Extralegal Crimes, Extralegal Punishments: Justice on the Antebellum Plantation

Gerald J Pierson
I. INTRODUCTION

Most plantation slaves in the American South prior to the Civil War\(^1\) never encountered the ordinary, legally established criminal justice system in their communities. Instead, an ad hoc justice system, unique to each plantation and controlled by the slaves’ master and enforced by the master, overseer, and driver, constituted the mechanism of control. Each plantation was, in effect, a common law jurisdiction within the larger “federal” system composed of the ordinary Southern state legal systems.

This justice system, extralegal and profoundly authoritarian, possessed the accouterments of any criminal justice system: rule-making authority, the establishment and “publishing” of statutory crimes, gradation of punishments, “model codes” that were debated among owners, and even an appellate procedure in some instances. There were differences between the extralegal justice system and the regularly established criminal justice system off the plantation, but these differences were generally of degree rather than kind: for instance the extralegal system emphasized strict liability even as the mens rea requirement of the legal criminal justice system provided scant protection for those slaves who were legally prosecuted, and punishments on the plantation usually involved whippings rather than confinement—after all, slaves generally had no great freedom of movement to take away.

\(^1\) The word antebellum means “before the war,” and is used by historians to refer to the United States and more specifically the South in the years before the Civil War. There is no absolute consensus about when the antebellum period began, but historians of American slavery usually use the word to describe slavery during the last generation or two of slaves and slaveholders, after the South had developed a strong cotton economy based on slave labor and the rationale behind racial slavery had become more or less fixed among its apologists, say from the 1840s on. For these historians, discussions of “antebellum” slavery are usually extended beyond the start of the Civil War to the end of slavery locally (which might be as late as a few months after the end of the war).
II. PLANTATION SLAVERY IN THE AMERICAN SOUTH

A. The “Peculiar Institution” As It Existed Before the Civil War

Before the end of legal slave importation in 1808, merchants brought an estimated 399,000 Africans into the United States.² By the eve of the Civil War (1861–1865), natural increase and smuggling from the Caribbean had caused the slave population to grow to 3,953,000, or about 14.3% of a total U.S. population of 31,443,000.³ These slaves were localized in the South, comprising 13.5% of the population in the border states (Delaware, D.C., Kentucky, Maryland, and Missouri), 29.2% of the population in the upper South (Arkansas, North Carolina, Tennessee, and Virginia), and 47.5% of the population in the lower South (Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Texas).⁴

Slavery was first and foremost a rural phenomenon. Although the distinctive characteristics of urban slavery in such cities as New Orleans, Charleston, and Washington, D.C., have been described by scholars,⁵ the South of 1860 remained profoundly rural. For example, the states of Arkansas, Florida, Mississippi, North Carolina, and Texas did not contain any towns with a population of 10,000 or more in 1860.⁶ About nine out of ten slaves in 1860 toiled on farms and plantations.⁷

The average white antebellum Southerner was a nonslaveholding “yeoman farmer,” producing mostly food for the immediate family, with perhaps a few acres set aside for the local cash crop.⁸ The average slave worked on one of the less numerous but larger estates owned by one of the 385,000 slaveholders in the antebellum South. About half of these slaveholders owned five or fewer slaves. Some 12% of slaveholders owned more than twenty slaves. Some ten

³ UNITED STATES CENSUS OFFICE, EIGHTH CENSUS OF THE UNITED STATES, POPULATION 598–99 (1863), pp. 598–99.
⁴ Id.
⁷ Id. at 31.
⁸ Id. at 29; ULRICH B. PHILLIPS, LIFE AND LABOR IN THE OLD SOUTH 91–139 (1929).
thousand slaveholders owned more than fifty slaves apiece, while less than three thousand owned more than 100 slaves each. 9

This skewed distribution of slave ownership can also be seen from another perspective: only a fourth of slaves belonged to masters who owned fewer than ten, more than half lived on plantations holding more than twenty slaves, and a full quarter lived on plantations holding more than fifty slaves. 10 Most importantly, the concentration of slaves in the hands of a relatively small and distinct planter elite allowed for the development of plantations as functionally independent common law jurisdictions where slaves were born, lived, worked, and died subject to the rules and punishments set by the masters.

Slave plantations were profitable business enterprises. 11 Slaves worked at producing cash crops that ranged from tobacco in Virginia, rice in the Carolina lowcountry, sugar in Louisiana, and—pre-eminently—cotton in a belt across much of the South outside coastal regions. Slave plantations produced most of the 434 million pounds of tobacco produced in the South in 1859, most of the 2.15 billion pounds of cotton, and almost the entire 230-million-pound cane sugar and 187-million-pound rice crops of that year. 12

B. The Plantation World

Slave plantations were self-contained communities, containing a variety of slaves from infants to “semiretired” seniors, from skilled labor to unskilled labor, from field hands to house servants. The most important division was that between the house servants and the field hands. Slaves assigned to the “Big House” served as cooks, maids, manservants, and in similar domestic positions. House servants sometimes, but not always, slept in the house. Ladies’ personal maids and children’s nannies were known to be required to sleep on rugs inside or near their charges’

10 Id. at 31.
11 The economics of plantation slavery are explored by ROBERT WILLIAM FOGEL & STANLEY L. ENGERMAN, TIME ON THE CROSS: THE ECONOMICS OF AMERICAN NEGRO SLAVERY (1974). Although Fogel won the 1993 Nobel Prize in economics for his work, that slavery was efficient has remained a controversial finding.
12 ULRICH B. PHILLIPS, LIFE AND LABOR IN THE OLD SOUTH 91–139 (1929); also inset Economic Map of South, 1860 in id.
room, to be readily available if required. Slave children old enough to follow directions but too young for field work were often employed in the house or yard as kitchen helpers, waiters, and pages. These children and the adult house servants were subject to the rule of the master—or, more accurately in many cases, the mistress of the house.

House servants possessed several advantages over field hands. First, their proximity to and interaction with the master gave them the possibility of influencing decisions. Second, this same proximity made it more likely they would be better clothed and fed than field hands. As exslave Robert Toatley of Fairfield District, South Carolina, reported: “Mammy was a house woman, and I got just what the white chillun got to eat, only a little bit later, in de kitchen.” On some plantations, at least, the children of field slaves were fed on the floor or in troughs. Exslave Mom Ryer Emmanuel recalled that “Would string us little wooden bowls on de floor in a

---

13 Lucretia Heyward, for example, a former slave from Beaufort, South Carolina, reported to a federal Works Progress Administration (WPA) interviewer in the 1930s that “[w]en I small, I sleep on the floor in Miss Blunt room.” The source for the slave interviews cited in this paper is THE AMERICAN SLAVE: A COMPOSITE AUTOBIOGRAPHY (George Rawick ed. 1972–77), which consists of two regular series and two supplemental series, plus ancillary volumes and indexes totaling more than forty volumes altogether. This work consists of about 3500 interviews with former slaves conducted in the mid 1930s by federal workers. For the sake of simplicity and accuracy, I will give the ex-slave’s name then cite these narratives as in the following example: RS2V8AR1:155-56. “RS2V8” signifies that the narrative is to be found in volume eight of regular series two, as opposed to regular series one or either of the two supplemental series (SS). The “AR” denotes the Arkansas narratives. The “1:55-56” means that the Arkansas narratives are divided into several parts, and this narrative is in part one, while the “1:55-56” denotes the page numbers. Using this system, then, the quote noted above is Lucretia Heyward, RS1V2SC2:279. Transcripts from the first regular series are also available on the American Memory website of the Library of Congress at http://memory.loc.gov/ammem/index.html. This site also includes photographs and sound recordings of former slaves collected by field researchers for the WPA and the DICTIONARY OF AMERICAN REGIONAL ENGLISH. As a final note, interviewers often tried to replicate the accent of the ex-slave in typing up their reports; the resulting orthography is distinctive, inconsistent, and beyond my poor power to “[sic]” errors.

14 See, e.g., Mom Ryer Emmanuel, RS1V2SC2:12; Lucretia Heyward, RS1V2SC2:279; Fannie Griffin, RS1V2SC2:209; Rebecca Jane Grant, RS1V2SC2:177; Sam Mitchell, RS1V3SC3:201; and Samuel Boulware, RS1V2SC1:66. Sam Polite, RS1V3SC3:271, reported that children were sent to the fields by the time they were twelve to thirteen years old.

15 A number of former slaves mentioned that the master’s wife would punish more severely than the master himself. See, e.g., Lucretia Heyward, RS1V2SC2:279; Fannie Griffin, RS1V2SC2:209; and George King, RS1V7OK:165. It’s easy to speculate that some of this might be due to the mistress’ anger over or suspicion of the master’s sexual intimacy with slaves. Mom Ryer Emmanuel, interviewed in Marion, South Carolina, said: “Like I speak to you, my white folks was blessed wid a heap of black chillun, but den dere been a odd one in de crowd that wasn’ noways like dem others. All de other chillun was black skin wid dis here kinky hair en she was yellow skin wid right straight hair. My Lord, old Missus [the owner’s wife] been mighty proud of her black chillun, but she sho been touches bout dat yellow one.” Mom Ryer Emmanuel, RS1V2SC2:14.

