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**Taking Former Masters to Court: Civil Cases Between Former Masters and Slaves in the
US South, 1865-1899**

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Abstract

This essay analyses the trial records of civil cases between former slaves and their former slaveholders between 1865 and 1899 to consider the different, often competing, ways in which these parties portrayed the antebellum and postbellum worlds. In courtrooms around the post-war South, former slaves and former masters wove diverging narratives about slavery, capitalism and labor, family and authority, and sexual violence. Litigants sought to leverage these tales and their interlinked histories to win legal disputes against each other, while also working to advance their own visions of the post-war world.

In 1863, at the height of the U.S. Civil War, Georgia slaveowner Walter Towner fled his county. Before leaving, he later recalled, he made a deal with his slave Bristow Bugg for the elderly black man to keep intruders off the land, “keep the place in good repair,” and pay Towner’s taxes. At the end of the war, the former slaveholder returned. However, according to Towner’s later civil suit, he found that Bugg had not paid the taxes. Worse still, the former slave now claimed 158 acres of the land as his own.

To regain the property, in 1869 Towner filed an ejectment suit against his former slave in the Richmond Superior Court. Yet in the courtroom, the freed man told a version of events that radically re-envisioned their interactions before and after the Civil War. According to Bugg, before the war he had provided much of the money for Towner to buy him and in time had earned the funds to pay off his value completely. Bugg testified that he then had Towner buy the property in question with Bugg’s money. While Towner maintained the title of the property, Bugg – who was still legally enslaved – had paid for it and lived on it as if it were his own land. He held onto it after the Civil War, then, because he had purchased it himself.¹

The court was left to consider two narratives: Towner’s story that Bugg had been a disloyal slave who had failed to look after his master’s land and Bugg’s account of a hardworking man who earned property while a slave. The first narrative seems to have won out in the lower court as the trial ended with a decision in favor of the former master. Bugg persevered, and appealed to Georgia’s highest court. In the end, the Georgia Supreme Court ruled in Bugg’s favor, stating that because Towner engaged in illegal transactions with his former slave before the war, the state “will not aid plaintiff to recover the possession of the land from the defendant.”² Clearly, the justices believed at least part of Bugg’s narrative. As a result, Bristow Bugg won legal recognition of his ownership of 158 acres of land.

In the wake of the Civil War, some former slaves and slaveholders separated forever. Others remained in the same localities, where they challenged each other over power, labor, freedom, property, and family. At times, these contests entered southern courtrooms. In a study of appellate civil cases between black and white litigants across eight southern states, black litigants were more likely to litigate against their former masters or their former masters' heirs from 1865 to 1899 than they were to litigate against any other whites. Indeed, during Reconstruction, 67 percent of these appellate civil cases between black and white litigants took place between former masters and their former slaves or the heirs or executors of those parties. These contests continued decades after Reconstruction ended as well. During the 22 years after Reconstruction (1878-1899), 35 percent of such cases took place between former slaves and their former masters or their heirs and executors. In total, the study found 108 cases between former slaves and their former masters and their heirs or executors between 1865 and 1899.³ Sixty percent of these cases between former slaves and slaveholders involved at least one or more black female litigant.⁴

These civil cases between former slaves and masters highlight the different, often competing, ways in which these parties portrayed the antebellum and postbellum worlds. In courtrooms throughout the post-war South, former slaves and former masters wove diverging narratives about slavery, capitalism and labor, family and authority, and sexual violence.⁵ This essay examines these clashing accounts of life before and after the Civil War and how litigants sought to leverage these tales and their interlinked histories to win legal disputes against each other. These courtroom portrayals at times also sought to advance former slaves' and slaveholders' own visions of the world.

The years of forced, unpaid labor and violence that the litigants shared and the emancipation that followed were critical forces in shaping these narratives. Invariably, litigants' intertwined antebellum histories colored their post-war contentions in the courtroom. Some former slaves had served as the nursemaids of former masters, some whites had perpetrated repeated acts of sexual violence against black women, and still other former slaves and former masters had engaged in business ventures together. These experiences still played critical roles in their lives and interactions even decades after emancipation, and thus entered their testimony as well. The continuing links between some former slaves and former masters after emancipation affected courtroom strategies, too. On occasion, both sides used their intertwined pasts and continued ties to enhance their own courtroom narratives and gain the upper hand. In other instances, former slaves and masters found these connections to be a weapon that could be used against them. Additionally, emancipation changed the stories that former slaves and slaveholders told about their world. White southerners who had emphasized ideas of paternalism now argued that disabled former slaves should be evicted if they did not pay the necessary rent. In contrast, black fathers and mothers who had no legal claim to their own children before emancipation asserted their legal rights to their sons and daughters in southern courts.

As former slaves and masters presented competing stories in southern courtrooms, other factors influenced their narratives as well. White privilege was a key resource for former masters. Because of their categorization as white and the many barriers that enslaved people had faced, former masters generally had significantly more experience and knowledge of the law as well as more power in their communities than the black men and women they litigated cases against.⁶ Yet both former slaves as well as slaveholders could use legal knowledge as well as their understanding of southern race relations to strengthen the accounts they told the court.

