States of Insurrection: Race, Resistance, and the Laws of Slavery

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Abstract

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This project tracks how resistance to enslavement durably altered the making of law and race in Barbados and South Carolina between 1650 – 1899. It explores four critical junctures: Interracial resistance during the 1650s, the Stono Uprising in 1739, the Denmark Vesey Uprising in 1822, and the construction of the South Carolina Penitentiary in 1867. I demonstrate how resistance to enslavement yielded new laws and legal institutions designed to suppress that resistance, as well as new ideas of race to underwrite and support those institutions. This process furnished the foundations of two institutional developments: the construction of separate-but-interrelated legal orders to govern blacks and whites and the expansion of racial capitalism, as well as two ideological developments: the consolidation of whiteness and institutionalization of white ignorance, and the stigmatization and criminalization of blackness.

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Introduction

Resistance, Repression, and Retrenchment

In recent years, the United States has experienced a visible resurgence in the use of political protest as a tactic for challenging some of the nation's most racist ideas and institutions. From the disproportionate and violent policing of black communities, to the exploitation of indigenous lands and the violation of tribal sovereignty, a new generation of activists have harnessed novel and disruptive protest tactics to contest racist structures and the ideas of race underwriting them. These tactics have caught the attention of lawmakers: Since 2016, eighteen states with conservative *and* liberal legislatures have introduced or voted on expansive legislation to criminalize and repress protest. These laws legalize harsher fines and the seizure of assets, institute longer mandatory minimums, criminalize a range of political acts, create new criminal categories, and shield acts of violence against protestors from prosecution.

Citing the BLM Ferguson protests, a Missouri bill would prohibit protestors from wearing any hood or mask that concealed their identity or protected that person from tear gas. In Oregon, a bill would require community colleges and public universities to expel any students found guilty of participating in 'violent riots.' A Minnesota bill would make it a gross misdemeanor to block a road or highway. When asked about the bill, one representative responded by invoking a familiar narrative that bifurcated disruptive and socially acceptable protest: "Well, there is a cost to that. Rosa Parks sat in the front of the bus. She didn't get out and lay down in front of the bus." Citing the Dakota Access Pipeline protests, a bill recently passed in South Dakota empowers the Governor to declare any area a 'public safety zone' which quarantine 'outside agitators' and prohibit protest. A series of bills in Florida, Tennessee, and North Dakota would shield drivers who harmed or killed protestors blocking roads or highways.

Taken together, these bills reflect the aspirations of lawmakers to secure the confluence of racial capitalist and state interests by racializing and criminalizing 'lawless' protest and authorizing everyday citizens to engage in violence against protestors. In doing so, they extend a long tradition of instituting and enforcing separate-but-interrelated legal orders to govern American citizens: For 'lawful,' predominantly white citizens, a system of rights and protections, and for nonwhites, a system of arbitrary discretion and violence designed to surveil, control, and discipline. In this respect, these bills are reflective of a much broader ongoing process, wherein resistance to racist ideas and institutions yields repressive state laws that reinforce those ideas and institutions, either by transforming or rearticulating them. The dynamic, in other words, is one of *resistance* followed by *repression* and then *retrenchment.*

Popular analyses have regarded these and similar bills as either a manifestation of reactionary conservatism born of the Civil Rights Movement, or as novel, modern tactics in the ever-expanding network of surveillance, control, and racialized punishment that constitute the carceral state. In this project, I situate the ideas and institutional designs underwriting these laws within a longer historical pattern of resistance, repression, and retrenchment that neither reactionary conservatism nor accounts of the modern carceral state adequately explain. Instead, I argue that the forms of state power and ideas of race underwriting modern protest laws are linked to the laws of slavery, particularly those designed to surveil and suppress resistance to enslavement. Like modern protest laws, these early slave laws repressed resistance through forms of violence that consolidated whiteness and criminalized blackness, retrenching the racial order in ways that secured the tangled interests of the state and racial capitalist order.

In recent years, political scientists have paid increasing attention to this racialized dynamic of resistance, repression, and retrenchment, particularly in relation to the expansion of

the American criminal justice system, or that broader network of practices and institutions termed the carceral state. Many of these scholars have gone beyond the traditional narrative that attributes the rapid expansion of the criminal justice system to the rise of 'tough on crime' policies in the latter half of the twentieth century. [1] Instead, this growing body of scholarship has linked carceral buildup to a longer series of ideological and institutional developments, including the war on poverty, the criminalization of blackness by northern elites, civil rights organizing, prison activism, and the ascendance of both liberal and conservative law-and-order politics. [2]

Underlying this scholarship is a commitment to taking the 'long view' of how ideas of race form and state institutions develop over time. [3] This timeline, however, is generally truncated at the early twentieth—and sometimes late nineteenth—centuries. Too often, it appears as though the modern American state—particularly the criminal justice system—sprung from the ground in the aftermath of the Civil War. The result is that while past scholarship has revealed a great deal about the origins of these racialized ideas and institutions, these enduring punitive

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[1] Enns, *Incarceration Nation: How the United States Became the Most Punitive Democracy in the World*; Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America*; Lerman and Weaver, *Arresting Citizenship: The Democratic Consequences of American Crime Control*; Miller, *The Perils of Federalism: Race, Poverty, and the Politics of Crime Control*; Murakawa, *The First Civil Right: How Liberals Built Prison America*; Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear*.

[2] Berger, *Captive Nation: Black Prison Organizing in the Civil Rights Era*; Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America*; Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America*; Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*; Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America*; Murakawa, *The First Civil Right: How Liberals Built Prison America*; Taylor, "Sunbelt Capitalism, Civil Rights, and the Development of Carceral Policy in North Carolina, 1954-1970"; Thompson, *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy*; Weaver, "Frontlash: Race and the Development of Punitive Crime Policy."

[3] Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy*; Fehrenbacher and McAfee, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery*; Francis, *Civil Rights and the Making of the Modern American State*; Frymer, *Black and Blue: African Americans, the Labor Movement, and the Decline of the Democratic Party*; Frymer, *Building an American Emprie: The Era of Territorial and Political Expansion*; Johnson, *Reforming Jim Crow: Southern Politics and State in the Age Before Brown*; Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America*; Lieberman, *Shifting the Color Line: Race and the American Welfare State*; Lowndes, Novkov, and Warren, *Race and American Political Development*; Mickey, *Paths Out of Dixie*; Novkov, *Racial Union: Law, Intimacy, and the White State in Alabama, 1865-1954*; Rana, *The Two Faces of American Freedom*; Weiner, *Americans Without Law: The Racial Boundaries of Citizenship*.

developments are cast as too decidedly modern. Scholarship that historicizes punitive developments by articulating this modern break in the making of law and race has obscured crucial linkages between resistance to enslavement and entrenched ideas of the black criminality and white authority, which have been repeatedly mobilized to expand punitive state power. As such, I argue we need a subtler understanding of the overlaps and disjunctures between early modern and modern ideas of race, as well as the laws that both rearticulate and transform those ideas, repressing the possibility for resistance.

In this project, I argue that resistance to enslavement durably altered the making of law and race in ways that have survived abolition. Beginning in the seventeenth century, I show how resistance to enslavement drove the creation of two *separate-but-interrelated legal orders*: For enslaved people, a system of *law without rights* that *economized violence* by demarcating 'justifiable' and 'excessive' forms of anti-black violence in order to suppress resistance and secure the interest of racial capitalism. For whites, a system of rights and protections that consolidated whiteness through anti-black violence and institutionalized white ignorance by invoking a *logic of outside contagions,* which attributed resistance to slavery to corrosive outside threats, rather than the dehumanizing conditions of enslavement. Across each chapter, I show how these separate-but-interrelated legal orders were adapted to repress new acts of resistance, retrenching racial hierarchy in ways that secured the expansion of racial capitalism, consolidated whiteness and institutionalized white ignorance, and criminalized blackness. In tracking this counterpoint between resistance, repression, and retrenchment, the language of counterpoint here is crucial—it signals the interrelatedness of these processes, as well as their distinct, independent contours and rhythms. Thus, my work offers an account of the agency that enslaved and freed black people cultivated and the alternative conceptions of law and rights that they forged in

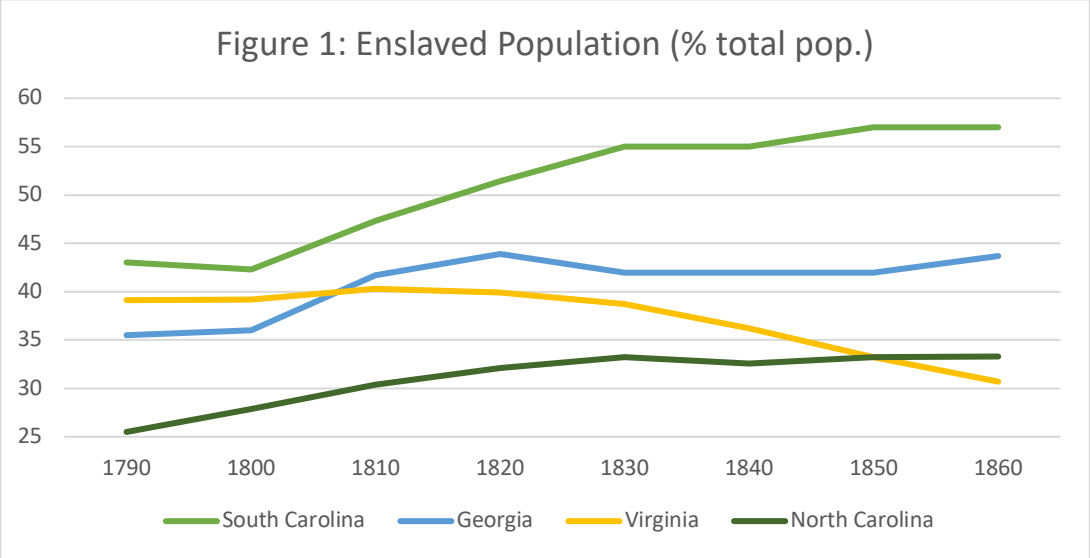
resisting enslavement, yet it is neither a strictly positive nor uplifting tale. As much as this is a story of resistance and resilience, it is also a story of how these systems of domination emerged and then adapted to survive repeated opposition, ensuring that white supremacy as a system of power and privilege would persist into the twenty-first century.

To locate the origins of these separate-but-interrelated legal orders, this project utilizes Barbados and South Carolinas as its cases. From the outset, the economic interests and political development of these colonies were closely linked: South Carolina was settled by planters from Barbados, and its early legislative assemblies were controlled by Barbadian elites. These economic linkages were deepened by vast fortunes—derived primarily from sugar in Barbados, and rice in South Carolina—which were amassed through the expropriation of African and indigenous enslaved people and the exploitation of white contract servants. In contrast to past historical accounts that focus on Virginia, I argue it was Barbados and South Carolina that consistently led the way in institutionalizing slavery and forging new ideas of race. [4] Barbados was the first colony to create a comprehensive slave code in 1661, and South Carolina's slave laws borrowed directly from—and often copied wholesale —those of Barbados.

Likewise, it was South Carolina, deemed by historians, 'the capital of slavery,' that was repeatedly at the forefront of preserving and expanding slavery in the United States. From the outset, South Carolina had one of the largest enslaved populations—second only to Virginia—and more than forty percent of all enslaved people who were kidnapped and taken to the United States were brought through Charleston. At the Constitutional Convention, it was the delegates from South Carolina who led the way in ensuring the survival of the transatlantic slave trade. By 1790, South Carolina—along with Georgia—had the highest number of enslaved people per

[4] Allen, *The Invention of the White Race*; Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia*.

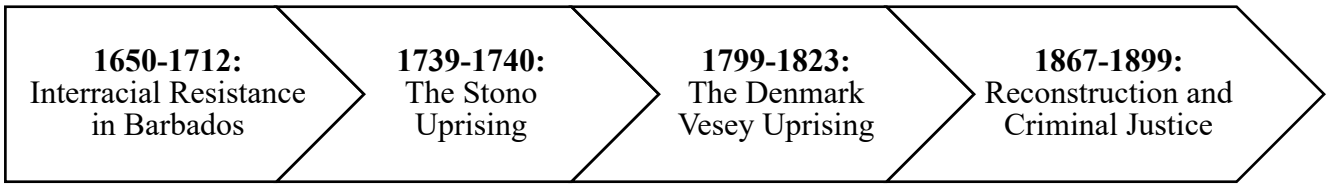
household, exceeding 12. [5] Between 1810-1830, as states with the largest enslaved populations like Virginia, North Carolina, and Georgia began to stagnate or decline in proportion to the white population, the proportion of enslaved people in South Carolina rapidly expanded. Figure 1 illustrates how the population of these states diverged during the 19th century:



From the outset, the demographics of South Carolina were closer to Caribbean sugar colonies like Barbados and Jamaica. By 1820, the enslaved population of South Carolina had rapidly diverged from other states—enslaved people accounted for more than 51% of the state's population. This share continued to grow, and by 1860, enslaved people accounted for 57% of the state's population. [6] In this respect, slavery was not only more widespread but deeply embedded in the social, political, and economic development of South Carolina than virtually any other state. Likewise, it was South Carolina, 'the cradle of the confederacy,' that was first to secede at the outset of the Civil War, and in the aftermath of abolition, South Carolina was the second state to institute its own Black Codes, just days after Mississippi.

[5] Fede, *Homicide Justified: The Legality of Killing Slaves in the United States and the Atlantic World*, 173.
[6] U.S. Census Data, 1790-1860.

In tracking the intertwined cases of Barbados and South Carolina, my work offers a transatlantic history of resistance to enslavement that shows how revolutionary acts of resistance like the 1739 Stono Uprising—the largest colonial slave uprising in American history—durably altered the development of law and race. Extending the typical timeline of past scholarship concerning the carceral state by two centuries, the following four chapters each explore a critical juncture from the Colonial Era through the turn of the twentieth century:



Admittedly, this is a particularly long timeline, even for APD scholarship, which utilizes long periods of time in order to track broader patterns of institutional change and political development. This scholarship, however, tends to be hyper-periodized, focusing on the critical junctures and ruptures in the political order that accompany new periods in the making of the modern American state. Instead, I follow APD scholars like Orren who emphasize the layering of—and tension between—institutions and norms across multiple eras. [7] My work also follows the trajectory of historians who track the *longue durée,* or extended periods of time in order to understand how rare and unprecedented moments like mass uprisings produce durable ideological and institutional effects with sprawling repercussions across both space and time. [8]

Across these four periods, I argue that resistance to enslavement yielded new laws and legal institutions designed to suppress that resistance, as well as new ideas of race to underwrite and support those institutions. Institutionally, I demonstrate how insurrection laws—forged in a transatlantic context against expressions of black agency—sanctioned new forms of state power

[7] Orren, *Belated Feudalism: Labor, the Law, and Liberal Development in the United States*.
[8] Rugemer, *Slave Law and the Politics of Resistance in the Early Atlantic World*.

that have persisted beyond abolition through the carceral state. Theoretically, my work bridges the gap between the making of law and race, tracking how intertwined processes of resistance and legal development yield new understandings of race. This contrapuntal movement between resistance, repression, and retrenchment furnished the foundations of *two enduring institutional developments*: the construction of separate-but-interrelated legal orders to govern blacks and whites and the expansion of racial capitalism as a crisis-prone economic system of domination, *as well as two enduring ideological developments:* the consolidation of whiteness and institutionalization of white ignorance, and the stigmatization and criminalization of blackness.

To construct an account of resistance to enslavement and its effects on the making of law and race, this project brings together studies in American Political Development (APD), political theory, sociolegal studies, and histories of racial capitalism. Building on this scholarship, I argue that an interdisciplinary approach to studying resistance to enslavement and its effects on the making of law and race requires four methodological shifts: First, a longer timeline, one that begins from the Colonial Era during the seventeenth century. Second, looking beyond the U.S. and tracking the transatlantic movement of law and ideas of race. Third, shifting our level of analysis from the federal government and federal constitutional development, tending instead to the early development of slavery and slave laws in the colonies and then states. Finally, that we decenter whites and state elites, instead taking a bottom-up view that centers the experiences of resistance from those most affected by slavery—enslaved people themselves.

Utilizing these methods and an interdisciplinary approach to the study of resistance, race, and the law, this project contributes to a range of scholarship, including: Bottom-up accounts of state and constitutional development in APD, scholarship in APD around the legacies of slavery and the rise of the carceral state, sociolegal scholarship on law and racial violence, theoretical-

historical scholarship on the making of whiteness and the criminalization of blackness, as well as historical-theoretical accounts of the relationship between resistance and racial capitalism. Although I disentangle these various threads in this introduction, a basic contention of this project is that such disciplinary boundaries often conceal as much as they reveal about the workings of power, the making of race, and the development of law and the state. Therefore, in the following chapters, I often move between historiography, accounts of institutional and legal development, and theorizing the ideas of race and resistance that both underwrote and emerged from those institutions. In doing so, I aim to provide a thicker account of resistance to enslavement and its varied effects on the making of law and race, one that reflects the interrelated and ongoing nature of these ideological and institutional developments.

I. Methodology: Remembering Slavery

The following pages utilize a range of archival materials spanning more than two centuries, including data gathered at the University of South Carolina, the Library of Congress, and the South Carolina Department of Archives and History. My sources include colonial and state laws and constitutions, congressional records, trial transcripts, state reports and resolutions, newspaper reports and op-eds, letters, diaries, and Federal Writers Project (FWP) interviews conducted with formerly enslaved people and their descendants during the early twentieth century. I engage in close readings of these documents on two fronts: Institutionally, I track the expanding forms of state power and violence that the law authorized both state officials and white citizens to utilize in preventing and suppressing resistance to enslavement. Wherever possible, I utilize not only state documents, but reports, eyewitness testimony, and popular discussion around these moments of resistance and repression. Theoretically, I track the varied ways that state officials, elites, white citizens, and freed and enslaved black people engaged with the question of

resistance in order to articulate new ideas of race. I devote particular attention to how whiteness is consolidated in response to resistance and the varying discourses that criminalized blackness, as well as the alternative conceptions of law and rights mobilized by free and enslaved black people to challenge those ideas.

In utilizing this range of materials, my work seeks to recover an account of the circumscribed-yet-revolutionary forms of agency cultivated by freed and enslaved black people. Most often, though, when the state archives do mention enslaved people, they are criminalized as barbarous, wild, and savage, infantilized as wayward, inept, and lacking paternal authority, or stigmatized in some combination of these racist discourses. From these overt mentions, the laws of slavery present themselves as solutions to the threat of criminality or as rightful structures to support paternal authority. In this respect, to construct a narrative of resistance to slavery is to write a history of the impossible. [9] It is impossible in two senses: First, in that widescale, revolutionary resistance by enslaved people appeared before whites as a conceptual impossibility. Indeed, as Michel-Rolph Trouillot argues in his seminal account of the Haitian Revolution, the event "entered history with the peculiar characteristic of being unthinkable even as it happened." [10] Second, it is impossible in that freed and enslaved black people who planned to engage in revolutionary resistance did so in secret, and revealed plans were brutally suppressed, so the archives are often replete with only silences. Resistance was then either suppressed or recast as being symptomatic of black criminality and white victimhood. How, then, might one construct a history of resistance which centers the experiences of freed and enslaved black people if so little was left behind? How should one disrupt the narratives of patriarchalism, paternalism, and criminality which distort or erase resistance to enslavement?

[9] Hartman, "Venus in Two Acts."
[10] Trouillot, *Silencing the Past: Power and the Production of History*, 73.

This project is indebted to an interdisciplinary body of scholarship that has confronted the asymmetries of power which characterize both enslavement and the archives of slavery, recounting the varied experiences of enslaved people. [11] Underwriting this scholarship is a keen awareness of the extent to which such accounts are not a matter of assembling objective facts into a 'true and exact' history but of recognizing how narratives are produced from archives which reflect asymmetrical relations of power. In other words, rather than treat these relations of power as distorting forces that can be isolated and excised from the archives and subsequent narratives, these scholars have begun from the premise that "Power is constitutive of the story." [12] Responding to the asymmetries of power and privilege that mark these archives, I have sought to mitigate these challenges by tending to not only the overt mentions of slavery, race, resistance, and the law, abut also the *silences* that resonate throughout the archives. These patterns of sound and silence are neither passive nor incidental. [13] The crucial move then, as Ann Stoler argues, is to "[1] distinguish between what was 'unwritten' because it could go without saying and 'everyone knew it,' [2] what was unwritten because it could not yet be articulated, and [3] what was unwritten because it could not be said." [14]

First, as slavery increasingly defined the social, economic, and political organization of Caribbean and American societies, race became commonsense and white supremacy came to

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[11] Aptheker, *American Negro Slave Revolts*; Camp, *Closer to Freedom: Enslaved Women & Everyday Resistance in the Plantation South*; Du Bois, *Black Reconstruction in America, 1860-1880*; Harding, *There Is a River: The Black Struggle for Freedom in America*; Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Ninteenth-Century America*; Hartman, *Lose Your Mother: A Journey Along the Atlantic Slave Route*; Hartman, "Venus in Two Acts"; Jones-Rogers, *They Were Her Property: White Women as Slave Owners in the American South*; Linebaugh and Rediker, *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic*; Lowe, *The Intimacies of Four Continents*; Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia*; Okihiro, *In Resistance: Studies in African, Caribbean, and Afro-American History*; Rucker, *The River Flows On: Black Resistance, Culture, and Identity Formation in Early America*; Rugemer, *Slave Law and the Politics of Resistance in the Early Atlantic World*; Smallwood, *Saltwater Slavery: A Middle Passage from Africa to American Diaspora*; Trouillot, *Silencing the Past: Power and the Production of History*.
[12] Trouillot, *Silencing the Past: Power and the Production of History*, 28.
[13] Trouillot, 48.
[14] Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense*, 3.

function as an autonomous ideology. The result was a balkanized set of discourses: On the one hand, racial categories were meticulously and exhaustively defined, contested, and rewritten, and on the other, such discourses also meant that racial categories were frequently invoked as common sense with little explanation. Read as 'that which everyone knew,' this pattern of explanation and silence reflects the entrenchment of race as the governing force ordering the state, society, and capitalism. Categories that might appear as natural or commonsense then reveal themselves as products of history, creating space for a genealogical account that reveals how those categories were established and developed and the effects of those processes. [15] In what follows, I seek to disentangle these categories while also showing how they developed both through and against revolutionary resistance.

Second, some might critique my usage of terms like 'whiteness' and 'criminality,' particularly during the colonial era when 'white' had not yet solidified as racial category and when the law more often linked blackness to 'barbarism, savagery, or heathenism,' concepts that are perhaps not coequal with criminality. Yet, understood as that which could not yet be articulated, a different view of these terms comes into focus: Whiteness is neither static nor monolithic, but a variegated hierarchy of power and privilege that has shifted, expanded, and hardened in order to maintain and expand state power and to mitigate the exigencies of racial capitalism. Indentured servants were already phenotypically white, but as I show in Chapter 1, the law *made* them white in the seventeenth century in order to fracture their axes of solidarity with enslaved people. Likewise, barbarism, savagery, and heathenism were framed as problems to be managed by creating a separate-but-interrelated legal order with new crimes and punishments to govern freed and enslaved black people. Thus, while the language of 'whiteness'

[15] Lowe, *The Intimacies of Four Continents*, 3.

and ‘criminality’ had not yet appeared consistently or durably, I show how the relations of power, systems of domination, and ideas of race underwriting these terms were already at work.

Finally, and perhaps most challenging, is excavating that which could not be said. For whites—as the assemblers and keepers of most archives—to fully recount the revolutionary resistance against enslavement would require acknowledging the brittleness of their authority and the inhumanity of enslavement, fictions that were essential to maintaining and expanding the institution. Instead, those who engaged in revolutionary resistance were brutally silenced and what traces remain of them are often distorted. [16] Like Hartman and other scholars of slavery, I argue that we ought to reckon with and admit the limitations of what can be known, remembered, and retold. My work seeks to resuscitate these historical silences, it seeks to provide an account of a history that we can never fully know, but that nevertheless we ought to struggle toward remembering. However, it also takes seriously the incomplete and elusive nature of these stories. Thus, while I aim to offer as full and complete a story as possible, I also recognize the “ongoing, unfinished, and provisional” nature of a story that attempts to recover a brutally silenced past. [17]

There are, however, punctuations in this silence—discourses that were not suppressed or erased. The FWP interviews, for example, are often the closest we can get to a history of resistance that does not come from the perspective of whites, especially during the colonial era. Some historians have characterized these interviews as inaccurate because the interviews were conducted well after the experiences of enslavement and unreliable because they were conducted by whites, which would condition the responses of participants. However, as Stephanie Jones-Rogers argues, formerly enslaved people would not forget the “salient life events” which they recalled during interviews, including “marriages, births, deaths… brutal beatings, sexual

[16] Hartman, “Venus in Two Acts,” 2.
[17] Hartman, 14.

assaults, or familial separations." Moreover, while some avoided or chose not to answer certain questions, many more "spoke openly of the tragedies and traumas of slavery." [18] Indeed, critiques of the FWP interviews reveal a tendency to treat the "archive as a stable, transparent collection of facts," a practice that I have already troubled and that Lisa Lowe rightfully cautions against. [19] The FWP interviews instead lay bare a characteristic that varies—but nonetheless persists—across *all* historical archives: such materials are constituted through relations of power that reflect processes of narrative *production,* rather than stable historical truths. While these relations of power may condition us toward producing certain forms of historical understanding, it does not preclude us from beginning to undo those processes or considering alternative forms of meaning embedded in texts like the FWP interviews.

II. Separate-but-Interrelated Legal Orders

In 1661, the Barbados Assembly secured the expansion of racial capitalism against the threat of interracial resistance by creating two separate-but-interrelated legal orders: For black people, a system of *law without rights* that *economized racial violence* by demarcating 'justifiable' from 'excessive' forms of violence to secure the financial interests of enslavers, against which black people struggled to forge alternative conceptions of law and rights. For whites, a system of rights and protections that consolidated whiteness by authorizing whites to engage in anti-black violence and institutionalized white ignorance by instituting a logic of *outside* contagions, which attributed resistance to corrosive outside forces, rather than the dehumanizing conditions of enslavement. These separate-but-interrelated legal orders were imported and adapted by enslavers in South Carolina, who expanded those orders in response to new acts of resistance.

[18] Jones-Rogers, *They Were Her Property: White Women as Slave Owners in the American South*, xviii–xix.
[19] Lowe, *The Intimacies of Four Continents*, 4.

This project locates the origins of these separate-but-interrelated legal orders in resistance to enslavement. To track the development of these separate-but-interrelated legal orders, I engage in close-readings of the slave codes of Barbados and South Carolina across two centuries, as well as the discourses and debates over the interplay between resistance, repression, and retrenchment. I show how these legal orders developed and changed in response to acts of resistance, as well as their broader implications for state and constitutional development. In tracking the development of these separate-but-interrelated legal orders, this work will be of particular interest to APD scholars concerned with bottom-up state development and the afterlives of slavery, as well as sociolegal scholars who study racial violence and the law.

A. Resisting Enslavement: State Development and Ideology

Scholars of slavery and American Political Development (APD) have not adequately contended with the enduring role of slavery in state development, and they have altogether elided the question of resistance to enslavement. [20] These scholars begin from the Antebellum Era when slavery was already a socially, politically, and economically entrenched institution, and they focus almost exclusively on the role of the federal government and white elites. Consequently, accounts of slavery and state development fail to recognize how those most affected by enslavement—enslaved and freed black people—not only resisted their experiences of domination but altered the development of law and race. These shortcomings are indicative of a broader methodological tendency in APD to engage in 'top-down' accounts of state development that not only elide the agency of citizens and noncitizens but privilege materiality and institutions over discourse and ideology in ways that conceal the precise interworking of race and law.

[20] Bensel, *Yankee Leviathan: The Origins of Central State Authority in America, 1859-1877*; Fehrenbacher and McAfee, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery*; Finkelman, *Slavery and the Founders: Race and Liberty in the Age of Jefferson*.

In taking a bottom-up approach to the study of resistance and state development, my project fills three crucial gaps in past scholarship on slavery in APD: a lack of attention to the Colonial Era as a significant period of state-building, particularly with respect to black people, an over-emphasis on the federal government's involvement in slavery, and a tendency to privilege the perspective and agency of white elites. First, the few scholars studying the Colonial Era tend to focus on the origins of social policy, in other words, the state's development with respect to white settlers. [21] These narratives elide an equally long and significant historical process: the development of a strong state that utilized repressive laws and institutions to legitimate anti-black violence and the expropriation of black labor, thereby ensuring freedom for whites. My work fills this gap by highlighting how resistance drove the creation of separate-but-interrelated legal orders that rapidly expanded state power and capacity, even in the absence of a robust bureaucracy, by broadly authorizing white citizens to engage in anti-black violence.

Second, APD scholars concerned with the significance of slavery tend to focus on federal constitutional development, including compromises around slavery during the Founding Era, federal court decisions like *Dred Scott v. Sanford,* as well as major federal policies like the Fugitive Slave Act. [22] My point is not to understate the significance of these moments, but to suggest that grappling with the significance of slavery requires that we consider its earliest forms at the state-level during the Colonial Era, not just the period in which it was already a socially, economically, and politically entrenched institution. Indeed, this level of analysis obfuscates that the racialized legal logics and institutional designs that would work to suppress the hard-won

[21] Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History*; Jensen, *Patriots, Settlers, and the Origins of American Social Policy*; Rana, *The Two Faces of American Freedom*; Frymer, *Building an American Emprie: The Era of Territorial and Political Expansion*.
[22] Bensel, *Yankee Leviathan: The Origins of Central State Authority in America, 1859-1877*; Graber, *Dred Scott and the Problem of Constitutional Evil*.

freedoms of black people was a colonial project first undertaken in the late-seventeenth and early eighteenth centuries, prior to the emergence of the federal government. [23] APD scholarship, with its over-emphasis on federal policy and U.S. constitutional development, has tended to elide or obfuscate the ways in which the structures and ideas that continue to underwrite the suppression of black resistance and state-sanctioned practices of anti-black violence was a transatlantic project embedded in the earliest forms of colonial governance.

Finally, while APD scholarship has begun tending to the impact of slavery on the formation of the American state, these studies often focus on the actions of—and conflicts between—white elites. The subjugation of black bodies and the expropriation of black labor, while central to these conflicts, is constructed in terms of the relative powerlessness of enslaved and freed black people. Such studies tend to understate or altogether ignore the impact that black organization, mobilization, and resistance had on the development of state laws and institutions. Ultimately, the tendency to focus on the perspective of the federal government and white elites prevent us from fully understanding what Robert Lieberman describes as the "legacies of slavery." [24] To fully understand the ways in which the afterlives of slavery still haunt the present, we must center the lives of those most affected by slavery—enslaved and freed black people—and tend to the earliest iterations of the ideas and institutions they navigated, resisted, and transformed. Thus, for scholars in APD interested in not only the legacies of slavery but the broader relationship between race and state development, my work suggests a need for a longer

[23] Even Young and Meiser's (2008) account of the 'dual state' locates the emergence of a 'predatory state' in the framing of the U.S. Constitution. Yet as Zackin (2013) shows in her account of state constitutions and the development of a positive rights tradition in the United States, shared political traditions and commitments may emerge and develop across state lines without federal intervention.
[24] Lieberman, Robert C. "Legacies of Slavery? Race and historical causation in American political development" in *Race and American Political Development.*

view of enslavement which begins from the state-level and takes a bottom-up view of this dynamic between resistance, repression, and retrenchment.

In tracking how resistance to enslavement drove the creation and development of separate-but-interrelated legal orders, my work reveals how law, race, and the state are 'built from below.' This shifts the traditional analysis of APD scholarship away from elites and toward the varied modes of resistance undertaken by enslaved and freed black people, which durably altered the making of law and race. In this respect, my work complicates the claims of institutionalists in APD who treat state development as an elite-driven process that takes place within the well-defined, insulated boundaries of institutions. [25] Challenging this top-down, elite-centered view of development that privileges powerful, autonomous elites in forming new rules and norms, my work joins an emerging body of scholarship in APD that takes a bottom-up approach to understanding institutional change and legal development. Indeed, as scholars like Megan Francis argue, although "the state is powerful… citizens," and in this case non-citizens, "are not without agency." [26]

This project builds on the work of APD scholars like Francis and others concerned with 'state-building from the margins,' or those expressions of collective power by citizens who challenge and transform the trajectory of state and constitutional development. [27] This body of scholarship complicates past accounts of state development by framing the relationship between state and society in porous terms: elites, while insulated by institutions, can never fully extricate

[25] Bensel, *Yankee Leviathan: The Origins of Central State Authority in America, 1859-1877*; Carpenter, *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862-1928*; Evans, Rueschemeyer, and Skocpol, *Bringing the State Back In*; Hacker, *The Divided Welfare State: The Battle over Public and Private Social Benefits in the United States*; Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America*; Lieberman, *Shifting the Color Line: Race and the American Welfare State*; Skowronek, *Building a New American State*.
[26] Francis, "The Strange Fruit of American Political Development," 129.
[27] Francis, *Civil Rights and the Making of the Modern American State*; Nackenoff and Novkov, *Statebuilding from the Margins: Between Reconstruction and the New Deal*.

themselves from society. Building on this scholarship, my work takes a bottom-up view of the relationship between resistance and state development, tracking how the law, underwritten by shifting ideas of race and resistance, are revised in order to retrench racial hierarchy. Organized mobilization and resistance can, has, and does infiltrate and transform state institutions, as well as the ideologies underwriting those structures. Such moments reveal that members of society—even the excluded and subjugated—are never fully without agency.

In addition to offering an account of how law and race are 'built from below,' my work tracks how institutions and ideologies are both materially and discursively intertwined, challenging APD scholars' tendency to neatly bifurcate institutions and ideologies in explaining political change. Seeking clear and direct theories of development, APD scholars attribute explanatory power to institutions, as well as ideology, yet often frame the two as operating independently from each other. [28] More troublingly, ideology and discourse are often framed as extra-institutional concerns, which can be parsed from more fundamental explanations about how institutions operate and change over time.

A notable exception is King and Smith's theory of racial institution orders, which they argue, "seek and exercise governing power in ways that predictably shape people's statuses, resources, and opportunities by their placement in 'racial' categories." [29] For King and Smith, changing racial orders signify the conflict between white supremacist and egalitarian orders, as different groups struggle to redistribute resources to originate or modify the meaning of racial categories. Admittedly, King and Smith place more emphasis than most APD scholars on the

[28] Evans, Rueschemeyer, and Skocpol, *Bringing the State Back In*; Frymer, *Black and Blue: African Americans, the Labor Movement, and the Decline of the Democratic Party*; Lieberman, *Shifting the Color Line: Race and the American Welfare State*; Orren, *Belated Feudalism: Labor, the Law, and Liberal Development in the United States*; Orren and Skowronek, *The Search for American Political Development*.
[29] King and Smith, "Racial Orders in American Political Development," 85.

various "ideological goals" that underwrite the conflict between multiple racial orders. [30] What is less clear, however, is the precise relationship between ideologies and institutions, and whether—or the extent to which—ideology can be understood in non-hegemonic terms. For King and Smith, ideological conflict may underwrite institutional change, but when those conflicts are resolved, it appears that a particular racial ideology becomes hegemonic until it is again challenged and transformed. Outside moments of contestation, ideology becomes immaterial—what remains material or 'real' are the new rules and procedures according to which actors in those institutions now operate, and the effects of those actions in redistributing resources, enacting violence, and constraining or expanding opportunities for future action. In this respect, ideology is an antecedent to political change that is circumscribed, confined, and operates within institutions according to consistent and predictable principles. Seeking clear and direct explanations of institutional change and state development, King and Smith elide the instability and materiality of ideology and discourse over time, how multiple ideologies are inflected in the structure and operation of laws and state institutions.

Instead, I seek to understand how ideologies and institutions are imbricated, how understandings of race are revised against and embedded in laws designed to repress resistance. Moreover, in taking a bottom-up approach to the making of law and race, I aim to show how ideologies often exceed institutions, bubbling from below in ways that remake institutions as much as they spill down from the top to shape the preferences, behaviors, resources, and opportunities of political actors. In doing so, my work demonstrates how multiple ideologies are often rendered as real and durable as the institutions that APD scholars track over time. Indeed, as Pamela Brandwein argues, acknowledging the existence of "multiple—diachronic and

[30] King and Smith, 89.

synchronic—ideologies is the key to understanding political transformation." [31] Because resistance to slavery necessitated the creation of separate-but-interrelated legal orders, the creation, enforcement, and experience of law is one of multiple racial ideologies and overlapping, often contradictory discourses around race and resistance. In charting the consolidation of whiteness and the criminalization of blackness, my work reveals how ideologies are imprinted on the world and human bodies, how ideologies are made as 'real,' as material and durable as the resources, rules, and procedures that APD scholars tend to highlight. Taken together, in contrast to past work in APD, which has tended to take a top-down view of political change that bifurcates institutions and ideology, I highlight the ways in which resistance, on the part of both free and enslaved black people, has often constrained and altered the intertwined trajectories of state and ideological development.

B. Law, Racial Violence, and Legal Consciousness

In showing how these separate-but-interrelated legal orders took shape in the Caribbean and were imported to South Carolina, my work joins sociolegal scholars like Michael McCann and George Lovell, who argue that "the hegemonic American legal inheritance has been multiple in character and more of a variant on than a transcendent alternative ("exception") to European racialized, classed, and gendered colonial regimes." [32] In contrast to scholars like Stuart Scheingold, who have characterized racial violence as a manifestation of the gap between the law in principle, or its ideal liberal configuration, and the law in practice which falls short of these aspirations, I argue that racial violence is a manifestation of these two separate-but-interrelated legal orders functioning as intended. For whites, this means a system of rights and

[31] Brandwein, "Law and American Political Development," 209.
[32] McCann and Lovell, *A Union by Law: Filipino Labor Activists, Rights Radicalism, and Racial Capitalist Empire, 1900-2000*.

protections, wherein whiteness is underwritten by the promise to partake in racial violence, and for black people and other marginalized groups, a system of state-sanctioned violence enacted primarily by whites. [33] As Aziz Rana argues, these two legal orders are deeply intertwined: American settler identity sought to broaden and instrumentalize civic republican ideals by tying them to economic independence, land ownership, and self-directed labor. However, securing this unique form of republican self-rule depended upon the oppression and domination of outsiders deemed unfit for citizenship, including not only enslaved people, but women, native and indigenous peoples, and a range of other groups. [34] The end result was a patchwork of separate-but-interrelated legal orders that ensured freedom for some through the domination of others. [35]

In this respect, my work reveals a need for a subtler account of political standing and rights. Political status and rights-bearing are often binaries between insiders and outsiders, haves and have-nots, and historically, those divisions have been deeply racialized. During the colonial period, "these [racialized] distinctions were far less sharp… when virtually *all* nonpropertied people had the status of subjects, not that of rights-bearing citizens." [36] However, while the distinction between "free and subject races" had certainly not yet hardened, as I demonstrate in Chapter 1, the seventeenth century *was* a formative period in the genesis of whiteness. To be sure, it was a far more variegated and limited vision of whiteness that was abridged by deep divisions in class, religious beliefs, and political standing. Nonetheless, early servant and slave codes were a crucial site for identifying and hardening racialized distinctions in order to secure the expansion of racial capitalism. In order to understand the development of racialized

[33] Scheingold, *The Politics of Rights: Lawyers, Public Policy, and Political Change*.
[34] Rana, *The Two Faces of American Freedom*.
[35] McCann and Lovell, *A Union by Law: Filipino Labor Activists, Rights Radicalism, and Racial Capitalist Empire, 1900-2000*.
[36] Fraser, "Is Capitalism Necessarily Racist?," 32.

subjectivity, I argue that we need a subtler account of political status and rights that acknowledges the limited forms of standing that nonpropertied whites asserted—despite internal divisions and hierarchies—through contract law and enacting anti-black violence.

By failing to acknowledge how these separate-but-interrelated legal orders authorized racial violence, sociolegal scholars have too often framed racial violence as an exception to the law. The result is that while sociolegal scholars have revealed a great deal about the racial violence that the law enacts and sustains, for many, that violence is 'exceptional,' it is always outside the law's otherwise universal promise of protection. In other words, racial violence is regarded as aberrational rather than foundational to the law. Perhaps most notably, Agamben's concept of 'states of exception' lead us to think of anti-black violence as 'extraordinary.' Yet as Sally Engle Merry argues, the law "plays a critical cultural role in defining meanings and relationships, but it does so in the context of state power and violence." [37] As my work reveals, far from a legal exception, anti-black violence was regulated by an ever-expanding body of law, which *economized racial violence,* balancing repressing resistance against the financial interests of enslavers and the global market. The result was an ever-shifting demarcation between 'justifiable' and 'excessive' forms of anti-black violence. However much these standards shifted, this *economy of violence* consistently exhibited four characteristics: It took the financial interests of racial capital as its starting point, was justified on the basis of black criminality, insisted that 'protecting' enslaved black people hinged on black rightslessness, and prescribed unbounded, brutal violence in response to widescale resistance. In this respect, the forms of anti-black violence that unfold over these pages are certainly shocking and horrifying, but these incidents reflect *exactly* what these separate-but-interrelated legal orders were designed to accomplish. The

[37] Merry, *Colonizing Hawai'i: The Cultural Power of Law*, 17.

violent repression of resistance was foundational to these separate-but-interrelated legal orders as they made and remade our shared understandings of—and material forms of—law and race.

Finally, these separate-but-interrelated legal orders, while hegemonic, did not go uncontested. In taking a bottom-up view of resistance as the catalyst of development, my work reveals how freed and enslaved black people forged alternative conceptions of law and rights that challenged these separate-but-interrelated legal orders. Thus, I build on the work of legal consciousness scholars who show how citizens—and in this case noncitizens—articulate varied, often conflicting concepts of law and rights. [38] Robert Cover, for example, argues, "We inhabit a nomos – a normative universe," underwritten by its own ideas of law and legal narratives. This *nomos,* the world of narrative and meaning underwriting legal institutions, written together in concert and contestation, "is as much 'our world' as is the physical universe of mass, energy, and momentum." [39] While we might associate the law with legal institutions, and while actors within those institutions control how the law is expressed and enacted, the *nomos* of law and legal narratives are not reducible to judges, lawyers, and legal institutions. Cover and other legal consciousness scholars urge us to look beyond institutions, to recognize that the law cannot be delimited to institutionalized rules, policies, or principles, since, after all, state law is always only one of many possible visions of the law.[40]

Building on this framework, my work seeks to recover the submerged, often brutally repressed concepts of law and rights articulated by both freed and enslaved black people. In

[38] Cover, "The Supreme Court, 1982 Term -- Foreword: Nomos and Narrative"; Ewick and Silbey, *The Common Place of Law: Stories from Everyday Life*; Lovell, *This Is Not Civil Rights: Discovering Rights Talk in 1939 America*; McCann, *Rights At Work: Pay Equity Reform and the Politics of Legal Mobilization*; McCann and Lovell, *A Union by Law: Filipino Labor Activists, Rights Radicalism, and Racial Capitalist Empire, 1900-2000*; Merry, *Colonizing Hawai'i: The Cultural Power of Law*; Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice*.
[39] Cover, "The Supreme Court, 1982 Term -- Foreword: Nomos and Narrative," 5.
[40] Cover, 8.

Chapter 3: The Vesey Uprising, I reveal how Denmark Vesey articulated a radical antislavery vision of law that hinged on the Old Testament and Story of Exodus, abolitionist discourses around the Missouri Compromise, and the legacies of the Haitian Revolution. Conversely, I demonstrate how enslavers, politicians, lawyers, and judges sought to reconcile two visions of law*:* On the one hand, a system of contract law for whites—predicated on rights, protections, and due process—and on the other, a proslavery vision of law that hinged on enacting *law without rights* for freed and enslaved black people. Taken together, my work excavates the multiple, entangled visions of race, resistance, law and rights that individuals wield in order to resist and retrench racial hierarchy.

III. Separate-but-Interrelated Legal Orders: Effects and Consequences

In tracking the counterpoint between resistance, repression, and retrenchment that drove the development of these separate-but-interrelated legal orders, my work highlights three durable effects of this process: The expansion of racial capitalism, the criminalization of blackness, and the consolidation of whiteness and institutionalization of white ignorance. For scholars of racial capitalism, my work furnishes an account of the politics of resistance and its varied effects in securing the expansion of racial capitalism. My work also extends the timeline of scholarship on the carceral state, locating the earliest figurations of black criminality that structured the development of law and the emergence of the criminal justice system. Finally, for theorists and historians of race, my work reveals how whiteness began to consolidate as early as the seventeenth century through the authorization of anti-black violence and the institutionalization of white ignorance, extending the timeline of past scholarship by more than a century.

A. Racial Capitalism and the Politics of Resistance

In recent years, an interdisciplinary group of scholars have rectified accounts of capitalism that attribute too much explanatory power to class. Instead, these scholars demonstrate how the hierarchies borne of capitalism and racism are intertwined and mutually constituted. These historians and theorists of racial capitalism have demonstrated how the iterative process of making, remaking, and retrenching racial hierarchy was essential to the development of capitalism. [41] Among them, scholars of slavery and racial capitalism have offered nuanced accounts of the many forms of resistance undertaken by freed and enslaved black people—individual and collective, small and large, overt and covert—that often overlapped and built upon one another. [42] As Johnson argues, scholars who frame these as opposing categories in theorizing and historicizing resistance have obfuscated the precise "relationship between individual and collective acts of resistance, the relationship, as it were, between breaking a tool and being Nat Turner." [43] Indeed, as Camp argues, the binary between 'covert' and 'overt,' or 'everyday' and 'revolutionary' forms of resistance conceals as much as it reveals about the dynamics of domination and violence that enslaved people navigated, contested, and sometimes

[41] Connolly, *A World More Concrete: Real Estate and the Remaking of Jim Crow South Florida*; Dawson, "Hidden in Plain Sight: A Note on Legitimate Crises and the Racial Order"; Dawson and Francis, "Black Politics and the Neoliberal Racial Order"; Day, *Alien Capital: Asian Racialization and the Logic of Settler Colonial Capitalism*; Fraser, "Is Capitalism Necessarily Racist?"; Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*; Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity*; Harris, *Sex Workers, Psychics, and Number Runners: Black Women In New York's Underground Economy*; Jung, *Coolies and Cane: Race, Labor, and Sugar in the Age of Emancipation*; Kelley, *Hammer and Hoe: Alabama Communists During the Great Depression*; Kelley, *Race Rebels: Culture, Politics, and the Black Working Class*; Reddy, *Freedom With Violence: Race, Sexuality and the US State*; Self, *American Babylon: Race and the Struggle for Postwar Oakland*; Taylor, *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership*.

[42] Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism*; Beckert, *Empire of Cotton: A Global History*; Camp, *Closer to Freedom: Enslaved Women & Everyday Resistance in the Plantation South*; Du Bois, *Black Reconstruction in America, 1860-1880*; Hall, *Essential Essays: Identity and Diaspora*; Hudson, *Bankers and Empire: How Wall Street Colonized the Caribbean*; Jones-Rogers, *They Were Her Property: White Women as Slave Owners in the American South*; Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom*; Miller, *Way of Death: Merchant Capitalism and the Angolan Slave Trade, 1730-1830*; Morgan, *Laboring Women: Reproduction and Gender in New World Slavery*; Robinson, *Black Marxism: The Making of the Black Radical Tradition*; Smallwood, *Saltwater Slavery: A Middle Passage from Africa to American Diaspora*.

[43] Johnson, "On Agency," 116–17.

overturned. [44] Consequently, resistance appears as a mere binary, as a force that is sometimes excessive and disruptive, prone to massive upheavals in the prevailing order, but, more often, as an abstract lurking threat with individualized and effects. The reality, however, is that these 'opposing' forms of resistance are often intertwined. Small-scale acts of resistance pose a cumulative threat to the same institutions and extractive regimes that widescale resistance seeks to upend, while widescale acts of resistance require a web of relations forged from everyday encounters, predicated on bonds of mutual recognition and trust. [45]

Scholars like Camp and Johnson have done tremendous work to both deepen and sharpen our understanding of resistance as an ongoing activity, one rooted in the mundane as much as the extraordinary. What is less clear, particularly among scholars of slavery and racial capitalism, is the varied ways that acts of resistance altered the making of law and race, thereby shaping the expansion of racial capitalism. Despite Johnson's figuration of resistance as a web of acts and relations, when scholars of slavery and racial capitalism highlight moments of widescale resistance, they tend to consider the most direct and linear effects of resistance in altering the regimes of expropriation and accumulation that structure racial capitalism. Baptist, Beckert, and Johnson all devote considerable attention to the effects of the Haitian Revolution in the Louisiana Purchase and the opening of the Mississippi Valley to the internal slave trade, durably altering the developmental trajectory of racial capitalism. [46]

The significance of moments like the Haitian Revolution are not only undeniable, they highlight an urgent need—particularly among political scientists—to expand their analyses of racial capitalism beyond the United States by conceiving of the construction and reproduction of

[44] Camp, *Closer to Freedom: Enslaved Women & Everyday Resistance in the Plantation South*.
[45] Johnson, "On Agency," 118.
[46] Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism*; Beckert, *Empire of Cotton: A Global History*; Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom*.

these extractive, racialized hierarchies as a global project. The trouble, however, is that a near-exclusive focus on the largest and arguably most emancipatory moments of resistance has led scholars to measure the significance of widescale resistance in terms of major political upheavals and direct market effects. Acts of resistance that fall short of these criteria often then appear as reactionary elements, as responses to—rather than acts that are constitutive of—the developmental trajectory of racial capitalism. Put simply, while these scholars have done a great deal to theorize and situate the *activity* of resisting enslavement, much less is known about the varied *effects* and *afterlives* of resistance in the development of racial capitalism.

While contemporary scholars have rightfully tracked these varied, intertwining forms of resistance *to* racial capitalism, my work contends that we need to better contend with the varied and layered effects of resistance *on* racial capitalism as an ongoing, global system of racialized economic domination. My work demonstrates how transatlantic moments of widescale resistance durably altered the making of law and race in ways that secured the expansion of racial capitalism. It was the counterpoint between resistance, repression, and retrenchment that drove lawmakers to institute an economy of violence capable of mitigating the exigencies of racial capitalism as a system of racialized exploitation and expropriation prone to resistance and repeated crises. The early colonial period was marked by a cascade of economic growth throughout the Atlantic—from Barbados, to Jamaica, and eventually South Carolina—and this rapid growth hinged on the exploitation of white indentured servants and the expropriation of black enslaved people. While scholars like Fraser emphasize these 'two exes' of exploitation and expropriation, my work highlights a third essential 'ex:' a culture of *exigency* that structured how whites responded to resistance and sought to secure the development of racial capitalism. On this account, the development of racial capitalism is not a unidirectional story of either domination or

upheaval, but a counterpoint between resistance and repeated crises met with repressive state intervention and the retrenchment of racial hierarchy through new ideas and institutions.