16 Robert Toatley, RS1V3SC4:164. For more on trough feeding of slave children, see EUGENE D. GENOVESE, ROLL, JORDAN, ROLL: THE WORLD THE SLAVES MADE 507 (1974). House servants also had access to the master’s food stores.
long row en us would get down dere en drink just like we was pigs. . . . Us would just squat dere en blow en blow cause we wouldn’ have no mind to drink it while it was hot.”17 Similarly, Phillip Evans, who had been a slave on General John Bratton’s South Carolina plantation, said that “Big quarters had many families wid a big drove of chillun. Fed them from big long trays set on planks.”18

Finally, house servants’ privileged status meant they were generally not under the direct control of overseers or drivers. This “short-circuiting” of the on-plantation justice system could have beneficial or detrimental results, depending on the character of the master or the master’s spouse.19

Sometimes household servants were used by masters to gain information about plantation crimes. In an 1857 Mississippi case, an overseer on the widow Sharp’s plantation was found dead in the woods, and a coroner’s jury ruled that he had fallen from his horse and broken his neck. Dissatisfied, the overseer’s brother gathered all the slaves on the plantation, then took the cook aside and told her that “something badly had happened upon the place,—that it could not happen without her knowing it,—and that she had better tell all about it.”20 The frightened cook then implicated three slaves.21

17 Mom Ryer Emmanuel, RS1V2SC2:13.
18 Phillip Evans, RS1V2SC2:35.
19 For female house servants, proximity to the master meant an increased likelihood of being used for sexual purposes by the master or members of his family. DEBORAH GRAY WHITE, AR’N’T I A WOMAN? FEMALE SLAVES IN THE PLANTATION SOUTH 34 (rev. ed. 1999). Much of Harriet Jacobs’ slave narrative, considered to be a classic and accurate autobiography by modern scholars, involves efforts to avoid the advances of her master. Harriet Ann Jacobs, Incidents in the Life of a Slave Girl (L. Maria Child ed., 1861), in SLAVE NARRATIVES 743 (William L. Andrews & Henry Louis Gates Jr. eds., 2000). Such female slaves might then face the jealous ire of the master’s wife as well. See also supra Note 15.
21 THOMAS D. MORRIS, SOUTHERN SLAVERY AND THE LAW, 1619–1860, 284 (1996). The entire story as uncovered by Morris reveals some of the tangled motives and relationships engendered by the institution of slavery: Apparently, the killing of the harsh overseer was encouraged by another white man, who had had a long-standing secret affair with one of the female slaves, but wanted to get rid of the overseer, who had opposed his courting of the widow Sharp. If the slaves helped him get the overseer out of the way, he could marry the widow and then be in a position to improve the lot of his girlfriend and her fellow slaves. Meanwhile, an overseer died at a neighboring plantation, and the authorities decided this was a “copycat” crime and arrested another three slaves. Eventually the three implicated slaves in the first case, and two from the second case, were executed.
On some plantations, there existed a middle ground between house servants and field hands: skilled slaves who knew a trade, e.g. carpentry. These slaves did not engage in the same sort of collective agricultural work as the field hands, but still were under the authority and control of the overseer. Depending on the size and organization of the plantation, child care might constitute a similarly specialized position employing one or more female slaves.

The majority of plantation slaves worked at general agricultural efforts, varied by the local cash crop and the season of the year. Duties could include sowing, hoeing, harvesting, cotton-picking, processing (as in sugar cane), ginning (operating machinery to separate the seeds from cotton), ditch digging, digging and spreading marl and other fertilizers, care of livestock, butchering, preserving meats, and myriad other tasks. Besides working on production of the plantation’s cash crop, slaves also grew corn and other vegetables to feed themselves, and caught fish in traps either as an organized activity, or on their own to supplement their family’s rations.

Throughout most of the plantation South, slaves were organized into gangs—groups of about a dozen or so slaves who worked together under the direction of a driver, an overseer, or directly under the master. Very large plantations would have multiple gangs, each directed by a driver chosen from among the most-trusted slaves. Drivers were agents of the overseer (and by extension, the master) and carried whips as the outward manifestation of their authority. Ex-slave Phillip Evans recalled that his father, as foreman, “was de only slave dat was give de honor to

---

22 Ex-slave Sam Mitchell reported his father was a carpenter who had to plow when there was no carpentry work to be done on the plantation. Sam Mitchell, RS1V3SC3:201.
wear boots.” Drivers had no direct authority over slaves outside their own gang, and were often—understandably—disliked by the other slaves on the plantation.

Overseers were white and were usually drawn from the yeoman farmer class. A particularly large plantation might have sub overseers under a main overseer, but this would be rare. Most of the time, the master or a male relative would themselves direct the slave gangs in their daily work. The larger the plantation, the more likely an overseer would be employed. One out of six plantations holding between sixteen and fifty slaves, 25% of plantations over fifty slaves, and 33% of plantations over 100 slaves used an overseer. Like drivers, overseers carried whips, but unlike drivers, they might also carry firearms.

On some antebellum plantations, most notably in the Carolina lowcountry, the task system replaced the gang system as a means of organizing labor. Under the task system, individual slaves or small groups of slaves were given specific tasks to accomplish each day, usually outside the immediate direction of the overseer or master. Once each slave completed his or her daily task, usually by mid-afternoon, that slave would be released from further plantation work. The slave would then use his or her free time as they saw fit—often working in private vegetable plots, weaving baskets, or catching dish for personal use or trade with other slaves. “Ebery slabe hab tas’ (task) to do. Sometime one task (quarter acre), sometime two tas’, and sometime t’ree. You haf for wuk ‘til tas’t’ru (through). . . . W’en you knock off wuk, you kin wuk on your land.”

26 Phillip Evans, RS1V2SC2:34.
28 See, e.g., Thomas D. Morris, Southern Slavery and the Law, 1619–1860 292 (1996). For family members of owners helping out, see the striking interview of Jerry Hill, RS1V2SC2:290: “Jerry says that the sister of Jim Fernandos used to carry a bullwhip around her neck when she walked out on the farm, and would apply it herself to any slave she thought needed it.”
32 Sam Polite, RS1V3SC3:272.
Field hands were classified as a “full” or “prime” hand or fractions thereof. A full hand could do a day’s work, while a half hand might be, for instance, an older female who could only be expected to do half as much work as a full hand. Jake McLeod, who was eleven years old when the war ended in 1865, remembered: “I had to thin cotton en drop peas en corn en I was a half hand two years during the war. If a whole hand hoes one acre, den a half hand hoes half a acre. Dat what a half hand is. Waited on de wounded de last year of de war.”

Unlike house servants with firmly demarcated gender roles, male and female field hands both did agricultural work for the plantation, while females also had family cooking and childcare responsibilities as well. Slave women cared for both black and white children, but the care of white children entailed extra hazards. Dinah Cunningham, of Fairfield District, South Carolina, remembered being whipped for accidentally rolling over on a white baby she was attending, while Rebecca Jane Grant, born in 1845, was whipped by her mistress with a two-foot raw cowhide strap for neglecting to address the white three-year-old she was watching as “Marse [Master] Henry.”

Field slaves lived in rudimentary quarters some distance from the “Big House.” Slave cabins were usually fashioned of wood (logs or planks), occasionally of clay, brick, or stone. A family would be assigned to each cabin, which would often be arrayed in rows down a common plantation “street.” “Slaves lived in quarters, 300 yards from de big house. A street run through the quarters, homes on each side.” Typical cabins were small, one-story structures containing a fireplace and one or two rooms. Jake McCleod remembered his “boss had four slave house dat was three or four hundred yeards from his house en I reckon he had about 25 slaves. One was pole house wid brick chimney en two rooms petitioned off en de other three was

33 Jake McCleod, RS1V3SC3:159.
34 Dinah Cunningham, RS1V2SC1:234.
35 Rebecca Jane Grant, RS1V2SC2:178.
36 Phillip Evans, owned by General John Bratton, recalled all of the quarters on Bratton’s model plantation being made of planks. Phillip Evans, RS1V2SC2:35.
38 Robert Toatley, RS1V3SC4:164.
39 See, e.g., Hector Godbold, RS1V2SC2:143.
clay house.”  

Window openings, if any, were closed with wooden shutters. Slaves either slept on the floor or on furniture they made themselves. “Beds was homemade. Mattresses made of wheat straw. Bed covers was quilts and counterpanes, all made by slave women.” “Us had frame bed en slept on shucks en hay mattress.” Sam Mitchell, who was fifteen years old at Emancipation, summed up his recollection of domestic conditions in one short paragraph:

De slave lib on de Street, each cabin had two room. De Master don’t gib you nuttin for yo’ house—you hab to git dat de best way you can. In our house was bed, table and bench to sit on. My father mek dem. My mother had fourteen chillen—us sleep on floor.

The quality and condition of slave quarters received a fair amount of attention in the writings of slave owners and overseers in the Southern agricultural press. Journals such as DeBow’s Review, the Southern Cultivator, the Southern Agriculturalist, the Carolina Planter, and others regularly published articles on the proper management of slaves in the antebellum era. These articles often described how slaves were housed on “model” plantations. It’s worth noting that by the antebellum era, slaveholders were acutely sensitive to abolitionist criticisms and their writings reflected this. It’s unlikely plantation slaves were ever housed in conditions that were better than the owners themselves described, and large numbers found themselves in worse living conditions. The anonymous author of an 1851 article for DeBow’s Review wrote that he found that a one-story dwelling 16 x 18 feet is sufficient for a small family. This author noted that the houses were whitewashed every summer. Similarly, Robert Collins, in his “Essay on the Management of Slaves,” which appeared in 1862, wrote the slave houses should

40 Jake McCleod, RS1V3SC3:158.
41 “My God, sleep right dere on de floor.” Hector Godbold, RS1V2SC2:143.
42 Robert Toatley, RS1V3SC4:164.
43 Jake McCleod, RS1V3SC3:158.
44 Sam Mitchell, RS1V3SC3:200.
46 Id.
47 [Anon.], Management of Negroes, 10 DeBow’s REV. 325, 327 (1851).
48 Id.
be located in the shade and raised two feet off the ground for cleanliness and ventilation.\textsuperscript{49} Collins’ houses were 16 x 20 feet each, with one family assigned to each.\textsuperscript{50} “A Small Farmer,” who boasted of his thirty years of working slaves in a \textit{DeBow’s Review} article of 1851, similarly found 16 x 18 feet to be the best size for a slave cabin.\textsuperscript{51}

The population density on “the Street” can be calculated from the numbers provided by “A Mississippi Planter” who wrote the 1851 “Management of Negroes Upon Southern Estates.”\textsuperscript{52} He wrote he had 150 slaves in twenty-four 16’ x 18’ houses constructed of oak and cypress, located in a double row two hundred feet apart, with fifty feet between each house. Discounting interior walls or fireplaces which would reduce the total, this works out to forty-six square feet per slave of living space, about the size of a small (6.5’ by 7’) office cubicle or prison cell.\textsuperscript{53}