While levels of legal understanding were unevenly balanced and varied across both groups, some former slaves entered courtrooms with at least a patchy knowledge of the law.⁷ Moreover, even black and white litigants with very little knowledge of the law often understood how to negotiate the intricacies of southern race relations.⁸

These narratives constructed in post-war civil cases provide a new lens with which to examine the aftermath of slavery, and give new insight into the lives and minds of former slaves and their former masters. Previously, to analyze the post-war South scholars have examined sources ranging from Freedmen's Bureau and U.S. Army records, pension and warranty claims, government reports, Works Progress Administration interviews, census and property records, newspapers, local court cases, and letters and diaries. These narratives constructed in post-war civil cases provide another less explored window into the evolving postbellum relationships between former slaves and their former masters.⁹ Moreover, by their very nature, court cases offer dueling perspectives and highlight conflict in people's interactions. As a result, civil cases help reveal the different views and flashpoints in the relations between former slaves and former masters and how they negotiated them. Because of the high proportion of black female litigants in these cases, these suits also provide insight into the experiences and narratives of black women after emancipation, including how they negotiated the effects of antebellum experiences of sexual violence in the post-war South. Finally, through stories that move backwards and forwards in time and participants that knew each other both before and after the Civil War, these cases connect two periods of US history – the antebellum and postbellum eras – that have often been treated separately by historians.¹⁰

Images of Slavery in the Courtroom

While these court cases took place after emancipation, what had occurred in the antebellum South remained a battleground in the courtroom. At least nine cases during Reconstruction and two cases between 1878 and 1899 involved disagreements between former slaves and masters that had originated before or during the Civil War, and other disagreements that began after the war often had pre-war roots.¹¹ For both former slaves and former slaveholders, the narratives they told about the antebellum South were influenced by the continuing weight of slavery in their lives as well as what they desired in the present. Most immediately, both sides sought to win specific civil suits against each other. More broadly, during Reconstruction and the succeeding years, black southerners cared deeply about gaining personal and economic independence while white southerners generally wanted to control African American labor and to maintain as many elements of the system of slavery as possible.¹²

To win suits, former slaves sometimes worked with their lawyers to tell the stories about slavery that whites wanted to hear. In one 1881 Kentucky case, the black litigants' petition reads: "During the life time of said Ezekiel, your Orators, his slaves as aforesaid, were always humble and obedient to their master and used their earnest endeavor to advance his interests and to do his will." Such language worked to support the black litigants' claim to a bequest in their former mistress's will by telling a version of the past that whites were eager to have reinforced.¹³

In other cases, though, black litigants gave accounts of slavery that refashioned and contradicted the stories that whites told each other. Certain narratives that black litigants shared portrayed slaves as hardworking entrepreneurs and businesspeople who engaged in widespread economic dealings.¹⁴ A blacksmith named Bedford Nelson brought a case against his former mistress, arguing that she owed him for work that he had done as a slave during the Civil War. He portrayed his economic interactions with his former mistress during the war as a business

partnership, stating in his deposition: “In 1861 when he and Mrs Nelson entered into partnership it was understanding that Mrs Nelson was to furnish the [blacksmith] shop and tools and the house that he himself lived in, that he was to do the work and the profits after paying the expenses were to be equally divided between them.” He also emphasized his own ability to provide for his family during this time, noting that he “supported his own family out of his own resources ... he kept a bakery and sold cakes on public days and placed cakes in several groceries for sale.” In other post-war cases across the South, black litigants testified about extensive earnings they had compiled as slaves. Bristow Bugg testified that he “paid \$75 in gold” to his former master while Abner Lattimore told the court about earning over \$1000 in livestock trading and money lending as a slave.¹⁵ Such testimony strengthened the monetary claims of individual black litigants to funds they had earned during slavery. However, in the years after Reconstruction, the abilities of African Americans to work for themselves remained heavily debated. Whites frequently used claims about their former slaves’ inability to work independently to justify coercive labor arrangements. As a result, black litigants’ courtroom narratives about the economic abilities of slaves also spoke to larger arguments that would determine the economic independence of black southerners.

Indeed, at times such cases forced white southerners to admit the economic prowess of former slaves. Bedford Nelson’s former mistress supported some of his claims of economic ability, admitting to the court in her lawyer’s response that the free man was “shrewd and sharp and very watchful of his own interests.” The legal document spoke, too, about responsibilities he had as a slave that went far beyond typical depictions of slave labor, stating that “He attended to the shop, received the cash and made reports of cash collections and of work done.” During the case’s trial, several other white community members testified about this business partnership as

well.¹⁶ Such publicly spoken versions of the past undermined whites' claims that they needed to control black labor because African Americans were incapable of working for themselves.