As I show in Chapter 1, in Barbados, experiences of domination compelled unfree laborers—including indentured servants and enslaved people—to engage in revolutionary resistance, often by forming interracial alliances. In turn, the colonial assembly created repressive new laws that expanded the boundaries of whiteness and criminalized blackness, severing the axes of solidarity between indentured servants and enslaved people while retrenching racial hierarchies in ways that stabilized the expansion of racial capitalist order. These early colonial laws distinguishing slavery from servitude articulated ideas of race and resistance, as well as laws and institutions designed to surveil, discipline, and control, which carried throughout the Atlantic and persisted across racial capitalist scholars' periodization of capitalism. These laws were set into motion by a contrapuntal movement between resistance and repression, one in which law and race were repeatedly remade to sustain the inherent volatility, the crisis-prone nature of an economic system founded on exploitation and expropriation, forms of domination that provoked varied resistance. Thus, while it is certainly the case that "modern racism found a durable anchor in the deep structure of capitalist society," as I demonstrate, it is equally true that the survival of capitalism hinged on the making of race. [47]

This counterpoint between resistance, repression, and retrenchment marked the beginning of an iterative process in stabilizing racial capitalism, wherein varying degrees of freedom *from* violence for whites necessitated violence against 'others,' including enslaved people, women, native and indigenous peoples, and groups beyond the borders of colonialism. [48] This violence was carefully economized, demarcating 'justifiable' from 'excessive' forms of violence in

[47] Fraser, "Is Capitalism Necessarily Racist?," 32.
[48] Reddy, *Freedom With Violence: Race, Sexuality and the US State*.

maximizing efficiency and productiveness, suppressing and repressing resistance, and retrenching racial hierarchy. This economy of violence authorized by law—though often executed by a variegated hierarchy of propertied and nonpropertied whites on behalf of the state—depended upon demarcating these groups in ways that were not just institutionally but *ideologically* durable. In other words, for racial violence to secure the exigencies of racial capitalism, race had to elevate itself to the status of common sense. In this respect, while race and racism are a matter of structure, they are also a function of ideology, and that ideology does crucial work in maintaining the racialized structures of capital that hinge on exploitation and expropriation.

Finally, still lingering beneath this discussion of resistance and racial capitalism, is the question of the agency that freed and enslaved people cultivated and exercised in their acts of resistance. Like many contemporary theorists and historians of race, I seek to avoid the pitfalls of reclaiming or 'giving' agency to enslaved and other marginalized people, which produces a self-congratulatory narrative and crude from of paternalism. Indeed, as Johnson argues, too many accounts of agency under slavery conflate 'agency' with 'resistance' and 'humanity,' rendering every expression of agency becomes an act of resistance which confirms the humanity of enslaved people. My goal in utilizing these terms is more precise: To show how the revolutionary resistance of freed and enslaved black people altered the making of law and race, constituting a form of agency in these processes that has gone largely unaccounted for and is too often told from the perspective—and consequently made the purview— of white lawmakers and other state officials. I am, moreover, unconvinced of Johnson's assertion that "the term 'agency' smuggles a notion of the universality of a liberal notion of selfhood, with its emphasis on

independence and choice, right into the middle of a conversation about slavery against which that supposedly natural (at least for white men) condition was originally defined." [49]

To excavate the agency of enslaved people from the silences of the archives certainly need not lapse into liberal individualism, particularly during the colonial era when liberalism was far from a dominant ideology or political philosophy, the very period that I explore in Chapters 1 and 2. Moreover, while one can speak of agents in the singular, agency is not always reducible to the individual, nor does it necessarily lapse into a theory of individualism. To the extent that revolutionary resistance necessitated planning, cooperation, alliances, and relations of trust, the very possibility of agency required action in concert. There was nothing inevitable about these expressions of agency, nor were they a function of rugged individualism—they were born of necessity, co-constituted, and deeply tenuous. That Johnson himself elaborates these dynamics of resistance makes it all the more troubling that he seeks to discard, rather than revise the concept of agency in ways that make it more emancipatory and recuperate its inegalitarian historical underpinnings. Instead, I contend that we can acknowledge the limitations of these concepts while still revising and utilizing them in ways that afford us fresh insight. Ultimately, I have chosen to retain the language of 'agency' in my account of the effects of resistance, while endeavoring to avoid these pitfalls and utilize the term with precision and restraint.

B. Black Criminality and the Carceral State

Perhaps above all else, the separate-but-interrelated legal order governing black people was premised on the 'threat' of black criminality. It was the specter of black criminality—forged from the dynamics of resistance, repression, and retrenchment—that legitimated the expropriative relationships of enslavement, durably linked blackness to rightslessness, and

[49] Johnson, "On Agency," 115.

authorized varying forms of anti-black violence. Drawing a through-line from the earliest colonial laws of slavery to those governing the South Carolina Penitentiary during Reconstruction, I demonstrate how the specter of black criminality mobilized to suppress resistance to enslavement was embedded in the criminal justice system, thereby surviving abolition. In this respect, my work links the figurations of black criminality underwriting the carceral state—and the institutions designed to police that 'threat— to a much longer struggle that begins with resistance to enslavement. To be sure, discourses around black criminality and the criminal justice system have modernized and adapted in response to changing norms of race and resistance. However, the racialized ideas of criminality and punishment that are mobilized in response to purported 'threats,' particularly acts of widescale resistance to racial inequality, remain entrenched in the history of resistance to enslavement. In tracking these ideological and institutional developments, this project contributes to a growing body of scholarship concerned with the role of race in the development and expansion of the carceral state.

For scholars of the carceral state, the timeline always seems to be growing longer and longer. Long past is the narrative that understood the carceral state solely in terms of 1960s conservative law and order politics and the meteoric rise of incarceration rates. Instead, scholars have extended this timeline by showing how the war on poverty, national trends in the ascendance of scientific racism, concerns around post-war economic development, civil rights organizing, prison activism, and the discursive construction and racialization of law and order politics laid the ideological and institutional groundwork for the carceral state. [50] These scholars have also

[50] Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics*; Enns, *Incarceration Nation: How the United States Became the Most Punitive Democracy in the World*; Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*; Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America*; Miller, *The Perils of Federalism: Race, Poverty, and the Politics of Crime Control*; Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America*; Murakawa, *The First Civil Right: How Liberals Built Prison America*; Taylor, "Sunbelt Capitalism, Civil Rights, and the

widened and sharpened our view of the carceral state as it has metastasized, demonstrating how social programs, immigration, and proximal contact with the criminal justice system have formed a punitive racialized network of repertoires, regimes, and institutions that retrench racial hierarchy. [51] Even more crucially, in my view, they have demonstrated how the individuals and communities disproportionally affected by these developments have *resisted* their experiences of violence and marginalization through various forms of organizing and mobilization. [52] Taken together, this body of scholarship reveals how the racialized threat of crime and criminality, the authorization of both citizens and state actors to violently police that threat, and the resistance by and brutal repression of those most affected by that violence have all been central to the broader development of the American state

These accounts, while truly remarkable in scope, have rarely considered the development of a modern criminal justice system prior to the twentieth century. Earlier accounts have almost exclusively been the purview of scholars studying convict leasing and chain gangs as an extension of slavery during and after Reconstruction. [53] Yet these scholars have rarely considered how, even after the decline of leasing and chain gangs, the institutional and ideological afterlives

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Development of Carceral Policy in North Carolina, 1954-1970"; Thompson, *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy*; Weaver, "Frontlash: Race and the Development of Punitive Crime Policy."

[51] Cuauhtèmoc Garía Hernández, *Migrating to Prison*; Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America*; Lerman and Weaver, *Arresting Citizenship: The Democratic Consequences of American Crime Control*; Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear*.

[52] Berger, *Captive Nation: Black Prison Organizing in the Civil Rights Era*; Francis, *Civil Rights and the Making of the Modern American State*; Lytle Hernández, *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771-1965*; Taylor, *From #BlackLivesMatter to Black Liberation*; Thompson, *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy*; Walker, *Mobilized by Injustice: Criminal Justice Contact, Political Participation, and Race*.

[53] Ayers, *Vengeance and Justice: Crime and Punishment in the 19th-Century American South*; Du Bois, *Black Reconstruction in America, 1860-1880*; Fitzgerald, *Splendid Failure: Postwar Reconstruction in the American South*; Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877*; Hindus, *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878*; Holt, *Black over White: Negro Political Leadership in South Carolina during Reconstruction*; Jenkins, *Seizing the New Day: African Americans in Post-Civil War Charleston*; Kamerling, *Capital and Convict: Race, Region, and Punishment in Post-Civil War America*; Oshinsky, *"Worse Than Slavery:" Parchman Farm and the Ordeal of Jim Crow Justice*; Zuczek, *State of Rebellion: Reconstruction in South Carolina*.

of slavery would continue to shape criminal justice. Likewise, criminal justice scholars have not considered how earlier attempts to build a modern criminal justice system both during and in the wake of Reconstruction may reveal continuities with their own accounts of the carceral state. Consequently, we are left to contend with a bifurcated history of criminal justice, one in which there is a decided break between the afterlives of slavery that underwrote convict leasing and the still racialized but now modernized ideas and institutions that fostered the carceral state.

My work extends this timeline by locating the earliest invocations of black criminality and the roots of racialized punitive law in resistance to enslavement during the seventeenth century. I draw a through-line from the 1661 slave laws of Barbados to the 1740 Negro Act, passed in response to the Stono Uprising—the largest colonial slave uprising in American history. This new law would institute a separate system for trying and punishing freed and enslaved black people accused of planning or participating in mass uprisings. I demonstrate how this law structured responses to black resistance throughout the nineteenth century, including the 1822 Vesey Uprising, a plan that involved seizing control of Charleston and sailing for Haiti. Turning to the construction of the South Carolina Penitentiary in 1867, I then demonstrate how the afterlives of slavery were entangled with efforts to institute a 'modern' criminal justice system and create a new expropriable laboring population through convict leasing, chain gangs, and prison plantations. Thus, my work demonstrates how the 'black criminal' was created and repeatedly adapted over more than two centuries to repress resistance and retrench racial hierarchy before embedding in the criminal justice system at the turn of the twentieth century.

In tracking the continuities between figurations of black criminality that emerged in resisting enslavement and the more modern specter of black criminality underwriting the carceral state, I do not mean to suggest that the modern criminal justice system is somehow solely an outgrowth

of slavery. To be sure, the criminal justice system has entrenched and expanded racial inequality by reinstituting relations of white authority and black subordination that are squarely rooted in the afterlives of slavery. Yet I am persuaded by much contemporary scholarship, which reframes the rise of a 'modern' criminal justice system as a process that occurred in prison systems across the United States. These scholars have upended narratives of 'southern exceptionalism which hold that the anti-black racism underwriting the criminal justice system was a southern project. Ultimately, the trouble with these accounts is they figure the carceral state as too decidedly modern, as a twentieth century innovation that erupted from the aftermath of Reconstruction.

In crafting this long timeline, I seek to trouble the seemingly decisive break between racialized figurations of criminality that emerged during the Colonial and Antebellum Eras and the modern notions of black criminality tracked by scholars like Muhammad. In his excellent account of modern black criminality, Muhammad's reveals how during the Progressive Era northern elites, including academics, journalists, politicians, and public figures transformed our shared understandings of criminality through statistics and a broader turn to positivism which decriminalized whiteness at the same time that blackness was increasingly linked to crime and criminality. [54] Although the methods and evidence used to articulate this particular notion of black criminality were decidedly modern, I am less convinced that the notion of threat and the need for violent state intervention—whatever form they took—were not already familiar tools for white lawmakers. Indeed, I wonder to what extent scholarship which historicizes these developments by articulating a modern break in criminalization of blackness obfuscate the linkages between resistance to enslavement and entrenched ideas of the black criminality that have been repeatedly mobilized to expand punitive state power.

[54] Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America*.

C. Consolidating Whiteness and Institutionalizing White Ignorance

In tracking the effects of resistance on the making of law and race, this project engages in a process of historical theorizing—of showing how racial categories develop, and then are contested and transformed over time. I am particularly concerned with the *political and legal stakes* of these processes, with understanding how the making of race positions us in relation to the law, and not just to the protections of the law, but to the violence of the law, to the silences and spaces of exclusion which the law creates. For whites, their encounters with the law have historically been one of protection and rights, yet they have consistently been positioned in relation to the violence of the law—as agents of state-sanctioned violence. In this respect, the violence of the law has been instrumental in the making of whiteness. Across the following chapters, I make two central claims about the making and consolidation of whiteness: First, I argue that these separate-but-interrelated legal orders both produced and consolidated whiteness by linking whiteness to principles of civic republicanism and by authorizing whites of varying social, economic, and political standing to engage in anti-black violence. Second, I show how anti-black violence was regulated according to *a logic of outside contagions,* which attributed resistance to corrosive outside forces rather than the dehumanizing conditions of enslavement. I contend that this process signaled the first institutionalization of white ignorance.

The argument that anti-black violence was central to the making of whiteness is a familiar one, particularly among scholars who track the making of whiteness beginning in Virginia during the mid-late seventeenth century and then focus on European immigration during the eighteenth and nineteenth centuries. My work expands this scholarship by locating the emergence of whiteness during the first half of the seventeenth century in Barbados, where interracial resistance culminated in the creation of separate-but-interrelated legal orders in 1661.

By contrast, prevailing early accounts detailing the emergence of whiteness begin fifteen years later with Bacon's Rebellion in 1676. [55] Both Allen and Morgan attribute the making of whiteness to the threat of interracial resistance in Virginia, which compelled white elites to fracture the axes of solidarity between white indentured servants and black enslaved people. In focusing exclusively on the territory that would become the United States, these scholars elide how the separate-but-interrelated legal orders that yielded and consolidated whiteness were in fact a transatlantic project.

I offer an alternative account with a longer timeline that explores the nascent forms of whiteness which took shape throughout the Caribbean and South Carolina. Building on English police and vagrancy laws, Caribbean enslavers were the first to confront and respond to the threat of resistance by enslaved people, and as they violently settled new territories, these legal orders were imported and adapted to further the interests of enslavers in Carolina. [56] As I show in Chapter 1, some Irish indentured servants—particularly in the Caribbean—were only made white by law in order to destabilize the axes of solidarity which they shared with black enslaved people, preventing further acts of resistance. These Irish were well on their way toward whiteness as early as the seventeenth century. In the following chapters, I demonstrate that state authorization to participate in anti-black violence—coupled with other forms of surveillance, control and discipline—was essential to demarcating the boundaries of whiteness and affording limited forms of standing to poor, unpropertied whites.

Likewise, my work demonstrates how whiteness was forged not only through anti-black violence but also through civic republican principles of stability and self-rule. In both Barbados

[55] Allen, *The Invention of the White Race*; Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia*.
[56] Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865*.

and South Carolina, the production and consolidation of whiteness emerged as an institutional and ideological solution, as the stabilizing force which sustains the colony by underwriting civic republican principles of regime stability and durability. Likewise, in constructing new economies of violence, early slave laws blended a republican vision of regime stability and durability with a commitment to property that demarcated 'justifiable' from 'excessive' forms of anti-black violence. Finally, I also demonstrate how free and enslaved black people contested the link between whiteness and republicanism: In Chapter 3, I demonstrate how the Vesey Uprising threatened both the institutional and ideological stability of a republican order in which civic virtue and self-rule hinged on the ongoing exclusion and subordination of both freed and enslaved black people. These processes, which linked anti-black violence to civic republican principles of self-rule, were essential to not only expanding whiteness, but also ensuring that white supremacy as a system of power and privilege would persist into the twenty-first century.

Building on this earlier period, whiteness scholarship has tended to focus on broader, nationalized issues of race and citizenship, particularly in the urban north. Following the trajectory of Allen and Morgan, they focus on the consolidation of whiteness during the nineteenth century, most often with the Irish but also other socially, economically, and politically marginalized ethnic groups. [57] Most often, these accounts begin in 1790 with the United States' first naturalization law, which delimited those eligible for citizenship to "free white persons." Invoking the language of "good character," this figuration of whiteness was suffused with a republican principle of self-rule that linked whiteness to the capacity for self-government. Demarcating a new legal category of 'aliens ineligible for citizenship,' the law invoked

[57] Rana, *The Two Faces of American Freedom*; Roediger, *Working Toward Whiteness: How America's Immigrants Became White: The Strange Journey from Ellis Island to the Suburbs*; Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class*.

racialized criteria of assimilability and desirability that durably established whiteness as the standard for immigration and citizenship. However, between 1840 and 1920, the meaning and boundaries of whiteness were repeatedly contested and redrawn with the arrival of new waves of European immigrants who struggled to become both prosperous workers and independent citizens. Scholars like Jacobson have revealed in exacting terms how capitalism, with its need for expropriable and exploitable labor, and republicanism, with its emphasis on self-governance, were central to the expansion of whiteness during the nineteenth and early twentieth centuries. [58]

The trouble for this scholarship is that once whites have overcome the threat of interracial resistance, both the act and matter of black resistance tend to fall away. Whiteness is often made real and durable through anti-black violence and its effects on the black body, yet notably absent is how *resisting* that violence altered the ideological and institutional terrain on which racial violence would unfold. By contrast, my work demonstrates how the boundaries and meaning of whiteness were forged in the fires of resistance. In resisting enslavement, freed and enslaved black people threatened to upend the relationships of expropriation that underwrote the creation and expansion of racial capital. Moreover, resistance could topple the racial hierarchy that afforded whites the political and epistemological standing to engage in anti-black violence. It was this standing that frequently insulated white elites from reckoning with their exploitation of white workers and the material realities of inequality. These moments of resistance underwrote the architecture of new forms of state repression, which remade the boundaries and meaning of whiteness in order to retrench racial hierarchy. In this respect, the making of whiteness is inextricably bound up with broader dynamics of resistance, repression, and retrenchment.

[58] Jacobson, *Whiteness of a Different Color: European Immigrants and the Alchemy of Race*, 13.

Finally, my project locates the first institutionalization of white ignorance in the laws of slavery, historicizing a body of scholarship which argues that whiteness constitutes an ideology that hinges on a fundamentally flawed understanding of oneself and the world. [59] From the earliest days, whites fundamentally misunderstood the nature of resistance to enslavement, locating the root causes *outside the institution rather than within it*. I term this process of framing resistance as an exogenous problem, rather than a problem endemic to the dehumanizing conditions of enslavement, as a *logic of outside contagions.* Time and again, literacy, freed people, imperial rivalries, Quakers, and a host of other factors were cited as the root cause of resistance in varying and often incommensurable combinations. Thus, resistance was always fomented by the corrosive influence of outside forces, rather than by the dehumanizing conditions of enslavement. This fiction was essential to the rapid expansion of slavery in colonies like Barbados, Jamaica, and South Carolina where the enslaved population was at least double that of whites. By invoking a logic of outside contagions, whites could accumulate vast wealth by rapidly growing the expropriated enslaved population while also denying that such practices intensified the likelihood of resistance. Taken together, I argue that the repeated invocation of this logic—coupled with the creations of laws to mediate those supposed 'outside contagions'—represented the first, and also an ongoing, institutionalization of white ignorance.

IV. Overview of Chapters

Across the following four chapters, I show how resistance to enslavement drove the creation of separate-but-interrelated legal orders that secured the expansion of racial capitalism,

[59] Baldwin, *The Fire Next Time*; Butorac, "Hannah Arendt, James Baldwin, and the Politics of Love"; Douglass, *Narrative of the Life of Frederick Douglass*; Du Bois, *The Souls of Black Folk*; Frankenberg, *White Women, Race Matters: The Social Construction of Whiteness*; Lipsitz, "The Possessive Investment in Whiteness: Racialized Social Democracy and the 'White' Problem in American Studies"; Mills, *The Racial Contract*; Mills, *Black Rights / White Wrongs: The Critique of Racial Liberalism*; Olson, *The Abolition of White Democracy*; Threadcraft, *Intimate Justice: The Black Female Body and the Body Politic*; Turner, *Awakening to Race: Individualism and Social Consciousness in America*.

criminalized blackness, and consolidated whiteness. In tracking these developments, I show how resistance to enslavement altered the development of law and race from the Colonial Era to the rise of Jim Crow, spanning the period from 1650 – 1899.

Chapter 1 locates the origins of these separate-but-interrelated legal orders, which were forged in response to the threat of interracial resistance between indentured servants and enslaved people. For enslaved people, the result was laws which managed and suppressed the threats of 'indigenous savagery' and 'black criminality' in order to secure the expropriative relationships of slavery. For white servants, a system of contract law with a schedule of rights that became progressively less punitive due to the consolidation of whiteness, an emerging racial category which sought to consolidate the interests of whites in subordinating black enslaved people. Taken together, these separate-but-interrelated legal orders sought to justify and secure the forms of expropriated and exploited labor which inevitably produced destabilizing forms of resistance yet were essential to the development of racial capitalism.

Chapter 2 focuses on the 1739 Stono Uprising—the largest colonial slave uprising in American History—and the 1740 Negro Act, which was passed in response to the uprising and served as the slave code of South Carolina until abolition in 1865. This chapter explores three major developments: First, the consolidation of whiteness through anti-black violence and a logic of outside contagions that misunderstood resistance to slavery as exogenous rather than endemic to the institution. Second, the criminalization of blackness through a geography of fugitivity that not only constructed black bodies in motion as fugitives, but linked criminality to capacities like literacy. Finally, I show how the Stono Uprising and 1740 Negro Act would transform the terrain of future struggle for both freed and enslaved black people.

Chapter 3 centers on the 1822 Denmark Vesey Uprising, the largest planned uprising in the history of the United States, which was preemptively suppressed and prosecuted under the 1740 Negro Act. Turning to the question of paternalism, I track how enslavers attempted to sustain the positive good fiction of slavery by constructing a separate-but-interrelated legal order that durably linked blackness to rightslessness, articulating a vision of *law without rights*. I then utilize the trial records to recuperate three bases of Vesey's antislavery politics: The Old Testament, abolitionist discourses around the Missouri Compromise, and the Haitian Revolution. Finally, I reflect on the enduring significance of the Vesey Uprising, showing how the court delegitimated Vesey's antislavery commitments and created the conditions for a sweeping buildup of racialized state power.

Finally, Chapter 4 tracks three major periods in the development of the South Carolina Penitentiary between 1867-1899: from the politics of prisoner reform, to convict leasing, to the prison plantation. I first show how the penitentiary looked toward Northern states in pursuing a reform model. Despite drawing on national trends in criminal justice and invoking Northern models of reform, the penitentiary instituted a system of punishment that was structured by the dynamics of resistance underwriting enslavement. Second, following the collapse of Reconstruction, I show how the penitentiary emerged as a focal point in reinscribing racial hierarchy through convict leasing. Finally, I argue that in the wake of leasing, the penitentiary effectively became a state-owned plantation by instituting a politics of reform that was a thinly veiled new paternalism, aimed at rendering prisoners obedient while maximizing productivity and profits. Taken together, this chapter demonstrates how the afterlives of slavery were entangled with a modern vision of criminal justice, ensuring that the dynamics of resistance, repression, and retrenchment underwriting enslavement would persist into the twentieth century.

Chapter One

Interracial Resistance and the Making of Separate-but-Interrelated Legal Orders, 1650-1712

This chapter situates the development of South Carolina's slave codes within a transatlantic context, showing how the development of servant and slave laws produced new ideas of race and resistance as they circulated throughout the colonies of Barbados, Jamaica, and South Carolina between 1650-1712. From the outset, the economic interests and political development of these colonies were closely linked: both Jamaica and South Carolina were settled by planters from Barbados, and legislative assemblies were often controlled by Barbadian elites. These economic linkages were deepened by the vast fortunes—derived primarily from sugar in Barbados and Jamaica, and rice in South Carolina—which were amassed through the expropriation of African and indigenous enslaved people and the exploitation of white contract servants. Indeed, the entrenchment of African enslavement occurred in tandem with each colony's rising economic prospects and growing demands for exploitable labor. The trouble was that such forms of exploitation and expropriation gave rise to resistance by unfree laborers who sought to challenge and transform their status. Thus, the early colonial period was marked by a cascade of economic growth throughout the Atlantic—from Barbados, to Jamaica, and eventually South Carolina—which then yielded active, often violent, resistance.

Yet colonists often relied upon the African slave trade in combination with other forms of racialized, unfree labor: white servants in the colonies of Barbados and Jamaica, while South Carolinians enslaved indigenous peoples. These differences in the unfree laboring population yielded different configurations of resistance: For example, in Jamaica and Barbados, the

significant proportion of white indentured servants threatened not only active resistance to exploitative laboring conditions, but also the possibility of interracial alliances with African enslaved people. Thus, while colonists sought to achieve similar forms of economic prosperity, their varying patterns of exploited and expropriated labor gave rise to distinct challenges which were met with varying forms of legal coercion and violence.

From 1650-1712, these economic and political entanglements, coupled with the threat of resistance, manifested themselves in a process of 'legal borrowing,' wherein not only laws, but the ideas of race and resistance embedded in those designs, circulated freely between Barbados, Jamaica, and South Carolina. [1] In 1661, Barbados instituted a comprehensive slave code—the first among the English colonies—and Jamaica shortly followed suit, implementing a near-identical version of the law in 1664. In 1684, following a series of uprisings, the Jamaica Assembly instituted a new slave code, which the South Carolina Assembly copied wholesale in 1691. Finally, in 1688, the Barbados Assembly would also respond to the threat of resistance with a punitive new slave code, which the South Carolina Assembly adopted in 1712. In tracking the movement of these laws, my goal is not to provide a robust account of this winding historiography, but instead, to distill the points of overlap and divergence between these legal orders in order to assess their political significance. I devote particular attention to the institutional and ideological implications of these developments, and their collective effects on colonial understandings of race, resistance, and the law. [2]

[1] For this concept of 'legal borrowing,' or as I describe them, imported legal regimes, I am indebted to the work of Christopher Tomlins, particularly his excellent *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865.*

[2] For a more in-depth historiography of these developments, see Edward Rugemer's *Slave Law and the Politics of Resistance in the Early Atlantic World.*

In this chapter, I argue that these colonial servant and slave laws sought to fragment interracial resistance between white indentured servants and black enslaved people by producing new ideas of race and resistance. These laws situated slavery and servitude within the language of the law and legality, formulating two separate-but-interrelated legal orders: For enslaved people, laws which managed and suppressed the threats of 'indigenous savagery' and 'black criminality' in order to secure the expropriative relationships of slavery. For white servants, contract law with a system of rights that became progressively less punitive due to the consolidation of whiteness, an emerging racial category which sought to consolidate the interests of whites in subordinating black enslaved people. Taken together, these separate-but-interrelated legal orders sought to justify and secure the forms of expropriated and exploited labor which inevitably produced destabilizing forms of resistance yet were essential to the development of racial capitalism.

This chapter is divided into three parts: In Part One, I develop an account of the 'three e's:' expropriation and exploitation, which distinguished the unfree labor of enslaved people and servants, and exigency, the overlapping forms of resistance that drove the creation of separate-but-interrelated legal orders. In Part Two, I show how Barbados' early laws governing slavery and servitude provided the bases for interracial alliances and resistance between white servants and black enslaved people, which were stymied by the Servant and Slave Acts of 1661. These laws marked the full realization of those separate-but-interrelated legal orders: for enslaved people, a system of violent law without a concept of rights that was founded on notions of inherent criminality, and for indentured servants, a system of contract law which sought to consolidate whiteness through the expansion of rights and other limited forms of legal standing, as well as the authorization of anti-black violence. Part Three focuses on South Carolina's early

slave codes, which largely mirrored those of Barbados. I focus on three elements of the earlier Barbadian laws that the South Carolina laws furthered: First, a logic of economization that sought to manage the threat of black criminality and regulate anti-black violence; second, a civic republican ideal of regime stability and durability that hinged on the consolidation of whiteness; and finally, an instrumentalized commitment to Christianity that was ultimately subservient to the interests of racial capitalism.

I. Exploitation, Expropriation, and Exigency

The enduring myth of capitalism is a market of free and fair exchange, ordered by the dictates of maximizing growth and efficiency. Governed by self-interest, rational actors will compete to further their own interests by accruing capital, making inequality inevitable, but only exorbitant or malicious under conditions of imperfect competition. Indeed, as Smith argues, state regulation—faced with a task for which "no human wisdom or knowledge could ever be sufficient"—will almost surely run counter to its goals of free and fair competition. Instead, without restrictions, the market will establish an "obvious and simple system of natural liberty… of its own accord" wherein each individual "is left perfectly free to pursue his own interest in his own way." [3] Workers freely labor in exchange for a fair wage that reflects their relative skill, while an employer profits from the surplus value of that productive labor. These relative values of compensation and surplus are an logical outcome of supply and demand. Exploitative relationships may arise, but they are incidental, rather than foundational to the market, and are mediated by competition and the agency of workers to contract their labor elsewhere.

The enduring reality of capitalism as Marxian analyses have shown, however, is a market of unfree and unfair exchange, ordered by the dictates of maximizing growth and efficiency.

[3] Adam Smith, *The Wealth of Nations,* Book IV, Chapter IX.

Governed by self-interest, rational actors who own the means of production will seek to further their own interests by paying workers the minimum socially acceptable wage. Unable to control the means of production, workers must instrumentalize their labor in exchange for a wage that often guarantees subsistence at best, while employers compound existing inequalities by maximizing their share of workers' surplus labor value. Politically, workers remain rights-bearing citizens and their relationship to the state is one of minimal protections, even while the state also secures their exploitation in the market. The result is market structured by two classes whose "relation has no natural basis." One the one hand, the capitalist, "with an air of importance, smirking, intent on business," and on the other, the worker, "timid an holding back, like one who is bringing his own hide to market and has nothing to expect but—a hiding." [4] Exploitative relationships will arise, and they are *foundational* to the market.

In contrast to the veneer of choice that defines the contractual relations of exploitative wage labor, expropriation instead trades in conquest, theft, and relations of violence and domination. Thus, while Marxist theorists have long dispatched with the myth of free market exchange which conceal relationships of exploitation, as Nancy Fraser argues, the enduring reality of capitalism that this framework less often exposes is one of racialized expropriation. Unlike the wage laborer whose laboring power is instrumentalized and exploited by the capitalist, "expropriation works by *confiscating* capacities and resources and *conscripting* them into the circuits of capital expansion."[5] Thus, while expropriation might begin with the kidnapping of African peoples, the theft of their lives, bodies, and capacities, it is distinguished by the processes of value-generation and capital accumulation that theft sets into motion. Politically, expropriated labor is distinguished by "political exposure," that is, an "incapacity to

[4] Karl Marx, *Capital,* Volume I, Chapter VI.
[5] Fraser, "Is Capitalism Necessarily Racist?," 26.

set limits and invoke protections," including one's rights. [6] Where the exploited laborer might find limited protections in their relation to the state, expropriated labor not only lacks protections and limits, but its relation to the state is constituted through violence and domination. Sometimes this violence is executed directly by the state, but often the state merely authorizes the execution of violence by racially dominant groups, namely whites.

Framing "capitalism's history as a sequence of *regimes"* founded upon *racialized, rather than primitive, accumulation,* Fraser shows how exploitation and expropriation were embedded and intertwined in the global racial capitalist order beginning in the sixteenth century. In the following sections, I adopt Fraser's framework of exploitation and expropriation with three revisions: First, because resistance to domination is as much a structural feature of capitalism as 'the two exes,' I afford a central place to resistance and its effects on the development of law and race in producing, crystallizing, and sustaining the racialized distinction between exploitation and expropriation. Second, while race and racism are a matter of structure, they are also a function of ideology, and that ideology does crucial work in maintaining the racialized structures of capital that hinge on exploitation and expropriation. Thus, I devote particular attention to the making of racial ideology and its effects on capitalism, resistance, and the law. Finally, political status and rights-bearing are often binaries between insiders and outsiders, haves and have-nots, and historically, those divisions have been deeply racialized. According to Fraser, during the colonial period, "these [racialized] distinctions were far less sharp… when virtually *all* nonpropertied people had the status of subjects, not that of rights-bearing citizens." [7] While the distinction between "free and subject races" had certainly not yet hardened, the sixteenth century *was* a formative period in the genesis of whiteness. To be sure, it was a far more variegated and

[6] Fraser, 30.
[7] Fraser, 32.

limited vision of whiteness that was abridged by deep divisions in class, religious beliefs, and political standing, yet, nonetheless, early servant and slave codes were a crucial site for identifying and hardening racialized distinctions in order to uphold the capitalist order. Thus, in order to understand the development of racialized subjectivity, I argue that we need a subtler account of political status and rights that acknowledges the limited forms of standing that nonpropertied whites asserted—despite internal divisions and hierarchies—through contract law and the execution of anti-black violence.

If, as Fraser argues, "the racializing dynamics of capitalist society are crystalized in the structurally grounded 'mark' that distinguishes *free subjects of exploitation* from *dependent subjects of expropriation*," then that division originated in the existential threat of interracial resistance, which sought to upend these intertwining processes of exploitation and expropriation, and those separate-but-interrelated legal orders that followed. [8] No mere "precursors of the racializing subjectivations that became so consequential in later phases," colonial laws distinguishing slavery from servitude articulated ideas of race and resistance that carried throughout the Atlantic and persisted across Fraser's periodization of capitalism. These laws were set into motion by a contrapuntal movement between resistance and repression, one in which law and race were repeatedly remade to sustain the inherent volatility, the crisis-prone nature of an economic system founded on exploitation and expropriation, forms of domination that inevitably provoked *resistance,* or conditions of exigency. Thus, while it is certainly the case that "modern racism found a durable anchor in the deep structure of capitalist society," as I demonstrate, it is equally true that the survival of capitalism hinged on the making of race. [9]

II. Enslavement, Servitude, and Interracial Resistance

[8] Fraser, 28.
[9] Fraser, 32.

It was the existential threat of interracial alliances between indentured servants and enslaved people—actualized as escapes and collective uprisings—which drove the making of race and the formation of separate-but-interrelated legal orders for enslaved people and indentured servants. I track the making of these racialized legal orders in three parts: First, I provide an account of the early slave and servant laws that laid the groundwork for such interracial alliances; second, I map the points of disconnect between the experiences of expropriated enslaved people and exploited indentured servants; and finally, I show how the 1661 Slave and Servant Acts durably established these separate-but-interrelated legal orders.

Early Slave and Servant Laws

The basis for these interracial alliances was embedded in the earliest published laws of Barbados: Until 1661, enslaved people and indentured servants shared the same legal status as chattel. [10] [11] When a creditor would collect on their debt, they were entitled to three tiers of goods: "In the first place… Goods, if none, then Cattle, Stock, Negroes, or Horses, or Servants, if none, then Lands and Plantations." [12] More akin to animals than human beings, enslaved people and indentured servants shared a legal status with cattle, horses, and other stock as value-generating forms of capital. Control over enslaved peoples' and indentured servants' lives were forfeit to market forces—the errant financial choices of one's 'master or mistress' could transform their lives at a moment's notice. These laws were not only designed to properly order and discipline expropriated labor, but also to preserve elite interests: human beings were to be

[10] These systems of control and discipline were also part of a longer historical arc: Barbados' slave codes drew heavily from English police laws designed to manage and discipline 'vagrant' laboring populations. These early laws largely modified prior English police laws with respect to indentured servitude, adding the caveat that "Negroes and Indians, that came here to be sold, should serve for Life, unless a Contract was before made to the contrary."

[11] Nicholson, "Legal Borrowing and the Origins of Slave Law in the British Colonies," 40; Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865*, 397.

[12] Jennings, *Acts and Statutes of the Island of Barbados*, 38.

taken and sold before lands or plantations, the source of one's political standing and civic persona.

These early laws also demonstrate that the racialized distinction between 'slave' and 'servant' had not yet crystallized. The law held that any "Master of Family, or Captain, or Master or Ship," who employed or "entertain[ed] any man, or woman, White or Black, above one night, if he doth not know him to be a Free-man" was to be fined one-hundred pounds of sugar if done so unknowingly, and five-hundred pounds of sugar if done so knowingly. [13] Another law cited the threat of "divers wicked Persons have lately attempted to steal away Negroes, by specious pretence of promising them Freedom in another Countrey," specifying that such concerns applied only to those 'Negroes' who were 'slaves.' [14] In this respect, whiteness was not yet durably linked to freedom, nor was blackness solely linked to the unfreedom of enslavement. White indentured servants were chattel, the legal property of their master, and thus poor free whites were obligated to prove their legal status. Black people, though most often enslaved, were not presumed to be and could be hired or taken into the service of a master. While the practice was uncommon, the crucial point is that both institutionally and ideologically "free status could have been theoretically associated with blacks." [15]

There were further axes of solidarity that might ground such interracial alliances: indentured servants were reportedly paid as little as ten pounds after four years of service. This amount hardly recompensed indentured servants' grueling labor and access to such little capital all but ensured their continued economic dependence. [16] Moreover, some accounts suggest that indentured servants endured worse conditions during the early colonization of Barbados due to

[13] Jennings, 20.
[14] Jennings, 47.
[15] Handler, *The Unappropriated People: Freedmen in the Slave Society of Barbados*, 13.
[16] Rugemer, *Slave Law and the Politics of Resistance in the Early Atlantic World*, 20.

their finite terms of service. In a history of Barbados published in 1657, Richard Ligon recalled that, "The slaves and their posterity, being subject to their master for ever, are kept and preserved with greater care than the servants, who are theirs but for five years, according to the law of the Island. So for the time, the servants have the worser lives, for they are put to very hard labour, ill lodging, and their diet is very light." [17] On Ligon's account, while enslaved people and indentured servants shared the status of chattel, as value-generating human bodies, they represented different forms of investment. Indentured servants laboring under finite contracts represented short-term investments, and so planters had a vested interest in maximizing the excess value of that exploited labor with little regard for the long-term viability of their working conditions. In contrast, enslaved people represented longer-term investments with higher upfront costs. Less concerned with respecting the humanity of enslaved people by providing marginally better living and working conditions, some enslavers may have sought to recoup their initial investment by maximizing their gains from the expropriated labor of enslaved people.

While this dynamic may have held true for some, it is hardly the case that enslaved people were substantively better off than indentured servants. The long hours and grueling labor involved in sugar production, coupled with poor working and living conditions, meant that the average life expectancy of an enslaved person on Barbados was just over seven years, scarcely longer than a servant's average contract of four or five years. [18] Moreover, enslaved peoples' marginally longer lifespans were more likely a function of their resilience to the most prevalent diseases in the Caribbean, rather than substantively improved living or working conditions. [19] Like indentured servants, enslaved people were regarded as disposable, easily replaceable labor.

[17] Blackburn, *The Making of New World Slavery: From the Baroque to the Modern, 1492-1880*, 320.
[18] Blackburn, 339.
[19] Blackburn, 242.

Brutal conditions yielded not only high mortality rates, but also low rates of fertility, such that the population of enslaved people depleted at an annual rate of 2-4 percent. [20] Enslavers during this period showed little interest in the reproductive capacities of female enslaved people, and they saw little to be gained financially from investing in the children of enslaved people when their expropriated labor could be replaced more quickly and at a comparatively low cost. The political economy of the slave trade during the seventeenth century supported the disposability of expropriable labor. Even as the transatlantic slave trade spread and the demand for expropriated labor rose, in 1695 a planter in the neighboring colony of Jamaica would only pay "around £20 for a slave who, on a well-run plantation, would produce sugar worth this amount each year." [21] Thus, even if an enslaved person lived for only seven years, planters could reasonably expect a substantial return on their initial investment. Engaged in a violent and moribund calculus, enslavers kept meticulous records that enabled them to navigate a volatile and risky market by trafficking in human flesh.

Contract Law and the Antecedents of Whiteness

Despite these parallels, prior to 1661, the law subjected enslaved people and indentured servants to different forms of violence and punishment. Where the punishment of enslaved people was direct violence enacted by any white man, the punishment of indentured servants was governed by a system of contract law that afforded them limited forms of standing. Thus, it was contract law that furnished much of the institutional and ideological conditions for the racialized distinction between Christian—and eventually white—servants and black enslaved people. "An Act to restrain the wandering of Servants and Negro's," passed in 1652, identified a shared problem between the two groups yet prescribed distinct punishments for indentured servants and

[20] Blackburn, 340.
[21] Blackburn, 339.

enslaved people who absented from work or escaped altogether. Indentured servants who left the plantation without a written pass were sentenced to an additional month of service for every two hours absence, with the punishment increased proportionally to the duration of absence. [22] This dynamic held true for a range of prohibited activities, including striking one's master, trade, theft, and marriage, each of which extended servants' contracts when they violated the law. [23] Any servant who struck their employer were "to serve his said Master, or Mistress, two years after his time by Indenture." [24] To be sure, indentured servants were not altogether exempt from violent forms of discipline and control. Nonetheless, the law would maintain that punishments for the most egregious crimes were to be arbitrated primarily by contract law, not state-authorized violence on the part of the master or mistress.

Although the law cites the "many great mischiefs" that arose as a result of both indentured servants and enslaved people 'wandering,' a system of violent punishment and reward applied only to enslaved people. Enslaved people who escaped were to be 'apprehended' by any enslaver or overseer on the island and then 'whipped and corrected' before being returned with a guard to the plantation, at which point the apprehender would be paid "twenty pounds of tobacco for each mile of transportation." [25] Moreover, the same law that cited the threat of violence by indentured servants made no mention of enslaved people who engaged in violence against their enslaver and prescribed no punishment for such acts. Perhaps lawmakers presumed that enslavers should be free to order and discipline their property as they saw fit, yet indentured servants and enslaved people shared the same legal status as chattel akin to livestock. Why, then, did the law identify only indentured servants as potentially violent subjects while instituting

[22] Jennings, *Acts and Statutes of the Island of Barbados*, 81–82.
[23] Jennings, 13.
[24] Jennings, 17.
[25] Jennings, 82.

specific violent punishments against those enslaved people who resisted through absenteeism and outright escape?

Although indentured servants and enslaved people shared the same legal status, that status was governed by distinct logics that were steadily racialized during the seventeenth century. For indentured servants, their status as chattel was temporary and finite. Their status was governed by contract law, which necessarily implied legal standing, mutual obligation, and however thin, relations of reciprocity. Thus, while indentured servants lacked political standing, their status as chattel secured a limited form of recognition, prescribing that crimes would be prosecuted by a justice of the peace and that punishments would operate on the basis of contract law. However exploitative and perverse, the exploited labor of indentured servants garnered them limited recognition and protections that they could invoke against their masters and mistresses. To be sure, the early colonial logic of equality would never admit even formerly indentured servants as civic and political equals so long as they remained landless and poor. However, indentured servants were 'on the way' to being legally free, even if they remained exploited laborers after completing their contracts.

From the outset, enslaved people—though not yet durably racialized—were viewed as chattel *in perpetuity.* Enslavement, understood as a status akin to livestock, as a condition of perpetual rightslessness, was not subject to the same rights and protections underwriting contract servitude. Absent legal standing and the veneer of proceduralism securing minimal protections for exploited contract servitude, expropriated enslaved labor was to be disciplined and controlled through state-authorized violence. As enslavement became more durably racialized, as blackness and enslavement came to be equated, the logic followed that black people were not only

rightsless, but to be governed by a separate-but-interrelated legal order grounded in broadly authorized forms of racialized violence.

Despite these differences in working and living conditions, punishment, and compensation, there existed sufficient overlap for enslaved people and indentured servants to form relationships of solidarity and sometimes engage in mutual resistance. During the first half of the seventeenth century, Barbados experienced two uprisings in 1638 and 1649 on the part of enslaved people, neither of which produced any durable change to the plantation regime's slave codes. A 1655 uprising, undertaken by a group of Irish indentured servants and African enslaved people resulted only in the legal prohibition of indentured servants possessing weapons. Few mentions of the uprisings remain, though mentions of English, French, Scottish, Irish, and Spanish Jewish servants on Barbados suggest the possibility of collaboration between not only Irish servants and African enslaved people, but a whole range of unfree laborers. [26]

The colony's slow adaptation to the threat of such interracial alliances was partly a function of a laboring population that was steadily shifting from exploited toward expropriated labor. During the early seventeenth century, Barbados relied primarily upon the labor of white indentured servants. It was only with increasing sugar production and the growth of the transatlantic slave trade that Barbados grew increasingly reliant upon African enslaved labor. By the late 1650s, enslaved people accounted for nearly half of Barbados' population, and by the 1660s, nearly seventy percent of the total population. [27] As exploited servitude was supplanted by expropriated slavery—in other words as the laboring population shifted from predominantly white to black—the possibility of widescale enslaved resistance, and with it, interracial resistance, emerged as a credible and looming threat. Moreover, it was not only the threat of

[26] Rugemer, *Slave Law and the Politics of Resistance in the Early Atlantic World*, 21.
[27] Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865*, 428.

alliances between indentured servants and enslaved people, but a broader coalition of 'slaves, servants, and vagrants,' or in the language of the law, those "loose, idle, and vagrant," former indentured servants. Those found with "no constant place of abode" and without "settled employment and calling" were to be drafted into any "necessary work," including the defense of the island. [28] Thus, as the laboring population became varied and visibly racialized with clearer divisions, planters, merchants, and overseers would have found themselves outnumbered and faced with the possibility of resistance on multiple fronts.

Separate-but-Interrelated Legal Orders

In the Fall of 1661, the Barbados Assembly would respond to these multiple threats, becoming the first colony to pass a comprehensive slave code. A critical juncture in the making of law and race, "An Act for the Better Ordering and Governing of Negroes" abandoned the racially-neutral language of enslavement, instead joining together blackness and slavery. [29] Less well known is a companion law, "An Act for the good governing of Servants, and ordaining the Rights between Masters and Servants," which set forth the most clearly racialized distinction between servitude and slavery up to that point. Indeed, as Blackburn notes in his study of the early transatlantic slave trade, "I have found no evidence that those most concerned with the construction of the slave systems were primarily animated by racial feeling." [30] Instead, race, and with it, racial divisions emerged as a solution to the instability of capitalism, destabilizing the axes of solidarity that had begun to take shape between whites across multiple ethnic lines, and between white indentured servants and African enslaved people. It was shifting patterns of

[28] Hall, "An Act to Prevent the Prejudice That May Happen to This Island, by Loose and Vagrant Persons, in and about the Same."
[29] Kenneth Andres. "Source Analysis of 'The Barbados Slave Code of 1661.'"
[30] Blackburn, *The Making of New World Slavery: From the Baroque to the Modern, 1492-1880*, 329.

exploited and expropriated labor that yielded new forms of resistance and demanded the creation of new laws to racialize, divide, and dominate on multiple fronts.

The 1661 Servant Act began by acknowledging that "many good laws" already existed, but that "great and often damages hath happened to the people of this place, through the unruliness, obstinacy, and refractoriness of the servants." [31] In other words, the problem was one of class discipline, suggesting the need for better forms of surveillance and control. Servants who demonstrated "bold extravagancy" by "wandering" from their plantation could be made to obey through a "continual strict courte" and a more robust set of laws. [32] Despite its punitive framing, the new law's primary effects were eliminating or lessening punishments for indentured servants and instituting new forms of accountability for masters and mistresses. The punishment for absenteeism was reduced from an additional month of service to just *one day* for every two hours absence, and the maximum term of additional service was capped at three years, shorter than the average length of an indentured servant's contract. [33] The new servant code also established a court system and legal procedures for arbitrating disputes "between Master and Servant, in and concerning the time of servitude, or term of years that they are to serve." [34] Minimizing the punitivity of the law enabled planters to sever potential axes of solidarity between indentured servants and enslaved people while maintaining the exploitative bonds of contract servitude.

In making contract law the final arbiter of exploited labor, the Servant Act also took aim at those forms of "violence and great oppression" which those specifically "*Christian-servants*" suffered. When a Christian servant died, the "Master, Mistress, Attorney, or chief Overseer of any family" were now legally obligated to produce the body for inspections by a "Justice of the

[31] Hall, *Acts Passed in the Island of Barbados, 1643-1672*, 35.
[32] Hall, 35.
[33] Hall, 38.
[34] Hall, 37.

Peace, or a Constable, and two of the Neighbours of the Parish." Those who buried a servant without first producing the body for inspection were fined 20,000 pounds of sugar, and neighbors who failed to inspect the body in a timely manner were fined 1,000 pounds of sugar. Suspected cases of foul play were referred to the coroner who could recommend the case for prosecution. [35] The law further crystallized the racialized distinction between Christian (white) servants and black enslaved people by revising the law around 'entertaining' or hiring already-contracted laborers, omitting any mention of black servants and instead only referring generally to 'men and women' that were now presumed to be Christian servants. [36]

Although roughly the same length as the 1661 Servant Act, the 1661 "Act for the Better Ordering and Governing of Negroes" took a critical stance toward the existing laws governing slavery. In contrast to the former servant codes that were generally "good laws," only some of the laws of slavery were judged effective, while "many clauses [were] imperfect and not fully comprehending the true constitution of this Government in relation over their Slaves their Negroes an heathenish brutish and an uncertain dangerous pride of people" [37] The problem was beginning to take shape as an issue of racial difference—colonists had not fully understood the "brutish and uncertain" nature of African enslaved peoples, and so the law had yielded imperfect and unsuitable forms of control. However, because whiteness was still linked to Christianity more than particular phenotypical attributes or capacities, the 'brutality and uncertainty' of enslaved people was more a function of religious deficiency than racial difference, as they had been "created Men though without the knowledge of God in the world." [38] Enslavers invoked a

[35] Hall, 39.
[36] Hall, 40.
[37] Excerpts are drawn from a transcript of the original law, generously provided by Professor Douglas Egerton. See "An Act for the Better Ordering and Governing of Negroes," (Barbados, 1661), Preamble.
[38] Fredrickson, *Racism: A Short History*, 45.

blend of Christian theology and biological racism that operated at the level of popular discourse and mythology, arguing that the dark pigmentation of African people was a mark of the biblical curse of Ham or Canaan, which indicated a servile and inferior nature. [39] Acknowledging the novelty of their oppressive undertaking, the preamble conceded that there was nothing "in all the body of that [English] Law no track-to guide us where to walk nor any rule set us how to govern slaves." If, as Appleby argues in the tradition of Pocock, "ideologies tend to emerge and take hold when societies free themselves from the governance of tradition," the 1661 Slave Act not only forged a new institutional path in the development of slavery, it also marked a new phase in the development of a racial ideology premised on white supremacy and black inferiority. [40] Without an existing pattern of legal norms and institutions to follow, the law invoked "the right rule of reason and order" as its guide. This invocation of reason would purportedly spare enslaved people from "the Arbitrary, cruel, and outrageous wills of every evil disposed person… [and] protect them as we do many other goods and Chattels." [41]

Wedged between contract law, which afforded limited forms of protection and standing to indentured servants, and the laws governing chattel, which debased and dehumanized enslaved people to the status of livestock, the law appeared to acknowledge in enslaved people a lesser form of humanity that ought to be spared from the most base and arbitrary forms of cruelty. There was, however, a fundamental disconnect between these mild forms of recognition and the brutal violence that the law enacted. Reframing enslaved people as potentially violent subjects, the prescribed that "any Negro man or woman[who] shall offer any Violence to any Christian as by striking or the like," on the first offense was to be "severely whipped," on the second offense,

[39] Blackburn, *The Making of New World Slavery: From the Baroque to the Modern, 1492-1880*, 312.
[40] Appleby, *Liberalism and Republicanism in the Historical Imagination*, 127.
[41] "An Act for the Better Ordering and Governing of Negroes," (Barbados, 1661), Preamble.