There is ample evidence that living conditions on other, non-model plantations were worse. John R. Turner, a Georgia physician and advocate of slavery, wrote in the \textit{Southern Cultivator} in 1857 that

\begin{quote}
Thinking a great deal of negligence prevails in reference to the construction of negro houses causes us to notice them in this article. We have often seen them low, half-covered, half ceiled and with half-made chimneys where it was impossible for the inmates to dwell comfortable or warm at night. . . . Their houses are too often left to the negroes themselves to build in their own time, perhaps at night or during the Sabbath, which easily explains their careless manner of construction.\textsuperscript{54}
\end{quote}

Interestingly, Turner was immediately excoriated for providing ammunition to abolitionists:

\begin{quote}
If Dr. Turner is correct in his statement, it is passingly strange to me that, after managing negroes for the last twelve years and being in ten Southern states, not a single such case has come under my notice. And I rejoice to know that I have never lived in a country where the people were so utterly lost to moral and religious feeling as to \textit{permit} even,
\end{quote}

\textsuperscript{50} \textit{Id}.
\textsuperscript{53} For comparison, the Unabomber has a XX x XX foot cell at PRISON, for XXX square feet.
much less compel, their negroes to construct their own houses at night or on the Sabbath; and God forbid I ever should. 55

Adherence to religious scruples—or the appearance of this adherence—carried importance among slaveholders who used religious arguments to bolster their authority. 56

The work of the plantation usually slowed on Sundays. 57 Some masters allowed religious services to be held, either by bringing in white ministers to preach to the slaves, or by allowing slaves to conduct ad hoc services. 58 Depending on the plantation, weekly rations might be handed out on Sunday, and special foods, such as meat or fish, distributed for Sunday dinner. 59 Sundays were also often the day when slaves were most likely to be allowed off the plantation to visit friends and relatives on other plantations. 60 The master’s permission for these visits was not given automatically, but as a special privilege. 61

The pass system provided the means of controlling slaves off their plantation in rural areas. In essence, masters wrote out a note stating that they had given permission for this particular slave to be off the plantation traveling to or from a particular place, on a particular date. Any white person meeting up with a slave on a public road could demand to see the slave’s

56 Some slaveholder saw slavery as an institution established by God and themselves in the role of biblical patriarchs. Ex-slave Phillip Evans recalled that that “General Bratton love that place [his plantation “Canaan”]; so him named it proud, like de Land of Canaan.” Phillip Evans, RS1V2SC2:34. Ex-slave George King of Lexington District, South Carolina, also had a biblical sobriquet for the plantation he knew: he was “born on two-hundred acres of Hell.” George C. King, RS1V7OK:165.
57 Not always. Lucinda Miller, for instance, recalled fellow slaves being worked on nights and Sundays. Lucinda Miller, RS1V3SC3:192. Robert Toatley also remembered Sunday work “wid de fodder, and when the de plowin’ get behind. Robert Toatley, RS1V3SC4:165.
58 One planter wrote he did not allow Negro preachers, except the plantation’s own; he allowed preaching in daylight only; and he required any Sunday meetings to be over by 10 o’clock. Joseph Acklen, Rules in the Management of a Southern Estate, 22 DEBOW’S REV. 376, 377 (1857). These rules were almost certainly the result of insurrection fears. See also “A Mississippi Planter,” Management of Negroes Upon Southern Estates, 10 DEBOW’S REV. 621, 624 (1851) (would like to teach slaves to read the Bible, but was afraid of “fanaticism”).
61 See, e.g., Joseph Acklen, Rules in the Management of a Southern Estate, 22 DEBOW’S REV. 376, 378 (1857); P.C. Weston, in Management of a Southern Plantation: Rules Enforced on the Rice Estate of P.C. Weston, Esq., of South Carolina, 22 DEBOW’S REV. 38 (1857), wrote he required slaves to carry passes between the various plantations he owned.
pass. After dark, statutorily created *slave patrols* consisting of groups of white men on horseback would travel up and down rural roads for the specific purpose of locating slaves without passes. They would summarily punish (usually by whipping) and return those found to be off their plantations without authorization.62

While the patrols were legally constituted, the punishments they delivered were ad hoc and impromptu, not judicial in nature. The patrol thus constituted a middle ground between the regular criminal justice system and the extralegal justice which held sway on the plantation. Ex-slaves remembered their encounters with the slave patrol, and stories of whippings and narrow escapes are common in the extant narratives:

You see, de colored people couldn’ never go nowhe’ off de place widout dey would get a walkin ticket from dey Massa. Yes, mam, white folks would have dese patroller walkin round all bout de country to catch dem colored people dat never had no walkin paper to show dem. En if dey would catch any of dem widout dat paper, dey back would sho catch scissors de nex t mornin.63

Nellie Loyd of Union District, South Carolina, recalled that “They had patrollers den [during the Civil War], and if dey caught you off de place dey would have twelve men whip you.”64

Margaret Hughes, born in 1855, remembered: “Talking ‘bout patrollers, I was awful scared of them. We had to have a pass from our massa to go from one plantation to another, ans if we went without a pass the patrollers would ketch us and whip us. I never did get ketched though.”65

Samuel Boulware, of Fairfield District, South Carolina, also remembered his father traveling with and without a pass:

My daddy was a slave on Reuben Boulware’s plantation, ‘bout two miles from Marster Hunter’s place. He would git a pass to come to see mammy once every week. If he come

62 See Sally E. Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas* (2001). The post–Civil War activities of the first Ku Klux Klan seem to have focused on terrorist “night riders” doing basically the same thing, illegally and without the presence of checking passes. Patrols had limited legal authority, and could not whip a slave who had a valid pass, or search a plantation’s slave quarters without permission of the owner. For example, *Tennent v. Dendy*, 16 Dudley 85 (S.C., 1837) is a trespass suit against a patrol captain for unlawfully whipping a slave.

63 Mom Ryer Emmanuel, RS1V2SC2:15.

64 Nellie Loyd, RS1V3SC3:127.

65 Margaret Hughes, RS1V2SC2:328.
more than dat he would have to skedaddle though the woods and fields from de patrollers. If they ketch him without a pass, he was sho’ in for a skin crackin’ whippin’. He knowed all dat but he would slip to see mammy anyhow, whippin’ or not.\textsuperscript{66}

Some masters preferred their slave avoid the temptation of traveling without a pass by discouraging slave marriages across plantation lines. Sam Mitchell of Beaufort District, South Carolina, recalled that his master, John Chaplin, “don’t lak his slave to marry slave on nodder pusan plantation, but if you do den you hab pass to visit yo’ wife.”\textsuperscript{67} An Alabama planter explained his policy of dividing his thirty slaves into half male and half female: “I do this in that each man may have his own wife on the premises. They then have no excuse for leaving home.”\textsuperscript{68}

Forged passes were rare, as the overwhelming majority of slaves were illiterate.\textsuperscript{69} Slaves simply maintained family and community connections by traveling without the required passes, relying on stealth to escape the patrols.\textsuperscript{70}

While slaves were often born, lived, worked, and died on the same plantation, they were not legally bound to the soil in the way a serf or villein in medieval England was.\textsuperscript{71} In other words, they were not sold or transferred with the plantation, but remained the personal property of their master.\textsuperscript{72} On the death of their master, slaves were either bequeathed to another (usually someone in the same family), or divided up as per state law on intestate succession. Slaves could

\textsuperscript{66} Samuel Boulware, RS1V2SC1:68.
\textsuperscript{67} Sam Mitchell, RS1V3SC3:201.
\textsuperscript{68} “Alabama Planter,” Management of Slaves, 13 DEBow’s REV. 193 (1852). An additional reason for not allowing inter-plantation marriages was to avoid disruption of slave families when estates were sold or devised. Robert Collins, Essay on the Management of Slaves, 32 DeBow’s REV. 154, 157 (1862)
\textsuperscript{69} See discussion of learning to read as a crime, infra.
\textsuperscript{70} Indeed, the second most common “resistance” activity, and the most common reported “first-person” crime mentioned by former slaves in South Carolina was traveling without a pass. GERALD JAMES PIERSON, THE NATURE OF RESISTANCE IN SOUTH CAROLINA’S WORKS PROGRESS ADMINISTRATION EX-SLAVE NARRATIVES 89 (2002).
\textsuperscript{71} BLACK’S LAW DICTIONARY 1397, 1599–1600 (8th ed. 2004). Note that the Southern aristocracy strongly associated itself with medieval chivalry; this can be seen in its obsession about honor (Wyatt-Brown), the popularity of IVANHOE by Walter Scott, and the occasional jousting tournament. Apologists for slavery have written much about the purported loyalty of the slaves—the belief in which 1) seems to have its genesis in a serfs-and-lord analogy, and 2) is not much supported by slaves’ own accounts of experiences in the Civil War.
\textsuperscript{72} This was not always the case—some states, for varying periods of time, did consider slaves to be real property in certain circumstances. This was generally done for the policy reason of preventing a spouse or other family member from inheriting land alone without the means to keep it in production. THOMAS D. MORRIS, SOUTHERN SLAVERY AND THE LAW, 1619–1860 64–65, 71 (1996).
be sold to facilitate such distributions of property, or to raise money to pay a master’s debt. Sometimes slaves would be sold in markets further South as punishment or if their master considered them to be at risk for running away.73

Finally, it is necessary to explain that slaves represented a significant amount of capital to their owners. The average price of a prime field hand in Georgia in 1860 was $1,800.74 Prices in South Carolina in 1859 ranged from $1,000 for a girl aged 12 to 15, to $1,500 for a male aged 20 to 26.75 This is at a time when a typical monthly cash income for a skilled blue-collar worker hovered around $20.76 Average annual net earnings for each slave peaked at about $100 for male slaves aged 30 to 35, and about $80 for female slaves aged 25 to 30 in 1850.77 Masters were aware that punishing a slave by placing him or her in extended confinement would be profoundly unproductive given this investment, and this concern is reflected in the choice of punishments on the plantation.78

III. JUSTICE ON THE PLANTATION

A. Authority on the Plantation

Authority, as the master class understood it, came in two flavors: 1) legal authority, meaning the authority masters held by virtue of state statute or common law to control the lives of their slaves, and 2) moral authority, which gave slaveholders the right to hold and control slaves by virtue of the heightened social status of the master class. Both types of authority evolved from the earliest colonial experience with slavery, in 1619, to the end of slavery in 1865, but the development of each drew from different intellectual roots and by the antebellum period.

