during the Civil War and Reconstruction*. Oxford: Oxford University Press, 2012.

DuBois, W.E.B. *Black Reconstruction in America*. New York: Harcourt Brace, 1935.

Duggan, Lisa. *Sapphic Slashers: Sex, Violence, and American Modernity*. Durham and London: Duke University Press, 2000.

Edwards, Laura. *Gendered Strife and Reconstruction: The Political Culture of Reconstruction.* Urbana: University of Chicago Press, 1997.

------. "James and His Striped Velvet Pantaloons: Textiles, Commerce, and the Law in the New Republic" (unpublished paper presented at Vanderbilt University's Legal History Colloquium, 2019).

------. *A Legal History of the Civil War and Reconstruction: A Nation of Rights*. New York: Cambridge University Press, 2015.

------. "The Legal World of Elizabeth Bagby's Commonplace Book: Federalism, Women, and Governance." *Journal of the Civil War Era* 9 (December 2019): 504-523.

------. *Only the Clothes on Her Back: Clothing and the Hidden History of Power in the Nineteenth-Century United States*. Oxford and New York: Oxford University Press, 2022.

------. *The People and their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South*. Chapel Hill: University of North Carolina Press, 2013.

-----. "Sarah Allingham's Sheet and Other Lessons from Legal History." *Journal of the Early Republic 38* (Spring 2018): 121-47.

------. "Status Without Rights: African Americans and the Tangled History of Law and Governance in the Nineteenth-Century U.S. South." *American Historical Review* 112, no. 2 (April 2007): 365-93.

Egerton, Douglas R. and Robert L. Paquette, ed. *The Denmark Vesey Affair: A Documentary History*. Gainesville: University Press of Florida, 2017.

Elder, Robert. *The Sacred Mirror: Evangelicalism, Honor, and Identity in the Deep South, 1790-1860*. Chapel Hill: University of North Carolina Press, 2016.

Emberton, Carole. *Beyond Redemption: Race, Violence, and the American South after the Civil War*. Chicago: University of Chicago Press, 2013.

------. "Only Murder Makes Men: Reconsidering the Black Military Experience." *Journal of the Civil War Era* 2, no. 3 (September 2012), 369-393.

------. "The Limits of Incorporation: Violence, Gun Rights, and Gun Regulation in the Reconstruction South." *Stanford Law & Policy Review* 17, no. 3 (2006), 615-34.

Ewan, Elizabeth. "Disorderly Damsels? Women and Interpersonal Violence in Pre-Reformation Scotland." *Scottish Historical Review* 89, no. 228 (October 2010), 153-71.

Ewick, Patricia and Susan S. Silbey. *The Common Place of Law: Stories from Everyday Life*.

Chicago: University of Chicago Press, 1998.

Farrell, Elaine. “Infanticide of the Ordinary Character': An Overview of the Crime in Ireland, 1850–1900.” *Irish Economic and Social History* 39 (2012), 56-72.

Faust, Drew Gilpin. *This Republic of Suffering: Death and the American Civil War*. New York: Knopf, 2009.

Feimster, Crystal. *Southern Horrors: Women and the Politics of Rape and Lynching*. Cambridge: Harvard University Press, 2009.

Fett, Sharla M. *Working Cures: Healing, Health, and Power on Southern Slave Plantations*. Chapel Hill: University of North Carolina Press, 2002.

Flanigan, Daniel L. “Criminal Procedure in Slave Trials in the Antebellum South.” *Journal of Southern History* 40, no. 4 (November 1974), 537-564

Foner, Eric. *Nothing but Freedom: Emancipation and Its Legacy*. Baton Rouge: Louisiana State Press, 1983.

------. *Reconstruction: America’s Unfinished Revolution, 1863-1877*. New York: Harper, 1988.

------. *The Second Founding: How the Civil War and Reconstruction Remade the Constitution*. New York: W.W. Norton, 2019.

Foote, Lorien. *Rites of Retaliation: Civilization, Soldiers, and Campaigns in the American Civil War*. Chapel Hill: UNC Press, 2021.

Foucault, Michel. *Discipline and Punish*. New York: Pantheon Books, 1977.

Funk, Kellen. “Let No Man Put Asunder: South Carolina’s Law of Divorce, 1895-1950.” *South Carolina Historical Magazine* 110, no. 3-4 (July-October 2009), 134-53.

Francis, Leigh-Anne. “Steal or Starve’: Black Women’s Criminal Work in New York City, 1893 to 1914.” *Journal of Women’s History* 32, no. 4 (Winter 2020), 13-37

Fraser, Walter J. *Charleston! Charleston!: The History of A Southern City*. Columbia: USC Press, 1989.