"severely whipped, his nose slit and burned in face," and on the third offense, "by order of the Governor and Council such greater Corporal punishment as they shall think meet to inflict." [42] Not yet fully racialized, enslaved people now bore a distinct legal status as neither fully human nor entirely chattel, and this necessitated a separate-but-interrelated legal order separate from the system of contract law governing white servants, one which yielded new forms of discipline, control, and violence.

Severing potential axes of solidarity between enslaved people and indentured servants, the law reversed its previous logic, identifying enslaved people as potentially violent subjects and the most likely sources of resistance. In contrast to the disorderly 'wandering' of undisciplined indentured servants, resistance by enslaved people would assume violent and destructive proportions. Citing those "heinous and grievous Crimes, Murder and Burglaries and robbing in the highway… [the] burning of houses and cane" which enslaved people had committed, the law held that investigation, trial, and punishment were to be efficient and brutal. Because of the "dangers of escape," enslaved people suspected of crimes were to be imprisoned for "not long," and given the "baseness of their Conditions," they did not deserve "to be tried by the legal trial of twelve Men." [43] Instead, their cases were to be heard by two justices of the peace, along with three "good and legal freeholders," who would consider any evidence and testimony without any clear procedure or evidentiary standards. [44] Those enslaved people found guilty were sentenced to death and given the "horrid" nature of their crimes, their execution was to be swift and never reconsidered or delayed. [45]

[42] "An Act for the Better Ordering and Governing of Negroes," (Barbados, 1661), Clause 2.
[43] "An Act for the Better Ordering and Governing of Negroes," (Barbados, 1661), Clause 13.
[44] "An Act for the Better Ordering and Governing of Negroes," (Barbados, 1661), Clause 14.
[45] "An Act for the Better Ordering and Governing of Negroes," (Barbados, 1661), Clause 13.

Despite previous episodes of interracial resistance, the Servant Act made no reference to armed resistance on the part of indentured servants. Instead, the Slave Act identified enslaved people as the only group likely to "make Insurrection or rise in rebellion." Invoking (some of) those uprisings that had "been formerly attempted," this clause cited the "preparation of Arms, powder or offensive Weapons or hold[ing] any Council or conspiracy for raising Mutinies or rebellion in the Isle" as potent threats to the public safety. The Slave Act held that the Governor should "appoint a Colonel and the field officers of the Regiment of the Island or any four of them to meet in Council and proceed by Martial Law against the Actors, Contrivers, raisers, fomenters and Concealors of such Mutiny or rebellion" who were to be punished "death or other pain as their Crimes shall deserve." [46] Those tasked with suppressing the uprising would almost certainly include indentured servants and vagrant laborers who had been drafted into military service as part of the new Servant Act. In contrast to the unruliness of exploited white labor, which was normalized and arbitrated through a framework of contract law with its emphasis on rights and proceduralism, resistance on the part of expropriated labor was exceptional, a destructive crisis that merited a brutal, violent, and "speedy remedy." [47]

However, more than armed uprisings, it was the possibility of escape by enslaved people during the Colonial Era that threatened the long-term stability and profitability of the plantation regime. The Slave Act linked this more capacious vision of whiteness to durable material gains, promising to release any indentured servant from the remainder of their contract if they provided information that led to the capture of a runaway slave. [48] These legal innovations were the

[46] "An Act for the Better Ordering and Governing of Negroes," (Barbados, 1661), Clause 17.
[47] Despite the professed 'newness' of the Slave Act as a legal innovation in response to the 'brutishness' of African enslaved people, this clause drew from a longer tradition of English common law which instituted martial law in response to such threats.
[48] "An Act for the Better Ordering and Governing of Negroes," (Barbados, 1661), Clause 6.

outgrowth of a series of unstable alliances between African enslaved people and white indentured servants, who had not only undertaken an armed uprising in 1655 but also engaged in other forms of resistance, including escape. Indeed, as Blackburn argues, "So long as the servants constituted a large component of the menial workforce, there was a potential axis of solidarity between them and African slaves," creating the impetus for new systems of control that would destabilize such alliances. [49] To be sure, such alliances were already inherently asymmetrical and unstable, since the light skin of white indentured servants would lend a greater chance of securing their freedom after escape. Thus, the promise of freedom from indentured servitude not only consolidated whiteness along ideological lines—within a shared commitment to violently subjugating black resistance—but also created a durable material interest for white indentured servants in supporting the plantation economy by capturing escaped enslaved people. Indeed, it was this fear of black resistance, as well as the nascent material and ideological privileges of whiteness, "both constituted with reference to black slaves," which furnished the "core elements of their social identity." [50] It is no coincidence that there was only one documented case of interracial resistance undertaken by enslaved people and servants in Barbados during the latter half of the seventeenth century.

In domesticating the unruliness of exploited labor and severing their potential axes of solidarity with expropriated laborers, indentured servants were to become new sources of law and order that could subdue and discipline resistant enslaved people. This nascent racialized logic held that Christians—including indentured servants—represented a source of "strength" and social stability. Those who favored "the present profit" and relied upon the expropriated labor of enslaved people while "neglecting Christian Servants" threatened to endanger "their

[49] Blackburn, *The Making of New World Slavery: From the Baroque to the Modern, 1492-1880*, 322.
[50] Blackburn, 323–24.

own and public safety." [51] Acknowledging the danger of such asymmetries between the exploited and expropriated laboring populations, the law established a quota that "every freeholder possessed or thirty Acres of land or more keep no less than one Man Servant for twenty Acres of Land he is Master, owner or occupier of." [52] This belief was reflected in the changing racialized division of labor on Barbados. Although white indentured servants and black enslaved people had worked side-by-side in the sugarcane fields well into the 1650s, by the 1660s, most white indentured servants were promoted to either skilled or supervisory roles. [53]

This invocation of Christian servitude reveals that one's religious status—as much as their political standing or class position—would now structure their legal relationship to enslavement. While enslavement and expropriation were linked to blackness, servitude and exploitation were linked to Christianity in ways that afforded poor whites limited forms of standing, minimized the domination they experienced, and expanded their agency to engage in anti-black violence and domination. The reality, of course, is that such laws ultimately ensured the exploitation of indentured servants and the expropriation of enslaved people, preserving the hierarchical class structure of Barbados' plantation regime through minimal concessions to the interests of planters, merchants, and other elites. Indeed, as Rugemer argues, "Race as an ideological construction had not yet fully emerged, but race as an exercise of power was clearly at work." [54] Thus, the laws of slavery and servitude were to form a separate-but-interrelated legal order, one designed to produce racial difference, stymy interracial alliances, and ultimately uphold the volatile relations of exploitation and expropriation underwriting the development of racial capitalism.

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[51] "An Act for the Better Ordering and Governing of Negroes," (Barbados, 1661), Clause 21.
[52] "An Act for the Better Ordering and Governing of Negroes," (Barbados, 1661), Clause 22.
[53] Blackburn, *The Making of New World Slavery: From the Baroque to the Modern, 1492-1880*, 230.
[54] Rugemer, *Slave Law and the Politics of Resistance in the Early Atlantic World*, 33.

Although the 1661 Servant and Slave Acts made no explicit mention of whiteness, their invocation of Christian servitude set into motion a series of legal developments that consolidated and durably embedded the language of whiteness in colonial law. In 1676 the neighboring Jamaica Assembly proposed an "Act for the Good Governing of Christian Servants" that closely modeled itself after the Barbados Servant Act. However, the Lords of Trade informed the assembly that the act could not invoke the language of 'servitude' with reference to Christians. As Rugemer demonstrates, "'Servitude' struck them as 'being a mark of bondage and slavery,' inappropriate to use in a description of persons who were 'only apprentices for years.'" [55] Set into motion by early contract laws—and the limited forms of standing which they instituted—this rebuttal marked the culmination of a logic that the Barbados Assembly originated in the 1661 Servant Act. The growth of expropriative enslavement—and with it the looming possibility and reality of resistance—could be stabilized by affording Christian servants limited forms of standing and enabling them to partake in the expropriation of black enslaved people without direct economic benefit, simultaneously securing the exploitation of Christian servants. Since contract law framed Christian indentured servants as 'on their way to freedom' this group came to represent a novel source of stability and durability for plantation regimes in which black enslaved people dramatically outnumbered propertied whites. As the Lords of Trade warned the Jamaica Assembly, the language of 'servitude' muddled this distinction and limited the standing of Christian indentured servants in ways that were antithetical to exploiting servants while relying upon them to surveil, control, and discipline the expropriated labor of enslaved people. Arising from the politics of resistance, the threat of interracial alliances, and the need for new

[55] Rugemer, 45.

forms of discipline and control, colonial law would instead begin to durably racialize 'white servants' and 'black enslaved people.'

In 1681 the Jamaica Assembly would heed this order and build on the careful construction of Barbados' legal order for white indentured servants by omitting the terms 'Christian' and instead utilizing the language of whiteness. The Jamaica Assembly extended this logic again in 1684 by passing an "Act for the Better Ordering of Slaves" which exclusively utilized the language of whiteness. These invocations of whiteness rather than Christianity marked a shift away from the muddled and interchangeable usage of the two terms, which had begun as early as the 1640s in Barbados. [56] The logic of whiteness furnished a racialized ideological and institutional position that would circulate throughout the Atlantic in the latter half of the seventeenth century, culminating in the ideological and institutional division between black enslaved people and whites in Barbados, Jamaica, and eventually, as I show in the following section, South Carolina.

III. From Barbados to South Carolina

During the colonial era, "the English had come to regard Barbados as being by far and away their most highly prized possession anywhere in the New World," and this esteem and wealth was a direct outgrowth of slavery. [57] At any given moment, more than fifty thousand enslaved people across the Caribbean labored to produce twenty thousand tons of sugar annually, yielding enormous wealth for enslavers. [58] Unsurprisingly then, it was Barbados that had led the way in the institutionalization of slavery—by 1661 the Barbados Assembly had crafted a legal status for enslaved people, one year before lawmakers in Virginia adopted their own statute

[56] Rugemer, 46.
[57] Wood, *The Origins of American Slavery: Freedom and Bondage in the English Colonies*, 45.
[58] Blackburn, *The Making of New World Slavery: From the Baroque to the Modern, 1492-1880*, 270.

regarding the legal status of enslaved people. Indeed, as Nicholson argues, "the Barbadian code was the premier slave law code in the English colonies," excepting Maryland and Virginia, which followed a separate path of legal development. [59] The 1661 Slave Act was adopted word-for-word in both Jamaica and Antigua. In 1712, when Carolina split into two colonies, the South Carolina Assembly would adopt a new-identicaly copy of Barbados' 1688 slave codes. The adoption of this Barbadian law, rather than the sweeping slave codes already passed in nearby Virginia, likely arose from the composition of the Carolina Assembly, which was controlled by Barbadian planters during this period. [60] Governing everything from the provision of clothing to the suppression of uprisings, South Carolina's 1712 Slave Act invoked: (1) a logic of economization that sought to manage the threat of black criminality and regulate anti-black violence; (2) a civic republican ideal of regime stability and durability that hinged on the consolidation of whiteness; and (3) an instrumentalized Christian discourse that was ultimately subservient to the economic interests of racial capitalism.

Black Criminality and the Economization of Anti-Black Violence

By most accounts, African enslaved people were first brought to the territory that is now South Carolina by Spanish colonists in 1526. Early colonization efforts, however, were quickly abandoned—on October 18, 1526, the first known slave uprising in North American history occurred, culminating in the desertion of both African enslaved people and Natives from the deteriorating settlement. These former enslaved people would become the first permanent, non-native inhabitants of what was to be the United States. [61]

[59] Nicholson, "Legal Borrowing and the Origins of Slave Law in the British Colonies," 41.
[60] Sirmans, *Colonial South Carolina: A Political History, 1663-1763*, 464.
[61] Rucker, *The River Flows On: Black Resistance, Culture, and Identity Formation in Early America*, 91.

Sustained colonization efforts began in South Carolina during the seventeenth century, when British Caribbean planters arrived from Barbados. Although the Barbadian plantation economy was thriving, land holdings were increasingly concentrated among a wealthy elite, ensuring that profits from the coveted sugar market would enrich only a select few. During the mid-1640s there were between 8,300 and 11,2000 Barbadian landowners, yet by 1679, this figure had declined to just 2,639. [62] Seeking out new and 'uninhabited' lands, Lord Ashley led a group of seven men in petitioning Charles II for proprietorship over the territory of Carolina. Recognizing Ashley's and his seven associates' support for his father's efforts to reclaim the throne during the English Civil War, Charles II granted the petition in 1663, and in the summer of 1669, the group embarked to begin the colonization of Carolina.

When British Caribbean enslavers landed on the shores of Carolina, they carried not just African enslaved people with them, but also, as Rucker observes, "concrete ideas about labor utilization from a firmly established plantation society," as well the systems of control they believed would manage and discipline its laborers. [63] Unlike the planters whom settled Barbados, and first relied upon white indentured servitude before turning to African slavery, South Carolinian enslavers were already familiar with and dependent upon the enslaving African peoples. [64] Although some efforts were made to grow the population of white indentured servants—a process I explore in the following section—the majority of South Carolina's unfree laboring population was black enslaved people. In 1708, black enslaved people accounted for

[62] Handler, *The Unappropriated People: Freedmen in the Slave Society of Barbados*, 7.
[63] Rucker, *The River Flows On: Black Resistance, Culture, and Identity Formation in Early America*, 92.
[64] For an account of the turn from white indentured servitude to African enslavement in neighboring Virginia, see Edmund Morgan, "Slavery and Freedom: The American Paradox."

more than fifty-percent of the population in South Carolina, and by 1714, this figure exceeded sixty-percent. [65]

However, it was not solely black people that were enslaved during the early years of colonization in South Carolina. Despite the early warnings of Governor Sayle that, "We do absolutely prohibit you and you are to take not only that you suffer not the people out of greediness to molest either the Spaniard on that side or any of our neighbor Indians in their quiet possessions," enslavers in South Carolina also relied upon the expropriation of native peoples. [66] As Hsueh argues, native enslavement threatened not only trade with tribes, which was essential to the early colonial economy, as well as local alliances, but risked initiating war, "which might not only prove expensive but bring unwanted attention from forces within England that might wish to take away their patent." [67] Indeed, colonists were deeply reliant upon indigenous peoples, who taught them crucial agricultural and navigational skills that were crucial to the colony's early survival and rapid economic prosperity. [68] Despite these risks, by 1708 more than 1,4000 indigenous peoples, including 500 men, 600 women, and 300 children—most kidnapped during slaving raids in Spanish Florida—were enslaved. [69]

Sensing no need to adjust its assessment of enslaved people, the South Carolina Assembly replicated—word-for-word—the Preamble of the 1688 Barbadian slave code, proclaiming that African peoples were "of Barbarous, Wild, and Savage Natures." [70] Solidifying the racialized legal distinction separating black enslaved people from whites, the law proclaimed that black enslaved people were not only sub-human, but naturally prone toward criminality and

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[65] "Population in the Colonial and Continental Periods."
[66] Hsueh, *Hybrid Constitutions: Challenging Legacies of Law, Privilege, and Culture in Colonial America*, 76.
[67] Hsueh, 75.
[68] Hsueh, 69.
[69] Rugemer, *Slave Law and the Politics of Resistance in the Early Atlantic World*, 77.
[70] McCord, *The Statutes at Large of South Carolina: Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers*, 7:352.

other behaviors that disrupted the expropriative relations of slavery and the broader plantation hierarchy. The code was framed as not simply useful, but as vital to the development of the plantation society and economy, since the "laws, customs, and practices" that governed white Christians therefore could not adequately "restrain the disorders, rapines and inhumanity" toward which black people were "naturally prone and incline." On this account, black criminality was a natural propensity and an inherent threat that warranted the creation of a separate legal order, a new set of "constitutions, laws and orders" with its own institutional logics and ideas of race. [71]

This particular discourse around black criminality, though derived from the 1661 Slave Act, had been expanded in 1675 and linked to the production of anti-Native American racism during King Philip's War, a conflict between New England colonists and the Wampanoag, Nipmuck, Pocumtuck, and Narragansett tribes which spanned 1675-78. Indeed, the 1661 Barbadian Slave Code would go unchanged until May 1675, when planters learned of a widespread plan among the enslaved population. Discovered and foiled only eight days before its execution, the enslaved population had planned to murder the white elite and crown an elderly enslaved man named Coffee as their king. The threat was evidently credible among the white elite, who arrested and investigated more than one-hundred enslaved people, and immediately publicly executed seventeen men. While the remaining prisoners anxiously awaited trial, five hanged themselves and another twenty-five were eventually executed. In the course of the investigation, planters learned that the uprising had been "clandestinely" planned over the preceding three years. [72]

Up to this point, Barbados had served as a destination for Native American prisoners-of-war, and the Assembly attributed the worsening instability of Barbadian plantation society to the

[71] McCord, 7:352–53.
[72] Fisher, "'Dangerous Designes': The 1676 Barbados Act to Prohibit New England Indian Slave Importation," 110.

growing Native population. In the Journal of the Barbados Assembly, lawmakers expressed their opposition to the further enslavement of Native peoples, insisting the practice would continue to increase the likelihood of widescale resistance:

> the great Evils the Indians allready in this Island from New England & places adjacent may bring upon this Place if they should continue here they being of a Subtle and dangerous Nature and able more cunningly to contrive and carry on those dangerous designes which our Negroes of the[ir] Owne Nature are prone unto. [73]

The Barbados Assembly's opposition to Native enslavement represents the first turn toward a logic of 'outside contagions,' which holds that the 'problem' of black resistance to enslavement was always coming from somewhere other than the dehumanizing conditions of slavery. On this account, black criminality was a problem of nature, but one that could be surveilled, managed, and disciplined. The problem of black resistance was a matter of detecting and delimiting those 'contagions' which caused uprisings to propagate. The "subtle" and "dangerous nature" of enslaved Natives from New England represented an even greater threat to the stability of plantation society, one that necessitated outlawing their importation and enslavement. That 'danger' was inescapable, the Assembly argued, because Christianization had caused New England Natives to internalize a sense of injustice that would animate, inspire, and sustain uprisings among the enslaved population. [74] This particular notion of black criminality—forged through anti-Native racism—would have also taken root in South Carolina. In the 1670s when British Caribbean planters began to settle near present-day Charleston, they already carried with them ideas about insurrection that were firmly grounded in the notions of resistance set forth in the 1661 Barbadian Slave Code. Given the consistent flow of ships carrying Indian and African

[73] Fisher, 115.
[74] Fisher, 116.

enslaved people between Barbados and South Carolina during this period, news of the foiled uprising and the dangers of Native enslavement would have certainly reached South Carolina.

However much the concept of black criminality shifted and evolved, in the fifty years flowing the passage of the 1661 Slave Act, both legislative assemblies made few substantive changes to the institutions designed to manage this threat. Citing those "heinous" and "grievous" crimes that enslaved people undertook, enslaved people were to remain exempted from trial by a jury. Instead, their cases were heard by two justices of the peace and three freeholders, who were instructed to "judge uprightly and according to evidence, and diligently weighing and examining all evidences, proofs and testimonies." [75] Whatever thin concept of proceduralism the law proclaimed to enact in determining the guilt of enslaved people, the violence that followed was not only brutal but subjected to wide discretion. In cases warranting execution, "the kind of death to be inflicted to be left to their judgment and discretion," and for all other punishments, the justices and freeholders were instructed to "condemn and adjudge the criminal or criminals to any other punishment, but not extending to limb or disabling him." [76]

Addressing the threat of uprisings, the 1688 Barbadian law empowered the Governor to appoint a committee of four, which would operate under martial law to identify any "actors, contrivers, raisers, fomenters, and concealors," and punish those individuals to "death or other pains as their crimes shall deserve." The 1712 Slave Act made only minor changes to the system of control tasked with punishing such acts, requiring that a committee be formed from "two justices of the peace, and three able freeholders." The punishment for such crimes, of course, would remain "death, or any other punishment," performed in any manner the committee should

[75] McCord, *The Statutes at Large of South Carolina: Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers*, 7:354–55.
[76] McCord, 7:355.

"think fit." [77] However, when more than one enslaved people was found guilty of "mutiny or insurrection or ris[ing] in rebellion against the authority and government of this Provence," the governor and council could determine whether "only one or more of the said criminals should suffer death as exemplary," while the remaining enslaved people were to be returned to their enslavers. This violent calculus also distributed the financial burden among enslavers, holding that "the part allotted for any person to pay for his part or proportion of the negro or negroes so put to death, shall not exceed one sixth part of his negro of negroes so excused and pardoned." [78]

Across the 1712 Slave Act, the distinction between legitimate and illegitimate forms of state-authorized violence hinged on enslaved peoples' continued usefulness as expropriated laborers. This *economization of violence* legitimated punishments, which promised discipline and control, were to be enacted in however brutal a fashion, while those forms of violence disrupting the expropriative relations of racial capital were to be delimited. This logic was reinforced by the fact that "in all cases whatsoever" where an enslaved person was put to death, the law required that the justices and freeholders "inquire, by the best means they are able, of the full and true value of such negro or slave," and submit a certificate to the public treasury, which was tasked with reimbursing that enslaver. [79] In this respect, the anti-black violence of enslavement was subject to a logic of economization, which hinged on the material interests of slaveholding whites and the long-term development and profitability of the plantation regime. This economization of violence reflected the careful governing logic of racial capitalism: In framing black criminality as a racialized threat meriting its own logics, norms, and institutions, the violence of the law was racialized from the outset. In 1722, a local minister conceded that while

[77] McCord, 7:356.
[78] McCord, 7:356–57.
[79] McCord, 7:358.

such acts of violence might seem extreme, they were essential to the expropriative relations of slavery, and subsequently, the development and survival of the racial capitalist order:

> I admit the punishments are cruel, but one must consider before condemning the inhabitants of the islands that they are often constrained to abandon moderation in the punishment of their slaves, in order to intimidate them, to impress on them fear and respect, and to prevent themselves from becoming the victims of the fury of a people who, being one against ten, are always ready to revolt, to take over everything and to commit the most horrible crimes in order to liberate themselves. [80]

Indeed, as Labat concedes, the material conditions of slavery were such that enslaved people were constantly at the precipice of active resistance, and this looming threat terrified whites. This terror, however, was mitigated by their material interests and the promises of great wealth in the rapidly growing colony, and so they continued to intensify the conditions which threatened their own security. It was this tension between the growth-maximizing logics of racial capitalism—of constantly maximizing the expropriated value of enslaved labor—and the threat of resistance, which tempered and economized the excesses of anti-black violence while still subjecting enslaved people to dehumanizing and disfiguring forms of violence. Thus, anti-black violence was neither exceptional nor aberrational, but foundational to the making of law and race, those institutional and ideological forms which were essential to managing and sustaining an economic system of domination that inevitably provoked resistance.

Civic Republicanism and Whiteness

From the outset, the colony of Carolina was steeped in the intellectual traditions of civic humanism, republicanism, which as Hsueh argues, were deeply rooted in Locke's *Fundamental*

[80] Blackburn, *The Making of New World Slavery: From the Baroque to the Modern, 1492-1880*, 345.

Constitutions of Carolina. [81] Although the *Fundamental Constitutions* were never fully enacted, this was less a failure of a document itself than the tension between the normative aspirations of colonists, who held these civic humanist and republican principles, and the material exigencies of colonialism which included scarcity, disease, warfare, and resistance. Indeed, the document did "bolster the sense of forthcoming polity, clarifying the structure of the government by crafting a specifically civic humanist and republican framework that put forth an image of Carolina as a commonwealth not only governed by an organized leadership, but also populated by situated colonists." [82] Among the question at stake in these early years of colonization was who were to count among these 'situated colonists.' To be sure, this vision of commonwealth was highly abridged, and it "held no promise of egalitarianism." Instead, republican aspirations of civic virtue and an engaged political life, "co-existed with significant political hierarchy and social and economic inequality, where great distinctions of wealth and status flourished within a civic humanist structure of government." [83] Nonetheless, these early laws afforded limited forms of standing to nonpropertied whites that were essential to civic republican principles of stability and durability.

In addition to the limited forms of standing which nonpropertied whites garnered through those forms of contract law that I outlined in the previous sections, they also found new standing in the exercise of anti-black violence. Resistance, understood as a contagion that could assume epidemic proportions, would often require quicker and more forceful subdual. In order to suppress uprisings, the 1688 Barbadian law granted broad powers to "any Justice of the Peace, Constable or Captain of a Company" to raise up to twenty men in apprehending "any Runaway

[81] Hsueh, *Hybrid Constitutions: Challenging Legacies of Law, Privilege, and Culture in Colonial America*, 56.
[82] Hsueh, 62.
[83] Hsueh, 69.

Negro, fugitive [or] Outlaws," taking them either dead or alive. State violence was not an instrument to be wielded by a select few, but a power that could be widely distributed and freely wielded at the moment of perceived crisis. Such crises, governed only by martial law, demanded the full force of the colonial government's monopoly on violence, and so previously delimited forms of 'cruel' violence were unbounded. These changes also spoke to a widening category of whiteness, in which the variegated hierarchy of laborers, merchants, small property owners, and plantation owners could begin to find some common interest in state-sanctioned, anti-black violence. To be sure, this early notion of whiteness was still particularly narrow, as evidenced by the anti-Semitic underpinnings of the Barbadian law, which targeted the Sephardic Jewish population of Barbados, forbidding "any person of the *Hebrew* Nation" from 'employing' any more than "One Negroe or other Slave." [84] [85] Nonetheless, the interests of whiteness, while still bound up with capital and the material gains of plantation owners could find a shared interest that bridged the gap between waged and unwaged labor and that transcended the class divisions underwriting slave societies: the violent subjugation of black bodies. Although the South Carolinian law omits any mention of "outlaws," it nonetheless granted identical powers to "every Captain of a company in this province," who might raise any "convenient" party of up to twenty men.

As I have already demonstrated, it was resistance that drove the development of law and race, and the racialization of indentured servants as white was central to mitigating the risks of resistance by enslaved people. In 1698, the Carolina Assembly would extend this logic by passing "An Act for the Encouragement of the Importation of White Servants." Citing "the great

[84] Rawlin, *The Laws of Barbados Collected in One Volume by William Rawlin, of the Middle-Temple, London, Esquire, and Now Clerk of the Assembly of the Said Island.*, 143.
[85] Blackburn, *The Making of New World Slavery: From the Baroque to the Modern, 1492-1880*, 312.

number of negroes which of late have been imported," the law held that such dangers should be speedily mediated by encouraging "the importation of white servants." [86] Any "merchant, owner or master of any ship or vessel, or any other person not intending to settle and plant here," who brought any white male servants—with the exception of Irish servants—were offered a schedule of payments based on the age of the servant. [87] Ranging from the ages of twelve to forty, these individuals were to serve anywhere between five and eight years, with the youngest serving the longest contracts until they reached twenty. Rather than make their contracts publicly available, the constables were tasked with compiling list of all planters who owned more than twelve and six enslaved people. State officials would then distribute contracts to enslavers, giving first priority to those who owned more than twelve enslaved people. This distribution would continue until the pool of servant contracts was exhausted or until every enslaver on the first list now had a servant, at which point, enslavers who owned six or more enslaved people would be randomly selected to receive a servant. [88]

Unlike earlier servant acts, the law makes no mention of 'Christian servants,' only 'white men,' which also now formally excluded the Irish, pointing toward a concept of whiteness that was beginning to harden around ethnic divisions. Indeed, it was this hardening racial division which enabled colonists to sustain a regime of racial capital which was prone to repeated crises of resistance. Like Hsueh's reading of the *Fundamental Constitutions,* I read these early laws around whiteness and anti-black violence as evoking "… a corresponding temporality in their revivals of the Machiavellian 'republican ideal' as a response to exigency." [89] For Machiavelli and other civic republicans, the material exigencies of politics were actualized in the concept of

[86] Cooper, *The Statutes at Large of South Carolina: Containing the Acts from 1682 to 1716, Inclusive*, 2:153.
[87] Cooper, 2:154.
[88] Cooper, 2:154–55.
[89] Hsueh, *Hybrid Constitutions: Challenging Legacies of Law, Privilege, and Culture in Colonial America*, 62.

anacyclosis, wherein good regimes devolve into corrupt forms of government. According to this intellectual product of the Ancient Greeks, political regimes were a transient phenomenon. Regardless of strength, prosperity, or form, a regime would devolve into corruption: monarchies to tyrannies, aristocracies to oligarchies, and republics to democracies. Confronted by this cyclical devolution, Machiavelli's political thought is underwritten by a fatalism which acknowledges the inherent mortality of political institutions. Yet this fatalism is mediated by a thick concept of civic virtue which is committed to imagining those institutions and ideologies that might maximize the stability and durability of one's political community.

Confronted with the material exigencies of colonialism and the knowledge that their political structures could only be sustained by anticipating and responding to such conditions, colonists found in whiteness the basis for a durable and enduring regime. In this respect, the production and consolidation of whiteness emerges as both an institutional and ideological solution, as the stabilizing force which sustains the colony by underwriting civic republican principles of regime stability and durability

Christianity and Racial Capitalism

Although both the 1688 and 1712 Slave Acts established notions of black criminality that were forged in part through anti-Native racism, there was, however, one notable difference between the two: the South Carolina Assembly omits the Barbados Assembly's claim that the law would protect enslaved people from "the Cruelties and Insolencies" of enslavers and other whites. This was a marked departure, since even the 1690 Carolina slave code had insisted that the Assembly was obligated to institute certain protections, which would guard against the "arbitrary, cruel, and outrageous wills of every evil disposed person." Yet the 1712 Carolina code omits this sentiment altogether, instead highlighting the need to provide for "the safety and

security of the people of this Province and their estates." How might we account for this omission? On my reading, the elision of these 'protections' is bound up with the tension between Christian theology and the interests of racial capitalism. Although early justifications for African slavery were grounded in Christian theology—the story goes that African peoples' dark skin was a sign of the Curse of Ham and thus marked them as non-Christians fit for enslavement—Christianity also provided a framework for critiquing slavery to varying degrees. At its extreme, baptism would resolve the curse and justify manumission since the Bible forbade the enslavement of fellow Christians, while more common variants did not oppose slavery, but sought to ameliorate the conditions of enslavement on the bases of human dignity and Christian charity. On this account, Christianity might underwrite such laws, providing a foundation for critiquing and ameliorating slavery's most punitive and extreme forms of violence.

The 1688 Barbados code instituted a penalty of fifteen pounds sterling to be paid by any man who of "Wantonness, or only of Bloody-mindnesss, or Cruel Intention, willfully kill a Negro or other Slave of his own," increasing the amount to twenty-five pounds for the murder another man's slave. A reading that emphasized the tempering effects of religion might suggest that the law sought to penalize and thus disincentive the most extreme and arbitrary forms of violence, thereby delimiting cruelty that was unbecoming of a Christian and providing some basic security to enslaved people. The logic underlying such protections, however, was not a commitment to the dignity or security of enslaved people, but to securing white patriarchal property rights and material interests, and thereby the civic personas of white elites. There is ample reason to doubt the substantive impact of Christianity on the Barbadian slave codes. Indeed, as Richard Dunn argues, "the island colonists were scarcely known for their religious zeal, and in a 1681 letter, Governor Dutton noted that "God's house and worship…. was but too

much neglected." [90] Although the Quaker population in Barbados was committed to converting enslaved people to Christianity and improving conditions of enslavement, it is unlikely their presence affected the content or form of the slave codes. Indeed, the opposite is perhaps more likely, since the Quakers' activities among the enslaved population were repeatedly targeted and fined by the Barbados Assembly. [91] Thus, the purpose of such fines and systems of compensation was not to reduce or delimit violence and cruelty toward enslaved people, but to *economize* violence—to ensure that excesses in force would not disrupt the flow of capital. Indeed, the Barbados and Carolina codes' institution of a public fund to compensate any enslaver whose slave was killed, murdered, or executed as a result of the act points to this fact. Under this new law, even death and outright loss could be converted into material gains for enslavers.

The 1712 South Carolina code bears further evidence suggesting that colonists—particularly enslavers—bore a distant, if not estranged attitude toward Christianity. Because early justifications for enslaving African people rested on their non-Christian status, enslavers feared that baptism might provide grounds for manumission. Thus, enslavers instituted punitive laws to impede missionaries, and so little mission work was carried out among the enslaved population in South Carolina and other English colonies. [92] Yet unlike Barbados, the 1712 South Carolina code confronted anxieties around Christianity by permitting the baptism of enslaved people while stipulating that it could not provide grounds for manumission. Clause 34 conceded that, "charity, and the christian religion, which we profess, obliges us to wish well the souls of all men… and that no person may neglect to baptize their negroes or slaves." [93] However, this

[90] Dunn, *Sugar & Slaves: The Rise of the Planter Class in the English West Indies, 1624-1713*, 103.
[91] Dunn, 104.
[92] Fredrickson, *Racism: A Short History*, 42–43.
[93] McCord, *The Statutes at Large of South Carolina: Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers*, 7:364–65.

would have been a small concession, since Christianity was not yet widely practiced among enslaved people, and because mission work was so limited. Moreover, given the deep fear of baptism among enslavers, it is unlikely that baptism would be widely enacted. Although some Kongolese were practicing Catholics—Portugese missionary work had begun in the Kongo during the fifteenth century—their religious doctrines and practices were relatively autonomous. [94]

Moreover, Clause 34 established the primacy of property rights over Christianity by declaring "that religion may not be made a pretence to alter any man's property and right… or suffer [their negroes or slaves] to be baptized, for fear that thereby they should be manumitted and set free." [95] On this account, Christianization could be tolerated, but only insofar as it did not disrupt racial capitalism as the governing force in the ordering of slave society. By this same reading, clauses in both laws which required the provision of basic necessities to enslaved people—adequate clothing, food, and water—likely stemmed from both a logic of economization, of minimizing losses or damages to property, as well as a civic republican concept of regime durability which sought to maintain stability within the slave society. To be sure, Christianity could have carried some significance for such provisions. However, the omission suggests an orientation toward black criminality and anti-black racism that was moving away from Christian theology and laying the groundwork for a predominantly secular, pro-market logic that instrumentalized such minor shows of religiosity while *economizing* violence in the interest of racial capital. This turn from Christianity represented the convergence of a civic humanist and republican vision of political membership that premised one's civic persona on

[94] Thornton, "The Development of an African Catholic Church in the Kingdom of Kongo, 1491-1750," 148.
[95] McCord, *The Statutes at Large of South Carolina: Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers*, 7:364–65.

sufficient land and property holdings with the interests of a racial capitalist order that relied upon the expropriation of black labor and the criminalization of blackness.

Conclusion

In this chapter, I have sought to delineate the emergence of two separate-but-interrelated legal orders in colonial Barbados and South Carolina: for black enslaved people, a legal system premised on their lesser humanity and rightslessness which subjected them to forms of violence that were only delimited by the material interests of enslavers, and for white indentured servants, a system of contract law premised on their future freedom, which garnered them limited forms of rights and standing. As I have demonstrated, both systems originated in the threat of resistance, and oftentimes, the threat of interracial resistance. In this respect, law and race during the colonial period were co-constituted as both institutions and ideologies, and it was this process that enable colonists to maintain the relationships of exploitation and expropriation which underwrote the development of racial capitalism. Thus, while contemporary scholarship has rightfully focused on the development of racial capitalism, this chapter should illuminate a need to better contend with the role of resistance in a racialized system of economic domination. My account of the emergence of whiteness, which I argue hinged on affording whites limited forms of standing that simultaneously secured their exploitation within structures of racial capital, also points toward the nascent ideological power of race during the colonial period as these concepts were increasingly embedded in legal norms and structures. In the following chapter, I extend my account of the making of law and race by turning to the 1739 Stono Uprising, the largest colonial slave uprising in an English colony, and the 1740 Negro Act, which was implemented in response to the uprising and served as the colony's slave code until abolition.

Chapter Two

The Stono Uprising, 1739-1740

In 1739, a group of enslaved people along the Stono River in South Carolina rose up against the English plantation regime and set out for the promise of freedom in Spanish-controlled St. Augustine, Florida. Although their resistance met violent repression, the Stono Uprising shook the slave society to its core, altering the trajectory of state development and race-making. Seeking to prevent another Stono Uprising, the colonial assembly passed the 1740 Negro Act, which would serve as South Carolina's slave code until the abolition of slavery. Institutionally, the 1740 Negro Act marked a radical expansion of the separate-but-interrelated legal orders governing black enslaved people and whites, expanding state capacity through the creation of a new court system for free and enslaved black people, as well as new modes of surveillance, discipline, and anti-black violence. Ideologically, the Negro Act marked a critical juncture in the understanding and suppression of black resistance, that while rooted in the logics of Barbadian plantation society, justified new modes of anti-black violence that consolidated whiteness, criminalized blackness, and reshaped the terrain of future struggles against slavery.

In centering the Stono Uprising as a critical juncture in not just the history of South Carolina, but in resistance to enslavement and its effects on the making of law and race, this chapter takes a bottom-up approach that emphasizes the significance of black resistance and agency. In what follows, I first elaborate the conditions under which the Stono Uprising would unfold before providing an account of the uprising itself. The bulk of this chapter then evaluates the significance of the Stono Uprising and the subsequent 1740 Negro Act, highlighting three interrelated processes: First, the consolidation of whiteness through anti-black violence and a the

institutionalization of a *logic of outside contagions,* which attributed resistance to enslavement to outside 'corrosive' forces, rather than the dehumanizing conditions of slavery. Second, I track the criminalization of blackness through a geography of fugitivity that not only criminalized black bodies in motion, but linked criminality to a broader set of capacities including literacy. Finally, I conclude by reflecting on the ways that the Stono Uprising and the 1740 Negro Act would expand those separate-but-interrelated legal orders, transforming the terrain of future struggle for both freed and enslaved black people.

The Stono Uprising

The Stono Uprising unfolded in a decade marked by rapid economic growth, widescale demographic shifts, escalating tensions between the colonial ambitions of England and Spain, political deadlock in the legislative assembly, and changes to the laws governing enslaved people. Carolina's initial economic prospects were grim, as experimentation with cotton, silk, wine, oranges, and even rice had proven unsuccessful. The outlook began to shift with the importation of new varieties of rice from Africa, and even more crucially, the kidnapping of enslaved people from Southwest Africa, particularly Angola and Kongo, who were knowledgeable and skilled in cultivating these crops. [1] By the 1720s, rice had become not only South Carolina's staple crop, but a source of tremendous wealth for the growing British Empire. Between 1720-1740, rice exports would more than quadruple from 8.2 million pounds to 35 million, making it the third most valuable export from the mainland United States. [2] As interest grew in the rice trade, a patchwork of farms emerged in the Low Country, some as small as 100 acres, the majority ranging between 200-1,000 acres. Operating at relatively small scales, these

[1] Hoffer, *Cry Liberty: The Great Stono River Slave Rebellion of 1739*, 23.
[2] Nash, "South Carolina and the Atlantic Economy in the Late Seventeenth and Eighteenth Centuries," 680.

farms rapidly changed hands as enslavers speculated to secure advantages for themselves, making land sales the second largest source of wealth. [3]

With rice established as a reliable and growing source of wealth, enslavers required an ever-greater supply of expropriable laborers. Governor Glen would report that most farms required about thirty enslaved people working year-round to ensure operations were profitable. [4] During the 1720s, roughly 600 enslaved people were kidnapped and brought to South Carolina each year, and within a decade, this average would more than quadruple to 2,500 enslaved people across the 1730s. [5] Traders and enslavers particularly targeted African peoples from West-central Africa, which today includes Zaire, Congo-Brazzaville, Gabon, and Angola. In the five-year period preceding the Stono Uprising, thirty-one of sixty ships that arrived in Charles Town came from West-central Africa. [6] As demand for—and speculation in—rice soared, enslaved people would account for an ever-greater proportion of the population. Consequently, South Carolina still resembled the Caribbean plantations that many colonists hailed from—in 1740, there were 2.6 black enslaved people for each white colonist. [7] These disparities would have been even wider in a rural area like Stono, where vast numbers of enslaved laborers would work under the supervision of just a few whites. Indeed, this disparity—and with it, the threat of mass uprisings—would only intensify throughout the eighteenth century. [8]

Tensions already ran high between England and Spain, and this fact was compounded by escapes by enslaved people. Attempted and successful escapes had also begun to escalate among enslaved people—the former consuming limited resources of time and manpower in tracking

[3] Edelson, *Plantation Enterprise in Colonial South Carolina*, 95.
[4] Hoffer, *Cry Liberty: The Great Stono River Slave Rebellion of 1739*, 23.
[5] Hoffer, 39.
[6] Rucker, *The River Flows On: Black Resistance, Culture, and Identity Formation in Early America*, 99.
[7] Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 through the Stono Rebellion*, 34–36.
[8] Sirmans, *Colonial South Carolina: A Political History, 1663-1763*, 207.

escaped enslaved people, and the latter constituting an outright financial loss. This rise in escapes was spurred by Spanish officials in St. Augustine, Florida, who had published a royal edict in 1738, promising freedom to any enslaved person in exchange for two years of military service. Such efforts were a threat to both territorial security—colonial borders were still a site of contestation and open hostilities—and the viability of the still-nascent plantation economy, where enslaved people constituted a huge proportion of colonists' investment in South Carolina. Yet for the enslaved people of South Carolina, "St. Augustine had come to symbolize freedom." [9] As tensions escalated between England and Spain, a 1737 report would reveal that South Carolina was neither properly supplied nor fortified for war. [10] These tensions would also play a direct role in the timing of the uprising—by most accounts, official word of hostilities between England and Spain would have reached Charleston the same weekend as the Stono Uprising.

Politically, the colonial assembly was polarized between two factions—one led by merchants, and the other by planters—placing most legislative efforts in a deadlock. [11] On January 20, 1738—nearly two years before the uprising—the colonial assembly had begun to consider an "Act for the Better Ordering and Governing of Negroes and Other Slaves," which would eventually become the 1740 Negro Act. [12] One week later, the assembly would again take up the bill, during which time lawmakers proposed fourteen conflicting amendments on a range of issues, laying bare these divisions. Some followed the trajectory of earlier laws that linked whiteness to a broader republican principle of stability and durability by proposing to require the presence of a white overseer for every ten enslaved people on a plantation. Others responded to

[9] Wax, "'The Great Risque We Run': The Aftermath of the Slave Rebellion at Stono, South Carolina, 1739-1745," 143.
[10] Sirmans, *Colonial South Carolina: A Political History, 1663-1763*, 198.
[11] Sirmans, 200.
[12] Easterby, *The Colonial Records of South Carolina: The Journal of the Commons House of Assembly: November 10, 1736 - June 7, 1739*, 397.

these efforts by proposing an amendment that would exempt any plantation on which a white woman resided, effectively nullifying the proposal. Patriarchal authority would furnish yet another basis for profit maximization, enabling enslavers to invoke the preservation of white femininity in evading the escalating costs of surveillance and discipline. [13] Others sought to revise the economy of violence governing slavery by punishing those who murdered an enslaved person. Previously punishable only by monetary fine, this new law would sentence that person to "corporal punishment" and seven years of service in the garrison, after which time they would be ineligible for any government office. This proposal, however, was nullified by an amendment that would enable the accused to clear themselves of all charges by offering a sworn oath testifying to their innocence. [14] Finding themselves at an impasse, the bill was returned to committee for nearly two months, until it was presented again on March 6, 1738. Ultimately, however, no compromise was struck to institute this new economy of violence, and the bill continued to languish in committee. [15]

Taken together, these conflicting visions of racialized surveillance and violence reflect the divided aspirations of lawmakers in weighing the threat of open resistance against the impulses of speculation and profit maximization. Indeed, this conflict lays bare the outer limits of what scholars like Blackburn describe as "extravagant fantasies concerning the intentions of the slaves," a psychology of fear that "generates a species of 'rational' paranoia." [16] Yet the economy of violence underwriting slavery was precisely that—an economy underwritten by an ongoing calculus in which the often-immaterial psychological threat of widescale resistance would rarely outweigh the material promises of rice, flesh, land, and capital. Enslavers had

[13] Easterby, 429.
[14] Easterby, 430.
[15] Easterby, 513.
[16] Blackburn, *The Making of New World Slavery: From the Baroque to the Modern, 1492-1880*, 324.

embedded themselves in a global web of transactional relations that depended upon speculative capital from England and Scotland, expropriated labor from Africa and the Americas, and voracious markets throughout the Atlantic. Loosely-yet-inescapably bound through relations of violence, obligation, and self-interest, this web threatened to collapse around enslavers at virtually any moment. Wealth was not yet intergenerationally stable, and so families would frequently "ascend to or descend from the top rank within a single generation." [17] Pulled in opposing directions by the eminent-yet-abstract threat of resistance and the risk-taking impulses of profit maximization, enslavers would pursue the path of material return and short-term gratification. Thus, despite escalating acts of resistance, particularly through escape, the laws governing slavery would go largely unchanged in the years preceding the Stono Uprising.

Although lawmakers had failed to institute a series of broader reforms, they had begun to converge on the question of self-armament and the threat of widescale resistance on Sundays during the Sabbath. Whites had begun to recognize they were most vulnerable to armed resistance on Sundays, when they were engaged in their own collective activities and enslaved people were afforded wider discretion to travel the roads, enter town, and attend market. Thus, on August 18, 1739, the *South Carolina Gazette* published a notice concerning the Security Act, which would shortly go into effect on September 29. The law would require all white men to carry firearms with them to church on Sunday or pay a harsh fine. [18] In this respect, from its earliest stages, the preoccupation of white men with self-armament has been bound up with detecting and suppressing black resistance. Moreover, it is likely that enslaver people were aware of this fact, which may have structured the timing of the uprising. In a Federal Writers Project interview with a self-identified descendent of the Stono Uprising, George Cato described his

[17] Hoffer, *Cry Liberty: The Great Stono River Slave Rebellion of 1739*, 29.
[18] Wood, "Anatomy of a Revolt," 62.

ancestor as a man who not only led the uprising, but "was teached how to read and write by his rich master." [19] By this widely corroborated account, at least one of the uprising's leaders was literate and would have seen the newspaper announcing the Security Act and when it would go into effect. That members of the uprising struck for freedom less than three weeks before the Security Act's enforcement suggests they were aware of the law and chose to act strategically when white men were least likely to be armed.

The Stono Uprising began the morning of September 9, 1739, following a meeting the prior evening among a group of enslaved people who decided they would escape to St. Augustine. Led by a man named Cato, roughly forty enslaved people gathered before dawn near the Stono River, less than twenty miles from Charlestown. The small group—emboldened by the news of hostilities between England and Spain—marched on the Stono Bridge toward Hutchenson's storehouse, just fifteen miles from Charlestown. With a journey of nearly three-hundred miles ahead, the group set out in search of supplies. Knowing they would have to defend themselves in pursuing their freedom, the group broke into the storehouse to arm themselves. In the ensuing struggle, two shopkeepers were decapitated, and their severed heads were left on the front steps to dissuade pursuers. Armed with guns, which many Kongolese enslaved people had learned to use in the course of military service, members of the uprising marched another house, which they cleared out and burned before killing the owner and its other residents. The group then shifted course southward and began their march in earnest toward St. Augustine and the promise of freedom. One account, given by an unidentified white man in October 1739, recalls that several more homes were burnt as the group proceed down Pons Pons Road, killing "all the

[19] Smith, *Stono: Documenting and Interpreting a Southern Slave Revolt*, 55–56.

the white People they found in them." [20] The group's numbers continued to grow—many joined voluntarily in pursuit of their freedom, while others were conscribed to stop them from raising the alarm. At this point, several more joined and "they calling out liberty, marched on with Colours displayed, and two drums beating, pursuing all the white people they met with and killing Man Woman and Child when they could come up with them." [21]

By sheer chance, the growing uprising encountered Lieutenant Governor Bull on horseback, whose statement furnishes the only firsthand account of the Stono Uprising: [22]

> I was returning from Granville Country with four Gentlemen and met these rebels at Eleven a Clock in the forenoon, and fortunately deserned the approaching Danger time enough to avoid it, and to give notice to the Militia who on that Occasion behaved with so much expedition and bravery, as by four a Clock the Same day to come up with them and killed and took so many as put a stop to any further mischief at that time, forty four of them have been killed and Executed some few yet remain concealed in the Woods expecting the same Fate, seem desparate. [23]

By now, Bull would have encountered a group of "above Sixty, some say a hundred." Although the group pursued Bull, he managed a narrow escape, marking a turning point in the uprising. As Peter Wood argues in his seminal account of the uprisings, "Bull's death or capture would have had incalculable psychological and tactical significance." [24]

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[20] "Account of the Negroe Insurrection in South Carolina." *Stono: Documenting and Interpreting a Southern Slave Revolt.* Columbia: University of South Carolina Press, 2005. 14.
[21] *Ibid.*
[22] Bull's statement—told from the perspective of a member of the white elite—is the only surviving firsthand account of the uprising. This scarcity of primary source materials makes it particularly challenging to reconstruct the uprising in ways that do not simply reproduce the events from the perspective of whites.
[23] "Lieutenant Governor Bull's Eyewitness Account." *Stono: Documenting and Interpreting a Southern Slave Revolt.* Columbia: University of South Carolina Press, 2005. 17.
[24] Wood, Peter H. "Anatomy of a Revolt." *Stono: Documenting and Interpreting a Southern Slave Revolt.* Columbia: University of South Carolina Press, 2005. 64.