White southerners also reframed the antebellum past in post-war courtrooms. One theme throughout their testimony was their kindness and liberality to slaves. A document submitted by the lawyer of Bedford Nelson's former mistress described "the kind feelings of his master who gave him half his earnings in advance of his freedom." Similarly, the brief submitted on behalf of a former mistress in an 1884 Kentucky case depicted the litigant's husband John Helm as "an indulgent master of large estate and great liberality." According to the legal document, Helm obtained a legislative act to free his former slave and nurse maid, Hester Rogers. Then, when Rogers' husband died, the former mistress stated that she and her husband had taken Rogers back at the elderly black woman's request "but she did just as she pleased, we doing nothing with her or controlling her except to clothe her and feed her." In some instances, white southerners also described the positive relations that they saw existing between themselves and their former slaves under slavery. Ann Nelson stated in her deposition that as a slave Bedford Nelson "was always obedient and kind to me and never mistreated me."¹⁷

This rewriting of the past served white southerners' post-war purposes. Statements about their antebellum interactions with former slaves provided fuel for contrasts with their interactions with African Americans in the present. According to the response of Ann Nelson's lawyer, despite her antebellum partnership with Bedford Nelson, after the war, the former slave had become a "spoilt negro" who was "undertaking now that defendant is Seventy years of age to embitter her old age with useless + fruitless litigation." The brief in Mrs. Helm's case similarly described her former slave Hester Roger's suit for funds promised to her as a slave as ungrateful and baseless, stating that when her husband "had calculated it up," he had "found he had

[already] over paid her.”¹⁸ In these white southerners’ narratives, emancipation had detrimental effects on themselves and on former slaves. Such portrayals highlighted the benefits of the system of slavery that white southerners hoped to replicate as much as possible.

Portrayals of Post-war Economic Interactions

Just as former slaves and former masters battled over what their economic interactions had looked like during slavery, southern courtrooms became another front to contest their ideas about the post-war economic world. A quarter of the appellate civil cases between white and black southerners from 1865 to 1899 show African Americans litigating against whites over contracts, transactions, and property disputes unrelated to wills. Many of these cases (42 percent) took place between black and white southerners who had been connected by slavery or their heirs or executors.¹⁹ Unsurprisingly, the narratives they presented about economic matters in slavery’s aftermath diverged wildly. Courtroom participants’ testimony reflected the ongoing battle over African Americans’ access to land and what southern labor arrangements would look like.²⁰ At the same time, former slaves and former masters crafted their portrayals of their postwar economic transactions to push for specific legal outcomes and to support their economic visions for the post-war world.

Often, former slaves claimed that contracts and transactions between themselves and their former masters should be fair and equitable. Primus Cooper’s suit against his former master T.P. Pease, for instance, alleged that he had bought land from his former master shortly after emancipation but Pease had refused to name the purchase price. Each time Pease reportedly told him, “a little more money Primus and you will get your title.” By 1878, the freed man claimed to have paid his former master almost eight times the true value of the lot. When Pease contended that the purchase price remained largely unpaid, Cooper brought a civil suit against his former

master. His lawyer's petition noted that Cooper had believed that his former master "fully intended to carry out faithfully and comply with his said contract," but when he had discovered that Pease would not do so, he had brought the suit. This story of faith that a former master would treat him fairly sought to appeal to white paternalism and the power of contract.²¹ Yet by bringing civil suits when transactions were unjust, former slaves also advocated for economic fairness and portrayed the law as an avenue to enforce this.

In contrast, some former slaveholders argued that African Americans had been more successful and industrious as slaves, but now faced economic failure or failed to work as hard after emancipation. Ann Nelson testified in her deposition that as a slave "Bedford was attentive to his business and industrious." However, she noted that he had lost his blacksmith shop in 1872 and had never been able to support his family as well after emancipation as he had supported them during their partnership during the war.²² This testimony had little relevance to the larger claims in Nelson's case. Rather, such narratives sought to demonstrate the flaws in the new capitalist regime and the inability of African Americans to work independently.

When it suited their own purposes, though, former slaveholders could advocate a type of capitalism in which only the fittest survived. In the antebellum South, white slaveholders had often touted the idea that masters took care of their slaves when they became too old or ill to work, presenting this as a way in which slave labor was superior to free labor. In the post-war South, former slaveholders sometimes resisted remnants of these earlier ideas that survived in wills and contracts. Instead, they used the new free-labor regime as a rationale not to carry out contracts or wills.²³ For instance, shortly before the Civil War, a Kentucky slaveholder left a will stating that two infirm slaves, Hiram and Clarissa Bramlett, should be provided for throughout their lives out of his estate. Seven years after the war, the two former slaves brought a suit

against their former master's estate, stating that Clarissa Bramlett had never received anything from the estate and Hiram Bramlett had received only \$15. In response, the lawyer representing their former masters' estate asserted that Clarissa Bramlett was in fact able to work for herself: "She is about thirty five years of age, able bodied, and a fine Cook, able to earn, and in fact now earning good wages." By contrast, the estate's lawyer admitted that "Plaintiff Horace is old and infirm and to a great extent incapable of earning his support." However, even Horace Bramlett, the document noted, "can labor and earn something."²⁴ Similarly, in a North Carolina case, a former master left 50 acres of land in 1871 to two former slaves, Jesse and Henry Harris on the condition that they "remain with my wife and nephew until the death of my wife." In the years after, in a capitalist economy that vastly favored white landowners, Jesse and Henry Harris struggled to pay the property's full rent. Finally, in 1887, their former mistresses' agent ejected them. The nephew of their former master testified in explanation: "For the year 1887 and for several years prior thereto the share of the crop and rents received by me from the land cultivated by plaintiff was not sufficient to pay expenses ... I told plaintiff that I could not afford to keep him on the farm, that he was making little or nothing + every year was bringing me deeper in debt."²⁵ When it benefited their interests, then, these former slaveholders endorsed capitalism, even when it contravened legal contracts and wills.

