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Color, Crime and the City

by

Mark Hepler

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INTRODUCTION

This work is an effort to measure urban racial prejudice through examination of the criminal justice system of old New Orleans, and to examine some ways in which such measurements can be of assistance in meeting modern urban problems of racial unrest. It is a study with several, unusual ramifications that have developed over the past twenty-two years.

This all began when, as an undergraduate at Tulane University, the writer developed a strong interest in southern history, largely due to the influence of the late Wendell Holmes Stephenson. At the time, the general advice of historians was to look at elements other than Negro history, since "all that has already been covered." In the ensuing decade, as monetary needs caused pursuit of the second-choice profession of journalism, the writer became, progressively, a reporter, police reporter, special edition editor and then assistant city editor of
a major New Orleans daily newspaper. Reading in southern history remained a habit; and, as skills and knowledge of journalism were being developed, as the racial problems of the nation became more and more the raw material for news, the old caution against black history seemed more and more illogical. Surely, there was a growing gap between blacks and whites, and just as surely one of the reasons was too little of that black history. Something else became evident, too: although historians frequently very critical of news media for shoddy reporting, those historians with knowledge of journalism's techniques and methods made better use of journalistic source material. Further, loose use of journalistic sources was often obvious in works which had produced sharp controversies, particularly in the area of slavery.

In 1958 a temporary return to the academic world became possible. The timing was excellent, for this opportunity came shortly after discovery of some truly dusty records of ante-bellum police and recorders' activities. Preliminary research indicated that Louisiana legal historians regarded such courts of little importance. E. Merton Coulter had written a small volume about them, based on accounts in one of the city's old newspapers, but this, too, indicated little of serious value could lie in such courts' records. Consequently, those records had lain, unused, for a century. Yet, cursory
examination indicated that the old volumes contained a great deal of information on both slaves and free persons of color. With no historical work upon which to base an opinion of the worth or powers of such courts, recourse was taken to statutes and city records. Two conclusions soon were reached: the courts were quite important in the area of black history, for they were the courts of first resort for all cases involving blacks in old New Orleans; and, standardized digests of ordinances, resolutions and statutes were inadequate. The first conclusion meant that any time a slave or free black ran afoul of the law, the first examination at law was before the Recorder; criminal trials for serious offenses might be held elsewhere, but at the least, if full records could be made available, recorders' courts could be the source of an amazingly full picture of an important part of black life during slavery. The second conclusion also had its special meaning, that all the statutes regarding courts and blacks needed to be examined if a true picture of the legal situation was to be produced.

Material from the court records and from search in the statute books was used to produce a master's thesis in 1960 (Chapters II through V of the present work are based on portions of that thesis). Following completion of that work, the academic world again had to be forsaken in the interests of a more stable economic life. The next ten years were spent managing news operations of television
stations in New Orleans and Houston, as a CBS Foundation Fellow at Columbia University, and, finally, twenty-seven months as administrative assistant to the Mayor of Houston, with primary responsibility of solving problems of police-Negro relations.

Achievement of a certain degree of financial independence permitted entrance to Rice University for concentration on racial problems. Even more than before the preceding years had been a time of deep, personal involvement in the emergence of black America's problems: coverage of racial outbreaks in Little Rock, New Orleans and Houston; lengthy interviews and conversations with major participants in the racial developments of the decade—black leaders such as Martin Luther King, Ralph Abernathy, Whitney Young, Stokely Carmichael... national political leaders, including Presidents Kennedy and Johnson, Attorney-General Robert Kennedy, Presidential hopefuls Richard Nixon and Barry Goldwater... outspoken advocates of white supremacy, such as Robert Shelton, George Wallace, Leander Perez... and literally hundreds of policemen, black citizens, white citizens and local figures of prominence.

At this stage in the development of this work, absences in historical methodology had become apparent with regard to adequate use of journalistic sources and legal records. Five fundamentals of journalism seemed
to be in special need of attention:

1. In news of crime events, any good newspaper, whether the year was 1965 or 1855, covers an entire event. It will begin by reporting the occurrence of the crime and then will proceed over days, months or even years, with new stories to cover subsequent events, such as clue discoveries, arrests, grand jury meetings and decisions, trials, convictions, sentencings, appeals and/or executions. For the significance of a crime to be accurately portrayed in history, all such stages should be examined and reported.

2. If, for political, social or economic reasons, one newspaper chooses to ignore, underplay or even misrepresent a situation, other newspapers in the same city will try most diligently to present the facts otherwise; and, if a community has as many as three, strong dailies, the chances for full coverage are excellent. This was a more common situation a century ago than it is today because of the change from individually owned newspapers operated for various purposes to today's system of chain and joint ownership of media, with operation fundamentally an economic enterprise rather than a journalistic endeavor.

3. People generally regard newspapers as if they were individuals, and they speak of them as such. Historians such as the late Allan Nevins, with journalistic
pasts of their own, have long recognized this and do not use cumbersome, unnecessary phrases when citing the viewpoints of a newspaper. In particular, they recognize certain basic elements of a newspaper's daily operation. First, there is a great deal of owner-dictation in any paper today because, unlike the journals of a century ago, nearly all newspapers of today are operated as business ventures, and the profit motive is foremost; individual journalism is rarely permitted, for as a general rule the entire editorial staff, from cub reporter to managing editor, is selected and trained to hew to the views of the owners. News stories are rarely dreamed up by reporters, but almost always are assigned; the copy then is edited, sometimes to the point of exclusion, and rewritten. Editorial writers are especially a part of the system, chosen primarily because of their ability to present the ownership's point of view.

4. In the ante-bellum period one particular economic factor was most significant in the selection and presentation of news. It was the matter of municipal advertising. By state laws in all states, cities were required to select an "official journal" and place therein a variety of advertisements of a public nature. Such contracts were most lucrative in that era of few ads, and often meant the financial survival of a newspaper. As a consequence, official journals often tended to go easy on news stories which would be embarrassing to the
administration in power. At the same time, however, competing newspapers were seeking similar contracts for themselves from future administrations, and they often redoubled their efforts to expose covering up by an official journal.

5. Taking into account factors such as those just mentioned, one can utilize newspapers as important gauges of public opinion. This is true both in regard to ideas expressed in editorials and in regard to the selectivity used in news items. Further, the ways in which a newspaper refers to various items or types of people can be particularly revealing about public attitudes toward the same targets.

Journalistic experience in New Orleans, New York and Houston also gave the writer some familiarity with legal matters, insights and procedures not normally imparted in an academic atmosphere. Of special importance in this work are these three points:

1. There is amazing confusion in many minds about the need to differentiate clearly between civil and criminal law. In a historical study such as this, these differences are crucial. Simply put, civil law involves action between two individuals. The role of government is to provide the arena, the courtroom, for that action; to establish the rules; to provide the judge and, sometimes, the jury; and to make the final determi-
nation of responsibility in regard to the point at issue. The final outcome of such action is also significant, because it again involves only the litigants and most often takes the form of requiring the loser to pay money to the winner. The state in civil action receives nothing from the loser, neither his money in a fine nor his time in a jail term.

A criminal action, in contrast, finds the government in a role as one of the adversaries at all stages of the dispute. The state also provides the arena, judge, jury and rules, so that the internal process is broadly parallel to civil litigation. The major difference remains, however, that the complainant is the state, and if the other party loses, he loses his time and his money. In conjunction with these differences in the court, it also should be constantly realized that in both prior and later stages of action the same differences prevail. That is, prior to a civil action it is up to the individuals to obtain evidence and information, with their only help from the government being subpoenas to get witnesses to court; in criminal action, the government is the adversary from the outset, with law officers obtaining information with the force of law. As elementary as this seems, it is truly amazing how few people are aware of such differences, which are most important in this study because it is restricted entirely to the criminal justice system.
2. One of the major complaints a reporter hears from attorneys is against a newsman's tendency to expect all criminal cases to fit into neat, little categories, with identical decisions and sentences to be meted out for identical crimes. Experienced attorneys and newsmen, by having defended or prosecuted or covered numerous cases, generally agree that there just are not any two, identical cases, that, in fact, the great beauty of the criminal justice system is that it allows for thorough consideration of all the differences. In works of history, it would seem valid to expect recognition of this point, which means it would rarely be possible to cite a single case of any type of serious crime as "typical," particularly if a work is examining a period of time in which changes in public attitude are anticipated. To develop, for example, a clear and accurate idea of public attitudes toward blacks through an examination of the criminal justice system requires detailed reporting of numerous incidents of all types; to do less would be to impose preconceptions or to fail to make adequate use of sources.

3. From comments of readers of early drafts of this work, and from reading numerous historical works which in part or in whole examine slave laws, many minor misunderstandings of those laws have become apparent. Two of them merit special notice in connection with this work—the concept of property and the matter of prohibited slave testimony.
The property concept was primarily a civil matter, and consequently is only indirectly involved in this work. Under slave codes, slaves were property. They were bought, mortgaged, sold, willed, rented, and this certainly was among the heinous factors in the institution of slavery. But, the property concept did not create slavery or the idea of inferiority, although in the latter years of the slavery era it was both attacked and defended as if it were, indeed, the cause. At most, the property concept in law was a problem for slaveholders who might otherwise have supported abolitionism, but this was an economic problem, not a moral one, for the property concept was more a corollary of the idea that slaves were inferior, itself the fundamental idea behind the property status.

The second legal matter often confused, slave testimony, involves a civil right in criminal matters. Very simply, in ante-bellum Louisiana the law prohibited slaves from testifying against white persons. Under law, this is a very narrow matter which turns on the word, "against." What it meant was that if a white person was a defendant in a criminal case, a slave could not testify against him. If, however, a slave was a defendant, he could say anything he wanted about any white person and not violate that law, for that would not have been testifying "against" the person. This was an immensely important element of slave law and must be clearly understood.

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In summary, then, this work examines that portion of the criminal justice system which used governmental powers to control people on the basis of race. With proper recognition of the differences of that area of law from civil law, and with data primarily from the old Recorders’ Courts, police records and newspapers, it will provide a detailed picture of the way that law was enforced during the 1850’s. From this it is felt that the depth of prejudice in that period can be measured.

As a preliminary it will first be necessary to examine elements of sociology and social psychology which relate to race prejudice, police-black relationships and urban communities, in order to establish basic standards by which to gauge the evidence. Finally, the insight and conclusions produced by this examination prompts questions about the value of such data during crisis years. An epilogue will, therefore, examine the dominant public attitudes of leading politicians and media members with special attention to the awareness which they exhibited about the age and seriousness of problems which had existed as long ago as a century in a somewhat parallel urban community.

For the good and valuable parts of this work, the writer owes an unpayable debt to Frank E. Vandiver for his frequent, if sometimes painfully correct, readings of early drafts, and to Harold M. Hyman and William
C. Martin for significant suggestions about the final drafts. Also, for their inspiration and intellectual support over the years, gratitude also is deeply felt for the late Carey Croneis and for John R. Hubbard, Phillip Hoffman, William Ransom Hogan and R. John Rath.
PROLOGUE

Until less than a century ago the best scientific minds in the western world believed that criminals were born, not made. In fact, in 1876 the first serious, scientific study, Cesare Lombroso's L'Uomo Delinquente, wholly supported the idea that criminal tendencies were inherited. Only sixty years ago the world's experts in criminology were evenly divided between those who felt criminal acts were the results of environment or economy and those who were equally certain that criminality was the product of heredity, and often a racial defect.¹

Today, theory about environment dominates, although many reputable specialists remain constitutionalists, contending that criminal tendencies are among hereditary characteristics. Their school of thought is especially significant in regard to race relations, even though no creditable work today directly suggests that criminality is an inherited, racial trait; it is
important, instead, because it is claimed as a source of scientific support for advocates of racial supremacy. For example, The Councilor of the White Citizens Council, claiming a circulation of 200,000 in 1965, in just one, four-page issue carried three stories which argued that "well-known" sociologists and psychologists had long recognized the basic inferiority of Negroes; two of the stories included charges that this inferiority was evidenced in criminal records.

Systematic studies of blacks' involvements with the criminal justice system were first made only after the World War One riots in East St. Louis and Chicago. Following the first of those major outbreaks, in East St. Louis in 1917, an official investigation singled out the police department as the prime cause due to "bias and ineptness." Similarly, after Chicago erupted into racial violence in the next year, Governor Frank O. Lowdon's Commission on Race Relations carefully examined the facts and then "rebuked the courts for facetiousness in dealing with Negro cases, and the police for unfair discrimination in arrests."

By 1935 William T. Couch had concluded that Negro-police relationships were the worst of southern problems, as he condemned both state and federal governments for indifference:
Thus four white men in South Carolina a few months ago broke into a jail, carried off a Negro prisoner, shot him to death, and neither the State of South Carolina nor the federal government is likely to do anything about it. Hardly a month passes when similar outrages do not occur.

During World War Two, Gunnar Myrdal's major study of race relations also concluded that southern police had developed a consistent philosophy that held that all blacks, whether criminal suspects or not, should be "punished bodily."\(^5\)

After the war a study of standard procedures, sponsored by police officials, found a general attitude among officers North and South that was unconcerned with the rights of blacks. It concluded that "far too often the police make no pretense of impartiality when Negroes are concerned." In Los Angeles, some three years prior to the Watts riot, the United States Civil Rights Commission scored police for inhumane attitudes towards blacks. Labelling the "social isolation of the city's rapidly growing Negro population . . . more complete than it ever was for the Negro rural resident in the South," local Commission Chairman John Buggs pinpointed police as direct causes of tension as well as "the only authority with which daily contact is possible . . . \([\text{and}]\) therefore, the easiest and most obvious authority against which they may rebel."\(^6\)
Elliott Rudwick and August Meier have suggested that racial outbreaks in urban centers between 1917 and 1921, as well as those in the 1960's, were essentially a retaliation against the oppression of white dominance. Other sociological and historical studies for several years have suggested that Negro crime of all sorts has long been a form of rebellion against white society. Basic to all these works has been stress on a disproportion in the number of crimes involving Negroes as compared to those involving only whites. As early as 1930 Charles S. Johnson concluded that with only certain exceptions the Negro crime rate had been in excess of white rates since emancipation. More than twenty years later, C. Vann Woodward used the same census records as had Johnson and suggested that the serious disproportion had developed later, in the Redeemer period. At about the same time, William S. Kephart was conducting a study of police attitudes and the Negro in Philadelphia, which revealed that "the Negro crime rate is staggering: more than half of all arrests involve Negro violators" whereas blacks made up only twenty per cent of the city's population.7

Disproportionate black crime came often to public attention in the 1950's through local press coverages and through national publication of F.B.I. studies. A 1957 study, for example, showed that in 1,551 cities, blacks accounted for ten per cent of the population; yet, they were the subjects of "about thirty per cent of all
arrests, and sixty per cent of the arrests for crimes involving violence or threat of bodily harm—murder, non-negligent manslaughter, rape, robbery and aggravated assault." Despite the frequency of such statistical reports prior to the 1960's, however, the first academic study of social, economic, racial and sex attributes of killers and victims—just one portion of the crime picture—was not made until 1958. This was an examination by Marvin Wolfgang of 508 murders committed in Philadelphia over a five year period. It supported previous reports of police and F.B.I. sources, showing a disproportionate involvement of blacks in crime; it also showed that a great majority of the murders in Philadelphia were intra-racial, with both killers and victims most often being black.8

Two years after publication of the Wolfgang study, Henry A. Bullock of Texas Southern University conducted a specific study of racial factors in murders in Houston. His report showed that from 1957 to 1960 a total of 61.9% of the assailants and 61.1% of the victims were black. At the same time, Negroes comprised approximately ten per cent of the Houston population. Newspaper reports in the next decade showed no change in the percentages of disproportion in that city; and a national study in 1963 revealed that with black citizens comprising 11.4% of the population, they had accounted for twenty-eight per cent of arrests for all causes and for more than half the charges of murder.9
President Johnson's Advisory Commission on Civil Disorders provided much data about disproportions in black involvement in crime. The Commission concluded that "crime rates are higher in disadvantaged Negro areas than anywhere else" and that serious crimes against persons produced the greatest statistical imbalance. In one black neighborhood, it reported, crimes against persons were thirty-five times more frequent than in nearby, high income white sections. The Commission found that crime rates against black property were not so badly out of balance, but still were higher than those against white-owned property, and that most of the crimes committed against blacks were perpetrated by other blacks. 10

Voluminous statistical evidence seems to demonstrate clearly that there has been a long-term imbalance in black involvement in crime. Yet, major disagreements and a wide range of interpretations have resulted from such data. The last time any near consensus existed, in fact, was around the turn of the century when constitutionalist views were dominant. At that time, sociological pioneer Frederick L. Hoffman set the tone when he suggested that excessive criminality among blacks emerged with freedom. Under slavery, he wrote, "the Negro committed fewer crimes than the white man, and only on rare occasions was he guilty of the more atrocious crimes." His explanation of the change was that slavery had repressed natural instincts.
A different interpretation was presented some two decades later by black historian Benjamin C. Brawley, who suggested that "the sinister form of the Negro criminal" emerged from the vicious economic system of Redeemer governments; crime, he said, was the only hope for survival among blacks turned into peons by the system. In the same period, criminologist D. Hiden Ramsey more directly stated that under slavery "any criminal instincts of the negro [sic] were repressed by the strict surveillance maintained under the plantation government." Illustrating public acceptance of such views, local politicians in East St. Louis explained the race riot there as the result of inherent Negro criminality; they went unchallenged. 11

Late in the 1920's sociological views ascribed high black crime rates to "native lower level of intelligence . . . disturbed social conditions following emancipation . . . and a greater willingness on the part of the administrative machinery to suspect, arrest and convict a Negro." This view, combining ideas of heredity with newer ones of environment, slowly gave way by 1940 to the idea that excessive black crime was the result of economic pressure, frustrations and hostilities of being in a lower class position, and resentment against cruelties of the law in comparison to treatment accorded white persons. During World War Two Myrdal denied the existence of biological criminality altogether, but conceded that blacks
might be "culturally more criminal" than whites. In seeking a cause for the difference, he cited the high involvement in "such crimes as involve personal violence, petty robbery and sexual delinquency--because of the caste system and the slavery tradition." 12

Five years after the end of that war, E. Franklin Frazier concluded that criminality "thrives among Negroes in an environment of poverty and social disorganization." He rejected the suggestion that crime had been minimal under slavery, writing, "the idea once current that there was scarcely any crime among slaves has been shown to be false." In support of this contention, Frazier conducted the first in-depth search of ante-bellum crime records--vouchers in the State Library of Virginia describing convictions of slaves. The evidence consisted of 1418 cases over a period of fifty years, or slightly more than 28 cases per year. 13

In the decade following Frazier's study, few new views were presented in regard to the origin of disproportionate black crime. C. Vann Woodward in that period re-examined nineteenth century census figures previously used to support the interpretation that excesses emerged with emancipation; he concluded the emergence had been later, during the Redeemer period. Ina Van Noppen at about the same time, however, concluded from various documents that excess criminal involvement was a product of freedom because "the Negro found obedience to law difficult."
Time magazine, meanwhile, suggested that the black crime problem had existed for centuries because "Negroes are more prone than whites to break the laws, rules and customs of society because they are excluded from full membership in it." ¹⁴

During the 1960's little concern was evidenced over the historic origins of disproportionate black involvement with the law. Instead, the basic validity of statistical data came under frequent attack. Urban League President Whitney Young, in an editorial which he circulated among Negro newspapers for reprinting, bluntly discounted all data's accuracy. Although recognizing that blacks appeared to be involved in a large percentage of crimes of violence, such as armed robbery, he said that in balance whites were involved in an excessive number of unreported crimes of "the 'white collar' variety," such as embezzlement, forgery and issuance of hot checks. ¹⁵ Yale University sociologist L. C. Gould, meanwhile, concluded that the "much-quoted criminal predominance among Negroes is more apparent than real." He charged that police keep black people under more careful surveillance than they do whites, and implied that courts more readily convict non-white defendants. Roy Wilkins, executive director of the National Association for the Advancement of Colored People, suggested that blacks were arrested routinely in "dragnet lots" and that this caused a false impression of statistical disproportion. United States
Attorney General Nicholas Katzenbach dismissed all statistics as insignificant. Speaking before the black Federal Bar Association, he said figures on Negro crime were of no importance because all crime was on the increase. 16

Racial differences in crimes and punishments were emphasized in 1966 by the NAACP. Announcing preliminary results of a $100,000 study of rape trials in the South, the organization stated that statistics proved that southern blacks, "solely because they are Negroes--are more likely than whites to be executed for rape." The study found that in Louisiana, Alabama and Arkansas, "far higher proportions of Negroes than whites convicted of rape receive the capital sentence." No factors other than race were found to explain the discrepancy, the report said.

Although that study did not examine records outside the South, a concurrent study by the Bureau of Prisons provided support on a national basis. The Bureau revealed that from 1930 to 1965, of 3,849 persons executed for all causes in the United States, 2,064 were black, 1,743 were white, and 43 were of "other" races. The report showed that almost equal numbers of whites and blacks were executed for murder, while 407 blacks as compared to only 48 whites were put to death for committing rape. The federal report also found that in the eleven "former Confederate states" 1,484 blacks and only 491 whites had been executed. Finally, the report stated that from a high of 199 executions in 1935, there had been a steady decline in imposition of
capital penalties to a low of 15 in 1964. Even so, of the
15 persons executed in 1964, twelve were in the South and
seven of the twelve were black. 17

Arguments against statistical proofs of disproportional black involvement in crime have been summarized by
University of Pennsylvania sociologist Marvin Wolfgang.
In a 1970 study he emphasized a difference between figures
on crimes committed and arrests made, concluding that ar-
rests and convictions account for only a third of crimes
reported. Wolfgang concluded that no meaningful comparison
of statistics on crime commission can be made because of
this major discrepancy, as well as the implied difference
between crimes reported and crimes committed. He also
suggested that crime-reporting techniques of various police
departments add to statistical inaccuracies, that "white
collar" crime is dominantly a caucasian offense that usu-
ally goes undetected, and that figures are further con-
fused because of differing definitions of "Negro" in
state laws and national censuses. 18

Bullock's examination of murders in Houston in
1960 included a significant interpretation of statistical
differences between punishments of blacks and whites.
He ascribed disproportions both in commission of crimes
and in enforcement of laws to "rather convincing evidence
that whites have a dual standard of law enforcement--one
for themselves and one for Negroes." He suggested that
crime among blacks who do not cross the color line is
treated by courts and police as a matter of minor importance. In Texas, where juries determine punishments, he suggested that this dualism is of special importance because it also provided a direct measurement of public opinion about the value of black life. Juries "assess sentences in terms of their community norms as related to race," he wrote. His study reviewed statistics and case reports to conclude that virtually all murder convictions of Negroes were for slaying other blacks, and that in general blacks found guilty received shorter prison terms than did whites who killed whites. This dual standard, the report concluded, was more important in causing high urban crime rates than was police prejudice or any other single factor:¹⁹

One of these attitudinal patterns serves to give Negroes a sense of self-purification—a sense of their contribution to the crime rate. Another gives whites a dual standard concept of law enforcement and an inclination to indulge Negroes who commit crimes against the person and property of their own race.

Claude Sitton of the New York Times two years later wrote of dual standards as a southern phenomenon. He concluded that the "law deals most harshly with the Southern Negro when he is charged with a violation against the property or person of a white. . . . On the other side of the coin, a Negro may escape with little more than a judicial slap on the wrist when the target of his offense is a member of his own race." In Jersey City in 1964,
however, a young black man who had been involved in a riot there suggested the South had no monopoly on dualism; he said police intervention in the racial disturbance was resented by blacks because it arrived only when whites became involved. "When we was fighting against ourselves," he said, "you never did anything to help us." A year later, in recapitulating events of the 1964 outbreak in Harlem, that area's "unofficial mayor," Bishop A. A. Childs, voiced a like view:

One of the most obvious inequities of Harlem life is the lack of proper—or even reasonable—enforcement of existing laws. People are allowed to stand on street corners, drinking openly, using profanity and generally displaying disorderly conduct. They wouldn't be allowed to behave like this on Park Ave., and 60 St., so why should they be allowed to behave like this in Harlem?

In 1967 at the height of the worst of the decade's urban riots, a southern newspaper paused to note the national nature of dual standards of law enforcement:

The very fact that criminal revolt can gain such momentum in even such an enlightened city as Detroit also would seem to indicate that the police don't know what is going on in the slums. They don't know because they don't apply to those areas the standards they impose on the better-off sections of town. They seem to have the attitude: 'What if Negroes indulge in a few cutting scrapes, so long as they slice each other?'

The U. S. Commission on Civil Rights also noted that, on a national scale:
For many ghetto residents, the symbol of white authority is the policeman, who, in their view, has often not provided protection for citizens within the ghetto, does not treat them with dignity and respect, and views his role as that of keeping Negroes 'in line' on behalf of the white community.

The Presidential Commission on Civil Disorders similarly condemned this dual standard of law enforcement. At several points in its report, that body commented, including among its primary recommendations the proposal that city governments be required to give "more adequate protection to ghetto residents to eliminate their high sense of insecurity and the belief of many Negro citizens in the existence of a dual standard of law enforcement."\(^{21}\)

Black youth, as has been noted in a number of comments from the recent period, have been particularly apparent in involvement in criminal proceedings. No major study in sociology or social psychology has concentrated on such problems, but many general studies on youth and delinquency are significant. Of particular interest are those which bear on elements of urban life--problems of large, concentrated populations, broken homes, poverty, lower class culture, and differing class attitudes. As far back as the 1920's, pertinent conclusions were presented by Clifford Shaw and Frederick Thrasher. In separate studies they concluded that crime and delinquency were highest in the centers of cities. Thrasher found that high levels of adult permissiveness were
essential elements in leading youth into gang life.22 In 1938 Britain's Cyril Burt demonstrated a direct relationship between poverty and delinquency. Shaw, in a 1942 examination of several cities, concluded that the total tempo of urban life sanctioned delinquency.23 Talcott Parsons in 1947 found that fatherless homes, a type common in black ghettos, produce violent boys. He concluded that this happened because boys in such homes tended towards violence as a representation of masculinity, in apposition to the feminine trait of gentleness in a female-controlled home atmosphere. Sheldon and Eleanor Glueck, examining home influences in 1950, determined that homes with economic pressures were a factor in producing criminals. In 1954 Albert Cohen suggested that a delinquent subculture develops primarily among lower economic groups, as a direct reaction against the established culture. He noted in particular that this reaction is triggered by the negative opinions of society, feelings of self-derogation, and the impact of mass media. In the same year Clyde Vedder suggested that much delinquency is produced by adult attitudes and by lower economic status, restricted employment opportunities and racial proscriptions.24

In general, then, recurring elements have been identified by sociologists and social psychologists as causes of crime in modern cities. Historians have not attempted to use such standards to measure ante-bellum
prejudice on other facets of social life. Caution has been exercised largely because the modern concepts are urban while ante-bellum society was primarily rural, and because of the undoubted impact of slavery, whose oppression and control could logically be expected to cause distortions in the reactions being measured. Given adequate information on ante-bellum urban life, however, it seems proper to be less cautious, keeping in mind that the purpose is not to challenge modern views about slavery but to provide more adequate grounds for historical conclusions about it. To gauge ante-bellum applicability of modern concepts of criminality and race requires, first, consideration of some of the elements in the psychology of prejudice.

In 1943 psychologist Bruno Bettelheim first drew the stark parallels between the effects of slavery on blacks and of Nazi concentration camps on Jews. The ideas in his work were interpreted into the broad psychology of prejudice in 1954 by Gordon Allport, who had served the United States government during World War Two as a specialist in German psychology and then had become a leading expert on prejudice. The same data was given historical treatment in 1959 by Stanley Elkins, whose primary conclusion was that the excesses of American Negro slavery had been so strong that they had produced the "Sambo" personality, the groveling, shuffling, clowning image. According to Elkins' interpretation, slavery by its absolutism
made chattels so dependent that it destroyed initiative and other positive traits of character and personality.  

Bettelheim had suggested that when withdrawal and passivity occur and the individual has no hope of escaping from the situation, he feels group oppression which in its final stages produces self-hatred. The integrity of the ego is virtually destroyed and the groveling self-image can develop; in turn, this will produce actions such as clowning or cringing, both of which represent rejection of the victim's out-group's positive characteristics and acceptance of the majority, in-group's views. Thus, the individual is not just "playing" Sambo, but actually does agree with the dominant class and tries to identify himself with it by rejecting his own out-group. Such extreme development, Bettelheim stressed, is rare; identification of self with one's oppressors is the form of adjustment accepted only when all other methods of ego defense have failed.  

Because much historical evidence shows that absolutism was not the rule in slavery, it is logical to expect to find and, possibly measure other psychological effects of slavery. In particular, modern research into personality development suggests that the impact of slavery on both black and white personalities can be measured more thoroughly in terms of the marginal role in which any minority group finds itself within a society. Allport
pointed out that as members of a specific group which is markedly different from the dominant element of a society, minority group individuals find themselves subject to prescribed customs, values and practices which their group did not create and, often, whose benefits they cannot fully enjoy. Under slavery, not only was this the social situation, it also was emphasized by the use of criminal justice procedures to enforce those customs, values and practices.  

Studies by Samuel A. Stouffer and other psychologists have shown that individuals within an out-group vary greatly in their reactions to pressures from a controlling group. Reactions range from physically violent opposition to the other group, to hatred of their own group. Indeed, describing the varieties of possible reactions stresses the limited area of the concept of prejudice examined by Elkins, for the psychologist's classic example of the extreme of self-hatred is withdrawal and passivity, in which a Negro hates being a Negro partly because he is irremovably a member of that out-group, regardless of his own preferences. Before such extreme rejection develops most individuals of a victimized out-group will stop at some earlier stage of self-rejection. Allport found that irritability, as shown be strained relations or bickering within the out-group, is a sign that pressures are bearable. When the bickering decreases sharply, or stops, it is the signal that oppression is on the increase and has created
out-group defensiveness and unity. The threat of an enemy common to all members of the minority group thus can serve to unite that minority for its own defense.²⁹

Allport reported on numerous studies which show that, in addition to causing total self-rejection, the pressures of group prejudice also result in immaturity, anxiety, alertness and suspicion among those victimized. Under some circumstances, positive personality traits also emerge, such as unusual courage, sympathy, persistence and dignity. In short, invididual reactions vary not only with each individual but between individuals, depending on their own life circumstances and the degree and type of direct or indirect contact with real or imagined pre-judice.

For centuries philosophers have counselled that "hatred breeds hatred." Numerous modern studies in the area of prejudice support this idea, although psychological thinking in regard to the nature of aggression is divided. One point of view is that of Clyde Kluckhohn, who suggests that aggression is a fundamental element in the universe; it is regarded as an instinctive, basic element, "free-floating" in a society and capable of moving people to the extremes of war or criminality.³⁰ A differing viewpoint regards aggression as more a reactive than an instinctive capacity. This view, examined in direct relation to studies of attitudes prior to wars, holds that hatred can be rational when it develops due to
violations of fundamental human rights. Aggression thereby is regarded as a counter-active factor. Included in this idea is the concept of a character-conditioned hatred, existing in manner somewhat similar to "free-floating" aggression; it is defined as a continuing readiness to hate, coupled with ill-defined emotional feelings of being wronged. Such character-conditioned hatred remains a re-active rather than instinctive phenomenon, in that it depends primarily on the individual, rather than a total society.\textsuperscript{31} These psychologists generally agree that when an initial prejudice, contempt or hatred is aimed at an entire group, the reaction is likely to be aimed at a group, too. Also closely related to these interpretations are views about fear and anxiety: anxiety is defined as an emotional state uncontrolled by self-insight because the cause is not understood and the proper target for reaction is unknown; anxiety becomes fear in a minority individual when the cause is clearly identified and the victim recognizes that he can do nothing to control it.\textsuperscript{32}

Such principles of the psychology of prejudice as have been mentioned here all present possible areas in which the impact of slavery on blacks, as measured through the criminal justice system, can be gauged. But black Americans were not the only victims of the psychological impact of slavery. White people, too, must have been deeply affected. Allport concluded that ethnic prejudice almost always involves feelings of definite hostility and
categorical rejection among members of the dominant group. He determined further that the prejudiced personality does not always have sufficient basis in actual experience when it rejects an ethnic group. These fundamentals of prejudice are consonant with the views of sociologists Allison Davis, Burleigh B. Gardner and Mary R. Gardner, who defined racial prejudice as "an organized system [in the individual] that has been deposited into his personality structure by the society; in the group, it is a status system which maintains such beliefs and values in the culture." 33

Negro slavery by its fundamental nature amounted to categorical rejection, reducing an entire ethnic group to special, inferior status by law. Hostility therefore can be measured directly from the basic nature and content of the laws, and indirectly from the general support and recognition given those laws by the press and legal system of the ante-bellum period. Of particular importance in this interpretation is the classification of rejection as "categorical." As Allport states, the human mind thinks in categories. Within this process it also is normal to think in terms of large "classes and clusters," to develop early in life a limited number of such large groups and thereafter to try to fit all new observations into them. Thus, a categorical system makes it easier to accept new data, but at the same time gives the new information the same ideational and emotional significance already attached to the category. Closely allied with this process is what
George K. Zipf called monopolistic categories and the "law of least effort." His work shows that it is a basic human desire to simplify things, a process which leads to a closed mind which will either reject all new ideas or twist them to fit monopolistic categories which the mind already has established and limited. The suggestion is that this system of thought also makes it easier to avoid knowing individuals and to avoid questions of ethics, to simplify all knowledge into two broad categories of "good" and "bad."  

