ABSTRACT

Title of dissertation: PEOPLE AT LAW: SUBORDINATE SOUTHERNERS, POPULAR GOVERNANCE, AND LOCAL LEGAL CULTURE IN ANTEBELLUM MISSISSIPPI AND LOUISIANA

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"People at Law: Subordinate Southerners, Popular Governance, and Local Legal Culture in Antebellum Mississippi and Louisiana" uses manuscript civil and criminal court records, church disciplinary hearings, newspaper accounts of trials, and the personal papers of judges and lawyers to investigate the relationship between subordinated people and the law in the Natchez District of Mississippi and Louisiana from 1820 to 1860. This project asks if local courts provided white women and free and enslaved blacks with a platform to improve their lives. Although denied many legal rights and excluded from formal political arenas, white women and African Americans positioned themselves as astute litigators. They frequently went to court to redress wrongs done to them and to make public demands on those in positions of authority. Knowledge of the southern legal system, coupled with the ability to harness their own community networks, gave them a degree of power: the power to improve their immediate situations and, on occasion, the power to bend others to their will.

Part of the reason for the success of the challenges subordinates mounted in court against their husbands, masters, and social betters was the limited nature of the challenges themselves. Rather than attempting to confront the planter class directly and dismantle the larger social system, they appealed to notions of justice and fairness that they insisted all southerners shared. When white women and African Americans (male and female) used local courts to constrain the power of their superiors, they in effect confirmed their subordination by making patriarchal marriage and the institution of slavery work according to the highest southern ideal. But in the process, courts disciplined adulterous husbands and brutal masters. Setting limits on the unrestrained behavior of husbands or slaveholders helped uphold the legitimacy of hierarchical marriage and slavery, to be sure. Still, it also allowed wives (white and black), free people of color, and slaves to turn their subordination into a legal strategy. While they did not overthrow the system of power that subordinated them, white women, free blacks, and slaves used the courts to help define what their place in that system would entail.

PEOPLE AT LAW:
SUBORDINATE SOUTHERNERS, POPULAR GOVERNANCE, AND LOCAL LEGAL CULTURE IN ANTEBELLUM MISSISSIPPI AND LOUISIANA

by

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people want to read. If I can be half the scholar, teacher, and mentor he is, I will be doing well indeed. Robyn Muncy's door was always open, and she believed in me from the first and in this project from the moment I pitched it. She has been a terrific friend and cheerleader and a fine critical reader. Leslie Rowland took me under her wing as if I were her own advisee, and I have greatly benefited from her vast knowledge of southern history. Dylan Penningroth has been a fellow traveler in the unwieldy world of local courts and a source of wisdom when I have most needed it. Michael Ross has offered me insight into the field of legal history, a field new to me. The support of my committee has made this a better dissertation and me a better scholar.

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I dedicate this dissertation to Jimmie Person. Jimmie's family settled in Port Gibson, Mississippi, in the early part of the nineteenth century, and Jimmie himself has

lived there his entire life. I learned a great deal about the importance of family and place from Jimmie, lessons he taught me over laughs, cocktails, meals, and Mississippi State football games. He also taught me more about southern history than anyone else—through our animated conversations, treks through old graveyards and battlefields, and frequent excursions down the muddy back roads of Claiborne County. Jimmie took this Yankee from Maine and made her a proud, if honorary, southerner.

CONTENTS

ABBREVIATIONS

CRP HNF	Courthouse Records Project, Historic Natchez Foundation, Natchez, Mississippi
MBHC	Mississippi Baptist Historical Commission, Mississippi College, Clinton, Mississippi
MDAH	Mississippi Department of Archives and History, Jackson, Mississippi
NARA	National Archives and Records Administration
NTC	Natchez Trace Collection, Dolphe Briscoe Center for American History, University of Texas at Austin
RSFB	Race, Slavery, and Free Blacks Petitions to Southern Legislatures and County Courts, 1775-1867, Race and Slavery Petitions Project
PAR	Petition Analysis Record

INTRODUCTION

In September 1822, Fanny, a free woman of color and former slave, appeared before the district court in Pointe Coupee Parish, Louisiana. She was suing Francois Gueho, an "evil-minded and disgraceful" white man, for slanderous verbal attacks on her reputation. Gueho, Fanny claimed, had "wickedly, willfully and maliciously slandered" her and "endangered her freedom by insisting that she is a slave." Gueho's "acts of violence, threats and menaces" had endangered her position in the community, Fanny told the court, and caused others to question her free status. Gueho, she pleaded, "intended to reduce her to slavery." He was a powerful and influential man, the "president of the Parish of Pointe Coupee." Without the court's intervention and protection, he could "greatly injure her." She herself had behaved respectably and had "faithfully served" her former master. She asked the court to formally "adjudge" her a free woman and award her $5,000 in damages, plus "general relief."[1] Fanny's lawsuit raises important questions about the relationship between subordinated people and local courts in the slave South. It indicates her readiness to use the courts to address her grievances, reveals her familiarity with the legal process, and confirms the soundness of her expectation that the court might rule in her favor. As a woman of color and a former slave, however, her lawsuit against a white man challenges the race and gender inequalities that historians of the antebellum South have found embedded in the southern legal system.

[1] The outcome of Fanny's lawsuit is not known. *Fanny v. Gueho*, Records of the Fourth Judicial District Court, #539, Pointe Coupee Parish, Louisiana, 1822.

"People at Law: Subordinate Southerners, Popular Governance, and Local Legal Culture in Antebellum Mississippi and Louisiana" investigates the relationship between subordinated people and the law in the Natchez District of Mississippi and Louisiana from 1820 to 1860. It asks if local courts—although themselves an arm of the planter class—provided white women and free and enslaved African Americans with a resource to improve their lives. With its enormous plantations, large population of slaves, and the richest planters in the American South, the Natchez District seems an unexpected place for a legal culture that recognized the claims of marginalized people. Nevertheless, although denied many legal rights and excluded from formal political arenas, white women and African Americans positioned themselves as astute litigators. They frequently went to court to redress wrongs done to them and to make public demands on those in positions of authority. Knowledge of the southern legal system, I argue, coupled with the ability to harness their own community networks, gave them a degree of power: the power to improve their own situations and the power to bend others to their will.

In exchange for individual legal success, however, white women and free and enslaved African Americans reinforced their subordinate position within the southern social order. Part of the reason for the success of the challenges subordinates mounted in court against their husbands, masters, and social betters was the limited nature of the challenges themselves. Rather than attempting to confront the planter class directly and dismantle the larger social system that oppressed them, they appealed to notions of justice and fairness that they insisted all southerners shared. When white women and African Americans used the local courts to constrain the power of their superiors, they in effect confirmed their subordination by making patriarchal marriage and the institution of

slavery work according to the highest southern ideal. But in the process, courts also disciplined adulterous husbands and brutal masters. These men had violated their prescribed roles by wantonly abusing their wives or carelessly governing their slaves and thus were penalized. Setting limits on the unrestrained behavior of husbands or slaveholders quite certainly helped uphold the legitimacy of hierarchical marriage and slavery. Still, I argue, it also allowed wives (white and African American), free people of color, and slaves to turn their subordination into a usable legal principle, transforming the slaveholders' terrain into their own turf. In so doing, they improved their situations. While they did not overthrow the system of power that subordinated them, white women, free blacks, and slaves used the courts to help define what their subordination would look like. Their actions in court helped influence the rules that dictated their lives.

By the eve of the Civil War, the institution of slavery defined the Natchez District.[2] With the opening of new territory in the southern interior, the enormous movement of slaves from the seaboard states to the Deep South, the invention of the cotton gin, revolutions in cotton and sugar, as well as other factors, slavery became deeply entrenched in the Natchez District. In the antebellum period, the cotton counties of Mississippi and the cotton and sugar parishes of Louisiana were emphatically slave societies: societies in which slavery was central to the region's economy and a powerful slaveholding minority held the reins of political power. In this region, the authority of the slaveholding elite was seemingly unlimited, and a coherent planter ideology and culture unified slaveholders. Slaveholders' interests dominated politics. The South's

[2] The Natchez District consisted of the Mississippi River counties and parishes of southwest Mississippi and southeast Louisiana.

richest planters resided in Natchez, Mississippi, and its environs, and many owned plantations in both states. By the second quarter of the nineteenth century, the District's slaveholders were some of the largest importers of slaves in the booming domestic slave trade. The Surget family of Mississippi, to name one example, owned more than 5,000 slaves. Natchez was home to "Forks-of-the-Road," the busiest slave market outside of New Orleans. As in much of the South, slavery touched nearly every aspect of life in the Natchez District, from the rule of law to the position of women in society.

Throughout the South, slavery affected power relations within households. Households—planter and yeoman alike—represented the most important social unit in the slave South, and they organized the majority of the population (free women and children, servants, and slaves) in relationships of dependency to the propertied male head. As historian Stephanie McCurry demonstrates, by law and custom, adult freemen, as heads of households, were constituted masters. As masters, they enjoyed exclusive authority over their household. The construction of households as independent and impenetrable primarily reflected planters' interests in the security of slave property, but planters could not establish the requisite legal and customary authority of the master without making more general claims. Rooted in property rights and an ideology of fierce independence, McCurry argues, these claims extended to the households of all free and propertied men. When jurists ruled on the rights of property, for example, they made no distinction between planter and yeoman. The proslavery ideology developed by planters reminded white southerners of every class that slavery could not be distinguished from

other relations of power and repeatedly conjoined all domestic relationships of domination and subordination, particularly marriage.[3]

The authority of men as household heads was also reflected in southern statutes and appellate law. The southern legal system supported the authority of men over all other dependents, and the state recognized and supported the male head as the sole representative of the family in all economic, legal, and political matters. Generally, only white men had the power to act at law, and only they could cast ballots. Once married, wives surrendered their legal personality. Single white women could function on a legal par with white men with regard to property rights; they did not, however, enjoy any of the political rights associated with property ownership.[4] Slaves and free people of color fared even worse. Southern statutes stipulated that anyone born of a slave mother was the property of the mother's owner. Slaves had no civil or political rights. Both prejudice and policy led white southerners to subordinate free blacks legally as well, and lawmakers did their best to make sure free people of color enjoyed few rights. Many states equated free blacks with slaves in an effort to diminish their status as free persons.[5]

As subordinates, white women and free and enslaved African Americans, seemed, then, to be outside the political and legal system. From the perspectives of household governance and formal law, subordinated people had little power and standing in

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[3] Stephanie McCurry, *Masters of Small Worlds: Yeoman Households, Gender Relations, and the Political Culture of the Antebellum South Carolina Low Country* (New York: Oxford University Press, 1995).

[4] Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill: University of North Carolina Press, 1986); and Norma Basch, *In the Eyes of the Law* (Ithaca, NY: Cornell University Press, 1982).

[5] Donald G. Nieman, *Promises to Keep: African-Americans and the Constitutional Order, 1776 to the Present* (New York: Oxford University Press, 1991), 3-29.

southern society, and the law represented a site closed to them. Thus, the success of white women and African Americans' in using the local courts to improve their lives was all the more surprising, especially in the heart of a slave society.

The law did not uniformly reinforce the power of household heads. Wives and slaves registered their voices in the public sphere, using the courts to contest the authority of husbands and masters and expand their place in southern society. Their actions in court demonstrated that the power of household heads was far from absolute. The focus on the household as an independent and autonomous space tends to denote a world apart from law or politics, positing the public actions of domestic dependents as extralegal and apolitical. I demonstrate, however, that the household was a political space, and wives and slaves were legal and political actors. Subordinated people, including domestic dependents, insisted that their voices be heard, demanded access to the legal system to seek redress for wrongs done to them, and turned their private disputes into public matters.

By investigating how married women, free blacks, and slaves used public, legal venues to enlarge their positions in antebellum southern society, this dissertation contributes to recent scholarship in women's and gender history and in African American history that argues for an expanded view of the politics and disrupts old dichotomies of "public" and "private" by positing a dynamic connection between private households and the public, political order. Indeed, as scholars of the household such as Laura F. Edwards, Stephanie McCurry, and Peter W. Bardaglio point out, the values that dictated white men's political choices originated in the household—in the relations of authority, dependency, and subordination that engaged them most directly. Relationships of power

within southern households between masters and their dependents were every bit as political as those between household heads.[6]

In addition, my dissertation contributes to a developing literature examining law on the ground that suggests that ordinary people influenced the legal and political processes that occurred within their communities. Viewed from the perspective of appellate decisions and statutes, the southern legal system has long been understood as exclusionary and hierarchical, situating marginalized people as outsiders to the courts. Married women and free and enslaved blacks were *acted upon* by legal institutions. Those in subordinate positions were *objects* of the law, not *agents* of it. At the appellate level, jurists could not—and would not—open Pandora's Box by legally recognizing a slave's personality or a married woman's ability to challenge her husband without confronting slavery or patriarchal marriage—institutions central to antebellum southern society. At the state level, the law was decidedly hierarchical, separate from the local community in which the case originated, and separate from the facts in the case.

An emphasis on the law as an instrument of cultural hegemony constitutes one of the most influential interpretations of the law's function in the slave South. The classic account of southern law's hegemonic role is Eugene Genovese's *Roll, Jordon, Roll*. According to Genovese, the law "constituted a principal vehicle for the hegemony of the ruling class."[7] Slaveholders used the law to maintain their position of power, and it

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[6] On this point, see McCurry, *Masters of Small Worlds*, viii. See also Peter W. Bardaglio, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 1995); and Laura F. Edwards, "Law, Domestic Violence, and the Limits of Patriarchal Authority in the Antebellum South," in *Gender and the Southern Body Politic*, ed. Nancy Bercaw (Jackson: University of Mississippi Press, 2000), 63-86.

[7] Eugene Genovese, *Roll, Jordon, Roll: The World the Slaves Made* (New York: Random House, 1974), 26.

enabled them to disguise the extent to which their power rested on force and violence.[8] Genovese's conception of law as a tool of the elite renders those in positions of subordination as largely irrelevant. Moreover, he presumes that the power of the planter elite was firmly in place.

Local court records present a different picture. As recent scholarship on law and governance in the nineteenth century contends, two conceptions of the state coexisted in the antebellum South—one in which the law was an "abstraction" and the other in which "the rule of law was realized through concrete relations within the community."[9] While historians of the South have turned to appellate decisions as definitive expressions of the law, these decisions represented only one element of the legal order. Investigating local legal practice makes the law look less unified.[10] As historians such as Laura Edwards, Ariela J. Gross, Dylan C. Penningroth, and Walter Johnson have shown, locally constructed law was susceptible to the agency, opinion, and participation of the wives,

[8] Ibid., 25-49. Genovese's argument about hegemony and the law has inspired a voluminous literature. Even scholars who do not agree with Genovese's position on the "hegemonic function of the law" nonetheless continue to discuss southern law in instrumental terms: southern legislators and jurists developed legal doctrines to protect the interests of slaveowners. Pointing to appellate opinions and statutes, scholars demonstrate that southern lawmakers and jurists used law to impose a proslavery ideology and to protect the power of masters and household heads. Others examine the way judges chose rules instrumentally in order to maximize the interests of the ruling class and promoted slaveowners' economic interests. See, for example, A. Leon Higginbotham, Jr., *In the Matter of Color: Race and the American Legal Process* (New York, 1978); A. Leon Higginbotham, Jr., and Barbara K. Kopytoff, "Property First, Humanity Second: The Recognition of the Slave's Human Nature in Virginia Civil Law," *Ohio State Law Journal* 50 (June 1989): 511-40; and James L. Hunt, "Private Law and Public Policy: Negligence Law and Political Change in Nineteenth-Century North Carolina," *North Carolina Law Review* 66 (Jan. 1988): 421-42.

[9] Laura F. Edwards, "Enslaved Women and the Law: Paradoxes of Subordination in the Post-Revolutionary Carolinas," *Slavery and Abolition* 26 (Aug. 2005): 307. Elsewhere, Edwards also argues that statutes and appellate opinions emphasized individual rights in their most abstract form and obscured "key elements of what was, in fact, a highly localized system that rooted legal culture directly and concretely in daily life." See Edwards, "Status without Rights: African Americans and the Tangled History of Law and Governance in the Nineteenth-Century U.S. South," *American Historical Review* 112 (Apr. 2007): 383.

[10] Ibid.

children, and slaves that it attempted to control.[11] The very nature of local law-making processes necessitated the participation of all community members—white and black, slave and free, male and female. Laura Edwards emphasizes the power available to subordinated people because they were part of a larger community where a whole range of "private" injuries became "public" wrongs. Because jurists wanted to keep "the peace" in local communities, and because local authorities emphasized social order over individual rights, Edwards found that local courts allowed white women, African Americans, and the poor a presence in the law. "The peace," in her words, "was an equal opportunity enforcer, enclosing everyone in its patriarchal embrace and raising its collective interests over those of any given individual."[12]

Indeed, if we turn our attention to law on the ground—to the level of trial courts—the relationships of domination and subordination in southern society look different than they do in state law. The local legal record in the Natchez District is full of white women and free and enslaved African Americans wielding law on their own behalf—sometimes successfully, sometimes not. They had an important presence in the local courts and a number of opportunities to learn something about the law and the operation of the local courts. They sued their husbands, masters, and social betters far more often than we would expect, and they often won.

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[11] On law on the ground in the slave South, see Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2009); Ariela J. Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Princeton, NJ: Princeton University Press, 2000); Dylan C. Penningroth, *The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 2003); and Walter Johnson, "Inconsistency, Contradiction, and Complete Confusion: The Everyday Life of the Law of Slavery," *Law & Social Inquiry* 22, no. 2 (Spring 1997): 405-33. See also Jessica K. Lowes's review essay of Edwards's *The People and Their Peace*. Lowe, "A Separate Peace? The Politics of Localized Law in the Post-Revolutionary Era," *Law & Social Inquiry* 36, no. 3 (Summer 2011): 788-817.

[12] Edwards, "Status without Rights," 383. See also Edwards, *The People and Their Peace.*

This dissertation demonstrates that in the local courts, litigants and witnesses were not anonymous members of categorical groups, as they were in statutes and appellate law. Instead, they were individuals.[13] At the local level, the legal process was inseparable from community relations. Community norms as well as formal rules of evidence and legal language influenced disputes. In the small, face-to-face communities that made up much of the Old South, public and private life overlapped. Despite southern society's rigid hierarchies, personal and direct knowledge of one's neighbors enabled community members to gauge the individual measure of a man or woman, white or black. For subordinated people, this sometimes meant the opportunity to be judged as human beings and widened their access to and influence on the local courts.

This neither implies, however, that community relations on the ground in the Old South were harmonious and less hierarchical. Far from it. Nor does it suggest that white women, free people of color, and slaves were subordinated in the same way. They were not. Indeed, in the words of Peter Bardaglio, "the auction block left far less room for negotiation and contestation than the altar."[14] Community members regularly performed and reproduced the acute inequalities that defined the slave South. Their relationships were fraught with tensions. Subordinated people's engagement with the law was often brutal and exacting. Yet, even the most powerful and wealthiest members of a community sometimes faced community judgment and punishment if they failed to fulfill their prescribed roles within the southern social order. Community members protected those who conformed to certain standards of behavior. They also punished those who did

[13] On this point, see also Edwards, *The People and Their Peace*, 65-6.

[14] Peter W. Bardaglio, "Commentary," in *Gender and the Southern Body Politic*, ed. Bercaw, 86-93.

not. In ways that scholars have only begun to understand, marginalized people could thus influence the legal and political culture in their communities despite their exclusion from formal law and politics.

Law was pervasive in the everyday life of the Old South. As a result of the localized nature of antebellum government, the courts operated in close proximity to southerners of all stripes. Southern towns, especially those in rural areas like the Natchez District, formed around the courthouse—the social, commercial, political, and usually geographical center of the county. Most nineteenth-century southerners looked to their counties (parishes in Louisiana) as the constituent unit of government.[15] A uniform, systematic, and rationalized body of state law was still embryonic, and state governments granted local jurisdictions extensive authority. Most southern legal business was conducted in the lower courts: in magistrates' homes or offices, before the board of police or police juries, and in county, parish, probate, chancery, orphans, circuit, and district courts. These courts, with their broad range of duties, dealt with a medley of local affairs and had wide-ranging powers over nearly every aspect of life. They oversaw roads, bridges, and ferries. They probated wills, appointed executors, punished gamblers, drunks, and fornicators, sanctioned shopkeepers for opening their doors on the Sabbath, and enforced the payment of debts. They returned runaway slaves, provided for orphans and the poor, indicted murderers, divorced adulterous spouses, and manumitted slaves.[16]

[15] The county did exist in Louisiana, but by 1820 it was little more than an electoral district. See Robert D. Calhoun, "The Origin and Early Development of County-Parish Government in Louisiana," *Louisiana Historical Quarterly* 18 (Jan. 1935): 124, 136-37.

[16] On the county as the central unit of government in the Old South and the importance of local courts, see Charles S. Sydnor, *The Development of Southern Sectionalism, 1819-1848* (Baton Rouge:

As both observers and participants, white women and African Americans had frequent and direct contact with local legal processes, giving them many opportunities to develop an understanding of the law. Court week represented one of the antebellum South's most important social institutions. While many people attended monthly county courts or witnessed hearings and inquests, circuit and district courts attracted residents from every corner of the county. These courts met for one to two weeks twice a year, drawing judges, lawyers, litigants, witnesses, and prospective jurors to town. Court week also attracted vendors, entertainers, and spectators. The courthouse steps served as a center of both business and pleasure: auctioneers sold slaves, grogshops hawked liquor, peddlers marketed goods, entertainers danced and sang, farmers and planters conducted private business, and friends and neighbors gossiped. Political parties and temperance or Bible societies frequently scheduled their annual meetings during court week. Agricultural societies held their annual fairs. Newspapers discussed court cases, announced decisions, and reported legal gossip. Local business improved when court was in session. William Johnson—a barber, businessman, and leader of the free black community in Natchez—noted in his diary that business was especially brisk during the November 1850 court session because a "Greate many Persons are in town."[17] Even those not directly involved in hearings or summoned for trials frequently turned up at court to bring testimony, offer information, or simply to observe. Court week

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Louisiana State University Press, 1948), 33-54; Ralph A. Wooster, *The People in Power: Courthouse and Statehouse in the Lower South, 1850-1860* (Knoxville: University of Tennessee Press, 1969), 81-107; Orville Vernon Burton, *In My Father's House Are Many Mansions: Family and Community in Edgefield, South Carolina* (Chapel Hill: University of North Carolina Press, 1985), 28-30; Bardaglio, *Reconstructing the Household*, chap. 1; Gross, *Double Character*, 22-46; and Edwards, *The People and Their Peace*.

[17] *William Johnson's Natchez: The Ante-Bellum Diary of a Free Negro*, ed. William R. Hogan and Edwin A. Davis (Baton Rouge: Louisiana State University Press, 1973), 757 (entry for November 11, 1850).

transformed sleepy, rural communities into bustling, noisy towns and drew diverse crowds from dispersed sections of the county—crowds that included white women, free people of color, and slaves.[18]

Not all legal business was conducted in the courthouse. Often magistrates heard complaints, conducted inquests, and held trials in taverns, fields, country stores, and other places that could accommodate large crowds. As Laura Edwards points out, "these locations pushed law physically into the community and into the lives of the people there."[19] Indeed, courts met where community members of all types commonly gathered. As a result, a wide range of southerners understood the legal process intimately and expected it to serve their interests.

By focusing on Mississippi and Louisiana, this dissertation investigates both common-law and civil-law regimes. Mississippi followed the Anglo-American common-law system—law developed by judges through court decisions and handed down through reported cases that established precedent.[20] As a result of its civil-law history stemming from the French and Spanish colonial periods, Louisianans conceived of legal issues differently than their common-law counterparts elsewhere in the United States. They adhered to a written code of law rather than a legal system based upon case decisions

[18] For a discussion of the role of court week in the culture of the Old South, see Sydnor, *Development of Southern Sectionalism*, 34-35; Guion Griffis Johnson, *Ante-bellum North Carolina: A Social History* (Chapel Hill: University of North Carolina Press, 1937), 148-9, 613-15; and Gross, *Double Character*, 22-46. For a discussion of African Americans' frequent observation of hearings, trials, and inquests, see Edwards, "Status without Rights," 365-92.

[19] Edwards, *The People and Their Peace*, 69.

[20] On the Anglo-American common-law tradition, see Lawrence Friedman, *A History of American Law*, Third Edition (New York: Touchstone, 2007).

made by judges. When Louisiana entered the federal union, many Spanish and French residents resisted American authorities' attempts to replace the civil law with common law. This resistance influenced the shape and substance of Louisiana law and resulted in the Louisiana *Civil Code*. The 1812 state constitution (as well as subsequent constitutions) required judges to justify every decision by citing the specific act of the legislature or article in the *Civil Code* upon which it was based. Louisiana lawmakers rejected implied law and principles of equity, important tenets of the Anglo-American common-law system. Louisiana also retained much of its civil-law tradition, such as the ability of free people of color to sue whites and married woman to sue their husbands for separations of property. The influx judges and lawyers trained in the common law and repeated exposure to common-law concepts, however, gradually transformed the state's legal system.[21] Despite Louisiana's civil-law heritage, the disputes between subordinates and their superiors in the local courts of Louisiana were remarkably similar to those in the common-law regime of Mississippi.

Trial court cases from local justice of the peace, county, parish, circuit, district, and chancery courts represent the bulk of my research materials. I searched through thousands of civil and criminal legal cases from Adams and Claiborne counties in Mississippi and Iberville and Pointe Coupee parishes in Louisiana. These records are neither published nor housed in any archive. Instead, they are in the possession of the clerk of the court's office and have not been preserved, processed, cleaned, or even

[21] For a discussion of Louisiana's civil-law tradition, see Elizabeth Gaspar Brown, "Legal Systems in Conflict: Orleans Territory 1804-1812," *American Journal of Legal History* 1 (Jan. 1957): 35-75; Judith Kelleher Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana* (Baton Rouge: Louisiana State University Press, 1994); Vernon Valentine Palmer, ed., *Louisiana: Microcosm of a Mixed Jurisdiction* (Durham, N.C.: Carolina Academic Press, 1999); and Mark F. Fernandez, *From Chaos to Continuity: The Evolution of Louisiana's Judicial System, 1712-1862* (Baton Rouge: Louisiana State University Press, 2001).

organized. They are in unlabeled boxes in basements and in sloppy piles sitting unprotected from vermin and weather in wet storage sheds on the outskirts of towns. After several months of searching, I identified about 2,000 cases involving white women and African Americans.

The court records vary considerably. They certainly look different from the published reports with which legal scholars and historians are most familiar with. They are moldy, ripped and falling apart, incomplete, all handwritten, and often in French. Over the years, they have suffered from war, theft, rot, fire, flood, and general neglect. Because local officials with different levels of literacy created the records, they vary in handwriting, spelling, detail, and length. Sometimes only the initial petition survives, and in other instances the verdict is missing. Lawyers, clerks, and other court officials mediated the voices of litigants and witnesses. Many petitions were formulaic—with clerks filling in names, dates, charges, and location. Some officials recorded few details about the involved parties and their complaints, while others included much more information, occasionally repeating litigants' complaints verbatim. It is difficult to ascertain what court officials withheld from the record—the common knowledge, the gossip, and the hearsay—information widely available to the local court, but obscured (frustratingly so) from the twenty-first century researcher. Yet, despite the fragmentary nature of records, the cases I uncovered proved to be a rich source for understanding how and why marginalized people went to court to defend themselves and improve their lives.

Years of poor record keeping and dwindling county and state budgets also influenced the sources I chose to engage. In all of the counties and parishes where I conducted research, the justice of the peace or magistrates' court records were often

missing. I found records from these lowest courts very rarely and only when a case had been appealed to the county or parish court. The ones I did locate were particularly rich, and they included a great deal of witness testimony from white women, free blacks, and slaves. Because they operated so closely to the local community, the magistrates' courts tended to be the most accessible sites of legal redress for those without formal rights. Indeed, it was in the magistrates' courts that women would first seek protection from their husbands for domestic abuse or free blacks would charge their white neighbors with theft or slander.

In order to supplement my research in magistrates' court records, I therefore turned to church minutes and disciplinary hearings from Baptist, Catholic, Episcopal, and Presbyterian churches in the Natchez District. Church records may seem out of place in a dissertation on local courts, but they are an important piece of the puzzle.[22] Churches and their disciplinary hearings functioned in similar ways to the justice of the peace. They too punished transgressors and policed community members. They handled the same kinds of offenses, such as public drunkenness, fornication, and conflicts between neighbors. Church records, then, open another window into the local legal culture of the Old South.

While most of the subordinated people I examined left few records, I tried whenever possible to reconstruct the broader circumstances of a given case—although doing so proved difficult. Newspaper accounts of trials, diaries, ex-slave narratives, justice of the peace manuals, and personal papers provided me with an important social and cultural framework for the local court records I analyzed. I also examined records

[22] Laura Edwards's work has demonstrated the importance of churches in early nineteenth-century legal culture. See Edwards, *The People and Their Peace*.

documenting the history of the Natchez District in the Natchez Trace Collection at the University of Texas at Austin, the Hill Memorial Library at Louisiana State University, and the Mississippi Department of Archives and History. These materials included personal and family papers, county and parish records, newspapers, plantation records, maps, and governors' pardons. The personal papers of judges and lawyers from the Natchez District were particularly helpful. Many of these collections included testimony, letters to and from clients, judgments, warrants, contracts, depositions, and other legal documents.

"People at Law" is divided into four chapters. Chapter 1 examines free and enslaved African Americans' use of reputation as a defensive and offensive legal strategy. A good reputation could protect African Americans from criminal charges and restrictive laws, and it sometimes allowed them privileges usually associated with whites. Moreover, African Americans' ability to circulate gossip about each other, their masters and other social betters, and their neighbors sometimes damaged the reputations of their superiors. Litigation involving reputation demonstrates the ability of African Americans to shape the social order in their communities. Although excluded from formal politics, in the "small politics" of their neighborhoods, the voices of free blacks and slaves sometimes held sway.

Chapter 2 investigates married women's lawsuits against their husbands and argues that wives (both white and black) used the familiar language of subordination as a rhetorical strategy in order to attain legal success. Courts rewarded women who behaved as obedient and chaste wives, and they punished violent and adulterous husbands. By

challenging their spouses' capacity to govern their households properly, married women reinforced patriarchal marriage. At the same time, however, they employed the local courts and their own community networks to their advantage and limited their husbands' power over them.

Chapter 3 examines slaves' interactions with and knowledge of the southern legal system. When suing for their freedom, in particular, slaves demonstrated a sophisticated understanding of the law and an ability to harness community networks on their own behalf. Yet, using the courts as a pathway to freedom by contending that they were wrongfully and illegally enslaved meant acknowledging that there were circumstances in which they could be justly and legally enslaved. By going to the law to sue for legal freedom, slaves affirmed legal slavery. Although they did not challenge slavery directly, slaves in Mississippi and Louisiana used the local courts to play a role in negotiating what their place within a slaveholding society would be.

Chapter 4 explores free black plaintiffs and demonstrates that many free people of color in Mississippi and Louisiana used the local courts to resist the social limitations and humiliations imposed upon them. When initiating lawsuits against whites over debts owed them, broken contracts, property disputes, and other disagreements, free blacks had to strike a delicate balance between deference and self-assertion. As long as they worked within the boundaries of their subordination and did not challenge their general position within the southern hierarchy, they found legal redress for wrongs done to them and debts owed them.

Taken together, these chapters demonstrate that in the Old South, the law had many makers. As legal actors wielding law on their own behalf, subordinated people

demonstrated that the power of the planter elite was not absolute. Mastery took work and required negotiation. With their use of the local courts, wives, free people of color, and slaves helped shape the rules that governed their lives.

CHAPTER 1

"Contradictions in Talk": African Americans and the Politics of Reputation in the Southern Courtroom

"At ev'ry word a reputation dies." - Alexander Pope, *The Rape of the Lock* (1712)

In October 1857, fifteen-year-old Alexina Morrison, a blond-haired, blue-eyed slave, sued her master, James White, for her freedom in Jefferson Parish, Louisiana. White had purchased Morrison the previous January in the slave market in New Orleans, although shortly after her sale, she ran away and filed suit against him in the parish court. In her petition, Morrison claimed that she was from Arkansas, born free and of white parents. Her whiteness entitled her to freedom. She was white, she said, because she looked that way, acted that way, and kept the company of respectable whites. Her performance of the qualities of white womanhood overcame evidence of her black ancestry and helped determine her ambiguous racial identity. Morrison was a slave, as was her mother, and she may have had an African grandfather, but her conduct and reputation in her community, not her blood, made her white. Furthermore, she told the court, her whiteness, discernible in her reputation, made her free.

Morrison used her reputation as white as a part of her legal strategy. She and her lawyers expertly harnessed local knowledge about her appearance, character, and actions in order to prove her claims to whiteness. Her attorneys asked jurors to look at her for themselves and listen to the testimony of their neighbors. Morrison attended white balls, witnesses said. She slept in beds belonging to young white ladies, ate at the tables of

highly regarded white people, wore the clothing of a respectable white woman, and conducted herself as sexually virtuous. Because of her purity, delicacy, beauty, and vulnerability—qualities white southerners thought inherent in white women and absent in black women—those who testified on her behalf believed that she was white. Indeed, when James White went to court to file his answer to her petition, he found himself threatened by a blood-thirsty mob aiming to lynch him for keeping a young and vulnerable white woman as a slave. It was her reputation as white that provided her with the legal grounds to sue her master for her freedom, a reputation she used to her advantage.[1]

Antebellum southern society was, as scholar David M. Potter describes it, a "folk culture" characterized by "personalism," a dense network of community and person-to-person relations.[2] In the small communities that comprised much of the Old South, public and private life overlapped. Members of such communities were on constant display so that everyone knew or knew of most everyone else. Neighbors noticed the spendthrifts and those who worked hard to provide for their families. They observed who went to church on Sunday and who gambled and drank to excess. They distinguished the generous from the skinflints. Despite southern society's strict hierarchies, personal knowledge of one's neighbors accustomed local communities to assessing the individual measure of a man or woman, white or black, and trust it. In the local courts, litigants and witnesses were individuals—not anonymous members of categorical groups, as they were

[1] On Alexina Morrison, see Walter Johnson, "The Slave Trader, the White Slave, and the Politics of Racial Determinism in the 1850s," *Journal of American History* 87, no. 1 (June 2000): 13-38; Ariela J. Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Cambridge, MA: Harvard University Press, 2008), 1-3; and Gross, "Litigating Whiteness: The Trials of Racial Determinism in the Nineteenth-Century South," *Yale Law Journal* 108, no. 1 (Oct. 1998): 171-6.

[2] David M. Potter, *The South and the Sectional Conflict* (Baton Rouge: Louisiana State University Press, 1968), 16.

in statutes and appellate law. For subordinated people like free and enslaved blacks, this presented the opportunity to be judged as human beings. Morrison had cultivated personal relationships with influential white men and women who came to her aid in court when she called upon them. Based on their personal knowledge of her appearance, character, and actions, her patrons successfully convinced white jurors that she was white. The kind of familiarity that exemplified social relations in the Old South undoubtedly intensified loyalties and hatreds. Judgmental neighbors—with their short tempers and long memories—readily reproduced the extreme inequalities that defined the slave South. But, as Morrison found, local communities protected those who conformed to certain standards of behavior expected of fellow community members. And they punished those who did not.

As cases like Morrison's suggest, in the face-to-face society of the antebellum South, reputation was paramount. A good reputation represented a person's most valuable possession, as well as his or her most vulnerable commodity. "The vulnerability of a good name," explains anthropologist Peter J. Wilson, "stems from the fact that it is held and conferred by people other than the person who is said to possess it, and that it has no tangible substance, it consists entirely of words."[3] Reputations required public assessment. An individual's "common repute" depended on a public evaluation of his or her character and actions.[4] Because reputations rested on the estimation and judgment of

[3] Peter J. Wilson, "Filcher of Good Names: An Inquiry into Anthropology and Gossip," *Man* 9, no. 1 (Mar. 1974): 100. In the words of social anthropologist F. G. Bailey, a "reputation is not a quality that [a person] possesses, but rather the opinions which other people have about [that person]." Bailey, "Gifts and Poison," in *Gifts and Poison: The Politics of Reputation*, ed. F. G. Bailey (New York: Schocken Books, 1971), 4.

[4] In nineteenth-century parlance, southerners referred to their reputations as their good "name," "fame," "character," or "credit." Laura F. Edwards contends that nineteenth-century southerners used terms such as "character" and "credit" interchangeably. "Credit," she writes, "referred broadly to a

others, they were unstable and constantly made and remade. Ordinary southerners took care to nurture their reputations, and legal proceedings served as a crucial forum for protecting and defending a good name. Litigation involving reputations offered abundant proof of the biblical adage, "a good name is better than precious ointment."[5]

Wielding reputation was at once a legal strategy and a strategy of power. While the authority of the planter elite seemed unlimited, marginalized people could use the politics of reputation to protect themselves and advance their positions. For those with limited legal rights and little official standing in the southern social order, leveraging reputation represented an important weapon in the "small politics" of their communities. While all southerners understood the social and legal power of reputation and deployed it, its use was particularly important to those who were most subordinated in southern society—free and enslaved African Americans.