Friedman, Lawrence. *Crime and Punishment in American History*. New York: Basic Books, 1993.

Friedman, Susan Hatters and Phillip J. Resnick, “Child Murder by Mothers: Patterns and Prevention.” *World Psychiatry* 6, no. 3 (October 2007): 137-141.

Fuentes, Marisa. *Dispossessed Lives: Enslaved Women, Violence, and the Archive*. Philadelphia: University of Pennsylvania Press, 2016.

Genovese, Eugene. *From Rebellion to Revolution: Afro-American Slave Revolts in the Making of the Modern World.* Baton Rouge: Louisiana State University Press, 1979.

Gilfoyle, Timothy. *City of Eros: New York City, Prostitution, and the Commercialization of Sex, 1790-1920.* New York: W.W. Norton, 1992.

Gillin, Kate Côté. *Shrill Hurrahs: Women, Gender, and Racial Violence in South Carolina, 1865-1900.* Columbia: University of South Carolina Press, 2014.

Gilmore, Glenda. *Gender and Jim Crow: Women and the Politics of White Supremacy in North Carolina, 1896-1920*. Chapel Hill: University of North Carolina Press, 1996.

------. ------. "Gender and Origins of the New South." *Journal of Southern History* 67 (November 2001): 769-788.

Glymph, Thavolia. *Out of the House of Bondage: The Transformation of the Plantation Household*. Cambridge and New York: Cambridge University Press, 2008.

Gordon, Linda. *Heroes of Their Own Lives: The Politics and History of Family Violence, Boston, 1880-1960*. Champaign: University of Illinois Press, 1988.

Green, Elna C. "Infanticide and Infant Abandonment in the New South: Richmond, Virginia, 1865-1915." *Journal of Family History* 24 (1999), 187-211.

Greenlee, Cynthia. "Due to Her Tender Age: Black Girls on Trial in South Carolina, 1885-1920." PhD Dissertation, Duke University (2014).

Gross, Ariela. *Double Character: Slavery and Mastery in the Southern Antebellum Courtroom*. Princeton: Princeton University Press, 2000.

------. *What Blood Won't Tell: A History of Race on Trial in America*. Cambridge: Harvard University Press, 2008.

Gross, Kali Nicole. *Colored Amazons: Crime, Violence, and Black Women in the City of Brotherly Love, 1880-1910*. Durham: Duke University Press, 2006.

------. *Hannah Mary Tabbs and the Disembodied Torso: A Tale of Race, Sex, and Violence in America*. Oxford: Oxford University Press, 2016.

Haber, Carole. *The Trials of Laura Fair: Sex, Murder, and Insanity in the Victorian West*. Chapel Hill: University of North Carolina Press, 2013.

Hadden, Sally. *Slave Patrols: Law and Violence in Virginia and the Carolinas*. Cambridge:

Harvard University Press, 2001.

Hahn, Steven. *A Nation under Our Feet: Black Political Struggles in the Rural South from Slavery to the Great Migration*. Cambridge: Harvard University Press, 2005.

Haley, Sarah. "Like I Was A Man': Chain Gangs, Gender, and the Domestic Carceral Sphere in Jim Crow Georgia." *Signs* 39, no. 1 (Autumn 2013), 53-77.

------. *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity*. Chapel Hill: University of North Carolina Press, 2016.

Hall, Rebecca. "Not Killing Me Softly: African-American Women, Slave Revolts, and Historical Constructions of Racialized Gender." *Freedom Center Journal* vol. 2 (2010), 1-47.

Halttunen, Karen. *Murder Most Foul: The Killer and the American Gothic Imagination*. Cambridge, MA: Harvard University Press, 1998.

Hamm, Richard. *Murder, Honor, and Law: Four Virginia Homicides from Reconstruction to the Great Depression*. Charlottesville: University Press of Virginia, 2003.

Harlow, Luke E. "The Future of Reconstruction Studies." *Journal of the Civil War Era* 7, no. 1 (March 2017), 3-6.

Hartman, Saidiya. *Wayward Lives, Beautiful Experiments: Intimate Histories of Riotous Black Girls, Troublesome Women, and Queer Radicals*. New York: W.W. Norton & Co, 2019.

Hartog, Hendrik. "Lawyering, Husbands' Rights, and "the Unwritten Law" in Nineteenth-Century America." *Journal of American History* 84, no. 1 (June 1997): 67-96.

------. *Man and Wife in America: A History*. Cambridge, MA: Harvard University Press, 2000.