Certainly, categorical thinking was a logical process during black slavery, supported by the additional psychological concepts of "visibility and strangeness." According to Virginia Seeleman, these concepts relate directly to one of the basic elements of ethnic prejudice, the lack of a basis in actual experience to support negative feelings toward a group. Her research has shown, for example, that mental categories are most easily formed in regard to an individual who has some conspicuous feature; at the same time, lack of direct familiarity with that individual makes it easier to regard him with suspicion, and, even, with hostility. It has been demonstrated that skin color is very often regarded as such a conspicuous feature. John S. Gray cites further demonstrations that casual contact between members of different ethnic groups is more liable to increase prejudice than it is to dispel it.
Effects of custom also are important to consider in analyzing ethnic prejudice. In testing of military personnel, Samuel A. Stouffer and other psychologists found that much prejudice is no more than blind conformity to custom. Some estimates based on this research hold that as much as half of all prejudice is based on this need. This concept can be related to another element in the psychology of prejudice. Regarded by scholars as a rare development in modern society, it is the existence of justifiable attitudes of prejudice and is variously called the principle of "sufficient warrant" or of "well deserved reputation." The idea is that a given group can conceivably have so many "offensive or dangerous" traits as to make it highly probable that most individuals of the group will display the same traits. According to Bohdon Zawadski, the sufficiency of warrant depends on a basis of unquestionable fact or high probability, and on traits being of a type which properly should be rejected. As an example, psychologists during and shortly after World War Two regarded the Nazi party as a rare, modern development, and suggested that Americans were justified in regarding any member of that group as bad.36

Allport stated that the structure of prejudice, as it develops in a given individual's mind, is not the product of all knowledge to which he has been exposed. Instead, much available knowledge and even some accepted knowledge is screened out in the formation of mental
categories; as a result, the structure of prejudice is more the product of selective perception and closure. From childhood, when the young person is under constant pressure to obtain definite meanings from his total experience, this system of closing out that which can easily be ignored becomes almost a natural process. The pressure thus forces the individual to attempt to close up his view of an item or even of a complex value-pattern before he actually has received or evaluated all the data he needs for a complete, logical closure. It has been shown that this process causes early thinking to develop a view of subtle, personal superiority; as the individual grows older, he fences his mental structures and makes it more difficult to accept ideas not easily consistent with his selective view of the world. In the case of inter-racial judgments, this means that often in childhood an individual builds prejudices which are mere incidents to maintaining his self-image, and that as he matures the broad view developed from this process will tend to cause his own in-group to be regarded as superior and all out-groups as inferior.

Directly related to this principle of closure is the law of subsidiation, which states that there is a tendency in all persons to acquire ethnic attitudes which will conform to whatever dominant frames of value the individual possesses. In other words, an individual tends to acquire and accept ethnic attitudes which conform to the self-image
he already has developed. Viewed this way, the acquisition of prejudice is a product of external influences—ready-made attitudes of others, the impact of publications and the most easily observed, dominant facts of life about him. 37

An additional significant factor in the development of human prejudice is described by Allport as the "social manifestation of egoism." The problem of status-craving, as it also is called, finds a handy solution in a culture with clearly distinct classes or castes. Studies by Bernice L. Neugarten and Robert J. Haring have shown that, although the simple existence of castes or classes does not by itself automatically create prejudice, it is a cultural invitation to attitudes of bigotry. At a minimum, existence of a caste or class system leads to development of a mild sense of superiority, which can be achieved without conscious organization of prejudiced attitudes in support. For many persons, social distinctions of class and caste thus are taken as major guides for their way of life; this, under the law of subsidiation, means that they have taken the social model as their model. Applied to ante-bellum life this line of thought provides general support for regarding the law-enforced system of slavery as a primary creator and sustainer of at least mild sensations of superiority among whites. 38
Observations by Zawadski in regard to selection of scapegoats provide a final method for interpreting more precisely the nature of prejudice in a society. He demonstrated that the selection of a racial group as a scapegoat is largely an unconscious mental process. Few persons are aware of their real reasons for hating minority groups or that the causes which they may cite in self-justification are dominantly rationalizations. 39

To this point, significant facts and opinions have been considered in regard to the criminal justice system, crime and race, and the elements involved in establishing a prejudiced personality. Before they can be applied to the ante-bellum period in an effort to measure the extent of prejudice as reflected in the system of justice, it will next be necessary to define more clearly the selection of old New Orleans as a proper area.
FOOTNOTES


19. Bullock, Houston Murder Problem, pp. 2, 61-62, 64, 65-66. Using statistics of the State Prison system, Bullock concluded that "burglary, being basically an interracial offense, elicits protection of the property of white society against Negroes." In conflict, the Kerner Report, pp. 267, 268, found that offenses against property were committed primarily by blacks against blacks.


27. Allport, Nature of Prejudice, pp. 36-38.


29. Ibid., pp. 148-149.


31. Hadley Cantril (ed.), Tensions that Cause Wars (Urbana, 1950), Ch. 2.


34. Ibid., p. 20; George K. Zipf, Human Behavior and the Principle of Least Effort (Cambridge, 1949), passim.

35. Virginia Seeleman, "The Influence of Attitude upon the Remembering of Pictorial Material," Archives of Psychology, No. 258 (1940), passim; John S. Gray, Psychology Applied to Human Affairs (New York, 1954), pp. 104-105, 130-131, 546. Also see Kerner Report, p. 268, for view that news of black crime is the primary contact for most whites and both a cause of prejudice by whites and of black hostility towards police.


COLOR, CRIME AND CITIES

Americans polled in the 1960's identified the nation's leading problems as race and crime. Professional studies of public attitudes showed further that the people were near unanimity also in feeling that urban growth somehow was involved with those primary problems. From that point on, however, agreement could not be found; instead, public opinion divided into widely varying ideas about the inter-relationships among color, crime and cities.¹

During the decade, facts and figures about city dwellers showed that there were, indeed, deep and close relationships among race, crime and urban growth. When the 1966 riots had reached their peak, the Bureau of the Census released a report which predicted that by 1970, fourteen cities in the United States would have populations that were at least 40% black. Already in that year
Washington, D. C. and Bessemer, Alabama, had black majorities. Five years later, official tabulations of the 1970 census showed that the 1966 estimate had been conservative; a total of sixteen cities had reached black majority status.2

In other cities, where blacks were not majorities, Negro populations also were becoming significant. In New York City, with just over one million blacks in a total population of eight million, a 1967 survey revealed that more than half the students in public schools were Negro or Puerto Rican. Houston, Texas, with 34 per cent of its public school students registered as blacks, had a citywide black population of only twenty per cent.3

In such cities, both with black majorities and with large black youth populations, concern with disproportionate Negro involvement in crime was high. In Houston the daily Chronicle brought the elements of race, crime and urbanity together in an editorial which concluded that the black was simply "the latest arrival in the big city and the man on the bottom rung of the ladder, who disproportionately contributes to the crime rate." Quick assimilation into the mainstream of urban society would occur and solve the problem, the newspaper assured its readers. On a national basis, the Wall Street Journal editorially suggested that racial disorders had no underlying meaning, such as national racism; instead, outbreaks of violence were called merely the product of rapid urban growth.
That editorial also blamed urban growth for "unemployment, housing, schools, segregation and police problems." In the same period, other media similarly presented editorials which concluded that the mere existence of large cities was the primary cause of problems.  

Black migration within the United States, a key element in the Houston commentary, more and more frequently was cited by news media as an element behind rising crime and unrest during the sixties. Syndicated columnist Marquis Childs, on the basis of an interview with Los Angeles Mayor Sam Yorty, said that "a root reason" for the upheaval in Watts was that "the Deep South has been exporting to the cities of the North poor, uneducated, semiliterate Negroes." Joseph Alsop warned that the summer of 1966 could be the worst in history, "quite largely because of the emigration of over twelve million Southern Negroes to the great Northern cities." A Department of Labor report warned that problems were being caused by the "massive out-migration of millions of uneducated, untrained Negroes from the farms and small towns of the South to urban centers where the jobs they hope for don't exist."  

California Governor Edmund Brown lamented that his state was "paying the penalty for the conditions under which the Negro has lived in other states." His State Riot Study Commission concluded specifically that the key to the Watts riot had been "a recent influx of Southern farm
immigrants." Even leaders of the Black Nationalist movement supported this trend of thought, as they said that their people were in ghettos to seek "life without Southern rural oppression." A year after these various comments, the Washington Post deplored the Detroit riot as inexplicable except for heavy migration from the South; two years later the Kerner Commission repeatedly attributed the crises in northern cities "in large part to heavy immigration of Negroes from rural poverty areas" and to "a continuous flow of Negroes from Southern rural areas."  

In direct contrast the Kerner Commission study, examining individual outbreaks in different cities, reported time after time that rioters were not the typical "Southern-born Negro," but were "life long residents of the city in which the riot took place," and that "in the South, more than half the Negro population now lives in cities." Also in direct contrast was publication at the same time of a study of a racial outbreak in Detroit during World War Two; it showed that by 1943, rural, southern blacks had completed their major, direct migration to that city. Similarly, a 1965 study by the Institute of Government and Public Affairs at UCLA showed that seventy percent of the men in Watts had lived in that community for at least ten years.  

Actual patterns of black migration were most completely analyzed and described in a 1965 study conducted
by Karl and Alma Taueber. They pointed out that "the rural Negro sharecropper is disappearing from the American scene, and no longer makes up a significant share of the Negro in-migrants to cities." Instead, they showed, most "Negro migrants to cities are coming from other cities rather than farms; they are of higher average educational and occupational status than the resident Negro populations in the cities to which they move." By 1960, the Taueber study concluded, 73 per cent of America's Negroes already lived in cities, and the movement of blacks from northern city to northern city was far more significant than the movement from southern farm to southern city. Such intra-southern movements, the Tauebers reported, had become the primary pattern for black departures from rural areas. 

Analysis of census figures on black births and migration patterns supports the views of the UCLA researchers and the Tauebers. These figures are presented on Tables I and II (Pages 37 and 38). The first table illustrates that black population shifts out of the rural South had begun far earlier than media sources had indicated. Indeed, it is apparent that major movements to the Northeast had started as early as the 1890's, and that the most significant black population increase in the North had occurred during the prosperous 1920's, when the Northeast reflected a seventy per cent rise and the North Central a fifty-five per cent rise; the West, although reflecting substantial increases in black percentages since the start of the
**TABLE I**

NEGRO POPULATION BY REGIONS

<table>
<thead>
<tr>
<th>Year</th>
<th>South</th>
<th>Northeast</th>
<th>North Central</th>
<th>West</th>
</tr>
</thead>
<tbody>
<tr>
<td>1870</td>
<td>4,932,974</td>
<td>179,738</td>
<td>273,000</td>
<td>6,380</td>
</tr>
<tr>
<td>1880</td>
<td>5,953,903</td>
<td>229,417</td>
<td>385,261</td>
<td>11,852</td>
</tr>
<tr>
<td></td>
<td>+20%</td>
<td>+30%</td>
<td>+35%</td>
<td>+87%</td>
</tr>
<tr>
<td>1890</td>
<td>6,760,577</td>
<td>269,906</td>
<td>431,112</td>
<td>27,081</td>
</tr>
<tr>
<td></td>
<td>+14%</td>
<td>+18%</td>
<td>+12%</td>
<td>+133%</td>
</tr>
<tr>
<td>1900</td>
<td>7,922,969</td>
<td>385,000</td>
<td>495,751</td>
<td>30,254</td>
</tr>
<tr>
<td></td>
<td>+12%</td>
<td>+40%</td>
<td>+15%</td>
<td>+11%</td>
</tr>
<tr>
<td>1910</td>
<td>8,749,427</td>
<td>484,176</td>
<td>543,498</td>
<td>50,662</td>
</tr>
<tr>
<td></td>
<td>+10%</td>
<td>+26%</td>
<td>+10%</td>
<td>+67%</td>
</tr>
<tr>
<td>1920</td>
<td>8,912,231</td>
<td>679,234</td>
<td>793,075</td>
<td>78,591</td>
</tr>
<tr>
<td></td>
<td>+02%</td>
<td>+40%</td>
<td>+28%</td>
<td>+56%</td>
</tr>
<tr>
<td>1930</td>
<td>9,361,577</td>
<td>1,146,985</td>
<td>1,262,234</td>
<td>120,347</td>
</tr>
<tr>
<td></td>
<td>+04%</td>
<td>+70%</td>
<td>+55%</td>
<td>+52%</td>
</tr>
<tr>
<td>1940</td>
<td>9,904,619</td>
<td>1,369,875</td>
<td>1,420,318</td>
<td>170,706</td>
</tr>
<tr>
<td></td>
<td>+06%</td>
<td>+18%</td>
<td>+12%</td>
<td>+42%</td>
</tr>
<tr>
<td>1950</td>
<td>10,225,407</td>
<td>2,018,182</td>
<td>2,227,876</td>
<td>570,821</td>
</tr>
<tr>
<td></td>
<td>+03%</td>
<td>+47%</td>
<td>+33%</td>
<td>+236%</td>
</tr>
</tbody>
</table>
TABLE II

MIGRATION PATTERNS, SHOWN BY AREA OF BIRTH

Northeast Black Population--Areas of Birth

<table>
<thead>
<tr>
<th>Year</th>
<th>Northeast</th>
<th>S. Atlantic</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>1900: 201,000 (53%)</td>
<td>167,000 (45%)</td>
<td>7,000 (2%)</td>
<td></td>
</tr>
<tr>
<td>1910: 238,000 (51%)</td>
<td>213,000 (45%)</td>
<td>17,000 (4%)</td>
<td></td>
</tr>
<tr>
<td>1920: 281,000 (44%)</td>
<td>305,000 (49%)</td>
<td>44,000 (7%)</td>
<td></td>
</tr>
<tr>
<td>1930: 425,000 (40%)</td>
<td>560,000 (53%)</td>
<td>74,000 (7%)</td>
<td></td>
</tr>
<tr>
<td>1940: 599,000 (46%)</td>
<td>613,000 (47%)</td>
<td>91,000 (7%)</td>
<td></td>
</tr>
<tr>
<td>1950: 891,000 (47%)</td>
<td>854,000 (45%)</td>
<td>152,000 (8%)</td>
<td></td>
</tr>
</tbody>
</table>

North Central Black Population--Areas of Birth

<table>
<thead>
<tr>
<th>Year</th>
<th>N. Central</th>
<th>S. Atlantic</th>
<th>E.S. Central</th>
<th>W.S. Central</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>1900: 370,000 (68%)</td>
<td>44,000 (08%)</td>
<td>107,000 (20%)</td>
<td>12,000 (02%)</td>
<td>11,000 (2%)</td>
<td></td>
</tr>
<tr>
<td>1910: 348,000 (63%)</td>
<td>48,000 (09%)</td>
<td>128,000 (23%)</td>
<td>19,000 (03%)</td>
<td>11,000 (2%)</td>
<td></td>
</tr>
<tr>
<td>1920: 415,000 (50%)</td>
<td>99,000 (12%)</td>
<td>249,000 (30%)</td>
<td>54,000 (06%)</td>
<td>17,000 (2%)</td>
<td></td>
</tr>
<tr>
<td>1930: 581,000 (43%)</td>
<td>209,000 (15%)</td>
<td>396,000 (30%)</td>
<td>142,000 (10%)</td>
<td>27,000 (2%)</td>
<td></td>
</tr>
<tr>
<td>1940: 702,000 (47%)</td>
<td>196,000 (13%)</td>
<td>415,000 (28%)</td>
<td>150,000 (10%)</td>
<td>30,000 (2%)</td>
<td></td>
</tr>
<tr>
<td>1950: 999,999 (44%)</td>
<td>278,000 (12%)</td>
<td>694,000 (30%)</td>
<td>255,000 (11%)</td>
<td>69,000 (3%)</td>
<td></td>
</tr>
</tbody>
</table>
twentieth century, did not have its first important numerical rise until the 1920's. Figures for the South suggest that after 1910 the real out-migration began, doubtless influenced by the World War One economy. Similarly, the second World War was also an obvious stimulus to a new surge of movement and population growth in all areas except the South.

Table II provides data on the areas in which black citizens were born and provides information from which patterns of migration can be drawn. Examined in conjunction with Table I, these figures suggest that there was a moderate increase in black migration from the South Atlantic states to the Northeast prior to 1920 and that this movement peaked in the 1920's. The gradual decline in the percentage of southern-born Negroes in the Northeast after 1930 illustrates that by the time of the riots of the 1960's the impact of southern emigres was clearly secondary to that of northern-born blacks. Similarly, the figures on patterns of migration to the North Central part of the United States show that significant black out-migration from three major areas of the South had peaked before 1930, while black out-migration from the fourth area, the West South Central, had virtually levelled off.

Although the major movements of black Americans to the North and to urban areas occurred over a long period of time, there is little question that those movements were dominantly elements of the twentieth century. As the
figures in the first table show, only 5.7% of the nation's blacks resided outside the South in 1860 and only ten per cent resided outside the South in 1900, whereas by 1950 some one-third lived in regions other than the South. Even so, nineteenth century black migration to cities, both northern and southern, has frequently been regarded as a factor worth investigation. Wilbur Cash concluded that immediately after the Civil War, movement of newly freed blacks to towns was sizeable and significant; his examination showed a direct connection between this migration and an early disproportion in black involvement in crime. More recently, Rudwick and Meier have shown that the black urban population by 1890 accounted for twenty per cent of all blacks; their interpretation held that the movement was due largely to economic problems of rural areas. Their observation also is consonant with the Taueber study, since most of that rural-to-urban movement was within the South.

Several authorities have urged closer examination of migration patterns during slavery. The Tauebers suggest that attention be directed to the role of free blacks, pointing out that this class was "concentrated in cities, where they depended on domestic work and other services and on jobs for unskilled labor and craftsmen." Both Frazier and Cash laid part of the blame for high Negro crime rates in the late nineteenth century on "traditional" poverty and lack of opportunity in urban society. New York Times columnist Claude Sitton in 1962 concluded that
Negro problems with the law stemmed at least in part from "long years of repression" under slavery. Gunnar Myrdal similarly called "slavery tradition" a significant factor in disproportionate black involvement with the law.  

C. Vann Woodward has suggested that the status of free blacks in the Old South is significant because "it was in the treatment accorded these people in both North and South that the ante-bellum period came nearest to foreshadowing segregation." For any study of such status, recognition should immediately be given to the fact that free Negroes in the pre Civil War period lived mostly in towns and cities of the South. In 1860, for example, of 19,829 free blacks in Delaware, 19,200 lived in towns and cities. More than ninety per cent of the free Negroes in Virginia lived in Richmond and Alexandria. In contrast, southern states with no sizeable cities had very small free black populations; in Alabama in 1860 there were only 2,690 free blacks; in Mississippi, 773.  

Town slaves of the Old South also were important forerunners of twentieth century urban blacks. Many accounts from the period depicted such slaves as enjoying more freedom than their plantation brethren. Scotch journalist Alexander Mackay, a frequent visitor to the United States in the late 1840's, said he regarded town slaves in the Upper South to be the freest of all chattels. Another traveller, Charles A. Clinton of New York, found slaves in Richmond to be enjoying substantial liberty.
Well-known English writer Matilda Houstoun, during a visit to New Orleans, concluded over her own antislavery bias that the horrors of slavery were greatly mitigated under urban conditions; another lady traveller, Amelia Murray, even labelled that same city's slaves "pampered."  

Many modern studies have suggested that urban slaves enjoyed a different status from their plantation brethren. Charles Sydnor reported that in Mississippi, with no big cities to visit, slaves frequented small towns on weekends despite state laws prohibiting it. U. B. Phillips noted that Charleston slaves were so much on their own that white labor raised strenuous objections. Howell M. Henry and Ralph Flanders discovered corresponding situations in the towns of South Carolina and Georgia. 

Another topic drawing frequent comment from travellers was the fear of rebellion in the Old South because of the existence of free blacks. James Silk Buckingham went into some detail, for example, to explain how southern whites feared that free Negroes would promote slave revolts. Modern studies have echoed the point. Rosser Taylor wrote that North Carolina "slave owners always regarded the free negro with suspicion because he was known to be in sympathy with the desire of the slaves to be free." William B. Hesseltine stated the same fears were felt in all the South because free Negroes made up the great majority of southern criminals. Arthur C. Cole suggested that free blacks either emigrated to the North or remained close to
the plantations from which they had been freed; he, like Hesseltine, concluded that free blacks "were charged with most of the crimes" in the South. Francis Butler Simkins also concluded that slaveowners greatly feared the influence of free Negroes on their slaves. 16

Common to all these conclusions was the assumption that free blacks were in close enough proximity to make fears reasonable. State lawmakers of the Old South undoubtedly felt the threats were real, and legislated often to place special controls on free Negroes. Yet, because the free blacks against whom they legislated did not, indeed, live near enough to plantations to constitute an actual threat, it seems logical to examine closely the idea that legislation alone is evidence of actual treatment accorded free blacks. Over a long period, many historians have endeavored to seek better evidence than statutes, and several have attempted to differentiate between rural and urban situations. The first historian to give more than a casual glance at ante-bellum black crime was U. B. Phillips. In American Negro Slavery he briefly examined reports on New Orleans during the early years of slavery, but reached no specific conclusions about cases reported there. In a special study of Charleston, South Carolina, however, he went through police court records for the year 1837 and concluded that about twenty per cent of all charges against blacks were dismissed immediately; he
further concluded that almost all offenses were of a minor nature, such as being found without passes or being in prohibited places, such as bars.17

Howell M. Henry's study of South Carolina also touched on black crime in Charleston, but was restricted to an examination of ordinances. Gerald Caper, in a penetrating look at Memphis, examined ordinances and local records to find that slave codes were "laxly enforced" and that blacks were not involved in a disproportionate number of crimes. William R. Hogan's discovery of the diary of a Natchez free Negro also led to summary examination of the black crime situation in that city; he concluded that in "the entire ante-bellum period, Natchez was comparatively free of Negro crime, by either slaves or members of the Free Negro group, and a majority of the law violations were cases of petty theft." Charles Sydnor found Mississippi slave laws to be poorly enforced and noted no change in the efficiency of enforcement during times of national stress. More restricted studies by other historians similarly have failed to discover any increased enforcement efficiency in New Orleans or Missouri following revolts or rumors of revolts.18

More recent and comprehensive examinations of ante-bellum, urban society, led by Richard Wade, support the idea that laws governing blacks in cities were less than efficiently enforced. At the same time, Wade says that urban communities were in constant fear of insurrection.
As yet, no thorough examination has been conducted of the black crime situation in any ante-bellum city, largely because, as Wade has suggested, there are "few municipal records or police blotters remaining; newspaper accounts are spotty, irregular and not always reliable," and memoirs are at best questionable.19

Baltimore, largest city in the Old South, illustrates the difficulties of research. With a total population of some 212,000 persons, the Maryland city was the fourth largest in the nation. Yet, today the most nearly complete Baltimore records on crime in that period are in newspapers; among those journals, only the Baltimore Sun made any regular effort to report crime news. An examination of six months' coverage by that paper amply demonstrates Wade's view. Setting the scene was a report on January 3, 1850, summarizing activities of the city police department during the preceding year. In summary, the following arrests had been made: disorderly conduct, 566; assault and battery, assault with intent to kill, and waylaying, 354; violation of city ordinances, 179; robbery, burglary, theft, and pickpockets, 80; vagrancy, 72; gambling, 14; murder, 8; shooting with intent to kill, 4; sale of liquor on Sunday, 3; incendiary, 3; slave-harbor ing, 2. No mention was made in the report about the race of alleged offenders.20
Near the end of the first six months of that year a grand jury report was issued, including details on conditions at the city jail and state prison. The local jail was found to be holding 123 prisoners; of them, 66 were charged with felonies, 50 with misdemeanors, seven for debt and the remainder not identified. Of the total, 40 were identified as black. The state institution had 234 inmates, of whom 110 were identified as white and 100 as black, with no status given for the other 24. Aside from this report and the police activity report, the Sun in these six months provided no comprehensive stories on crime. Examination of daily issues in the intervening months reveals an effort to report all cases of only one crime, murder; otherwise, entries show obvious reportorial selectivity and fall far short of categorical totals which the year-end report would have led a reader to expect. The newspaper also was highly inconsistent in identifying the status of those termed "colored." General contempt for black persons showed through, with use of such epithets as "nigger." Regardless, if it may be presumed that all persons of color were identified in one way or another, as many as ninety per cent of the crimes reported involved only whites; and, except for murders, virtually all the crime news presented was of comparatively trivial nature, treated lightly and apparently chosen for its "amusement" value rather than to provide a chronicle of events.
Despite many weaknesses as source material, entries in the Sun still suggest that important areas of interracial relations in such a city were unusual in comparison with the plantation system. The year opened, for example, with reports on two cases, one of which showed that the rights of accused persons of color were respected and the other of which showed how summary punishment was meted out to slaves. The entries read: 22

Oliver Sanders, colored, was yesterday arrested by Officer Logue upon the charge of stealing two pairs of boots the property of Frederick Roach. Justice Root released him, as the evidence was wholly insufficient to warrant his detention.

John Cooper, a colored slave, who was arrested upon the charge of stealing a bar of copper, the property of Messrs. Murray & Hazlehurst was yesterday ordered by Justice Pennington to receive five lashes for the offence, and be discharged.

Ten days later an entry in the paper showed that black victims of white assailants could obtain legal assistance: 23

*Cruel Assault*—On Tuesday evening quite a disturbance took place on Potter street, growing out of a dispute between Patrick Mullen and a colored man named Robert Russell. Mullen beat the latter over the head with a huge stick, in the most cruel manner, and cut his face badly. Officer Yarrington immediately arrested Mullen, who gave security for his appearance before court to answer the charge.

In somewhat of a reversal of that situation, an entry of January 21, 1850, suggested that blacks accused of offenses against whites also had their basic rights protected; the report said that "James Curtis, colored, arrested upon
the charge of stealing, on Saturday afternoon underwent a further examination, which resulted in his being discharged." Likewise, the paper reported on February 9, 1850, that "John Reynolds, convicted of aggravated assault upon a colored man the other day, was sentenced to one month's imprisonment and a fine of $10 with costs."24

When free blacks were accused of crimes against their own class, justice also apparently could be found. Such was the case of Caroline Wright, accused of stealing shirts from two black men; she was acquitted in court when "the State failed to sustain the identity of the property." Other cases mentioned now and then in the daily press substantiate findings for the same period among high court decisions in various southern states; among such decisions was the North Carolina ruling which reversed the death sentence of the slave Jim with the statement that "The slave is put on trial as a human being," not as property, and had the right to have defense witnesses testify.25

Reports in the Sun also reflected the more cruel elements of slavery, when black people became involved in crime as both victims and criminals. Thus, free black Joshua Johnson, found guilty of stealing a ham from a white grocer, was sentenced "to be sold out of the State for the term of three years." Amanda Smith, also free black, when unable to swear on a Bible because "she didn't have religion," was sentenced to be sold out of state for
five years; her crime was stealing a shawl from another black person. 26

By May 18, 1850, the daily paper had reported six cases of murder in Baltimore; in all cases, the victims and the accused were white. On that date the first black person accused of murder was arrested. It was a slave whose name was never reported by the press. Five days after his arrest, he was tried in County Court, found guilty of murdering a white man, and sentenced to be hanged. No details of the trial were presented, but the speed of handling strongly suggests little consideration for the rights of the accused. This was not, however, an urban crime; it had occurred on a plantation outside the city, and the Baltimore system of justice was not involved. 27

In the following month, June of 1850, two murders involving free Negroes were reported. In the first instance the initial report stated that Emily Johnes had stabbed her brother-in-law in an argument over who was a liar; she reportedly freely admitted her guilt as "the parties were all very respectable colored people, and had heretofore lived together on the best of terms." Ten days later the trial in City Court was chronicled. Emily, charged with manslaughter, changed her testimony from that given at the time of arrest, and said she had been holding a knife when Robert Jones lunged at her and impaled himself on it. Two days later she was convicted as charged, and
sentenced to five years in the penitentiary. The second killing occurred just two days after Emily's trial. In that instance the statements of some twenty witnesses, including slaves and free blacks, were carried by the newspaper, strongly indicating that the white victim, one Armenian S. Watkins, had been fatally struck with a brick by one Major Harrod, "colored boy." Harrod was arrested on the following day; examination of the newspaper for the next six months failed to show any further action in the case. 28

Although such cases show variety in the system of justice as it applied to blacks in ante-bellum Baltimore, they show also the unsuitable nature of the press of that city as a source for thorough examination of the total crime picture. They suggest that black crime was not disproportionate, whether the Negroes were slave or free, criminal or victim. But they do no more than suggest such points. A markedly different situation is to be found in regard to the black crime problem in the second largest city in the Old South, and the largest in the Deep South--New Orleans.

Contemporaries then and historians since have remarked often on New Orleans' distinctive difference from anything else in the nation, a cosmopolitan center unique in the rural South, combining some country elements with urban attitudes and a strong international past and present.
Of special significance was the position of black people during the final years of slavery, for they were both numerous and quite different in mode of life from other Negroes in that time.

In 1860 the population of the city was 168,675 persons, making it the sixth largest city in the nation. Aside from New Orleans and Baltimore, only Louisville, Kentucky, had reached the 100,000 population level. Of the 1860 New Orleans populace, 25,122, or 16.7% were black; that included 10,689 free blacks and 14,484 slaves. The city's free black population had grown from 1,335 in 1803 to 2,312 by 1810. By 1852 the free Negro count had risen to 12,529; the entire state total of free blacks was 17,462, with almost all of those outside New Orleans being residents of other towns.29 After the 1840 census, a feud had erupted between the city and federal government over its accuracy. Great numbers of Orleanians, white and black, were not counted because they were absent from the city during the malaria-ridden summers. When, following the 1850 census the disagreement arose again, city fathers had their own, winter-time headcount made; it revealed a total population of 145,449, including a 20.1% black population of 29,174.30

Both in size and character, New Orleans was very different from the rest of the South. "It also seemed to many the least American," Wade has suggested. Certainly, many found it the least southern. Frederick Law Olmsted
wrote that "the rights of free negroes were carefully re-
garded" there in comparison to their privileges in other parts of the South. Many historians have tended to con-
firm this. Joseph G. Tregle, in an examination of New Orleans alone, suggested that "free persons of color were no less unrestrained and enjoyed a status in Louisiana probably unequalled in any other part of the South." El-
kins suggested that the entire state might have been more humane than the rest of the South due to its Spanish-French past. Clement Eaton arrived at a similar view.31

Other authorities, however, have concluded that New Orleans was not so unique, particularly during the fi-
nal years of slavery when Louisiana leaders regularly dis-
played a unanimity of feelings with the rest of the South. In 1850 the state's political leadership was reported to be of the same general opinion as other southern state leaders, that they should be united because northern politi-
ticians "could push issues" to the point of disunion.
Outgoing Governor Isaac Johnson at that time expressed the earnest hope that "a firm, united and concerted action among the Southern States may avert the danger that menaces the Union, ... impelled by the fanaticism of anti-slav-
ery." Mass meetings were held in all major cities of the South after the Compromise of that year; New Orleans was no exception as some 10,000 persons gathered to express their unanimous sentiment for preservation of the Union at any cost. Later in the decade as southern unity grew
in reaction to growing criticism, nationalism became secondary and Louisiana again was in accord with its region. Governor P. O. Hebert reflected the change in temper in 1856 as he endorsed talk of secession: "The slaveholding states are warned in time. They should be prepared for the issue. If it must come, the sooner the better." 32

On the issue of black involvement in crime, various authorities have raised doubts about the real, lasting impact of French and Spanish influence in Louisiana. Where elements in the original code noir under earlier flags were more humane than contemporary codes of the American states, by the 1850's such elements were minor parts of a large volume of laws that was strikingly like those of other slave states. A modern student of the last days of slavery in New Orleans has provided a good deal of statistical data which also indicates that the legal and special status of free blacks deteriorated badly in the 1850's. Frazier has suggested that rather than being more humane, Louisiana, with special note to the slave-trading center of New Orleans, was a true representative of the Deep South, the harshest part of the nation. John Hope Franklin concluded that "great brutality" occurred even in the French period, despite theoretical humane elements of the laws. 33
Visitors to the city also wrote with doubts about its reputation for humanity. British abolitionist Ebenezer Davies charged that there was a complete lack of justice in the entire state. Alexander Mackay concluded that the "mildest form" of human bondage was in the Upper South; he singled out the cotton states, including Louisiana, as examples of "unfeeling severity." W. E. Baxter, another English abolitionist, criticized unusual "brutality" in New Orleans.34

Study of the criminal justice system in New Orleans during the final years of slavery offers an opportunity to resolve the conflict about its typicalness or its humanness. The city presents an exceptional opportunity for study, also, through the availability of records and a unique legal system, and through publication during the 1850's of three major newspapers. The records are those of police and of the old Recorders' Courts, the courts which screened all complaints by or against Negroes and which conducted many criminal actions on their own.35

The newspapers, the Daily Crescent, Daily Delta and Daily Picayune, were highly competitive both in the battle for news and in the fight for city advertising, and together with extant records present a detailed picture of the criminal justice system and the Negro during slavery.
FOOTNOTES

1. Wolfgang, Crime and Race, p. 3. See Epilogue of the present work for examples of this attitude.


21. Ibid., June 8, 1850.

22. Ibid., January 1, 1850.

23. Ibid., January 10, 1850.

24. Ibid., January 21, February 2, 9, 1850.


27. Ibid., May 18, 23, 1850.

28. Ibid., June 12, 22, 24, 26, 27, 1850.


33. Donald E. Everett, "Free Persons of Color in New Orleans, 1803-1865," (Unpublished Ph.D. dissertation, Tulane University, 1952), pp. 128-130, 171; Frazier, *The Negro in the United States*, p. 91; Lewis G. Clarke, *Narrative of the Sufferings of Lewis Clarke* (Boston, 1845), p. 121; John Hope Franklin, *From Slavery to Freedom: a History of American Negroes* (New York, 1947), p. 65. The question of enduring impact of French and Spanish slave laws could also be raised in regard to population changes, since its 1803 population, when the territory was transferred to the United States, was only 8,056, of whom just 3,248 were white. See Appendix A.