Finally, then, both black and white southerners connected by slavery formulated their narratives about post-war economic interactions to suit their own interests. Former slaves desired to be treated equally and fairly in the economic realm and told stories that sought to achieve this. Former masters, on the other hand, provided dueling narratives that reflected their changing ideas in the post-war South. Their stories reflect a belief in the superiority of the system of

slavery and sometimes, even in the same case, a desire to gain economic benefits from capitalism.

Portrayals of Post-war Family Relationships and Concepts of Authority

Former slaves and former masters also presented widely divergent images of black family authority and relationships in the courtroom. Before the Civil War, enslaved parents generally had little say in the fate of their children, unable to stop them from being sold or violently punished. White southerners viewed enslaved mothers and fathers as incapable of exercising authority over their own families. Instead, by law, slaves were part of white men's households rather than family units of their own.²⁶ After the Civil War, reuniting with their families was a central priority of many black southerners.²⁷ However, in the years immediately following the war some former masters and other whites resisted black southerners' assertions of authority over their own families. Claiming control over black children for themselves, former slaveholders tried to apprentice black children and teenagers and gain years of unpaid labor as well as power over their young former slaves.²⁸

While apprenticeship disputes were often heard by the Freedmen's Bureau, cases over the apprenticeship of black children also made it to civil courts, particularly during the first years of Reconstruction. During Reconstruction, about one-sixth of the civil suits examined between black and white litigants (18 cases) concerned apprenticeships. Half of these apprenticeship suits took place between former masters and slaves, undoubtedly in part because some states prioritized former masters' right to indenture former slaves above that of other whites.²⁹ In a number of cases, the informality of slave marriages allowed former masters to claim that children did not have fathers or mothers, which their parents fiercely challenged. At stake in other cases was both sides' ability to show that they were fit guardians and could raise the

children in “moral courses.”³⁰ Apprenticeship cases thus reveal the contrasting narratives and claims of former slaves and masters about family and authority in the years after emancipation.

With the fate of their children in the balance, formerly enslaved parents and relatives asserted their parental responsibilities and family ties with the children. In a number of cases, children had been indentured because their parentage, according to former owners, was unclear. Several cases, in particular, debate whether the man challenging the indenture is the child’s father. Slaves’ often complex family arrangements and antebellum courts’ failure to legally recognize slave marriages complicated black litigants’ responses.³¹ To counter these claims, however, black southerners testified that the children were very much their own. One father, Oliver Adams, testified that he “knows that all three of the children are his and that he always claimed them as his children + their mother always said that they were his.” At times, former slaves’ testimony also portrays battles over parental authority as power struggles between themselves and their former masters. Adams noted that his former owner “had frequently tried to get the children of Witness, but witness refused to let him have them.”³² This father, then, claimed both the legitimacy of his parental responsibility over his children as well as his own power to protect this authority in the face of incursions from his former master.

Other parents asserted their legal rights to raise their children and the illegality of specific indentures. After his three sons were indentured, Samuel Adams brought a suit against his former master before the Dougherty County judge. His lawyer’s petition stated that his former master “took said minors without any authority or right and carried them to the said County...where he has kept them ever since and still keeps them restrained of their liberty, without any legal right whatever and thereby delivering your petitioner of his legal control of said children.” Occasionally, the children in question also testified about their rights. As his father fought back

against his indenture, 14-year-old Henry Reddish testified that he “thought he was as much entitled to freedom as others.”³³ With these lines of argument, former slaves merged their own understandings of authority and freedom with their knowledge of relevant laws.

In contrast, former masters presented their own narratives of authority to support indentures. In a number of cases, they challenged the parentage of children to bolster the case for apprenticeship. Their arguments about parentage sometimes involved analysis of the children’s physical appearance. When asked if the child he had indentured was “too light Colored to be the son of defendant,” former slaveholder James Comas used a livestock metaphor, stating “he could not tell that a black bull sometimes was the father of a white or light calf, that defendant was very black.” At other times, former masters drew on firsthand knowledge of former slaves’ activities to challenge children’s parentage. A former slaveholder named William Adams testified that in addition to the children’s mother, during the antebellum period the father “had a wife at a neighbor’s, whom he visited as negroes do, and witness thought was there most of his time at night, as he was frequently missing at night.”³⁴

