“Due to Her Tender Age”: Black Girls and Childhood on Trial
in South Carolina, 1885-1920

by

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Jacquelyn D. Hall

Dissertation submitted in partial fulfillment of
the requirements for the degree of Doctor
of Philosophy in the Department of
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2014
ABSTRACT

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Abstract

Drawing on local criminal court records in western and central South Carolina, this dissertation follows the legal experiences of black girls in South Carolina courts between 1885 and 1920, a time span that includes the aftermath of Reconstruction and the foundational years of Jim Crow. While scholars continue to debate the degree to which black children were included in evolving conversations about childhood and child protection, this dissertation argues that black girls were critical to turn-of-the-century debates about all children’s roles in society. Far from invisible in the courts and jails of their time, black girls found themselves in the crosshairs of varying forms of power—including intraracial community surveillance, burgeoning local government, Progressive reform initiatives and military policy—particularly when it came to matters of sexuality and reproduction. Their presence in South Carolina courts established boundaries between early childhood, adolescence and womanhood and pushed legal stakeholders to consider the legal implication of age, race, and gender in criminal proceedings. Age had a complicated effect on black girls’ legal encounters; very young black girls were often able to claim youth and escape harsher punishments, while courts often used judicial discretion to levy heavier sentences to adolescents and violent girl offenders. While courts helped to separate early childhood from the middle years, they also provided a space for African-American children and family to engage a legal system that was moving rapidly toward disenfranchising blacks.
Dedication

To Mary Beckett Daniels, who taught so many
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1. Introduction

Historians and popular commentators have often struggled to situate black children within the frame of the “New Childhood.” The late nineteenth and early twentieth centuries constituted a seminal and transitional moment in defining children’s relationship to adults, urbanity, legal and social institutions, and work. Black children’s overrepresentation in patently coercive but permissible labor arrangements such as apprenticeship, their exclusion from the first juvenile justice institutions and their presence in adult correct facilities challenged the notion of the “priceless child,” whom author Viviana Zelizer argued was prized less for her direct economic contribution to households and more for her sentimental value.¹ Yet this frame remains deeply embedded in contemporary historical and social scientific treatments of black childhood. Today, it is a truism that black children are distinctly “unprized” and experience childhoods that are particularly “nasty, brutish and short”; characterized by premature adulthood; and not accorded the same worth as white children’s.²

This dissertation shifts from the question of whether black childhood “get to” have a childhood and whether its quality and duration match those of white children, many of whom suffered similar economic deprivations, labor conditions and dubious

² This view of a truncated black childhood is apparent in both nonfiction, sociological and historical texts. For a groundbreaking example that is nonetheless representative in its focus on the urban crisis among black male youth, read Alex Kotlowitz, There Are No Children Here : The Story of Two Boys Growing up in the Other America, 1st ed. (New York: Doubleday, 1991). For a historical source that treats the twentieth-century juvenile justice turn toward the mass incarceration of black youth, see William S. Bush, Who Gets a Childhood? : Race and Juvenile Justice in Twentieth-Century Texas, Politics and Culture in the Twentieth-Century South (Athens, Ga.: University of Georgia Press, 2010).
protection. Instead, this study focuses on an understudied population—black girls—and contends that they were central to defining the boundaries of childhood and children’s legal treatment in a time of ideological and political ferment about children and African-Americans. Black working-class girls in late nineteenth-century South Carolina lived at a critical juncture between three massive social, political, and legal experiments. They stood at a crossroads between Reconstruction’s efforts to reconstitute black and white southerners into equals, and Jim Crow’s equally transformative efforts to gut Reconstruction gains and cement white supremacy. At the same time, Progressive-era concerns about womanhood and girlhood animated discussions about how to deal with black female criminality.

In underlining black girls’ fundamental role in reshaping childhood, this research develops three major subthemes. First and foremost, black girls’ legal encounters helped establish the boundaries between early childhood and adolescence. Next, while Progressive reformers and their government allies did frequently bar black girls from their child-saving efforts, they acknowledged the cross-racial problem of “incorrigibility” and crafted responses to white girls’ apparent delinquency that distinguished them from black girls. Reformers worked to divert white girls from prison precisely because it was a punishment suitable for black girls. As Daryl Maeda has pointed out, various racial identities are formed in relationship to whiteness, and white girls’ rehabilitation was in constant dialogue and debate with black girls’ supposed depravity. And, finally, black girls’ legal encounters point to the ways in which African-Americans used and shaped the law even in a time of mounting disenfranchisement.

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1.1 South Carolina: Frontline for a “Failed Revolution”

South Carolina provides ample fodder for a legal history of this kind. Throughout much of the nineteenth century, the state had a slight black majority, a demographic reality that commanded white attention and political fear. During Reconstruction, the South Carolina assembly was one of the few in the nation to have a bicameral black majority among its legislators. This formidable reversal — in which former free men of color and some once-enslaved men occupied positions of power in the statehouse — met with massive political and violent resistance. Like many of the former rebelling states, South Carolina’s move from slave state to federal oversight that demanded at least de jure recognition of black rights was considered an injustice and fueled the “Lost Cause” that yearned for earlier days of unabashed white dominance. For South Carolina, a pioneer in secession, the transition was particularly fraught. In the course of a generation, the state underwent a legal, social and political realignment unlike any other in its modern history.

With the real threat of black political power at hand, South Carolina politicians retrenched in order to achieve black disenfranchisement. In the 1870s, the homegrown Edgefield Plan espoused a “by any means necessary” approach that sometimes advocated the use of violence to preserve white privilege. The state also adapted the “Mississippi Plan” to dismantle black citizenship through constitutional change and amended its governing framework in 1895 to revoke black males’ franchise rights.

\[\text{As historian Peter Wood noted, black demographic dominance had a long tradition in South Carolina. In his seminal work that linked the histories of African-Americans and early America, Wood noted enslaved people made up the largest single group of Carolina colony residents. The black majority persisted in the state until after the Civil War. See (Wood, 1974 #412) For other discussions about white fears of a black majority in the state over time, see Walter B. Edgar, South Carolina: A History (Columbia, S.C.: University of South Carolina Press, 1998), 77-78. John Henrik Clarke and Vincent Harding, Slave Trade and Slavery, Black Heritage, (New York,: Holt, 1970), 39.}\]
establish racial categories and criminalize interracial marriage.\textsuperscript{5} With the ejection of black men from electoral politics and office-holding, South Carolina consolidated Jim Crow through coerced labor regimes of sharecropping, strategically aggressive policing of vagrancy and work contracts, and an expanded carceral state.

This study locates in a specific region of South Carolina, the western upcountry and some of the adjacent central counties. Geographically, it focuses most on Greenville, Spartanburg and Anderson counties, but also extends to other upcountry counties such as Laurens and York. For comparison’s sake, the study also includes legal cases from nearby black-majority Fairfield and Newberry counties as well as Richland County, home to the state capital and the state’s first municipal juvenile court. Also called the “backcountry,” this region has traditionally has been whiter than the heavily-black low country, and black populations usually hovered at less than or roughly a quarter of all occupants. However, the relatively smaller black populations did not foster particularly amicable black-white relations; the upcountry spawned the Edgefield Plan, an active cadre of Klan and vigilante groups that tormented black partisans and residents for much of the early 1870s, and some of the state’s earliest municipal segregation ordinances in the late nineteenth century. By that time, the upcountry was the undisputed capital of the state’s textile boom, though few blacks could gain positions in the consciously segregated industry.\textsuperscript{6} Rapidly industrializing and rapidly segregating, the upcountry represents a miniature portrait of the industrialization and post-Reconstruction racialization of a Southern state.

\textsuperscript{6} Jacquelyn Hall et. al. \textit{Like a Family: The Making of a Southern Cotton Mill World}. (Chapel Hill, University of North Carolina, 1987).
The temporal boundaries are important as well. This study begins in the uncertain early years after the conventionally accepted end of Reconstruction in the state, the year 1877. During that year, national troops ceded the state to “Redeemers” and the Hamburg massacre was a bloody finale to black male militias in the state. It continues well past the sweeping legal disenfranchisement that came with the 1895 constitution. This dissertation ends in 1920, by which time Jim Crow was in full bloom and South Carolinians were immersed in conversations about child labor and compulsory school attendance. Within those chronological bookends, South Carolina legislators also approved a number of acts or laws that affected children, including one that approved a raised age of consent, a law punishing incest, mandatory school attendance policies and acts that established juvenile reformatories.

That period of legal innovation was a distinctly mixed bag for black girls. As Chapter Two will discuss, black families, wards and communities made use of the post-Reconstruction ability to sue for sexual assault and benefited from the age of consent law. However, black girls vacillated between dangerous hypervisibility and an equally dangerous invisibility in legal and criminal justice matters. They made up the core of incarcerated girls and thus were represented as a threat to public order. But as Progressive reformers created programs and institutions for white girls, black girls

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8 Though South Carolina was repeatedly cited for the numbers of working children in the state’s textile industry, Hugh Hindman has pointed out that measures to limit child labor and make schooling mandatory were introduced in the state legislature as early as 1903, well before the first federal child labor law was passed in 1916. Yet there was considerable pushback even from the millhands themselves and children continued to labor in South Carolina industry and agriculture well into the twentieth century. Hugh D. Hindman, *Child Labor: An American History* (Armonk, N.Y.: M.E. Sharpe, 2002).
existed in a limbo where they were positioned as depraved but not prioritized as a
group that could be “saved.”

1.2 Chapter Outline

Chapter One sets the stage for subsequent chapters by first exploring postbellum
courts and children’s roles in them. After Reconstruction, South Carolina had to realign
its courts to take into consideration new legal subjects: African Americans in freedom.
While courts underwent segregation, they did not also segregate by age until the early
decades of the twentieth century. Since juvenile courts were a latter-day innovation,
black and white children alike were routinely tried, testified and participated in court
proceedings alongside adults.

Chapter Two examines child rape cases in local Courts of General Sessions. Despite
cultural scripts that suggested black girls’ inherent hypersexuality, black actors
continually challenged these narratives by filing suit, sometimes in numbers that far
exceeded those of white complainants. These cases made clear such courts’ preference
for younger victims and that they were likely to convict when an assault survivor was
under the age of consent, even if the perpetrator was a white male. In more readily
affirming the claims of young black girls, the courts reinforced and cemented the
growing divide between early childhood and the intermediate life stage of adolescence.
And granting the claims of black girls in roughly the same rate as they did those of
white girls points to the power of early childhood.

These cases add to the growing case made by Southern and legal historians that
African-Americans have used law (sometimes with white support) even when it was
decidedly not in their favor. During slavery, Ariela Gross has demonstrated that
southern states created highly complex mechanisms for dealing with the cases of slaves,
who ostensibly fell under their owners’ discipline and had no legal rights as
individuals. Writing about rape, Diana Miller Sommerville used legal trials to counter the notion, advanced by pro-slavery historian U.B. Phillips, that Reconstruction unleashed an epidemic of black-on-white rapes that never happened in slavery; in fact, slave rapes of white women did occur before the Civil War’s end, but white communities often supported accused slaves and pointed fingers at the working-class white women who often brought the charges. During Reconstruction, Laura Edwards, showed that black women (technically not enfranchised but subject to property laws that subordinated their ownership claims to men’s) frequently appealed to the legal authorities in cases of domestic and workplace abuse. Likewise, Nancy Bercaw’s study of black working-class women in Reconstruction Mississippi pointed to working-class black women’s repeated attempts to gain rights not specifically granted them through the quasi-legal and short-lived Freedmen’s Bureau; they made up a substantial percentage of freedpeople asking for resolution of wage conflicts for themselves and family members, ownership of the cotton crop, and spousal support. In twentieth century Virginia, Lisa Lindquist Dorr noted interracial rape cases made it to local and state courts with far more frequency than many historians have supposed, and many more black defendants earned court sentences or even acquittal due to webs of relationships with whites and interclass tensions among whites themselves. In her study of how black women and girls were affected by reform movements and

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respectability politics in early twentieth-century New York, Cheryl Hicks suggests that working-class black families used the courts to police youthful, single female family members accused of out-of-wedlock pregnancy, violating gender norms, and general unruliness. Armed with the state’s wayward minor law and a morality that was formed internally and independently from black and white reformers, the families in her study legally pronounced troublesome girls as “incorrigible” and campaigned for their incarceration as a method to scare them straight, a gambit that often backfired when the girls disappeared into institutions that classified them as born criminals.\textsuperscript{14}

Following Hicks, I argue that African-Americans were also strategic in if, how and when they used law in cases related to childhood. As Chapter Two attests, the courts were not the sole venue for handling charges of rape, attempted sexual assault or incest. While it is significant that African-Americans used formal legal mechanisms to counter or charge sexual violence during lynching’s heyday, they used other strategies that worked in conjunction with the threat of prosecution. To borrow a phrase from Christopher Tomlins and Bruce Mann, such legal cases illustrated the “many legalities” or systems of redress that were not limited to actions seen as more traditionally legal.\textsuperscript{15} Black guardians, family members and community were just as likely to pursue out-of-court settlements, force suspects to perform private or public penance, or exact their pound of flesh through physical violence such as beatings or lynchings.

Chapter Three shifts the lens to looking at female perpetrators. Black female criminals in the region have long been relegated to the margins of a historiography

\textsuperscript{14} Cheryl Hicks, \textit{Talk to You Like a Woman: African-American Women, Justice and Reform in New York, 1890-1935}. (Chapel Hill: University of North Carolina Press, 2010).

\textsuperscript{15} Christopher L. Tomlins; Bruce H. Mann; and Omohundro Institute of Early American History & Culture., \textit{The Many Legalities of Early America} (Chapel Hill: University of North Carolina Press, 2001).
fixated on white and black masculinity and violence. Looking at October 8, 1892 provides an unusual spectacle and opportunity to think about the narratives surrounding black, female and youth offenders. In Spartanburg, Milbry Brown, a girl believed to be anywhere from 14- to 16-years-old, hanged for fatally poisoning a white toddler for whom she served a nurse. About sixty miles away in rural Newberry, the sheriff hanged Anna Tribble, a young woman about 20 years of age, for reportedly murdering her infant child. Their cases are similar to those of scholar Kali Gross’ “colored amazons” of Philadelphia, black women whose economic marginalization and refusal to hew to standards of womanhood placed them at odds with the criminal-justice system.¹⁶

The cases are strikingly similar in the demographics of the executed females and the nature of their crimes. Milbry Brown and Anna Tribble were both young, black, female, working class, and laboring away from family networks. Their alleged crimes also constituted adamant rejections of the productive and reproductive roles considered the lot of black women: caregiving for white children or birthing their own children. Furthermore, the cases also drew upon timeworn narratives about black female or domestic servants’ propensity toward specific crimes, namely poisoning, arson and infanticide. Both cases also demonstrated the increasing salience of ideas about mental incapacity in legal cases. White elites debated whether youth, black intellectual inferiority, the defendants’ supposed low intellectual capacity, and female gender influenced the commission of crime and whether it should influence punishment.

Still, as a minor (even one of disputed age), Milbry Brown was potentially a different legal subject than Anna Tribble. Common law had long dictated that the

criminal age of culpability was fourteen years old, but it provided flexibility as judges and juries could scrutinize evidence and determine whether children younger than 14 bore responsibility for their offenses. This diminished culpability standard allowed legal stakeholders discretion in levying punishments of lesser or harsher degree. For Milbry Brown and many other black youth, local courts failed to apply the principle’s leniency in cases that pertained to older youth, particularly those on the culpability threshold, and those accused of violent or especially abhorrent crime. Refusing to invoke diminished culpability as a mitigating factor, local sessions courts effectively drew another line between early childhood and adolescence, and blurred the divisions between adolescence and adulthood in criminal-justice proceedings.

Discourses about womanhood and childhood could be invoked to varied effects: to argue for innocence or lack of mental capacity or responsibility, or to emphasize deviance from those categories’ social norms. White elites lobbied on behalf of Milbry Brown, the fourteen-year-old “colored virago” who killed one of their racial brethren, and they turned the case into a referendum on the violent turn of white Democratic Party politics. Though black girls were not admitted to the state’s juvenile institutions, black girls in post-Reconstruction South Carolina were able to rhetorically harness and sometimes successfully leverage ostensibly colorblind law and the growing symbolism of childhood in local courts. Far from excluding black girls or boys from legal definitions of childhood, Southern communities, judges and juries often had protracted discussions about whether and how gender and age should impact children’s court appearances, their verdicts and sentencing. The paradox of the period was that hardening segregation, the mounting numbers of incarcerated black females and bias against females who offended social norms could — and often did — offset any benefits that accrued to those categorized as minors.
Chapter Four takes us to South Carolina’s urbanizing cities, many of which took more active anti-prostitution stands in the late 19th and 20th centuries. In Columbia, Greenville and Spartanburg, law enforcement ramped up bawdy-house raids; monitored the presence of young girls on their streets; and policed displays of seemingly inappropriate public mingling between males and females. Local governments wielded more power through the regulation of commercialized sex and also the establishment of new juvenile courts. The newfound Progressive zeal to root out immorality resulted in largely unsuccessful attempts to close red-light districts. These efforts worked in sometimes contentious tandem with the reformers, who felt a growing imperative to stamp out prostitution and pressured municipal authorities to adopt zero tolerance policies to the sex trade in their midst. Adolescent girls across racial lines were subject to multiple, overlapping forms of legal and community power, from local white slavery commissions, Law and Order Leagues, women’s reform groups, and federal government agencies. These girls who wound up in courts help us understand the proliferation of different social and legal regimes that was a characteristic of the Progressive era.

As scholars have followed Ruth Alexander’s “the girl problem” — a social panic ushered in by girls’ entry into wage labor and public spaces — they have primarily focused on white and immigrant girls’ encounters with social disapproval and state power through reformatories and the first generation of social services organizations in Northeastern cities.17 South Carolinians were keenly aware that white girls were not the only “problems” for an urbanizing society; indeed, the 1895 debate about the age-of-

consent law raised questions whether the change would apply to African-American girls
and therefore criminalize white men and boys who saw black girls as appropriate
partners for sexual debut.\textsuperscript{18} The black female adolescent was not far from many
lawmakers’ and social reformers’ minds as they mulled laws conceived to reduce
statutory rape and underage marriage among whites.\textsuperscript{19} But the pre-eminent girl problem
involved white country girls running amuck in the expanding city, mill villages and
public spaces. Though black and white girls both experienced rural-to-urban migration
and struggled to find livelihoods in these new milieu, reformers actively pursued
policies that would further distinguish categorize white girls as worthy citizens-in-
training and black girls as a continuing menace to social order.

With the arrival of World War I military training camps in the state, reformers
increasingly narrowed their idea of the “girl problem” to a “colored girl problem.” Black
communities, soldiers and girls were problematized as the leading vectors of crime, sin
and venereal disease. Various scandals about white girls in local jails propelled
reformers to begin diverting white girls from penal institutions and punishments that
were largely reserved for black females. County and local jails continued to detain black
girls and women suspected of various sexual crimes, public immorality or disruptive
sociability. As these forms of government converged to “clean” South Carolina cities,
black clubwomen also targeted black girls for diversion from jails and discipline in civic

\textsuperscript{18} Stephen David Kantrowitz, \textit{Ben Tillman & the Reconstruction of White Supremacy} (Chapel Hill:
\textsuperscript{19} Scholar Crystal Feimster has written that Women’s Christian Temperance Unions, other social
reformers and pro-lynching advocate Rebecca Latimer Felton campaigned for age of consent laws
70-71.
clubs and, later, a hardscrabble industrial school without meaningful state-government funding.  

2. Children of the Courts

On November 3, 1885, 13-year-old Rosannah Ellis found herself standing before the Charleston police court — in both of the only two cases of the day’s docket. The girl was accused of slapping a 6-year-old white girl, Gertrude Lemon, with such force that it left a clear handprint blazing on the younger child’s face. E.W. Lemon, Gertrude’s father, alleged that it wasn’t the first time that his daughter had been harassed on the way from school and said that he had filed complaints that went unheard by police. With Gertrude in tow to identify Ellis, Lemon questioned the older girl, who reportedly answered that she had hit the child and would do so again. Taking matters into his own hands, Lemon grabbed Ellis by the throat and shook her. The confrontation landed Ellis in the court as attacker and aggrieved party. By the end of the cases, both Ellis and Lemon were convicted and given a sentence of paying $5 fines or spending thirty days in jail.1

Like many states, South Carolina was slow to develop courts and jails that separated minors from adults. Children were not rare sights in 19th century courts, and the cases involving Rosannah Ellis demonstrated black girls’ dual roles as both perpetrators and victims in local criminal justice systems. But, more importantly, they also signaled how little late nineteenth-century courts took age into consideration, an approach that would last until South Carolina empowered its probate courts to handle juvenile cases in 1912 and the first dedicated juvenile courts were established a few years later. The $5 fine — less than the $10 or more usually levied in assault cases — communicated that the case was not deemed serious and may have taken Ellis’ age into account. But any small recognition of Ellis’ status as a minor was outweighed by the

1 “The Police Court,” The News and Courier, November 4, 1885, 8.
parity in punishment. The equity in sentencing implied shared and equal guilt on both Ellis and Lemon’s part, but the two were in actuality different legal subjects: one who fell under the accepted age of criminal culpability of 14 (though judges could mete out lighter or harsher sentences to children younger than this age), and Lemon, who was an adult and therefore theoretically more capable of controlling his impulses. But under the Charleston court, it was not age that mattered. Lemon and Ellis were equal threats to public order.

This chapter follows black children through the transition from city or municipal courts that tried children alongside adults to the shift, in some urban areas, to special juvenile courts. For Rosannah Ellis and many children like her, a mundane street conflict between children escalated into a confrontation with an older white male, a beating, a court appearance and the possibility of jail. Ellis’ run-in with another child catapulted her into a local court that saw few reasons to give young offenders a break. Historians of the transition between Reconstruction and segregation have traditionally emphasized local criminal courts as an arena where disenfranchisement was made manifest and have cited their condemnation of young offenders to chain gangs and jail as a central violation of human rights.\(^2\) But black girls appeared frequently as litigants, court

\(^2\) For examples of scholars who see Reconstruction and post-Reconstruction courts as unequivocally unfriendly to African-Americans and as instruments of legalized white supremacy, see Leon Litwack’s *Trouble in Mind*, which catalogs the horrors of segregation and white violence for four generations postslavery. While serving as a comprehensive document of the human rights violations embedded in American racism, Litwack advances a view that legal justice was, at best, improbable and out of the reach of most black Americans in the face of lynching, school segregation and economic violence. See Leon F. Litwack, *Trouble in Mind: Black Southerners in the Age of Jim Crow*, 1st ed. (New York: Alfred A. Knopf : Distributed by Random House, 1998). Histories that focus on coercive labor regimes supported by law, such as convict leasing, also tend to argue that law was, first and foremost, a means to criminalize black life and dissent, and that African-Americans did not expect justice from the law. See Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black People in America from the Civil War to World War II* / Douglas A. Blackmon, 1st ed. (New York: Doubleday, 2008).
witnesses, informants outside of court, and spectators who crowded the courts. But with juvenile justice still an inchoate concept, criminal courts had few mechanisms that acknowledged the growing consensus that children were different and deserved specialized correction or care. As late nineteenth-century local courts came to grips with the legal implications of this changing childhood, black children faced a daunting imbalance: segregated courtrooms of decision-makers who were not their racial or age peers, and the likelihood of being tried as adults in more cases than not. On the other hand, they could hope for lighter fines that they could afford; that the overall high dismissal of criminal court cases would work in their favor and that local legal gatekeepers would not send their cases to higher local courts; and, if convicted, that their youth would sway legal authorities of an early pardon.

2.1 Prelude: New Courts for the Postslavery Era

Black girls in South Carolina criminal courts entered a legal and criminal justice system that had been refashioned by the Civil War and Reconstruction. With war’s end, South Carolinians grappled with building a government that at least nominally assured black citizenship but had scant or no legal infrastructure, precedent, or motivation to do so. But regulating black families and labor relations was a critical concern in the immediate aftermath of the Civil War. The war had not just recalibrated the relationship between North and South or between the states and a stronger federal government; the abolition of slavery demanded intensive realignments of black families that had not been recognized under slavery and new labor regimes. That white South Carolinians understood the entangled nature of family and work arrangements showed in its Black Code, officially called the 1865 Act to Establish and Regulate the Domestic Relations of
Persons of Color and to Amend the Law in Relation to Paupers and Vagrancy. Its first provision extended legal recognition to slave unions and legitimacy to black. In theory, it also gave black parents all civil powers and authority over their children and invested black adults with the ability to serve as guardians to children not their own.

But the act contained enough loopholes that it simultaneously guaranteed and gutted parental and child rights. It upheld the principles of the master-enslaved relationship, conspicuously using even the language and legal logic of slavery. While the law granted recognition to marriages contracted during slavery, the law also invalidated the marriage of apprentices without approval of the “master.” It mandated the ages during which black children could be legally hired out for work, with girls serving shorter terms than their boy counterparts. Female children older than age two, “born to a colored parent,” could be bound out according to the father’s wishes until the age of 18, and illegitimate children could similarly be contracted out by their mothers. Girls ages ten and older could enter into apprenticeships. The law ostensibly provided for even very young children without guardians and tacitly acknowledged that, in this new era of wage labor and still-forming labor regimes, some children might make decisions about their own labor. Yet the law also held that a child’s consent could be trumped; in such cases where the child was not of age to sign an agreement “or when an infant refuses consent,” the master’s obligation and the approval of a district judge or magistrate would suffice. Parents and children gained some rights, but they were not on equally footing when it came to the rights of planters, employers and guardians (black or white).

3South Carolina General Assembly, “An Act to Establish and Regulate the Domestic Relations of Persons of Color and to Amend the Law in Relation to Paupers and Vagrancy, Act No. 4733,” in The Statutes at Large of South Carolina(Columbia, SC).
4ibid.
But the Black Code set up a showdown between the state and the newly united federal government. When states such as South Carolina and Mississippi signaled their resistance to equal citizenship with their Black Codes in late 1865, the federal government fired back with a series of laws explicitly designed to give freedpeople legally rights that were obstructed by state-level Black Codes or rights unlisted elsewhere. In the Civil Rights Act of 1866, for example, affirmed that African-Americans were citizens and equally protected by the law. Vetoed by President Andrew Jackson but eventually overridden by the Senate and passed, the Civil Rights Act was followed by other “Reconstruction Acts” and the 14th Amendment, which again guaranteed black protection under the law.

Inside the state, remaking South Carolina’s legal structures fell to Gov. James Orr, the first governor elected under federal oversight. An Anderson County native, Orr urged legislators in a September 1866 letter of the imperative to craft new legal institutions and procedures to navigate the equally new racial and political order. He wrote: “It is a striking anomaly, that more than one-half of the inhabitants of the State are not amenable to trial in the state’s tribunals … In a majority of the Districts, neither Provost nor freedmen’s courts are in existence.” Where freedpeople’s courts did exist, there were also military tribunals and military-run provost courts. The bewildering and localized proliferation of temporary courts made it unclear exactly where freedmen could turn for legal recourse, and local Freedmen’s bureaus were distant, perennially

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6 Orr, #422

strapped for cash and understaffed until their closing in 1866.8 Within some of those local courts, freedpeople had been able to testify only in cases in which they personally played a role or in which all the involved parties were black — a distinction that Orr called “illogical and indefensible.”9 With the possibility of interracial courts, Gov. Orr further encouraged the state legislature to equalize punishments — so blacks and whites would endure the same penalties — and to pass an act that considered all witnesses competent regardless of race or former status.10

Orr’s apparent progressivism was rooted in allegiance to the federal government, a clear sense of black racial inferiority, and his pragmatic acknowledgment of how essential African Americans were to the working of even the law that disenfranchised them through Black Codes and less formal exclusion. He underscored how critical black testimony was to the efficient operation of both civil and criminal law. In his eyes, close black-white relationships and a supposed postslavery crime wave demanded granting blanket competence to black witnesses.11 As freedpeople were often the sole witnesses of contracts and transactions between whites, he argued that the information they possessed was critical to making well-informed legal decisions and that invalidating

8 With its staff located in Unionville, at the northern border of the state, the upcountry Freedmen’s Bureau often found it difficult to deploy its investigators and agents even to nearby Laurens and other counties in its territories.
9 [Orr, #422]
10 [Orr, #422]
11 Scholars have long debated whether there was a postslavery crime wave and whether an uptick in violent or other crime could be attributed to freedpeople. While scholars of the Dunning school posited a direct causal relationship between perceptions of rising crime and the decline of slavery, scholar Michael J. Boyle has argued more recently that high rates of violence in the Civil War South cannot be laid at the feet of any one population; instead, he says that the widespread violence was a function of strategic political violence against freedpeople, “criminal depredations, ‘honour killings,’ score settling, and seemingly random violence driven by the anger, frustration and despair of Southern whites.” See Michael J. Boyle, Violence after War: Explaining Instability in Post-Conflict States (Baltimore, Md.: Johns Hopkins University Press), 6-7.
freedpeople’s testimony wholesale stood to deprive whites of the chance to make effective arguments in court.

The question of black testimony weighed heavy in the design of new criminal courts in South Carolina districts (which would later become counties). According to Orr, the right of testifying enabled the criminal justice system to crack down on preserve public order and crack down on offenders of both races. While Orr led blame for crime at the feet of both whites and blacks, he noted that “the negro is readily deceived and corrupted, and becomes an easy prey to machinations of depraved white men; and past experience teaches that he is employed to execute the most dishonest purposes, because of his exclusion as a witness from the Courts of justice.” Blacks were thus predisposed to devilment at the exhortation of whites, who strategically used African-Americans as convenient pawns in crime’s commission. To stem the rising tide of crime, Orr suggested that the state prioritize the construction of the state penitentiary (with prison labor), an enhanced vagrancy law, and expanding the Courts of General Sessions into the venue for hearing the most serious felonies.

2.2 Going to Court

For all South Carolinians — black and white, male and female, youth and adult — the late nineteenth century brought more intense contact with a growing state apparatus. The state was literally more visible in the more remote upcountry through a late nineteenth-century construction boom of public edifices including courthouses and jails. In Spartanburg, the mayor’s office jostled for space in the city’s opera house, which was part auditorium and municipal complex, but the city had one of South Carolina’s most impressive jails. Built in 1895, the jail was a three-story brick masterpiece with four cell blocks on each floor; a 1917 state report on county jail conditions lauded this as an ideal layout to segregate inmates and praised the warden for not mixing “juveniles with
adults, coloreds with whites, as so many of our jailers so carelessly do.”