35. Pertinent volumes in the archives of the New Orleans Public Library include *Record Book No. 2, Municipality No. 3*, 1850, which contains data on criminal cases from November 18, 1848, to November 30, 1850; included in entries are dates and titles of cases, nature of complaint, names of witnesses, dates of warrants, appearance dates, proceedings summaries and decisions. *Recorders Courts, 1856-1858*, *Record Book*, is a daily record of day and night police from July 2, 1856 to January 15, 1858. *Report Book, Recorder's Office, 3d District*, contains day and night police reports to the recorder; race is clearly identified and numerous entries have brief descriptions of unusual circumstances involved in arrests, from January 1, 1853 to April 30, 1854. *Report Book, Recorder's Office, 3d District, 1854-1855*, contains similar entries from May 1, 1854 to May 15, 1855. *N.O.P.D. Record of Arrests, 1857-1858*, the most well maintained among the volumes, provides considerable data on arrests and trials from October 1, 1857 through October 16, 1858. Appendix A of the present work provides an exposition on the state laws governing slavery; Appendix B contains a brief history of the courts and police systems of New Orleans; together, they provide data for a more complete understanding of the criminal justice system of the period under study.
II

CRIMINAL JUSTICE AND BLACKS
IN OLD NEW ORLEANS:
THE PUBLIC PEACE

Just as racial riots and fears of them dominated much of the mid-1960's, slave insurrections and fears of them were a major element of the 1850's. Similarly, just as no consensus was reached by political leaders about causes of the problems of the 1960's, no agreement has been reached among historians about either the frequency of actual rebellions or of unfilled plots in the 1850's. Nearly sixty years ago James C. Ballagh suggested that slave revolts near the end of the ante-bellum period "were more of an anticipated danger than an actual one." More recently Herbert Aptheker said slave insurrections were common up to 1861; Joseph C. Carroll supports this view, contending that "while there were many failures, the attempts at Insurrection were frequently enough to keep the South in constant fear." E. Franklin Frazier
further concluded that slave unrest produced "sporadic conspiracies and uprisings during the decade prior to the Civil War."\(^1\)

New Orleans in the 1850's saw only one plot come near reality. This was the scheme of John Dyson, onetime schoolteacher and self-styled lawyer, who planned and organized what was to be a bloody rebellion in 1853. Working quietly for several months, Dyson recruited more than 2,000 slaves for his uprising. He organized them into three equal sized groups, along military lines, each with its own chain of command. He hand-picked his own "general staff," with himself as commander-in-chief.

One squad was to spread through New Orleans' residential streets on the night of June 14, 1853, and at the stroke of midnight its members were to set fire to as many homes as possible. With this expected to draw the city's populace away from the business district, the two other groups of slaves would strike. One was to attack the armories, the other the banks. By this strategem, Dyson expected to gain control of the military and economic power of the community, which would enable him to exact tribute for himself and freedom for the slaves.\(^2\)

Dyson planned carefully and organized well, but his dreams were destroyed by a free Negro named George Wright, who gave advance warning to city officials. Drawn into the plot on its very eve of commission, by Dyson's
key lieutenant, a slave named Albert, Wright feigned interest and then at first opportunity stole away and informed. Within a few hours twenty ringleaders, including Dyson and Albert, were under arrest. ³

On June 16, Dyson and Albert were charged with conspiring to "create an insurrection." One week later they were committed for trial. In the months that followed, Dyson acted as his own lawyer to forestall court action against himself. His last delay came on November 16, 1853, when he was denied a writ of habeas corpus which he had sought on the ground that George Wright, the main witness against him, was a slave. A month later, the parish grand jury indicted Dyson for "making use of language with intent to incite free people of color and slaves to discontent and insurrection." He was languishing in jail under this true bill the following February when he died of natural causes; by that time, public interest was so low that news of his passing merited only brief notice in the press, and that a full two days after his burial. ⁴

Meanwhile, the slave Albert was tried by a jury of slaveowners. Found guilty of conspiring to revolt, he was sentenced to life imprisonment, despite a Louisiana law specifically requiring the death penalty for any slave convicted of any involvement in a revolt or attempted revolt. ⁵
Insurrection was never nearer in New Orleans during the decade. In fact, the only actual uprising in the entire state of Louisiana during the 1850's occurred in 1856 in New Iberia, far removed from New Orleans in the Sugar Belt to the southwest. That revolt was suppressed within minutes of its outbreak; following it, for several weeks rumors abounded about plots everywhere, but New Orleans newspapers do not indicate any belief that the city was actually threatened. On other occasions, charges of insurrection were whispered about in New Orleans, but in no case was any fact reported to support the claims. Police did arrest Leonard Hipp in 1855 for tampering with slaves "in such a way as to incite them to insurrection," but he was quickly released when the slaveowner who had filed the charge admitted he had no proof other than his own personal dislike of Hipp. A year later police accused Valentine Goodin of "attempting to incite slaves to revolt." He, like Hipp, was released almost immediately when he was found to be the victim of a personal grudge and a false complaint.

As in the Dyson case, the accused organizers Hipp and Goodin were white. Yet, free Negroes continued to be the primary object of suspicion in southern state legislatures. Louisiana was a leader in revision of laws intended to control the movements of free blacks, having by 1850 a highly complex set of statutes to govern that class.
In 1850 the Louisiana Legislature made control even greater with an act prohibiting free black immigrants from establishing permanent, legal residence in the state. That law also prohibited the Legislature itself from passing acts to permit exceptions, a procedure which had been followed on seven separate occasions prior to 1850. Violators of the new law, including those who may have already been in the state illegally, were to be arrested on sight and given orders to leave Louisiana within sixty days. Failure to obey such orders was to result in a one-year prison term, after which emigration was mandatory within thirty days; failure to obey a post-prison order was to be punished by a life sentence at hard labor in the state prison.  

In New Orleans, where most free blacks were to be found, none were arrested under this law in its year of passage. In 1851 police did arrest a number of free Negro seamen, holding them in jail until sailing time; however, when British Consul William Mure discovered that most of those seamen were being taken from British ships, he hired a lobbyist to have the laws liberalized so as to except them. His efforts produced a new statute which permitted free black seamen to remain aboard ship while in port if they were certified as crewmembers in a report filed by the ship's captain with local officials. Captains had an option of placing such seamen in custody with city police while in port. Shore visits in line of duty were permitted if the ship's master obtained passports for the
Free persons of color. Heavy fines were to be assessed in cases of violation. 10

Only two seamen were reported in violation of the liberalized act in the three years after it was passed. A number of non-seagoing black people, however, were arrested under other laws which held that they were in the state illegally. Three were convicted for refusing to leave after sixty days, but all the others apparently took the warning seriously and were not heard from again. 11

Louisiana's black code was modified and recodified in 1855. Illegal entry by free Negroes remained a serious crime, but the new code lowered the sentence for the second offense from a life term to five years in prison. Less than a week after this revision became effective, a surprising revelation was made—one which undoubtedly accounts for the low arrest rate under the 1852 seaman's act. Police charged Recorder Phillip Seuzeneau, one of the city's committing magistrates, with "receiving and allowing fees to be charged in said Recorder's office, for bonds and free negro passes, or passports, and appropriating the same to his own use." Seuzeneau was suspended a few days later when an aldermanic investigation revealed that he had "knowingly, wilfully and illegally allowed fees to be received by his subordinate officers, for negro passes and bonds given in his office." By all accounts the Recorder was clearly aware of the situation, but the criminal court acquitted Seuzeneau when his chief clerk
took the blame, swearing that his employer knew nothing about the graft. The clerk, although impeached by his own testimony, was never tried.\textsuperscript{12}

From that time until 1859 only one seaman was found guilty of being ashore in violation of the law. The free Negro Bazin Mitchell was fined $10. Otherwise, police records indicate that ships' officers usually used their option to have free black seamen held in jail until sailing time. It was common for police blotters to bear such entries as: "Feb. 19, 1856--James Doyle, FMC Brought to the Guard house at 2/4 oClock P.M. by George Jackson, at the request of Capt. Merryman of Ship Marshal Greenleaf, for safekeeping." During the same years the courts did not convict any non-seagoing free blacks of being in New Orleans illegally, but the arrest rate was high. Then, in 1859, P. C. Percy, a free man of color, was found guilty and sentenced to six months in the workhouse. Until that time, either the law was laxly enforced or free blacks arrested under it availed themselves of their sixty days of grace.\textsuperscript{13}

Louisiana's lawmakers again revised the law on March 15, 1959, in an act which required that all free blacks arriving in the state "by sea or river" be held in jail until their ship departed. Ships' captains were required to pay forty cents a day for each person thus held in custody; if they refused to pay or left the Negroes for
sixty days, the prisoners were to face a "summary examination" and be given five days to leave the state. Failure to depart was to bring a jail term of from three months to one year, after which ten days were to be allowed for leave-taking. Failure to go after that period would result in a five year penitentiary sentence. Other illegal immigrants were to be given the same treatment, beginning with the summary examination.  

That statute became effective on September 1, 1859. Within one week it had been challenged in court by John Cook and George Logan, the first free black seamen to be imprisoned under its provisions. They filed for a writ of habeas corpus, alleging that the act imprisoned them without trial. On September 12, the district judge dismissed the appeal for the writ on the ground that he had no jurisdiction; the following May, the state supreme court upheld this decision, agreeing that the matter was one of federal law.  

On September 5, 1859, the Daily Crescent reported that most arrests under the new law were of "dashing females of the silk-dress and saddle-colored class, who, whilst more or less corrupting [sic] the slaves with whom they come in contact, add to the immorality of their houses and neighborhoods by their money-making intercourse with white men." Four days earlier—the day the act had gone into effect—the first persons arrested under it were Harriett and Eleonora Robinson, both free women of color.
Unable to prove a legal right to be in the state, they were given five days to leave. They may have done so, since they were not mentioned again.\textsuperscript{16} They may just as well not have done so, however, because a new graft was created to dodge the law. On September 2, city officials interpreted the statute to mean that any free black illegally in the state before September 1 had sixty days to leave; within three more days, they had interpreted it so that the testimony of two white men was all that a free Negro needed in order to prove legal residence. Almost immediately, white men were reported to be amassing considerable wealth by swearing affidavits for $25 to $75 apiece. Nothing appears to have been done to stop that practice; this, coupled with the legal delay of the Cook-Logan appeal, brought enforcement to an instant halt. Police made no arrests until the May, 1859, supreme court ruling, whereupon they began a policy of frequent arrests. Still, no convictions were reported from that time forward, which indicates the affidavits remained in full use.\textsuperscript{17}

Disrespect for laws intended to protect the general public from blacks was further encouraged by actions of the Recorders. On November 21, 1857, for example, Recorder Gerard Stith, a former mayor, took it upon himself to allow an illegal entrant to remain in the state, even though he had no legal power to do so. His action was the more suspect since Julia apparently was one
of the "silk dress" class which was regarded as undesirable. On May 29, 1860, police arrested her for operating a house of prostitution; in a preliminary hearing the evidence was "so strong that she was ordered to leave the neighborhood within 36 hours." Apparently she chose to ignore this order, for on December 4, 1860, a jury found her guilty of "keeping a disorderly brothel" and the court sentenced her to three months in the city prison.¹⁸

Julia's kind long before had brought the city "a reputation for wickedness equal to that of Sodom and Gomorrah." Henry B. Whipple, a Minnesota clergyman, said New Orleans vice was even more open, although possibly less evil, than that of New York, which he felt stood "first in the catalogue of sin." Olmsted condemned the moral quality of all New Orleans, stating that "crime and heart-breaking sorrow that must frequently result from it, must be evident to every reflective reader."¹⁹

Early in the 1850's, the city government was charged with complacency over vice and morals. Making the accusation as the newspaper which did not have the city advertising contract. In response, the journal with that contract countercharged in an editorial of its own, which stated that:²⁰

Concubinage is now discontinue, and we doubt whether a man living in that state could now receive the votes of the citizens for any office of honor or trust.
The Sabbath is better observed; licensed gambling houses have been abolished; duelling has nearly disappeared; and the vice which does remain, pays that tribute to a correct public sentiment: it attempts to conceal itself beneath the veil of hypocrisy.

City officials had passed ordinances and resolutions in vain efforts to end or limit prostitution, but police machinery was not effective enough to enforce them. For every Julia Arbuckle who eventually was penalized, untold others went unpunished, although not unnoticed. And the few small fines and brief jail terms which were administered were scarcely enough affect their income.21

New Orleans courts had never convicted a brothel operator until March 16, 1851, when "H. Darker, the proprietor of one of the down-town ball-rooms," was sent to jail for two months and ordered to pay a nominal fine. The penalty for Darker was not only the first, it also was the most severe ordered in the entire decade for such an offense. Less than a month after the Darker conviction, a Recorder jailed the free black woman Cecelia Clay for one month after she refused to pay a $25 fine; she had been found guilty of keeping a "disreputable house" with a staff of seven slave girls and one free colored woman. Typical court sentences thereafter were even lighter. The Recorder fined free black woman Anna Reed $25 in 1857 for "keeping a colored assignation house" with four slave girls; the slaves were given the choice of paying five
dollar fines or receiving 25 lashes apiece. Harriette
Johnson, also a free Negro, paid a $25 fine "for keeping
a brothel for white women." Sarah Victor, free black,
was fined the same amount for "promoting immoral inter-
course between white men and women." The Recorder re-
leased Charlotte Ollman, a "yaller gal, fair, fancy and
free," after her accusers failed to appear in court to
prove their claim she was "keeping a disorderly house." 22

Possibly the clearest example of continued in-
efficiency of the law in regard to black moral offenses
was in the career of one of the most notorious "hags" of
the city, the free black Emeline Gibson. She was involved
in more than a dozen serious escapades in the 1850's, plus
even more minor scrapes, but she was never reported to
have paid a penny in fines or to have served a day in jail.
In 1852 she reportedly attempted to rob a white man. In
1854 she stabbed a white man; police indifference was so
marked that a mob of some sixty persons attacked her house
in force, sacked it, smashed and attempted to burn its
furnishings. In 1855 police filed a complaint against
"Emeline Gibson, the notorious negress who keeps a brothel
on Customhouse street, for keeping an infamously bad house
and speaking to persons passing by." In the same year her
house was again attacked by a mob. In 1859 police arrested
one of her competitors, Nancy Porter, for hitting Emeline
"in the head with a stone, pounding her with her fists,
and biting off a piece of her lip." Cause of the battle
was Emeline's failure to invite Nancy to a "fancy soiree." In 1860 "the notorious African hag, Emeline Gibson," was charged with getting drunk and throwing a "Voudou Hell-broth" on a white lady.²³

Links between illicit enterprises and "Voudou" appear to have been quite close in ante-bellum New Orleans. An 1851 affair involving about fifty "negresses and yellow girls" was referred to as a "Voudou party." Three years later, police interrupted a similar "party of mingled negroes and whites, who were celebrating the wild orgies of the voudou, by dancing naked round a bubbling cauldron."²⁴

Intimate relations between Negro men and white women, while hardly as common as relations between black women and white men, at the same time were apparently not infrequent. It was not uncommon, for example, for the press to carry such entries as:²⁵

Black and White.—Jack, a slave, belonging to David Moore, was ordered out for twenty-five lashes, to be well laid on, for improper conduct with Bridgit Smith, who was fined $25 for participation in the offence.

More commonly, white women arrested for such offenses received harsher punishment. In 1853 the Recorder sent "the fair Miss Maria Molarky" to the workhouse for four months "because of indelicacies perpetrated" by her and a slave identified as "William." The slave was given fifteen lashes. In the same year the slave Thomas received twenty-five lashes on each of two consecutive days after Rose
Flood, "a damsel of loose habits, was . . . found in his loving embrace." Rose spent thirty days in the workhouse. At about the same time an unnamed slave was given twenty-five lashes for allowing one May Ann Prudhomme to take "improper liberties" with him; May Ann went to the workhouse for three months.26

Near the middle of the decade sentences became more strict for white women found involved with slave men. The average sentence for these women was increased to six months; slaves penalties were reduced to fifteen lashes or to brief waits in jail for their masters to claim them. Phoebe Smith was the first woman given the new, longer term, ordered in September, 1854, after she was "found occupying the same sleeping apartment with" a slave named George; George was given fifteen lashes. Similarly, a year later the slaves John Louis and Charles were held in jail for their owners, while Catherine Rutledge, a white woman "found living with" them, was sent to the workhouse for six months.27

Each year during the 1850's, police arrested many white women for taking up with slave men. By contrast, white men were rarely singled out for notice for cohabiting with black women. Such escapades usually came to light only as incidents to other happenings, as in the 1860 trial of the slave Margaret. The charge against her was "insulting" a young white woman. According to trial testimony, she had barged into a room where her master's
son was sitting sith the white woman, who the slave ordered to leave the house. Margaret was found guilty of talking "in a most insulting manner" and was ordered to receive twenty-five lashes and pay a fifteen dollar fine. However, her master then appealed in her behalf, informing the court the Margaret and her son had recently presented him with a grandson. The magistrate thereupon cut the punishment to the fine alone, according to the reporter because it was a case of "a suppliant old man, begging for mercy, not only for his slave, but for the mother of his grandchild."  

Towards the end of the decade punishments again became lighter for white women in such cases. Margaret Maher, found "sleeping in a cotton pickery with a negro" in 1859, was sent to the workhouse for two months. Mary Mechan a year later served the same term for "consorting and cohabiting with Richard, slave of Bloom, a thick-lipped, wooly-haired African, black as the ace of spades and as ugly as sin."  

Free black men were either more discreet or less often involved with white men than were their slave brethren, probably because punishment was more stringent. In 1858 the free black man S. Molar and a white woman both went to the workhouse for six months for "amalgamation." A year earlier, several dozen black freemen were fined twenty-five dollars each just for dancing with "several
white girls who did not stand on the privileges of caste." The white girls were not arrested, which suggests that free black men normally would bear the brunt if caught in compromising situations with white women. That this was the normal course of events was shown by the treatment of Thomas J. Martin, a free black "musician of some talent, a composer and a proficient upon the piano and guitar." He was accused of using his manners and talent to gain admission as a music teacher to "some of the most respectable" homes in the city. Once admitted, he reportedly seduced the white ladies of the households. According to reports at the time of his arrest in June of 1860, he had "ruined several . . . white girls in this city." The Civil War erupted and Martin was still in jail awaiting trial. Whether he ever was tried is not known, but it is probable that an early trial would have produced a stiff sentence because public opinion was extremely high. Three days after his arrest, more than 2,000 people gathered at an indignation meeting which was as near as New Orleans came to having a lynching in the 1850's.

Although public opinion and the law were harsh towards free black men when they became involved with white women, the reaction was often quite different when white men cast their eyes upon free black women. In 1855 police arrested an unnamed free black girl as a member of a boisterous mob which reportedly spent its time
swearing indiscriminately at nearby white persons. Her
guilt as a ringleader was obvious, but she paid no fine
and served no sentence. Instead, when she appeared in
court a white witness immediately posted $200 bond for
her. One reported described her as "a pretty and elegantly
dressed sylph of fourteen springs, whose braided auburn
hair, cherry lips and blue eyes had been bothering us and
half the court for the past hour or two." In the same
year, a more mature free black woman, Lodoiska Chalon, was
arrested for calling a Mrs. Strong by various, vile names.
When Lodoiska was called into court, Mr. Strong left the
side of his wife to post bond for the defendant, who was
described by the press in this manner: 32

Lodoiska Chalon has a person which does
justice to her poetic name; although that
name is somewhat spoiled in the legal re-
cords by the unromantic initials 'P.W.C.'
But it was of such a creature that Barry
Cornwall sung,
'Arise thou, like a night in June,
Beautiful quadroon.'

Just as such incidents indicate a general ab-
sense of animosity between races in New Orleans during
the final ante-bellum years, so do incidents relative to
code noir provisions forbidding slaves from assembly with
free blacks or with other persons' slaves. Laws as written
were most strict. The only legal exceptions to the state
statutes were New Orleans ordinances which permitted
blacks to congregate at churches, funerals, "dances and
other amusements," but only on Sundays and in public places.
Late in the decade the city cancelled even those rights, and throughout the 1850's police regulations required officers "to disperse all unlawful assemblages of negroes and slaves; . . . disperse negroes and slaves congregated on the sidewalks." and otherwise break up any but the smallest meeting of blacks. 33

Those were the laws, but they were rarely enforced. The 1850's opened and closed with complaints about the continual, open violations of them. In 1850, even the official journal gave police notice that there was a part of New Orleans where bands of "dissolute Negroes . . . keep the neighborhood in an uproar with their noisy games and profane cries" and should have a "quietus" put on them. No quietus resulted, apparently, for the same area remained a source of complaint for years afterwards. Several other locations gained similar reputations, with the only period of extended law enforcement occurring during the few months following the aborted Dyson revolt. One week after Dyson's arrest police arrested several dozen blacks in cabarets; one cabaret owner was fined twenty-five dollars "and the negroes were ordered to be fined, confined or beaten with stripes, according to their several meritings and as they happened to be bond or free." 34

Police conducted many similar raids in the next three months, including two descents on religious gatherings. Interest then began to wane. The next significant
arrest was not made until September 3, 1954, when twenty-five blacks were arrested and seventy-five others escaped from a raid on a ball at the home of a free Negro woman. The woman was fined fifty dollars; the free blacks were fined ten dollars each; and the slaves were given the choice of paying five dollar fines or receiving fifteen lashes apiece. From that time on, raids were sporadic and a few large assemblages were broke up. In almost all instances, Recorders allowed both slaves and free blacks to pay fines.35

Public opinion about black gatherings rarely was concerned with plots to rebel, although that was the purported purpose of assemblage laws. Opposition to such meetings seems to have been far more a matter of irritation at the immediate effects of too much freedom—the assumption of equality. This was stressed by the 1856 newspaper report that blacks had36

been growing in insolence towards whomsoever they dare, and in many parts of the District, their crowding the banquets and jabbering with their own natural muskiness made more villainous by the fumes of whisky and tobacco, have rendered them an intolerable nuisance.

Yet, police made few arrests; during the closing years of the decade complaints continued against insolence and assumption of equality by slaves and free blacks.37
Courts had considerable discretion under the laws regarding insults and insolence, but the most severe punishment ordered during the decade was a major exception to a general rule of leniency. The culprit was Jean Baptiste Poincy, a free black who was arrested personally by the mayor of New Orleans in the act of "abusing and insulting a respectable white lady on Marais street in a most villainous manner, showering her with epithets and obscene language without stint." His punishment, a year in the workhouse, illustrated both the power of the court and the social importance of his specific offense.38 Normally, free blacks were fined small sums for insolence to whites. In 1853 Louisa Macastis paid a $25 fine for "grossly insulting a white woman." Five years later the same fine was assessed against Thomas Porche for passing himself off as a white person and "putting on all sorts of airs."39

Slaves apparently were less insolent than free Negroes, probably because punishment was more painful. In most instances a slave could expect either fifteen or twenty-five lashes, a punishment so well known that news reports regularly stated only that the slave was "to receive the usual punishment, for insulting."40 In such cases slaves were not denied the right of legal defense; frequently, in fact, alleged offenders were released shortly after arrest due to legal maneuvering or to failure of complainants to appear in court. Late in 1850 the slave Henry, charged with using "abusive and
insulting language" towards J. McClusky, was discharged when his master's attorney successfully argued that the offense violated state laws only and that Henry therefore could not be tried in city court. This argument did not establish a precedent, inasmuch as it directly contradicted requirements of the state constitution that cities operate courts to enforce state laws.41

Legal rights of free blacks also were protected by regular procedures. Pierre Bonnet, a free Negro, once had a total of $1,500 in bonds posted on three separate charges of insulting white persons; he was found innocent in all three cases. Sarah Crimes, a free black woman, was fined $25 for insulting another free Negro woman. Martha Scott, a white person, was forced to post a peace bond for threatening a free black woman. Henry Hildebrand, also white, was fined $25 for "wantonly dashing a glass of beer in a colored man's face, when he called to get good money for a spurious dollar which Hildebrand had" used to pay a bill to the black man's wife.42

Except for the brief period after discovery of the Dyson plot, then, tension in New Orleans was never serious in the 1850's. Consequently, city officials were lax in enforcing a particularly important part of the black code in regard to insurrection—the prohibitions against weapons. Slave codes in all southern states contained many provisions in this particular: in Louisiana, slaves could not own weapons; free blacks could not carry
them except with permits. State law required violators to surrender their weapons and New Orleans police regulations expanded this requirement by demanding the arrest of slaves found with firearms and the fining of free blacks caught with concealed weapons. 43 Throughout the 1850's, however, the normal penalty was a $25 fine for both slaves and free Negroes. Arrests were almost a daily event, doubtless because of low penalties, but public alarm was never raised.

Portions of the criminal justice system examined to this point are those which were created because of the presence in southern society of an unwelcome social element; the intent was to provide special protections for that white society. The record of enforcement in the final years of slavery suggests that such laws were rarely enforced as written. Possibly part of the reason was that they had been passed by a rural-dominated legislative system and were not appropriate in a large city. Corruption in city government, as revealed in the pass scandals, doubtless contributed to laxity of enforcement. In addition, however, there appeared to have been a great casualness on the part of slaveowners and a lack of deep, public concern about the corruption which made mockery of laws possible.

The last years of slavery in New Orleans were sometimes marked by apprehensions, but they were hardly dominated by fears of revolt. Instead, tensions rose on
occasion because of frequent breakdowns in racial separation. This was especially evident where moral issues were concerned, but the reaction was not fear so much as it was irritation. Involvement of blacks of both sexes and classes in immoral activities generally saw public opinion smiling paternally on it, which could only have stressed the lower caste position of blacks in ante-bellum urban society. There was normally little difference in attitude even when the color line was crossed, undoubtedly because the white women involved usually were Irish, the "class" which dominated the criminal sector of the city and was, indeed, regarded as the bottom rung on the white ladder of social prestige. In the case of Martin the musician, where the white women were of a different class, attitudes suddenly became very different from those in all other varieties of moral transgressions; so, in at least this area there was a sort of double standard of justice.

State lawmakers continued to write new laws to protect society, including new restrictions on the movements of free blacks. Yet, in the city, where most members of that class were to be found, they were not regarded as a special threat to peace. This was shown all through the decade by laxity of enforcement of laws meant to control them and to prevent insurrection—provisions to govern migrations, prevent assemblies, control weapons and keep blacks in what was regarded as their place.
Modern black crime and urban outbreaks have been interpreted as conscious black retaliations against a society which oppresses and represses. Yet, resentments under this area of the criminal justice system in old New Orleans apparently did not produce such reaction then. Tentatively, data on the criminal justice system's elements which were designed for special protection of society suggests that oppression and repression were not at a stage which caused sufficient cohesiveness and resentment to prompt revolt or even serious criminality. Yet, Dyson did recruit 2,000 blacks for his plot; insolence and insults were very common; dual standards existed in some morals cases; slaves were whipped; and police in their actions and newspapers in their verbiage served constantly as reminders of the inferior status attached to color.

Apparent inconsistencies in the situation are partly due to incomplete examination, for in addition to elements of the criminal justice system covered here, other elements were written for (1) customary crimes, such as murder and arson, to which both blacks and whites were subject; (2) protection of the special interests of the slaveowners; and (3) protection of the rights of slaves.
FOOTNOTES


2. New Orleans _Daily True Delta_, June 15, 1853. The official advertising journal at this time, the _Daily Crescent_, made numerous attempts to play down the seriousness of Dyson's plot, but within its own pages revealed its reasons for so doing. On June 17, 1853, an editorial critical of the arrests cited as its evidence the denials of Dyson and his chief aide, the slave Albert. At the same time, the editorial hinted that Albert had a "crazed imagination" and was easily deluded. Yet, in its own news columns on the same day, the _Crescent_ described the slave as a person "possessed of unusual intelligence." The editorial also admitted that the editors wanted the public to regard the plot as "a humbug" because if it was reported in newspapers around the nation it would make the city look bad. That the revolt was not a "humbug" was shown by the subsequent fates of Dyson and Albert.


4. Ibid., June 17, 23, 25, November 17, December 16, 1853; February 19, 1854.

5. _Louisiana Session Laws, 1806_, Chapter 33; ibid., 1843, p. 91; New Orleans _Daily True Delta_, December 11, 1853. It is significant that Dyson was not an unknown threat. He previously had been arrested on a similar charge; on March 24, 1852, he was to have been tried for enticing a slave to run away. The court at that time released him because the slave's owner failed to appear in court to press the charge. See New Orleans _Daily Crescent_, March 25, 1852.


9. Louisiana Session Laws, 1806, Chapter 33; ibid., 1807, Chapter 28; ibid., 1830, p. 90; ibid., 1841-42, pp. 308-318; ibid., 1850, p. 12; ibid., 1841, pp. 27-28; ibid., 1846, p. 19; ibid., 1846, p. 167; ibid., 1847, p. 4; ibid., 1848, pp. 84, 95; ibid., 1850, p. 13.


11. New Orleans Daily Crescent, December 16, 1854; New Orleans Daily True Delta, July 17, 1853, carried the report on the sentencing of Isaac Gooden and James Durham; New Orleans Daily Crescent, March 1, June 25, 1855, covered the sentencing of George Stevens; ibid., July 2, 1855, described the case of Luke Stephens; ibid., December 14, 28, 30, 1854, included examples of warnings of the year.

12. Louisiana Session Laws, 1855, No. 308; New Orleans Daily Crescent, March 21, April 9, 13, 18, 20, 28, May 3, 10, 18, 24, June 1, 1855.

13. Ibid., October 26, 1857; Daily Report Book, 1854-56, New Orleans Police (Department of Archives, New Orleans City Library), p. 320; New Orleans Daily Crescent, February 22, 1859. Through the four-year period, daily newspapers listed several free blacks each month as having been ordered to leave the state.


17. Ibid., September 5, 8, 1859; November 14, 1860.

18. Ibid., November 21, 1857; May 29, December 5, 8, 1860.


22. New Orleans Daily Crescent, March 17, 29, 1851; April 18, August 21, 22, 1857; October 16, 1858. Also, Arrest Records, 1857-58, New Orleans Police (Department of Archives, New Orleans City Library), p. 275.


24. Ibid., July 25, 26, 1851; November 3, 1854.

25. Ibid., July 16, 1851.


27. Ibid., September 28, 1854; April 3, 1855.

28. Ibid., January 13, 1860.

29. Ibid., January 18, 1859; February 14, 1860.


31. New Orleans Daily Crescent, June 25, 26, 27, 29, July 12, 1860; Wade, Slavery in the Cities, p. 261. The only other lynching effort in the decade developed when a free black cut the arm of a white seaman; the affair was broken up by a single police officer. New Orleans Daily Crescent, November 30, December 2, 1857; January 21, 1858.

32. Ibid., February 14, June 25, 1855.

33. Louisiana Session Laws, 1806, Chapter 33; ibid., 1807, p. 186; Phillips, American Negro Slavery, p. 497; Common Council Ordinances and Resolutions, 1856-1866 (Department of Archives, New Orleans City Library), Ordinance 3203, January 7, 1857; Police Regulations, pp. 32-33.