Free and enslaved African Americans participated in the politics of reputation as a means to survive in a slaveholders' regime. For free blacks cultivating a good name served as both offensive and defensive strategies; a good reputation could protect them

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person's general reputation. . . . It centered on repute: what others thought about that person, not just what the person did, although conduct and personality provided the basis for those judgments." See Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2009), 113. Joanne Freeman, in her book on honor and politics in the New Republic, argues that "rank," "credit," "fame," and "character" all determined a person's reputation and had different meanings to those who lived by them. See Freeman, *Affairs of Honor: National Politics in the New Republic* (New Haven, CT: Yale University Press, 2001), xx.

[5] Defamation lawsuits and lawsuits involving reputation in the antebellum South resembled slander litigation in early modern England and colonial North America. On this point, see Edwards, *The People and Their Peace*, 332, n. 23. See also Cornelia Hughes Dayton, *Women before the Bar: Gender, Law, and Society in Connecticut, 1636-1789* (Chapel Hill: University of North Carolina Press, 1995); Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (New York: Oxford University Press, 1996); Jane Kamensky, *Governing the Tongue: The Politics of Speech in Early New England* (New York: Oxford University Press, 1997); Peter N. Moogk, "'Thieving Buggers' and 'Stupid Sluts': Insults and Popular Culture in New France," *William and Mary Quarterly* 36, no. 4 (Oct. 1979): 524-47; Mary Beth Norton, "Gender and Defamation in Seventeenth-Century Maryland," *William and Mary Quarterly* 44, no. 1 (Jan. 1987): 3-39; and Terri L. Snyder, *Brabbling Women: Disorderly Speech and the Law in Early Virginia* (Ithaca, NY: Cornell University Press, 2003).

from criminal charges and restrictive laws, and it might also allow them legal privileges usually associated with whites. By highlighting their reputations as obedient, deferential, and well-behaved members of the community and showing that they remembered their place, free people of color shielded themselves from attack. In addition, by demonstrating that they performed their expected roles in southern society, they could use their good reputations to sue others in court, protect their property, and improve their situations.

Enslaved men and women also participated in the politics of reputation through gossip. The rumors they circulated sometimes damaged the reputations of their owners and brought their owners' behavior to the attention of local authorities. Slaves' gossip was a form of governance, and with it they critiqued the power and authority of their superiors. In the politics of reputation where words were the ultimate weapon, slaves' ability to circulate gossip about their owners and other social betters served as a means to exercise a measure of power in a society where they had limited access to institutionalized sources of authority. They helped determine what kind of behavior constituted a "good" or "bad" slaveowner. Within communities, members established particular social norms and standards of behavior, and they expected all to adhere to them. Failure to do so jeopardized one's reputation and community standing. The authority of even the most powerful and wealthiest leaders of a community was thus contingent on the fulfillment of their allotted roles within the social order. When they failed to do so, they sometimes faced legal action, weakened political and social standing, and loss of reputation. Because all reputations were subject to public judgment and review, the words and opinions of all community members contributed to the

conversations that determined an individual's good name. Even the voices of the most marginalized—the enslaved—could help sustain or undermine the reputations of others. For masters who failed to demonstrate the qualities and responsibilities associated with their position, slave-initiated rumors of domestic disorder could come to the attention of the courts and local authorities, and they sometimes faced penalties.

Free and enslaved African Americans, however, had to be careful with their words. When participating in the politics of reputation, African Americans worked within the boundaries of their subordination. Setting limits on the excessive behavior of slaveholders or emphasizing one's obedient, sober, industrious, and deferential behavior ultimately upheld the legitimacy of slavery and the subordinate position of African Americans within southern society.

Nonetheless, the words of free and enslaved African Americans sometimes had the power to influence the social order of their communities. Although denied entry to formal political or public life, in the "small politics" of their neighborhoods, the voices of free blacks and slaves held sway. They did not always achieve the results they desired, but their actions inside and outside the courtroom helped shape the next round of the battle.

As Alexina Morrison's lawsuit against her owner suggests, the right reputation represented a source of legal and social capital in southern society. Establishing a good reputation served as both defensive and offensive strategies for free people of color struggling to survive in a slaveholders' republic. Free blacks understood the importance of reputation in southern society and employed it to defend themselves from the far-

reaching authority of their superiors. While some white southerners attempted to limit free blacks' use of the politics of reputation, especially their words as weapons in battles involving reputation, free people of color found ways to wield their good name in court to protect or enhance their position. For free blacks, a good name could shield them from arbitrary punishments and restrictive laws and allow them privileges usually reserved for white southerners.

In a culture where the power of white men seemed limitless, free blacks needed to secure good reputations within their communities to shield themselves from the litany of charges that might be lodged against them. Southern laws circumscribed the lives of people of color to such a degree that local authorities could round them up and haul them into court for nearly any offense, real or imagined, from vagrancy to traveling out of state or even keeping a dog. They also faced charges for crimes of deference, such as insulting a white person or not yielding the road. Local churches disciplined their free black members in much the same way the magistrates' courts did, holding hearings for blacks accused of "crimes" such as slander, fornication, hunting on a Sunday, or "gross immoral conduct," and punishing them when found "guilty."[6] In 1853, Jeffrey, a free black Mississippian, faced charges for "styling himself as a Baptist minister," "teaching strange doctrine" to the black population of Port Gibson, and "other dishonest conduct." After his hearing before church officials, the Magnolia Baptist Church "excluded" him from

[6] The Fellowship Baptist Church in Jefferson County, Mississippi, frequently investigated free blacks and slaves for what they called "gross immoral conduct," holding monthly disciplinary hearings and excluding from church membership those they found guilty. See Minutes of the Fellowship Baptist Church, Jefferson County, Mississippi, July 1832 to September, 1885, Box 49, Mississippi Baptist Historical Commission (hereafter MBHC), Mississippi College, Clinton, Mississippi. Many of the evangelical churches in Mississippi were biracial and included free black and slave members. Both free black and white members participated in church disciplinary hearings. On evangelicalism in Mississippi, see Randy J. Sparks, *On Jordon's Stormy Banks: Evangelicalism in Mississippi, 1773-1876* (Athens: University of Georgia Press, 1994).

the congregation because of his "bad repute" in the community.[7] When defending themselves against such accusations, free blacks needed to demonstrate that they were "good negroes"—obedient, well-behaved, subservient, and respectable. Little wonder that Nero, a free man of color jailed in Natchez, Mississippi, for "riotous behavior," claimed that he had always demonstrated "good behavior" in his community and asked the court to subpoena witnesses on his behalf.[8]

People of color needed powerful white allies willing to affirm in court that they were indeed "good negroes" with respectable reputations, especially as they faced increasingly restrictive laws. By the 1830s, as abolitionists' attacks on slavery intensified and slaveholders' fears of slave rebellion heightened, white southerners increasingly perceived free blacks as a threat to the social order. Across the South, they escalated their assaults on free black communities. These attacks were particularly prevalent in Mississippi and Louisiana. Lawmakers in both states attempted to restrict—and reverse—the growth of the free black population and enacted laws to remove them from the state. In 1831, a Mississippi newspaper captured the sentiment of many whites in the region. "If the free coloured people were removed," the paper argued, "the slaves could safely be treated with more indulgence. Less fear would be entertained, and greater latitude of course allowed. . . . In a word, it would make better masters and better slaves."[9] Indeed, in one revealing petition, twenty-one white men reminded the

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[7] Minute Book of Magnolia Baptist Church, Claiborne County, Mississippi, September 1852 to August 1875, Box 86, MBHC.

[8] *State of Mississippi v. Nero*, Adams County, Mississippi, 1818, Records of the Circuit Court, Habeas Corpus Files, Box 1, Courthouse Records Project, Historic Natchez Foundation (hereafter CRP, HNF), Natchez, Mississippi.

[9] *Natchez*, March 5, 1831.

Mississippi legislature that there were both "vicious and evil disposed" free people of color and those "who have spent a life free from reproval, or even the suspicions of improper conduct." While the "unworthy" should be removed, these men insisted that the "good blacks" be protected. They asked the legislature to allow local communities to make the distinction between "loyal and disloyal."[10] Requesting special permission to remain in the state, free blacks in good standing in their communities offered petitions containing the signatures of reputable white men to their county courts and state legislatures. Black men and women who wanted to remain in the state, however, had to remember their place.

In their petitions to remain in the state or seeking relief from suffocating restrictions, free people of color were careful to demonstrate that they were well-behaved, not prone to rebellion, sober, industrious, and could offer something of worth to the larger community. To document their cases, they presented evidence of support from whites in their neighborhoods. When Ann Caldwell petitioned the Mississippi legislature, she gathered the signatures of over one hundred white residents of Natchez and the surrounding area to support her request "for a special act allowing her to remain in the state." She pledged not to become a public charge and even promised to post a bond guaranteeing "her good behavior." Her community valued her skills as a healer, she claimed, and she had gained her freedom by serving as a "faithful" nurse to her former mistress.[11] Similarly, thirty-three white men of Natchez petitioned on behalf of Esther

[10] Petition of H. L. Foules et al. to the Mississippi State Legislature, 1859, in Race, Slavery, and Free Blacks, (hereafter RSFB), Series I: Legislative Petitions, Petition Analysis Record (hereafter PAR) #11085912.

[11] Petition of Ann Caldwell to the Mississippi State Legislature, in RSFB, Series I: Legislative Petitions, PAR #11085923. For another example of a free black woman offering to post a security bond for

Barland, a free black woman. They asked lawmakers to allow her to remain in the state due to her reputation for "great industry" and claimed that she was "much grieved at the idea of being driven from the Land of her home and her friends to find shelter she Knows not where."[12]

Without a good reputation to call upon, free blacks risked losing everything. A good reputation could help them protect their property. William Hayden, a free black barber in Natchez, claimed that the Mississippi act forcing free blacks to leave the state would "produce absolute ruin to his prospects." He had gained "an honest livelihood for himself" through his "sobriety and good conduct," he insisted, as "those who knew him could affirm." His reputation for "honesty," "fidelity," and "obedience to the laws of the state" made him an ideal candidate for remaining in Natchez. He owned property and ran a successful business, he asserted. But because he was in constant danger "of being driven from his home," he wanted "a special act exempting him . . . from removal from the state." Moreover, he claimed that he could produce "testimonials of his good character and honesty . . . sobriety and good conduct." Indeed, Hayden gained the assistance of John Minor, a member of one of the most prosperous and respected families in Mississippi. Minor supported Hayden's petition and claimed to "have knowledge of [his] character" and could "testify to his honesty." He "recommended" that the legislature allow Hayden to remain a resident of the state, a recommendation the legislature followed. Calling upon his reputation as a sober, industrious, and honest

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her good behavior when requesting to remain in the Mississippi, see Petition of Agnes Eahart to the Mississippi State Legislature, in RSFB, Series I: Legislative Petitions, PAR #11085911.

[12] Petition of L. G. Rowan et al. to the Mississippi State Legislature, 1830, in RSFB, Series I: Legislative Petitions, PAR #11083008.

businessman served as an effective defensive strategy. Hayden's reputation protected him from "ruin" and shielded him from restrictive legislation in a social order where the nearly unlimited power of white slaveholders could run roughshod over his "prospects."[13] In the small, face-to-face communities of the Old South, the white community judged free blacks like William Hayden or Ann Caldwell as individuals, and because they remembered their place, they were rewarded. Others were not so lucky.

Many of the restrictive laws free blacks faced were locally negotiated and only partially enforced. The lack of systematic enforcement was deliberate. Not every free black traveling to another state or keeping a dog faced criminal charges. Instead, white authorities used the law selectively. Laws demanding deference or restricting free blacks' movements existed to remind people of color of their place within southern society. The deferential might be exempt, but, if a black person misbehaved in some way, whites could call upon the law to punish the transgressor.

The need to maintain a good reputation forced free blacks to adhere to the standards whites set for them. When white southerners supported the use of reputation by free blacks as a protective strategy, it was often on their terms. Whites sometimes backed free blacks' access to good reputations (along with the benefits that came with a good name) if they had behaved according to their position in the southern racial hierarchy. Yet, in other instances whites sought to limit free blacks' use of reputation—especially if it threatened white authority. In the politics of reputation, words were the most lethal weapon; because reputations required public assessment, the words of

[13] Petition of William Hayden to the Mississippi State Legislature, 1829, in RSFB, Series I: Legislative Petitions, PAR #11082904. For a similar case where a free black man claimed to have acquired both property and a good reputation, see Petition of William Parker to the Mississippi State Legislature, n.d., in RSFB, Series I: Legislative Petitions, PAR #11000008.

others—gossip, insults, rumors—could undermine or augment a good name. Free blacks often faced criminal charges for insulting and slandering whites because of the dangerous potential their words acquired when repeated or spoken publicly. Whites went to great lengths to regulate free blacks' speech in order to limit the influence of their words.

The case of John Motton revealed how the politics of reputation could keep even the most aggressive black man in line. In 1838, Baton Rouge authorities arrested Motton, a free black man, for heatedly screaming insults at the executioner while witnessing the public hanging of two slaves in the town square. In his petition for a writ of habeas corpus, Motton admitted using "language strongly disapproving of the cruel manner in which the executioner did his duty." His anger originated from "the excitement of the moment, when the feelings of all bystanders were outraged." Understanding the gravity of the charges against him for breaching the peace and insulting a white man in the presence of others, Motton assured the district court judge that he had not used "imprudent or disrespectful expressions towards any officers on duty—or towards any other white man." His quarrel was with the executioner. A "bad feeling" existed between the two men. Executioners routinely faced insults and had bad reputations in their communities because of the infamy of the hangman's profession. Executioners, like debt collectors and bailiffs, ran a high risk of verbal abuse and even physical assault because of the nature of their duties.[14] The concern, however, was not simply that Motton had insulted the hangman. Rather, he was arrested for "abusing the executioner in the presence of slaves."

[14] Debt collectors, court bailiffs, and executioners faced far more vilification than people of other occupations such as farmers and craftsmen because they made arrests, delivered summonses, hanged criminals, seized property, and collected taxes and debts. See Moogk, '"Thieving Buggers' and 'Stupid Sluts,"' 531-3.

By insulting a white man in public and potentially damaging his reputation, Motton forgot his place. Motton's insulting language toward a white man in the presence of slaves raised the hackles of the other white bystanders because it betrayed commonly acknowledged racial and social hierarchies. One man who witnessed the incident, William Jackson, claimed that Motton "used language rebellious in its tendency, & calculated to destroy that line of Distinction which exists between the several classes of the community." With this statement to the court, Jackson revealed his apprehension about the power and reach of Motton's words. By publicly challenging a white man and calling him a "damned rascal [who] ought to be hung," Motton encouraged disrespect and even insurrection. Encouraging slave rebellion was punishable by death. The judge denied Motton's habeas request because of the insubordinate and mutinous example he had offered to enslaved bystanders.[15]

By insulting a white man, Motton also broke the law, and in this instance white officials enforced it. A black person's insulting or failing to show respect to a white person was a crime in Louisiana. "Free people of color ought never to insult or strike white people, nor presume to conceive themselves equal to whites," the law provided, "but on the contrary, they ought to yield to them in every occasion, and never speak or answer to them but with respect, under the penalty of imprisonment, according to the nature of the offense."[16] Elaborate laws that criminalized blacks' speech and demanded

[15] Petition of John Motton, East Baton Rouge Parish, Louisiana, 1838, in RSFB, Series II, Part F, PAR #20883808. For other cases in which free blacks faced criminal charges for insulting whites, see *State of Louisiana v. Fleming*, unprocessed materials, Iberville Parish, Louisiana, 1833; *State of Louisiana v. Louise*, unprocessed materials, Iberville Parish, Louisiana, 1842; and *State of Louisiana v. Marguerite and Julian*, unprocessed materials, Iberville Parish, Louisiana, 1842.

[16] Louisiana *Digest* (1842), Art. 40, p. 57. Southern lawmakers criminalized the speech of African Americans in a number of ways. In Mississippi, for example, the punishment for African Americans,

deferential behavior bolstered the racism that accompanied the entrenchment of slavery in the antebellum South and the distancing of whites and blacks. The development of a rigid racial ideology and efforts to make "whiteness" synonymous with freedom and "blackness" with slavery depended upon the everyday practice of racial difference. With his affidavit, Jackson reminded Motton of his inferior standing within southern society, and the court reminded Motton of his place.

While laws demanding deference reinforced racial boundaries, they also betrayed the uneasiness of white lawmakers and their white constituents about African Americans' speech and the place of free blacks within a slave society. When white southerners prosecuted blacks for insulting whites, they revealed their anxiety about the impact and scope of African Americans' words. By claiming that Motton's actions were "calculated to destroy that line of Distinction which exists between the several classes of the community," Jackson implicitly acknowledged that Motton had the power to upset racial hierarchies. Motton himself may not have achieved the results he desired when he petitioned the court for his release from jail, but his actions reminded white southerners of the influence and potential danger of his words.

While free blacks most often used their reputations to defend themselves from attack, cultivating a good name also served as an offensive weapon. Sometimes the reputations of free people of color exceeded their social and racial status and allowed them certain privileges and opportunities usually associated with whites. The good reputations of some free blacks allowed their voices to carry weight in their communities in a number of ways, despite their subordinate status.

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enslaved or free, for lying in a capital case was to have both ears nailed to the pillory for two hours and then cut off. *Digest of the Laws of Mississippi*, p. 757.

With the right reputation, even those with little legal or political standing could attain enough social credit to bring information to court and be believed. Free blacks in both Mississippi and Louisiana used their good reputations to sue in court for repayment of debts owed them, settle disputes over cattle and horses, inheritance, slave warranties, and back wages, win damages for assault, and adjudicate a number of other disagreements. While statutes in every southern state except Louisiana barred free blacks from testifying against whites, in practice, free blacks (many of them descendants of slaves or former slaves) found ways to circumvent these statutory prohibitions. Many engaged their white neighbors as both legal allies and legal foes.[17]

Antoine Lacour's reputation as a trustworthy cotton planter and good neighbor far surpassed the social position typically assigned a free black man in Louisiana and assisted him in winning the nine lawsuits in which he was embroiled between 1831 and 1844—all but one involved litigation against white men.[18] In 1830, Lacour's household consisted of eighteen slaves, and by 1839 he was reputed to own real and personal

[17] For a discussion of free blacks suing whites, see chapter 4, below.

[18] See *Lacour v. Landry*, Records of the Fourth Judicial District Court, #1070, Iberville Parish, Louisiana, 1831 (Lacour successfully sued Valerin Landry, a white man, to recover damages for killing his horse); *Lacour v. Teinter*, Records of the Fourth Judicial District Court, #1479, Iberville Parish, Louisiana, 1835 (Lacour recovered a $337 debt from Jeannette Teinter, a free black woman); *Ingledove v. Lacour*, Records of the Fourth Judicial District Court, #1065, Iberville Parish, Louisiana, 1839; *Ingledove v. Lacour*, Records of the Fourth Judicial District Court, #1745, Iberville Parish, Louisiana, 1840 (Weyman Ingledove, a white man and Lacour's former overseer, unsuccessfully sued him twice for $200 in back wages); *Ingledove v. Lacour*, Records of the Fourth Judicial District Court, #1726, Iberville Parish, Louisiana, 1840; *Ingledove v. Lacour*, Records of the Fourth Judicial District Court, #1754, Iberville Parish, Louisiana, 1840 (Ingledove unsuccessfully sued Lacour twice more in 1840, this time for slander); *Molaison v. Lacour*, Records of the Fourth Judicial District Court, #1760, Iberville Parish, Louisiana, 1840 (Jacques Molaison, a white man, proved unable to rescind the sale of a "damaged" slave he had purchased from Lacour); *Landry v. Lacour*, Records of the Fourth Judicial District Court, #1873, Iberville Parish, Louisiana, 1841 (Camile Landry, a white man, was unable to recover a debt he claimed Lacour owed him); and *Lacour v. Landry*, Records of the Fourth Judicial District Court, #2154, Iberville Parish, Louisiana, 1844 (Lacour successfully recovered a debt from Camile Landry).

property valued at $150,000.[19] Litigious to the core, he made extensive use of the legal system to increase his wealth, protect it, and bequeath it to others. Like white men of similar financial standing, Lacour bought and sold land, slaves, and other property, ginned cotton, rented out bondsmen, and, when he went to court, hired white attorneys to represent him. Although illiterate, he spoke both French and English. In early 1838, Lacour may have solidified his position when he hired a white man, Weyman Ingledove, to serve as overseer on his cotton plantation. A slaveowning, free black planter who employed a white overseer was a rare occurrence in the antebellum South. This curious arrangement, however, lasted less than a year. Between 1839 and 1840, Ingledove sued Lacour four times, twice for back wages and twice for slandering him as a horse thief. He even attempted to have Lacour arrested. Ingledove's persistent pursuit of Lacour proved a costly mistake, as he lost each case. Although Lacour could not serve on a jury, hold office, vote, or participate in a number of other civic acts reserved for white men, in a venue often denied free black men, he repeatedly defeated his white overseer.

In late summer, 1839, Lacour's legal troubles with his overseer began when Ingledove sued him for back wages. In his petition to the Iberville parish court, Ingledove claimed that Lacour had hired him in April 1838 to serve as a "Labourer and overseer" on his plantation for a "term of nine months." According to Ingledove, near the end of the contract, Lacour evicted Ingledove from his plantation and refused to pay him. Lacour intended to depart Louisiana "without leaving sufficient property to satisfy the judgment which he suspect[ed] to obtain against him." Witnesses for Ingledove (one of whom Lacour had sued successfully in 1831) testified that Lacour planned to sell his

[19] 1830 U.S. Census, Iberville, Louisiana, Microfilm Publication M19, Roll 43, National Archives and Records Administration (NARA), Washington, D.C.; see also *Ingledove v. Lacour*, #1065.

property for $150,000 and go to France where "Negros" had "rights" and "were admitted as Generals in the Armies." Ingledove wanted Lacour "arrested and confined" to ensure that he would not flee the state. In early December, 1839, the parish judge ordered Lacour's arrest but suspended the warrant three days later when Lacour denied the charges against him and filed a motion to dissolve the arrest. Lacour admitted that he planned to move to France, but he claimed that he had "plenty of . . . slaves, movables and credits" in Louisiana, enough to "satisfy" Ingledove's "demand." In the trial that followed, witnesses established the source of the two men's disagreement. Some months prior, Lacour had lent Ingledove a horse and sent him, in his capacity as overseer, in search of runaway slaves. When Ingledove returned fifteen days later without the horse, claiming he had lost it, Lacour had terminated his employment and refused to pay him unless he returned the missing horse. After listening to the witnesses' testimony, the parish court judge ordered Lacour to subtract the value of the horse—some $50—from the $200 he still owed Ingledove. Lacour swiftly appealed, claiming that Ingledove's theft of his horse justified terminating his employment without pay. Two months later the district court in Plaquemine overturned the parish court's decision and dismissed Ingledove's case entirely.[20]

The controversy between the two men, however, was not over. In mid-spring, 1840, Ingledove sued Lacour twice more, this time for slandering him as a horse thief. In both of his defamation lawsuits, Ingledove professed that he was a man "of irreproachable honesty, character, and reputation," "a good neighbor and good friend," and "harmless and inoffensive" to boot. Notwithstanding these noble qualities, Lacour

[20] *Ingledove v. Lacour*, #1065; and *Ingledove v. Lacour*, #1745.

had "falsely, maliciously, and slanderously" accused him of dishonesty and of stealing and then gambling away his horse. These accusations "render him contemptible and suspicious to the public and . . . deprive him of his honest reputation," he lamented. Lacour also had made threats against Ingledove in "both the English and [F]rench languages" and had warned that if he approached his plantation again, he would "shoot him & make his negroes throw his dead body in the river." The district court dismissed the first lawsuit because of lack of evidence, requiring Ingledove to pay court costs and nonsuited him (fined him for filing an inadequate case) in the second.[21]

Lacour's success hinged on local knowledge and the reputations of both men in their community. In each of the four trials, both Ingledove and Lacour summoned witnesses to testify on their behalf. Community members frequently provided verbal accounts of the controversies at hand, descriptions of physical evidence, opinions about the circumstances of a given case, and personal judgments about the litigants involved.[22] Such witness testimony shaped the outcome of a case.

In many ways, Ingledove faced an uphill battle when he sued Lacour. While white men had the greatest claim to a good reputation as a result of their superior position in the southern hierarchy, formal determinants such as race, gender, age, property ownership, class, and religion did not fully define a person's status in antebellum southern society. At times, behavior could modify the status hierarchy. Within particular communities, individuals had to affirm those attributes associated with their position.

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[21] *Ingledove v. Lacour*, #1726; and *Ingledove v. Lacour*, #1754.

[22] Laura Edwards demonstrates that, in her words, "judgments rested on the situated knowledge of observers in local communities, in which an individual's 'credit' (also known as character or reputation) was established through family and neighborly ties and continually assessed through gossip networks." (7) Knowledge about a person's character or actions was readily available and informants provided details about both the offense and the offender. See Edwards, *The People and Their Peace*, chap. 4.

White women, children, and free and enslaved African Americans could earn a good reputation or even an elevated position in their community by fulfilling their allotted roles within the social order.[23] Lacour, although a black man, had significant influence in his community because of his position as a wealthy planter and slaveowner. Even the men who testified on Ingledove's behalf respecting Lacour's alleged intentions to move to France acknowledged that Lacour was honest, well-regarded, prosperous, and not dependent on others for his livelihood. His financial independence meant that he was not subject to the influence of an employer or landlord and free to make decisions for himself. Despite his race, Lacour's community professed respect for him and his capacity as a fair-minded householder. Because he performed effectively the qualities expected of a man of his economic stature—honesty, rationality, reliability, and independence—Lacour enjoyed an elevated status. Not a single witness uttered a word in favor of Ingledove's character and reputation, even those who testified on his behalf. Instead, many reported rumors of Ingledove's frequent gambling as an explanation for the alleged horse theft.

Thieves had particularly ignoble reputations in southern society. To be called a thief implied a lack of trustworthiness. In a face-to-face culture where a man was known by his word, charges of dishonesty could not be left uncontested. Trust was essential in a society where many were illiterate, and lenders often extended credit on nothing more than a handshake or the debtor's oral promise to repay. A damaged reputation might result in the loss of crucial sources of livelihood—trading partners, credit, potential business associates, and opportunities for prosperity. Charges of theft, fraud, frequent gambling, and dishonesty could have ruinous consequences and jeopardized a man's

[23] Edwards, *The People and Their Peace*, chap. 4.

position in his community.[24] With his social and economic standing on the line, as well as his prospects for future employment, Ingledove could not afford to disregard such an allegation. Ignoring an accusation of theft was tantamount to admitting that it was true.

Worse, however, by calling him a thief, Lacour publicly shamed and dishonored Ingledove. The slaveholding South was a society in which conceptions of honor held a central social and cultural place. White men were particularly sensitive about points of honor. Moreover, honor was tied to public display. It required an audience as well as external assessment and confirmation.[25] Indeed, honor hinged on reputation and outward appearances.[26] Men of honor projected themselves through the way they appeared and what they said. They were treated honorably when others respected the image they portrayed and acknowledged it as true. The principal concern to men of honor was the acceptance of their appearance, not their inner character. In southern honor culture, accusing a man of being dishonest and unprincipled was a serious offense.[27] Whether or

[24] On the importance of reputation in the consideration of financial matters, see Bruce H. Mann, *Republic of Debtors: Bankruptcy in the Age of American Independence* (Cambridge, MA: Harvard University Press, 2002); and Judy Hilkey, *Character is Capital: Success Manuals and Manhood in Gilded Age America* (Chapel Hill: University of North Carolina Press, 1997).

[25] The prominent scholar of southern honor Bertram Wyatt-Brown notes that, "at the heart of honor . . . lies the evaluation of the public." Although honor began as "internal to the claimant," it was also external and required public appraisal and verification. Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (New York: Oxford University Press, 1982), 14.

[26] As historian Ariela J. Gross astutely argues, "In sharp contrast to the inward-looking piety of the Puritan tradition" in the North, southern honor depended on a "sense of outer-directedness." As Gross points out, honor, character, and reputation were closely linked in the antebellum South. However, unlike in the North, where character "had come to mean something very internal, a matter of inner morality. . . . In the South . . . character meant at once one's true, essential nature and one's apparent, reputed nature, for they were one and the same." See Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Athens: University of Georgia Press, 2000), 48.

[27] On southern honor and accusations of dishonesty, see Kenneth S. Greenburg, "The Nose, the Lie, and the Duel in the Antebellum South, *American Historical Review* 95, no. 1 (Feb. 1990): 54-74; and Freeman, *Affairs of Honor*, 67.

not Ingledove actually stole the horse and was a dishonest man was far less shameful than the public perception of him as a thief.[28]

But to be denounced as a thief by a black man represented a particularly humiliating offense to a white man, as Ingledove claimed when Lacour accused him of horse theft. By raising the possibility that Ingledove was a dishonest thief, Lacour dishonored him before other white men. Ingledove felt the sting of his accuser's words all the more sharply because his defamer was black. Indeed, Ingledove repeatedly reminded the court that his accuser, Lacour, was a "man of color." To be dishonored by a black man compounded Ingledove's shame.

Lacour's accusations of dishonesty and theft were not the sole threats to Ingledove's reputation. Whatever his economic stature, Lacour was still a black man, and Ingledove was white. The danger derived from the repetition of Lacour's words. Lacour's version of events gained additional credibility as it was repeated by propertied white men. Because of their superior social standing, the voices and opinions of white men of property were thought to be inherently more believable and authoritative than all others.[29] Repetition among reliable and impartial white men thus validated the accusation of theft. Lacour's allegations became the "common fame" or "common

[28] Honor was available to every white man regardless of class. White men of the poorer classes also participated in rituals of honor—from brawling and nose-pulling to defending their honor through litigation. However, honor was not equally distributed, as Ingledove found when he was dishonored by a black man.

[29] Laura Edwards shows that race, gender, age, and property ownership helped establish a person's good name, and the speech of propertied white men had the most credibility. Their words "supposedly captured and conveyed truth precisely because they were independent, not subject to the pressure of superiors, landlords, or employers, and therefore free to think and speak for themselves." Edwards, *The People and Their Peace*, 113.

report."[30] In each of the four trials involving the two men, no one questioned whether Ingledove had stolen Lacour's horse; all assumed that he had (including witnesses for Ingledove). Once Lacour's words circulated amongst whites, they attained power—the power to dishonor a white man before other white men. Dishonoring and publicly insulting Ingledove reduced him as a man. A southern white man without honor was no man at all.

Reputations were not equally vulnerable to public critique. The gravity of an insult or defamation depended on the social and racial rank of the persons involved. Ingledove was, after all, a landless wage worker dependent on a black man for employment. Due to his protected status in his Plaquemine community, Lacour could afford to be less judicious with his words even though he was a man of color. Indeed, in some ways, Lacour was elevated to the position of an honorary white man, while Ingledove was degraded to the status of a "negro" as a result of his employment by a black man. As a result, Lacour did not entirely disrupt the social and racial order by slandering Ingledove. Slaves gossiping about white slaveholders was another matter entirely.

Although denied entry to formal governing structures, slaves' gossip served as a means to practice politics. Their gossip was a form of governance and could potentially force slaveowners to change their strategies of rule and expand the definition of what

[30]According to Laura Edwards, "the mechanisms by which gossip developed credibility were so routine that they occupied an acknowledged place in localized law as 'common reports'—information that was widely held to be true, even though positive proof was lacking. . . . What distinguished a 'true' report from a 'false' one was the extent to which others believed it, not the extent to which it had a demonstrable factual basis." Edwards, *The People and Their Peace*, 118.

constituted a "good" and "bad" owner. Slaves did not have access to such "big politics" as office-holding or voting. However, in the "small politics" of everyday life in their communities, their words had sway. The voices of slaves were the most restricted by law, but their gossip might, in certain circumstances, make or unmake others' reputations, including the reputations of their masters. Their words served as an essential tool for protecting their own interests. In the politics of reputation, slaves' words became weapons. They could insult or gossip about someone they disliked or feared. While they did not sit on the magistrate's bench or in the halls of government where community leaders made decisions about conduct, enslaved African Americans helped to shape the rules of daily life. Indeed, their speech served as a mechanism to exert informal political power in a society that denied them access to formal political arenas.

Of course, to a large degree, slaveholders circumscribed slaves' speech and limited their ability to use the power of reputation to their own benefit. Slaves who insulted whites faced harsh penalties. White southerners designed legal codes to severely penalize slaves and free blacks who committed crimes against deference.[31] A Natchez jury condemned Beverly, an enslaved man, to the lash when he insulted John Pomet and his wife. In a disagreement over the weight of some meat, Beverly, the Pomets claimed, "insolently insinuat[ed]" that they were "liars" and cheats, and shook his fist at them. For his offense against the Pomets, the jury sentenced Beverly to twenty lashes.[32] Although slaveholders often punished loquacious slaves or simply ignored their speech,

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[31] Wyatt-Brown, *Southern Honor*, 363.

[32] *State of Mississippi v. Beverly, a slave*, Adams County, Mississippi, 1827, Records of the Circuit Court, Group 1820-29, Box 42, File 58, CRP, HNF. In a similar case, Becky, an enslaved Mississippi woman, faced charges for "using insolent and abusive language without provocation" against Elisabeth Lawes, a white woman. See *State of Mississippi v. Becky, a mulatto slave*, Adams County, Mississippi, 1822, Records of the Circuit Court, Group 1820-29, Box 14, File 7, CRP, HNF.

occasionally the words of enslaved men and women damaged the reputations of their superiors.

Defamation and gossip had a kind of democratizing power because all reputations were subject to public scrutiny and could be strengthened or undermined by the gossip of others. Even the most powerful and wealthiest leaders of a community held their positions at the will of the public. Their authority was contingent on the fulfillment of their allotted roles within the social order. When they failed to do so, they might face punishment, diminished political and social standing, dishonor, and loss of reputation. Having achieved the status of a man of good repute, a slaveholder could gain esteem from his neighbors, but he was neither immune to community sanction nor insulated from community judgment. Sometimes the words of enslaved men and women undermined the reputations of their masters as proper patriarchs by exposing their disorderly households to public view.

In the politics of reputation, gossiping about one's superiors served as a weapon for those with limited legal rights. Enslaved people's gossip could damage the good name of whites and bring the actions and behavior of their superiors to the attention of the courts and local authorities. As members of their masters' households, slaves served as conduits of information about the personal lives, character, and conduct of their household heads. Thus, they could use their speech to exert informal authority over their social betters. The ability of enslaved men and women to spread gossip about their owners and other whites gave their words potentially subversive power. In a church disciplinary hearing (which functioned similarly to the justice of the peace court), the Piedmont Baptist Church in Jefferson County, Mississippi, reprimanded an enslaved

woman belonging to David Ellis for spreading rumors about Ellis's alleged immoral behavior—behavior that she insisted should exclude him from the Church. Ellis, concerned about the effect these rumors had on his reputation among his fellow parishioners, asked the church elders to censure his enslaved woman's speech.[33] Similarly, the Zion Hill Baptist Church in Amite County, Mississippi, excluded the enslaved woman Fanny Marsh for "contradictions in talk," claiming that she had been gossiping and spreading false rumors about her master.[34] Because slaveholders could not always control what their slaves said (although they certainly tried) or to whom they said it, the words of enslaved men and women attained influence beyond their official standing in their communities.

Slaves used the power of gossip to bend others to their own will and critique the power and authority of their superiors. Their gossip was a form of governance, and with it sometimes they forced slaveowners to measure up to slaves' standards of what made a "good" master. The gossip of slaves made slaveholders' reputations vulnerable, particularly if owners did not live up to what was expected of them as household heads. Masters and mistresses needed to demonstrate the qualities and responsibilities associated with their position, and rumors of domestic disorder started by slaves could come back to haunt their owners.

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[33] Minute Book of the Piedmont Baptist Church, 1852-1910, MBHC. For a discussion of how domestic dependents could use their personal knowledge of a man's household to influence his reputation or legal proceedings against him, see Edwards, *The People and Their Peace*, 121-31. For an analysis of how the words of slaves entered southern courts in civil suits despite restrictions on their testimony against whites, see Gross, *Double Character*.

[34] Zion Hill Baptist Church Minutes, 1811-1979, Amite County, Mississippi, Microfilm #36304, Mississippi Department of Archives and History (hereafter MDAH), Jackson, Mississippi.

Slaveholders who abused and neglected their slaves might face some kind of penalty. Louisiana slaveowner Jean Baptiste Mengate faced criminal charges for assault when Josiah and Thomas Brown accused him of "treating his slave Amy with great and unlawful cruelty and barbarity—by beating with unlawful weapons—and unlawful means of punishment."[35] Excessive brutality called into question a slaveholder's capacity as governor of his household. Although slaveholders could use violence to control slaves, they were expected to deploy physical punishment rationally and deliberately rather than passionately and wantonly. The harshness of the punishment needed to match the severity of the crime. Honorable and capable slaveowners were expected to recognize the difference.[36]

After William Surget's slaves revealed their master's vicious conduct to the public, he faced criminal charges for assaulting several of his slaves. They made Surget's behavior known as they appealed to his white neighbors for protection from his beatings and sought shelter to avoid his wrath. Their bruised and bloodied bodies confirmed rumors of his brutality, and the white community reacted by indicting him for assaulting six of his slaves. Surget was a member of the wealthiest family in Mississippi, and his brother, Natchez nabob Francis Surget, Sr., was the second-largest slaveholder in the

[35] *State of Louisiana v. Mengate*, unprocessed materials, Iberville Parish, Louisiana, 1820.