Anderson, South Carolina was, in fact, more popularly known as Anderson Court House; though its first county headquarters went up in the antebellum period, the city joined many South Carolina towns by erected a stately, columned courthouse in 1897.

Before most black girls made appearances in courthouses for the sessions court, they had first appeared on the dockets of local magistrates. Mostly men of influence (but often scant legal education) appointed by the governor, magistrates represented the first and most visible officers of the law. In Spartanburg district and the later county of the same name, small and isolated hamlets such as Pacolet or Cross Anchor and mill villages such as Glendale each had their own magistrates. Magistrates called court at will and held proceedings far more frequently any other state or local court. Their ability to preside at a moment’s notice and location within communities made them the most accessible and frequently used arm of the law. Indeed, magistrates’ almost single-handed rule over their fiefdoms troubled legal advocates such as Charleston attorney Benjamin Chaplin Pressley, who complained that South Carolina magistrates substituted “their own judgments and impulses” for the law and who wrote an alphabetized manual to educate the local legal officials about the finer points of their trade.

Though few magistrates have left records, they exercised tremendous and power over their territories. The end of the Civil War has shorn them of their duties as the principle court that dealt with slavery-related disputes, but magistrates were key

14 An Act to Amend the Law Relating to Magistrates, Their Constables, Powers, Duties, Jurisdiction, Salaries, Etc, (March 24, 1922).
15 Benjamin Chaplin Pressley, The Law of Magistrates and Constables in the State of South-Carolina (Charleston, SC: Walker and Burke, 1848), v-vi.
guardians of public order by the 1890s. During that time, their oath enumerated their mandates to curb gambling, enforce the dispensary law that regulated alcohol sales, and generally handle public disturbances. Magistrate E.H. Lanford’s Spartanburg notebook from 1912 to 1914 shows that his court was a revolving door in which residents sometimes appeared as the accused, complainants, and witnesses in other cases. Of the 103 cases before his court, thirty-seven were for disorderly conduct, usually public intoxication, and gambling was the next most popular offense. One man, E.C. Powers, appeared in court no less than five times in gambling cases. With a finite geographic jurisdiction and a steady stream of repeat visitors, magistrates functioned as neighborhood tribunals where decisions hinged on one man and, in smaller communities, the reputations and records of the accused.

Magistrates’ other powers made them particularly important — and dangerous — for youthful black offenders. Their dominion over public order meant that their courts were the frontline for petty offenses often committed by juveniles, such as public drunkenness and fighting. Furthermore, the magistrate’s possible sentences were typically fines (which younger defendants might struggle to pay), time in county jails, or a term on county “public works” or county public works.

But the most important duty of the magistrate was to examine cases and determine whether they should be transferred to the circuit court, which handled felony cases. Magistrates worked closely with local solicitors to determine what criminal cases were serious enough to be sent to the quarterly Court of General Sessions. County sessions courts were the highest local court available; could overrule or affirm the

16 E.H. Lanford, "Spartanburg County Magistrates Docket Notebook," 1912-14 terms, L42208, Spartanburg magistrates criminal docket, notebook 1, SCDAH.
17 Ibid.
18 Ibid.
decisions of magistrates and local mayors courts (a type of court common in larger
cities); and their decisions could be appealed to the state Supreme Court.

What the traveling circuit judges found in those towns and courts displayed the
diversity within South Carolina’s interior. In many communities, the courthouse or
other public buildings often functioned as both headquarters of authority and staging
ground of entertainment and community meetings. When Judge Joseph Jeptha Norton
arrived in Newberry for the fall 1887 session, he found a coterie of black preachers, who
were having a conference nearby and hosted a concert on the courthouse premises.19 The
tradition of courthouses with multiple functions derived from the early antebellum
period, where there were few public buildings and few places of worship within the
region’s small cities; in Spartanburg of the 1830s, religious revivals and services took
place at the courthouse as well as private residences.20 Far from being isolated from the
law, religious meetings and leisure brought South Carolinians into close physical
proximity with the law.

When South Carolinians traveled to Court Week, it was a legal, social and
economic event that few residents could avoid. Residents from far and wide flooded
county seats during the court session. Across the upcountry, wagon, railway and later
car traffic increased as residents flocked into cities like Anderson, Greenville and
Spartanburg. Complainants, defendants, witnesses and spectators took up temporary
residence in hotels bursting at the seams with guests or camped outside the city limits.
Merchants girded for the onslaught of customers making their pilgrimage to the

19 Letter from Joseph Jeptha Norton to His Unnamed Wife. December 11, 1887, L42208, box 2,
folder 31, South Caroliniana Library, Columbia S.C.
20 J. B. O. Landrum, History of Spartanburg County; Embracing an Account of Many Important Events,
and Biographical Sketches of Statesmen, Divines and Other Public Men (Atlanta, GA: The Franklin
Printing and Publishing Co., 1900).
courthouse; sales abounded, farmers stocked up on essential supplies, and in many upcountry, counties combined Court Week with market days, particularly around the November cotton harvest. Solicitors and clerks spent time liaising with their peers, but they also spent time bargaining to clear crowded dockets and cut back-room deals.

The highest ranking public official that African-Americans in upcountry courts were likely to meet was the circuit judge who presided over trials in one of the nine court districts of the state. Working for the circuit court was no easy job — as the newly appointed Jepetha Norton learned when he took over a seat in South Carolina’s Eighth Circuit in 1887. Norton had lobbied for the position after the previous officeholder was appointed to Congress; circuit court judges were typically appointed by legislative acts in South Carolina, and local bar associations and elites actively campaigned for their candidates. Norton was an ideal candidate: a skilled barrister with an undeniable Confederate pedigree, an asset in the post-war period. As part of the Orr’s Rifles regiment, Norton’s first term was marked by running from trains and carriages to hotels with varying amenities and courthouses of varying size. Norton’s first circuit stopped across the upcountry and midlands, with sessions in Anderson, Pickens, Laurens and Newberry, among other counties. When another justice was ill or otherwise unable to sit his term of the traveling court, Norton was dispatched to other more far-flung locations.21

The circuit court judge had to acquaint himself quickly with the legal apparatus and organization in each town. Solicitors — lawyers who represented the state’s interests — collaborated with magistrates and clerks to compile court dockets for the traveling justice. In some cities and towns, magistrates represented the first level of law.

21 Letter from Joseph Jephta Norton to Sallie Norton, October 15, 1888, box 2, folder 34, Joseph Jeptha Norton family papers, South Caroliniana Library.
and they could dispense with minor cases and thereby reduce caseload. But a circuit
court judge did triple duty: hearing criminal cases in the Court of General Sessions, civil
cases, and also claims for the South Carolina Court of Equity. The intense time crunch of
the judicial session — often only one or two weeks — made for close working
relationships between justices and solicitors, but also extended trial time for
complainants, whose cases were often delayed until subsequent court sessions months
later.

African-Americans typically considered local criminal courts as, at best, an
imperfect route to recourse. At worst, they considered them institutions that were
dangerously biased in favor of whites and an often a path to unwarranted and
disproportionate sentencing. Interviewees for a 1904 report from W.E.B. DuBois’ annual
Atlanta Conference, which produced a series of social scientific research reports about
black Americans, shared opinions about black crime and courts in Georgia, including
some counties abutting the South Carolina upcountry. In tiny Macon County town of
Marshallville, one black contributor noted there had been few arrests, that most crimes
were hard-to-prosecute crimes of sexuality or morality, and that a white man had
recently remarked there was almost no need for a guardhouse.22 Yet another interviewee
implicated the sessions courts: “Sorry to say that in our courts, a Negro’s color is a brand
of guilt. This refers to our county and circuit courts. Justice in rural districts is a mere
farce. Justice to a Negro against a white man is less than a game of chance.”23 Even more
telling was one subject’s admission that “there is some partiality” followed by a request
for anonymity: “Don’t let it be known let it be publicly known that I said we are illegally

22 W. E. B. Du Bois, Some Notes on Negro Crime, Particularly in Georgia (Atlanta, Ga.: Atlanta
University Press, 1904), 42.
23 Ibid., 44.
treated. … It would cause me to have enemies among the whites, and they might set snares for me.” While one white Georgia mayor matter-of-factly recounted the case of a black man fined 50 dollars for beating a dog and sent to the chain gang for a year, white subjects averred that local criminal courts were fair to black complainants.24

While black litigants had ample reason to worry about partiality, they often entered sessions courts full of people who looked like them. At the pre-eminent county criminal courts, blacks made up disproportionate shares of the accused in these venues, even in South Carolina counties where they were only a sliver of the population. But blacks attended court as observers and packed courtroom galleries, especially for cases involving other African-Americans. They were also frequently present as witnesses, again mostly against and for other blacks. South Carolina’s black population had been quickly climbing the steep learning curve to access the law since Reconstruction.

But these courts were simultaneously interracial but segregated. Labor connections and patronage meant that black witnesses were sometimes joined by white witnesses who gave testimony on behalf of black legal actors. Sessions courts records document that black laborers often reported crime or injury to white bosses or elites. This was partly a function of proximity (particularly if crimes occurred on plantations managed by said whites), but also reflected black acknowledgment of white power; a sympathetic white benefactor could mediate disputes, negotiate with other whites and, if necessary, ease the way into intimidating court systems. The Atlanta Conference report interviewees accepted that black complainants could benefit from white influence in courtroom. But source after source made clear that white support in court had its costs: When a black person was accused in court, “their captain (i.e., employer) takes

\[24\] Ibid., 38.
their part in court. They generally pay about $25 and work the Negro from one to one and a half to two years, and the Negro never knows what it costs. Some that are guilty come clear, some not guilty are found guilty all the same.”  

In league with white employers, the court functioned as a private labor market that operated outside the convict leasing programs active in many Southern counties and states. For these black observers and South Carolinians, racial and procedure fairness were stymied by the lack of black jurors in most local criminal courts. In 1865, South Carolina mandated that jury composition must reflect the demographic of the territory it represents. In theory, black-majority counties such as Fairfield should have juries populated by a black majority. Yet, as Christopher Waldrep has noted, the idea that the accused had a right to a jury of his or her peers, was a fantasy for most African-Americans and indeed, many Americans of all ethnicities. By the 1880s, the prospects for black jurors dimmed considerably across the state, and black leaders bemoaned the changes that purged them from these critical positions. At the 1880 Republican convention of Anderson County, Rev. W.R. Parke made clear his disappointment with the Democrats’ stingy and race-based allocation of political spoils, saying “the Democrats would not give colored people offices, and … they would not put as many of them on the jury as they once had.” In an atmosphere where white politicians still saw the need to curry the favor of black voters, the accusation did not go unanswered. Major E.B. Murray responded with a common feint that argued that the courts were more accessible than ever under Republicans and used evidence of an individual conviction to support his claim of nonracial legal justice: “Men do not now have to buy justice; but the

\[25\] Ibid., 47.  
poor as well as the rich and powerful can secure their rights under the law. He said it was true that fewer colored men were put on juries, but the colored man received more justice now than before; that colored men want to be tried by white juries in nine cases out of ten anyway; and that but recently a white man had been hung in Spartanburg for murdering a colored man, and that such an occurrence had never been known under Republicanism, and when the colored people had the greatest number of men on the juries. It did not make any different whether they got justice from a colored man or a white man as long as they got it.”

Grand juries were particularly rare places to find black jurors, especially in the upcountry. Though courts convened *venire facias* proceedings to determine who would eligible for service on the grand jury, the selection pool was often confined to “good and honorable men” — a subjective label that often meant white, propertied, and literate. A notable exception was highly controversial federal trials related to racial violence during Reconstruction; the mass U.S. Circuit Court trials of Klansmen suspected in terrorizing black and white Republicans were heard by a grand jury of six white men and fifteen black.

A few black men served on the petit juries that ruled on most cases, but their seating was also far more prone to be challenged by lawyers for the state or the defendant. In the 1887 sessions court in Fairfield County, three black jurors were repeatedly presented for credentialing and each time challenged by attorneys; within the space of a year or three turns of the court, their names never again appeared as candidates for jury service. Even in black-majority Fairfield, black jurors were severely

28 Ibid.
underrepresented when they sat on the court; when a February 1885 newspaper article listed the prospective jurors for the month’s court, only three of thirty-two jurors present were black.30 Similarly, in Spartanburg, a venire facias list of potential jurors showed how small the pool of black jurors was to begin with, before peremptory challenges: of more than 40 names, only one can be identified as black.

Furthermore, politicians argued that few white men would accept the decisions of integrated juries — an anxiety that both justified and reflected white resistance. In February 1885, John Seals, a white man accused of petit larceny, appeared before the winter session of the court. When six black men were empanelled, “the defendant made no objections, but remarked audibly that as they stood up to be sworn that they looked ‘very wild.’” After Seals was convicted “very promptly” without the jury leaving their seats, said a newspaper account, he reportedly commented that he would have an all-white jury for his next case or would not consent to be tried. Seals’ speedy guilty verdict was attributed to the jurors’ taking offense at his comment and not the details of his case.31

Integrated jurors were a potent symbol of “Negro rule,” for white South Carolinians even after Reconstruction, and many maintained that African Americans were constitutionally unable understand and apply the rule of law. In language that would foreshadow D.H. Griffith’s “Birth of a Nation” with its images of black legislators sullying their offices with fried chicken and frolicking, newspaper editors frequently ran editorials illustrating just how unfit blacks were for jury service. The Keowee Courier published a vignette of a judge frustrated by a black juror who abruptly left court in the

middle of a case. Upon his return, the juror allegedly said, “Boss, no use to tell me anything more 'bout that nigger; I know he stole dat beef.”32

Yet there were few black lawyers and no black sessions judges in the upcountry. From 1868-1900, African-American judges and lawyers were predictably concentrated in the Low Country areas around Beaufort, Charleston and, further inland, Columbia and rural Aiken. In a few rare and exceedingly controversial cases, such as the 1887 lynching of a white man by a group of black men, black lawyers from the Low Country volunteered their services to defend a black client. A survey of African-American lawyers found only two black attorneys in the upcountry during the 1890s; one was Thomas Saxon, a former dean of the all-black Benedict College, and Casper Garrett of Laurens, about whom very little is known. While Garrett qualified to try cases before the State Supreme Court, most black litigants had to look elsewhere for representation. White attorneys filled the void, and most made their livings off of representing black defendants and plaintiffs in the state.

If black litigants operated in a legal world with more racial constraints than opportunities, the few black attorneys in the state found themselves targeted for prosecutions for corruption or behavior unfitting their offices. Jonathan Wright, the state’s black Supreme Court justice and the only known black jurist on any state high court during Reconstruction, was hounded from office with increasingly shrill charges that he had engaged in public drunkenness, an accusation that could have disqualified a goodly number of public officials had it been applied equally.34

32 “Jury Story (Untitled),” Keowee Courier, March 18, 1879, 2.
33 At Freedom’s Door: African American Founding Fathers and Lawyers in Reconstruction South Carolina.
34 Ibid.
2.3 *Children, the State and the Law*

But with the circuit court meeting only ever several months, many children wound up in front of local police courts. The legal venues were charged with maintaining public order, punishing minor offenses and, to some degree, deciding whether more serious cases should be transferred to the periodic sessions courts. “Little Harvey,” a ten-year-old, appeared before the Charleston court for the childish crime of throwing rocks in a public thoroughfare. A sergeant questioned Harvey about the whereabouts of his father (“I don’t got no pa,” said the chastened boy) and asked if the boy “knew the nature of an oath.” A sympathetic newspaper report wrote that “Harvey shook his head no and a tear the side of a base ball slide down his face and splattered on the floor.” Unlike many youth in the upcountry, young Harvey had a black defense lawyer who resorted to high rhetoric, saying to “walls that echoed to the tread … of Brutus, once again I say, little Harvey must be free.” Little Harvey’s punishment was public interrogation, shaming and the fear of jail time; his case was dismissed.\(^{35}\)

Though the first generation of juvenile courts nationwide were created in Chicago and Denver around the turn of the century, courts especially for trying cases with child offenders did not materialize in South Carolina until the early twentieth century. In 1912, the state general assembly empowered local probate judges to conduct hearings in cases where children under the age of sixteen entered the court.\(^{36}\) Four years later, it extended those powers to city recorders’ courts in urban locations such as Columbia.\(^{37}\) In 1918, the capital established a juveniles only court, which heard complaints related to those offenders eighteen and younger.

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\(^{35}\) “In the Police Court,” *The News and Courier*, July 30, 1902, 8.  
Judge Kimball of Columbia’s juvenile court laid out the structure of the court: it had a probation officer for white children, another worker for colored children, and a staff assistant. In theory, children were only committed to the state industrial school for the more serious offenses. Black boys went to the industrial farm. Black girls — with no juvenile institution to house them — were in a legal limbo that either ushered them to jail or prompted local judges to acquit them or create alternative sentencing arrangements.

South Carolinians followed the creation of the nation’s earliest juvenile courts in Chicago in 1899 and Denver a year later. Newspaper after newspaper celebrated and dissected the pioneering work of Ben Lindsey, the sometimes controversial judge who headed Colorado Juvenile and Family Court. His philosophy and methods were the topic of discussion in city after city; Spartanburg’s Wofford College invited him as keynote for the school’s 1912 lyceum series covering innovative ideas, and Lindsey visited Charleston eight years later for a fund-raising for an emergency home for children.38 Under his leadership, the Denver court popularized foundational aspects of juvenile justice, including parole for youthful offenders and designating troubled children as wards of the state rather than simple criminals. The Colorado court also established the principle of the juvenile court being deeply connected with or embedded in schools, with early social workers or truancy officers often being teachers or school staff.39

38 Ben B. Lindsey, Twenty-Five Years of the Juvenile and Family Court of Denver, Colorado : Being an Account of Its Contributions to the Cause of Humanity, Truth and Justice : Presented by Friends of the Denver Juvenile and Family Court in Commemoration of Its Foundation under the Colorado Law of April 12, 1899, and Its Subsequent Development under Some Fifty Other Items of Statutes since Enacted (Denver, Colorado1925).
Like cities nationwide, South Carolina towns lagged behind the formation of age-segregated juvenile courts. In Spartanburg, mayors typically took special interest young white male lawbreakers, negotiated lighter sentences, and released them into parental custody in cases of trespassing or minor stealing. Yet, by 1909, when a member of the Society to Protect Young Criminals came to town and investigated the presence of white boys on the city’s chain gangs, city leadership and members of a new juvenile protective agency began mulling a juvenile court to specifically deal with such offenders. In 1915, Spartanburg began turning over all juvenile offenders to a judge who also served as the chief probation officer. This informal court met in the police station and empowered the mayor to turn young criminals over to the judge. Its first day of operation was greeted with ceremony and photographers as a young white boy jailed for five days was released and literally cut from shackles that had bound his feet. However, it’s unclear whether the Spartanburg court lasted long; there are few records that document the court and sources almost unanimously refer to the Columbia juvenile court as the state’s first such court.

Meanwhile in Columbia, young people were brought in front of a probate judge in local recorder’s court. Recorder’s courts, sometimes also called mayor’s courts, were high-volume legal settings which, in South Carolina’s larger cities, could hear up to 75 cases a day. These were perhaps the most local of urban courts, a counterpart to the magistrates courts that held sway in more rural areas like Anderson and Fairfield counties. When police made their weekend rounds in Columbia’s rougher areas, they gathered up all types of common law-breakers, including drunks, brawlers, and street walkers. The recorder’s court was the first court destination for many petty criminals

\[40\] Gendered Strife & Confusion: The Political Culture of Reconstruction.
would face after an arrest and night in jail. As the court that most often tried the “disorderly classes” for crimes often committed by youth — including larceny, cursing, stone-throwing pranks — the Recorder’s Court had become the de facto juvenile court in the capital city.

But, after multiple tries to get the state legislature to pass bills supporting the creation of a network of juvenile courts, Columbia City Recorder William Etchison and the city council approved a measure that would allow that officially created a juvenile court within the recorder’s court of Richland. As Etchison said in an open letter, it was not that his court was overrun by juvenile cases but rather the principle that children deserved a dedicated court that “examined” and not tried them. “A delinquent child should be investigated in an atmosphere of sympathy and correction rather than one of prosecution. … I hope that no child, white or negro, in Columbia will ever again be arrested and thrown behind bars and thus branded a common jail bird with life all ahead of it.”

The new recorder’s court met once a week in special separate sessions, usually on Thursdays, to hear the cases of young people caught by police or reformer "street scouting." Its primary mandate was divert young people under the age of 18 from the more serious county sessions court, but the probate judge had the discretion to send children to the sessions courts, children’s home or jail. From its inception, the juvenile court was tied to other newly established institutions, such as the children's home on Senate Street. In fact, the juvenile court's weekly hearings were held in the Columbia children’s home. Social workers at the children’s home were on the premises, and staff

41 “Recorder Opens Juvenile Court.”
from the Anna Finnstrom home for girls and young women could cross the street to attend meetings.

Juvenile court adjudicated disputes large and small. A Florence juvenile probate court, occupied itself with a band of small “Jesse James,” boys ages 6 to 10 who committed a rash of thefts involving bicycles, items left in unsecured buggies and even eggs stolen right from under chickens. Black children figured among the juvenile court’s wards. In its early years, white boys predominated among its clienteles, with black boys as a close second. Black girls were less likely than either black or white boys to be in the court, but they were far more likely than white girls to be before the judge. In November 1919, one of the few monthly reports to be broken down by race and offense, black children comprised a slight majority of juveniles in the court with 22 compared with 20 white children. Their offenses also differed; almost half of those black children in the court, eight, were being trying for disorderly conduct. Another nine were in court for violations of probation.

Children before the court were likely to meet Judge Kimball, who was firm and avuncular but not against levying a veiled threat. But while the majority of children were in court for less serious offenses, a court appearance could result in the relocation of children and the separation of families. The recorder also had the power to remove children from households deemed unfit, and in June 1918, it removed four unnamed

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colored children from inadequate homes and placed them with more appropriate guardians. In one unusual case, the juvenile court removed a young white boy who approached the mayor and said that his mother was unable to care for him and he was associating with immoral adults; after an investigation, Recorder Etchison recommended that the mother sign over guardianship and that the young boy be committed to the State Industrial School. Going to the juvenile court, many youngsters found, was far from a day in the park. But, for the most part, it was an improvement over going to the Court of General Sessions.
3. Girl Rape and Legal Vernaculars

In April 1891, farm laborer Louisa Floyd was working near her Spartanburg, South Carolina home when her seven-year-old son raised this alarm: “A white man has got Hattie, and he won’t let her go!” According to her account, Louisa spotted a commotion behind some bushes a few steps from the family’s dwelling. The unknown assailant shoved Floyd’s nine-year-old daughter, Hattie, from his lap and took to his heels. An emboldened Louisa and a neighbor pursued the fleeing man though he was armed with a knife. The accused — later identified as a fifteen-year-old named Thomas Wix — claimed he had done nothing to Hattie. Facing Louisa’s curses and perhaps physical chastisement, he quickly revised his statement, saying he had offered the girl a nickel to look under her dress and then merely pulled her on his lap. Not assuaged by Wix’s explanation, Hattie’s father filed a rape charge in the local criminal court. Wix, an adolescent mill worker, was convicted of a lesser charge, assault with intent to ravish, and sentenced to three years in prison.¹

As the late nineteenth century brought disenfranchisement and lynching, black South Carolinians pursuing sexual violence cases of girls and young women drew upon the vestiges of Reconstruction’s legal order and innovations of the emerging Progressive movement. Reconstruction had theoretically positioned African-Americans as citizens and opened unprecedented avenues for legal protection and recourse.²

¹ The State of South Carolina V. Thomas Wix, July 1891 term, L42157, box 31, Spartanburg County Court of General Sessions indictments, South Carolina Department of Archives and History (hereafter SCDAH).
² Particularly influential for me is the work of Christopher Waldrep, who makes the point that southern whites often found law an unwieldy and unreliable tool to control black labor, and that local courts “allowed Blacks new access to the criminal justice system and at the same time, undermined whites’ immature confidence in law as an instrument of their domination over Blacks.” See Christopher Waldrep, “Substituting Law for the Lash: Emancipation and Legal Formalism in a Mississippi County Court,” Journal of American History, 82, no. 4.
Carolina, like many states, Reconstruction-era legislation gave black females the right to sue for rape. These laws combined with later reformist ideas about child protection to bolster the cases of girl accusers. Sexual violence cases point to African-Americans’ continued use of the legal system as well as the law’s possibilities amid mounting racial restrictions. Those possibilities were particularly evident in cases involving very young black girls, who benefited most from age-of-consent laws and whose cases won conviction in similar rates to white girls.

Yet legal recourse had its limits. The opening for trying sexual assault cases was, at best, narrow and precarious for black girls and indeed all females. Very few cases were reported, even fewer went to trial, and when convictions occurred, sentences often fell far short of the maximum allowable punishment. The odds of successful conviction diminished for older girls, as these cases served to erect boundaries between early girlhood, adolescence and womanhood.

Perhaps because of the likelihood that a rape charge would not end in a trial and black uncertainty about the possibility of racial justice, appealing to the law was only one option for South Carolinians. The legal archive demonstrates the winding path that many cases took to court. Many black South Carolinians pursued conflict resolution strategies that were closely aligned with, but not entirely contained in the legal system. They responded to sexual violence by negotiating monetary or legal settlements without formal legal interlocutors, talking publicly about purported assaults or forcing alleged rapists to do verbal penance, and deploying violence. There was the law that was the business of magistrate, judge and judge. But there was, too, a popular system of
negotiation and concessions that happened in people’s homes and communities before, after, and even while cases were being heard on court. This expansive legal vernacular operated outside and in collaboration with actions easily recognizable as legal. When it came to dealing with sexual violence, black girls and women were particularly apt navigators in this legal language without borders, advocating for themselves and others in court and community.

Though African-Americans deployed these strategies, they were not alone. Seeking to resolve conflict outside the court was a hallmark of antebellum and postbellum cultures, as both blacks and whites defined their relationships with the law. The frequent combined use of formal law and community-based mechanisms underscores black and white southerners’ shared approach to legal authority, even as that same legal authority promised vastly different degrees of legal protection and access to members of each race. Still, South Carolina blacks’ maneuverings proved just how effectively they had learned the ins and outs of the legal system during the first postslavery generation, and they made strategic decisions when it suited their interests to fully engage it. Taken with black South Carolinians’ efforts to police child sexual abuse or activity through formal mechanisms, seemingly extrajudicial measures point to African-Americans’ complex juridical lives and the intensely legal lives of southerners.

This chapter documents African-American legal and quasi-legal action against child rape in a number of upcountry and midland counties between 1885 and 1905: namely, black-majority Fairfield in the state’s center; small Oconee, the state’s mountainous westernmost county on the North Carolina border; urbanizing Spartanburg, home to

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3 For a discussion of how social networks and rumor worked in antebellum South Carolina among elite whites, see Elizabeth Dale, “A Different Sort of Justice: The Informal Courts of Public Opinion in Antebellum South Carolina,” *South Carolina Law Review*, 54. Also, for a broad view of the multiple ways in which early Americans understood the law, used it and maneuvered around it, see the collected essays of Tomlins; Mann; and Omohundro Institute of Early American History & Culture, *The Many Legalities of Early America*. 39
nine crisscrossing railroads and a newly booming textile industry; and, to a lesser extent, Anderson, Union and York counties. But it also hones in on three specific cases that illustrate the spectrum of black action in child rape cases. Nine-year-old Hattie Floyd won her case against an adolescent white perpetrator in Spartanburg. Nineteen- or twenty-year-old Lovey Sawyer of Fairfield County unsuccessfully charged a co-worker with attempted assault in 1890. In 1897, an assault on five- or six-year-old Nancy Alston of Oconee triggered violence within her family and crossfire within her community. Using local criminal court records, coroner’s reports, petitions for commutation and pardon, and newspaper articles, I foreground the testimonies of the girls themselves, their families, supporters, accused men and other stakeholders to understand how all of these actors navigated inside and outside courts.

3.1 Age, the Archive and Black Girls’ Visibility

As historian Bruce Baker has noted, “the rape of black women [emphasis mine] is a classic historical iceberg — we can see a bit of it above the surface of the documentary records, but there is almost certainly much more in the murky waters of the past that we

4 South Carolina historians variously define the upcountry, which may also be called the “upstate” or “backcountry.” Traditionalists may use this term to refer to the counties that once made up Pendleton district (Anderson, Oconee and Pendleton); South Carolina was divided into counties during the period of this study. The term is now commonly for the counties north of Columbia, the state capital, but some have also delineated the region by those areas north and west of the fall line. My definition of upcountry closely resembles that of Lacy Ford, who includes Anderson, Greenville, Lancaster, Oconee, Pickens, Spartanburg and York counties, but extant sources were best in Fairfield, Oconee, and Spartanburg counties, the focus of this work. Ford and W.J. Megginson further divide the upcountry into upper and lower Piedmonts, the primary distinction being the upper Piedmont had smaller slave populations in 1860 and thereafter than those in the lower half. See [Ford, 1988 #25] W. J. Megginson, African American Life in South Carolina’s Upper Piedmont, 1780-1900 (Columbia: University of South Carolina Press, 2006), 8.

5 The State of South Carolina V. Thomas Wix, July 1891 term, L42157, box 31, Spartanburg County Court of General Sessions indictments, South Carolina Department of Archives and History, SCDAH.