38. Louisiana Session Laws, 1806, Chapter 33; New Orleans Daily Crescent, August 2, 1855.

39. New Orleans Daily True Delta, February 24, 1853; New Orleans Daily Crescent, August 9, 1856, April 17, 1858.

40. Ibid., January 3, 1850.

41. New Orleans Daily True Delta, October 22, 1850.

42. New Orleans Daily Crescent, October 11, 23, 28, 1854; August 26, November 17, 1860.

43. Ulrich B. Phillips, Life and Labor in the Old South (Boston, 1929), p. 163; Franklin, From Slavery to Freedom pp. 65, 73, 81, 84; Louisiana Session Laws, 1806, Chapter 33; Ibid., 1855, No. 308; Police Regulations, p. 21.
Hundreds of spectators gathered outside the prison of Orleans Parish in the early morning of July 2, 1852 to witness the "rare treat" of a double execution. Even the most morbid among them must have been a little shocked when the hangman loosed the trap, for instead of watching two men jerked to their deaths, they say the men drop all the way to the pavement as a pair of poorly fashioned nooses failed in their task. The delay was minor, however, as the convicted killers were taken directly back to the scaffold for a second try at justice. The nooses held true and the price was paid for what the presiding judge had called the city's most "atrocious and cold-blooded murder."
New Orleans had gone for nearly six years without an execution, prior to that double hanging. Yet, the murdered person had been no leader of society, no wealthy businessman, no person of any great importance in the life of the city. The victim had been a black slave named Mary, slain by having her throat cut, "entirely dividing the windpipe, the esophagus and the carotid artery" by two men whom she had interrupted as they were burglarizing her owner's home. The killers both were white—Jean Adam, "bettle-browed, black-eyed" and wearing "the scowl of a fiend," and Antoine Delisle, a man of possibly pleasanter mien but of no less vicious disposition.¹

There is a sharp contrast between the facts of that case and the views of many historians. Carter G. Woodson, long the editor of the Journal of Negro History, felt that no thought ever was given to human rights of American slaves. Mason Crum, authority on plantation life in the Carolina Sea Islands, suggested that no one but slaveholders felt concern for the well-being of slaves, and that theirs was only an economic concern for property. Gunnar Myrdal concluded that southern courts always treated blacks badly and that slaveowners, because of the property factor, were the only element in the South with any interest in the well-being of black-chattels. John Hope Franklin and Kenneth Stampp have expressed like views,² concluding that any showing of humanity was truly rare.
None of those views allows for such a case as that of Adam and Delisle, where the severity of punishment demonstrates clear public concern for slaves' lives. The jury was composed of a cross-section of New Orleans citizens; juries were restricted to slaveowners only when the defendants were slaves, so the Adam-Delisle jury did not represent just slaveholders, who might have been motivated more by economic reasoning than by desire for justice. Further, even during the tension-filled 1850's, conviction of Delisle and Adam was not an exceptional event. In two other instances in which acceptable evidence could be gathered to prove that white persons had killed slaves, quick trials and convictions resulted. In one of those instances, Luke Burke was sentenced to life imprisonment when the prosecution proved he had, without provocation, struck a slave with a whip; and, when the slave attempted to run, he knocked him down and then drove over him with a dray, inflicting fatal injuries. In the other case, in 1859, steamboat cook John Marshall was found guilty of stabbing a slave to death; convicted of manslaughter and sent to prison for four years, he had obtained lenience from the court because he was a juvenile and because his defense attorney raised strong possibilities of self defense against a person of questionable character.

During the 1850's five other slaves died in New Orleans under general circumstances which indicated that
white persons were guilty under standard criminal law provisions, but no convictions were obtained. The press showed public opinion to be very critical of the suspects, but in three of the incidents the only evidence was the testimony of slaves; this, by law, was inadmissible against white defendants and the suspects never went to trial. The fourth case was clearly an accidental slaying and the fifth remained open because the white suspect fled the state and never was found.5

Murders of slaves by whites accounted for only a minute portion of the crime in ante-bellum New Orleans, for although E. Merton Coulter has written that the crime in that city was "not of the enormous kind," the records show otherwise. Much of the lawlessness involved Irish and other immigrant laborers who flooded the city after European famines. The visiting abolitionist James Silk Buckingham in 1841 attributed the high crime rate to two additional causes: city officials who seemed "to want the moral courage to pursue, apprehend, and punish" criminals; and "speculators, gamblers, sharpers and ruffians, who throng here during the winter months, to prey upon the unsuspecting." A journalist who lived in the city from 1854 to 1861 concluded similarly:6

The great cause of the vast amount of crime which is there committed is to be found in the discordant elements of its population, the lack of unity and fellowship which must ever exist in a cosmopolitan city like this.
The resort for eight months in the year of gamblers, adventurers, and men of reckless habits, it is crowded fully half the year by seamen, the worst class of population which ever cursed any city with its presence.

In 1858, even the mayor of the city recognized the same components, as, in his annual message, he warned of the annual invasion of criminal elements. In addition, crime rates were high because the police force was a disorganized, underpaid political tool and because large numbers of lower-class immigrants did descend on the city in this period. Thus, even in the "off" season, New Orleans was plagued by crime. During June of 1852, police arrested 1714 free persons, including one alleged arsonist, four suspected rapists, 129 assault and battery suspects, three persons accused of "mayhem" and eight of murder.
In the next six months, police made 10,833 arrests, including 26 for murder and 149 for stabbing and other grievous assaults. For the six months ending October 31, 1854, of 11,577 persons arrested, 17 were accused of murder and 138 of serious assault. Reports of coroners in the same decade showed that black involvement in slayings was small, while "three-fourths" of the killed and killers belonged to the foreign population. 7

Such records, indicating an average of from 35 to 60 murders and from 265 to 300 serious assaults each year, show, indeed, that crime was of "the enormous kind." One hundred years later, with more than five times the 1850
population, New Orleans averaged 57 murders and 612 aggravated assaults each year. In regard to police efficiency, during the 1850's fewer than half the serious cases ever were closed by convictions, while in the 1950's some three-fourths ended with guilty verdicts; further, in the 1950's, some eighty per cent of major crimes involved blacks, although they accounted for a far smaller proportion of the population. 8

In the 1850's, black involvement in crime was complex, for with three distinct classes--slaves, free blacks, and whites--differing situations developed with varying inter-relations in major crimes. Thus, in contrast with the rapid and stern treatment of whites who murdered slaves in the decade, no great promptitude of police or court action was evident when white persons fell short of murder, in serious assaults or attempted murders against slaves. For example, Hugh Quigley received only a six-month jail term in 1854 for "dangerously cutting" a slave boy on the head with a hatchet. Three years later, William Hudson was merely put under peace bond after he had severely beaten another man's slave. J. B. Horton went to jail for one month after he stabbed the slave Sandy in the eye and in the stomach when Sandy attempted to stop him in the act of theft. 9 More often than not, white assaults on slaves were never prosecuted. Either witnesses failed to appear in court or defendants chose to forfeit their very low bonds
rather than face trial. The "worthless character" of such bails often was condemned by the press and grand juries, but no changes were instituted in bonding practices before the Civil War.  

When whites assaulted blacks who were free, punishment often was far more severe. James H. Bell and Henry H. Martin in 1854 went to prison for twelve-year terms for such an assault. Martin soon after was freed when he agreed to serve as hangman for a white killer; within six months of his original sentence, however, he was in the penitentiary, serving a new, 21-year term for robbing and attempting to kill a free Negro. Other sentences in the early years of the decade were similarly stringent, depending more on the criminal record of the convicted persons than on racial factors. The lightest sentences meted out to whites found guilty of attacking free blacks were six-month terms. As the decade drew to a close, however, an obvious change in attitude was developing. The six-month term suddenly became the standard rather than the minimum, except in the most serious circumstances. Typical was the case of Blas Sanchez, who had slashed a free black with a razor with intent to kill, but went to trial charged only with "cutting and wounding." Coffeehouse bartender Jean Castello was given a one-year term in prison, the longest term in the final two years
of the decade. According to news reports, Castello slashed
free black Lange Toussaint across the hand with a knife,
then slashed him in the abdomen and chased him for several
blocks in an effort to complete the grisly job. His
motive was that Toussaint had spoken up and warned an
elderly man that he was about to be robbed by Castello's
confederates. ¹¹

Frequently in the 1850's white persons charged
with minor attacks on free blacks were freed without
prosecution. Possibly the most bizarre case of this sort
involved George R. Carradine, who was at first tried and
found guilty of assault with a dangerous weapon. Two
weeks after the trial, the key witness came forward and
retracted her story; despite open reports that she had
been bribed, the record was erased and Carradine freed. ¹²

A different attitude prevailed when white assaults
on free blacks became murder. In the decade, this happened
on only three occasions. Two of the killers were con-
victed and the third quite probably would have been found
guilty had war not erupted when it did. The first of
these cases involved John Morton, who in 1855 was sent
to prison for ten years for kicking a free woman of color
to death; the only defense was that the victim was a
woman of "disreputable character." In 1858, eighteen-year-
old Patrick Murphy was sent to prison for life for stabbing
a free Negro man to death while "in a drunken frenzy."
The third accused man was Jean Gros, who allegedly murdered a free black woman. His trial was delayed several times due to the absence of witnesses; when the Civil War broke out, he was free on bail. 13

Not a single free black was convicted of murdering a white in the 1850's. Three such charges were made, but in each the rights of the defendant were protected by the legal system. Victor Jourdain, a free black, was acquitted on a self-defense plea in 1851, even though some testimony had indicated that he may have placed a weapon in the hands of his white adversary after the slaying. Three years later the coroner ruled that the killing of a white by a free Negro was accidental; William H. Holden, a black porter, had dropped some baggage containing a gun, which fired when the bag struck the ground and fatally wounded a bystander. At the end of the decade a murder charge was dropped against Wesley Harris, a free Negro, when a jury failed to reach a decision after sixteen hours of deliberation. A new trial could have been ordered, but was not. 14

Free Negro assaults on white persons apparently were the most common inter-racial conflicts in the city. Investigation very often revealed these to be cases of verbal assault only. Where physical injury was involved, two trends were apparent: (1) a large percentage of cases were dropped "at the request of the prosecution," which indicates that the injuries were slight or that settlements
had been reached out of court; (2) punishments became increasingly severe as the period drew to a close. Thus, in 1853, Antoine Boire, f.m.c., had his case dismissed in First District Court, and Ignace Tabares, also a free black, was fined $25 for striking an officer. A year later, John Marcello, free man of color, had no difficulty in obtaining the discharge of his case of assault and battery, while a free black woman named Clarice was fined $20 and court costs for assaulting a white person. In 1856 Josiah Morgan, free and black, was sent to parish prison for six months for assaulting a white man. In 1859, Thomas Leon and Raphael St. Amand, both free Negroes, were imprisoned for two years and eighteen months, respectively, for separate assaults on whites.¹⁵

A distinctly different picture from those considered so far is found in regard to slave violence against whites. According to E. Franklin Frazier, many crimes of violence were committed by slaves as aggressions or retaliations prompted by resentment over status. This view has been applied specifically to Louisiana by Kenneth Stampp. The urban society of New Orleans provides no support for either authority.¹⁶ From January 1, 1850, until Louisiana entered the Civil War, no New Orleans slaves were convicted of murdering their owners or anyone else because of such resentment. The only slave found guilty of any involvement in the murder of a master was
a slow-witted female servant named Kitty, whose actions apparently were without personal motive. She went to prison for twenty years because she had purchased poison which was used by her mistress and the mistress' paramour to slay Kitty's master. The lover, who was the main villain, was imprisoned for life while the victim's wife was freed from prosecution. Despite the minimal degree of responsibility on Kitty's part, the sentence she received was too lenient according to the law; the slave code allowed no exceptions from the death penalty for any slave convicted of poisoning, attempting to poison or aiding in the poisoning of a white person.\(^{17}\)

One other slave during the decade was for a time suspected of murdering his master. He was exonerated, however, when the coroner determined that the slaveowner had died from natural causes. Otherwise, the decade saw just one other murder of a white person by a slave. This was the slave Adeline, who stabbed her white lover to death with a sword cane in 1855 and then readily confessed that she had "run it into him like a good solja." Despite this confession of wilfull murder, with jealousy as the motive, she was convicted of manslaughter and sentenced to twenty-five years in prison; the slave code as written did not allow a jury to declare any killing of a white by a slave to be anything less than murder.\(^{18}\) Since juries in such cases as these were composed entirely of slaveholders, it is possible that their recognition of
property values caused them to violate the laws by giving light sentences. At the same time, it should be noted that sentences of twenty and twenty-five years surely deprived fellow-slaveowners of their property.

Slaves apparently assaulted white persons as infrequently as they murdered them. In six instances in the decade, blood was shed, which according to the law called for the mandatory death penalty. Yet, only once was this penalty ordered, and even in that instance the sentence was not carried out because the slave died in prison of yellow fever.\textsuperscript{19} More typical was the experience of the slave Alfred, who in June, 1853, was charged with having "assaulted, battered, beaten with a chair and bitten" a white man, a matter which the local press was accurate in pointing out as a "capital offence [sic]." Six months later a jury of slaveholders set Alfred's punishment at twenty-five lashes. Other such assaults were similarly treated, except when the prosecution failed to follow through with its case, as with the slave Solomon. There, the committing magistrate had obtained statements from witnesses that Solomon had stabbed a white person; the criminal court judge, however, ordered the charge dropped when witnesses failed to appear.\textsuperscript{20}

Minor assaults by slaves on whites, not involving bloodshed, brought punishments varying from forty-eight hours confinement to twenty-five lashes. For example,
the slave Ben in 1850 received ten lashes for "committing an assault on a white woman, by laying his hands on her."
This penalty was in accord with the law, which gave the courts discretionary power in such minor assaults so long as the punishment did not extend to deprivation of life or limb, or to incarceration for more than eight days.\textsuperscript{21}
Minor assaults by slaves on whites were not always prosecuted with vigor, as was shown by frequent news items such as:

\begin{quote}
Aleck, slave of J. M. Fogarty, charged with brickbatting and wounding Charles Farrell on Julia Street, and abusing Maria Farrell and slapping her face at the same time and place, was dismissed at the request of both the prosecutors.
\end{quote}

Similarly, five years earlier another newspaper glossed over an incident in which a young slave had attempted to shoot at white youths who were teasing him. Instead of pointing out that this was attempted murder, and at least possession of a prohibited weapon, the newspaper urged punishment for whites who "often disgrace themselves by beating and throwing stones at unoffending young niggers."\textsuperscript{22}

Most crimes of physical violence by blacks in New Orleans were committed against other blacks. Nearly all such cases were pursued to completion in the courts. Sentences were almost always imposed according to the lower limits of the law, and it is apparent that Negroes stood in little danger of harsh punishment so long as they did not cross the color line. The most common murders of blacks
by blacks were among slaves, but in the 1850's only two such offenders were tried and found guilty as charged. Both were condemned to life terms in prison. Three other killings among slaves ended in manslaughter convictions, with correspondingly lesser sentences, although the facts as reported did not indicate justification for leniency. Benjamin Shields, a 25-year-old slave so convicted in 1853, was a case in point. He had been caught by Dabney Green, another slave, while spending the night with Green's wife. In the ensuing struggle Shields grabbed Green's knife and stabbed him to death. The killer's punishment was a year in irons at the service of his master; this doubtless was a penalty determined not by the facts of the case but by both slaves being owned by the same person, plus a significant disregard for the seriousness of informal marriage vows between slaves. The suspicious leniency of the courts was shown also in the case of the slave Archer. He was arrested and charged with murder after hitting the slave Washington a fatal blow on the head with a brickbat. Two weeks later, Archer was released to his master's custody after the coroner inexplicably decided against hearing testimony and ruled instead that the death was due to "heart trouble."23

Such cases show clearly that slave defendants, because of their monetary value, benefitted in courts which were composed of slaveholders. That slaves' interests were
well protected in such cases al so can be seen by a number of acquittals with findings of self-defense. One such was reported in the press with the simple summary: "It appearing that the homicide was committed in self-defence, David was acquitted." Similarly, a committing magistrate five years later refused even to consider pressing charges against the slave Major when preliminary proceedings revealed that the slave killed by Major had been holding a cotton hook at Major's throat when slain.24

Non-fatal assaults among slaves were an everyday item in the columns of New Orleans newspapers in the 1850's. Because of this frequency the cases were rarely followed up with news stories on trials and punishments. Among exceptions which were fully reported was the 1854 case of "Brown, an Ethiopian gentleman, belonging to M. A. Violette," who was given a choice of paying a five dollar fine or receiving fifteen lashes for beating a slave girl. Extreme indeed was the sentence of twenty-five lashes and a year in an iron collar at his master's services—the penalty ordered in 1858 for a slave who had seriously injured a fellow slave. More often than not, prosecution was halted in early stages at the request of the owner of the offended slave; that was the lucky fate of Kemp, a slave who in 1855 had beaten another slave with a whip and rocks so severely that the victim was confined to bed for several months.25
Crimes of violence involving both slaves and free blacks were much less frequent than those between slaves. Only one free Negro was killed by a slave and only three slaves slain by free blacks during the decade. The slave culprit, Henry, was quickly tried, found guilty of murdering a free black woman, and sentenced to life in prison. Three years later, two other slaves, suspected of killing a free black man, were released without trial when a coroner's investigation determined their innocence. The victim, Felix Baroche, had filed charges of assault against the pair and then had died, presumably from wounds suffered in the assault. Before the charge could be changed to "murder" the coroner's probe revealed that Baroche had been recovering nicely from his head wounds until he made the tragic mistake of bathing his head in a dray trough, thus bringing about the infection that killed him.26

When free blacks were charged with murdering slaves, justice was almost a casual thing. Of the three so accused, the most severely punished was Joseph Jerry Taylor, who was sent to prison for seven years after being found guilty of manslaughter. His victim, a slave carpenter, had died from wounds caused by a brick which Taylor had thrown. Joe Smith, a free black who killed a slave midwife named Omer Tagert, drew a five-year sentence when he pleaded that the killing had been accidental; he had intended to kill Omer's white lover, not her, but his aim was bad. William Boyer fared even better with an even stranger
defense. He was found innocent of murder of his fifteen-year-old niece, the slave girl Margaret, even though he confessed that "in order to prevent her from carrying out her lewd inclinations he tied her up in a coal hole where she died."²⁷

Murder among free blacks, an uncommon event, was one which sometimes brought stern justice. Three convictions were obtained in the decade in five murders among the class, while two prime suspects were not prosecuted due to apparent bribery and legal technicalities. Celestin Leonard, Antoine Benoit and Gilbert Maxent were the three found guilty. Leonard received a life sentence for the slaying of Edlor Martin in 1850 after testimony showed it to have been cold-blooded, premeditated murder. Ten years later, Benoit was sentenced to be hanged for the fatal shooting of Antonio Boulie during a robbery. When convicted and sentenced, Benoit "made quite a saucy speech, saying that he had not had a fair trial, and that he was going to be hung because he was a negro." Maxent was convicted of manslaughter in the 1854 slaying of Jules Giquez. Sentenced to five years in prison, Maxent at the trial had said the slaying was a duel, but testimony showed that he had timed his movements in the affair, ducking just as his opponent had fired and then striding up and shooting point-blank at Giquez.²⁸

Free blacks released by the courts despite admittedly slaying others of their class were Dutriel Barjon
and Armand Fondvergue. Barjon, in the presence of several witnesses, had killed Michel Honore with thirteen thrusts of a dirk. Although the witnesses testified clearly at the preliminary hearing in August, 1854, they were not to be found when the case went to the grand jury four months later and the proposed indictment against Barjon was rejected. It was reported that Barjon was one of a select group of free blacks whose families were "wealthy and able to expend money." The Fondvergue case came to a close unique in that decade. Fondvergue, a sixteen-year-old, was charged with fatally stabbing seventeen-year-old Jean Baptiste Hubert. Evidence was sufficiently damning to produce a grand jury true bill for murder, but before trial could be set Fondvergue was declared insane by state medical authorities. Shortly afterwards the case was dismissed.29

Available records do not indicate that any colored woman was raped during the 1850's, either by black or white men. One newspaper report was made regarding the attempted rape of a black woman, but the suspected offender was released without being formally charged and no details of the case were made public. Extant records show one possible instance of attempted rape. One September 22, 1858, Philip Byeke was arrested for "attempting to violate the person of his slave." The record book shows that either Byeke or the case was "Discharged," but does not
indicate whether the slave was male or female or the nature of the alleged, attempted violation. The treatment of these two incidents, combined with the complete absence of any other reports, seems to mean little else than that such matters were not considered worth reporting and that rape of black women was not looked upon as a crime. It is unbelievable that no black women were raped in the city in the decade.\textsuperscript{30}

Five slaves and four free blacks were charged during this period with attempted rape of white females, but none were charged with the completed act. All five slave suspects were brought before grand juries; four were tried and convicted. Although the law made the death sentence mandatory for either slave or free Negro convicted of rape or its attempt on any white woman or girl, this penalty was not imposed in any of the cases. It was strictly adhered to, however, in neighboring, rural Gretna, where the only two rape incidents of the decade both ended in legal hangings.\textsuperscript{31}

Of the New Orleans slaves convicted of attempted rape, William received the lightest penalty—four years in prison. In 1854 he had been found guilty of slipping into the bedroom of two young white women and attempting to attack them while they slept. In 1852 the slave Michel received the most stringent punishment—fifty lashes and life imprisonment. He had chased a woman into the woods
and had her pinned down when nearby picnickers, attracted by her screams, intervened. A life term in prison was ordered for William Green, who in 1855 had attempted to rape "two little white girls, in an outhouse," by hiding in the building and leaping upon them when they entered. Sam, in the same year, was convicted of attempting to rape a sixteen-year-old white girl. He received fifty lashes and a year in prison; the court dropped a companion charge of "suspicious familiarity" with a white woman in whose house he was employed. Three years later, no punishment at all was ordered for an unnamed slave who allegedly had assaulted an inmate of a mental institution. Her legally incompetent testimony left the state with no case and the charge was dropped.32

Only one free black was found guilty of attempting to rape a white female; that was Joseph Howard, who in 1860 was sent to jail for six months for attempting to assault a seven-year-old girl. Three other free blacks were charged with attempted rape in the 1850's, but none of them was penalized. One, Felix Saulet, narrowly escaped punishment. In 1855 a jury found him guilty, but his battery of "five able lawyers" managed to obtain a reversal of the verdict through a technical plea to an appeals court. Three years later a case against Jack Remy was abandoned before trial when the defendant produced several witnesses who swore that he was elsewhere at the time of the crime, even though the assault victim
had given positive identification of Remy. Evidence also was apparently conclusive that Joseph Patterson had tried to rape a white girl in 1860, but he was released on bond shortly before the outbreak of war and the case apparently never went to trial.\footnote{33}

Another major crime, arson, according to Kenneth Stampp, "was the favorite means for aggrieved slaves to even the score with their master." The record for ante-bellum New Orleans does not bear out this conclusion. From January 1, 1850, to the outbreak of war, no slaves were convicted of arson against any property. Only one free black went to prison for any involvement in arson; that was Joseph Blanchard, who was sent to the penitentiary as an accessory to a white arsonist. The white firebug went to prison for life. Cecelia Clay, also free and black, was formally charged with arson and a jury found her guilty of firing her own home for the insurance, but the state Supreme Court released her because she had been indicted illegally under a law which had been repealed. The laws on arson, at this time set a minimum penalty of five years in prison for white arsonists and free blacks, while slaves faced a mandatory death penalty for either arson or the attempt at it.\footnote{34}

Eight slaves were arrested during the 1850's as arson suspects. Six of them were released quickly because of lack of ample evidence even to conduct a hearing, and
the other two were acquitted by juries of slaveholders. The flimsy quality of the evidence was exemplified in the 1858 arrest of Mary Wise. The local press immediately condemned the apprehension and carried on a running attack against it until the charge was dismissed, "there not being evidence enough to justify procedure to trial." A year later, fire marshals claimed that Edward Thomas had confessed setting fire to a commercial building and the case went to trial; the jury found the confession to have been the result of coercion, and promptly released Thomas. 35

Theft was far more common than arson, rape, assault or murder in ante-bellum New Orleans. Throughout the 1850's daily newspapers were filled with reports of thefts through holdups, burglaries, highway robberies, swindling and pocketpicking. Available police records show that year by year thieves accounted for more than ten per cent of all crime in the city. 36 Famous travellers of the time blamed slaves for most thefts. Olmsted said that city slaves considered themselves justified in thievery because they were not being paid for their labor, while William H. Russell suggested that some slaveowners played Fagin by sending their slaves out at night to steal. He said that failure to obtain more than seventy-five cents allegedly resulted in such slaves being sent to "jail on charges of laziness." Available records do not bear out such stories. Neither extant police records nor newspapers reveal a single incident of a slave being jailed
for "laziness," either as an actual charge or a subterfuge, nor do they support other aspects of these visitors' claims. Instead, they show that for every theft by a black, dozens were committed by whites. 37

Slaves convicted of theft received punishments varying from fifteen to fifty lashes, with imprisonments up to the legal limit of eight days. The laws generally were not abused either for or against blacks and no general increase or decrease in the severity of punishment is to be found in the decade. Thus, in 1850 the slave Sancho was given twenty lashes for stealing carpenters' tools; in 1853, Griffin, caught in the act of stealing cotton, received '25 stripes.' Carter, in 1856, was given twenty-five lashes for stealing a jar of preserved peaches; and in 1857, Theodore received the same punishment for stealing three chickens. 38

Occasionally, slaves were allowed to pay fines in theft cases rather than submit to the lash. Many cases also were closed out with release of the slave because the only evidence was suspicion of a complainant. The slave Cato, for example, was discharged in a preliminary hearing in 1850 when no eyewitness to the theft could be found. Other cases were just as quickly abandoned when accusers failed to appear in court. The slave Jean, accused in 1856 of stealing $275 from a white man's cloak, was released, "the case having been fixed for a hearing at three different times, and Mr. Garreau [the victim]
failing to appear each time." Accused slaves also were allowed to prove their innocence in court, sometimes to the embarrassment of white accusers. The slave girl Prudence, for instance, when charged in 1854 with stealing a large amount of clothing from a white man, was released at a preliminary hearing when she proved that her accuser had left the clothes with her to launder and that when he later refused to pay for the washing, "she kept the clothes as security." 39

Another instance of tempered justice involved a theft charge against Isaac, "the slave of Mr. Prendergast." He had been caught in the act of burglary, shot in the arm by a booby-trap set up by the proprietor of a gunsmith's shop. Isaac confessed the crime in Recorder Summer's court and forthwith was remanded to a higher court for trial under state statutes. A technical error, however, resulted in his transfer to another city court where he was tried for simple larceny, convicted, and given twenty-five lashes and two months in Parish Prison. When the locksmith, Joseph Nuttall, learned of this slip-up in the system of justice, he demanded that the case be reopened; Recorder Summer denied the request on the ground that further proceedings would have been unfair to the defendant. 40

Free blacks accused of theft also received justice in the courts. When a white youth accused the free Negro girl Madeline of robbing him, she proved that the
property in question was her own, whereupon she was released and the Recorder issued a public scolding to the original complainant. Where free blacks' guilt was proven, sentences were no more severe than those for white thieves in similar circumstances. In 1851 identical thirty-day workhouse sentences were imposed on a white youth named Cotter and a black youngster named Cobert when the pair were arrested in a theft together. Later in the year, J. B. Boulard, free black, was sent to prison for one year for stealing a piece of linen; on the same day the same judge provided similar one-year prison stays for two white men convicted of stealing a bird and cage.\textsuperscript{41}

Even habitual criminals often felt only a light touch from New Orleans justice. Ernest Potier, also known as Homer, "a good-looking free colored youth, almost white," exemplifies this. Acquitted on one theft charge on November 7, 1857, within a week he was found guilty of another theft count. Two unrelated charges of theft were dropped upon this conviction and he was sentenced to only four months in Parish Prison. In the following July, he apparently had barely been released from jail when he was arrested for theft again. This time, despite being a rapid recidivist, he received a comparatively light sentence of one year in the state penitentiary.\textsuperscript{42}

Theft of property of free blacks by white persons either was rare or seldom was settled in the courts of New Orleans. In the few such cases which were reported,
justice appears to have been served. Typical was the case of William Latamore, a white man who in 1853 was sent to prison for two years for stealing $150 from a free black.\footnote{43}

Crimes which have been considered here--murder, assault, rape, arson and theft--were not offenses peculiar to a society with slavery or racial differences. They are traditional, or standard, offenses against which all societies have legislated over the years. They are thus the crimes which allow comparison of justice as it applied to ante-bellum blacks and whites and which allow comparison with criminal justice problems of other periods.

Black involvement in crime was significant in New Orleans in the final decade before civil war erupted. In those years, blacks comprised twenty per cent of the populace; they never were charged in any year with as much as twenty per cent of homicides or any other standard crime. A table compiled from the data in extant police records and newspapers illustrates, in particular, the below average involvement in homicides, with blacks charged with only 24 murders as compared to 481 charged against whites (See Table III, p. 113).

A semi-annual report of the police chief in mid-1852 showed that 384 slaves were arrested, compared to 1714 free persons, or eighteen percent of the total. At the same time, extant records indicate that fully thirty-seven per cent of the slaves arrested were held
### TABLE III

**MURDERS: 1850-1860**

<table>
<thead>
<tr>
<th>Victim Status</th>
<th>Violator Status</th>
<th>Numb.</th>
<th>Fnd Gty</th>
<th>Acquit</th>
<th>Es</th>
<th>Dis Cape</th>
<th>Missed</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slave</td>
<td>White</td>
<td>8</td>
<td>3</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>4 Yrs to Death</td>
</tr>
<tr>
<td>Slave</td>
<td>F.P.C.</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>5 to 7 Yrs</td>
</tr>
<tr>
<td>Slave</td>
<td>Slave</td>
<td>8</td>
<td>5</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1 Yr to Life</td>
</tr>
<tr>
<td>F.P.C.</td>
<td>White</td>
<td>3</td>
<td>2(3)</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>10 Yrs to Life</td>
</tr>
<tr>
<td>F.P.C.</td>
<td>F.P.C.</td>
<td>5</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>5 Yrs to Death</td>
</tr>
<tr>
<td>F.P.C.</td>
<td>Slave</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>-------Life</td>
</tr>
<tr>
<td>White</td>
<td>F.P.C.</td>
<td>3</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>470</td>
</tr>
<tr>
<td>White</td>
<td>Slave</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>20 to 25 Yrs</td>
</tr>
<tr>
<td>White</td>
<td>White</td>
<td>470</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(Figure computed on 47 per year average, see pp. 91-92.)</td>
</tr>
</tbody>
</table>

### TABLE IV

**FELONIES: 1950-1960**

<table>
<thead>
<tr>
<th>Status of Arrested Person</th>
<th>Homicide</th>
<th>Aggravated Assault</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>7</td>
<td>100</td>
<td>1952</td>
</tr>
<tr>
<td>Black</td>
<td>33</td>
<td>200</td>
<td>1952</td>
</tr>
<tr>
<td>White</td>
<td>12</td>
<td>186</td>
<td>1955</td>
</tr>
<tr>
<td>Black</td>
<td>46</td>
<td>265</td>
<td>1955</td>
</tr>
<tr>
<td>White</td>
<td>6</td>
<td>94</td>
<td>1956</td>
</tr>
<tr>
<td>Black</td>
<td>51</td>
<td>195</td>
<td>1956</td>
</tr>
<tr>
<td>White</td>
<td>19</td>
<td>175</td>
<td>1960</td>
</tr>
<tr>
<td>Black</td>
<td>55</td>
<td>281</td>
<td>1960</td>
</tr>
</tbody>
</table>
as suspected runaways. Actually, of them a third were found to be free blacks and were released shortly after arrest. The next most common ground for city imprisonment of blacks was "safekeeping," in which free Negroes, placed in jail in one specific quarter from vessels in port, outnumbered slaves by four to one. These two "peculiar" crimes alone lower the slave arrest percentage to one below their proportion of the population. Similar examination of lower court records and police blotters shows that the arrests of free blacks also were not in excess of their percentage of the population. Importantly, serious charges, such as assault and battery or murder, never in the decade accounted for more than three per cent of the arrests of blacks; instead, the most common charges were for insulting, threatening, contempt of court and keeping disorderly houses. Finally, state prison records show that the only disproportionate black involvement in New Orleans crime was on the lower side of the scale; in 1858-1859, for example, of 92 persons in the state penitentiary from New Orleans, two were slaves and two free blacks, while the rest were white.44

Because of problems of disproportionate involvement of blacks in crime during the twentieth century, a comparison is called for between observations about New Orleans during the 1850's and a comparable decade of a century later in the same city. In the 1950's, blacks comprised 32 per cent of the New Orleans populace
(182,631 out of 527,445). Yet, they were charged with a range of seventy-four to eighty-nine per cent of the murders and fifty-nine to sixty-seven per cent of the aggravated assaults (See Table IV, p. 113).

At the same time, black involvement in lesser crimes was not measurably out of proportion. Year by year they accounted for fewer than a third of arrests for drunkenness, the most common arrest charge in modern, urban America; in the House of Detention, the city prison, their numbers each year were in proportion to their numbers in the city population. Within predominantly black neighborhoods, however, the number of crimes and arrests for lesser counts was above average. Thus, in 1955, out of a total of 546 robberies reported for the entire city, 262, or nearly one-half, were committed in the city's two Negro districts; of 2,137 burglaries, 920 were in the same two districts; the other robberies and burglaries were evenly distributed among four, equally populous, districts. 45

Records from the 1850s make it clear that the criminal justice system in New Orleans was far different from the plantation system of strict surveillance. Arrests, trials and convictions of blacks, both slave and free, were conducted with no substantial departure from the rigidity imposed on whites. Legal technicalities and a bungling, often corrupt, legal system served as much
to open opportunities as to restrict them. The supposedly stringent Black Code was ignored with regularity by the legal system, in favor of blacks. Yet, their involvement in crime remained within reasonable, statistical bounds.