Undeterred, the group continued down Pons Pons Road on their path toward St. Augustine, gathering new recruits along the way. By afternoon, they would stop in a field toward the northern end of the road. Weary, tired, and elated at having marched more than ten miles without facing resistance, the group chose to make camp rather than cross the Edisto River and continue toward St. Augustine. The gathering consensus seemed to be that their numbers would continue to grow, and that by marching time the next morning, the uprising would have gathered enough momentum to be all-but-unstoppable. However, by four in the afternoon, a group of white planters—numbering somewhere between twenty and one-hundred—had gathered, armed themselves, and begun to march on the field. Though caught off-guard, the group nonetheless stood their ground against the planters and prepared themselves for a final confrontation. In the first wave of fire, at least fourteen members of the uprising were gunned down. The planters enclosed on foot and began to violently suppress the uprising.

Two reports offer diverging accounts of the violent suppression that ensued. More proslavery propaganda than historical evidence, the first report lauds the bravery and restraint of the planters, who "notwithstanding the Provocation they had received from so many Murders, they did not torture one Negroe, but only put them to an easy death." [25] Given the extreme violence that was visited on enslaved people for simple escapes—whippings, brandings, dismemberment, and executions—the brutal executions that ensued were surely anything but 'easy.' The second cuts to the effectual truth, recalling a far more gruesome scene in which those who attempted to escape "were taken by the Planters who Cutt of their heads and set them up at every Mile Post they came to." [26] That same report recalls a scene in which an enslaved person

[25] "Account of the Negroe Insurrection in South Carolina." *Stono: Documenting and Interpreting a Southern Slave Revolt.* Columbia: University of South Carolina Press, 2005. 15.
[26] "A Ranger Details the Insurrection." *Stono: Documenting and Interpreting a Southern Slave Revolt.* Columbia: University of South Carolina Press, 2005. 8.

approached his enslaver, who "asked him if he wanted to kill him the Negroe answered he did at the same time Snapping a Pistoll at him but it mist fire and his Master shot him tho' the Head." [27] By the time the smoke had settled, and the sun began to set, at least forty-four enslaved people, and between twenty and forty white people were dead.

Accounts also differ over whether or to what extent the uprising was subdued by nightfall. Most agree that at least thirty enslaved people escaped from the initial onslaught, continuing their march southward, which invited the possibility of another uprising. The Ashley River militia company gave pursuit, marching thirty miles south in a week before encountering the largest remaining contingent of the uprising. However, it would take nearly a month until a correspondent reported that "the Rebellious Negros are quite stopt from doing any further Mischief, many of them having been put to the most cruel Death." [28] Tensions remained high through the year and into 1740—militias were on alert, several planters around Stono deserted their homes, and a special patrol was established. More than fifteen-hundred pounds in rewards—amounting to at least 365,000 USD today—were distributed to enslaved people and Natives who supported white interests in subduing the uprising, whether through providing information or catching fugitives, who were pursued into the Spring of 1740. For many, the tensions and anxiety around the uprising would remain unresolved until three years later, when a key leader in the uprising was finally captured and publicly executed in brutal fashion.

An official report on the Stono Uprising, filed to the Assembly as part of a longer report on the tensions between South Carolina and Spanish Florida, documented these tensions. The report described a scene in which,

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[27] "A Ranger Details the Insurrection." *Stono: Documenting and Interpreting a Southern Slave Revolt.* Columbia: University of South Carolina Press, 2005. 7-8.
[28] Wood, Peter H. "Anatomy of a Revolt." *Stono: Documenting and Interpreting a Southern Slave Revolt.* Columbia: University of South Carolina Press, 2005. 65.

> every Breast was filled with Concern. Evil brought Home to us within our very Doors awakened the Attention of the most Unthinking. Every one that had any relation, any tie of Nature; every one that had a Life to lose were in the most sensible Manner shocked at such Danger daily hanging over their Heads. [29]

Although members of the Stono Uprising would never reach St. Augustine, they had shaken the plantation regime of South Carolina to its core. While many spoke of open resistance as a constant, abstract fear among whites, the Stono Uprising had exposed the brittleness of white authority and the tenuous capacity of whites to prevent or suppress such violent resistance. Indeed, if the uprising had not encountered Bull who raised the alarm and gathered the militia, the group would have continued their march toward freedom, grew their numbers through South Carolina and Georgia, and likely reached St. Augustine. The Stono Uprising shows that from its earliest stages, slavery was neither a static condition, nor one of complete powerlessness. [30] Instead, resistance to enslavement would repeatedly define the boundaries and trajectory of institutional development in South Carolina, expanding state institutions and authority in accordance with the tactics adopted by both free and enslaved black people.

The 1740 Negro Act

In the days, weeks, and eventual months following the Stono Uprising, the colonial assembly faced growing pressure to revise the slave codes by expanding patrols, enacting harsher punishments, and implementing other new forms of discipline and control. Indeed, the legislature acknowledged that speculation and profit maximization could no longer reign uncontested as the

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[29] "The Official Report." *Stono: Documenting and Interpreting a Southern Slave Revolt.* Columbia: University of South Carolina Press, 2005. 29.

[30] Aptheker, *American Negro Slave Revolts*; Camp, *Closer to Freedom: Enslaved Women & Everyday Resistance in the Plantation South*; Douglass, *Narrative of the Life of Frederick Douglass*; Harding, *There Is a River: The Black Struggle for Freedom in America*; Patterson, *Slavery and Social Death: A Comparative Study*; Rucker, *The River Flows On: Black Resistance, Culture, and Identity Formation in Early America*.

governing logic, conceding that, "The late Insurrection and Rebellion of the Slaves at Stono, is a sufficient Precaution to us, to take all the Care in our Power, to guard against any further wicked Designs they may have in Agitation." [31]The legislature would respond by forming a committee tasked with the express purpose of devising "the proper Means for relieving the People at and about Stono from the Dangers arising from Domestic Enemies." [32] On November 30, 1739, the legislature met to consider the committee's recommendations, which largely copied the earlier 'better ordering' act considered in 1737. During that meeting, the bill was amended with several clauses that responded directly to the conditions of the uprising: Enslaved men numbering more than five were prohibited from traveling without white supervisions, limits were placed on the number of enslaved people working together on public roads, and a strict ban on literacy was instituted. [33] However, like past attempts to revise the laws of slavery, conflict between the upper and lower houses of the legislature only resulted in a six-month long series of disputes over the precise nature of the new law. [34]

Legislation proceeded slowly until May 10, 1740, when the South Carolina Assembly and Governor Bull would seek to prevent another Stono Uprising by passing "An Act for the Better Ordering and Governing of Negroes and Other Slaves in This Province," or the 1740 Negro Act. [35] The bill had been under consideration for several years, yet despite numerous exposed plots and uprisings throughout the preceding decade, the Assembly had lacked the adequate impulse or consensus to treat the law with any urgency. Only a fully realized

[31] Easterby, *The Colonial Records of South Carolina: The Journal of the Common House of Assembly: September 12, 1739-March 26,1741*, 69.
[32] Easterby, 67–68.
[33] Easterby, 68–69.
[34] Easterby, 121–22; 145–46; 151–53; 220; 224–25; 330.
[35] McCord, *The Statutes at Large of South Carolina: Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers*, 7:397.

uprising—and one that nearly succeeded—would create the sufficient impetus to enact a slave code so draconian and durable that it would remain virtually unchanged until 1865.

If the 1688 Barbadian law and 1696 South Carolinian laws had laid the groundwork for a separate legal regime, premised on the inherent criminality of blackness, then the 1740 Negro Act brought that idea to its fullest and most durable realization yet. The 1740 Negro Act would largely do away with the trappings of Christian charity, which the 1688 Barbadian law and 1696 South Carolinian law had unevenly and often instrumentally invoked. Instead, the Negro Act did not simply sanction anti-black violence, but in the absence of a robust bureaucracy and organized military, expanded state capacity by vesting every white man with the violence of the state. Thus, the legitimation and security of state authority as both ideological and institutional force would now depend upon the *diffusion* of state violence across a broader population. In this respect, the Negro Act reveals how the earliest forms of governance were not constituted solely or even primarily by elites, but through the agency of black people and the prerogative of ordinary white people to wield state power. Taken together, the law sought to detect the precipitants, tactics, and techniques of resistance with new vigor, while harnessing novel forms of control and an economy of violence that sanctioned unbounded violence in response to widescale resistance.

In evaluating the significance of the Stono Uprising, some historians question whether the 1740 Negro Act was really effective or represented a meaningful expansion in state power. For these scholars, effectiveness and capacity are understood as the extent to which the law was enforced by whites and obeyed by enslaved people. On historian Darold Wax's account,

> despite the energy expended on slavery and the various programs aimed at safeguarding the colony from black subversion, no fundamental reorientation occurred. Indeed, most of

> the programs launched after 1739 were ineffective. The flurry of citizen involvement and legislative activity did not result in long-lasting or permanent change. [36]

For Wax, the Negro Act was ultimately ineffective, as it did not lead whites to 'fundamentally reorient' plantation society in response to the Stono Uprising. These failures were largely endemic to the structure of the law, since the safeguards embedded in the law would not only require cooperation among all whites in order to be effective, but also the "constant supervision" of enslaved people to resolve the "doubts and insecurities" of whites. Predictably, the law failed to achieve this end. In the years following the passage of the Negro Act, varied complaints arose: patrols of enslaved people remained irregular; surveillance of enslaved people and compulsory searches of their quarters were often loosely enforced; taverns continued selling liquor to enslaved people and encouraging them to gamble in outlawed attire; enslaved people still moved freely without permission, gathered in large numbers without supervision, and contracted their labor with and without permission.[37] [38]

I am unconvinced, however, that the South Carolina Assembly intended for the 1740 Negro Act to achieve such a herculean task or believed that such a degree of transformation was possible. Past scholarship on the Stono Uprising often treat the relationship between social change and resistance as zero-sum phenomena—enslaved people are either made docile or

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[36] Wax, "'The Great Risque We Run': The Aftermath of the Slave Rebellion at Stono, South Carolina, 1739-1745," 143.

[37] Wax, 143–45.

[38] Wax's account reveals that enslaved people inevitably found new methods of resistance that enabled them to circumvent these new restrictions, and that the private material interests of whites often superseded their commitment to enforcing new modes of surveillance, discipline, and violence. Indeed, if the Negro Act truly sought to completely subjugate enslaved people and resolve the fear of insurrection among whites, then the law was doomed from the beginning. The material interests of white elites in maximizing their gains by subjugating black bodies and expropriating their labor would always supersede their commitment to pursuing some abstract ideal of 'absolute' security. Likewise, in a context where Spanish Floridians and Natives represented equally looming, if not greater threats to the security of colonists, the "constant supervision" of enslaved people was not only untenable but could never allay the anxieties produced by imperial rivalries and the violence of settler-colonialism. Resistance and violence were endemic to the institution and the experience of enslavement, and no law could altogether resolve that anxiety or suppress the possibility of another uprising.

remain resilient; laws are either enforced or unenforced; society is either transformed or unchanged. [39] The law is a static and blunt tool, an instrument of the state whose effectiveness can be measured according to simple, vertical relationships of enforcement and obedience. Equally troubling, progress is measured according to moments of wholesale rupture and transformation, rather than an uneven struggle between change and retrenchment. Instead, I want to suggest that we understand the lasting effects of the Stono Uprising and the significance of the 1740 Negro Act in more nuanced terms, particularly in the law's capacity to expand state capacity and produce new forms of racial meaning. I explore three interrelated processes: First, the consolidation of whiteness through anti-black violence and a the institutionalization of a *logic of outside contagions,* which attributed resistance to enslavement to outside 'corrosive' forces, rather than the dehumanizing conditions of slavery. Second, I track the criminalization of blackness through a geography of fugitivity that not only criminalized black bodies in motion, but linked criminality to a broader set of capacities including literacy. Finally, I conclude by reflecting on the ways that the Stono Uprising and the 1740 Negro Act would expand those separate-but-interrelated legal orders, transforming the terrain of future struggle for both freed and enslaved black people.

Whiteness, Violence, and a Logic of Outside Contagions

Historians often describe proslavery commitments during the colonial era as being defined by patriarchalism. As Stephanie Camp argues, differences in "language, meaning systems, and values" during the colonial era would prevent planters from seeking to "convince enslaved people of the legitimacy of bondage." Instead, patriarchalism meant that slaveholders

[39] Hoffer, *Cry Liberty: The Great Stono River Slave Rebellion of 1739*; Shuler, *Calling Out Liberty: The Stono Slave Rebellion and the Universal Struggle for Human Rights*; Smith, *Stono: Documenting and Interpreting a Southern Slave Revolt*; Wax, "'The Great Risque We Run': The Aftermath of the Slave Rebellion at Stono, South Carolina, 1739-1745."

only sought "to maintain their place in the social order. [40] On this account, colonial slavery was defined by a relatively straightforward commitment to racial subjugation for the sake of racial capital and maintaining the existing patriarchal social order. Uprisings were primarily understood as an abstract threat, one that could be managed primarily through reactive exercises of state violence. Yet, as I have already shown, early slave codes—including the 1688 Barbados code and 1696 South Carolina code —purported to not simply discipline and maintain social order, but perversely, to protect enslaved people by instituting an economy of violence that demarcated and banned 'arbitrary' of violence and ensured the provision of basic necessities.

Sensing no contradiction between their religious commitments, and the violent subjugation of enslaved peoples, these early laws instituted an economy of violence that demarcated 'arbitrary' and 'justifiable' forms of anti-black violence by filtering them through a Christian theology of charity and humanity. Even if slave owners could not directly persuade enslaved people that slavery was a benevolent institution, they could attempt to persuade themselves of their just cause, foreshadowing the rise of paternalism that would proliferate during the nineteenth century. In reality, these early colonial era laws simply legitimated new forms of violence and terror by supplanting comparatively draconian forms of discipline. Yet these rhetorical and epistemological moves, however shallow, set an outer limit on the kinds of violence the law could justify. Violence, regulated in the trappings of Christian charity and hemmed in to secure the expansion of racial capitalism, was economized to ensure that 'inhumane' or 'barbaric' excesses in force would not disrupt the accumulation and flow of capital. The Negro Act sought to maintain this economy of violence by restraining "owners and other persons having the care of slaves… from exercising too great rigour and cruelty over

[40] Camp, *Closer to Freedom: Enslaved Women & Everyday Resistance in the Plantation South*, 17.

them." Clause 37 enforced this logic, maintaining that cruelty was not only unbecoming of Christians, but "odious in the eyes of all men who have any sense of virtue of humanity." [41] Invoking an instrumentalized vision of Christian theology that would secure the ongoing expansion of racial capitalism, the law only instituted monetary fines for violence toward enslaved people—including murder. This ensured that excesses in violence would not disrupt the accumulation and circulation of capital among white elites.

However, the reality of the Stono Uprising and the continued threat of widescale resistance exposed the limits of this commitment to economizing anti-black violence. As debates over the 1740 Negro Act stretched into the winter, the legislature expressed a deep concern over these delays. Citing the threat of "an Invasion from the Spaniards by Sea, and… from the French also by Land, who have now an Army on Foot behind us," lawmakers insisted that the greatest threat was in fact "an intestine enemy, the most dreadful of enemies." This enemy, of course, was the Stono Uprising, the full-blown realization of a threat that could no longer be regarded as lurking or immaterial. Nor was this new enemy singular, as the legislature insisted, "we have just Grounds to imagine [it] will be repeated." The dangers of future widescale resistance were compounded by the Stono Uprising's corrosive effects on state legitimacy. Fearful and humbled by the law's total failure to prevent the uprising, the legislature warned that "the Public Credit (without which no Government can subsist) is in Danger of being lost." [42] More than war, more than invasion, more than conquest, white legislators feared widescale resistance by enslaved people, 'the most dreadful of enemies.'

[41] McCord, *The Statutes at Large of South Carolina: Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers*, 7:410–11.
[42] Easterby, *The Colonial Records of South Carolina: The Journal of the Common House of Assembly: September 12, 1739-March 26,1741*, 97.

Consequently, the 1740 Negro Act would abridge this previously careful economization of violence, furnishing new forms of state-sanctioned violence that legally codified the detection and suppression of uprisings as the collective responsibility of *all* white people. Clause 56 cited the eminent threat posed by the Stono Uprising and any future uprising, holding that "all and every act, matter and thing, had, done, committed and executed, in and about the suppressing and putting all and every said Negro and Negroes to death, is and are hereby declared lawful." [43] Confronted with the reality of the Stono Uprising, colonists could no longer regard uprisings as a lurking, but ultimately abstract threat. Violence, once economized to preserve the material interests of white elites, was now unbounded to ensure that white authority, however brittle, would survive another uprising. No longer strictly understood in economic terms of limits and excess, violence was reframed as a duty, as a shared commitment among white men who "were obliged to put such Negroes to immediate death." Like the earlier Barbados Code, which sought to destabilize interracial alliances and ameliorate intraracial class tensions among the variegated class hierarchy of whites by legitimating new forms of anti-black violence, the Negro Act upheld violence as not just an obligation, but as a collective right that would bridge class divisions within the plantation economy. Consolidating whiteness and expanding state capacity in the absence of an organized bureaucracy and military presence, the Negro Act framed the preservation of law-and-order as the collective duty of white men, which would necessitate discretion, vigilantism, and unbounded anti-black violence. The law offered no substantive definition of an uprising, yet at the first sign of open resistance, it vested every white man with absolute discretion and total impunity in their use of violence, transforming them into judge, jury, and executioner.

[43] McCord, *The Statutes at Large of South Carolina: Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers*, 7:416–17.

This process reveals that the issue of resistance cannot be disentangled from the concept and embodiment of race—indeed, what it means to be a resisting subject is always bound up with one's racial identity. Unbounded state-legitimated violence, racialized as the collective prerogative of whites, was constructed through and against the agency of black enslaved people. Blackness, understood as the antithesis of patriarchal social order, could only be managed by legitimating new forms of state-sanctioned violence. Thus, the preoccupation with self-armament among white men was, from the beginning, driven by threats—both real and imagined—of black violence. This logic was extended again in 1743 when the South Carolina Assembly revisited the Security Act, which had structured the uprising's timing, increasing the fine for any white man who went unarmed to Church on Sundays. Framed as an "Act for the Better Security of this Province Against the Insurrections and Other Wicked Attempts of Negroes and Other Slaves," the law reveals how the white masculinist project of self-armament developed out of both paranoid fantasies of black resistance. [44] Indeed, as Colin Dayan argues, "The epistemology of whiteness depended upon the detection of blackness." [45] Resistance—both covert and overt, violent and nonviolent—was always bound up with the project of constructing, contesting, and transforming racial categories.

Ultimately, though, however much whites sought to center themselves as the rational arbiters of law-and-order, the Negro Act also exposed the internal contradictions of colonial slavery. The Stono Uprising marked a durable entrenchment in the consciousness of white South Carolinians of a *logic of outside contagions,* which held that black resistance was fomented by the corrosive influence of outside forces, rather than the dehumanizing conditions of enslavement. Whites would attribute the Stono Uprising to the effects of literacy, the influence of

[44] McCord, 7:417.
[45] Dayan, *The Law Is a White Dog: How Legal Rituals Make and Unmake Persons*, 51.

recently imported enslaved people, particularly those from Kongo and Angola, as well as the efforts of the French, Spanish, and Natives to sow unrest. The primary trouble, they argued, was that enslaved people had been taught to write, enabling them to forge passes and evade patrols. [46] Or, perhaps, it was the recent arrival of kidnapped peoples from Kongo and Angola, who resisted their experiences of enslavement. After all, during the prior decade, roughly 80 percent of all escapes published in the papers had been enslaved people from Kongo and Angola. [47] Likewise, reports that meetings between escaped enslaved people and "the Spaniards at St. Augustine has encouraged many others to make like Attempts, and even to rise in Rebellion" prompted extravagant fantasies that evaded basic facts about the dynamics of resistance. [48] By this logic, the problem of open resistance was often coming from somewhere else, whether that 'else' was figured geographically, culturally, or politically. This position—which concealed the fact that resistance was not an exogenous problem, but rather endemic to the institution of slavery—reflects what Charles Mills terms an 'epistemology of ignorance.' Understood as, "a particular pattern of localized and global cognitive dysfunctions… producing the ironic outcome that whites will in general be unable to understand the world they themselves have made," this *logic of outside contagions* arose from the confluence of anti-black racism, Christianity, racial capitalism, and civic republicanism. [49]

In attributing widescale resistance to outside contagions, these strands of thought were invoked in uneven and sometimes incommensurable ways. Underwriting each of these strands was a commitment to anti-black biological racism, or in the words of the Barbados Assembly,

[46] Easterby, *The Colonial Records of South Carolina: The Journal of the Common House of Assembly: September 12, 1739-March 26,1741*, 68.
[47] Hoffer, *Cry Liberty: The Great Stono River Slave Rebellion of 1739*, 66.
[48] Easterby, *The Colonial Records of South Carolina: The Journal of the Common House of Assembly: September 12, 1739-March 26,1741*, 100.
[49] Mills, *The Racial Contract*, 18.

the belief that African enslaved people were biologically inferior and inherent criminals. Enslavers invoked this figuration of black criminality in seeking financial compensation from the legislature for the "great suffering" *they* had endured as a result of enslaved people that were killed in suppressing the uprising. Having taken "the best care they possible could for keeping [enslaved people] in good order and demeanor" through a combination of "personal inspection" and "employing overseers," these enslavers claimed they bore no responsibility for the uprising. The Stono Uprising, they insisted, was a "misfortune" that could have "taken rise in any other part of the province," and was solely attributable to the fact that "negroes by nature are generally prone to cruelty, barbarity, and savage endeavors." [50] Understood in these terms, widescale resistance was simultaneously a function of outside contagions and inherent black criminality. The result was a state of constant vigilance: Black criminality could be managed and suppressed through surveillance, discipline, and violence, yet it was in constant danger of being activated if enslavers failed to quarantine outside contagions. By this logic, the social alienation and dehumanization of slavery were somehow either tolerable or opaque to enslaved people, who would only recognize and actively resist if sufficiently primed.

However, also underwriting this logic of outside contagions was a belief among lawmakers that the state was not only obliged to institute laws that repressed resistance and preserved slavery, but also create certain minimal protections for enslaved people. These protections, lawmakers argued, would serve as a bulwark against the threat of outside contagions. After all, these legislators contended, many enslaved people had aided their enslavers during the uprising—a fact they attributed to loyalty, rather than the eminent threat of violence now on multiple fronts, and proceeded to reward with money and clothes. Perhaps,

[50] Easterby, *The Colonial Records of South Carolina: The Journal of the Common House of Assembly: September 12, 1739-March 26,1741*, 166.

then, a comparatively 'humane' form of slavery, one in which there were rewards for "faithful service" would encourage other enslaved people to follow that "example in cases of the like nature." [51] Building on this principle, which sought to guard against outside contagions by 'humanizing' slavery, the law instituted fines to punish excessive violence against enslaved people, which would guard against the "arbitrary, cruel, and outrageous wills of every evil disposed person." For some, this commitment coexisted with a Christian doctrine that was committed to African inferiority and slavery, yet also held that the institution could be less brutal and cruel, and that such restraint was essential to one's spiritual wellbeing and eventual salvation. For others, the purpose was not solely to reduce or delimit violence and cruelty in order to confirm one's religious commitments, but also to economize anti-black violence, thereby ensuring that excesses in force would not disrupt the tenuous and unpredictable flow of capital. Indeed, as Johnson argues, "The cord of credit and debt—of advance and obligation—that cinched the Atlantic economy together were anchored with the mutually defining value of land and slaves: without land and slaves, there was no credit, and without slaves, land itself was valueless." [52] Resistance threatened to sever this cord and unravel the speculative relations that bound together enslavers, bankers, merchants, ship captains, consumers, enslaved people, and other laborers throughout the Atlantic. In this respect, insurrection laws were essential to the unstable and rapidly growing plantation regime, securing the laboring power that underwrote the expansion of racial capitalism. Moreover, land, property, and by extension, enslaved people, were fundamentally tied to one's social and political standing. Ownership demarcated the

[51] Easterby, 64.
[52] Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom*, 87.

boundaries of not only paternal authority but also citizenship and rights. [53] This commitment to the management of resistance in preserving property was likely twofold, arising from both a commitment to racial capitalism and a recognition that property was vital to one's social standing, as well as their civic personality and political membership.

Underwriting each of these commitments was a belief that black criminality could be managed by quarantining outside contagions, and that slavery could be sufficiently humanized in ways that would create the conditions for long-term stability. The crucial move, then, was to quarantine those outside contagions which might sow unrest and create the conditions for another Stono Uprising. This logic of contagions was institutionalized through a prohibitive tariff, which resulted in a ten-year moratorium on international slave trade. In this respect, insurrection laws were not simply tools of control, they were expressions of the internal contradictions of slavery, as well as the early fragility and uncertainty of white power and racial meaning. Of course, the reality which whites have continually evaded is that resistance was endemic to the experience of enslavement. However much imperial rivalries, including Spanish promises of freedom, may have created the conditions for the Stono Uprising, they could not undo the fact that resistance and outright resistance were endemic to the institution of slavery. Instead, colonists relied upon "misunderstanding, misrepresentation, evasion, and self-deception" to evade this fact, constructing new institutions and laws which they deluded themselves into believing were effective. [54] Taken together, the law economized violence in order to suppress resistance, invoking an uneven blend of Christian theology, commitment to property and

[53] Appleby, *Liberalism and Republicanism in the Historical Imagination*; Hsueh, *Hybrid Constitutions: Challenging Legacies of Law, Privilege, and Culture in Colonial America*; Peltonen, *Classical Humanism and Republicanism in English Political Thought, 1570-1640*; Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*.
[54] Mills, *The Racial Contract*, 19.

accumulation under racial capital, and a civic republican vision of citizenship. It was these varying configurations of conflicting, often incommensurable traditions that enabled whites to maintain that resistance to enslavement could simply be resolved by quarantining and guarding against outside contagions. In this respect, insurrection laws were not simply pragmatic tools of control but reflected multiple intellectual traditions that underwrote a logic of outside contagions and were then mobilized to varying degrees in framing and defining resistance to enslavement.

Geographies of Fugitivity: Criminalizing Blackness

If the Negro Act constructed whites as the harbingers of order, then it also sought to racialize blackness as a condition of criminality. It was not just, as enslavers had suggested, that black enslaved people were 'naturally prone' toward criminal acts by reason of some 'natural inferiority,' but that the law itself would now play a direct role in constructing blackness as a condition of criminality. [55] As I have already shown, this process of criminalization lay the foundation for the creation of a separate-but-interrelated legal order, one that purported to be uniquely suited for governing criminalized enslaved peoples. The Negro Act extended this process by first changing the legal status of enslaved people from freehold property to personal chattel, declaring all "Negroes, Indians, mulattoes, and mustizoes… absolute slaves, and the subjects of property in the hands of particular persons." [56]

The immediate effect of this changed status was that all black people were presumed to be enslaved until proven otherwise. Any black person in transit, whether enslaved or freed, could be stopped at the discretion of a white man and required to produce either a ticket or proof of

[55] To be sure, there are also crucial limits to the figuration of black criminality under conditions of enslavement. Indeed, the language of 'criminality' invokes the institutional structure of courts, and with it, notions of legal protections, including *habeas corpus* and due process. By contrast, the criminalization of blackness was rarely afforded such institutional designs or protections.

[56] McCord, *The Statutes at Large of South Carolina: Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers*, 7:397.

manumission. Thus, even if patrols remained inconsistent, the net effect remained that black bodies in motion were presumed to be fugitive, criminal bodies in violation of the law. [57] Indeed, as Stephanie Camp argues, this preoccupation with the movement of black bodies reveals that, "More than any other single slave activity—such as trading, learning to read, consuming alcohol, acquiring poisoning techniques, or plotting rebellions—slave movement was limited, monitored, and criminalized." [58] For Camp, this preoccupation with the movement of enslaved people shows how slavery was defined by 'geographies of containment,' wherein enslavers created both rules and physical spaces to monitor and determine the locations and activities of enslaved people. It was this power of enslavers to construct both spaces and rules that determined the placement, distribution, and movement of enslaved peoples' bodies, laboring power, and families across both time and space that maintained order and delimited resistance. [59]

Building on Camp's concept of containment, in creating the legal presumption that even freed black people were enslaved, the 1740 Negro Act produced a *geography of fugitivity*, wherein the construction and ordering of space centered on criminalizing, surveilling, and monitoring black bodies. Under a geography of fugitivity, black bodies in motion were linked to crime and presumed a threat to the prevailing order. In contrast to a geography of containment, which centers on the activity of enslavers in creating rules and constructing physical spaces to determine the location and activities of enslaved people, a geography of fugitivity locates the activity of resistance in contesting and transforming those rules and spaces. It highlights the reactionary nature of containment as a method of rule that is constantly responding to, rather than anticipating, new forms of resistance. A direct response to the geography of containment, a

[57] McCord, 7:408–9.
[58] Camp, *Closer to Freedom: Enslaved Women & Everyday Resistance in the Plantation South*, 15.
[59] Camp, 17.

geography of fugitivity locate the iterative processes of resistance, repression, and retrenchment through which those very spaces and rules are contested, violated, and transformed.

In this respect, it is not just that enslavers sought to contain and criminalize the movement of black bodies, but that such notions of criminality were produced through and against the activity of resistance and fugitivity. Derived from the Latin *fugere,* which means 'to flee,' fugitivity marks a departure from the subjugation of containment that is momentary and fleeting, yet also a recurrent possibility. When members of the Stono Uprising began their march toward St. Augustine, their intent was to escape enslavement, yet in doing so, they threw into disarray the ordering of time and space that sustained slavery. Fugitivity disrupts the materiality and temporality of containment, which is closely monitored and regimented, structured by discreet units of time and specific tasks, as well as the ordering of bodies and laboring power that ensures the maintenance of racial capital. In contrast to the strict ordering of time and space under slavery, the temporality and spatial character of fugitivity is both spontaneous and unpredictable, threatening to erupt at any moment despite the likelihood of violent suppression.

Revealing the contingency and brittleness of the white authority which maintained these geographies of containment, the Stono Uprising marked a radical moment of fugitivity that lay bare the gap between enslavers' perception of their paternal power and the reality of enslaved peoples' agency. That the South Carolina Assembly would respond by enacting a slave code so brutal it went largely unrevised until the abolition of slavery, reveals just how far the state will go in mobilizing the law to (re)contain such moments of transgressive excess. In this respect, a geography of fugitivity reveals the ways in which new forms of control and racialized notions of criminality are produced through and against processes of resistance. Yet it also points to the ways in which new forms of state power—and with it, new techniques of surveillance, control,

and violence—are rarely top-down innovations, but products of an iterative struggle between resistance, repression, and retrenchment.

The Negro Act's geography of fugitivity utilized brutal, disfiguring punishments to physically represent black criminality, creating a hierarchy among enslaved people that crudely distinguished obedience from resistance. Clause 19 of the South Carolina law instituted a series of escalating punishments for enslaved people who sought their freedom: the first escape would result in a "severe" public whipping of up to forty lashes; the second escape would result in a branded 'R' on the right cheek; the third escape another lashing and the removal of an ear. Beyond the fourth attempted escape, punishments were gendered: men were to be executed, while women were to be branded with another 'R' and disfigured by the loss of another ear. Enforcement was not taken lightly, as failure to exact the punishment would result in a series of escalating fines, culminating in the forfeiture of property. [60] Building on previous regimes of brutality, this series of escalating punishments ensured that violent would play a constitutive role in the 'ordering' of enslaved people and the criminalization of blackness. In this respect, fugitivity is always structured by the threat, but more often, the very real and embodied experience of violence. Too often, scholars of fugitivity—particularly radical democratic theorists—have elided this fact. [61] The risk is that fugitivity becomes a romanticized and aspirational practice, rather than pragmatic, often deadly choice that is made in pursuit of liberation. Fugitivity is a temporary and fleeting, a moment of punctuation in a much longer story, and this fixation on the radical and transgressive conceals the much longer periods of embodied life between these moments of excess and transformation. Put another way, fugitivity

[60] McCord, *The Statutes at Large of South Carolina: Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers*, 7:403.
[61] Shuler, *Calling Out Liberty: The Stono Slave Rebellion and the Universal Struggle for Human Rights*; Roberts, *Freedom as Marronage*.

risks concealing and perhaps even upending that which it pursues: The capacity and opportunity to choose where one lives, how they direct their labor, who they love, if or how they participate in politics. Underlying the politics of fugitivity are some tough questions: What are the costs of fugitivity? How are those costs distributed and who bears their disproportionate weight? Scholars of fugitivity have not sufficiently contended with these costs, and until they do, we ought to take pause at a politics elides the everyday in favor of the extraordinary.

Moreover, the Negro Act instituted a geography of fugitivity which went beyond the movement, ordering, and timing of bodies, developing a wider understanding of resistance that linked the threat of uprisings to a whole host of behaviors on the part of enslaved people, including literacy. Recognizing that literacy posed a threat to regulating the movement and activity of enslaved people, Clause 45 instituted a one-hundred pound fine for, "all and every person and persons whatsoever, who shall hereinafter teach or cause any slave or slaves to be taught, to write, or shall use or employ any slave as a scribe in any manner of writing whatsoever, hereafter taught to write." [62] By now, the threat of literacy would have been apparent to the South Carolina Assembly on multiple fronts—in their imperial rivalries with Spain, as well as in managing the free movement and legal knowledge of enslaved people. Driven by imperial rivalries, the clause was partly a response to the Spanish royal edict, which had promised members of the Stono Uprising their liberty in St. Augustine. Although St. Augustine had long been an aspirational symbol of freedom for enslaved people, its practical function as an incentive for outright resistance depended upon the literacy of those who could read the edict and share it with others. Colonists may have also attributed the timing of the uprising to the *South Carolina Gazette's* publication of the Security Act, which a leader within the uprising likely read

[62] McCord, *The Statutes at Large of South Carolina: Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers*, 7:416.

and disclosed to others. This incident would mark the beginning of a recurrent fear among South Carolinians toward publishing news of legal developments and political events, including the Haitian Revolution, which I explore further in Chapter Three.

Literacy posed a direct threat to the capacity of whites to manage and detect the movement and activity of enslaved people within a geography of fugitivity. In his Federal Writers Project interview, George Cato recalled that, "Long befo' dis uprisin', de Cato slave wrote passes for slaves and do all he can to send them to freedom." Camp confirms the power that enslaved people like Cato would have wielded in producing these passes, since "Tickets were enormously powerful in South Carolina and elsewhere. No mere scraps of paper, passes and tickets were animated by the power of absent owners and overseers; they spoke for slave managers and acted on their behalf, directing and overseeing the movement of enslaved people."[63] The capacity to forge tickets not only limited the ability of whites to detect and limit the free movement of enslaved people but contested and exposed the brittleness of white authority. In this respect, literacy and forging passes played a constitutive role in a geography of fugitivity which sought to contain and delimit not only the physical movement of enslaved people, but to anticipate those capacities and modes of resistance which might enable such movement. Cato's early efforts to fabricate passes before becoming a leader in the Stono Uprising reveals how concealed and outright modes of resistance cannot be neatly bifurcated and may fall back onto each other. In forging these passes—a presumably 'everyday' form of resistance—enslaved people quite literally coopted the authority and language of the law, furnishing themselves and others the freedom to move through spaces that were never meant to afford them any agency. Enslaved peoples' capacity to replicate the legal authority of whiteness, to temporarily

[63] Camp, *Closer to Freedom: Enslaved Women & Everyday Resistance in the Plantation South*, 15.

circumvent this legal regime and evade its presumption of fugitivity reveal the extent to which law is truly a language—one that can be coopted, contested, and utilized to challenge existing orders, even if only temporarily.

Indeed, more than a century after the passage of the Negro Act, Frederick Douglass would document the threat of literacy and the brittleness of white authority:

> To make a contented slave, you must make a thoughtless one. It is necessary to darken his moral and mental vision, and, as far as possible, to annihilate his power of reason. He must be able to detect no inconsistencies in slavery… The whole relationship must not only demonstrate, to his mind, its necessity, but its absolute rightfulness. If there be one crevice through which a single drop can fall, it will certainly rust off the slave's chains. [64]

On Douglass' account, and as the earlier experiences of other enslaved people like Cato confirmed, only the absolute suppression of positive capacities like reason and literacy could hope to sustain the subjugation of enslaved people. The tension between Americans' professed commitments to ideals of liberty and self-rule and their reliance on slavery was apparent to enslaved people, and this hypocrisy would slowly erode their chains, leading them to not just desire but fight for their freedom. These contradictions nourished the legal consciousness of slaves, who—convinced by this commitment that their cause was just—would seek to resist and escape their bondage. Despite the buildup and new modes of violence that the Negro Act would inaugurate, white authority would remain brittle and tenuous. Understood as a corrosive force and a condition of criminality, literacy furnished a set of capacities that bridged the narrow gap between everyday and widescale resistance. Indeed, it was likely these 'corrosive effects' literacy among enslaved people like Cato that enabled members of the uprising to circumvent the

[64] Douglass, "Frederick Douglass: Autobiographies," 337.

legal regime of South Carolina and exploit the English colony's imperial rivalries with Spain, creating the conditions for their near-victory.

The threat of literacy on multiple fronts meant that insurrection was no longer reducible to overt designs or widescale resistance, but attributable to the very capacities of enslaved people. While earlier slave codes denigrated blackness as lacking capacities of reason and independence, the 1740 Negro Act extended this logic by framing blackness as a condition of criminality. Literate enslaved people were now perpetual lawbreakers in the eyes of the state. On this account, criminality was not simply a natural propensity as the Barbados Assembly had suggested, but a perpetual condition that the law would have to detect and manage. These tensions exposed a contradiction at the core of colonial slave codes: while the law regarded enslaved people as civilly dead chattel, not civil persons, the criminalization of literacy revealed that "slaves were recognized as possessing a legal mind, a status for which they paid by being punished as criminals." [65] Enslaved people were civilly dead, yet these acts of resistance necessitated a recognition of one's rational capacities before the law, revealing how "Law can make one dead in life, and it can also determine when and if one is to be resurrected." [66]

Although a geography of fugitivity points to the ways in which new modes of control are forged in the fires of resistance, its emphasis on the relationship between resistance, repression, and retrenchment also points to the possibility of transformation. Moreover, fugitivity points toward the interrelated nature of everyday and widescale resistance in disrupting the geography of containment under slavery. Indeed, as Neil Roberts argues, "Fugitivity is at once episodic and yet a permanent facet of everyday politics. Fugitives can evade and transform the world we live

[65] Dayan, *The Law Is a White Dog: How Legal Rituals Make and Unmake Persons*, 58.
[66] Dayan, 49.

in." [67] In this respect, a geography of fugitivity reveals not only the agency of enslaved people, which was repeatedly and brutally suppressed, but also the recurrent possibility of contestation and transformation. However much new forms of control—enacted through material violence and the criminalization of blackness—sought to delimit the possibility of resistance, the authority of whites would remain incomplete and contingent. In this respect, a geography of fugitivity points to the recurrent-yet-elusive possibility of transformation, pushing us to consider future sites of resistance.

Future Resistance and Struggle

Ultimately, the 1740 Negro Act transformed the terrain of future struggle in ways that cannot be captured by simple measures of enforcement and obedience. Indeed, as Camp argues, the very division of 'resistance' and 'obedience' prevents us from understanding the varied activity of resistance. Enslaved people were "both agents and subjects, persons and property, and people who resisted and who accommodated—sometimes in one and the same act." [68] The 1740 Negro Act went beyond suppressing resistance in order to solidify racial hierarchy and ensure the accumulation of capital—it reshaped and transformed the terrain on which acts of resistance would develop and unfold. In this respect, the law expanded and remade racial hierarchy as much as it retrenched existing ideas and institutions. Yet as I demonstrate in this and subsequent chapters, enslaved people would respond in turn by developing new techniques of resistance. As Peter Wood argues in his assessment of the 1740 Negro Act, "The result was not stricter obedience but deeper mistrust; a shroud of secrecy was being drawn over an increasing portion of Negro life." [69] The 1740 Negro Act could never suppress resistance or prevent another Stono

[67] Roberts, *Freedom as Marronage*, 86.
[68] Camp, *Closer to Freedom: Enslaved Women & Everyday Resistance in the Plantation South*, 1.
[69] Wood, "Anatomy of a Revolt," 69.

Uprising—it could only reshape the terrain on which future struggles would unfold by making that terrain inhospitable to widescale resistance, thereby altering the tactics and techniques undertaken by free and enslaved black people.

In order to make the social conditions of enslavement inhospitable to resistance, the South Carolina Assembly sought to fragment trust among enslaved people and free blacks by institutionalizing incentives for informants. Although these systems of control existed prior to the Stono Uprising, they were the informal design of individual slave owners. Conversely, in the wake of the uprising, on November 29, 1739, more than thirty slaves were publicly rewarded for protecting their enslavers during the uprising or assisting in apprehending those members of the uprising who had escaped during the initial confrontation. [70] These rewards, furnished by the colonial government, ranged from clothing and cash to manumission, depending on the merit of their contributions. [71] To be sure, it remains "unclear to what extent slaves assisted whites and to what extent coercion was involved." Likewise, the motivations of those enslaved people who refused to join the Stono Uprising were likely complex, and not simply a matter of paternal control: "Perhaps the exigencies of slavery or the uncertainties of joining the freedom struggle led them to protect their lives or the lives of family members." [72] Regardless of coercion or motive, the rewards would have nonetheless had a chilling effect on trust and unity, particularly in the case of widescale resistance. The stakes were already high enough—the increased possibility of betrayal might dissuade not only individual participants, but entire uprisings.

[70] Easterby, *The Colonial Records of South Carolina: The Journal of the Common House of Assembly: September 12, 1739-March 26,1741*, 65–67.
[71] While not technically part of the Negro Act, the rewards were clearly part of the same concerted effort to preemptively suppress future uprisings.
[72] Shuler, *Calling Out Liberty: The Stono Slave Rebellion and the Universal Struggle for Human Rights*, 99.

The law also sought to suppress resistance by creating a court system that advanced the development of a separate-but-interrelated legal order governing free and enslaved black people. In this respect, although, the law authorized unbounded violence in suppressing any uprising, lawmakers recognized that slavery still depended upon delimiting and economizing anti-black violence. Within three days of their arrest, black people accused of a range of crimes would now stand trial before two Justices of the Peace and between three and five freeholders. [73] These crimes included felonies like murder, which were crimes without the benefit of clergy as defined by the common law tradition, as well as acts of resistance peculiar to slavery. This latter category included mass uprisings, poisoning any person, arson or destruction of goods and their means of production, and concealing or otherwise aiding any escaped enslaved person. Regardless of mitigating circumstances or severity, any free or enslaved person found guilty of these crimes would be sentenced to death, and the law provided no system of appeals. [74] The court also oversaw non-capital cases and was granted near-absolute discretion in punishing those crimes, "not extending to the taking away life or member, as he and they in their discretion shall think fit." Justices and freeholders were tasked with the "due and equal administration of justice," and were required to swear an oath to "truly and impartially try and adjudge the prisoner or prisoners who shall be brought before me." [75] However, the question of what constituted a just and impartial trial was almost entirely at the court's discretion.

In reality, the court system was without due process or other substantive guarantees of fairness and justice. Instead, the court proceeded from the presumptive guilt of black defendants and sought to balance social order and political stability against the financial interests of

[73] McCord, *The Statutes at Large of South Carolina: Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers*, 7:400.
[74] McCord, 7:402.
[75] McCord, 7:401.

enslavers. Citing the "want of sufficient and legal evidence" against free black people who had "harbored and encouraged" enslaved people to commit crimes, as well as the need "for the more effectual discovery and bringing slaves to condign punishment," the court instituted standards that would expedite and secure guilty sentences. [76] The testimony of Native Americans, free and enslaved black people—inadmissible in cases against whites—were made admissible against free and enslaved black defendants. Justices were empowered to issue summons, and anyone who refused to testify, including enslavers who prevented an enslaved person from testifying, could be imprisoned. [77] A guilty verdict required agreement among only two justices and one freeholder or one justice and two freeholders, less than half of the court if five freeholders were present. [78] Put another way, any free or enslaved black person could now be executed for "willfully and maliciously" burning or destroying as a little as a "stack of rice, corn or other grain," even if a majority of the court believed they were innocent. [79] By contrast, any white person accused of a felony would be tried by a jury of twelve under the common law imported from England to South Carolina in 1712. [80] In this respect, the court would, by design, reinforce already widespread notions of black criminality by racializing the purportedly neutral distinctions between guilt and innocence. Beyond these provisions, justices exercised total discretion in determining the setting, evidentiary standards, and other terms of the proceedings. Thus, free and enslaved black people who engaged in widescale resistance in pursuit of liberty were now confronted by two looming threats: On the one hand, the sanitized and routinized

[76] McCord, 7:401–2.
[77] McCord, 7:403.
[78] McCord, 7:401.
[79] McCord, 7:402.
[80] Cooper, *The Statutes at Large of South Carolina: Containing the Acts from 1682 to 1716, Inclusive*, 2:432.

bureaucratic violence that preemptively suppressed uprisings, and on the other, the brutal and unbounded state-sanctioned violence that was mobilized against widescale uprisings.

Lawmakers, cognizant that enslavers might not cooperate with the court if they feared property losses, also established a system of financial incentives and penalties within the court. Enslavers would be compensated up to two-hundred pounds, or nearly forty-thousand pounds today, for each enslaved person that was found guilty and executed by the court. Those who attempted to conceal an enslaved person accused of a crime would be fined fifty pounds for non-capital offences and two-hundred-and-fifty pounds for capital offences. [81] Questions of enforcement were structured by the fierce commitment of enslavers to their property rights, which secured not only their social and political standing, but their long-term economic prospects. Although enslavers, particularly in the wake of the uprising, were cognizant of the dangers of widescale resistance, they remained concerned with maximizing profits during an era of rapid growth and widespread speculation. It was not just the laboring power of enslaved people as a form of production and wealth generation that enslavers feared losing. Enslaved people were animate capital and a universal form of collateral that enabled enslavers to navigate a credit-based economy. Great wealth and long-term success required borrowing vast sums of money and investing those funds in the pursuit of ever more—more enslaved people, more land, more efficient modes of production. The execution of an enslaved person represented not only lost laboring power but lost capital and credit that would compound over time. Thus, the law would alter the terrain of future struggle by mediating the exigencies of racial capitalism, the survival of which hinged on the ongoing management and suppression of resistance.

[81] McCord, *The Statutes at Large of South Carolina: Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers*, 7:403.

Even as new laws were devised to deter and suppress widescale resistance, the Stono Uprising mobilized other enslaved people to resist their experiences of domination. Within a year, the Stono Uprising would foster another organized uprising. First, in June 1740, "over 150 slaves rebelled near Ashley River," and yet again, in June 1748, "a plot was uncovered among slaved living on plantations along the Cooper River." [82] News of the Stono Uprising not only traveled between plantations but crossed state lines and inspired resistance in other colonies. A multiracial conspiracy was uncovered in New York in 1741 which would have transpired under conditions closely resembling the Stono Uprising. [83] Although members of the uprising never reached St. Augustine and claimed their freedom, in each of these moments it was partly the imaginative possibilities inaugurated by the uprising which emphasized to other enslaved people the contingency of their bondage and inspired them to act. Members of the Stono Uprising confirmed what many enslaved people had experienced through everyday acts of resistance—that white authority was brittle, that the laws could be circumvented and contested, and that slavery was not an absolute condition of domination. To be sure, the violence that brutally suppressed the Stono Uprising was sweeping and tragic, yet to the extent that it inspired others to resist, it cannot be understood as an unmitigated failure. Indeed, George Cato would recall, "As it come down to me, I thinks de first Cato take a darin' chance on losin' his life, not so much for his own benefit as it was to help others." Cato had sought to help others—through forging passes and eventually leading a mass uprising—and he continued to help others by exposing the contingency of slavery and inspiring the possibility of resistance. In this respect, the 'success' of widescale resistance cannot be understood in linear and direct terms.

[82] Shuler, *Calling Out Liberty: The Stono Slave Rebellion and the Universal Struggle for Human Rights*, 91.
[83] Shuler, 91–92.

Even as expanding forms of law and violence worked to suppress future resistance, memories of the Stono Uprising would acquire a new life and ongoing salience. Although slavery was defined by "cultural alienation, reduction to the status of property, the ever-present threat of sale, denial of the fruits of one's labor, and subjugation to the force, power, and will, of another human being," uprisings and resistance—both in practice and remembrance—were characterized by a mobility across space and time that exposed the contingency of enslavement.[84] Nearly two centuries after the Stono Uprising, George Cato recalled being told by his grandfather that "his daddy often take him over de route of de rebel slave march, dat time when dere was sho' big trouble all 'bout dat neighborhood." For Cato and his family, memories of the Stono Uprising formed a genealogy of resistance, a shared inheritance with a common language and its own sense of the relationship between race, resistance, and the law. These memories exposed the contingency of slavery and the emancipatory possibilities of resisting perhaps not only enslavement but white supremacy more broadly. In this respect, if the preceding chapter sought to illustrate the mobility of law, legal regimes, and race in a transatlantic context, these moments demonstrate how resistance and struggle are neither spatially nor temporally fixed.

Conclusion

In this chapter I have demonstrated how the Stono Uprising durably altered the making of law and race in South Carolina during the early eighteenth century. In response to the uprising, the legislature would pass the 1740 Negro Act, a sweeping new law that would serve as the slave code of South Carolina until the abolition of slavery. These events illuminate the process of resistance to enslavement that was met with violent repression in order to retrench racial hierarchy. In particular, I have highlighted three durables effects of this process: First, the

[84] Camp, *Closer to Freedom: Enslaved Women & Everyday Resistance in the Plantation South*, 12.

consolidation of whiteness through anti-black violence and institutionalization of white ignorance through a *logic of outside contagions.* Second, the criminalization of blackness through a *geography of fugitivity* that not only criminalized the movement of enslaved people but also a host of capacities, including literacy. Finally, I have reflected on the ways in which the 1740 Negro Act would alter the terrain of future resistance and struggle by fragmenting bonds of solidarity and trust between enslaved people and by instituting a court system to deter and punish resistance. Despite these attempts, however, enslaved people would simply learn and navigate this technique in ways that enabled them to continue engaging in resistance and struggle. In the following chapter I track how these separate-but-interrelated legal orders would continue to expand throughout the nineteenth century. I explore how the 1740 Negro Act was deployed and enforced in response to the Vesey Uprising in 1822, a plan for one of the largest and most elaborate uprisings in U.S. history.