[36] Gross, *Double Character*, 105-9. White indentured servants also spoke out against their masters' maltreatment, but, unlike slaves, they could testify against their abusers in court. John Arden, the apprentice of James Cunningham, sued his master because he threatened to horsewhip him and otherwise ill-treat him. As a result of Arden's complaints in court, the jury ordered that he be discharged from Cunningham's services. *Arden v. Cunningham*, Records of the Old Parish Court, #280, Iberville Parish, Louisiana, 1811.

mid-nineteenth century South.[37] His standing, however, did not shield him from punishment and public reprimand for abusing his power as a master.

The voices of Surget's slaves shaped the case against him and unmasked the brutal practices occurring within the Surget household. They produced the information that dismantled Surget's reputation as a competent master. While his slaves could not formally testify against him, their words reached the courthouse through the voices of white intermediaries who had heard rumors of Surget's violence. Some of the most prosperous men in town cast doubt on Surget's fitness as a household manager. Witnesses claimed that Surget abused his slaves "with whips, sticks, knives and clubs . . . in a barbarous and unusual manner" not equal to their crimes. An honorable master disciplined his slaves with coolness and rationality—never in anger. The broken bodies of Surget's slaves called into question his ability to govern his household dispassionately. Surget's "cruel" treatment of his slaves violated the standards expected of slaveholders, and his mishandling of his domestic affairs therefore threatened his standing in the community. In the case of William Surget, excessive mastery would not be tolerated. Jurors fined him $358 for sadistically beating his slaves. Although hardly a blow to his bank account, reputation required an audience, and in this particular public accounting, Surget lost.[38]

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[37] When he died in 1856, Francis Surget, Sr., left an estate valued at upwards of $2,500,000. While Francis became the grandee of the family, his brother Jacob amassed a fortune valued at more than $980,000, and his brother James accumulated more than 400 slaves. Their sister, Charlotte Catherine Surget, married Natchez nabob Adam Bingaman. Together, the Surget family network owned, at one point, a remarkable total of 5,287 slaves. At the time of his death in 1834, William's estate yielded proceeds of about $80,000, a modest amount compared to the estates of his brothers. On the Surget family fortune, see William K. Scarborough, *Masters of the Big House: Elite Slaveholders of the Mid-Nineteenth-Century South* (Baton Rouge: Louisiana State University Press, 2003), 11-3.

[38] *Territory of Mississippi v. Surget*, Adams County, Mississippi, 1816, Records of the Circuit Court, Group 1810-19, Box 34, File 125, CRP, HNF.

Just as Antoine Lacour's words gained additional weight when they were repeated by white men, the speech of slaves gained legitimacy and became the "common fame" as whites repeated their words, first to others in the community and then in court. Repeated accusations signified gossip's persuasive power to become fact. For instance, on the morning of June 17, 1830, Augustin, an enslaved man belonging to John Close, fled his master's household and ran to the neighboring home of David Markham. When he arrived, Augustin told Markham that his owner had "treated" him "most cruelly and shamefully." Shocked by the gravity of Augustin's injuries, Markham then accused Close of beating his slave excessively and petitioned the court to seize Augustin and remove him from Close's barbarous reach. He also wanted Close to appear before the court to "show cause why [Augustin] should not be sold in order to place him out of the reach of the power which his Master had abused." Several witnesses repeated Augustin's version of events, although none had witnessed the abuse firsthand. Five white men claimed that they had heard that Close often whipped Augustin so severely that his skin fell from his body. This kind of brutal and repeated abuse, witnesses affirmed, reinforced Close's reputation as a "severe master." Although Augustin could not testify against Close, the judge requested his presence in court so that the jurors could observe the physical violence inflicted upon his person. After white men and his own injuries spoke for him, the court ordered that he be seized from Close. Frequent repetition of Close's abusive treatment of his slave transformed Augustin's accusations into common assumptions, signifying agreement among other slaveholders that Close was a bad master.[39]

[39]*Markham v. Close*, St. Landry Parish, Louisiana, 1830, in RSFB, Series II, Part F, PAR #20883023.

In addition to their words, the behavior of slaves similarly influenced the reputations of their masters.[40] Giving a slave too much freedom, for example, called into question the ability of a master to govern his household. To many slaveholders, a master's leniency represented a bigger problem than his ruthlessness: "Some persons are too strict with servants; but for every one who errs in this way, one hundred may be found who go to the opposite extreme and let them idle away their time and do no more than half work."[41] As this slaveholder indicated, a well-run plantation did not allow slaves to drink, hire out, gamble, or trade independently. A lax master was a bad master. Courts routinely prosecuted slaveholders whose slaves ran wild or lived on their own.[42] The behavior of Isabella Nichols's slave, Ned Miles, caused her neighbors to question her ability to master slaves and head a household. Ned faced criminal charges several times for his unruly behavior, indicating Nichols's lack of control over him. In 1818 alone, local Natchez authorities prosecuted Ned three times: for living apart from his mistress

[40] The bodies and conduct of enslaved men and women influenced legal proceedings in both direct and indirect ways. In her study of slavery in the antebellum courtroom, Ariela Gross demonstrates that in slave warranty cases and other civil disputes involving slaves, enslaved people who repeatedly ran away or feigned illness could manipulate the outcome of lawsuits or dishonor their masters by making them out to be liars. According to Gross, a breach of warranty lawsuit involving a slave was, in itself, an insult, particularly in a culture where accusing someone of lying represented the worst affront to a man of honor. A slave proven emotionally or physically unsound at trial could indirectly demonstrate that the slaveholder/seller had lied. See Gross, *Double Character*. Enslaved men and women also used their bodies to shape their own sale and hire and to wield influence in the marketplace. For an analysis of slave agency in the market, see Walter Johnson, *Soul by Soul: Life inside the Antebellum Slave Market* (Cambridge, MA: Harvard University Press, 1999).

[41] Quoted in Gross, *Double Character*, 110.

[42] For a discussion of southerners' concerns about overly lenient masters, see Gross, *Double Character*, 110-11. For examples of slaveholders facing criminal charges for allowing their slaves to live separately from them, see *State of Mississippi v. Clark*, Warren County, Mississippi, 1842, Box 2E775, Folder 1, Natchez Trace Collection (hereafter NTC), Slaves and Slavery Collection, 1793-1864, Dolphe Briscoe Center for American History, University of Texas at Austin ; *State of Mississippi v. Barnett*, Warren County, Mississippi, 1842, Box 2E775, Folder 1, NTC; *State of Mississippi v. Coleman*, Warren County, Mississippi, 1842, Box 2E775, Folder 1, NTC; *State of Mississippi v. Schueler*, Warren County, Mississippi, 1858, Box 2E775, Folder 3, NTC; and *State of Mississippi v. Ship*, Adams County, Mississippi, 1850, Records of the Circuit Court, Group 1850-59, Box 5, File 52, CRP, HNF.

in a state of fornication with a white woman named Betsy Osteen, for assault and battery upon the same Betsy Osteen, and for selling alcohol without a license. Nichols was charged with allowing Ned to live separate from her. Because she allowed Ned to behave as a free man, Nichols's local community questioned her capacity to govern a household properly.[43]

William Surget, John Close, and Isabella Nichols faced criminal charges for needlessly beating or neglecting their slaves because they violated general understandings of the way slaveowners should behave—expectations reinforced in state law. Both Mississippi and Louisiana law banned masters from inflicting cruel and unusual punishment upon their slaves and made it illegal for masters to allow slaves to live as free people. Admittedly, however, what constituted cruel and unusual punishment was debatable. In general, the law of cruelty toward a slave was fairly flexible. Most often abusive or even sadistic masters did not face criminal charges for beating or even killing their slaves. When they did, the charges were generally dropped. For example, a Mississippi grand jury indicted George Tarleton for "maiming" his slave by castrating him, but the charges were later dismissed when Tarleton did not show up in court.[44] Masters regularly justified abuse by claiming that their slaves had misbehaved. After being arrested for excessive punishment that resulted in the death of a slave, John Brooks successfully petitioned for a writ of habeas corpus by claiming that he had whipped the

[43]*State of Mississippi v. Osteen and Miles*, Adams County, Mississippi,1818, Records of the Circuit Court, Group 1810-19, Box 39, File 43, CRP, HNF; *State of Mississippi v. Miles*, Adams County, Mississippi,1818, Records of the Circuit Court, Group 1810-19, Box 39, File 43, CRP, HNF; and *State of Mississippi v. Miles*, Adams County, Mississippi,1818, Records of the Circuit Court, Group 1810-19, Box 40, File 2, CRP, HNF.

[44] *State of Mississippi v. Tarleton*, Adams County, Mississippi, 1846, Records of the Circuit Court, Group 1850-59, Box 3, File 65, CRP, HNF.

man forty to fifty times because he had run away. The court dismissed the charges against Brooks.[45]

Still, slaves had a keen sense of what constituted appropriate behavior by slaveholders, and when their owners violated it slaves passed the information on to others who might repeat it. The words of enslaved men and women could set the community rumor mill in motion. Slaves listened and observed. They talked to visiting whites about their owners, gossiped about who was a kind master or a cruel mistress, chatted with passersby on the road, and traded stories at the local general store.

For those with limited legal rights and excluded from formal political arenas, gossip served as a means to exercise power in the small politics of everyday life. The gossip of slaves represented a form of governance because their words (and actions) influenced the behavior of others. The information circulated by slaves about their masters and mistresses contributed to the meaning of what made a good and a bad slaveowner. Excessive and wonton violence and poor management signified a slaveholder's inability to govern slaves. When slaveowners failed in their expected duties and others found out about it, they might lose valuable standing as did Isabella Nichols, or face criminal punishment as did William Surget. By publicly speaking out against an abusive master, slaves critiqued the power of their superiors and sometimes received redress for past wrongs.

When openly questioning their masters' ability to govern their households or manage their slaves, enslaved men and women worked within the boundaries of their subordination. The challenges they mounted in public were not assaults on the institution

[45] *State of Louisiana v. Brooks*, unprocessed materials, Iberville Parish, Louisiana, 1845.

of slavery. Slavery's legitimacy was not in dispute; only its excesses were. By challenging slaveholders as proper masters, slaves in effect reinforced the system of slavery by making it work according to the highest southern ideal. Setting limits on the unrestrained behavior of slaveholders helped uphold the institution of slavery. But in the process, courts disciplined negligent and brutal masters. By bringing the bad behavior of their owners to the attention of the local authorities, slaves improved their situations. Doing so, however, meant conceding their subordination.

Similarly, free blacks wielding the politics of reputation as both offensive and defensive strategies also had to work within the limitations of their subordination. They too reinforced their lesser position within the social order by calling upon their qualities as "good negroes." In exchange for individual legal success and protection from attack, free blacks reified the system that subordinated them.

Thus, on the surface it appeared as if African Americans were partners in enforcing their own subordination. The qualities of deference and consent that free and enslaved African Americans performed reassured white southerners that blacks remembered their place. For African Americans, behaving deferentially by fulfilling their designated roles within the southern racial hierarchy was necessary in order to survive in a slaveholders' republic. It is possible, however, that this behavior obscured more than it revealed. Such performances on the part of African Americans may have been feigned. Political anthropologist James C. Scott argues that, despite appearances of consent, oppressed groups challenge those in power by creating a hidden, dissident political culture that manifests itself in daily conversations, jokes, folklore, and songs. This social and cultural world of the oppressed often surfaces in everyday forms of

resistance, like theft or the destruction of property, or in the arts such as theater where subordinates insinuate a critique of power. This day-to-day resistance constitutes what Scott calls "infrapolitics." Infrapolitics conveys, in Scott's words, "the idea that we are dealing with an unobtrusive realm of the political struggle."[46] Unlike open rebellions or headline-grabbing protests, the "circumspect struggle waged daily by subordinate groups is, like infrared rays, beyond the visible end of the spectrum. That it should be invisible . . . is in large part by design—a tactical choice born of a prudent awareness of the balance of power."[47] What free and enslaved African Americans did and said openly, their public performance of the qualities expected of them by southern whites, may have been a "tactical choice" obscuring something else entirely.

While the bondspeople belonging to George Tarleton and John Brooks and free people of color such as John Motton may have failed to obtain redress in court for the injustices they suffered, their actions were not in vain. Evaluation of resistance should not concentrate solely on the triumphs of the agents involved. Often they did not win. Focusing on victories alone as historically significant moments silences many of the actions of subordinate people and places them outside of history. Moments of defeat were as important as moments of success because they helped shape the next round of the fight. The actions of slaves and free blacks both inside and outside the legal arena—their gossip, insults, lack of deference, insurrection, and rebellious behavior—shaped the law

[46] James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven, CT: Yale University Press, 1990), 183.

[47] Ibid. For examples of how historians of the United States use Scott's theory of infrapolitics, see Robin D. G. Kelly, '"We Are Not What We Seem': Rethinking Black Working-Class Opposition in the Jim Crow South," *Journal of American History* 80 (June 1993): 75-112; and Stephanie M. H. Camp, *Closer to Freedom: Enslaved Women and Everyday Resistance in the Plantation South* (Chapel Hill: University of North Carolina Press, 2004).

and southern governance more generally. The indirect consequences of enslaved and free blacks' actions were every bit as important as their conscious intentions. White southerners' fear of African American agency, their anxiety about the reach of African American speech, and their apprehension about blacks' capacity to control their own lives shaped future litigation and statutory law. Comprehensive laws curtailing and criminalizing African American speech, in particular, highlighted white unease about the power and scope of blacks' words.

Although they did not specifically challenge slavery or institutionalized racism, free blacks and slaves directly and indirectly used the courts to influence what their place within a slaveholding society would entail. In so doing, they limited the authority their owners and social betters had over them and sometimes improved their situations. In the politics of reputation, even the grandees were accountable to a public with considerable influence over their good name and social standing. This public—which included free and enslaved blacks—enjoyed a power of its own. In the small, face-to-face society that characterized the Old South, the public represented a constant and judgmental audience. For those denied access to the halls of government, gossip served as a means to practice politics. For free blacks, acquiring a good reputation could mean the difference between ruin and prosperity. By participating in the politics of reputation, African Americans seized a measure of power: the power to protect themselves and elaborate their position in southern society and, in some cases, the power to bend others to their will.

CHAPTER 2

"Forgetful of his Duties as a Husband": Married Women, Law, and the Politics of Subordination in the Southern Household

"In truth, woman, like children, has but one right, and that is the right to protection. The right to protection involves the obligation to obey. A husband, a lord and master, whom she should love, honor and obey, nature designed for every woman,—for the number of males and females is the same. If she be obedient, she is in little danger of mal-treatment; if she stands upon her rights, is coarse and masculine, man loathes and despises her, and ends by abusing her. Law, however well intended, can do little in her behalf."[1]

- George Fitzhugh, 1854

In April 1849, Margaret O'Conner, an illiterate white woman living in Natchez, Mississippi, petitioned the Adams County chancery court for a divorce from her husband, Luke. Throughout their seven-year marriage, she had "conducted herself with propriety," Margaret claimed, "mainly from the fruits of her own industry provided for, and managed the household affairs of her said husband, with prudence and economy, and at all times treated her husband with kindness and forbearance." Despite her patience, love, and support, Luke treated her "in an insulting & threatening manner," using the "most indecent and opprobrious epithets, degrading [her] to the level [of a] negro servant." He beat her, grabbed "her by the hair of her head, and dragged her across the room," "menaced her with deadly weapons," and assaulted her until boarders in their home intervened. Luke, she lamented, was "almost daily intoxicated; and most of his time

[1] George Fitzhugh, *Sociology for the South, or the Failure of Free Society* (Richmond, VA: A. Morris, 1854), 214-5.

[was] filled with a regular alternative of revolting scenes of brawling debauchery and inebriety." He was "a man of violent, poisonous, and ungovernable temper, apparently without any moral feelings, and only restrained from atrocity by fear and force."

Luke was also a poor provider. Margaret's personal industry and labor supported them, as Luke owned no property of his own. By "keeping a boarding house," Margaret managed to "acquire and save a small property," including two slaves and some "kitchen & bar furniture." In this endeavor, Luke represented nothing but a" nominal proprietor," while she "furnished, provided for and managed" the house. Furthermore, his "daily rounds of intoxication and brawling" made the boarders "extremely uncomfortable." Unless "the timely interposition of the court" restrained Luke, Margaret ran the risk of losing everything for which she had worked so hard. In addition to a divorce, Margaret also wanted her property—the boarding house, furniture, and two slaves, Arthur and Jane.

A month after she petitioned for divorce, Margaret and Luke O'Conner reconciled. In an effort to make their marriage work, Luke pledged to cease his erring ways. Margaret claimed that she forgave him and dismissed her lawsuit. Yet, their fragile reconciliation did not last long. Six months later, Margaret petitioned for divorce once again. It appears that Luke had reneged on his promises and began threatening Margaret's life with a "bowie knife and a loaded pistol." Moreover, he now lived in "open adultery" with "a slave named Jane," a woman who had been purchased by Margaret. He also contracted "a disease" from his "various immoral acts." As a violent, lazy, and adulterous drunk, Luke certainly fell far short of the model husband. Instead, he required his wife to provide for him, manage their business, and make the household

decisions, while he drank and cohabited with her slave. Fed up, Margaret would not dismiss her second petition, and the court granted her a divorce from the adulterous and abusive Luke.[2]

Margaret O'Conner's lawsuit against her husband offers an appropriate framework for understanding how the struggle over power within southern marriages and between subordinates and their superiors was fought in the terrain of law.[3] For nineteenth-century southern ideologues like George Fitzhugh, the law and the courts offered little to married women because southern legal system supported the authority of men over all dependents. Husbands represented wives in all matters, and wives' access to the courts was thus circumscribed. To allow wives redress in court against their husbands implied that wives had interests separate from and at odds with those of their husbands. Nonetheless, many married women like Margaret O'Conner had a keen sense of the legal process in their communities and used the courts to limit their husbands'

[2] *O'Conner v. O'Conner*, Adams County, Mississippi, 1848, Records of the Vice Chancery Court, #376, CRP, HNF. This chapter uses evidence from 314 local court cases in which married women sued their husbands for divorce, separations from bed and board, separations of property, and protection from domestic violence.

[3] Much of what is known about married women in the early nineteenth-century South tends to be filtered through the private realm. The household denotes a world apart from law or politics, positing married women's actions and challenges as extralegal and apolitical. This holds true for enslaved people and other domestic dependents as well. Scholars of slavery, for example, mine the historical record for instances of everyday resistance such as tool-breaking and running away, and underscore the agency of enslaved people in a number of "private" places. These "extralegal norms," as legal scholars would call them, describe a world outside of law where slaves (or wives) exercised agency. But, as Stephanie Camp argues in her examination of enslaved female resistance, ignoring the links between the public (the material and political) and the private (the intimate and emotional) "limits our understanding of human lives in the past, especially women's lives." Stephanie M. H. Camp, *Closer to Freedom: Enslaved Women and Everyday Resistance in the Plantation South* (Chapel Hill: University of North Carolina Press, 2004), 3. Moreover, scholars of the southern household have done much to disrupt old dichotomies of the "public" and "private" to reveal just how political the private world of the household could be. See Stephanie McCurry, *Masters of Small Worlds: Yeoman Households, Gender Relations, and the Political Culture of the Antebellum South Carolina Low Country* (New York: Oxford University Press, 1995); Elizabeth Fox-Genovese, *Within the Plantation Household: Black and White Women of the Old South* (Chapel Hill: The University of North Carolina Press, 1988); and Peter W. Bardaglio, *Reconstructing the Household*: *Families, Sex, and the Law in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 1995).

authority, improve their lot, and make their grievances known to those in positions of power. By leaving the household and publicly petitioning the local courts for divorce, separations of property, and protection from domestic violence by their husbands, wives registered their voices in the public sphere. With calculated use of the courts, wives demonstrated that the power of household heads was not absolute.[4]

Married women utilized legal venues to challenge their husbands, but their battles with their spouses did not begin and end in the courtroom. Indeed, law was inseparable from community relations, and wives' disputes were community affairs. Not only did local communities intervene on the behalf of wives, reminding husbands that wives were also daughters, sisters, aunts, and neighbors; they also helped determine the outcome of cases, weighing in, providing information, and passing judgment. The community constituted a discriminating audience. The public character of married women's lawsuits was critical. Wives' knowledge of the legal system as well as their capacity to harness their community networks empowered them to protect themselves, their children, and their property, and gave some wives leverage over their husbands' actions.

Not every wife sued her husband, of course. Most did not. The wives who did, however, enjoyed considerable legal success. Yet, suing husbands required a particular formula. African American and white women used a similar approach to secure verdicts in their favor. Employing the familiar language of subordination, they demonstrated that

[4] Laura Edwards's groundbreaking work demonstrates that at the local level, domestic dependents used the courts to successfully challenge their immediate patriarchs because court officials, in their efforts to "keep the peace," could intervene without altering the larger structure of the law. See Laura F. Edwards, "Law, Domestic Violence, and the Limits of Patriarchal Authority in the Antebellum South," *Journal of Southern History* 65 (Nov. 1999): 733-70; Edwards, "Status without Rights: African Americans and the Tangled History of Law and Governance in the Nineteenth-Century U.S. South," *American Historical Review* 112 (Apr. 2007): 365-92; and Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2009).

they had fulfilled their expected roles within their families while their husbands had failed as legitimate patriarchs. Just as local communities rewarded free blacks for behaving according to their place within the southern social hierarchy, they also protected wives who behaved obediently and chastely. And just as local communities disciplined brutal and neglectful masters, they also punished violent and adulterous husbands. By challenging their spouses' capacity to govern their households properly, married women embedded themselves more deeply in a patriarchal gender system in which wives were subordinated to the power of husbands. At the same time, however, these Mississippi and Louisiana wives transformed that subordination into a usable legal principle. They employed the local legal culture to their advantage and ultimately limited their husbands' power over them. While they did not directly challenge household patriarchy, married women used the courts to play an important role in framing what their place within it would entail. Husbands held most of the cards in southern marriages, but wives held a few of their own.

Given the nature of marital power in the antebellum South, lawsuits like Margaret O'Conner's challenged many of the inequalities embedded in the southern legal system. Once married, wives forfeited their legal personhood. In Mississippi, under the unity of person principle (coverture) of Anglo-American common law, a married woman's legal existence was incorporated into that of her husband's. Husband and wife became one person—the husband. This principle limited a married woman's ability to act at law. As a *feme covert*, she could not sue or be sued in her own name. She could not enter into contracts. She could act as neither an executor, administrator of an estate, or legal

guardian. Nor could she convey property she brought into her marriage. Once married, a wife's personal property came under the exclusive control of her husband, and he could spend it, sell it, or appropriate her wages. A husband could make all managerial decisions regarding his wife's real property, but he could not sell or mortgage it without her consent.[5]

When it came to the rights and duties of husbands and wives, Louisiana's civil-law system, which had its origins in Roman law rather than British common law, shared a great deal with Anglo-American common law. While wives in Louisiana could hold separate property, their husbands enjoyed the exclusive right to manage the property they held in community. Wives could neither enter into contracts without their husbands' permission, nor initiate lawsuits. The Louisiana *Civil Code* was explicit on the subject of marriage and family responsibility. A husband and wife owed each other "fidelity, support and assistance." A wife was "bound" to her husband, who in turn was "obliged to receive her and to furnish her with whatever is required for the conveniences of life, in proportion to his means and conditions."[6] The doctrine of marital unity articulated in the law of both states mandated a married woman's subservience to her husband.

Questioning a household head's domestic authority, even in its most sadistic forms, challenged a finely tuned social and political hierarchy. The patriarchal household, with its networks of kinship, served as the constituent unit of southern society,

[5] On the legal rights of wives, see Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill: University of North Carolina Press, 1986), chap. 2; Norma Basch, *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth-Century New York* (Ithaca, NY: Cornell University Press, 1982), chap. 1.

[6] See *The Digest of Laws Now in Force in the Territory of New Orleans* (St. Louis: Joseph Charles, 1808); and Wheelock S. Upton and Needler R. Jennings, *The Civil Code of the State of Louisiana, with Annotations* (New Orleans: E. Johns and Co., 1838).

one in which yeomen and planters alike grounded their claims to masterhood.[7] The southern household represented a site of both production and reproduction that guaranteed the authority of men. As the northern middle class increasingly moved toward a more companionate view of the home and domestic relations by creating an ideology of public and private spheres, the white South saw itself as the defender of an organic model of the household.[8] This model reinforced the centrality of male control

[7] I use the term patriarchy, not paternalism, to describe the southern household and employ Gerder Lerner's definition of patriarchy as "the manifestation and institutionalization of male dominance over women and children in the family and the extension of male dominance over women in society in general." Rooted in Roman and Greek law, patriarchy describes a social order in which the male household head holds absolute political, economic, and legal power over his dependents. Lerner describes paternalism as a modified form of patriarchy, defining it as: "the relationship of a dominant group, considered superior, to a subordinate group, considered inferior, in which the dominance is mitigated by mutual obligations and reciprocal rights." Gerder Lerner, *The Creation of Patriarchy* (New York: Oxford University Press, 1986), 239. Further, I adopt Peter Bardaglio's assertion that "paternalism did not represent a sharp break with 'genuine' patriarchy, but rather was a new variant of patriarchy that emerged in response to social pressures and demands." Like Bardaglio, I refer here to "household patriarchy," a "form of patriarchy in which the male head of the household governed in a largely autonomous fashion with the support of the state, and in which economic, political, and legal power was channeled through a network of patriarchs." On the historical debate about patriarchy, paternalism, and the southern household, see Bardaglio, *Reconstructing the Household*, 241, note 70.

[8] The great economic transformations that occurred throughout the United States in the early nineteenth century also stimulated social change—change that significantly altered the landscape of the American household and family and gender relations, especially in the urban North. Before the nineteenth century, the household served as a productive unit. All family members worked to sustain it, work they performed in or near the household. As a market economy developed, old patterns of life changed, especially as many men's work became removed from the household. The removal of productive labor from the household increasingly transformed the household (characterized by patterns of production and reproduction) into a home, a newly private space. Northern elite and middle-class whites made crucial distinctions between the home and the outside world, and a division between male work oriented toward markets and female work tied to child-rearing. According to newly emerging northern ideologies, the home became a private enclave: a retreat from the world, a refuge from commercial life, and a space where women assumed a new authority over the home. The public world of politics and economic exchange became the proper sphere of men; women on the other hand were to exercise new kinds of moral influence within the private home. This ideology of public and private spheres resulted in the feminization of domestic life. No longer under constant male domination, women assumed responsibility for all things domestic, including housekeeping, the rearing of children, and moral and religious life. In her own domestic space—according to this ideology—the wife gained a new degree of authority.

The domesticization and feminization of the northern upper and middle-class home and the resultant creation of the separate spheres ideology did not characterize the early national and antebellum South. The North and South diverged significantly in their understanding of household order. White southerners clung to traditional notions of patriarchal authority that stressed the importance of harmony, dependency, and hierarchy.

On the transformation of the middle-class northern household, see Nancy Cott, *The Bonds of Womanhood: "Woman's Sphere" in New England, 1780-1835* (New Haven: Yale University Press, 1977),

over households and the individuals within them. The customary arrangements of work and space within the southern household did not conform to northern bourgeois beliefs about gendered division of labor and spheres of influence. Northern middle-class distinctions between public and private, work and home, and men's and women's spheres had little meaning in southern households. Southern women belonged to a slave society that differed significantly from the urban northern bourgeois society. While northern women of the propertied classes made new claims to influence and authority within the home, white southerners rejected changes such as these that might challenge existing power relations.[9]

While the size and wealth of southern households differed, both yeomen and planters established their claims to autonomy and independence on their ability to exercise authority over dependents (women, children, slaves, and servants) within their households. The state recognized and supported the male head as the sole representative of the family in all economic, legal, and political matters. State power derived from a network of patriarchs who reigned over their households, and dependents were connected to the state only through their household head. Essentially they had no government but the household.[10] As the proslavery apologist George Fitzhugh explained in 1854, "Two-thirds of man-kind, the women and children, are everywhere the subject of family government. In all countries where slavery exists, the slaves also are the subjects of this

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63-80; Anne M. Boylan, *The Origins of Women's Activism: New York and Boston, 1797-1840* (Chapel Hill: University of North Carolina Press, 2002), 5-10; and Mary P. Ryan, *Cradle of the Middle Class: The Family in Oneida County, New York, 1790-1865* (New York: Cambridge University Press, 1981).

[9] McCurry, *Masters of Small Worlds*, 6-22; and Fox-Genovese, *Within the Plantation Household*, 38-42.

[10] Bardaglio, *Reconstructing the Household*, 27.

kind of government. Now slaves, wives and children have no other government; they do not come directly in contact with the institutions and rulers of the State."[11] All subordinates owed obedience to the household head in return for his representation, protection, and economic support.

To most southerners, the importance of family and the centrality of marriage were the foundation of a civilized and stable society. The household hierarchy gave each person specific responsibilities. The ideal husband provided for his dependents, used restraint rather than violence in disciplining them, managed the family finances with care, responsibly represented the household in all legal and political matters, and resisted temptations such as drink, infidelity, and gambling. The ideal wife exhibited characteristics of virtue and obeyed her husband. Deviance from these expectations and ideals challenged the viability of marriage as well as the proper roles of men and women.[12]

Patriarchy, however, was never as perfect in practice. Marriages did not always live up to such social prescriptions, and husbands and wives did not always act as they should. The lower courts provided some women with an important venue in which to protect their limited legal rights, improve their immediate situations, and contest their husbands' tyrannical control. Judges and juries frequently awarded married women verdicts that challenged household patriarchy and granted them alimony, child custody, divorce, protection from domestic violence, and the right to administer their property as a *feme sole* (with the rights of a single woman).

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[11] Fitzhugh, *Sociology for the South*, 105.

[12] Fox-Genovese, *Within the Plantation Household*, chap. 1; Bardaglio, *Reconstructing the Household*, chap. 1.

Wives could sue their husbands under certain circumstances. Wives sometimes used the courts to leave their marriages. Women could petition for absolute divorce or for separation from bed and board—a legal separation in which neither party could remarry—on a number of grounds ranging from adultery to cruelty. In the early antebellum period, both men and women could receive a divorce only for adultery, abandonment, or bigamy. A liberalization of divorce law occurred throughout the United States during the antebellum period, especially between 1830 and 1860, and both Mississippi and Louisiana increasingly expand the grounds for divorce.[13] By the late antebellum period, the grounds for divorce or a legal separation included insanity or idiocy, impotence at the time of marriage, criminal activity on the part of the spouse, habitual drunkenness, nonsupport, and cruelty. Cruelty was interpreted broadly by both wives and the courts: it could mean slander or attempted murder, calling a wife a liar in public or domestic violence, refusal to provide care for a sick wife, or failure to provide adequate clothing for the couple's children. Its expansive definition gave judges, juries, and litigants flexibility when interpreting divorce law.[14]

[13] With the exception of South Carolina, which did not allow for divorce until after the Civil War, the South saw increasingly liberalized divorce laws throughout the early nineteenth century, particularly in the new states of Mississippi, Alabama, Tennessee, Texas, and Louisiana. The Alabama Territory (which became the states of Alabama and Mississippi) passed a divorce law as early as 1803. The liberalization of divorce law was consistent throughout much of the nation in the early nineteenth century. See Jane Turner Censer, "'Smiling through Her Tears': Ante-bellum Southern Women and Divorce," *American Journal of Legal History* 21, no. 1 (Jan. 1981): 24-47. On late eighteenth- and nineteenth-century divorce nationally, see Norma Basch, *Framing American Divorce: From the Revolutionary Generation to the Victorians* (Berkeley: University of California Press, 1999); Hendrik Hartog, *Man and Wife in America: A History* (Cambridge, MA: Harvard University Press, 2000); Linda K. Kerber, *Women of the Republic: Intellect and Ideology in Revolutionary America* (Chapel Hill: University of North Carolina Press, 1980); chap. 6; and Glenda Riley, *Divorce: An American Tradition* (New York: Oxford University Press, 1991).

[14] Nineteenth-century lawmakers throughout the United States enlarged the definition of marital cruelty as grounds for divorce in order to encompass many manifestations of physical and mental abuse. See Robert L. Griswold, "Law, Sex, Cruelty, and Divorce in Victorian America, 1840-1900," *American Quarterly* 38, no. 5 (Winter 1986): 723

Because few alternatives to marriage existed for southern women, however, most wives chose to stay in their marriages. In the rural counties and parishes of the Natchez District, women had little opportunity to make an income that allowed independent living. Beleaguered wives therefore needed to find ways to expand their authority and increase their independence within their marriages and counterbalance their husbands' control over them.

Married women also sued their husbands to protect their property. They did so most frequently in Louisiana because Louisiana's civil law protected the separate property of married women beginning in the colonial period, well before Mississippi did. If Louisiana wives believed that their husbands were mismanaging their property or if their husbands' creditors endangered their own assets, they could sue for a separation of property. This separation granted married women the legal rights of single women, allowing them to administer and control their own property free from their husbands' interference.[15]

[15] Louisiana law stipulated that a married couple's property was divided into separate property and common property. The property that either party brought into the marriage or acquired during the marriage through inheritance constituted the separate property of a spouse. Any other property acquired during the marriage was common property. A wife could hold property separate from her husband if she stipulated this in her marriage contract. A wife's separate property was both dotal, the property that she brought to the husband to help bear the expenses of the marriage, and extra-dotal, property that formed no part of the dowry. A husband had the right to administer the dowry and the community property, but the wife had the right to administer her extra-dotal property without the assistance of her husband if she had so stipulated in her marriage contract. If a wife believed her property (either dotal or extra-dotal) was in danger, either from the mismanagement of her husband or from his creditors, she could petition the district court for a separation of property from her husband. If granted, she could administer as a *feme sole* the property she had brought to the marriage or acquired during the marriage, as her separate property. Once separated in property from her husband, a wife's property was free from her husband's creditors. Furthermore, if a wife petitioned for a divorce or a separation from bed and board, she would automatically receive a separation of property, restoring her to *feme sole* status. Upton and Jennings, *The Civil Code of the State of Louisiana, with Annotations*; and U.B. Phillips, comp, *The Revised Statutes of Louisiana* (New Orleans: John Claiborne, 1856).

Mississippi did not have a separate property law for wives until 1839, when the state legislature passed one of the nation's first Married Women's Property Acts in response to the national banking crisis of 1837 when a wave of bankruptcies threatened southern household stability. Supported in part by wealthy fathers hoping to protect gifts they gave to their daughters from unsuccessful husbands, the law shielded women and the property they inherited or earned through their own industry and labor from the business errors of their husbands. Moreover, it allowed wives to possess and administer property in their own names free from their husbands' creditors. Even before 1839, some Mississippi wives of means established trust estates administered in equity (chancery) courts, using that vehicle to own and manage property separate from their husbands.[16]

In order to obtain legal separations (divorces, separations from bed and board, or separations of property), married women had to work within the boundaries of their subordination by first demonstrating that they had performed the roles expected of them. In order to be successful, petitioners had to exhibit ideal spousal behavior in their tales of marital discord.[17] The very nature of the separation process required a demonstration of fault. A woman therefore needed to show that her husband had violated his domestic role as patriarch or head of household in some fundamental way, while at the same time

[16] Laws of Mississippi, *An Act for the protection and preservation of the rights and property of Married Women*, 23rd sess., Jan. 1839. On married women's property in Mississippi, see Joyce L. Broussard, "Naked before the Law: Married Women and the Servant Ideal in Antebellum Natchez," in *Mississippi Women: Their Histories, Their Lives*, vol 2, ed. Elizabeth Anne Payne et al. (Athens: University of Georgia Press, 2010), 57-76.

[17] Laura Edwards argues that petitioners had to demonstrate what she calls "virtuous victimization" in their divorce petitions. See *The People and Their Peace*, 169. Husbands and wives in northern states used parallel tactics when suing their spouses for divorce. See Basch, *Framing American Divorce*, 99-140; Nancy Cott, *Public Vows: A History of Marriage and Nation* (Cambridge, MA: Harvard University Press, 2000), 48-9; and Hartog, *Man and Wife in America*, 93-166.

demonstrating her innocence. Married women used the antebellum expectations of womanhood and the idealized roles and characteristics of wives to establish themselves as the injured party. Female petitioners consistently called on their qualities of domesticity, propriety, and submissiveness when asking the court for a separation. Wives also attempted to prove their husbands' fault by demonstrating their failure as heads of households. Emilie Brout's account of her marriage to Ursin Heno was fairly typical.[18] In her petition to the district court, she claimed that she had "always been a dutiful wife, attentive to her business and a good mother." Despite her obedience, she had experienced "on the part of her husband all kinds of vexations, excesses, cruel treatments, outrages, and defamation."[19] Similarly, Margaret Richards complained that although she had been a "kind faithful, prudent and affectionate wife," her husband had "treated her in a cruel, outrageous, dishonorable and inhuman manner."[20] Not all household heads were able to meet the responsibilities of legitimate patriarchal authority, and wives' petitions were full of tales of their husbands' inability to manage their affairs and their households.[21]

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[18] Because of its French colonial heritage, Louisiana practiced the legal custom of calling a married woman by her maiden name, often followed by the designation "wife of."