------. "Pigs and Positivism." *Wisconsin Law Review* (1985), 899-935.

Hayden, Erica Rhodes. *Troublesome Women: Gender, Crime, and Punishment in Antebellum Pennsylvania.* University Park: Pennsylvania State University Press, 2019.

Hearn, Daniel Allen. *Legal Executions in North and South Carolina, 1866-1962*. Jefferson, NC: McFarland, 2015.

Heyrmann, Christine. *Southern Cross: The Beginnings of the Bible Belt*. Chapel Hill: University of North Carolina Press, 1998.

Hicks, Cheryl. *Talk With You Like A Woman: African American Women, Justice, and Reform in New York, 1890-1935*. Chapel Hill: University of North Carolina Press, 2010.

Higginbotham, Evelyn Brooks. *Righteous Discontent: The Women's Movement in the Black*

Baptist Church, 1880–1920. Cambridge: Harvard University Press, 1993.

Hindus, Michael S. *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878*. Chapel Hill: University of North Carolina Press, 1980.

Hine, Darlene Clark. "The Corporeal and Ocular Veil: Dr. Matilda A. Evans (1872-1935) and the Complexity of Southern History." *Journal of Southern History* 70, no. 1 (2004): 3-34.

Hodes, Martha. "The Sexualization of Reconstruction Politics: White Women and Black Men in the South after the Civil War." J*ournal of History of Sexuality* 3, no. 3 (January 1993), 402-17.

Hoffer, Peter C. *Cry Liberty: The Great Stono River Slave Rebellion of 1739*. Oxford: Oxford University Press, 2010.

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.

Holden, Charles J. *In the Great Maelstrom: Conservatives in Post-Civil War South Carolina*. Columbia: University of South Carolina Press, 2002.

Holloway, Pippa. "A Chicken-Stealer Shall Lose His Vote: Disfranchisement for Larceny in the South, 1874-1890." *Journal of Southern History* 75, no. 4 (November 2009), 931-962.

Hudson, Janet. "From Constitution to Constitution, 1868–1895: South Carolina's Unique Stance on Divorce." *South Carolina Historical Magazine* 98 (January 1997): 75–96.

Humphreys, Margaret. *Marrow of Tradition: The Health Crisis of the American Civil War*. Baltimore: Johns Hopkins University Press, 2017.

Hunt, Patricia. "The Struggle to Achieve Individual Expression Through Clothing and Adornment: African-American Women Under and After Slavery." In *Discovering the Women in Slavery: Emancipating Perspectives on the American Past*, ed. Patricia Morton. Athens: University of Georgia Press, 1996, 227–40.

Hunter, Tera W. *Bound in Wedlock: Slave and Free Black Marriage in the Nineteenth Century*. Cambridge: Belknap Press of Harvard University Press, 2017.

------. *To 'Joy My Freedom: Southern Black Women's Lives and Labors after the Civil War*. Cambridge: Harvard University Press, 1997.

Hyman, Rebecca. "Medea of Suburbia: Andrea Yates, Maternal Infanticide, and the Insanity Defense." *Women's Studies Quarterly* 32, no. 4 (Fall 2004): 192-210.

Inabinet, Glen L. "The July Fourth Incident' of 1816: An Insurrection Plotted by Slaves in Camden, South Carolina." In *South Carolina Legal History: Proceedings of the*

Reynolds Conference, University of South Carolina, December 2-3, 1977, ed. Herbert A. Johnson (Columbia, 1980).

Jaffary, Nora E. “Maternity and Morality in Puebla’s Nineteenth-Century Infanticide Trials.” *Law and History Review* 39, no. 2 (May 2021): 299-320.

Jenkins, Wilbert L. *Seizing the New Day: African Americans in Post-Civil War Charleston.* Bloomington: University of Indiana Press, 1998.

Johnson, Walter. “On Agency.” *Journal of Social History* 37, no. 1 (Autumn 2003), 113-124

Jones, Ann. *Women Who Kill*. New York: Beacon Press, 1980.

Jones, Catherine A. “Ties That Bind, Bonds That Break: Children in the Reorganization of Households in Postemancipation Virginia.” *Journal of Southern History* 76, no. 1 (February 2010): 71-106

------. “Women, Gender, and the Boundaries of Reconstruction.” *Journal of the Civil War Era* 8, no. 1 (March 2018), 111-31.

Jones-Rogers, Stephanie. "Mistresses in the Making: White Girls, Mastery and the Practice of Slave-ownership in the Nineteenth-Century South," in *Women's America, Volume 8: Refocusing the Past*. Edited by Linda Kerber, Jane Sherron De Hart, Cornelia Hughes Dayton, and Judy Wu. Oxford and New York: Oxford University Press, 2015.