6 The State V. James Edward (Ben) Ferguson.
cannot make out so clearly.”7 This is doubly true for the sexual violence against black girls in the post-Reconstruction South. Their very identities — as children, dependents, workers whose labor was typically folded into household economies, females, and African Americans — shroud their actions in mediated layer after layer of sources. Even as part of the first African-American generation to have widespread access to school and literacy, black girls left few surviving personal records, such as diaries and letters, delving into their inner lives and environs. Few archives easily reveal the contours of children’s experiences. Black girls were frequent participants in courtroom dramas where they figure as witnesses, perpetrators of or parties to crimes as diverse as larceny to infanticide, and victims suing for redress. As much as court was framed as an adult arena, children left their marks there as well.8

Whether child or adult, enslaved of free nineteenth-century African Americans were not exempt from the law. Neither was the law free from their influence. As Martha Jones has noted, free African-Americans in antebellum Baltimore encountered legal regulation at every turn: required licenses for travel, marriage, and possession of dogs and firearms; prohibitions against assembling; and a myriad other “black code” restrictions.9 Under slavery, African-Americans greeted such limits with both compliance and resistance, and southern courts and slaveowners alike often tacitly recognized the enslaved’s agency at the same time laws denied it.10 After the Civil War, freedpeople

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7 Bruce E. Baker, This Mob Will Surely Take My Life: Lynchings in the Carolinas, 1871-1947 (London: Hambledon Continuum, 2009), 79.
10 [Gross, 2000 #32]
made clear they hewed to an alternate vision of property rights than their former masters and new institutions such as the Freedmen’s Bureau. Empowered as the country’s latest body of new litigants, freedpeople swung disputes between traditional legal bodies and often contentious community decision-making where ownership was largely determined by public display and use of material goods. Much to the vexation of nineteenth-century bureaucrats, freedpeople’s broad vision of ownership allowed for, but was not dependent on, legal intervention. Instead, freedpeople invested multiple venues with the power to determine issues of ownership and custody: household, extended kin group, social network, and courts among them.¹¹ For people freshly out of slavery, lack of explicit citizenship rights did not completely erase their political organization, stymie forays into the legal system or stop them from pursuing compensation for injury.¹²

Reconstruction’s dramatic legal upheavals directly affected freedwomen and girls in the immediate aftermath of the Civil War. Freedwomen and freedgirls embraced their newly won rights to make contracts, sue, and to claim control over their own bodies. In antebellum South Carolina, rape against a female slave had not been explicitly criminalized, unless it was considered a property crime. The 1841 statute markedly

¹¹ [Penningroth, 2003 #21]
excluded black women when it established the death penalty for both enslaved men and free men of color accused of merely attempting an assault on a white woman.  

In the wake of emancipation and Reconstruction, South Carolina’s black-majority legislature revised its rape statutes to include offenses against black females.  

Scholars of Reconstruction and women’s history have read black and white women’s rape cases as documents of varied female experience, and, significantly, a means for women to claim citizenship.  

After the Civil War, sexual assault was an instrument to firmly entrench white male political power and terrorize the South’s fragile, biracial Republican coalitions. Faced with waves of sexual violence tied to partisan activity in the upcountry’s 1870s “Ku Klux Klan war,” black women in South Carolina used secret Congressional hearings, hearings of the Freedmen’s Bureau, and local courts to tell stories of being raped or witnessing such assaults.  

By the late nineteenth century, Ida B. Wells-Barnett and others emphasized black females’ vulnerability to sexual violence, and historians have followed in her lead. Scholars point to this vulnerability as a legacy of slavery’s coercive reproductive regime, the hallmark of a durable patriarchy that commodifies women’s sexuality, a legal system  


\[14\] South Carolina has gone through multiple revisions of its rape statutes, particularly in reference to sentencing. During the colonial period, rape was a capital crime for offenders of any race. During slavery, the state later instituted the death penalty for free or enslaved blacks who raped white women. More than a century later, in 1995, South Carolina became one of a handful of states to reintroduce capital punishment as an option for convicted rapists who committed the crime against children younger than 13 years of age.  

\[15\] For a long view of rape and race, Danielle L. McGuire, At the Dark End of the Street: Black Women, Rape, and Resistance, 1st ed. (New York: Alfred A. Knopf, 2010); Sommerville, Rape & Race in the Nineteenth-Century South.  

\[16\] To read black women’s testimonies, see the volumes of the Testimony Taken by the Joint Select Committee to Inquire into the Condition of Affairs in the Late Insurrectionary States, an 1872 publication of the 42nd Congress. South Carolina’s violence was so prevalent and profound that the testimony from the state spans volumes III, IV, and V. Numerous authors have used excerpts from this voluminous resource; see Lou Faulkner Williams’ The Great Ku Klux Klan War of South Carolina, 1870-1871 (Athens: University of Georgia Press, 2004), 87; and John D’Emilio and Estelle Freedman, Intimate Matters: A History of Sexuality in America (Chicago, third edition, 2012), 105. For the one of the earliest and still influential scholarly treatments of Klan violence in South Carolina, see Allen Trelease’s classic White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction (1971, 1995).
stacked against black litigants, and a culture that must imagine rapacious black sexuality to justify its own excesses, fantasies and racism. As Jacquelyn Dowd Hall noted in her classic study of women’s anti-lynching activism, white men who recoiled in “horror and madness from the image of sexual relations between white women and black men” … “regarded their own crossing of the sexual color line as ‘welcome attention to the black women,’” assumed to be the sexually expressive foil to white women’s supposedly passive, demure sensuality.

Yet these social and cultural ideas were not so entrenched that the rape of black females was universally condoned, considered an impossibility or went unacknowledged in courts. Apparent adversaries such as one-time Congresswoman Rebecca Latimer Felton — who had once called for “a lynching a day” to halt the putative pandemic of black-on-white rape — and Wells-Barnett sometimes articulated remarkably similar sentiments against the rape of black females. By the early 1920s, black men charged in Virginia courts of raping white females often escaped lynching and won acquittal or lighter sentences, sometimes with white support. Lynching rumors did not always override due process. And, more recently, Danielle McGuire argued that black communities mobilized against sexual violence during the 1940s and 1950s, taking white offenders to court and galvanizing anti-rape networks that formed one pillar of the Deep South’s modern civil rights movement.

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17 Scholars in history, public policy and law have studied racial disparity in sentencing of black rape suspects and also treatment of black women rape accusers, though few of these studies have touched upon the nineteenth century. A recent example is Dawn Flood’s work about rape prosecutions in the urban North, Rape in Chicago: Race, Myth and the Courts (Urbana-Champaign, 2012). Flood argues that black men and women in the metropolis from the 1930s to 1970s repeatedly challenged myths about rape, sexuality, and propriety in court, while attorneys in rape cases debunked ideas about black criminality yet perpetuated racist and sexist stereotypes in their dealings with complainants.
19 Feimster, Southern Horrors: Women and the Politics of Rape and Lynching.
20 McGuire, At the Dark End of the Street: Black Women, Rape, and Resistance.
Another outrage that galvanized African Americans, lynching engraved sensationalist images of interracial rape on the national imagination, though with little emphasis on black victims. Black leaders across the country countered stories of Negro assault against white women with public condemnation of white men’s sexual predation of black girls. Episcopalian clergyman Alexander Crummell railed in an 1880s pamphlet: “In the field, in the rude cabin, in the press-room, in the factory, [black girls] are followed and tempted and insulted by the ruffianly element of Southern society, who think that black women [have] no virtue which white men should respect.” Though Crummell focused his ire on white men, he left the door open enough to include “ruffianly” black men and “tempted” black girls.

Crummell’s critique was expanded and trumpeted by Wells-Barnett, who used incendiary examples of black girls’ rapes in her writings. Her “Southern Horrors” manifesto mentioned specific cases: that of a “little Afro-American girl ruined for life” by a white Nashville detective who served six months in jail, another white rapist who assaulted a young girl in a Tennessee drugstore and was believed to be the target of a black lynch mob, and finally a “Miss Camphor” of Baltimore, raped by three white youths. Pointedly extending a courtesy title usually reserved for “ladies” to the young woman, Wells-Barnett wrote that Miss Camphor’s case “went to the courts, an Afro-American lawyer defended the men, and they were acquitted.” A black girl could get no justice, and looking for legal remedies in the hardening Jim Crow regime was wishful thinking, Wells-Barnett concluded.

23 Ibid., 26.
Wells-Barnett’s own sharp commentary listed but barely registered the various means of black protest against child sexual assault. Enumerating the indignities visited upon black girls, Wells-Barnett also described community responses that involved a threatened lynching and litigation (with black attorneys, no less). But in her estimation, justice for sexual-assault survivors was defined by a successful conviction, appropriately long sentencing, and equitable social outrage over the plights of black and white girls. Success was not measured in blacks’ ability, willingness or agency to file charges, get cases to the trial stage against the odds, seek community-supported resolutions, or threaten whites or other African-Americans with the prospect of violence.

Wells-Barnett’s framework marked girlhood as distinct from womanhood while disappearing age-related differences between black females. Hoping that her audience would see child rape as a particularly heinous crime, Wells-Barnett touted black girls’ assaults as the most egregious expression of black female sexual victimization. Their youth exacerbated the crimes, and Well-Barnett likely believed that child rape could arouse black anger in the ways that sexual violence against black women rarely did. Yet race and a shared history of black female exploitation made black girls’ rapes representative. Like many before and after, Wells invoked childhood rhetorically to enlist adult sympathy and rage over childhood mistreatment. She did not, however, fully acknowledge that invoking age could be effective legal strategy and that the age-specific outrage she tried to galvanize could set off varied legal or community responses.

Historians have discussed child rape primarily through the lens of age-of-consent laws that spread nationwide in the last decades of the nineteenth century and demonstrated that southern legislators often feared such laws would lead to nubile

young black girls prosecuting white males. But beyond debates about the age of consent, scholars have followed Wells-Barnett’s example in grouping together black women and girls as “women.” Such framing flattens possible age differences in black girls and women’s vulnerability to assault and legal treatment. This inattention to age — even when individual historical subjects’ ages are mentioned in primary sources and scholarly accounts — stems partly from the historical, historiographic and legal struggles to define childhood, adolescence and womanhood. In the nineteenth century, just as older children’s entry into public arenas and early social science fueled the creation of adolescence as a social category, childhood was still often defined on the individual basis and by a number of factors. A young female might be considered a woman if she was an independent wage earner, maintained her own home, showed bodily signs of puberty, or had married or known sexual or romantic relationships. If she attended school and still lived under the roof and influence of parents, she could arguably be considered a girl.

The line between girlhood and womanhood was thin, permeable, and arbitrary; this very porousness defies efforts to establish firm, universal chronological beginning and end points to childhood and womanhood. Complainants in upcountry sexual assault cases often referred to minor children who were older than fifteen. Yet, as many primary accounts attest, many rape survivors and their families saw their victimization in terms of age and generation. When Jenny Green, a “young colored girl” who was raped by a Union soldier in Virginia in 1864, she later testified that her rapist “did what married people do. I am but a child.” Jenny objected to her rape not just because of the

shock and physical pain, but because the attack pushed her outside the realm of appropriate behavior for one of her (unspecified) age and unmarried status.

3.2 A Tale of Two Children

South Carolina’s local courts mirrored other legal institutions where sexual assault dockets were filled with abuse against girls. As scholars Holly Brewer and Stephen Donaldson noted in their studies of colonial America and late nineteenth-century New York, respectively, rape was increasingly tried as a crime against the young. Upcountry South Carolina also saw what scholar Estelle Freedmen has called the late nineteenth-century “girling of rape” by which prosecutions of rapes against minors increased and sometimes outnumbered cases involving adult women.27 In the upcountry region at the foot of the Appalachian Mountains, black South Carolinians constituted anywhere from 25 to 35 percent of the residents, a contrast to the black-majority Low Country around Charleston and the state’s central cotton belt.28 But in Spartanburg and Oconee counties, black girls comprised more than half of the complainants who successfully prosecuted claims in these counties.

When black South Carolinians went to court, they filed a variety of legal charges to report sexual violence. In addition to the obvious charge of rape, most South

27 Estelle Freedman’s analysis of four white newspapers, including the sensationalistic National Police Gazette, also notes that these newspapers reported sexual assaults against black girls, but with less frequency than those of whites. Estelle Freedman, “‘Crimes Which Startle and Horrify’: Gender, Age, and the Racialization of Sexual Violence in White American Newspapers, 1870-1900,” Journal of the History of Sexuality, 20, no. 3: 492.

28 In the 1880 U.S. Census, blacks made up 34 percent of Spartanburg County’s 40,000 residents, and this represents one of the higher concentrations of African Americans in the region. Oconee has the second smallest black population in actual numbers of all South Carolina counties, with only 4,301 of its 16,256 residents (still 26 percent). This is in marked contrast to Low Country counties such as Charleston and Georgetown, which reported blacks as 70 and 82 percent, respectively, of their populations in 1880. Fairfield, in the state’s cotton-belt, was roughly two-thirds black. For county-level populations from 1790 to 1930, see David Duncan Wallace, South Carolina: A Short History, 1520-1948 (Chapel Hill: University of North Carolina Press, 2011), appendix IV, 710-11.
Carolinians chose to prosecute under the assault with intent to ravish charge. In contrast to rape, which could earn a convict life in prison, the assault with intent to ravish charge carried up to thirteen years of incarceration. It covered a wide array of actions not always obviously sexual in nature. In South Carolina, assault with intent to ravish or attempted rape cases included circumstances in which a white girl saw a black man running toward her in the cotton field or when a familiar entered a girl’s bed at night and stroked her thigh. What constituted assault with intent to ravish was open to wide interpretation and relied on the complainant’s feelings of endangerment. Many cases began with a male advance — including “indecent” proposals or gestures, requests for kisses, or more ominous actions such as throwing a girl to the ground or covering her with a coat to restrain her.

Hattie Floyd’s case began with an offer — a nickel if she would expose herself to Thomas Wix — and ended in conviction. So what did it take to win a black girl’s rape case at the turn of the century? The case of Hattie Floyd shows how South Carolina’s local courts affirmed very young black girls as children but operated with multiple concepts of childhood’s importance for both child victims and offenders.

Hattie Floyd’s family entered court with a compelling case. If the evidence did not quite fulfill legal standards such as proof of penetration or seminal emission, there was enough to sway jurors that some malfeasance had been at work. First, if they could not explicitly argue that Hattie had resisted, there were signs that, by extension, her

\[ \text{\textsuperscript{29}} \text{Other charges not covered in this paper are abduction and deflowering a girl child, which often was as much about a household’s loss of a girl’s labor as her sexual innocence; incest; and carnal knowledge of a girl child under the age of ten. Carnal knowledge of a girl child under 10 had been in sporadic use since the early 1700s in what was once the Carolina colony, a nod to fourteenth-century English laws’ influence on New World jurisprudence.} \]

\[ \text{\textsuperscript{30}} \text{For an example of a white girl fearing rape from an approaching black man, see The State V. Andrew Higgins. For a case involving a known acquaintance or family member entering the bed of a girl and stroking her thigh, see The State V. Henry Dodd, January 1902, L42157, box 34, Spartanburg County Court of General Sessions indictments, SCDAH.} \]
family had. While Hattie Floyd didn’t testify, Louisa Floyd’s retelling of Hattie’s story in court contradicted Wix’s claim that he had only seated her on his lap; the girl had said that he had mashed her between his legs.31 Wix’s knife and the threats he made to Hattie’s unnamed younger brother — promising to “knock the hell out of the boy” when the child pelted the suspect with rocks — constituted force. And, finally, there was an admission of sorts from the culprit, who said he was curious to see her “private parts” and that he was willing to pay for the privilege.32

The case was also bolstered by an expert witness: a doctor who examined her shortly after the alleged assault. The physician noted abrasions and Hattie’s complaint of sore hips, but later equivocated on whether Hattie had actually been penetrated. In upcountry counties, doctors and black midwives (who had not been totally pushed from practice by “regular physicians”) regularly attended to black child rape victims. In a Union County case, Alice Sims told midwife Adaline Pintergrass that “cousin” Glen Rogers had waylaid her in the field where she worked, silenced her, raped her in the bushes, and then meticulously washed the resulting stains from her dress.33 Pintergrass determined that forced sex had occurred and decisively rejected Rogers’ claim that Alice had suffered an unfortunate and intimate fall on a plow shaft. Only a man’s phallus — “not a stick nor a boy,” Pintergrass said — could have caused the damage to Alice’s genitalia.34

31 In this setting, “mashing” likely does not mean merely a physical action. According to the Oxford dictionaries, the term ‘masher’ was used in the late nineteenth century to describe a man who made “unwelcome sexual advances, often in public places and and typically to women he does not know.” As a stranger who assaulted a young girl outdoors, Wix’s actions fit within this context.
32 “The State V. Glen Rogers,” September 1899 term, L44158, box 46, Union County Court of General Sessions indictments, SCDAH. Note that the defendant’s first name is spelled both “Glen” and “Glenn” and that his surname is also spelled “Rodgers” in some accounts.
33 It is unclear whether “cousin” reflects an actual biological or family relationship, or is a term that denotes fictive kinship.
34 “The State V. Glen Rogers,” September 1899 term, L44158, box 46, Union County Court of General Sessions indictments, SCDAH.
White doctors and black midwives attested to the extent of injury suffered by a girl, and their testimony was particularly influential in securing conviction in child rape cases. Physicians and lay nurses did not assume promiscuity or lack of virginity on the part of black girls, though they were more likely to quiz black girls if they had ever been pregnant. Doctors and midwives mostly conducted visual checks of black girls believed to have been raped, noting genital swelling, bruises, and torn or bloody garments. Their inspections were varied and imprecise in the fashion of much nineteenth-century medicine; physicians routinely had trouble distinguishing between menstrual blood and damage incurred during rape, and few remarked on whether girls’ hymens were intact.35

In a few Spartanburg cases, physicians specifically referred to a more intrusive examination; in a case of an eleven-year-old black girl, one doctor concluded she had been tampered with because her vaginal cavity could easily accommodate his three fingers, more than should have been expected in one so young.

With medical evidence that was not especially damming, the charge against Wix was downgraded to assault with intent to ravish and the jury began deliberations on the reduced count. After a short recess, the jury declared Thomas Wix guilty. Judge Joseph Kershaw, on the bench since Reconstruction and previously a supporter of the short-lived biracial Union party in the state, sentenced him to three years in the

35 It does not appear that black girls were subjected to these types of examination more than white girls in rape cases. Joan Jacobs Brumberg argues that nineteenth-century gynecologists avoided giving pelvic exams, whenever possible, due to the “danger” of stretching or rupturing an unbroken hymen, which was considered proof of virginity in popular consciousness. In rape cases, there would be less need to preserve proof of virginity. Yet Brumberg says that physicians themselves were much more skeptical that an intact hymen could prove chastity or anything about a girl’s sexual history. Though her account of the hymen focuses on middle- and upper-class white females, she notes that physician John M. Baldy used a black woman model for pelvic exam illustrations in his An American Textbook of Gynecology (1896), since “African-American women were assumed to be hypersexual and without normal feminine modesty.” See Joan Jacobs Brumberg, The Body Project: An Intimate History of American Girls, 1st ed. (New York: Random House, 1997), 149.
penitentiary. In terse language, Kershaw condemned Wix to three years in prison “on an impulse of outrage” based on Hattie’s “tender age.”

It was a probably disappointing win for the Floyds; in South Carolina, convicted rapists could be sentenced to life in prison or at hard labor for their crimes. For Wix, the conviction was also disappointing, but the relatively short jail stay was better than spending decades in the state penitentiary, overcrowded with black inmates and rife with contagious diseases such as typhoid and cholera. Going to the Columbia prison was a punishment rarely reserved for whites.

Yet Wix’s guilty verdict was not exactly a rarity; of the fifty-three sexual cases in Spartanburg’s courts, twenty-one ended in conviction. Of that twenty-one, fourteen — 70 percent — involved female minors, most of them under the age of twelve. Seven were identifiable as black girls, making up at least half of the girls in the convictions. Of those seven convictions with African-American girls, three involved offenders who can be identified as white males: Thomas Wix; Henry Short, another fifteen-year-old sentenced to life in prison for assaulting an eight-year-old but later pardoned; and 60-

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36 Freedom’s Promise: Ex-Slave Families and Citizenship in the Age of Emancipation (Charlottesville: University of Virginia Press).
37 Though life imprisonment was possible, it was deployed very rarely in South Carolina courts. In Spartanburg, for example, it was used only once between 1885 and 1905 in a particularly egregious case, in which two black men detained a mentally and physically disabled white women and forced her to have sex with multiple men, they said, in punishment for what white men had done to the Negro. See Handbook of Oral History (Lanham, MD: Altamira Press), Spartanburg County Court of General Sessions indictments, L42157, box 31, July 1891 term, SCDAH.
38 Matthew Mancini documents the overcrowded conditions, high mortality rates, and overrepresentation of black men in the South Carolina Penetentiary. By the late 1870s, when South Carolina was beginning its convict lease program, more than 153 of its prisoners died in one year and another 82 escaped. He notes that, by 1881, 622 of 690 convicts housed in the facility were black and overwhelmingly male. See Matthew J. Mancini, One Dies, Get Another: Convict Leasing in the American South, 1866-1928 (Columbia, S.C.: University of South Carolina Press, 1996), 38, 61, 208.
39 In order to arrive at this estimate, I cross-referenced girls’ names with census records. Where girls’ names or variations thereof were not immediately found, I compiled lists of family or household members from the lists of witnesses or legal actors in court indictments, if extant. In order to confirm a girl’s race and age, I generally confirmed the race and age of the girl or at least two known family members. "Central Registry of Prisoners, South Carolina, 1867-1938," (Columbia, SC: Central Corrections Institute).
year-old “Doc” Jim Ellis, who got six years for molesting ten-year-old Maud Littlejohn when her father sent her to fetch a potion from this purported white witch doctor.\textsuperscript{40}

Whites accused of interracial rape of black girls were largely portrayed as mentally unhealthy or deviant. Greenville’s Robert Gunnells, the son of a police officer murdered while on duty, was accused of assaulting Maggie Bullock’s four-year-old daughter in 1903. The (Sumter) \textit{Watchman and Southron} went so far as to use inflammatory language akin to that which accompanied lynchings, painting Gunnells as a monster — but was careful to advocate for a legal resolution. Its editorial wrote: “The white brute who outraged a little negro girl in Greenville should be given a speedy trial, at a special term of court, if no regular term of court is to be held in that county in the next 30 days, and if the facts are as stated in the press reports, ought to be hanged without the least delay.”\textsuperscript{41} Neither Gunnells’ whiteness nor his affiliation with local law enforcement was enough to acquit him for the newspaper, which asserted that the “brutal, fiendish deed” was out of character for a white man. “A white man who could be guilty of such an act should not be permitted to live an hour longer than necessary to give him a formal trial, conviction and execution.”\textsuperscript{42} Gunnells’ attack on the Bullock child rendered him a different sort of white man, deserving of both due process and the capital punishment rarely meted out to white men.

Gunnells’ family argued that there was skimpy evidence, but more importantly, that his mental instability and alcoholism were compelling fodder for a pardon or commutation. As his mother and sister wrote in their appeals to the Governor, Gunnells had served in the Spanish-American War and returned from the conflict a shattered and

\textsuperscript{40} \textit{The State V. Jim (Dock) Ellis}, November 1899 term, L42157, box 34, Spartanburg County Court of General Sessions, SCDAH.
\textsuperscript{41} “Untitled Editorial,” \textit{The Watchman and Southron}, September 16, 1903, 5.
\textsuperscript{42} Ibid.
damaged man. His 17-year-old sister, Ollie, beseeched the state’s chief executive:

“Please Dear Governor, please pardon him, don’t you think the punishment sufficient for being intoxicated and that is something he never did until he come from the Philippine Islands. ... He was a good boy, you can well see he had plenty of friends from the petition drawn up in January. He has been a member of the Episcopal Church since he was fifteen (15) years of age, and a christian hearted boy. Since he came from the Islands, I could see he was mentally wrong.”

Other family acquaintances, employees and Gunnell’s supervisor contributed statements of his tendency to wander off from work, show up at his employer’s home at night, and drink incessantly; some argued that he should have been committed to the State Lunatic Society rather than jailed, and others wrote sympathetically that his derangement made it ill-advised to grant him a pardon. Even as his supporters pushed Gunnells as a veteran disturbed by his foreign tour of duty and tried to win points by citing his father’s law-enforcement services, Gunnells’ requests for pardon failed in both 1906 and 1907, but finally succeeded in 1911.

Yet it was not merely Hattie Floyd’s youth that the Spartanburg jury and sessions court judge took into account. The case juxtaposed competing youth-related claims from the nine-year-old Hattie and the fifteen-year-old Wix. South Carolina’s earliest reformatory for boys would not be approved until 1895 and opened its doors years later, so committing Wix to a juvenile facility was not possible. Wix, at age fifteen, was just old enough to be considered criminally culpable and punished as an adult, as the legal threshold for holding a child responsible for his or her actions was fourteen. Common law also maintained that boys could not commit rape until age fourteen, at which time it

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43 Letter to Gov. Ansel from Ollie Gunnells, June 17, 1907. S531014, Governor Ansel pardons and commutation files, Gunnells folders 1 and 2, SCDAH.
was assumed that they had undergone puberty. Too old to claim his youth in these ways, Wix was nevertheless young enough to encourage leniency.

Wix was detained in the Spartanburg County jail, a compromise gesture that recognized his race and youth but also the imperative to jail him as a convicted nineteenth-century sex offender. Then, three months after Wix’s conviction, pressure from local leaders prompted a reconsideration of his case. Judge Joseph Kershaw, who had once shared his disgust for the crime, changed his tune from one of harshness to conciliation. On second look, Kershaw supported a pardon for Wix and said that Hattie was not seriously injured. With the urging of several unidentified politicians, Kershaw interpreted the lack of definitive physical evidence to mean lack of injury and, in the absence of twentieth-century theories of sexual assault’s traumatic effects, did not include psychological distress.\(^4^4\)

Wix’s multiple identities as an adolescent teetering on the edge of manhood, laborer, and possible household head complicated what had seemed a strong case. In his move to reconsider Wix’s case, Kershaw presented other factors in his decision to support pardon and early release. First, he opined that Hattie’s assault was the product of “mere morbid curiosity.”\(^4^5\) In three words, Kershaw simultaneously acknowledged and minimized Wix’s prurient interest in a younger child, and he positioned Wix’s attempt to bribe Hattie into displaying her genitals and force sex as an inappropriate desire spurred by Wix’s immaturity.

Wix’s advocates also upheld the importance of children’s earnings to family income. The sessions court judge shored up his case for mercy, noting that Wix’s poor,

\(^{4^4}\)Pardon file of Thomas Wix, Governor Benjamin Tillman Papers, petitions for pardons or commutations of sentence. SCDAH.

\(^{4^5}\)Ibid.
widowed but respectable mother needed his factory wages for support. Invoking Wix’s lack of a father figure and his mother’s survival in jeopardy, Kershaw and Wix’s supporters implicitly suggested that the absence of a moderating male influence may have contributed to Wix’s indiscretion. In their view, children vacillated between states of responsibility and irresponsibility. Unguided by a firm hand, Wix indulged in verboten sexual acts, but the greater good lay in ensuring his present and future abilities to head a household. Complainants who filed charges on behalf of victimized girls emphasized girls’ physical pain, but also referred to injuries that prevented girls from working in the home or on the farm. For many complainants, a sexual assault was both a loss of virtue and a loss of days worked. A girl’s injuries were not just damaging to her body and, perhaps, her later relationship prospects, but to her household’s material health.

The idea of youth operated on multiple levels in the Hattie Wix case. According to Kershaw’s comments about sentencing, Hattie’s age was the primary factor in the conviction and an aggravating factor in sentencing. By contrast, Wix’s youth and race effectively worked as mitigating factors that encouraged the jurors and judge who committed him to jail to support his release after he served a suitably brief period behind bars. These legal decision-makers reserved the right to return to cases in which they had rendered convictions to suggest pardons or sentence commutations — serving in practice as an informal appeals court. By the 1880s, South Carolina jurors and judges regularly cited youth in post-conviction campaigns to free inmates or substantially reduce their jail time. Boy and girl offenders of both races stood to gain from these efforts, particularly in capital or exceedingly controversial cases. Age alone, however, rarely provided a compelling case for pardon or commutation. In petitions supporting less harsh treatment for delinquents, supporters also included concerns about evidence
and procedural snafus. Though age was generally insufficient to free a child offender from incarceration, these pleas of mercy linked youth to ignorance of societal norms and, at times, young people’s supposed inability to commit crimes that were particularly violent, physical, or complex.

There was, however, no consensus about the meaning of Wix’s youth. Kershaw’s arguments for leniency and mercy drew the ire of another prominent attorney, Joseph Hudson, when the case was sent back to the court to consider whether Wix should be pardoned. Hudson pointed out that Wix had still committed an egregious crime that merited ample punishment, not mercy. But with Judge Kershaw backing a pardon and some of the convicting jurors joining him, Wix was awarded a sentence commutation and scheduled to be released just three months after his admission into the county jail. Despite this shortened sentence, Spartanburg corrections records show Wix as an inmate months after the amended release date and do not explain why his stay as a guest of the county extended past the three-month period.46

3.3 Lovey Sawyer and “Getting Satisfaction”

In January 1890, Lovey Sawyer tussled with 27-year-old Wade Ruff in a Fairfield County, South Carolina gin house where they had recently weighed cotton together.47 Ruff, Lovey’s co-worker on a plantation and a married man, offered her a quarter for the church raffle and then promised to increase his contribution if she “gave him what he wanted.”48 According to Lovey, Ruff’s cajoling included dubious biblical interpretations about female submission and his claim that he just wanted to “share part of himself.”

46 “Jail Books of the Sheriff,” L42219, Spartanburg County Sheriff’s papers, SCDAH.
47 The 1900 U.S. Census shows Wade Ruff and wife Malinda as ages 40 and 36, respectively.
48 The State V. Wade Ruff, February 1890 term, L20144, box 7, Fairfield County Court of General Sessions indictments, SCDAH.
But the encounter turned rough when she demurred, challenged male authority in Scripture, and asked why Ruff was giving away his wife’s money. Ruff threw her to the ground and tried to yank up her dress. By her account, the incident finally ended because a crying and resisting Lovey clung determinedly to the gin-house machinery and the white boss arrived on the scene. 

Yet that ending merely launched a process of negotiation, volatile communication, and litigation. When Lovey told her mother, Silla, about the attempted assault, Silla angrily marched off to confront Ruff. In the first of at least two meetings, Ruff offered some unspecified form of “satisfaction” or compensation to defuse the situation. $^{49}$ Whatever form of satisfaction Ruff suggested, Silla Sawyer refused. Perhaps she wanted an official court reckoning, an airing of grievances in the “court” of public opinion, a sincere apology, material compensation or a different type of restitution. Angered by Silla’s unwillingness to accept his terms, Ruff threatened Lovey’s persistent mother in a subsequent meeting. $^{50}$ With the settlement apparently off the table and Ruff proposing violence as one means of resolution, the Sawyer family turned to formal apparatus of the law.

