THE SOUTH CAROLINA SLAVE CODES
1688-1822

A THESIS
SUBMITTED TO THE FACULTY OF ATLANTA UNIVERSITY
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF MASTER OF ARTS

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ATLANTA, GEORGIA
July 1970
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INTRODUCTION

In many court decisions, and law debates it has been said that slavery could only exist by force of positive legislation. This is not historically valid, for in virtually every American community where it existed at all, the institution was first established by custom alone and was merely recognized by statutes when these came to be enacted.

Indeed, the chief purpose of these "codes" of law was to give sanction and assurance to the racial adjustments already operative. Accumulated experience had shown a community that it had a general problem of Negro police on its hands. Therefore, its legislature passed a series of acts of many clauses to define the status of slaves, to provide the machinery of their police, and to prescribe legal procedure in cases concerning them whether as property or persons. Their scope and harshness could not have made them for the benefit of the slave.

As a rule each slaveholding colony or state adopted a series of laws of limited scope to meet definite issues as they were successively encountered. Such was the case of the slave legislation of South Carolina, as the pioneer for the enactment of a set model of "codes" which strictly controlled its massive slave population from 1688 when it followed the pattern set by the already mature slave codes of the Barbados Islands.

The basic statutes of the original South Carolina slave codes were supplemented by police laws, curfew statutes, and the unique addition of the concept of "chattel" slavery. The stringent machinery of control and the slave's reaction to his degraded "peculiar" status under these
slave codes proves that these were not mild statutes made for the pro-
tection of the bondsmen.
CHAPTER I

THE ORIGIN AND DEVELOPMENT OF THE
SOUTH CAROLINA SLAVE CODES

In origin and development the South Carolina slave codes were a systematic body of laws which disproved the premise that the slave codes were protectory statutes aimed at the slaves' welfare. From the outset, the South Carolina slave codes treated the slave as inferior and policed every aspect of slave life.

The origin of the South Carolina slave codes extends directly from the slave codes of the island of Barbados. Barbados exerted its influence on the South Carolina colony by trade contact in sugar since the colony's founding in 1665. Early South Carolina proprietors such as Seth Sothell observed the possibilities of incorporating the slave laws which governed the Barbados plantations. By 1668, the South Carolina merchants had acquired a great many slaves from trade contact with Barbados and saw the need for a similar network of laws to control the increasing slave population of South Carolina.

In 1688, after a series of minor laws, Barbados passed a more stringent slave code which South Carolina would later copy verbatim for its slave population. Thus, a long series of legal control on the slave arose, as recited in the Barbadian preamble of 1688:

Slaves whose wild savage nature...renders them wholly unqualified to be governed by the laws, customs, and practices of our nation, and the absolutely necessary consequence that such other constitutions, laws, and orders should be in this island framed and enacted for the good
regulating and ordering of them...¹

This made the island of Barbados among the pioneers in slave legislation; they devised a specialized body of laws designed specifically for the already existent slave labor force. The implication of this preamble of 1688 is that the Negro slave, due to his inferior "barbarous" nature must be controlled by a different, more rigid network of laws.

The basic statute of 1688 was copied verbatim into the South Carolina statute books by 1712. In its basic language, the Barbados slave codes forbade slaves from leaving their master's premises at any time unless in the company of whites. Offenders in this might be whipped and taken into custody by any white person encountering them. No slaves were to blow horns or beat drums; and masters were to have their Negro houses searched at frequent intervals for weapons, runaway slaves, and stolen goods. Runaways, when caught were to be imprisoned, advertised, and restored to their masters upon payment of captors fees. Trading with slaves was restricted for fear of encouraging theft. A Negro striking a white person, except in defense of his master's person, family, or goods, was criminally punishable though merely with lashes for a first offense; theft and vagrancy were capital crimes. There were numerous other minor statutes, but this act was thenceforward the basic law transported to the sea-isle state of South Carolina.

However, in actuality the South Carolina legislators made their slave code much harsher in its treatment of the slave's legal status in practice while the Barbadian code was harsh in theory. The slave's

position was less degraded under the daily application of the Barbadian code in the Barbados. Similar to Portuguese colonies, Barbados' system of slavery placed the Negro on the lowest economic level but he could still improve his status and eventually by manumitted. The Barbadian codes allowed the slave to aspire to three classes: slave, servant, even master. Moreover, the influence of the Roman Catholic Church strongly forbade maltreatment of slaves as unchristian. The outstanding example of the harshness of the South Carolina codes and how they changed the legal status of the slave can be seen in the abolishment of freehold status of the slave from the 1688 statute and the addition of the slave chattelhood to the South Carolina slave code.

The change from the slave's status as freehold property to chattel property decreased the protection of the slaves' life and welfare under the codes. As freehold property, the Negro enjoyed a higher legal status than he did as chattel. Freehold slavery implied that a master had a right to the slaves' services rather than to the slave himself. The slave as chattel property was the absolute personal possession of his master. Thus, the South Carolina Assembly drew upon the Barbadian Acts of 1688, retaining the wording not the meaning:

The South Carolina statute provided that slave would serve as payment of debts, shall be deemed and taken as all other goods and chattels and all negroes shall be accounted as freehold property in all other cases.

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This change permanently fixed the inferiority of the South Carolina slave population by his status as the personal property of the master class.