Chapter Three

The Vesey Uprising, 1767-1823

During the Summer of 1822, Charleston was rocked by the revelation of plans for a massive uprising by the black population of South Carolina. Led by Denmark Vesey, a freedman, the uprising would have swept across the countryside and through Charleston, where the group planned to take control of the city and sail for Haiti. Word of the uprising extended across the Charleston Neck and into countryside plantations, and by one account, a list had circulated with the names of more than six-thousand participants. However, in contrast to the unbounded violence that was mobilized and retroactively sanctioned in suppressing the Stono Uprising, members of the Vesey Uprising were arrested and tried under the 1740 Negro Act, which established a veneer of due process. By the summer's end, thirty-five men were executed, two had died in custody, and thirty-seven more were exiled beyond the U.S., preemptively suppressing one of the largest and most elaborate uprisings in American history.

In this chapter, I explore how this thickening relationship between law and slavery was managed, contested, and transformed during the nineteenth century. I argue that the Vesey Trials represented more than a moment of legal pageantry or concealed violence—the uprising and trials marked a critical juncture in a broader transatlantic struggle over the meaning of—and relationship between—law and race. I outline this relationship as an ongoing struggle between two conflicting visions of law: On the one hand, a separate-but-interrelated legal order that legitimated anti-black violence by severing rights from its concepts of law and protection, and on the other, an antislavery politics that blended the Old Testament, abolitionist discourses underwriting the Missouri Compromise, and the commitments of Haitian Revolutionaries.

In charting this struggle, I first show how the law played a pivotal role in resolving the internal contradictions of paternalism as a proslavery ideology, which simultaneously regarded enslaved people as child-like subjects who benefited from enslavement and yet also potentially violent subjects who could engage in wide-scale resistance. The problem, in other words, was that paternalism could not sustain the 'positive good' fictions that justified slavery while also suppressing resistance through unbounded violence toward enslaved people. Instead, I show how these fictions of paternalism were sustained by a separate-but-interrelated legal order that durably linked blackness to rightslessness, articulating a vision of *law without rights*.

Conversely, drawing on more than one-hundred trial records, I explore three bases of Denmark Vesey's antislavery politics: The Old Testament, abolitionist discourses around the Missouri Compromise, and the Haitian Revolution. First, I argue that Vesey invoked the Old Testament and the story of Exodus to cast slavery as a violation of natural equality and as the oppression of a chosen people who were ultimately to be redeemed and liberated. Though ordained by God, this liberation was not to be delivered without resistance and struggle, and so Vesey also mobilized Christian narratives of equality and Exodus to prescribe a masculine ethic of self-help and revolutionary violence. Second, I show how Vesey utilized the language of law and rights—particularly abolitionist discourses around the Missouri Compromise—to coopt the authority of the federal government and mobilize support for the uprising. Finally, I demonstrate how Vesey ultimately rejected the U.S. legal order, instead turning to the Haitian Revolution to forge an alternative vision of solidarity and black nationhood. Taken together, I argue the Vesey Uprising threatened both the institutional and ideological stability of a republican order in which civic virtue and self-rule hinged on the ongoing exclusion and subordination of both freed and enslaved black people.

In the final section of this chapter, I demonstrate how the courts sought to suppress Vesey's antislavery commitments by casting them as an ideological ruse and dangerous fantasy. Indeed, the courts suppressed this antislavery politics by articulating one of the earliest defenses of slavery as a 'positive good.' However, I also show how state officials went beyond retrenching the ideological order. Following the trials, both city and state officials took extensive measures to prevent another Vesey Uprising, including: the construction of a military citadel, the creation of a standing guard, and the passage of stricter laws around literacy and enslavement, the migration and manumission of freed people, and the presence of black sailors in Charleston.

This chapter is divided into four parts: First, I trace the lives of Denmark Vesey from St. Thomas, to St. Domingue, and eventually Charleston, in order to consider the conditions under which Vesey's antislavery commitments took shape. Second, I explore how enslavers attempted to sustain the positive good fiction of slavery by constructing a separate-but-interrelated legal order that durably linked blackness to rightslessness, articulating a vision of *law without rights*. Third, I utilize the trial records to recuperate three bases of Vesey's antislavery politics: The Old Testament, abolitionist discourses around the Missouri Compromise, and the Haitian Revolution. I conclude by reflecting on the enduring significance of the Vesey Uprising, showing how the court delegitimated Vesey's antislavery commitments and created the conditions for a sweeping buildup of racialized state power.

I. Resistance and Freedom in Antebellum Charleston

By most accounts, a black child, whose name went unrecorded, was born in 1767, either on the island of St. Thomas—a Danish sugar colony—or along the Gold Coast of West Africa. Having likely endured the middle passage, the child was left to survive the fields of St. Thomas, a sparsely populated island where sugar cane dominated the plantation economy. Rising before

the sun, the child would have emerged from his hut, which were ordered in long rows, rather than circles or semi-circles, to "facilitate order and supervision." [1] In the fields by four in the morning, he would work until sunset, pausing only twice for breakfast and lunch. At the age of fourteen, the child was sold to a ship captain and slave merchant, Joseph Vesey. Noting the boy's "beauty, alertness, and intelligence," Vesey brought him on as a cabin boy. [2]

However, when the ship arrived in St. Domingue, the child was turned over with 389 other enslaved people to the planters of St. Domingue, who had come to not only dominate the Caribbean sugar economy, but also produced large yields of indigo, cotton, and coffee. With a population of more than 400,000 enslaved people, the fields of St. Domingue yielded 80 percent more sugar cane than its next closest rival, British Jamaica. [3] This dizzying pace of production and its massive returns for the colony's Parisian investors was made possible by long hours and brutal conditions. At fourteen, the child would now work the same long days as an adult. Rising before the sun, he would work in the cane fields until sunset, and then spend his evenings crushing cane in the sugar mill. With virtually no reprieve from this brutal work, mortality rates were higher in St. Domingue than any other Caribbean plantation economy and the labor force was in constant need of resupply. During his first year on St. Domingue, the child would have witnessed the arrival of more than 25,000 enslaved people to the island. [4]

Had he remained on St. Domingue, it is unlikely that the child would have lived to adulthood. However, his precocious wit would alter this course. In addition to already speaking black Dutch—a mixture of African, Dutch, English, and German—the child had learned to speak near-fluent French. Learning that slave trade law required all 'newly-imported' enslaved people

[1] Egerton, *He Shall Go Out Free: The Lives of Denmark Vesey*, 8.
[2] Egerton, 16.
[3] Egerton, 17.
[4] Egerton, 18.

be free from "affliction or disease," he began to display epileptic fits during the fall of 1781. [5] When Joseph Vesey returned to St. Domingue in 1782, he was informed that the sale was void and the child was returned to him on account of his poor health. Deciding to keep him aboard, the young man was made a cabin boy and given his first recorded name by Vesey: Telemaque after Telemachus, the protagonist of Homer's *Odyssey.* Unlikely by coincidence, Telemaque displayed no further signs of epilepsy after escaping the deadly fields of St. Domingue.

Telemaque's life would take yet another turn in 1783, when Captain Vesey decided to settle in Charleston. For the next seventeen years, Telemaque would serve as a domestic servant, and within the first five years, he would take a new name, "Denmark." As a domestic servant, Denmark Vesey settled into a life which afforded him a degree of autonomy to the fields of Saint Domingue. This work frequently took Vesey outside the home and into the city, where he could move without direct supervision. Vesey soon married an enslaved woman, Beck and they would have three children: Sandy, Polydore, and Robert. After seventeen years of enslavement in Charleston, Vesey's life would take a fateful turn. On November 9, 1799, the East Bay Lottery announced the winning ticket, '1884,' which guaranteed Denmark Vesey a $1500 prize. Suddenly, with enough funds to purchase his freedom and begin a new life, at thirty-three, Vesey was manumitted from Captain Vesey at a cost of $600. [6] However, the owner of Vesey's wife and children would make no such agreement, and so his family would remain enslaved. Vesey—no stranger to the horrors and inhumanities of slavery after thirty-three years of enslavement—confronted this cruel denial by turning toward new modes of survival and resistance.

The injustice of seeing his family remain enslaved was compounded by the fact that for every gain he made as a freedman, Vesey would confront new modes of oppression. In his first

[5] Egerton, 20.
[6] Egerton, 73.

years of freedom, Vesey became an independent businessowner and an active member of Charleston's African Methodist Episcopal (AME) Church. After purchasing his freedom, Vesey took up residence on Bull Street and converted the front room of his home to a storefront, where he found success as an independent carpenter and contractor. [7] Yet during this period, more than one-third of the enslaved population also worked as skilled contract laborers. This forced freed black laborers like Vesey into a race toward the bottom that frequently culminated in working for substantively lower wages. [8] Moreover, Vesey now found himself the member of a class—freed black people—whose hard-won freedoms were repeatedly targeted and delimited by white elites.

Yet these newfound pursuits were stymied by both existing and novel structures of domination. This punitive legal regime helped create the conditions for the Vesey Uprising by not only restricting Vesey and other freed peoples' limited freedoms, but further delimiting the tenuous spaces of privacy and agency which enslaved people had claimed for themselves in Charleston. In 1820, more than 140 white men—most of them enslavers—submitted a petition to the South Carolina legislature, establishing three grievances that required legislation: first, the growing "number of Free Negroes and coloured people," second, the "*exclusive* worship" of freed and enslaved people at the AME Church, and a final "evil… one of the greatest magnitude," those "suffering Schools" and other "assemblages" which taught enslaved people to read and write. [9] In addition to establishing the prevailing concerns of enslavers, the petition reveals how the conditions of urban enslavement often afforded enslaved people a relative autonomy compared to their rural counterparts. Charleston's majority-black population, the growing presence of free black people, enslaved peoples' opportunities for free movement,

[7] Lofton, *Denmark Vesey's Revolt: The Slave Plot That Lit a Fuse to Fort Sumter*, 76–78.
[8] Egerton, 54.
[9] Egerton and Paquette, "Petition, October 1820," *The Denmark Vesey Affair: A Documentary History*, 55–56.

inconsistent slave patrols, the density of black-led institutions, and the rise of abolitionist discourses all repeatedly stymied whites' aspirations of absolute control. [10] Thus, while much of the institutional structure designed to govern slavery was settled by the 1740 Negro Act, urban enslavers continued devising new modes of surveillance, discipline, and control. Seeking to reinforce the laws and institutions which sustained slavery and suppressed resistance to enslavement, whites struck at two overlapping concerns that directly affected Vesey: the manumission and migration of freed black people and free worship in black-led churches.

That year, the state legislature, citing "the great and rapid increase of free negroes and mulattoes in this State, by migration and emancipation," passed a law outlawing the manumission of enslaved people by their enslavers. [11] Instead, manumission could only be secured through a request, submitted by enslavers to be approved by an act of the legislature. Likewise, freed black people were prohibited from migrating to the state. Any freed black person suspected of being a migrant was to be "apprehended and carried by any white person" to appear before a justice of the peace who would determine their legal and could order their deportation across state lines. [12] This 'border crisis' was only loosely connected to reality. Although the freed black population steadily grew during the early nineteenth century, the group never constituted a significant portion of the population: In 1800, 3,185 "free non-whites," resided in South Carolina, accounting for roughly 0.9% of the population, and over the next twenty-years, their numbers only grew to account for 1.4% of the population. Moreover, despite increasing rates of manumission and migration, the states' enslaved population continued to grow: In 1800,

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[10] Harding, *There Is a River: The Black Struggle for Freedom in America*; Lofton, *Denmark Vesey's Revolt: The Slave Plot That Lit a Fuse to Fort Sumter*; Powers, *Black Charlestonians: A Social History, 1822-1885*; Egerton, *He Shall Go Out Free: The Lives of Denmark Vesey*; Chakrabarti Myers, *Forging Freedom: Black Women and the Pursuit of Liberty in Antebellum Charleston*.
[11] McCord, *The Statutes at Large of South Carolina: Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers*, 7:459.
[12] McCord, 7:460.

enslaved people constituted 42.3% of the population, and by 1820 this number had grown to 251,783, or 51.4% of the population. [13] Charleston mirrored these broader trends: In 1822, the population of Charleston remained majority black with only 10,653 whites in comparison to 13,504 enslaved people, and 623 free people of color. [14] Taken together, the anxieties of whites around the 'rapid growth' of the freed black population were less grounded in empirical reality than the perception of freed black people as a threat to the brittle authority of enslavers.

As a freed person, Vesey also found new meaning as a congregation member and class leader in the African Methodist Episcopal (AME) Church in Charleston. Founded by Reverend Richard Allen, the church had developed in response to an incident in Philadelphia at St. George's Methodist Episcopal Church when "black members and local preachers were pulled from their knees during prayer and told to go to the seats designated for blacks." [15] Indeed, as Glaude argues, the founding of the AME Church marked the beginning of the independent black church movement, and as it expanded, it underwrote "the first effective stride toward freedom among African Americans… the first covenantal convening of the nation." [16] Although Charleston statutes passed in 1800 and 1803 prohibited majority black congregations and only permitted worship by black people after sunrise and before sunset, city officials had not consistently enforced those laws. [17] This indifference began to shift as the AME Church was perceived by whites as a radical and corrosive invasion of northern sentiments. The AME Church, influenced by the radical commitments of Quakerism, had been a hotbed of abolitionist discourses. Whites reviled the notion of black people—whether enslaved or freed—studying the

[13] 1800, 1820 U.S. Census.
[14] Mills, *Statistics of South Carolina, Including a View of Its Natural, Civil, and Military History, General and Particular*, 425.
[15] Glaude, *Exodus! Religion, Race, and Nation in Early Nineteenth-Century Black America*, 24.
[16] Glaude, 57.
[17] McCord, *The Statutes at Large of South Carolina: Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers*, 7:436, 448.

Bible without supervision concerning its paternalist underpinnings. [18] City officials repeatedly struck at the church through prohibitive ordinances and mass arrests, threatening one of the few places that Vesey could enjoy his newly purchased freedom. Moreover, the AME Church provided an opportunity for Vesey to develop many of the lasting friendships and bonds of solidarity which would underwrite the uprising. Indeed, many of the leaders who were eventually tried and executed for their links to the uprising were class leaders of the AME Church.

II. *Law Without Rights*: Paternalism and Anti-Black Violence

The Vesey Uprising took shape during a period of contestation regarding the legitimacy of slavery as a 'positive good,' wherein a separate-but-interrelated legal order would prevent arbitrary violence toward enslaved people without giving them rights. In contrast to the Stono Uprising—during the Colonial Era when patriarchal justifications for enslavement prevailed—nineteenth century enslavers primarily invoked paternalistic discourses. The predominant logic was no longer that white patriarchal authority should simply be obeyed, either without question or in response to coercive violence. Instead, the Vesey Uprising took shape during a period when many still framed slavery as a necessary and inescapable evil, but increasingly insisted that enslaved people should obey their enslavers because enslavement ultimately *benefited* them. Freedom was no longer an aspiration to be coercively suppressed but a ruse to be revealed, an illusory and ultimately empty promise for enslaved people. In this respect, the Vesey Uprising reveals how paternalism as a proslavery ideology would evolve and adapt throughout the nineteenth century. Under the guise of paternalism, it was the deprivation of rights—in other words, giving the promise of mere legal protection, or *law without rights*—that whites purported would safeguard enslaved people.

[18] Egerton, 110.

This paternal logic, which justified unfree labor on the basis of white authority and benevolence, in turn altered whites' perceptions of—or at the very least, their justifications for—anti-black violence. Although the 1740 Negro Act still held that uprisings and other forms of outright resistance warranted unbounded violence, whites became increasingly critical of those 'less justifiable' forms of violence. Perhaps most notably, a growing cross-section of whites identified the murder of enslaved people by whites as the form of violence which the law neither proportionally punished nor adequately deterred. From the outset, the racial legal order governing enslaved people had delineated between purportedly justifiable and arbitrary forms of violence. The goal—as I demonstrated in chapters one and two—was not to protect enslaved people, but to economize the violence endemic to slavery, securing the expropriative relations endemic to racial capitalism. These forms of economization—including delimiting violence against enslaved people and compensating whites for damages and losses to property—ensured that anti-black violence did not disrupt the relationships of expropriation underwriting slavery. Among those arbitrary forms of violence, the murder of enslaved people represented the greatest threat to the interests of racial capital. The slave codes of South Carolina, however, did not reflect this loss: Since 1690, the murder of an enslaved person by a white person resulted in a simple monetary fine.

By contrast, questions around murder were long settled in the common law tradition that South Carolina followed for whites. In 1712, the South Carolina Assembly adopted the penal code of England, which outlined a series of distinctions between murder and manslaughter, the right of self-defense, and other circumstances around murder that warranted benefit of clergy—a right that South Carolina maintained well into the nineteenth century, long after most states had abdicated the tradition. The punishment for murder of whites—exempting cases of self-defense

or manslaughter by other whites—was capital in nature. [19] These racialized distinctions, of course, were also deeply gendered in ways that illuminate the parallels between the paternal authority that women and enslaved people experienced. In the common law tradition, it was a felony for a husband to kill his wife, yet a woman who murdered her husbands was altogether treasonous, as though she had betrayed a master or ruler. [20] Judged against this common law tradition, the laws governing murder threw into sharp relief the gap between the racial legal orders governing whites and the increasingly variegated hierarchy of freed and enslaved black people. Regarded by many as antiquated, elected officials, judges, abolitionists, and proponents of slavery had begun to converge on the murder of enslaved people as early as 1791 in *State v. Gee*. [21] These debates around violence—particularly the distinction between legitimate and illegitimate forms of antiblack violence—underwrote a proslavery racial legal order that sought to resolve the contradictions of paternalism by unevenly blending legal proceduralism, rights, and anti-black racism.

A case during the Fall of 1819 illuminates the contours of this separate-but-interrelated legal order: An enslaved woman—whose name went unrecorded—was murdered by her female enslaver. Although an all-male jury, persuaded by male lawyers, found the woman guilty and offered a stinging rebuke of her conduct, the court could only assess a simple monetary fine. On October 9, 1819, the *Charleston Courier* reported on the case, posing the question: "If the decision of the Jury be correct… who will not say, let the murderer be brought to condign punishment?" [22] The first trouble was the deficiency of existing laws and procedures. Judged

[19] Cooper, *The Statutes at Large of South Carolina: Containing the Acts from 1682 to 1716, Inclusive*, 2:418, 420, 479, 483, 507.
[20] Stretton and Kesselring, *Married Women and the Law: Coverture in England and the Common Law World*, 13–14.
[21] Fede, *Homicide Justified: The Legality of Killing Slaves in the United States and the Atlantic World*, 174.
[22] Egerton and Paquette, "*Charleston Courier,* Sunday, October 9, 1819," *The Denmark Vesey Affair: A Documentary History*, 49.

against the crime of murder in the common law tradition, a simple monetary fine was a patently disproportionate punishment. Confronted with the problem of proportionality, which revealed the injustice and inhumanity of the law, enslavers and supporters of slavery engaged in a simple-yet-effective rhetorical move: they sought to frame the violence and excesses of slavery as the function of a cruel and barbaric past, insisting upon 'humanizing' the present institution. This paternalist view—highlighted in the *Charleston Courier*—held that disproportionate punishments for murderer were a function of past wrongs that could be righted through just and humane laws:

> Shame on the framers of such a law! We repeat it, in behalf of justice and humanity—shame to the man who could be so far influenced by interest and prejudice as to give his voice in favor of a law which would be a disgrace of any country! …[We] recommend to the consideration of the legislature the Propriety of making Capital such murder in the first degree, and of increasing the punishment in cases of murder in the second degree and of killing by undue correction. [23]

Here, the limits of paternalism came into full view: While patriarchalism could historically accommodate arbitrary and excessive violence by compensating enslavers for 'property damages,' paternalism's logic of protection required *some* show of benevolence and outrage, however much a ruse. Moreover, such outrage—designed to sustain the fictions of paternalism—reveals how the division between 'arbitrary' and 'legitimate' forms of anti-black violence was repeatedly redrawn to secure the tangled interests of the state and racial capitalist order. Distancing themselves from the ongoing brutalities of slavery, these paternalist discourses constructed excessive violence as an aberration that could be delimited by moving closer to the protection of common law enjoyed by white citizens, thereby humanizing enslavement.

[23] *Ibid.*

In expressing their outrage at the least defensible forms of violence, paternalists sought to legitimate those forms of violence which whites could invoke to discipline enslaved people in ways that were purportedly beneficial. Enslavers and supporters of slavery mobilized paternalist discourses to not only condemn murder in ways that indirectly legitimated other 'justifiable' forms of anti-black violence, but also durably link blackness to rightslessness. In this respect, the displacement of 'illegitimate' or 'excessive' violence yielded subtler forms of control by reframing black rightlessness as a form of protection. This uneven blend of proceduralism, paternalism, and anti-black racism severed law and legality from any concept of rights for enslaved people. It produced, in other words, *law without rights.* In an 1820 letter to the state legislature, Governor Geddes articulated this view of black rightslessness:

> The rules of reason Justice and religion, require that the punishment for willful and deliberate murder should be the same in all cases; and it is to be observed, that a slave being deprived of his natural right of Self-defence against a white man, the killing of him by the latter, receives from this circumstance additional aggravation and demands at least equal punishment. [24]

On Geddes' account, the deficiency of this gap between crime and punishment was exacerbated by the issue of self-defense: where the natural right of self-preservation empowered whites to defend themselves, slave codes held that enslaved people who acted violently toward whites—even in self-preservation—would be put to death. On this account, blackness was severed from the most basic tenet of the rights-bearing individual: the right, and in most cases, duty of self-preservation. By contrast, since 1712, the South Carolina Assembly had recognized the right of

[24] Egerton and Paquette, "Governor John Geddes, Message to the South Carolina State Legislature," *The Denmark Vesey Affair: A Documentary History*, 60.

self-defense in murder cases involving white men. [25] The experience of freed and enslaved black people was, then, one of *law without rights,* a condition of obedience to paternal authority that would purportedly protect black people by depriving them of rights.

Freed and enslaved people would still exercise meaningful forms of agency, but they did so under a separate-but-interrelated legal order premised on white authority and black inferiority that was designed to suppress acts of survival and resistance. Instead, paternalism held that the question of preservation fell to whites who were duty-bound to expand a separate-but-interrelated legal order that invoked logics of justice and proportionality but evacuated of any concept of rights. Paternalism furnished a new discourse to conceal the economization of violence: whites were dutybound to protect enslaved people from arbitrary forms of violence against which they were unable to retaliate and therefore 'defenseless.' It was not simply that the law would guard the economist interests of enslavers, but under the guise of paternalism, that the law would in fact *protect* enslaved people by depriving them of rights. The law would assume the protective function of rights: with better procedures and adequate punishments, whites could effectively resolve the tenuous status of rightless enslaved people, sustaining the fiction of paternalism. Indeed, Judge Wilds invoked this logic during an 1806 trial, when he condemned a man who brutally murdered an enslaved person for his invocation of the law: "You have profanely pleaded the law under which you stand convicted, as a justification of your crime. You have held the law in one hand, and brandished your bloody ax in other, impiously contending, that the *one* gave a license to the unrestrained use of the *other*." [26] The trouble, then, was not the condition of rightslessness or the violence endemic to slavery but an issue of certain 'excessive'

[25] Cooper, *The Statutes at Large of South Carolina: Containing the Acts from 1682 to 1716, Inclusive*, 2:420.
[26] Egerton and Paquette, "Courtroom Speech of Judge Samuel Wilds," *The Denmark Vesey Affair: A Documentary History*, 42.

or 'inhumane' forms of violence that claimed the prerogative of law. These excesses lay bare the contradictions of paternalism, which claimed a fiction of 'positive good' that was inherently unsustainable under conditions of enslavement.

To be sure, some experience of *law without rights* was shared by a breadth of legal subjects, which included freed and enslaved black people, as well as women, children, and to a certain extent, propertyless whites. These experiences with and relations to the law were categorically different from the *law without rights* that freed and enslaved black people experienced. In contrast to the separate-but-interrelated legal order governing freed and enslaved black people, the common law tradition provided varying degrees of standing to propertyless whites, women, and children in ways that mitigated the precarity of their legal subjugation. Propertyless whites—barred from voting in elections or holding office—experienced a degree of rightslessness throughout the Colonial and Antebellum Eras. As Pocock argues, this link between property and rights was the product of a much longer republican tradition. By the fifteenth century, "the individual took on positive being primarily as the possessor of rights—rights to land, and to justice affecting his tenure of land." [27] Thus, the link between property and rights—or one's civic standing and persona—was long entrenched in ways that precluded the vast majority of people from the status of rights-bearing individual while simultaneously rendering them legal subjects whose obedience was expected. Indeed, it was only in 1810 that the legislative assembly amended South Carolina's 1790 Constitution to qualify its voting and officeholding requirements based on property holdings based on duration of residency. [28]

[27] Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, 335.
[28] South Carolina General Assembly, "Constitution of the State of South Carolina," Ratified June 13, 1790, Amended December 19, 1810.

Joseph Story, a Supreme Court Justice from 1812-1845, joined the common law tradition in categorizing children, "idiots," and "lunatics" as legal incompetents requiring oversight. [29] Like the status of enslaved people, this subjecthood and its expectations of obedience was codified in law, but its basis resided in naturally occurring differences. Children, as legal incompetents, were born by the wife but ultimately the subjects of paternal authority: "the custody of the children generally belongs to the husband." [30] The status of children as legal incompetents was, however, only temporary.

Although women were also legal incompetents, their subordination was primarily constructed through marriage and coverture. Story supported Blackstone's account of coverture and marital unity "in most cases," a definition that was regularly cited until the 20th century: [31]

> [T]he husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and *cover*, she performs every thing; and is therefore… under the protection and influence of her husband, her *baron*, or lord; and her condition during her marriage is called her *coverture*. Upon this principle, of a union of person in husband and wife, depend almost all the legal rights, duties, and disabilities, that either of them acquire by the marriage. [32]

Coverture simultaneously established partnership and subordination by depriving women of an independent legal identity. As Liebell notes, "Under the rules of coverture, women could not sue or be sued, control the wages they earn, own or control real estate and personal property, freely

[29] Story, *Commentaries on Equity Jurisprudence: As Administered in England and America*, 2:581–85.
[30] Story, 2:596–97.
[31] Story, 2:621.
[32] Blackstone, *Commentaries on the Laws of England: A Facsimile of the First Edition of 1765-1769*, I:430.

enter into contracts, defend a lawsuit, sit on juries, or design their wills." [33] Like enslaved people, women were subject to a paternal authority that claimed to protect and ultimately benefit them by depriving them of rights, and they experienced under coverture an eradication of the self and a foreclosure of legal standing.

Although the common law tradition deprived women of legal standing, slavery was often an exception in that regard. As Jones-Rogers demonstrates in her illuminating history of female enslavers, slavery was an early site of socialization for women to develop their understandings of race, law, property, and violence. [34] Female enslavers claimed meaningful forms of agency under conditions of constraint and both the law and courts supported these efforts. Anti-black violence was explicitly gendered as the purview of both men and women. The 1740 Negro Act empowered both 'masters and mistresses' to surveil and discipline enslaved people by writing passes, monitoring their activity, searching their quarters, and whipping those who refused to obey. [35] To limit the constraints of coverture, female enslavers would negotiate marriage contracts, including "deeds of gift, deeds of trust, and wills that granted her control over all property she already owned or would acquire during her marriage." [36] A precursor to prenuptial agreements, these contracts were written with painstaking detail to carve out limited forms of standing for women. To be sure, the common law tradition was—and remains—deeply patriarchal but its account of race, violence, and property were durably racialized in ways that enabled women to claim limited forms of standing and agency. Much like the experience of white indentured servants in Chapter One, the creation and enforcement of a separate-but-

[33] Susan Liebell, "Sensitive Places: Originalism, Gender, and the Myth of Self-Defense in *District of Columbia* v. *Heller,*" 14.
[34] Jones-Rogers, *They Were Her Property: White Women as Slave Owners in the American South*, 4.
[35] McCord, *The Statutes at Large of South Carolina: Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers*, 7:404, 408–10.
[36] Jones-Rogers, *They Were Her Property: White Women as Slave Owners in the American South*, 31.

interrelated legal order to govern freed and enslaved black people necessitated empowering a breadth of differently situated individuals to enforce that order, even as the common law tradition stratified and subordinated them.

In sustaining the positive good fiction of paternalism, this separate-but-interrelated legal order did not seek structural coherence. Instead, it articulated a concept of law without rights, underwritten by contradictory visions of blackness. It sought to preserve relationships of violence and expropriation in spite of growing scrutiny by reframing violence as a problem of indiscretion that could be resolved with new laws. Indeed, much of the trouble with debates around paternalism is their efforts to either resolve these internal contradictions into a coherent philosophy, or to argue they represent paternalism's marginal role in the politics of slavery. [37] Yet whiteness is a contradictory ideology grounded in ignorance of oneself and the world, and so such efforts are bound to fail in their representations of paternalism. [38] As I demonstrated in the preceding chapter, the internal logics and laws of slavery were rife with contradictions from the outset: Whites repeatedly attributed resistance to enslavement to a host of outside factors, rather than the dehumanizing conditions that were endemic to slavery. This process, which I term a logic of outside contagions, was essential to both consolidating whiteness and institutionalizing white ignorance. As the white rights-bearing subject became increasingly predicated on the subjugation of blackness, these contradictory figurations of blackness became an essential part of—and existential threat to—that incommensurable identity. Thus, I want to suggest a different tact—reading the contradictions of paternalism as a feature endemic to whiteness as an ideology, rather than an act of misrepresentation or a problem of historiographic interpretation.

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[37] Jordan, *White over Black: American Attitudes Toward the Negro, 1550-1812*; Genovese, *The World the Slaveholders Made: Two Essays in Interpretation*.
[38] Baldwin, *The Fire Next Time*; Mills, *The Racial Contract*; Turner, *Awakening to Race: Individualism and Social Consciousness in America*; Mills, *Black Rights / White Wrongs: The Critique of Racial Liberalism*.

It was the mounting visibility of these contradictions—particularly to abolitionists and other critics of slavery—that moved many enslavers and supporters of slavery toward vocal criticism of laws governing murder. The *Charleston Courier,* for example, emphasized the "indignant horror" which "strangers," in other words, northerners, "must feel" upon learning about the anemic laws concerning the murder of enslaved people. [39] The problem, then, was not strictly one of justice and proportionality, but of political visibility. Speaking to this visibility, Governor Geddes couched the visible insufficiency of the law within the broader context of the Missouri Question and the uncertain future of slavery:

> The Missouri question, which was agitated during the last session of Congress, and may be revived at the present… should put us upon our guard, and the mischievous effects of which we should counteract by the most efficient measures. I forbear, however, to enter into detail on this delicate subject—satisfied that your own discretion will readily suggest the proper course of conduct to be pursued. [40]

Rather than speak directly to the 'delicate' matter, Geddes instead deferred to the legislature, likely trusting that officials would make the smallest possible concessions to stymie abolitionists and other critics. For Geddes, the political question was one of 'efficiency,' rather than justice, in the interest of preserving the institution of slavery. In this respect, paternalist discourses which blended logics of justice and proportionality with a concept of black rightslessness functioned as a political cover. Ultimately, the political stakes of 'excessive' forms of anti-black violence were a matter of political concession in the interest of sustaining not only racialized social and political hierarchies, but the expropriative relations essential to racial capitalism.

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[39] Egerton and Paquette, "*Charleston Courier,* Sunday, October 9, 1819," *The Denmark Vesey Affair: A Documentary History*, 49.
[40] Egerton and Paquette, "Governor John Geddes, Message to the South Carolina State Legislature," 60.

Despite this relatively broad consensus that "the willful murder" of enslaved people constituted a legitimate political concern, the state legislature failed to institute an effective solution. On December 20, 1821, the state assembly would pass "An act to increase the punishment inflicted on persons convicted of murdering any Slave," which instituted the death penalty without benefit of clergy. However, the law adopted the common law distinction between 'willful, malicious, and deliberate murders' and manslaughter committed in "sudden heat and passion." Unlike manslaughter, which remained a felony punishable by a lengthy prison sentence (or death if the accused was black), the murder of an enslaved person was punishable only by a simple monetary fine of up to five hundred dollars and six months imprisonment. [41] Of course, the testimony of enslaved people remained inadmissible against whites, making it exceedingly difficult to meet the legal threshold of malice in securing murder charges. Charges of manslaughter also met legal challenges that effectively nullified the law. In *State v. Raines* (1826), the court held that since manslaughter was a crime perpetrated only by "men standing on equal footing in society," whites could not be prosecuted under manslaughter in cases involving enslaved people. [42] Here, the reality of law without rights became fully apparent. Without the standing afforded by rights-claiming, the protection (and death) of enslaved people remained a matter of white discretion. Unable to secure murder charges and unable to prosecute whites for manslaughter, the law effectively reverted to its original form: The murder of enslaved people remained effectively punishable only by monetary fines.

Between 1821-1849, of the twelve whites found guilty of murder and sentenced to death, none of their cases involved an enslaved victim. [43] It was only in *Posey v. State* (1849)—nearly

[41] McCord, *The Statutes at Large of South Carolina: Containing the Acts from 1814, Exclusive, to 1838, Inclusive*, 6:158.
[42] Morris, *Southern Slavery and the Law, 1619-1860*, 179.
[43] https://deathpenaltyusa.org/usa1/state/south_carolina.htm

three decades after the law's passage—that an enslaver, Martin Posey was executed for the murder of an enslaved man, Appling. The murder of Appling, however, was likely a tertiary concern in gathering the testimony that was necessary to convict Posey. Furnished by his own overseer, the testimony revealed that Posey had promised to free Appling in exchange for murdering his wife, Matilda, so that he could marry her sister, Eliza, thereby evading South Carolina's strict remarriage laws. However, after Appling murdered Matilda, Martin then killed Appling in order to conceal any evidence of his plans. [44] Had the murder of Appling not also involved Posey as an accessory to his own wife's murder, it is unlikely that his overseer would have testified against him. In this respect, the execution of Posey likely functioned to shore up a patriarchal legal order premised on legal union and the deindividuation of women.

Taken together, this series of cases illustrate how paternalists sought to advance the fiction of slavery as 'positive good' by prescribing *law without rights*. It was in this context—of efficient political concessions which claimed to 'protect' enslaved people from the excesses and inhumanities of slavery while constructing blackness as a condition of rightslessness—that Denmark Vesey would witness his wife and children remain enslaved. Vesey and his family were simultaneously rightless subjects without agency, unable to defend themselves from 'illegitimate' forms of violence, and yet also potentially violent, resistant agents who had to be subject to surveillance, coercion, and violence. Rights—or more precisely, the absence of rights—were essential to maintaining these contradictory visions of blackness. Forced to justify the positive good fiction of enslavement under conditions of growing visibility and scrutiny, the result was a separate-but-interrelated legal order which sought to distinguish between 'arbitrary' and legitimate' forms of anti-black violence. Paternalists sought to resolve the contradictions

[44] Fede, *Homicide Justified: The Legality of Killing Slaves in the United States and the Atlantic World*, 184–85.

between claims of a benevolent slaveholding society and the expropriative reality of black rightlessness by arguing that *law without rights* could guard against those arbitrary, excessive forms of violence. Yet it was this condition of rightlessness that repeatedly stymied the law in delimiting violence against enslaved people at the most basic level: in preserving their own lives.

III. The Vesey Trials

Planning for the Vesey Uprising began during the winter of 1821. Among his 'lieutenants,' Vesey's inner circle of leaders included Peter Poyas, Rolla Bennett, Monday Gell, Ned Bennett, and Jack Pritchard, all members of the AME Church. The uprising was predicated upon both hierarchy and secrecy—all orders originated from Vesey, and only these five men directly reported to him. Each lieutenant was tasked with recruiting captains who would maintain individual companies with minor recruiters. The resulting structure was distinct companies, wherein members knew only the leader who recruited them, preventing any single traitor from divulging the entire leadership of the uprising. Egerton confirms this structure, noting that two men, "John and Bram, both of whom worked in Jonathan Lucas's mill, were either unaware that either was 'engaged in the plot until they met in jail.'" [45]

Preparations were extensive—Vesey and his fellows procured spears and bayonets, horses to be ridden in raising the alarm up the countryside, and disguises including wigs. By most accounts, the plot was both elaborate and widespread—counts vary in testimony between four- and nine-thousand, but witnesses testified that a list of participants with six-thousand names was circulated. Word of the uprising extended from the city to Johns Island near Stono, James Island across the Ashley River, and up the Charleston Neck into rural plantations. At midnight on July 14, Bastille Day, "house servants were to kill their Masters," and enslaved

[45] Egerton, *He Shall Go Out Free: The Lives of Denmark Vesey*, 139.

people along the Neck—the northern suburbs—were to set fire in designated locations while preventing any white person from raising the alarm. Enslaved and freed people in Charleston were to take control of key locations throughout the city, including the arsenal and night watch's guard house, and to ride the streets, killing anyone who attempted to raise the alarm or mount an organized resistance. [46] Testimony by Joe LaRoche, an enslaved Charlestonian, also suggested that Vesey had even contacted Haitian revolutionaries who would aid the uprising. [47] If we regard the aggregate testimony as credible, then the Vesey Uprising was the one of largest and most elaborate planned uprisings in American history.

Plans for uprising took shape in total secrecy until May of 1822. However, these carefully guarded plans began to unravel on May 22, after William Paul shared them with an enslaved man, Peter Prioleau. Troubled by threat of violence and disorder –or perhaps fearing retribution for his complicit knowledge—Prioleau reported the plan to his friend, William Penceel, a successful freedman and member of Charleston's Brown Fellowship Society. [48] Penceel urged Prioleau to report the plans, who after five days, divulged details of the uprising to his enslaver, John Prioleau. William Paul was arrested, detained in solitary confinement, and likely tortured

[46] Egerton, 135.
[47] Egerton and Paquette, "The trial of Rolla, a negro man, the slave of His Excellency, Governor Bennett--Jacob Exson, Esq. attending as Counsel for his owner," *The Denmark Vesey Affair: A Documentary History*, 162–66.
[48] Where Vesey's status as a freedman was vilified and delimited at every turn, there were also limited exceptions to the condemnation of freed black people. Most notably, Brown Fellowship Societies coupled the aesthetic and biological valorization of light-skinned black people to economic security and legal status, constituting a liminal freedom. Founded in 1790, the Charleston Brown Fellowship Society was among those few organizations excluded from insurrection laws requiring a white man's presence at meetings of more than six black people. These institutions blended aesthetic and biological notions of race with paternalism and economic incentives, governing urban black life and suppressing resistance by stratifying blackness along lines of assimilability and desirability. They also reveal the still-relatively-fluid nature of race in Antebellum Charleston, where the boundaries of whiteness were frequently contested and shifted in relation to the legal claims of mixed-race freedmen who often appeared phenotypically white. Indeed, there were numerous documented cases in which members of Brown Fellowship Society members who successfully litigated to have their legal racial status changed to 'white.' In the wake of the Vesey Uprising, members of the Brown Fellowship Society sought to fervently signal their allegiances to white elites, expelling those members who were linked to or implicated in the uprising.

before finally divulging the names of Mingo Harth and Peter Poyas. [49] By June 27, less than three weeks before the uprising, 131 individuals—including Vesey and his lieutenants—were arrested.

Yet in stark contrast to the sudden and brutal violence that met the Stono Uprising, the violence against Vesey and his fellows was sanitized by a legal pageantry of proceduralism and paternalism. The trials, which carried over six weeks, marked a critical juncture in the turn toward law and legality as purported guarantors of security and fairness for both freed and enslaved peoples. The foundation for this legal pageantry was, of course, the 1740 Negro Act—passed in response to the Stono Uprising—which provided for trial by a Justice of the Peace and a group of freeholders, who together had near-total-impunity to dictate the setting, evidentiary standards, and other terms of the proceedings. Thus, more than three decades before Justice Taney would proclaim Dred Scott and other people of African ancestry an inferior race "which had no rights," South Carolina had established a separate-but-interrelated legal order in which, according to the state's attorney general, Robert Y. Hayne, black people—whether enslaved or free—were not entitled "to the rights of the Citizen." Blending proceduralism and paternalism, Hayne invoked a vision of *law without rights*, insisting that such a separate legal order and condition of rightlessness afforded "equal humanity," and perhaps even "better protection" to enslaved people. [50] It was no longer simply that the law would sanction new forms of anti-black violence, but that the sanitizing effects of administration, bureaucracy, and legal procedure recast that violence as a form of protection that could only be ensured through black rightslessness.

Under this particular configuration of *law without rights*, the accused were purportedly accorded five protections: First, enslaved people could not be tried without their enslaver or

[49] Egerton, *He Shall Go Out Free: The Lives of Denmark Vesey*, 157.
[50] Egerton and Paquette, "Attorney General Robert Y. Hayne to Governor Thomas Bennett Jr., Wednesday, July 3, 1822," *The Denmark Vesey Affair: A Documentary History*, 148–52.

counsel present; second, capital convictions would not proceed with fewer than one witness, barring additional evidence or circumstances; third, the accused would confront their witness(es), with the exception of anonymous testimony; fourth, counsel would be accorded to enslaved people at the request or their enslavers, or by request of any freed person accused; finally, the accused would be permitted to examine any witness "they thought proper." [51] The reality was one of repeatedly abridged protections: To prevent public panic, trials were conducted in total secrecy, with only the accused and state officials present, and when applicable, enslavers, counsel, and witnesses. In many cases, witness testimony was presented with total anonymity, preventing examination by either the accused or counsel. Those with legal representation rarely fared better, since beneath this veneer of proceduralism, the trials appeared largely predetermined — defendants were preemptively divided into two groups according to the extent of their involvement. Those who took an 'active' role in planning the uprising were tried and executed, while those judged to have taken a less active role were transported outside the United States. [52] Unsurprisingly, the sentencing reflected these distinctions: Only two men—Samuel Guifford and Robert Hadden—were found not guilty due to unreliable testimony. The only testimony against Guifford and Hadden came from twelve- and fourteen-year-old white boys, both of whom appeared to the Court as an uncredible witness engaging in "puerile boasting." [53] Nonetheless, both Hadden and Guifford were still whipped on suspicion of their involvement. A third, an elderly enslaved man named Peter Cooper was pardoned on the basis of his advanced age but still sentenced to twenty lashes. [54]

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[51] Egerton and Paquette, "Introduction," *An Official Report of the Trials of Sundry Negroes*, 159.
[52] Egerton and Paquette, "Introduction," *An Official Report of the Trials of Sundry Negroes*, 160.
[53] Egerton and Paquette, "The Trial of Samuel Guifford, a free Negroe, and Robert Hadden, a free Mulattoe; both of them boys," 180.
[54] Egerton and Paquette, "The Trial of Peter, an elderly Negro Man, belonging to Mrs. Cooper--Capt. Sears Hubbell, attending," 243–44.

Today, most surviving accounts of the uprising come from the records for trials that were conducted in secret and written by white state officials. There is no surviving account of Vesey's plans *in his own words.* Moreover, there is ample reason to believe that testimony from enslaved people was extracted through coercion, overt threat, and torture. Two accused men died in custody and the trial record offers no explanation for their deaths. The testimony of multiple enslaved people—perhaps most notably, Monday Gell—were extracted in hopes of a pardon. [55] A sweeping body of historical scholarship has explored the trial record's reliability, the lack of protections afforded the accused, and the largely predetermined nature of the proceedings. Many historians agree that the Vesey Trials were a bluster of legal pageantry, and that the accused's guilt were presumed. [56] In this respect, the Vesey Trials reflect yet another stage in the construction of separate-but-interrelated legal orders designed to govern an increasingly complex hierarchy of whites, freed people of varying social, political, and economic status, and enslaved people living and resisting under varying conditions of expropriation.

Left to contend with a deeply skewed archive, one reflecting the asymmetries of power that underwrote enslavement, how might we furnish an account of the Vesey Trials that moves beyond the reproduction of violence and toward a more emancipatory politics? Confronting these challenges, I attempt to recuperate an antislavery politics from the Vesey Trials. Drawing on

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[55] Although members of the court unanimously recommended pardoning Gell—along with Charles Drayton and Harry Haig—Governor Bennett declined, citing the "considerable embarrassment" which his decision might incur.
[56] Historians have taken considerable interest in Vesey's life in recent years, including a trio of biographies published in 1999 by Douglas Egerton, Edward Pearson, and David Robertson. This surge in biographical work has triggered its own set of historiographic controversies, beginning with Michael Johnson's (2001) review of the three texts, which refashions Vesey from a revolutionary into "a fall guy for both the court and the witnesses who repeatedly testified against him" (971). Documenting the historiographic errors and overreaches—particularly in Pearson's now rescinded trial record transcription—Johnson retooled Richard Wade's widely discredited account of the Vesey Affair by highlighting the coerced and inconsistent nature of key testimony by so-called 'superstar' witnesses. Johnson's review set off a cascading sixteen-year debate, including responses from each biographer (2002), a litany of critiques and corroborations, coverage in *The New York Times* (2002) and *The Nation* (2002), and in 2017, an exhaustive documentary history by Egerton and Paquette which seeks to finally settle the debate. While it is too soon to gauge the effect of Egerton and Paquette's most recent contribution, most historians now agree that plans for an uprising was underway that summer, though they continue to debate the depth and breadth of the plot.

more than one-hundred trial records, I propose that we read *against* these records as much as we read with them, looking for those sites of overlap and disjuncture which might begin to reveal the radical underpinnings of the Vesey Uprising. Likewise, I seek to infer the contours of this politics from the broader context of which Vesey—a literate and politically conscious freedman—was acutely aware, including abolitionist texts and speeches. Such efforts are bound to be probabilistic, incomplete, and subject to revision, however, they should not preclude scholars from recuperating a more emancipatory politics from the resistance that enslaved and freed black people like Denmark Vesey undertook. In what follows, I highlight three sources of Vesey's antislavery politics: The Old Testament, abolitionist discourses around the Missouri Compromise, and the Haitian Revolution.

First, Vesey's antislavery politics was grounded in a reading of Exodus and Christian equality that justified revolutionary violence underwritten by a masculine ethic of self-help. The black church—perhaps above all else—furnished the bases of Vesey's convictions, confirming DuBois' observation that the church was "peculiarly the expression of the inner ethical life of a people in a sense seldom true elsewhere."[57] There is ample reason to believe that appeals grounded in the language of Christianity would resonate broadly —1820 marked the end of the Second Great Awakening, when black people forged an independent ecclesiastical and national identity grounded in a shared history of racial oppression, survival, and resistance. Religious meetings—despite facing new scrutiny by whites—remained loosely regulated in comparison to other gatherings, providing opportunities for large groups to gather and plan. Other gatherings were subject to close scrutiny under the 1740 Negro Act, which forbade more than seven enslaved men from traveling without white supervision. Likewise, any black person in transit,

[57] W.E.B. Du Bois, *Souls of Black Folk,* 99.

whether enslaved or freed, could be stopped at the discretion of a white man and required to produce either a ticket or proof of manumission. [58] Anonymous testimony against Peter Poyas revealed that *"prayer meetings at night"* were used to gather and organize the uprising among enslaved people from the country and islands. [59]

Vesey invoked the story of Exodus as a basis for racial and political solidarity, forging a shared identity among members of the uprising that could sustain their struggle and envision alternative futures. In his confession, Rolla recounted how "Vesey said we were to take the Guard-House and Magazine to get arms; that we ought to rise up and fight against the whites for our liberties; he was the first to rise up and speak, and he *read to us from the Bible, how the Children of Israel were delivered out of Egypt from bondage.*" [60] On this account, the uprising was to be undertaken by a chosen people, one whose bondage would not only draw the wrath of God, but in the course of struggle, open up new futures for the oppressed. In invoking the story of Exodus, Vesey joined a growing contingent of black Christians who utilized the metaphor of a chosen people and pilgrimage to "make sense of and to struggle against the racist practices of white America." [61] Exodus forged a common identity grounded in a shared history of oppression, yet it was more than shared identification, it furnished a political history that enabled black Christians to envision themselves as a political collective, forging the bases of an independent nation. In this respect, the temporality of Exodus was simultaneously one of past, present, and future: It located a shared history of oppression, an ongoing struggle that necessitated violent resistance, and the redemptive possibilities of liberation. Following Glaude's timeline, which

[58] 1740 Negro Act, Clause 43.
[59] Egerton and Paquette, "The Trial of Peter, a negro man the property of Mr. James Poyas. Mr. Poyas with Robert Bentham, Esq. as his counsel attending," *The Denmark Vesey Affair: A Documentary History*, 171.
[60] Egerton and Paquette, "The trial of Rolla, a negro man, the slave of His Excellency, Governor Bennett--Jacob Axson, Esq. attending as Counsel for his owner," 166.
[61] Glaude, *Exodus! Religion, Race, and Nation in Early Nineteenth-Century Black America*, 55.

locates the proliferation of the Exodus story in black churches between 1800-1840, Vesey would have found this line of argumentation was both widely known and well received. [62]

Vesey built upon this reading of Exodus by emphasizing a concept of Christian equality that furnished the bases of rhetorical and political persuasion. In his confession, an enslaved man named Bacchus Hammett recalled a line of questioning that Vesey employed to recruit him:

> *Did His master use him Well – Yes he believed so,* Did He eat *the same* as His master, *Yes,* sometimes not always as well as his master—*Did his master not sleep on a soft bed,* Yes. *Did he Bacchus sleep on a[s] soft a Bed as his master*—No—*Who made his master*—God—*Who made you*—God—*And then ar'nt you as good as your master if God made him & you, ar'nt you as free,* Yes I believe so, *Does he whip you when you do wrong,* Yes sometimes, *Then why don't you as you are as free as your masters, turn about and fight for yourself.* [63]

Vesey opens his inquiry with simple factual questions about Bacchus' everyday life, establishing the disparate conditions under which Bacchus lived from his enslaver despite being 'well used.' Asserting that each man is God's creation—a seemingly apolitical fact to which Bacchus agrees— Vesey establishes a concept of equality that reframes violence as a means of self-assertion. If Bacchus is his enslaver's equal, yet nonetheless subject to the vulnerability, theft, and violence of enslavement, then his resistance assumes a new character. Violence is not solely a matter of self-preservation, but an act of self-assertion. Revealing the ideological ruse of paternalism, which held that enslaved people would find themselves lost without enslavers, Vesey would assert instead that in 'fighting for himself,' Bacchus could actualize his equality and forge an identity independent from his enslaver.