75 EDGEFIELD ADVERTISER, 10 August 1859.
76 The national per capita income (including non-working or unpaid individuals) was $128 in 1860. ROBERT WILLIAM FOGEL & STANLEY L. ENGERMAN, TIME ON THE CROSS: THE ECONOMICS OF AMERICAN NEGRO SLAVERY 248 (1974). The $20 figure represents an ad hoc estimate sometimes used by historians for that period. Thus, the price of a prime field hand equaled about 7.5 times the average annual income of a skilled blue-collar worker. 77 Id. at 76.
there was a perceptible shrinking of masters’ legal authority matched by an expanded defense of the slaveholders’ moral authority.

The holder of immediate legal authority over each slave was his or her owner. Slaveholders possessed not only the right, but also the legal duty to control and punish their recalcitrant slaves. Theoretically, slaves had the same legal protections against physical violence as whites did, and there exist cases where whites were convicted of assaulting or killing slaves. However, these legal protections vanished in the context of chastising or controlling slaves. Slave masters, and those with delegated authority such as relatives, overseers, drivers, and those who hired or rented the labor of the slaves could do whatever they deemed necessary to correct the slave, short of actually killing him or her. Two examples, both from South Carolina in 1849:

**Another Homicide.**
A Negro man, the property of the estate of Stanmore Watson, deceased, who lived at the Ridge, in this District, was killed on Saturday evening last, by the Overseer, J.W. Hamilton. The negro, it is said, made resistance, while the Overseer, was in the act of correcting him. Hamilton has been arrested, but was admitted to bail on Monday last.

**Another Homicide.**— We announce with regret that a negro man belonging to William P. Dora, Esq., of this District, was brought to premature death by undue correction on the 28th. The circumstances of the case as nearly as we can gather them, are the following: The negro and another negro belonging to the same gentleman, had stolen a considerable quantity of gold dust from their masters gold mill, two young men in the service of Mr. Dora, the one named James Coleman, and the other Richard Griffin, the latter a Georgian, in endeavoring to abstract the truth of the matter from one of the negroes, by whipping with a leather strap, did not nicely measure the extent of punishment inflicted, and consequently the negro died on the Wednesday morning. An inquest was held over the body of the deceased, and rendered a verdict to the following effect: That the deceased

---

80 THOMAS D. MORRIS, SOUTHERN SLAVERY AND THE LAW, 1619–1860 172 (1996). Such cases often contained a class element, where the criminal was “white trash” and the slave’s owner, by virtue of being a slaveholder, belonged to the upper reaches of Southern society. By antebellum times, the idea had taken hold that slaveholders owed a moral duty to protect their slaves from the mass of non-slaveholding whites. See also KENNETH M. STampp, THE PECULIAR INSTITUTION: SLAVERY IN THE ANTE-BELLUM SOUTH 218–19 (1956).
82 EDGEFIELD ADVERTISER, 19 September 1849, at 2.
came to his death by whipping inflicted by James Coleman and Richard Griffin. Both the guilty persons have fled from justice and are supposed to be in the State of Georgia. 83

Note that death from undue correction was not considered first-degree murder, but manslaughter or second-degree murder. 84 When a slave resisted by killing the master or overseer in the course of such “chastisement,” it was considered to be murder. 85 In the two cases quoted above overseers were involved. A slaveowner had even less to fear from the legal system, and could kill his slaves with practical impunity, provided he claimed the slave died in the course of correction and death was not intentional. 86

Almost all whites who killed slaves escaped without any criminal punishment attaching. Why was this? First, blacks—whether free or slave—could not testify against whites. Unless a white person had witnessed the killing, no eyewitnesses could testify. Second, most whites were simply unwilling to testify against other whites. 87 Finally, white juries would simply refuse to convict a white person for the death of a slave. 88 Frederick Douglass, former slave and abolitionist leader, recalled such cases: “[Overseer Austin Gore] gave Denby but few stripes; the latter broke away from him and plunged into the creek, and, standing there to the depth of his neck in water, he refused to come out at the order of the overseer; whereupon, for this refusal, Gore shot him dead!” 89 Although Gore was arraigned, “this amounted to nothing.” 90 The overseer told people that killing Gore was necessary, since “if one slave refused to be corrected, and was allowed to escape with his life, when he had been told that he would lose it if he persisted in his course, the other slaves would soon copy his example.” 91 The overseer was

83 EDGEFIELD ADVERTISER, 7 November 1849, at 2.
85 See, e.g. Another Murder!, EDGEFIELD ADVERTISER, 31 October 1850, at 2.
88 Id. at 223.
89 FREDERICK DOUGLASS, MY BONDAGE AND MY FREEDOM 122 (Dover 1969) (1855).
90 Id. at 123.
91 Id.
never tried for the killing, since “[t]he murder was committed in the presence of slaves, and they, of course, could neither institute a suit nor testify against the murder.” 92

One final case, from South Carolina in 1849, illustrates that owners could kill slaves in the course of correction with almost complete impunity. The owner of Roger, a crippled slave, punished him, according to a participant in the inquest, by placing him “in an open outhouse, the wind blowing through a hundred cracks, his clothes wet to the waist, without a single blanket & in freezing weather, with his back against a partition, shackles on his wrists, & chained to a bolt in the floor and a chain around his neck, the chain passing though the partition behind him, & fastened on the other side.” 93 The next morning Roger was found choked to death. The “[v]erdict of the jury was that Roger came to his death by choking by a chain placed around his neck by his master—having slipped from the position in which he was placed.” 94 No criminal action was brought in this instance.95

In antebellum times, the slave states increasingly tried to limit the legal authority of the masters in controlling their slaves. The Alabama constitution in 1819 and the Texas constitution in 1845 authorized the sale of abused slaves away from their owner, but in neither case were statutes permitting this passed.96 Kentucky did pass such a statute in 1830.97 Laws in South Carolina and Louisiana banned cruel punishments of slaves, although “necessary” punishments were exempted from the law.98 Georgia passed a law in 1816 allowing masters to be indicted for “unnecessary and excessive whipping,” extending this law in 1851 to include overseers.99

92 Id. at 124. Douglass also wrote about other cases from the neighboring countryside, including the case of a slaveowner’s wife who beat to death a fifteen-year-old girl who was a cousin of Douglass’s wife for allowing the woman’s baby to scream at night. Douglass reports a warrant was issued by Talbot County, Maryland authorities, but was never served. Id. at 125–26.
96 Id. at 183.
97 Id.
98 Id. at 184.
99 Id. See also Kenneth M. Stampp, The Peculiar Institution: Slavery in the Ante-Bellum South 218–19 (1956).
Alabama passed a vague law in 1852 that required masters to treat their slaves with humanity and to avoid cruel punishments. Prosecutions under these laws were exceedingly rare. Why then were these laws passed? Probably as public-relations measures to counter increasing Northern abolitionist criticism of slavery. An 1855 proposal in North Carolina to allow slave marriages, keep slave children from being sold away from their parents, and to repeal laws prohibiting the education of slaves was lauded thus by DeBow’s Review, an influential proslavery journal from New Orleans: “Should the southern people think proper, after due investigation, to adopt the regulation in each of the slave States, slavery will then be regarded in an entirely new light, and the enemies of the institution will be robbed of their most fruitful and plausible excuses for agitation and complaint.”

While the legal authority of the master to control his or her slaves thus appeared to wane somewhat before the Civil War, the justifications given for the moral authority of the slaveholder increased in response to the political situation of an isolated and defensive slave South, particularly in the 1840s and later. Much of the rhetoric granting moral authority to the slaveholders came in the form of an emphasis on the duties believed to be owed between masters and slaves. For proslavery apologists of the time, there was a moral contract between the two parties. Slaves, it was thought, bought the product of their labor, their obedience, and their loyalty to the contract, while masters brought food, shelter, protection, and other things needed by the slaves (including, interestingly enough, the furnishing of legal representation if the slave found himself or herself in trouble with the legal authorities).

Although any lawyer would recognize a major difficulty with using a contract analogy—slaves didn’t enter into this contract of their free will, but it was forced on them—apologists for slavery insisted that such contracts were not one-sided, but merely recognized an immutable and

101 Id. at 185–86.
102 Slave Marriages, 19 DeBow’s Review 130 (1855).
natural racial hierarchy, with the white slaveholder on the top. To slaveholders, blacks needed the paternalistic direction and control that the institution of slavery provided, and they should appreciate the benefits of the masters’ control:

The improvidence of the negro is proverbial. . . . [Under slavery] [h]is necessary wants were all supplied, and except for those few luxuries he aspired to, there was but little incentive to exertion. He and his wife and children were housed, fed and clothed, taken care of in sickness—and in old age, when labor was over, he knew that he would enjoy the benefits of the same protection. The anxieties for provision against sickness and old age, which afflict the poor, were unknown to him. The prospect of a family to support, never deterred him from marriage. The Doctor’s bills had no terror; and for the little dainties during convalescence, he looked to his master’s household.

When performed by each side, the mutual duties of slave and master created, according to Mary Schoolcraft in 1861:

whole-hearted a confidence and friendship . . . between different races . . . germinated in the South, by the patronage on the one hand, and dependence on the other, of the master as his property. There the negro never assumes equality, and therefore you are never afraid he will take liberties from kindnesses bestowed. He seems as satisfied that God never made him the equal of the white man, as he is that a horse was made larger than a mouse.

Judge John Perkins of Louisiana wrote similarly in his charge to the grand jury of his circuit in 1853, in remonstrating that the laws governing control of the slaves be properly enforced:

There has been much unjust abuse of the slaveholder, and such scandalous misrepresentations of the laws of Louisiana with reference to the treatment of slaves, that I can understand how difficult it is for you, as grand jurors, to preserve such feelings of indifference in the midst of denunciations, as to enforce the statutes of our State for the protection of the negro, with the zeal your natural impulses would prompt. You should recollection, however, in the words of a distinguished judge of South Carolina, (Judge O’Neal,) “that the first law of slavery is that of kindness from the master to his slave.”