Several other factors induced the South Carolina legislature to increase the stringency of the Barbados slave codes when written into the South Carolina law books in 1712. Prior to 1712, South Carolina under Proprietor Sothell began slavery in the form of indentured servitude in 1668. This system of indenture by 1700 had produced more than 1,107 free blacks who had worked out their seven-year term of indenture. Out of fear of the growing free black population the slave codes were adopted to undermine their rights as free citizens. Upon the adoption of the South Carolina code (1712) indentured servitude for blacks was abolished and they were made slaves for life. The code states:

That all negroes, mulattoes, mustizoes, or Indians which at any time heretofore have been sold or now held or taken as, or hereafter have been sold, or now held, shall be brought and sold for slaves, are hereby declared slaves, and they, and their children are hereby made and declared slaves.¹

Thus, the slaveocracy adopted a harsher slave code to permanently fix the slave legally in the institution of slavery by the abolition of indenture.

Secondly, the growing proportion of slave population to white slaveholder in the South Carolina colony was another factor for increasing the severity of the slave code. In 1708, the slaves outnumbered white rice planters by a 20 to 1 ratio. By 1712, as the production of rice and other crops expanded, the slave population exploded to 39,000 compared to 20,000 whites. This motivated legislation to increase the

mature Barbadian code due to the growing overpopulation of slaves:

...the number of slaves increased so rapidly and their barbaric character is so pronounced that a more comprehensive policy for large numbers for blacks owned absolutely by whites became necessary....

Moreover, because of the vast numbers of slaves being imported into the South Carolina colony certain import duty taxes were made effective by the 1712 statute:

Whereas, the great importation of blacks to this Province will greatly endanger the present white population; ...that all negro slaves of any age or condition whatsoever imported or otherwise from any part of the world, shall pay such additional duties.

Thus, the slaveholders' fear of numbers of slaves induced the South Carolina legislators to increase the harshness of the slave codes for purposes of Negro police rather than for the slaves' benefit.

Therefore, in 1712, the South Carolina Assembly copied verbatim the preamble and other equally stringent clauses of the Barbadian Act of 1688, and added harsher provisions devised to police her large slave population. These laws came to be called the "black slave codes." Entitled, "An Act for the better ordering of Slaves in South Carolina," the statute title suggests that these laws were for the betterment of the condition of slaves. In actuality, the South Carolina code degraded the slaves' position as inferior and permanently fixed the master class' absolute power over him. A portion of the statute read:

Whereas, the plantations and estates of this Province

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1 Thomas Cooper and David J. McCord, eds., Statutes at Large of South Carolina (Columbia, 1836), VII, 352. Afterwards shall be cited as Statutes.

2 Ibid., p. 469.
cannot be well and sufficiently managed and brought into use without the labor and service of Negroes...such other constitutions, laws, and orders, should in this Province be made as may restrain the disorders, rapines, and inhumanity to which they are naturally prone and may also tend to the safety and security of the people of this Province....

However, in the cross-fertilization of the Barbadian code to the South Carolina code there were basic differences which increased the stringency of the basic statute of 1712. For example, the penalty for injuring or killing a white man was changed to death. Moreover, the courts for slave trials no longer needed a unanimous verdict to convict slaves. A requirement that all slaves be sufficiently clothed annually was also dropped from the 1712 slave code.

One of the worst changes of the South Carolina code for the slave was the inadequate protection afforded by the terms of the statute to the life and limb of the slave. The provision in regard to this stated:

...that if any slave, by punishment from the owner for running away or other offense should suffer in life and limb, no person should be liable to the law for the same; but if any one of willfulness, wantonness or bloody-mindedness should kill a slave upon conviction he should suffer three months' imprisonment and pay the sum of 50 to the owner; a servant killing a slave was to be whipped nine and thirty lashes and to serve the master of the slave four years; a person was not to be punished for killing a slave stealing in his house, if the slave refused to submit.

These provisions practically placed the life or death of the slave in the hands of the master. Moreover, the introduction of chattel slavery

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1 Statutes of South Carolina, VII, 352.
2 Statutes of South Carolina, VII, 342.
3 Statutes of South Carolina, VII, 343-347.
into the South Carolina slave codes proved the most rigorous deprivation of civil rights and the protection of slaves' life and limb.

From the outset, the South Carolina slave code fixed the slave's legal status as property or chattel with no criminal or civil rights protected by slave laws. The original legal document stated:

Nevertheless, the cardinal principle of slavery—that the slave is to be regarded as a thing—is an article of property—a chattel personal... In South Carolina it is expressed that slaves shall be deemed, sold, taken, reputed, and adjusted in law to be chattels personal in the hands of their owners, possessors, and executors.¹

The basic language of these statutes suggests that by rendering the slave as property, the law secured to the master absolute authority over him. Thus, the dominion of the master was as unlimited as that which one would accord in relation to the rights of brute animals. For example, the cases of McDowell vs. Lawless Monroe and Carrol et al vs. Fall, established slaves as "real" property or personal estate under the law.²

Many political histories have questioned this polemical legal status which the idea of the slave as personal or real property implied. Some South Carolina legislators justified the chattel principle by the claim that the slave was protected from wanton abuse if he was rendered incapable of performing certain human rights such as testifying in court. This justification becomes historically invalid upon examination of the degradation and immobility of the slave under chattelhood. The injustice and severity of the chattelhood statutes was proven by the slaveholders


themselves. Thomas Jefferson, in his letter to Governor Coles of Illinois, dated August 25, 1814, asserted that the slaveholder regarded his slave as property of the lowest type. Thomas Jefferson wrote:

...few minds have yet doubted that they (slaves) were even as legitimate subjects of property as their horses or cattle.\(^1\)

Thus, the slaveholders themselves illustrated the contradiction of holding a man as "human property" for any service of the master and, then as real estate which could not perform other "human" rights such as testify in court on his own behalf.