With working daughters, black families and guardians could not control the opportunities for both sexual interaction and violence presented by the wider world. For most black South Carolina girls whose alleged assault cases wound up in South Carolina courts, sexual danger often came in familiar forms. Unlike Hattie Floyd, South Carolina girls were frequently accosted by black men or boys with whom they worked or worked for, or males they knew from school, church, the neighborhood, or their own families. Assaults happened in the most common places; many girls were molested in the vicinity

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$^{49}$ Ibid.  
$^{50}$ Ibid.
of their homes while performing household chores such as fetching water. Still others were violated inside their homes, often when male acquaintances knew or learned that they were home alone or without parental supervision. Many incidents that happened in family dwellings, where girls frequently shared rooms and beds, occurred in the company of younger siblings. In the upcountry, where cotton still packed wagons and markets, girls were accosted in barns and fields where they worked as part-time family helpers (as most girls were now enrolled in school) or contract laborers.

In February 1890, Sam and Silla Sawyer, Lovey’s parents, had gone to court with their daughter. But this was not their first encounter with the local legal system. Whether the Sawyers were exceptionally litigious, well-connected, or serious about maintaining their authority and their daughters’ reputations, they had entered the same Fairfield County sessions court three years earlier to try a case related to another daughter. Mary, then a fourteen-year-old, had married without her parents’ permission. When her parents sued her husband, Dave Johnston, for abduction and presumably consummating the nuptials, the court quickly generated a not-guilty verdict. Mary had remained silent when Johnston, whose age is not revealed in the legal proceedings, swore to a justice of the peace that she was old enough to marry. Mary’s participation in what her parents argued was a kidnapping and unlawful marriage pointed to the difficulty of dealing with daughters determined to forge their own paths. While the Sawyers tried to gloss over Mary’s participation and emphasized Johnston’s unrepentant defense of the illegal union, the jury did not lose sight of her complicity. The Sawyers lost their case.51

51 The State V Dave Johnston, February 1887 term, L20141, box 6, Fairfield County Court of General Sessions, SCDAH.
While the Sawyers unsuccessfully argued for fourteen-year-old Mary to be considered a child and not of marriageable age, they later constructed the much older Lovey as their dependent. When the Sawyers filed this second lawsuit, Sam was listed as the prosecutrix. Lovey, either nineteen or twenty, was not a minor by most legal or popular definitions. She was years older than the age of sexual consent at the time: ten. Though she could have feasibly launched her own suit, Sam’s position as the case’s initiator suggests that, within both the family and the local sessions court in the county seat of Seneca, Lovey was still considered a child or, at least, her father was considered the primary injured party in the case. Girls like Lovey Sawyer often resided in their parental homes until their late teens or early twenties. While Lovey Sawyer was involved in wage earning and her place of residence was unclear, her parents positioned themselves as both her legal advocates inside court and her defenders outside it.

Lovey’s case demonstrated the active role that women took in prosecuting and resolving sexual assault. Women policed morality in their communities, sometimes aggressively, and their sexually-segregated social networks provided knowledge about reproductive matters. It was her mother Silla to whom Lovey reported the attempted assault, and it was Silla, rather than her husband Sam, who took the lead in confronting Ruff. Silla ordered her daughter to stop talking “because it angered her so” and promptly cornered Ruff, who greeted Silla’s verbal onslaught with a denial and then an

52Scholars have written across culture and time periods about the social, legal and punitive power of women's networks. These networks were particularly important in matters related to women’s sexual and reproductive lives, and gender roles. Kathleen Brown has written that, in colonial Virginia, women’s gossip, which included talk about servant’s sexual lives and immorality, created an imagined community of women; acted as a form of social control that paralleled and influenced legal proceedings; functioned as informal political networks; and swayed public opinion by outing behavior outside community standards. See Good Wives, Nasty Wenches and Anxious Patriarchs: Gender, Race and Power in Colonial Virginia (Chapel Hill: University of North Carolina Press, 1996), 99-100, 145, 285-286. Rachel Fuchs and Leslie Page Moch explore the multiple ways in which lower-class French women used networks to seek information on abortion, marriage partners, and child care in their “Invisible Cultures: Poor Women’s Networks and Reproductive Strategies in Nineteenth Century Paris” in Situating Fertility: Anthropology and Demography, ed. Susan Greenhalgh (Cambridge: Cambridge University Press, 1995), 86-107.
offer. “What sort of way are you treating me? ... Stop and let me give you ‘satisfaction.’” Silla’s account revealed a graduated series of steps that could escalate the ginhouse incident into courthouse fodder. Suggesting that she had acted independently, she first warned Ruff that she was going to tell his wife and her husband about his actions. And “if that did not do, take him to the state.” The next time Ruff and Silla Sawyer met, he repeated the offer of satisfaction, never specifying exactly what he would give to the family. When Silla refused, she noted that Ruff said, “You did not take that. Now if you fool with me, I will beat the hell out of you.”

Getting satisfaction was a quasi-legal way that both working-class African Americans and whites in South Carolina used to resolve conflict. As an on-the-ground approach to handling disputes, settlements “to get satisfaction” determined whether and when alleged abusers reached the formalized legal system, and these settlements may have served to keep the overall numbers of rape prosecutions low. In fact, such agreements were not so much extrajudicial as much as they were part of legal spectrum that did not always require trained interlocutors such as judges. This related system included redress opportunities not limited to court cases. Verbal agreements that the alleged perpetrator would never again interact with the child or would “work it off” — providing goods or labor — could also keep a case from authorities’ notice.

53 The State v. Wade Ruff, Fairfield County Court of General Sessions Indictments, box 7, February 1890 term, SCDAH.
54 Scholars such as Bertram Wyatt-Brown connected Southern notions of honor with extrajudicial forms of community discipline, such as dueling and lynching. More recent scholarship has demonstrated links between concepts of honor and the law, and provided compelling evidence for the American South as not anti-legal and prone to lawlessness, but a space that is intensely legal. See Wyatt-Brown, Southern Honor: Ethics and Behavior in the Old South (New York, 1982) for the former interpretation; for the latter trend in legal history and particularly at it pertains to sexuality, see Ariela The State V. Young Harris Gross, Double Character: Slavery and Mastery in the Antebellum Southern Courtroom (Princeton, NJ, 2000); Joshua Rothman, Notorious in the Neighborhood: Sex and Families Across the Color Line in Virginia, 1787-1867 (Chapel Hill, 2003); and Diane Miller Sommerville, Rape and Race in the Nineteenth-Century South (Chapel Hill, 2003).
Cash payments from the accused to girls’ families steered cases away from the courts. These restitution payments were usually arranged by adult guardians who confronted and questioned suspects. Sometimes accused men themselves would come forward, hat in hand, to offer confession, compensation, or to make a deal. One suspect, Young Harris, said he was innocent but offered to pay the medical bills of the young girl — who was reported to be either five or six — whom he allegedly infected with syphilis. In his testimony, he spoke of resolving a previous similar case for $25 and announced his intention to borrow money from a white benefactor to squash legal action. Such agreements knit black and white men together in an effort to avoid court and a possible lifetime stay at the penitentiary, but likely increased Harris’ indebtedness. The case was dismissed.

Girls who said they had been raped and their guardians placed stock in oral acts of contrition and material settlements. Girls and women were aware of these settlement arrangements and showed interest in the outcomes. They even sometimes advocated for satisfaction themselves without the aid of male household heads, communicating with the boys or men they accused in search of an admission of wrongdoing, damages, and perhaps, marriage proposals. A fourteen-year-old girl of York County, near the North Carolina border, started negotiations for payments and sent her younger brother to collect. Getting “satisfaction” was almost always a family affair.

With Wade Ruff’s threats, the Sawyers read the writing on the wall and moved their complaint to the courts. In keeping with a vernacular legal culture that had roots in the antebellum period, a fair share of all cases went to court only after such informal

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55 Ibid.
56 The State v. Giles Ford, York County Court of General Sessions Indictments, 1886, SCDAH.
settlements collapsed, and prosecutors routinely asked girls and their families whether a suspect had tried to mollify them with goods or promises after the alleged assault. The extent to which prosecutors and legal stakeholders mentioned these ways to diffuse a complaint reveals that black and white South Carolinians selected from a more expansive menu of conflict resolution options than lawyers and reform-minded jurists intent on standardizing law in a supposedly law-resistant region would have liked to admit. Still other cases wound up before juries only when the assault became visible in some way, including pregnancy, other injuries sustained during the sexual assault, or the noticeable eruption of sexually transmitted infections in a very young child.

Lovey Sawyer’s in-court testimony mirrored that of other black girls who scrapped with would-be attackers, and her narrative also reflected the legal system’s demands for evidence of resistance. For both black and white girls in assault with intent to ravish cases, their standard testimony often included efforts to draw bystanders’ attention by “hollering,” emphatic refusals, and descriptions of wrestling with attackers. While Lovey tussled with Wade Ruff, other girls reported far more desperate struggles to ward off attacks. Roxie Ann Reed, of Oconee, brandished a shovel when John Jones interrupted her while she was arranging books in the family’s home, only to have him take it from her. And some girls were not loath to handle more dangerous weapons for self-defense; Phillis Mayfield, a Fairfield County resident whose race is unclear from the documentary evidence, engaged in mutual combat with an intruder who entered her bed. After she pushed him from the home, she removed the family’s shotgun from a locked cabinet and blocked his continued tries at forced entry.

57 The State V. John Jones, March 1886 term, L37041, box 3, Oconee Court of General Sessions indictments, SCDAH.
58 The State V. John Maloney, September 1899 term, L20141, box 8, Fairfield County Court of General Sessions indictments, SCDAH.
Older girls were far more likely to testify in court and detail not merely physical struggles, but also verbal battles in which they tried to deter an attack. Lovey employed various rhetorical strategies to fend off Ruff’s advances. Lovey knew Wade Ruff well enough to call his wife “Aunt Malinda,” perhaps a respectful acknowledgment of Malinda’s superior age, marital status and community rank. This form of address also reminded Ruff of near-familial ties, his position as her elder, and the respect with which he should have regarded his own spouse. In addition to reminding Ruff of his wife and his responsibility to contribute to their household, Lovey also challenged Ruff’s assertions that women were made to serve all male needs. If men were entitled to get whatever they wanted from women, she recounted saying during their struggle, why didn’t Ruff get “it” from his wife? Furthermore, Lovey’s testimony underscored her position as the girl who was fundraising for church while Ruff was determined to barter sex for a modest twenty-five cent contribution.

Lovey’s claim that Ruff offered her money for sex was echoed in dozens of other cases, including Hattie Floyd’s, in which men or boys tried to initiate transactional sex. For promises of candy or costs as low as a nickel or sometimes as high as fifty dollars, defendants in rape cases tried to bribe black girls into disrobing, allowing themselves to be fondled, or actual sexual activity. In court, defendants routinely and casually recounted what they perceived as, and what may have been, in some cases, negotiations over the price of sex. Even after the changed age of consent law, which denied girls’ ability to legally say yes to sex while they were under the age of fourteen, defendants were often able to muddy the legal waters and introduce reasonable doubt with stories of exchanges of money or items with the girls who took them to court.

Girls’ experiences were not monolithic, and girls could indeed agree to sexual relations with or without payment. That defendants, lawyers, and complainants all
referred to material inducements in exchange for sex likewise suggests a high degree of transactional sex in South Carolina communities. Though law posited that young girls could not contract marriage and or consent to sex before age fourteen after 1896, legal actors understood that girls could be agents of their own “corruption.” A Union County girl whose mother pressed rape charges first answered under oath that she had not consented to sex and then audibly whispered that she agreed to “illicit connection” — a revision penned in the court indictment before the case was dismissed. More often than not, families were aware of too-cozy relationships between girls and particularly older men, and these relationships could leap into the open when girls ran away with their lovers. When Fairfield County fourteen-year-old Betsy Johnson vanished after church one Sunday in 1890, her brother and father knew enough to begin furiously searching for Samuel Bobo, a married man whom Betsy’s father rightfully suspected of “being too intimate with her.”

Once girls got to court, the emphasis on defendants’ rights to confront their accusers gave accused boys and men an outlet for refuting claims of sexual misconduct. They often cross-examined the girls themselves, and at times, girls’ supposed agreement to transactional sex was the topic of spirited repartee between accuser and accused. Seventeen- or eighteen-year-old Annie Dill of Anderson County found herself on the defensive in 1891. While she had previously testified that Hicks intercepted a Christmas Day walk to the store and asked her for a gift, Hicks parried with a stream of questions evident by Dill’s stream of answers: “I did not tell you that I had no candy, but I had something better than candy. … I did not tell you that I was afraid somebody would see

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59 The State V. Samuel Bobo, June 1890 term, L20141, box 7, Fairfield County Court of General Sessions, SCDAH.
us. ... I did not talk you about [her] mother until I saw my father coming.’” When Union County eleven-old-year Alice Sims said that farm laborer Glen Rogers raped her in 1899, she had to refute his claim that her vaginal injuries were due to a painful tumble onto farm equipment. Alice’s testimony veers between first- and third-person viewpoints ventriloquized by the court reporter. According to Alice, Rogers had asked where her mother and brother were, and once he was sure they was not nearby, “he had me down and hurt me bad.” Rogers countered with questions about whether Alice had cried, how far the incident took place from any dwelling and concluded on the statement, “You say I done it.” Alice’s answer: “You know you did nobody else but you.” The jury returned a guilty verdict and sentenced Rogers to fourteen years in jail.

Unlike Alice Sims’ case, Lovey’s did not end in conviction. Lovey’s age, her established working relationship with Ruff and her own testimony contributed to a not-guilty verdict. The defense made much of the fact that Lovey herself admitted that much of their conversation before the alleged assault had been “in good humor.” For Lovey, recounting the incident before jurors and judge was risky business, for what she framed as initially pleasant banter could be interpreted as negotiation about the terms of sexual interaction.

As the Sawyers learned in their two tries to punish men accused of misconduct with their daughters, most sexual violence cases in upcountry courts failed. Lovey’s case is emblematic of how rape cases generally unfolded in South Carolina courts that tried very few rape cases at all: a known suspect (usually a black male), a girl or young woman at its center, a standard narrative of resistance, and lack of conviction. And the

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60 The State V. James Hicks, February 1892, L04153, box 14, Anderson County Court of General Sessions, SCDAH.
61 “The State V. Glen Rogers.”
older the girl, the more difficult it became to sustain claims of innocence in the eyes of judge, jury, and community.

The small number of convictions stemmed from underreporting but, also in great part, from the small pool of cases that even made it to verdict phases. Relatively few went past initial evidentiary phases. Many were declared no bill, meaning that the court found little reason to continue the case through the process. In Spartanburg, at least twenty-two of the fifty-three cases met their end in this way, when prosecutors decided there was insufficient or too conflicting evidence to go on. Prosecutors frequently moved to have still others discontinued after indictments and testimony were taken, but before verdict — sometimes because they discovered new information that significantly changed their arguments or prospects.

In Oconee, only twenty-two rape and assault with intent to ravish cases were heard in the local sessions court from February 1892 to February 1905. By contrast, the urban Spartanburg Court’s fifty-three complaints between 1887 and 1905 still worked out to an average of only a handful per year.⁶²

3.4 Retributive Violence, Community Knowledge and Rape

Complainants such as the Floyds and Sawyers must also have carefully weighed the social and material consequences of reporting sexual violence. There were benefits to starting a complaint, and some families or guardians went to great lengths to file legal

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⁶² I calculated these numbers by using each county’s Session Courts criminal journals, which were ledgers in which court proceedings were entered. I compiled lists of all sexual violence charges — rape, assault with intent to ravish, abduction, incest, and carnal knowledge with a woman child under the age of ten (and later under fourteen). I did not include sodomy cases in this count. I cross-referenced the criminal journals with extant indictments and produced these estimates of cases that went to court. It is possible that some sexual violence cases did not make it to the level of the Sessions Courts if there were local mayor’s courts. See the Anderson District and County sessions courts criminal journals, the Fairfield District and County sessions courts criminal journals, the Oconee County Sessions Courts criminal journals, Spartanburg District and County sessions courts criminal journals, all at SCDAH.
complaints. Traveling to the county seat to file charges cost work time for complainants and witnesses; in February 1886, Oconee farmer Berry Reed made multiple trips to report the rape of his fifteen-year-old adopted daughter, Roxy Anne Reed; he went first to a judge in neighboring Pickens County for a warrant, but he was informed that he could only file charges in the Oconee town of Seneca and he later appeared in the county seat for the trial. For guardians, making an assertive public statement either by law, settlement or airing accusations could express love for the child and family, as well as affirm the chastity of black girls. Going public could shore up black parental and patriarchal authority, and denouncing a suspected sexual offender could be seen as an act of public safety. And there were less laudable reasons for accusing a male of rape, including maligning enemies or settling scores.

Rape complaints that started in secret encounters could reverberate in a community, especially the hamlets that dotted the rural upcountry. On a purely pragmatic level, filing a rape charge could damage important relationships. South Carolina’s local criminal courts could take months or years to decide or dismiss cases, building tension between those involved and extending the trauma of sexual assault survivors. Nine-year-old Hattie Floyd was attacked in April 1891, but her case wasn’t heard until the next quarterly circuit session in July, and this was a relatively short wait when courts typically continued cases when witnesses or suspects failed to appear. Furthermore, incurring the wrath of local whites could provoke indiscriminate reprisals throughout the black community (though whites also often played supportive roles as witnesses or character references in trials). That same black community might oppose instigating a rape case in fear of retaliation or if an accused offender was one of its own;

63 *The State V. John Jones.*
the stakes were high in a state that included life at hard labor as a possible punishment for rape. Black men were uniquely likely to feel the law’s force in sexual assault cases, though relatively few black South Carolinians in the upcountry were sentenced to life in prison for rape during this time period.

Intrafamilial sexual violence could also set off shockwaves in a household and its surrounding community, though South Carolina’s courts made little use of its new incest statute. By the late nineteenth century, South Carolina joined many states in passing laws aimed to curbing youth sexuality and child exploitation. In 1884, South Carolina defined incest as a crime that merited a sizable five-hundred-dollar fine, a year’s imprisonment, or both penalties. From 1886 to 1905, the first twenty years of incest’s status as a legal crime, the Spartanburg sessions court saw only a handful of incest charges.

But the lack of incest charges did not mean that interfamily sexual abuse was not occurring, as the Spartanburg docket attests. Intrafamilial sexual activity had previously wound up before juries, just wrapped in different legal packages. Before and after the incest law was put on the books, upcountry courts tended to classify sex between young girls and men who were social kin but not biological relatives as rape, not incest. In 1894, Jesse Stevenson supposedly accosted his niece or stepniece, Simi Robb, while she and her sister were going to get chickens. Though his rape case was dismissed, it almost never made it court because filing charges “would make a fuss in the family.” The girl

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64 An Act of Define the Crime of Incest and Provide a Punishment for the Same, December 24, 1884. An index to acts and joint resolutions passed at the [South Carolina General Assembly] Regular Session of 1884. No. 529, page 857.
told her mother a month later, probably after it became clear that he “gave her a bad disease.”

In other Spartanburg cases, a perceptive female relative suspected that father figures were molesting girl children. In 1895, when 11-year-old Mamie Garrett took water to her stepfather, Broadus Griffin, in the field, he “knocked her on the head and back, then done what he wanted to do.” Her mother noticed the dirt on her shoulder, questioned the girl and took her husband to court, where he was sentenced to five years in the penitentiary. Another 11-year-old, Ada Alexander, shared the home’s bed with her father, and her aunt noticed noises and movement suggestive of sex coming from the only bed. Not persuaded that the groans were snores or sleeptalking, the aunt talked to the child, who stated matter-of-factly that such nighttime happenings were frequent occurrences. A subsequent physician’s examination concluded that Ada had been “tampered with” and that for a girl of age 11, “her private parts were unusual.”

Watchful community members inserted themselves into many a case, and authorities may have never been alerted about the case of Oconee County’s Nancy Alston without their intervention. When Nancy, an orphan of either five or six years of age, was spotted wandering, crying and with a bleeding nose on a Saturday, her distress galvanized unspecified community members. Those parties were probably community women; neighborhood women had whisked Nancy to a nearby house where they cleaned her face, and one Susan Davis testified about the events before and after the injured child’s discovery. In contrast to the inherent slowness with which quarterly sessions courts were doomed to work, a constable had been contacted by “members of

66 The State V. Jesse Stevenson, January 1892, L42157, box 31, Spartanburg County Court of General Sessions indictments, SCDAH.
67 The State of South Carolina v. Dock Alexander, Spartanburg Court of General Sessions indictments, SCDAH, L42157, box 34, February 1904 session.
the colored community” by Sunday. A magistrate visited the Ferguson home, Nancy’s adoptive home, almost immediately. The next day, an investigation was well under way, though court transcripts do not detail other injuries or more than a barely sketched chronology. Just how Nancy’s case progressed from two common childhood ailments—crying and bloody noses — to a full-fledged rape investigation remains a mystery unaddressed in the indictments or other legal documents.

Communities wielded significant power in cases involving sexual violence and morality. Rumors and allegations traveled within neighborhoods where people lived, worked and worshipped together. With nineteenth-century homes lacking modern ventilation and indoor plumbing, household doors opened and closed frequently, making indoor happenings visible to outsiders. The single-room dwellings of the nineteenth century meant that spectators could often see into small dwellings where there was little or no division between sleeping quarters and other living space. Neighbors testified in a variety of cases involving criminalized intimacy, including rape, adultery, bigamy and the rare incest accusation. In court, they cited glimpses of unmarried people, pairs married to others, family members, and other unusual couples sharing beds. Judging by the frequency with which kin and bystanders initiated or weighed in on these court proceedings, families and social networks often did not balk against using the law to formally condemn what they deemed reprehensible behaviors. Neighborhood women particularly provided a wealth of information for juries: that they helped a girl wash blood from her clothes, saw rumpled bedclothes in the house where a child shared a mattress with an adult, spied a man pulling a girl through the bushes, or

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68 The State V. James Edward (Ben) Ferguson.
even walloped an offender who was harassing another female. Others gave evidence about an accused man’s character or used their testimony to give free rein to suspicions.

Ultimately, three separate conflicting explanations of Nancy’s injuries emerged. First, Nancy shared that she was struck by a small boy. A second story said that she was raped by adult white men. A third version pinned her apparent assault on a lone black man. No clarification was forthcoming from the Fergusons themselves, and prosecutors noted that the family appeared to be hiding something.69 Georgianna Ferguson, perhaps the family matriarch, did little to calm the brewing tempest over the child’s mistreatment, saying in earshot of concerned neighbors that Nancy’s apparent abuse was the fruit of an old feud best left unspoken.70 While women in her community and likely her social network informed magistrates about the alleged assault, Georgianna Ferguson opted to preserve silence and her family unit.

Soon, lawyers dismissed the Fergusons from the courtroom and interviewed the very small child alone. Common law, though inconsistently followed, frowned upon testimony from witnesses or complainants younger than fourteen. But though the Anglo-American legal tradition threw doubt on the admissibility of child testimony, South Carolina judges and juries often had nowhere else to turn to discover evidence in child assault cases and weighed child testimony heavily. What Nancy said and whether it was both intelligible and actionable is not apparent.

Just as community members sparked the case by contacting local officials, community members played a role in the case’s pivotal turn. The violence embedded in sexual crimes against children often begat other violence. Eyewitnesses reported that

70 The State V. James Edward (Ben) Ferguson, 1897, L37041, box 4, Oconee County Court of General Sessions indictments, SCDAH.
household head Gus Ferguson beat another family member, eighteen-year-old Ben Ferguson, in the family’s yard. Though we cannot know if Nancy’s injuries caused the beating, this was clearly the conclusion of the Fergusons’ neighbors, and the Fergusons may have opted for family discipline as a way to avoid the criminal justice system. Gus Ferguson exercised the patriarch’s privilege of violently correcting a younger family member, though the relationships between Gus and Ben (and indeed between the Ferguson clan and Nancy herself) are never fleshed out in any legal documents.

But while Gus Ferguson claimed the right to mete out punishment on his kinsman, the method he chose was conspicuously public. With the eyes of his neighbors on him, Gus Ferguson brought the beating into the literal open. Whether this action was the spontaneous response of an angry household head or a calculated effort to respond to community members who proved they would act if he didn’t, Ferguson placed his attack on Ben within the view of the very people who informed authorities of Nancy’s condition. In doing so, Ferguson combined family-based discipline with a nod to a watchful community that monitoring its own and did not hesitate to bring in outsiders to render a different kind of verdict.

For prosecutors, the opinions of a few neighbors and the attack on Ben Ferguson trumped the need for a clear narrative of what happened and who was responsible. Community observation brought the case to court, and community knowledge or speculation identified Ben Ferguson as the leading suspect. He was later charged in the crime, though extant records do not include direct statements from Nancy linking him to the crime or a confession. In the eyes of the jury and judge, community-based reports and ideas about the younger Ferguson’s guilt constituted damning evidence. On this

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71 Ibid.
seemingly flimsy evidentiary foundation, eighteen-year-old Ben Ferguson was committed to the state penitentiary. He died there two years later.

The case of Nancy Ferguson—one small girl—mobilized three entangled forms of governance: within the family, within the community, and within the courtroom. Community members overruled the Fergusons’ silence to report a possible crime against Nancy Alston, and their intervention triggered the legal case. Gus Ferguson’s show of force expressed, to his kith and kin, both a measure of his power and a measure of his disgust for suspected child predators. That reprisal constituted a physical settlement designed to simultaneously exact punishment and re-establish the Fergusons’ credibility among neighbors who doubted their concern for the orphaned Nancy. But the spectacle of Ben Ferguson’s beating transformed Nancy’s case from an outrage in the “court” of very localized neighborhood opinion into an actionable matter tried in the Oconee County Court of Sessions.

Allegations of child rape, seeping outside the confines of family, sparked violence beyond a communal yard or the court. Throughout the late nineteenth- and early twentieth centuries, South Carolina newspapers reported snippets that emphasized black mobs that targeted black suspects.\(^2^2\) In the early twentieth century, *The Anderson Intelligencer* ran blurbs detailing the deaths of supposed rapists “at the hands of persons unknown.” A December 1905 item in “General News” noted that “Jim Green, a negro, was lynched, by a negro mob at Boyle, Miss., for assaulting a little colored girl.”\(^2^3\) Two months earlier, *The Edgefield Advertiser* proclaimed that “Negro Mob Lynches Negro,” a reference to a Banbridge, Georgia, incident where an unidentified


black man accusing of raping a girl and attempting to assault her mother was “strung up
a tree and riddled with bullets.” The assailants, none of whom were apprehended,
intercepted a convoy taking the man to town and told deputies “they must have the
Negro.”

That scenario — an armed band of black men hijacking a sexual-violence suspect
and then escorting him to his death — evoked the famous “colored lynching” of Pickens
County. The day after Christmas 1887, fourteen-year-old Lula Sherman was minding her
younger sister while her parents went to a community meeting. In their absence, a
white, bearded man entered the Sherman home, demanded water, and refused to leave.
The man — a man named Manse Waldrep, who was characterized as an on-and-off
again millworker — raped Lula Sherman and concluded the assault by giving her pills,
stuffing her vagina with cotton, and advising her to tell her father to remove the batting
in a few days. After Lula died of an apparent infection, her eight-year-old sister pointed
out Waldrep as the suspect and he was promptly arrested. Two white constables,
including part-time officer Gaylord Eaton, were transporting the suspect to jail when
their wagon was halted by a dozen armed black men, including Cato Sherman, Lula’s
father. The next morning, Waldrep’s body was swinging as the particularly strange fruit
hanging from a Southern tree. Cato Sherman and five accomplices were jailed.

While Lula Sherman’s case inverted the rape myth, some white and black males
in Pickens County agreed on violence as the appropriate response to child sexual
assault. Cato Sherman and his comrades had followed the ritualistic script of lynchings:
an intervention in transit or at the jail, state authorities’ limp-wristed resistance (and
possible collaboration), the presence of multiple perpetrators, and the body’s display.

74 “Negro Mob Lynches Negro,” Edgefield Advertiser, October 11, 1905, 1
Contradicting ideas of lynching as spontaneous acts of collective anger, two black male witnesses — key for the state’s case against Cato and his ilk — the black male conspirators had met beforehand to discuss what, if any action to take.

White men of Pickens may have communicated with black men about Waldrep’s fate, and commentators hinted that white men had initiated, encouraged, or made possible this unusual murder. A reportedly intoxicated Constable Eaton declared publicly before the murder that he would lynch Waldrep himself if he had three negro men to help. Newspapers remarked suspiciously that as the constable’s wagon approached Pickens, Eaton moved to the rear, dismounted when the lynchers approached, and stayed behind after the first volley of shots rang out. Those shots, in turn, drew white physician Dr. T.W. Folger, who lived nearby and inspected Waldrep’s wounds. Pronouncing his injuries merely grazes, Folger ignored Waldrep’s requests to see his family, left, and was later charged (but acquitted) with being an accessory to the murder. Eaton, too, was charged, but made bail speedily while the black male defendants went through a mistrial and resided in jail for 14 months. Newspapers like The Manning Times focused on Eaton saying the lynching “was a clear case of culpable official neglect … and the constable or officer responsible for starting alone at midnight, with a prisoner charged with with an infamous crime, and in the face of threats of lynching, ought to be held as an accomplice.” Other papers opined that the lynching would never have happened without Eaton’s drunken suggestion or more direct complicity.

Lula Sherman’s rape and death quickly faded in public memory, as her father and his fellow lynchers awaited their death sentences. Her rape and death eclipsed by the prospect of a mass hanging, the black lynchers’ plight became a referendum just how far the privileges of patriarchy would extend to black men. Pundits and politicians
argued that Waldrep’s murder, while illegal, was understandable given the responsibility of male household heads to protect the honor and lives of their dependents. The black men, opined a Charleston newspaper, had only done what their racial betters would do: “White men have been lynching Negroes for the same thing since the war, and having set this example, they should not grumble if the Negroes imitated them when a like occasion occurred.” For Chesterfield County residents, the Pickens lynching represented a failure that those with “superior advantages and untrammeled opportunities” — white men — had “tended to mislead the ignorant and unwary, and clothe such acts of violence in their eyes, with legality.” One letter writer advanced the lynching as proof positive that slavery had successfully civilized black men into being patriarchs. Still others argued that, as no lynchers had ever been convicted (much less hanged) in South Carolina, that justice demanded that no black man should be so punished for a crime of passion. Lula Sherman’s rape and death were but sidenotes in white men’s continued defense of lynching and the maintenance of male impunity.