Whites’ narratives to support indentures also praised their own abilities to teach and provide for black children while denigrating the abilities and authority of black relatives to do the same. In many cases, former masters claimed that black relatives were not able to control children and teach them hard work. To establish this, former slaveholders leveraged knowledge of former slaves once again. In the apprenticeship case involving Mary Overby’s children, John Overby began his testimony by establishing that “he had known the Defendant Mary all his life about thirty Years was raised with, had known the Children Reeves + Jo all their lives.” He then used this long period of acquaintance to state that her eight and ten-year-old sons were “both Reel Bad Boys and Rebelled against their mothers authority and that she has not and cannot

bring up the Boys in Moral Courses for they will not mind anything she says to them.”³⁵ In addition, former masters and their witnesses sought to comply with the law by emphasizing their own ability to bring up children. According to a witness, Mary Overby’s former master “was a kind master and is fully competent to raise the children up in Industrious and moral habits.”³⁶

These apprenticeship cases, therefore, highlight the stark contrasts in former slaves’ and former masters’ views of black family relationships and authority in the wake of the Civil War. Newly free black men and women boldly asserted their parental ties with children and claimed indentures to be illegal. Former masters worked to show that children did not have legitimate or fit parents to raise them to meet the conditions that would allow them to take control of the children themselves. At the crux of this debate was the independence of the black family and the ability of black mothers and fathers to be family units of their own.

Narratives About Sexual Violence in the Post-war South

Former slaves and masters also battled in the courtroom over portrayals of white men’s antebellum sexual violence against black women. The majority of civil cases between white and black litigants that related in some way to sexual violence against female slaves were will contests, but other cases took place over property or contract disputes.³⁷ Frequently, the cases were brought by children born from sex across the color line. Of the 24 such cases in southern state supreme courts between 1865 and 1899, 8 cases involved black women who had sexual relations with slaveholders in the antebellum South and 16 involved only the children of such liaisons. These post-war cases grew out of a long history of rape perpetrated against enslaved women and an antebellum legal system that condoned such violations. Enslaved women had been viewed as having no legal rights to their own bodies and indeed were often blamed for enticing white men into such liaisons. In the post-war South, black litigants struggled to break

free from similar narratives. Occasionally, black litigants' own narratives of the past exposed sexual violence and pressured white relatives who feared scandal. However, African American women also faced whites' own narratives in these cases, which often portrayed them as morally suspect due to their perceived race as well as the physical violations they had endured during slavery. As a result, formerly enslaved women had to defend their own character as well as the claims of such cases.³⁸

The act of naming sexual violence occurred rarely in civil suits between former slaves and masters. Undoubtedly, the physical and legal risks of doing so prevented many litigants from discussing it. However, in one instance in 1866, a group of former slaves brought a suit against their former masters' heirs claiming a bequest in the former master's will. The wording of their lawyer's petition emphasized the physical violation of their mothers, stating: "Your Orators further show that they are the illegitimate children of said testator begotten upon the bodies of two of his female slaves."³⁹ In other suits, former slaves did not name the sexual violence as explicitly, but the very act of litigating such a case brought community attention to the subject.

Occasionally, though, black southerners and their lawyers could use their narratives of sexual violence to maneuver better legal outcomes. By publicly discussing or threatening to publicly discuss sex between masters and slaves, former slaves gained a measure of power in the courtroom. In one 1872 Georgia case, the plaintiff, Sallie Pope, claimed to be the daughter of a male slaveholder and an enslaved woman. When her white father James Pope died suddenly from poisoning, Sallie Pope initiated legal action to gain an inheritance from her father's estate. In the course of the lawsuit, Sallie Pope's attorneys attempted to settle out of court with the representatives of James Pope's estate. According to one of her attorneys, "We put ourselves in communication with Mr. CC Duncan admr & laid before him the claims & showed to him the

proofs by which we expected to support it. After some negotiation Mr. Duncan agreed to a full settlement of the whole claim of the child that the estate should make her a deed to the house & lot in Collinsville.” In later writing about the rationale behind this settlement, her attorneys stated that the settlement took place for several reasons, including “for the purpose of avoiding what might be a long and vexatious suit at law, and to prevent if possible, the annoyance and scandal to the relatives of James S. Pope.” The settlement thus seems to have occurred, in part, because of the potential scandal that would occur if “claims” and “proofs” of sexual violence were publicly exhibited in a courtroom.⁴⁰ In this case, then, mentioning the antebellum sexual violence perpetrated against the litigant’s mother in a legal context helped the black litigant to gain the outcome to the case that she desired.

But allegations of sex across the color line often harmed formerly enslaved black women more than former slaveholders.⁴¹ When entering southern courtrooms, African American women found that white southerners presented their own narratives of sex across the color line that painted black woman as sexually loose because of antebellum violations. During trials, black women could face intense scrutiny as lawyers and witnesses questioned their morality, ignoring the coercive nature of their earlier relations with white men.⁴² In one Alabama case, Mary Gracie had borne the son of her former master when she had been enslaved. While she continued in his household for a certain period after emancipation, she soon moved to her own home in a nearby city. However, when she found herself unable to purchase the home she desired because the owner “did not want to sell to colored persons,” she enlisted her former master to buy the home on her behalf, using her substantial earnings as a seamstress. After her former master’s death, his creditors tried to take possession of the home by insisting that the house had been given to Gracie by her former master for sexual favors. To prove this, they portrayed Gracie as