The South Carolina legislature defended and guaranteed the master's right to use slave chattel in every possible way. South Carolina proprietor, Sir George Carteret wrote:

There is no distinction in law between the rights of property in respect to slaves and rights in respect to slaves as property.\(^2\)

Moreover, state constitutions prevented slave manumission without the owner's written consent and money compensation. South Carolina enacted penalties for the theft of slave (property) and compensation for injuries incurred. South Carolina courts set up a different mode of trial for slaves. It consisted of a court of two justices and three freeholders instead of a jury.\(^3\) Moreover, with the death of the master

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slaves went under the states property laws of inheritance. For example, in the case of Millsaps vs. McLean,\(^1\) it was held that as a characteristic of the slaves' legal status as property they could be transferred by will, sale, or gift, or even be pledged in mortgage. The state courts allowed the executor of an estate to dispose of human chattels like other property (cows, wagons) in the most profitable way. Oftentimes, slave property had to be sold to debtors, and advertisements for this were not uncommon: One lot of a hundred sold for the benefit of the heirs, also a large number of healthy fine children, a house carpenter, blacksmith, and miller.\(^2\)

The South Carolina slave laws were not just abstractions left on the South Carolina law books; they were applied to every conceivable aspect of slave life on the plantation. Slaves, as the property of the master class had no rights that were protected; they could be bartered, deeded, pledged, seized, and auctioned as real estate; they were awarded as prizes in lotteries and used for wagering in gambling and races. Thus this chattelhood concept engendered in the South Carolina codes reduced the bondsmen to mere pawns having no rights that must be respected under the law.

The uses of slave chattel when validated by ownership were unlimited and the slave had virtually no protection from the almost absolute authority of his master. The use of property by the owner was limited

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\(^1\) South Carolina Statutes, VII, 500.

only by the nature of that property.\(^1\) Thus, the degree of protection to bondsmen under the slave code was only that given to personal property such as cattle. In the case of *Fable vs. Brown*,\(^2\) the court affirmed this principle:

...and that such reference is recognized by the court, in this case, as legitimate particularly with reference to a standard of property and in distinguishing these natural (slaves) persons as being chattels.\(^3\)

The slaveocracy did not accord the bondsmen even the equal protection shown to mere brute animals. Moreover, besides the unequal protection given to slave property in theory, the uses of this "peculiar" type of human property were geared to the availability of profits for the master class. American historian John C. Hurd wrote: ...the Negro was bought and sold and treated as an ordinary article of merchandise and traffic whenever a profit could be made by it.\(^4\) Thus, human chattel was systematically and deliberately used up and destroyed for the profit of the master and degradation of the slave. Legal historian William Goodell wrote:

As goods, therefore, they may be used while like other goods, they will perish with the using.\(^5\)

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It is out of the passion for gain that the use of slave property as defined by the codes can readily be seen in the unrequited slave's labor. The slaves' labor, used as a brute animal, presupposed a denial of his nature as a man. The bondsmen could not hire out his labor; his was a coerced labor without benefit of wages. Again, the legal relationship of master and slave, that of an owner to a chattel, became incompatible with the relationship of wage-laborer. This principle was stated in the South Carolina code of 1712: "A slave can make no contract, hence he cannot stipulate for wages." The dehumanizing effect of slave labor, regarding slaves as beasts of burden rather than allow him to reap the benefits of his own labor, placed him in a perpetual bondage. These slave codes prevented the slave from hiring out his own labor, therefore, prohibiting him from purchasing his freedom.

Another prominent use of "human" property provided in the codes was the use of female slaves as breeders of slaves. This principle, sanctioned by the need to make human chattel the source of wealth and profit, typified the case for the random inbreeding of human beings. In the case of South Carolina State vs. Nicholas the court held that the price of female "breeders" should be raised to twice that of male slaves and set no definite limit upon the number of offspring that a "breeder" could produce. Thus, the slavemongers set up specific prices and conditions for the availability of female slaves similar to those for the sale of "brood mares."

1 Cited in Appendix, Proposition XI.

2 Statutes of South Carolina, VIII, 401.
A remarkable but nonetheless common use of slave property was the farrago of diseased slaves sold to physicians as objects of experimentation. For example, in the case of Charleston vs. Cohen, two slaves who were "lent" to a prominent physician died due to experimentation of the same doctor. This case was affirmed in behalf of the master, but it clearly shows that defective slave property was used in this way and sold with high profits.

Therefore, the concept of chattelhood for the slave was the unique addition to the already mature Barbadian code that South Carolina adopted as the basis of her slave code in 1712. The introduction of the institution of chattel slavery permanently fixed the slave's position as an inferior one under the slave laws. In the main, the deeper implication of chattelhood or personal real estate was that of the unlimited power of the master to use up the slave labor force indiscriminately for profit. South Carolina saw the need to increase the harshness of the Barbados code for reasons of police control, and the chattelhood concept placed much greater restraint than the Barbadian freehold principle. Freehold, a feudal situation where the master had the right to slave service because the slave was bound to the plantation; chattelhood, inferred the slave as the master's personal property with the master holding absolute rights. Thus, in this context South Carolina became the harbinger of "peculiar" type of addition to the American slave code.

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1 Ibid., p. 346.

that could never have been beneficial to any slave, but only increased
the profits of the master class.

The South Carolina Assembly insisted upon an elaborate set of slave
codes to define the slaves' status as inferior before enacting methods
of Negro police. Threatened by a large free black population due to the
indenture system and a growing slave population the slaveocracy founded
the South Carolina slave code as the lubricant for the development of
one of the most stringent slave police mechanisms in American history.
CHAPTER II

CONTROL UNDER THE SLAVE CODES OF SOUTH CAROLINA

Almost from the very first the South Carolina slave population presented the problem of a police control that would meet the needs of the plantation community rather than the protection of the slave.