Still, defending the black lynchers partly depended on painting a picture of Lula’s sexual chastity. Among the first petitions to arrive in Columbia was a spirited missive from Chesterfield County, signed by black farmers, an African-American schoolteacher and a few whites. The signers appealed to Gov. John Patrick Richardson to exercise executive clemency for the lynchers who acted on the “brutal outraging of Lula Sherman, an innocent girl, fourteen years of age.” Lula’s virtue went relatively unchallenged, though a random letter writer challenged her cause of death and hinted that she perished from a female disease, perhaps a euphemism for sexually transmitted infections. Lula Sherman stood as a martyr in stark contrast to Waldrep, who was described in a Pickens County letter as a profligate and serial sex offender. Waldrep was
a “dangerous character, consorting with the worst element of society, and if common report is to be trusted, has been guilty of rape before and has several times before been guilty of the attempt.”

The case of the colored lynching captured the imagination of South Carolinians statewide and resulted in an effective campaign that prevent their mass execution. More than 6,000 black and white South Carolinians rallied in their defense and signed petitions advocating for Cato Sherman’s release and lesser sentences of life in prison for the others implicated. A group of African-Americans in Charleston began a defense fund for the men, and one of the state’s few black attorneys, John Freeman of Charleston, offered his services. As it turned out, a team of local white attorneys volunteered to represent the men. Cato Sherman and two others were acquitted, though another trio of co-defendants served life sentences in prison until they were pardoned by Governor Johnson Richardson in 1889.

“Going to the law” was only one weapon in the arsenal blacks used to protest illicit or illegal sex with girl children. African-Americans tapped a reservoir of responses that also included community-based settlements and physical violence. In contrast to the culture of dissemblance — by which historian Darlene Clark Hine argued that adult black women “shielded the truth of their inner lives” and sexual assaults from others — many black families or individuals in South Carolina’s western regions responded publicly to the alleged violation of their daughters, relatives, neighbors, or wards.75 They

75 Various scholars have specifically documented African American women’s experiences of sexual violence, and there is a productive intellectual tension between scholarship that sees a cultural predisposition to silence in matters of sexual violence and other literature that increasingly argues that making sexual violence public was a key and important project for individual women and increasing black women’s collective power. See Darlene Clark Hine, “Rape and the Inner Lives of Black Women in the Middle West: Preliminary Thoughts on the Culture of Dissemblance” in Unequal Sisters: A Multicultural Reader in U.S. Women’s History, eds. Ellen Carol DuBois, and Vicki L. Ruiz (New York, 1990): 292-297; Crystal Feimster, Southern
did so amid mounting constrictions on their hard-won citizenship rights and surging racial animus in a state where Gov. Benjamin Tillman would declare that the alleged rape of white women should be stopped by any means necessary. Black girls did not figure in Tillman’s imagination as the injured parties in rape, but enough black and white South Carolinians objected to child abuse that black girls’ individual cases exploited the rapidly narrowing apertures for black legal redress. When cases did go to court, pre-adolescent black girls’ suits represented the best chance for black females — far better than the odds for older girls or women — to protest sexual violence. From Reconstruction, they won the right to sue and the right to ownership of their own bodies. This legal legacy combined with common laws punishing child exploitation and Progressive reform meant that, for many girls, they could also lay claim to victory in the courts.

Yet law is only part of the story. Invested in using the law to their advantage, South Carolina blacks keenly understood that its formal structures — its rules, procedures, and the actual courthouses being erected across the South in this period — were not the end all and be all of conflict resolution. Just as child sexual-violence cases expose the possibilities and the limitations of a Jim Crowing legal system, they also demonstrate the other means at black complainants’ disposal. In their legal testimonies, black South Carolinians listed other options they had tried to resolve rape complaints. These African-Americans influenced, supplemented or circumvented the law by


horrors: Women and the Politics of Rape and Lynching (Cambridge, Mass: 2009). and more recently, Danielle McGuire, At the Dark End of the Street: Black Women, Rape, and Resistance: A New History of the Civil Rights Movement from Rosa Parks to the Rise of Black Power (New York, 2010), which contends that largely forgotten organizing around sexual violence contributed to the modern civil rights movement and the activist education of luminaries such as Rosa Parks.

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community-based financial settlements that echoed legal ones or the use of rumor and physical violence. Even as these legal actors landed in court, they often simultaneously put faith in alternative forms of community and family governance. These actions, described first by Lawrence Friedman as legal consciousness, were clearly seen as viable options that worked in concert with the threat or reality of legal action. These African-Americans influenced, supplemented or circumvented the law by community-based financial settlements that echoed legal ones or the use of rumor and physical violence. Even as these legal actors landed in court, they often simultaneously put faith in alternative forms of community and family governance. For black South Carolinians, there was the law that was the business of magistrate, judge and judge. But there was, too, a popular system of negotiation and concessions that happened in people’s homes and communities before, after, and even while cases were being heard in court.
4. The Hangman’s Harvest

At 11 a.m. on October 7, 1892, twenty observers congregated inside the Spartanburg jail enclosure. Hundreds, including a reporter for an Atlanta newspaper, milled outside the jail waiting for the rare spectacle of a double execution. On the gallows was Milbry Brown, a girl whose age was variously reported as anything from 12 to 16. A black domestic servant from the nearby town of Gaffney, Brown had allegedly poured two drops of the caustic household cleaner carbolic acid into the mouth of the 1-year-old daughter of her employers, the Carpenter family. According to newspaper reports, the poison had been Brown’s vengeful comeback for the white “missus’” scolding her for sweeping too slowly. The girl had allegedly confessed before a panel of white male inquisitors that she intended only to burn the child, a comment that galvanized supporters who claimed she was unable to understand the seriousness of her actions. Still, intentions or not, young Geraldine had died. Four months later, Milbry Brown quoted an old hymn — “I’m going home to glory to die no more” — and was hanged along with a black man who accidentally killed the mayor of Spartanburg.1

October 7 earned Spartanburg and South Carolina a dubious distinction. On that day, a total of four black South Carolinians and one white were executed in various locales in what The State newspaper labeled “the hangman’s harvest.”2 Indeed, about sixty miles away in rural Newberry County, the sheriff also hanged a young black female, 19- or 20-year-old Anna Tribble. Tribble, a farm laborer in the fertile cotton-belt county, had been convicted of killing her newborn infant by exposure. She was not the resigned convict headed for the gallows, ready to confess and expiate her sins. Tribble loudly protested her innocence and “bore evidences of the insanity by the manner in

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1 The Fatal Gallows Tree,” The State, October 6, 1892, 8.
2 Ibid.
which she took on — raving, talking at random and tearing her clothing.”

Once the black hood lowered over her head, Tribble quieted, and the newspaper journalist pronounced that, all in all, it was a good and humane first hanging for Newberry Sheriff Riser. Since there hadn’t been a hanging in the county for almost twenty years and it couldn’t spare the expense of a new wooden gallows, Riser had improvised and carved out a trap door out of the jail’s third floor, and Tribble’s body swung into rooms on the second.

Brown and Tribble’s executions were graphic proof of the punitive turn in Southern criminal justice and penal systems nationwide that had, after the Civil War, jailed more black females than ever before. Female executions have been infrequent in the United States, with less than 600 occurring from the late seventeenth century to the early 2000s. But in the 1890s Carolinas, the gallows picked up pace. Another young black woman, Caroline Shipp, had been hanged for infanticide in the North Carolina border town of Dallas eight months earlier than Brown and Tribble; so many turned out to attend her public death that the small town was caught in a massive traffic jam of wagons and witnesses. Along with her death, the executions of Brown and Tribble represented a troubling and unusual cluster of female hangings.

In Brown and Tribble’s cases, longstanding tropes of black criminality, Southern lawlessness and duplicitous servants converged with emerging medicolegal ideas about the mental competence of children and women. These cases set off a firestorm among

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3 “The Black Woman of the South: Her Neglects and Her Needs” (Cincinnati, Ohio: Woman’s Home Missionary Society of the Methodist Episcopal Church), 5.

4 Ibid.

5 See Nicole Hahn Rafter, Partial Justice: Women in State Prisons, 1800-1935 (Boston, MA: Northeastern University Press, 1985); Anne M. Butler, “Still in Chains: Black Women in Western Prisons, 1865-1910,” Western Historical Review, 20, no. 1. Hahn’s work underscores the general pattern that while black women were incarcerated at lower rates than either black or white men, they consistently made up a larger proportion of the female population than either male group.

white elites. In Milbry Brown’s case, dueling white elites who advocated for her commutation or execution struggled to make sense of the diverse discourses of children’s mental capacity and their implications for legal responsibility. In the eyes of her detractors and few allies, Milbry Brown was a child, an African-American and possibly a person with developmental delays — all determining factors in her commission of the crime. Anna Tribble’s case raised questions about whether her apparent infanticide was the result of insanity. Anna Tribble, some advocates argued, was of generally low intelligence or was rendered incompetent in a moment of childbirth-induced insanity, a victim of her own reproduction and possibly the recently discovered puerperal madness.

In keeping with the new science of criminology, most of these white South Carolinians who weighed on in the cases agreed that crime was rooted in immutable characteristics — such as age, race and biological sex — that diminished mental capacity. Crime was a function of nature and identity, not merely an unfortunate action or moment in time. They believed mental illness and incompetence stemmed from the compromised decision-making that was ostensibly part and parcel of blackness, childhood, and female reproduction. These two cases underlined and announced the arrival as a variant of the black female. Brown and Tribble were disruptive and defiant and, in the case of the young girl Milbry, a good candidate for delinquency. But they were also seen as mentally defective, a socially-determined, nonscientific diagnosis. When compounded with other citizenship disabilities — notably, blackness, female gender and being unskilled labor — those assessments of their mental abilities made them vulnerable in a pre-eugenics world with little compunction about incarcerating and executing the “feeble-minded.”
But for all similarities—the demographics of the executed females, the final outcomes, the fact that each case included an apparent repudiation of black women’s caregiving roles—neither case was straightforward and each emerged from its very specific local context. In the wake of national narratives about crime waves spurred by black wrongdoing, Milbry Brown’s hanging occurred against a backdrop of what some in the Spartanburg area saw as a small crime wave. As whites got involved in the back-and-forth over her fate, her case became fodder for entrenched political battles between the state’s fractious Democrats; she was caught in the crossfire between prominent racial moderates and the pugilistic Tillmanite faction, which adopted an early “tough on crime” rhetoric and actively cultivated the Lost Cause idea of an antebellum world where slavery had kept black criminality at bay. In contrast, Anna Tribble was doubly endangered because she stood accused of infanticide at a time when the state had criminalized abortion.

4.1 The Mystery of Milbry

By their very nature, court proceedings focus on a point of conflict, ask questions tailored to specific charges, and build a case that hews to the demands of legal evidence. So the girl Milbry Brown can be mentioned in the purple prose of nineteenth-century newspapers nationwide, immortalized in Ida B. Wells’ writings, and still be a cipher. She is known only by a crime, her death, and a few paltry details. Indeed, her name is something of a mystery; she is referred to as Milbry most often, but also Milby, Milbrey, Mildrey or Mildred. Her surname is also reported as Smith, not Brown. 7

7 The State of South Carolina V. Milbry Brown/Smith,(1892).Spartanburg Court of General Sessions, Gov. Benjamin Tillman papers, Petitions for Commutation of Sentence, S526010, Box 3, Folder 15, SCDAH.
Census records suggest that Milbry Brown’s work was relatively unusual among her community’s black girls. In the Gaffney or Limestone Springs townships in 1900, many girls were “at school,” “keeping house,” or listed as “farm laborers.” In the household of Henry Jeffries, his 14-year-old daughter Mary was a farm worker, but 12-year-old Hattie’s entry came with no entry describing what she did with her days. Children younger than 12 most frequently came with no notations, suggesting late school starts or no formal employment that parents wished to report. Though many of Gaffney’s blacks girls labored in family economies and may have done sporadic or part-time domestic work, relatively few were acting as nurses or housegirls as young as Milbry Brown.

In contrast, the Carpenter family for whom she worked left deep archival footprints. It is through these whites with well-documented upcountry roots that we get to know Milbry Brown and the time and place in which she lived. The Carpenters were economically privileged enough to employ Milbry as a housegirl, a woman named Lis as a nanny and a cook named Hannah. The family patriarch, William Carpenter, ran a successful general store and capitalized off the mercantilist boom that made the once-sleepy western region a crossroads of railroads and mills. His wife, née Carrie Brown, was the upcountry’s closest thing to a local debutante. Hailing from an influential family of decorated Confederate veterans, Carrie Brown attended Limestone College where she dabbled in Latin, music and the domestic arts. But Carrie Brown, too, is a shadowy presence in the extant legal archive; just as Milbry Brown’s reported confession is reported by her male interrogators, Carrie Brown’s role in this family tragedy and courtroom drama is sketched in bare detail by others.

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8 U.S. Census Bureau, 1900 U.S. Census, Limestone Township, Gaffney City, Cherokee County, South Carolina, Enumeration District 9.
However, Milbry Brown likely had a connection to the Carpenter family that preceded her arrest by many years. In the 1880 census, the dwelling adjacent to the Carpenter home (see Fig. 1, below) where 10-year-old Carrie — later, Milbry’s “missus” — resided was occupied by 40-year-old cook Amanda Mitchell, her 7-year-old daughter Sophia, and a 2-year-old daughter, “Milberry,” whose age in 1892 would place her within the possible age range. Furthermore, in Gaffney, the distinctive name Milbry could easily be found in Carrie Brown Carpenter’s family tree; her grandmother was named Milbry, and thus shared both her first name and surname with a black housegirl accused of murdering one of her descendants generations later.9

Newspapers reports and legal documents presumed the absence of a black family or kin group for Milbry Brown. A few appeals on Milbry’s behalf refer to her as “a poor motherless child,” perhaps as much a rhetorical effort to build a case for clemency as a statement of fact. A newspaper aside that “Mrs. Carpenter raised the girl” suggests that the relationship between the Carpenters and Milbry Brown was a long, complex one that was predicated on, but not entirely limited to, employment.10 As scholars Thavolia Glymph and Rebecca Sharpless have demonstrated, Milbry Brown’s workplace was simultaneously a home and site of simmering interracial conflict. It may also have been Milbry Brown’s only home if the Carpenters had assumed responsibility

9 It was not entirely unusual for former enslaved people to take or adapt the surnames of their master’s, despite some concrete and emotional incentive to create new monikers that distanced ex-bondspeople from their one-time masters. For a discussion of naming conventions postemancipation, see Regosin, *Freedom’s Promise: Ex-Slave Families and Citizenship in the Age of Emancipation*, 54-78. Regosin’s analysis, however, treats only last names, and there has been far less research on whether free African-Americans similarly adopted first names from familiar slave-owning whites. Studies of names have also emphasized African day names as African-origin cultural retentions or slaveowners’ propensity for giving their slaves grandiose names of ancient figures such as Roman emperors or philosophers. However, other research suggests that African-Americans were influenced by white naming practices but also that there were distinctive African-American first names in the past.

for the girl.\textsuperscript{11} A seemingly benevolent gesture, but one that also potentially captured Brown’s labor in a formal or de facto apprenticeship with no end.\textsuperscript{12} For Milbry Brown, that could have translated to a lack of recourse in disputes. For the household, there was no easy escape valve for escalating tension; the confession attributed to Milbry Brown never mentioned a sweeping incident, but instead talked about Mrs. Carpenter’s telling her husband that Milbry wanted to kill Geraldine as the beginning of the conflict that ended in the child’s death. And for pundits who followed the girl’s trial, the Carpenters’ unspecified guardianship transformed Milbry’s apparent offense into the betrayal of a particularly ungrateful servant taken into the family fold and galvanized public sentiment against her.

Brown’s alleged crimes required intimacy and access. Journalists speculated that an earlier fire in an outbuilding had also been the work of the disgruntled child servant. It was easier to accuse her of arson and poisoning as both crimes had been considered common offenses of bondswomen during slavery, and they continued to be associated

\footnotesize{\textsuperscript{11} Thavolia Glymph’s incisive research has firmly debunked the idea of Southern white women as sympathetic sisters in struggle against patriarchy and the often difficult living conditions of the slaveholding and postbellum South. Instead, they are, as household managers, both beneficiaries of the power structures created by slavery and active participants in its maintenance. She argues that the household was the pre-eminent site of white women’s power and a perpetually contested terrain where black women engaged in sometimes violent struggles over the terms of their labor. Thavolia Glymph, \textit{Out of the House of Bondage: The Transformation of the Plantation Household} (Cambridge ; New York: Cambridge University Press, 2008). In her account of black women cooks from slavery to the mid-20th century, Sharpless focuses less on the violence or discipline ever-looming for enslaved or freed women; instead, she attends to the myriads ways in which power was daily exercised in the course of black women domestic’s labor experiences, including long workdays and living arrangements that compromised black women’s family lives. However, unlike Glymph, Sharpless provides for a reading of the complex, affective (and still sometimes abusive) bonds that connected white women and the black women who, in fact, ran their households. The best example of this is her examination of “The Yearling” author Marjorie Rawlins and her long fraught relationship with her maid, Idella Parker. See Rebecca Sharpless, \textit{Cooking in Other Women’s Kitchens: Domestic Workers in the South, 1865-1960}, The John Hope Franklin Series in African American History and Culture (Chapel Hill: University of North Carolina Press, 2010), xxii, 87, 102, 58.

\textsuperscript{12} This arrangement bears some similarity to a historical and contemporary Brazilian labor practice called criacao, by which mostly black women are “adopted” by white families and expected to contribute their unpaid labor to the family or household. According to Elizabeth Hordge Freeman, these affective bonds can ensnare women in exploitative conditions that approximate slavery. See Elizabeth Hordge Freeman, "Family Bonds and Bondage: Unpaid Servitude in Salvador, Bahia," (Unpublished paper presented at the 42nd annual conference of the National Conference of Black Political Scientists, Raleigh, NC2010).}
with African Americans after slavery.\textsuperscript{13} Glenn McNair’s study of enslaved women criminals in neighboring Georgia from the early republic to 1865 found that female slaves were disproportionately represented among those charged with arson, making up 27 percent of the accused when enslaved men were accused in 9 percent of cases. When it came to poisoning, the numbers were even more lopsided, with black slaves being almost 60 percent of suspected poisoners in the state’s courts. These crimes required knowledge of a family’s eating, food storage habits or the ability to enter whites’ property without creating suspicion, all within the scope of a domestic’s job. The location of the black female cook or nanny within the home provided the opportunity for poisoning and established, in white minds, a durable connection between female servants and poisoning. South Carolinians were especially disturbed at the idea of a girl murdering another child, but they believed arson and poisoning to be common to the duplicitous black female help.

While the malicious black female house servant using fire or poison became a familiar trope in the Southern racial lexicon, cases like Brown’s were not without recent precedent. Brown’s case echoes that of 12-year-old Axey Cherry of Barnwell County. In

\footnote{Many historians of slavery have noted arson as a particularly significant form of enslaved resistance, though questions remain about whether naturally-occurring fires have been attributed to enslaved violence, fires were strategically set during possible insurrections, or if arson was an individual rather than collective act of insubordination. For varied accounts that posit arson as intentional or unplanned parts of enslaved uprisings or urban crises across the Atlantic, see Afua Cooper, \textit{The Hanging of Angélique: The Untold Story of Canadian Slavery and the Burning of Old Montréal}, 1st ed. (Toronto: HarperCollins, 2006). Dan Gerlach, "Black Arson in Albany, New York: November 1793," \textit{The Journal of Black Studies}, 7, no. 3 (1977). Jill Lepore, \textit{New York Burning: Liberty, Slavery, and Conspiracy in an Eighteenth-Century Manhattan}, 1st ed. (New York: Alfred A. Knopf, 2005). There are fewer accounts that focus solely on arson and in the postbellum period. Albert Smith finds that, in Georgia’s Baldwin and Terrell counties immediately after the Civil War, that arson victims were disproportionately white; those subjects who can be definitively identified by race were overwhelmingly black; and all females accused of arson were black. He concludes that arson constituted a form of potent form of “black-on-white crime” and therefore a political protest for African-Americans during Reconstruction’s upheavals and the codification of Jim Crow. See Albert L. Smith, ""Souther Violence" Reconsidered: Arson as Black-Belt Protest, 1865-1910," \textit{The Journal of Southern History}, 51, no. 4. For poisoning and the enslaved, see \cite{Paton, #82}}
1887, Cherry had been pressed into a live-in domestic service job by her recently widowed father. Three days before her alleged crime, the girl first left her job without permission only to be returned unwillingly by her father. The next day, she was accused of fatally poisoning the small child of her employers, the West family, with lye. She had been heard to grumble that maybe now, she “wouldn’t have to take care of that baby” and bolted until the child’s father chased and tackled her into submission.

Nineteenth-century media routinely described the physical attributes of crime suspects and, with African-Americans particularly, reinforced the idea that competence and criminality were discernible. Physical descriptions of young black female murder suspects linked appearance to their competency and, in some cases, animals. One report described Axey Cherry as a “pure-blooded Negress, black as coal and with a very stupid expression.”14 Before the widespread use of the mugshot in criminal justice and racial typologies that purported features could predict criminality, Cherry’s race, dark complexion and facial features were visual clues to her poor intellect and penchant for criminality. Furthermore, said the writer, Cherry’s eyes had abnormally large whites, which resembled those of an excited beast. 15

But descriptions of young murderesses vacillated between the monstrous and those that played up their childish qualities. The same wild-eyed Axey Cherry was also the Axey Cherry who “cried for her father” at trial. Reports that Cherry twirled and laughed in her jail cell, longed to play outside and tried to dart out of the local jail during mealtimes effectively her emphasized childishness and perhaps her “simple-minded” for the courtroom audience. They also framed her as a more sympathetic

14 “A Case without a Parallel,” Kansas City Times, August 1, 1884.
15 Ibid.
character than Milbry Brown, whom newspapers quoted as spitefully saying she would have poisoned the entire Carpenter clan if only she had known carbolic acid could kill.\(^\text{16}\)

While Axey Cherry’s story could be read as childish intransigence and sloth gone awry, Cherry’s walking off the job highlighted tensions, lingering since emancipation about exactly who would control children’s labor. Voting with her feet, Axey left the West before the alleged poisoning and asserted dissatisfaction with the conditions of her labor, perhaps missing home, desiring to go to school, expressing a preference for other work or no work at all, protesting maltreatment, or leaving in a pique. Whatever the underlying motivation, Axey flaunted the authority of two sets of adults, the Wests and her father, who assumed authority over her person and her work. As scholar Dylan Penningroth has noted for earlier decades, the transition from slavery to freedom introduced a troubling new element for families to consider; as black families had emerged from bondage and struggled to become “masters” of themselves and their dependents, black children’s relatives decided whether children would be claimed under kinship-based labor contracts, the duration of those agreements, and how wages would be distributed. This relocation of child labor under the biological family prompted resistance from whites, many of whom had wrested de facto guardianship of black child workers from their parents, and from children themselves. Decades later, we see Axey Cherry personifying the conflicts that could occur when parents and youth differed about work situations. While a contract might be signed by adult parties and subsume children under their aegis, children were no more malleable – and perhaps less so – than the adult parties who agreed. In a labor market where children routinely

\(^\text{16}\) “A Child Criminal,” newspaper clipping (likely from the Charleston Post), Axey Cherry pardon file, Governor Richardson papers, SCDAH.
worked on family or nonfamily farms from single-digit ages and where older children could be hired out as individuals, the calculus became ever more complicated.

Long and fatal though Cherry’s life sentence was, her lesser sentence demonstrated the power that social networks and reputation could bring to bear on even the most controversial cases. Cherry’s lighter sentence may have been connected to the disreputable reputation of R.W. or Amos West, the father of the child she was believed to have killed. West was a railroad sectionmaster who eventually fled town to avoid outstanding debts. A York County case showed that even black female adolescents had social networks from which to draw when they faced criminal charges. When 14-year-old domestic servant Anna Belle Jones was convicted of attempted homicide by poisoning in 1891 and sentenced to 10 years, “nearly every lady in Yorkville” vouched for the girl in a letter to the governor — over dissenting male voices who dismissed their petition as women’s irrational and ill-informed patter. “She was convicted entirely upon circumstantial evidence and we believe her to be innocent. She has sustained a good character, is kind and amiable in her disposition, inoffensive, and has never been charged with any offence. She has been employed in many families in Yorkville as a nurse and had the confidence of all her employers and the affection of the children she nursed. It was proven on the trial that the door of the kitchen ... was usually left unlocked at night.”\textsuperscript{17} Other correspondence to the governor indicated that “the prisoner belongs to a numerous and influential family of Negro’s [sic] in this community.”\textsuperscript{18} A disproportionate amount of black girls’ crime stemmed from their labor in white homes, but connections borne of work and white benefactors could pay off in the courts.

\textsuperscript{17} Letter to Governor Ben Tillman, Dec. 23, 1891. Anna Bell Jones file, Governor Ben Tillman papers, petitions for pardons, box 10, folder 11. SCDAH.

\textsuperscript{18} Letter to Governor Ben Tillman, Dec. 18, 1891. Anna Bell Jones file, Governor Ben Tillman papers, petitions for pardons, box 10, folder 11. SCDAH.
The dearth of primary sources don’t shed light on whether Milbry Brown had support from people who actually knew her or social capital with pull. We do not know anything of Brown’s multiple identities or social networks; her friendships; if she was really of “such low intellect” as contemporary observers remarked; or the names or fates of her parents. Her execution was attended by hordes of upcountry residents, including “hundreds of restive Negroes” according to an Atlanta Journal reporter who traveled for the occasion. But it’s likely that the crowd included people who knew the girl, those who were outraged at the execution, and many more who were interested in the spectacle. It was customary for executions to draw large crowds and for African-Americans to attend. In fact, scholar Michael A. Trotti has argued that governmental decisions to move executions to more private arenas were less a response to concerns about the humanity of executions, but a white gambit to reassert control over such events, which often attracted large black crowds. The predominance of blacks at public executions, he says, amounted to a revival in which black pastors officiated, the condemned could be valorized, and black spectators could have collective, ecstatic religious experiences beyond white comprehension. As abhorrent as it may sound to contemporary readers, nineteenth-century public executions were a venue for black sociability and cannot be read solely as protests related to the individual cases of the condemned.

4.2 “The Criminal is Nothing More than a Child”

The earliest reports of the Carpenter child’s death revealed little about the circumstances. But nevertheless, the first spate of news reports were answered with racist speculations about why a poison would have been accessible to a young toddler. While some newspapers were silent until after Brown’s confession, others guessed that the fatality was probably the product of black ignorance and ineptitude. Commentators cited “Negro carelessness” with carbolic acid as the culprit. To this school of thought,
even if there was no intent to harm, Brown’s failure to place the toxic cleaner out of reach set in Geraldine’s death in motion. Brown’s negligence was not an individual failing, but further evidence of poor African-American work ethic and intellect; black servants did not follow through and proved more trouble than “help.” These explanations did not fully remove the Carpenters’ house servants from blame but provided a familiar explanation to whites who believed in black inferiority yet, paradoxically, entrusted much of their care to them.

But when it became apparent that Milbry Brown was a suspect, Axey Cherry’s case provided a template for the efforts to save the Gaffney girl’s life. Most notably, Cherry’s had case attracted the attention of James C. Hemphill, the prominent editor of the Charleston News and Courier newspaper. Hemphill personally wrote or signed off on editorials that questioned Cherry’s execution. “She undoubtedly killed the child,” an opinion piece wrote, “but whatever the motive that led to the killing, the murderer is but a child herself.” While expressing its concern that the girl did not have any conception of her supposed crime, the article did not support an outright pardon. Its unnamed author instead pontificated on “one of the most troublesome features of the Southern problem,” that “the lower order of negro criminals” seemed not to fear retribution for their offenses, suffered from a characteristic lack of foresight and pursued pleasure innocently, but at all costs. He added that there is no way of changing this peculiar disposition, of course, except through the influence of education.” But in the meantime, the editorial writer warned parents to be more careful about entrusting their little ones into so untried hands.

The News and Courier of Charleston published remarkably similar sentiments five years later, this time in reference to Milbry Brown. “The criminal is nothing more than a child — and to offer no other argument, we cannot afford to begin the work of reform in
the matter of the more rigid administration of justice with such a subject — a half-grown girl! … Her punishment must be nearly proportioned to its character, notwithstanding her youth and sex; but imprisonment is as severe a penalty as the public sentiment of the state and country will tolerate in her case. It would be a crime to hang her, when a white girl would not certainly be hanged.”

Hemphill supplemented his newspaper’s written appeals with a volley of communications to the governor, including a telegram that requested another respite of Brown’s execution date but arrived in Columbia around noon on October 7 — an hour after her hanging.

Hemphill’s advocacy kept Milbry Brown’s case in the spotlight, but in a context of the state’s fractious and perpetually feuding Democrats, also damaged her prospects among his political foes. The News and Courier’s forthright criticism of a state that would execute children was just the latest volley in its boisterous opposition to the Tillman administration. Tillman was the one man with the power to commute Brown’s sentence or pardon her. The Columbia-based State newspaper rebutted the claims of racial bias, saying that Hemphill’s publication “has been both hysterical and unjust in its utterances regarding the hanging of Milbry Brown. … When our contemporary says that a white woman would not have been hung for a similar crime, it speaks without knowledge, to the shame of the State. No such case has occurred.”