105 The literature on the racial underpinnings of slavery is immense and beyond the scope of this paper. An interested reader could start with WINTHROP D. JORDAN, WHITE OVER BLACK: AMERICAN ATTITUDES TOWARD THE NEGRO 1550–1812 (1968) and continue with EUGENE D. GENOVESE, THE WORLD THE SLAVEHOLDERS MADE: TWO ESSAYS IN INTERPRETATION (new introduction, 1988). Also of use is George M. Frederickson, Masters and Mudsills: The Role of Race in the Planter Ideology of South Carolina, 2 S. ATLANTIC URBAN STUDIES 34 (1978).


107 MARY HOWARD (MRS. HENRY) SCHOOLCRAFT, THE BLACK GAUNTLET: A TALE OF PLANTATION LIFE IN SOUTH CAROLINA (Philadelphia, J.B. Lippincott & Co. 1861). Her husband, Henry R. Schoolcraft, is known to historians for his ethnographic work among Native Americans and discovering the source of the Mississippi River.
he is our dependent, and looks to us for protection; and interest and humanity both require that kindness be enforced and inculcated by law.  

The moral authority of the planters in this “contract” was heightened by the slaveholders’ religion as well. Defenders of slavery enjoyed pointing out that slaves were held in ancient and biblical times, and they gleaned support for their conception of mutual duties from Scripture. The Rev. H.N. McTyeire, a well-known Southern Baptist minister, emphasized the duties owed by masters to slaves: “Servants should be judiciously worked,” “Servants should be allowed wholesome rest,” “Servants should be well clothed,” “Servants should be well fed,” “Servants should be well housed,” for, after all, “Thou shalt not muzzle the mouth of the ox that treadeth out the corn.” The idea that there natural hierarchies instituted by God was not unique to apologists for slavery, but this conception added a significant boost to the moral authority of the masters. Said James Henry Hammond, former governor of South Carolina, and later U.S. Senator, in 1845: “American slavery is not only not a sin, but especially commanded by God through Moses, and approved by Christ through his disciples.”

For Hammond, the quintessential antebellum slaveholder,

in all social systems there must be a class to do the menial duties, to perform the drudgery of life. That is, a class requiring but a low order of intellect and but little skill. Its requisites are vigor, docility, fidelity. Such a class you must have, or you would not have the other class which leads progress, civilization, and refinement. It constitutes the very mud-sill of society and of political government; and you might as well attempt to build a

108 John Perkins, *Relation of Master and Slave in Louisiana and the South*, 15 DEBOW’S REVIEW 275 (1853). Perkins is quoting Judge John Belton O’Neall, of Newberry District, South Carolina, who wrote many influential opinions concerning the law of slavery.

109 See, e.g., Thornton Stringfellow, *A Brief Examination of Scripture Testimony on the Institution of Slavery* (1841), in *The Ideology Of Slavery: Proslavery Thought In The Antebellum South*, 1830-1860 138 (Drew Gilpin Faust ed., 1981). The role of religion in anti- and proslavery thought culminated in the splitting of the Methodist Episcopal and Baptist denominations into factions in 1845. By the Civil War the Methodist Episcopal Church South and Southern Baptists claimed about 1.2 million white members in the South. Other churches had evolved on sectional lines as well, and it is safe to assume any antebellum slaveholder expressing Christianity as his or her creed identified with these pro-slavery denominations. ROBERT T. HANDY, *A History Of The Churches In The United States And Canada* 185–90 (1976).


house in the air, as to build either the one or the other, except on this mud-sill. Fortunately for the South, she has found a race adapted to that purpose to her hand. 113

While it’s impossible to know how completely the slaveholders believed their propaganda, it is clear that they were serious about their expectations that slaves provide not only labor, but also obedience and loyalty in exchange for all the benefits of having a master. 114 The supposed loyalty of the slaves before and during the Civil War has had a long, mythic life as one of the basic assertions of adherents of the Lost Cause. In truth, slave holders desperately wanted the slaves to believe in the “mutual duties” idea, for their own moral authority rested on it. There’s no compelling evidence, however, that this theory ever held much sway among the mass of plantation slaves. There were close personal relationships that developed between individual slaves and masters, but many of the supposed instances of loyalty, after Emancipation, for instance, might be as easily explained as accommodations to existing realities—i.e., many ex-slaves simply had nowhere else to go.

All this resulted in intellectual schizophrenia among the slaveholders. The extreme paternalism of the slaveholding ideology led to both the public belief that slaves were loyal to their masters and to secret fears that the slaves were constantly plotting insurrection. 115 Much in the slave codes enacted or revised in the antebellum era pointed to this fear, including pass laws, laws requiring owners to keep themselves or other whites resident on large plantations, and law requiring more oversight of hiring out (many owners in urban area allowed slaves to “hire themselves out” and live where they wanted provided the slave made periodic payments to the owner). 116 These laws provided double duty, in that by constraining the exercise of personal liberty, they made both insurrections and garden-variety running away less likely.

114 E.g., [Anon.] Fidelity of slaves, 29 DeBow’s Review 569 (1860); Edmund Ruffin, Fidelity of Slaves to Their Masters, 30 DeBow’s Review 118 (1861).
B. Varieties of Crime on the Plantation

When people consider the extralegal justice system in operation on plantations, often the first “crime” that comes to mind is running away. This is appropriate, since dealing with actual and potential runaways was an enormous headache for the plantation owners. Estimates of the number of runaways in any given year varied widely, with 50,000 given as an conservative estimate for 1860. While the classic runaway scenario of someone who takes his leave of his owner’s plantation and heads to the North is true in many respects, the reality of running away showed much variance. Slaves in the upper South and border states, such as Kentucky, found travel to the North possible. Further South, however, in Florida, Louisiana, or South Carolina, for instance, slaves who ran away had swamps and inaccessible forests as their goals. Sometimes slaves ran off to the nearby woods, and counted on other slaves bringing them food at night. Other times, runaway slaves joined bands of runaways which remained in the locality, foraging food, and fighting battles with slavecatchers sent to retrieve them. In numerous instances, slaves were serial runaways, taking off every chance they could. Other slaves might run away for a few days or weeks before returning. Old or infirm slaves might be left to their own devices, eventually causing them to live in a manner indistinguishable from runaways.

To control runaways, masters relied both on the legal system and their own extralegal means. Besides the pass laws, slave patrols, and local law enforcement officials (as well as newspaper advertisements), masters would join their overseers and search likely hiding places for the runaways. If convinced the runaway was still in the locality, professional slave catchers with tracking dogs might be hired as well.

118 These scenarios are described throughout JOHN HOPE FRANKLIN & LOREN SCHWENINGER, RUNAWAY SLAVES: REBELS ON THE PLANTATION (1999); EUGENE D. GENOVESE, ROLL, JORDAN, ROLL: THE WORLD THE SLAVES MADE (1974); and NORRECE T. JONES, JR., BORN A CHILD OF FREEDOM, YET A SLAVE: MECHANISMS OF CONTROL AND STRATEGIES OF RESISTANCE IN ANTEBELLUM SOUTH CAROLINA (1990).
In a sense, chasing runaways could be considered the slave South’s policing equivalent of modern high-speed auto pursuits: these chases were both exciting and dangerous, but do not typify the majority of policing duties.

In the context of a slave plantation “crime” meant something more prosaic: simply breaking the rules established by the master, or otherwise subverting the extralegal control system. Specific acts could be anything from deliberately neglecting work to suicide.\footnote{120 GERALD JAMES PIERSON, THE NATURE OF RESISTANCE IN SOUTH CAROLINA’S WORKS PROGRESS ADMINISTRATION EX-SLAVE NARRATIVES 89 (2002).} A study of resistance among the last generation of slaves in South Carolina identified the following offences:

<table>
<thead>
<tr>
<th>Offence</th>
<th>Offence</th>
</tr>
</thead>
<tbody>
<tr>
<td>neglecting work</td>
<td>traveling without pass</td>
</tr>
<tr>
<td>working too slow</td>
<td>stealing food</td>
</tr>
<tr>
<td>refusing to work</td>
<td>stealing nonfood</td>
</tr>
<tr>
<td>other disobedience</td>
<td>threatening to leave</td>
</tr>
<tr>
<td>learning to read\footnote{121}</td>
<td>running away</td>
</tr>
<tr>
<td>secret communications</td>
<td>threatening whites</td>
</tr>
<tr>
<td>secret meetings</td>
<td>attacking whites</td>
</tr>
</tbody>
</table>

Many of these crimes had statutory or common law analogues, such as learning to read, traveling without a pass, or assaulting or killing someone. Others would not be crimes in another context: e.g., yeoman farmers, unlike slaves, could not be accused of stealing the food they themselves produced. Some crimes might have been seen as torts off the plantation: Hector Godbold, for example, negligently dropped a white baby he was carrying, and his mistress “put me head under her foot and en beat me dat way.”\footnote{123 Hector Godbold, RS1V2SC2:144. Godbold carried his master’s children to his mother “across the swamp” so she could nurse them. \textit{Id}.} Sometimes punishment was in response to actions that were simply natural, but spoke against the authority of the master class: Sam Boulware, the slave of a Dr. Hunter near Ridgeway, South Carolina, remembers:

\footnote{121 An statutory offense in the large plantation states of Louisiana, Georgia, South Carolina, as well as a few other states, but with uneven enforcement. THOMAS D. MORRIS, SOUTHERN SLAVERY AND THE LAW, 1619–1860 347 (1996).} \footnote{122 GERALD JAMES PIERSON, THE NATURE OF RESISTANCE IN SOUTH CAROLINA’S WORKS PROGRESS ADMINISTRATION EX-SLAVE NARRATIVES 89 (2002).}
Marster had over twenty grown slaves all de time. He bought and sold them whenever he wanted to. It was sad times to see mother and children separated. I’s seen de slave speculator cut de little n—— chillun with keen leather whips, ‘cause they’d cry and run after de wagon dat was takin’ their mammies away after they was sold. 124

Several logical groupings of crimes can be seen. First were offences aimed at subverting the economic system of slavery. Among these were neglecting to work, working too slow, refusing to work, stealing food, or stealing themselves (either by running away or suicide). One visitor to an antebellum rice plantation found much deliberate neglect:

[G]ates left open and bars left down, as against standing orders; rails removed from fences by the negroes, as was conjectured, to kindle their fires with; mules lamed, and implements broken, by careless usage; a flatboat, carelessly secured, going adrift on the river; men ordered to cart rails for a new fence, depositing them so that a double expense of labor would be required to lay them; . . . men, ordered to fill up holes made by alligators or crawfish in an important embankment, discovered to have merely patched over the outside, having taken pains only to make it appear that they had executed their task. 125

