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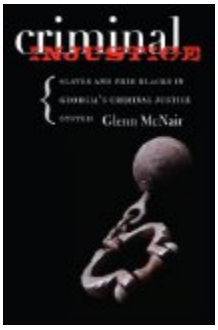

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Criminal Justice and Slavery in Georgia

Glenn McNair's study of Georgia's capital criminal justice system in the colonial and antebellum periods is a welcome addition to a growing number of Southern state studies that include Christopher Waldrep and Donald Nieman's edited collection, James Denham's study of antebellum Florida, Philip Schwarz's work on colonial and antebellum Virginia, and Harriet Frazier's wide-ranging analysis of slave crime in Missouri.[1] Georgia's history of crime and punishment in the nineteenth century has been the subject of several excellent studies. Edward Ayers's examination of Greene and Whitfield Counties to evaluate the similarities and differences between plantation and upcountry societies formed a key part of his seminal study.[2] Alex Lichtenstein's work on convict leasing and the emergence of the chain gang and the ways in which punishment was embedded in the state's political economy and Martha Myers's exploration of the shift from corporal punishments to incarceration focus on the New South and the early twentieth century.[3] Consequently, McNair's study of the period 1733-1865 makes an important contribution to knowledge and understanding of these earlier decades.

Using the inferior and superior court minute books, appellate reports and decisions, and other legal sources, McNair analyzes 417 capital cases between 1755 and 1865 to ascertain the meaning and operation of Georgia's criminal justice system in the colonial and antebellum decades for both African American and white victims and offenders. He seeks to understand how all components of this colony/state's criminal justice system operated together and consequently explores the informal plantation justice system alongside the evolving formal system. Thus, (and as in other slave colonies/states) a dual system of punishment operated in Georgia throughout the colonial and antebellum periods. Within the boundaries of their farms and plantations, slave owners and masters presided over all crime and punishment matters and dispensed justice as they saw fit. The slave patrols operated as a police arm to this system of summary and often arbitrary justice. The formal legal system operated outside or away from these farms and plantations, and discussion of this system takes priority in this study, largely because of the availability of sources and the methodology, particularly the statistical analyses. In both systems, white males dominated the administration of "justice."

The organization of the six chapters, particularly chapters 3-6, follows the different stages of the formal criminal justice process, from the commission of crime(s) through arrest, prosecution, conviction, and punishment. The first chapter charts the settlement and early development of Georgia, intended as an egalitarian society where economic prosperity would grow from the religious values and hard work of white colonists rather than a system of racial slavery which was deemed to breed white indolence and avarice. McNair charts the rising discontents over the ban on slavery, the expanding illegal slavehold-

ing, and finally the legalization of slavery within twenty years of the colony's founding. He argues that the battles over the establishment of racial slavery in Georgia had a profound impact on the development of the system of justice and on the treatment of black and white defendants. A "high level of autonomy" and continued "suspicion of, and even disrespect for, the rule of law" (p. 33) among slaveholders defined their treatment of black miscreants and lawbreakers and the evaluation of their transgressions and offenses. Given that Georgia's laws were racially constructed, some evaluation of how the categories of "white," "slave," "Negro" and/or "free Negro" were legally defined and redefined would be useful here, especially as measurements based on racial mixing or fractions of "Negro" blood would change over time.[4]

Chapter 2 examines the development of slave law, with its many inconsistencies (such as the prohibition on slaves bearing arms and the authorization of their recruitment and arming when called for militia service), and the colony's emerging legal culture. In all chapters, McNair is able to summarize, evaluate and relate these often complex rulings and their archaic language in clear and accessible language and form. The 1755 code which included the definition and list of capital crimes was a watershed as it encompassed the racial prejudices and misconceptions of the white slaveholding society: "From that moment forward, the law gave precedence to slavery and to white supremacy over due process and justice for blacks" (p. 40). Thus, the law served the needs of the slaveholders first and foremost. Nevertheless, to what extent were these laws shaped by the agency or resistance of slaves? White Georgians were clearly frightened by the Stono Rebellion but there must have been other, more localized interracial and intraracial conflicts that impacted on the ways in which the laws were constructed and the shape of the legal culture. McNair does address this in places, for example, in the 1765 anti-poisoning provisions, but why the 1770 capital amendment for rape? Does this reflect changing gender relations within the colony perhaps as a result of rising slave numbers and the particular demographics of the black and white populations? Were there particular anxieties over black and lower-class white relations, perhaps in relation to a tiny but expanding free black population?