The Stono insurrection of 1739 roused the legislature into passing the more complete code of 1740 providing for Negro police and machinery of slave control. A commentary on the fear of rebellion and on the motive of sustaining the large slave population can be seen in South Carolina Governor Robert G. Hayne's statement in 1741:

A state of military preparation must be with us a state of perfect domestic security. A period of profound peace and consequent apathy may expose us to the danger of domestic insurrection.1

Thus, the supplementary clauses of the 1740 slave code added police laws and agents (e.g. patrol squads) to check the slaves' mobility. In the midst of rebellious activity and in order to combat unrest, the South Carolina legislature passed these rather vague laws which were amended by curfew and patrol laws. Even before the 1712 code, patrols, vigilante committees, and militia troops were legally sanctioned devices for Negro police.

Thus, the patrol system arose out of the need for keeping slaves from roving around the plantation. Among the earliest of the colonial

1 Statutes of South Carolina, VI, 401.
acts in 1686 was one that gave any person the right to apprehend, properly chastise and send home any slave who might be off his master's plantation without a ticket. The preamble of the act of 1704 stated the intended purpose to be:

To prevent such insurrections and mischief as from the great number of slaves we have reason to suspect may happen when the greater part of the inhabitants are drawn together.

These statutes defined the patrol system and elaborated on its purpose. The patrol, composed of free white men, served for a stated period of time, one, three, or six months. Their purpose was to search suspicious Negroes and whip those who were deemed to be dangerous. Counties were divided into "beats" or areas of patrol. Murder, burglarly, robbery, arson, and running away were capital crimes. For lighter offenses such as stealing chickens and hogs, slaves were branded with the letter "R" by the patrol. These patrols, like the slavemongers under the fugitive slave laws, apprehended Negroes who were out of place and returned them to their masters or committed them to jail. Every commander in his turn, upon receiving notice from his chief, was to cover the local "beat" on the night appointed, searching slave quarters, arresting any free Negroes or strange whites found where they had no proper authority to be.

Finally, in 1734 a regular patrol by act of the Provincial Assembly

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1 Ibid., II, 22.
2 Ibid., II, 252.
3 Statutes of South Carolina, II, 252.
4 Ibid., III, 395.
was organized, reciting in the preamble the reasons and needs as follows:

Whereas, former acts of the assembly passed in the province for regulating patrols have not answered the intention thereof and it being highly necessary to the well being of the province that the several patrols should be rendered as useful as possible in the keeping of all slaves in order.¹

This act formed the basis of all other patrol legislation in the slave codes. The enforcement of these patrol laws in the courts gave testimony to the wanton abuse given to the slave by the patrolmen. Moreover, the slave codes allowed the patrols a very large latitude to carry out their own punishments and ignore legal provisions. Thus, the courts sanctioned the wanton abuse of slaves by patrols. A Newberry district court stated in 1815:

Let the patrol always act in the spirit that should guide the discreet, sedate, intelligent, and humane owners of slaves and they will find the Judicial arm of government nerved to sustain them. Thus, guided, they may often find occasion—no doubt they will—to overlook a harmless violation.²

However, due to the excessive number of slave murders and beatings, the same court commenting in 1819 on the unauthorized practices of the patrol; held:

It is highly proper to protect these officers (patrols) when acting within the limits of their authority; but nothing is so offensive to the law, as to violate the principles of justice and humanity under the semblance of authority.

Thus, the dereliction of duty by patrolmen hampered the safety of the slave under the slave codes.

¹Ibid., III, 456.

²Cited in 5 Strabhart (Law), 21: State v. Boozer et al.
Oftentimes, the South Carolina rice planter was too fond of his liberties to perform the discipline that successful administration of patrol duty required. Slaveholders evaded their individual "watches" and many would often send whites to substitute in the performance of their "duties." A commentary on the disorganization of the patrol system can be noted in the patrol act of 1740: ¹

Many irregularities have been committed by former patrols arising chiefly from their drinking too much liquor before or during time of duty. However, although they were disorganized, the patrols felt they possessed a judicial license in the application of police laws which almost always erupted into violence.

A corrupted form of the patrol system was the vigilance committees which came into existence during the emergencies created by uprisings or rumors of them. At such a time, it was not unusual for the committee to disregard all caution and kill all Negroes they encountered. Committees like these frequently ended up engaging in nothing except a lynching party. Surprisingly, these transactions were often those of the most respected citizens in the community, perpetrated under the guise of maintaining social order. For example, Lillburn Lewis (nephew of Thomas Jefferson) owner of fifty slaves, whom he drove constantly and lashed severely; after one slave fled the patrol he chopped the slave into pieces upon his capture. ²

¹ Statutes of South Carolina, III, 473.
On a larger scale, the enactment of the 1740 slave code gave rise to the use of politico-military regiments known as "militia." Their policy was subjection of the slave by disbandment through extermination. That is, a bondsman found off the plantation without a written permit was often murdered on the spot. The militia executed a carefully planned program of fraud, violence, and intimidation. In the main, these rifle companies were merely the armed wing of the Democratic party, which protected the local interests of the planter class. They were deliberately organized into politico-military formation and trained in the use of force. The militia, an extension of the patrol system, committed deliberate acts of violence against bondsman with the sanction of local and state government. Fredrick Law Olmstead, commented on the size and scope of these bodies:

...There is nearly everywhere, (in the south) always prepared to act, an armed force, with a military organization, which is invested with more arbitrary and cruel power than any police in Europe.¹

Besides these fundamental agencies of police control, there were specific slave codes which rigidly controlled the slaves' movements and communications with others. A slave was not to be "at large" without a pass which he must show to any white man; if he forged a pass or free papers he was guilty of a felony. Charleston was the exception in the severity of its laws concerning slaves' hiring out their time. A gathering of five or more unattended slaves was an unlawful assembly, regardless of its purpose. Farms employing slaves were to be under the

supervision of resident whites. Slaves were not to beat drums, blow horns, or possess weapons. These laws were documented by the actual ruling in the South Carolina legislature:

The part of this bill restraining Negroes from walking abroad, as also from bearing any arms, carrying of clubs, staves, or other offensive weapons, or instruments, we are of the opinion is sufficiently provided for.¹ Moreover, by the 1813 code Negroes were even prohibited from swearing, smoking, or walking on certain streets; no Negro dances could be held without the consent of city wardens.