Other offences attacked the authority of the master and his agents: disobedience, insolence, threatening or assaulting whites. 126 The Civil War crimes of helping or joining Union forces in particular obviated the claim of masters to moral authority based on shared duties, since slaves who committed these crimes refused to accept the duty of loyalty to their masters. This author knows of some seventeen memoirs published after the Civil War by escaped Union prisoners from the three Confederate prison camps located in South Carolina. All seventeen escapees describe receiving secret assistance from slaves they encountered. 127 In several of

124 Samuel Boulware, RS1V2SC1:67.
126 Insolence to whites off the plantation was occasionally punished by statute. THOMAS D. MORRIS, SOUTHERN SLAVERY AND THE LAW, 1619–1860 296 (1996).
127 These are ALLEN O. ABBOT, PRISON LIFE IN THE SOUTH: AT RICHMOND, MACON, SAVANNAH, CHARLESTON, COLUMBIA, CHARLOTTE, RALEIGH, GOLDSBOROUGH, AND ANDERSONVILLE, DURING THE YEARS 1864 AND 1865 126, 177 (New York, Harper & Brothers 1865); JOHN GREGORY BISHOP ADAMS, REMINISCENCES OF THE NINETEENTH MASSACHUSETTS REGIMENT 150–52 (Boston, Wright & Potter Printing Co. 1899); CHARLES BEAN AMORY, A BRIEF RECORD OF THE ARMY LIFE OF CHARLES B. AMORY 27–30 (Boston, n.p. 1902); BERNARD F. BLAKESLEE, HISTORY OF THE SIXTEENTH CONNECTICUT VOLUNTEERS (Hartford, Conn., Lockwood & Brainard, Co. 1875); WILLIAM BURSON, A RACE FOR LIBERTY; OR, MY CAPTURE, IMPRISONMENT, AND ESCAPE 60 (Westville, Ohio, W.G. Foster, Printer 1867); SAMUEL H. BYERS, WHAT I SAW IN DIXIE; OR, SIXTEEN MONTHS IN REBEL PRISONS 67–68 (Dansville, N.Y., Robbins & Poore, Printers 1868); ALONZO COOPER, IN AND OUT OF REBEL PRISONS 149–55 (Oswego, N.Y., R.J. Oliphant, Printer 1888); J. MADISON DRAKE, FAST AND LOOSE IN DIXIE: AN
these accounts, the slaves providing assistance expressed fear of punishment from their master or overseer if found out, 128 in one case the slave stating his master would “burn him alive” if he knew he had been helping a Union soldier. 129

This fear may not have been exaggerated, for the master class took the duty of loyalty extremely seriously, even if it was a duty not ascribed to by the slaves. Stories of slaves who helped Union forces are common in the narratives. Samuel Boulware’s account is typical:

Marster tried to hide the best stuff on de plantation but some of the de slaves dat helped him hide it, showed de Yankee soldiers just where it was, when they come dere. They say: “Here is de stuff, hid here, ‘cause us put it dere.” Then de soldiers went straight to de place were de valuables was hid and dug them out and took them, it sho’ set old marster down. 130

Helping Union forces could be extremely dangerous, however, particularly where Union forces merely passed through Confederate-controlled territory, as in Sherman’s march through South
Carolina. Margaret Hughes, who would have been nine or ten years old at the time, remembered that:

Something awful happen to one of de slaves though, when de Yankees did come. One of de young gals tell de Yankees where de missus had her silver, money and jewelry hid, and they got it all. What do you think happened to that poor gal? . . . After de Yankees had gone, de missus and massa had de poor gal hung ‘til she die. It was something awful to see. 131

Another ex-slave, Hannah McFarland, who would have been twelve at the time, reported that she herself had shown Union soldiers where “the white folks hid their silver and money and jewelry.” 132 She was whipped by her own mother for doing so, but this might have been as easily for engaging in such dangerous behavior as for being disloyal to the master. 133

Another crime that involved both legal and extralegal sanctions was learning to read. Slaveowners who wrote articles on slave management generally did not mention this crime, since abolitionists cited the laws against teaching slaves to read as examples of how immoral slaveholders were (since it kept slaves from the Scriptures). At least one planter expressed the wish that he could teach his slaves to read, but was prevented by fears of “fanaticism.” 134 Slaveholders feared literacy since it made forging of passes possible, and would allow the sort of secret communication necessary for an insurrection. While some slaves did learn to read, Frederick Douglass being a famous example, the reported reaction of masters to the extralegal crime borders on paranoia:

Us chaps did not learn how to lead and write, dat is why I can’t read and write today. Marse wouldn’t allow us to learn. Once he saw me and some other chaps, white chaps, under a tree playing wid letter blocks. Dey had A B C’s on dem. Marse got awful mad and got off his horse and whipped me good. 135

131 Margaret Hughes, RS1V2SC2:329–30. It sounds here as if the master had turned the girl over to civil authorities for execution as an example to other slaves in the neighborhood, but it’s not hard to imagine summary executions for similar offenses in these circumstances. The capital of South Carolina, Columbia, just ten miles away from the plantation of Hughes’ owners, had been destroyed by fire when Union forces passed through, and slaves served as handy scapegoats for frustrated slaveholders.

132 Hannah McFarland, RS1V7OK:211.

133 Id.


Another ex-slave reported that getting caught with “pencil en’ paper, that was a major crime. You might as well had kill your master or missus.” 136 A third recalled that “our slaves were told if they ever learned to write they’d lose de hand or arm they wrote wid.” 137

Other offences involved maintaining the slaves’ community in the face of the power of the master class: traveling without a pass, secret communications, and secret meetings are among these. The extent to which slaves succeeded in maintaining communities under the circumstances of slavery has been a fertile field for the past several generations of scholars. 138

Contenders for the most common crimes on extralegal plantation justice system were malingering and stealing food, both of which fit into the “economic crime” category. The first of these is seen in a famous 1856 passage by Frederick Law Olmsted, written while he was on a trip to the Carolina lowcountry:

The overseer rode among them, on a horse, carrying in his hand a raw-hide whip, constantly directing and encouraging them; but, as my companion and I, both, several times noticed, as often as he visited one end of the line of operations, the hands at the other end would discontinue their labor, until he turned to ride towards them again. 139

In agricultural journals, plantation owners showed a focus on malingering in their essays on slave management. Malingering was an especial concern since it interfered with the duty of work masters considered owed to them. Working negligently can be functionally the same as not working at all. Examples of such crimes are common in the narratives. Adeline Jackson, for instance, recalled being whipped for chopping down a good corn stalk when tending the

136 Elijah Green, RS1V2SC2:197.
137 Robert Toatley, RS1V3SC4:165.
138 The main players in this controversy are Eugene Genovese and Herbert Gutman. Genovese argued that slaves ultimately were not able to escape the “hegemonic demands” of the master class; Gutman argued the creation and existence of permanent and meaningful family structures among the slaves constituted a genuine alternative to the master’s world. See EUGENE D. GENOVESE, ROLL, JORDAN, ROLL: THE WORLD THE SLAVES MADE (1974) and HERBERT G. GUTMAN, THE BLACK FAMILY IN SLAVERY AND FREEDOM, 1750–1925 (1976). Most current scholarship falls into one or another of these two camps.
fields. Emoline Wilson was whipped by her master for not coming when she was called. Jake McLeod told his interviewer that slaves were whipped for not doing their tasks. When Lucinda Miller’s “master thought that a slave was not working hard enough, he would whip him to make him work much harder.”

Joseph Acklen, in his 1857 essay “Rules in the Management of a Southern Estate,” wrote that owners should create a certainty of punishment for abusing stock, losing implements, leaving gates open, and similar acts. He also prescribed “severe punishment” for galling horses with bits, and forbade working horses over ten hours a day. To avoid the loss of tools, slaves should be assigned specific implements, and then held accountable for taking care of these. Similarly, Thomas Affleck suggested marking small tools with a punched number, and assigning these to specific hands. He also noted, quoting George Washington’s instructions to his overseer, that “when an overseer’s back is turned, most of the slaves will slight their work or be idle together.”

That masters continually mentioned keeping track of tools suggests that the deliberate or negligent loss or damaging of plantation equipment was a particularly common crime. The anonymous author of the 1859 essay in DeBow’s Review entitled “Management of Cotton Estates” asked the reader “Have you made out a list of all the farm implements and tools you have during the last three months, and do you know the tools, such as axes, wedges, hoes, &c., each negro has, and how he lost or disposed of the last ones he had.”

---

140 Adeline Jackson, RS1V3SC3:2.
141 Emoline Wilson, RS1V3SC4:213.
142 Jake McLeod, RS1V3SC3: 157.
143 Lucinda Miller, RS1V3SC3:191.
145 Id. at 380.
146 Id.
147 [Thomas Affleck], The Duties of an Overseer, 18 DeBow’s Rev. 339, 343 (1855) (reprinted from AFFLECK’S COTTON PLANTATION RECORD AND ACCOUNT BOOK).
148 Id. at 339.
Slaves did not care if their master’s tools were kept in good order, and they did not care to work speedily at the master’s work, particularly under the gang system where there was no incentive to hurry with the day’s work. Another anonymous planter wrote in 1851 attempted to remedy this: “While at work, they should be brisk. If one is called to you, or sent from you, and he does not move briskly, chastise him at once. If this does not answer, repeat the dose and double the quantity.”150 This same author did not even allow slow songs to be sung or whistled, but required any tunes to be “lively.”151 An overseer in Louisiana, however, wrote in 1858 that accuracy, not speed, was essential in slave work, vowing “I shall never permit them to do any work wrong if it takes the whole day to do it right.”152

Theft of the plantation’s produce or livestock was also common. One planter lamented when “the negroes take to killing your pigs or stealing your chickens and eggs.”153 Ex-slaves, too, recalled “Stealing was de main crime.”154 Stealing led to much of the punishments inflicted on slaves. Ex-slaves William Ballard, Sam Polite, Thomas Goodwater, Milton Marshall, and Jake McLeod, for instance, all reported theft as triggering punishment on the plantation.155 Goodwater remembered a driver who shot one of the master’s cows at night and distributed the meat among the slaves.156