------. *They Were Her Property: White Women as Slave Owners in the American South*. New Haven: Yale University Press, 2019.

Kamerling, Henry. *Capital and Convict: Race, Region, and Punishment in post-Civil War America*. Charlottesville: University of Virginia Press, 2017.

Kantrowitz, Stephen. *Ben Tillman and the Reconstruction of White Supremacy.* Chapel Hill: University of North Carolina Press, 2000.

Karlsen, Carol. *The Devil in the Shape of a Woman: Witchcraft in Colonial New England*. New York: WW Norton, 1987.

Kelly, Brian. “Black Laborers, the Republican Party, and the Crisis of Reconstruction in Lowcountry South Carolina.” *International Review of Social History* 51, no. 3 (2006), 375-414.

Kelley, Robin. *Race Rebels: Culture, Politics, and the Black Working Class*. New York: The Free Press, 1994.

Kennedy-Haflett, Cynthia. “A Moral Marriage: A Mixed-Race Relationship in Nineteenth-Century Charleston, South Carolina.” *South Carolina Historical Magazine* 97, no. 3 (July

1996), 206-226.

Kennedy-Nolle, Sharon D. *Writing Reconstruction: Race, Gender, and Citizenship in the Postwar South.* Chapel Hill: UNC Press, 2015.

King, Wilma L. ""Mad" Enough to Kill: Enslaved Women, Murder, and Southern Courts." *Journal of African American History* 92, no. 1 (Winter 2007), 37-56.

Leavitt, Judith Walzer. *Brought to Bed: Childbearing in America, 1750-1950*. New York: Oxford University Press, 1986.

LeFlouria, Talitha. *Chained in Silence: Black Women and Convict Labor in the New South*. Chapel Hill: University of North Carolina Press, 2015.

Lichtenstein, Alex. *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South*. New York: Verso, 1996.

Litwack, Leon F. *Trouble in Mind: Black Southerners in the Age of Jim Crow*. New York: Alfred A. Knopf,1998.

Long, Gretchen. *Doctoring Freedom: The Politics of African American Medical Care in Slavery and Emancipation*. Chapel Hill: University of North Carolina Press, 2012.

Lowery, Malinda. *Lumbee Indians in the Jim Crow South: Race, Identity, and the Making of a Nation*. Chapel Hill: UNC Press, 2010.

Lundquist, Caroline. "Being Torn: Toward a Phenomenology of Unwanted Pregnancy." *Hypatia* 23, no. 3 (2008): 136-55.

Lussana, Sergio A. *My Brother Slaves: Friendship, Masculinity, and Resistance in the Antebellum South.* Lexington: University Press of Kentucky, 2016.

Manchester, Jessie. "Beyond Accommodation: Reconstructing the Insanity Defense to Provide an Adequate Remedy for Postpartum Psychotic Women." *Journal of Criminal Law and Criminology* 93, no. 2 (Winter 2003): 713-52.

Mancini, Matthew. *One Dies, Get Another: Convict Leasing in the American South*. Columbia, University of South Carolina Press, 1996.

Masur, Kate. *An Example for All the Land: Emancipation and the Struggle over Equality in Washington, D.C.* University of North Carolina Press, 2010.

McDougall, Sara. "Pardoning Infanticide in Late Medieval France." *Law and History Review* 39, no. 2 (May 2021), 229-255.

McCurry, Stephanie. *Confederate Reckoning: Politics and Power in the Civil War South*.

Cambridge, MA: Harvard University Press, 2010.

------. *Masters of Small Worlds: Yeomen Households, Gender Relations, and the Political Culture of the Antebellum South Carolina Low Country*. Oxford: Oxford University Press, 1995.

------. "The Problem of Equality in the Age of Emancipation," in *Beyond Freedom: Disrupting the History of Emancipation*, ed. David W. Blight and Jim Downs. Athens: University of Georgia Press, 2017.

McCandless, Peter. *Moonlight, Magnolias, and Madness: Insanity in South Carolina from the Colonial Period to the Progressive Era*. Chapel Hill: University of North Carolina Press, 1996.

McGuire, Danielle L. *At the Dark End of the Street: Black Women, Rape, and Resistance- a New History of the Civil Rights Movement from Rosa Parks to the Rise of Black Power.* New York: Knopf, 2010.

McLaurin, Melton Alonzo. *Celia, A Slave.* Athens, GA: University of Georgia Press, 1991.