[19] *Brout v. Heno*, Orleans Parish, 1824, in *Race, Slavery, and Free Blacks, Series II: Petitions to Southern County Courts, 1775-1867, Part F: Louisiana, 1795-1863*, RSFB, Series II, Part F, PAR #20882047.

[20] *Richards v. McDougald*, West Baton Rouge Parish, Louisiana, 1826, in RSFB, Series II, Part F, PAR #20882632.

[21] For examples of women calling on their qualities as ideal wives to sue for divorce successfully in Mississippi, see *McLendon v. McLendon*, Adams County, Mississippi, 1834, Records of the Circuit Court, Group 1830-39, Box 17, File 71, CRP, HNF; *Farr v. Farr*, Adams County, Mississippi, 1834, Records of the Circuit Court, Group 1830-39, Box 22, File 9, CRP, HNF; *Robertson v. Robertson*, Adams County, Mississippi, 1836, Records of the Circuit Court, Group 1830-39, Box 47, File 9, CRP, HNF; *Sessions v. Sessions*, Adams County, Mississippi, 1838, Records of the Circuit Court, Group 1830-39, Box 63, File 73, CRP, HNF; *Flynn v. Flynn*, Adams County, Mississippi, 1850, Records of the Circuit Court, Group 1850-59, Box 3, File 15, CRP, HNF; *Williams v. Williams*, Jefferson County, Mississippi, 1846, Records of the Vice Chancery Court, #2, CRP, HNF; *Mitchell v. Mitchell*, Jefferson County, Mississippi,

Women understood that they needed to demonstrate to the court that they were model wives, dutiful and compliant rather than high-spirited or independent-minded, in order to obtain legal separations from their husbands. Deviance from this behavior generally resulted in failure. If a husband could prove that his wife did not act chastely or obediently, he could usually get the court to dismiss the suit or he could successfully countersue for a divorce himself. This is what happened in Elila and John Toumy's divorce in Adams County, Mississippi. In 1837, Elila petitioned the circuit court for a divorce from John, claiming that he beat her, treated her cruelly, and habitually drank. But John countersued, asking for a divorce himself. Elila, he claimed, had purposefully tried to have him incarcerated and now lived in a state of adultery with her "seducer." Witnesses on his behalf testified that they had heard rumors that Elila had murdered her first two husbands. Because Elila had not acted as a proper wife, she did not receive a ruling in her favor. Instead, the judge granted John's divorce and declared that he was no longer financially responsible for Elila.[22] When Susan Thames O'Neal petitioned for a separation of bed and board in 1854, she accused her husband, Albert, of cruelty and

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1850, Records of the Vice Chancery Court, #543, CRP, HNF; *Lovie v. Lovie*, Wilkinson County, Mississippi, 1848, Records of the Vice Chancery Court, #365, CRP, HNF; *Smith v. Smith*, Claiborne County, Mississippi, 1857, Records of the Claiborne County Chancery Court, #6, Claiborne County Courthouse, Port Gibson, Mississippi; *Hoel v. Hoel*, Claiborne County, Mississippi, 1857, Records of the Claiborne County Chancery Court, #9, Claiborne County Courthouse, Port Gibson, Mississippi. For Louisiana, see *Black v. Black*, West Feliciana Parish, Louisiana, 1825, in RSFB, Series II, Part F, PAR #20882519; *Allyn v. Allyn*, West Feliciana Parish, Louisiana, 1829, in RSFB, Series II, Part F, PAR #20882942; *Overbay v. Overbay*, West Feliciana Parish, Louisiana, 1834, in RSFB, Series II, Part F, PAR #20883417; *Richardson v. Richardson*, West Feliciana Parish, Louisiana, 1859, in RSFB, Series II, Part F, PAR #20885917; *Collins v. Collins*, St. Landry Parish, Louisiana, 1817, in RSFB, Series II, Part F, PAR #20881710; *Harris v. Harris*, St. Landry Parish, Louisiana, 1830, in RSFB, Series II, Part F, PAR #20883008; *Beauchamp v. Beauchamp*, St. Landry Parish, Louisiana, 1837, in RSFB, Series II, Part F, PAR #20883712; and *Godin v. Godin*, St. Landry Parish, Louisiana, 1839, in RSFB, Series II, Part F, PAR #20883917; and *Rawlings v. Rawlings*, West Feliciana Parish, Louisiana, 1825, in RSFB, Series II, Part F, PAR #20882531.

[22] *Toumy v. Toumy*, Adams County, Mississippi, 1837, Records of the Circuit Court, Group, 1830-39, Box 30, File 29, CRP, HNF.

physical abuse. But Albert, as well as witnesses on his behalf, testified that Susan had a bad temper and had threatened to take his life, and the district court judge dismissed her case.[23]

The importance of the appearance of respectability, propriety, submissiveness, piety, and obedience—all qualities used to describe the southern "lady"—raises the question: for whom was a legal separation intended? The ways in which women had to frame their petitions, calling on their traits as modest and subservient wives, qualities supposedly inherent in the lady, suggest that separations were reserved solely for white women of the upper classes. Class and race deeply divided southern women. The figure of the lady, especially the plantation mistress, dominated southern ideas of womanhood; her clothing, her breeding, her leisure time, her freedom from household and farm labor all differentiated the lady from her poorer or enslaved counterparts.[24]

Judges looked after well-bred and delicate women—ladies the judiciary felt required protection from depraved and abusive husbands. Some judges believed women of the poorer classes were accustomed to rough treatment and violence within their marriages and their homes. The abuse poor women endured at the hands of their husbands was more routine, possibly expected, and thus not cause for divorce. Justice George Goldthwaite of the Alabama Supreme Court certainly made such a class-based distinction when he claimed that "between persons of education, refinement, and delicacy, the slightest blow in anger might be cruelty; while between persons of a

[23] *O'Neal v. O'Neal*, East Baton Rouge Parish, 1854, in RSFB, Series II, Part F, PAR #20885437.

[24] On the southern lady, see Fox-Genovese, *Within the Plantation Household*; and Drew Gilpin Faust, *Mothers of Invention: Women of the Slaveholding South in the American Civil War* (Chapel Hill: University of North Carolina Press, 1996).

different character and walk of life, blows might occasionally pass without marring to any great extent their conjugal relations or materially interfering with their happiness."[25] Many southern ladies did in fact claim that their parents had brought them up delicately and protected them from want and violence, making their husband's behavior all the more outrageous. In her petition for a separation from bed and board, Hetty Jewell testified that "she was tenderly raised" by a "wealthy father" and was unaccustomed to the kind of cruelty meted out by her vicious and neglectful husband. Judges responded by protecting delicate women like Hetty by granting their requests.[26]

The standards of decorum required of southern ladies did not make them less willing to sue their husbands and broadcast their private woes to the public. In legal proceedings, women of the propertied classes volunteered all the dirty details of their marriages, however shameful or discomforting and despite the damage it might do to their reputations. Lavinia Erwin, the daughter of Joseph Erwin, a Louisiana planter,

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[25] Quoted in Censer, "Smiling through Her Tears," 35. Likewise, in antebellum southern rape cases, poor white women (as well as all African American women) had trouble prosecuting their assailants because they were outside the definition of the southern lady. In *Rape and Race in the Nineteenth-Century South*, Diane Miller Sommerville demonstrates that in the antebellum South, social class and sexuality were inextricably linked. When the victim was from the lower classes, attorneys for both black and white men typically argued that the defendant was innocent because the woman who brought the accusation was a person of no consequence, and her word could not be trusted. Even in cases where enslaved men raped poor white women, masters often hired lawyers to successfully defend their slaves. Attorneys insinuated that poor white women associated with black men socially and sexually and for that reason, as social and sexual deviants, they forfeited the right to refuse men's sexual advances. Attorneys also probed the sexual history of these women, perpetuating the stereotype of the poor female as a seductress and sexually promiscuous. Poor white women who accused men of rape could expect to have their lives and backgrounds searched for clues about past sexual indiscretions, even if their attackers were black men. All-white, all-male juries typically required female victims to prove their sexual purity. If they had behaved badly in the eyes of the community, then they were fair game for rape and responsible for their own sexual attacks. Juries often linked poor white women to debauchery and immorality, while elite white women represented charity, piety, purity and innocence. See Sommerville, *Rape and Race in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 2004). See also, Victoria E. Bynum, *Unruly Women: The Politics of Social and Sexual Control in the Old South* (Chapel Hill: University of North Carolina Press, 1992).

[26] *Jewell v. Mitchell*, Records of the Fourth Judicial District Court, #750, Pointe Coupee Parish, Louisiana, 1830.

claimed that her husband, William Aborn, had abandoned her and was living "publically and Openly with his Concubine in the Village of Plaquemine." As a result of his "wicked conduct" and "vicious habits," he had also "caught contracted and carried upon his person dangerous Infectious [and] disgraceful" venereal "diseases" which "threaten and endanger" her life. Despite what her petition revealed to her neighbors and friends about the private details of her marriage, Lavinia risked her reputation as a southern lady in order to free herself from the "worthless" William.[27] Coincidently, in 1843, shortly after Lavinia's divorce, Caroline Walker, a manumitted slave once belonging to Joseph Erwin, Lavinia's father, also sued her husband for divorce. The judge initially granted her alimony, her "wearing apparel," and custody of her daughter, but dismissed the case when she failed to appear in court and charged her with the court costs.[28]

As Caroline Walker's lawsuit suggests, free black women relied on the mercy of the local courts when they faced marital discord they could not fix themselves. In the local courts, both free black women of all classes and poor white women sued their

[27] *Erwin v. Aborn*, her husband, Records of the Fourth Judicial District Court, #1558, Iberville Parish, Louisiana, 1836. In another case, Josephine Burt, the sixteen-year-old daughter of Peter Segmond, a successful and respected Natchez attorney, risked tarnishing her reputation and jeopardized her chances of ever marrying into a respected family when, in 1850, she petitioned for an annulment from James Burt and the restoration of her maiden name. According to Josephine, "some few weeks" prior, her father hired James Burt, "a musician and play actor," as her music instructor. Within a few days time, James professed his love for Josephine, "at which she laughed, considering the disparity of their years, she only sixteen, and he upwards of forty five, though he professed to be only twenty nine years of age." Shortly after this, he drugged and kidnapped her, and took her to Woodville, Mississippi, "where by the employment of fraudulent and false means," he procured a marriage license. Against her will and the consent of her parents, James then forced Josephine to marry him. For the next few days, he continued to drug her with "medicines" in order to "control her for his purposes." Within four days, her father, after "discovering the direction she had been taken," "recaptured her" and brought her home. She wanted the court to void this "fraudulent, pretended marriage," and to restore her maiden name and *feme sole* status. The judge granted her a divorce from her "pretended husband," James Burt. While rid of him, she was no longer the innocent and virginal sixteen-year-old she had been only weeks before. *Burt v. Burt*, Adams County, Mississippi, 1850, Records of the Vice Chancery Court, #549, CRP, HNF.

[28] *Walker v. Villiar, her husband*, Records of the Fourth Judicial District Court, #2092, Iberville Parish, Louisiana, 1843.

husbands for divorce in similar ways as white women of means, and with similar results.[29] Whatever their social status or race, women who sued their husbands for divorce or separation used similar tactics. If they said the right things, conducted themselves as respectable wives, and demonstrated that they had performed their prescribed roles within their marriages, families, and communities, then judges and juries ruled in their favor. These women demonstrated that they were models of southern femininity, and the courts responded to them as such. Laurinda Griffin, an illiterate and propertyless white woman, sued her husband, Young Griffin, for a divorce. Despite her industrious and virtuous nature, shortly after Laurinda married Young, he abandoned her and then committed adultery. She also claimed that he was insolvent, with no intention of ever working. Knowing that alimony was not an option, Laurinda simply wanted to be rid of him and to have her rights as a single woman restored. The judge granted her a divorce and ordered her husband to pay the court costs.[30] When Ann Mather Bienville, a free woman of color, petitioned the East Baton Rouge, Louisiana, district court for a separation from bed and board from her husband, St. Luke Bienville, she told the court that she had conducted herself as "a faithful dutiful and affectionate wife" and had gained the "good opinion of her friends and neighbors." She had cared for him devotedly and obediently, yet he treated her with cruelty, beating her and refusing to feed her or their

[29] In her study of southern divorce records in antebellum appellate courts, Jane Turner Censer found few cases of poor women appealing to state supreme courts. She claims that "it seems unlikely that many poor people ever used the judicial machinery for divorce." Censer also admits the limitations of her study and states that research in lower court records could reveal poorer women seeking divorce. That poorer women appeared infrequently in appellate records is not entirely a surprise. They lacked the means to appeal their cases, particularly to pay for the travel it required or the court costs. In Mississippi and Louisiana women initially petitioned for divorce in their county chancery courts (Mississippi) and district courts (Louisiana) which were held often and locally in order to increase their accessibility to the poorer segments of southern society. See Censer, "Smiling through Her Tears," 37, note 44.

[30] *Griffin v. Griffin*, Adams County, Mississippi, 1851, Records of the Vice Chancery Court, #682, CRP, HNF.

four children. Despite her "patience & forbearance," living with St. Luke had become "impossible & insupportable," and Ann asked for and received a legal separation. St. Luke, then, bore sole responsibility for their marital disunity while Ann established herself as faultless. St. Luke was the antithesis of a responsible and respectable head of household. He failed to act as he should.[31]

While definitions of femininity were intensely racialized in the antebellum South, free black women also employed the trope of the sexually virtuous wife when suing their husbands. Free black and enslaved women confronted different standards from propertied white women. White womanhood emphasized domesticity, purity, and decorum. Black womanhood represented debasement, hard labor, and sexual availability.[32] In spite of stereotypes depicting women of color as innately hypersexual, however, free black women also used the courts to protect their reputations as sexually virtuous when suing their husbands. When Aurore Lauvee, a free woman of color living in Pointe Coupee Parish, Louisiana, sued Victore Leblanc, her free black husband, she claimed that he had ruined her good reputation by inflicting "injuries" upon her "peculiarly distressing and detrimental to her sex." Victore's "wonton cruelty and unbridled lust" had destroyed Aurore's "reputation and good fame as a woman of virtue." His "savage disposition & beast-like habits led him to assault, outrage, and injure" her.

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[31] *Bienville v. Bienville*, East Baton Rouge Parish, Louisiana, 1836, in RSFB, Series II, Part F, PAR #20883605.

[32] Myths of black female promiscuity enjoyed an especially long history. See, for example, Deborah Gray White, *Ar'n't I a Woman?: Female Slaves in the Plantation South* (New York: Norton, 1985); and Jennifer Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia: University of Pennsylvania Press, 2004). For the centrality of gender and sexuality to the development of the legal apparatus of race-based slavery and the politics of racial difference, see Kathleen M. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender and Power in Colonial Virginia* (Chapel Hill: University of North Carolina Press, 1996).

During the two years she lived with him, Victore impregnated her with a child he refused to support. Aurore wanted $10,000 in damages, "plus interest," for the two years she had endured his abuse, as well as a public apology for the damage he did to her reputation. She also asked the court to force Victore to pay her "two hundred dollars annually for the support of the child." The court found for Aurore. The amount of support or damages awarded, if any, is, however, unknown.[33] Aurore certainly held herself to the same sexual standards as elite white women. By using the court as a venue to safeguard her sexual honor and separate herself from the abusive Victore, Aurore expressly rejected the stereotype that defined black women as naturally libidinous. Instead, she posited a view of herself as a virtuous and chaste woman by nature and expected the court to uphold and protect that conception—and succeeded in doing so.

Women crafted their petitions for legal separations from their husbands in ways that reinforced their subordinate status and bolstered existing gender norms based on patriarchal marriage. In the process of protecting virtuous wives from depraved husbands, courts buttressed patriarchal marriage and reified female subordination. Judges and juries punished an errant head of household by awarding his wife a divorce or a separation of property. From this perspective, local communities reinforced and legitimized patriarchal authority and hierarchal gender norms, as opposed to weakening

[33] *Lauvee v. Leblanc*, Records of the Fourth Judicial District Court, #393, Pointe Coupee Parish, Louisiana, 1819. In another case, Rosalie, a free black woman, sued Jean Duclos, a white man, for the restoration of her reputation, the $13 she had lent him, and $50 in back wages. Rosalie claimed that she lived with Duclos for six months as his "hired servant." During that time, Duclos asked her "to act in the capacity of a wife" and provide him with sexual services. After securing certain guarantees, Rosalie agreed to do so. However, this "unfortunate marriage" soon soured, and Rosalie sought the help of the parish court to repair her good name and acquire the money Duclos owed her. The court awarded Rosalie with the $13 she lent Duclos. See *Rosalie, FWC v. Duclos*, Records of the Old Parish Court, #1061, Iberville Parish, Louisiana, 1839.

them. Setting limits on patriarchal excess helped sustain the legitimacy of patriarchy. These men had violated their expected roles as legitimate heads of households by abusing and neglecting their wives, rather than caring for and protecting them. They simply did not act as men should. Punishing deviant and abusive husbands reinforced the hierarchal structure of marriage by making the system work according to the highest ideal. By providing women with the legal resources to escape deficient marriages, courts legitimized patriarchy.

The courts, however, simultaneously provided a space for some wives to challenge their husbands' power over them and limit how that authority should be exercised. The married women who sued their husbands were shrewd litigators and used their subordination as a source of power. The expectation that, as wives, they were owed protection by their husbands served as their entry point to the legal system, and they employed this expectation to their benefit. Indeed, it was precisely because they were meant to be protected and well cared for that they had access to the courts in the first place. At issue was not whether they should be subordinate, but the nature of their subordination. Wives thus co-opted their subordinate status and transformed it into a workable legal principle—one that allowed them to negotiate for a degree of autonomy and additional control over their lives, their children, and their resources. They may have drawn on longstanding images of female submission, weakness, and silence, but their insistence on being heard in public, legal settings directly challenged those traditional ideals. Wielding the trope of female powerlessness was a rhetorical strategy and, in effect, a strategy for obtaining power because it gave wives standing in court. Wives'

lawsuits against their husbands suggested that the patriarchal household was not itself inviolate.

Wives knew enough about the legal grounds for separation, as well as the social expectations of married men and women, to frame their petitions in a way that both echoed the law and positioned themselves as long suffering victims. Often, their testimony quoted the laws that protected them (perhaps guided by lawyers). Catherine Wilkins, the daughter of a wealthy Natchez resident, Stephen Minor, referred to both the 1839 and 1846 Mississippi Married Women's Property Acts in her bill of complaint against her husband, James Wilkins, and the trustee of her property, Samuel Davis. Some years before, Catherine had inherited $20,000 in stock from her father and $10,000 from her uncle. Her husband managed the property, and because he owned nothing of his own, her wealth supported their household and family. But, Catherine claimed, James was a poor manager, and their house was in disrepair. In light of "the act of the Legislature in relation to the rights of married women passed in 1839, and its amendment of 1846," Catherine insisted that she was "competent to hold her property in her own name or the proceeds of it." These laws granted her the capacity to manage and control her property, she told the court. She asked that the judge dismiss her trustee and remove the control of her property from her husband, who could not responsibly manage it. The judge agreed, and Catherine became the administrator of her property.[34] Women knew enough about the law to frame their petitions in ways that would help guarantee their legal success. The fact that married women's petitions shared a similar formulaic quality in both tone

[34] *Wilkins v. Wilkins and Davis*, Adams County, Mississippi, 1848, Records of the Vice Chancery Court, #176, CRP, HNF.

and text suggests that the formula was a recipe petitioners knew well, and one they used because it worked.

Many married women were savvy enough to ensure that the courts acknowledged their independence, autonomy, and ability, rather than just their helplessness. Wives' petitions for separations of property bring this issue to the fore most explicitly because these disputes generally had an important effect on power relations within marriages, particularly when husbands owned no property of their own and depended on their wives' property to support them. Wives frequently employed the courts to take legal control of the family finances when their husbands could not manage the household themselves. Manette Bandon claimed that she had brought a dowry worth $4,700 into her marriage to Duncan Robertson. Manette worked constantly and, through her "own individual industry and labor," accumulated both real and personal property, including seven slaves. She put a great deal of effort into supporting her family and, like so many other wives, stepped in when her husband failed. Duncan, she claimed, contributed nothing to his family. In fact, he barely worked at all, expected her to provide for him, and accrued nothing but debt. He squandered the family resources he was supposed to manage prudently, and, as a result, his creditors and their lawyers had attempted to seize her property to settle his debts. His bad decisions and rabid creditors endangered the fruits of her hard labor. With mouths to feed, Manette took decisive action and sued Duncan for a separation of property. The Louisiana district court judge granted the separation, declared all the property she described in her petition to be her own, restored her to the legal status of a single woman even though she remained married to Duncan, and granted

her a judgment against him for $4,700.[35] Now Duncan faced another creditor—his wife. With her in charge of the family property, and particularly because he had none of his own, the power dynamics of their marriage shifted. In effect, because Duncan owned nothing without her and could not support his family, Manette became the head of the household.[36]

The married women who appeared in the Mississippi and Louisiana courts were notably protective of the property they had accrued through their own industry. Wives were incensed when their husbands made decisions about their property without their authorization, especially when the husband made bad choices or represented his wife's interests poorly.[37] When Elizabeth Maignen sued her husband, Bonaventure Granet, she claimed that his "significant" debts had forced him "to make a complete surrender of all of his property to his creditors." Her "large family" "relied on [Elizabeth's] industry and

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[35] *Robertson v. Robertson*, Orleans Parish, Louisiana, 1816, in RSFB, Series II, Part F, PAR #20881601.

[36] For similar cases in which wives became creditors of their husbands, see *Kirkland v. Kirkland*, West Feliciana Parish, Louisiana, 1827, in RSFB, Series II, Part F, PAR #20882727; *Richardson v. Richardson*, West Feliciana Parish, Louisiana, 1833, in RSFB, Series II, Part F, PAR #20883309; *Chestnut v. Chestnut*, West Feliciana Parish, Louisiana, 1848, in RSFB, Series II, Part F, PAR #20884808; *Hamilton v. Hamilton*, West Feliciana Parish, Louisiana, 1848, in RSFB, Series II, Part F, PAR #20884815; *Glaze v. Glaze*, West Feliciana Parish, Louisiana, 1849, in RSFB, Series II, Part F, PAR #20884917; *Kimball v. Kimball*, St. Landry Parish, Louisiana, 1822, in RSFB, Series II, Part F, PAR #20882224; *Richard v. Richard*, St Landry Parish, Louisiana, 1828, in RSFB, Series II, Part F, PAR #20882824; *Lessassier v. Lessassier*, St Landry Parish, Louisiana, 1830, in RSFB, Series II, Part F, PAR #20883009; *Leger v. Leger*, St. Landry Parish, Louisiana, 1840, in RSFB, Series II, Part F, PAR #20884011; and *Provost v. Provost*, St. Landry Parish, Louisiana, 1841, in RSFB, Series II, Part F, PAR #20884125.

[37] In Adeliza Quays' lawsuit against her husband, Phillip Quays, and one Cornelius Byrd. Adeliza claimed that she owned a large parcel of land as her separate property, property she alone managed and maintained. After some negotiation, she had contracted to sell this land to Cornelius Byrd for $3,000. Byrd reneged just before completing the sale, claiming the value of the land had declined. Adeliza's husband, Phillip, acting as her representative in the sale, agreed to Byrd's demand to reduce the price by $500. Instead of the $3,000 that Adeliza had negotiated, Phillip accepted $2,500 for the property. Adeliza claimed that he did sold the land at the lower price without her knowledge and authorization. She told the court she wanted the full $3,000, the amount for which she had authorized Phillip to sell. Arguing that her husband had joint interest in the land, the court dismissed her case. *Quays v. Byrd et al*., Adams County, Mississippi, 1847, Records of the Vice Chancery Court, #114, CRP, HNF.

talents" to support them. She had recently started a school for young women, where she managed "to make a decent living for her and her family." Her husband's poor decisions and sizeable debts threatened the livelihood of her children, and she wanted him as far away from her property as possible.[38]

While husbands had the legal right to control their wives' labor and earnings, wives did not cede to that right easily—especially in cases where women felt their husbands offered little in return but heartache and want. In an effort to care for her children, Sarah Read used the Mississippi chancery court to wrench control of her property away from her estranged and insolvent husband, William Read. In early December, 1848, Sarah filed suit against William, an "indigent" without "any property real or personal" or "regular employment." Shortly after marrying him, Sarah had found, "much to her disappointment and mortification," that William was "thriftless, of careless

[38]*Maignen v. Granet*, Records of the Fourth Judicial District Court, #1597, Iberville Parish, Louisiana, 1837. For other examples of Louisiana wives accusing their husbands of being incapable of managing the family finances, see *Bell v. Bell*, Iberville Parish, Louisiana, 1842, in RSFB, Series II, Part F, PAR #20884205; *Brown v. Brown*, Iberville Parish, Louisiana, 1847, in RSFB, Series II, Part F, PAR #20884734; *Matherine v. Matherine*, Iberville Parish, Louisiana, in RSFB, Series II, Part F, PAR # 0884826; *Reid v. Reid*, Iberville Parish, Louisiana, 1848, in RSFB, Series II, Part F, PAR #20884842; *Gayle v. Gayle*, East Baton Rouge Parish, Louisiana, 1816, in RSFB, Series II, Part F, PAR #20881608; *Williams v. Williams*, East Baton Rouge Parish, Louisiana, 1831, in RSFB, Series II, Part F, PAR #20883109; *McKnight v. McKnight*, East Baton Rouge Parish, Louisiana, 1831, in RSFB, Series II, Part F, PAR #20883112; *Dortch v. Dortch*, East Baton Rouge Parish, Louisiana, 1838, in RSFB, Series II, Part F, PAR #20883806; *Sloan v. Sloan*, East Baton Rouge Parish, Louisiana, 1842, in RSFB, Series II, Part F, PAR #20884219; *Stuart v. Stuart*, East Baton Rouge Parish, Louisiana, 1843, in RSFB, Series II, Part F, PAR #20884302; *Martin v. Martin*, East Baton Rouge Parish, Louisiana, 1846, in RSFB, Series II, Part F, PAR #20884628; *Scudder v. Scudder*, East Baton Rouge Parish, Louisiana, 1851, in RSFB, Series II, Part F, PAR #20885110; *Hutchinson v. Hutchinson*, Pointe Coupee Parish, Louisiana, 1827, in RSFB, Series II, Part F, PAR #20882710; *McKinney v. McKinney*, Pointe Coupee Parish, Louisiana, 1837, in RSFB, Series II, Part F, PAR #20883720; *Tardy v. Tardy*, Pointe Coupee Parish, Louisiana, 1842, in RSFB, Series II, Part F, PAR #20884412; and *Dozier v. Dozier*, Pointe Coupee Parish, Louisiana, 1855, in RSFB, Series II, Part F, PAR #20885523. Women in Mississippi made similar accusations against their husbands when petitioning the chancery courts to intervene when their husbands' mismanagement endangered their property or their husbands did not adhere to the property stipulations in their marriage contracts. See, for example, *Lanier v. Lanier*, Wilkinson County, Mississippi, 1846, Records of the Vice Chancery Court, #13, CRP, HNF; *Carter v. Carter*, Wilkinson County, Mississippi, 1847, Records of the Vice Chancery Court, #60, CRP, HNF; and *Fletcher v. Fletcher*, Adams County, Mississippi, 1856, Records of the Vice Chancery Court, #859, CRP, HNF.

and indolent habits [and] unsettled in purpose; without employment and dependent upon his friends for the first necessities of life." "During her coverture" with William, Sarah provided for the "maintenance and education" of their three children through her own "industry," while he contributed nothing. William eventually abandoned Sarah and their children. While they had received no word from him in years, she had heard that he was still worthless and lazy, "ever contin[uing] in the same thriftless and unprofitable career which he ran while he [had] lived with" her. Sarah claimed that she possessed no real or personal property other than a promissory note for $8,000 given to her by her brother, an enslaved woman and her child whom she had been forced to sell to satisfy her husband's debts, and a small "tract of land" that William had sold, keeping the $1,500 profit. Soon after they married, William took great interest in the promissory note. "Under the color of his marital rights," he signed the note over to himself, without her "knowledge or consent." She feared that she and her children would never see a dime of it, as William would squander the entire sum "for his own exclusive personal gratification." She wanted the judge to recognize the promissory note as belonging to her, and the court rendered a verdict in her favor.[39]

With verdicts in support of hardworking wives, judges and juries conceded women's competence. Granting wives alimony, child custody, divorce, and the right to control their property as *feme soles*, indicates that, on some level, the courts found some women proficient household managers. Indeed, in cases like those of Manette Bandon or Elizabeth Maignen, it was the wife's labor that sustained the household. Wives could plan their children's futures, carefully dispense money, manage their finances, run a

[39] *Read v. Read et al.,* Adams County, Mississippi, 1848, Records of the Vice Chancery Court, #334, CRP, HNF.

household, and make long-range preparations regarding their homes, farms, land, and slaves. When granting a woman legal separation from her husband, some judges and juries demonstrated a belief in female self-reliance.[40]

By depending on their wives to manage the household and support the family, husbands such as Manette Bandon's, Elizabeth Maignen's, and Catherine Wilkins's jeopardized their reputations in their local communities. Southern men, by both law and custom, were responsible for the economic well-being of their households. Charges of thriftlessness, the inability to repay debts, or the incapacity to manage one's finances could have ruinous consequences and might even endanger a man's position in his community. Financial trustworthiness was a central tenet of southern male life. In antebellum Mississippi and Louisiana, the decision to offer or deny credit depended on personal ties and experience with the prospective borrower, or without those, on information gathered from outside parties concerning the borrower's reputation. A lender did not extend credit to strangers without a sense of their reputation as creditworthy. A damaged reputation might therefore result in the loss of crucial sources of livelihood.[41]

Married women who proclaimed their own innocence, chastity, and obedience were not the only wives whose behavior highlighted their husbands' inability to manage their households. Disobedient, disorderly, and unchaste women also challenged their husbands, albeit in different ways. Wives who violated standards of respectability, committed adultery, abandoned their spouses to live with other men, or came and went as

[40] See also Censer, "Smiling through Her Tears," 26-7.

[41] On the importance of reputation in financial matters, see Bruce H. Mann, *Republic of Debtors: Bankruptcy in the Age of American Independence* (Cambridge, MA: Harvard University Press, 2002); and Judy Hilkey, *Character Is Capital: Success Manuals and Manhood in Gilded Age America* (Chapel Hill: University of North Carolina Press, 1997).

they pleased also highlighted their husbands' inability to properly manage their households.

An unruly wife may not have had legal grounds to sue for divorce, but she could force one by cohabiting with another man or humiliating her husband by abandoning him. When Zenon Bourgeat petitioned for a separation from bed and board from his wife, Mary, he claimed that "she abuses him by day and by night" and ran off at all hours of the day. She destroyed his property, sold all the beds, and made him sleep on the floor. Her cruelty, he said, was "indescribable." She had threatened to kill him so often that he feared she would make good her threats, particularly because she had already caused the death of an enslaved woman. Furthermore, she spat terrible insults at him in public, greatly damaging his good reputation. Witnesses on his behalf believed her to be "trouble" and claimed that she had killed an enslaved woman because of her extraordinary "jealousy." Mary Bourgeat was no model wife. By terrorizing her spouse, coming and going as she pleased, and reigning over her husband's household, she seized a power that belonged to men. Errant wives such as Mary Bourgeat claimed a right to mastery over their marriages. Stepping out at all hours of the day also suggested a lack of chastity, compounding her husband's shame because he could not be certain of her sexual fidelity.[42]

Just as a headstrong wife suggested a disorderly household, so too did an adulterous spouse. Unchaste women signified sexual deceit. The adulteress represented

[42] *Bourgeat v. Bordelon, his wife*, Records of the Fourth Judicial District Court, #651, Pointe Coupee Parish, Louisiana, 1826. For a discussion of unwifely behavior, law, and household power in colonial Virginia, see Terri L. Snyder, *Brabbling Women: Disorderly Speech and the Law in Early Virginia* (Ithaca, NY: Cornell University Press, 2003), chap. 3.

the dishonest opposite of ideal wifehood and womanhood.[43] For southern white women in particular, honor was synonymous with sexual virtue—sexual purity for unmarried women and sexual decorum for married women. Unlike the antebellum northern middle class, which promoted the doctrine of female "passionlessness," white southerners did not deny that women were subject to sexual desire.[44] They did, however, attempt to control female sexuality and expected single women to be chaste and married women to be faithful to their husbands. Husbands were responsible for their wives and were thus the proprietors and protectors of female sexual virtue.

Rumors of unchaste wives greatly damaged the reputations of their husbands by implying that they were cuckolds. To admit that one was a cuckold was a profound humiliation. Robert Lowes bemoaned "that notwithstanding his love, kindness, and provident management as a husband" his wife, Nancy, "publicly defamed him," "brought shame and disgrace to" his name by committing adultery, and, finally, abandoned him, and "now lives in open shame and concubinage" with one Peter Jones.[45] Cuckolds were the butt of antebellum songs, jokes, and rituals. A cuckolded husband was beneath contempt in southern society because he signified domestic disorder. Unchaste wives indicated a general depravity within the household and a loss of male control. A cuckolded man failed to maintain household order and lost his authority over his wife. Cuckoldry also called into question the paternity of his wife's children and raised the

[43] For an examination of sexual honesty, adultery, and honor in early modern London, see Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (New York: Oxford University Press, 1996), 105-10, chap. 4.

[44] On the sexuality of southern white women, see Elizabeth Fox-Genovese, *Within the Plantation Household*, 235-36; and Wyatt-Brown, *Southern Honor*, 293-94.

[45] *Lowes v. Johnson, his wife*, Records of the Fourth Judicial District Court, #1622, Iberville Parish, Louisiana, 1838.

possibility of having to provide for a child he may not have fathered and passing on his inheritance to a bastard. An adulterous wife signified a man's failings as a lover and a family leader. She publicly humiliated her spouse and jeopardized her husband's reputation as a legitimate household head.

Women like Mary Bourgeat and Nancy Lowes contravened the authority of their spouses by attempting to govern their marriages. They refused to accept their status as subordinated wives and reversed the traditional understandings of household authority. The behavior and actions of unruly and misbehaving wives reflected poorly on husbands who could not manage their households.

The public character of wives' behavior and of their accusations against their husbands was critical. Wives who accused their husbands of being inept patriarchs exposed their husbands' failures and made their private lives public. In a culture where one's standing rested on the question of honor, reputation, and respectability, the power of peers to influence a husband's conduct was a device women used to their advantage.

Married women brokered both legal and extralegal means to dictate the terms of their marriages and employed their considerable social networks to help constrain the power of their husbands. Wives commonly drew upon local legal culture, which operated on a middle ground somewhere between law and custom. Many cases of abuse, neglect, or other sources of marital discord never made it to formal legal venues. The boundaries between custom and local law were not obvious, and petitioning for a legal separation was often only the final course of action in a long process that began outside of the courtroom.

Conflicts between husbands and wives were public battles. Community involvement preceded trials and continued long after the verdicts. Women ran to the shelter of neighbors, fought with their husbands in the street, and asked brothers or other male relatives to act as co-petitioners. They implored observers to become witnesses, named their husbands' mistresses, and openly accused their spouses of deplorable behavior. A couple's most intimate life became public knowledge well before the ink on the petition dried. Even after they approached the courts, wives continued to involve their local communities in their marital disputes. Initiating a legal separation was itself a public act. Petitioning for divorce or separation of property involved the judge or magistrate, the sheriff and his deputies, possible witnesses, and lawyers, as well as anyone else who happened to be in court that day. In addition, both Louisiana and Mississippi law required that spouses publish a notice of their divorce petition in a local newspaper for a month. Wives aired their dirty laundry for all to see.

Women used their petitions to condemn publicly the character and actions of their husbands. For some married women, the court represented more than a judicial body or a site of dispute resolution. The courts also served as a site of governance. When they did not live up to the standards expected of them as husbands, men faced punishment. There was a line they simply could not cross without consequences. Women's lawsuits against their husbands, especially successful ones, served as a warning to other men.