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[62] Glaude, 54.
[63] Egerton and Paquette, "Fourth Version of Bacchus Hammett's Confession, Undated," 324.

As a class leader, Vesey—likely in no small part a response to the growing persecution of the AME Church—would argue that a slaveholding society which repeatedly violated the natural equality of a chosen people ought to suffer wrath, reckoning, and revolutionary violence. In their testimony, multiple enslaved people cited Vesey's invocation of scripture in condemning slavery and advocation for revolutionary violence. William, an enslaved man, directly linked Vesey's religious and abolitionist commitments, claiming that Vesey "studies the Bible a great deal and tries to prove from it that slavery and bondage is against the Bible." [64] Vesey invoked the Bible to not only condemn slavery, but to justify revolutionary violence against the slaveholding society of South Carolina. An enslaved man named John Enslow confessed that Vesey had shared with him the 16th verse of the 21st chapter of *Exodus:* "Anyone who kidnaps someone is to be put to death, whether the victim has been sold or is still in the kidnapper's possession." [65] Invoking the language of kidnapping, Vesey framed slavery as an ongoing act of theft which deprived enslaved people of their productive powers, necessitating both punishment and compensation. During his testimony, Rolla claimed that Vesey's reading of the Bible authorized revolutionary violence against *all* whites: "He then read in the Bible where God commanded, that all should be cut off, both men, women, and children, and said, he believed, it was no sin for us to do so, for the Lord had commanded us to do it." [66] For Vesey, it was not just those actively engaged in enslavement who ought to suffer. Proximity to—or indirectly benefiting from—slavery constituted both a moral contagion and form of guilt that warranted violent retribution.

[64] Egerton and Paquette, "The Trial of Denmark Vesey, a free black man -- Col. G. W. Gross attending as his Counsel," 181.
[65] Egerton and Paquette, "Second Confession of John Enslow," 326.
[66] Egerton and Paquette, "The trial of Rolla, a negro man, the slave of His Excellency, Governor Bennett--Jacob Axson, Esq. attending as Counsel for his owner," 166–67.

Although the Exodus is a story of redemption and liberation ordained by God, Vesey emphasized that equality and liberty were not to be realized without violent struggle and resistance, and so he repeatedly invoked a masculine ethic of self-help. Indeed, Vesey's emancipatory figuration of violence anticipates Douglass' fight with his enslaver Covey, which Douglass describes as a form of "glorious resurrection, from the tomb of slavery, to the heaven of freedom." [67] As Turner argues, the fight exemplified Douglass' ideal of the self-made man as one who "question[s] the boundaries of the possible… view[s] the world as changeable… imagine[s] feats of agency" in order to "find latent powers within oneself that previously went undetected." [68] Like Douglass, Vesey prescribed a politics of individualized masculinity and an ethic of self-help. Anonymous testimony against Rolla recounted a scene in which, Vesey asked "if I remembered the fable of Hercules and the Waggoner… that if we did not put our hand to the work and deliver ourselves, we should never come out of slavery" [69] In that fable, Hercules proclaims to a man whose wagon is stuck in the mud and pleas for help, "Tut, man, don't sprawl there. Get up and put your shoulder to the wheel. The Gods help them that help themselves." Like Douglass' figuration of the root, Vesey recalls this particular fable to imagine a masculinized ethic of self-help. It is little wonder that Douglass frequently invokes Vesey in speeches alongside figures like John Brown and Nat Turner when he proclaims that, "One man in the right, is a majority." [70] In this respect, although Vesey articulated a universal vision of shared humanity and an account of equality that emanated from God, it was circumscribed by a politics of masculinity and rugged individualism. [71] These patriarchal notions of self were

[67] Douglass, *Narrative of the Life of Frederick Douglass*, 89.
[68] Turner, *Awakening to Race: Individualism and Social Consciousness in America*, 52.
[69] Egerton and Paquette, "The trial of Rolla, a negro man, the slave of His Excellency, Governor Bennett--Jacob Axson, Esq. attending as Counsel for his owner," from *The Denmark Vesey Affair: A Documentary History*, 164.
[70] Egerton and Paquette, "New York *Weekly Anglo-African,* Saturday, April 27, 1861," from *The Denmark Vesey Affair: A Documentary History*, 758.
[71] Threadcraft, *Intimate Justice: The Black Female Body and the Body Politic*, 54–55.

reflected in the makeup of the uprising: No women were directly involved or implicated in the planning of the uprising. The liberation of black women is largely incidental to the project of masculine self-assertion and liberation for not just enslaved people, but also freedmen like Vesey whose families remained enslaved. Moreover, as Chakrabarti Myers argues, the "post-Vesey Era" would constrain both enslaved women who sought to forge their freedom through trust agreements and acts of manumission, as well as free black women who found themselves undesirable subjects in the wake of an uprising plot led by freedmen. [72]

Second, Vesey's antislavery politics was informed by—and appropriated—abolitionist discourses around the admission of Missouri. Just two years earlier, Congress had debated the question of Missouri's statehood, which was only tentatively resolved through the admission of both Missouri and Maine. Among those opposing Missouri's admission as a slave state, Vesey was familiar with the speeches of Rufus King, a New York Senator and signer of the Constitution. During his confession, Jack Purcell recalled how Vesey cited Senator King's speeches to Congress, describing King as "the black man's best friend… [since] he would continue to speak, write and publish pamphlets against slavery the longest day he lived, until the Southern States consented to emancipate their slaves, for that slavery was a disgrace to the country." [73] Indeed, in his speech, King described slavery's existence as an 'unhappy' fact that should trouble all "enlightened men." [74] Referencing Virginia, North Carolina, South Carolina, and Georgia, King framed slavery as a toxin that permeated both state and society: "the evil was felt in their institutions, laws, and habits, and could not easily or at once be abolished." [75] The

[72] Chakrabarti Myers, *Forging Freedom: Black Women and the Pursuit of Liberty in Antebellum Charleston*, 71, 141.
[73] Egerton and Paquette, "The Trial of Jack, a Mulatto Man, belonging to Mrs. Purcell--Mr. Thomas Smith, the brother of his owner attending," 214.
[74] King, *The Substance of Two Speeches, Delivered in the Senate of the United States, on the Subject of the Missouri Bill. by the Honourable Rufus King, of New York*, 5.
[75] King, 2.

condemnation that followed was sweeping: King offered an account of property that denaturalized slavery, excluding it from "the common and universal meaning" of property. [76] Instead, King linked the denigration of free labor to the existence of enslavement, arguing that the "industry and power of the nation" were deteriorating in direct proportion to the growth of slavery. To be sure, this claim would resonate with Vesey as both a formerly enslaved person and business owner who was forced to compete against the widening practice of contract labor among enslaved people. [77]

Vesey not only professed a deep admiration for this abolitionist politics, he extended King's critique of property, slavery, and labor to declare the obligations of enslaved people null and void. Anonymous testimony against Rolla Bennett revealed that Vesey, citing the Missouri Compromise, "took to telling slaves he encountered on the streets that 'Congress had declared them free,' and that 'they were held in bondage contrary to the laws of the land.'" [78] To be sure, Vesey—a multilingual, literate freed person—knew that Congress had not abolished slavery. More likely, this invocation of law was both a rhetorical strategy designed to mobilize support for the uprising. Confronted with the reality of a white supremacist order that demanded obedience through violence and terror, Vesey's deceit aimed to empower enslaved people to reclaim and utilize their numerical strength. In this respect, Vesey's account of the Missouri Compromise can be read as a noble lie designed to subvert enslavers' aims at total obedience. Yet Vesey *also* articulated an alternative concept of law and rights that simultaneously invoked and subverted the authority of Congress by utilizing that power in a broader emancipatory project. Recognizing the risk of their undertaking, Vesey invoked the language of law to forge

[76] King, 4.
[77] King, 7.
[78] Egerton, 131.

an alternative account of authority and obligation: Both freed and enslaved black people owned no fidelity to the laws of South Carolina but drew their rights—including the right to revolt—from the federal government.

Although Vesey invoked the language of law and rights in ways that coopted state authority, he did not identify the possibility of *realizing* those rights with the United States. Instead, Vesey's antislavery politics was predicated on forging a coalition of freed and enslaved people that operated in total secrecy in not only South Carolina, but arguably also across the Atlantic and into Haiti. Testimony repeatedly established that Vesey's politics and the structure of the uprising were underwritten by the Haitian Revolution. In his confession, Monday Gell divulged that "Vesey *even ceased working himself at his trade, and employed himself exclusively in enlisting men…* he would endeavor to open a correspondence with Port-au-Prince, in St. Domingo, to ascertain whether the inhabitants there would assist us." [79] Unfortunately, none of these alleged exchanges between Vesey and Port-au-Prince would survive. State officials claimed that after the first wave of arrests, Vesey and other key leaders destroyed incriminating evidence including abolitionist speeches and pamphlets, receipts, and letters. Given whites' enduring fear and panic around the Haitian Revolution, it is perhaps more likely that state officials fabricated this particular detail to indict Vesey.

Regardless of whether those particular letters existed, it was more than a logistical concern of whether Haiti would send reinforcements to support the uprising. Vesey envisioned a politics of solidarity that wove together his reading of Exodus and his vision of the Haitian Revolution. During his testimony, Rolla Bennett—a lieutenant within the uprising—revealed that

[79] Egerton and Paquette, "The Trial of Monday, a Negro Man, the Slave of Mr. John Gell. Col. Wm. Rouse as his friend, and Jacob Axon, Esq. Counsel for his owner attending," from *The Denmark Vesey Affair: A Documentary History*, 191.

Vesey "said, we must unite together as the St. Domingo people did, never to betray one another; and to die before we would tell upon one another. He also said, he expected the St. Domingo people would send some troops to help us." [80] Vesey invoked more than the possibility of Haiti's support as a means for growing the uprising—he invoked the memory of the revolution in order to foster bonds of solidarity and trust. These bonds were essential to such a revolutionary enterprise, one that involved thousands of freed and enslaved people working in total secrecy to resist and escape a white supremacist order. Thus, Vesey and leaders like Peter Poyas were acutely aware of the dangers they faced and were judicious in who they chose to trust. In a piece of anonymous testimony against Poyas, one individual revealed they were forbidden from mentioning the uprising "to those waiting men who receive *presents of old coats etc from their masters or they'll betray us.*" [81] While many eventually divulged details of the uprising under threat of death, others obeyed this code of secrecy and solidarity until their brutal deaths. Among them, Peter Poyas, along with four other men, "mutually supported each other and died obedient to the stern and emphatic injunction" of Poyas, "Do not open your lips! Die silent, as you shall see me do."

Building on this politics of solidarity, Vesey identified the full realization of his rights—and the liberation of enslaved people—with the legacies of the Haitian Revolution. After he was found guilty and sentenced to death, an enslaved man named Jesse divulged that Vesey said,

> [W]e were deprived of our rights and privileges by the white people, and that our Church was shut up, so that we could not use it, and that it was high time for us to seek our rights, and that we were fully able to conquer the whites, if we were only unanimous and

[80] Egerton and Paquette, "The Trial of Peter, a negro man the property of Mr. James Poyas. Mr. Poyas with Robert Bentham, Esq. as his counsel attending," 174.
[81] Egerton and Paquette, 173.

courageous, as the St. Domingo people were… *it was for our safety not to spare one white skin alive, for this was the plan they pursued in St. Domingo.* [82]

Invoking the Haitian Revolution, Vesey articulated a transatlantic vision of revolution and rights that exceeded much of abolitionism in the United States. For Vesey, the language of rights furnished the basis for collective struggle—it was precisely the shared identity of black people, underwritten by the story of Exodus, as well as the absence of those 'rights and privileges' that justified revolutionary violence. Rights and violence were mutually constituted: Only through violent, revolutionary struggle could both enslaved and freed black people fully reclaim the rights they were denied by whites. This collective struggle necessitated both 'unanimity' and 'courage,' and it was the emancipatory possibility of those rights that secured such deep conviction. Such violence was as much an act of self-preservation as an exercise in retribution. Vesey, who experienced and bore witness to the daily violence of slavery, was acutely aware of the punitive state violence that could be mobilized to suppress the uprising.

In linking violence and a masculine ethic of self-help to the restoration of one's rights, Vesey joined a broader radical black tradition that sought to mobilize and justify black solidarity and resistance in the early nineteenth century. As Vesey began planning the uprising, David Walker—one of the great abolitionists of the nineteenth century—had already taken up residence in Charleston and become a member of the AME Church. Given their shared abolitionist commitments and church membership, as well as the small size of Charleston's free black population, it is likely the two met well before the publication of Walker's *Appeal to the Colored Citizens of the World* in 1829. Like Vesey, Walker invoked the story of Exodus in order to assert a common identity and purpose for black people. However, Walker articulated the limits of

[82] Egerton and Paquette, "The Trial of Jesse, a Negro Man, the Slave of Mr. Thomas Blackwood. His owner attending," 178.

Exodus in reflecting the experience of both freed and enslaved black people, insisting, "how much more cruel we are treated by the American, than were the children of Jacob, by the Egyptians." [83] Reflecting on the ways that slavery—in both practice and proximity—had degraded whites, Walker would assert the moral superiority of both freed and enslaved black people, insisting, "that the blacks, take them half enlightened and ignorant, are more humane and merciful than the most enlightened and refined European that can be found in all the earth." In contrast to the routine and brutal violence of enslavement perpetrated by whites, and that suffused the racial order, Walker held that black people tended to engage in violence as a grave last resort, done with "solemn awe." [84] Like Vesey, Walker framed liberation as ordained by God, cautioning whites that "God will deliver us from under you." Their only choice was to either join the cause of liberation or suffer the consequences: "And wo, wo, will be to you if we have to obtain our freedom by fighting." [85]

Unlike Walker, however, Vesey did not identify the possibility of redemption within the United States. Much like Walker's appeals to black solidarity and the redemptive possibilities within the U.S. legal order, as well as Cover's reading of Frederick Douglass, Vesey's "greatest need was for a vision of law that both validated his freedom and integrated norms with a future redemptive possibility for his people." [86] However, unlike Douglass and Walker, Vesey did not identify redemptive possibilities for free and enslaved black people with the United States or with a reclamation of the emancipatory ideals embedded in the Constitution. Instead, Vesey suffused the story of Exodus with the legacies of the Haitian Revolution to forge an alternative political identity and consciousness, one underwritten by a shared history of oppression, a

[83] Walker, *Walker's Appeal, in Four Articles*, 11.
[84] Walker, 28.
[85] Walker, 79.
[86] Cover, "The Supreme Court, 1982 Term -- Foreword: Nomos and Narrative," 38.

destiny of struggle and resistance, and the possibility of liberation. Moreover, Vesey invoked these nascent forms of black nationalism while coopting the legal discourse around the Missouri Compromise to articulate a politics of radical *anti-constitutionalism.* In this respect, Vesey was acutely aware of the limits of the law as Cover described them: "If law reflects a tension between what is and what might be, law can be maintained only as long as the two are close enough to reveal a line of human endeavor that brings them into temporary or partial reconciliation." [87] Vesey *had* to escape, not just for reasons of survival, but because his vision of law and rights were irreconcilable with the separate-but-interrelated legal orders that governed South Carolina.

In this respect, Vesey anticipates the nationalist politics of Martin Delany who identified a pattern of domination and denial perpetrated by whites—embedded in the nation's laws and reflected in the civic persona of its citizens—that was beyond repair. Like Walker and Vesey, Delany proceeded from the contradictions between the fact of Christian equality and the denial of civic standing for black people. For each thinker, the question was one of recuperation and redemption: Could an inclusive and active citizenry—committed to robust forms of social, political, and economic equality—be durably forged from a racial order where equality among the few hinged upon demarcating and excluding the many? Anticipating these challenges, Delany would join Douglass, Walker, and Vesey in prescribing a masculinized ethic of self-help, insisting, "Our elevation must be the result of self-efforts, and work of our own hands. No other human power can accomplish it." [88] However, recognizing whites' ideological and material investment in the subordination of both freed and enslaved black people, Delany saw little promise in laboring to transform the existing racial order. Such transformation was simply not

[87] Cover, 39.
[88] Delany, *The Condition, Elevation, Emigration, and Destiny of the Colored People of the United States*, Kindle Location 467.

possible in a country where black people were forced to endure the hypocrisy that, "We love our country, dearly love her, but she don't love us—she despises us, and bids us begone, driving us from her embraces." [89] Unlike Douglass and Walker, who saw the seeds of redemption and liberation in the U.S. constitutional order, both Delany and Vesey would maintain that, "A new country, and new beginning, is the only true, rational, politic remedy for our disadvantageous position." [90] For Vesey, the Haitian Revolution represented more than an ideal of black solidarity, but a tangible figuration of black nationhood that could be achieved through revolution and escape.

Read as part of an emerging black radical tradition, an altogether different vision of Denmark Vesey emerges from the same court record that not only pronounced him guilty but described his "infatuation" with resistance as "diabolical." [91] Indeed, as Rucker argues, the Vesey Uprising was a moment of ethnic collaboration, which bridged cultural, linguistic, and religious divisions between African ethnic enclaves in South Carolina. Blending Afro-Atlantic religious ritual, including conjuring and talismans with Old Testament allegories of a vengeful, wrathful God and his chosen people, the Vesey Affair had "at its very foundation, a pan-Africanist consciousness." [92] Likewise, this reading of the trial record confirms Flemming's appraisal of Vesey as an Atlantic figure. Vesey forged an African diaspora and Pan-African identity well before modern Black intellectuals coined the term. It was antislavery nationalists like Vesey, whose transatlantic coming-of-age—from St. Thomas, to St. Domingue, to the Gold Coast, and eventually Charleston—that forged a revolutionary, pan-African consciousness. [93] Vesey did not

[89] Delany, 2299.
[90] Delany, 2315.
[91] Egerton and Paquette, "The Trial of Denmark Vesey, a free black man -- Col. G. W. Cross attending as his Ccounsel," 184.
[92] Rucker, *The River Flows On: Black Resistance, Culture, and Identity Formation in Early America*, 179.
[93] Flemming, "Denmark Vesey: An Atlantic Perspective," 7.

only plan one of the largest and most complex uprisings in American history—he articulated an alternative vision of law, rights, and resistance that mobilized Old Testament theology, coopted abolitionist discourses, and invoked the legacy of the Haitian Revolution to forge a radical vision of black solidarity and nationhood. In this respect, Vesey emerges from the trial record as a leader who articulated a transatlantic vision of race, resistance, and the redemptive possibilities of escaping the United States.

In this context, Vesey's invocation of Haiti acquires new salience: Escape—and the experience of fugitivity—could inaugurate a radical and transgressive set of possibilities, including a transatlantic vision of black nationhood. However, for many, recognizing the risk of violent retribution, escape was judged against the promise of social resurrection and the possibilities of ordinary life: human dignity, stable kinship, agency and free labor. In short, escape was a calculated-but-risky gambit undertaken for the possibility of an everyday ordinary life. To be sure, civic standing and political participation were part of those new possibilities, but often instrumentalized to secure that ordinary life. This leaves us to contend with a stark fact: *the costs of fugitivity* as a political project tends to romanticize the fleeting and transgressive character of political action in ways that often elide the possibilities of ordinary life.

Of the 101 trial records surveyed, few justify the court's decisions. Among them, the sentencing of Vesey is the most extensive. The court not only exhaustively justified its decision, it sought to refute and suppress Vesey's politics by rearticulating a proslavery vision of law. In doing so, they offer an early confirmation of Cover's observation that, "Judges are people of violence. Because of the violence they command, judges characteristically do not create law, but kill it. Theirs is a jurispathic office." [94] Reasserting the primacy of a proslavery vision of law, the

[94] Cover, "The Supreme Court, 1982 Term -- Foreword: Nomos and Narrative," 53.

court confirmed Vesey's guilt as "the author, and original instigator of this diabolical plot," which, on their account, sought "to trample on all laws, human and divine; to riot in blood, outrage, rapine, and conflagration, and to introduce anarchy and confusion in their most horrid forms." Systematically rejecting Vesey's antislavery politics and reasserting the positive good fiction of paternalism, the court put its jurispathic capacities on full display. In light of these offenses, Vesey's life was "a just and necessary sacrifice at the shrine of indignant Justice," one necessary to restore and maintain a proslavery legal order. [95]

Citing his invocation of scripture as the "grossest impiety," one which "pervert[ed] the sacred words of God," the court sought to upend the relations of solidarity and equality which underwrote the uprising, dismissing its other members as mere "deluded victims" of Vesey's "artful wiles." If Vesey and others had read the Old Testament "with sincerity," they would have discovered a Christianity which required obedience to white supremacy. Quoting Saints Paul and Peter, respectively, the court insisted that enslaved people ought to "*obey in all things your masters,' according to the flesh, not with eye-service, as men-pleasers, but in singleness of heart, fearing God," [and] …. be subject to your masters' with all fear, not only to the good and gentle, but also to the forward.*" The court asserted that the meaning of these texts was apparently so self-evident that "comment [was] unnecessary." [96]

Instead, it stood to reason that freedom was a ruse, one designed to entice enslaved people to pursue an errant fantasy. In contrast to Vesey's politics of equality and solidarity—and eliding the fact that his family and many of his closest friends were enslaved—the court asserted a self-centered individualism that reframed the uprising as a misguided undertaking: "It is

[95] Egerton and Paquette, "The Trial of Denmark Vesey, a free black man -- Col. G. W. Cross attending as his Ccounsel," from *The Denmark Vesey Affair: A Documentary History*, 184.
[96] Egerton and Paquette, 185.

difficult to imagine what *infatuation* could have prompted you to attempt and enterprize so wild and visionary. You were a free man; you were comparatively wealthy; and enjoyed every comfort, compatible with your situation. You had, therefore, much to risk, and little to gain." [97] On this account, Vesey was not only impracticable in his designs but ungrateful. He had, selfishly, nearly brought about the "ruin" of his race, upsetting the bonds of paternal affection that were "enjoyed in this community." [98] Seeking vindication, the court concluded by declaring the "only reparation in [Vesey's] power" was "a full disclosure of the truth." [99] Vesey, however, appears to have followed Poyas's edict of silence and refused to offer any confession. No firsthand account of the execution was written or at least survived. The court calendar simply states that Denmark Vesey, "a free black man," was "hanged on Tuesday the 2nd [of] July, 1822 on Blake's lands, near Charleston." [100]

The court's condemnation of Vesey, however, was judged insufficient. Later that summer, a second group was tried for their alleged involvement in the uprising. In sentencing these cases, the court provided its most extensive defense of paternalism, asserting the benevolence of slavery and the protective function of *law without rights*:

> Everyone is more or less subject to controul; and the most exalted, as well as the humblest, individual, must bow with defference to the laws of that community, in which he is placed by Providence. Your situation, therefore, was neither extraordinary nor unnatural. Servitude has existed under various forms, from the deludge to the present time, and in no age or country has the condition of slaves been milder or more humane than your own. You are, with few exceptions, treated with kindness, and enjoy every

[97] Egerton and Paquette, 184.
[98] Egerton and Paquette, 185.
[99] Egerton and Paquette, 185.
[100] Egerton and Paquette, "Sentence of ten of the Criminals," 264.

> comfort compatible with your situation. You are exempt from many of the miseries, to which *the poor* are subject throughout the world. In many countries the life of the slave is at the disposal of his master; here you have always been under the protection of the law.[101]

Fifteen years before Calhoun would proclaim that slavery was a "positive good," state officials in South Carolina had forged a justification for enslavement that dispensed with concessions that slavery was merely a 'necessary evil' and ahistorical claims of a tragic inheritance beyond control. [102] Drawing a false equivalency between the forms of control in communities bound by law and rights as opposed to the attempts at absolute control underwriting slavery, the court reasserted a vision of slavery as a comparatively benevolent form of servitude. Although slavery necessitated unidirectional forms of violence—the exclusive purview of whites—such acts were altogether exceptional in their rarity. In other words, the control and servitude underwriting slavery were to be measured in differences of degree, rather than kind. Moreover, while most enslavers were purportedly kind, this remained a matter of individual discretion. Instead, enslaved people could depend upon the universal and impartial 'protection of law.' The reality of *law without rights*, however, was one an unstable division between arbitrary and legitimate forms of anti-black violence, one that failed to institute even the most basic forms of protection. In asserting the primacy of this separate-but-interrelated legal order—a system of *law without rights* suited to the status of enslaved people as chattel—the court once asserted this division in ways that mirrored the interests of whites, advocating for forms of 'protection' that, at best, merely instituted more subtle forms of discipline, surveillance, and control.

[101] Egerton and Paquette, 263.
[102] John C. Calhoun, "Slavery a Positive Good," February 6, 1837.

Moreover, the court reasoned further that even if the uprising *had* succeeded, it ultimately would have been detrimental to formerly enslaved people: "Such men as you, are in general, as ignorant as you are vicious, without any settled principles, and possessing but few of the virtues of civilized life; you would soon, therefore, have degenerated into a horde of barbarians, incapable of any government." [103] Invoking a long history of racist justifications to exclude black people from claiming civic standing, the court asserted that black people lacked the principles to found an independent nation, as well as the capacities necessary for civic life. However, securing this unique form of republican self-rule depended upon the demarcation and subordination of outsiders deemed unfit for citizenship. In naturalizing both exclusion and hierarchy, the subjugation of these outsiders produced "… a political community motivated by the promise of republican self-rule and imprisoned within a deeply limited vision of social inclusion." [104] In this respect, reasserting the division between citizen and subject, ruler and ruled was essential to not only discrediting the uprising and reasserting a proslavery vision of law, but to preserving the broader project of republican self-rule in the United States.

IV. Legacies of the Vesey Uprising

As the trials concluded and the public panic began to subside, Governor Bennett attempted to downplay the uprising's scope. Invoking notions of both inherent black inferiority and the deteriorative effects of enslavement, he insisted that a "formidable conspiracy" with truly dangerous plans could not have been "matured" by a coalition of freed and enslaved black people. However, less than two weeks after Vesey's execution, Bennett would also write Secretary of War John C. Calhoun to request federal military assistance, citing the "peculiar character of a large proportion of our population, and the evidence of a temper hostile to the

[103] Egerton and Paquette, 263.
[104] Rana, *The Two Faces of American Freedom*, 15.

peace and welfare of society which has so recently been manifested." [105] Calhoun would respond in short order, deploying a full company from St Augustine in order to "remove the uneasiness in the publick mind on account of the inadequacy of the Garrisons," which housed munitions that would have been key to the uprising. [106] In a conflicted message to the state legislature, Bennett conceded that while "it is scarcely possible to imagine one, more crude or imperfect," the uprising nonetheless constituted a legitimate threat warranting legislative action. [107] Still, doubting the "magnitude of this conspiracy," he rearticulated a paternalist narrative of loyalty and mutual regard. Reframing the meticulous and deliberate planning of the uprising, Bennett insisted that its leaders had only acted cautiously because they identified among the enslaved population, "a Fidelity, which they dared not tamper with, and in units only, could discover a suitable defection." [108] Eliding the fact that only one among hundreds—if not thousands with some knowledge—had initially defected in planning the uprising, Bennett insisted that enslaved people would serve as a bulwark against future acts of resistance. Fearing that such fidelity might be "rebuked or destroyed… *by unnecessary* rigour," Bennett cautioned the legislature against "adopting measures of prevention… which may produce excessive coercion." [109] Instead, Bennett maintained that through calm deliberation and judicious action, the laws of slavery could be adjusted and revised to prevent future resistance.

Like his account of the uprising, the vision of law and resistance that formed the bases of Bennett's recommendations to the legislature were muddled at best. Conceding only that "crimes are imperfectly defined," Bennett maintained that the laws of slavery were a system of

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[105] Egerton and Paquette, "Governor Thomas Bennett Jr. to Secretary of War John C. Calhoun, Monday, July 15, 1822," from *The Denmark Vesey Affair: A Documentary History*, 101.
[106] Egerton and Paquette, "John C. Calhoun to Thomas Bennett Jr., Monday, July 22, 1822," 104.
[107] Egerton and Paquette, "Governor Thomas Bennett Jr., Message to the State Legislature, Thursday, November 28, 1822," from *The Denmark Vesey Affair: A Documentary History*, 545–46.
[108] Egerton and Paquette, 545.
[109] Egerton and Paquette, 539, 545.

"penetration and intelligence… wisely adapted to the object." Instead, the problem was largely one of enforcement, or "maladministration," rather than "the insufficiency of the Law." Thus, Bennett proposed a reordering in the administration of law that would shift the primary duty away from a broadly authorized coalition of whites and toward state officials. Although the enforcement of slave laws had "been regarded the duty of every individual in society" for more than a century, this "general privilege" ought to be a more distinct "duty of the State officers." [110] Crucially, however, Bennett proposed no changes to the laws broadly authorizing whites to engage in anti-black violence, particularly in suppressing acts of widescale resistance. These widescale practices of violence, which were essential to the articulation and consolidation of whiteness, continued to persist across divisions in social, political, and economic standing.

Beyond that change, however, Bennett cautioned the legislature against any brash or radical changes. Instead, he invoked an older claim that was out of step with the positive good fiction outlined in the preceding sections: The 'original sin' of slavery was not only far and irreparably past, but beyond the control of even state officials and enslavers. Put another way, "the institution is established; the evil is entailed." In this respect, if members of the court reflected the growing persuasion of whites who supported the positive good fiction, Bennett's invocation of evil necessity suggest a moment of discursive change and development. No longer the responsibility of those who continued to profit from its relations of expropriation, Bennett evaded the question of a positive good by inverting the material reality of agency and power underwriting slavery, crudely professing that, "we can now do no more than steadily pursue that course indicated by stern necessity and not less imperious policy." [111] Bennett would conclude his recommendation by again invoking the simultaneous threat and possibility of political visibility.

[110] Egerton and Paquette, 548.
[111] Egerton and Paquette, 549.

The crucial move was first to reframe the historical narrative of slavery as one of historical circumstance beyond control and then reasser the gap between 'legitimate' and arbitrary forms of anti-black violence in order to frame the law in sympathetic terms. Then, according to Bennett, "The world will cease to chide us for evils we did not originate and cannot remedy and the reflecting and virtuous of every community will sympathize with us all." [112]

Following the governor's message, the legislature would seek to correct those problems of enforcement, particularly existing laws around the literacy of black people. Officials began to strictly enforce the city's prohibition against teaching enslaved people to read. Anyone found to have taught a black person—enslaved or free—to write their own name could receive a heavy fine and up to fifty lashes. Citing Vesey's use of "the speeches in Congress, against the admission of Missouri," the *Louisiana Gazette* framed the threat of resistance as function of outside contagions. It was not the dehumanizing conditions of slavery, but those "passionate appeal[s]" and "inflammatory pamphlets" which most enslaved people could allegedly neither read nor understand, but would nonetheless find themselves so "excited" that it would be "extremely difficult… to prevent future conspiracies." [113] Likewise, citing those "inflammatory writings" composed and circulated by "evil minded persons," the Charleston City Council held that reading and writing were not only superfluous to the "duties" of enslaved people, but were altogether "incompatible with the public safety." [114] In this respect, literacy was not only perceived as a driver of resistance, but the very presence of abolitionist discourses posed an existential threat to security and slavery. These punitive laws were part of a broader project to circumscribe 'subversive' discourses against enslavement. As Rogin argues, these concerns,

[112] Egerton and Paquette, 550.
[113] Egerton and Paquette, "New Orleans Louisiana Gazette, Friday, August 30, 1822," 487.
[114] Egerton and Paquette, "Memorial Regarding Schools and Employment for Persons of Color, 1826," 630.

"drastically curtailed political and intellectual freedom for southern whites as well. It was illegal to argue in southern states that slavery was an illegitimate form of property or to advocate its abolition." [115] The very possibility of resistance would thus become a pretext for not only limiting black literacy but circumscribing broader political discourse.

However, against Bennett's recommendation, the legislature would also broadly authorize new forms of coercive power, including: a military citadel and standing guard, stricter laws governing the presence of freed people in the state, and the Negro Seamen Act, which set up a constitutional showdown with the federal courts. Following the pattern of resistance, repression and retrenchment that I outlined in the previous chapters, as well as the trajectory of earlier laws, these punitive expansions of state power ought to come as little surprise. These new laws built upon and expanded existing ideas of race and resistance, particularly in broadly authorizing whites to engage in anti-black violence and in reframing resistance to enslavement as a problem of outside contagions, rather than the dehumanizing conditions of enslavement.

In constructing a citadel and establishing a standing patrol, city officials in Charleston began to shift the locus of anti-black violence toward specific officials and institutions. At the height of the crisis, Intendant James Hamilton Jr., the Mayor of Charleston, assembled an informal citizens' militia that was tasked with patrolling the city and making arrests. As the panic subsided, rather than disband the group, Hamilton sought to institutionalize a standing military force. In the wake of the trials, Hamilton petitioned the state legislature to construct a Citadel to secure the city's munitions and house this new force. [116] Citing the lack of buildings "capable of

[115] Rogin, *Ronald Reagan, the Movie and Other Episodes in Political Demonology*, 53.
[116] The dissonance between the claims of paternal fidelity issued by Bennett and the reality of a new proto-police force were not lost on critics of slavery. Lydia Maria Child—a prominent abolitionist—recalled a conversation in which a woman declared, "'I often wish that none of my friends lived in a slave State.' 'Why should you be anxious?' rejoined the Southern gentleman; 'You know that they have built a strong citadel in the heart of the city, to which all the inhabitants can repair in case of insurrection.' 'So,' said [Child], 'they have built a *citadel* to protect

affording protection to the arms which belong to it or any means of protected resistance in case of a sudden attack," Hamilton recommended a site for the new citadel, which would secure the city's arms and house a standing "competent force." [117] Shortly after, the *Charleston Courier* would report that $100,000—more than $2 million today—was appropriated for the construction of the Citadel and creation of a standing patrol. [118] Against Hamilton's recommendation of establishing a standing military force at least 200 strong, city officials instituted a standing patrol of 150 guardsmen housed in the Citadel. [119] By the 1850s, this patrol would swell to more than 250 guardsmen. [120] To be sure, slave patrols had existed for centuries prior, and their duties were often akin to a proto-police force. [121] However, these early patrols were loosely organized, chronically underfunded, and a subject of frequent complaint by enslavers who found the duty an inconvenience. Moreover, these patrols exercised wide discretion and were largely unbounded in their practices of anti-black violence, leading one enslaved person to describe them as "like policemen, only worser." [122] Following Bennett's recommendation, this new standing patrol began to shift the locus of anti-black violence from one of 'general privilege' and wide discretion to these newly authorized state officials. This idea of a 'general privilege' to enforce the laws of slavery and partake in anti-black violence, however, was not so much diminished as relocated and reframed. The patrol was primarily constituted by poor whites who were not likely to be enslavers but were familiar with practices of anti-black violence, particularly in surveilling and disciplining enslaved people. Many had likely participated in previous patrols, some conscripted

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them from their happy, contented servants—a citadel against their *best friends*!'" (Egerton and Paquette, "Lydia Maria Child on Charleston Controls, 1836," from *The Denmark Vesey Affair: A Documentary History,* 725).
[117] Egerton and Paquette, "Memorial of James Hamilton Jr. to the Charleston City Council, 1822," 573.
[118] Egerton and Paquette, "Charleston Courier, Wednesday, December 11, 1822," 589.
[119] Egerton and Paquette, "Memorial of James Hamilton Jr. to the Charleston City Council, 1822," 573.
[120] Chakrabarti Myers, *Forging Freedom: Black Women and the Pursuit of Liberty in Antebellum Charleston*, 25.
[121] Balko, *Rise of the Warrior Cop: The Militarization of America's Police Force*, 28.
[122] Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas*.

by wealthy enslavers to spare themselves the obligation. Thus, the shift that Bennett prescribed marked an expansion in the institutionalization of state violence, yet the agents of that violence remained a broad coalition of whites with little restraint or oversight. In this respect, the move away from a 'general privilege' was primarily rhetorical, exhibiting the varied capacity of law to proactively authorize and retroactively legitimate anti-black violence.

The state legislature would also strike at those 'outside contagions,' which it claimed truly drove resistance to enslavement. Recognizing that many alleged members of the uprising were skilled, literate freed people, the state instituted new punitive measures to restrict the emigration and settlement of free black people. In 1822, the state legislature passed an 'Act for the Better Ordering of Negroes,' which prohibited the migration and reentry of freed people to the state. [123] Recognizing the unwieldy cost of forced migration, the law also sought to drive freed people from South Carolina by requiring them to pay a $50 annual tax. Likewise, the law sought to institute new relationships of paternalism by requiring freed people to register a white 'guardian,' who could testify to their good character. [124]

In 1823, the state extended this logic of outside contagions by passing the Negro Seamen Act, which restricted the entrance of all 'colored' seamen into South Carolina. Framing the threat of insurrection as a problem of 'contagion' by an outside 'moral pestilence,' the law required that all seamen of color, regardless of nationality, would be detained at the expense of the ship's captain until the vessel was prepared to depart. If the captain refused or failed to pay the cost of incarceration, the cost of detention was recuperated by declaring the sailor an 'absolute slave' and selling him into slavery. [125]

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[123] McCord, *The Statutes at Large of South Carolina: Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers*, 7:459–60.
[124] McCord, 7:462.
[125] McCord, 7:461.

Within the year, the Negro Seamen Act was declared unconstitutional by Supreme Court Justice William Johnson in a circuit decision, *Elkison v. Deliesseline* (1823). Anticipating the Supreme Court's landmark ruling in *Gibbons v. Ogden* (1824), Johnson held in even stronger terms that the law violated the federal government's paramount and exclusive right to regulate commerce by negating the Commercial Convention of 1815 with Great Britain, which established a "reciprocal liberty of commerce." [126] Yet state officials defied Johnson's ruling, and continued to enforce the law. In a resolution drafted by State Senator Ramsay, the South Carolina legislature proclaimed that an individual state's power to suppress insurrections was "paramount to all *laws,* all *treaties,* all *constitutions.*" [127] This assertion posed a great risk to the state's economy: By the nineteenth century, Charleston had established itself as a transatlantic hub for commerce with ships exporting lumber, naval stores, rice, indigo, cotton, furs and skins, and tobacco from the city's port. Even more grisly was the trafficking of flesh: More than forty percent of kidnapped enslaved people were transported through Charleston. In detaining the citizens of its trading partners, South Carolina risked a diplomatic and economic crisis.

In risking the state's economic interests, South Carolina's first act of nullification would have far-reaching consequences. Foreshadowing the dynamics of South Carolina and its rejection of federal constitutional authority, identical laws were passed in North Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas leading up to the Civil War. As historians of the Civil War argue, it was this successful act of resistance that hardened South Carolina's ardent principles of state sovereignty and slave power. Many of the same men who oversaw Vesey's trial—including mayor-turned-governor James Hamilton and Robert Turnbull—were

[126] Elkison v. Deliesseline, 4366 8Fed.Cas.-32, Circuit Court, D. South Carolina (Aug 1823).
[127] Egerton and Paquette, "Portland *Easter Argus,* Thursday, December 30, 1832: Sentiments of the South," from *The Denmark Vesey Affair: A Documentary History*, 652.

key leaders in the Nullification Crisis of 1832. As Freehling argues, it was the Vesey Affair that drove the development of the Negro Seamen Act, and in turn, the dynamics of nullification that precipitated the Civil War. [128] Indeed, as John Lofton argues in his seminal text, it was Vesey's uprising that "lit a fuse to Fort Sumter." [129]

Legal scholars have begun to acknowledge the Negro Seamen Act's pivotal role in constitutional development during the Antebellum Era. Litwack and Berlin situate the Negro Seamen laws within a broader legal regime and ideology that denied equal protection to black people—free, manumitted and enslaved alike—culminating in *Dred Scott v. Sanford*. [130] For these scholars, the Negro Seamen laws furnished new institutions and ideas of race for treating even free black people as rightless subjects. Law highlights the Negro Seamen laws in her study of state control over immigration, showing how these laws shaped the development of federal immigration policy and evolving understandings of 'freedom of movement.' [131] In this respect, the Negro Seamen laws mark a critical juncture in the development of the federal government's power to regulate interstate commerce and foreign relations. In his recent account of 'quarantines' and 'moral contagions,' Schoeppner expands upon and bridges these two levels of analysis by placing the Negro Seamen Laws in a transatlantic perspective that tracks the relationship between "African-American citizenship and Afro-British subjecthood." For Schoeppner, the Negro Seamen laws reflect the contested, contingent and evolving nature of race and citizenship in the United States and beyond. [132]

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[128] Freehling, *Prelude to Civil War: The Nullification Controversy in South Carolina, 1816-1836*.
[129] Lofton, *Denmark Vesey's Revolt: The Slave Plot That Lit a Fuse to Fort Sumter*.
[130] Litwack, *North of Slavery: The Negro in the Free States, 1790-1860*, 50–55; Berlin, *Slaves Without Masters: The Free Negro in the Antebellum South*, 216.
[131] Law, "Lunatics, Idiots, Paupers, and Negro Seamen—Immigration Federalism and the Early American State."
[132] Schoeppner, "Peculiar Quarantines: The Seamen Acts and Regulatory Authority in the Antebellum South."

This body of scholarship, however, has not fully acknowledged the continuities between the Negro Seamen Acts and earlier legislation, particularly the ideas of race and resistance underwriting these laws. Like the 1740 Negro Act that I analyzed in the preceding chapter, as well as the 1822 'Better Ordering' Act, this new law invoked a logic of outside contagions, which held that resistance to enslavement was driven primarily by outside, corrosive influences, rather than the dehumanizing conditions of enslavement. The crucial move, enslavers claimed, was to quarantine these outside contagions while humanizing the institution by sharpening the distinction between 'arbitrary' and 'legitimate' forms of anti-black violence. However, the seamen laws located the roots of resistance well beyond U.S. borders, ascribing it to the very presence of freed black people, regardless of their nationality. In this respect, as the scope of slavery continued to grow and as the fictions of paternalism came under scrutiny, so too did the litany of corrosive outside influences appear to multiply. The result was a dynamic of denial and evasion that would expand and diversify this separate-but-interrelated legal order's tools of coercion without ever understanding the subject of its surveillance, discipline, and violence.

Conclusion

In this chapter, I have situated the Vesey Uprising within a longer historical trajectory that tracks the increasingly tangled relationship between resistance to enslavement and the making of law and race. First, I have argued that the Vesey Uprising represents a critical juncture in the mounting critiques of slavery, particularly paternalist justifications for enslavement. As these defenses of slavery came under growing scrutiny, I show how the murder of enslaved people became a focal point for articulating a concept of law *without rights* that reappraised the division between 'legitimate' and 'arbitrary' forms of anti-black violence. Underwritten by contradictory visions of enslaved people as child-like subjects incapable of self-defense and

violent agents capable of widescale resistance, such efforts were bound to—and indeed *did*—fail from the outset.

Second, while historians have exhaustively debated the precise details of the Vesey Uprising and the veracity of the trial record, few have gone beyond reproducing a narrative of resistance met with violent subjugation. To be sure, such accounts are vital to developing a precise and accurate account of the uprising. However, they offer few resources in reimagining the emancipatory vision of law that underwrote the uprising, however provisional that account. Instead, I have sought to go beyond reproducing the violence of that summer by recovering Vesey's antislavery vision of law from the trial records. In doing so, I have shown how Vesey and his fellows articulated an antislavery politics that blended an Old Testament vision of wrath and reckoning with the story of Exodus, abolitionist debates around the Missouri Compromise, and the legacy of the Haitian Revolution.

Finally, I have reflected on the legacies of the Vesey Uprising, perhaps most notably the construction of the Citadel, establishment of a proto-police force, and the passage of coercive new laws governing freed black people from throughout the Atlantic. In doing so, I have sought to establish a continuity in my account of the law's capacity to authorize anti-black violence as a means for consolidating whiteness, as well as its logic of outside contagions. Taken together, this chapter offers an account of the Vesey Uprising that illustrates the ongoing dynamics of resistance, repression, and retrenchment that continued to persist in the nineteenth century.

Chapter Four

The State Penitentiary, 1867 – 1899

In 1867, South Carolina began construction on its first state penitentiary. From the outset, officials sought to make the penitentiary self-sustaining, if not profitable, through the expropriated labor of its predominantly black prisoners. Within a year, the penitentiary came under fire by black citizens, who accused state officials of systematic, racialized abuse. Invoking a language of rights still fresh in their mouths, these citizens demanded that state officials act, insisting, "Nothing but a deep interest in the cause of equal rights, and the welfare of our race, would cause us to ask you to investigate the nefarious treatment of our race in the prison." However, the state commission tasked with investigating these accusations found that "the charges of harsh and cruel treatment" were "unfounded," and instead praised the Superintendent and prison officials for being so "humane and efficient," given their challenging work. [1]

These proceedings provide an early insight into the dynamics of resistance, repression, and retrenchment that underwrote the development of the penitentiary, and which often closely paralleled the institution of slavery. Indeed, it is tempting to critique the penitentiary as solely an outgrowth of slavery—as an institution designed to reinstitute relations of white authority and black subordination. To be sure, this is part of the story. However, much contemporary scholarship has reframed the turn toward a modern system of crime and punishment as a process that bridged divisions between Southern, Northern, and Midwest prisons. These scholars have contested earlier narratives of 'southern exceptionalism,' or the idea that the link between anti-

[1] "South Carolina Penitentiary," January 14, 1868, 126, ST 0773 (AD 651), Reel 2, South Carolina reports and resolutions, 1868-1900, Regular Session 1867/68, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

black racism and the criminal justice system was a predominantly southern project. For these scholars, more than an outgrowth of an enduring link between slavery and criminal justice, the development of a modern criminal justice system—in both the South and beyond—was the result of national trends in the ascendance of scientific racism, the discursive construction and racialization of law and order politics, and concerns around post-war economic development. [2] Such accounts, however, rarely consider the development of a modern criminal justice system prior to the twentieth century. Instead, earlier accounts of criminal justice have primarily been the purview of scholars who frame convict leasing as an extension of slavery during and after Reconstruction. [3] Indeed, convict leasing—buoyed by Northern investors—reframed and retrenched the relations of expropriation endemic to slavery, supplying much of the labor and capital necessary to rebuild the post-Civil War South.

Yet few have approached these two strands of scholarship as describing overlapping developments. Most states had abolished their convict leasing systems by the late nineteenth or early twentieth centuries, and scholars of modern criminal justice rarely tend to this earlier period. Likewise, scholars of convict leasing concerned with the afterlives of slavery have rarely considered how, even after the decline of leasing, those institutional and ideological afterlives continued to shape criminal justice. In this respect, we are too often left to contend with a bifurcated history of criminal justice, one in which there is a decided break between the afterlives

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[2] Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics*; Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America*; Murakawa, *The First Civil Right: How Liberals Built Prison America*; Taylor, *From #BlackLivesMatter to Black Liberation*; Taylor, "Sunbelt Capitalism, Civil Rights, and the Development of Carceral Policy in North Carolina, 1954-1970"; Weaver, "Frontlash: Race and the Development of Punitive Crime Policy."

[3] Ayers, *Vengeance and Justice: Crime and Punishment in the 19th-Century American South*; Du Bois, *Black Reconstruction in America, 1860-1880*; Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877*; Hindus, *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878*; Jenkins, *Seizing the New Day: African Americans in Post-Civil War Charleston*; Kamerling, *Capital and Convict: Race, Region, and Punishment in Post-Civil War America*; Zuczek, *State of Rebellion: Reconstruction in South Carolina*.

of slavery that underwrote convict leasing and the still racialized but now wholly modern ideas and institutions that fostered the carceral state.

In this chapter, I argue that these two strands of thought and institutional design were entangled at various points in the wake of the Civil War, yielding a hybridized, often conflicting vision of criminal justice in South Carolina: On the one hand, a modern, nationalized vision of criminal justice, and on the other, a decidedly southern vision of crime and punishment forged from the dynamics of enslavement. It was the tension between these two modes of thought and institutional design that would shape the trajectory of criminal justice in South Carolina. The result was that even while modern ideas of incarceration gained traction, the ideas of race, law, and resistance underwriting slavery would shape criminal justice, even as the penitentiary entered the twentieth century.

Drawing on more than thirty-years of reports and prison records from 1867-1899, I track three major periods in the development of the South Carolina Penitentiary: from the politics of prisoner reform, to convict leasing, to the prison plantation. I first show how the penitentiary looked toward Northern states in pursuing a reform model. However, despite drawing on national trends in criminal justice and invoking Northern models of reform, the penitentiary instituted a system of punishment that was structured by the dynamics of resistance underwriting enslavement. Second, following the collapse of Reconstruction, I show how the penitentiary emerged as a focal point in reinscribing racial hierarchy through convict leasing. However, elected officials, penitentiary administrators, and business interests came into conflict over how best to balance disciplining prisoners against maximizing profits. This conflict yielded a fragmented and unstable lease system that failed to deliver an expropriable laboring population that could further both state and business interests. Finally, I argue that in the wake of these

developments, the penitentiary effectively became a state-owned plantation by instituting a politics of reform that was a thinly veiled new paternalism, aimed at rendering prisoners obedient while maximizing productivity and profits. Taken together, this chapter demonstrates how the afterlives of slavery were entangled with a modern vision of criminal justice, ensuring that the dynamics of resistance, repression, and retrenchment underwriting enslavement would persist into the twentieth century.

I. Race, Violence, and the Politics of Reform, 1867-1876

The first major era of the penitentiary began with its construction on November 17, 1867. In the first year of construction, costs totaled more than $72,000, or $1.25 million today. These costs would have been far higher if not for a growing supply of expropriable laborers. Construction was undertaken by predominantly black prisoners who lived in improvised cells. Indeed, even in in the early years of Reconstruction as officials pursued a reform-centered agenda, they also sought to make the penitentiary financially self-sustaining. Writing to Governor Orr, Thomas Lee—engineer, architect, and acting Superintendent—declared that the penitentiary, "if properly managed, [will] not only be of no expense to the State, but a source of income. The convicts of our Courts will no longer be idle in jail, but be made to labor for their support, and remunerate the state for the expense of protecting society." [4] Indeed, in the first year of construction, 86 percent of prisoners were black, and all were men. By the end of that year, more than two-hundred prisoners had worked to complete "about a hundred cells." [5] Even as the penitentiary pursued an economic model that hinged on the expropriated labor of black prisoners, in these early years, prison officials repeatedly expressed their desires to construct an institution

[4] "South Carolina Penitentiary," January 14, 1868, 80, ST 0773 (AD 651), Reel 2, South Carolina reports and resolutions, 1868-1900, Regular Session 1867/68, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[5] *Ibid,* 122-23.

centered on rehabilitation through work, vocational training, and religious worship. However, they simultaneously pursued a system of punishment that not only echoed the dynamics of resistance and repression underwriting slavery, but directly borrowed from earlier slave laws. From the outset, the politics of reform was entangled with the afterlives of slavery, undercutting the limited gains of Reconstruction by restoring racial hierarchy.