At issue was whether Milbry Brown, as a girl, could be held legally responsible for poisoning Geraldine Carpenter. Following English common law, the state of South Carolina held that the age of full criminal culpability — at which time youth could be treated like adults — was age 14. But the law allowed for some discretion. As James Aldrich, the presiding judge at Brown’s trial, would later write, under seven years of age

19 “She Should Not Be Hanged,” The News and Courier, Sept. 5, 1892, 8.
20 Ibid.
a child is considered incapable of committing crime; between seven and fourteen years of age is the debatable period, the presumption being that a child under fourteen is incapable of committing crime. Still that evidence could be rebutted by evidence showing ability and intent to conceive and commit a crime.\footnote{James Aldridge letter to Gov. Ben Tillman, Sept. 9, 1892. Governor Tillman papers, SCDAH}

If the law did not dictate precisely how jurists should deal with children, neither was Milbry Brown’s age entirely clear. Parties who represented the state or were called to help with the pardon decision were far more likely to use the oldest age estimates. Aldrich continued in his letter, “As I remember the evidence on the part of the state, Milbry Brown was sixteen years old” and thus recommended no changes to the execution plan. As Brown’s case traveled to the governor for reconsideration, the lawyer enlisted to independently review the case repeated that Brown’s age was 16 and therefore meant that she should be held wholly accountable for murder.\footnote{Schumpert comments in petition for pardon, Sept. 6, 1892. Governor Tillman papers, SCDAH.} After Brown’s execution, Gov. Ben Tillman “found that our courts had decided fourteen was the age of consent, and in view of atrocious nature of the murder, I decided to let the law take its course.” While advocates for mercy typically cited a younger age, as did Converse College President B.F. Wilson (identifiying Brown as “about 14 years old”), there appears to have been no effort to clarify her age.\footnote{B.F. Wilson letter to Gov. Ben Tillman, Sept. 7, 1892. Governor Tillman papers, SCDAH.}

Between seven and fourteen was a grey area, and youthful offenders could only hope to win the sympathy of judge and jury. In the absence of a juvenile justice system, girls as young as 11 and children born behind bars were housed along with adult women in the penitentiary and county jails. Female offenders of all ages constituted challenges for South Carolina’s legal and criminal justice systems. On a pragmatic level,
the state’s penitentiary and county jails were simply not equipped to detain female prisoners. The central prison in Columbia, whose decades-long construction began after the Civil War in 1866, did not have a cell block for the female incarcerated until the 1880s. But there was little incentive to expand its facilities; females were typically a small share of the population in the only statewide prison facility, and very few were convicted of the capital crimes that were more likely to land them in the penitentiary. For most offenders of both sexes, the penitentiary was a temporary waystation as they served short sentences for property-related and violent crimes; indeed, outbreaks of disease and the obligation to feed and clothe prisoners on the state’s pittance of a budget walls made corrections authorities eager to reduce the prison rolls by the development of its convict leasing program. 

Girl offenders posed particular problems. In the late nineteenth and early twentieth centuries, South Carolina had no special juvenile court like those Denver and Chicago had established in the 1890s. As late as 1916, some larger counties empowered court recorders to separate out children’s cases and apply some juvenile justice principles to them, and other counties folded children’s matters into probate court business. When it came to housing girl offenders, there were few options for black girls. Richard Carroll, sometimes called “South Carolina’s Booker T. Washington” for his conservative endorsement of vocational education for blacks, opened the Industrial School for Negros in 1899. Part orphanage and part reformatory for delinquent youth of both sexes, the institution outside Columbia had a fleeting career, with many of its charges running away. Though the state’s first reform school, it suffered from scant

24 Mancini, One Dies, Get Another: Convict Leasing in the American South, 1866-1928, 198.
financial backing even from the white conservatives who labeled Carroll as a “reasonable colored man” with whom they could work. White boys were the first to receive their own reformatory in 1906, and black boys were then incarcerated in a reformatory that was actually a prison-farm extension of the state penitentiary. Black girls would wait for a segregated girls institution until 1921 when a coalition of reform-minded black women launched the Fairwold School by scraping together their own resources.

More debate, however, centered around Milbry Brown’s mental and intellectual faculties beyond the issue of age. White commentators characterizing her as too “dull-witted” for real accountability were pitted against others arguing that she was competent enough to stand trial. Mutable explanations for her compromised decision-making capacity included her youthful immaturity, lack of adult ratiocination or apparently nonexistent education. Had she had the benefit of more years and appropriate environmental inputs such as schooling and moral guidance from the “right people,” Milbry Brown’s crime and death could have been preventable.

Few white South Carolinians discussing the case espoused this relatively moderate vision that allowed for black improvability. A scion of one of Spartanburg’s founding families, retired attorney James Bomar Cleveland, sent an cogent nine-page letter outlining major objections to Brown’s execution to Columbia. Though he accepted that capital punishment was necessary, Cleveland believed that Brown had not intended to murder Geraldine Carpenter. Secondly, she was too immature and close to the legal age of culpability to grasp the gravity of her actions and current endangerment. Furthermore, Cleveland appealed to state pride and urged that South Carolina “be tender” to women in its administration of punishment. But in a conclusion that Cleveland acknowledged others might call “purely sentimental,” he waxed: “This poor
colored girl is penniless, friendless, helpless. Had it been otherwise, had she been rich with friends influence and position in Society, had the law’s delay had been exhausted, if the state had been employed to influence court, jury and public sentiment, you would now be flooded with appeals not only from our own state, but all over the United States and from those high in authority. That she has not this great advantage does not make her case less deserving. … I feel that it would be a disgrace not only for the state, but for every official having any connection with the case should she be put to death.”

Pleadings for condemned girls’ lives made sectional appeals, underlined the governor’s role as the state’s patriarch and tried to leverage metaphorical power of childhood. In writing about Milbry Brown, James Cleveland wrote assuredly that should Governor Tillman think of 15-year-old relatives, he would understand their developmental stage and why Milbry Brown’s case for commutation was compelling. When Axey Cherry was sentenced to death, a writer who identified herself as a 12-year-old from Oneida, New York, wrote South Carolina Gov. Richardson that “I know how I would feel if I were to be hung. Please, sir, if you have a little child, girl or boy, think how you would feel if she or he were doomed to die.” The letter writer called on Richardson “to start up all your manly feelings,” and noted that up north, “they would not dare do such a thing.” Signed “your little friend, Agnes Reynolds,” the missive spoke to children’s potential to influence political events. Though a Greenville, South Carolina newspaper scoffed at whether the letter was a 12-year-old’s handiwork, the missive highlighted how children or the invocation of childhood could sway political events.

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27 The State of South Carolina V. Milbry Brown/Smith.
As the letter writer demonstrated, childhood had its privileges, but not all children were considered equal. The New York girl constructed a bond between herself and Axey Cherry, challenging the governor to project her -- ostensibly, a young white girl -- into the shoes of Axey Cherry. While newspapers questioned the true age of the young writer and her commentary’s relative sophistication, white children in the North had been reading and reacting to the plight of black children since antebellum publications encouraged them to pity children in bondage. Regardless of whether the missive was written by a child, in consultation with an adult or a masquerading grownup, the letter suggests the writer understood that a child’s seemingly guileless voice could yield political capital. But the girl writer made clear the limits of juvenile solidarity. Whatever similarity she shared with Axey Cherry as a minor could not overcome their obvious racial, educational, class and regional differences. Well-schooled in the racial thinking of the day, the child writer proposed that the colored race’s inherent intellectual deficiencies were partly to blame for Cherry’s crime and should be properly taken into account by those with the power to redeem Cherry from her death sentence.

Little Agnes Reynolds’ letter also showed how far and how fast news could travel, and Milbry Brown’s execution reached the ears of black progressive and muckracking journalist Ida B. Wells. Wells recycled the story of Brown’s execution in two of her most circulated speeches and broadsides including “The Reason Why The Colored American is Not in the World’s Fair Exposition.” Wells saw Milbry Brown’s execution not as a symbol of the girl’s depravity, but a sign of the South’s own sectionally-specific brand of sin. Wells recast Milbry Brown’s execution as a “legal hanging” that was more akin to a lynching than a product of due process. She wrote: “So great is Southern hate and prejudice, they legally(?) hung poor little thirteen-year-old
Mildrey Brown at Columbia, S.C., Oct. 7, on the circumstantial evidence that she poisoned a white infant. If her guilt had been proven unmistakably, had she been white, Mildrey Brown would never have been hung. The country would have been aroused and South Carolina disgraced forever for such a crime. The Afro-American himself did not know as he should have known as his journals should be in a position to have him know and act.”

Popular press around the country similarly viewed the case as evidence that the South was distinctly un-Reconstructed when dealing with its black population, juveniles and corrections.

Within South Carolina, journalists also understood criminal-justice treatment of children to be a key barometer of a civilized society, and they debated the case as a referendum on the perennial topic of lawlessness in the state. Multivalent in meaning, lawlessness was popularly used to describe widespread societal violence and, more specifically, lynching. But in regards to the convicted girl, lawlessness took on various other meanings. Hemphill, the Charleston editor and Brown’s most vocal advocate, saw her death sentence as the ultimate sign of a law gone so astray that it was an affront to moral principles and ostensibly colorblind justice. It was a perversion of law that “the poorest, most ignorant, and most helpless criminals” would suffer such a punishment when competent whites went free for similar or greater crimes, said his mouthpiece. Hemphill’s publication echoed Ida B. Wells’ take that connected the impunity of lynching with the harsh punishments levied to this child offender. Predictably, Brown’s

detractors had a quite different read. They registered Brown’s crime as an undeniable marker of lawlessness; though children often shot and maimed each other accidentally in the state, the specter of a young girl coolly poisoning a smaller child symbolized a culture more inclined to chaos than order. Newspaper parlance also referred to what many saw as widespread malfeasance among local juries, which were notoriously lenient in dismissing defendants in violent crime cases.

But childhood and femaleness were not universally understood as mitigating circumstances in South Carolina courts. Milbry Brown was caught in a war of petitions that dueled about whether her age and girlhood were enough to preserve her life. Lawyer Charles Barrett presented a petition urging a commutation based on “her tender age and sex” and signed by about 30 of the upcountry’s captains of industry and education: Dr. James Wofford, president of Wofford College; D.D. Converse, the president of the Clifton and Glendale Mills; and George Cofield, president of the National Bank of Spartanburg, among others. He followed with a second petition with hundreds of signatures, many this time from women, African-Americans and residents of the “rural suburbs” outside Spartanburg. But a counterpetition urging Brown’s execution attracted hundreds more signatures than Barrett’s first petition, and it bore the signatures of scores of men who identified themselves as carpenters, clerks, jewelers and farmers — a snapshot of the working and agricultural classes that Tillman was busy co-opting into a white-supremacist power bloc.30

The counterpetition took aim, first, at the idea that female gender should affect her execution. “The law makes no distinction between male and female. An argument in

this Case based upon the sex of the convict is based upon a sentimentality and does not appeal to the principal [sic] of the law.” Indeed, it argued that “the facts that such crimes are so rarely committed at this age, and are more rarely committed by a female at this age, prove, if they prove anything, that this person is depraved, mentally and morally,” to a degree which fully justifies the full penalty of the law: death.” With a few drops of poison, Milbry Brown had ventured so far outside the norms of child and feminine behavior that she was irredeemable.

In comprehensive fashion, the counterpetition addressed and dismissed a third concern: that Milbry Brown was mentally disabled. “There was no proof of want of mental development at the trial. Able and zealous counsel did not offer any evidence looking to that end. The allegation rests upon the assumption of the Petitioners.” Charles Petty, editor of the Spartanburg newspaper and a commutation advocate, had indeed chimed in on this point, saying “I learn from those who knew her well that she is very dull in mind and never had any opportunity for the improvement of mind or morals.” James B. Cleveland, who had never met Milbry, noted “she was not a bright girl, much below the average in intelligence, this fact alone it seems to me should have great influence.” Convicting judge James Aldrich spoke his piece, recalling that Milbry Brown did not testify on her behalf but that others said she had “good sense” and was chronologically old enough to face her sentence. Milbry Brown’s competence was gauged by hearsay and a cadre of white men with substantial influence but little experience in the nascent science of psychiatry.

While there was no concerted effort to determine Milbry Brown’s level of mental disability (if any), popular interpretations of psychiatric medicine and social science

31 Ibid.
ideas about intelligence exerted a strong influence on the whites who involved
themselves in Milbry Brown’s case. One South Carolinian withdrew his letter for
leniency because he had been misinformed that “Dr. George Heinitsch said she did not
have good sense. On my return home … he informs me that he did not say so and that
he did not examine the girl to ascertain the soundness of her mind.” He inquired of
another who was at Carpenter home the day Geraldine died and that physician “would
not say she did not have good sense.” Milbry Brown supporters also used the
vocabulary of early classification schema that ranked people according to their mental
age. Though such schemes were not codified until the 1910s, Milbry Brown advocates
routinely argued that she was close to an “idiot” or “imbecile,” terms that corresponded
to a specific place on the intelligence ladder.

Since retrospective diagnosis is not possible, reports of Milbry Brown’s
diminished mental faculties should be handled with especial care. Milbry Brown may
have indeed had a mental or emotional deficit, though contemporaneous assessments of
her capacity consisted of run-of-the-mill statements that were ascribed to many black
criminals. Brown lived in a time when developing psychiatric medicine committed
chronic masturbators, epileptics and other people now recognized to have underlying
health conditions to the state lunatic asylum. Furthermore, the racialized theories of
intellectual development and the hierarchy of species proliferating in the late nineteenth
century relegated blacks to the bottom of civilization’s ladder. After the Civil War, the
forerunners of modern psychiatric medicine observed what seemed to be spikes in black
mental illness — interpreted as demonstrable evidence that freedom had harmful effects
— and identified black madness as qualitatively different and more violent than whites’ melancholy-prone insanity.33

As the execution date approached, residents of Gaffney and Spartanburg waited to hear whether Gov. Ben Tillman would favorably hear Brown’s request for clemency. Tillman had respited Brown’s case once, leaving her literally standing on the gallows in a suspenseful act of political theater. They were especially interested in Brown’s case in conjunction with that of the man slated to be hanged with her on October 7. John Williams had killed Spartanburg’s mayor, John Henneman. Coupled with Brown’s killing of the Carpenter child, people in this corner of the upcountry saw a disturbing trend in which blacks were taking aim at the “best people of the section,” and should be punished. While two murders did not constitute a crime wave, the killings confirmed white fears about the expansion of post-emancipation black crime, a key and emerging Lost Cause narrative. The killing of a public official by a black man symbolized the ever-present threat African-Americans posed to public and household order, and Milbry Brown’s case reinforced that elite South Carolinians could not be safe in their homes while employing black servants.

Hope for a pardon were slim. To her supporters, Milbry Brown was an ignorant delinquent at best or a dangerous defective to those who wanted her executed. She was also a particularly unlikely candidate for pardon because pardons often came with the guarantees from white benefactors who stood to gain materially from vouching for a prisoner. White supporters, especially former employers, often take "custody" of a newly released inmate. That custodial arrangement frequently included a labor contract or

33 Martin Summers, “‘Suitable Care of the African When Inflicted with Insanity’: Race, Madness and Social Order in Comparative Perspective,” Bulletin of Medicine, Vol. 84, No. 1, Spring 2010. 67-75.
promises that would prove the convict had some means of support and white oversight. For Milbry Brown and Anna Tribble, the prospect of a pardon and subsequent release into a work contract was foreclosed. Each had committed a crime within the confines of the domestic home that doubled as their workplace. With records of a serious crime committed at the workplace or against their employers, they would find few willing to take them on as a community-based rehabilitation project in exchange for labor.

Despite the best efforts of Charleston newspaper man James Hemphill, Milbry Brown was hanged and was pronounced dead from a broken neck nine minutes later. Hemphill had sent a telegram requesting another stay, a missive that arrived minutes after Brown’s execution.

4.3 Anna Tribble: The Mad, Reluctant Mother

On February 23, 1892, according to her testimony, Anna Tribble left her lodgings on the Werts family’s property before dawn, ostensibly to find sweet potatoes to replace the ones she had baked in pie form the previous day. The 20-year-old had felt pains rippling along her back and neck but walked through the discomfort. As she reached a pasture, her contractions peaked and Tribble rested on a log “for a good while.” Realizing that she could not walk home and reach Mrs. Werts (whom she identified as the person for whom she worked), she squatted and had the child, which was still attached to the umbilical cord. The infant — its sex never identified in subsequent court documents — “did not cry when it was born,” attested Tribble. But neither did it hit the ground head-first and incur a fatal injury as sometimes happened in unattended births. In her own words, Tribble “wrapped it good in the sack” that had been destined for the sweet potatoes and left the child by the water’s side. She returned to her home, burned the afterbirth in the fire, and told no one that she had delivered a child.
But W.H. Werts knew Tribble was pregnant. When she reported sick to work, he entered her cabin later that morning and asked if she had had her child. Tribble denied it and explained that “when she made water, blood passed from her.” Suspicions aroused, Wertz again quizzed Tribble, who “seemed to be suffering a great deal at the time.” Hours later, Werts saw Tribble walking to the woods in what she said was an attempt to feel better. When Wertz covertly followed Tribble, he found an infant wrapped in sack in the creek and confronted Tribble. “She owned to it,” he recounted. “She asked me if I would I let her off that time and she would work for me for a year. I told her that I wouldn’t do it for $1,000. She then said she would work for me for five years if I did not report it.”

Another neighbor came by and urged Werts to inform authorities. Wertz’s story painted a picture of a desperate woman negotiating her freedom away while recovering from a painful concealed birth and death of her child.

These two vastly different stories involving the same dead child launched the infanticide inquest that would culminate a criminal case and Tribble’s death by hanging. Tribble’s account amounted to less than a straightforward confession, with her admission dealing only with the concealment of the child’s birth. Werts’ version of the story fails to specify exactly what Tribble “owned to.” With two such opaque accounts, what happened on that February day may be lost in the erosion of time; incomplete reporting and documentation; and prejudice against the mentally ill or crime suspects, particularly those who may have committed child murder.

Anna Tribble’s background is as much a cipher as Milbry Brown’s. The 1870 and 1880 censuses include black Tribble families with young members with similar names. The family of Henry Tribble included 10 children and a mother named Amanda, a first

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34 The State V. Anna Tribble.
name often used in early media reports about the Tribble case. It also included a 1-year-old Annie, whose age and birth date would put her in the older end of the early twenties age range most sources cited for Tribble. Another Tribble family in Moons township had a 5-year-old Annie in the 1880 census. Given the scarce and conflicting ages reported for Tribble, it is possible she was older or younger than contemporaneous media knew. Still even as Tribble was isolated from family on the Werts farm, friends and family removed her body for burial.

Tribble’s supporters were few, and her case garnered less passionate media attention than that of Milbry Brown. While hundreds of petitioners supporting Milbry Brown foregrounded her youth in their campaign to win her life in prison, Tribble’s commutation petition bore less than 50 signatures. Those advocates argued that the adult Tribble was mentally unable to grasp the severity of her actions. Newberry’s political elite — including the town’s mayor, a former sheriff, a Clemson College professor, and a doctor bearing the surname Tribble — argued for a lesser sentence for Tribble, saying “we are satisfied that if she committed the crime that she did so without knowing the enormity of the crime; that it is general impression of the community at large that she is a negro of very little intellect, and in fact too stupid to realize she has done as an infraction of the law.” But the signers also demonstrated knowledge of the emergent “science” that classified the mentally disabled. “Whilst she cannot be classed as an idiot or imbecile, yet her mind is of such a low type as to be almost free her from guilt,” they wrote. Reinforcing the idea of Tribble as a defective citizen, they fell short of an enthusiastic defense.

As a stigmatized practice, infanticide has historically been had to detect and even harder to prove. With abysmally high infant mortality rates, early child deaths were a common enough fact of life. Nineteenth-century investigators had to find a corpse or a
woman believed to have been pregnant or in labor — no simple task when that same woman was likely invested in keeping her secret. The earliest laws targeting infanticide went hand in hand with concealment laws that criminalized the hiding of a pregnancy or birth.

Infanticide was even harder to prove from the standpoint of medicine and motive. As officials in Pickens County noted when a dead baby was found wrapped in cotton in October 1908, “it was impossible to discern whether the child had died from natural causes or whether it was killed by the heartless parent and carried to the swamp with the hope of covering up the crime.”\(^{35}\) And, while some nineteenth-century physicians placed stock in the “hydrostatic test” — which floated the lungs of a dead infant to test whether the child had inhaled — it was an unreliable method to determine live birth and controversial even among doctors.\(^{36}\) The nineteenth-century forerunners of today’s forensic medicine debated how to prove infanticide. An 1836 text from the British physician Dr. William Cummin billed itself as “The proofs of infanticide” and argued that it was possible for doctors well-educated in obstetric medicine and experienced with coroners’ inquests to determine from physical evidence whether an infant had been born alive and then killed. Such signs included the corpse’s length, well-developed hair and nails, and the condition or healing progress of the umbilical cord.

But much of such proof rested on assessments on whether an infant had breathed, and examination of the lungs’ color, weight, and texture featured prominently

\(^{35}\) History of Spartanburg County; Embracing an Account of Many Important Events, and Biographical Sketches of Statesmen, Divines and Other Public Men, 1.

in this discussion. By the 1830s, regular physicians were challenging what, if anything, the hydrostatic test proved. Cummins challenged the efficacy of the “swimming of the lungs,” arguing posthumous decomposition and pneumatic disorders could make the organs buoyant. Barring visible and direct evidence of trauma such as a slit throat, coroners looked for neck bruising, fingerprints left on fragile newborn skin, and signs of strictures or violence. Women could feasibly argue that some marks were the result of a normal birth or that infant death itself was an all-too-regular feature of nineteenth-century reproduction and life.

Yet a profile of the infanticide suspect emerges in Anna Tribble’s Newberry and beyond. Like most girls or women suspected of infanticide, Anna Tribble was young, unmarried, and working class. Throughout the nation, the accused were often the most vulnerable or marginalized women amid the seismic economic and cultural shifts of the nineteenth century. In the urbanizing North, vast rural-urban migration, immigration waves, and beckoning factories pushed and pulled single women and girls outside the home and into wage labor. In upcountry South Carolina, when white girls were suspected of child murder, it was mill girls like Anderson County’s Maggie Bowen, thought have strangled her child with string, or Sumter’s Lottie Spell, an 18-year-old white girl who offended the day’s racial codes by bearing and abandoning a “supposed negro baby.”  

From Irish girls to black nannies, domestic servants were typically the most likely to be suspected and charged when babies’ corpses appeared in privies, sewers and under beds.

While commentators were quick to vilify Tribble and call her suspected infanticide a manifestation of madness, Tribble’s alleged infanticide could have been a

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37 Slavery by Another Name: The Re-Enslavement of Black People in America from the Civil War to World War II / Douglas A. Blackmon, 8.
strategic decision that allowed her to continue employment. As black women entered wage labor after emancipation, employers displayed decided preferences for women without children or children old enough to take care of themselves or help with the work. Soon after the Civil War, the Freedmen’s Bureau directly acknowledged that women with children were less attractive to employers and suggested that the bureau open orphanages to stash their children and facilitate employment. The possibilities for black women’s employment had not changed so substantially by the late nineteenth century that black women domestic or agricultural laborers did not have to worry about child care. With few opportunities for unskilled women laborers — and many included on-site lodging and dawn-to-dusk hours incompatible with caring for one’s own children — domestic and agricultural workers had to weigh the consequences of pregnancy against their prospects for continued employment, shelter and ability to support any existing children.

In small Newberry County, there were relatively few coroners’ inquests and child deaths were just as likely to occur from falls, tumbles into fires and countless contagious diseases. Yet young black females were often the subject of community surveillance from other black residents, white employers and subsequent coroner’s investigations when their children died. In June 1886, neighbors found a dead baby of indeterminate race in the well in Pool’s Row and instantly pointed to 22-year-old Wealthy Williams, who had been with child, visited the well recently, and suddenly looked much smaller — a change she said was due to extra-tight corseting. Williams claimed Aunt Lue Harris, a local woman who reported finding the body, was a midwife, had carried her child away in a box and told her not to tell. Williams, who testified she “didn’t know there was a law against destroying a child,” was arrested and sentenced to
hang, though her sentence was commuted. Harris walked away unscathed. A year before Tribble’s brush with the law, 17-year-old Sibbie Mobley was just two weeks into work at the home of Ellen Rutherford, who noticed that the girl looked pregnant, sickened at the dinner table and vomited outside. Rutherford’s questioning “if she had had anything to do with man” drew denials, but Rutherford sent Sibbie, who was hoeing cotton while complaining of a headache, to bed. When Sibbie went back to work as usual, Rutherford inspected her bedroom where “the bed, the floor, and other things looked as if I woman had been confined” for childbirth. Further investigated yielded blood on the windowsill, and outside, Rutherford found a dead baby in the gully, and “Sibbie told me that she had thrown the child out of the window.” Mobley got a reprieve, as a doctor declared the child was too premature to have lived.

Across the country, infanticide cases rarely ended in conviction, though conviction rates varied by locale, race of the defendant, and time period. Jack Marietta and Gail Stuart found that convictions spiked in Pennsylvania after 1786, when the state declassified infanticide and it was no longer a capital crime; this account, however, does not pay address any racial differences in conviction or sentencing. Sociologist Michelle Oberman noted the low conviction rates of Chicago mothers believed to have killed their children; of the 11 cases with reported verdicts in the Cook County homicide database from 1877 to 1930, only one had garnered a conviction. In the early nineteenth century, accused women often faced fines and shaming punishments such as standing on a public gallows, but not hanging from them as did Anna Tribble; historian Felicity Turner argues that it was uncommon for women, black or white, to face conviction for

38 “An Act to Establish and Regulate the Domestic Relations of Persons of Color and to Amend the Law in Relation to Paupers and Vagrancy, Act No. 4733.”
39 Coroner’s inquest on the dead infant of Sibbie Mobley, Newberry County inquests, box 1. SCDAH.
infanticide before Reconstruction, but that penalties stiffened, particularly for black women in the South after the Civil War.

Black women were particularly vulnerable to suspicion, prosecuted and more severe penalties. Sharon Harris’ study of early American women’s narratives about race and the law notes that, between 1670 and 1780, black female New Englanders made up a tiny sliver of the population, but were almost twice as likely as white women to be found guilty of infanticide. For black women, she wrote, the standards of proof were noticeably less rigorous; the 1711 hanging of enslaved Massachusetts woman Bettee occurred without ever recovering an infant’s corpse, which never happened to an accused white woman.40 Scholar Felicity Turner found that post-Civil War communities in North Carolina grew less tolerant of infanticide, particularly when the alleged perpetrators were black women. In Reconstruction Alabama, Mary Ellen Curtin found that black women prisoners who were peripherally involved with child deaths or were implicated with flimsy or questionable evidence often were charged with murder and served long sentences.41 In postbellum urban Richmond, coroners investigated far more child death cases involving black infants — 84 as opposed to 13 performed for white babies — and thus subjected black women and families to more state scrutiny and perhaps harassment from white authorities.42

Working in other people’s homes, female servants accused of infanticide were often removed from family or community networks they could rely on for birthing, economic or child-care support. Anna Tribble added in her inquest statement that she

lived by herself in Mr. W.H. Hertz’s yard. Nowhere in the extant archival documents are references to nearby family or even speculations about her infant’s paternity. The silences are at once usual and curious; infanticide prosecutions rarely charged men, but they were often named. And as the public viewed such legal encounters as much-valued chances to air community knowledge, gossip and complaints, the absence of additional character witnesses is striking.

The lack of references to family or an intimate partner is not the only omission. In her inquest statement, Tribble admits to knowing that she was pregnant and having three other children. Her testimony is a record of a young black woman’s reproductive history; Tribble had begun her sexual life in adolescence and ostensibly spent many of those years pregnant. But her own words fail to address the fates of her other children. Did they succumb to the common and contagious illnesses that stalked nineteenth-century children? Or, given her relative youth at the time of her childbearing and her perhaps unattached status, had Anna Tribble’s children been left with other family members capable of providing more than her life as a single, female contract laborer could afford?

A partial answer comes from Tribble’s sessions court indictment. An August 29 solicitor’s letter to Gov. Benjamin Tillman argued against commutation for Tribble, saying that “the jury convicted her of murder, killing her own child, and the last is the fourth one, it is charged, she has made [a]way with.” In the eyes of the white jurors, the suspicion that Tribble killed not one, but four, children elevated the horror of her purported crime and put her in a classification of her own. While that single sentence does not clarify the methods by which the children were “made away with” — miscarriages, abortions, infanticide after birth, suspicious accidental deaths — Tribble was identified as a habitual reproductive criminal. That status earned her heightened
stigma in a state that had, a decade earlier, criminalized abortion and upped the ante for females who terminated pregnancies and rejected motherhood.\(^\text{43}\)

There is no legal record of other cases against Tribble, but the lawyer’s mention of Tribble’s suspected reproductive crimes indicate that community speculation or knowledge about supposed multiple infanticides. Tribble’s case demonstrated the potency of community dialogue and participation even that dialogue occurred outside the court setting. With no witnesses referencing Tribble’s previous reproductive history, Tribble had no opportunity to answer or refute such charges against her. The reference to Tribble’s other alleged infanticides surfaced in a later and particularly inconvenient phase of her case. The state’s solicitor, who played an important role in sharing case history and recommending mercy for the convicted, uncovered the information. That Tribble was believed to have committed a crime often considered prima facie evidence of madness not once, but multiple times, meant no last-minute push from the solicitor to soften her sentence.

The image of Anna Tribble as recidivist reproductive criminal was fueled by longstanding narratives about a black maternity that was monstrous and irresponsible. Earlier in the nineteenth century, antebellum commentators observed judgmentally that enslaved women did not bond with their children and lamented infant deaths attributed to smothering or “overlaying” — pointedly ignoring how slavery undermined family stability, relationships and parental authority. In their eyes, enslaved women killed their infants to deny profits to slaveowners or neglected them due to pure sloth. As Wilma King and others noted, the “overlaying” deaths of infants while co-sleeping “received an unusual amount of attention” in slaveholders’ accounts of infant death, and served as

\(^{43}\) An act to amend the criminal law to punish abortion, Dec. 24, 1883. SC Acts of 1883, pages 547-548.
demonstrable evidence that blacks needed white guidance for survival and that black children would not be safe with their own parents.  

By the turn of the century, black parenting and infanticide were linked as pathologies. Newspapers in upcountry and across the state blared headlines about an alleged child murder committed by an Anderson County black couple. Fresh from a “holiness meeting,” John Graffenreid and his wife of Broadway township were driven to infanticide in 1903 by “religious fanaticism.” When the unnamed wife awoke, she claimed the Lord was going to take her or their 16-month-old child, asked John whom he loved best, and dashed the child against a wall as a sacrifice. Religious excitability, supposedly a common tendency of African-Americans, had flared into a bout of temporary mental illness. John Graffenreid was “weak-minded” and his story “rambling and disconnected,” but the reporter opined that his wife was “either raving mad or feigning it.”

South Carolinians similarly railed at Anna Tribble’s alleged crime as a dastardly act unbefitting a woman and mother while calling into question whether her madness was a wily performance to garner sympathy and a lighter sentence. The most comprehensive local account of her execution detailed Tribble’s behavior in her last day: “Throwing herself upon the floor of her cell, wildly clutching at the invisible, alternately mourning in her deep despair and shrieking in her semi-insanity: You done me wrong, you done me wrong.” With Tribble’s resistance, it took a team of women several hours to dress her and “standing on the verge of the trap. … she utterly refused to move a step.