McLeod, Marc. "Razing Cane: Making Sense of Arson in the Sugar Fields of Republican Cuba." *Agricultural History* 89, no. 4 (Fall 2015): 513-35.

McNair, Glenn. "Slave Women, Capital Crime, and Criminal Justice in Georgia." *Georgia Historical Quarterly* 93, no. 2 (Summer 2009), 135-58.

Megginson, W.J. *African American Life in South Carolina's Upper Piedmont, 1780-1900*. Columbia: University of South Carolina Press, 2006.

Merry, Sally Engle. *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans*. Chicago: University of Chicago Press, 1990.

Middleton, Stephen. *The Black Laws: Race and the Legal Process in Early Ohio*. Athens: Ohio University Press, 2005.

Milewski, Melissa. *Litigating Across the Color Line: Civil Cases Between Black and White Southerners*. Oxford: Oxford University Press, 2017.

Milroy, Chris. "Neonatal Deaths, Infanticide, and the Hydrostatic (Floatation) Test: Historical Perspectives." *Academic Forensic Pathology* 2, no. 4 (2012): 338-345.

Mohr, James C. *Doctors and the Law: Medical Jurisprudence in Nineteenth-Century America*. New York City: Oxford University Press, 1993.

Moore, John Hammond. *Carnival of Blood: Dueling, Lynching, and Murder in South Carolina 1880-1920*. Columbia: University of South Carolina Press, 2006.

------. *Columbia and Richland County: A South Carolina Community, 1740-1990.* Columbia: University of South Carolina Press, 1992.

Morantz-Sanchez, Regina. *Conduct Unbecoming a Woman: Medicine on Trial in Turn-of-the-Century Brooklyn*. Oxford and New York: Oxford University Press, 2000.

Morgan, Jennifer. "Archives and Histories of Racial Capitalism: An Afterword." *Sociology Text* 33, no. 4 (2015): 153–161.

------. "Periodization Problems: Race and Gender in the History of the Early Republic." *Journal of the Early Republic* 36, no. 2 (Summer 2016): 351-7.

Morris, Monique W. *Pushout: The Criminalization of Black Girls in Schools*. New York: New Press, 2016.

Morrison, Toni. *Beloved*. New York: Knopf, 1987.

Muigai, Wangui. "Something Wasn't Clean: Black Midwifery, Birth, and Postwar Medical Education in All My Babies." *Bulletin of the History of Medicine* 93, no. 1 (2019): 82–113.

Muurling, Sanne. *Everyday Crime, Criminal Justice, and Gender in Early Modern Bologna*. Boston and Leiden: Brill, 2021.

Myers, Amrita Chakrabarti. *Forging Freedom: Black Women and the Pursuit of Liberty in Antebellum Charleston.* Chapel Hill: University of North Carolina Press, 2011.

Naish, Camille. *Death Comes to the Maiden: Sex and Execution, 1431-1933*. New York: Routledge, 2014.

Oberman, Michelle. "Mothers Who Kill: Coming to Terms with Modern American Infanticide." *American Criminal Law Review* 34, no. 1 (2002), 707-738.

Odem, Mary E. *Delinquent Daughters: Protecting and Policing Adolescent Female Sexuality in the United States, 1885-1920*. Chapel Hill: University of North Carolina Press, 1995.

Oldfield, John. "On the Beat: Black Policemen in Charleston, 1869-1921." *South Carolina Historical Magazine* 102, no. 2 (April 2001), 153-168.

Owens, Deirdre Cooper. *Medical Bondage: Race, Gender, and the Origins of American Gynecology*. Athens: University of Georgia Press, 2017.

Painter, Nell Irvin. *Southern History Across the Color Line*. Chapel Hill: University of North Carolina Press, 2002.

Parsons, Elaine Frantz. “Klan Skepticism and Denial in Reconstruction-era Public Discourse.” *Journal of Southern History* 77, no. 1 (2011), 53-90.

------. *Ku-Klux: The Birth of the Klan during Reconstruction*. Chapel Hill: University of North Carolina Press, 2016.

Pascoe, Peggy. *What Comes Naturally: Miscegenation Law and the Making of Race in America*. New York: Oxford University Press, 2009.

Penningroth, Dylan. *The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South*. Chapel Hill: University of North Carolina Press, 2003.

Perrone, Giuliana. “Back into the Days of Slavery’: Freedom, Citizenship, and the Black Family in the Reconstruction-era Courtroom.” *Law and History Review* 37, no. 1 (January 2020), 1-37.

Pilarczyk, Ian C. “So Foul A Deed: Infanticide in Montreal, 1825-1850.” *Law and History Review* 30, no. 2 (May 2012), 575-634.