During the penitentiary's early years, officials were earnestly committed to the concept of reform, and since South Carolina had no prison before 1867, they looked to other states as resources for both emulation and improvement. Governor Orr himself conceded that, "A Penitentiary is an entirely new institution in South Carolina, and little is known by our people of its management, arrangement, or discipline." [6] Drawing on examples from other states, officials sought to institute vocational programs as well as chaplaincy with both black and white ministers in order to reform prisoners. The prison administration was also transformed to pursue these ends: Carlos J. Stolbrand, a former Union general was appointed Superintendent. Shortly thereafter, in 1869, William Beverly Nash, a black state senator, was appointed to the Board of Directors. Nash was joined in 1873 by another black state senator, Henry E. Hayne. [7] Black Republicans would rally behind Superintendent Stolbrand, who argued that the prison too often became "a receptacle" for prisoners and failed to address the social conditions of crime. [8] Officials were attuned to the challenges of this radical undertaking but maintained that, "Every effort is made to induce the convict to preserve his self-respect; he has his own clothing,

[6] *Ibid,* 130.
[7] Kamerling, "Capital and Convict: Race, Region, and Punishment in Post-Civil War America," 36.
[8] "South Carolina Penitentiary," November 12, 1870, 257, ST 0773 (AD 651), Reel 2, South Carolina reports and resolutions, 1868-1900, Regular Session 1867/68, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

bedding, cell, and is not required to hang his head like a dog. Where self-respect is gone, then we can never expect reformation." [9]

This commitment to a deeper vision of reform is perhaps best captured by the attitudes of administrators toward instituting a penitentiary farm. In 1869, Superintendent Stolbrand would insist upon the importance of purchasing "small farm, say of one hundred acres or more of land," and this work would primarily be undertaken by prisoners serving less than a one-year sentence. [10] The farm's small scale was linked to Stolbrand's broader goal of limiting incarceration for minor offenses. In 1870, Stolbrand would recommend that the Legislature amend sentences for minor crimes "to prevent so many persons being sent to the State prison for the small offences." [11] Those with longer sentences—the majority of whom were farmers—would be gradually instructed in more skilled and lucrative trades, including, "carpentry, cabinet-making, spinning and weaving." [12] To be sure, such trades were *also* more lucrative for the penitentiary than producing cotton and other staples, but they were nonetheless linked to a deeper vision of reform and rehabilitation. Stolbrand maintained that vocational training was essential to the penitentiary's broader mission, arguing, "the State owes the convict, first, to awaken in him an ardent desire to earn, honestly, his bread, and secondly, to put him in possession of the power to do so after his liberation, by proper preparation during his confinement." [13] Without these programs, Stolbrand warned, incarceration would produce only "increased viciousness in the old

[9] "South Carolina Penitentiary," January 14, 1868, 128, ST 0773 (AD 651), Reel 2, South Carolina reports and resolutions, 1868-1900, Regular Session 1867/68, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[10] "Report of the State Penitentiary," November 12, 1870, 244, ST 0773 (AD 651), Reel 2, South Carolina reports and resolutions, 1868-1900, Regular Session 1869/70, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[11] *Ibid,* 254.
[12] *Ibid,* 260.
[13] *Ibid.*

offender, and greater insecurity to the community," producing a cycle of recidivism underwritten by the deepening immiseration of prisoners. [14]

In linking the penitentiary to a politics of reform, I do not mean to romanticize this early period. From the outset, even as reform-minded officials pursued an agenda aimed at rehabilitating prisoners, the penitentiary was a locus for retrenching racial hierarchy. Between 1867-72, black people accounted for 88% of the 1257 individuals who were incarcerated at the penitentiary. Not only were black people incarcerated at rates disproportionate to whites, they were also less likely to be pardoned. Utilizing an original data set compiled from five years of penitentiary registers, Table 1 demonstrates, the small group of white people who did find themselves imprisoned were more likely to receive a pardon from the Governor:

Table 1. Frequency of Pardons by Race, 1867-72 [15]

Race	**Pardon**	**No Pardon**	**Total**	**Frequency**
White	108	44	152	**0.71**
Black	642	463	1105	**0.58**

Read against the patent disproportionality in incarceration and pardoning rates, these reformist aspirations become even more troubling in their purported racial neutrality. Indeed, this reform agenda was premised on a view of class inequality that did little to recognize or directly address the needs of black prisoners. Efforts to implement vocational programs that might alleviate the social conditions of crime did nothing to address racial discrimination in law enforcement,

[14] "Report of the State Penitentiary," February 14, 1871, 132-33, ST 0774 (AD 652), Reel 3, South Carolina reports and resolutions, 1868-1900, Regular Session 1870/71, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

15 Pardon data by race is only available for this five-year period. All other pardon counts are aggregate. Individual pardons, including prisoner race, crime, sentence length, and pardon date, are recorded in the Attorney General's annual report. Unfortunately, there are thousands of entries, which I could not process in this timeframe. For subsequent drafts of this chapter, I will compile an original dataset of pardons for this period.

presumptions of black criminality and guilt, or racial disproportionality in sentencing. No amount of new skills or resources would fully alleviate the burden of black criminality, a stigma forged from the dynamics of resistance, repression, and retrenchment across the past two centuries. Moreover, this concept of reform was inherently disciplinary: It proceeded from a masculinized, racially neutral vision of the citizen who was simultaneously independent but obedient to authority, self-sufficient but subservient to capital, educated but uncritical. In this respect, reform was not only disciplinary, but fundamentally gendered—it sought to institute a masculinized vision of citizenship premised on self-reliance that not only hinged on the subordination of women, but that made no reference to the small-but-growing population of female prisoners. Perhaps most significantly, this reform model instituted a system of discipline and punishment that directly invoked earlier slave laws, perpetuating the dynamics of resistance and repression under slavery.

In 1868, the penitentiary's first annual report would outline the various duties of penitentiary officials, as well as prisoners themselves. The penitentiary rules articulated a vision of resistance and repression that closely paralleled the dynamics of enslavement that I outlined in the preceding chapters. Earlier slave laws—including the 1740 Negro Act— empowered justices of the peace to deputize citizens in violently suppressing uprisings. In contrast to the careful economization of violence underwriting slavery, these laws prescribed unbounded violence in restoring racial order, shielding *all* acts of violence from prosecution. Responding to the Stono Uprising, lawmakers had proclaimed that, "all and every act, matter and thing, had, done, committed and executed, in and about the suppressing and putting all and every said Negro and Negroes to death, is and are hereby declared lawful." [16]

[16] 1740 Negro Act, Clause 46.

The penitentiary established a similar hierarchy, vesting the Superintendent with "the entire control and management of the penitentiary," including issues of "discipline and police." [17] Beneath that, the chief of guard was tasked with overseeing a growing contingent of guards that directly oversaw discipline in the penitentiary. Penitentiary rules empowered guards to deploy lethal force in suppressing uprisings, such that in "any revolt or attempted revolts, if necessary to quell it, the parties engaged may be killed." However, the violent repression of resistance was not the exclusive purview of guards, or even those trained to deploy force. *All* employees were required to "assist the guard in preventing an attempted escape of a prisoner, or to quell a revolt, whenever called upon." [18] In 1873, the state legislature rendered this logic even more explicit, empowering the Superintendent "to suppress any disorders, riots or insurrection that may take place among the prisoners" by requiring "the aid and assistance of any of the citizens of the State." Penitentiary officials and citizens alike were authorized to utilize any form of violence to suppress resistance, and regardless of severity, were to "be justified and be held guiltless." [19] Of course, in contrast to earlier slave codes, these laws made no explicit reference to racial violence. That silence, however, should not be mistaken for racial neutrality. Instead, law enforcement in tandem with judges had disproportionately targeted black citizens, ensuring they would be the primary targets of punitive violence in the penitentiary. Despite the fears of penitentiary officials, incidents of violent resistance were highly infrequent. The only violent escape attempt during this first period nearly occurred in 1867 when an interracial group of

[17] "South Carolina Penitentiary," January 14, 1868, 82, ST 0773 (AD 651), Reel 2, South Carolina reports and resolutions, 1868-1900, Regular Session 1867/68, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[18] *Ibid,* 86.
[19] General Assembly, *The Revised Statutes of the State of South Carolina*, 761.

"unemployed convicts concocted a plan to make their escape by killing the guard." [20] This plan, however, was preemptively suppressed and all men involved were "required to wear a ball and chain, until further orders from the Superintendent." [21]

Nor was violence against prisoners confined to acts of resistance that posed an eminent threat to penitentiary officials. Even nonviolent acts of resistance like escape attempts were to be violently suppressed. If a prisoner attempted to escape, was ordered to stop, and did not respond, guards were legally required to shoot that individual. [22] Across three decades of reports, penitentiary officials repeatedly cited the deaths of prisoners who were shot and killed by guards during escape attempts**.** Those who survived fared little better: One prisoner who attempted to escape was shot in the arm, fracturing the bone so severely that the entire limb had to be amputated at the shoulder. [23] By 1889, Superintendent Lipscomb would attribute much of the escalating number of prisoner deaths to this policy, citing that, "The guards are compelled by law to fire on an escaping convict." [24] If a guard was found to have contributed to an escape—either voluntarily or by negligence—they were to be arrested, prosecuted, and sentenced up to twenty years. [25]

Although penitentiary officials feared uprisings and escape by prisoners, they were even more attuned to everyday forms of resistance. At stake was the production of a disciplined,

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[20] "South Carolina Penitentiary," January 14, 1868, 128, ST 0773 (AD 651), Reel 2, South Carolina reports and resolutions, 1868-1900, Regular Session 1867/68, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[21] *Ibid,* 130.
[22] Ibid, 103.
[23] "Report of the State Penitentiary," October 31, 1879, 353, ST 0779 (AD 659), Reel 8, South Carolina reports and resolutions, 1868-1900, Regular Session 1878/79, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[24] "Report of the State Penitentiary," October 31, 1889, 51, ST 0788 (AD 683), Reel 17, South Carolina reports and resolutions, 1868-1900, Regular Session 1888/89, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[25] "South Carolina Penitentiary," January 14, 1868, 87-88, ST 0773 (AD 651), Reel 2, South Carolina reports and resolutions, 1868-1900, Regular Session 1867/68, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

expropriable, and predominantly black laboring force that would make the penitentiary a self-sustaining, if not profitable, institution. Thus, in contrast to the unbounded forms of violence that met uprisings and escapes, officials claimed that everyday forms of resistance were governed by a complex and ever-changing economy of violent punishments. This system was a response to the litany of behaviors that penitentiary officials feared would erode discipline among prisoners. Prisoners were commanded "to labor faithfully and diligently, to obey all orders promptly, and to observe unbroken silence." Echoing some of the most common forms of resistance under enslavement, prisoners were forbidden from "willfully or carelessly" sabotaging their work, tools, or other penitentiary property. Socialization among prisoners was strictly forbidden: They were not permitted "to exchange a word with each other under any pretence, nor communicate any intelligence… in writing." Bans were also placed on nonverbal communication, including "looks, winks, laugh[s]… any signs," except those to communicate their needs to guards. [26] Officials' reticence toward socialization extended to outside contact and visits, which were forbidden except by special permission of the Superintendent, and even then, took place in the presence of a guard for no more than five minutes. [27]

Although these dynamics of resistance and repression conjure the afterlives of slavery, officials also sought to institute a system of punishment that emulated, perhaps even improved upon, the 'modern' penitentiary in Northern states. Governor Orr would send Superintendent Lee on an investigation across the North, insisting that he "obtain the largest experience on the subject of penitentiaries." [28] The state would also procure a comprehensive report on prisons across the United States, assembled by a commission in New York. Drawing on visits and

[26] Ibid, 85.
[27] Ibid, 85-86.
[28] Ibid, 117.

reports, penitentiary officials standardized punishments for everyday resistance by first looking to existing practices in New York, Indiana, Kentucky, Massachusetts, Michigan, Missouri, Rhode Island, Vermont, and Connecticut. [29] Officials did not simply mirror these systems of discipline—they sought to improve upon them. Among those foregone punishments, penitentiary officials in South Carolina noted that "solitary confinement was, in their opinion, not a merciful or prudent punishment under the circumstances." [30] Within the first year, officials had also stopped replacing meals with bread and water—a punishment still enacted in Connecticut, Maine, Massachusetts, Michigan, and Vermont—deeming it "ineffectual." [31]

Instead, officials argued that they could economize violence against prisoners and produce a disciplined laboring force by relying on positive incentives like reduced sentences and better rations for good behavior. [32] Some even maintained that resistance, particularly escape attempts, could be limited by subjecting prisoners to intensive labor, arguing that "the idle brain is the devil's workshop." [33] Recognizing that excessive violence might hamper their reformatory aspirations and limit the productivity of expropriated laborers, officials conceived of a strict schedule of punishments. These punishments were to be proportionate to the offense, however, the Superintendent was empowered to freely amend those rules to ensure "proper enforcement." [34] Punishments were scheduled and administered according to severity: "First—tying up by the thumbs, from three to sixty minutes ; second—bucking and gagging, from one to six hours ; third—standing on a post, blindfolded, from one to nine hours ; and fourth—the blind march, from one to one and a half hours." These punishments, officials insisted, were not only "less

[29] Ibid, 125.
[30] Ibid, 117.
[31] Ibid, 124.
[32] Ibid, 117.
[33] Ibid, 128.
[34] Ibid, 87.

exacting and less severe" than other penitentiaries but comparable to existing disciplinary practices in the U.S. military. [35]

Whatever aspirations at economizing violence underwrote this system, incidents of violent punishment quickly escalated. The matter came to a head in 1868, when black citizens circulated a petition accusing prison officials of chronic abuse. The petitioners argued that prisoners' "treatment would be a disgrace to any Government, even in the dark ages. They are made subject to punishments only such as might be expected from the Turks, or the cruel savage." [36] Shortly thereafter, state officials opened an investigation into the prison, culminating in ten days of testimony by former prisoners, prison and state officials, and even the governor himself. Although the commission largely sided with penitentiary officials—despite evidence contrary to their findings—elements of the report are still illuminating. Testimony by former prisoners revealed the brutality and regularity of punishment: One recalled a scene in which prisoners were "bucked and gagged" and forced to stand blindfolded on posts "during the heaviest rain I mostly ever saw." [37] When blindfolded prisoners fell from these posts, "three or four feet from the ground," guards would punch them with their guns to force them back on the posts. [38] Another recalled a scene in which prisoners were "bucked and gagged, balled and chained… marched in bling gangs from twenty-five to thirty in a gang over ladders, wheel-barrows, ditches, and sometimes holes," while guards jabbed them with bayonets and struck them with rifles. [39]

[35] Ibid, 124.
[36] *Ibid,* 129.
[37] Ibid, 105.
[38] Ibid, 106.
[39] Ibid, 102.

During the penitentiary's first year of operation, these punishments were inflicted 784 times across a population of just 215 prisoners, 86 percent of whom were black. [40] Table 2 provides a breakdown of these incidents of violent punishment:

Table 2. Incidents of Violent Punishment

Tying up by the thumbs	39
Buck and gag	42
Standing on post	152
Blind march	410
Minor punishments	141

Although *frequently* practiced, in another respect, punishment was highly economized: Between thirty and fifty prisoners were the primary targets of guards, and roughly ninety—or forty percent of—prisoners were never subjected to violent punishment. Indeed, one prisoner was punished *twenty-nine times* in less than a year. [41] Officials argued that such economized and concentrated violence indicated a measure of success. After all, for most prisoners, then, "cruel punishment" had merely been replaced with "unceasing vigilance." [42] In this respect, it was the visible threat of violence—exacted on an economized minority of prisoners—that secured the majority's obedience. Moreover, this economization of violence shows how state institutions like the penitentiary continued to consolidate the authority to sanction anti-black violence. Just as lawmakers sought to consolidate this form of racialized state authority in the wake of the Stono and Vesey Uprisings, the penitentiary furnished a novel site in which the interests of racial capitalism were underwritten by the empowerment of low-skill, low-wage white workers to

[40] Ibid, 124.
[41] Ibid, 124.
[42] Ibid, 125.

partake in anti-black violence. Guards and other prison officials worked under conditions of high stress and low wages, spiking turnover rates, and with experience and training in short order, violence proliferated. Thus, even as fewer citizens were explicitly authorized to engage in anti-black violence, the growth of the penitentiary signaled new horizons for racialized repression. These practices, however, were increasingly submerged and covert in the wake of abolition. Indeed, the findings were damning that no further counts of punishment were recorded across the next three decades of penitentiary reports.

Although some attempts were made at reforming the system of punishment, they often fell short. In January 1869, newly appointed Superintendent Stolbrand would abolish some of the most severe punishments, including: "the tying up by the thumbs, the blind march, the spread eagle, the flogging of prisoners, and the shower bath." [43] These rules, however, were not consistently enforced, and on June 25, 1871, a prisoner named Davis Brown was murdered in the shower bath after exhibiting "disobedience and obstinate abusiveness" toward the guards. Stolbrand described a scene in which Brown was locked beneath a perforated iron plate, through which "four to six buckets" of water were dumped onto his restrained face. [44] Struggling to break free, Brown loosened his head from the restraints, but was forced back by the guards who mortally wounded Brown in the ensuing struggle. "Brought back into the box, by the assistance of a rope," Brown was pummeled with another "five to eight buckets of water," struggling until he succumbed to his wounds and was pronounced dead just moments later. [45]

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[43] "Report of the State Penitentiary," October 31, 1869, 265, ST 0773 (AD 651), Reel 2, South Carolina reports and resolutions, 1868-1900, Regular Session 1868/69, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[44] "Report of the State Penitentiary," January 15, 1871, 266, ST 0774 (AD 652), Reel 3, South Carolina reports and resolutions, 1868-1900, Regular Session 1868/69, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[45] Ibid, 267.

Not only was this vision of reform compromised by a racialized economy of violence, it quickly collapsed beneath the weight of its own aspirations. Despite posting a profit in its second year, the penitentiary soon lapsed into a pattern of unfulfilled funding and mounting debt. In 1872, Superintendent Dennis revealed that the State Treasurer had repeatedly failed to disburse funds appropriated by the legislature for the penitentiary. Consequently, in order to even feed and clothe prisoners, the Superintendent and Board of Directors had not only exhausted every source of private loans for the institution but had begun to procure loans on their personal lines of credit. [46] By 1872, chronic underfunding had left the penitentiary in total disrepair: Buildings constructed just five years earlier were not only "greatly out of repair," one had actually begun "tumbling down." [47] The hospital lacked necessities like "bedsteads, mattresses, bed clothing or hospital clothes" and even the prisoners themselves were scarcely clothed, lacking shoes, hats, and blankets. [48] As officials struggled to furnish these bare necessities, the penitentiary's debt exceeded fifty-thousand dollars by April 1873, or more than $1 million today. [49] Nonetheless, officials struggled to continue implementing improvements, including a brickmaking yard, a new bookkeeping system to prevent fraud and waste, and a 'reformatory' to house and educate the penitentiary's youngest prisoners. The chaplain also continued to lobby for funding to create a library and Sunday school, citing "ignorance" as "the mother of a large proportion of crimes." [50] Noting a lack of discipline among the guards, Superintendent Dennis would institute new

[46] "Report of the State Penitentiary," November 9, 1872, 153, ST 0775 (AD 653), Reel 4, South Carolina reports and resolutions, 1868-1900, Regular Session 1871/72, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[47] Ibid, 115.
[48] "Supplemental Report of the State Penitentiary," November 9, 1872, 527, ST 0775 (AD 653), Reel 4, South Carolina reports and resolutions, 1868-1900, Regular Session 1871/72, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[49] Ibid, 526.
[50] "Report of the State Penitentiary," December 21, 1874, 158, ST 0776 (AD 655), Reel 5, South Carolina reports and resolutions, 1868-1900, Regular Session 1873/74, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

accountability measures to prevent them from "using improper language to each other and prisoners," to prevent unauthorized, violent punishments against prisoners. [51]

Moreover, it was not only prison administrators who supported this vision of reform. In 1874, the legislature would support this course by explicitly prohibiting the "letting, hiring or use of any such labor for any purpose or purposes whatsoever," effectively banning convict leasing. [52] Anyone found to have violated the act would be fined between five-hundred and one thousand dollars and be imprisoned for three to six months. Convict labor, one Senator argued, not only posed a great thereat to "the labor of the honest mechanic and laborer," but was "offensive to society" and had a "demoralizing influence" upon prisoners. [53] Instead, prisoners should be made to engage in "constant, continuous hard labor" on behalf of the state. Discipline, however, was to be moderated by a commitment to reform—only religious and vocational instruction in tandem with positive incentives like shortened sentences and conditional pardons would ever transform prisoners. Only this combination of discipline and reform could produce the "sentiment of hope… mingled with despair," the level of severity without cruelty, necessary to punish and prevent crime. [54]

However, with the decline of Reconstruction, the institution's commitment to reform would rapidly deteriorate. By the mid-1870s, Governor Chamberlain—a staunch abolitionist from Massachusetts and the state's former attorney general—had already betrayed the trust of black Republicans. Chamberlain inverted the radicalism of Reconstruction politics by arguing that "freed people's misdeed, rather than white racists, were South Carolina's outstanding public

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[51] "Report of the State Penitentiary," October 31, 1875, 150-51, ST 0776 (AD 655), Reel 5, South Carolina reports and resolutions, 1868-1900, Regular Session 1874/75, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[52] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Special Session of 1873 and Regular Session of 1873-74*, 601.
[53] *Journal of the Senate of the State of South Carolina for the Regular Session of 1873-74*, 117.
[54] *Ibid.*

problem." [55] Put another way, it was black criminality, rather than discriminatory policing and sentencing, that drove racial disparities in incarceration. Framed in these terms, the penitentiary emerged as a neutral apparatus of control—a positive force for preserving social order—that was only incidentally racial. The penitentiary's troubles were compounded by the decline of Reconstruction, namely a campaign of violent terrorism, voter suppression, and mass fraud by whites during the 1876 elections that culminated in the violent excise of Republican lawmakers. Incarceration surged as a technique of repression during this campaign with the penitentiary population ballooning from three hundred and fifty to nearly six hundred prisoners. [56] The election results were devastating, all but eradicating the gains of black voters and elected representatives. During Reconstruction, black voters in South Carolina had elected 29 black state senators and 210 state representatives. [57] To be sure, this was still short of proportional representation for black voters, yet the election of at least 130 formerly enslaved people was still a watershed political moment. [58] In the wake of a highly contested election, the state house and senate were reclaimed by Democratic majorities, their legislative agenda all but assured with the inauguration of Governor Hampton in April 1877.

II. Convict Leasing, Resistance, and the Disciplinary Deficit, 1877-1899

During the second major era of the penitentiary, officials began to institute a convict lease system, wherein private corporations would lease prisoners to labor on railroads, phosphate mines, and other emerging industries in the still nascent post-war economy. In order to maximize profits, corporations forced prisoners to work long shifts under brutal conditions and with minimal surveillance, yielding a system of profit maximization at the expense of a 'disciplinary

[55] Fitzgerald, *Splendid Failure: Postwar Reconstruction in the American South*, 197.
[56] "The Result in South Carolina."
[57] Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877*, xvi.
[58] Foner, xviii.

deficit.' Concerned with this deficit, which they believed was antithetical to preventing resistance among prisoners, officials sought out new modes of profit maximization also concerned with discipline, intermixing convict leasing with private contracts inside the penitentiary. Ultimately, I argue it was this tension between profit maximization, resistance, and discipline that proved fatal to the convict lease system in South Carolina.

Empowered by the ouster of Republicans, this coalition immediately sought to erode the gains of Reconstruction, and the penitentiary emerged as focal point in this struggle. At stake was the question of whether—or at least to what extent—South Carolina would embrace a system of convict leasing like other Southern states. South Carolina was among the last to adopt a least system—second only to Texas—while states like Louisiana had experimented with convict leasing prior to the Civil War and others soon resumed these efforts beginning with Georgia in 1868. On June 8, 1877, the legislature would finally pass "An Act to Utilize the Convict Labor of the State," authorizing the Board of Directors to begin advertising for and negotiating contracts, pending legislative approval. Prisoners serving the longest sentences for violent crimes—murder, rape, arson, and manslaughter—were excluded from the lease system. [59] However, the vast majority of prisoners could still be leased. Between 1876-77, only fifty-eight individuals had been convicted of those crimes, accounting for just 13% of prisoners received at the penitentiary in the past year. The proliferation of prisoner labor would also extend to state projects. That same day, the legislature would require the Superintendent to enlist prisoners to begin repairing the State House. [60]

[59] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1876-77*, 262–63.
[60] *Ibid,* 318.

In 1877, conceding that, "the South Carolina Penitentiary is but in its infancy, the building in an incomplete state, and no system adopted for a practical and remunerative employment of convict labor," the Board of Directors acceded to charting a new course for the institution. They would send Superintendent Parmele to tour "the best managed institutions of the country, with a view of informing himself as to their management and obtaining such data as might enable the Board to bring the Penitentiary up to a fair standard, compared with other institutions." [61] Reporting on his findings, Parmele advocated for a system that better protected society and punished crime while maximizing the penitentiary's yearly revenue for the state. [62] (1876-77, 89). Elevating profit maximization over education and rehabilitation, this new system would institute shops and industries within the prison, employing "unskilled convict labor" in a single industry that required no "previous training as mechanics." This new direction would altogether abandon the concept of vocational education as a tool of rehabilitation, instead framing labor as a disciplinary force and process of wealth generation. In the interest of maximizing production, these new industries would employ only the most "capable men" and leave the "common" labor for "drones," those prisoners "who, by physical unfitness and mental incapacity, cannot make profitable return for their time." [63]

Superintendent Parmele, however, was unwilling to cede direct authority to oversee and discipline prisoners. Citing the "large proportion of escapes, which are unavoidable" under convict leasing, Parmele—with the support of the Board of Directors—refused to institute an outside lease system. [64] Although the penitentiary was poised to become a source of significant

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[61] "Report of the State Penitentiary," October 31, 1877, 85-86, ST 0777 (AD 656), Reel 6, South Carolina reports and resolutions, 1868-1900, Regular Session 1876/77, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[62] *Ibid,* 89.
[63] *Ibid,* 91.
[64] *Ibid,* 90.

revenue for the state and a ready source of expropriable labor for rebuilding post-war industries, prison administrators clung to a vision of discipline that impeded upon the totalizing relations of convict leasing. This struggle was short-lived, as Governor Hampton was determined to institute convict leasing, insisting that, "the labor of the convicts in the penitentiary could be made profitable." The following year, a new Board Chairman reported his disappointment that Superintendent Parmele "was not in sympathy with the majority of the Board of Directors and would not cooperate with us," culminating in his resignation. [65]

Building on the collapse of Reconstruction and the excise of Republican lawmakers from the state legislature, a new penitentiary administration was appointed that abandoned the language of reform and pursued a profit maximizing agenda unencumbered by the need for total oversight and discipline. Within the year, prison administrators had begun to institute a system of convict leasing in earnest. In the first year alone, nearly two-thirds of all prisoners were forced to labor in phosphate mines, build railroads, produce bricks, and dig out canals to begin rebuilding South Carolina. [66] By the following year, the number of convict leases had doubled. [67] In this first year, the lease system returned over $2,100 in profits to the penitentiary, and this increased to $3,700 by the following year, or roughly $100,000 today. [68] [69] The remaining prisoners without contracts would labor on a state-owned farm and construct public buildings, including the Penitentiary itself, as well as the State House and State University. [70]

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[65] "Report of the State Penitentiary," February 31, 1878, 475, ST 0778 (AD 658), Reel 7, South Carolina reports and resolutions, 1868-1900, Regular Session 1877/78, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[66] *Ibid.*
[67] *Ibid,* 291-95.
[68] *Ibid,* 482.
[69] "Report of the State Penitentiary," October 31, 1879, 308, ST 0779 (AD 659), Reel 8, South Carolina reports and resolutions, 1868-1900, Regular Session 1878/79, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[70] *Ibid,* 503.

As interest in the lease system steadily grew, the legislature continually revised the system to expand the expropriable laboring pool, maximize state profits, and favor certain business interests. Revisions to the penal code increased the sentences for nonviolent property crimes, which formed the backbone of the lease system's expropriable laboring population. Under these new laws, burglary was punishable by lifetime imprisonment and livestock theft punishable with up to ten years. [71] In increasing the punishment for livestock theft, South Carolina joined other Southern states in passing "pig laws," which established property crimes that were used to disproportionately target black citizens. [72] In the year following the passage of this new law, arrests for livestock theft nearly quintupled. Just as state officials extended the sentences of those prisoners most likely to be leased, they also reduced the population of 'violent' prisoners who could not be leased and were not a ready source of profit. The death penalty was expanded beyond willful murder to include arson and rape, which were both now punishable by death. [73] Although data on the death penalty is not available, it is possible to make some inferences from incarceration rates. Over the next ten years, even as the penitentiary population grew, the number of prisoners sentenced arson was reduced by more than half.

In addition to expanding the convict lease pool, legislators sought to maximize state profits. The legislature would amend the convict leasing act, obligating the Board of Directors to select the "highest responsible bidder," ensuring that the state would collect the largest possible profit from prisoners' labor. In order to limit inefficiencies in negotiating leases and maximizing profits, the legislature ceded sole discretion over the lease system to the Board of Directors. [74]

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[71] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1877-78*, 631–32.
[72] Oshinsky, *"Worse Than Slavery:" Parchman Farm and the Ordeal of Jim Crow Justice*, 40.
[73] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1877-78*, 631.
[74] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1878-79*, 727.

The legislature would also cut costs and further distance the penitentiary from a reform model by abolishing the penitentiary school established under the Reconstruction government. [75] Indeed, as the lease system expanded, the concept of reform was increasingly eclipsed by the promise of greater profits.

Finally, the lease system was expanded to include more industries while still favoring others. Existing lease laws were amended to allow for convict leases in agriculture, an industry previously barred from the system to limit competition with free labor. [76] Legislators also made special exceptions for the rapidly growing railroad industry, permitting them to lease prisoners using certificates of stock in the company. [77] This development was unsurprising, since the number of railroad companies had surged in recent years and many Democratic lawmakers also sat on the boards of railroads. In this respect, as Foner argues, the law "was redesigned to encourage the free flow of capital and enhance the property rights of corporations." [78]

The development and expansion of this lease system would compound the penitentiary's already disproportionate impact on black citizens. From the outset, the penitentiary's population was—and remained—predominantly young black men who had previously worked as farmers or laborers and were accused of committing nonviolent property crimes that yielded the shortest sentences. Drawing on an original dataset of penitentiary records, Figure 1 illustrates the race and gender disparities in the penitentiary population over a twenty-five-year period:

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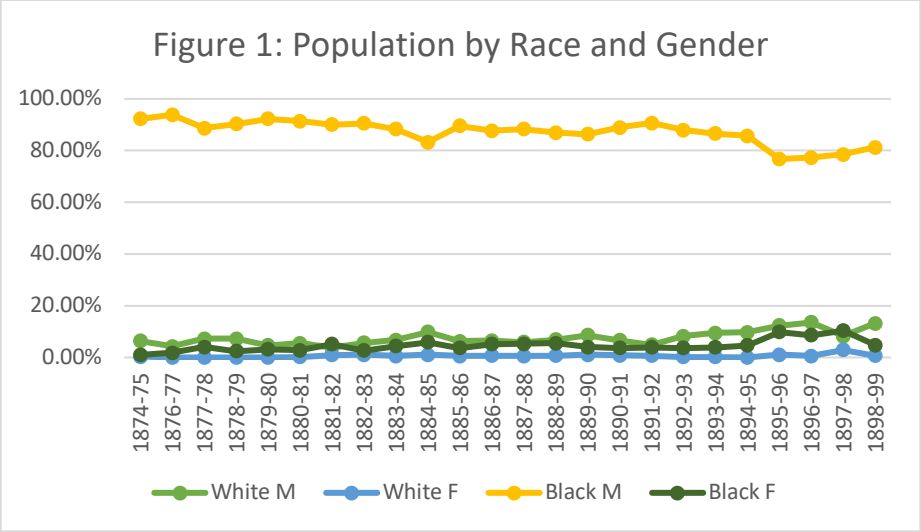
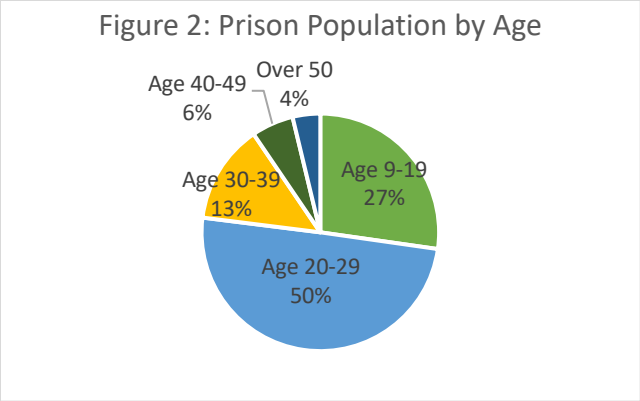
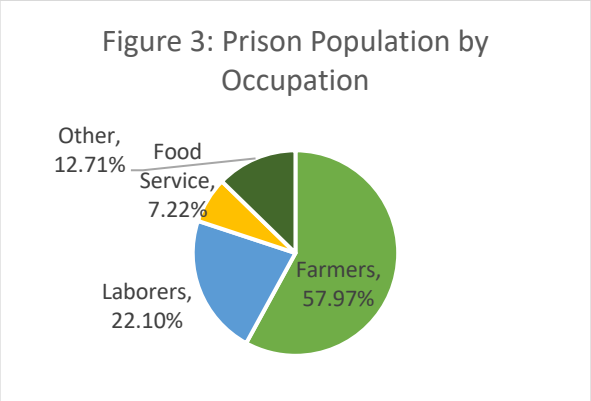
[75] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1877-78*.
[76] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1878-79*, 721.
[77] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1877-78*, 393.
[78] Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877*, 381.



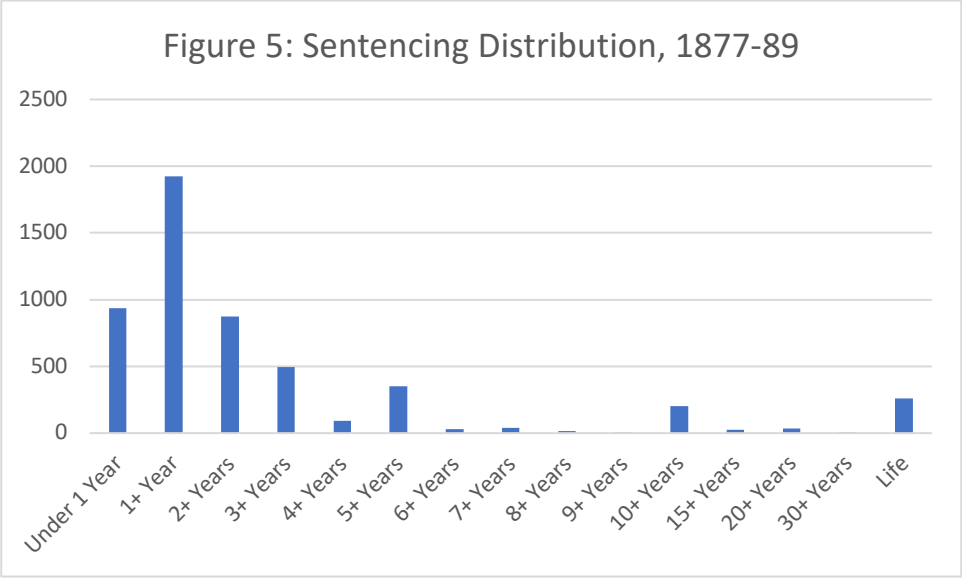
Between 1874 – 1899, black men accounted for, on average, 88 percent of the total population, while the next largest group, white men, accounted for just 7 percent. Put another way, black men were twelve times more likely to be incarcerated than their white counterparts. Although fewer women were incarcerated, the proportion of black female prisoners grew steadily across the nineteenth century. Taken together, black men and women constituted, on average, 92 percent of the penitentiary population, while black people in 1880 accounted for 60 percent of South Carolina's population. In contrast to their black counterparts, white women never accounted for more than 1 percent of the prisoner population.

The victims of convict leasing were not only predominantly black, they were young people who prior to incarceration had been consigned to work in low-skill, low wage jobs. For the many who were born into slavery and newly emancipated, they were often forced to remain in the same occupation. Figures 2 and 3 illustrate how the vast majority of prisoners were under 30 and previously worked in low-skill, low-wage jobs:





Individuals under thirty accounted for more than three quarters of all prisoners, and the vast majority had previously worked as either farmers or laborers. The majority were also arrested for property crimes, including nonviolent offences like livestock theft and larceny that yielded the shortest sentences. In this first year of convict leasing, 81% of all new prisoners had been found guilty of a property crime. Conversely, those arrested for crimes against persons—less than 20% of the population—were likely to receive much longer sentences. Figure 4 illustrates this distribution of sentences during convict leasing between 1877-1889:



Across this period, prisoners serving less than a two-year sentence accounted for 54% of the penitentiary's population. The result was a predominantly black laboring population that

railroads, mines, and other business interests could treat as disposable as they sought to rapidly rebuild the South Carolina economy.

Because the majority of prisoners were incarcerated for property crimes with relatively short sentences, they constituted an expropriable labor population to which contractors owed no long-term responsibility. Contractors, of course, would only lease able-bodied prisoners and refused all others, but rarely returned them in good health. With the promise of a ready supply of disposable labor, contractors sought to extract the maximum value from each prisoner with total disregard for the sustainability of those practices. Working conditions under convict leasing were especially brutal and mortality rates skyrocketed: 152 prisoners died under the lease system in less than two years, *ten times higher* than the preceding two-year period. [79] Mortality rates remained high, and many who survived would die upon return from wounds, viruses, or diseases that had gone untreated by contractors. The penitentiary's physician described how some prisoners would die weeks after returning because, "They were in a complete state of exhaustion…. their systems were so enfeebled that they could not assimilate sufficient food to restore them to health." [80] Indeed, penitentiary officials frequently complained that among the prisoners who were lucky enough to survive their leases "fully one-third" returned "more or less disabled," unable to labor. [81] As the number of disabled prisoners mounted, officials feared the penitentiary would become a receptacle for those unable to labor and cover the cost of their incarceration, let alone furnish a profit.

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[79] "Report of the State Penitentiary," October 31, 1879, 296, ST 0779 (AD 659), Reel 8, South Carolina reports and resolutions, 1868-1900, Regular Session 1878/79, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[80] *Ibid,* 353.
[81] "Report of the State Penitentiary," October 31, 1884, 643, ST 0784 (AD 676), Reel 13, South Carolina reports and resolutions, 1868-1900, Regular Session 1883/84, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

Perhaps the worst abuses occurred in the Greenwood and Augusta Railroad camps. Rumors of neglect were so rampant and egregious that the Senate passed a resolution requiring the Superintendent Lipscomb to submit a full report of these leases. In what followed, more than sixty pages of reports and interviews would outline in gruesome detail the violence that prisoners endured. [82] The stench inside the camp was so awful that prisoners had to be brought outside for examination. These quarters were so overcrowded and dirty that most prisoners had developed respiratory problems. [83] Prisoners were forced to drink from dirty water supplies and subjected to a diet that produced digestive problems, diarrhea, and scurvy. Thin straw mattresses were provided for the sick, while others slept in their work clothes without beds or bedding. [84] Nearly all of the injured men had gone untreated, chained up and "covered with vermin and fleas," so many that Lipscomb became ill and walked away. [85] Even the doctor tasked with examining the prisoners described "the stench" as "sickening to the uttermost extent." [86] Venereal diseases, scurvy, and swollen limbs from overwork and shackles were all rampant. [87] Even white prisoners were "rotten" with syphilis. [88] Doctors reported that sick prisoners were forced to continue "light work," all but ensuring a slow or nonexistent recovery. [89] In less than a year, the Greenwood and Augusta Railroads were responsible for the deaths of 130 prisoners, roughly 45 percent of their total leases. In response to poor surveillance and rampant abuse, another 38 prisoners would

[82] "Report of the Superintendent of the Penitentiary, Together with Other Papers, In Regard to the Condition and Treatment of Convicts Employed on the Greenwood and Augusta Railroad," 885-947, ST 0779 (AD 659), Reel 8, South Carolina reports and resolutions, 1868-1900, Regular Session 1878/79, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[83] *Ibid,* 926-27.
[84] *Ibid,* 891.
[85] *Ibid,* 889.
[86] *Ibid,* 891
[87] *Ibid,* 890.
[88] *Ibid,* 905.
[89] *Ibid,* 925.

manage to escape. After 24 discharges and pardons, just 43 of the original prisoners were returned to the penitentiary. [90]

Superintendent Lipscomb was troubled by this "extraordinary mortality," which he argued "would have been less frequent if the convicts were property, having a value to preserve; then the contractors, having more interest in their lives and services, would look after them with greater zeal, and not leave them, as they have too often done, to the ignorance, inattention or inhumanity of irresponsible hirelings." [91] In contrast to the economization of violence under slavery, which demarcated between 'acceptable' and 'excessive' violence as means to secure the financial interests of enslavers, convict leasing furnished an altogether disposable and expropriable laboring population. The disposability of prisoners was facilitated by the law itself, which held that contractors were only liable to repay the state if they failed to "use due diligence" in preventing prisoners from escaping. [92] This made it virtually impossible for the state to institute the financial penalties that might have incentivized contractors to provide livable working conditions for prisoners. In this respect, the lease system had created a class of expropriable laborers who were subject to not only the brutalities of slavery but a legal system bereft of the minimal protections afforded enslaved people as property and as long-term investments.

With the ascendance of convict leasing, the reform model was all but eviscerated, supplanted by a logic of profit maximization for both the penitentiary and private corporations. Between 1878-86, the state would receive $15,000—nearly half a million dollars today—in

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[90] *Ibid,* 890.
[91] "Report of the State Penitentiary," October 31, 1879, 296-97, ST 0779 (AD 659), Reel 8, South Carolina reports and resolutions, 1868-1900, Regular Session 1878/79, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[92] "Report of the State Penitentiary," October 31, 1880, 10, ST 0780 (AD 660), Reel 9, South Carolina reports and resolutions, 1868-1900, Regular Session 1879/80, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

payment for convict leases from railroad companies, while those companies reaped even greater profits from a ready supply of disposable laborers. [93] Although penitentiary officials continued to utilize the language of reform, they primarily did so to lobby the legislature for additional funding. Describing rampant overcrowding in the penitentiary, with two to three prisoners packed into a cell designed for one, Superintendent Lipscomb would plead, "How can men be reformed unless their physical wants are supplied? Can I persuade a convict that the State desires his reformation when he is starved or otherwise abused?" [94] Although the penitentiary population would plateau, partly in response to these conditions, pleas to expand and improve the cell blocks went largely unheeded. As a result, prisoners who remained at the penitentiary—effectively surplus labor unutilized by the lease system—were subject to these deteriorating conditions. In this respect, the penitentiary emerged as a focal point in rebuilding the hierarchies and securing the relationships of expropriation that could ensure the survival and resurgence of racial capitalism. There were, however, two tensions at the heart of the lease system that would eventually prove fatal: First, a conflict between penitentiary officials and contractors over prison discipline and punishment, and second, a broader conflict over *how exactly* to maximize the profitability of prisoner labor.

First, penitentiary officials identified a lack of discipline with convict leasing that they perceived as antithetical to the punitive mission of the penitentiary and as a threat to broader social stability. Contractors were not only reckless with the lives of prisoners, they did little to secure that labor. An audit of one camp found that prisoners had been permitted to "dress in

[93] "Report of the State Penitentiary," October 31, 1886, 288, ST 0787 (AD 679), Reel 15, South Carolina reports and resolutions, 1868-1900, Regular Session 1885/86, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[94] "Report of the State Penitentiary," October 31, 1883, 644, ST 0783 (AD 675), Reel 12, South Carolina reports and resolutions, 1868-1900, Regular Session 1882/83, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

citizen's clothing and go frolic in the neighborhood." These incidents, Superintendent Lipscomb argued, proved "the utter impracticability of maintaining any discipline among convicts leased outside the prison and away from the supervision of state officers." [95] In the interest of reducing costs, supervision and surveillance were so minimal that contractors often relied upon prisoners themselves to institute discipline. The trustee system was particularly "in vogue" among contractors, who tasked 'trusty' prisoners with overseeing their fellow laborers. [96] These practices, oriented around maximizing profits, ultimately produced a disciplinary deficit, wherein lack of surveillance and control enabled prisoners to frequently resist. Thus, while the labor was grueling, punishing, and often deadly, practices that minimized discipline in the interest of maximizing profits also furnished the possibility for resistance through escape.

Acts of resistance would change and increase in response to these new experiences of violent expropriation under conditions of minimal discipline. In response to both brutal laboring conditions and poor security, escapes nearly tripled in the first year of the lease system, and by the end of the second year, a total of 82 prisoners had escaped during their leases. [97] When prisoners survived an escape attempt, penitentiary officials repeatedly sought to make an example of them. Multiple Superintendents would insist on harsher penalties, including making "escape or revolt… *a penal offense,* on proof which the convict so attempting should serve his entire sentence over again." [98] (1876-77, 92). In response to the changing politics of resistance,

[95] *Ibid,* 642.
[96] "Report of the State Penitentiary," October 31, 1882, 475, ST 0782 (AD 672), Reel 11, South Carolina reports and resolutions, 1868-1900, Regular Session 1881/82, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[97] "Report of the State Penitentiary," October 31, 1879, 296, ST 0779 (AD 659), Reel 8, South Carolina reports and resolutions, 1868-1900, Regular Session 1878/79, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[98] "Report of the State Penitentiary," October 31, 1877, 92, ST 0777 (AD 656), Reel 6, South Carolina reports and resolutions, 1868-1900, Regular Session 1876/77, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

the legislature would pass an act "to provide for the better control of convicts… and to punish persons harboring or employing escaped convicts." This new law instituted a $25 reward for the recapture of an escaped prisoner and would reimburse transportation costs for returning prisoners to the penitentiary. Those found to have employed an escaped prisoner would be charged with a misdemeanor punishable by a combination of fines and incarceration at the judge's discretion. [99]

The convict lease system's corrosive effects on discipline appear to have also affected stability within the penitentiary. Just as the modes and forms of repression had shifted, so too did the dynamics of resistance: Prisoners, most no longer slaves for a lifetime, were confronted with a different calculus in choosing how, when, where, and why to resist these forms of anti-black violence. Between 1874-1899, 80 percent of violent escape attempts would occur during this tumultuous era of convict leasing. In October 1880, six prisoners disarmed the guard, took their guns, and escaped down the river. Four were later found drowned in the river, while the remaining two prisoners went unfound. Finding that the escape had occurred due to the negligence of a guard, the Superintendent would arrest and prosecute him. [100] The following year, in August 1881, a group of five prisoners attempted to overpower the guard and escape, but the guards quickly opened fire: Two were injured and captured, one was killed, and the remaining two succeeded in escaping. [101] The largest uprising would occur in September 1885 after a massive earthquake that had damaged the prison. Sensing the opportunity, a group of thirty prisoners had conceived of an elaborate an "well concocted plan of escape," seizing

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[99] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1881-82*, 952–53.
[100] "Report of the State Penitentiary," October 31, 1881, 76, ST 0780 (AD 658), Reel 9, South Carolina reports and resolutions, 1868-1900, Regular Session 1880/81, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[101] "Report of the State Penitentiary," October 31, 1882, 478, ST 0782 (AD 672), Reel 11, South Carolina reports and resolutions, 1868-1900, Regular Session 1881/82, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

control of the gates while prisoners were returning from laboring in the canal and brickyard. Seizing on the disorder and confusion, a massive escape would have likely ensued, but the Superintendent and guards managed to suppress "the boldest of the ringleaders" without fatalities. [102] Finally, in 1887, two prisoners working on a lease in the Broad River managed to overpower a guard and take his weapon, knocking him into the river and making their escape by boat, never to be recaptured. [103]

Across each of these uprisings, there were no fatalities among prison officials, and only one official was prosecuted for negligence that enabled a prisoner to escape. [104] Nonetheless, as escape rates surged in the labor camps, officials repeatedly expressed their fear at the possibility of violent resistance and lobbied the legislature for funding to purchase new weapons and fortify the prison, citing the "rotten wood fence" that provided little security. The state asylum, they argued, was a more secure structure than the penitentiary, "where a wave of the hand, or a word, may be the signal for revolt." [105] These troubles were compounded by high turnover among the prison guard. In 1880, Superintendent Lipscomb would report to the legislature with mounting anxiety that, "I have found it extremely difficult to maintain an efficient guard at the low rate of pay, and have had during the year thirty-six resignations among my most efficient men." [106]

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[102] "Report of the State Penitentiary," October 31, 1886, 286-87, ST 0786 (AD 679), Reel 15, South Carolina reports and resolutions, 1868-1900, Regular Session 1885/86, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[103] "Report of the State Penitentiary," October 31, 1887, 58, ST 0787 (AD 680), Reel 16, South Carolina reports and resolutions, 1868-1900, Regular Session 1886/87, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[104] There is ample evidence, supplied across multiple penitentiary administrations, to support this inference and little reason to believe that officials concealed such widespread acts of violence to preserve their own positions or the reputation of the institution. Officials kept meticulous escape records, consistently noting when violence occurred against officials and even when they died from causes unrelated to the penitentiary itself.
[105] "Report of the State Penitentiary," October 31, 1877, 90-91, ST 0777 (AD 656), Reel 6, South Carolina reports and resolutions, 1868-1900, Regular Session 1876/77, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[106] "Report of the State Penitentiary," October 31, 1880, 10, ST 0780 (AD 660), Reel 9, South Carolina reports and resolutions, 1868-1900, Regular Session 1879/80, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

Second, the precise methods of *how* to maximize profits from prisoners' labor while minimizing lapses in discipline was contested among state officials, town and county officials, penitentiary administrators, and business owners. Having abandoned the idea of vocational reform, penitentiary officials utilized the labor of unleased prisoners on a state-owned farm. Between 1878-79, up to 130 prisoners would labor on the farm, yielding $18,000 worth of goods and contributing to a budget surplus of $10,000 for the penitentiary. [107] Expanding its use of prison labor on public works, the legislature would also authorize work on the Columbia Canal, which by 1882, would have 243 prisoners working daily on its construction. [108] Building on the convict lease system, which now primarily served as a source of expropriable labor for phosphate and railroad works, in 1882 the penitentiary began to collaborate with companies that were willing to fund factories *within* the prison. Supervised by penitentiary officials and subject to strict discipline, these prisoners would produce shoes, hosieries, saddles, and harnesses for private corporations. [109] These new prison contracts would alleviate disciplinary concerns among penitentiary officials while ensuring that prisoner labor remained profitable for both the state and private industries.