Violations of these codes were felonies which were tried in the slave courts. Few legal safeguards were afforded to the Negro slave who violated the slave codes within the framework of the slave court system. These courts were organized by the colonial act of 1690² and fuller provision made by the "Negro Law" of 1740. Any justice of the peace being informed of a slave crime was immediately to dispatch a constable to arrest the slave and he would then try the slave within three days for trial of the case according to this law.³ A quorum of a justice and two freeholders could convict slaves. The state slave codes did establish regular judicial procedures for the trial of slaves accused of public offenses.

In actuality, the South Carolina slave codes negated the legal


² Statutes of South Carolina, VII, 345.

³ Ibid., VII, 427.
personality of the slave, giving him a peculiar position in the courts. The jurisprudence of the court handled the chattel status in court cases as a dual position. The slave was recognized as both personal real estate and as a person. This juxaposition implied the property rights of the owner to unlimited time and labor; but it also recognized the slave as a person in regard to the defense of his master, i.e. to testify in courts. The court-exercised jurisdiction over slaves were of two kinds, those of inferior grade courts which dealt with slaves in personal suits as witnesses, and those of a superior court handled them under the ownership rights of their respective masters. In criminal enforcements for slave prosecution, slaves were considered as responsible persons and punishable under the applicable laws. This unequal status on the other hand gave the slaves no funds to pay bail fines, and conversely he had no liberties to be exercised even if out on bail. Moreover, as chattel he could make no contract or testify "against" his owner (master).

Thus, the courts had restricted all legal recognition of the slave as a citizen; he had no legal personality, e.g. rights. The killing or injury of slaves was punished by judicial action by the masters' claims for damages. In a few cases, the courts overrode the slave codes and punished the intentional murder of slaves outside of the loss of property charges. For example, in the case of Jones vs. Allen, (1814) the South Carolina Court of Appeals voided the statute that: "a simple assault and battery on a slave was not an indictable offense."¹ Jones had hired out his slave (Issac) to Allen, at which time he was murdered by his

overseer for no provocation. The court ruled against Allen, forced full compensation for the loss of property and levied a fine of $600 for manslaughter. But, generally there were sharp limits to the leniency of the courts in their interpretation of the "codes."

On the balance sheet, the evils of slave courts under the slave codes undermined the slave's welfare and civil rights. For example, in the slave courts in trials of capital offenses, the court as constituted did not even approximate jury trial or fair jury selection. There was no opportunity to challenge either the presiding magistrate or the freeholders sitting with him. There were no official court records kept at these trials and slaves were often tried more than once for the same offense. Moreover, slaves or free Negroes were convicted without the use of counsel or the presence of their masters. South Carolina historian H. M. Henry wrote:

\[\text{Capital offenses committed by slaves involving the nicest questions of law, are often tried by courts composed of persons ignorant of the law and left without counsel.}^1\]

One member of the slave court system, Judge O'Neal, criticized the irregular procedure of these courts:

\[\text{The courts before which slaves must now be tried, for crimes of every description, are liable to be so arranged as to deprive them of an impartial trial.}^2\]

However, some attempts were made to liberalize this system by an act

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2 Ibid., p. 70.
concerning Negroes passed in 1831.\(^1\) It gave the master, guardian, or agent the right of challenge for slaves being tried for a capital offense. It also prohibited the master's absence during a slave trial. Moreover, an act of 1832 required a unanimous verdict for the conviction of free Negroes in Charleston.\(^2\) By 1833, the right of the accused slave to appeal the decision of a slave court was recognized. In the main, the slave courts afforded the slave little protection from the injustices of the South Carolina codes regardless of the few revisions made in slave court procedure.

Besides the legal machinery of the slave courts, the extra-legal private control exercised by the master was often more stringent. The slave codes sought to achieve the perfect submission of slaves, to utilize their labor profitably, but each master devised a set of rules by which he governed. The techniques of control, geared to minimize the bondsmen's resistance to the slave code, impressed upon him his innate inferiority and attempted to develop a paralyzing fear of white men.

These rules were enforced consistently by the overseer since there were usually more than twenty slaves on the typical South Carolina river plantations and the planter was customarily an absentee landlord. The overseer, a free white, came from non-slaveholding and landless groups having no interest in the protection of the slaves' rights under slave codes.

The requirement of an overseer on the plantations was first

\(^1\) Statutes of South Carolina, VII, 467.