44 Medical historians are now questioning both the frequency and causes of these early deaths, as well as their causes. Todd Savitt, among others, suggest that underreporting of white infant deaths creates the appearance of a problem isolated to bondspeople and that such mortality may have been the result of Sudden Infant Death Syndrome (SIDS). Todd Lee Savitt, Medicine and Slavery: The Diseases and Health Care of Blacks in Antebellum Virginia, Blacks in the New World (Urbana: University of Illinois Press, 1978).

In being pushed, she tripped over one of the pulleys ... and one of the men who held her partially fell with her. It seemed like a death struggle.” It was indeed a death struggle for Tribble, whether her active resistance constituted mental illness, the real stress of facing her mortality, or a strategic play to elicit a last-minute gallows pardon. In fact, the journalist pontificated on Tribble’s mental state: “Some say she was insane. It was the insanity of black horror. She was insane to the extent that no mortal mind could be wholly sound whose tension had been strung to the highest pitch with the thoughts of that impending fate.”

By the end of the nineteenth century, the mother-murderess merged with medical beliefs tying women’s physiology to their ratiocination. Physicians such as Horatio Storer — later made famous by his campaign to criminalize abortion — popularized the idea that childbirth and lactation were triggers that led many women to exhibit lack of interest in their children, husbands, domestic life, and, in some extreme cases, life itself. Though the causes of puerperal disorders were not certain and scholars even then questioned whether it was a real ailment or a disorder that reflected societal dismay when women failed to embrace maternity, many late nineteenth and early twentieth century medical researchers were convinced that puerperal insanity led to infanticide. A forensics textbook from the 1890s described the disorder’s manifestation in impulsive actions, attacks against husband family and sometimes the “unintentional killing” of infants. In those most extreme cases, puerperal madness could be understood legally as precipitating cause that rendered a woman irresponsible and perhaps not culpable for her actions.

For Tribble, one option could have been commitment to an insane asylum. In the South Carolina Lunatic Asylum, black and white women alike were committed for symptoms varying from endangering their children, delusional spells that sent them
wandering naked and cursing in public, and ignoring their offspring. In an age where physicians were trying to suss out connections between disease and race, they were remarkably willing to see that that a new illness called “puerperal” or childbirth insanity affected black women as well as well. By the 1880s, girls and women were routinely committed to the Lunatic Asylum for matters related to violence or threats against children. Alice Biddle, an elderly widow from Hamburg, manifested “a particular desire to murder children” and was on her second turn at the asylum. The personal history of Aggy Pendergrass of Williamsburg included a similarly vague note that “she has attempted to injure children.” Seventeen-year-old house servant Bessie Carter had not yet experienced menarche, a condition believed to explain her “attempted violence on the person of a child.” Twenty-two-year-old Susan Crane landed in the institution after striking her husband, mother-in-law and going after her children with an ax. Diagnosed with acute melancholia, Lou Simms’ disavowal of her children and exposing them to an unspecified danger was enough to earn the Anderson County resident a nine-month stay. Sallie Chapman, a twenty-seven year-old from Cheraw, tried to kill her own infant and a nurse, and then attempted to cut her own throat. But none of the shorthand physician’s notes indicated that any children had been killed at the hands of the patients.

Still, courts in South Carolina and beyond often reserved harsh punishments for women who violated gender norms. Juries’ discretion in cases often resulted in stiffer penalties, including the death penalty, for women who acted in ways thought to be uncharacteristic of their gender than for men who defied gender-based behavioral expectations. Courts may not have expected nineteenth-century black males to be exemplars of ideal maternity, but they expected at least the display of a proper, womanly penitence that neither Milbry Brown nor Anna Tribble showed in court or
with those who accused them. With Milbry Brown allegedly regretting that she didn’t wreck more violence against the Carpenter family and Tribble trying to negotiating work in exchange for her freedom, both females demonstrated little willingness to perform appropriate and strategic regret.\textsuperscript{46}

These two state-sponsored deaths illuminated the tangle of medical and legal discourses about female madness, the mental competence children, and crime as a product of nature. This confluence proved particularly deadly for these two young black females who were accused of the racially coded and gendered crimes of poisoning and infanticide, and positioned as baby killers just as middle-class reformers were clamoring for child protection. Headlines and petitions to the governor called the pair colored viragos and, most importantly, infanticides — the latter a telling choice of words that described who they were and not merely their actions.

The debate surrounding the fates of Brown and Tribble reflected conflicting societal notions: ideas of children, females and blacks as dependents prone to emotion and violence chafed against ideals that elevated motherhood and childhood. South Carolinians wrestled with the role such identities should play in sentencing, especially in capital cases where so-called crimes \textit{against} nature (here, offenses against children) were also crimes \textit{of} female, youth or black nature. If one faction declared that capital punishment was patently unsuitable for all women and girls as members of the fairer, weaker or less stable sex, others returned that with essentializing arguments that such women and children were more inclined to heinous acts due to their unbridled emotionalism and still others argued that child murder so violated norms of female or child behavior that it negated the idea of less severe penalties for females and children.
In a 1920 visit to Columbia, Margaret Falconer assessed the prospects for shutting down prostitution, particularly around the state’s recently established military installations. The director of the War Department’s social hygiene bureau for women and the former head of a Pennsylvania reformatory for females, Falconer was among the nation’s leading female experts on dealing with the incorrigible and morally challenged female, precisely like the ones who loafed around Columbia’s Fort Jackson. After surveying the state’s efforts to discipline and urban girls who dallied with soldiers and were labeled the primary vectors of venereal disease, Falconer pronounced “that the colored girl is a greater menace to society than the white girl.” Noting that keeping a “clean society” demanded attention to girls and women of both races, she nevertheless tacitly acknowledged the growing gap between the punishment regimes for white and black girls suspected of sexual impropriety. White girls increasingly went to reformatories or were re-integrated into society, but the black girl was lodged “in the ordinary jail, [where] her presence adds fuel to the already inflamed male prisoners, and after her release she goes out to ply as a trade what had hitherto had been an occasional pleasure.”

This chapter explores the entangled histories of delinquent black and white girls who had brushes with the state. Even as local courts were willing to hear and validate very young black girls’ rape cases in court, the broader society of which they were part remained profoundly anxious about the sexuality of older girls. Nineteenth-century concerns about girls’ sexuality have long occupied a place in historians’ considerations

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1 "Help for Wayward Girl Is the Appeal: Miss Falconer Talks to Women at Y.W.C.A ", *The State*, April 4, 1918.
of social, economic and political change. Urbanization and the shift from home industry
to waged factory labor pushed children, especially girls, into increased contact with men
outside their families and into public spaces. As in larger cities such as New York, South
Carolina’s smaller towns and cities were unaccustomed to large numbers of youthful
females away from their families and determined to seek wages, leisure and a measure
of independence. The influx of girls unmoored from their nuclear families and social
networks created a Southern small city “girl problem,” and the most extreme version of
the problem was the girl who accepted money from male suitors or sold her favors for
material items or cash.\(^2\)

However, this chapter distinguishes itself from previous scholarship that has
neglected how Southern cities grappled with these new, incorrigible girls, and also
histories that have segregated black and white girls’ histories. Most seminal studies of
the sexualized and disturbing girl focused on the urban residents of the Northeast and
white or immigrant girls. While reformers’ tunnel vision regarding white slavery or
white girls’ rehabilitation inhibited or drowned out efforts to address black girls’ sexual
delinquency, few scholars have considered the relationships between differing efforts to
“save” girls from social and moral decay. Black and white girls alike were affected by
social panics about female public immorality and sexual contact.\(^3\) Working-class girls

\(^2\) Ruth Alexander’s seminal book coined the term “the girl problem” and established new ground
in articulating emergent concerns about girls’ sexuality and absorption into new economies, as
well as theorists’ early ideas about adolescence as a stage of separation from parents. Notable in
its effort to be girl-centric rather than institution-centric, it was also exceptional in that it
discussed the role of race in state attempts to discipline African-American girls, a topic that many
of the histories to follow would neglect. See Alexander, *The "Girl Problem" : Female Sexual
Delinquency in New York, 1900-1930*.

\(^3\) For works that blend the trajectories of black and white girls, see Susan K. Cahn, *Sexual
and women, whether they were the immigrants of Northern tenements or the young black domestic servants in the blossoming South Carolina upcountry, were primary characters in the nineteenth century’s broad morality plays about sexuality.

In South Carolina, black and white women reformers struggled to balance the similar needs of delinquent black and white girls. But faced by paltry resources, beliefs about black hypersexuality and venereal disease, reformers pursued increasingly divergent paths and forms of state treatment for black and white girls suspected of committing the same crimes. Since whiteness was taken for the potential for rehabilitation, white girls were channeled from jails into out-of-state reformatories and, eventually, into a new local institution. In contrast, black girls who transgressed sexual boundaries faced repeated fines and jail time. While reformers spoke about the need for institutions for all girls, their policies firmly re-established the bright line between white girl sex offenders and black girl sex offenders that commercial sex had erased.

In the cities of Columbia, Spartanburg and Greenville, anti-prostitution campaigns indexed anxieties about “public girls and women” and public health. Importantly, regulating all girls’ sexuality and prostitution, became an important means for strengthening local government. As South Carolinians’ traditionally laissez-faire attitudes towards prostitution were replaced by Progressive impulses to tame the sex trade, reformers in these and other cities pushed for enforcement of existing law; new local and state laws; and the establishment of charitable institutions that ostensibly tried to save girls and women from falling into sin. As these campaigns existed in a stratified


world, age, race and role in the sex trade influenced how law enforcement and reformers monitored, prosecuted and prescribed “treatment” for women and girls believed to participate in sex work.

By World War I, however, the military’s mandate to stamp out prostitution near its South Carolina training campus ushered in new local, federal, and military restrictions, as well as unprecedented funding for juvenile institutions for girls of both races. Faced with 100,000 service men flooding into places like Columbia’s Fort Jackson and Spartanburg’s Camp Wadsworth, these urban centers also struggled with handling girls who migrated for employment in wartime industries, proximity to male partners and, sometimes, the chance to work as prostitutes.⁵ Girls of both races’ social and sexual dalliances with soldiers were considered extremely dangerous to public health and mores. Black and white women reformers had a largely unified goal — the diversion of girl sex offenders from jails to charitable institutions or reformatories — and, in fact, started an interracial detention house in the capital. But with military intervention, white girls were increasingly taken to federal court and channeled into state and national institutions to recast them into respectable working-class women. Black girls were increasingly consigned to county jails for sexual offenses, though South Carolina began to half-heartedly support the creation of a reformatory for black girl delinquents.

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⁵ Estimates of how many soldiers cycled through South Carolina’s WWI training camps vary, and 100,000 may be a conservative estimate. A retrospective newspaper article quoted a figure of 105,000 soldiers who had been through Camp Wadsworth, not including other bases in the state. See {Thoms, #50}
5.1 When Prostitution Wasn't a Crime: Glimpses of the Sporting Life

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6 "Help for Wayward Girl Is the Appeal: Miss Falconer Talks to Women at Y.W.C.A,” The State, April 4, 1918, 2.
7 Ibid.
This chapter explores the entangled histories of delinquent black and white girls who had brushes with the state. Even as local courts were willing to hear and validate very young black girls’ rape cases in court, the broader society of which they were part remained profoundly anxious about the sexuality of older girls. Nineteenth-century concerns about girls’ sexuality have long occupied a place in historians’ considerations of social, economic and political change. Urbanization and the shift from home industry to waged factory labor pushed children, especially girls, into increased contact with men outside their families and into public spaces. As in larger cities such as New York, South Carolina’s smaller towns and cities were unaccustomed to large numbers of youthful females away from their families and determined to seek wages, leisure and a measure of independence. The influx of girls unmoored from their nuclear families and social networks created a Southern small city “girl problem,” and the most extreme version of the problem was the girl who accepted money from male suitors or sold her favors for material items or cash.8

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8 Ruth Alexander’s seminal book coined the term “the girl problem” and established new ground in articulating emergent concerns about girls’ sexuality and absorption into new economies, as well as theorists’ early ideas about adolescence as a stage of separation from parents. Notable in its effort to be girl-centric rather than institution-centric, it was also exceptional in that it discussed the role of race in state attempts to discipline African-American girls, a topic that many of the histories to follow would neglect. See Alexander, The “Girl Problem”: Female Sexual Delinquency in New York, 1900-1930.
the sexualized and disturbing girl focused on the urban residents of the Northeast and white or immigrant girls. While reformers’ tunnel vision regarding white slavery or white girls’ rehabilitation inhibited or drowned out efforts to address black girls’ sexual delinquency, few scholars have considered the relationships between differing efforts to “save” girls from social and moral decay. Black and white girls alike were affected by social panics about female public immorality and sexual contact. Working-class girls and women, whether they were the immigrants of Northern tenements or the young black domestic servants in the blossoming South Carolina upcountry, were primary characters in the nineteenth century’s broad morality plays about sexuality.

In South Carolina, black and white women reformers struggled to balance the similar needs of delinquent black and white girls. But faced by paltry resources, beliefs about black hypersexuality and venereal disease, reformers pursued increasingly divergent paths and forms of state treatment for black and white girls suspected of committing the same crimes. Since whiteness was taken for the potential for rehabilitation, white girls were channeled from jails into out-of-state reformatories and, eventually, into a new local institution. In contrast, black girls who transgressed sexual boundaries faced repeated fines and jail time. While reformers spoke about the need for

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9 For works that blend the trajectories of black and white girls, see Susan K. Cahn, Sexual Reckonings: Southern Girls in a Troubling Age (Cambridge, Mass.: Harvard University Press, 2007).
institutions for all girls, their policies firmly re-established the bright line between white
girl sex offenders and black girl sex offenders that commercial sex had erased.

In the cities of Columbia, Spartanburg and Greenville, anti-prostitution
campaigns indexed anxieties about “public girls and women” and public health.
Importantly, regulating all girls’ sexuality and prostitution, became an important means
for reinforcing racial difference. As South Carolinians’ traditionally weak prosecution of
prostitution was replaced by Progressive impulses to tame the sex trade, reformers in
these and other cities pushed for enforcement of existing law; new local and state laws;
and the establishment of charitable institutions that ostensibly tried to save girls and
women from falling into sin. As these campaigns existed in a stratified world, age, race
and role in the sex trade influenced how law enforcement and reformers monitored,
prosecuted and prescribed “treatment” for women and girls believed to participate in
sex work.

By World War I, however, the military’s mandate to stamp out prostitution (and
the coercive power of military investment) near its South Carolina training campus
ushered in new local, federal, and military restrictions, as well as unprecedented
funding for juvenile institutions for girls of both races.11 Faced with 100,000 service men

11 Numerous historians across geographic fields have noted aggressive military campaigns
against prostitution and its “twin evil,” venereal disease. At the same time, they have also
documented how military crackdowns co-existed with tacit acceptance of sex work near military
bases and the promotion of female sexuality in wartime efforts. Allan Brandt has written what
flooding into places like Columbia’s Fort Jackson and Spartanburg’s Camp Wadsworth, these urban centers also struggled with handling girls who migrated for employment in wartime industries, proximity to male partners and, sometimes, the chance to work as prostitutes. Girls of both races’ social and sexual dalliances with soldiers were considered extremely dangerous to public health and mores. Black and white women reformers had a largely unified goal — the diversion of girl sex offenders from jails to charitable institutions or reformatories — and, in fact, started an interracial detention house in the capital. But with military intervention, white girls were increasingly taken to federal court and channeled into state and national institutions to recast them into respectable working-class women. Black girls were increasingly consigned to county

remains a seminal account of the military’s fight against venereal disease, writing that the military, the medical establishment and Progressive reformers united to make soldiers “fit to fight.” However, Brandt notes change over time as Progressives challenged traditional ideas that prostitution was a necessary byproduct of large military encampments by launching education campaigns about venereal disease and its effects on proper masculinity and the health of the nuclear family back home. Laura Briggs has noted that U.S. in Puerto Rico drew from an imperial archive of anti-prostitution regulation, including the British Contagious Disease Acts. Puerto Rican prostitutes were also positioned as racialized disease vectors and forced to register and have weekly medical examinations during most of World War I, after which they were incarcerated. Marilyn Hegarty writes that, during World War II, the regulation of prostitution occurred side by side with the military’s official use of female sexuality, including the promotion of so-called “patriotutes,” whose gendered and sexual labor included “innocent” pasttimes such as dancing with GIs and also actual prostitution. See ibid., 52-71. [Briggs, 2002 #525@23”, 47;Thoms, #3] Marilyn E. Hegarty, Victory Girls, Khaki-Wackies, and Patriotutes: The Regulation of Female Sexuality During World War ii (New York: New York University Press, 2008).

12 Estimates of how many soldiers cycled through South Carolina’s WWI training camps vary, and 100,000 may be a conservative estimate. A retrospective newspaper article quoted a figure of 105,000 soldiers who had been through Camp Wadsworth, not including other bases in the state. See Susan Thomas, “During World War I, Camp Wadsworth Brought the World to Spartanburg,” The Herald-Journal, February 26, 2012.
jails for sexual offenses, though South Carolina began to half-heartedly support the creation of a reformatory for black girl delinquents.

5.2 Rooting Out Vice, Reforming White Girls

Though regulation of prostitution was largely a local matter, South Carolinians’ efforts to stamp out the trade were influenced by state and national trends. Deviating from the idea that prostitution was a necessary evil, growing cities nationwide experimented with new legal tools to eliminate or severely reduce prostitution and bring wayward girls back into the fold. White reformers — many of them pastors, physicians and the upcountry’s businessmen — drew on connections and news from regional and national networks, and presented themselves as New Southerners who would rehabilitate a lawless South, lax local government and the girls themselves. Latching onto national anxieties about a largely nonexistent white slave trade and the 1909 Mann Act prohibiting the movement of girls from state to state for sexual purposes, South Carolinians adapted those narratives and envisioned the girl prostitute as white, a vulnerable rural migrant, and the dupe of dissipated older women and girls who trafficked them into prostitution.

Cities enjoyed wide lassitude to regulate the public welfare. By the early twentieth century, cities nationwide began more actively controlling the spread of vice districts, a new phase of enforcement for city governments that had often benefited from
the fines generated by bawdy house arrests. As Ruth Rosen points out, many U.S. cities tolerated commercial sex up until the late nineteenth century, making various attempts to regulate it through licensing, medical checkups and segregation. As reformers began to see prostitution as one of the pre-eminent “social evils” of their times, they entered a second, more activist phase during which they moved to abolish red-light districts in hopes of banishing prostitution from their cityscapes. But as the morality reformers soon found out, prostitution could not be easily uprooted; the soiled doves set off for new cities, and the policy designed to eradicate sex-for-sale inadvertently fueled prostitution’s mobility into other urban areas.

With women and girls finding ever more ways to make money discreetly, the failure of what Rosen calls the “abolitionist” attempt to deracinate urban red-light districts inevitably provoked debates about whether to reinstate the “social evil” so it could at least be seen and restricted. At the head of these efforts were Law and Order Leagues of “the best men.” These leagues were a natural outgrowth of Progressivism, with its belief that citizenship did not end and begin with the ballot box. For Leaguers, citizens worked not just to support lawmakers, but often pushed them to execute laws

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13 Lawrence Friedman notes that, in 1909, the mayor of Bellingham, Washington, agreed to clamp down on prostitution but pointed out that fining the industry earned the city $17,000 per year, more than 10 percent of its annual budget. Lawrence M. Friedman, *Guarding Life’s Dark Secrets: Legal and Social Controls over Reputation, Propriety, and Privacy* (Stanford, Calif.: Stanford University Press, 2007), 133. It is difficult to tally how much fining prostitutes or others convicted of disorderly conduct contributed to municipal budgets in South Carolina cities due to limited records, sporadic prosecution, and multiple jurisdictions, but it is possible that the costs of policing cut into city profits.

on the books and create new legislation to deal with emerging problems; the best citizen was an active citizen who actually helped implement the law — a rhetoric that played well in a state that seesawed back and forth in debates over the necessity of lynching and the rule of law.¹⁵

South Carolinians avidly watched how other cities campaigned against prostitution and formed chapters of national “Law and Order Leagues” to wage war against drunkenness and other forms of vice. After following Atlanta’s cleansing of its urban core — in which the city claimed to have shut down all gambling establishments, Columbia’s league called in an Atlanta attorney to prosecute cases against illegal clubs in 1909.¹⁶ In 1913, Charlestonians gathered to hear a panel about its sister port city, Wilmington, as the latter tried to stamp out vice businesses with charges against more than 200 blind tigers — illegal drinking houses — and houses of ill fame.¹⁷

As Law and Order Leagues took off, the city of Columbia was sufficiently worried about the trafficking of girls and women into the sex trade that it hired a “white slavery” coordinator, and moved toward the eventual closing of its district. Coordinator

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¹⁵ For a discussion about Law and Order Leagues’ focus on prohibition and strategies, see Ann-Marie E. Szymanski and Duke University Press, Pathways to Prohibition: Radicals, Moderates, and Social Movement Outcomes (Durham, NC: Duke University Press, 2003), 55-56. Law and Order Leagues presumably were against vigilante violence and, in some Southern locales, spoke against lynching, but in other locations the Law and Order Leagues or their individual leaders developed relationships with the Ku Klux Klan. For an example of a league that actively opposed the Klan in Illinois, see [Pegram, 2011 #573@181] Conversely, Pegram has also written about a similar organization, the Anti-Saloon League, and its close ties to the Klan in South Carolina. See [Pegram, #575@89-119]
¹⁷ “Mass Meeting to-Morrow Night,” The News and Courier, October 2, 1913, 10.
John Hammond, a future state senator, traveled freely in the district behind the Capitol, checking conditions and offering alternative employment for girls and women willing to leave the brothels. He held that it was meaningful, sufficient employment that would keep girls from prostitution. White slavery coordinators were empowered to cross state lines in search of young girls trafficked to other locations, and South Carolina used the provisions of the Mann Act to punishing intrastate trafficking of young girls. Coordinators like Hammond were on the lookout for girls such as 14-year-old Estelle McCluney, a Jacksonville, Florida, girl believed to be trafficked into the state in 1917. As it turned out, McCluney was found in a Charleston boardinghouse, where an older man left her after promises of marriage; when interviewed, the girl seemed more concerned about whether her story would appear in newspapers around the region than in her fate so far away from her parents.\textsuperscript{18}

But cases like McCluney’s were few and far between. Young women like 20-year-old Lancaster native Etta Smith were the ideal beneficiaries of Hammond’s work. After marrying at age 16 and being widowed a short time later, the 20-year-old moved to Columbia and secured a position at the Granby mills, one of four large mills in the city. At Granby and its accompanying mill village, women operatives routinely rose before sunrise, worked until 7 p.m. in clouds of choking cotton lint and for 10 hours per day for

\textsuperscript{18} “Charged with Violating Mann White Slave Law,” \textit{The Herald and News}, March 10, 1914, 7.
a dollar.\textsuperscript{19} Arrested one night in 1905, she told police that she couldn’t survive on with her mill wages.\textsuperscript{20} She had never engaged in paid liaisons until that very night when her economic situation became more precarious and she succumbed to the urgings of “older girls from home.”\textsuperscript{21}

For upcountry and national reformers, white girls’ prostitution was seen as inextricably bound to the lack of truly renumerative work available for female migrants, as well as working-class girls’ “degenerancy.” While some South Carolinians pinned prostitution on the underdeveloped morals of the mill class, the white slavery narrative that drove anti-prostitution initiatives shared allegorical space with the labor exploitation of poor whites, particularly children.\textsuperscript{22} In South Carolina, a volatile economic climate based on cotton and the back-breaking labor at places like Granby’s spinning rooms fed the development of a white slavery narrative based on the specifics of a mill-driven economy. When a leftist labor activist visited Granby in 1903, she called

\begin{itemize}
\item [\textsuperscript{19}] Hourly wages at Granby typically ranged from $1 to $1.25 for men and a quarter to 75 cents for children. The supervisor interviewed in this story did not give a range for women, saying only a dollar. Ellen Weatherell, “Among the Cotton Mills,” *The International Socialist Review*, July 1913, 418.
\item [\textsuperscript{20}] “A Pathetic Case: Young Woman Who Gave up Honor with Poverty for False Allurements,” *The State*, January 24, 1907, 13.
\item [\textsuperscript{21}] Ibid.
\end{itemize}
the operatives — many pale from hours of work without sunlight — “mill slaves,” an analysis that she shared with less radical reformers.23

Girls who looked to escape or avoid the mill’s brand of “white slavery” might consider prostitution as a viable alternative to drudgery among the looms. Reformers walked a line between portraying white girl prostitutes as desperate innocents buffeted by limited vocational opportunities and acknowledging that girls themselves could view commercial sex as a more viable livelihood. The most vocal challengers to reformers’ insistence on girls’ innocence were madams and girls themselves. Not afraid to litigate, madams sometimes used the courtroom to challenge the white slavery narrative. When Elizabeth Cothran was convicted of abduction for allegedly taking 12-year-old Susie Dobson captive for her brothel, Cothran appealed to the S.C. Supreme Court in 1891. While she did not deny her profession or that the clearly underage Susie Dobson was in her establishment, Cothran argued that the white young girl had chosen a life in the brothel. Brothel witnesses said that Susie, “intoxicated and much excited” when pulled from a wardrobe where the women had stashed her, had announced to her father that she would not leave the premises until she had collected the money she had earned while there. Cothran disputed the court’s conviction and proceeded with a riskier argument: that the female members of the Dobson clan were “not of good character for

chastity.” In her story, Susie’s older sister had lived for three years at the brothel, and young Susie had come to the brothel multiple times to visit and with the full approval of her parents. Furthermore, the self-same father seeking Susie’s return to the family fold had also visited the premises with this wife “for immoral purposes,” and a third sister had “applied” for residency within the house and been denied. Cothran presented quite a different picture of young Susie, an independent adolescent who knew the house well, as an eager wage earner and also part of a disorderly family network.

It is not apparent, however, just how many girls like Susie populated the brothels and flophouses of South Carolina’s small cities. Hammond’s survey of Columbia’s red-light district revealed that, at least locally, the women plying the oldest trade were most often adult women and not the hapless girls reformers assumed. Hammond conducted interviews with the residents and collected information that of the ninety occupants of the brothels, only two were listed as younger than 20 years of age, but that figure relied on self-reporting or information from madams. Hammond, however, also collected information about how many years the women had been employed in sex work; of all the women in Frances Morgan’s Senate Street pleasure house, none said that she had entered the trade at an age younger than 20. A few short blocks away, however, the majority of women working in Della Starnes’ bawdy house said they began working at ages 16 or 17: young, but older than the age of sexual consent.
Even with his spare approach to data collection, Hammond managed to convey the diversity of the white women inhabiting the brothels he investigated. While the prostitute population was characterized by the mobility critical to an illicit enterprise — the possibility of police crackdowns meant that these sex workers could be called to pack up shop and move quickly — the white madams displayed remarkable residential stability. Madam Della Starnes owned the brothel property at 1010 Lincoln Street and had spent her 16 years in “the life” in Columbia. The entry of one 24-year-old noted that she was a “good stenographer.” Far from being divorced from their families, most of the women were mothers of children who lived with them; occasional entries noted that a woman’s children stayed with her parents or, in the case of Mattie Caughn’s two children, were at a local shelter for orphaned or needy children. The miscellaneous comment about Stella Johnson, another Gates Street madam of a nine-room house, shed light on why she didn’t want to leave the field: “2 sister children dependent on me.” Hammond’s goals for the women are apparent in his marginalia: “married, now happy” or “married to a preacher.” A vocation and marriage to an upright man could be the antidote to prostitution, but Hammond’s own report recorded the prostitutes’ responses about whether they wanted to leave the “rough trade.” The overwhelming majority said no.

As the white slavery coordinator, Hammond was noticeably silent about the red-light district’s black prostitutes. In his report, Hammond notes that “Negroes occupy” at
least four addresses in the zone and that at another Gates Street abode, a black man was
the lone occupant in a serviceable house that prostitutes had vacated. Focusing on his
duties to curb white slavery, Hammond left the pages for these buildings blank, not
listing the residents by name or attempting to collect the demographic information he
did with white brothels. Hammond must have walked by the premises; the black-
occupied dwelling at 1007 Senate was adjacent to at least two recognized white brothels.
The vaguely descriptive “Negroes occupy” could suggest either new renters or
occupants outside the sex trade, but it is more likely that these addresses were also
brothels. Hammond's report concluded with a typed list of women affiliated with local
bawdy houses, and it includes women whose last known addresses were those Negro
houses that Hammond briefly cited.

Hammond’s elision of black prostitution from his document was the byproduct
of his narrow, racial focus, but it also could have been tied to earlier efforts that
specifically tried to root out black prostitution. Hammond recorded 11 vacant properties
once known to be sporting houses, and, if one piece of fragmentary evidence is
representative, black prostitutes may have been the first pressured by police and
reformers to pack up shop.24 In 1915, two years before Hammond documented the last
brothels in the red-light district, the NAACP’s Crisis magazine published this tidbit:
“Twelve houses of prostitution containing 50 colored women and run for the benefit of

24 [Moore, #47]
white men have been closed in Columbia, S.C. No wonder that the Iowa bill against intermarriage is called by the Des Moines, Iowa Evening Tribune a ‘bill to legalize white debauchery.’”25 If successful, the campaign may have just pushed black prostitution elsewhere in the city, but it appeared to have changed the literal complexion of the city’s red-light district.

At least one black reformer publicly protested black prostitution within Columbia. Richard Carroll, a devotee of Booker T. Washington and the founder of a short-lived industrial school for black children in the 1890s, complained of problems “in the negro section” of the red-light district in a letter known only from the published response of Columbia’s Mayor Wade Hampton Gibbes. Carroll’s open letter apparently called city leaders to task, asking “Why not clean out the red-light district?” Gibbes answered with a tutorial on municipal policy, pointing out that some of the district’s residents had been arrested for vagrancy and that local law required that three witnesses either black or white had to testify in the Recorder’s Court to the character of the female or house in question. With those clarifications, Gibbes deemed himself ready to join Carroll in the conservative black newspaperman’s “righteous battle” to convict the guilty.