Experimentation with varying mixtures of convict leasing and private industry contracts within the penitentiary all contributed to the penitentiary's growing annual surpluses. Between 1878-88, the penitentiary had yielded almost $300,000 in profits, nearly $8 million today. [110]

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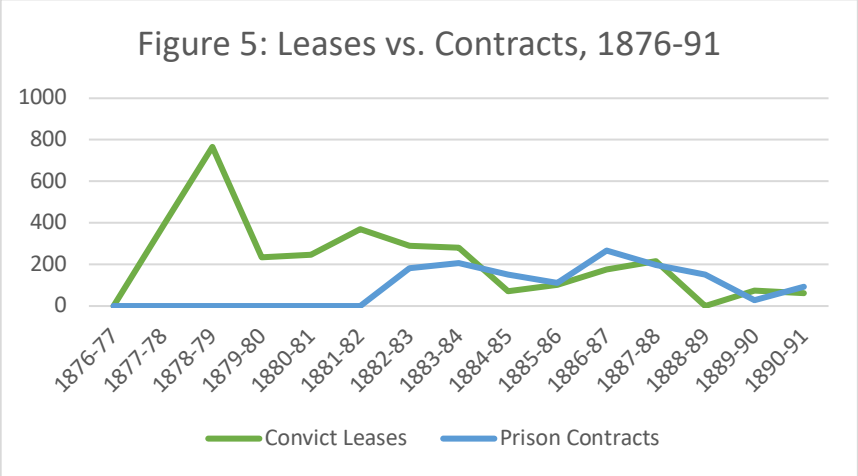
[107] "Report of the State Penitentiary," October 31, 1879, 9-10, ST 0779 (AD 659), Reel 8, South Carolina reports and resolutions, 1868-1900, Regular Session 1878/79, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[108] "Report of the State Penitentiary," October 31, 1883, 635, ST 0783 (AD 675), Reel 12, South Carolina reports and resolutions, 1868-1900, Regular Session 1882/83, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[109] *Ibid.*
[110] "Report of the State Penitentiary," October 31, 1888, 59, ST 0788 (AD 683), Reel 17, South Carolina reports and resolutions, 1868-1900, Regular Session 1887/88, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

Indeed, these figures would be even higher, however, this mixture of leases and contracts proved volatile and unpredictable. By 1879, just two years after the lease system was instituted, the annual number of leases had already peaked. Figure 5 demonstrates how the number of convict leases and prison contracts eventually converged between 1876-91: [111]



The number of outside convict leases initially surged but rapidly declined, even as the penitentiary population continued to grow. Eventually the number of leases stabilized, almost solely as a result of continued demand for labor from the phosphate and railroad industries. However, the stagnating lease system's troubles were compounded in 1884 when the legislature passed a restrictive law that required all prisoners under convict leases be supervised by "a sworn officer and guard appointed by and responsible to the Superintendent of the penitentiary." The salaries and rations for guards were now added to each contract, dramatically increasing the total lease cost. [112] Unable to cut costs around surveillance and discipline, companies elected not to renew their contracts and the lease system all but evaporated within the year.

[111] Leases were often for less than a year and some prisoners were leased multiple times in a year, causing the number of leases to exceed the total penitentiary population.
[112] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1883-84*, 815.

In 1885, a distraught Board of Directors reported they had only been able to negotiate a single contract and that no prisoners had been put to work by a railroad company during the preceding year. The result was immediate overcrowding in the penitentiary and rapidly mounting costs. [113] In 1885, the physician would report 90 prisoner deaths *within* the penitentiary—roughly 10% of the population—attributable to "exposure to cold," as many cells were still exposed to the elements, "and the depressing influences of over-crowding." [114] With pressures mounting from both business interests and penitentiary officials, these new rules were short lived. On December 22nd, 1885, less than a year later, the legislature would repeal the act. [115] It would take three years before the number of convict leases recovered, and even then, the damage would prove fatal. The lease system's days were numbered.

The evisceration of the leasing system enabled penitentiary officials to begin charting a new course for the institution, one that overcame the disciplinary deficit of convict leasing. Citing the "more than ordinary difficulties" posed by the 1884 law, the Board of Directors sought to alleviate overcrowding in the penitentiary by leasing three farms, which would have their own camps. Speaking against repealing the 1884 restrictions on leasing, the penitentiary prescribed another course: Empowering the Superintendent to make contracts for prisoner labor "at a profit to the institution," thereby expanding the growing system of prison contracts. There was reason to believe in the efficacy of these prison contracts, which now included both hosiery and shoe factories within the penitentiary. Moreover, the Superintendent had demonstrated his capacity to discover further uses for prisoner labor, successfully negotiating for the production of brick in

[113] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1884-85*, 538.
[114] *Ibid,* 604.
[115] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1885-86*, 74–75.

privately-owned yards. In the first year alone, prisoners at just two brickyards produced nearly three million bricks, half of which contractually belonged to the state and were used for public works. [116] As these industries expanded and the penitentiary's commitment to reform grew even thinner, cost reduction and profit maximization reigned supreme. By 1886, Superintendent Lipscomb would proudly report that, "the entire expenses of the institution," including food, clothing, materials, and guards had been reduced to just 21 7/8 cents per prisoner per day. Citing this figure, the Board of Directors would proclaim that the South Carolina Penitentiary was not only operating at lower costs than ever before, but it was believed lower than "any other similar institution in the land." [117]

Evidently the legislature would accede to this new course, authorizing the Superintendent and Board of Directors to utilize excess funds to purchase land one or more farms in any part of the state. In 1886, the Board of Directors reimplemented the earlier restriction on prisoner labor outside the penitentiary: "Under the new arrangement none of the convicts will in future be worked or controlled or disciplined except under the immediate supervision of the officers of the institution. This plan will be rigidly enforced in future." [118] Once again, the number of leases evaporated: There were no outside leases between 1888-89, and never more than a handful of outside railroad leases in any subsequent year. Even then, railroads only pursued these leases because they could be made profitable by paying for labor with company stock. Other industries were barred from the lease system altogether— in 1889 the legislature even explicitly forbade

[116] "Report of the State Penitentiary," October 31, 1886, 278-79, ST 0786 (AD 679), Reel 15, South Carolina reports and resolutions, 1868-1900, Regular Session 1885/86, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[117] *Ibid,* 281.
[118] "Report of the State Penitentiary," October 31, 1887, 436, ST 0787 (AD 680), Reel 16, South Carolina reports and resolutions, 1868-1900, Regular Session 1886/87, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

"the hiring or leasing or convicts to be employed in phosphate mining." [119] The end of convict leasing was effectively finalized in March 1896, when the legislature passed an act requiring that payments for convict leases be made monthly in "legal tender cash," ending the practice of accepting company stocks. [120] Instead, the penitentiary was determined to chart a new path that moderated profit maximization with discipline, mixing prison contracts that forged private-public industries with a return to a politics that evoked plantation life under slavery.

III. Plantation Life in Prison Stripes and the New Paternalism, 1889-1899

The third and final era of the penitentiary prior to the turn of the twentieth century began in 1889 when state and penitentiary officials became increasingly critical of the lease system. Intent on resolving the disciplinary deficit, they returned to a familiar mode of racialized expropriation by establishing a prison plantation. During this era, penitentiary officials returned to the politics of reform, however, their vision of the 'reformed' prisoner was one rendered obedient and productive, and still economically dependent, consigned to low-skill, low-wage labor. Ultimately, I argue the result was effectively a 'new paternalism,' one that sought to institute and retrench a racialized hierarchy of expropriation, cloaked in the racially neutral language of protection, improvement, and transformation.

As the lease system declined and the number of prison contracts stagnated, penitentiary officials began to express renewed interest in establishing state-owned prison farms. On December 23rd, 1889, the legislature would support this consolidation of state authority over prisoners, passing an act that authorized the Superintendent and Board of Directors to expend up

[119] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1888-89*, 320.
[120] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1895-96*, 199.

to $40,000 in purchasing land for farming. [121] Seeking to resolve the disciplinary deficit of convict leasing, this legislation ensured total authority over prisoners and their labor. It is difficult to convey the sheer scale of this undertaking. Officials complained that these funds could only secure the purchase of three to four thousand acres, which was "not enough," as they desired "to carry out plans, to work, say 600 hands, which would require about ten thousand acres of land," one-hundred times higher than Stolbrand's original recommendation for a 100 acre farm in 1869. [122] Despite these limitations, the growth that followed was staggering. Prior to 1885 the state owned a single small farm near the penitentiary, and since 1885, officials had leased an additional three farms from their owners. In less than three years, the number of state prison farms *quadrupled* and during that time the share of prisoners laboring on farms ballooned from 30 to 82 percent. As production accelerated, officials were desperate to maximize their farmable land. In 1892, the Captain of the Guard noted the land adjoining the "burying ground has been put in a condition to be of great value to the institution by being rendered available for cultivation. It is now sowed in oats." [123] This was the same land that Superintendent Lipscomb had noted was "so full of graves that there is scarcely enough ground left to dig new ones." [124]

By 1894, the state penitentiary had fully paid for and owned 4,712 acres of land between just three of its farms, which officials estimated had already increased in value by 25 percent. [125] In a

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[121] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1888-89*, 320.
[122] "Report of the State Penitentiary," October 31, 1889, 45, ST 0789 (AD 684), Reel 18, South Carolina reports and resolutions, 1868-1900, Regular Session 1888/89, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[123] "Report of the State Penitentiary," October 31, 1893, 96, ST 0793 (AD 688), Reel 22, South Carolina reports and resolutions, 1868-1900, Regular Session 1892/93, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[124] "Report of the State Penitentiary," October 31, 1879, 297, ST 0779 (AD 659), Reel 8, South Carolina reports and resolutions, 1868-1900, Regular Session 1878/79, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[125] "Report of the State Penitentiary," October 31, 1895, 727, ST 0795 (AD 695), Reel 24, South Carolina reports and resolutions, 1868-1900, Regular Session 1894/95, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

single year, prisoners would now labor to produce crops with a value exceeding $66,000—nearly $2 million today. Prisoner labor alone now supported the entire cost of running the penitentiary, as officials proudly reported, "We have been very economical in the management of the affairs of the Penitentiary and have thereby reduced the average cost per month for running expenses to $4,662.97," or just 17 cents per prisoner each day. [126] Moreover, with construction completed on the Columbia Canal, the penitentiary now produced its own electricity in excess, selling the difference to local railways and power companies. [127] In under five years, the state penitentiary had not only become a self-sustaining institution, it had effectively become a prison plantation.

With total authority over prisoners restored, penitentiary officials began to more frequently invoke the language of reform. However, unlike earlier reform-minded officials, they did so without reference to vocational training or other forms of education that might improve the job prospects of prisoners, who were still primarily laborers and farmers. Instead, reform was linked to the activity of prisoners as farmers and laborers, who by virtue of hard labor under "bearable" conditions could be transformed into "good citizens capable of making support for themselves and families." By this logic, prisoners could be transformed into "a more useful class, if they were reformed." [128] In figuring the penitentiary as a site of reform, officials invoked a republican ideal of citizenship as self-rule through economic independence. However, the economic reality in South Carolina was one of widening inequalities with shrinking opportunities, particularly for black citizens. Indeed, as Foner argues, "While the region's new upper class of planters, merchants, and industrialists prospered, the majority of Southerners of

[126] "Report of the State Penitentiary," October 31, 1892, 404, ST 0792 (AD 687), Reel 21, South Carolina reports and resolutions, 1868-1900, Regular Session 1891/92, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[127] *Ibid,* 401.
[128] "Report of the State Penitentiary," October 31, 1883, 64, ST 0783 (AD 675), Reel 12, South Carolina reports and resolutions, 1868-1900, Regular Session 1882/83, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

both races sank deeper and deeper into poverty." [129] With few prospects for subsistence, let alone self-sufficiency, civic republican ideals of citizenship and economic independence were aspirational at best.

More likely, though, the language of republicanism lent credibility to a politics of reform that had little actual concern for the tenability of republican ideals for black citizens, and to a lesser extent, a small population of poor whites. Instead, penitentiary officials' politics of reform centered on instituting improvements and protections that would nurture prisoners' economic dependence, while promoting obedience and long-term productivity. In this respect, officials cleverly presented reform as a twofold process aimed at transforming not only prisoners but the penitentiary itself. The scope of this undertaking would also be far wider—unlike the lease system, which targeted only able-bodied men, officials praised the new plantation system because it enabled "the management to work to advantage all classes of convicts, male and female, and the weak as well as the strong." [130] These improvements and protections, cloaked in the language of reform, would not only resolve the disciplinary deficit by balancing productivity and profitability against obedience, they targeted a broader range of prisoners than ever before. Reform, achieved through traditionally low skill—and in this case wageless—labor, would foster economic dependence by ensuring that prisoners left as they had entered, with job prospects that hinged on and furthered white economic interests. This economic dependence was then made durable by promoting obedience and productivity as the criteria for positive incentives like better rations and shorter sentences, as well as the measures of reform.

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[129] Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877*, 596.
[130] "Report of the State Penitentiary," October 31, 1887, 436, ST 0787 (AD 680), Reel 16, South Carolina reports and resolutions, 1868-1900, Regular Session 1886/87, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

Ultimately, reform would become little more than a proxy for dependence, obedience, and productivity. In turn, these traits—essential to racial hierarchy—were recast as redemptive and transformative ideal, echoing earlier figurations of paternalism. Black criminality—once restrained by the laws of slavery—would now be remade by a criminal justice system that presented itself in racially neutral terms of reform while fostering the very conditions that were necessary to maintain and expand racial exploitation. Thus, as the operations of the penitentiary increasingly resembled those of a plantation, so too did the pursuit of discipline and obedience articulate a new paternalist politics with claims of protection and improvement that hinged on the retrenchment of racial hierarchy. Like earlier claims of paternal authority, this new paternalism cast itself as disciplinary for the sake of redeeming prisoners, concealing the fact that reform was an instrument of oppression and exploitation, not liberation and empowerment. Like enslaved people who encountered, navigated, and resisted paternalism in widely varying ways, my point is not to suggest that black prisoners earnestly believed in the redemptive claims around reform. However, as the penitentiary prepared to enter the twentieth century, this paternalist concept of reform *would* furnish the ideological underpinnings of the institution moving forward.

This restoration of paternalism would first hinge on the consolidation of authority, namely with the Superintendent. As the penitentiary grew larger and its operations became more complex, the Board of Directors had continually deferred to the Superintendent, vesting him with ever greater discretion over the institution's operations. Just as the penitentiary consolidated its institutional authority over prisoners with the decline of leasing, so too did the Superintendent exercise growing discretion over negotiating prison labor contracts, purchasing land and supplies, and instituting new policies. Moreover, because the penitentiary's mission as a plantation now hinged on the daily management of a growing expropriable laboring force, the

Superintendent was expected to behave as a businessman more than a bureaucrat. The Board of Directors now selected and praised Superintendents on the basis of their business acumen more than their knowledge of discipline or reform. [131] These changing expectations and the Superintendent's growing authority were put on full display in 1895, when a Board Member submitted a minority report to the Governor. Noting the level of discretion that had accumulated, he proclaimed that the Superintendent now exercised "entire control" over the "vast amount of supplies of all kinds needed for the Penitentiary, its farms and camps." [132] The result of this discretion was an institution that did not operate according to "sound business principles" and had lapsed into "glaring extravagance." [133] However, these complaints yielded no investigation, reproach, or institutional change, and Superintendent Neal remained in the same capacity for another three years. Through a combination of board deferral and legislative authorization, the Superintendent now found himself with almost total discretion over plantation operations. He had become the master of his own small universe, the sole author of a hierarchy that guaranteed protection and redemption in exchange for obedience and productivity.

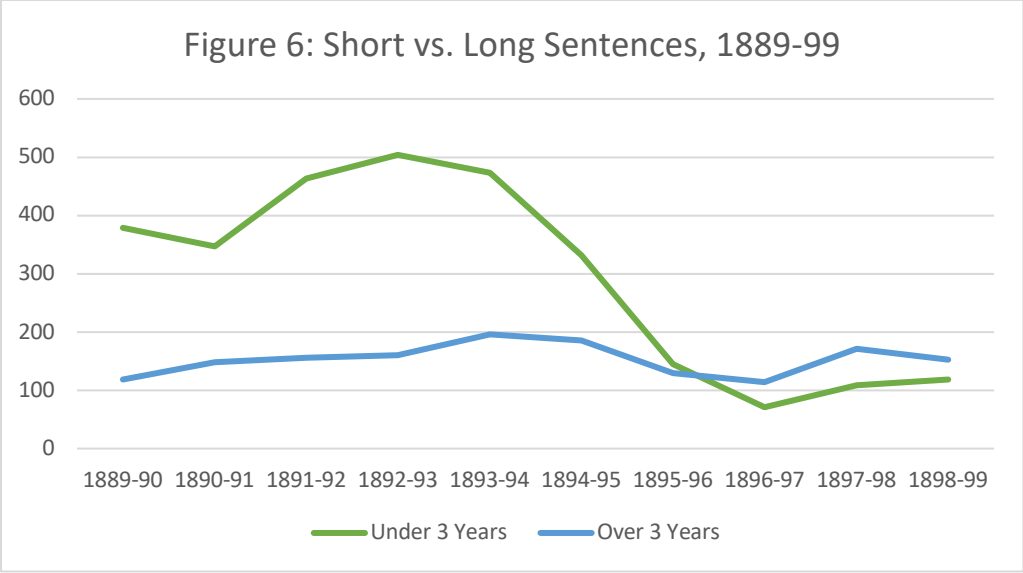
Officials first attempted to elicit this obedience by continually changing the character prisoners' labor. Although the vast majority of prisoners would labor as farmers, they were rotated between prison farms, prison factories owned by private industries, and public works. Far from displacing farm labor as the predominant site of reform and transformation, this range of industries would ensure that officials could utilize "all classes of convicts." Moreover, changing the character of labor would provide prisoners with "relief from the continuous toil with pick and

[131] "Report of the State Penitentiary," October 31, 1892, 401, ST 0792 (AD 687), Reel 21, South Carolina reports and resolutions, 1868-1900, Regular Session 1891/92, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[132] "Report of the State Penitentiary," October 31, 1895, 728, ST 0795 (AD 695), Reel 24, South Carolina reports and resolutions, 1868-1900, Regular Session 1894/95, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[133] *Ibid,* 727.

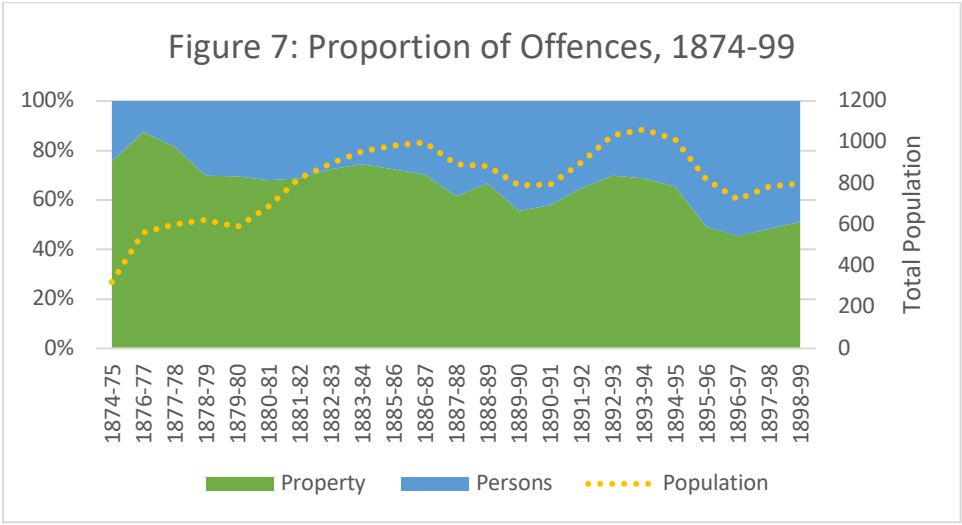
shovel, the whole year round, which, necessarily, affects the health of many of the convicts thus employed." [134] Put another way, officials believed that varying labor would promote obedience and productivity by preventing prisoners from becoming restless. The Superintendent continued to exercise sole authority in negotiating contracts with outside industries to utilize prisoner labor. Factories were rebuilt for the production of hosieries and shoes within the prison, which could employ up to two hundred prisoners during a given year. A growing number of prisoners were also required by the legislature to labor on public works, including the South Carolina Lunatic Asylum, the Girls Industrial School, and Clemson College. In just one year, the penitentiary would furnish more than $22,000 in labor, clothing, and supplies for the construction of these institutions. [135] Between 1890-99, nearly six hundred prisoners ranging from ages 13 to 53 were forced to labor at Clemson College, where they arrived, legally classified as "slaves of the State." [136] In addition to furnishing an expropriable source of labor for state works, this new system would purportedly promote obedience among prisoners by disrupting the monotony of living and laboring in the penitentiary.

Indeed, the question of monotony would acquire new salience as prisoners began serving increasingly long sentences. Figure 6 illustrates how as the plantation system became more entrenched, the number of prisoners serving sentences under 3 years rapidly declined and eventually converged with the number of prisoners serving longer sentences:

[134] "Report of the State Penitentiary," October 31, 1888, 54, ST 0788 (AD 683), Reel 17, South Carolina reports and resolutions, 1868-1900, Regular Session 1887/88, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[135] "Report of the State Penitentiary," October 31, 1894, 637, ST 0794 (AD 689), Reel 23, South Carolina reports and resolutions, 1868-1900, Regular Session 1893/94, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[136] Robinson Thomas, "'Slaves of the State': Convict Labor and Clemson University Land and Legacy," 10, 20.



In large part, this shift in the dynamics of sentencing was attributable to the declining share of prisoners incarcerated for property crimes and the growing proportion of prisoners sentenced for crimes against persons. Although property crimes still accounted for the greatest proportion of offences, that share steadily decreased as the plantation system became more entrenched. Indeed, the rate of incarceration for property crimes effectively predicts how the prison population would expand and contract as convict leasing emerged, declined, and was eventually supplanted by the plantation system. Figure 7 tracks the changing proportion of offence types (property vs. persons) against changes in the total penitentiary population:



Between 1877-85, as demand for expropriable labor increased in tandem with the growth of convict leasing, the prison population grew to meet that demand, and arrests for property crimes furnished the majority of that labor. However, as the leasing system and the demand for expropriable labor began to stagnate, the overall population would decrease almost directly in proportion to the rate of incarceration for property crimes. Similarly, as penitentiary officials rapidly purchased land in order to grow the nascent plantation system, the proportion of arrests for property crimes once again increased and the total population grew in tandem. As the plantation system became settled and routinized, and the legislature furnished no further capital for the purchase of land, the proportion of prisoners incarcerated for property crimes once again fell, and the total population decreased with that shift.

These shifts were driven in part by changing legislation around the criminal code, which eliminated or shortened sentences for property crimes. Incarceration for these crimes had, in turn, furnished a disposable laboring population of prisoners serving relatively short sentences to which the state and corporations undertaking leases owed virtually no long-term responsibility. For example, on January 4, 1894, the legislature would limit punishment for property crimes under "false pretense or representation" amounting to less than twenty dollars to no more than thirty days imprisonment. [137] Thus, as the proportion of prisoners serving longer sentences increased and the penitentiary assumed sole authority over prisoners' labor and productivity, officials were forced to contend with the sustainability of their methods in ways previously uninterrogated. However, changes in the criminal code could not altogether account for the scale of these changes.

[137] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1893-94*, 506–7.

Although fewer prisoners were incarcerated for property crimes at the penitentiary, South Carolina was not incarcerating fewer of its black citizens, the state had simply begun to utilize prisoners' labor in different places and spaces. Indeed, the changing demographics of the penitentiary were also driven by the ascendance of the chain gang system at the town and county level. As convict leasing declined, counties and towns had expressed a growing interest in establishing their own systems for expropriating prisoner labor. However, it would take nearly a decade for a chain gang system to fully take shape in the towns and counties. On March 12, 1878, the legislature had amended the criminal code, vesting Circuit Judges with sole discretion in determining whether prisoners would be sent to county jails or the state penitentiary. [138] This law acquired new salience in 1885 when the legislature empowered those same officials to "impose the condition of hard labor for a period not exceeding ninety days." Prisoners who would previously have been sent to the state penitentiary for short sentences could now remain in town and county jails, where they would "perform hard labor upon the public highways, roads, bridges and other public works." [139] As local officials reaped the benefits of cutting public works costs, the legislature would grant them growing power and discretion over the expropriated labor of these prisoners. In 1892 the legislature expanded the county chain gang system by removing the ninety-day sentence limit on hard labor in county and municipal chain gangs. [140] Again, in 1898, the legislature empowered city and town councils, granting them broad discretion to effectively create their own criminal codes. Officials could now create laws "respecting the roads, streets, markets, police, health and order… [or] any subject as shall appear to them

[138] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1877-78*, 453.
[139] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1885-86*, 125.
[140] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1891-92*, 22.

necessary and proper for the security, welfare and convenience of such cities and towns, or for preserving health, peace, order and good government within the same." Individuals found guilty of violating these new laws could be fined up to one hundred dollars or sentenced to thirty days imprisonment, during which time they would labor on various public works at minimal expense to those towns and counties. [141]

The result was a two-tiered system: At the local and county level, a system of prisoners primarily serving relatively short sentences for a variety of artificial new property crimes, and at the state level, system with a growing concentration of prisoners serving longer sentences for crimes against persons. Like the lease system, towns and counties would disproportionately target the most able workers for chain gangs, while "the rejected ones" were sent to the penitentiary. Chain gang managers would routinely "refuse all of those prisoners sentenced to work on the County roads who are unfit, by reason of sickness or injury, to do hard labor." [142] Town and county officials, eager to extract the maximum value from these prisoners, would force them to labor under brutal conditions, regardless of their sentence length. Once prisoners were exhausted, injured, or otherwise unable to work, chain gang managers would send them to the penitentiary hospital for treatment. However, as the penitentiary's surgeon would report, many did not survive: "Our death rate is increased yearly from the disabled and sick prisoners being sent to the Institution from the County chain gangs, some of which only live a few days." [143] For those who survived the chain gang, they would remain at the prison, "broken down in

[141] *Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Passed at the Regular Session of 1897-98*, 820.
[142] "Report of the State Penitentiary," October 31, 1897, 797, ST 0797 (AD 697), Reel 26, South Carolina reports and resolutions, 1868-1900, Regular Session 1896/97, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[143] *Ibid,* 742.

health" and "unfit to do anything but the lightest kind of work." [144] With the ascendance of the chain gang system at the town and county level, penitentiary officials were forced to contend with not only a durable population of inmates serving long sentences, but a growing contingent of prisoners who would be unable to labor and furnish a profit for the institution. Moreover, officials reported that in addition to the chain gang system, "In many instances we get prisoners from the Courts who are unable to work, and often having diseases from which they never recover." [145]

At the turn of the century, the penitentiary had become a receptacle for the state's black citizens who suffered poor health from state-sponsored violence in the prisons and on chain gangs, the various deprivations of poverty, or some combination of the two. Eager to minimize this responsibility, officials would lobby the legislature to commute the sentences of prisoners serving life sentences for arson and burglary, which were no longer punishable with life in prison. [146] This dynamic reflects how the penitentiary would become an increasingly vital tool for managing and concealing the reality of black poverty, yet this limited the capacity of the new plantation system to be a fully realized, profitable industry. For officials, the challenge was to create a plantation that operated according to the exploitative principles of racial capitalism, while also tending to the health and wellbeing of inmates in ways that created the conditions for obedience and productivity. The dynamics of control would have to change as the state

[144] "Report of the State Penitentiary," October 31, 1891, 142, ST 0791 (AD 686), Reel 20, South Carolina reports and resolutions, 1868-1900, Regular Session 1890/91, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[145] "Report of the State Penitentiary," October 31, 1893, 94, ST 0793 (AD 688), Reel 22, South Carolina reports and resolutions, 1868-1900, Regular Session 1892/93, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[146] "Report of the State Penitentiary," October 31, 1899, 731, ST 0799 (AD 698), Reel 28, South Carolina reports and resolutions, 1868-1900, Regular Session 1898/99, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

penitentiary simultaneously functioned as a source of economic profit, a locus of racialized violence, and a receptacle for managing and containing racial domination and inequality.

Forced to contend with the brutal aftermath of the chain gang system, officials experimented with economizing violence by placing renewed emphasis on the health and healthiness of prisoners. Both the lease and chain gang systems had all but eviscerated the economy of violence that had developed under slavery by refusing to demarcate between 'justifiable' and 'arbitrary' forms of violence against prisoners. This demarcation between reasonableness and excess, although shifting, secured the economic interests of enslavers and instituted minimal protections for enslaved people, although as I have shown, they repeatedly failed. Instead, the lease system had regarded the steady flow of nearly all black prisoners as an altogether disposable source of labor. However, under the prison plantation system, officials demonstrated a renewed interest in the "health and comfort" of prisoners. [147] Delineating between the justifiable violence of discipline under the plantation model and the excesses of the lease system, Superintendent Neal would argue that, "Prisoners sentenced to the Penitentiary should be treated as prisoners, but we have no right to so treat them as to make them physical wrecks when discharged." [148] Officials not only carefully tracked mortality rates and causes of death, they responded by instituting substantive solutions, including new heating and sewerage systems, as well as a new hospital, after the previous building was condemned by the Board of

[147] "Report of the State Penitentiary," October 31, 1887, 436, ST 0787 (AD 680), Reel 16, South Carolina reports and resolutions, 1868-1900, Regular Session 1886/87, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[148] "Report of the State Penitentiary," October 31, 1898, 283, ST 0798 (AD 697), Reel 27, South Carolina reports and resolutions, 1868-1900, Regular Session 1897/98, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

Health. [149] [150] Between 1893-98, the death rate in the penitentiary would decrease by more than 50 percent. [151] By 1898, officials had invested more than $100,000 into the penitentiary's infrastructure to ensure the health of prisoners, and with that, the institution's economic prospects. Indeed, the Board of Directors would report with great self-satisfaction that, "In the future we feel certain that the institution will be able to turn over to the state, in cash, a nice sum annually." [152]

My point is not to romanticize this system or suggest that it was somehow more humane or efficient—it is quite the opposite. My point here is to demonstrate how the valuation of black lives and the state's willingness to protect those lives has always been intimately linked to—and contingent upon—the interests of racial capitalism. The penitentiary surgeon, anxiously reporting on lung diseases within the prison, noted that, "If these terrible diseases are contracted here by neglect of ours, I consider it a serious cause for complain on the part of the prisoners and the thinking public." [153] On the one hand, the 'thinking public,' might refer to the black citizens who had repeatedly criticized the penitentiary for being a violent, regressive institution. More likely, however, this invocation of the 'thinking public' was a reference to those white citizens who had repeatedly criticized the penitentiary as a drain on public funds. The 'thinking public' is really only worried—and this is a recurrent point of contention across three decades of reports—about the penitentiary being profitable. In this respect, health, economy, and racialized expropriation

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[149] *Ibid,* 269.
[150] "Report of the State Penitentiary," October 31, 1889, 47, ST 0789 (AD 684), Reel 18, South Carolina reports and resolutions, 1868-1900, Regular Session 1888/89, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[151] "Report of the State Penitentiary," October 31, 1898, 283, ST 0798 (AD 697), Reel 27, South Carolina reports and resolutions, 1868-1900, Regular Session 1897/98, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[152] *Ibid,* 269.
[153] "Report of the State Penitentiary," October 31, 1895, 731, ST 0795 (AD 695), Reel 24, South Carolina reports and resolutions, 1868-1900, Regular Session 1894/95, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

were intimately linked: The prison plantation's continued profitability and its function as a site of racialized discipline hinged on a minimum level of wellbeing among prisoners. Economizing the prison required healthy prisoners, making health an *economic* problem, rather than a moral or ethical one. In this respect, we should take pause at invocations of health and healthiness in order to consider how they often function as crucial axes of racial capitalism, as measures of the sustainability of exploitative and expropriative relations.

In addition to placing new emphasis on health and wellbeing, officials believed that they could secure the obedience of prisoners and maximize their productivity under the new plantation system by changing laboring conditions. In 1891, the Captain of the Guard would proudly report that not only had no prisoners attempted to escape, but "a number of long-term convicts have been worked without shackles." [154] The following year, this policy was widened, and officials "abolished the use of chains and shackles where practicable to do so, using them only as a menace or a temporary punishment for a turbulent and refractory disposition." Proclaiming the new policy an unmitigated success, officials proudly highlighted not only "the improvement of the physical condition of the men so liberated," but even more crucially, that they were "now performing one-fifth more labor." [155] Although escapes increased slightly, officials attributed those rates to the growing population and number of farms, which had nearly doubled in just one year. Here, the prison plantation's economy of violence came into focus: In demarcating between 'justifiable' and 'arbitrary' forms of violence, the shackles—once the most common means of physical discipline—were now judged to be excessive and a hindrance to the

[154] "Report of the State Penitentiary," October 31, 1891, 134, ST 0791 (AD 686), Reel 20, South Carolina reports and resolutions, 1868-1900, Regular Session 1890/91, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[155] "Report of the State Penitentiary," October 31, 1892, 439, ST 0792 (AD 687), Reel 21, South Carolina reports and resolutions, 1868-1900, Regular Session 1891/92, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

penitentiary's financial prospects. As before, resistance was to be continually measured, redefined, and punished in proportion to the threat it posed to the tenability of racial capitalism. Escape—though still punishable by death—could be tolerated when judged against relative gains in productivity and growing budget surpluses. In addition to increasing productivity, removing these constraints would create positive incentives for prisoners to appear obedient and thereby avoid the sore legs, swollen limbs, and fatigue that came with heavy shackles.

Much like enslaved people who coopted and circumvented the authority of enslavers, prisoners quickly upended this new economy of violence, which mistakenly hinged on the belief that comfort and obedience were somehow more desirable than freedom. As the dynamics of violence and repression shifted, so too did the patterns of resistance: In their first year of laboring without shackles, 87 prisoners succeeded in escaping, more than 10% of the entire penitentiary. No deaths were recorded that year, indicating that no prisoners were killed during escape attempts. The results were an unmitigated failure: This was more prisoners than had ever escaped from the penitentiary in a single year, and the highest number of escapes since 1877 during the height of convict leasing. The following year, the Captain of the Guard would admit that "the number of escapes has been large," and suggested that, "I find that when prisoners have been shackled the number of escapes have been few, and I respectfully recommend that when it is possible for prisoners to work with them on that shackles be used." [156] On the one hand, officials may have simply been eager to post higher profits by increasing productivity, or perhaps they really believed that they could coax prisoners into obedience by simply varying their labor and removing their shackles. Regardless, prison officials had made a gross miscalculation and the

[156] "Report of the State Penitentiary," October 31, 1893, 94, ST 0793 (AD 688), Reel 22, South Carolina reports and resolutions, 1868-1900, Regular Session 1892/93, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

policy was eliminated. Whether a lapse in judgement or an epistemological delusion, prisoners had immediately and shrewdly exploited this fact to great success. Moreover, this sudden surge in escapes had revealed the limits of this new paternalism: Prisoners would not be easily coaxed into obedience under conditions of racialized expropriation. How could prisoners be convinced that the penitentiary was earnestly committed to reform when more than 90 percent of prisoners were black? Why believe that laboring productively and obediently as slaves of the state could redeem or restore their standing as citizens, which the state itself had repeatedly sought to limit or deny altogether?

Even as officials struggled to resolve the disciplinary deficit by fostering obedience and productivity among prisoners, the penitentiary was nonetheless becoming an increasingly durable institution. In 1898, Superintendent Neal proudly reported that, "the institution is on a firm and permanent basis." [157] Signaling officials' commitment to this new mode of operation, Neal would also lobby the legislature for an additional tend thousand dollars, which could be used "to build a modern prison for her convicts—one that is roomy, comfortable, and safe, and one, too, that the young and ofttimes harmless and helpless convicts can be separated from the old and hardened criminals." [158] Time and again, it was this tension the aspirations of officials to create a 'modern' institution and the afterlives of slavery—particularly the racialized dynamics of resistance, repression, and retrenchment—that animated the development of the penitentiary. Modernization was to be underwritten by a politics of reform that took obedience and productivity as its ideals, the same ideals underwriting paternalism, the prevailing ideology

[157] "Report of the State Penitentiary," October 31, 1898, 269, ST 0798 (AD 697), Reel 27, South Carolina reports and resolutions, 1868-1900, Regular Session 1897/98, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.
[158] "Report of the State Penitentiary," October 31, 1899, 751, ST 0799 (AD 698), Reel 28, South Carolina reports and resolutions, 1868-1900, Regular Session 1898/99, South Carolina Department of Archives and History, Archives and Publications Division, Columbia, SC.

justifying enslavement during the nineteenth century. Figurations of the black criminal—once explicitly deployed to construct a separate-but-interrelated legal order to repress resistance to enslavement—were now submerged beneath a common law tradition of rights and protections, the racial disproportionality of which was only incidental. State officials and business interests converged to institute new modes of repression that aspired to restore and retrench racial hierarchy by maximizing obedience and productivity, thereby preempting acts of resistance. The result was, in short, a mixture of paternal and disciplinary power, one that drew on the legacies of slavery even as penitentiary officials also borrowed, forged, and improvised 'modern' methods of control.

Conclusion

In this final chapter, I have shown how in the wake of abolition, the state penitentiary emerged as a focal point in restoring and retrenching racial hierarchy. Across three eras—from the politics of reform, to the convict lease system, to the prison plantation—the penitentiary would repeatedly delimit black citizens' new rights through disproportionate incarceration that created a novel class of expropriable laborers. During the initial era of reform, officials utilized the examples of their Northern and Midwestern neighbors and sought to institute modern vocational and education programs that they believed would improve the prospects of prisoners after release. However, this vision reform also hinged on an economy of violence that closely paralleled the dynamics of resistance and repression underwriting slavery, yielding a fragmented and often contradictory politics. As Reconstruction collapsed, a new coalition of white Democrats would seize the penitentiary, instituting a system of convict leasing that maximized profits at the cost of staggering death rates and a deficit in discipline among prisoners. Penitentiary officials, eager to correct this deficit and assume total authority over the labor of

prisoners, eventually succeeded in instituting a system of prison farms that closely paralleled the dynamics of paternalism and plantation life under slavery. Cloaked in the language of reform, this new paternalism sought to balance productivity and profits against obedience in order to craft sustainable modes of racialized expropriation. Officials in each era had their own distinct ideas of crime and discipline, and each pursued different institutional forms and levels of public-private business partnerships they believed would suit those ends. However, at bottom, they all invoked modern notions of punitivity while continually making recourse to the ideas and institutions that underwrote slavery and resistance to enslavement.

Of course, this periodization is only meant to convey how certain institutional priorities and ideological commitments emerged and entangled in various combinations, waxing and waning in their significance. I am not suggesting that a growing emphasis on profit maximization during convict leasing was bereft of any commitment to discipline, nor that the new paternalism ever fully displaced a logic of profit maximization. In this respect, my periodization eschews truncation and sharp breaks in attempt to excavate the compounding, fragmented, and contested layers of institutional and ideological development that underwrote the making of a 'modern' criminal justice system in South Carolina. Nonetheless, this periodization reveals how, from the outset, debates over the making of a modern criminal justice system were entangled in the afterlives of slavery. Even after abolition, slavery could still furnish the resources to construct a racial hierarchy and the modes of racialized expropriation premised on white authority and black criminality, and the prison would be a linchpin in that new system of domination. The South Carolina Penitentiary was the inheritor of more than two centuries of ideological and institutional conventions that had accumulated to sustain slavery as a racialized system of discipline and expropriation. In this respect, the South Carolina Penitentiary was differently positioned from its

Northern and Midwestern counterparts and prepared to carve its own path at the turn of the twentieth century, even as it turned to those neighbors in forging its own modern vision of criminal justice.

Conclusion

Remembering Slavery

For more than two centuries, no public landmark in South Carolina would recognize the Stono Uprising, the largest colonial slave uprising in U.S. history. During a research trip to the University of South Carolina, I decided to visit the sole memorial to the uprising, which had been erected in 2006. After several frustrated passes along Highway 17, I finally spotted the small placard dotting the highway where it meets the Wallace River. I pulled off the road and walked the grassy strip along the highway as cars whipped past. The memorial is an austere metal sign with worn black borders, and a white background is streaked with dust and fumes. The text reads in plain and direct terms:

> The Stono Rebellion, the largest slave insurrection in British North America, began nearby on September 9, 1739. About 20 Africans raided a store near Wallace Creek, a branch of the Stono River. Taking guns and other weapons, they killed two shop-keepers. The rebels marched south toward promised freedom in Spanish Florida, waving flags, beating drums, and shouting "Liberty!" The rebels were joined by 40 to 60 more during their 15-mile march. They killed at least 20 whites, but spared others. The rebellion ended late that afternoon when the militia caught the rebels, killing at least 34 of them. Most who escaped were captured and executed; any forced to join the rebels were released. The S.C. assembly soon enacted a harsh slave code, in force until 1865.

Almost brutally concise in its account, the monument struck a tone that suggested an understanding of the uprising that was ambiguous at best. Enslaved people were figured as rebels, raiders, and killers marching bravely in search of promised freedom and liberty. Were these valiant heroes or crazed murderers on a rampage? Likewise, the figuration of its

consequences, a "harsh" slave code enforced until 1865 conveyed a sense of finality—that the violent repression of the uprising was resolved by the abolition of slavery. The broader 'question' of Stono, its enduring effects and significance, suddenly appeared only a suggestive inquiry, rather than an urgent historical and political interrogation.

Even in January, the air hung hot and heavy as I stood there attempting to sort my thoughts and feelings. How many others had stopped and stood in this spot or even noticed this small tribute? What had they thought and felt? Perhaps some set themselves at a contemplative-yet-safe distance that enabled them to think of the Stono Uprising as another example of the tragic-but-distant harms of slavery. After all, they had thought, these laws were abolished along with slavery. I suspect that others were even less sympathetic and found themselves struck only by the specter of black criminality and the singular tragedy of lost white lives. Slavery was unjust, but no injustice could justify revolutionary violence, especially in harming women and children. Many others would think of the Stono Uprising as yet another example of the unresolved harms of slavery as an ongoing force in structuring modern racism, and rightfully so. However, I found myself returning to these questions of memory and misremembrance. Whatever the distance between these reactions—of which I am certain there were many others—too many of them required some imaginative leap, some act of misremembrance that vaulted the thinker away from moments like the Stono Uprising and their enduring effects.

Wondering at that sign and how it recalled the uprising, I was struck by the gap between these varied and outsized white fantasies and this small, remote tribute to such a critical juncture in the making of law and race. This lent renewed urgency to the questions that animate this work and structure my thinking: How do we confront and critique our historical memory? Would a new vocabulary of action and change reveal agents that were once presumed to be subjects?

When we craft novel concepts to diagnose our political inheritance, to what extent are those memories denaturalized and made politically contingent? What previously foreclosed avenues of change avail themselves to us when we devise new ways of ordering and knowing those memories? In short, how do we remember slavery and what are the political stakes?

For some, these memories formed a past that was coherent and resolved, a historical riddle that was answered and known. These memories signaled a fundamental reliance upon, perhaps even a faith in, an understanding of slavery in which the vocabulary was always in the past-tense, where the agents were men of a distant era and the issue of responsibility was a long-settled debate. These memories were rooted in well-rehearsed acts of evasion and denial that secured the self against interrogation. These memories were entangled in essential patterns of how these individuals they not only understood themselves and others, but the very world itself and their limited obligations to it. These memories furnished a kind of common sense and a way of being in the world—neither isolated nor individualized, they underwrote the terms and conditions of political expression and action. These memories were embedded in informal structures that empowered individuals to surveil the everyday activities of black people and engage in state-sanctioned, anti-black violence. These memories were durably embedded in formal structures and institutions—in the criminalization and suppression of anti-racist protest, in the disproportionate and violent surveillance and policing of black communities, in the financial and epidemiological devastation of historically segregated black communities. These memories had a weight and a force to them, one that was imprinted on the world, making them as real and durable as the sign planted before me.

If these memories truly run that deep, it should come as little surprise that the memory of slavery—and the battle for its dominant historical narrative—is alive and well in South Carolina.

Since the early twentieth century, state officials and entrepreneurs have waged an aggressive marketing campaign that has repackaged, rebranded, and commodified the brutal history of 'slavery's capital,' transforming Charleston into a tourist destination and 'America's Most Historic City.' Today, more than five million tourists visit Charleston every year, making tourism a $19.1 billion industry in South Carolina. Developers and agents now market historic 'servant' quarters turned boutique vintage apartments where individuals can live among the rebranded remains of slavery. Plantations have been repackaged and repurposed as romantic, picture-perfect wedding destinations. Historic tours spin fantastic tales of benevolent slave owners and docile, well-protected enslaved people who found themselves 'lost' after abolition. Self-fashioned historians and cultural vanguards protest the removal of monuments that deracialize the Confederacy and Civil War, concealing secessionism and anti-black racism beneath the legal pageantry of federalism and state's rights. These acts of misremembrance are not only political, but also personal and familial—during research trips to the University of South Carolina and the Department of Archives and History, the reading room was not filled with other academic researchers, but individuals who were tracing their genealogies and family histories. For some, this process was an honest reckoning with their family's history of brutalizing or brutalization. More often, though, I sat frustrated in the reading room, listening to individuals wax about the kindliness of their ancestors and the paternal bonds that linked enslavers and enslaved people. For these individuals, the family tree simply furnished another tool in a broader repertoire of denial and evasion.

But for every act of denial there are moments of resistance that bubble to the surface. Anti-racist organizers and protestors have increasingly adopted the language of abolitionism to demonstrate how political structures from the welfare state to immigration to the carceral state

are still structured by the afterlives of slavery. Since the 1980s, an emerging tourist industry, among them Gullah tours led by the descendants of enslaved people have provided a historical counter-narrative that exposes not only the brutality of slavery, but also provides public knowledge of the cultural and religious practices that were forged in acts of survival and resistance. In 1988, the City of Charleston purchased the Old Slave Mart, which previously served as an auction site trading in enslaved people, and in 2007, the space was reopened as a museum. Joining these efforts, there is an ongoing struggle over the memory of Denmark Vesey. Originally undertaken by a group of Charleston activists in 1996, the Denmark Vesey and the Spirit of Freedom Monument Committee would fight for nearly two decades to erect a life-size statue of Denmark Vesey. These plans for a highly visible memorial to the Vesey Uprising were met with fierce backlash. Among the many critics of the effort, one editorial cast Vesey as a 'terrorist' by drawing broad comparisons to 9/11 and the bombings of Japan during World War II. Finally, in 2014 the statue of Vesey was erected in Charleston's Hampton Park in front of hundreds of people. However, these reparative strands of historical memory, while remarkable, are not essential to the basic structures and economic vitality of the state in ways that might displace the preceding dominant narratives.

Such memories of resistance are also reminders of the tragic costs of these struggles. If these stories of resistance are ultimately ones of repression and retrenchment, the question then becomes, "How can a narrative of defeat enable a place for the living or envision an alternative future?" [1] Perhaps frustratingly, I have not offered an alternative future or emancipatory solution here. A pessimistic reading might even suggest that I have only generated a more robust vocabulary for understanding the adaptability of racial hierarchy and the ideas of race

[1] Hartman, "Venus in Two Acts," 14.

underwriting those structures. However, like Christina Beltrán, I want to resist the rush toward prescription, whether normative or policy-oriented, that drives so much scholarship. Indeed, as Beltrán rightfully argues, "Political theorists interested in questions of race, gender, and sexuality often face the added burden of being prescriptive. It is not enough that our theoretical efforts be penetrating or insightful—they must also be emancipatory." [2] The question of prescription, particularly in reckoning with the afterlives of slavery, strikes me as a democratic project that must be undertaken in concert and resolved through political engagement. Both material and ideological, this project requires structural change and institutional development, yet also necessitates a personal reckoning with—and rehabilitation of—one's own history. Whether, or perhaps more generously, the extent to which, individuals are capable of that work is a matter of eroding faith, at least on my part. However, this should not preclude us from naming the processes of structural and personal transformation that must come next.

When Denmark Vesey's statue was finally unveiled after two decades of struggle, Bernard Powers, a history professor, would assert before the crowd that, "Today, many people are still unable or unwilling to grasp the pertinence of slavery and freedom. They don't have the conceptual framework or proper vocabulary to understand Denmark Vesey." [3] The question of how we understand Denmark Vesey is a political question of the highest order, and one that we cannot afford to continue evading. At bottom, this has been my aim: To press that question with renewed urgency and to pry open a frank conversation, underwritten by a vocabulary of race and resistance that can facilitate a longer reckoning over the meaning of resistance and the afterlives of slavery. I have reframed the history of slavery and its afterlives as an ongoing counterpoint between resistance, repression, and retrenchment, tracking three harmonically intertwined yet

[2] Beltrán, *The Trouble with Unity: Latino Politics and the Creation of Identity*, 158.
[3] Parker, "Denmark Vesey Monument Unveiled before Hundreds."

rhythmically independent processes with their own distinct logics and effects, which have together been essential the making of law and race in the United States. I have shown how the creation of separate-but-interrelated legal orders arose from these dynamics, and how these orders were essential to the expansion of racial capitalism, the consolidation of whiteness, the institutionalization of white ignorance, and the criminalization of blackness. Moreover, I have sought to center the lives and experiences of those most affected by slavery—free and enslaved black people and their descendants—in order to denaturalize and politicize the narratives of enslavers and other white elites that dominate many memories of slavery and its afterlives. Wrought from the asymmetries of power that structure the archives of slavery, such work is bound to be incomplete and probabilistic. Yet these ventures, while contingent and fraught, enable us to recognize that resistance injects life and motion into the activity of political life, whether that politics is repressive or democratic. If we are willing to abandon some measure of certainty, to take pause and listen to these historical patterns of sound and silence, we will find that resistance is the stuff of politics and that institutions and ideas are built as much from below as above. It is this spirit of experimental, sometimes transgressive historical and theoretical inquiry that our own moment of radical uncertainty requires.

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