\(^2\) Statutes of South Carolina, VI, 457.
mentioned in the 1712 slave code.\textsuperscript{1} It provided a penalty of 40 shillings in the case of any person who should establish and maintain a plantation with six freed-men or slaves without one or more white persons to supervise. By 1740, a more complete law stated:

\begin{quote}
Whereas plantations settled with slaves without any white person thereon may be harbors for run aways and fugitive slaves.\textsuperscript{2}
\end{quote}

Thus, the slave codes recognized the overseer as the quasi-police officer on plantations, necessary for the control and management of slaves. Moreover, an act of 1800\textsuperscript{3} required the tax collector to have every slaveholder take an oath that either he lived on the plantation or had a white man for every ten slaves. The patrol law of 1819 provided that any slaveholder who did not live on his plantation seven months a year must have an overseer or be penalized fifty cents per slave.\textsuperscript{5}

The unlimited power of the overseer was written into the South Carolina statutes as follows: All the power of the owner over his slave is held and exercised also by overseers and agents.\textsuperscript{4} From the unlimited

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\textsuperscript{1} Statutes of South Carolina, VI, 460. \\
\textsuperscript{2} Ibid., VII, 403. \\
\textsuperscript{3} Ibid., VII, 440, sec. 5. \\
\textsuperscript{5} Statutes of South Carolina, VII, 230.
\end{flushleft}
power given to him the overseer did not have to use incentives in governing the slaves; he had a preference for physical force. Thus, the planter's demands on the overseer for superior work and crops from the slaves gave the overseer a mandate for excessive cruelty. This problem came up in the South Carolina courts, where masters sued overseers for injuring slave property; even, occasionally the state intervened to prosecute an overseer for killing or maiming a bondsman. Historian Herbert Aptheker wrote that a man named John R. Cooke was actually convicted in South Carolina of killing a slave under the most atrocious conditions and was sentenced to hang.¹

In the main, the overseer hated the slave codes which placed him on a constant alert for slave malfeasances. Often the overseer directed his special contempt at the Negro who was his "watch." Many overseers under the pressures of labor management and production drove the slaves to impress the plantation owner:

That the overseer often drives the slaves too hard in order to make a good showing or impression...the scarcity of even 'tolerable overseers' make it impossible to lay down strict rules for the welfare of the slaves.²

Fights grew out of attempts of many an overseer to punish workers because the slave force resented the delegation of authority between master, overseer, and driver. Thus, the dehumanizing effect of overseers on the slave could readily be seen:


Last and lowest, a feculum of beings called 'overseers,'--the most abject, degraded, unprincipled race,--always cap in hand to the dons who employ them, furnishing materials for the exercise of their pride, insolence, and spirit of domination.\(^1\)

The bestiality of the overseer, assisted by a black slave called a "driver," did irreparable damage to the slaves' daily life on the plantation. The Negro "drivers" were chosen from the slaves as intermediary between the laboring field slave and the overseer. The Negro "driver" did not often abuse his privileges of a house, clothes, and money, for he was chosen because of his faithful service. His position was defined in the codes:

Drivers are under overseers to maintain discipline and order on the place. They are to be responsible for the proper performance of tasks, for bringing out the people from the Negro houses, and generally for the immediate inspection of such things as the overseer superintends.\(^2\)

In addition to these agents of control, a workhouse system was produced for the correction of slaves breaking the police regulations of the codes. To this workhouse or guardhouse were sent slaves and free Negroes arrested by the patrols. Slaves were sent to the workhouses to do stonework or some other gainful labor. Moreover, for each correction whipping or putting on of irons, a fee of twenty-five cents was charged to the master. These workhouses were especially used by fearful masters who desired restive slaves "broken in." A South Carolina historian wrote:

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1 Ibid., p. 75.

Slaves were lodged in the workhouse at the pleasure of the owner, who became liable for the costs of the slave's arrest and detention.

In summary, it can be seen that the greatest bitterness that the control of the slave generated came from these mechanisms of control, i.e. patrols, courts, overseers. It was the bitterness against the entire elaborate system of repression: run by the use of spies (drivers), military police systems, workhouses, and a separate body of courts under a rigid legal code that lubricated this machinery of control. As the slave resisted these codes, the mechanism of control only grinded harder.
CHAPTER III

SLAVE RESISTANCE TO THE SOUTH CAROLINA SLAVE CODES

It has been generally held that the Negro slave was submissive under the enforcement and enactment of the stringent South Carolina slave codes.¹ The slaveocracy sought to convey the image of the docility and contentment of human chattel under the "protection" of the slave codes. The tendency to romanticize the appraisal of the slaves' reaction to his status was noted by a committee of the South Carolina Senate in 1795:

The animal predominating largely over the intellectual being, he has no aspiration for liberty, and would never dream of revolt, or of elevating his social status.²

Overstatements of slave inferiority such as this as criteria for submissiveness can readily be disproved by the acts of day-to-day resistance to the hierarchy of laws made for his repression, and by individual acts of insurrection by the Carolinian bondsmen.

Slave reaction by daily resistance to the hierarchy of laws made for his repression was manifold. The poisoning of the master class by slaves, a widespread device, almost always went undetected. Arsenic, ground glass, and dirt were used in cooking, since slaves could not


² Alice Baer, "Day to Day Resistance to Slavery," Journal of Negro History, XXVII (October, 1942), 301-315.
administer medicine to whites. As early as 1761, the Charleston Gazette remarked that the "Negroes have begun the hellish act of poisoning."\(^1\) South Carolina found it necessary to enact a law providing the death penalty, without benefit of clergy, for slaves guilty of attempting to poison white people. Thus, the slave codes stated:

...Only such negroes, mulattoes, and mestizoes whether free or bond who shall furnish, procure any poison to slave or white, shall hereby be declared felons and shall suffer death.\(^2\)

An intricate program of sabotage, developed by the slaves themselves, was utilized daily in the plantation structure. Slave labor purposely lagged, farming tools were destroyed, and work animals were purposely driven to certain death. Arson of crops, forests, and homes made the control agencies such as patrols afraid to leave their respective plantations. The losses incurred caused the dismissal of many overseers and drivers for negligence.