Without specific statutes, or a literate population, it was difficult to provide a precise listing of on-plantation crimes. Planter Joseph Acklen suggested “ardent spirits, stealing, lying, adultery, fornication, profanity, fighting, quarreling” as a general guide.157

150 [Anon.], Management of Negroes, 10 DeBow’s Rev. 325, 328 (1851)
151 Id.
153 Tattler, Management of Negroes, 8 Southern Cultivator 102 (1850) quoted in Advice Among Masters: The Ideal in Slave Management in the Old South 83 (James O. Breeden ed. 1980).
154 Phillip Evans, RS1V2SC2:37.
156 Thomas Goodwater, RS1V2SC2:166.
Slave-on-slave crime was not a particular concern of legal authorities, and so was rarely reported in court records.\textsuperscript{158} Such crime did occur. Hector Godbold told his interviewer that his mother had had an argument with a male slave, who ended up striking her and leaving her bloodied: “Sam Watson [a ‘rough old overseer’] come dere en make dat fellow lay down on a plank in de fence jam en he take dat cat o’ nine tail he have tie around his waist en strike John 75 times.”\textsuperscript{159} Jake McLeod similarly recalled a slave being whipped for beating up his (McCleod’s) uncle, another slave.\textsuperscript{160}

Masters and overseers, unlike legal authorities, expressed concerns about slave-on-slave crime. The author of the 1851 essay “Management of Negroes” warned that “Unless better provided for taking care of their provisions than is common among negroes, some will steal the meat from others, and the loser is compelled for the remainder of the week to live on bread, or the master must give him an additional allowance.”\textsuperscript{161} Some owners saw it as their duty to keep the peace in the slave quarters: “if allowed, the stronger will abuse the weaker; husbands will often abuse their wives, and mothers their children, so that is becomes a prominent duty of owners and overseers to keep peace, and prevent quarreling and disputes among them; and summary punishment should follow any violation of this rule.”\textsuperscript{162} P.C. Weston warned in 1857 that “Fighting, particularly amongst women, and obscene, or abusive language, is to be always rigorously punished.”\textsuperscript{163}

\textbf{C. Punishment of Crime on the Plantation}\n
How were slaves on the plantation punished? Participants in the most serious crimes, involving capital offences, were generally turned over to state authorities after committing

\textsuperscript{159} Hector Godbold, RS1V2SC2:145.
\textsuperscript{160} Jake McLeod, RS1V3SC3:157.
\textsuperscript{161} [Anon.], \textit{Management of Negroes}, 10 DEBOW’S REV. 325 (1851).
crimes such as murder, rape, or arson.\textsuperscript{164} This was not always true in colonial days, but in antebellum times slaves were increasingly drawn into the legal system.\textsuperscript{165} Most states had provisions reimbursing owners for slaves executed through the regular judicial system, although reimbursements were either capped at relatively low amounts, or the slave’s value would be adjusted to reflect the propensity to commit the crime he had committed.\textsuperscript{166}

In general, owners were reluctant to turn slaves over to the legal system.\textsuperscript{167} Poorer slaveholders, who had the most to lose economically by the jailing or execution of their slaves, were particularly averse to this.\textsuperscript{168} Slaveholders relied on the extralegal power and authority of the master before turning to state law.\textsuperscript{169} James Henry Hammond, antebellum governor of South Carolina, wrote to an abolitionist about the legal economies of extralegal plantation justice: “Remember that on our estates we dispense with the whole machinery of public police and public courts of justice. Thus, we try, decide, and execute the sentences, which in other countries would go into the courts.”\textsuperscript{170}

Whipping was most common punishment on the plantation. The mechanics of whipping varied somewhat from plantation to plantation, but generally the slave would be stripped to the waist and tied to a post, over a barrel or log, or occasionally suspended by their wrists. The owner or overseer, or occasionally the driver, would use some sort of a leather or rawhide strap (or occasionally a switch) on the slave’s back, counting strokes until the determined punishment had been given. George G. King recalled his mother being whipped:

They crossed her wrists and tied them with a stout cord. They made her bend over so that her arms was sticking back between her legs and fastened the arms with a stick so’s she couldn’t straighten up. . . . [her clothes were pulled] over her head so’s the lash would

\textsuperscript{164} Thomas D. Morris, Southern Slavery and the Law, 1619-1860 251 (1996). See also Elijah Green, RS1V2SC2:198 (slaves hanged for plotting to poison family).
\textsuperscript{165} Id. at 247.
\textsuperscript{166} Id. at 249.
\textsuperscript{167} Id.
\textsuperscript{168} Id. at 251.
\textsuperscript{169} Id. at 316.
reach the skin. [King] saw the overseer lay on the whip with hide-busting blows that left her laying, all a shiver, on the ground, like a wounded animal dying from the chase. 171

Mom Ryer Emmanuel remembered others being whipped:

[D]ey would carry dem to de cow pen en make them strip off dey frock bodies clean to de waist. Den dey would tie dem down to a log en paddle dem wid a board. When dey would tie dem down to a log en paddle dem wid a board. When dey would whip men, de boards would often times have dails in dem. Hear talk dey would wash dem wid dey blood. Dat first hide dey had, white folks would whip it off dem en den turn around en grease dem wid tallow en make dem work right on. 172

Fannie Griffin, who was twenty-two at Emancipation, recalled being whipped herself:

When she [Missy Grace Beard, her owner’s wife] go to whip me, she tie my wrists together wid a rope and put that rope thru a big staple in de ceiling and draw me up off the floor and give me a hundred lashes. I think about my old mammy heap of times now and how I’s seen her whipped, wid de blood dripping off of her. 173

A final example comes from Margaret Hughes, who was a young girl of ten at Emancipation:

“Once I saw my poor old daddy in chains. They chained his feet together, and his hands too, and carry him off to whip him, ‘cause he wouldn’t tell who stole a trunk that was missing. He couldn’t tell, though, ‘cause he didn’t know, but they thought he did.” 174

Owners and overseers would avoid the lurid language in describing whippings, preferring to use a term such as “chastising” or “correcting.” Perhaps to avoid abolitionist criticism, the mechanics of whippings were not discussed in agricultural journals, but planters did note information other slaveholders might find useful in punishing their slaves. Joseph Acklen wrote in 1857 that whipping was the only punishment allowed on his plantation, except for denying passes for off-plantation visits. 175 Overseers were not to use clubs on the slaves. 176 He also noted that “if a negro resists when corrected, every other negro man present must assist in

171 George G. King, RS1V7OK:166.
173 Fannie Griffin, RS1V2SC2:209.
174 Margaret Hughes, RS1V2SC2:328.
175 Joseph Acklen, Rules in the Management of a Southern Estate, 22 DEBOW’s REV. 376, 379 (1857).
176 Id. at 379.
arresting him.” 177 Similarly, another planter wrote in 1859 that overseers are “not allowed to take hold of the negroes to whip them, nor to beat them with sticks and clubs, or in any other manner that the most usual with the assistance of the driver and the other negroes. . . . If he starts to run, and the other negroes will not stop him for you, let him go.” 178

A number of planters strongly urged their brethren not to punish the slave when angry. The first rule on John A. Calhoun’s estate was “Never punish in passion.” 179 P.C. Weston suggested allowing 24 hours to elapse before punishment, and apparently waiting until the next morning before going to the fields was common practice on many plantations. 180 Weston’s instructions on punishments is worth reading in full:

**Punishments.**—It is desirable to allow 24 hours to elapse between the discovery of the offense, and the punishment. No punishment is to exceed 15 lashes: in cases where the Overseer supposes a severer punishment necessary, he must apply to the Proprietor, or to ———, Esq., in case of the Proprietor’s absence from the neighborhood. Confinement (not in the stocks) is to be preferred to whipping: but the stoppage of Saturday’s allowance, and doing whole task on Saturday, will suffice to prevent ordinary offenses. Special care must be taken to prevent any *indecency* in punishing women. No Driver, or other negro, is to be allowed to punish any person in any way, except by order of the Overseer, and in his presence. 181

Other on-plantation punishments besides whipping did exist. S.D. Wragg, a Georgian overseer, suggesting pulling the slave’s ear, or twisting the slave’s nose. 182 Unlike Weston, Thomas Affleck suggested the use of the stocks:

When it can be done without a too great loss of time, the stocks offer a means of punishment greatly to be preferred; so secured in a lonely, quiet place, where no communication can be had with any one, nothing but bread and water allowed, and the

---

177 *Id.* at 378.
181 *Id.*
This concern with balancing effective punishment with time for work is also seen in the 1851 essay of A Small Farmer:

I do not punish often, but I seldom let an offense pass, making a lumping settlement, and then correct for the servant’s remembrance. I find it better to whip very little. Young ones being rather treacherous in their memory, pulling an ear, or a sound box, will bring everything right. . . . Put up a hewed log-house, with a good substantial door, lock and key, story 12 feet high, logs across above, as to as to make a regular built jail. Have air holes near the ceiling well protected by iron bars. The first negro that steals, or runs away, or fights, or who is hard to manage in order to get a day’s work, must be locked up every night as soon as he comes in from work, and turned out next morning; kept up every Sunday. 184

Confinement as a punishment is occasionally mentioned in the extant narratives, such as “the old log cabin jail built before the War, right on the plantation, where runaway slaves were stowed away ‘till they would promise to behave themselves.” 185 Another ex-slave remembers runaway slaves being held in the barn. 186 Sam Mitchell, of Beaufort District, South Carolina, also remembers a barn being used as an occasional place of confinement. 187

One final issue involves the intersection between legal and extralegal punishments: the interaction between masters and members of the patrol. The patrol, as discussed supra, operated to control the movements of slaves on public roads and lands. They checked passes and detained and returned those without passes. Bona fide runaways would be caught by the patrol as well, which was maintained as a visible sign of white authority. When the patrol caught a slave without a pass, the slave would usually be summarily whipped and returned to their master’s plantation. As ex-slave George King remembered, at the end of the Civil War three slaves still remained in the plantation’s homemade jail. They had been “caught and whipped by the