No clear system of double standards appears to have been developed in this period. Rather, a mixture of standards appeared to exist, with harshest penalties for whites who slew blacks, with great laxity in penalties for blacks who assaulted other blacks, with an almost amazing lack of success in prosecution of blacks who killed whites, and with no protection at all for black victims of rape. No trends toward general tightening or relaxing of law enforcement are seen in the decade with the exception of increasing severity of punishment for free blacks who assaulted whites and a corresponding decreasing stringency of penalties for whites who assaulted free blacks. None of the evidence for the period supports various claims about slaves using arson for revenge, about slaves being trained as thieves or about urban crime not being of a serious type.

Where slaves were defendants in common crimes, the monetary investment they represented obviously influenced the slaveowners who sat on juries. It should be restated, however, that slaveholders were not the only jurors in all other cases involving Negroes, in many of which special concern was shown for the lives of blacks. Further, imposition of long jail terms on slave criminals
just as surely produced economic losses for their owners, so it could be argued that some humaneness also was involved in decisions which stopped short of executions despite state law requiring recourse to the gibbet.

With two elements of the criminal justice system yet to be examined, it appears that considerable paternalism was involved in much of the legal action in the 1850's. Certainly, from information on the elements considered it is clear that absolutism was not the rule. At the same time, discrimination was strong, with the important distinction being that free and slave blacks were objects of very different sorts of discrimination. They were, in this way, prevented from developing strong cohesiveness. Bickering among blacks, particularly between the two classes, was almost encouraged by these elements of the system. Thus, the paternalism and dual discrimination both undoubtedly served as braking influence on the development of black cohesiveness. These factors will come into truer focus during consideration of the elements of the criminal justice system which were concerned with the rights of slaveholders and of the slaves themselves.
FOOTNOTES


3. Louisiana Session Laws, 1806, Chapter 33; ibid., 1816, p. 146; ibid., 1852, No. 308.

4. Legal technicalities are considered only as incidents at this point. They are covered in detail, along with police efficiency, in Appendix B. New Orleans Daily True Delta, Marcy 3, 9, April 3, June 4, 26, 1853; New Orleans Daily Crescent, February 15, 18, May 21, December 25, 1858; February 28, March 21, 1859.

5. Louisiana Session Laws, 1816, p. 146; New Orleans Daily Crescent, December 25, 1852, reports on dismissal of the case against Patrick Mulhollan, who allegedly had slain a black youth with a hatchet; New Orleans Daily True Delta, January 14, 21, February 25, 1854, covers the case of James McKenna, charged with the murder of an elderly slave named Ralph; ibid., January 23, 1858, reports the release of Patrick Donohue, who a year previously, killed a slave; no white witnesses were available in these cases. Ibid., March 15, 26, April 2, 1855, presents the case of Simeon Landry, carriage driver for a city alderman, who surrendered himself to police after shooting at a shadowy figure near his employer's home. Investigation disclosed the body of a slave. New Orleans Daily True Delta, March 29, 1853, provides other data on the ineffectiveness of public opinion.

7. Gerard Stith, Message of Gerard Stith, Mayor of the City of New Orleans, to the Common Council, October 12, 1858 (New Orleans, 1858), p. 11; New Orleans Daily Crescent, July 2, December 8, 1852; December 14, 1854; January 16, June 1, December 1, 1860; Wade Slavery in Cities, p. 100.


11. New Orleans Daily Crescent, December 4, 11, 1854; June 1, August 21, 1855; March 13, 1856; February 8, March 16, 24, 1860.

12. Ibid., January 5, February 29, March 16, 1860.

13. Ibid., February 5, 1854; January 20, February 26, 1855; April 26, 1858; New Orleans Daily Picayune, February 25, 27, April 14, 26, 1858; New Orleans Daily Crescent, October 13, 14, 1859; April 24, May 9, 19, June 20, December 19, 1860.

14. New Orleans Daily True Delta, April 29, 1851; February 8, 9, 1854; New Orleans Daily Crescent, May 7, 10, 1859; February 28, May 3, 4, 15, 1860.

15. Ibid., May 15, December 16, 1854; May 27, June 7, 1856; March 12, January 11, 15, 1859; New Orleans Daily True Delta, January 26, December 14, 1853.


20. Ibid., June 25, December 10, 1853; New Orleans Daily Crescent, February 6, 1851.

21. Ibid., November 27, 1850; Louisiana Session Laws, 1806, Chapter 33; ibid., 1855, No. 308.

22. New Orleans Daily Crescent, May 18, 1858; New Orleans Daily True Delta, February 1, 1853.

23. Ibid., April 8, 24, 1852; February 20, March 12, 1853; New Orleans Daily Crescent, April 9, 1852; October 14, 18, 20, 1856; September 11, October 1, December 24, 1856; January 1, 1857; March 17, 19, 24, April 21, June 30, July 2, December 8, 1858; June 11, 14, 1859; Catterall, Judicial Cases, Vol. III, p. 672; Louisiana Penitentiary Reports, 1852, p. 45.


25. Ibid., June 30, 1858; April 21, 1855; New Orleans Daily True Delta, January 1, 1854.


27. Ibid., November 17, 18, 1854; February 26, April 28, May 14, 1855; April 28, June 14, 27, 1860; New Orleans Daily True Delta, February 2, 1853.

28. New Orleans Daily Crescent, September 5, 6, 7, November 23, December 25, 1850; May 26, June 8, July 2, December 21, 25, 1860; January 22, 1861; May 17, December 21, 1854; January 31, February 1, March 10, April 30, 1855.

29. Ibid., August 31, September 5, October 3, 1854; January 8, 1855; February 26, March 12, May 3, June 21, 1858.


31. Louisiana Session Laws, 1806, Chapter 33; ibid., 1816, p. 146; ibid., 1818, p. 18; ibid., 1855, No. 308; New Orleans Daily Crescent, May 19, June 8, 1854, reports the Slave Ned hanged for rape of a white girl; ibid., November 30, 1857, reports handing of slave Oscar for attempting "to outrage the person of a respectable lady."
32. Ibid., October 16, 17, November 11, 1854; June 9, 1852; June 9, July 11, 1855; July 27, 28, August 4, 6, 14, 1855; January 25, March 28, 1856; September 15, 1856; April 21, 1858.


35. New Orleans Daily Crescent, February 11, April 22, July 2, December 10, 1858; October 8, 1859; April 28, 1860.

36. Recorder's Court, Third District Appearance Bonds, 1855, passim.


38. New Orleans Daily Crescent, September 5, 1850; April 17, 1856; October 22, 1857; New Orleans Daily True Delta, May 1, 1853.

39. Ibid., October 16, 1850; New Orleans Daily Crescent, January 17, 1856; October 4, 5, 1854.

40. Ibid., June 25, October 7, 11, 1858.

41. Ibid., April 10, July 22, 1851; November 9, 1854.

42. Ibid., November 8, 12, 1857; July 18, 1858.

43. New Orleans Daily True Delta, April 20, 24, 1853.

44. New Orleans Daily Crescent, September 27, 1852; Mayor's Office, Messages, January 11, 1850-December 29, 1852 (Department of Archives, New Orleans City Library), A.D. Crossman to Common Council, December 9, 1850; Louisiana Penitentiary Report, 1856, p. 25; ibid., 1858, pp. 41-45; 1859, pp. 45-47; ibid., 1861, pp. 23-26; Record Book No. 2, Municipality No. 3; Record Book, Recorder's Office, 3rd District; Third District Appearance Bonds, 1855, passim.

IV

CRIMINAL JUSTICE AND BLACKS

IN OLD NEW ORLEANS:

FOR OWNERS ONLY

On July 28, 1856, the slave Shadrach was released after spending twenty years in New Orleans jails. His crime—trying to be free. He had run afoul of the oldest provision of le code noir, the prohibition against slaves running away.¹ Police had arrested him in 1836 as a suspected runaway; unable to prove free identity, he was held, working as jail janitor until the day two decades later when his owner appeared, proved title, and took Shadrach away.²

Shadrach's dilemma, although extreme, shows that New Orleans authorities enforced the laws against runaways, although as Clement Eaton suggested, "running away" had special meaning. Police did arrest many suspects, but few of those apprehended actually were trying to flee from the institution of slavery. Most of them were slaves out for a night on the town, either with improper
passes or with no passes at all. A few were free blacks who lacked proper identification.

Legal advertisements fostered the illusion that runaways were quite common, listing an average of eight to ten suspects arrested or missing persons each day. Actually, those listings reveal that only a fraction of that number ran away daily, for state law required city government to run each advertisement for fifteen days. Consequently, each day's list of eight-to-ten runaways was largely a repetition of previous ads; on the average, only one-fifteenth of the total was new, or some 200 per year. Advertisements listed considerable detail:

Was brought to the City Police Jail on the 18th of January, the black boy GEORGE. Says he belongs to Mr. Theodore Soniat, who lives in the Parish of Jefferson; he is 5 feet 6½ inches high, and has three scars on the forehead.

The owner will call and claim his property according to law.

Police turned the bulk of these suspects over to their owners, not as runaways, but as slaves without passes or with improper passes. In a typical week in 1857, for example, police arrested five suspected runaways, Billy, Marguerite, Adelle, Cuba Anderson and Washington. The first four were delivered almost immediately to their owners after being re-booked for not having passes; Washington also was returned to his owner, although he remained listed as a runaway because he had been hiding
in "the woods over two weeks," apparently uncertain of what to do with his freedom once he had taken it. During another week, officers booked four blacks as runaways. The entry against one of the four was changed to "no pass" and he was returned to his owner. The entries against the other three were revised to "pass out of date" and they, too, were handed back to their owners. Police often picked up slaves such as these, who were not real fugitives, and claimed ten-dollar rewards from owners. Slaves wandering out of neighboring Jefferson Parish were especially liable to such apprehension. 4

At times free blacks suffered from the regulations about runaways. In February of 1852, Mr. S. Hite, a white man, claimed that a black woman named Betsey was a runaway. Police jailed her when she could not disprove Hite's claim; she remained incarcerated until eighteen months later, when the jail-keeper petitioned the court to order her release or to force Hite to prove his claim. When Hite failed to come forth, the Recorder ordered her freed. 5

Free blacks arrested as suspected runaways usually were able to prove their status quickly, either through passes issued by municipal authorities or from sworn statements of reliable citizens. Suzan Miller, so arrested in 1854, was allowed to send for witnesses who testified as to her freedom, and gained her release on the day of her arrest. On July 17, 1858, police booked William Price
"as a runaway," but released him on the same day as a free man of color. Victor Stanislaus, arrested August 27, 1858, as a suspected runaway, was able to locate his pass and went free the next day.  

State lawmakers had designed a pass system to aid slaveowners in keeping track of their slaves. It required owners to issue passes to slaves whenever they were permitted to leave their home premises. The system was inefficient because owners ignored it as an inconvenience and city officials ignored it since enforcement brought no cash to city coffers. City officials made only the most modest efforts to enforce the pass regulations, and extant records do not indicate that they inflicted the required twenty lashes when they did arrest slaves without passes. Police blotters reflect local action with such cryptic entries as "Slave Adelaide--no pass--Delivered to Master--no punishment," or, less commonly, "Slave August of Delery--no pass--Fined $5. Paid."  

Forgers, abetted by official indolence, also frustrated the pass system. In 1852 a slave girl named Elizabeth went unpunished for "having forged, or caused to be forged, a paper allowing her to visit Massot's slave boy Frank, while he was confined to the city jail for safekeeping." A year later a Recorder fined Richard Rowly twenty dollars for forging a pass for a slave. When authorities tried to prosecute another pass forger their efforts dragged on for two years of technical
pleadings and ended with the case being dismissed. This effort began in December, 1854, with the arrest of J. C. David, an attorney whom police charged with writing "a false certificate of freedom" which a local slave used in lieu of a pass. A jury found David guilty, but he obtained a ruling of mistrial. The state then dropped the case rather than make a second attempt. Towards the end of the 1850's, public opinion was aroused at reports of similar pass-forging, but authorities did nothing to halt it.9

A major factor underlying police apathy over passes was the indifference of slaveholders, the persons whose interests the laws had been written to protect. Not only did some masters let their slaves roam at will without passes, others paid little heed to the law when they did write passes. By law, they were required to follow this form:

The bearer (negro or mulatto), named ________, has leave to go from ________ to ________, for ________ days. (or hours) dated the same day of the delivery.

Illustrating slaveowners' attitude toward form, in 1852 a slave was found with a pass which read, "the bearer, Edward N____, has full permission to pass unmolested from date to Sunday, the 8th inst." Police warned slaveholders that they would arrest all slaves sith such passes, and urged slaveowners to follow prescribed forms.10
On January 18, 1855, officers arrested Jacob, a slave of J. P. Norfleet of Suffolk, Virginia, for insulting a policeman. On Jacob's person was a pass which gave him complete freedom for a full year, most of which he had already spent in New Orleans. Two years later the press reported continuing arrests of large numbers of slaves, "for having passes which were not good, though given them mostly by their masters." Late in 1858, slaveowners were accused of issuing passes on a monthly basis as "virtually a species of emancipation, by which the law is evaded, without the slaves feeling any responsibilities of freedom." 11

Dick Barnes possessed what was probably the most unusual pass of the decade. Police arrested him on July 20, 1859, as a suspected runaway, when they found him with a pass giving him freedom to roam indefinitely from his home in Houston, Texas. Officers made immediate inquiries and within five days had determined the pass to be authentic. It was issued by Dick's owner because the slave, "a topnotch racehorse trainer, needed to travel back and forth between Texas and New Orleans and Mobile" in pursuit of his profession. 12

Dick Barnes' pass was illegal according to the slave codes of most southern states, for they forbade independent travel by slaves whether or not their owners approved. The codes made it doubly illegal by special
prohibitions against slaves being allowed to compete too strongly in white labor markets.\textsuperscript{13} Louisiana law recognized urban needs, however, and allowed the city of New Orleans to make exceptions in favor of slaveowners with marketable talents among their property. During the 1850's, under the city use of that privilege, the only requirement imposed on hired slaves was for owners to give them special passes, a requirement obviously designed to protect the owner's interest in the money-making abilities of his chattels. For nine years no criminal charges were filed for violation of this ordinance; then, in 1859 a slaveowner used it to accuse the free black Virgil Bonseigneur of hiring a slave without the owner's consent. Bonseigneur was released on bond and the case was still in abeyance when the war came.\textsuperscript{14}

As indicated in the case of Washington, who was labelled a runaway because he hid in "the woods over two weeks," most slaves who skipped out on their owners apparently had no real destination in mind. Practically none were involved with underground railways or incendiary abolitionists. Most often, police found them within a few blocks of their owners' homes, living a meagre existence in rented rooms. By law, landlords in such instances were guilty of the serious crime of harboring runaways; in practice, landlords were treated as petty offenders. In 1851 Leopold Bordenham was fined ten dollars
for renting a room to a slave. Six years later, the Recorder fined the slave Albert twenty-five dollars for "renting rooms to other slaves." Loremy Rittler was fined $2.50 for renting a room to a slave who in turn was fined ten dollars, which his owner paid, because he had sublet the room to a female runaway. Late in 1860, Mrs. Carroll, a white woman, paid a twenty-five dollar fine for renting a room to a slave who had his master's permission to be a tenant; the law permitted such procedures only when the owner himself made the arrangements for the room.¹⁵

Police sometimes charged suspects with the specific offense of slave-harboring. Almost always those so charged were free blacks. The district attorney's office seldom succeeded in prosecution during the early years of the decade, although the record improved as civil conflict neared. Until 1854 the average charge ended with an announcement such as, "Felix Duplessis, f. m. c., and Edward, a slave, charged with harboring a runaway slave belonging to James L. Powers, were yesterday called up for examination, and were discharged, no one appearing against them." Even when witnesses did appear in preliminary proceedings, results rarely were impressive. The grand jury, for example, on one occasion followed through by indicting free blacks Catherine Robinson and Pierre Brusson; the two suspects were able to avoid trial,
however, because the district attorney's office failed to take further action within the time limits set by law, during almost the entire half of the 1850's, in fact, juries tried only two persons for slave-harboring; both were found innocent. 16

Late in 1854, New Orleans officials completed their first successful prosecution of a slave-harborer. The Recorder found free black Jemyah Hardy guilty and ordered him to leave the state within sixty days or face trial as an undesirable; Hardy chose to leave the state. Five months later a jury in criminal court convicted the free black woman Augustine Aliff of harboring a runaway; the judge sent her to prison for six months and fined her $200. 17 On March 23, 1857, a jury found Andre Leggion, a white man, guilty of the same charge; he paid only a $200 fine. Later in that year the court gave a free man of color a choice between that fine and three months in jail for harboring a slave--his wife. Three days before Christmas, the slave Anderson, "charged with enticing away, harboring and concealing J. B. Harris' slave girl Ellen--all for love--was discharged; the Recorder deciding such a thing to be no offence in a slave."

Throughout the rest of the period, slave-harborers were convicted with regularity, with the option between three months in jail or a $200 fine becoming standard for offenders of all types. 18
Slaves were occasionally stolen in this period, either to be sold illegally or to be set free. City authorities enforced laws against such stealing in a manner similar to that involved in enforcing laws against slave-harboring; as the decade grew older, they increased their vigilance. At the start of the 1850's Thomas Jourdan was arrested for stealing a young slave boy. When apprehended, Jourdan had the youth with him; reliable witnesses said they had heard the suspect promise to take the boy out of New Orleans. Yet, instead of sending the case to criminal court for trial, the Recorder sentenced Jourdan to the workhouse for three months as a vagrant. Later in the year several competent witnesses testified in preliminary hearings that James Bonner had sold a slave, then stole him away and sold him again. Again, the Recorder refused to send the case to state court, this time ruling that the original affidavit, charging Bonner with slave-stealing, should have charged him with fraud.¹⁹

Midway through the decade enforcement began to tighten up. In May, 1855, Oliver Perry Wilkinson was found guilty of stealing a slave and was sent to prison for two years. A half dozen other slave-stealers suffered similar fates during the next two years. In 1857, Samuel Everett chose to forfeit his $100 bond rather than take his chances in court, so certain was the sentence; subsequently, average sentences increased even more. Michael Donnelly, alias McDonald, alias McDonough, received the
stiffest sentence—ten years for "running off a slave."
More typical was the experience of William Robinson and
attorney S. J. Baer. Robinson stole a slave; Baer made
up fake papers of ownership; Robinson then sold the slave
in Galveston. The Criminal Court judge sent the two
to prison for five years apiece. Some suspects were
found innocent in these years, also; in 1855 "Counsellor
A. A. Randolph" went free when the prosecuting witness
failed to appear in court, and in 1857 technical flaws
in legal papers prompted the prosecutor to drop the charge
against D. W. Merine for "inveigling Louis, slave of
Louis Tassman." 20

In May, 1854, police filed their first charges
against a suspect for stealing a slave to free him rather
than sell him. Booked were the free black men Francesco,
Alick and Joseph, who had concealed a slave on a ship in
an attempt to spirit him away to a free country. Police
at first suspected a major, underground railroad system,
but investigation showed such fears to be groundless;
five months later the accused men were released because
of a lack of evidence. A year later officers were able
to make a better case and the court sentenced James Smith
to prison for fifteen years for helping slaves run away.
This was an exceptional sentence even in the waning years
of slavery, as other abolitionists were given much lighter
terms for similar offenses. Early in 1857 Levant M.
Thompson was given a two-year sentence. Halfway through
1858 Charles Hardy, a white man, and the free blacks
William A. Clark and his wife, confessed that they were
members of the underground railway; the criminal district
judge gave them the option of paying fines of $1,000
each or serving six months apiece in prison. 21

In the remaining four years of the ante-bellum
period police failed to apprehend any other slave-
stealers, although New Orleans was rife with fears and
rumors of abolitionist activities. The first public re-
port came on March 17, 1857, when Recorder Solomon gave
the Reverend John Brown, a free black, sixty days to
leave the state. Police had found Brown in possession
of letters which showed "that he and other parties were
in secret correspondence with abolitionists at the North."
Less than a month later, "sundry respectable citizens"
pleaded in the court for a reversal of the order; telling
the character witnesses that they would be held respons-
ible for Reverend Brown's future actions, the Recorder
rescinded his order. 22

Rumors of abolitionist activities became even
more common in 1860. On August 11, 1860, "a notorious
Abolitionist" reportedly was on his way to the city. A
mob of Orleanians searched the ship on which he was ex-
pected to arrive, but could not find him. One newspaper
suggested that had he been discovered, there was "little
doubt that he would have been treated rather roughly."
Less than three months later, New England schoolmaster
S. M. Whitney was accused of tampering with a slave girl by promising to take her to Boston and free her. The girl's mistress had uncovered the plot after the slave aroused her suspicion by asking questions about Boston. Since the only witness against Whitney was the slave, he was not prosecuted. In the weeks that followed publication of news about this incident, the press made frequent reference to rumors of abolitionists in the city; few arrests were made, no convictions were obtained, and when the war came only one suspected "incendiary" was awaiting trial.23

In addition to laws written expressly to protect the cash investment which slaves represented to their owners, the slave code also included statutes meant to make independent existence difficult for slaves. Among such provisions were various trading laws, to control sales and purchases of items by slaves. The intent was to prevent theft and resale of owners' property, and to prevent outsiders from supplying slaves with items which their owners did not want them to have; prohibitions on slaves making purchases also were designed to make the theft of masters' cash a fruitless act, since there would be no way for a slave to spend it. In the 1850's these trading laws prohibited slaves from gambling under any circumstances, prohibited anyone from "buying, selling, or receiving of, to, or from any slave or slaves, any
produce or commodity whatsoever without the consent in
writing of the master, owner, or overseer or employer of
such slave or slaves." Only an owner could give a slave
consent to purchase alcoholic beverages.24

As a deterrent to theft of owners' property,
these trading laws apparently were rigidly enforced;
vViolations, treated by severe lashings for slaves and
heavy fines for purchasers, were rare. For gambling
with slaves in 1853 William Doyle was fined ten dollars.
For "buying from a slave without the consent of his owner"
in 1858, a white man was sent to jail for two months and
fined fifty dollars. Late in 1860, Recorder Emerson
ordered a white man to the workhouse for two months for
illegally trading with a slave.25

In stark contrast to the record where slaves sold
items was the record where they bought them. In such
instances, both masters and courts generally ignored the
laws. Slaveholders apparently felt their money was
guarded well enough that their chattels would not steal
it, and they consequently seemed indifferent to the
spending habits of their slaves. If a slave had cash,
questions were rarely raised. Even when a storeowner in
1853 expressed concern over a $212 cash purchase by a slave,
neither the owner nor authorities felt the question should
have been raised.26
Failure to enforce provisions of the code regarding sale of alcoholic beverages to slaves constituted the greatest example of laxity in the whole system of criminal justice. Grand juries, visitors and newspapers complained of dereliction throughout the 1850's, but to no permanent avail. As early as 1813, in fact, the mayor of New Orleans had complained that slaves were loitering all night in grog ships. A visitor in 1828 commented that on a Sunday evening he and his party "observed two-thirds of the blacks drunk." In 1852, the first official book of regulations for policemen carried two special entries to remind members of the force to "keep a sharp look-out for all cabarets or grog shops where spirituous liquors are sold to negroes and slaves." 27

Early in the 1850's only occasional attempts were made to stop slave drinking. On October 1, 1850, Recorder Genois fined coffeehouse owner Bernard Bernardus and cabaret keeper John Ferrand $100 each for allowing slaves to assemble and drink in their establishments. On the same day, however, Recorder Caldwell referred two similar cases to the criminal court, where it was well known that no action would be taken. 28

For slaves, punishments for drinking were minimal. A score of slaves found drinking in a cabaret in 1851 were fined, rather than flogged. The fines, five dollars each, "were for the most part paid by the owners," an
an illustration of the slaveowners lack of concern, and almost endorsement, of the situation. H. Forno, captain of police, in 1853 publicly condemned slaveholders for condoning liquor sales to slaves. Forno charged that police rarely raided drinking establishments frequented by slaves because "up to this time not one of the offending parties" had been referred to trial by the grand jury, a body predominantly made up of slaveowners. Forno's complaint brought no results, although police tried to combat the problem for a short time after the aborted Dyson revolt of that year. On July 2, 1853, they were praised by the press for "doing a good work by searching out the cabarets where slaves are brutalized by a supply of theft-fostering drinks." Yet, only one of the arrests made during this crack-down ended in conviction; Peter Remerdo paid a $200 fine and forfeited his liquor license after a criminal court jury found him guilty of selling liquor to a slave. This was the first time in the decade that this court produced a conviction on such a charge. It also was to be the last time for many months. Immediately afterwards, Recorders began again to refuse to refer cases to the grand jury or to the higher court. The first Recorder so refusing was the same one who had sent the Remerdo charge "up;" two days after that major conviction, he dismissed an almost identical case against S. Gomez. In an effort to justify the action, the Recorder
said the slave had had his employer's consent; the law, as the press quickly pointed out, permitted liquor purchases only with the consent of the owner.29

By early 1854 the press once again was condemning the sale of liquor to slaves. On April 30, 1854, the grand jury also condemned the practice; pressure apparently had become strong enough to prompt energetic enforcement that was to last for some three years. One offender, Mrs. Adam Gardner, was sent to jail for six months when she defaulted in payment of a $400 fine. Others paid fines ranging from $150 to $300; several forfeited their licenses.30

By 1857 things had changed again. On January 1, 1857, a special city ordinance went into effect, returning jurisdiction in slave liquor cases to the Recorders. City officials argued that this would bring good prosecution because fifty per cent of any fines would be paid to informers. Numerous arrests were made within a short time, but the fines imposed presented a drastic drop from recent penalties in the criminal court. They ranged from ten to twenty-five dollars, only once going as high as fifty dollars. The criminal court technically still had jurisdiction, but it had no way of receiving charges since the Recorders, as committing magistrates, were the fundamental route for cases to reach the grand jury. In addition, the criminal court showed no disposition towards
continuing action; a large number of cases was pending before that court when the new city ordinance went into effect, but when a new judge took that bench in May, 1857, he proceeded to clear up the backlog by dismissing cases on a wholesale basis. 31

Within a year of institution of the new system of enforcement, Mayor Gerard Stith complained:

Selling liquor to slaves has come to be in this city a most serious evil. The demoralizing influence of this illegal traffic upon our servants is observed in their growing irregularity of habits, their restiveness under salutary restraints, and their occasional insolence which public punishment alone can repress.

The mayor urged that offenders be sent directly to the criminal court since there was "little doubt that the city ordinance conflicted with the Black code." His plea was ignored. A few days after he made it, the slave Aleck was arrested in the act of buying liquor; the Recorder ordered that Aleck be returned to his owner with no punishment and that the liquor seller not be booked. On August 8, 1857, the slave Peter was found drunk; police placed him in jail for the night and then released him. 32 Police found many other slaves in the same condition and gave them the same treatment, making no apparent efforts to locate their source of supply; when charges were taken to Recorders, the maximum penalty which they assessed was a twenty-five dollar fine. 33
In March, 1858, the Louisiana Legislature produced a novel situation to the black drinking problem. Special powers were given to Recorders to hold trials with juries composed of three slaveholders. The law required these courts to presume that a liquor sale had been made if a slave spent more than five minutes in a place of business which had a liquor license. The courts were required to levy a minimum fine of $250 and to order revocation of liquor licenses. The first three-man jury found Jose Fernandez guilty on May 25, 1859, sentenced him to the minimum fine and revoked his license.\textsuperscript{34}

Public interest in the new system was keen, for it affected all interests. Liquor sellers faced losses of licenses, heavy fines and sure convictions with the five-minute rule in force. The slaveholder was endangered by a requirement that suspected slaves be jailed or bailed until called to trial, which would hold up either the slave's time or the owner's cash. Police, meanwhile, were energized by a provision which diverted half the fines collected to the arresting officers. Further, to prevent legal delays, the law authorized Recorders to pass sentence immediately upon conviction.\textsuperscript{35}

Within a few days police had made numerous arrests and Recorders had imposed a number of fines and revocations. By June 1, cabaret owners were organized and on June 5 they filed a civil petition for injunction. The civil court rejected the request on the ground that
it had no jurisdiction. Liquor dealer George Weigel then obtained permission to apply to the same court for a writ of habeas corpus, alleging illegal imprisonment. Jurisdiction here was clear, and on June 13 the civil judge ruled the law unconstitutional for denial of such items of due process of law as "indictment by information, an impartial jury and compulsory process for obtaining witnesses" for the defense.\textsuperscript{36}

Louisiana's attorney-general immediately appealed to the state supreme court, but for the next six months enforcement was suspended. On January 15, 1860, the state high court reversed the civil court and upheld the law.\textsuperscript{37} The next day city officials filed charges based on arrests which had been made before the appeal had begun. By the end of the month, three trials were set, and within the next three months more than a dozen persons had been convicted by Recorders' three-man courts; those convicted included one defendant who was sent to jail for six months when he defaulted in payment of a $500 fine.\textsuperscript{38}

Then, just as the new law appeared to be solving the long-standing problem, the Recorders balked. On April 29, 1860, one magistrate refused to call a jury and "spared" the license of George Faecher. On June 2, the charge against "Mrs. Higgins was discharged" when the arresting officer, for no stated reason, declined to testify. On August 17, J. G. Montfort, free black,
was fined $250 but was allowed to keep his license. Through the remainder of the ante-bellum period all other licenses were similarly spared. Press reports hinted at a massive bribery by liquor dealers, but it was never proven. 39

Enforcement of liquor laws, like enforcement of most statutes designed to protect the cash investment which slaves represented to their owners, was thus erratic and weak during the 1850's. As did elements of the criminal justice system previously examined, this suggests a highly permissive society, albeit, a paternalistic one. Pass system and liquor laws in particular were apparently regarded as largely unnecessary in fact to protect the real interests of slaveholders. Only when fear of a revolt arose after the Dyson incident did public concern rise, and only then was an effort made to enforce the laws. Otherwise, public indifference towards the "danger" of slaves and free blacks becoming too free showed strong reliance in a general system of control which already worked well. Runaway slaves appear to have posed little problem, either in numbers or motivations. Their lack of real goals when they set off, the actual support by owners of lax enforcement of laws regarding passes, both suggest little fear of abolitionism or any other local threat to their property.
Enforcement of only selected laws towards the close of the decade also suggests great faith in the general system which kept blacks in their place. This appears logical because those provisions chosen for enforcement were the ones designed most directly to protect the money value which slaves represented, not those designed to protect society. Thus, the sharpest enforcement was designed to combat the over-rated underground railway system, the slave-stealers and slave-harboerers.

That the permissiveness in New Orleans was paternalistic provides some insight into the strength of class distinctions in the minds of New Orleans white society. It also supports understanding of the absence of cohesiveness and serious counter-aggression by blacks. Examination next of the actual operation of elements of the criminal justice system designed to protect the interests of the slave will provide additional data for this analysis.


3. Louisiana Session Laws, 1806, Chapter 33; New Orleans Daily Crescent, February 1, 1859. On one occasion, authorities failed to place an advertisement and the state supreme court forced the city to reimburse the slaveowner for income lost due to the negligence; see Catterall, Judicial Cases, Vol. III, p. 602. In 1861, the legislature created a six-man committee to examine conditions surrounding runaways in New Orleans, but raised no question of the propriety of advertising; see Louisiana Session Laws, 1861, p. 134.


5. New Orleans Daily True Delta, August 12, 1853.


7. Louisiana Session Laws, 1806, Chapter 33; ibid., 1852, No. 308.

8. Ibid., 1806, Chapter 33; Police Department Record of Arrests, 1857-58, pp. 218-219.

9. New Orleans Daily Crescent, April 2, 1852; December 22, 25, 1854; December 13, 22, 1856, January 13, 1857; November 15, 1860; Daily True Delta, April 7, 1853.


11. Ibid., January 19, 1855; April 7, 1856; New Orleans Daily Picayune, November 2, 1858.


14. Louisiana Session Laws, 1806, Chapter 33. Later, laws were passed to prohibit slave labor in other parishes; see ibid., 1852, pp. 169-170; New Orleans Daily Crescent, October 11, 1850; April 15, 1859.

15. Ibid., May 7, 1851; August 28, 1857; October 26, 28, 1858; September 21, 1860.


18. Ibid., March 23, November 23, December 23, 1857; June 7, December 5, 8, 1860.

19. Ibid., January 10, 11, 1850; New Orleans Daily True Delta, October 17, 1850.

20. New Orleans Daily Crescent, January 23, May 25, 28, 1855; May 19, June 19, 23, August 21, 22, November 18, 26, 1857; January 25, March 4, April 5, 10, May 26, 1858; New Orleans Daily True Delta, June 6, 1858.