having a “bad” reputation, which they implied stemmed from the sexual violence she experienced as a slave. Their testimony hinted that just as she had engaged in improper liaisons before the war, she continued to be sexually loose, stating “Rodifer is a butcher and Semple is a taylor, both of whom appear to be warm friends of Mary Gracie and say that they visit her frequently both in the day time and at night.”⁴³ Similarly, Julia Dickson’s reputation came into question as she testified in her daughter’s suit to gain an inheritance. Throughout the trial, the opposing counsel sought to portray Dickson as a “loose” woman and cast doubt on her daughter’s paternity to invalidate her daughter’s claims to the estate. Ignoring the fact that her daughter was the result of her mistress’s son raping her at the age of 12, the lawyer repeatedly asked Dickson whether she had been sleeping with any other men at the time of her daughter’s conception or in later years.⁴⁴

The earlier sexual violence and continued economic connections with whites after emancipation made it difficult at times for black women to fully protect themselves from these claims. In defending her reputation, Gracie repeatedly stumbled and reversed herself. In particular, Gracie found it difficult to disassociate herself completely from a reputation as a “kept woman” because of continued postwar economic dealings with her former master. Children that resulted from sex across the color line also made it difficult for freedwomen to defend their reputations. As concrete evidence of a violation of social mores, such children reminded courtroom participants of the liaison. Undoubtedly realizing this, throughout her testimony, Gracie stressed that Willie was “my son” and did not acknowledge that he was her former master’s child as well. In the end, though, Gracie lost the suit on appeal because the higher court believed she received the land as her former master’s mistress, despite her attempts to prove otherwise.⁴⁵

In sum, former masters and former slaves could both at times use stories of black women's violations to turn court cases in their favor. Yet such narratives were dangerous as well, and in the highly-charged racial atmosphere of the post-war South posed significant threats to white and black southerners' suits, their reputations in the community, and even their physical safety.

Conclusion

Legal narratives that might initially appear as mundane contests between litigants in fact tell us much about the post-emancipation negotiations between former slaves and their former masters. First, they provide a glimpse into the ways that former slaves and slaveholders used civil litigation to navigate their post-war interactions. As they battled in southern courtrooms, both groups told versions of the past and present that would advance their cases and their larger aims. These narratives had significant power to shape the outcome of individual cases, for and against both sides. As both white and black litigants put forward different visions for the post-war South, these courtroom tales also played a part in wider discussions in society.

Additionally, these suits highlight how relevant slavery – particularly the interlinked histories of former slaves and former masters – remained in black and white southerners' lives and litigation after the war. Even decades after emancipation, former slaves still used ties with their former masters to enhance their suits while former masters drew on knowledge of former slaves to damage the credibility and claims of black litigants. Both sides still battled each other – often over highly personal issues – not just during Reconstruction, but also in the 22 years after Reconstruction ended. For 35 years after the Civil War, then, former slaves and former masters contested the realities of slavery and its aftermath in the courtroom.

Finally, these cases reveal both shifts and continuities in black and white southerners' relations after the Civil War. Black women in both the antebellum and postwar South experienced attacks on their morality stemming from sexual violence perpetrated against them. Former masters, too, struggled to acknowledge black parents' authority in both eras. However, in these cases, former slaveholders also embraced some aspects of free labor ideology that benefited them. In addition, former slaves boldly claimed their rights to their children and highlighted their economic abilities. These cases show, therefore, the ways in which both former slaves and former masters operated in the powerful shadow of the past even as they sought to navigate new paths in the decades after the Civil War.

¹ *Bugg v. Towner*, 41 Ga. 315 (1870)

² *Bugg v. Towner*, 41 Ga. 315 (1870)

³ To find the cases analyzed in this book, the author used key word searches on LexisNexis to search the online records of the state supreme courts of eight states: Alabama, Arkansas, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, and Virginia. The author then examined the surviving case files in archives. When a case is referred to, the author is referring to the online case record and the archival case file. During Reconstruction (1865-1877), 72 out of 108 cases between white and black southerners in the eight appellate courts examined took place between former slaves and their former masters or their heirs or executors. Between 1878 and 1899, 36 out of 104 of these cases involved former slaves and their former masters or their heirs or executors. Between 1865 and 1899, 108 of 212 cases (51 percent of suits) involved former slaves and their formers or their heirs or executors. See Melissa Milewski, *Litigating Across the Color Line: Civil Cases Between Black and White Southerners from the End of Slavery to Civil Rights* (New York: Oxford University Press, 2018), 195-205.

⁴ Between 1865 and 1877, 42 out of 72 (58 percent) of these cases involving former slaves and masters or their heirs or executors involved one or more black female litigants. Between 1878 and 1899, 23 out of 36 (64 percent) of these cases involving former slaves and masters or their heirs or executors involved black female litigants.

⁵ For an analysis of [I meant this as analyzing the idea of “narrative” more generally rather than specific narratives] narrative in cases in the antebellum South, see Kimberley M. Welch, *Black Litigants in the Antebellum American South* (Chapel Hill: University of North Carolina Press, 2018), 27-59.