Powers, Bernard E. *Black Charlestonians: A Social History, 1822-1885*. Little Rock: University of Arkansas Press, 1994.

Prior, Pauline. *Madness and Murder: Gender, Crime, and Mental Disorder in Nineteenth-Century Ireland*. Dublin: Irish Academic Press, 2008.

Racine, Phillip N. “The Slave Catherine and the Kindness of Strangers?” *South Carolina Historical Magazine* 113, no. 2 (April 2012): 146-56.

Rafter, Nicole Hahn. *Creating Born Criminals*. Chicago and Urbana: University of Illinois Press, 1997.

------. *Partial Justice: Women, Prisons, and Social Control*. New York: Routledge, 1990.

Reagan, Leslie J. “Linking Midwives and Abortion in the Progressive Era.” *Bulletin of the History of Medicine* 69, no. 4 (Winter 1995): 569-98.

------. *When Abortion Was A Crime: Women, Medicine, and Law in the United States, 1867-1973.* Berkeley: University of California Press, 1997.

Richie, Beth. *Arrested Justice: Black Women, Violence, and America’s Prison Nation*. New York: New York University Press, 2012.

------. *Compelled to Crime: The Gender Entrapment of Battered Black Women*. New York: Routledge, 1996.

Roberts, Dorothy. *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty.* New

York: Vintage, 1997.

Rodriquez, Junius P. *Encyclopedia of Slave Resistance and Rebellion, Volume 1*. Westport, CN: Greenwood Publishing Group, 2007.

Romeo, Sharon. *Gender and the Jubilee: Black Freedom and the Reconstruction of Citizenship in Civil War Mississippi*. Athens: University of Georgia Press, 2016.

Rosen, Hannah. *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Post-Emancipation South*. Chapel Hill: University of North Carolina Press, 2009.

Rothman, Joshua D. *Notorious in the Neighborhood: Sex and Families Across the Color Line in Virginia, 1787-1861*. Chapel Hill: University of North Carolina Press, 2003.

Rubin III, Hyman. *South Carolina Scalawags*. Columbia: University of South Carolina Press, 2006.

Sano, Yulonda Eadie. "Protect the Mother and Baby: Mississippi Lay Midwives and Public Health." *Agricultural History* 93, no. 3 (Summer 2019): 393-411.

Santow, Gigi. "Emmenagogues and Abortifacients in the Twentieth Century: An Issue of Ambiguity." In *Regulating Menstruation*, ed. Étienne van de Walle and Elisha P. Renne, 64-92. Chicago: University of Chicago Press, 2001.

Saville, Julie. *The Work of Reconstruction: From Slave to Wage Laborer in South Carolina, 1860-1870*. Cambridge: Cambridge University Press, 1994.

Savitt, Todd. *Medicine and Slavery: The Diseases and Health Care of Blacks in Antebellum Virginia*. Urbana: University of Illinois Press, 1978.

Schoen, Johanna. *Choice & Coercion: Birth Control, Sterilization, and Abortion in Public Health and Welfare*. Chapel Hill: University of North Carolina Press, 2005.

Schwartz, Marie Jenkins. *Birthing A Slave: Motherhood and Medicine in the Antebellum South*. Cambridge: Harvard University Press, 2006.

Sharpless, Rebecca. *Cooking in Other Women's Kitchens: Domestic Workers in the South, 1865-1960*. Chapel Hill: University of North Carolina Press, 2010.

Sinha, Manisha. *The Slave's Cause: A History of Abolition*. New Haven: Yale University Press, 2016.

Slapp, Andrew. "The Spirit of '76: The Reconstruction of History in the Redemption of South Carolina." *Historian* 63 (Summer 2001), 769-86.

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. *Rape and Race in the Nineteenth-Century South*. Chapel Hill and London: UNC Press, 2004.

Stein, Joshua. “Privatizing Violence: A Transformation in the Jurisprudence of Assault.” *Law & History Review* 30, no. 2 (May 2012), 423-448.

Stevenson, Brenda E. “Marsa Never Sot Aunt Rebecca Down: Enslaved Women, Religion, and Social Power in the Antebellum South.” *Journal of African American History* 90, no. 4 (October 2005), 345-67.

------. “What’s Love Got to Do With It?: Concubinage and Enslaved Women and Girls in the Antebellum South, 159-188. In *Sexuality and Slavery: Reclaiming Intimate Histories in the Americas*, ed. Daina Ramey Berry and Leslie M. Harris. Athens: University of Georgia Press, 2018.