22. New Orleans Daily Crescent, June 24, 29, July 7, 1858.


24. Louisiana Session Laws, 1806, Chapter 33; ibid., 1824, p. 76; ibid., 1830, p. 144; ibid., 1852, Nos. 27, 326; ibid., 1855, No. 308; ibid., 1857, No. 187.


29. Ibid., July 22, 1851; New Orleans Daily True Delta, January 6, July 2, 20, 22, 1853.

30. Ibid., January 4, 1854; New Orleans Daily Crescent, May 1, June 27, November 4, 29, 1854; January 22, March 26, May 21, 22, 1855; November 10, 1856.


32. Stith, Mayor's Report, p. 10; Police Department Record of Arrests, 1857-58, pp. 215, 217, 258.

33. New Orleans Daily Crescent, October 21, November 11, 1858.


35. Ibid., May 28, 1859.

36. Ibid., May 30, June 1, 2, 3, 6, 14, 1859.

37. Ibid., January 26, 1860.

38. Ibid., January 27, 30, April 20, 21, 1860.

39. Ibid., April 30, June 2, August 17, 1860.
Slave laws of ante-bellum Louisiana were filled with provisions intended to protect the person and well-being of slaves. Between 1806 and 1861, Legislatures controlled by slaveowning interests enacted twenty-six such laws. Eight of them contained provisions specifically designed to prevent cruelty. By 1850 this body of law provided clear rules and regulations. Whipping was a legal punishment for slaves, but limits were set according to the seriousness of the crime: twenty-five lashes was the maximum for striking an overseer; thirty-nine for theft; forty for train robbery. To exceed the limit was to commit cruelty, a criminal offense. Slaveholders could not sell children under the age of ten away from parents, nor could they sell the aged or infirm away from families. Harsh treatment was also defined to include failure to provide slaves with proper
food, clothing and housing. The laws further provided concise orders for juries: they were to fine owners from $50 to $2,000 for unnecessary cruelty; they could, at their option, sell slaves who were victims of cruelty; they were to fine persons guilty of cruelty to slaves of others, up to $50, and to order reimbursement of owners for time lost.¹

The law was clear. The story of its enforcement is not clear now and was confused in the closing antebellum years by writings from both sides of the Mason and Dixon line.² Abolitionist propagandists described alleged cruelties in detail: James Stirling wrote of seeing a slave having his skin stripped off with a whip and stated that such occurrences were common; Charles Lyell, particularly impressed by the grief among a white family because of the death of a slave, concluded that this example of concern refuted all claims of cruelty; New Orleans minister Theodore Clapp rejected all complaints, classified all slaveowners as humane and all slaves as fortunate in their status.³

Today, views on ante-bellum cruelty to slaves are in contrast just as sharp. One school of thought, reflecting the heavy influence of U. B. Phillips, feels that "with few exceptions, the general rule was kindness," that "severity was clearly the exception" and that "each slave was under a paternalistic despotism, a despotism in the majority of cases benevolent." Clement Eaton has
suggested that "public opinion in the South was a powerful factor in preventing the mistreatment of Negroes." 

Louisiana historian Pierce Butler stated that in the state, "there were severe laws for the regulation of slaves, but both laws and public opinion provided protection for the slave against ill treatment."

Other authorities contend otherwise. John Hope Franklin cited examples of extreme harshness as if they were everyday occurrences; he charged that protective elements of slave codes "were few and were seldom enforced." Carter Woodson concluded that slaves generally were mistreated because no check existed to stay the wrath of owners and overseers. Mason Crum said "that too often the handling of slaves was ruthless and unnecessarily harsh." Ralph Flanders believed that "human passions found little restraint in the institution of slavery," and Arthur C. Cole that "brutality colored the authority of master over slave."

New Orleans in the closing years of slavery presents a blend of these views which suggests that cruelty, although not the rule, certainly was more than an exception; even in the permissive, urban society, even with a highly vocal public, the life and limb of slaves were, indeed, at the mercy of the masters. During this final decade of slavery, more than a dozen cases of extreme cruelty were made public. Yet, the courts were able to convict only one person, a German shoemaker named Francois Roueché,
of mistreating a slave. Police arrested Roueche, his wife and a Dr. F. Allain on March 14, 1858, following the death of the Roueche's eleven-year-old slave boy. Neighbors testified in court that on a number of occasions over a period of months they had seen Roueche beat the child with sticks, steel pincers and other objects. Yet, Dr. Allain had certified that the death had been from natural causes. When neighbors had complained to police, the boy's body was exhumed and an autopsy performed. It revealed that the child's back was covered with large scabs and scars, one lung was punctured, the skull and brain had suffered two severe injuries, and the body had been punctured a number of times. The committing magistrate exonerated Mrs. Roueche; no witness linked her directly with the beatings. Then the Recorder dismissed the doctor on the incredible plea that he had not noticed the many wounds because he had conducted his post mortem examination in a "darkened room." Roueche was tried, convicted of second degree murder, and sent to prison for fifteen years at hard labor. 6

All other criminal cruelties to slaves went unpunished due to two causes: (1) slaves were the only witnesses and prosecution was not possible; or (2) a bungling legal system failed to hold prisoners. At the very start of the decade, a New Orleans woman went free because the only witness against her was an eight-year-old slave girl whom the mistress allegedly had tortured "with
a malignity absolutely fiendish. She [the slave girl] had been beaten, cut with a knife, her thumbs mashed to jelly, her person burnt by the application of lighted paper, her her entire body scarred and mangled by cruel blows." Four years later, the lack of free witnesses similarly prevented prosecution of Madam Chaveau and her daughter, the Widow A. Moret, for torturing nine slaves with "fire, pins and iron objects."

In 1855 the grand jury attempted to ignore the requirement that witnesses be free. It indicted a "wealthy courtesan" named Fanny Smith for cruelty to two slave boys "by beating them, biting them in the cheeks, and burning them on various parts of their bodies with hot irons." The trial jury, however, set her free when the prosecution was not allowed to introduce the testimony of slaves.

One of the most callous incidents was the treatment of Bob, a slave of more than seventy years of age, who died from starvation and exposure. George Wilbanks had found Bob in the woods in bad condition. He took the slave to a physician, but it was too late for effective treatment and the old man died. Before his death, Bob told Wilbanks and the doctor that because his age made him a poor worker, his owner's overseer had left him in the deep woods two weeks earlier without food and water. Bob attempted to walk out, but could not. Since no one had witnessed these happenings, and the only available testimony was hearsay from a legally incompetent witness,
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the coroner's jury did not recommend prosecution. 9

Because of inefficiencies in the legal system, prosecution often failed even when free witnesses were available. In 1853 officers arrested ex-policeman Louis C. Berniard, for beating another man's slave girl who was reportedly "shockingly bruised from the kicks of Berniard." Released on $500 bail, Berniard was arrested within another three days when the free woman of color Angeline Koffman filed an affidavit stating that he had approached her, represented himself as a policeman, and by threat of arrest had forced her to submit to rape. The charge was simple assault, and Berniard was released on another bond of $500. A few days later he failed to appear for preliminary examination; police said he had fled the state. Less than a year later he was in New Orleans again, but the old charge apparently was forgotten. Within six months of the first newspaper notice of his return, police took him into custody on three occasions—once for swindling and twice for assault and battery. Free on $500 bond late in 1854, he left on the ship Orizaba for Vera Cruz. Three years later he was back again and through the remainder of the decade his name appeared frequently in police reports, but he never went to trial or served a sentence for any offense. 10

Police arrested Mrs. Elizabeth Wood in 1855 for cruelty in flogging a fourteen-year-old slave boy. The
committing magistrate released her on light bail and kept the slave in custody for medical treatment. The slave died from the injuries, but by that time Mrs. Wood had disappeared. A year later she returned to the city and surrendered; her attorneys then obtained legal delays of trial for another two years. On January 27, 1858, the district attorney dismissed the charge because witnesses by that time could no longer be located. 11

On December 26, 1958, the coroner ruled that a slave woman had died as a direct result "of a severe and most unmerciful whipping" by John T. Hatcher, an employee of a New Orleans slaveyard where she was being held. During the inquest, Hatcher disappeared. He was arrested three months later in St. Louis and the New Orleans police chief immediately requested removal. Before interstate legal technicalities could be overcome, St. Louis police were forced by their state law to release the suspect. He never was seen again by authorities. Other charges of cruelty during the decade, with the sole exception of the Roueche case, ended with similar, negative results. 12

Cruelty under slavery also included legal brutality, the use of the lash. Nineteenth century law in most states had, at the start, provided whipping as legal punishment for both white and black malefactors. In Louisiana, reform of such penalties began early, with a message from Territorial Governor W. C. C. Claiborne to
the legislature on January 14, 1810:13

Your criminal jurisprudence requires revision. Punishments are not proportioned to crimes, and, in some cases, offenders are imprisoned for life, whose reformation might probably be effected by a less rigorous suffering.

Following this suggestion the territorial lawmakers began to temper the criminal code of Louisiana, and early state legislators followed through. By 1820 they had abolished whipping as a punishment for "free persons." Through the remainder of the ante-bellum period, lawmakers elsewhere in the nation continued to remove violence from punishments for crime, with the exceptions of slave codes in the Old South.14 Thus, until the Civil War, whipping remained a legal punishment for slaves in all slave states. In a study of travelers' accounts, historian Max Berger found that visitors to the South seldom witnessed this punishment, notwithstanding claims of abolitionists such as England's W. E. Baxter; he wrote that "in New Orleans one could watch the whipping of naked, chained slaves as freely as one could enter a reading room or a playhouse."15

Regardless of whether flogging was public, it was the common punishment for offenses of all varieties in New Orleans. Seldom did a day go by that the press did not chronicle the order of a lashing for some slave miscreant. Still, a certain quality of mercy sometimes appeared, as in 1850 when a white slaveowner requested
the Recorder to order twenty-five lashes "laid on hard" for a female slave who had been in a tussle with another slave, and the Recorder not only rejected the request but gave a long lecture to the owner about his cruel attitude. 16

Authorities sometimes were accused of using physical punishments other than the lash. Minnesota clergyman Henry B. Whipple wrote of seeing a slave who had been placed in a pillory, his head "mounted with a fool's cap, a paper pinned to his breast—'Stolen $5.00.'" Reverend Whipple also reported seeing "slaves at work as scavengers in the streets, male and female, chained to each other as punishment for some offence, I was told for criminal offences." 17 Extant records and laws do not bear out this report.

A serious aspect of cruelty to ante-bellum blacks was the matter of legal discrimination by police. Indeed, the New Orleans police force, like other southern, urban police departments, drew much of its authority from laws establishing slave patrols, and had as one of its prime reasons for being established the legal, physical control of blacks. By virtue of their legal status, police were required to repress both classes of blacks, with that authority extending to the requirement that they administer lashings. In New Orleans during the 1850's, certain recorded incidents revealed a high degree of official casualness, or even callousness, when police went beyond
reason in the use of those powers. In 1851 the state supreme court refused to reverse the arson conviction of a slave, even though defense attorneys proved that police had intimidated witnesses for the prosecution. In the same year the high court tacitly approved the use of threats to obtain a confession from a slave. In 1855 police readily admitted giving a slave burglary suspect ten lashes "in order to make him a little more communicative." In 1860 police with equal candor admitted using threats and promises to obtain a confession from a slave. 18

Louisiana legislatures passed numerous laws to provide protection for free blacks. By 1850, that class possessed technical rights equal to those of white persons in criminal proceedings. 19 Olmsted reported that those rights "were carefully guarded," but thirty years after the Civil War, historian W. E. B. DuBois aruged strongly that free Negro rights were not protected and that New Orleans in the final ante-bellum decade was a leader in the illegal enslavement of free blacks. Two modern students have argued that the "legal status" of free Negroes worsened in the 1850's in Louisiana and that their legal and social status deteriorated to the point where some elected to leave the city rather than remain. 20

Police and court records partially bear out the more harsh judgments. Police arrested a number of people for attempting to enslave free blacks illegally, and federal
authorities made one charge of importing blacks illegally from Africa. Illegal enslavement attempts were like that of one Phoebe Black, identified by the press as a woman "of well-known reputation." She was charged with bringing Sarah Lucas, a free Negro, to New Orleans as her hired maid and then turning the girl into a virtual slave, even to the extent of mortgaging her. The Recorder freed Phoebe on a $1,000 appearance bond; two days later he released her from the bond "because her landlord to whom the free negro was mortgaged came into court and stated that Phoebe and he had settled." It was reported that Sarah Lucas had been "induced to leave the State," which prevented any prosecution on criminal charges.21

The federal case involved a grand jury indictment of planter Henry W. Allen and four other persons from other states for "holding as slaves certain negroes imported into this country from Africa." Allen, the day after the indictment was issued, surrendered to authorities in Baton Rouge, the city nearest to his plantation home. He was released immediately on $5,000 bond and scheduled for trial in the following November. A few days prior to the trial date he died of natural causes and the case was dropped.22

Historian William B. Hesseltine once stated that Southern courts frequently "remanded a free Negro to slavery as a punishment for crime." Louisiana law did
not provide for such penalties, but did allow free blacks to revert to slavery on their own volition. The first petitioners for such an action did not appear until after passage of an 1859 statute to rid the state of undesirable free Negroes. The first to be enslaved under this voluntary procedure was Ann Barney, who on March 4, 1860, became the chattel of Mrs. Ann Johnson Dickens. Less than a dozen others filed similar petitions during the next year, in all cases reportedly seeking the status of slaves of close friends or relatives; the courts took no reported action on any of these requests prior to the outbreak of war.  

Although few free blacks volunteered to become slaves, many of them often pretended to belong to that supposedly lower caste. Joseph Johnson told police in 1855 that he was a slave, when he was arrested as a suspected thief. Police reported finding Johnson "living in a state of luxury and splendor seemingly fabulous for a slave." He was residing in a home furnished in mahogany and with fine carpeting. He possessed twenty-six suits of men's clothing and enough women's garments "for half a dozen white ladies." A week of investigation failed to reveal that any of these articles was stolen, but it did reveal that Johnson actually was a free man of color, illegally in the state. The court gave him sixty days in which to pack up all those belongings and depart. In the same year a Negro named Archy was brought
into Recorder's Court as an illegal entrant. When the magistrate gave him sixty days in which to leave the state, Archy claimed he was the slave of a Mr. Heath. Police, rather than release him on trust to return to his "owner," held him while they investigated; upon ascertaining that his story was false, police ordered him out of town.\(^{24}\)

On November 10, 1859, police arrested two free black women and eighteen free black men as they arrived aboard the steamer *Northern Light*.\(^{25}\)

They all represented themselves as slaves, and showed passes, representing themselves as belonging to different persons up the river. The Chief of police arrested them because he had excellent reason to suspect that they were all free, but pretended to be slaves in order to have the run of the town whilst here. After they were sent to prison, they confessed that they were free. Being free, they will have to leave at an early day, without the chance of feasting themselves upon the fun and frolic of darkly /sic/ life in New Orleans.

Many statutes of Louisiana in this period were designed to protect the civil rights of blacks who became involved in the criminal justice system. Eaton classified these laws as "the most humane in the Southern states." The liberality generally is credited to the Spanish and French regimes, which conducted criminal procedures for slaves in the same manner as they did for white persons. United States territorial law retained this spirit in Louisiana, although it established separate systems for slaves and free persons. By 1850, as material
from police and press records has shown, Recorders in New Orleans heard evidence in all complaints of a criminal nature that involved blacks, conducted trials for numerous offenses and exercised full authority to reject serious complaints or to refer them to grand juries for consideration by higher courts. 26

New Orleans slaves enjoyed all routine rights in criminal proceedings, including the right to employ counsel, the privileges of bond and appeal, the right to writs of habeas corpus and the right to petition for commutation of sentence. 27 The records show almost daily exercise of these rights. On January 18, 1854, Joseph Chandler posted a $500 appearance bond for his slave, Gustave, who was charged with stealing three pairs of pantaloons. Early in the next year attorneys obtained release from prison for the slave Sanite, on a writ of habeas corpus. In 1859 the state supreme court released the slave Charles from prison when his appeal showed that a lower court had acted illegally. The slave Solomon was released from state prison the following year under similar circumstances. Eugene, a slave belonging to Valsin Marmillion of adjoining St. John the Baptist Parish, even had a special legislative act passed in 1858 to change the location for his trial on a murder charge. 28

Free blacks also routinely exercised fundamental civil rights when involved in criminal proceedings. In
1852 "a respectable free colored man, named William Johnson," won a $100 damage suit in a charge of false arrest against Lieutenant Petrie of the police, who had jailed him overnight despite arguments from reputable witnesses that he was not a slave. In 1853 the full privileges of grand jury proceedings were shown when that body found a "no true bill" against William Zebrisky, f.m.c., accused of perjury. As late as March of 1860, the State high court showed broad application, ordering that compensation be paid to a free black woman who, at best, had a questionable case. This was Perinne, who had substituted herself for a fellow inmate, a slave, while in city jail and had taken a flogging intended for the slave. She then sued for "special and exemplary damages" for sickness and time lost from work due to the whipping. Losing in the lower courts, she availed herself of appeal rights and won the supreme court verdict. 29

Louisiana was the only slave state which permitted free blacks to testify against white defendants. This was not, however, a total equality. The code required that free Negroes be considered competent in criminal proceedings against whites, but allowed that the social standing of such witnesses "according to circumstances" be taken into account when judging the truth of their testimony. 30 Slaves, as has been pointed out, could not testify against white defendants. Only once in the decade was this prohibition ignored; in 1856 the state supreme
court refused to reverse a lower court conviction of a white person, even though the key witness for the prosecution had been a slave. The high court ruled that the witness' statement showed that "he was competent" and that no other factors needed to be considered; the original trial in this instance had been conducted prior to 1850.\textsuperscript{31}

Police were allowed to gather evidence from slaves out of court in order to build cases against whites, but once inside the courtroom the prosecution had to find other means to prove its charges. For example, police acted on a tip from a slave youth to arrest three men who had burglarized the home of the late John McDonogh in 1850. The slave had seen the men commit the crime, but could not testify in court. To prove their case, officers relied on circumstantial evidence--stolen McDonogh property found in the possession of defendants.\textsuperscript{32}

Slave defendants actually had a peculiar advantage over free persons accused of crimes. This was the requirement that juries for these blacks be composed of slaveowners. Such jurors were well aware of the cash investment represented by slaves, and numerous cases considered here have shown they were prone to ignore laws on occasion. Phillips found the same situation to exist on plantations and other historians have confirmed it in Louisiana's neighboring states. James B. Sellers stated that Alabama justices almost always favored slaves, using
judgment that most often was "that of a well-informed and interested neighbor, guided by homely common sense and dictated by expediency, rather than the impersonal ruling of a capable barrister." Charles S. Sydnor said that in Mississippi, usually "there was some attempt to keep the scales of justice balanced by making allowance for the effect of slavery on his character. Furthermore, financial consideration prompted slaveowners to defend their negroes."33

Records of New Orleans indicate little doubt about special consideration sometimes being given to slave defendants. Beyond this, however, the entire criminal justice system in the city reflected almost regularly divergence from the intent of laws. Throughout the 1850's the courts of the city were under fire for illegal and inefficient actions which brought harm to blacks and whites alike. On July 22, 1851, the grand jury scored Recorders for being "very careless" in the way they prepared cases for the jury and criminal court. The jury revealed that the district attorney had been forced to abandon a murder case because the Recorder had hopelessly confused the identities of witnesses; another Recorder in a separate case had lost all records pertaining to witnesses. In January, 1854, a grand jury disclosed that a Recorder had illegally allowed bail for a man accused of manslaughter; that jury also condemned all the committing magistrates for setting "worthless" bails which were too
low to insure the appearance of defendants, a regular factor in the failure of prosecution of those accused of cruelty to slaves.\textsuperscript{34}

Six months later a new grand jury reported that Recorders were flooding the criminal court with minor cases which should have been handled at their level; this jury also criticized Recorders for failing to send supporting facts in serious cases to the higher court. Many of those cases involved blacks as either defendants or victims. In 1856 the press charged that Recorders were overly prone to accept writs and then refer them to higher courts whenever "one free nigger looks cross-eyed at another free nigger, or a town woman makes a mouth at another town woman."\textsuperscript{35}

By early 1860 little had changed, as a grand jury issued a special report to berate Recorders for unnecessary delays in transmitting papers on cases to the criminal court. The jury also accused Recorders of usurping authority to hold trials on state offenses. At mid-year the new grand jury again condemned the city courts for assuming too much power, pointing out that:

The trial of persons, the imposing of fines, and the imprisonment or acquittal of individuals for such offences as murder by the Recorders, is a dangerous assumption of power, which will certainly increase if continued with impunity.
The jury further stated that criminals often escaped punishment because Recorders delayed unnecessarily in transmitting legal papers to the higher court; this, the jury said, too often allowed witnesses to scatter before a trial could even be scheduled. As the slavery era drew to a close, this grand jury once more rebuked Recorders for their failings and assumptions; this time, the jury even recommended the impeachment of one Recorder. The press was quick to note that this would have been unfair—not because it was undeserved by that Recorder, but because he was no more remiss in his performance than were his fellow magistrates.\(^\text{36}\)

New Orleans criminal court, the First District Court, itself was not beyond criticism during the decade. Being the only state court with criminal jurisdiction in the city, it frequently faced the problem of backlogs. In 1852 a large number of cases had piled up when the judge was ill for several months. After each election, the bench was vacant for two weeks; and, incumbent judges took summer vacations lasting three and four months. IN 1856 the court devoted all its time to a series of suits over recent elections, which caused "the accumulation of fifteen hundred criminal cases on the docket." In addition, the caseload of court was frequently impaired when Recorders decided to shift as many cases as they could, rather than handle them by themselves.\(^\text{37}\)
Other state courts in New Orleans could have been authorized to handle overflow cases. The governor could have sent temporary judges in from time to time to help clear up logjams. Judges could have worked longer hours. Instead, judges and district attorneys took another way out. In 1856 they dismissed large blocs of cases "in consideration of the length of time" already served by some prisoners awaiting trial. In three months, they cut the 1500 case backlog to 966, but the grand jury estimated that no more than 500 of those would ever reach trial. One year later, a new grand jury found that some defendants had been awaiting trial for as long as sixteen months; these prisoners included six slaves and one free black, as well as fifteen white persons. By the middle of 1859, the report of yet another grand jury disclosed that court officials were consistently dropping more than half the charges that reached them in order to prevent further growth of even larger backlogs.\textsuperscript{38}

With examination of court deficiencies and the elements of the criminal justice system intended to protect the rights of black persons, a composite picture can be drawn of the total system. Fundamentally, it appears that the system functioned with certain very apparent characteristics that, at times, appear to have been in contradiction, or at least to have been inconsistent. Considerable fairness can be found in the criminal justice system as it worked, ranging from respect
for basic civil rights in criminal procedures to vigorous prosecution of whites who murdered blacks. At the same time, unchecked cruelty existed, a particularly important point since the moral standards involved in this judgment was the ethic of that time, as set forth in laws against cruelty. Also, by the standards of the 1850's, with the lash and the whipping post abandoned elsewhere in the nation for virtually all persons, retaining it in daily use in the South for slaves amounted to specialized cruelty by standards of that time. Police brutality, not only in the legal use of the lash, but also in special treatment of blacks, also existed; it was special discrimination, legal and moral in the South of that time, but nonetheless a variety of psychological brutality.

Another conflict in the function of the criminal justice system is found in regard to permissiveness, paternalism and public support. Permissiveness was high, in official and slaveowner indifference to violations by police and courts of the slave codes, with those violations ranging from illegally low sentences for slaves guilty of murder and bloody assault to flagrant abuses of laws regarding passes, liquor sales, assemblies and possession of weapons. Paternalism was partially the reason for such permissiveness. Yet, in contrast the system also allowed constant displays of open contempt for all blacks by the press; it further allowed unchecked cruelty and, in certain cases, excessive zeal in prosecution
of blacks, such as those arrested personally by the mayor. And the system allowed long-term imprisonment of suspected runaways. The public, although on occasion disturbed, never became concerned enough to urge correction of laws which permitted such actions, and the lawmakers never became paternalistic enough to produce changes on their own.

In many ways an area of internal contradiction, the criminal justice system also involved a very complex set of double standards. It its broadest, general form, it was a total system of dual standards in that it included special criminal laws and procedures just for blacks. In its operation, however, certain subtleties entered. Most dramatic of these was the general fairness in the enforcement of standard laws, those to which whites also were subject; and yet, within that element of the system, variations in practice revealed additional double standards being formed. In particular, there was the leniency towards slave defendants in minor infractions among themselves and yet unbalanced harshness towards slaves and free blacks involved in inter-racial morals law violations.

In part, inefficiency and corruption explain apparent discrepancies within the criminal justice system. In total, however, the conflicts and contrasts are better resolved through examination of the varying effects of the system as they reflected attitudes and desires of
the people of New Orleans, and as the system itself filled the needs which were revealed by those feelings.

Both direct and indirect results of the actual operation of the criminal justice system explain why it met the needs of the controlling society of the community. Possibly most important among the indirect effects of the system was that, under it, no serious tensions existed in New Orleans during the 1850's. Although this absence of tensions undoubtedly was due to many factors in the life of the community, the easily visible system of laws undoubtedly received credit in most peoples' minds for keeping the peace, regardless of how inefficient it may have been from time to time. Other important impacts of the system as it functioned, desirable to that society at a conscious level, were the absence of disproportionate crime rates, the absence of counter-aggressive attitudes beyond common insults, the absence of special youth or gang problems. The presence of any one of these factors would undoubtedly have created anxieties and fears among both blacks and whites; the absence of all of them, as in the case of the general absence of tension, served to make the system as it was not just acceptable, but desirable.

Four additional, indirect results of the system, which were not necessarily recognized as products of it, but which were quite important in sustaining public support
of it, were low black cohesiveness, high black fear, some extreme black withdrawal, and a general suppression of black independence. In particular, it is apparent that the criminal justice system did not suppress bickering among blacks. Light punishments for intra-racial disagreements, coupled with general public contempt for black morals, certainly acted to promote bickering, and in so doing acted to prevent the development of cohesiveness which could have produced the counter-aggression that did not develop. Further, the basic system of maintaining clear distinctions between slaves and free blacks served also to combat cohesiveness.

Distinctions between fear and anxiety are of special significance in assessing these indirect impacts of the criminal justice system. Under it, there was really little anxiety because the blacks, slave or free, were kept well aware of the identity of their enemy, or their oppressor class; at the same time, because the oppression was very real, and often very physical, they also could only have felt steady fear, even though they may not have regarded themselves as a unifiable element of society.

Slaves who submitted to sadistic tortures of their owners can be said to have reached the extreme of withdrawal, and surely represent numbers larger than those reflected in press reports. In addition, the general attitude of runaway slaves suggests limited
withdrawal; the rarity of runaways seeking more than momentary escape, combined with the pathetic situation of those who did make brief breaks and then knew not what to do, stresses black loss of initiative and great dependence on the in-group.

Early closure and subsidiation must also have been quite normal in New Orleans in view of the way in which the criminal justice system functioned. In addition to the basic nature of black slavery serving constantly as a reminder of the difference in status and class of whites and blacks, the constant daily reminders in the daily press of that status difference had to have heavy impact on closure in the minds of white or black persons at very early ages. Actual, detailed knowledge is not available in regard to the actual degree of personal contact between urban whites and urban blacks, but it is quite possible that much of the contact was, indeed, through the press. In this way, in addition to supporting early mental closure on a negative, criminally oriented black culture, the press also added to categorical thinking by providing visibility and strangeness at the same time.

During the years under study, it does not appear that blacks had filled any major role as scapegoats, with the possible exception of free blacks in the areas of written law which regarded them as threats in rebellion inspiration. The absence of serious fears in practice,
however, suggests that white society in New Orleans, at least, felt no real need for any scapegoats.

Also important were the relationships between blacks and a special sub-group of the dominant society, the New Orleans police. Their daily efforts, regardless of inefficiencies, affected the lives of both free and slave blacks in large numbers. With the legalized cruelty of the lash constantly associated with them, there could only have been a special awareness among blacks that urban police were their special oppressors and also the special protectors of white society.

Records of the city refute arguments of sociological constitutionalists and racial supremacists. Nothing in those records provides any support for claims of inherent inferiority or criminality among blacks. The repressive strength of the system on personality development of black people, unfortunately, makes most questionable any attempt to examine such elements as the impact of poverty, unsatisfactory homes or the basic tempo of urban life. Even so, as it functioned the criminal justice system in Old New Orleans produced and sustained measurable effects on the personalities of the black people of that time--immorality, mistrust of whites, self-hatred, anxiety, police hatred, suppressed egos and strong feelings of inferiority. It was a powerful legal system, despite its operating problems, that met the needs of white society to sustain a social system.
FOOTNOTES

1. *Louisiana Session Laws*, 1806, Chapter 33; *ibid.*, 1807, p. 82; *ibid.*, 1808, p. 138; *ibid.*, 1809, p. 76; *ibid.*, 1816, p. 146; *ibid.*, 1824, p. 76; *ibid.*, 1825, p. 206; *ibid.*, 1828, p. 166; *ibid.*, 1827, p. 13; *ibid.*, 1827, p. 134; *ibid.*, 1830, p. 144; *ibid.*, 1838, p. 101; *ibid.*, 1842, p. 212; *ibid.*, 1843, p. 91; *ibid.*, 1846, p. 14; *ibid.*, 1847, p. 215; *ibid.*, 1852, No. 27, No. 315, No. 326; *ibid.*, 1855, No. 43, No. 121, No. 308; *ibid.*, 1857, No. 69, No. 187, No. 285; *ibid.*, 1858, p. 59.


8. New Orleans Daily Crescent, October 21, 22, 31, 1854; February 14, 26, March 1, 1855.


10. New Orleans Daily True Delta, August 24, 27, 30, 1853; New Orleans Daily Crescent, July 13, 15, 17, 18, August 2, 1854; Match 17, 1858.

12. Ibid., December 27, 30, 1858; March 24, 1859. For details of the death of a thirteen-year-old slave girl named Leda, see Ibid., November 21, 22, December 25, 1854; January 24, 1855, June 29, 1857. Other reports are presented in Ibid., July 19, 20, 1856; October 2, 15, 1857; March 9, May 7, May 15, May 22, August 31, 1858.


15. Franklin, From Slavery to Freedom, p. 188; Berger, The British Traveller in America, p. 113; Baxter, America and the Americans, p. 185.


17. Shippee, Bishop Whipple’s Diary, p. 108.


22. New Orleans Daily Crescent, May 12, 14, November 1, 1859. Ibid., February 25, 1859, describes one other peculiar case, in which eight free black sailors charged a Russian sea captain with signing them on in Liverpool and then attempting to take them to Russia as slaves.

24. Ibid., July 12, 19, October 16, 23, 1855.

25. Ibid., November 11, 1859.


27. Ibid., 1823, p. 16; ibid., 1850, p. 161; ibid., 1858, p. 55.


32. Ibid., November 3, 1850.


34. New Orleans Daily Crescent, July 23, 1851.

35. Ibid., July 13, 1854; June 30, 1856; New Orleans Daily True Delta, January 4, 1854.


37. New Orleans Daily True Delta, January 1, 17, 1854; New Orleans Daily Crescent, April 23, 27, 1852; June 15, 1855; April 5, 1856.
39. Ibid., April 19, 23, July 8, 1856; July 11, 1859; New Orleans Daily Picayune, February 17, 1857.
EPILOGUE

Racial violence of unprecedented frequency and scope tore at the hearts of American cities during the four middle years of the 1960's. Through those years and after, the press and politicians of the nation presented the public with various views about why the riots had started and why they stopped. Those ideas were the dominant messages communicated to the public; they also represented an expression of the feelings of large segments of that public. Consequently, the reasons and reactions which received so much attention are in need of careful examination, also. They should be viewed most closely in relation to the depth and degree of understanding and knowledge involved in them, particularly in regard to the past and present record of black relationships with criminal justice.

Severe outbreaks began in the summer of 1964, with riots in Harlem and eight other, predominantly northern communities. As an index of the development
of public opinion in the four years that followed, the changing attitudes of President Lyndon B. Johnson are especially significant. His initial approach, in 1964, was to make no public statements. A year later, when the second "long, hot summer" exploded in the Watts district of Los Angeles, he spoke out in condemnation of lawlessness. At the same time, he also stressed the importance of all people meeting the "obligation to seek to understand" what lay behind the rioting and hatred. One year after that, to the day, he spoke at length about the 1966 riots. In a political address at Kingston, Rhode Island, in behalf of local candidates for Congress, he talked of the civil responsibilities of minorities. His conclusion—a warning that if political and economic rights were to continue being enjoyed, "justice and charity demand also that political and economic responsibilities be accepted." Further, he expressed personal grief that Negroes should protest at all after making "great gains in the past decade."