Self-mutilation and suicide were common methods of slave resistance. Under the slave codes, slave status was that of chattel or property; any damage to slaves represented a loss of property to the master class. Thus, slaves blinded themselves, cut off arms and legs, and broke bones to render themselves incapable of labor. Slave mothers murdered their offspring, slave children ate small amounts of glass or were often drowned by parents. In 1807, two boatloads of newly arrived Negroes in Charleston starved themselves to death.

\(^1\) Editorial, Charleston City Gazette, June 2, 1761, p. 11.

\(^2\) Statutes of South Carolina, VII, 424, sec. 2.
The greatest evidence of slave resistance was the number of slaves who ran away on a daily basis. From 1799-1820 the black slave population in South Carolina numbered about 156,406 out of the total slave population of 1,014,448 in the United States.\(^1\) Evidently, the large slave population made the control of slave runaways by the planters virtually impossible without increasing the stringency of the slave codes.

Slaves wrote passes, freedom papers, and permits long before the underground railroad was in existence. Thus, the South Carolina legislators took preventive measures:

> And whereas, having slaves taught to write, or suffering them to be employed in writing, may be penalized or forfeited one hundred pounds.\(^2\)

Moreover, the growing numbers of runaways necessitated the law that any white person finding more than seven slaves together without a white person could be lashed. By 1821, the South Carolina code read that:

> In South Carolina, if a free harbors, conceals, or entertains a runaway slave, he would be fined ten pounds a day and if unable to pay, is sold into slavery.\(^3\)

Therefore, these covert acts of resistance were in part the basis for a more rigid slave code. Another reason for a harsher code was numerous slave insurrections.

Organized active resistance to the South Carolina slave codes seems

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to have been imminent from the 1690 act which provided the death penalty for attempts to instigate insurrection. In that year various slave gangs were described as keeping their white inhabitants in fear. In 1720, slaves were burned alive at the implication of revolt near Charleston. The act of 1722 made it the duty of the justice of the peace to seize any horses kept solely by slaves since they afforded additional opportunity for the conducting of insurrectionary plots. By 1739, there had been three risings in the seaboard colony. The Cato conspiracy, the most successful, began at Stono near Charleston; slaves killed two guards in a warehouse, secured arms, and escaped to Florida.\footnote{Herbert Aptheker, \textit{American Negro Slave Revolts} (New York: International Press, 1963), p. 74.} In 1740, precautions against the threat of insurrection produced more rigid slave codes such as forbidding slaves to beat drums as as not to arouse slaves to revolt or carry guns.

By 1800 the law under which these Negro subversives were tried became a peculiar product; it was written to protect the rights of masters, not their chattels, from their fear of slave rebellion. Moreover, the Camden district attempt at insurrection in 1816 added to the fear and despair of the slaveholders. Their plan was to blow up an arsenal and set the town afire. These new code clauses, made final by the Denmark Vesey revolt of 1822, limited the amount of work required daily by slaves to fourteen hours and forbade the selling of liquor and the renting of lands to slaves. American historian Herbert Aptheker wrote:

South Carolina found it advisable in 1800 to enact a new and elaborate code for the government of slaves, free negroes, mulattoes, for the laws heretofore have been found
insufficient for keeping them in due subordination.\footnote{Ibid., p. 75.} 
Therefore, out of the fear of their restive slave population, the slave-o
ocracy increased the scope and meaning of their slave laws. Slave codes were passed covering every conceivable aspect of slave life. No longer were slaves permitted even religious worship unsupervised:

No person of color whether free or slave shall be allowed to preach to exhort or join in any religious exercise, with any person of colour either free or slave without the presence of a discreet white.\footnote{Statutes of South Carolina, VIII, 300.}

Placed in its proper historical perspective, the numerous outbreaks of slave revolts give testimony that the slave codes were not beneficial to the slave community. Moreover, as the slave insurrections increased, the stringency and number of the laws concerning Negro police increased. However, some ameliorative measures were taken when these acts did not calm slave unrest, such as colonization schemes to remove the insurgents. The fact that the state of South Carolina had 15.5% of all the 250 slave revolts in the United States\footnote{Herbert Aptheker, American Negro Slave Revolts (New York: International Press, 1953), p. 71.} and 33 of these were before 1822 gives testimony to the militant resistance the slaves attempted by insurrection against the slave codes.

The Denmark Vesey revolt (1822) in Charleston, remains in American historiography as a successful plea against the degradation of the South Carolina slave codes. Although there were numerous revolts in South
Carolina as a result of the codes, the Vesey revolt remains the foremost example of active resistance by South Carolina bondsmen and freedmen.

Historian John Lofton wrote:

By December of 1821, Vesey was beginning to talk of direct action. His expression of dissatisfaction began to hint at an objective. Negroes in Charleston, he said, were living in such abominable life and their situation so bad that he did not know how they could endure it.¹

This act of active resistance proved the discontent within the slave community and its ability to organize types of effective resistance by slaves and freedmen. Denmark Vesey, a free Negro seaman, along with Gullah Jack, Monday Gell, and Peter Poyas planned to seize the shipping port, burn the town, and then sail to the West Indies. Although the plot was revealed by a slave informer, thirty-four whites and thirty-five blacks died in this battle for full freedom.

Slave revolts such as the Denmark Vesey revolt were not just violent actions by fanatical upstarts. Vesey's revolt had been the result of seven months' preparation to take Charleston.² Moreover, there were definite plans for the allocation of tasks and plans for retreat. The destruction of property was the secondary phenomenon and freedom the primary goal. The fact that these slave revolts were systematic engendered greater fear into stricter codes. Thus South Carolina passed laws restricting free Negro seamen in her ports after the Vesey revolt (1822). This slave code reached the height of reactionary legislation against slave revolts. The act required:

...that free Negro employees on any vessel which might come into a South Carolina port be imprisoned until the vessel should be ready to depart; that the captain of the vessel pay the expenses of their "detention" and take them away from the state and upon the captain's failure to do this, he was subject to fine and imprisonment and the Negroes were to be deemed 'absolute slaves' and sold.1

Moreover, this act of 1822 provided the death penalty for participating in insurrectionary activities whether successful or not.