Because of the public nature of litigation in the Old South, women could use their lawsuits to shame men into changing their behavior. Sometimes women approached the courts in order to force men to do right by them, only to dismiss the case when they received the result they desired. Mina Klotz used the local court to extract a marriage out

of Simon Weil, although one that ultimately brought her little but heartache. In early July, 1856, she sued him for a breach of marriage promise, claiming that he had seduced her shortly after they met with "the light & beauty of his conversation the elegance of his demeanor and the seductive and fascinating power of his address." "He soon found his way into her heart," she exclaimed, "and induced her !alas! to love not wisely but too well." He had declared that he wanted to marry her in the presence of others, but then refused to do so. She asked the court to force him to pay her damages for her distress, but when he finally agreed to marry her she dropped the case. Although she asked the local court to grant her damages for breach of promise, what she really wanted was for him to marry her. She used the court to coerce Simon into living up to what he had promised her. Yet the court could not force him to do right by her permanently. Less than one year later, Mina found her way to the courthouse once again, this time suing Simon, now her husband, for separation from bed and board. He had abandoned her, she reported, and asked the court to order him to return home. He did so, and once again, having achieved her desired result, Mina dropped her lawsuit against him. Mina's and Simon's rapprochement did not last long. Ten months later, she sued him again for a legal separation. He had abandoned her a second time, calling her a "whore" unworthy of his love. The judge once more ordered Simon to return to his marital home, although this time Simon had absconded for good.[46]

[46] *Klotz v. Weil*, Records of the Sixth Judicial District Court, #899 (1856), #957 (1857), #1100 (1858), Iberville Parish, Louisiana. Suing a man for breach of promise did not always result in marriage, as Lise Prevost, a free woman of color, found. Lise claimed that Francois Birott, a recently widowed free black man, promised to marry her "as soon as it would conform to the holy catholic religion." Lise and Francois sealed the promise before a justice of the peace in New Orleans in June 1823. On the basis of that promise, Lise waited for Francois. Francois, however, did not wait for her, and in 1824 he married someone else. Lise claimed that Francois had made the marriage promise "fraudulently," intending to "craftily and subtly deceive her." She believed that this false promise had caused her to sustain $2,000 in damages and asked the court to direct Francois to pay her that amount. The St. Landry Parish district court

Community sanction was an effective tool for enforcing social norms and coercing better conduct out of husbands. Wives hoped that kin and neighbors might convince delinquent husbands to cease their abusive behavior and behave as men should. When confronted with marital problems that they could not negotiate themselves, some women initially approached kin or neighbors for care, shelter, or aid. The litany of hardships women described in their petitions and the number of years many wives endured abuse, indicate that divorce, in particular, was often a last resort. Women understood that they needed financial resources to live outside marriage and that the public airing of their private grievances could lead to humiliation. In their petitions, women regularly described how family and friends intervened when irresponsible husbands left their wives destitute or sheltered wives who ran from husbands in fear for their lives.

Family members played an important role in policing domestic disputes, chastising errant spouses, and offering married women protection and relief. In 1808, Rosalie Belly, a free black woman, appeared before the Iberville parish court claiming that her husband, Antoine Dubuclet, also a free person of color, had beaten and whipped her at diverse times during their marriage. Because of his "cruel & malicious" temper, she told the court, she could no longer live with him. She wanted him out of their house, and away from her property, as well as alimony sufficient to support her and their children. By abusing Rosalie, Antoine also ran afoul of his father-in-law. On the same day Rosalie sued her husband, her father, Pierre Belly, a white Frenchmen, former judge, and one of the most prosperous planters in the region, also filed suit against Antoine

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found for Lise, but awarded her only one cent in damages. *Prevost v. Prevost*, St. Landry Parish, Louisiana, 1825, in RSFB, Series II, Part F, PAR #20882529.

Dubuclet. Like Rosalie, he too tried to eject Antoine from the Belly-Dubuclet household, although he used a different tactic. Pierre Belly told the court that Antoine lived as a tenant on his plantation and had possession of four of his slaves. He wanted to evict Antoine and reclaim ownership of his plantation and slaves. In his response, Antoine admitted that he was in fact in possession of the plantation and the slaves, but not as a tenant. When he married Rosalie, Antoine contended, Pierre Belly had conveyed the plantation and the slaves to him and his wife. Belly, he claimed, had no legal grounds to evict him. The court agreed, and Antoine remained in control of the property. Both Rosalie and her father lost their joint endeavor to rid themselves of Antoine and protect their family property.[47] But battles between married couples reminded husbands that wives were also daughters, sisters, and aunts. Many fathers such as Pierre Belly and other male kin intervened when a husband treated his wife poorly.

Wives' disputes with their husbands also involved local communities. Married women sometimes approached justices of the peace, lawyers, deacons, pastors, and other important community members to negotiate settlements with their spouses. People often went to magistrates to resolve their quarrels in an effort to avoid making formal charges.[48] Even after a woman petitioned for divorce, the courts might send arbiters to attempt to mediate a resolution between the parties.[49]

Fellow church members frequently intervened on behalf of beleaguered or abused wives, charging husbands with misdeeds and sanctioning them before the congregation.

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[47] *Belly Dubuclet v. Dubuclet*, Records of the Old Parish Court, #71, Iberville Parish, Louisiana, 1808; and *Belly v. Dubuclet*, Records of the Old Parish Court, #70, Iberville Parish, Louisiana, 1808.

[48] Edwards, *The People and Their Peace*, 74.

[49] See, for example, *Frederic v. Lacour, her husband*, Records of the Early Parish Court, #452, Pointe Coupee Parish, Louisiana, 1812.

In 1817, the Salem Baptist Church in Jefferson County, Mississippi, investigated a man for "abusing his wife and other conduct." After he admitted to whipping her, the church excluded him from its membership as punishment.[50] In 1847, the Magnolia Baptist Church in Claiborne County, Mississippi, investigated Wallace Ben, a free black man, when his wife claimed that he had "fallen into sin" and committed adultery. A "committee" of white and black members investigated, found him "guilty" of adultery, and excluded him from the church.[51] The Piedmont Baptist Church in Jefferson County, Mississippi, excluded Willis Moore after his wife accused him of bigamy.[52]

If community involvement failed, wives called on the local courts for help. Frances Sharpe Harris tried everything she could think of before she sued Gowin Harris, her husband of twenty-nine years, for divorce in St. Landry Parish, Louisiana. In her petition, Frances claimed that "she at all times conducted herself towards" Gowin "as a good and dutiful wife," but he was "unmindful of the obligations and duties of a husband," and he treated her in the "most inhumane manner." In 1826, after several years of marriage, Gowin sneaked out of their Mississippi house in the middle of the night, taking all of the property he "could carry off," and leaving her and their eight children "without any means of support." After his departure, her parents supported her and her children. A few years later, with the help of her male kin, Frances tracked Gowin to Louisiana, but he continued to flee from place to place. Finally her brother-in-law found Gowin living in Iberville Parish. He threatened Gowin and demanded he provide

[50] Minute Book of the (Old) Salem Church, MBHC.

[51] Minute Book of Magnolia Baptist Church, Claiborne County, Mississippi, September 1852 to August, 1875, Box 86, MBHC.

[52] Minute Book of the Piedmont Baptist Church, Jefferson County, Mississippi, September 1852 to March 1910, Box 132, MBHC.

for his family as a man should. Gowin reluctantly acquiesced, and Frances and her children moved back in with him. But Gowin continued to treat them with "bitter hatred." He demonstrated "a considerable dislike" for his children, had "no house to take them to," and "awaits the first favorable opportunity to abandon them entirely," Frances told the court. His behavior was "outrageous and unmanly." He was the antithesis of a husband, father, and provider. She knew it was only a matter of time before he would abandon them again, taking all of their remaining property. In fact, she had recently learned of his latest plot to rid himself of them—a plan that involved abandoning them along the Mississippi River. Frances would not allow her children to be left "destitute and unprotected" a second time. She had used her considerable kin networks to force Gowin to behave as a proper husband. She had sought advice from her neighbors, comfort from her children, financial support from her parents, and help from her male kin—all with the hope that someone might convince her husband to cease his erring ways. She endured his abuse for years, and, when he continued to show no signs of repentance, she sued him for a divorce. The court granted Francis a separation from bed and board and custody of her children and ordered Gowin to pay her $1000 to help care for them. With eight young children to support and no property to speak of, the money, if Gowin paid it, probably did not last long. However, considering he had planned to run off a second time leaving her without anything at all, legal intervention represented Frances's best option.[53]

Communities also took matters into their own hands and used the courts to punish wayward husbands. Sometimes kin, friends, and neighbors sued a woman's husband

[53] *Harris v. Harris*, St Landry Parish, Louisiana, 1830, in RSFB, Series II, Part F, PAR #20883008.

themselves, especially if they had boarded or cared for his wife and children. Pauline Bergeron fled Baptiste Bergeron's household after he beat her while she was pregnant. She sued him for a separation from bed and board, and while she waiting for the court to make its decision, she and her children lived with her mother, Marie Louise Lacroix. Lacroix also sued Baptiste Bergeron, claiming that he had left Pauline and the children penniless, forcing her to clothe and feed them for two and a half months. The district court ordered Baptiste to pay Lacroix $125, plus court costs, for providing for his family.[54]

Community members who protected abused and neglected wives sometimes faced the wrath of their husbands. Husbands also sued the people who aided their spouses or who harbored their runaway wives. Natchez resident Thomas Jackson claimed that on very morning he married Rebecah McKinney, her friends helped her abscond. He left Rebecah at the Fretwell house after their wedding ceremony, and when he returned a few hours later, the Fretwells had "secreted" her from him and refused to let him see her. He petitioned the local county court for a writ of habeas corpus, demanding Rebecah's return, but she never turned up. Evidently she had not wanted to marry him in the first place and had run off to parts unknown to him.[55] William Wilkinson sued James Foster for $10,000 in damages, claiming that Foster had convinced his wife, Eleanor, to stay

[54] *Lacroix v. Bergeron*, Records of the Old Parish Court, #729, Iberville Parish, Louisiana, 1828. Edmond and Lefroy Legendre claimed that for "ten or twelve years," Maurice Legendre "conducted himself in a cruel and outrageous manner toward his wife and minor children." Maurice also "took, and received into his marital dwelling, a colored woman as a concubine" while living with his wife, the petitioners claimed, and fathered two children with the woman. Although Maurice's wife and three children had lived with Edmond and Lefroy for some time, Maurice refused to pay alimony or any other means of support. Edmond and Lefroy asked the court to order Maurice to pay them the $3,850 they claimed he owed them for the support of his wife and children. *Legendre v. Legendre*, East Baton Rouge Parish, Louisiana, 1861, in RSFB, Series II, Part F, PAR #20886108.

[55] *Jackson v. Fretwell*, Records of the Circuit Court, Box 2, Habeas Corpus File, CRP, HNF.

with his family and would not let her return. Wilkinson claimed that he and Eleanor had lived together harmoniously until she met the Foster family. He blamed Foster for his influence over Eleanor, claiming that he was the reason she would not return home.[56]

The local community also played an important role in determining the outcome of particular lawsuits. Judgments depended on the knowledge of observers and witnesses who knew the involved parties. Judges and juries relied on witnesses to bring "information" regarding the reputation of the husband and the wife, as well as evidence of the crime or mistreatment allegedly committed.[57] Community members helped determine the seriousness of an offense through an assessment of both the perpetrator and the victim. Both had to be investigated. Was the wife dutiful and chaste, or was she willful and headstrong? Was the husband a good provider, or did he squander his resources gambling and drinking? Witnesses provided information about an individual's actions and character. Justices of the peace, county and parish court judges, clerks of the court, and members of the jury were also part of the local community and often knew the individuals in a given case. They knew which witnesses to trust and which to ignore. They knew when a husband did not care for his wife or children and when a wife behaved badly and had a high temper.

In the face-to-face societies of the antebellum South, an individual's reputation in his or her community played an important role in separation cases. The outcome of such proceedings could hinge on local knowledge about a person's reputation, particularly

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[56] *Wilkinson v. Foster*, Records of the Circuit Court, Group 1820-29, Box 9, File 9, CRP, HNF.

[57] "Information," in this context, included "physical evidence as well as verbal accounts, often presented together by informants. Above all, "information," Laura Edwards argues "was expected to be subjective and was valued for that reason." Edwards, *The People and Their Peace*, 112.

when husbands responded to their wives' petitions by denying all of the charges or accused their wives of immoral behavior. Witnesses helped the court assign fault by providing information about who behaved according to accepted social and marriage norms and who did not. For example, in 1847, Jane Davis, a free black woman living in St. Landry Parish, told the local court that her husband of twelve years, William Edmonds (also a free person of color), had broken his "marital vows" and "abandoned, deceived, and maltreated her." Not only did he "humiliate her" by seeking the "embraces" of another woman, but William also denied that he and Jane were ever "united in the bonds of Lawful wedlock." He consistently "defames and blackens her reputation," Jane claimed, by spreading rumors that she was "of doubtful fame & chastity." She told the court that their "living together was insupportable" and asked that they be "separated in bed and board." William denied Jane's allegations and claimed that she worked as a prostitute and had once been jailed for slander.

In order to clear up the contradictory statements made by the couple, the court turned to Jane's and William's local community. Character witnesses, black and white, male and female, would settle the confusion by answering the following questions: What reputation did Jane have in her community? Was she known for her "chastity, integrity and general worth"? Was Jane a "common prostitute"? "Did she keep company with women of ill fame"? Had they ever heard "whispered" rumors questioning her "chastity"? Was Jane really married to William? Witness after witness testified on Jane's behalf. William Nanly claimed that he "considered Jane to be a woman of chastity, of good repute, faithful to her husband and a good mother to her children." He knew her as "the wife of Edmonds." Mary Russell said that Jane was "a respectable,

honest, virtuous and industrious woman" who "kept respectable company and always resided with respectable people." James Bird swore that he knew "no blemish against her character. . . . She kept company with the best of our people. She never kept company with women of ill fame." Thomas Jordan claimed that Jane "was always a gal that kept decent company—went to Church on Sunday—and was never seen in the streets at night." Eliza Smith testified that she "was never acquainted with Jane by the name of Jane Davis," but instead was "acquainted with Jane Edmonds wife of William Edmonds free man of color." Margaret McClellan, a white doctor's wife who had employed Jane's mother as her housekeeper for several years, said Jane "bore a good character for integrity and industry." While witnesses on William's behalf testified that they had heard rumors questioning Jane's character and reputation, the court, swayed by the overwhelming evidence supporting Jane, found in her favor.[58] Wives like Jane Davis used the politics of reputation to their advantage, calling on witnesses to attest to their good behavior and their husbands' failings.

In cases of wife beating, married women similarly mobilized both the courts and their community networks to protect themselves from violent husbands. Obtaining court protection from domestic violence, however, was difficult. White men had great latitude

[58] *Edmonds v. Edmonds*, St. Landry Parish, Louisiana, 1847, in RSFB, Series II, Part F, PAR #20884719 and 20885023. Alexis Trudeau found out the hard way the impact witnesses made in domestic disputes when he petitioned for a separation of bed and board from his wife, Julie. Alexis accused Julie of committing adultery with "several persons," as well as other licentious behavior. Julie countersued for a separation of bed and board, claiming that Alexis's accusations were false and solely brought for the purpose of depriving her of her dowry and other property. Witnesses supported Julie claims, and they recounted her chaste and dutiful behavior and her care of her husband when he was sick. They also testified that he had called her a "prostitute" in public and told her to "go to hell." The court awarded Julie a separation of bed and board, custody of their children, and $3,000. *Trudeau v. Trudeau*, West Baton Rouge Parish, Louisiana, 1820, in RSFB, Series II, Part F, PAR #20882028, 20882034, and 20882114.

to use violence against dependent members of their household. Throughout much of the nineteenth century, the "rule of thumb" served as the standard for measuring cruelty in wife beating. Beating a wife with any instrument wider than a man's thumb was considered excessive.[59] It is difficult to know just how commonplace domestic violence was, but wife beating occurred in households across classes and races. Some men beat their wives routinely and others with excessive brutality. William Porter whipped his wife "with a cow hide," then stripped off her clothes and threw her naked in the street.[60] Allen Ellis habitually drank and punched his wife "in a barbarous and evil manner." He "cruelly tore out" her hair, "choked her violently," and repeatedly threatened to kill her.[61] Ansel Davis liked to beat his wife both in "private and at the supper table, at her home, [and] in the presence" of her children, her mother, her husband's niece, and "other persons." His abuse was so frequent that she often fled for "the safety of a neighbours house" unless her injuries were bad enough "to confine her to her bed."[62] Lydia Ireson claimed that her husband "brutally assailed her, struck her repeatedly in the breast and about the head and choked her" so violently "as to leave the prints and marks of his hands upon her throat. And at the same time threatens to take her life and made efforts to get a

[59] On domestic violence in the Old South, see Suzanne Lebsock, *The Free Women of Petersburg: Status and Culture in a Southern Town, 1784-1860* (New York: W. W. Norton & Co., 1984); Edwards, "Law, Domestic Violence, and the Limits of Patriarchal Authority in the Antebellum South;" Wyatt-Brown, *Southern Honor*; and Stephanie Cole, "Keeping the Peace: Domestic Assault and Private Prosecution in Antebellum Baltimore," in *Over the Threshold: Intimate Violence in Early America*, ed. Christine Daniels and Michael V. Kennedy (New York: Routledge, 1999).

[60] *Porter v. Porter*, Orleans Parish, Louisiana, 1834, in RSFB, Series II, Part F, PAR #20883416.

[61] Ellis v. Ellis, Iberville Parish, Louisiana, 1825, in RSFB, Series II, Part F, PAR #20882506.

[62] *Railton v. Davis*, Iberville Parish, Louisiana, 1861, in RSFB, Series II, Part F, PAR #20886120.

large Knife with which he swore he would kill her."[63] Minerva Robertson's husband, James, chased her out of their house on a number of occasions, threatening to kill her. While "in a great passion and high temper," he threw cups and saucers at her and broke all of their china. Worst of all, however, he beat her while she was pregnant. He later turned her and their newborn child out of the house without sufficient clothing or any means of support the day after she gave birth. Soon afterward, the infant became ill and died.[64]

Despite the difficulty of obtaining redress, married women did occasionally take abusive spouses to court to attempt to curb the violence. While many antebellum southerners considered domestic violence a private family matter, local officials sometimes prosecuted men who assaulted their wives.[65] Assault and battery was, after all, a matter of law. A battered wife could file a breach of the peace complaint against her husband, an action that forced him to appear before a justice of the peace and post a bond, or "surety," promising to "keep the peace" toward his wife.[66] Judge Henry Tooley's Natchez magistracy consistently prosecuted violent husbands. Justices of the peace like Tooley handled most incidents of domestic violence, although cases

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[63] *Ireson v. Ireson*, Adams County, Mississippi, 1853, Records of the Vice Chancery Court, #775, CRP, HNF.

[64] *Robertson v. Robertson*, Adams County, Mississippi, 1836, Records of the Circuit Court, Group 1830-39, Box 47, File 9, CRP, HNF.

[65] In a recent article, Ruth Block argues that after the American Revolution, women lost opportunities they once had to seek legal protection from domestic violence. Because post-revolutionary notions of the right to privacy (a term not used at the time) protected social institutions such as the family and did not apply to individuals, women, as subordinates within the family, had trouble seeking redress in court for wife beating. See Block, "The American Revolution, Wife Beating, and the Emergent Value of Privacy," *Early American Studies* 5, no. 2 (Fall 2007): 223-51.

[66] See "Surety for the Peace and Good Behavior" in Harry Toulmin, *The Magistrates' Assistant* (Natchez, MS: Samuel Terrell, 1807), 196.

sometimes moved to the higher courts. For example, in the case of Cornelius Stranahan, who beat his wife while intoxicated, a Natchez circuit court jury decided "that a husband had no right to whip his wife in any case."[67]

A number of men found themselves behind bars because their wives had put them there. John Bacon was jailed for punching his wife in the presence of the local judge and ordered to post a $500 bond.[68] Mary Harrison had her husband, Charles, arrested for assaulting her and endangering her life. The magistrate ordered him to post a bond to keep the peace toward her, but after Charles would not (or could not) post the $200 bond, he was jailed.[69] William Murray spent time in the local jail for pointing a gun at his wife's chest and threatening to kill her. Even threatening a wife without physical violence could be grounds for a breach of the peace complaint.[70] William Ducaye found himself in jail for "using abusive language to his wife therefore causing her to believe that her life is endangered."[71]

More often, however, after initially charging their husbands with assault and battery, wives requested that the courts dismiss their cases, claiming that the parties had settled their differences. In 1818, Ann Camp asked for protection from her husband, John Camp, because he beat her badly, forcing her to flee her home. He had threatened

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[67] *State of Mississippi v. Stranahan (Shannahan*), Adams County, Mississippi, 1821, Records of the Circuit Court, Group 1820-29, Box 8, File 30, CRP, HNF.

[68] *State of Mississippi v. Bacon*, Adams County, Mississippi, 1822, Records of the Circuit Court, Group 1820-29, Box 14, File 37, CRP, HNF.

[69] *State of Mississippi v. Harrison*, Adams County, Mississippi, 1822, Records of the Circuit Court, Group 1820-29, Box 15, File 54, CRP, HNF.

[70] *State of Mississippi v. Murray*, Adams County, Mississippi, 1823, Records of the Circuit Court, Group 1820-29, Box 2, File 53, CRP, HNF.

[71] *State of Mississippi v. Ducaye*, Adams County, Mississippi, 1839, Records of the Circuit Court, Box 2, Habeas Corpus File, CRP, HNF.

to kill her before, and this time she thought he just might do it. A notoriously violent man, John Camp faced assault and battery charges four times in 1818 alone, and seven times between 1816 and 1818. Despite her initial fears, Ann later requested that the court drop the charges against her husband, stating "I wish you would let that suit that is between Mr. Camp and myself be dismissed as it is not my wish for it to be carried in court as we have made it up ourselves."[72] Perhaps he sobered up, cooled down, and apologized. Perhaps he promised never to hurt her again. Or perhaps he terrorized her into dropping the charges. It is impossible to know. Either way, Ann's complaint to the local authorities placed John under increased public scrutiny. The watchful eye of the community might have been enough to keep him from beating her again.

Charging husbands with assault and battery was not the perfect solution for an already bad situation. Spending time in jail as a result of their wives' accusations probably did not make many men eager to reconcile with them when they returned home. For a poorer woman, the bond her husband had to post might deplete important resources from her household. But having him arrested did get him out of the house and away from his family, however temporarily. More importantly, though, it put him and his abuse in the public eye, where he might be monitored more carefully in the future by neighbors and by local authorities.

Men who beat, or in extreme cases of domestic violence, killed their wives could face terrifying community responses. The local Natchez community came within minutes of murdering James Foster for the beating he inflicted on his wife, Sarah Foster,

[72] *State of Mississippi v. Camp*, Adams County, Mississippi, 1818, Records of the Circuit Court, Group 1810-19, Box 40, File 50, CRP, HNF. That same year, John Camp also faced assault and battery charges for beating two slaves and two white men. Ironically, he also faced assault charges for threatening to kill Robert Curry because Curry had beaten his own wife, Elizabeth.

that ultimately caused her death. When the court acquitted him of murder due to insufficient evidence, an angry mob of nearly 300 people attacked him as he emerged on the courthouse steps. The diverse crowd, which included planters' sons, riverboat men, slaves, apprentices, prostitutes, and ordinary citizens attending court that day, seized Foster and whipped him for nearly half a day. They then partially scalped him, poured hot tar over his head and shoulders, and plastered him with feathers. As the crowd called for his lynching, the sheriff finally intervened and took Foster to the jailhouse for his own protection.[73] This Mississippi community had little tolerance for wife-beaters and even less for wife-murderers.[74]

By confronting their spouses and airing their grievances in court and to their neighbors, married women openly challenged their husbands. When a woman stood up in court before the assembled judge, jury, witnesses, and spectators, she seized a degree of power to define the terms of her marriage. Making their marital discord notorious in their communities may have helped force husbands to treat their wives better or to acquiesce to their wives' demands. Since the state recognized and supported the husband as the sole representative of the family in all legal and political matters, publicly defying him was a political act. A husband's honor and identity was intimately tied to his status as an independent householder. Being a head of a household meant being someone who controlled a wife, children, and other dependents such as slaves. This position gave a

[73] Wyatt-Brown, *Southern Honor*, 462-93; and *State of Mississippi v. Foster*, Adams County, Mississippi, 1834, Records of the Circuit Court, Group 1830-39, Box 19, File 18, CRP, HNF.

[74] In 1834, Natchez residents found Arthur Thyme guilty of attempting to murder his wife, Elizabeth. Thyme claimed he could not remember threatening Elizabeth with a loaded pistol because he was drunk at the time and thus should not have been held responsible. The jury, however, disagreed. *State of Mississippi v. Thyme*, Adams County, Mississippi, 1834, Records of the Circuit Court, Group 1830-39, Box 66, File 52, CRP, HNF.

man public significance and political clout. He was the sovereign of a domain, a person who represented the family in all political matters. Mastery over his household was the foundation of his political rights. Loss of this status was a profound source of shame. By challenging their household heads, through whom state power flowed, wives not only challenged their husbands, they also challenged the state. By highlighting their husbands' households as disorderly, southern wives practiced politics. They also demonstrated that their husbands' authority was not absolute.

When petitioning the courts for protection from abusive, adulterous, or neglectful husbands, women established a relationship with the state and with those in positions of authority. The act of petitioning had long been the means by which individuals without formal political power made themselves heard in the civic sphere. Women frequently turned to petitioning to gain access to and make demands on those in power. For the unenfranchised, petitioning both symbolized and ignited political action. Petitions carried the words of ordinary women to state lawmakers and judges and made their requests known to those who wielded authority. For example, antebellum southern women—both white and black—petitioned their state legislations for many things, ranging from pleas for divorce, requests for corporate charters, and the allocation of funds for voluntary societies.[75] When petitioning the local courts for protection from their husbands, married women may not have been engaged in collective political action, but they were attempting to improve their lot and make their grievances known to those

[75] On southern female petitioners (black and white), see Elizabeth R. Varon, *We Mean to be Counted: White Women and Politics in Antebellum Virginia* (Chapel Hill: University of North Carolina Press, 1998). For examples of female petitioners more generally, see Boylan, *The Origins of the Women's Activism*; Lori D. Ginzberg, *Untidy Origins: A Story of Women's Rights in Antebellum New York* (Chapel Hill: University of North Carolina Press, 2005); Julie Roy Jeffrey, *The Great Silent Army of Abolitionism: Ordinary Women in the Antislavery Movement* (Chapel Hill: University of North Carolina Press, 1998); and Kerber, *Women of the Republic*.

in positions of power. Through their petitions, married women forged a relationship between themselves and the state—a relationship they otherwise did not have.

In exchange for individual legal success, however, married women reinforced patriarchal marriage by employing the language of subordination and by citing the social expectations of husbands and wives. Married women needed to work within the boundaries of their subordination; otherwise, they risked legal failure. After all, antebellum southern women, married or single, remained subordinate to men, lacking in political rights, and limited in their legal rights. Their marginalized status in southern society, however, makes their knowledge of the law and their use of the courts to improve their own situations all the more startling. Wives did not contest patriarchy itself, but they did dispute their husbands' abuse of it. While they did not overthrow the gender system that subordinated them, southern women used the courts to define what their place in it would be. They turned their subordination into a working legal principle and with it challenged their husbands' right to beat them, to manage their property with impunity, to neglect them, or to abandon them and leave them destitute. These Mississippi and Louisiana wives, then, deployed their subordination to their benefit, pushing at it and expanding its boundaries. In doing so, they negotiated an improved place for themselves in the system of power that subordinated them.

CHAPTER 3

Contravening Slavery, Conceding Subordination: Enslaved Litigants and the Local Courts

"The right of personal liberty in the slave is utterly inconsistent with the idea of slavery."[1]

- Thomas R. R. Cobb (1858)

"Pity me, and pardon me, O virtuous reader! You never knew what it is to be a slave; to be entirely unprotected by law or custom; to have the laws reduce you to the condition of a chattel, entirely subject to the will of another."[2]

- Harriet Jacobs (1861)

In May 1826, Phoebe, a woman of color enslaved in Washington, Mississippi, sued her owner for her freedom and the liberty of her two children. Although she was free and the daughter of a white woman from Kentucky and a "mulatto" father, William Boyer held her and her children as his slaves. While living as free people in Kentucky, several unsavory characters, including her white uncle, had kidnapped Phoebe and her children and sold them into slavery. Declaring that they deserved the "liberty guaranteed by the laws of the state," Phoebe asked the court for their freedom. Boyer, however, insisted that she and her children were born slaves and denied that they were free persons.

Phoebe had a murky past and the circumstances of her birth proved difficult to uncover. Her mother, she claimed, took great care to "conceal her parentage" resulting

[1] Thomas R. R. Cobb, *An Inquiry into the Law of Negro Slavery in the United States of America* (1858; repr., Athens: University of Georgia Press, 1999), 105.

[2] Harriet A. Jacobs, *Incidents in a Life of Slave Girl*, ed. Jean Fagan Yellin (Cambridge, MA: Harvard University Press, 2000), 55.

from the "disgrace" she faced for having "relations . . . with a negro." Recently, though, Phoebe had met several "respectable persons" who could confirm the details surrounding her birth and prove that she and her children were in fact "free and not slaves." Indeed, several white witnesses testified on her behalf. Jeremiah Mathers recounted that the "general report from old settlers and residents in the neighborhood" supported Phoebe's claim to freedom. She was, Mathers informed the court, the child of Sally Kimberland, a white woman, and thus entitled to her liberty. Walter Miles, a resident of Kentucky familiar with Sally Kimberland, divulged that it was "common knowledge in the neighborhood" that Kimberland was Phoebe's mother and a white woman. Miles also testified that slave traders had kidnapped Phoebe and her children, brought them down the Mississippi River, and sold them as slaves. With such evidence in her favor, the court found for Phoebe and her children and granted them their liberty.[3]

Although denied legal rights and excluded from formal political arenas, enslaved people like Phoebe mobilized the local courts and their community networks on their own behalf, often successfully.[4] Slaves had a number of opportunities to learn something about law and the operation of the local courts. The culture of legal localism in the antebellum South led even the most marginalized of southerners to view the legal system as something connected to them. They went to court to redress wrongs done to them and to make public demands on those in positions of authority. Moreover, slaves approached

[3] *Phoebe, John, and Sally v. Boyer*, Adams County, Mississippi, 1826, Records of the Circuit Court, Group 1820-29, Box 34, File 82, CRP, HNF.

[4] This chapter engages 111 instances of enslaved people suing for their freedom in the Natchez District of Mississippi and Louisiana. Of that total, sixty-five were successful. Twenty-five lawsuits were either dismissed or the court found for the defendant, and in twenty-one instances the outcome is not known. Given the success rate of enslaved people suing in court for their freedom and the fragmentary nature of local legal records from the first half of the nineteenth century more generally, is it is quite possible that many of the unknowns were victories as well.

the courts as shrewd litigators. They demonstrated an intimate knowledge of southern laws and the workings of the local courts. As the case of Phoebe suggests, a wide range of southerners understood the legal system. Even the most marginalized southerners participated in local law-making processes, leaving their imprint on the local legal system. Indeed, the slaves who sued their masters for their freedom used the courts to their own benefit and sometimes challenged those who enslaved them.

When suing for their freedom, however, slaves confirmed their subordination and worked within its boundaries. By going to the courts to petition for legal liberty, slaves reinforced legal slavery. Using the courts to gain their freedom by contending that they were *illegally* enslaved, meant implicitly acknowledging that there were circumstances in which persons could *legally* be enslaved. Those suing for their freedom did not challenge the legitimacy of the institution of slavery, just its excesses and wrongs. Although they defied individual slaveholders, their lawsuits were systematically reassuring to the racial status quo. Still, slaves' knowledge of the southern legal system, coupled with the ability to harness extensive social networks, gave them a degree of power to improve their immediate situations and negotiate for increased autonomy over their lives.

Because law was pervasive in the everyday life of the Old South, slaves had frequent and direct contact with local legal processes and enjoyed many opportunities to learn about the law. Slaves witnessed a great deal of the law in action. They observed monthly county courts, watched hearings and inquests, and sometimes even offered information themselves. Slaves swarmed the courthouse steps during court week—as objects of sale, defendants in criminal actions, litigants in lawsuits for their freedom, or

witnesses in trials involving other slaves. They served as body servants and carriage drivers for masters with court business and labored as peddlers, marketers, and hired hands. From the vantage point of the courthouse steps, enslaved men and women observed, participated in, and gossiped about a considerable amount of legal action.

Much of the southern courts' legal business concerned slaves. In Adams County, Mississippi, for example, at least half of the circuit court trials involved the commercial law of slavery.[5] William Johnson, a leader of the free black community in Natchez, frequently noted in his diary that disputes involving slaves commanded a good deal of the court's attention. In January 1844 in a typical entry, he observed that "A trial Came of[f] before Esqr Woods to day and . . . Parkhurst was tried for Stealing a Darkey belonging to Fields. . . . Justice Woods required bail in the Sum of One Thousand Dollars."[6] Inside the courthouse, white southerners battled over unpaid debts for slave hires or sales, fought over damaged, sick, or recalcitrant slaves, and assigned responsibility for slave patrols or blame for failed crops. They rewarded slave catchers, disciplined runaways, penalized poor whites who sold slaves liquor or bought goods from slaves, punished insurrectionists, and ordered the execution of slaves found guilty of capital crimes. Southerners used the courts to convey the land upon which slaves labored and the plantations and farms where they lived. They probated wills involving slave property, manumitted loyal servants, and hashed out their understandings of race and racial identity.

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[5] Ariela J. Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Athens: University of Georgia Press, 2000), 23.

[6] *William Johnson's Natchez: The Ante-Bellum Diary of a Free Negro*, ed. William R. Hogan and Edwin A. Davis (Baton Rouge: Louisiana State University Press, 1973), 471.

Slaves themselves came before the courts for a variety of reasons: as damaged or stolen goods, as objects of theft, as criminals to be punished, as witnesses in the trials of other slaves, and as victims of abuse. They appeared as concubines in lawsuits for divorce, as fugitives, and as property seized to settle debts. They also sued their owners for their freedom and were the objects of disputes over attempts to manumit them. For a people with little formal legal status, slaves occupied a significant portion of the court's time.

It is difficult to know with certainty how enslaved men and women interpreted the power of the courts in their lives, but the rule of law was hardly beyond their comprehension. Indeed, slaves' narratives consistently described the authority and place of law in African American life. The draconian face of the law was a central theme in slave narratives. Harriet Jacobs's narrative begins with a declaration of her legal status: "I was born a slave." The remainder of her opening paragraph describes a number of legal issues faced by slaves—the conditions under which her father hired out his labor, his failed attempts to purchase his children, her description of herself as property, details about manumission and inheritance laws, and the impossible position slave parents faced because they could not legally protect their children. The paragraph ends with a legal statement as well: "The reader probably knows that no promise or writing given to a slave is legally binding; for, according to Southern laws, a slave, *being* property, can *hold* no property. When my grandmother lent her hard earnings to her mistress, she trusted solely to her honor. The honor of a slaveholder to a slave!"[7] Jacobs's awareness of her

[7] Jacobs, *Incidents in the Life of a Slave Girl*, 5-6, emphasis in original. On the centrality of law in slave narratives, see Jon-Christian Suggs, *Whispered Consolations: Law and Narrative in African American Life* (Ann Arbor: University of Michigan Press, 2000). On slaves' awareness of the law and the law's influence over their lives, see Gross, *Double Character*, 41-5.

legal status as property is a pivotal theme in her narrative and something she affirms on nearly every page. William Wells Brown, a former slave and novelist, also addressed the power of law in the world of a slave. He opens his 1853 novel, *Clotel, or The President's Daughter*, with a discussion of the centrality of law in African American life:

> In all the slave states, the law says—"Slaves shall be deemed, sold, taken, reputed, and adjudged in law to be chattels personal in the hands of their owners and possessors, and their executors, administrators and assigns, to all intents, constructions, and purposes whatsoever. A slave is one who is in the power of a master to whom he belongs. . . . He can do nothing, possess nothing, nor acquire anything, but what must belong to his master. The slave is entirely subject to the will of his master, who may correct and chastise him, though not with unusual rigour, or so as to maim and mutilate him, or expose him to the danger of loss of life, or to cause his death. The slave, to remain a slave, must be sensible that there is no appeal from his master." Where the slave is placed by law entirely under the control of the man who claims him, body and soul, as property, what else could be expected than the most depraved social condition?[8]

For most enslaved people, then, the southern legal system represented a merciless taskmaster. State law was an arm of the slaveholding class and was enacted to maintain the institution of slavery. Southern laws denied slaves civil and political rights and made them into property. These laws stipulated that anyone born of a slave mother was the property of his or her mother's owner, who had the legal right, according to the Louisiana *Civil Code*, to "sell him, dispose of his person, his industry, and his labor."[9] If enslaved people could use the same laws as free people, they too would have been free.[10] They

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[8] William Wells Brown, *Clotel, or The President's Daughter*, Introduction by Hilton Als (New York: The Modern Library, 2000), 41-2. For a discussion of law as a central theme in Jacobs's slave narrative and Brown's novel, see Suggs, *Whispered Consolations*, chap. 1.

[9] Louisiana *Civil Code* (1838), Art. 35, p. 8.

[10] Slaves had an ambiguous status in southern jurisprudence. They were at once persons and property: the law recognized the personhood of slaves in criminal law (and punished them as persons) but viewed them solely as property in civil law. Civil law, then, suppressed bondspeople's personality nearly completely. In Daniel Flanigan's words, "A slave could not own a horse, but he could surely steal one." See Flanigan, "Criminal Procedure in Slave Trials in the Antebellum South," *Journal of Southern History*

could not enter into contracts, and because marriage was a civil contract, they could not legally marry. They could not testify against whites in either civil or criminal trials. Southern law also stripped slaves of other individual rights. Most legislatures required them to carry passes when they left the boundaries of their owners' plantations, limiting their movements. When they did leave their masters' property, enslaved people encountered slave patrols organized by the county and empowered by statute to whip them on the spot, arrest them, and turn them over to the justice of the peace. Whites could corporally punish a bondsperson, but southern law made it a crime for a slave to insult or strike a white person. Slave codes made certain acts committed by slaves criminal that were not considered crimes when committed by whites. Slaves also sometimes faced harsher punishments than whites who committed the same offenses.[11]

For slaves charged with crimes, legal proceedings were frightening affairs.[12] In Louisiana, slaves were especially vulnerable because the state tried them separately and

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40 (1974): 537. Yet, Ariela Gross uses lower court records, warranty cases in particular, to disrupt this person vs. property dichotomy. For example, when buyers found "defects" in their human property (such as habitual running away), they might sue for a breach of warranty as they would for other property. But unlike cases involving horses, machines, and other types of property, Gross found that in warranty cases involving slaves the parties in the courtroom brought into question enslaved peoples' moral character. In doing so they recognized slave personhood in civil cases, cases where, in Gross's words, "slaves were most property-like" (3). Gross, *Double Character*, 3-5.