In July of 1967 the President appointed a select committee of eleven, leading Americans as an Advisory Commission on Civil Disorders, to seek out the underlying causes of the recurring troubles. As he announced the appointment, however, Mr. Johnson said he was inclined to believe the problems were the result of an organized conspiracy, although he did not identify the persons or groups which he suspected. He stressed, instead, his
feeling that the "criminals who committed these acts of violence against the people deserve to be punished—and they must be punished." Six months later, when the Commission issued a report which refuted theories of conspiracy, the President refused to make any comment about its report. ²

The hardening of viewpoint indicated in the President's comments was in line with the general thinking reflected by political leaders and news media during those same years. One aspect of newspaper viewpoints consisted of expressing opinions about riot causes. In 1964 the Wall Street Journal editorially concluded that "the mob mind concludes, easily but disastrously, that total militancy will therefore bring total success," and that the cause had been allowing civil rights demonstrations in preceding years. In 1965 the National Observer stated that tolerance of civil disobedience was directly responsible for the Watts riot because "so much drivel has been expended in the civil rights situation, so much inflammatory nonsense has come from people who ought to know better, that what else was expected?" In 1966, the Wall Street Journal placed the blame on "the Federal Government" for setting itself up as the answer to all problems and then failing to be that answer. Further, the Journal stated, "common sense and candor" really showed that the people directly responsible
were those who sanctioned peaceful protest, "the teachers of casual disregard for law and order." ³

Generally, newspapers concentrated on coverage of political reaction to riots. This emphasis began with the second summer, as political leaders provided ample material for the dailies of the nation. Prentiss Walker of Mississippi was one of the first, laying blame for the Watts disorder on the Great Society and recent civil rights legislation. The Republican leader of the House, Gerald Ford of Michigan, said it was due merely to poor law enforcement and to radical elements which he did not define. Senator Strom Thurmond of South Carolina charged that the President had "placated minority groups and led them to believe that they can do anything and get away with it." Meanwhile, Secretary of the Interior Stewart Udall told a Washington Post reporter that the outbreak in Watts was a reaction against "ugliness and poverty" there; on the same day, a black reporter from that paper wrote from Los Angeles to describe Watts as a scene of wide streets, stucco cottages, lush lawns and President Johnson at the same time, although stressing the need for understanding, responded to the political criticisms and spoke of the black community having "a special responsibility to guard the house of justice." ⁴

At the state level in California, the gunbattle in Watts produced sharp political bickering. Governor Edmund Brown at first said that his state was "paying
the penalty for the conditions under which the Negro has lived in other states of the Union." Shortly after this statement, the Governor complained that political leaders of California had received no inkling that danger was near and that no one had "advised me that Los Angeles was in a turbulent situation." At the same time, Brown rejected offers of aid in a statement concerning the impending arrival of Dr. Martin Luther King: "I prefer that we handle this ourselves. I'm not criticizing Dr. King. I think he's a great man, but I don't think this is the time for any civil rights demonstrations." Dr. King's intentions at that time already had been publicized, as he cut short a church meeting in Puerto Rico to "see what can be done to restore order and instill a non-violent approach" in California.

Mayor Sam Yorty of Los Angeles had left town when the rioting began. Upon returning he issued numerous statements. Paralleling the Governor's reaction to news of Dr. King's arrival was a comment by Yorty about the visit of the then Under Secretary of Commerce, Le Roy Collins. Collins, whose presence had been requested by the Governor, was rejected by the Mayor in a special announcement that concluded; "I don't believe he can do anything. He is a specialist in civil rights, which is not the issue here." Years earlier, Yorty had expressed the same sentiment of disbelief in any relationship between civil rights and human rights, when he protested
plans for hearings in Los Angeles by the U. S. Commission on Civil Rights. Such hearings, he had said, would "damage race relations in this community."\(^5\)

During the same release of views by Yorty and Brown, the Chicago Daily News revealed that of all major city mayors in the nation, only Yorty and Richard Daley of Chicago had "refused to cooperate in a secret Federal Government program set up earlier this year to try to head off summer race riots." The Chicago report specifically charged that Yorty and Daley both "told Federal officials that they did not need any help from the Federal Government." When this report was made public in Los Angeles, Yorty did not deny it; instead, he attacked the federal government for delays in sending anti-poverty money to the city. That, he said, was the cause of the outbreak.\(^6\)

While the leaders of the state and city governments were conducting news conferences, United Press International newsman Al Kuettner went into the Watts District and spoke with residents. He found it significant that there appeared to be no real communication between people who rioted and those who led the city politically; nor was there any even between those in the streets and those who were considered by political leaders to be spokesmen for people in the district. Both types of leaders, Kuettner suggested, failed to "recognize that
this town is composed of people and not institutions."7

One year after the Watts riot, fears of another bad summer were nearing realization when the Washington Post sent staff reporter Nicholas Von Hoffman to Los Angeles to re-examine the riot area. His report said that the one serious problem was concentration on politics, not on problems. He found the city tense with fears, "but no one, unless it might be Mayor Sam Yorty, has the power to prevent it. The prevailing tone is impotency, drift and prayer that the summer which really is long here--until October--will be safely negotiated."

Von Hoffman reported that Los Angeles Times publisher Otis Chandler seriously believed that Yorty wanted a riot in order to protect his own political career through the white backlash vote. Chandler's newspaper, indeed, on one occasion charged that the "vacuum of leadership" had prevented any real improvements in race relations since the preceding summer. During the same month of anticipation, syndicated columnist Joseph Alsop noted that politics for the entire state of California were "dominated by last year's rioting in Watts." The concern, Alsop stressed, was not over the need to identify underlying causes; it was rather for surface treatments by white politicians who were squaring off for or against the broad issue of civil rights. The columnist also suggested that the responsibility was not that of the
so-called Negro community, which politicians then were saying with increasing frequency, but of:

the leaders of the white community have also failed in their task, perhaps more miserably than the most drama-prone Negro leaders. The white community has the means to alleviate the ghetto situations. The white community has the resources and the apparatus to get to work on the basic problems.

Yet, hardly any white leader, national or local, has been ringing the alarm bell in recent months except for Sen. Robert Kennedy (D., N.Y.). The liberal intellectuals have continued to indulge in the usual public masochism. But the liberal politicians have been far worse than silent.

With most eyes thus focused on Los Angeles in the summer of 1966, the major outbreak of the year came elsewhere. The center of action was now Chicago, the only other major city whose mayor had rejected federal offers of help the year before. When it did break out, the only statement of public remorse at not seeing ahead the intensity of danger in Chicago came from the Southern Christian Leadership Conference's Dr. King. He had planned a major program in Chicago to convince blacks that their own people would be the main losers in a riot. As he blamed himself for lack of foresight, Dr. King also lashed out at the national administration for failing to act early: "The Federal Government knew the tension areas. Chicago was high on the list. Why sit back and wait until violence comes?"
No public reply was made to Dr. King's question. Instead, President Johnson, on a stump tour to support Democratic candidates for national office, suggested that all black people shared responsibility. He warned that since blacks were a small minority they should realize that the great majority of Americans were white and had limits to their patience. Reaction to Mr. Johnson's stand in general was positive. The major exception was a statement issued by forty-three black religious leaders from across the nation. Read to a news conference by Dr. Benjamin F. Payton, director of civil rights for the National Council of Churches, it specifically scored the President's comment on the small minority, and then criticized politicians in general for taking sides on civil rights. Finally, the statement made the initial demand of the decade that more money be spent on problems of people than on the then-popular Viet Nam War.9

The most jarring political clash came in the following year after the Detroit riot, in the exchange between President Johnson and Governor George Romney, himself already an avowed contender for the 1968 Republican presidential nomination. The running verbal confrontation opened with the President's televised speech to announce that he was sending troops into the city. The action, he said, was being taken "only because of the clear, unmistakable and undisputed evidence that Governor Romney and the local officials have been unable
to bring the situation under control. . . because of the Governor's representation that there is reasonable doubt that you can maintain law and order." Yet, the President did not send troops directly to Detroit. Instead, they were dispatched to the outskirts where they delayed for an extra half day before being ordered on, into the city. This produced charges from Romney that the President was "playing politics in a period of tragedy and riot."

Specifically, the Governor also accused the U. S. Attorney-General, long a personal political favorite of the President, of insisting that Romney "certify he had an uncontrollable insurrection on his hands before the Administration would move." This certification, he said, was demanded after the president had made his speech.

With this exchange the political fight expanded into other arenas. Vice President Hubert Humphrey blamed the riots on Congress "for gutting measure after measure" which he said would have prevented eruptions. The Republican Co-Ordinating Committee issued a statement placing the blame on the President and urging a Congressional investigation. U. S. Senator Herman E. Talmadge of Georgia said it was all due to "a serious lack of national leadership." U. S. Representative Lawrence G. Williams of Pennsylvania accused the federal government itself of "subsidizing riots" through the Anti-Poverty Program, and Mississippi Representative Thomas G. Aber-
nathy said that both parties had caused the riots by years of playing "racial politics."  

News media during those years, with only a very few exceptions such as the Kuettner and Von Hoffman visits, made little effort to do more than present views and charges and countercharges of the political figures of states and nation. Long before the riots had begun, C. Vann Woodward wrote of the public's vacuum of knowledge about black Americans, suggesting that "the fact seems to be that people of all shades of opinion--radical, liberal, conservative and reactionary--as well as people of both the Negro and white races have often based their opinions on shaky historical foundations or downright misinformation." This conclusion apparently remained valid after one year of summer riots, as National Community Relations Director Le Roy Collins, former Governor of Florida and soon to become Under Secretary of Commerce, appealed to news media to expose and bury the myth of racial superiority. Addressing the American Society of Newspaper editors, he concentrated on their own complaints about riots and rights, and then added:

But what is missing in this arsenal of arguments is perhaps the most neglected reason of all: the actual fact of racial equality. Individuals of course differ widely within all races, but scientific inquiry has demolished the theory long held by some that the people of any one race are inferior or superior to those of any other.
The Riot Study Commission headed by Illinois Governor Otto Kerner three years later did not find that such a challenge had been met. In its 1968 report, that group stated, "news media have failed to analyze and report adequately on racial problems in the United States, . . . The media report and write from the standpoint of the white man's world." 12

Prior to the second summer of riots, a particular chain of events occurred which illustrated problems of news media which accepted opinions rather than searched for facts. The events centered on what came to be known as the Moynihan Report. Prepared by Presidential Assistant Daniel Patrick Moynihan, it was a new study in line with works extending back to the 1930's to examine problems of black families. It was not sensational as written, but merely presented details of the breakdown of the Negro family in the United States due to racial segregation and discrimination. Completed for internal White House distribution in March, 1965, the report was used by the President in a commencement address at Howard University on June 4 of that year. Describing special problems of black families, Mr. Johnson adopted the civil rights slogan of years previous in pledging that "we shall overcome." 13

Intentions originally had been for the report to serve as the focus for a White House conference the following November, seeking solutions to the problems
involved. That conference was never held because of what happened to the Moynihan report. A painstaking study by sociologists Lee Rainwater and William Yancey has shown what happened. According to their examination, Department of Labor employees and White House staff members reacted from petty political fears and deliberately sabotaged the report. To do this, they used "unpublished memoranda, and private denunciations, in the professional conversations of some social scientists" to give the impression that Moynihan's work labelled blacks pathologically unstable and the cause of their own problems. Rainwater and Yancey show that on this basis, the staff members obtained harsh criticisms of Moynihan from other social scientists, who based their condemnations not on reading the work but on the word of those staff members. The public credibility of the report was destroyed by news media leaders who accepted the criticisms and denunciations, also without reading the report themselves. Almost incredibly, it should be noted, this "sabotage" was committed with no apparent recognition that the Moynihan report, as presented at Howard University by the President, said none of the things which its assailants were claiming. 14

A particularly important part of the problem of media reporting of racial matters was the matter of provincialism, the absence of any newspaper in the nation published on the basis of national interest or concern. Instead, the 1960's and the decades before saw far more
regionalism in newspapers, North and South. Yet, although psychological principles warned that attacks on a region would cause a united resistance in an area where differences might originally exist on a question such as race, civil rights leaders elected to capitalize on regional differences in the mid-1950's, a tactic which they openly avowed was "necessary" to awaken the northern conscience. 15

During the riot years, that heightened regionalism did not react as anticipated. Following the first serious riot, in New York in 1964, northern media men were quick to agree with Harvard historian Oscar Handlin, that "sit-ins and street demonstrations are the sole recourse in those areas of the South where Negroes are excluded from due process of law . . . but they are self-defeating in such cities as New York." No broad indictments were issued by Northerners against their own area; instead, their media blamed "poor leadership" of the civil rights movement, "police brutality" or out-of-town agitators. Even syndicated scholars such as John Roche still could regard prejudice as a Southern problem and suggest that the nation's real dilemma was "elimination of white supremacy in the South." 16

North or South, media seldom gave full examination to racial problems. An editorial in the Houston Post of September 30, 1964, is an example. Entitled, "Defiance of the Law--Cause of Riots," the editorial was a direct
criticism of all blacks for having the attitude of expecting "Government alone . . . to do the job" of compensating for past prejudice. At about the same time, the Washington Post said northern riots and unrest were simply due to poor understanding of urban society by blacks. A year later, the Washington newspaper blamed the riots on a "mad, primitive, primordial impulse to destroy those who are different in descent or color" and decried "the sickness that makes mentally disordered Negroes hate white people and the illness that makes white people hate Negroes." The paper proposed a solution--creation of "an Urban Affairs Department that can address itself to the crisis of our cities." 17

In the days directly after the 1965 Los Angeles riot, news stories included occasional views of specialists in human relations, but the reports produced no follow-through by media on isolated warnings that the causes of problem lay in all areas, not just in the South. Consequently, in 1966 as rioters were striking predominantly in northern cities, the most vigorous action of the civil rights movement, and one of the most thoroughly covered events by northern newspapers, was an all-out assault on the most recalcitrant of southern states, Mississippi. In what came to be known as the "Meredith March," launched after the wounding of James Meredith, the "inhumanity of all the South" was made the basic theme. The extent to which it was developed was
illustrated when a demonstrator died of apparent natural causes in the 100-degree heat of the Black Belt. In prayer along the roadside, Reverend King intoned: "We are deeply saddened that one of our brothers, Armstead Phipps, has died of a heart attack. This is still Mississippi and his death meant that he was probably underfed, overworked and underpaid." No one really knew, for before the prayer the marchers had to search the dead man's pockets even to determine his name. Yet, thus they prayed, and the march went on.18

Regionalism in newspaper coverage was revealed in another incident along the Meredith March, when state police routed demonstrators in Canton, Mississippi. The Washington Post, through its reporters on the scene, headlined and opened its straight news stories by referring to the action as but a standard example of the uncivilized attitudes of all white people in the state. It was, the story on Page One suggested, a riot caused deliberately by police because the marchers merely wanted to pitch a tent. Contradictory detail, however, was presented in the very same newspaper. In the "jump," the continuation of the story inside the paper, the narrative revealed that officials of the small, poor town of Canton had offered to provide three apparently reasonable sites with proper camping and sanitary facilities for the large group of marchers, and had pleaded with the demonstrators
not to use school grounds because of maintenance problems during the summer vacation period. The march leaders, however, even when warned that they would be ejected by force, deliberately chose the school grounds; they had stated at the start of the march that they felt the need to go to any length to provoke an incident. Editorially, the Washington newspaper paid no heed to this part of its own story:

What happened at Canton is an affront to human sensibility. Tear gas, a device for bringing an unruly mob under control, was employed wantonly—indeed, sadistically—to disrupt and injure peaceful demonstrators who, at worst, were guilty of nothing more than defiance of a foolish and malicious police order to refrain from camping on the grounds of a Negro school.

Northern newspapers during the 1960's had numerous opportunities to look more closely at their own areas for examples of affronts to sensibilities. Indeed, they had sometimes only to look at their own policies in regard to coverage of black activities. It was a rare event, for example, when the white media covered the 1961 midwest conference of the black, National Bar Association, in Detroit; coverage included an agreement among panelists that there was "serious discrimination in housing, in employment, in suffrancé [sic] and in the administration of justice" both North and South.²⁰

Blacks often spoke frankly about prejudice as a national, rather than a regional, problem, but news coverage was rare in the early 1960's. No news coverage,
for example, was given to the youth who in testimony before the Commission on Civil Rights suggested that white people should "fight racism in their own areas, because this is where the major battle is, in the white communities, rather than in the black communities." Similarly, wire services did not regard it worthwhile to mention a speech by Atlanta University sociology chairman Tilman C. Cothran before civic leaders of his community, in which he said that the greatest threat to the nation in 1963 stems from those Americans who, in order to maintain racial tyranny, express a psychotic attachment to the delusive veneer of skin-color, and inflict irrational and irresponsible mental and physical indecencies upon fellow human beings in the name of states' rights, constitutional government, property rights, and resistance to the communist inspired and other outside agitators.

Developments in two major areas, religion and education, provided enough information in the early 1960's to suggest to editors that racial prejudice was not just a southern problem. Religious leaders did not join in any numbers on any attack on discrimination until the 1963 March on Washington for Jobs and Freedom. Three years later the most sweeping reform in religion came in the hope, expressed at the end of the 1966 Methodist General Conference, that the organization could wipe racialism out of the church structure by 1972. Leaders of the conference, however, expressed great doubts about the probabilities of success, estimating that
success could not be attained without causing a million white members to quit the church. It was not until the summer of 1967 that a major Roman Catholic leader took a national stand in regard to problems of race relations. This was a pastoral letter issued by Patrick Cardinal O'Boyle, Archbishop of Washington, D. C. Announced on the same day that President Johnson named his riot study group, the Cardinal's message called for an end to prejudice. It described the riots, "however senseless they may be," as:

the frenzied cry of alienated people who are trying to tell us, out of a sense of enervating despair and utter hopelessness, that they want to be heard and want to participate as full-fledged American citizens in the economic, social and cultural life of our cities and our nation.

Slow implementation of the desegregation decision of the Supreme Court, assaulting only the statutory schools of southern states, made many national headlines in the early 1960's, but only as a regional onslaught. Yet, in 1964, a group of University of California professors publicly criticized the "virtual omission of the Negro" from the seven most widely read American history textbooks in the nation. Their report called the omission a deliberate action to reinforce "notions among whites of their own superiority and among Negroes of their inferiority." Two years later, a report of the U. S. Office of Education showed that only minimal change had been effected; even where textbooks had been revised,
outside counter influences smothered the written word so that by the third grade, children still were found to be forming clear racial prejudices. That study also found that even the revised schoolbooks continued to propagate myths through omission or poor writing. In 1966 also, the American Federation of Teachers called for major "corrections" in textbooks. The Federation warned that a strong backlash was at work against the few changes which had then been made, and charged that a well-financed, right-wing effort was under way to pressure publishers into refusing to handle such works.°

In those same middle years of the 1960's, entire northern school districts began to come under attack for poor judgment and bias in selecting textbooks for civics, history and other courses; few changes were reported as a result of such assaults. The highest-based accusation came from black Municipal Judge Raymond Pace Alexander of Philadelphia, who said that the techniques of book selection seriously hindered the black in his fight for equality. A Harlem school study by Dr. Kenneth Clark supported the judge's observation, finding that black children failed "because they are not being taught effectively," which itself he said was a result of doubt among teachers that black children could learn. In 1966, optimism was sounded by the American Association of School Administrators in a statement that the American public
had realized the error of prejudicial beliefs. The President's riot study group two years later, however, concluded that school systems as yet had given no real indication that they regarded prejudice to be erroneous. Indeed, the Commission stated, failure to show such a recognition "is one of the persistent sources of grievance and resentment within the Negro community."\textsuperscript{24}

During the 1960's the Ku Klux Klan was reborn North and South, gaining headlines and coverage as it grew. Simultaneously, the Citizens Council movement openly announced that it, like the Klan, was dedicated to the belief in inherent racial differences; by 1964, only ten years after its formation as a direct response to the 1954 desegregation decision, Council chapters operated in 28 states and full-time, paid organizers, were at work in all 50 states. "White superiority" also was evident in public opinion polls which in 1964 showed that eighty-one per cent of white Americans opposed mass civil rights demonstrations, an increase of fifteen per cent in only one year; and which in 1966 showed that eighty-eight per cent of white Americans were opposed to their children dating blacks, that seventy-nine per cent were opposed to marriage of friends or relatives to blacks, and that fifty per cent were convinced that blacks had looser morals than whites.\textsuperscript{25}
Among academicians, in 1964 Charles E. Silberman found it necessary to indict the South first in order to hint at northern weaknesses, as he wrote:

The South will never change--and cannot be expected to change--until the North leads the way. At the moment, the North is leading, but in the wrong direction. It has shown the South that Negroes can be kept 'in their place' without written laws.

In response, northern reviewers rapped Silberman for not making recommendations about limiting black militancy. Gunnar Myrdal, on a 1964 speaking tour of the United States, received only scant press coverage when he warned that black rebellion would grow until both the statutory discrimination of the South and the custom-supported bias of the North were "brought down very radically."²⁶

Politicians, like the critics of Silberman, most often during the riot years blamed poor black leadership, militancy and plots for the eruptions. As early as the first year of multiple outbreaks, however, answers to such claims were uttered, but rarely heard. In Philadelphia in 1964 a special report on the black community commented that rapid progress by middle-class, educated black citizens did not make them black leaders, for they "meant little to the slumbound, unskilled, semi-educated Negro whose children took the streets." A year later, the New York Herald-Tribune published a rare, thorough round-up of opinion from inside Harlem. In the survey, prompted by the preceding summer of violence,
the head of New York's Urban League, Alexander Allen, explained a lack of actual black leadership as due partly to an exodus of upper-income blacks to the suburbs. This, Allen said, had "bankrupt the leadership of our inner-city community." Livingston Wingate, executive director of the Harlem Youth Activities organization, urged removal of barriers which might cause further riots. Such obstacles, he said, included the feeling of the Harlem people that they "had no part in creating" the rules under which they lived. The reportorial team which conducted the series of interviews concluded: "The riots pointed up the lack of communication between the people of the ghetto and the Negro leaders, the Negro leaders and the city administration, and the city administration and the whites of New York.27

A few months later, at the end of a week of rioting in Los Angeles, black comedian Dick Gregory explained the lack of black leadership with, "the little Negro has never felt represented by the NAACP. He doesn't have the money to join, and the NAACP would feel embarrassed if he came to their meetings." Three days later, an "open letter of confession and concern" was issued jointly by the Southern California Board of Rabbis, the Council of Churches of Southern California and the Catholic Human Relations Council of Los Angeles. In this pleading for action and concern, the church leaders admitted that they had been unable to communicate. Significantly
at this time, even after the tragic loss of lives, stubborn resistance to even this "confession" was raised by Roman Catholic Cardinal James Francis McIntyre. Refusing to join in the statement, he issued his own press release to condemn "the uprising . . . without the presentation of grievances for settlement." ²⁸

During the cleaning up operations in Watts, individual reporters found proof quickly of the social disorganization and lack of leadership in that area prior to the outbreak. Among such accounts were the reports of black writer William Raspberry, who had been sent to the troubled area by the Washington Post. He concluded that Watts "is a community without leaders . . . As one woman resident puts it, 'the ministers have lost contact with us, and the politicians only want to use us. There's nobody really gives a damn about us.'" Raspberry also observed "again and again that the only leadership that reaches down to the grassroots is in the teenage gang." ²⁹

In 1966, Cleveland church leaders concluded that the main cause of violence there was "lack of communication between Negroes and City authorities." In Chicago, Dr. Martin Luther King warned of dangers in trying to communicate between such divergent elements as slum people and civil leaders. "There must be somebody to communicate to two worlds," he said, even as he lamented his own lack of success in finding anyone capable of doing it. ³⁰
It was in this period that President Johnson made his ten per cent speech, placing primary responsibility on black communities to restore order. The speech also came when public opinion polls showed the President's popularity to be at its lowest ebb since he had entered the White House; and they showed that the public in opposition was led by white conservatives. In his comments, Mr. Johnson expressed faith that most of the ninety percent of the people who were white "had come around to the viewpoint of wanting to see equality and justice given their fellow citizens...... [But] they want to see it done under the law. They want to see it done orderly [sic]. They want it done without violence." Three days later, on the political tour in Indianapolis, the President expanded on the theme. There, he warned that riots would jeopardize the aims of civil rights leaders by setting people against each other and "turning away the very people who can and must support reform." 31

Leading daily newspapers quickly grasped this new approach in a wave of editorial demands for black leaders to lead. The Wall Street Journal made it a blunt challenge, suggesting that after all, whites "cannot, century after century, nourish a guilt complex for ancestral evil." The Washington Post, similarly, suggested: 32
The civil rights movement has, in the historical sense, worked itself out of a job. The long campaign for civil rights, in the strict and traditional definition of the term, has arrived at the point that it set out a generation ago to reach . . . .

Perhaps, at the moment, the most valuable role for the President is the purely conservative one of enforcing the laws, and preventing Congress from going back on its commitments, while the Nation examines its conscience. That job alone will be difficult enough, but it does not lend itself to the cadences of state addresses.

Six months later as a new summer of riots arrived, "black leadership" became even more the topic for journalistic comment. From Philadelphia, the Inquirer pleaded:

"When will the exponents of law and order and decency in the Negro communities of this country stand up and speak out, and cast aside the racists among them who seek to destroy rather than to build?"33 In that summer, only one, involved, major political leader spoke out to suggest a lack of black leadership made such proposals impossible. That was Jerome P. Cavanagh, mayor of hardest-hit Detroit, who observed, "I don't know of any government in America, local government or national government, or any institution for that matter, that is communicating in any way or carrying on any kind of dialogue with the so-called have-nots." Finally, six months later the Kerner Report expressed surprise at discovering that the grievance machinery in some seventeen cities was "seldom regarded as effective by Negroes who were interviewed." The
presidential panel made no separate study of the problem of communication, although at one point in its report it listed at the head of a column of unresolved grievances the "widening gulf of communications between local government and the resident of the erupting ghettos of the City." 34

A particular aspect of the communications problem, one noted by black reporter Raspberry in Watts, also was given some prominence by the Kerner Commission. That was the significance of teenagers in the riots. Earlier, it was brought to attention during the first year of riots when a black social worker warned that there was a "don't care attitude of these boys. They're saying to white society, 'You're going to kill me psychologically if I live, so why not kill me with bullets?" At about the same time, the minister of Harlem's most influential church devoted an entire sermon to the attitude of black youth, cautioning that too many were "cocky, lazy, and unwilling to learn anything." Months later, after the riots in the New York community, a nineteen-year-old, unemployed black dropout named Melvin Anderson, presented yet another insight into the minds of youthful rioters: 35

Whites just don't want to see me do anything with my life. They just want to see Negroes pushing brooms and cleaning things. They only come to Harlem to make money. That's the cops and business men. Most of them don't care if I live or die.
The trouble with a kid's life in Harlem is that by the time any real help arrives, it's too late. You've got to reach a Harlem kid by the time he's 12, because by then he's a man and his mind's made up. He's already decided what he wants and how he's gonna get it. He knows who he hates and he knows why.

After Watts, the comments of an unidentified black businessman from the area were printed in the back pages; he called his people easy to get along with, "but, brother, this young generation won't let you push at all. They'll kill you if you do. I don't care if you're black, blue, green or white. They are hard to handle even for their parents."36

Again in 1967 the dominance of youthful rioters was often noted. In Houston, where mass arrests prevented a gun battle from becoming a full-scale outbreak, the mayor acknowledged that months earlier his office had become aware that "the greatest support for Black Power came from ... young people in the Negro community from the age of 16 to 22."37

Failure to recognize the problem of such youth involvement became evident in 1967 in the failure of an elaborate "early warning system" intended to alert officials in all cities of impending violence. This system involved Federal Bureau of Investigation agents, United States Attorneys, and police and community relations organizations in all major cities. At the end of the summer, no instance of successful use of the system
had been recorded. Its managers admitted then that they had been unable to detect riot symptoms because of "a lack of contact with juveniles." Instead, they said, they had dealt primarily with the "moderate" Negro leadership and had learned too late that "moderate Negro leaders had no communications with juveniles." In fact, they reported, in Detroit "many Negro leaders had to have police protection" from their own black youth.\(^{38}\)

Often during the riot years, charges that secret plots were the cause were closely linked with charges against the black community for not casting out its evil influences. In the first year of riots, suggestions of some sort of plot were made in isolated instances, but died away quickly when an F.B.I. analysis dissected the facts on the nine uprisings and coldly rejected the idea that any organization or conspiracy lay behind them.\(^{39}\)

By 1966, the cry was raised anew. The first major figure to issue it was the mayor of Chicago, as he spoke in opposition to open-housing actions of the Southern Christian Leadership Conference. The organization had tried to show Chicago blacks that they, not whites, would be the losers in a riot; to prove their point, they showed motion picture films of the horror in Los Angeles the year before. The S.C.L.C. publicly announced that this was its plan, but later Mayor Daley charged that everything had been conducted in secrecy.
I think you can't charge it rioting to Martin Luther King directly. But surely some of the people that came here have been talking for the last year of violence, and showing pictures and instructing people in how to conduct violence. They're on his staff and they're responsible in great measure for the instruction that has been given for training youngsters.

Shortly afterwards a Chicago police precinct commander said the riots had been planned by black nationalists. The Chicago American disagreed, stating that instead, Fidel Castro was behind it. In Cleveland, a local grand jury named the Black Panther organization, while U. S. Senator Frank Lausche of Ohio made the more general accusation that his state's problems were "part of a national conspiracy, executed by experts." 40

In 1967 Stokely Carmichael and H. Rap Brown, as successive leaders of the militant, "non-other-cheek" Student Non-Violent Coordinating Committee, became national figures as they made fiery speeches in many locales. How much heat they added to the summers was still an unmeasured factor months later; no actual, reported investigations are known to have been under way. In political circles, however, Carmichael and Brown were regularly designated as riot-inciters. Brown was actually charged on a number of counts when a riot followed a speech which he made in Cambridge, Maryland. There, addressing a crowd of some four hundred of that city's black citizens, he was quoted by all sources as
saying, "get your guns ... if you gotta die, wherever you go, take some of them white with you. I don't care if we have to burn him down or run him out, you gotta take those stores, gotta take your freedom." The day after this speech, Cambridge erupted into racial violence. Brown had left the city almost immediately after speaking, but at a news conference when the riot ended, Cambridge Police Chief Brice Kinnamon blamed the SNCC leader. Kinnamon also announced that he was "firmly convinced this eruption was a well-planned Communist attempt to overthrow the city of Cambridge." When reporters asked about his sources of information, he said he had reached the conclusion from reading daily news stories which quoted national politicians. 41

Two days after the Cambridge riot, Brown was arrested by federal marshals. He was reported to have said, "we are in rebellion and are going to win by any means possible. Black brothers everywhere have been oppressed too long. We are going to change this." While free on bail a few days later, Brown disappeared; arrested early in 1972 in New York, he has yet to be tried in Cambridge on the riot charge. The full facts of the case, therefore, have never been explored by the courts or in public. It should be noted that Cambridge previously suffered from racial problems, being one of the nine trouble spots in the nation in the summer of 1964. 42
While the ashes of Cambridge were still literally hot, pointed doubts were raised about the actual effectiveness of Brown as a plotter. The first came when it was revealed that Police Chief Kinnamon had forcibly prevented fire trucks from going to a non-riot fire in a peaceful black section of the city. Later, F.B.I. Director J. Edgar Hoover reported on this and 51 other disturbances of the summer of 1967. His conclusion: there was "no intelligence on which to base a conclusion of conspiracy." Further, Hoover in testimony before the Kerner Commission reportedly said that although he recognized that "outside agitators" played some role in summer violence, it "was not something to which he gave a great deal of weight or with which at the moment he was seriously concerned." A week after this publicized appearance by Hoover, the Washington Post examined the situation and the past of Cambridge. Editorially, it summarized:

There indisputably were outside agitators in Cambridge. They were the same agitators, saying the same things, who had visited other cities. But it was Cambridge that erupted. And while there was gunplay in other riots, it was only in Cambridge that the chief of police, Mr. Kinnamon, himself, held back the fire companies and watched whole blocks of Negro businesses burn.

Cambridge is, in fact, a pathological community in which much of the leadership has given itself over to the luxury of unrestrained hatreds and grievances. It has made itself a national example of the failure of local authority.
After four years of serious urban violence, H. Rap Brown was the only national figure charged formally with inciting riots. Despite the absence of a trial, the presence of the F.B.I. testimony, and the past record of Cambridge, that arrest served to trigger a chain of statements by political leaders. President Johnson, in his strongest comments to that time, one month after the Cambridge riot spoke before the International Association of Chiefs of Police. He named no names, but left little doubt that it was his opinion that the summer riots had been directly caused by a "group of men whose interest lay in provoking others to destruction, while they fled its consequences." The President charged: "These wretched, vulgar men, these poisonous propagandists, posed as spokesmen for the underprivileged and capitalized on the real grievances of the suffering people." He then proposed, not attention to those grievances, but passage of stronger, anti-speech laws.44

Leaders of the Republican Party, who two years earlier had blamed the Democrats for the riots, after Cambridge issued a joint statement. This group, including former President Dwight Eisenhower, denounced "hate mongers [who] are travelling from community to community, inciting insurrection." The main spokesman for the Republicans, Senate Minority Leader Everett Dirksen, said the group had specific information to prove that it
was, indeed, a nationwide plot. At the time, however, he refused to divulge this data, saying only that "you'll find out in due course. Why should we disclose it here when we can disclose it in far more dramatic fashion?"