While the 1755 code and the 1770 revised code were core components of Georgia's legal system through the Civil War, a "modern" penal code was adopted in 1816 in the context of changing ideas about the origins of crime, the purposes of punishment, and appropriate methods of punishment, that were permeating the Atlantic world. Yet, local social, economic, and political conditions guided the actions of Georgian justices of the peace, judges, and Supreme Court justices; local conditions trumped international discourse. Reform of the criminal law for whites was the priority in Georgia, but the penal code which combined common and statute law affected slaves and free blacks also. New definitions of burglary and arson and a reduction in the number of capital felonies were included but so were racial disparities. For example, interpersonal violence offenses with white victims drew the most severe punishments. It is telling but not surprising that Georgia juries convicted every black male defendant charged with rape between 1812 and 1849, and every black male convicted of rape between 1755 and 1865 was executed (p. 128).

Georgia's criminal justice system had no legitimacy for slaves and free blacks but they were still subject to it. Chapter 3 examines the types and numbers of offenses by race and sex and numbers of assailants. Nearly 70 percent of cases before the courts c. 1755-1865 involved crimes against persons (murder, rape, poisoning, etc.); interpersonal violence by blacks was of greater concern to white Georgians than property crime. (Ayers found that generally non-capital and usually white property offenders were treated more harshly than those accused of violent interpersonal offenses).[5] While white Georgians were generally paranoid about slave violence and insurrection, violent assaults in the home, on the plantation or farm, and among family or kin were much more prevalent than stranger or public violence. McNair's analysis of "simple" and "effective" conviction rates underlines that slave men were "the group most likely to be convicted" of interpersonal violence offenses between 1755 and 1865. The odds of conviction were even for African Americans charged with capital crimes, but stacked against black defendants once their case went to trial as 75 percent were convicted (p. 114).

As owners/masters retained control over the informal plantation justice system, an increasingly structured and elaborate formal system was emerging, particularly in the antebellum years. McNair charts the transfer of jurisdiction for the trial of capital offenses from justices of the peace to the inferior courts between 1812 and 1848 and then to the superior courts from 1850. This gave slaves additional privileges, including the right to trial by jury and the requirement that any pronouncement of guilt be unanimous, as well as privileges over testimony and in the evaluation of indictments. By the beginning of the Civil War, black defendants in Georgia had the same trial rights as whites, but the ways in which they

encountered the laws, policing, the courts were different and unequal, and their punishments were usually more severe and more public.

The criminal justice system continued to operate in favor of white slaveholding interests (particularly as many judges were slaveholders themselves), and seemingly with the tacit approval of the white nonslaveholding majority. Review of several cases involving slave defendants in chapter 4 highlights how peripheral black defendants were to their own trials as masters took all the key decisions about lawyers, presenting testimony, challenging jurors, and so on. Free blacks fared little better. Masters also held the right to appeal for their slaves. Yet, recent historiography has accorded enslaved and free black persons more agency in shaping events inside and outside the courtroom. Walter Johnson has suggested "that the law of slavery was as much the product of conjuntural pragmatism as it was of considered philosophy or concerted transformation; that the master languages of slavery were continually used by lawyers and litigants to contest its practice; that the social relations between and among slaveholders and nonslaveholders were embodied in and undermined by slaves; that slaves actively shaped the courtroom contests–contests that gave slavery its legal shape–which resulted from their agency and resistance; that slaves were able through everyday resistance to turn race against class–whiteness against slavery–in Southern courtrooms; and that rather than inconsistency or contradiction, the most prominent feature of the law of slavery was complete confusion."[6]