Stowe, Steven M. *Doctoring the South: Southern Physicians and Everyday Medicine in the mid-Nineteenth Century*. Chapel Hill: North Carolina University Press, 2004.

------. *Keep the Days: Reading the Civil War Diaries of Southern Women.* Chapel Hill: UNC Press, 2018.

------. “Seeing Themselves at Work: Physicians and the Case Narrative in the Mid- Nineteenth-Century American South.” *American Historical Review* Vol. 101, no. 1 (February 1996): 41-79.

Strickland, Jeff. *Unequal Freedoms: Ethnicity, Race, and White Supremacy in Civil War-Era* Charleston. Gainesville: University Press of Florida, 2015.

Summers, Mark Wahlgren. *The Ordeal of the Reunion: A New History of Reconstruction.* Chapel Hill: UNC Press, 2014.

Sweeny, JoAnne. “Undead Statutes: The Rise, Fall, and Continuing Uses of Adultery and Fornication Criminal Laws.” *Loyola University Chicago Law Journal* 46, no. 1 (Fall 2014).

Taylor, Amy Murrell. *Embattled Freedom: Journeys Through the Civil War’s Slave Refugee Camps*. Chapel Hill: UNC Press, 2018.

Theriot, Nancy. “Diagnosing Unnatural Motherhood: Nineteenth-Century Physicians and ‘Puerperal Insanity.’” *American Studies* 30, no. 2, (Fall 1989): 69-88.

Thomas, J.A.W. *A History of Marlboro County*. Atlanta: Foote & Davis Co, 1897.

Trotti, Michael Ayers. *The Body in the Reservoir: Murder and Sensationalism in the South*. Chapel Hill: University of North Carolina Press, 2008.

Turner, Felicity. "The Contradictions of Reform: Prosecuting Infant Murder in the Nineteenth-Century United States." *Law and History Review* 39, no. 2 (May 2021): 277-298.

------. "Narrating Infanticide: Constructing the Modern Gendered State in Nineteenth-Century America." PhD Dissertation, Duke University (2010).

------. "Rights and the Ambiguities of the Law: Infanticide in the Nineteenth-Century U.S. South." *Journal of the Civil War Era* 4:3 (September 2014): 350-372.

Turner, Sasha. *Contested Bodies: Pregnancy, Childrearing, and Slavery in Jamaica*. Philadelphia: University of Pennsylvania Press, 2017

Turner Censer, Jane. *The Reconstruction of Southern White Womanhood, 1865-1895*. Baton Rouge: Louisiana State University Press, 2003.

Ulrich, Laurel Thatcher. *A Midwife's Tale: The Life of Martha Ballard, Based on Her Diary, 1785-1812*. New York: Knopf, 1990.

Umphrey, Martha Merrill. "The Dialogics of Legal Meaning: Spectacular Trials, the Unwritten Law, and Narratives of Criminal Responsibility." *Law and Society Review* 33 (1999): 393-423.

Underwood, James Lowell and W. Lewis Burke Jr, edited. *At Freedom's Door: African American Founding Fathers and Lawyers in Reconstruction South Carolina*. Columbia: University of South Carolina Press, 2000.

Vandal, Giles. *Rethinking Southern Violence: Homicides in Post-Civil War Louisiana*. Columbus: Ohio State University Press, 2000.

van der Heijden, Manon. "Future Research on Women and Crime." *Crime, Histoire, & Sociétiés* 21, no. 2 (2017), 123-33.

van der Heijden, Manon, and Marion Pluskota. "Leniency versus Toughening? The Prosecution of Male and Female Violence in 19th Century Holland." *Journal of Social History* 49, no. 1 (Fall 2015), 149-67.

van der Heijden, Manon. *Women and Crime in Early Modern Holland*. Boston and Leiden: Brill, 2016.

Waldrep, Christopher, ed. *Local Matters: Crime, Race, and Justice in the Nineteenth-Century South*. Athens: University of Georgia Press, 2001.

------. *Roots of Disorder: Race and Criminal Justice in the American South, 1817-80*. Urbana:

University of Chicago Press, 1990.

------. “So Much Sin: The Decline of Religious Discipline and the “Tidal Wave of Crime.” *Journal of Social History* 23, no. 3 (Spring 1990, 535–552.

Walker, Christine. *Jamaica Ladies: Female Slaveholders and the Creation of Britain’s Atlantic Empire*. Chapel Hill: UNC Press, 2020.

Ware, Lowry. “The Burning of Jerry: The Last Slave Execution by Fire in South Carolina?” *South Carolina Historical Magazine* 91, no. 2 (April 1990), 100-106.