[11] Donald G. Nieman, *Promises to Keep: African-Americans and the Constitutional Order, 1776 to the Present* (New York: Oxford University Press, 1991), 3-29.

[12] Historians investigating slave law frequently debate the extent to which southern courts provided slaves with procedural rights and fair trials. See, for example, Leon Higginbotham, *In the Matter of Color: Race and the American Legal Process* (New York, 1978); Leon Higginbotham and Barbara Kopytoff, "Property First, Humanity Second"; and Michael Hindus, "Black Justice under White Law: Criminal Prosecutions of Blacks in Antebellum South Carolina," *Journal of American History* 63 (1976): 575-99. These scholars argue against a tradition of studies of criminal law which demonstrate that slaves in criminal cases experienced fair trials. Indeed, Hindus argues that "black justice" was a contradiction in terms and virtually non-existent. Higginbotham and Kopytoff argue that southern law had no difficulty in treating slaves as things. But scholars such as Daniel Flanigan, A.E. Keir Nash, and Peter Bardaglio argue that in criminal proceedings at least, the law treated slaves with surprising fairness. See Flanigan, "Criminal Procedure in Slave Trials in the Antebellum South," 537-64; A. E. Keir Nash, "Fairness and Formalism in the Trials of Blacks in the State Supreme Courts of the Old South," *Virginia Law Review* 48

differently than it tried whites and free blacks: in special tribunals made up exclusively of slaveholders. Different rules applied to the trial of slaves than to the trial of whites. For example, Louisiana slaves did not have the right to challenge jurors either for cause or peremptorily, while whites and free blacks could issue both types of challenges.[13] In Mississippi, slaves faced special tribunals for non-capital offenses, but were tried in the circuit court for capital crimes. Here, too, slaves confronted different rules than whites. For instance, the punishment for giving false testimony was exceedingly steep, and Mississippi judges issued instructions to slaves intended to demonstrate the draconian nature of the law. Court officials warned slaves not to lie or they would receive "thirty-nine lashes . . . at the public whipping post" and have their ears "nailed to the pillory" for two hours and then "cut off."[14] Mississippi slaves who appeared in court as witnesses in criminal proceedings involving other slaves met with the same warning. Moreover, whether they were tried by special tribunals or by the circuit court, slaves were surrounded by white faces. The judges and juries were white men. They never faced a jury of their peers.

For enslaved men and women, access to the southern legal system was limited and law represented an exacting and menacing presence in their lives. It punished them

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(Feb. 1970): 64-100; and Peter Bardaglio, "Rape and the Law in the Old South: 'Calculated to Excite Indignation in Every Heart," *Journal of Southern History* 60 (Nov. 1994): 749-72. Indeed, southern jurists were part of a legal system dedicated to protecting white property and as such often granted slaves the right to procedural due process. The slaveholders who tried bondspeople accused of crimes understood the financial value of slaves and the importance of their labor to their owners. Many proved reluctant to jeopardize the economic interests of other slaveholders, especially when the crime carried the death penalty. Thus slave defendants sometimes received new trials or the right to appeal their cases. On this point, see Anthony E. Kaye, *Joining Places: Slave Neighborhoods in the Old South* (Chapel Hill: University of North Carolina Press, 2007), 168.

[13] Judith Kelleher Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana* (Baton Rouge: Louisiana State University Press, 1994), 64.

[14] *Digest of the Laws of Mississippi*, 757.

and barred them from using the courts in their own interest. Yet, the very constraints slaves faced informed them about the law and the legal process. Their interactions with the law, however intimidating, taught them how the legal system worked.

Given the hostility enslaved men and women faced when they appeared in court as defendants, it is surprising that slaves like Phoebe found ways to use the law to their own benefit. For some enslaved people, the courts could serve as an avenue of redress and a place to resolve their grievances and protect their interests. The law, after all, did involve rules, rules that all members of the community were expected to follow. For some slaves, then, the courts may have symbolized a site of fairness and justice, perhaps a notable contrast to the arbitrary punishments meted out by masters, mistresses, and overseers on the plantation or in the big house.[15] On occasion, enslaved men and women did mobilize the legal system on their own behalf despite their lack of formal legal rights. Moreover, slaves demonstrated an astute understanding of the southern legal system.

Slaves occasionally circumvented the statutory prohibitions that limited their access to the courts and sued whites.[16] In the fall of 1825, Bob Moussa, an enslaved man,

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[15] As Anthony Kaye points out, "in some slaves' experience, the law occasionally did what no power in the neighborhood could ever do—bring white men to heel." Kaye, *Joining Places*, 172.

[16] Laura Edwards has uncovered some examples of slaves testifying against whites despite southern bans on enslaved people's testimony. For example, Harriet, an enslaved woman, testified at a magistrates' hearing against John Hammond, a white man. Harriet claimed that she had witnessed Hammond beating Charlotte Rogers, a white woman. She also announced that Hammond should "be ashamed to strike a woman with a stick," publicly rebuking him in front of other white men. Edwards suggests that it may have been possible for slaves to serve as witnesses at magistrates' hearings because they could bring information against whites without swearing an oath. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2009), 128. For examples of enslaved people bringing civil suits against whites for reasons other than lawsuits for their freedom in Louisiana, see Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 221-24. In each of the cases Schafer discovered, however, the slave litigants lost their lawsuits on the grounds that they had no right to sue.

sued two white men, Valerian Allain and Villeneuve Leblanc, in the district court in West Baton Rouge Parish, Louisiana, over a bill of sale that had transferred him, as human property, from Allain to Leblanc. Moussa claimed that the sale violated the terms of his late master's will. For most of his twenty-four years, Moussa had belonged to Julien Poydras. Poydras, however, had died the previous year, leaving a will that would be fought over in the Louisiana courts by his slaves and his heirs for more than a decade to come. In his will, Poydras stipulated that his heirs sell each of his six plantations in Pointe Coupee Parish at the time of his death, along with all of his slaves. The purchase of these six plantations and the hundreds of people living and working on them came with strict conditions. Poydras specified that none of the slaves, including their future children, could be sold apart from the plantation on which they resided. They were "to be considered attached" to the plantations and could not be removed from them. In addition, the purchasers were to treat the slaves with "humanity." After twenty-five years, or when the individual bondsperson reached the age of sixty, whichever came first, each slave would be freed. Once free, they could no longer be compelled to work, could remain on the plantation if they chose, and would receive an annual stipend of twenty-five dollars as "a relief against the infirmities of age."

Poydras' heirs, however, ignored the provisions of the will and sold off much of the property in pieces. Shortly after his death, Allain bought the plantation where Moussa lived and labored. Allain then sold Moussa to Leblanc against Moussa's "will and inclination." Moussa asked the court to declare the sale null and void, to "restore" him to his plantation on False River in Pointe Coupee Parish, and to forbid Allain from separating him from the plantation a second time.

It would be remiss to underestimate the enormous challenges Moussa faced when lodging a complaint before the court. He had to leave his master's property without permission, secure an attorney to represent him in court, and find a way to compensate his lawyer. Moreover, he defied Allain and Leblanc at great personal risk. Confronting his masters (in public no less) was dangerous. The consequences of loss could be devastating, perhaps even violent. Beyond these practical concerns, he faced larger structural barriers. Indeed, given the racial inequalities embedded in the southern legal system, it is remarkable that he approached the courts at all. As a slave his sole legal right was to sue for his freedom, not to seek enforcement of a white man's will. Moussa lost because he technically had no right to sue.[17]

Other slaves, however, sued whites in disputes over property and won. Milly, an enslaved Mississippian, successfully prosecuted a white man, Peter Brown, twice for sizeable debts he owed her. The first time Milly sued Brown, she used the Adams County circuit court to recover the $110 she had lent him. As evidence of the debt, Milly provided the court with a promissory note signed by Brown indicating that he had borrowed the money from her and promised to repay her "without delay." The jury found for Milly and awarded her a judgment for $127.[18] Several months later, Milly sued Peter Brown a second time in order to recover a debt of $550. Once again, she presented the court with a promissory note signed by Brown. This time the jury awarded Milly a

[17] *Moussa v. Allain*, West Baton Rouge Parish, Louisiana, 1825, in RSFB, Series II, Part F, PAR #20882524.

[18] *Milly and Lawson v. Brown*, Adams County, Mississippi, 1823, Records of the Circuit Court, Group 1820-29, Box 28, File 66, CRP, HNF.

verdict of $584, and the judge overruled Brown's motion for a new trial.[19] Although a slave, Milly must have acquired considerable property to be able to lend out such large amounts of money, property she successfully protected and recovered in court despite her status as a slave. Legally, she could neither own property without her master's permission nor initiate a lawsuit for anything except her freedom. Yet, Milly did both. Such claims and privileges should have been out of her reach.

Cases like Milly's are particularly maddening for the twenty-first century researcher because so much information is missing from the record. Her lawsuits were formulaic and read like thousands of other debt recovery cases. There is no indication of the local knowledge that must have played a role in the court's decision. Milly's litigation also leaves many questions unanswered: who was she and who was her owner? How was it that a slave earned such a significant amount of cash? Why didn't she use it to buy her freedom? Why didn't the court simply dismiss the case? As a slave, she did not have the legal right to initiate these lawsuits. Why didn't Brown appeal and claim that technically she could not sue him? What was her relationship to Brown? Perhaps she was his concubine and the debt he owed her was simply a way of passing money to her to defraud his creditors or avoid his heirs. These questions cannot be answered with the available evidence, and they highlight the difficulties of interpreting such records. It is clear, however, that Milly used the courts to sue a white man twice. And twice she won when she was not entitled to be in the courtroom in the first place.

Sometimes local authorities prosecuted instances of theft on the behalf of slaves. In 1854, Daniel Smith, a Natchez resident, faced larceny charges, a warrant for his arrest,

[19] *Milly v. Brown*, Adams County, Mississippi, 1823, Records of the Circuit Court, Group 1820-29, Box 28, File 69, CRP, HNF.

and $3,000 bail for stealing a gold watch and several coins from an enslaved man named Bill who belonged to Jacob Croizen. Because of his status as a slave, Bill could not pursue the case himself. However, Joseph Hawk, a white man, brought the theft to the attention of the justice the peace on behalf of Bill. Five additional white witnesses appeared before the justice of the peace to claim that the property belonged to Bill and to provide evidence that Smith had "carried it off." The case never made it to trial, however. Shortly after his indictment David Smith died of cholera, and the court dismissed the case.[20] In Mississippi and Louisiana, slaves could not testify in cases involving whites, making it all the more difficult to prosecute those who committed wrongs against them. But as this case suggests, enslaved men and women might circumvent the statutory bans on their testimony by getting a white witness to file suit and pursue the case for them.[21]

Cases such as Moussa's, Milly's, and Bill's were rare, however. Yet, both Mississippi and Louisiana law granted enslaved people one legal right: the right to institute a civil suit for their freedom in the circuit (Mississippi) and district (Louisiana)

[20] *State of Mississippi v. Smith*, Adams County, Mississippi, 1854, Records of the Circuit Court, Group 1850-59, Box 16, File 21, CRP, HNF.

[21] I have found the same to be true in enslaved women's rape cases. The rape of a slave by a white man was not a crime in any southern state. However, enslaved women sometimes faced their rapists in court because a white witness to the attack brought the incident to the attention of local authorities. For example, in Cape Girardeau, Missouri in 1834, Reuben Sherwood, a white man, was charged with the rape of Nancy Ellis, an enslaved girl. Four white men testified before the justice of the peace that Sherwood brutally raped Nancy. John Jacobs' testimony was particularly condemning: he was at the "mouth of the branch that empties into the Mississippi River," he claimed, when he heard Nancy "hallowing." When he arrived at the river's edge, he saw Sherwood on the ground. When Jacobs asked him what he was doing there, Sherwood yelled, "'go to hell.'" He saw Nancy on the ground under Sherwood, and heard her screaming that he was hurting her. Jacobs also noticed Nancy's injuries and saw blood covering the ground and Nancy and Sherwood's clothing. Three other men reported similar stories. Because a number of white witnesses like Jacobs proved willing to testify against Sherwood, Nancy succeeded in bringing her rape to court, although the outcome of the case is not known. *State of Missouri v Sherwood*, Cape Girardeau County Archive Center, Jackson, Missouri, Box 5, Folder 34.

courts.[22] Suing for freedom was the only time a slave could initiate a lawsuit legally and was a right they defended vociferously. Indeed, slaves sometimes claimed they were wrongfully enslaved and sued their owners for their freedom. If they could prove that their owners illegally held them as slaves, they won their lawsuits more often than not. Slaves sued for their freedom on a number of grounds, from the enforcement of promises of freedom made in their late masters' wills to accusations of kidnapping, to safeguarding self-purchase contracts. Moreover, they artfully employed their knowledge of the law and legal processes and harnessed their considerable community networks in order to gain their liberty.[23]

Enslaved men and women occasionally used the courts to enforce the terms of their late owners' wills, especially if those wills promised them their freedom. Often these transactions went smoothly enough, particularly if the estate's debts did not exceed its assets and did not deprive the heirs of their inheritance. Sometimes, however, executors and heirs ignored the wishes of the deceased and refused to liberate the enslaved people in question. After all, freeing slaves meant the loss of valuable human

[22] Article 177 of the 1825 Louisiana *Civil Code* stated: "He [the slave] cannot be a party in any civil action, either as a plaintiff or defendant, except when he has to claim or prove his freedom." Louisiana *Civil Code*, Art. 177, p. 28. Similarly, Article 10 of the 1857 Mississippi *Code* read: "Any person in this State who shall conceive himself illegally detained as a slave in the possession of another, and claiming to be free, may proceed in the circuit court of the county where the master may reside, by petition, on which, after notice to the master, an issue shall be made up to try the question of freedom before a jury." *The Revised Code of the Statute Laws of the State of Mississippi*, Art. 10, p. 236.

[23] On freedom suits, see Ira Berlin, *Slaves without Masters: The Free Negro in the American South* (New York: Pantheon Books, 1975), 33-4, 82-3, 103, 140; Tommy Bogger, *Free Blacks in Norfolk Virginia: The Darker Side of Freedom* (Charlotte: University of Virginia Press, 1997), 94-6; Thomas F. Brown and Leah C. Simms, '"To Swear Him Free': Ethnic Memory as Social Capital in Eighteenth-Century Freedom Petitions," in *Colonial Chesapeake: New Perspectives*, Debra Meyers and Melanie Perreault, eds. (Lanham, MD: Rowman and Littlefield Publishers, 2006), 81-122; Judith Kelleher Schafer, *Becoming Free, Remaining Free: Manumission and Enslavement in New Orleans, 1846-1862* (Baton Rouge: Louisiana State University Press, 2003), 15-33; Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 220-49; and Edlie L. Wong, *Neither Fugitive nor Free: Atlantic Slavery, Freedom Suits, and the Legal Culture of Travel* (New York: New York University Press, 2009).

property. Heirs and executors profited handsomely by keeping enslaved people freed by will in bondage. Freeing slaves also created free blacks, a class of people southern whites considered subversive. Slaves promised their freedom by their deceased masters, nevertheless, sought redress in court and sued heirs and executors for their liberty.[24]

Sometimes a lawsuit or the threat of a lawsuit was an effective enough strategy in convincing heirs and executors to free a slave, as Peter, an enslaved man belonging to the late Moses Kirkland, found in 1824. Immediately after Peter petitioned the district court in West Feliciana Parish for his freedom, Kirkland's heirs filed an answer to his petition admitting that Kirkland had freed Peter in his will and promised to liberate him without delay. The court declared Peter a free man and made the defendants pay the costs of the lawsuit.[25]

Typically heirs did not surrender valuable slave property so easily and often went to great lengths to hold in bondage slaves who had been promised their freedom. In April 1833, Bob and Milley, two enslaved people freed by will in Adams County, Mississippi, sued their late master's testamentary executors for their freedom and the liberty of their seven children. Bob and Milley claimed that their master, Timothy O'Hara, had stipulated in his will that when their youngest child reached ten years of age, the entire family would be freed. O'Hara instructed his executors to take them to Ohio to free them if Mississippi law did not allow the emancipation, and O'Hara even designated funds for that purpose. Yet, after his death, Bob and Milley claimed, one of his executors,

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[24] Judith Schafer has argued that in New Orleans, slaves suing for the freedom promised them in their late masters' and mistresses' wills were surprisingly successful, even in the 1850s as tensions over slavery increased. See Schafer, *Becoming Free, Remaining Free*, chap. 4.

[25] *Peter v. Bradford et al.*, West Feliciana Parish, Louisiana, 1827 in RSFB, Series II, Part F, PAR #20882728.

O'Hara's heir John Nugent, took possession of the family, continued to "fraudulently" hold them "in bondage and slavery . . . as his own absolute property," and "appropriated" their labor "for his own use and the use of his creditors." Nugent's creditors had recently sued him, Bob and Milley told the court, and he had listed them for sale to cover his debts. In addition to their freedom, he owed them $300 that O'Hara had bequeathed to them in his will. They asked the court to declare them free and require Nugent to pay the $300. The court agreed, awarding them their liberty and $300 and condemned Nugent to pay the court costs.[26]

In an effort to retain valuable property, some heirs attempted to keep the provisions of wills secret. Slaves sometimes labored for years after the death of their owners before they realized they should have been granted their liberty and sued. In some cases, courts even awarded slaves back wages, compensating them for the years they had worked without pay. Mary, an enslaved woman in East Baton Rouge Parish, Louisiana, claimed that she was "ipso facto free" according to the terms of her late master's will. She told the court that her former owner, John Marshall, "conscientiously believing that civil and religious Liberty is the natural right of all men," gave Mary and her five children to his daughter, Miriam Morris, for five years, after which they were to be liberated. But Miriam and her husband, Gerard, left Mary in "complete ignorance of the existence of the will and provisions thereof, and did illegally and fraudulently detain" her in the "bonds of slavery." She should have been freed several years prior. She therefore asked the court to grant her and her children their freedom and sought $2,000 in damages for her "services rendered during the eight or nine years of her illegal

[26] *Bob and Milley v. Nugent et al.*, Iberville Parish, Louisiana, 1833, in RSFB, Series II, Part F, PAR #20883304.

detention." The district court found for Mary, granted her and her children their freedom, and ordered the Morris family to pay her $900 compensation and cover the court costs.[27]

Although slaves in both states could—and did—sue for their freedom, Louisiana slaves had an advantage. While Louisiana law denied enslaved people the capacity to contract for wages or enter into marriage contracts, the *Civil Code* allowed slaves to enter into one type of contract: a contract for their freedom.[28] Indeed, antebellum law in Louisiana did not permit slaves to own property without the permission of their masters, but it did allow slaves the right to self-purchase. A slave's ability to contract for his or her freedom was unique to Louisiana and a legacy of the Spanish right of *coartación*. While enslaved people in other states on occasion purchased their liberty if their masters allowed it, only Louisiana slaves enjoyed the legal capacity to enter into a contract to purchase their freedom.[29]

Even in Louisiana, however, a number of factors limited a slave's self-purchase. Because enslaved people could not force a sale, their owners had to approve it and permit their slaves to hire themselves out for wages or peddle goods in their spare time for cash. Slaves wanting to purchase their freedom needed skills or goods to sell. Yet, if they could raise the money to purchase their freedom and their owner was amenable, state law allowed them to contract for their liberty. Slaves in New Orleans had the greatest success contracting for their freedom because they enjoyed more opportunities to work for wages

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[27] *Mary v. Morris et al.*, East Baton Rouge Parish, Louisiana, 1830, in RSFB, Series II, Part F, PAR #20883001.

[28] Article 174 of the *Civil Code* stated that a "slave is incapable of making any contract, except those which related to his own emancipation." Louisiana *Civil Code*, Art. 174, p. 27.

[29] See Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*; and Schafer, *Becoming Free, Remaining Free*, 224.

in their spare time.[30] Still, from time to time slaves in the rural areas of the state made a determined effort to purchase their freedom and entered into contracts with their owners for their liberty.

When their contracts fell apart, Louisiana slaves turned to the courts to safeguard the bargains they had made with their owners and to protect their interests. Deceitful and greedy owners sometimes pocketed the purchase price and denied the existence of the agreement. Slaves' self-purchase contracts were, however, legally enforceable. When owners violated the terms of those contracts, their slaves could sue them in court for their freedom.[31] In 1854, Tom, an enslaved man living in Pointe Coupee Parish, sued his owner, Rene Porche, for his freedom, claiming that Porche was "contractually obliged" to grant him his liberty. In his petition, Tom informed the court that five years earlier, he had entered into a self-purchase contract with Porche for $200. He had fulfilled his end of the bargain and paid Porche the agreed-upon amount, Tom contended, yet Porche refused to live up to his end and continued to hold him as a "slave for life." Tom asked the court to enforce the terms of his contract and "condemn" Porche to "liberate & emancipate him according to law." Moreover, several white men testified on Tom's behalf, supporting his assertion that Porche had publicly acknowledged his "contract to emancipate Tom." For example, William H. Cooley claimed that "Tom had come to him to ask him to sue Porche for his freedom," and because he knew that Tom had paid him

[30] Schafer, *Becoming Free, Remaining Free*, 45.

[31] Judith Schafer found several instances in which the Supreme Court of Louisiana heard the appeals of slaves attempting to gain their liberty by enforcing their self-purchase contracts with their owners. The formula for success in these cases appears to have been producing a written contract as evidence of the contract. Many with only verbal contracts lost their appeals. See Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 224-34; and Schafer, *Becoming Free, Remaining Free*, chap. 3.

the agreed upon price, Cooley thought Tom had a "clear case." The district court judge, however, disagreed, and dismissed the case, claiming that the contract was not in compliance with state law.[32]

When their owners died, slaves also sued heirs and estate administrators to honor their contracts with the deceased. Milien, a man of color, petitioned the district court in St. Landry Parish claiming that in September 1852 he had entered into a contract with his mistress, the late Carmalitte Lacasse, to purchase his freedom for $550. Although he paid the agreed-upon price, the administrator of his mistress's estate, Florian Sonnier, advertised him for sale at auction, along with "some little property" Milien possessed, including two horses, twelve heads of cattle, and a bale of cotton. He asked the court for a writ of injunction prohibiting Sonnier and his "aiders and abettors" from selling him and his property. Moreover, he wanted the court to enforce the terms of his contract with the late Lacasse and declare him a free man. The court granted his request for a writ of injunction, but the outcome of his freedom suit is not known.[33]

Slaves in the Natchez District had the greatest success securing their legal liberty if they could prove that they were free people who had been kidnapped and illegally enslaved. The local legal record in the Natchez District is rife with instances of free blacks claiming that they had been kidnapped and sold into slavery. In the first half of the nineteenth century, with the enormous expansion of sugar and cotton production in the Lower South and the rapid growth of a booming internal slave trade, more than a

[32] *Tom v. Porche*, Pointe Coupee Parish, Louisiana, 1854, in RSFB, Series II, Part F, PAR #20885414. For a similar case, see *Pauline v. Hubert*, Pointe Coupee Parish, Louisiana, 1857, in RSFB, Series II, Part F, PAR #20885717.

[33] *Milien v. Sonnier*, St. Landry Parish, Louisiana, 1855, in RSFB, Series II, Part F, PAR #20885503.

million enslaved men and women were transported from the eastern seaboard to the southern interior. Initially slaveholders themselves moved their slaves to the interior. Yet, over time, they increasingly relied on slave traders—a new faction of merchants whose sole business was to deal in human beings—to build their labor force.[34] The trade in human beings to the southern interior also encouraged the kidnapping of free blacks and nearly free people—often term slaves (those with a fixed number of years to serve before becoming free), indentured servants, or people promised their freedom by individual manumission or statute. Kidnapping occurred often enough to create fear among black people in free states. The abduction of free people of color was an attractive option for slave traders and their agents because it garnered high profits while keeping costs low.[35]

The slave trader enjoyed a sordid reputation in southern society as a dishonest and lecherous drunk who made it his business to separate families. Motivated solely by money, slave speculators were traders in diseased bodies, sharp dealers of disorderly and criminal slaves, abductors of free people, and generally dishonest. Portraying the slave trader as an outcast or a monster served a particular purpose, however. By stigmatizing the slave trader, southern slaveholders created a figurative distance between themselves and those individuals who made it their business to deal in human beings as property.

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[34] See Ira Berlin, *Generations of Captivity: A History of African-American Slaves* (Cambridge, MA: Harvard University Press, 2003), chap. 4; and Berlin, *The Making of African America: The Four Great Migrations* (New York: Viking, 2010), chap. 3.

[35] On the kidnapping of free African Americans, see Berlin, *Generations of Captivity*, 167-68; Berlin, *The Making of African America*, 102; Steven Deyle, *Carry Me Back: The Domestic Slave Trade in American Life* (New York: Oxford University Press, 2005),17, 29, 39, 178; Robert H. Gudmestad, *A Troublesome Commerce: The Transformation of the Interstate Slave Trade* (Baton Rouge: Louisiana State University Press, 2003), 62, 73-5, 159-60; Gary B. Nash and Jean R. Soderlund, *Freedom by Degrees: Emancipation in Pennsylvania and its Aftermath* (New York: Oxford University Press, 1991), 196-201; and Carol Wilson, *Freedom at Risk: The Kidnapping of Free Blacks in America, 1780-1865* (Lexington: University of Kentucky Press, 1994).

With these stereotypes, slaveowners in effect separated the institution of slavery from the marketplace. They conveniently ignored their own culpability in the development of the internal slave trade and insulated themselves from responsibility for the more unsavory aspects of buying and selling human beings.[36]

Slaveholders were not the only people to wield the stereotype of the insalubrious slave trader to their advantage. Slaves suing for their freedom also employed the image of the slave speculator on their own behalf. Indeed, in kidnapping lawsuits, the slave trader often emerged as the ultimate villain. John Neal, a man of color, claimed that slave speculator Branch Jordon held him illegally as his slave and sued him for his freedom in Mississippi in 1828. In his petition, Neal insisted that Jordon had kidnapped him and described Jordan as an "outsider," a "transient person," a "dishonest" man, and a "dealer in slaves." Although Neal offered the court no additional proof of his free status, the court granted his request. The fact that he was held as a slave by an allegedly dishonest, transient slave trader may have been evidence enough of his kidnapping.[37]

Although it was difficult to do so, some people of color found legal remedies for their unjust and illegal enslavement. While many states enacted statutes against kidnapping, the laws were hard to enforce given the voracious demand for enslaved laborers and the greed of those involved in the slave trade. It was often up to those

[36] In many ways, as Michael Tadman demonstrates, the images of the oily slave speculator were myths of convenience. In reality, slave traders, like other successful businessmen, were sometimes leaders of their communities. See Tadman, *Speculators and Slaves: Masters, Traders, and Slaves in the Old South* (Madison: University of Wisconsin Press, 1989), chap. 7. On the stereotypes of slave traders and traders as scapegoats see Deyle, *Carry Me Back*, 9-10; Gudmestad, *A Troublesome Commerce*, 56; and Walter Johnson, *Soul by Soul: Life inside the Antebellum Slave Market* (Cambridge, MA: Harvard University Press, 1999), 24-5.

[37] *Neal v. Jordon*, Adams County, Mississippi, 1828, Records of the Circuit Court, Group 1820-29, Box 56, File 33, CRP, HNF.

illegally held in slavery to seek the means to secure their rightful liberty. In February 1834, Charles and Betsy (alias Lisette) sued Philip Rocheblanc for their freedom in Iberville Parish, Louisiana. They claimed that for more than six years Rocheblanc had "illegally, forcefully, and unjustly deprived them of their liberty" by keeping them as his slaves. They were free people of color and residents of Illinois, Charles and Betsy told the court, where by "virtue of the Constitution and Laws of the State . . . slavery does not and can not by Law exist." Despite Rocheblanc's knowledge of their free status, he "illegally, fraudulently, secretly, and with the intention of depriving them of their liberty" seized them in St. Louis and brought them to Louisiana where he "kept them in a state of slavery." Rocheblanc had even boasted that "they ought to be free . . . in the presence of witnesses," they told the court. They were "entitled to their liberty" and insisted on "legal redress." In addition to their freedom, they wanted monetary damages for the six years they had labored for Rocheblanc without pay—a total of $900—and the costs of the lawsuit. The jury found in favor of Charles and Betsy, awarded them their freedom, and demanded that Rocheblanc pay them $900 and cover the court costs. The court also refused Rocheblanc's motion for a new trial. Charles and Betsy received the "legal redress" they desired.[38]

For kidnapped people of color, attaining legal freedom was an arduous process. Although Charles and Betsy regained their liberty, they lost six years of their lives as

[38] *Charles and Betsy v. Rocheblanc*, Records of the Fourth Judicial District Court, # 1387, Iberville Parish, Louisiana, 1834. For other examples of slaves suing for their freedom on claiming they had been kidnapped see, *Mary Ann v. Kempe*, Adams County, Mississippi, 1818, Records of the Circuit Court, Group 1810-19, Box 43, File 68, CRP, HNF; *Springer v. Hundley*, Adams County, Mississippi, 1822, Records of the Circuit Court, Group 1820-29, Box 13, File 70, CRP, HNF; *Tennet v. Smith*, Adams County, Mississippi, 1823, Records of the Circuit Court, Group 1820-29, Box 23, File 56, CRP, HNF; and *Woodall v. Sexton*, Adams County, Mississippi, 1826, Records of the Circuit Court, Group 1820-29, Box 37, File 36, CRP, HNF; and *Scott v. Jackson*, St. Landry Parish, Louisiana, 1829, in RSFB, Series II, Part F, PAR #20882912.

slaves. For others it took even longer, and some never recouped their freedom at all. Solomon Northrup's twelve-year struggle for freedom underscores the difficulties kidnapped people faced when attempting to regain their liberty. After being drugged and abducted in Washington, D.C., by two con artists who sold him into slavery, Northrup was eventually sold at auction in New Orleans. He spent several years enslaved in Louisiana, seeking every opportunity to attain his freedom, but without success. After failed attempts to send letters home to notify his family about his condition and location, Northrup eventually gained the assistance of a white carpenter and abolitionist, a Mr. Bass. After learning of Northrup's tragic predicament, Bass agreed to mail letters on Northrup's behalf, despite the risk such an act posed to both his safety and Northrup's. Sending clandestine letters home with details of his whereabouts triggered an extended struggle for his release. Northrup's wife had trouble proving his free status to the governor of New York, Washington Hunt. After finally deciding to help Northrup, Hunt appointed Henry Northrup, a member of the white family Solomon Northrup's father had served for years, as the official state agent to rescue Solomon. Henry Northup negotiated with a former Louisiana senator, a Supreme Court justice, and the U.S. secretary of war to provide support for his mission. Henry Northrup still confronted obstacles locating Solomon despite his careful preparations and found him only with the help of a sympathetic local sheriff. After finally regaining his freedom, Solomon Northrup filed kidnapping charges against his abductors. The charges were dropped because of technicalities, and, unlike Charles and Betsy, Northrup never received remuneration for the twelve years he spent as a Louisiana slave.[39] Without white allies willing to come to

[39] Solomon Northrup, *Twelve Years a Slave: Narrative of Solomon Northrup, a Citizen of New-York, Kidnapped in Washington City in 1841, and Rescued in 1853, From a Cotton Plantation Near the*

his aid (both in Louisiana and New York), Northrup might not have been released from bondage.

The most successful litigants had local white witnesses to confirm their freedom. In 1822, Benjamin and Bradford Lewis sued J. W. Clark and David Slater for their freedom in the Superior Court in Natchez. They were free men of color from Indiana who had been "forcibly taken to the state of Tennessee and . . . sold as slaves" to Clark and Slater. Moreover, their captors now conspired to "take them to distant ports [to] dispose of them as slaves for life." After several white men appeared before the court and declared that Benjamin and Bradford were free men, the jury found in their favor and granted them their liberty.[40]

In kidnapping cases, in particular, witnesses played a central role in helping determine outcomes because they provided details about events outside the courts' jurisdictions. Without local knowledge of the people and circumstances involved a given case, courts frequently turned to testimony offered by distant witnesses. Frank Irwin, a man of color suing for his liberty, claimed that he was "without friends" in Louisiana, and witnesses from outside of the local community helped the district court in West Feliciana Parish determine his status. In his 1837 petition to the court, Irwin contended that he was born a slave in Pennsylvania and gained his liberty at the age of twenty-one. He then moved to Cincinnati, Ohio, and lived there for several years as a free man before he was "seized and delivered as a slave" by a kidnapper named Harris. Harris "carried" him to Kentucky, Irwin recounted, and "after much cruel treatment," sold him as a slave

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Red River, in Louisiana (Auburn, NY: Derby and Miller, 1853).

[40] *Lewis and Lewis v. Clark and Slater*, Adams County, Mississippi, 1822, Records of the Circuit Court, Group 1820-29, Box 13, File 39, CRP, HNF.

to Thomas Powell, a Kentucky man temporarily residing in Louisiana. Powell denied Irwin's allegations and insisted that he was his slave.

Neither Irwin nor Powell (or the circumstances that brought them together) were well-known in the greater West Feliciana Parish community. Thus, witnesses from outside the area proved central for the local court to determine Irwin's status and the course of events that brought him to Louisiana. The district court in West Feliciana Parish issued a "commission" to examine witnesses in Ohio and Kentucky to establish the facts in the case. These witnesses provided their testimony to justices of the peace and notaries public from their home jurisdictions, who then sent the interrogatory to the court in Louisiana. Moreover, for those not familiar with Irwin and his circumstances, descriptions of physical characteristics from the witnesses ensured they were dealing with the right man. Witnesses portrayed him as "dark but not very black," "tall," "large boned," "with blunt & heavy features," and a "clumsy looking negro." The court then matched those descriptions to the man petitioning the court in West Feliciana Parish for his freedom.

The witnesses' accounts, however, painted a blurred picture. Indeed, in his opinion, the judge remarked that he had "no small difficulty in reconciling their testimony." Witnesses on Irwin's behalf claimed that although he had been born a slave in Pennsylvania in 1809, his master freed him when he reached the age of twenty-one. Several white men from Kentucky, however, recounted a different version of the story. These men claimed that Irwin was born a slave in Pennsylvania in 1809 and brought to the state of Kentucky shortly after his birth. He remained in Kentucky as a slave on the farm of General James Taylor until he ran away in July 1830 to Ohio, where he lived for

several years. Taylor found Irwin in Cincinnati a short time after he "eloped," though due to his age and infirm condition, he did not capture Irwin himself. Thus, Irwin remained in Cincinnati and lived as a free man. In 1836, however, Taylor sold Irwin to his son-in-law, a Mr. Harris. Harris promptly traveled to Cincinnati, seized Irwin as his property, brought him to Kentucky, and sold him to Powell.

After sorting through the various accounts from faraway witnesses, the Louisiana judge drew the following conclusions: Irwin was born in 1809 in Pennsylvania and lived in Cincinnati from 1830 to 1836 with his master's knowledge. All of the witness testimony supported these suppositions. Thus, the judge deduced, Irwin was a free man because he was born in Pennsylvania and lived in Ohio in the years after the 1787 Northwest Ordinance prohibited slavery north of the Ohio River. Moreover, the judge continued, "even if he was born a slave, having resided in the state of Ohio with the knowledge of his owner at that time, he is therefore free." Taylor, the judge argued, essentially consented to Irwin's residence in Ohio because he did not take any legal action to recapture him. Therefore, the judge declared Irwin a free man and ordered Powell to pay the costs of the lawsuit. Although Powell appealed, the Supreme Court of Louisiana affirmed the lower court's decision and again ordered Powell to pay costs. While the witnesses offered competing accounts, the judge uncovered the corresponding pieces of the story and used that testimony to determine Irwin's rightful status as free.[41]

The information witnesses provided, their testimony about the events in question, their assessments about the character and actions of the people involved in the disputes, and their opinions on the matters at hand helped weave together a story about the

[41] *Irwin v. Powell*, West Feliciana Parish, Louisiana, 1837, in RSFB, Series II, Part F, PAR #20883713.

circumstances of a case. These narratives aided the court in its attempts to assess the litigants' competing claims. Through their use of witnesses, slaves' wielded their ties to their communities—both local and distant—to their advantage and employed their extensive social networks on their own behalf.

Legal disputes involving slaves did not begin and end in the courtroom. Slaves commonly drew upon their local communities and leveraged their considerable social networks in their battles for legal freedom. They called witnesses, found allies, cultivated respectable reputations in their communities, and sought legal help from their neighborhoods. They learned valuable lessons from fellow slaves. Indeed, suing for one's liberty was part of a much broader process.