⁶ For more on the legal limitations faced by slaves in the antebellum South, see Thomas D. Morris, *Southern Slavery and the Law, 1619-1860* (Chapel Hill: University of North Carolina Press, 1996). For an examination of ways slaves used the law, see Welch, *Black Litigants*; Anne Twitty, *Before Dred Scott: Slavery and Legal Culture in the American Confluence, 1787-1857* (Cambridge: Cambridge University Press, 2016); Kelly Kennington, *In the Shadow of Dred Scott: St. Louis Freedom Suits and the Legal Culture of Slavery in Antebellum America* (Athens: University of Georgia Press, 2017).

⁷ Laura Edwards, “Status without Rights: African Americans and the Tangled History of Law and Governance in the Nineteenth-Century U.S. South,” *The American Historical Review* 112, no. 2 (2007): 377-378; Welch, *Black Litigants*, 30-36. See, for example, *Briley v. Underwood*, 41 Ga. 9 (1870).

⁸ Milewski, *Litigating Across the Color Line*, 87-88, 136-37, 154-60.

⁹ See Tera W. Hunter, *Bound in Wedlock: Slave and Free Black Marriage in the Nineteenth Century* (Cambridge, Mass.: Harvard University Press, 2017), 196-260; Dylan Penningroth, *The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South* (Chapel Hill: The University of North Carolina Press, 2003); Leslie A. Schwalm, *A Hard Fight for We: Women's Transition from Slavery to Freedom in South Carolina* (Urbana: University of Illinois Press, 1997), 147-268; Sharon Ann Holt, *Making Freedom Pay: North Carolina Freedpeople Working for Themselves, 1865-1900* (Athens: The University of Georgia Press, 2000); Steven Hahn, *A Nation Under Our Feet: Black Political Struggles in the Rural South from Slavery to the Great Migration* (Cambridge, Mass.: Harvard University Press, 2003); Susanna Michele Lee, *Claiming the Union: Citizenship in the Post-Civil War South* (Cambridge: Cambridge University Press, 2014). Two exceptions that focus on court cases are Tamika Y. Nunley, "'By Stealth' or Dispute: Freedwomen and the Contestation of American Citizenship," in *The Civil War and the Transformation of American Citizenship*, ed. Paul Quigley (Baton Rouge: Louisiana State University Press, 2018), 44-63; Laura Edwards, *Gendered Strife and Confusion: The Political Culture of Reconstruction* (Urbana: University of Illinois Press, 1997).

¹⁰ Exceptions include Sydney Nathans, *A Mind to Stay: White Plantation, Black Homeland* (Cambridge, Mass.: Harvard University Press, 2017); Erskine Clarke, *Dwelling Place: A Plantation Epic* (New Haven: Yale University Press, 2005); Hahn, *A Nation Under Our Feet*; Hunter, *Bound in Wedlock*.

¹¹ These 11 appellate suits between black and white litigants with pre-war roots involved disputes over property, transactions or contracts unrelated to wills or allegations of fraud.

¹² Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1988), 77, 103-104, 128-130; Carole Emberton, *Beyond Redemption: Race, Violence, and the American South after the Civil War* (Chicago: University of Chicago Press, 2013), 32-35.

¹³ *Briley v. Underwood*, 41 Ga. 9 (1870). See also *Burdine v. Burdine's Ex'or*, 98 Va. 515 (1900); *Cowan v. Stamps*, 46 Miss. 435 (1872).

¹⁴ Jonathan D. Martin, *Divided Mastery: Slave Hiring in the American South* (Cambridge, Mass.: Harvard University Press, 2004); Ira Berlin, *Generations of Captivity: A History of African-American Slaves* (Cambridge, MA: Harvard University Press, 2003), 90-92, 221-224.

¹⁵ *Bugg v. Towner*, 41 Ga. 315 (1870); *Lattimore v. Dixon*, 63 N.C. 356 (1869); *Lattimore v. Dixon*, 65 N.C. 664 (1871). See also *Potter v. Gracie*, 58 Ala. 303 (1877).

¹⁶ *Nelson v. Nelson*, 7 Ky. 384 (1873)

¹⁷ *Nelson v. Nelson*, 7 Ky. 384 (1873); *Helm's Ex'r v. Rogers*, 81 Ky. 568 (1884). See also *Overby v. Overby*, 2 Ky. 304 (1868).

¹⁸ *Nelson v. Nelson*, 7 Ky. 384 (1873); *Helm's Ex'r v. Rogers*, 81 Ky. 568 (1884).

¹⁹ Thirteen suits involving transactions, contracts and property disputes (not including wills) took place between former slaves and former masters or their heirs or executors between 1865 to 1877 and 9 such suits took place from 1878 to 1899.

²⁰ Schwalm, *A Hard Fight For We*, 187-233; Holt, *Making Freedom Pay*.

²¹ *Pease v. Cooper*, 61 Ga. 626 (1878). See also *Simmons v. Hessey*, 11 Ky. Op. 40 (1881).