Weisenburger, Steven. *Modern Medea: A Family Story of Slavery and Child-Murder from the Old South.* New York: Hill and Wang, 1998.

Welch, Kimberly M. *Black Litigants in the Antebellum South*. Chapel Hill: University of North Carolina Press, 2018.

Welke, Barbara Young. *Law and the Borders of Belonging in the Long Nineteenth Century United States*. New York: Cambridge University Press, 2010.

Wells-Oghoghomeh, Alexis S. “She Come Like a Nightmare”: Hags, Witches and the Gendered Trans-Sense among the Enslaved in the Lower South." *Journal of Africana Religions* 5, no. 2 (2017): 239-274.

------. *The Souls of Womenfolk: The Religious Cultures of Enslaved Women in the Lower South.* Chapel Hill: UNC Press, 2021.

Wertheimer, John. "Escape of the Match-Strikers’: Disorderly North Carolina Women, the Legal System, and the Samarcand Arson Case of 1931.” *North Carolina Historical Review* 75, no. 4 (October 1998), 435-460.

Wertheimer, John et al., "The Law Recognizes Racial Instinct": Tucker v. Blease and the Black—White Paradigm in the Jim Crow South.” *Law and History Review* 29, no. 2 (May 2011), 471-495.

Wertheimer, John and Mark Jones. “Pinkney and Sarah Ross: The Legal Journey of an Ex-Slave and His White Wife on the Carolina Borderlands during Reconstruction. *South Carolina Historical Magazine* 103, no. 4 (October 2002), 325-350.

Wertheimer, John. “*State vs Sanders*: Jim Crow Juries.” Book manuscript chapter in possession of author and read with permission, 2021.

West, Stephen A. *From Yeoman to Redneck in the South Carolina Upcountry, 1830-1915*. Charlottesville: University of Virginia Press, 2008.

White, Deborah Gray. *Arn’t I A Woman?: Female Slaves in the Plantation South*. New York:

W.W. Norton, 1985.

White, Sophie. *Voices of the Enslaved: Love, Labor, and Longing in French Louisiana*. Chapel Hill: UNC Press, 2019.

Whites, Lee Ann. *The Civil War as a Crisis in Gender: Augusta, Georgia, 1860-1890.* Athens: University of Georgia Press, 1995.

White-Perry, Giselle. "In Freedom's Shadow: The Reconstruction Legacy of Renty Franklin Greaves of Beaufort County, South Carolina." *Prologue* 42, no. 3 (Fall 2010).

Williams, Jack Kenny. *Vogues in Villainy: Crime and Retribution in Antebellum South Carolina*. Columbia: University of South Carolina Press, 1959.

Williams, Kidada. *They Left Great Marks Upon Me: African American Testimonies of Racial Violence from Emancipation to World War I*. New York: New York University Press, 2012.

Williams, Lou Faulkner. *The Great South Carolina Ku Klux Klan Trials, 1871-1872*. Athens: University of Georgia Press, 2004.

Williams, Susan Miller and Stephen G. Hoffius. *Upheaval in Charleston: Earthquake and Murder on the Eve of Jim Crow*. Athens: University of Georgia Press, 2011.

Williamson, Joel. *After Slavery: The Negro in South Carolina during Reconstruction, 1861-1877*. New York: W. W. Norton & Company, 1975.

Wood, Amy Louise, ed. *The New Encyclopedia of Southern Culture, Volume 19: Violence*. Chapel Hill: University of North Carolina Press, 2011.

Wood, Peter. *Black Majority: Negroes in Colonial South Carolina from 1670 to the Stono Rebellion*. New York: Knopf, 1974.

Woodward, C. Vann. *Origins of the New South: 1877-1913*. Oxford and New York: Oxford University Press, 1951.

------. *The Strange Career of Jim Crow*. Oxford and New York: Oxford University Press, 1955.

Work, Monroe N., et al. "Some Negro Members of Reconstruction Conventions and Legislatures and of Congress." *Journal of Negro History* 5 no. 1 (January 1920), 63-119.

Wyatt-Brown, Bertram. *The Shaping of Southern Culture: Honor, Grace, and War, 1760s-1880s*. Chapel Hill: University of North Carolina Press, 2001.

------. *Southern Honor: Ethics and Behavior in the Old South*. New York and Oxford: Oxford University Press, 1982.

Yee, Gregory. “How SC Law Criminalizing Premarital Sex Came into Play in a Recent State Supreme Court Case.” *Charleston Post and Courier*, August 20, 2020.

Zuczek, Richard. *State of Rebellion: Reconstruction in South Carolina*. Columbia, South Carolina: University of South Carolina Press, 2009.