McNair's study seems to confirm findings elsewhere that Southern judges, particularly supreme or high court justices, were concerned with legal formalism and respect for the rule of law. Nevertheless, it highlights also that this did not translate into undue leniency or black privilege, as Georgia's appellate process spared only 6 of 224 black convicts from execution (p. 140). McNair notes also that most superior court judges and all the post-1845 Supreme Court justices were slaveholders. At the same time, Southern courtrooms served as important battle grounds for local contests of law, race, and gender, where racial and social orders could be subverted by insubordinate whites, slaves, and free blacks. In some cases subversion was through interracial collusion (or coercion of slaves by masters?) as in the 1853 murder of Edna McMichael, quite possibly as a result of a conspiracy between her husband and his male slaves, but which resulted in the hanging of an eighteen-year-old female slave, Ailey. The 1859 attempted poisoning of her master and his family by Sarah, with the help of her white male lover, raises intriguing questions as to whether the attempted poisoning by itself was enough to warrant Sarah's prosecution and sentence, or whether interracial sexual relations between this female slave and a white male who did not own her was the stronger indicator of guilt.

Generally, the chapter organization and the efforts to balance chronology with thematic issues and discussions work reasonably well until chapters 5 and 6 when some repetition and inconsistencies creep in. For example, the final chapter on "Punishment" begins with evaluation of the detailed statistical analysis but then awkwardly returns to a rather pedestrian discussion of colonial punishments and the "birth of the prison" in Georgia, which probably would have been more useful in an earlier chapter.

The final chapter (chapter 6) presents and explains the statistical results for prosecution and conviction rates, distribution and severity of punishments including the increase in non-capital punishments and the decline in execution rates, as well as victim-offender relations linked to age, sex, status, and race, to highlight the many racial, class and gender discrepancies in Georgia's criminal justice system. McNair observes: "What was required to accomplish the masters' goal was a pattern of punishment that balanced severity with a concern for slaves' lives. Georgians achieved this balance by hanging approximately half of the slave convicts and subjecting the remaining half to combination punishments and flogging" (p. 153). A section on geographical differences and similarities would have been useful here, particularly as the appendix lists the 417 defendants and their county of conviction/execution. For example, there are thirteen cases listed for Houston County between 1849 and1863, one for Coweta in 1858, and twenty-four for Bibb between 1851 and 1865. An explanation as to the nature of plantation slavery and the number of residents and slaves when the county was created would be useful for both academic and general readers. Nevertheless, this is an accomplished study that should prove its value to various fields, including the history of Georgia, Southern crime, punishment and criminal justice, and the wider scholarship on slavery.

Notes

1]. Christopher Waldrep and Donald G. Nieman, eds., *Local Matters: Race, Crime, and Justice in the Nineteenth-Century South* (Athens: University of Georgia Press, 2001); James M. Denham, "*A Rogue's Paradise": Crime and Punishment in Antebellum Florida, 1821-1861* (Tuscaloosa:

University of Alabama Press, 1997); Philip Schwarz, *Slave Laws in Virginia* (Athens: University of Georgia Press, 1996); and Harriet C. Frazier, *Slavery and Crime in Missouri* (Jefferson, NC: McFarland & Company, Inc., 2001).

2]. Edward L. Ayers, *Crime and Punishment in the 19th-Century American South* (Oxford: Oxford University Press, 1984).

3]. Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (London: Verso, 1996); and Martha A. Myers, *Race, Labor, and Punishment in the New South* (Columbus: Ohio State University Press, 1998).

4]. One recent work which illustrates how black and lower-class white defendants and witnesses were able to use these often confusing definitions to subvert the criminal justice system is James M. Campbell, *Slavery on Trial: Race, Class, and Criminal Justice in Antebellum Richmond, Virginia* (Gainesville: University Press of Florida, 2007), especially chapter 5 on free African Americans, 146-185.

5. Ayers, *Vengeance and Justice*, 111-112.

6. Walter Johnson, "Inconsistency, Contradiction, and Complete Confusion: The Everyday Life of the Law of Slavery," *Law and Social Inquiry* 22/2 (1997): 405-433; 409.