Still, the failure of attempts to shut down prostitution is evident by cities’ repeated calls to rid themselves of bawdy houses. After apparently purging black

brothels with white clienteles in spring 1915, Columbia’s city council considered a January 1916 measure to geographically limit so-called sporting houses north of Senate Street and that all brothel residents on Gates and Lady Streets were to evacuate in 30 days; the measure failed, with even the mayor dissenting.26 Spartanburg, too, struggled to clear vice districts, with its mayor issuing a less-generous 1908 edict that all “demimondes” — a word describing the sexual underworld, but the prostitute herself — had two days to leave if they only had trunks and clothing to pack, and three days to make themselves scarce if they had heavier furniture. Unlike its bigger sister city Columbia’s multiple tries to dislodge brothels, Spartanburg’s campaign yielded some results; in early 1910, members of the local Y.M.C.A. minister’s union were gearing up to fight the re-opening of the vice street, which had been closed for more than a year.27

The location of largely white brothels in black neighborhoods allowed both white and black reformers to an argument about environmental factors that led to black girls’ prostitution. While white reformers typically tied white girls’ commercial sex to factory employment, migration and a working-class background, they argued that black neighborhoods — populated by a supposedly morally challenged and sexually depraved lower race — were the ideal breeding grounds for immorality. Even some black reformers echoed the sentiment that black residential areas threatened girls’ ability

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26 {, #54@2}
to remain on the straight and narrow. In Baltimore, black Law and Order Leaguers lamented in 1908 how difficult it was to keep 12- and 13-year-old black girls in schools that were surrounded by pubs, dancing halls and billiard shops: “So powerful was the influence of this neighborhood on them that at thirteen some of them passed from the school to the houses of prostitution and to live lives of shame.”

In one swift stroke, black neighborhoods were indicted as epicenters of sin in Southern cities, despite the presence of law-abiding working-class African-Americans who lived in close proximity to less respectable neighbors.

Even as reformers pointed to the vice industries concentrated in black environs, few noted, as Asheville preacher Robert Campbell did, that whites opened their vice businesses in black neighborhoods. Reasoning that white demand for paid sex drove the creation and maintenance of vice districts, he asked “was it not fair that the residence districts of the whites, near their own homes and churches, should endure this ‘necessary evil, instead of thrusting it off on the poor black people?’”

Whatever the reasons reformers thought vice businesses flourished in black sections, many shared the idea that black children’s race and residence — one an immutable characteristic and the other unlikely to change as upcountry cities like Greenville began codifying legal

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segregation down to a block-by-block level at this time — exposed them to predators and greatly compromised chances of virtuous living.

Black and white women reformers were quick to emphasize the prevalence of vice in black communities, even if they advanced different reasons for the environmental factors that pushed black girls into sex work or incorrigibility. They located the black girls’ overrepresentation in prisons squarely in the African-American neighborhoods in which they lived, worked and went to school. According to prominent activists such as Mary Church Terrell, the first president of the National Association of Colored Women: “When families of eight or ten, consisting of men, women and children, are all huddled together in a single apartment, a condition of things found not only in the South, but among our poor all over the land, there is little hope of inculcating morality or modesty.”

While black women reformers pointed to disorganized home life as a factor in black children’s delinquency and appealed to desires to save the children, white reformers heavily emphasized saving young men from dangerous and possibly life-changing moral lapses. Within this frame, black prostitutes who worked across the color line, or did not attempt to hide their vocation, posed multiple threats to normative masculinity and femininity. Those who engaged in sex with young white men subverted the hardening racial order and, by diverting these young men from appropriate white female partners, endangered white nuclear families. According to the *Anderson*
\textit{Intelligencer}, their city was “flooded by a set of the most loathsome, dirty, filthy wenches that ever disgraced any city, decoying the youths of our town into their lair.” The writer, going by the nom de plume Daufina, railed about the impact of “two dirty wenches parading themselves in front of a lot of ladies coming from Church.” Those “blackberry girls” unleashed a dual evil: luring the young white men whose fates so concerned Daufina and thumbing their noses at notions of female respectability.

Mixed-race prostitutes often came in for even more vitriol, even when they were crime victims. When Greenville’s Ezell Thackston shot and murdered the mulatto woman he “kept” in 1897, his supporters’ pardon portrayed Thackston as a young man led astray by his victim, Willie Ably. His mother, Sarah, reserved the harshest descriptions for her son’s victim in her request for his pardon. According to her letter, Ably was "a demon in the form of a mulatto woman, thrice a murderess, thrice separating husband and wife, escaped her pursuers from Chicago, in man’s clothing.” Despite Thackston’s violent past — he had murdered another bawdy house visitor but successfully claimed self-defense — it was the dead Ably who stood accused of miscegenation, prostitution, homicide, being on the lam, and violating gender norms by strategic cross-dressing. Conveniently forgetting that her son and Ably co-habited for a time, Sarah Thackston portrayed her 20-year-old son as someone who was simply waylaid by a mulatto seductress and succumbed to her advances due to a childhood that
included the loss of the family home, leaving school to find employment, and the lack of male guidance.

5.3 Military Justice and Momentum

Though regulation of prostitution was largely a local matter, South Carolinians’ efforts to stamp out the trade were influenced by state and national trends. Deviating from the idea that prostitution was a necessary evil, growing cities nationwide experimented with new legal tools to eliminate or severely reduce prostitution and bring wayward girls back into the fold. White reformers — many of them pastors, physicians and the upcountry’s businessmen — drew on connections and news from regional and national networks, and presented themselves as New Southerners who would rehabilitate a lawless South, lax local government and the girls themselves. Latching onto national anxieties about a largely nonexistent white slave trade and the 1909 Mann Act prohibiting the movement of girls from state to state for sexual purposes, South Carolinians adapted those narratives and envisioned the girl prostitute as white, a vulnerable rural migrant, and the dupe of dissipated older women and girls who trafficked them into prostitution.

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31 Rosen, The Lost Sisterhood: Prostitution in America, 1900-1918.
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But cases like McCluney’s were few and far between. Young women like 20-year-old Lancaster native Etta Smith were the ideal beneficiaries of Hammond’s work. After marrying at age 16 and being widowed a short time later, the 20-year-old moved to Columbia and secured a position at the Granby mills, one of four large mills in the city. At Granby and its accompanying mill village, women operatives routinely rose before sunrise, worked until 7 p.m. in clouds of choking cotton lint and for 10 hours per day for

a dollar.\textsuperscript{36} Arrested one night in 1905, she told police that she couldn’t survive on with her mill wages.\textsuperscript{37} She had never engaged in paid liaisons until that very night when her economic situation became more precarious and she succumbed to the urgings of “older girls from home.”\textsuperscript{38}

For upcountry and national reformers, white girls’ prostitution was seen as inextricably bound to the lack of truly remunerative work available for female migrants, as well as working-class girls’ “degeneracy.” While some South Carolinians pinned prostitution on the underdeveloped morals of the mill class, the white slavery narrative that drove anti-prostitution initiatives shared allegorical space with the labor exploitation of poor whites, particularly children.\textsuperscript{39} In South Carolina, a volatile economic climate based on cotton and the back-breaking labor at places like Granby’s spinning rooms fed the development of a white slavery narrative based on the specifics of a mill-driven economy. When a leftist labor activist visited Granby in 1903, she called

\textsuperscript{36} Hourly wages at Granby typically ranged from $1 to $1.25 for men and a quarter to 75 cents for children. The supervisor interviewed in this story did not give a range for women, saying only a dollar. Ellen Weatherell, “Among the Cotton Mills,” \textit{The International Socialist Review}, July 1913, 418.


\textsuperscript{38} Ibid.

the operatives — many pale from hours of work without sunlight — “mill slaves,” an analysis that she shared with less radical reformers.40

Girls who looked to escape or avoid the mill’s brand of “white slavery” might consider prostitution as a viable alternative to drudgery among the looms. Reformers walked a line between portraying white girl prostitutes as desperate innocents buffeted by limited vocational opportunities and acknowledging that girls themselves could view commercial sex as a more viable livelihood. The most vocal challengers to reformers’ insistence on girls’ innocence were madams and girls themselves. Not afraid to litigate, madams sometimes used the courtroom to challenge the white slavery narrative. When Elizabeth Cothran was convicted of abduction for allegedly taking 12-year-old Susie Dobson captive for her brothel, Cothran appealed to the S.C. Supreme Court in 1891. While she did not deny her profession or that the clearly underage Susie Dobson was in her establishment, Cothran argued that the white young girl had chosen a life in the brothel. Brothel witnesses said that Susie, “intoxicated and much excited” when pulled from a wardrobe where the women had stashed her, had announced to her father that she would not leave the premises until she had collected the money she had earned while there. Cothran disputed the court’s conviction and proceeded with a riskier argument: that the female members of the Dobson clan were “not of good character for

chastity.” In her story, Susie’s older sister had lived for three years at the brothel, and young Susie had come to the brothel multiple times to visit and with the full approval of her parents. Furthermore, the self-same father seeking Susie’s return to the family fold had also visited the premises with this wife “for immoral purposes,” and a third sister had “applied” for residency within the house and been denied. Cothran presented quite a different picture of young Susie, an independent adolescent who knew the house well, as an eager wage earner and also part of a disorderly family network.

It is not apparent, however, just how many girls like Susie populated the brothels and flophouses of South Carolina’s small cities. Hammond’s survey of Columbia’s red-light district revealed that, at least locally, the women plying the oldest trade were most often adult women and not the hapless girls reformers assumed. Hammond conducted interviews with the residents and collected information that of the ninety occupants of the brothels, only two were listed as younger than 20 years of age, but that figure relied on self-reporting or information from madams. Hammond, however, also collected information about how many years the women had been employed in sex work; of all the women in Frances Morgan’s Senate Street pleasure house, none said that she had entered the trade at an age younger than 20. A few short blocks away, however, the majority of women working in Della Starnes’ bawdy house said they began working at ages 16 or 17: young, but older than the age of sexual consent.
Even with his spare approach to data collection, Hammond managed to convey the diversity of the white women inhabiting the brothels he investigated. While the prostitute population was characterized by the mobility critical to an illicit enterprise — the possibility of police crackdowns meant that these sex workers could be called to pack up shop and move quickly — the white madams displayed remarkable residential stability. Madam Della Starnes owned the brothel property at 1010 Lincoln Street and had spent her 16 years in “the life” in Columbia. The entry of one 24-year-old noted that she was a “good stenographer.” Far from being divorced from their families, most of the women were mothers of children who lived with them; occasional entries noted that a woman’s children stayed with her parents or, in the case of Mattie Caughn’s two children, were at a local shelter for orphaned or needy children. The miscellaneous comment about Stella Johnson, another Gates Street madam of a nine-room house, shed light on why she didn’t want to leave the field: “2 sister children dependent on me.” Hammond’s goals for the women are apparent in his marginalia: “married, now happy” or “married to a preacher.” A vocation and marriage to an upright man could be the antidote to prostitution, but Hammond’s own report recorded the prostitutes’ responses about whether they wanted to leave the “rough trade.” The overwhelming majority said no.

As the white slavery coordinator, Hammond was noticeably silent about the red-light district’s black prostitutes. In his report, Hammond notes that “Negroes occupy” at
least four addresses in the zone and that at another Gates Street abode, a black man was the lone occupant in a serviceable house that prostitutes had vacated. Focusing on his duties to curb white slavery, Hammond left the pages for these buildings blank, not listing the residents by name or attempting to collect the demographic information he did with white brothels. Hammond must have walked by the premises; the black-occupied dwelling at 1007 Senate was adjacent to at least two recognized white brothels. The vaguely descriptive “Negroes occupy“ could suggest either new renters or occupants outside the sex trade, but it is more likely that these addresses were also brothels. Hammond’s report concluded with a typed list of women affiliated with local bawdy houses, and it includes women whose last known addresses were those Negro houses that Hammond briefly cited.

Hammond’s elision of black prostitution from his document was the byproduct of his narrow, racial focus, but it also could have been tied to earlier efforts that specifically tried to root out black prostitution. Hammond recorded 11 vacant properties once known to be sporting houses, and, if one piece of fragmentary evidence is representative, black prostitutes may have been the first pressured by police and reformers to pack up shop. In 1915, two years before Hammond documented the last brothels in the red-light district, the NAACP’s Crisis magazine published this tidbit: “Twelve houses of prostitution containing 50 colored women and run for the benefit of

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41 [Moore, #47]
white men have been closed in Columbia, S.C. No wonder that the Iowa bill against intermarriage is called by the Des Moines, Iowa Evening Tribune a ‘bill to legalize white debauchery.’” If successful, the campaign may have just pushed black prostitution elsewhere in the city, but it appeared to have changed the literal complexion of the city’s red-light district.

At least one black reformer publicly protested black prostitution within Columbia. Richard Carroll, a devotee of Booker T. Washington and the founder of a short-lived industrial school for black children in the 1890s, complained of problems “in the negro section” of the red-light district in a letter known only from the published response of Columbia’s Mayor Wade Hampton Gibbes. Carroll’s open letter apparently called city leaders to task, asking “Why not clean out the red-light district?” Gibbes answered with a tutorial on municipal policy, pointing out that some of the district’s residents had been arrested for vagrancy and that local law required that three witnesses either black or white had to testify in the Recorder’s Court to the character of the female or house in question. With those clarifications, Gibbes deemed himself ready to join Carroll in the conservative black newspaperman’s “righteous battle” to convict the guilty.

Still, the failure of attempts to shut down prostitution is evident by cities’ repeated calls to rid themselves of bawdy houses. After apparently purging black

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brothels with white clienteles in spring 1915, Columbia’s city council considered a January 1916 measure to geographically limit so-called sporting houses north of Senate Street and that all brothel residents on Gates and Lady Streets were to evacuate in 30 days; the measure failed, with even the mayor dissenting.\textsuperscript{43} Spartanburg, too, struggled to clear vice districts, with its mayor issuing a less-generous 1908 edict that all “demimondes” — a word describing the sexual underworld, but the prostitute herself — had two days to leave if they only had trunks and clothing to pack, and three days to make themselves scarce if they had heavier furniture. Unlike its bigger sister city Columbia’s multiple tries to dislodge brothels, Spartanburg’s campaign yielded some results; in early 1910, members of the local Y.M.C.A. minister’s union were gearing up to fight the re-opening of the vice street, which had been closed for more than a year.\textsuperscript{44}

The location of largely white brothels in black neighborhoods allowed both white and black reformers to an argument about environmental factors that led to black girls’ prostitution. While white reformers typically tied white girls’ commercial sex to factory employment, migration and a working-class background, they argued that black neighborhoods — populated by a supposedly morally challenged and sexually depraved lower race — were the ideal breeding grounds for immorality. Even some black reformers echoed the sentiment that black residential areas threatened girls’ ability

\textsuperscript{43} \textsuperscript{44} Bruce W. Eelman, \textit{Entrepreneurs in the Southern Upcountry: Commercial Culture in Spartanburg, South Carolina, 1845-1880} (Athens: University of Georgia Press, 2008), 6.
to remain on the straight and narrow. In Baltimore, black Law and Order Leaguers lamented in 1908 how difficult it was to keep 12- and 13-year-old black girls in schools that were surrounded by pubs, dancing halls and billiard shops: “So powerful was the influence of this neighborhood on them that at thirteen some of them passed from the school to the houses of prostitution and to live lives of shame.”\textsuperscript{45} In one swift stroke, black neighborhoods were indicted as epicenters of sin in Southern cities, despite the presence of law-abiding working-class African-Americans who lived in close proximity to less respectable neighbors.

Even as reformers pointed to the vice industries concentrated in black environs, few noted, as Asheville preacher Robert Campbell did, that whites opened their vice businesses in black neighborhoods. Reasoning that white demand for paid sex drove the creation and maintenance of vice districts, he asked “was it not fair that the residence districts of the whites, near their own homes and churches, should endure this ‘necessary evil, instead of thrusting it off on the poor black people?’”\textsuperscript{46} Whatever the reasons reformers thought vice businesses flourished in black sections, many shared the idea that black children’s race and residence — one an immutable characteristic and the other unlikely to change as upcountry cities like Greenville began codifying legal

\textsuperscript{45} James H.N. Waring, \textit{Work of the Colored Law and Order League} (Cheyney, PA: Committee of Twelve for the Advancement of the Interests of the Negro Race, 1908), 8.

segregation down to a block-by-block level at this time — exposed them to predators and greatly compromised chances of virtuous living.

Black and white women reformers were quick to emphasize the prevalence of vice in black communities, even if they advanced different reasons for the environmental factors that pushed black girls into sex work or incorrigibility. They located the black girls’ overrepresentation in prisons squarely in the African-American neighborhoods in which they lived, worked and went to school. According to prominent activists such as Mary Church Terrell, the first president of the National Association of Colored Women: “When families of eight or ten, consisting of men, women and children, are all huddled together in a single apartment, a condition of things found not only in the South, but among our poor all over the land, there is little hope of inculcating morality or modesty.”

While black women reformers pointed to disorganized home life as a factor in black children’s delinquency and appealed to desires to save the children, white reformers heavily emphasized saving young men from dangerous and possibly life-changing moral lapses. Within this frame, black prostitutes who worked across the color line, or did not attempt to hide their vocation, posed multiple threats to normative masculinity and femininity. Those who engaged in sex with young white men subverted the hardening racial order and, by diverting these young men from appropriate white female partners, endangered white nuclear families. According to the Anderson
Intelligencer, their city was “flooded by a set of the most loathsome, dirty, filthy wenches that ever disgraced any city, decoying the youths of our town into their lair.” The writer, going by the nom de plume Daufina, railed about the impact of “two dirty wenches parading themselves in front of a lot of ladies coming from Church.” Those “blackberry girls” unleashed a dual evil: luring the young white men whose fates so concerned Daufina and thumbing their noses at notions of female respectability.

Mixed-race prostitutes often came in for even more vitriol, even when they were crime victims. When Greenville’s Ezell Thackston shot and murdered the mulatto woman he “kept” in 1897, his supporters’ pardon portrayed Thackston as a young man led astray by his victim, Willie Ably. His mother, Sarah, reserved the harshest descriptions for her son’s victim in her request for his pardon. According to her letter, Ably was "a demon in the form of a mulatto woman, thrice a murderess, thrice separating husband and wife, escaped her pursuers from Chicago, in man’s clothing.” Despite Thackston’s violent past — he had murdered another bawdy house visitor but successfully claimed self-defense — it was the dead Ably who stood accused of miscegenation, prostitution, homicide, being on the lam, and violating gender norms by strategic cross-dressing. Conveniently forgetting that her son and Ably co-habited for a time, Sarah Thackston portrayed her 20-year-old son as someone who was simply waylaid by a mulatto seductress and succumbed to her advances due to a childhood that
included the loss of the family home, leaving school to find employment, and the lack of male guidance.

5.4 Detaining Black Girls: Jail or the Fairwold School

As the Finnstrom Home tried to recoup and reopen after the city pulled its funding, the country pre-emptively announced that women and girl offenders were to be housed in a renovated third floor of the Columbia city jail. The county put a decisive coda to the Finnstrom Home by removing any government-funded equipment from the premises, including the plumbing fixtures. The message was clear: Local authorities did not necessarily object to the jailing of women and girls suspected of sexual crimes.

As reformers ferried white girl offenders from struggling nascent institution to institution, both white and black reformers acknowledged that far more black girls languished behind bars than whites for similar offenses. Black girls were not transported out of state to reformatories, and white reformers were dedicated to making sure that few white girls were housed, even temporarily, in ordinary jails.

In September 1915, Albert Johnston visited the Greenville County jail. As the director of the South Carolina Board of Charities and Corrections, Johnston was doing a routine inspection of the facility and was shocked to see three “but scantily clad” 16-year-old girls among the jail’s inmates.47 One of the girls “had been leading a nomadic

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sort of life in the woods and fields around Greenville, had been arrested three times, once for stealing a hog, and once for stealing a buggy at the urging of “the boys” and whiskey. Another “looks as though she has forgotten how to laugh … and will become a mother in a few months.”48 The story of “the Greenville girls” outraged white South Carolinians who balked at the girls’ detention with a 46-year-old white murderess, 16 “negro women” with whom they had to share toilets, and a black male population with whom they shared the prison yard during outside privileges.49 Newspapers railed at the injustice that there were no detention houses or age-segregated institutions for the girls, whom newspaper reports called the youngest white females ever held within its walls.

Johnston’s surprise derived not from seeing girls in jail, for he was well aware that statewide clampdowns on prostitution meant that young females were often fined or detained for short sentences. Rather, it came from seeing white girls in a corrections setting where black females were the more common inhabitants. The media reports had been careful to specify the unnamed girls as the youngest white females ever in the county stockade.50 The qualification obliquely referenced black girls, no strangers to Greenville’s warden and jails. While Johnston’s reports galvanized calls to create a white girls-only reformatory where a change of environment could spark their rehabilitation, his much-publicized findings literally disappeared black girls from view.

49 Ibid.
50 Ibid.
Five years later, Martha Falconer had made her case for removing girls from jails. She wrote of the “painful experiences of many white girls in our jails” as a “dark story of in our treatment of prisoners,” replete with “sordidness, lack of conveniences, want of comfortable cots, need of proper food.” Conditions in early house of detentions looked appallingly similar to those in jails or mental health institutions that motivated Dorothea Dix to advocate for the mentally ill.

Women reformers such as Marion Wilkinson, the wife of the historically black South Carolina State College in Orangeburg, had been raising concerns about incorrigible black girls well before Falconer discovered their presence in South Carolina jails. But the women gained traction with white women reformers after 1919, when the state opened a reformatory for white girls. “During the last year,” a 1921 state board of welfare reported in a summary of information provided by the state chapter of the National Association of Colored Women, “negro girls under 18 years were committed to the county jails. Some of the girls were acquitted, a number of others were sentenced to the county works or the jail. This is a wrong principle and involves not only a danger to the inmates of these places, but to the girls themselves. In the face of powerful temptation many of these girls, having grown up with the meagerest training advantages, swerve from the standard of social righteousness.”

The widening gap between punishment regimes prompted the South Carolina Federation of Colored Women to begin fund-raising for a black girls’ home to fill the
void left by the Finnstrom Home. The War Department’s Committee for Protective Work for Girls had identified Greenville and Spartanburg as priority locations, citing in a November 1918 unsubstantiated reports that in Greenville, “99 percent of the girls arrested are diseased.” But it was unclear how many of those girls were black and it was increasingly unclear whether military funding to deal with problem girls and infectious diseases would be allocated to serve black girls specifically or in interracial accommodations.

While the War Department dispatched repeatedly sent white female workers to South Carolina, its outreach to black communities near military installments was limited nationwide and they largely left black communities to fund and create their own institutions and auxiliaries. The strategy accepted the greater effectiveness of black intracommunity organizing but also alienated such efforts from larger funding streams. In light of the uncertain status of military funding and the meagre $1,000 contribution, the clubwomen traveled the state soliciting donations for what they would call the Fairwold Industrial School for Girls. In September 1918, the committee’s regional director, Maude Needham, noted that $800 was collected from colored citizens for a detention home. One month later, the black First Calvary Baptist Church of Columbia sponsored a $3,000 fund drive for the institution.

While fund-raising for Fairwold relied heavily on donations from black organizations and individuals, its founding marked an important interracial
collaboration between local white and black clubwomen. The school’s board was racially
mixed, though led by Marian Wilkinson, “first lady” of the historically black South
Carolina State College. But realizing their lack of clout among the white political elite,
Wilkinson and her federation colleagues actively courted and publicized white support.
Understanding that they needed interlocutors whose reputations would bolster their
fund-raising, the black clubwomen hired a white financial officer and announced her
appointment in the state’s major newspapers to garner additional support.

Though the Fairwold School evolved from the interracial collaboration of black
and white clubwomen, it flowed from the institutional priorities for the National
Association of Colored Women and its South Carolina state chapter. Mary Church
Terrell, one of the NACW’s founders and South Carolina-born, urged her fellow women
activists to pay attention to incarcerated women and girls, whom she said were the
“principal victims” of the convict lease system in nearby Georgia.\(^{51}\) Local NACW groups
nationwide embarked on visits to male and female prisoners, and eventually, states
began launching fundraising for reformatories that would divert black girls (and boys)
from jail. With NACW urging and energy, states such as Alabama, Georgia, North
Carolina, South Carolina and Virginia launched homes for wayward black girls.\(^{52}\)

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\(^{51}\) As quoted in Nancy Margaret Forestell and Maureen Anne Moynagh, ed. *Documenting First
Wave Feminisms: Transnational Collaborations and Crosscurrents*, vol. 1 (Toronto: University of
Toronto Press), 133.

\(^{52}\) Bettye Collier-Thomas, *Jesus, Jobs, and Justice: African American Women and Religion*, 1st ed. (New
York: Alfred A. Knopf, 2010), 326.
The black women of the South Carolina federation launched Fairwold as an alternate to jail for girls and understood their efforts to discipline black girls were necessary to combat stereotypes of black female hypersexuality. South Carolina politicians, physicians and commentators had long insisted that prostitution was largely a black problem, or pinpointed black involvement in the trade — even when court dockets were filled with white girl vagrants or truants. In 1915, members of the South Carolina Medical Association debated how to stamp out venereal disease among the "military boys": One Dr. Kibler began his remarks with the urgency of installing morals in the cotton-mill workers, but ended with a claim that "we know from statistics that fully 95 per cent of all classes of women that are engaged in this State in that business are Negroes."53

Increased scrutiny of black girls and women’s possible prostitution was, no doubt, influenced by alarming reports about sexually transmitted diseases among military men and, particularly, black soldiers and sailors. By the close of World War I, South Carolina was estimated to have the second syphilis highest infection rate on military bases among at-risk blacks, lagging only behind Georgia.54 Military officials called South Carolina one of the worst states for venereal disease and gave more

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54 Quoted in Toni P. Miles and David McBride, "World War I Origins of the Syphilis Epidemic among 20th Century Black Americans: A Biohistorical Analysis," *Social Science & Medicine*, 45, no. 1: 63. Miles and McBride also argue that war precipitated the boom in syphilis, rather than arguing for any racial or cultural factors as did physicians, public health practitioners and pundits of the time.
infusions of cash to set up nine clinics devoted to treatment, six of which were located in the upcountry and midlands.\textsuperscript{55} Statistics on South Carolina’s syphilis problem for the World War II period indicate the scope of the problem, and how ineffective public health measures that focused on prostitutes and servicemen had been. In the 1940s, the rate of syphilis among South Carolina men eligible for military service was three times the national average and African-American men looking to enlist were almost nine times more likely than whites to have been infected with the disease.

While the military was extremely interested in curing soldiers, matrons and the clubwomen founders of the Fairwold School were equally interested in curbing venereal disease among its inmates. Screening and treatment played a disproportionately large role in the Fairwold routine. Unlike white girl delinquents admitted to places like the Finnstrom Home or Carolyn House for a variety of reasons, all of the 21 Fairwold girls as of March 1919 were admitted there for sexual offenses, which reflected what category of crimes were most troubling to the recorder and, later, probate courts that typically sent the girls there.\textsuperscript{56} Unlike the Finnstrom Home, Fairwold did not have on-site quarters that could serve as an examining room or daily doctor’s visits, and girls needing

\textsuperscript{56} United States Interdepartmental Social Hygiene Board; Mary Macey Dietzler; and Thomas A. Storey, \textit{Detention Houses and Reformatories as Protective Social Agencies in the Campaign of the United States Government against Veneral Diseases} (Washington, DC: Government Printing Office, 1922), 209.
prophylaxis had to travel from the Fairwold campus in Cayce, on the outskirts of Columbia, to the city. The typical daily treatment for syphilis — a disease that could have three lengthy phases, remain latent for months, and be passed congenitally — required sustained attention and expensive round-trips for periods of weeks.\textsuperscript{57} Costs of the treatment and the necessary transportation influenced the state’s decision to take away what little funding it had appropriated to the facility. Fairwold’s per diem costs were almost eight times what the Finnstrom Home spent, and the facility went into debt to purchase a truck to shuttle the girls back and forth.\textsuperscript{58} Representatives from the charitable board, many of whom supported the home’s opening by the South Carolina Federation of Colored Women, looked askance at the expense.

\textit{Fairwold faced an uphill battle with stingy funding, uncooperative legislators and the lackluster support from white male elites.} At Fairwold, conditions were dire. Though the clubwomen had purchased a thirty-acre tract outside Columbia, their funds did not stretch to fully equip the institution, and they petitioned the federal government for emergency funds. Until the school could erect a second building, girls shared a large great room that functioned simultaneously as a dormitory, schoolroom, workspace and

\textsuperscript{57} By the time of the World War I, medical researchers were making progress toward syphilis treatment, though penicillin would not be discovered as an effective remedy until decades later. Many physicians were likely using salvarsan, an injectable arsenic compound that showed more promise of treatment (but not a cure), and often mercurial ointments. John Parascandola has suggested that some reformers and physicians welcomed the intense syphilis management and treatment regime as a punishment for promiscuity. See \cite{Parascandola, 2008 #550} \textsuperscript{58} United States Interdepartmental Social Hygiene Board; Dietzler; and Storey, \textit{Detention Houses and Reformatories as Protective Social Agencies in the Campaign of the United States Government against Veneral Diseases}, 210.
cafeteria. There was no indoor plumbing, and observers from the State Board of Welfare noted that its library was pitifully small even for the less than 20 girls that Fairwold typically accommodated. Fairwold’s pleas for funding and support would continue until the 1940s, when it closed.

Nineteenth century observers feared the increasingly public nature of female work, amusements, and not least of all, sexuality and sex work. In South Carolina, local authorities tried to tame vice by, first, containing white prostitution in official segregated districts and arresting black prostitutes as they committed other nonsexual crimes. As the ultimate focus of white reformism, white girls and women were subjected to regulation, more intense regular surveillance and, as the twentieth century progressed, particularly invasive state efforts to rehabilitate them. In turn, cultural perceptions about black female sexuality and the concentration of black prostitutes in less, nonbrothel-based sex work translated into less. But in the twentieth century, the construction of World War I military bases across the state set off a wave of “camp following” that prompted crackdowns on both black and white female delinquents.

In the midst of widespread anxiety over girls’ sexuality and heightened regulation of prostitution, there was a broader conversation among Progressives that recognized prostitution, girls’ forays into public life, and girls’ imprisonment as concerns that affected both black and white girls; however, that sense of a unified
concern for the dangers that awaited girls in South Carolina’s growing cities and in local jails eroded with time. As reformers girded for the arrival of soldiers to the region’s World War I training camps and aggressive military “fit to fight” campaigns against venereal disease, the limited interracial collaboration between women reformers gave way to an increasingly segregated social-service system, and disparate outcomes for girls.
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Biography

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