²² *Nelson v. Nelson*, 7 Ky. 384 (1873)

²³ *George Fitzhugh, Cannibals All! Or Slaves Without Masters* (Richmond, Va.: A. Morris, Publishers, 1857), 108-109; Foner, *Reconstruction*, 130-31.

²⁴ *Bramlett's Ex'r v. Clarissa Bramlette*, 6 Ky. 718 (1873). See also *Grey v. West*, 93 N.C. 44 (1885); *Arnold v. Arnold*, 62 Ga. 627 (1879).

²⁵ *Harris v. Wright*, 118 N.C. 422 (1896). See also *Wright v. Harris*, 116 N.C. 460 (1895).

²⁶ Edwards, *Gendered Strife and Confusion*, 7-8; Hunter, *Bound in Wedlock*, 80-81.

²⁷ Heather Andrea Williams, *Help Me to Find My People: The African American Search for Family Lost in Slavery* (Chapel Hill: University of North Carolina Press, 2012); Foner, *Reconstruction*, 82-85

²⁸ Edwards, *Gendered Strife and Confusion*, 39-51; Karin L. Zipf, "Reconstructing 'Free Women': African American Women, Apprenticeship, and Custody Rights During Reconstruction," *Journal of Women's History* 12 (2000): 8-31.

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- ²⁹ The 18 apprenticeship and custody cases between white and black litigants in southern state supreme courts during Reconstruction were 17 percent of the total 108 such suits during this period. No cases between black and white litigants involving apprenticeship and custody were found in the eight state supreme courts examined between 1878 and 1899. Nine out of the 18 custody and apprenticeship suits found (50 percent) took place between former slaves and their former masters or their heirs. See also “Master and Apprentice, 1866” in Harvey Myers, ed., “A digest of the general laws of Kentucky: enacted by the Legislature, between the fourth day of December, 1859, and the fourth day of June, 1865 with notes of the decisions of the Court of Appeals of Kentucky: with an appendix containing the laws of the winter session, 1865-’66,” (R. Cincinnati: R. Clarke, 1866), 729-30; Edwards, *Gendered Strife and Confusion*, 49-54, 272 n.77. See also Nunley, “‘By Stealth’ or Dispute,” 52-3, 57-8.
- ³⁰ *Overby v. Overby*, 2 Ky. 304 (1868); *Lamb v. Lamb*, 67 Ky. 213 (1868).
- ³¹ Hunter, *Bound in Wedlock*, 70-81; Edwards, *Gendered Strife and Confusion*, 51-52
- ³² *Adams v. McKay*, 36 Ga. 440 (1867). See also *Adams v. Adams*, 36 Ga. 236 (1867).
- ³³ *Adams v. Adams*, 36 Ga. 236 (1867); *Comas v. Reddish*, 35 Ga. 236 (1866). See also *Mitchell v. Mitchell*, 67 N.C. 307 (1872).
- ³⁴ *Comas v. Reddish*, 35 Ga. 236 (1866); *Adams v. Adams*, 36 Ga. 236 (1867). See also *Mitchell v. Mitchell*, 67 N.C. 307 (1872).
- ³⁵ *Overby v. Overby*, 2 Ky. 304 (1868).
- ³⁶ *Overby v. Overby*, 2 Ky. 304 (1868). See also *Lamb v. Lamb*, 67 Ky. 213 (1868).
- ³⁷ While 22 of the 24 cases involved contested wills, two cases involved disputes over contracts or property.
- ³⁸ Saidiyah Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (New York: Oxford University Press, 1997), 79-112; Joshua D. Rothman, *Notorious in the Neighborhood: Sex and Families across the Color Line in Virginia, 1787-1861* (Chapel Hill, NC: University of North Carolina Press, 2003), 133-163; Bernie D. Jones, *Fathers of Conscience: Mixed-Race Inheritance in the Antebellum South* (Athens: University of Georgia Press, 2009), 6-12.
- ³⁹ *Hayley v. Hayley*, 62 N.C. 180 (1867).
- ⁴⁰ *Duncan v. Pope*, 47 Ga. 445 (1872). See also *Davis v. Strange’s Executor*, 86 Va. 793 (1890).
- ⁴¹ Kirsten Fischer, *Suspect Relations: Sex, Race, and Resistance in Colonial North Carolina* (Ithaca: Cornell University Press, 2002), 134, 141.
- ⁴² *Johnston v. Colley*, 101 Va. 414 (1903); *Burdine v. Burdine’s Ex’r*, 98 Va. 515 (1900); *Smith v. Dubose*, 78 Ga. 413 (1887); *Potter v. Gracie*, 58 Ala. 303 (1877).
- ⁴³ *Potter v. Gracie*, 58 Ala. 303 (1877).
- ⁴⁴ *Smith v. Dubose*, 78 Ga. 413 (1887); Kent Anderson Leslie, *Woman of Color, Daughter of Privilege: Amanda America Dickson, 1849-1893* (Athens: The University of Georgia Press, 1995), 1, 37, 45-46.
- ⁴⁵ *Potter v. Gracie*, 58 Ala. 303 (1877).