183 [Thomas Affleck], The Duties of an Overseer, 18 DeBow’s Rev. 339 (1855) (reprinted from AFFLECK’S COTTON PLANTATION RECORD AND ACCOUNT BOOK).
185 George G. King, RS1V7OK:166.
186 Gabe Lance, RS1V3SC3:92.
patrollers, and then brought back to the plantation for another beating before being locked in jail.”188

Patrollers could enter plantation property to return an escaped slave, but they did not have general police powers to search on the plantation itself. Any such search, for possible runaways hiding out, for instance, or to continue the pursuit of a passless slave, required permission from the master or his agent (i.e. the overseer). When patrollers were allowed on the plantation, they entered and searched the slave quarters. Dinah Cunningham recalled that her overseer, Mr. Welch, would sometimes “help de patrollers to search de houses fer to ketch any slaves without a pass.”189 Adeline Jackson also remembers the slave patrol searching in the slave quarters.190

Patrollers were not automatically given permission to enter the plantation to conduct searches. Many slaveholders forbade the entry of patrols onto their land as a general rule. Planters themselves were mostly silent about this in their writings about slave management (possibly because they did not want to appear to be undermining legal authority in its important role of preventing rebellion), but numerous narratives from slaves indicate that slave patrols were not made welcome. Mary Williams, of Spartanburg, South Carolina, reported that the master did not allow the patrol on his place.191 Lucinda Miller, from Union District, South Carolina, recalled patrols were not allowed on the plantation without permission.192 Similarly, Emoline Wilson, of the South Carolina upcountry, remembers the same.193

We can speculate why planters might have created this rule pre-empting legal authority. While some of this may due to their dread of lower-class (i.e. non-slaveholding) whites creating chaos and damaging slave property, it likely the rule was established to reinforce the extralegal authority of the slaveholder. The masters, in other words, were jealous of their prerogative to

188 George G. King, RS1V7OK:166.
189 Dinah Cunningham, RS1V2SC1:235.
190 Adeline Jackson, RS1V3SC3:2.
191 Mary Williams, RS1V3SC4:206.
192 Lucinda Miller, RS1V3SC3:192.
193 Emoline Wilson, RS1V3SC4:213.
punish slaves. Some slaveholders, for instance, either limited the scope of delegation by allowing overseers but not drivers to whip, 194 while others did refused to delegate their authority at all, and refused to allow overseers to punish slaves, limiting their authority to notification of the master that punishment was needed. 195

This reluctance by masters to allow patrollers on plantation grounds could work to the benefit of slaves who found themselves racing patrollers for the safety of the slave’s “plantation jurisdiction.” William Ballard remembers slave children playing in the road, daring and teasing patrollers who weren’t allowed on the plantation. 196 George Woods remembered that:

One day his mother went to a church that was not her own church. On coming back, she saw a “paterroller” coming behind her. She began to run, and he did too; but as he caught up with her, she stepped over a fence on her master’s place and dared the “paterroller” to do anything to her. He didn’t do a thing and would not get over the fence where she was, as he would have been on somebody’s place besides his own. 197

Another situation, but one that turned deadly, was reported by Will Deal:

One night Uncle Bob, he started to go see his gal, and it was pretty late, but he followed his path. There were some paterollers out looking for him, and t’rectly they saw him. Uncle Bob lit out running and the paterollers started running too. Here they had it up and down the path. Uncle Bob, he knew there was a big ditch crossing the path, but the pateroller didn’t know it; so when Uncle Bob got to the gully, he jumped right over it and run on, but one of the patrollers fell into the gully and broke his neck. After dat, Uncle Bob, he stayed in and kept quiet, for he knew the paterollers had it in for him. 198

Finally, one extraordinary story in the slave narratives deals with a slaveholder’s rejection of legal enforcement measures: “One time [Alfred Brown, Mary Williams’ master] kept a slave from another plantation who was fleeing the “paterellers” on his place and in his own house until he was set free.” 199

D. Defenses and Other Considerations

194 See, e.g., William Ballard, RS1V2SC1:27.
196 William Ballard, RS1V2SC1:27.
197 George Woods, RS1V3SC4:249.
198 Will Dill, RS1V2SC2:320.
199 Mary Williams, RS1V3SC4:206.
The extralegal justice system, while ad hoc and profoundly authoritarian, did incorporate some of the features of an established legal criminal justice system that we would consider to be safeguards. Some of these features can only be found in minor references in the owners’ essays on slave management, but they indicated that masters did see the plantation control of slaves as the functional equivalent of the legal system.

The usual starting point for examining a criminal law system is how it treats the mens rea requirement. In the case of the extralegal plantation system, there scant evidence that mens rea was given consideration. To a planter, there isn’t much difference between a tool deliberately or accidentally left in the rain to rust. Slaves found crimes were generally of the strict liability variety on the plantation: “If you have named the penalty for any certain offense, inflict it without listening to a word of excuse.”\textsuperscript{200} Yet, planter P.C. Weston wrote that “No person should ever be allowed to break a law without being punished, or any person punished who has not broken a well known law.”\textsuperscript{201} In one essay, a planter writes of how to deal with the situation of being unable to determine who is stealing, and suggests solving the problem by the application of group punishment:

As a general principle the legal maxim that “it is better ninety and nine guilty persons should escape than one innocent should suffer” is correct. It, however, has its exceptions. If, for instance, the negroes take to killing your pigs or stealing your chickens and eggs, and you cannot ascertain who are guilty, it is only necessary to put the whole “crowd” on half allowances of meat for a few days and the evil will end. This remedy is better than a perpetual fuss and suspicion of all.\textsuperscript{202}

In the same way, planters did not trouble themselves overmuch with the notice requirement. Crime could be defined as anything that led to punishment. In the end, plantations were operated more on “common law” than statutory law, although rules for model plantations were published, as discussed supra. The concept of notice could be additionally problematic

\textsuperscript{200} [Thomas Affleck], The Duties of an Overseer, 18 DEBOW’S REV. 339, 344 (1855) (reprinted from AFFLECK’S COTTON PLANTATION RECORD AND ACCOUNT BOOK).
\textsuperscript{201} P.C. Weston, Management of a Southern Plantation: Rules Enforced on the Rice Estate of P.C. Weston, Esq., of South Carolina, 22 DEBOW’S REV. 38, 44 (1857).
\textsuperscript{202} Tattler, “Management of Negroes,” 8 Southern Cultivator 102 (1850), quoted in ADVICE AMONG MASTERS: THE IDEAL IN SLAVE MANAGEMENT IN THE OLD SOUTH 83 (James O. Breeden ed. 1980).
when dealing with a population left deliberately illiterate. Planter Joseph Acklen solved this problem by requiring that “Rules and regulations in regard to negroes, stock, implements, etc. must be read to the negroes every three months by the managers on the various places.”203 It can only be assumed that this practice existed on other plantations as well.

Finally, slaves certainly had no right of appeal of their extralegal punishments to the duly constituted legal authorities. Recall that “correction” short of death would not, as a general rule, be noticed by the outside world. The issue of appeals to the master himself on the plantation was not dealt with consistently by slave owners, but it’s worth examining the varying attitudes of slaveholders and overseers, as the question speaks to the masters’ self conception as the font of justice on the plantation.

Some masters thought that allowing slaves to appeal their punishments damaged the law-abiding order they had established on their plantations. A.T. Goodloe, for instance wrote that “it has always been a rule with me to whip any negro that tries to tell me anything about an overseer.”204 Others believed that allowing regular appeals of planned punishments interfered with the overseer’s discretion to punish slaves “within the prescribed terms and limits.”205 To discourage such appeals, one planter suggested “When the slave therefore comes within the general rule which prescribes his punishment, let him be punished, and appeal to the master afterwards, if he chooses.”206 There is no indication of any advantage for the slave in doing so, however, once the punishment had been inflicted.

One planter balanced his own role as the source of justice slaves could revere with the desire to avoid everyday appeals:

The negro should feel that his master is his law-giver and judge, and yet is his protector and friend, but so far above him, as never to be approached save in the most respectful manner. This is where he has just cause, he may with due deference approach his master.

205 [Anon.], Overseers at the South, 21 DEBOW’S REV 277, 278 (1856).
206 Id.
and lay before him his troubles and complaints; but not on false pretences or trivial occasions. 207

For another, “[a] tribunal exists where complaints may be referred, grievances redressed, and disputes settled. . . . The ear of the highest authority is ever open. It is counted no unworthy condescension to inquire into the disturbances of this subordinate empire, and to set the wrong right.” 208

It is apparent some owners simply did not trust overseers, and used the prospect of appeals to keep the overseer from mistreating the master’s slave property. Joseph Acklen, for example, wrote in 1856 that “My negroes are all permitted to come to me or my agent with their complaints, and in no instance shall they be punished for doing so; and in my absence, I enjoin it upon my agent to attend to their complaints, and examine them, and if they have been cruelly or inhumanly treated, the overseer must be at once discharged.” 209 This is echoed in an anonymous planter who addressed his overseer thus: “One thing I wish distinctly understood, my negroes are allowed to lay their complaints and grievances before me—of the justice and the remedy I will judge. To punish them for this, I will deem an insult to me, and you may consider your dismissal in preparation, and notice thereof will be given.” 210 In such situations the extralegal authority of the master merged with practical economic considerations. As a whole, the characteristics of the extralegal justice system we associate with limiting authority—mens rea, notice, appeals—served as the means of social control of a degraded yet economically important element of the Southern plantation economy.

IV. CONCLUSION

Plantation slaves in the American South prior to the Civil War rarely encountered the ordinary, legally established criminal justice system in their communities. Instead, an ad hoc

207 [Anon.], Management of Negroes, 10 DeBow’s Rev. 325 (1851).
208 H.N. McTyeire, Plantation Life-Duties and Responsibilities, 29 DeBow’s Rev. 357, 361 (1860).
justice system, unique to each plantation and controlled by the slaves’ master and enforced by the master, overseer, and driver, constituted the mechanism of control. Each plantation was, in effect, a common law jurisdiction where the ordinary, legally constituted mechanisms of criminal justice took practical effect only by the sufferance of the slaveholder.

Although this justice system possessed some of the accouterments of the off-plantation criminal justice system, in the end the system of plantation crimes and punishments served not justice in any exalted sense, despite the claims of its apologists, but only the beneficiaries of the Southern plantation economy.