When wrongfully enslaved and suing for freedom, it helped if slaves had powerful allies willing to come to their aid, as cases like Solomon Northrup's suggest. John Hamm, a man of color petitioning for his liberty in Natchez, employed the assistance of a prominent and talented local attorney and rallied the support of several white men in his efforts to secure his freedom. In his petition to the Adams County Superior Court in 1819, Hamm told the court that he was an indentured servant and the son of a white servant woman, Elizabeth McGuire, and a black slave. His mother died "shortly after his birth" in Kent County, Maryland, and he "was bound as an apprentice" to a local man named William Sutton until his twenty-first birthday. With the permission of his master, Hamm relayed, he attended an evangelical "camp meeting" in the woods of Kent County in August 1816. During the meeting, however, Hamm's cousin (also an African American) and two other unsavory characters kidnapped him. They then

"forcibly . . . brought him down the river to Natchez where he was transferred from one to another until . . . James H. Steele" bought "him as a slave for life." He asked the court for his freedom from Steele and Charles Green, two local men.

In his legal battle for his liberty, Hamm had many influential people on his side, including his lawyer, William B. Griffith, a gifted litigator and one of the leading attorneys in the state. Griffith commanded respect in Natchez and throughout Mississippi. He ran a successful law practice and had several prominent partners, including John A. Quitman, a politician who would later serve as the governor of Mississippi and as a judge on the High Court of Errors and Appeals (the predecessor to the Mississippi State Supreme Court). Griffith had a reputation for fair dealing and frequently represented enslaved people in their lawsuits for their freedom.[42]

Griffith went to great lengths to help Hamm secure his liberty. He began by seeking out Hamm's master in Maryland and sent him a letter requesting his assistance. Griffith asked Sutton to secure the depositions of several local witnesses familiar with Hamm's status as an indentured servant and privy to the events in question. He gave Sutton precise instructions on how to conduct the depositions in order for them to be legally admissible in the circuit court in Natchez. Griffith also called upon his own professional and personal networks to support Hamm's bid for freedom. He suggested

[42] On William B. Griffith, see Dunbar Rowland, ed., *Mississippi: Comprising Sketches of Counties, Towns, Events, Institutions, and Persons, Arranged in Cyclopedic Form*, Vol. II (Atlanta, GA: Southern Historical Publishing Association, 1907). For other instances in which Griffith represented slaves in their lawsuits for freedom, see *Elias v. Bell*, Adams County, Mississippi, 1818, Records of the Circuit Court, Group 1810-19, Box 35, File 124, CRP, HNF; *Anthony v. Reed and Carter*, Adams County, Mississippi, 1819, Records of the Circuit Court, Group 1810-19, Box 42, File 21, CRP, HNF; *State of Mississippi v. Kiah*, Adams County, Mississippi, 1821, Records of the Circuit Court, Habeas Corpus Files, Box 5, CRP, HNF; *Lewis and Lewis v. Clark and Slater*, Adams County, Mississippi, 1822, Records of the Circuit Court, Group 1820-29, Box 13, File 39, CRP, HNF; *de la Croux v. Reinhart*, Adams County, Mississippi, 1822, Records of the Circuit Court, Group 1820-29, Box 13, File 77, CRP, HNF; and *Smith v. Welsh*, Adams County, Mississippi, 1827, Records of the Circuit Court, Group 1820-29, Box 51, File 77, CRP, HNF.

that Sutton seek the council of Ezekiel Chambers, a Maryland lawyer and the brother of James Chambers, a Natchez resident and a close friend of Griffith's.[43] Chambers, Griffith believed, would "see that everything [was] done in due form" and "immediately." Moreover, Griffith wanted the witnesses to address the following questions: was Hamm the son of a white woman and a slave father? What was Hamm's reputation "in the neighborhood?" Did anyone in the neighborhood think of Hamm as "as slave for life or was he ever claimed as such by anyone?" Did he have any identifiable marks on his body? Was he an indentured servant? If so, "by whom and for how long a period?" How was he kidnapped and by whom? Griffith insisted that the witnesses provide "full & explicit . . . answers, and state everything which [they] thought [would] be material" in order to help "rescue a fellow from an unjust & cruel state of slavery."

Sutton swiftly came to Hamm's aid. He wrote to the judge in the case, William Shields, and provided him with a copy of Hamm's indenture agreement. Sutton insisted that Hamm was his apprentice and his responsibility. Whether motivated by human feeling for Hamm or by a desire to recover his indentured servant, Sutton pledged to do anything in his "power to [help] release him from the unrighteous bonds which the inequity of his fellow man forced him to wear."

Ezekiel Chambers, the Maryland attorney, wrote a letter to the Natchez judge assuring him that Hamm was an indentured servant borne of a white mother. Hamm's cousin, "a negro man named Phil," kidnapped him and sold him to a slave trader. "His freedom," Chambers claimed, "was not in the least degree controversial." In addition to his own opinion on the matter, Chambers sent the court the depositions of twelve white

[43] Ezekiel Chambers would become a U.S. Senator and a Maryland District Court Judge.

witnesses, including several people familiar with Hamm since his birth. Without exception, each witness claimed that Hamm was an indentured servant and not a slave, the son of a white mother and a slave father, had been kidnapped in Maryland, and illegally sold into slavery. Due to the fragmentary nature of the record, the verdict in Hamm's lawsuit is missing. But given the overwhelming evidence in Hamm's favor, Griffith's stature in the Natchez community, his success in helping other wrongfully enslaved people secure their legal freedom, and the number of whites who offered their assistance, it is likely that Hamm obtained his liberty.[44]

Having credible white men supporting their lawsuits certainly provided slaves with an advantage in the courts. Elias Wilson, a man of color held in the Natchez jail as a runaway, successfully secured his release after two white men swore an oath that he was a free person and not a slave.[45] The oath of those with high social standing in their communities garnered respect and signified the legitimacy of the account in question. In

[44] *Hamm v. Green*, Adams County, Mississippi, 1819, Records of the Circuit Court, Group 1810-19, Box 43, File 76, CRP, HNF.

[45] *Wilson v. State of Mississippi*, Adams County, Mississippi, 1825, Records of the Circuit Court, Habeas Corpus Files, Box 1, CRP, HNF. For other examples of free people of color held as runaway slaves and suing for their freedom, see Petition of Stewart, East Baton Rouge Parish, Louisiana, 1838, in RSFB, Series II, Part F, PAR #20883807; *Territory of Mississippi v. Spain*, Adams County, Mississippi, 1817, Records of the Circuit Court, Group 1810-19, Box 35, File 34, CRP, HNF*; State of Mississippi v. Grayson*, Adams County, Mississippi, 1821, Records of the Circuit Court, Habeas Corpus Files, Box 5, CRP, HNF; *State of Mississippi v. Kiah*, Adams County, Mississippi, 1821, Records of the Circuit Court, Habeas Corpus Files, Box 5, CRP, HNF; *Petition of Jones*, Adams County, Mississippi, 1826, Records of the Circuit Court, Habeas Corpus Files, Box 5, CRP, HNF; *Rebecca v. Jones*, Adams County, Mississippi, 1828, Records of the Circuit Court, Habeas Corpus Files, Box 2, CRP, HNF; *State of Mississippi v. Lewis*, Adams County, Mississippi, 1841, Records of the Circuit Court, Habeas Corpus Files, Box 3, CRP, HNF; *State of Mississippi v. Faulk*, Adams County, Mississippi, 1841, Records of the Circuit Court, Habeas Corpus Files, Box 3, CRP, HNF*; State of Mississippi v. Demoya*, Adams County, Mississippi, 1841, Records of the Circuit Court, Habeas Corpus Files, Box 3, CRP, HNF; *Stearns v. Newman*, Adams County, Mississippi, 1845, Records of the Circuit Court, Habeas Corpus Files, Box 3, CRP, HNF; and *State of Mississippi v. Ritchey*, Adams County, Mississippi, 1845, Records of the Circuit Court, Habeas Corpus Files, Box 3, CRP, HNF. For an example of an Indian held as a runaway slave and suing for freedom, see Petition of Adaline, East Baton Rouge Parish, 1851, in RSFB, Series II, Part F, PAR #20885127.

the predominantly oral culture of the Old South, the words of powerful white men were the most believable.[46]

Not all white men's words carried the same weight, however. When Debby sued her master, Anthony Campbell, for her freedom in 1821 Natchez, she enlisted the help of James Grafton. Before she came into Campbell's possession, Debby had belonged to Daniel Grafton, James Grafton's brother who had died some years past. Both Debby and James Grafton maintained that she was an indentured servant and not a slave for life. Grafton claimed on oath that he had read the indenture agreement (although it had since gone missing) between Debby and his brother. He also insisted that his brother frequently stated that once Debby served her fourteen years, he would set her free. Anthony Campbell, a prominent journalist, politician, and a Pine Ridge planter, denied Debby's claims and contended that she was a slave for life. Without the indenture contract, neither Debby nor Grafton could prove to the court's satisfaction that she was entitled to her freedom. Indeed, in his opinion, the judge stated "that the declaration of Grafton is not sufficient to show her title to freedom." His word was not enough to free her in light of the evidence presented by Campbell.[47]

Robert Colston, a man of color suing for his freedom in St. Landry Parish, Louisiana, called upon the word of two of the most powerful men in the nation—President James Monroe and Secretary of State John Quincy Adams—to support his efforts for legal liberty. Colston claimed to "enjoy the privileges of the free," until Dr.

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[46] Laura Edwards argues that in the post-Revolutionary Carolinas, "credible people . . . could literally create truth with their words. . . . Through the very act of speaking, credible people could elevate their accounts and opinions over other information, whether verbal statements or physical evidence." Edwards, *The People and Their Peace*, 114.

[47] *Debby v. Campbell*, Adams County, Mississippi, 1821, Records of the Circuit Court, Group 1820-29, Box 6, File 102, CRP, HNF. On Anthony Campbell, see D. Clayton James, *Antebellum Natchez* (Baton Rouge: Louisiana State University, 1968).

Moses Littell snatched him in Washington D.C. "by violence and force . . . and reduced [him] to a state of slavery." Littell, "alleging that he had purchased [Colston] as a slave," then sold him to John D. S. Arden of Louisiana. He asked the court to issue an order to remove him "from the illegal and forcible possession of those who [held] him," and declare him a free man. In his answer to Colston's petition, Arden insisted that Colston "was a slave before and at the time" that he had "purchased him." He had bought Colston "fairly and for a good & bona fide price" from agents in Baltimore who produced a legal bill of sale for Colston. Moreover, Colston "was born a slave," Arden claimed, and he wanted the judge to dismiss the lawsuit.

Colston, however, offered indisputable proof to support his claims. As evidence of his free status, Colston supplied the court with a transcript of a trial in which the circuit court of the District of Columbia found him guilty for the theft of a congressman's gold watch. He also provided the court with a subsequent pardon document issued by James Monroe and John Quincy Adams. Both of these records described him as a "free mulatto" and convinced the Louisiana court of his free status.

President Monroe claimed he pardoned Robert Colston because of Colston's father, George Colston's, reputation as a respectable and upright man. He knew George Colston personally, Monroe declared in the pardon document, and insisted that he was "a man of virtuous and industrious habits of life and well spoken of by those who had long known him." The "good character and merits" of George Colston "specially moved" Monroe to "wholly exonerate" his son. Robert Colson had engaged in "vicious practices," but his father had promised to see "to his reformation." His father's

reputation saved him from a $100 fine and a public whipping of thirty-nine lashes.[48] Without the trial transcript and a presidential pardon explicitly describing him as a free man of color, his reputation as a convicted thief probably would have made his attempts at legal liberty all the more arduous. Indeed, the reputations of enslaved men and women played an important role in their lawsuits.

For slaves suing for their freedom, leveraging reputation represented a defensive legal strategy. Because they had to prove they were fit for the responsibilities of freedom, slaves needed to cultivate respectable reputations and then use others' positive assessment of their character and actions to support their case. Slaves could use their good reputations to defend themselves against those who might object to giving them their freedom. After all, these freed slaves might remain in the neighborhood after the conclusion of their lawsuits. They needed to demonstrate that they would not be disruptive or criminal forces, or become public charges, and could add something of value to the local community.[49]

Slaves, then, often attempted to demonstrate that they had performed their expected roles within the social order when petitioning for their freedom. Cultivating relationships with powerful white allies, for instance, meant that they had to behave (and show that they had behaved) in ways expected of them as subordinated people. They worked within the boundaries of their subordination by highlighting their attributes as "good" slaves. Slaves frequently insisted that they were obedient, well-behaved,

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[48] *Colston v. Littell and Arden*, St. Landry Parish, Louisiana, 1821, in RSFB, Series II, Part F, PAR #20882103.

[49] Mississippi and Louisiana laws governing the manumission of slaves also insisted that slaves demonstrate respectable qualities or show they had performed some kind of meritorious service for their masters in order to be freed.

industrious, had served their masters devotedly, and neither prone to running away nor engaged in criminal activity. When Tom sued Rene Porche for his freedom (discussed above), he used his good reputation to support his claims to liberty. Tom filed an amended petition with the court simply to insist that he was fit for the responsibilities of freedom because he "had led an honest & industrious life." Several white men testified on his behalf and provided the court with a positive character assessment of Tom. For example, Emile Jarreau stated that Tom was not "a rogue," "thief," or a "runaway." An assessment such as Jarreau's about Tom's reputation helped shield him from possible attack.[50] By emphasizing their positive attributes and obedient behavior, enslaved men and women defended themselves against potential claims that they were unfit for freedom.

Wielding reputation also proved an effective offensive legal strategy as well. In the face-to-face communities of the Old South where one's standing rested on notions of honor, reputation, and mutual obligation, the public nature of slaves' lawsuits might have a negative effect on the reputations of those they were suing. Just as wives damaged the reputations of their husbands by publicly highlighting their inability to properly manage their households, the petitions of slaves could jeopardize their masters' reputations in similar ways. These lawsuits indicated that the slaveholder had failed in some way—failed to honor his promises to and agreements with a slave, failed to control a resistant

[50] *Tom v. Porche*, Pointe Coupee Parish, Louisiana, 1854. For similar examples see *Mary v. Morris*, East Baton Rouge Parish, Louisiana, 1830; *Hamm v. Green*, Adams County, Mississippi, 1819; *Debby v. Campbell*, Adams County, Mississippi, 1821; and *Milien v. Sonnier*, St. Landry Parish, Louisiana, 1855.

and litigious slave, or failed to realize that a lying slave trader duped him into buying a kidnapped free person. These failures might reflect poorly on him as an inept master.[51]

The kinds of legal strategies enslaved men and women employed in the courts—calling witnesses, seeking powerful allies, leveraging the politics of reputation—probably stemmed from lessons learned within their own communities. The slave neighborhood served as a kind of law school, providing enslaved people with the practical legal education necessary to face slaveholders in court as shrewd litigators. Within their neighborhoods, enslaved men and women told stories and listened to the tales of others, gossiped, and conspired.[52] They collected information about criminal and civil trials, executions of convicted slaves, brutal masters and overseers, the reach of slave patrols, and whippings and punishments. They discussed the deaths of owners and heirs' legal contests over wills, sympathetic attorneys and judges, disputes over manumissions, battles for freedom, courtroom policies, legal gossip about town, and the laws governing their lives. From those in their neighborhoods, they learned lessons about which strategies worked and which did not. Enslaved Mississippians in the immediate Natchez area, for instance, probably discussed attorney William B. Griffith's reputation for successfully representing slaves in their lawsuits for freedom. Those with experiences with him, those who had learned a bit about the law from watching him and interacting

[51] For an excellent discussion of slaves' influence on the public assessment of their masters' character inside and outside of the courtroom, see Gross, *Double Character*, chap. 4.

[52] Anthony Kaye describes the slave neighborhood as both a physical location and a state of mind. Indeed, according to Kaye, "slaves defined neighborhoods precisely, as adjoining plantations, because this was the domain of all the bonds that constituted their lives (4)." Slave neighborhoods also provided slaves with "their own sense of place. . . Neighborhoods were a mode of understanding society (5)." Thus, "[t]he neighborhood was a place; the arena for activities of every type; a set of people, bonds, and solidarities; a collective identity (5)." See Kaye, *Joining Places*.

with him, and those who had heard stories about him brought that information back to the neighborhood.

The experiences of others in the neighborhood provided enslaved men and women with an indispensable legal education. They discovered the strategies that worked and those that did not. While Bob Moussa, a slave who sued two white men to enforce the terms of Julien Poydras's will (discussed above), failed to obtain redress in court for the personal injustices done to him, his actions were not futile.[53] Over the next decade, sixty-two enslaved men and women who had once belonged to Poydras learned valuable lessons from Moussa's defeat and used the Louisiana courts to enforce the provisions of their late master's will. For example, Moussa lost because he did not have the legal right to instigate a civil suit for anything but his freedom. However, the slaves who sued after him found an important and powerful ally to stand up with them in court and initiate their lawsuits for them—Poydras's nephew, Benjamin Poydras. With Benjamin Poydras's help, they fought to enforce the finer points of the will—manumission dates, promises for humane treatment, annual stipends without requiring work, and to stop sales separating them from the plantations where they lived and labored. All but eleven won their lawsuits—lawsuits that directly influenced the distribution of over two million dollars in property and prompted future litigation between Poydras's heirs.[54]

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[53] *Moussa v. Allain*, West Baton Rouge Parish, Louisiana, 1825.

[54] See for example *Poydras v. Murrain*, Pointe Coupee Parish, Louisiana, 1835, in RSFB, Series II, Part F, PAR #20883528; *Poydras v. Taylor et al.*, Pointe Coupee Parish, Louisiana, 1835, in RSFB, Series II, Part F, PAR #20883594; *Pollard et al. v. Delaware and Murrain*, Pointe Coupee Parish, Louisiana, 1836 in RSFB, Series II, Part F, PAR #20883609; *Leblanc v. Chained*, Pointe Coupee Parish, Louisiana, 1837, in RSFB, Series II, Part F, PAR #20883704; and *Poydras et al. v. Bonnie and Delaware*, Pointe Coupee Parish, Louisiana, 1839, in RSFB, Series II, Part F, PAR #20883937.

Moussa's lawsuit did not become binding legal precedent. After all, he lost his case and remained Leblanc's slave. But his actions in court shaped the next round of the battle over Poydras's property. Because the dominant view of the law is utilitarian, failed cases are often viewed as having no effect on the law and lawmaking-processes. In this winner-take-all model of American law, the success of a lawsuit is measured by courtroom victories, direct results, and immediate change. To dismiss the importance of Moussa's lawsuit, however, would be to ignore the more nuanced (and less tangible) social or political effects of a given case and to overlook an essential ingredient in understanding the historical development of the law. Moreover, it mistakenly renders those with little socio-economic or political power largely irrelevant in law, except as victims of it. Moussa's failures in court, after all, helped provide sixty-two other enslaved people with the legal knowledge necessary to challenge their owners, improve their lives, and influence the dispersal of an enormous estate.

The enslaved men and women who initiated civil suits on their own behalf in the local courts of Mississippi and Louisiana successfully employed their extensive community networks and knowledge of the southern legal system to their advantage. Indeed, they approached the courts as astute litigators, wielding the law to their own benefit and challenging those who enslaved them. For some enslaved men and women, the courts represented a site of justice and fairness—a place to air grievances and redress past wrongs. In ways similar to wives petitioning the local courts in order to force their husbands to behave better or acquiesce to their demands, slaves strategically petitioned to publicly shame their owners, force better treatment, gain increased privileges, or secure

their freedom. While slaves used several strategies to petition the courts and sought the aid of witnesses and allies, enslaved litigants were the prime movers behind their cases. White men like Robert Griffith and Mr. Bass acted at the behest of slaves.

Confronting a slaveholder in court was an act of resistance. Suing for freedom probably was not the first time slaves defied their masters or challenged the terms of their enslavement. Indeed, Jean Louis, an enslaved man in Louisiana, ran away and hid on a neighboring plantation to avoid his sale before he initiated a lawsuit for his freedom against his owner.[55] Slaves brave enough to battle an imposing court system probably resisted their masters in other ways as well in an attempt to dictate the conditions of their bondage. For some slaves, then, suing in court was perhaps an extension of tool breaking, temporarily absconding, feigning illness, and work slow-downs as strategies for increased autonomy over their lives.

When suing for their freedom, however, slaves conceded their subordination and worked within its boundaries. Successful petitions for freedom required enslaved men and women to perform a kind of narrative gymnastics. They needed to transform their legal enslavement from a masters' *right* under the law into a *crime*. Using the courts as a pathway to freedom by contending that they were wrongfully and *illegally* enslaved, however, meant acknowledging that there were circumstances in which they could be justly and *legally* enslaved. After all, laws allowing slaves to sue for freedom were not intended to protect the rights of slaves; instead, these laws were meant to protect the rights of free people. Those suing for their freedom were not challenging the legitimacy of the institution of slavery, just its excesses and wrongs. By going to the law to petition

[55] *Jean Louis v. Herbart*, West Baton Rouge Parish, Louisiana, 1820, in RSFB, Series II, Part F, PAR #20882016.

for legal freedom, slaves affirmed legal slavery. They sought their freedom on the terms dictated by a slaveholding system and confirmed its authority. By accusing slaveholders of illegally holding free people in bondage, enslaved men and women reinforced the system of slavery by making it work according to the highest southern ideal. Still, the courts freed wrongfully enslaved people and gave others a degree of control over their lives. Although they did not directly challenge their masters' right to enslave them, slaves in Mississippi and Louisiana used the local courts to play a central role in negotiating what their place within a slaveholding society would be.

CHAPTER 4

"This Useless and Dangerous Portion of our Population:"[1] Free Black Litigants and the Local Courts

"As we have before remarked, a free negro is an anomaly—a violation of the unerring laws of nature—a stigma upon the wise and benevolent system of Southern labor—a contradiction of the Bible. The status of slavery is the only one for which the African is adapted; and a great wrong is done him when he is removed to a higher and more responsible sphere."[2]

- Jackson *Semi-Weekly Mississippian*, May 21, 1858

In spring 1849, William Johnson, a leader of the free black community in Natchez, Mississippi, became involved in a legal dispute with a neighbor, Baylor Winn, that led to Johnson's death. Johnson and Winn had been friendly for many years. Their friendship dissolved, however, after Winn purchased the swampland adjacent to Johnson's and, in blatant disregard of the boundary lines between their properties, began cutting timber on Johnson's land. Before suing Winn in court, Johnson first attempted to compromise with him. At the suggestion of his lawyers he asked Winn to settle the dispute by agreeing to resurvey the boundary line between their land. Winn refused. Johnson secured a court-ordered survey, but after discovering that Winn continued to cut timber on his land, Johnson sued Winn for trespassing. In May 1851, before the lawsuit went to a final trial, Johnson proposed another compromise that included a survey paid for by both parties. This time Winn agreed, and Johnson dismissed the suit. The

[1] Woodville (MS) *Republican*, August 4, 1827.

[2] Jackson *Semi-Weekly Mississippian*, May 21, 1858, quote in Ira Berlin, *Slaves Without Masters: The Free Negro in the Antebellum South* (New York: Pantheon, 1974), 341.

disagreement between the two men, however, was far from over. A month later, in mid-June 1851, Winn ambushed Johnson and fatally shot him in the presence of three African American witnesses, including Johnson's son. Johnson died the next morning after naming Winn as his assassin. Local authorities arrested Winn and jailed him for two years, but after three trials, Winn was released from custody.[3]

The day after Johnson's murder, a Natchez newspaper, the *Courier*, printed a tribute to Johnson, extolling his good reputation. The *Courier* portrayed Johnson as a man with a "peaceable character . . . [in] excellent standing" in the community. Johnson held "a respectable position on account of his character, intelligence, and deportment." "Many of [the] most respected citizens" of Natchez attended his funeral, and Reverend Watkins of the Methodist church insisted that Johnson's "example [was] one well worthy of imitation by all of his class." The *Courier* implicated Winn as Johnson's murderer and said that he "repeatedly . . . threaten[ed] Johnson's life." While most in Natchez knew Winn as a man of color, Winn himself claimed "to be a white man, and [had] voted and given testimony as such." Because only African Americans witnessed the crime and could not testify against whites, the *Courier* maintained that Winn's race might decide his fate.[4] Indeed, it did. Despite Winn's reputation as "black hearted wretch" and the certainty about town of his guilt, Winn escaped conviction by claiming to be white.[5]

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[3] Edwin Adams Davis and William Ransom Hogan, *The Barber of Natchez* (Baton Rouge: Louisiana State University, 1954), chap. 22.

[4] Natchez *Courier*, June 20, 1851. See also The Natchez *Free Trader*, June 18, 1851; Woodville *Republican*, June 24, 1851; and Davis and Hogan, *The Barber of Natchez*, 265-66.

[5] In a letter to Johnson in late 1849, William Moseley, a respected Natchez man, wrote that "[e]very honest man knows B. Winn to be a black hearted wretch and those in co. with him no better." Newspaper accounts of Winn's trials echoed Moseley's opinion of Winn. Moseley to Johnson, November 28, 1849, W.T. Johnson Collection, Mss #529, Box 1, Folder 1, Louisiana State University Archives, Baton Rouge.

Johnson's reputation as a fair-minded businessman, slave owner, and friend to powerful white men had long offered him and his family an elevated and protected position in the larger Natchez community and allowed him privileges usually denied free people of color. Born a slave in Natchez and the son of a slave woman and her white master, Johnson's father manumitted him in 1820 and set him up in business as a barber. Johnson swiftly become one of Natchez's most prosperous and respected free blacks. Among free people of color in Mississippi, Johnson was something of an aristocrat. At the time of his death, he had accumulated more than $25,000 in property. This figure included the three most successful barber shops in Natchez, a small plantation south of town called Hard Scrabble, two houses in town, slaves, and farm tools and livestock.

In personal and business matters, Johnson conducted himself much like a white man of the merchant class. He set high standards of respectability and conduct for himself, his family, and his apprentices, and felt superior to most of the free black and poor white populations in Natchez and the surrounding area. Although he could not vote or hold office, Johnson paid close attention to party politics and was a lifelong Democrat. He read voraciously, educated his children, and attended art exhibits and music concerts. Johnson engaged in a good deal of business with local residents, white and black. Although he was once enslaved himself, Johnson regarded slavery in much the same way as white slaveowners and bought and sold slaves. He rented buildings and rooms to white men and hired them as laborers and overseers on his farm outside of town. In one year, he made sixteen loans to local whites totaling more than $2,000 and made a profit through the interest he charged them. He entered into contracts with whites and other

free blacks, and when he sued in court to enforce them, he hired white attorneys to represent him.

Johnson also allied himself with white men in Natchez. His associates included nabob, Colonel Adam L. Bingaman, a wealthy and respected white man and prominent Whig politician who had a long relationship with a free black woman. Johnson's home on State Street was in the white section of town. His neighbors included banker Gabriel Tichenor (who was the former owner and father of Ann Battles Johnson, Johnson's wife) and Peter Lapice, a prominent businessman and owner of Whitehall and Arnolia plantations.

Johnson's privileged position shielded him from many of the restrictions that free blacks faced, especially campaigns to remove free people of color from the state. While other free blacks petitioned to remain in Mississippi, the Johnson family did not have to present such petitions to the local courts or the state legislature. Their standing in the community spoke for itself, and they never faced persecution. However, Johnson did have to secure petitions for his free black apprentices and called upon his connections to the white community when doing so. He asked several of his white acquaintances to sign the petitions supporting his apprentices' requests to remain in the state. Indeed, as he commented in his diary, "Those names are an Ornament to Any paper—Those are Gentlemen of the 1st Order of Talents and Standing."[6]

Johnson's good reputation also protected his mother, Amy Johnson, an infamous troublemaker, from court action. Until her death in 1849, Amy Johnson enjoyed a certain amount of notoriety in Natchez. Although only five feet tall, she was prone to fighting

[6] William Johnson's Journal, September 5, 1841, W.T. Johnson Collection.

real and imagined adversaries, battles that extended from the streets into the courtroom. In 1816, she sued Alexander Hunter, a white man, for damages after a fistfight and received $25 compensation.[7] Her son estimated that his mother fought three public quarrels a week and averaged one a day with her family. In spite of her fractious nature, Amy Johnson's status as the mother of a successful barber and property owner probably shielded her from trouble with local authorities. Although she approached the local courts several times to fight her battles and sued whites and blacks a number of times to recover damages for assaults, Amy Johnson never faced criminal charges.[8]

Johnson himself never openly challenged the conventions of the world in which he lived. Instead, he struggled to fit into that world and gain its acceptance. He never attained the social equality he craved, however, and despite his elevated status amongst free blacks, Johnson was vulnerable. His murder in 1851, in particular, served as a reminder that he was black man in a white man's regime. It was a bitter irony that his death was avenged by law no more than if he had remained a slave. Johnson's murderer went unpunished because Mississippi law banned blacks from testifying against whites. While Winn was reputed to be a man of color, the prosecutor could not prove his "negro blood," and in each of the three trials the court did not admit the eyewitness testimony. While Johnson behaved respectably, acquired skills that made him valuable in the

[7] The jury awarded Amy Johnson $25 in damages. See *Johnson v. Hunter*, Adams County, Mississippi, 1816, Records of the Circuit Court, Group 1810-19, Box 36, File 69, CRP, HNF.

[8] In 1814, Amy Johnson sued another white man for $1000 damages for whipping and beating her, and kicking her while she lay on the ground. The outcome of that case is not known. See *Amey v. Davis*, Adams County, Mississippi, 1814, Records of the Circuit Court, Group 1810-19, Box 30, File 15, CRP, HNF. She also sued Arthur Mitchum, a free black man, for damages for assault. While she won that case, the court only granted her one cent in damages and probably viewed the charges as frivolous. See *Johnson v. Mitchum*, Adams County, Mississippi, 1822, Records of the Circuit Court, Group 1820-29, Box 12, File 96, CRP, HNF.

community, demonstrated that he was not a threat to the racial status quo by buying and selling slaves, and allied himself with local whites, he still remained at risk. In the end, all of his efforts to gain an elevated position in his community would not be enough to obtain justice in court for his murder. The benefits of a good reputation and community support had limits.[9]

As the life and death of William Johnson suggests, in order to survive in a society dominated by whites, free blacks developed a number of strategies to protect themselves, their families, and their property. They cultivated reputations as "good negroes," learned marketable skills in order to add something of value to the larger community, developed relationships with whites willing to defend them in court and in daily life, and even accumulated slave property in order to demonstrate their dedication to self-advancement within the southern social order. Survival meant working within the boundaries of their subordination and demonstrating that they were not a threat to a slave society. The strategies they developed, moreover, afforded some free blacks with a measure of security and safety and provided them with necessary advantages when they went to court to protect their interests and limited rights.[10]

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[9] On William Johnson, his family, his position in his community, and the circumstances that led to his death, see Davis and Hogan, *The Barber of Natchez* ; Virginia Meacham Gould, ed., *Chained to the Rock of Adversity: To be Free, Black, and Female in the Old South* (Athens: University of Georgia Press, 1998); William Ransom Hogan and Edwin Adams Davis, eds., *William Johnson's Natchez: The Ante-Bellum Diary of a Free Negro* (Baton Rouge: Louisiana State University, 1951); and Cecilia M. Shulman, "The Bingamans of Natchez," *Journal of Mississippi History* 63, no 4 (Winter 2001): 285-315.

[10] This chapter utilizes evidence from 373 lawsuits in which free blacks were the plaintiffs. Of the 373 litigants, 156 of the plaintiffs were free black women, and 187 of the lawsuits were against white defendants. About two-thirds of the lawsuits ended in a verdict for the plaintiff.

Free people of color, however, remained at risk. Surviving and prospering in the slave South as a free black was no easy achievement. Their freedom was precarious. The presumption of slavery always shadowed free people of color. In response to the maturation of a plantation society in the southern interior and the incessant demand for slave labor, the specter of slave uprisings in St. Domingue and fear of slave rebellions such as Nat Turner's in 1831, increased sectional tensions, and anxiety over abolitionists' attacks on the institution of slavery, white southerners reinforced racial boundaries between whites and blacks in both law and daily life. By the 1830s, whites in the slave South had made race the chief indicator of distinction in the region and replaced their more flexible system of social hierarchy with a systematic ideology of white supremacy.[11] Blacks, defenders of slavery claimed, were a distinct race suited only for enslavement because it provided them with the direction, guidance, and benevolent discipline they otherwise lacked. Slavery civilized people of African descent, who were not suited for the responsibilities of freedom, and kept them from descending into the savagery and debasement to which they were biologically inclined. If slavery was the natural state of people of color, then free blacks were an aberration and a potentially subversive, dangerous, and unsettling example to slaves.[12] Southern whites assigned African Americans—both enslaved and free—a permanently inferior status based on skin color and denied them economic, political, and legal rights.

[11] Lacy K. Ford, *Deliver Us from Evil: The Slavery Question in the Old South* (New York: Oxford University Press, 2009), 5-10.

[12] On the narrow space for free blacks within the positive good theory of slavery, see Berlin, *Slaves Without Master*s, 188-95.

Both prejudice and policy led white southerners to legally subordinate free blacks. Southern lawmakers did their best to make sure they enjoyed few rights. Many states tried to equate free blacks with slaves in an effort to diminish their status as free persons. Every southern state except Louisiana denied free blacks the right to testify in court in cases involving whites, making it all the more difficult to prosecute whites who committed wrongs against them. Because they could not sit on juries, whites decided their fate in court. They had to carry papers proving their freedom and might be arrested as fugitive slaves if they could not produce these papers. They had to periodically register with their local governments. For example, in 1858 the Claiborne County, Mississippi, Board of Police summoned over forty free black families to appear before the county court to "show satisfaction" that they were legal residents of the county and the state.[13] Free blacks were highly subject to vagrancy laws. Indeed, they were treated as vagrants if they left their county of residence in search of work. State laws and municipal ordinances prohibited free people of color from practicing a number of occupations. By 1850, free blacks in Louisiana could not operate billiard halls, coffee houses, or sell liquor, and they could not be employed as riverboat captains. In Mississippi, they could not work as typesetters in a printing establishment for fear that they might publish and distribute subversive or abolitionist literature. Violations of such laws could result in criminal prosecution, public whipping, and, in some cases, sale into slavery. State legislators in both Mississippi and Louisiana enacted legislation forcing free blacks to leave each state and barred non-resident free people of color from entering. Towns and cities also added their own restrictions. For example, an 1843 law in New

[13] "List of Free Negroes and Free Mulattos," Box 2E773, Folder 5, NTC, Slaves and Slavery Collection, 1793-1864, Dolphe Briscoe Center for American History, University of Texas at Austin.

Orleans allowed local police to arrest free blacks born outside of Louisiana and incarcerate them until it could be determined whether or not they posed a threat to the peace of the city.[14]

Free blacks did, however, have standing before the law. In Louisiana, free blacks could testify against whites in both civil and criminal actions, and they had the right to a trial by jury in the same courts as whites, not special tribunals reserved for people of color—enslaved or free—like much of the rest of the slave South, including Mississippi. While Mississippi denied people of color the right to testify against whites in either civil or criminal cases, in practice, however, individual free black Mississippians sometimes circumvented these statutory prohibitions in civil actions and sued whites to protect their property, recover debts, or enforce the terms of their contracts. Free black men in both Mississippi and Louisiana had the legal right to make contracts and possess property, including slaves. Single free women of color functioned on legal par with free black men, although once married, free wives of color faced the same legal handicaps as white wives.[15]

Although deprived of citizenship, relegated to a debased status, threatened with violence, and faced with exclusionary laws and other measures, many free blacks in Mississippi and Louisiana went to court to defend their position and resist the humiliations imposed upon them. Free blacks frequently used the local courts to protect their interests and sued whites over debts owed them, broken contracts, property disputes,

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[14] Donald G. Nieman, *Promises to Keep: African-Americans and the Constitutional Order, 1776 to the Present* (New York: Oxford University Press, 1991), 3-29; Charles S. Sydnor, "The Free Negro in Mississippi Before the Civil War," *American Historical Review* 32, no. 4 (July 1927): 769-88; H. E. Sterkx, *The Free Negro in Ante-Bellum Louisiana* (Rutherford, NJ: Fairleigh Dickinson University Press, 1972); Jennifer M. Spear, *Race, Sex, and Social Order in Early New Orleans* (Baltimore, MD: The Johns Hopkins University Press, 2009), chap. 7.

[15] Ibid.

and a number of other disagreements. Much like slaves suing for their freedom or married women suing their husbands, free blacks were shrewd litigators and wielded their ties to their local communities to their advantage in court. In so doing, however, they had to strike a delicate balance between deference and self-assertion when initiating lawsuits. As long as free blacks conceded their subordination and did not challenge their position within the southern hierarchy overall, they found redress for wrongs done to them and debts owed to them in the local courts of the Natchez District.