Nothing gives better testimony to the resistance to slavery by the slaves than the commentaries of the slaveholders and slaves themselves. These lines disprove the premise that the slave was content under the South Carolina codes:

...other observers on the Negroes of the Southern frontier in this period have noted that there is not the slightest hint of 'docility...submissiveness...contentment.' The assumption is always that the slave population is made up of 'intestine' black enemies, chaffing under their 'oppressive yoke,' 'a hardy, fierce, and strong race,' who constantly keep the province 'in great fear' lest some 'wicked barbarous plot of their should put 'all in blood.'2

Another commentary was that of the former slave, David Walker:

Are we MEN! ! ! I ask you, O my brethren! Are we MEN? Did our Creator make us to be slaves to dust and ashes like ourselves? Are they not dying worms as well as we? Have we any other Master but Jesus Christ alone? Is he not their Master as well as ours? What right then, have we to obey and call any other master, but himself? How we could be so submissive to a gang of men, whom we cannot tell whether they are as good as ourselves or not, I never could conceive.3

1 Statutes of South Carolina, VII, 461.


Thus, there were Negroes whose souls never bowed to the master, although their bodies were in bondage under the slave code system and slavery. In the main, the slave codes had effectively degraded the slave's position but his strength of character did not let him lose hope of freedom from the oppressive institution of slavery. This passionate plea for freedom typifies this point:

Sir, you may place the slave where you please—you may dry up, to your utter most the fountains of his feelings, the springs of his thought...you may close upon his mind every avenue of knowledge and cloud it over with artificial night, you may yoke him to your labors as the ox, which liveth only to work and worketh only to live—debase and crush him as a rational being—and the idea that he was born to be free will still survive.¹

Therefore, the Negro slave was not submissive under the enforcement and enactment of the stringent South Carolina slave codes. The acts of individual covert resistance and mass insurrection caused more stringent legislation to be formulated, but they were not sufficient to allay the terror that became the daily reality in the white plantation community. The elaborate machinery of control only increased the brutality not the effective maintenance of control itself, and prompted the slave to seek full freedom.

¹Ibid., p. 89.
On the balance sheet, the South Carolina slave codes (1688-1822) remain the unique contribution to the American slave code. Adopted from the already mature Barbadian slave codes and changed to South Carolina's unique set of circumstances, the product had the total effect of hampering the slaves' welfare and fixing him in a degraded position. Founded in the midst of a democratic nation, the South Carolina slave codes flourished under the guise of law and order, when they only sanctioned in law those racial adjustments and customs already operative.

Fundamentally, the South Carolina slave codes had two basic weaknesses which eventually enabled the slave to attain freedom. The slaveocracy tended to disregard the slave code where it restrained their own prerogatives. This developed a loosely knit body of laws which depended on locale and circumstance. Masters allowed slaves to "hire out" their time whether legally permitted or not; they sent them on long errands outside the plantation with no permits; gave them guns, encouraged private assemblies, and taught many to read and write. The master class valued its leisure time too much and instead, trained slaves to do his chores. This negligence on the part of the master class gave the slave the taste of freedom he needed.

Secondly, the sporadic increase in the slave code legislation after insurrection and revolt greatly weakened the effectiveness of the codes. This tendency to increase the harshness of a particular law caused an
uniformed white community as to what the law really did say and gave sanction to its abuse. Moreover, this policy acted as a catalyst to individual slave revolts and resistance. The toll of human lives taken through the enforcement of South Carolina codes illustrates that slave code legislation did little to actually quell slave discontent under the brutal institution of American Slavery.

South Carolina remains significant as a symbol of the severity and inequality engendered towards the slave under the slave codes; and, ironically, South Carolina was the state having the largest number of militant slave insurrections, revolts, and fugitives for freedom.
APPENDIX
COROLLARIES FROM THE ACTS OF SOUTH CAROLINA*
1792-1867

Prop. I  The master may determine the kind, and degree, and time of labour, to which the slave shall be subjected.

Prop. II The master may supply the slave with such food and clothing only, both as to quantity and quality, as he may think proper or find convenient.

Prop. III The master may, at his discretion, inflict any punishment upon the person of his slave.

Prop. IV The power of the master over his slave may be exercised not by himself only in person, but by anyone whom he may depute as his agent.

Prop. V Slaves have no legal rights of property in things, real or personal; but whatever they may acquire belongs, in point of law, to their masters.

Prop. VI The slave, being a personal chattel, is at all times liable to be sold absolutely, or mortgaged or leased, at the will of his master.

Prop. VII He may also be sold by process of law for the satisfaction of the debts of a living of the debts and bequests of deceased master, at the suit of creditors legatees.

Prop. VIII A slave cannot be a party before a judicial tribunal, in any species of action against his master, no matter how atrocious may have been the injury received from him.

Prop. IX Slaves cannot redeem themselves, nor obtain a change of masters, though cruel treatment may have rendered such change necessary for their personal safety.

Prop. X Slaves being objects of property, if injured by third persons, their owners may bring suit, and recover damages, for the injury.

Prop. XI Slaves can make no contract.

Prop. XII Slavery is hereditary and perpetual.

*Taken from, George M. Stroud, A Sketch or Laws Relating to Slavery (Philadelphia: Johnson & Co., 1858), p. 490.
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