In order to survive in a society where the power of whites seemed unlimited, free blacks developed a number of strategies that provided them with advantages in court and tied them to their local communities. Free blacks needed to demonstrate that they remembered their subordinate position in southern society. They knew that white southerners could be unforgiving to those who forgot their place and failed to live up to the expectations of whites, and they supported, rewarded, and defended the free people of color they found worthy. Whites in Mississippi and Louisiana demanded deference and obedience from free blacks in their communities and reinforced those demands in the laws of both states. According to Louisiana law, "Free people of color ought never to insult or strike white people, nor presume to conceive themselves equal to white; but on the contrary, they ought to yield to them in every occasion, and never speak or answer to them but with respect, under the penalty of imprisonment, according to the nature of the offense."[16] Free blacks needed to be on guard constantly. Even a careless boast might be interpreted as insolence against white people and would justify them in "correcting" free black offenders. Those who did not accommodate to whites frequently faced criminal

[16] Louisiana *Digest* (1842), Art. 40, p. 57.

charges for crimes against deference, such as insulting whites, not yielding the road, or failing to perform the duties their station in life demanded. In one case, thirty-two white members of the Richard family in St. Landry Parish, Louisiana, sued Celeste, a free woman of color, claiming that she pretended to be free and refused to serve them. They demanded that the court discipline her for her lack of obedience and force her to return to their service as their slave.[17] Indeed, free blacks had to convince their white neighbors that they knew their place. They had to be above reproach.

Thus, free blacks needed to develop reputations as "good negroes": obedient, sober, industrious, and deferential or risk the consequences. Reputations for such behavior shielded them from the nearly unlimited number of criminal charges that might be mounted against them and from the restrictive laws that circumscribed their lives.[18] When Peter Bell, a free man of color in Natchez, Mississippi, faced charges "for keeping an irregular and disorderly house of ill fame" and being "an evil example [to] others" in the community, he countered the charges by calling white witnesses to testify to his good and honest reputation. The jury found him not guilty.[19]

Establishing themselves as honest, respectable, and responsible, however, was not always enough to gain acceptance or support among the white community. Free blacks also needed to develop marketable skills to provide indispensible services to the larger

[17] The outcome of this case is not known. *Richard et al. v. Celeste*, St. Landry Parish, Louisiana, 1825, in RSFB, Series II, Part F, PAR #20882511.

[18] On the importance of good reputation as a legal defense against the seemingly unlimited power of slaveholders, see chapter one, above.

[19] *State of Mississippi v. Bell*, Adams County, Mississippi, 1825, Records of the Circuit Court, Group 1820-29, Box 32, File 12, CRP, HNF. For similar examples of free blacks charged with keeping disorderly houses and using their good reputations as a legal defense, see *State of Mississippi v. Evans*, Adams County, Mississippi, 1825, Records of the Circuit Court, Group 1820-29, Box 32, File 15, CRP, HNF; and *State of Mississippi v. Chavois*, Adams County, Mississippi, 1825, Records of the Circuit Court, Group 1820-29, Box 32, File 19, CRP, HNF.

community. Moreover, if they could build their businesses and accumulate a measure of prosperity with the help of slave labor, then they proved themselves all the more trustworthy to white planters. In return, those planters might come to their aid in court and provide them with a measure of security.

Free blacks' marketable skills enhanced their reputations in and ties to their communities, and helped them forge favorable relationships with whites, advancing their positions. These skills gave free blacks something of value to offer their community. It made them less expendable. Skilled laborers like kettle makers or barbers performed indispensable services for whites, and these services had important legal and material benefits. Their improved standing in their communities helped them petition to remain in Mississippi and Louisiana, especially as lawmakers passed legislation requiring free blacks to leave each state. William Hayden, a free black barber living in Natchez, successfully petitioned the state legislature in 1829 to remain in the state after ensuring lawmakers that he did a good business, had a good reputation, and owned property. John Minor, a cotton planter and a member of one of Mississippi's wealthiest families, testified to Hayden's "character" as well as the services he provided, and declared him a "fit subject" to remain in the state. He was handy and well-behaved, and because of this local planters believed he should stay.[20] In 1859, Ann Caldwell, another free person of color living in Natchez, used her proficiency as a nurse to remain in the state of Mississippi. Over one hundred white residents of Natchez co-signed her petition and

[20] Petition of William Hayden to the Mississippi State Legislature, 1829, in RSFB, Series I: Legislative Petitions, #11082904.

claimed she was a faithful nurse with a good character.[21] Free blacks' specialized skills boosted their standing in their community, granted them more control over their work, additional leverage in their negotiations for hire, and provided them a better bargaining position when approaching the courts to protect their contracts. Such skills also gave them a level of prosperity that made it possible to initiate lawsuits, hire lawyers to represent them, and pay court costs.[22]

Free blacks like William Johnson also cultivated reputations for adhering to the racial status quo and some accommodated to the social order set by southern whites by accumulating slave property. By demonstrating that they did not hesitate to own and exploit slave labor, free black slaveowners—some even recently freed slaves—reassured their white neighbors that they supported the institution of slavery. As masters of black slaves themselves, free black slaveowners proved to whites that race did not decide their loyalties.[23] Slaveownership also represented an opportunity to gain a level of prosperity and wealth—and wealth could also provide free blacks with the means to initiate lawsuits to protect their interests. Moreover, a reputation as a respected slaveowner could have legal benefits, as Marguerite Ove, a free black Louisianan, found. Ove sued Arnaud Lartigue for $3000 in damages for failing to return the slaves she had hired out to him. After witnesses came to her aid and claimed that she was a responsible slaveholder and

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[21] Petition of Ann Caldwell to the Mississippi State Legislature, 1859, in RSFB, Series I: Legislative Petitions #11085923.

[22] On skilled black laborers and their position in the slave South, see Michael P. Johnson and James L. Roark, *Black Masters: A Free Family of Color in the Old South* (New York: W. W. Norton and Co. 1984), 28, 57-8; and Kimberly S. Hanger, *Bounded Lives, Bounded Places: Free Black Society in Colonial New Orleans, 1769-1803* (Durham, NC: Duke University Press), chap. 2.

[23] On free black slave holders as loyal members of southern society, see, for example, Johnson and Roark, *Black Masters*; Berlin, *Slaves without Masters*, 273-5; and Loren Schweninger, "Prosperous Blacks in the South, 1790-1880," *American Historical Review* 95, no. 1 (Feb. 1990): 31-56.

good neighbor and declared the slaves her property, the court found for Ove and ordered Lartigue to return her property and pay the court costs.[24]

In order to prove their worthiness as valued members of the larger community, free blacks needed the support of whites willing to publicly affirm their good behavior and worth and come to their aid. Making connections with the right white allies, people who knew them personally, judged them as individual human beings, valued their work, and defended their character could offer them much needed security. By engaging the assistance of whites, free blacks wielded their ties to their local communities to their advantage.

The support of white allies offered free blacks legal benefits. These supporters backed free blacks' petitions to the local courts and state legislatures to remain in the state, as William Hayden and Ann Caldwell found. They served as witnesses in their trials, and sometimes testified against other whites. They requested pardons from governors based on local knowledge about free blacks accused of crimes. They posted security bonds for free blacks without the financial means to do so themselves. They paid court costs. They swore oaths on behalf of free people held as slaves. They gave legal advice, and they offered their services as attorneys to black litigants. Indeed, white allies helped free blacks attain legal redress in court for wrongs done to them or debts owed them.

A bad reputation, no marketable skills, and lack of support from the white community could have devastating consequences, as Lewis Burwell found in 1822 when the magistrates' court in Natchez found him guilty of "being a free negro" and refusing to

[24] *Ove v. Lartigue*, Records of the Fourth Judicial District Court, #320, Pointe Coupee Parish, Louisiana, 1816.

leave the state of Mississippi. Because Burwell could not post a $600 security bond guaranteeing his "good behavior," and because he did not leave the state after thirty days when ordered to do so, the court ordered his sale as a slave to the "highest bidder." No one came to Burwell's aid. On the contrary, it appears that the white community in Natchez was anxious to be rid of him. Burwell probably had a poor reputation among slaveowners. In 1818, the court found him guilty twice for selling liquor to slaves without their masters' permission, and in 1819 charged him with assaulting a slave belonging to David Eliot, a local slaveholder. Without white allies willing to come to his aid to confirm his value to the community and general worth, Burwell was enslaved.[25] Burwell's enslavement points to the precarious position of many free blacks. Survival meant remembering one's place and proving oneself worthy of the support of white southerners. Burwell did neither and paid the price.

While many free blacks in Mississippi and Louisiana engaged their white neighbors as legal allies, some engaged whites as legal foes. Suing whites, however, was dangerous. Free blacks risked appearing uppity. Free blacks needed to employ a careful mix of deference and self-assertion in court in order to protect themselves. They could not forget their position within a southern racial order dedicated to white supremacy. But their very survival might mean using the courts to protect their limited legal rights, especially their right to own property or to enforce the terms of their contracts.

[25] *State of Mississippi v. Burwell*, Adams County, Mississippi, 1822, Records of the Circuit Court, Group 1820-29, Box 12, File 32, CRP, HNF; *State of Mississippi v. Burwell*, Adams County, Mississippi, 1818, Records of the Circuit Court, Group 1810-19, Box 40, File 80, CRP, HNF; *State of Mississippi v. Burwell*, Adams County, Mississippi, 1818, Records of the Circuit Court, Group 1810-19, Box 40, File 81, CRP, HNF; and *State of Mississippi v. Burwell*, Adams County, Mississippi, 1819, Records of the Circuit Court, Group 1820-29, Box 1, File 27, CRP, HNF.

Moreover, having the courage to seek redress in court against a white person might have added to their stature and increased their standing in the eyes of whites, especially since jurors often found in favor of black litigants.

While free blacks needed to behave according to their position within the southern hierarchy, part of proving themselves worthy to their white neighbors meant the willingness to go to court to protect themselves and their property. Propertied white men probably would not respect another man who did not safeguard his property. By custom and law, southern men handled the economic aspects of their households. Part of being a competent householder meant prudently managing one's property. In order to demonstrate that they were capable of heading households and able to handle the responsibilities of freedom, free black men had to go to court to defend their livelihoods. Their reputation as adept heads of households depended on it. Men like William Johnson used the courts to safeguard their property and, in so doing, demonstrated to the larger community that they were competent and responsible householders. Indeed, free men of color sued whites in order to protect their property. "Black Ben," a free man of color living in Natchez, Mississippi, sued several white men to recover a number of unpaid debts. For example, he sued William Brooks twice for sizeable amounts (once in 1814 for $870 and again in 1816 for $902), money Brooks owed him over contracts for cotton. In both instances, the court found for Ben.[26]

[26] *Black Ben, FMC v. Brooks and Claiborne*, Adams County, Mississippi, 1814, Records of the Circuit Court, Group 1810-19, Box 25, File 61, CRP, HNF; and *Ben v. Brooks*, Adams County, Mississippi, 1816, Records of the Circuit Court, Group 1810-19, Box 31, File 80, CRP, HNF. For examples of free black men successfully suing whites in Mississippi over debts, contracts, and property disputes, see *Evans v. Martin*, Adams County, Mississippi, 1819, Records of the Circuit Court, Group 1810-19, Box 41, File 52, CRP, HNF; *Clark v. Jones*, Adams County, Mississippi, 1825, Records of the Circuit Court, Group 1820-29, Box 36, File 56, CRP, HNF; *Lewis v. Patterson*, Adams County, Mississippi, 1828, Records of the Circuit Court, Group 1820-29, Box 46, File 31, CRP, HNF; and *Hardes v. Mosby*, Adams County, Mississippi, 1835, Records of the Circuit Court, Group 1830-39, Box 23, File 11, CRP, HNF. For

Free black men also sued whites over broken labor contracts and wages owed them, lawsuits they won more often than not.[27] While free blacks' contracts had legal protections, this did not mean that they could contract as if they were white persons. They were, after all, degraded persons within the social order, and their subordinate position probably meant that they were at a disadvantage when contracting for wages or prices. Contracts were often slanted in favor of whites.[28] Free black men did, however, use the courts to enforce the agreed upon terms of their contracts with whites and looked to the law to protect them in the same way that it protected whites. In 1835, John Hardes, a free black Mississippian, sued William Mosby, a white man, for the $240 Mosby owed him for carpentry work he performed on Mosby's cotton plantation. Although Mosby claimed he already paid Hardes and denied he owed him anything further, the jury found for Hardes for $240.[29] In 1859, Leandre Decuir, a free black Louisianan, received a judgment for $519 plus interest and court costs from a white man, Patrick Gleason, who

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Louisiana, see *Dubuclet v. Lorrie*, Records of the Fourth Judicial District Court, #228, Iberville Parish, Louisiana, 1820; *Deslonde v. Love*, Records of the Old Parish Court, #829, Iberville Parish, Louisiana, 1831; *Charles v. Christian*, Records of the Old Parish Court, #1207, Iberville Parish, Louisiana, 1843; *Roth v. Garlick*, Records of the Sixth Judicial District Court, #477, Iberville Parish, Louisiana, 1851; *Verret v. Kelly*, Records of the Sixth Judicial District Court, #811, Iberville Parish, Louisiana, 1855; *Roth v. Comeau*, Records of the Sixth Judicial District Court, #1127, Iberville Parish, Louisiana, 1858; and *Decuir v. Gleason*, Records of the Sixth Judicial District Court, #1254, Iberville Parish, Louisiana, 1859.

[27] For other examples of free black men suing whites for back wages and to enforce labor contracts, see *Zenon v. Sicard*, Records of the Fourth Judicial District Court, #621, Pointe Coupee Parish, Louisiana, 1826; *Mitchell v. Taylor*, Records of the Early Parish Court, #1114, Pointe Coupee Parish, Louisiana, 1844; *Villiar v. Bristow*, Records of the Fourth Judicial District Court, #1835, Iberville Parish, Louisiana, 1841; and *Dubuclet v. Tenent and Navy*, Records of the Fourth Judicial District Court, #2030, Iberville Parish, Louisiana, 1843.

[28] Johnson and Roark, *Black Masters*, 56.

[29] *Hardes v. Mosby*, Adams County, Mississippi, 1835, Records of the Circuit Court, Group 1830-39, Box 23, File 11, CRP, HNF.

hired him to raft and run timber.[30] Honore Roth, a Louisiana mason, brick maker, and kettle settler, often sued his white employers to recover the money they owed him for the labor he performed.[31]

Despite the risks, some free black men were remarkably forceful when going to court to enforce the terms of their contracts and looked to the courts to protect them as they would whites.[32] The language Louis de Cadoret used in his 1821 lawsuit against his employer was particularly inflammatory and a striking difference from the deferential tone taken by free blacks like William Hayden. Cadoret did not call upon his reputation as a "good negro." Instead, he demanded equal protection and justice from the court and accused his employer of being dishonorable. Cadoret, a resident of Point Coupee Parish, Louisiana, claimed that Joseph Decuir, a white planter, had hired him as "laborer and overseer" on his plantation for a year and contracted to pay him $300 for that labor. Despite the fact that Cadoret "faithfully performed his duty, and never gave cause for complaint," Decuir dismissed him after a few short months and paid him only part of his promised wages. Then, when Cadoret complained about the broken contract and demanded the money owed him, Decuir offered to allow him to remain on the plantation picking cotton at a far lower wage. Cadoret, being a man "without money, and without

[30] *Decuir, FMC v. Gleason*, Records of the Sixth Judicial District Court, #1254, Iberville Parish, Louisiana, 1859.

[31] See *Roth v. Garlick*, Records of the Sixth Judicial District Court, #477, Iberville Parish, Louisiana, 1851; Roth v. Comeau, Records of the Sixth Judicial District Court, #1127, Iberville Parish, Louisiana, 1858; and *Roth v. Hebert et al.*, Records of the Sixth Judicial District Court, #1140, Iberville Parish, Louisiana, 1858.

[32] On the primacy of the law of contract in the nineteenth century, see James Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth-Century United States* (Madison: University of Wisconsin Press, 1930), 9-22; Morton Horwitz, *The Transformation of American Law 1780-1860* (Cambridge, Mass.: Harvard University Press, 1977), 160-210; Lawrence Friedman, *Contract Law in American: A Social and Economic Case Study* (Madison: University of Wisconsin Press, 1965); and Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (New York: Cambridge University Press, 1998).

employment," wanted the court to enforce the original terms of his labor contract and compel Decuir to pay him for the remainder of the year. Due to Decuir's "perfidy in hiring [Cadoret] with the intent to cast him out on the world when it would be difficult to find employment," he wanted the $244 owed him. And because he "suffered great injury in being deprived of the opportunity of hiring with some planter of known integrity," he also wanted $1,000 damages.

For Carodet, the court represented more than a site of dispute resolution: it was also a site of governance. Cadoret did not ask for back wages and damages only. He also used his lawsuit to publicly reprimand Decuir. He ended his petition with this striking remark to the court,

> [H]e [Cadoret] had the happiness of living in a country governed by laws that protected the liberty and rights of a poor overseer, no less than an opulent planter, that having once dismissed him, the contract was dissolved and could not be renewed without mutual consent; that he would never contract with a man who, wallowing in his riches, hired an overseer by the year, during the busy season, and when he had less to do, perfidiously dismissed him, thru. . . avarice; as if he had acted thru ignorance of the law, yet his religion must have taught him that to defraud a laborer his salary, is one of the four sins that cry to heaven, equally with willful murder, of which the latter crime, not only of [Decuir's] conduct, but from his present threats the Petitioner might reasonably think himself exposed to become the victim should he return to the service of Joseph Decuir.

Despite the risks that using such language might pose, Cadoret let Decuir know what he thought of him—in public, no less. He accused Decuir of dishonesty, greed, and criminal behavior. In Cadoret's estimation, Decuir was not an honorable man, and he wanted the community to know it. Cadoret publicly shamed Decuir before his peers, and perhaps forced better behavior out of him. He also reminded Decuir of his responsibilities as a good employer and expected the court to uphold those responsibilities.

Cadoret positioned himself as person with "rights" to defend and demanded equal protection from the courts. In his view of the law, the "poor overseer" enjoyed the same rights and protections as the "opulent planter," white or black. Cadoret viewed his labor as his property to sell, property his employer "perfidiously" and "sinfully" disregarded. As the owner of his labor, he was entitled to put that labor up for sale and benefit from its rewards. It was property he expected the courts to help him protect, especially since Decuir was an untrustworthy man without "integrity." He insisted the law come to his aid and safeguard his bargain.[33] For those free blacks who worked for wages like Cadoret, the ownership of one's labor was critical to their status as free persons. Free blacks' right to contract, to possess property, and to own one's labor and oneself represented crucial hallmarks of their freedom and placed them in stark contrast to slaves.

Although Cadoret's forceful language was unusual, other free black men used the courts to sue whites and assert their rights to the fruits of their own labor and to protect their property. They too approached the courts as knowledgeable and experienced litigators and viewed the courts as a site of fairness and justice where blacks should be equally protected by the law. In September 1818, Augustin Borie, a free black planter, petitioned the district court in Iberville Parish, Louisiana asking to "dissolve" the "partnership" that existed between himself and Jean Baptiste Lorrie, a white cotton planter. Two years prior, Borie and Lorrie contracted to build a cotton gin "in community" situated on Borie's land. But, Borie claimed, some "difficulties" had recently arisen between the two men, which had made it "disadvantageous to continue their community" and co-partnership. Because Borie and Lorrie held the gin "in equal

[33] *Cadoret v. Decuir*, Records of the Early Parish Court, #610, Pointe Coupee Parish, Louisiana, 1821. The outcome of this lawsuit is not known.

proportion," Borie wanted it sold and an "equal division" of the profits distributed to the two men on "equitable . . . terms and conditions." Lorrie, however, denied that the "co-partnership" still existed between himself and Borie and claimed that the cotton gin should belong to him because he alone provided the materials and the labor. In his defense, Lorrie summoned two witnesses, Jacques Rivere and Jean Trapper, both free men of color. While the cotton gin resided on Borie's property and "both parties were equal sharers in all the expenses that accrued, of every kind," Rivere and Trapper recounted, Lorrie had supplied the wood to construct it and the labor "of three of his negroes" to build it. Furthermore, they claimed, Lorrie "worked as hard as one of his negroes himself." Other witnesses, such as Preval Robilliard, claimed that while the two men had entered into a contract to build and share the cotton gin as "equal partners" and in "equal portion," Lorrie provided the lion's share of the capital to construct and maintain it. Although a valuable commodity, Lorrie allowed the cotton gin to reside on Borie's plantation rather than his own and provided much of the labor and materials for its construction. After considering the evidence, the jury denied Borie's request to dissolve the partnership. Three years later, Borie and Lorrie were back in court again, fighting over the same cotton gin. This time Lorrie sued Borie, claiming that while the two contracted to share the profits of the cotton gin "equally," Borie had kept the proceeds and now owed Lorrie three thousand dollars. The two men came to an agreement without further court intervention, however, and requested that the court dismiss the lawsuit.[34]

[34] *Borie v. Lorie*, Records of the Fourth Judicial District Court, #154, Iberville Parish, Louisiana, 1818; and *Lorrie v. Borie, FMC*, Records of the Fourth Judicial District Court, #255, Iberville Parish, Louisiana, 1821.

Rather than behaving obsequiously or deferentially when suing a white man, Borie insisted that the law protected him equally, specifically asking the court to make an "equitable division" of the property. He consistently used the terms "equality" or "equal" to describe his "mutual bargain" with Lorrie. He was neither reluctant to sue a white man, nor intimidated by the formality or mystery of the judicial process. Instead, he understood the ins and outs of the southern legal system and expected it to work to his advantage. Borie was also a frequent and skilled litigator and sued several white men in his lifetime. Indeed, between 1815 and 1840, Borie was involved in over twenty lawsuits.[35]

While free black men needed to demonstrate that they were worthy members of southern society and competent householders, free black women were equally litigious and used the courts to protect their property and livelihoods. Free black women also engaged their white neighbors as legal foes and consistently received verdicts in their favor. Some sued whites repeatedly. When Rachel, Elizabeth, and Ellen Rapp, all free black women, successfully sued John Fletcher, a white man, in Louisiana for a $500 debt he owed them, he fled to Mississippi to avoid repaying them. They pursued him doggedly from New Orleans to Natchez, attempting to recover the money. Once in Mississippi, the three women sued him again, this time receiving a second judgment for $800 plus interest and court costs—three hundred dollars more than the first verdict.[36]

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[35] For example, see *Borie v. Blanchard*, Records of the Fourth Judicial District Court, #463, Iberville Parish, Louisiana, 1824; *Borie v. Roth*, Records of the Fourth Judicial District Court, #478, Iberville Parish, Louisiana, 1824; *Borie v. Danos*, Records of the Fourth Judicial District Court, #579, Iberville Parish, Louisiana, 1826; and *Borie v. Troxler*, Records of the Fourth Judicial District Court, #627, Iberville Parish, Louisiana, 1827.

[36] *Rapp et al. v. Fletcher*, Adams County, Mississippi, 1837, Records of the Circuit Court, Group 1830-39, Box 44, File 23, CRP, HNF.

Marguerite, a free black woman from Iberville Parish, Louisiana, frequently went to court to reclaim the money owed her by white men. In 1831, she sued William Janes for the $105 he owed her for renting her slave, Urbin. Later that year she sued Simon Allain for an unpaid debt of $64.[37] Josephine Degruise, a free woman of color, sued the children of her recently deceased employer in 1859 for $2,000 in back wages "for eighteen years of long and useful services" as a nurse and "faithful servant" to their father. While the court ordered an inventory of the estate in order to see if it could meet her demand for pay, the outcome of the case is not known.[38]

The women of the Belly family of Iberville Parish, Louisiana, were particularly litigious and sued whites in court to protect their property and redress wrongs done to them. Daughters of Pierre Belly, a Frenchmen, planter, and judge, and Rose Belly, Pierre Belly's former slave and long-time consort, the Belly daughters and their descendants managed to carve out a place for themselves in a white man's world and prosper.[39] They

[37] *Marguerite, FWC v. Janes*, Records of the Fourth Judicial District Court, #1066, Iberville Parish, Louisiana, 1831; and *Marguerite, FWC v. Allain*, Records of the Old Parish Court, #809, Iberville Parish, Louisiana, 1831. For additional examples of free black women successfully suing whites in Mississippi over debts, contracts, and property disputes, see *Amey v. Davis*, Adams County, Mississippi, 1814, Records of the Circuit Court, Group 1810-19, Box 40, File 15, CRP, HNF; *Maria Theresa, FWC v. Martin*, Adams County, Mississippi, 1815, Records of the Circuit Court, Group 1810-19, Box 38, File 25, CRP, HNF; *Johnson v. Moore*, Adams County, Mississippi, 1823, Records of the Circuit Court, Group 1820-29, Box 17, File 61, CRP, HNF; *Carter v. Holden*, Adams County, Mississippi, 1835, Records of the Circuit Court, Group 1830-39, Box 24, File 27, CRP, HNF; and *Carter v. Holden*, Adams County, Mississippi, 1836, Records of the Circuit Court, Group 1830-39, Box 41, File 78, CRP, HNF. In Louisiana, see *Phillis, FWC v. Langlois*, Records of the Fourth Judicial District Court, #139, Iberville Parish, Louisiana, 1817; *Hortense, FWC, v. Orillion*, Records of the Fourth Judicial District Court, #158, Iberville Parish, Louisiana, 1818; *Verret v. Roach*, Records of the Old Parish Court, #810, Iberville Parish, Louisiana, 1831;and *Marguerite, FWC v. Roth*, Records of the Old Parish Court, #1095, Iberville Parish, Louisiana, 1840.

[38] *Degruise v. Breaux et al.*, Records of the Sixth Judicial District Court, #1235, Iberville Parish, Louisiana, 1859.

[39] In August 1779, Rose arrived in Louisiana on board the brigantine *La Golondrina*. She was part of a shipment of thirty slaves sent to Pierre Belly by his business agent in Jamaica. Her arrival marked the beginning of a long and loving relationship with Pierre Belly that lasted nearly thirty five years, produced six daughters, and ended only with his death in 1814. Rose lived with Pierre as his wife and their

did so, however, according to the terms dictated by white southerners in a slave society. They cultivated reputations as respectable, able, honest, and prosperous members of their community. They behaved as whites of equal financial status. They married free black men of similar Afro-French backgrounds, prosperous men who took up arms alongside whites as part of the Eighth Regiment during the War of 1812. They educated their children with private tutors and sent them to France for additional schooling. Instead of challenging the institution of slavery, they bought and sold slaves to labor on their enormous plantations. With the land, slaves, and money they inherited and accrued, coupled with their influence and talent for business and their skills as astute litigators, the Belly daughters and their husbands amassed substantial estates. Of the six Louisiana free blacks who owned more than fifty slaves in 1860, three were descendants of Pierre and Rose Belly. By the eve of the Civil War, Pierre and Rose Belly's descendants formed one of the most affluent free black family groups in the United States.[40]

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community accepted them as married. Pierre freed Rose and their daughters during his lifetime and legally recognized the girls as his "natural children," born of Rose, "commonly called Rose Belly free negro woman." Pierre and Rose baptized each of their daughters in the Catholic Church. Several years before his death, Pierre, a former judge and easily the wealthiest planter in Iberville Parish, passed much of his property to Rose, who managed it and cared for their children. Later in his will, Pierre bequeathed one half of what remained of his estate to his surviving brother and sister, both residents of France, and bestowed (in accordance with Louisiana law) one fourth to Rose, and one fourth to his daughters. When he died in 1814, Pierre's holdings included 5,593 arpents, five plantations, ninety-six slaves, a house, cabins, a corn mill, a kiln, and many other improvements. Rose died fourteen years later, in 1828, conferring her property to their daughters. Pierre and Rose were interred together in a family tomb in the St. Raphael Cemetery in Iberville Parish. On Pierre Belly, Rose Belly, and their descendants, see Ulysses R. Ricard, Jr., "Pierre Belly and Rose: More Forgotten People," *The Chicory Review* 1, no. 1 (Fall 1988): 2-17; and Succession of Pierre Belly, Records of the Probate Court, #65, Iberville Parish, Louisiana, 1814.

[40] Immediately after the Civil War, the Belly descendents, like their white planter counterparts, faced financial losses due to the general economic decline in the post-war South. However, their economic decline corresponded with a rise in their political activity during Reconstruction. Respected in their community, propertied, and well-educated, the Belly descendants became leaders in the struggle for racial equality in postbellum Louisiana. Pierre G. Deslonde, grandson of Pierre and Rose Belly, served as a delegate to the Louisiana Constitutional Convention of 1867-68, a member of the House of Representatives from 1868 to 1870, and the Louisiana Secretary of State from 1872 to 1876. Another grandson, Antoine Dubuclet, served as the Louisiana state treasurer of from 1868 to 1878. See Ricard, Jr., "Pierre Belly and Rose."

The Belly daughters, perhaps because their father was a judge, enjoyed considerable legal acumen and consistently used the courts to protect their interests. They entered into contracts with whites, and sought to protect the terms of those contracts in court. For example, in 1828, Marie Francoise Belly brought a claim against Louis Bousagne, a white man, for the $130 he owed her. She had "contracted to board Bousagne and to furnish him with two horses for the space of one year," but, despite her repeated "demands" for payment, he did not compensate her until she took him to court.[41] They often sued their white neighbors over property disputes or slave warranties. Two of the Belly women even sued their husbands for protection against domestic abuse and for divorce. The local courts provided them with the means to protect themselves, their families, and their property. After the Civil War, Pierre and Rose Belly's granddaughter, Josephine Dubuclet Decuir, wife of the wealthy sugar planter, Antoine Decuir, sued the owner of the steamship "Governor Allen" for denying her access to a cabin set aside for white passengers.[42] Although she initially won that lawsuit, the United States Supreme Court later overturned it, employing a rationale that would eventually be used to support the "separate but equal" doctrine. As with men like Louis de Cadoret and Augustin Borie, the women of the Belly family were skilled litigators and used the courts to improve their position in southern society.

When free blacks sued whites in court to protect their property, enforce the terms of their contracts, or demand pay for the labor they performed, they assumed a far

[41] *Belly v. Bousange*, Records of the Fourth Judicial District Court, #725, Iberville Parish, Louisiana, 1828.

[42] *Mrs. Josephine Decuir v. John G. Benson*, 27 La. Ann. 1; 1875.

different relationship with southern whites than the master/slave relationship. By confronting their white adversaries in court, they forced white southerners to recognize them as worthy adversaries. Despite their limited rights, free men and women of color demonstrated an astute understanding of the law and the intricacies of the southern legal system. They stood up in court and used this knowledge to challenge their superiors, sometimes a great personal risk.

Free blacks, like wives and slaves, mobilized their extensive community networks on their own behalf as they faced their neighbors in court. Their disputes did not begin and end in the courtroom. Indeed, law was inseparable from community relations, and free blacks' lawsuits were community affairs. Local communities intervened on the behalf of people of color. Free blacks' knowledge of the legal system as well as their capacity to harness their community networks armed them with a measure of power to protect themselves, their families, and their property.

In order to survive in a slaveholders' world dedicated to white supremacy, free blacks needed to employ a scrupulous mix of deference and self-assertion when initiating lawsuits. Challenging the southern racial hierarchy was dangerous and sometimes unwise. They had to be constantly on guard and demonstrate that they remembered their place. In ways similar to other marginalized southerners, free blacks conceded their subordinate status and worked within its boundaries. In doing so, they reinforced their marginalized position in the southern racial hierarchy.

Relations between whites and blacks, however, were not just a set of rules handed down by southern slaveholders, lawmakers, or racial theorists. The sharpening of racial boundaries and the resultant repression of free blacks was an uneven process. Free

people of color employed several strategies to defend themselves, their place in southern society, their families, and their property, demonstrating their resilience and fortitude. White southerners may have chosen intolerance as their guiding ideology, but they were sometimes fully capable of tolerance in their day-to-day lives. The position of free blacks within southern society was locally negotiated, locally determined, and locally enforced. Free blacks themselves played an important role in shaping what their place would be.

EPILOGUE

In June 1857, Irma, an enslaved woman in Iberville Parish, Louisiana, sued John Baptiste Rils, the executor of her late owner's estate, for her freedom. Her former owner's will, Irma claimed, promised her her liberty, yet Rils had to take "the legal steps to carry out the provisions of the will." She asked the court to declare her free. In his response to Irma's petition, Rils conceded that Irma's late owner had granted her a "bequest for her freedom" in his will; yet, "the laws and policies of the state no longer permitted the emancipation of slaves." Indeed, in March 1857, a few months before Irma sued for her legal liberty, the Louisiana legislature prohibited all emancipations of slaves.[1] Thus, Rils argued, he did not have "the legal power or authority" to free her. The court agreed, dismissing the case as a nonsuit and denying her request to appeal her lawsuit to the Supreme Court of Louisiana.[2] The Louisiana courts had ceased to be a site of legal redress for slaves like Irma seeking their freedom. The coming years, however, would decide her fate—the Louisiana Constitution of 1864 abolished slavery. If she had not yet attained her freedom by other means, on January 1, 1865, Irma gained her legal liberty. Her world changed dramatically in the years between her 1857 lawsuit and end of the Civil War.

During the war, most courts in the Natchez District (as well as other areas of Mississippi and Louisiana) ceased to function. The Supreme Court of Louisiana closed its doors in late April 1862, and by early May Union troops succeeded in capturing New

[1] "An Act to Prohibit the Emancipation of Slaves," Act of March 6, 1857, *Louisiana Acts, 1857*, p. 55.

[2] *Irma v. Rils*, Records of the Sixth Judicial District Court, #977, Iberville Parish Louisiana, 1857.

Orleans. The first Union warships travelled upriver to Natchez, Mississippi, in May 1862, but Natchez was not occupied by the Union army until the summer of 1863. The Adams Circuit Court closed in 1863 and did not reopen until 1866. In September 1863, parishioners of the Fellowship Baptist Church in Jefferson County, Mississippi, expressed the sense of lawlessness many in the area felt with the following lament in its minute book: "War! War! War! No civil law! But Anarchy and Misrule. Military sway by Friend and Foe! Property Rights and Religion will nigh all gone!"[3]

After the Civil War, the courts convened once again, hearing the lawsuits of wives suing their husbands, blacks suing whites, and the newly free suing their former masters. But the relationships between southern subordinates and their superiors had changed, and in the case of slaves and their former owners, had changed dramatically. White women and African Americans continued to go to court to protect their interests, make demands on those in positions of power, and challenge the authority of their superiors—lessons they learned and tactics they perfected in the decades leading up to the war.

When white women and African Americans went to court in the Natchez District between 1820 and 1860, they did so as skilled litigators, despite their limited legal rights and exclusion from formal politics. Their intimate knowledge of the law, coupled with an astute ability to harness their community networks, gave them a degree of power: the power to improve their situations and the power to help shape the rules that governed their lives. Indeed, the struggle for power between subordinated people and their

[3] Minutes of the Fellowship Baptist Church, Jefferson County, Mississippi, July 1832 to September, 1885, Box 49, Mississippi Baptist Historical Commission, Mississippi College, Clinton, Mississippi.

superiors was sometimes fought over in the terrain of law. The lawsuits of wives, slaves, and free people of color against their husbands, masters, and social betters demonstrated that the authority of white men was far from absolute. Mastery took work. It required negotiation. White women and African Americans used the courts to play a role in that negotiation of power.

Part of why subordinates attained redress in court for the wrongs done to them by their superiors, however, was because of the limited nature of the challenges they mounted. They did not directly confront patriarchal marriage or the institution of slavery. Instead, they challenged its excesses and wrongs. By working within the boundaries of their subordination, they reified the system that subordinated them. Yet, the tropes of subordination—of deference, of powerlessness—that white women and African Americans called upon when going to court also gave them legal standing. Marginalized litigants used the stereotypes of the obedient wife in need of protection, the good and deferential negro with something to offer the larger community, and the well-behaved slave who had served his master faithfully as a rhetorical strategy. They transformed their subordination into a usable legal principle and used it as a strategy of power. This strategy granted women divorces, slaves their freedom, and free blacks additional autonomy over their lives.

The public nature of subordinates' disputes was critical. The local courts were inseparable from social relations on the ground, and as such, white women and African Americans could wield their ties to their local communities to their advantage. Not only did local communities intervene on the behalf of marginalized people, they also helped determine the outcome of cases, weighing in, providing information, and passing

judgment. In the local courts, both subordinates and their superiors were judged as human beings, as individuals. The authority of even the most powerful and wealthiest leaders of a community was sometimes contingent on the fulfillment of their allotted roles within the social order. When they failed to fulfill those roles, they faced legal action, weakened political and social standing, and loss of reputation.

For marginalized people, the courts served as a site of governance. Because of the public nature of litigation in the Old South, subordinates could use their lawsuits to shame their superiors into changing their behavior. When white men did not live up to the standards expected of them, they faced punishment. There was a line they simply could not cross without consequences. With the lawsuits they mounted in public, wives, free people of color, and slaves critiqued the power and authority of their superiors. While they did not sit on the magistrate's bench or in the halls of government where community leaders made decisions about conduct, white women and free and enslaved African Americans helped to shape the rules of daily life. Indeed, their litigation served as a mechanism to exert informal political power in a society which denied them access to formal political arenas. In the "small politics" of everyday life in their communities, their words had sway well beyond what their status as subordinates could foretell.

Law was not simply the province of the elite. It was also a weapon of the subordinated. Marginalized people frequently used the lower courts to contest the authority of the elite and improve their lives. What appears from appellate records to be law wielded hegemonically in the interests of the master class was far more messy and flexible on the ground.

Thus, turning our attention to local legal records reveals white women and African Americans' intimate knowledge of the law and their potential role in shaping it, domestic dependents readiness to challenge their husbands and masters, judges and juries willingness to punish household heads for their transgressions against their dependents, rules articulated in statutes and appellate courts but locally negotiated and sometimes partially enforced, and the potential flexibility of the law as it was lived daily by ordinary people, even deep in the heart of a slave society.

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