No announcement ever was made by the Committee or Dirksen on the subject, either during the six months spent by the President's committee in study, or after release of the report of that committee and its finding that the riots "were not caused by, nor were they the consequence of, any organized plan or 'conspiracy.'"45

During the four years of racial violence, Black America had its political and media spokesmen, too. With the first of the northern incidents which led to inter-racial conflict in the streets, they spoke out. That was on July 16, 1964, when New York Police Lieutenant Thomas Gilligan shot and killed James Powell, a fifteen-year-old black youth. Within hours of the shooting, Harlem teenagers attacked police officers, broke store windows and pilfered and looted the business places. Black civic leaders quickly demanded a complete investigation of the entire police force, the suspension of Lt. Gilligan, and a major overhaul of police operating methods. Unanimously, the black leaders demanded also the establishment of a civilian board of review to examine all public complaints against policemen. The most outspoken of these leaders, Harlem Negro Congressman Adam Clayton
Powell, explained the sweeping nature of the demands by saying, "I've never seen a race riot in the 55 years that I've been up here that wasn't caused by police brutality."46

Six weeks after the shooting, a New York grand jury which included blacks among its members found the killing to have been justifiable self-defense against a dangerous, armed hoodlum.47 Before that first, "long, hot summer" was over, racial violence had erupted also in Cleveland, Ohio; Rochester, New York; Dixmore, Illinois; Philadelphia, Pennsylvania; and Jersey City, Elizabeth, Paterson and Kearsburg New Jersey. After each outbreak, black leaders issued charges of police brutality or irregularity. In none of these instances did local investigation support the charge; at the end of the summer the F.B.I. issued a composite report which stated that there had been no improper police actions in any of the cities. The federal agency also cautioned against the idea of police review boards, stating that in all cities where they then existed such bodies had severely hindered police in their efforts to control rioters. That Bureau report was consistent with a study announced by the Department of Justice during the summer. That report examined 2,602 claims of police brutality which had been lodged during the preceding calendar year; it stated that in only twenty-five cases was evidence adequate to produce criminal indictments, and in no instance did it credit the work
with being of any value. The study did not provide any detail on race of victims of alleged brutality. 48

Major newspapers in most urban communities came to the support of their local police, when brutality charges were aired. The New York Herald-Tribune editorial, following complaints about the Powell killing, pleaded in its headline for people to "Stop Slandering the Police." The newspaper did not go into the circumstances of the shooting; instead, it argued that talking against the police would lead directly to a challenge to the whole fabric of the social order. Allowing anyone to criticize the police, the editorial suggested, amounted to writing "a prescription for anarchy." Entreating support of authority because it was authority, the paper then accused unnamed persons of trying to inflame the black public: 49

There has been, or so it seems, a deliberate, concerted effort by these militants to implant and inflame in the public--and particularly in the Negro--consciousness a jingoistic and thus unquestioning hostility to the police. This would be bad enough in itself, but it has been done at precisely the time when 'civil disobedience' has been made a moral crusade, and a stay in jail a badge of honor. . . .

Now some rights leaders are obliquely threatening more of the same, saying they can't control their people. The first responsibility, it seems to us, lies on those who have deliberately courted disrespect for all civil authority to help undo some of the damage done by their own demagoguery, and by that of the frankly revolutionary agitators they have attracted to their cause.
In the nation's capital, the Washington Post also editorialized on the charges of brutality in New York. Insisting that "confidence in the police is an indispensable foundation for civil order," the Post said it recognized that charges against officers were "frequently flamboyant and sometimes totally unfounded." Filing of such charges, the paper suggested, reveals "a state of mind in the Negro Community that demands attention." A week later, Post reporter Robert E. Baker presented an article entitled, "Cop Has to be a Diplomat;" rather than look into the legitimacy of brutality claims, he concluded that "the fact is that today the police have a grave, if unwelcome, task: handling human relations problems that reflect the failure of the city to solve the more basic problems of ghettos, ignorance, poverty and discrimination."

Newspapers in other major cities provided other suggestions during that summer to suggest that there was no real brutality. In Houston, the Post said that "cop hatred" was what set off the northern racial explosions, but that this hatred was not due to actions of the police but to their roles as "visible symbols of the established order, the ruling power structure and government in general." Further, the editorial suggested, the hatred "reflects a growing contempt, disrespect and even hatred toward all law and order, all constituted authority, all government and all restraints upon the individual."
reason for this attitude, according to the newspaper, was that the "current generation has carried encouragement of disrespect for law and an ordered society too far--to the point that there is danger that it will destroy the system which is our only guarantor of freedom." U. S. News and World Report, through an interview with Los Angeles Police Chief William Parker, suggested that "the charge of police brutality is used more or less to cover over the real and basic problems . . . in other words, the policeman is a physical object against which persons believing themselves to be oppressed can vent their frustrations." The Wall Street Journal presented similar conclusions, reached through coverage of two days of meetings of the International Association of Chiefs of Police at Norman, Oklahoma. From those sessions, the newspaper chose as representative the view of Quinn Tamm, the organization's executive director, that in most cases the public confused "brutality" with "due force."51

During the next two years charges of police brutality were issued often. No known instances of substantiation of major charges were produced by officials of any city, nor was any independent media investigation reported into basic claims of brutality. Examination of major newspapers in troubled cities reveals a common pattern. In Los Angeles, policeman Michael B. Hannon was suspended; he claimed the reason was due to racial bigotry within the force, but his complaint received no further
media attention after the City counter-accused him of being a member of the Socialist Party. In the same city, following the Watts riot, James Robertson, an unemployed black, made a general complaint and warning: "the riots will continue because I, as a Negro, am immediately considered a criminal by the police and if I have a pretty woman with me, she's a tramp--even if she's my wife or mother. That's the Watts Negro's status with the Los Angeles Police Department." Robertson was charged with setting a fire, and no known effort was made to examine his charge.52

In Texas, Texas Southern University sociologist, Mrs. Wilhelmina Perry, warned that riots were imminent in Houston because of two primary problems--police brutality and segregated schools. No official notice of her charge was taken, although in the next eighteen months the city experienced a major gun battle between black college students and police, and the re-election of a "law and order" city administration. In Jackson, Mississippi, a black psychiatrist who formerly had practiced in Los Angeles warned that "police brutality--real or imagined--is a key reason for Negro anger." No publicized attention was given to his comments in either Jackson or Los Angeles, both of which suffered from violence in the following year. In Detroit, Michigan, Black Nationalist James Boggs charged that white society planned the wholesale slaughter of blacks. He said the plan compared
to Nazi extermination of Jews in Germany and that the police were to be "the vanguard of the extermination movement." With revelation that Boggs was a former, avowed Marxist, his protestations received no further media attention. 53

In 1967 cries of police oppression and brutality subsided with the use of National Guardsmen to quell riots. In Detroit that year there was almost instant public recoil against the Guard for "indiscriminant shooting" and for using military invasion tactics against snipers. A major item of support for critics of the Guard was an F.B.I. manual publicized only three months earlier, in which it was shown that counter-snipers were the most effective method to combat rooftop snipers, as well as the least dangerous method to innocent citizens. Two weeks after the Detroit incident, attention again went to the Guard when the President's fledgling National Advisory Commission issued a preliminary report, urging major overhauls in the training and recruitment of Guardsmen. Major General Winston P. "Wimpy" Wilson, head of the National Guard Bureau at the Pentagon, rejected the criticism, contending that the training program (which provided less than one day per year of instruction in riot control) was adequate. 54

One month before completion of the final report of the President's civil disorder committee, another major study was released. This was the work of the New Jersey
Governor's Select Commission on Civil Disorders, which presented voluminous evidence to support a charge that National Guard units "engaged in 'indiscriminate shooting.'" That report also re-opened the way to criticism of police, as it reported that "there was virtually a complete breakdown in relations between the police and the black community prior to the disorders." The state study stated that "nearly half the black people questioned believed the police are too brutal, as compared to six per cent of the whites." Just four weeks later, Governor Kerner's commission released its report, turning the focus of attention even more to urban police. The report called law officers more than mere "catalysts," more than just a "spark factor." In many ways, the Commission concluded, blacks found police actions day by day proved them to be a true symbol of "white power, white racism and white repression." Major changes were recommended in both recruitment and training of officers. Although the Kerner group did not conduct its own investigations into any allegations of police brutality, it accepted as generally accurate the 1965 statement of a former Detroit police chief, then a U. S. Appeals Court judge:

It is clear that in 1965 no one will make excuses for any city's inability to foresee the possibility of racial trouble . . . . Although local police forces generally regard themselves as public servants with the responsibility of maintaining law and order, they tend to minimize this attitude when they are patrolling areas that are heavily populated
with Negro citizens. There, they tend to view each person on the streets as a potential enemy or criminal, and all too often that attitude is reciprocated. Indeed, hostility between the Negro communities in our large cities and the police departments, is the major problem in law enforcement in this decade. It has been a major cause of all recent race riots.

Announcement of the primary conclusion of the Riot Study Report—that white racism was at the heart of racial problems during the mid-1960's—produced instant reaction from mayors and police chiefs across the nation. A secondary bridling was experienced by newsmen, at the suggestion that media shared in responsibility, or in irresponsibility. None of these people had seen the 657-page report; it was not yet in print. Yet, virtually all of them rejected it, garnering more publicity for their views in a week's time than the study ever did in popular media. Consequently, the public was told again and again the same things it had been told over the four years of long hot summers—that the unrest was due to plots, to agitators, to inherent inabilities of blacks to cope with urban life, to failures of black leadership, to sanctions of civil disobedience, to anything other than a national attitude of white racism.

Reactions as they came in that week revealed the inseparable combination of press and politician which also had been dominant during the riot years. To be sure, in isolated instances newspapers assigned reporters to dig a little, but the great volume of news placed the
emphasis elsewhere, as politicians and media diverted the public's attention from root issues and concentrated instead on the expedient and the sensational. The nation's intelligentsia, only occasionally coming forth to seek wider acceptance of the products of their toil, doubtless did too little, too, in seeking to correct the uninformed and erroneous opinions that dominated the public media.

Still, within the mass of accusations, counter-accusations, evasions and posturings, real factors were brought to light in the bad years. It was apparent that among them were the serious problems of communication, the absence of real black leadership, the absence of real white leadership, and the despair of black youth over the plight of the Negro in America. Apparent, also, was the failure of the so-called black leadership during the crisis years to attack the white racism which the Kerner Commission presented as the target. Instead, their time and energies most often were given to assaults on police brutality, real or imagined; and, in reaction, supporters of the police took the ascendancy and removed public consideration even farther from serious examination of prejudice on a national plane.

Political maneuvering and regionalism, which characterized so much of the 1960's in regard to racial problems, were really nothing new. Historical works abound to show that in the decades prior to 1860 the same
techniques and attitudes prevailed. Records presented in this work on the criminal justice system in old New Orleans further point up the sharp distinction between the facts of crime and black people, and the actions of state lawmakers. It is apparent, then, that political procedures and personalities did not improve with the passage of a century, but remained more often part of the problem than of the solution.

Strangely, communications—a major problem in the 1960's—posed no problem in the 1850's. The records of criminal justice under slavery show repeatedly that communications were quite good; blacks knew their place and there was little doubt about it. The moral rhetoric of that time was kept away from them, through direct censorship, through the white press, and most importantly through the legally-imposed illiteracy of slaves. Although the years before the Civil War were filled with talk of plots and insurrection, neither was reality, for the improbability of plots thickening was reflected in low hostility towards blacks, even as contempt for them remained high. In the 1960's, however, rejection of blacks by white society had changed; so had the blacks. Rejection in the 1960's reflected fear and hatred, instead of fear and anxiety, for the black society of the latter decade was just that, a society, a cohesive community of blackness. The fears of white society in
the 1960's were, then, indeed more justified than those of white society a century earlier. The difference was not due to plots, modern paternalism, inherent qualities or any other causes embraced by press and politician. It was that under slavery and its criminal justice system, slight differences between two classes of rejected blacks prevented the cohesiveness which was developed under freedom and its system of total rejection of all blacks—the cohesiveness which might have led to revolt so feared in that time of two black castes, and so real in this time of one.
FOOTNOTES


33. Philadelphia Inquirer, July 26, 1967, p. 16. A half century earlier, newspaper attitudes were very different; then, when Booker T. Washington urged urban blacks to meet such responsibilities, the Chicago Evening Post rejected the proposal as unjust and improper, stating, "for it is not true in any sense whatever that the colored community is wholly or entirely responsible for the vice and crime which appear now and then in its midsts . . . . the colored problem cannot be solved by the colored man alone. See Drake and Cayton, Black Metropolis, p. 56.


APPENDIX A

THE BLACK CODE OF LOUISIANA

Louisiana laws to govern blacks began as an isolated system less than fifty years after the first set of American slave laws was promulgated in Virginia. The Code Noir for Louisiana was issued from Versailles by Louis XV in March, 1724, and published later in Louisiana by the Superior Council. In the 137 years which followed, several changes were made, including one major Spanish proclamation and a number of American editions.

Spanish codification consisted of a decree by the Baron of Carondelet, sixth governor of Louisiana under Spain, issued June 1, 1795. Immediately upon transfer of the Louisiana territory to the United States, those parts of the French and Spanish codes considered inconsistent with national law were declared invalid; otherwise, the laws remained in force until changed by the territorial legislature. On June 7, 1806, the Territorial Code was passed, the first full U. S. codification of laws dealing with blacks in Louisiana. In comparison with the 28-section Spanish code, it contained 62 sections, reflecting both the increasing complexity of slave laws and the immediate
shift in emphasis towards American-style codes. The territorial code remained the core of Louisiana black laws until the 1850's. A variety of statutes amended it over the years and then they were brought together in a new code in 1855, containing 100 sections. Declared unconstitutional in 1857, it was quickly replaced with a 43-section code. ³

Through these developments Louisiana acquired a system of black laws with elements from three distinct national traditions and systems of justice; even so, the code during the final years of slavery was fundamentally the same as those of all slave states. The remainder of this Appendix traces developments within each major category of the laws' criminal sections.

1. Laws to protect society.

*Code Noir* provisions to protect society were those which prohibited slaves from travelling alone, from assembling in large groups, and from owning weapons except to hunt game for their owners. The Carondelet decree retained these restrictions and added others, with the effect that a fourth of its provisions were meant to protect the general peace. ⁴ The Territorial Code maintained this ratio. Its major sections provided that unclaimed runaways could be put to work by sheriffs in rural areas and by orders of New Orleans Mayor and Council in that city; that French and Spanish limits on assemblies, travel and firearms be retained; ⁵ and that capital punishment be mandatory for arson of field, product or building, for
malicious administration of poison to "any free man, woman, child, servant or slave," and for rape or attempted rape "upon the body of any white woman or girl." Other capital offenses under Territorial law included murder committed during an attempted revolt, inciting insurrection or murder, and manslaughter not the result of accident or defense of an owner. The "lesser crime" of striking a white was a corporal offense for first and second offenders, with punishment left to the discretion of the court so long as it did not "extend to the privation of life or limb." If the slave's act produced a serious wound or mutilation, however, or if it was a third offense, the death sentence was mandatory.\(^6\)

In the following years, new crimes and punishments were added by individual acts. An 1816 amendment changed the penalty for attempted poisoning to life in prison "in irons and at hard labour;" in non-capital cases not carrying the mandatory life sentence, it limited jury sentences to eight days and authorized as a substitute for jail terms that slaves be "whipped, put into the pillory or in irons at the service of their masters." The act was not designed to reduce penalties alone, for it also ordered the death penalty for any stabbing or shooting if intent to kill was proven. An 1823 law gave the State Senate and Governor the power to commute any slave sentence except in cases of conviction for insurrection. An 1843 law established capital punishment for murder by drowning or strangulation,
restored attempted poisoning to the category, and further
broadened definitions of insurrection and revolt.\textsuperscript{7} Three
other acts prior to recodification were for the general
protection of the public from the expense of caring for
runaway slaves.\textsuperscript{8}

Louisiana's 1855 code made capital punishment
mandatory in cases of "wilful murder;" injury to anyone
with a dangerous weapon if intent was to kill; malicious
attempt to "kill by drowning, or strangling;" inciting
insurrection or revolt or being "in any wise concerned in
instigating the same;" the third offense of striking any
white person; and the original capital crimes of poisoning,
attempted poisoning, rape or attempted rape of a white
female, and arson or attempted arson. The code also re-
tained original provisions on assemblies, roaming at will
and possession of weapons.\textsuperscript{9} After 1855, an 1857 law ex-
panded local authorities rights to use runaway slaves for
labor, an 1859 law prohibited slaves from hiring themselves
out in certain parishes, and three Confederate laws of
1863 set harsher penalties for insurrections.\textsuperscript{10}

2. Laws to protect interests of slaveowners.

Original French laws to protect property values
represented by slaves were those to prohibit slaves from
engaging in trade without owners' permission, to restrict
colorful and to permit rudimentary machinery for the re-
turn of captured runaways.\textsuperscript{11} Carondelet kept these safe-
guards and also set twenty lashes as the penalty for leaving "the limits of the masters' lands without a pass," and made it legal for an armed runaway, or a runaway resisting arrest, to be "shot at." Restrictions also were imposed by the Spanish on "Pedlars," to prevent slaves from bartering away their owners' possessions.12

Territorial law retained these basic provisions and added a penalty of twenty-five lashes for any slave "found on horseback" without his owner's written consent (a reduction of Spanish punishment of thirty lashes on each of two, non-consecutive days); a penalty of twenty lashes to be given by any citizen finding a slave without a pass bearing a specified statement; permission for any citizen to kill a slave who refused to submit to questions when away from his master's premises; a similar, blanket issuance of authority to the public to "fire upon runaway negroes who may be armed, and upon those who when pursued shall refuse to surrender." Forfeiture of property was the penalty for any slave who dared to "buy, sell, negotiate or trade or exchange any kind of goods or effects." Striking any member of a master's family "so as to cause a contusion, or effusion or shedding of blood" was a capital crime; the same action against an overseer subjected the offender to twenty-five lashes and two years in a leg-chain; if blood actually was shed by an overseer, however, the punishment was doubled.13
From statehood until 1855 re-codification, the only owner-protective statutes passed were an 1824 law to set new penalties for peddlers trading with slaves, and an 1814 statute reaffirming the provisions protecting owners and their families from slave violence. Re-codification kept alive original provisions about wandering, assembling and trading. The new code also stated that a slave could not claim freedom on the ground he had been to a place where slavery did not exist. A provision referred to the original code permission for citizens to "correct" slaves found at large as having no intention of giving an arresting citizen the right to punish the suspect on the spot, and established a $50 fine for any person convicted of beating a slave without lawful authority; it also required reimbursement of the slaveowner for all time lost by a slave due to injuries suffered in an illegal arrest, with the assailant required to buy and support for life any slave permanently disabled by such a beating.

3. Laws to protect slaves.

French law prohibited cruelty and arbitrary treatment, required that children under ten years of age be kept with their families in sales, ordered that slaves should receive good food and clothing and that the aged should receive proper care. Owners were to be fined for violations. The code also permitted slaves to hold property and required only court approval for manumission.
The Spanish code continued provisions to insure proper care of slaves, adding the requirement of a day off each week. It required legal, criminal proceedings against owners for failures or for direct cruelties.  

Territorial laws established detailed legal procedures and court systems for slave justice. Absolution from prosecution was provided in murder cases where the action was in defense of person or property of owners. Otherwise, the code was severely restrictive, limiting rights to own property, and repeating traditional taboos against assemblies and dancing at night. Individual laws passed from then until re-codification in 1855 were minor in nature. The new code retained requirements for feeding and clothing slaves, with $200 fines set for unworthy owners and, in extreme cases, forced sale of abused slaves. Free persons found guilty of gambling with slaves faced fines up to $1,000 and jail terms up to a year. A fine of up to $2,000 was set for sale of a slave child under ten away from its mother, and added that "if at a public sale of slaves, there happen to be some who are disabled through old age, or otherwise, and who have children, they shall be sold with such one of their children as they may choose to go with." A final new element for benefit of slaves came in the 1857 law, lowering the minimum sentence from life in prison to ten years for striking a master, his family member or overseer.
Free blacks.

Criminal laws in regard to free blacks went through a distinctive evolution of their own. Unnoticed in the Code Noir, this class was the subject of two of the twenty-eight articles of Carondelet's decree; they were provisions stressing their right to "enjoy by Law, the same privileges as the other members of the Nation," so long as they displayed proper respect for whites.22

Territorial legislation forbade free blacks from owning weapons without having a "certificate attesting their freedom;" ordered them to show proper respect for whites under penalty of imprisonment which could vary according to the "nature of the offence." The code classified free Negroes with mulattoes, Indians and mustees, and with slaves in sections which made capital offenses of arson, poisoning and rape or attempted rape of a white woman.23 Ambiguous wording of these sections caused cases for it to be dismissed on appeals until 1818, when it was clarified by an amendment stating that if "any slave, free negro, mulatto, Indian or mustee, shall commit or attempt to commit a rape on the body of any white woman or girl," the death penalty was mandatory.24

Most statutes after statehood were concerned with entry into the state. Exceptions were an 1830 law to prohibit free blacks from selling liquor to slaves or from owning liquor shops without sanction of local authorities; an 1843 statute providing that free blacks serving hard
labor sentences could be put to work on public projects; and an 1852 law requiring that any black obtaining his freedom after September 18, 1852, would have to leave the United States within one year, at his own expense. Code revision in 1855 retained previous provisions on possession of firearms and respect due to whites. It also included restrictions on entry of free blacks into Louisiana, but gave them the right of civil suit against persons who brought them in as slaves illegally.

Most laws regarding free blacks, passed between statehood and Civil War, were concerned with illegal entry. Louisiana was a trend-setter in this area, preceding by some fifteen years the rush of such legislation in other states. The first such Louisiana statute was an 1806 territorial measure "to prevent the introduction of Free People of Color from Hispaniola, and the other French islands of America." It provided jail terms for free black men who did not leave within three months of being ordered out; it exempted women and children under fifteen if they had "left the island . . . to fly from the horrors committed during its insurrection." This law was replaced a year later by a general act which gave post-1806 immigrants two weeks grace, then ordered a fine of twenty dollars for each additional week spent in the Territory of Orleans. Failure to pay required a jail term "sufficient to pay the fines."
Louisiana's next action on free black movements was a special resolution of 1826, endorsing a proposed Georgia-sponsored amendment to the Constitution. The purpose was to stress the belief that the Constitution did not authorize importation of "any person of color" to any state in contravention of that state's laws. In 1830 Louisiana required that any free black who had entered the state after January 1, 1828, in violation of the 1807 law, be arrested and given sixty days to leave. Failure to obey such an order would result in a one-year term at hard labor; subsequent to serving such a sentence, thirty days would be allowed for leaving the state, with a life sentence the penalty for refusal. This act gave one year's grace to free blacks who owned property, and made permanent exceptions for those who had entered the state between adoption of the state constitution and January 1, 1825, if they had registered within sixty days with their parish judge or the Mayor of New Orleans. Free blacks who had been slaves in Louisiana also were exempted if they returned to the state after being emancipated in another state. In contrast, free blacks who left the state after passage of this act were warned that they would be subject to its provisions upon return. 28

Re-codification in 1855 reduced the life term for illegal residence to a five-year term; it also permitted free blacks of established Louisiana residence to come and go from the state to transact business. Prior to 1855,
however, migration restrictions had been further expanded by an 1842 law aimed at free blacks who entered the state by ship. This law authorized local judges and justices of the peace to order such Negroes, whether passengers or crewmen, to be held in jail until sailing time. Boat masters were required to post bonds of $500 for each free black aboard; violation would send the black to prison for five years at hard labor, with a life sentence to be imposed if he failed to leave the state within thirty days of the completion of that five-year sentence. That law remained in force until 1852, when British consul William Fure employed a lobbyist to have it liberalized. The resultant act, whose provisions were retained in the 1855 code, permitted free blacks who were crewmen to remain aboard ship while in port if the captain supplied local officials with a full roster of their names. Shore visits in line of duty were permitted if the masters obtained passports for the free black crewmen, but heavy fines were to be assessed for violators.

In 1859, the final act in the series imposed severe restrictions. Free blacks entering by sea or river were to be jailed until the vessel was ready to depart. Freedom aboard ship was allowed only with $500 bond posted for each seaman.
FOOTNOTES


5. Louisiana Session Laws, 1806, Sections 12, 19, 28.

6. Ibid., Sections 7, 11, 15.

7. Ibid., 1816, p. 146; ibid., 1823, p. 16; ibid., 1843, p. 87.

8. Ibid., 1826, p. 92; ibid., 1830, p. 128; ibid., 1854, pp. 165-167.

9. Ibid., 1855, Number 308, Sections 1-9.

10. Ibid., 1857, Number 181; ibid., 1859, pp. 169-170; ibid., 1863, Numbers 22, 37, 38.


13. Ibid., p. 602; Louisiana Session Laws, 1806, Sections 10, 32, 35, 38.


15. Ibid., 1855, Number 308; Sections 1-17, 63-75.

16. Ibid., 1813, pp. 168-171; ibid., 1855, Number 308, Section 66.


20. *Ibid.*, 1807, Chapter 30; *ibid.*, 1843, p. 87; see, also, sources cited above in footnotes seven and fourteen.

21. *Ibid.*, 1855, Number 308, Sections 18, 19, 61, 69, 71-73; *ibid.*, 1857, Number 285, Section 3.


29. *Ibid.*, 1855, Number 308, Sections 95-98; *ibid.*, 1842, pp. 308-318.


APPENDIX B
THE CRIMINAL JUSTICE SYSTEM
OF LOUISIANA

1. State courts.

Modern legal authorities are critical of Louisiana's early court system because of independent authority given to different types of courts. Under the first state constitution, for example, there was no court for criminal appeals.\(^1\) Equally serious voids existed in development of early court procedures for slave cases. Originally, the French code said only that courts for blacks were to be the same as those for other persons.\(^2\) Spanish rule made no changes.

One of the first acts of the Territorial Legislature, primarily designed to set penalties for horse, mule or slave-stealing, included the first clauses on slave trials. These sections gave initial jurisdiction to county courts composed of one justice of the peace and four "discreet freeholders." In capital cases, an undefined superior court was to have primary jurisdiction. Shortly afterwards, the Territorial Slave Code was passed, establishing a direct system of special slave tribunals.

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In cases punishable by death the court was to be composed of a county judge, or two justices of the peace, and from three to five freeholders; for lesser cases, the court was to be a justice and three freeholders. For conviction or acquittal in capital cases the law required the presence of a judge and two freeholders; in corporal cases, it called for one justice and one freeholder.\(^3\)

Courts were next changed in 1825, expanding to six freeholders and the parish judge in capital cases; in the judge's absence, the senior justice of the peace of the parish was to preside. In 1827, law required that freeholders would be regarded as a jury and were to be summoned in the same manner set for juries in other courts. The court for non-capital crimes was changed in 1830 to a body composed of the nearest justice of the peace and two freeholders, of whom one was to be chosen by the slave-owner involved and the other by the chief complainant.\(^4\)

In 1845 the new state constitution set up the first system of inter-related courts in Louisiana. Parish courts were abolished and the jurisdiction of inferior courts was limited. Pursuant to this new constitution, an act of 1846 said that for capital crimes, slave tribunals were to be composed of two justices and ten slave-owners, except in New Orleans where jurisdiction was vested in the First District Court. For non-capital cases the court was to consist of a justice and two slaveowners; in New Orleans, with abolition of general justice positions,
this caused sole initial authority to evolve upon Recorders. This system remained substantially the same for the remainder of the period of slavery. Re-codification in 1855 made changes in rural courts only.

Rules of state evidence experienced few changes during the life of the code. The 1806 territorial system held valid in trials of slaves or free blacks the evidence of "all free Indians under oath . . . and of every slave under oath." Amendment the next year excluded slaves from testifying in trials against their own owners, and in 1816 from being witnesses against white defendants in any case.

2. New Orleans courts.

New Orleans had no incorporated form until 1805; previously it was governed by a "city council or cabildo" created under Spanish rule in 1769. The Cabildo was both legislative and judicial when established; in 1790 its judicial duties were transferred to justice of the peace courts. With incorporation in 1805, a new system of justice was created to deal with slave cases. At its base was a unique official known as the Recorder, second to the Mayor in administrative and judicial authority, and, for the remaining years of slavery, the initial point in the system of justice for blacks. In 1836, due to population growth and to rivalries between French and English-speaking sectors of the city, New Orleans was divided into three municipalities; over each was a Recorder
and Council, and over all three was a Mayor and Common Council. The city was governed in this divided fashion until 1852 when its parts were united. In the new system, the city retained three Recorders; however, where until that year these officials had exercised administrative, legislative and judicial duties, after reunion they were designated fundamentally the justice courts of the city. An 1850 attempt was made to decrease or limit the judicial authority of Recorders. It was a Mayor and Recorder's Court, established with original jurisdiction in all criminal cases arising within city limits. The court survived a bare two years, during which it made no decisions or rulings of note and quickly became a local joke, variously labelled "this unique tribunal" and "the ridiculous offspring of the weak brains of some of our legislators." Fundamentally, it was doomed to failure because it tried to turn individuals performing a special function into a group doing the same thing, with someone else, the Mayor, in charge; Recorders quickly chose to handle judicial manners in their individual courts, leaving virtually no business for the combined body, and on February 5, 1852, the Legislature abolished it.

Recorders courts remained the courts of first resort in New Orleans for all criminal cases, deciding when matters should be "sent up" to the criminal court for the
city. That court, until 1821, was a body legislatively titled, "The Criminal Court for the City of New Orleans;" in that year the First District Court was designated the trial court for all criminal cases. An act of 1842 gave it jurisdiction in all capital cases involving slaves, but other legal procedures continued to vest authority in Recorders to decide in preliminary hearings if such matters needed to be referred to the First District Court.¹³

2. The police.

The New Orleans police system developed apace with the city and its courts. In the colonial period the military conducted police functions, directing the activities of the "city guard or gens d'armes," a night watch consisting of squads of four and five men. Following transfer of the territory to the United States, one of the first acts of the city's governors was to name two of their own members as "commissioners to inspect the prisons and formulate police regulations." In the following year a resolution established "a police jurisdiction composed of twenty-five white men, or in default free mulattoes, whose officers shall be white, to patrol, when requested by citizens, outside the city limits, to catch runaway negroes, put a stop to looting, and other crimes." Later in the year, a sub-inspector of police was named and a "Patrol Militia" organized, consisting of four squads of fifteen "firemen and hunters." In addition, a "City Patrol"
of volunteer malitiamen was created, with manpower of sixteen soldiers, two officers and four noncommissioned officers, to serve as unpaid volunteers.¹⁴

In special session in 1806 the Council created the "City Police" or "Gardes de Ville," with a chief, two sub-chiefs and twenty men. Two years later the size was reduced to eight men and the militia volunteer system was reinstated. By 1822, a total of fifty private citizens served as volunteers, walking the streets each night as an "armed patrol." Daytime police work was cared for by a constabulary; each section of the city had its own captain, high constable and constables, serving primarily as political appointees in vaguely defined posts. In 1836 the constabulary system was formalized by an ordinance of the Common Council, which renamed it the "Day Police" and placed it under direct command of the Recorder of the Second Municipality. In the same year the Council created a night watch, also under the jurisdiction of the Recorder of the Second Municipality.¹⁵ These developments were partly due to reorganization of the city government at that time, but also were influenced by national and international growth of professional police systems. The first, organized metropolitan police force, begun under Sir Robert Peel in London, was then only seven years old; Philadelphia had made an abortive attempt to emulate the English example in 1833, but there was not
any comparable force in any American city by 1836. 16

Police operations in New Orleans were next expanded in 1845 when the Recorder of the Second Municipality was authorized to appoint ten men to a "levee police" force for special duty along the riverfront. Under this ordinance a sergeant and nine men were hired. 17

Until 1852 the Second Municipality Recorder remained in command of police. The new state constitution of that year gave command to the Mayor. The force at that time consisted of three captains, five lieutenants, ten sergeants, five corporals, and 373 men (including two jailers, 67 day police, eight levee police, 29 special police, four night-boat police, 14 lamplighters, 27 supernumeraries and 231 watchmen). 18 On May 14, 1852, the Common Council of the newly re-united city passed "An Ordinance to organize the Department of Police of the City of New-Orleans." This established a force consisting of one chief, one captain for each of four districts, seven lieutenants and 345 policemen. Within two weeks the ordinance had been fully implemented to produce the first, centrally-organized police force in the city's history. One of the first actions of the new chief, John Youennes, was to exceed the authority of establishment by setting up an organization of seven officers and 400 men. 19 Through the remainder of the period, this remained the size and structure, with the Mayor retaining total control. 20
Powers of the police force were well-established by 1850. Steady legislative expansion of authority to municipal government had begun with an 1834 act giving the city guard the right to arrest suspects without obtaining specific warrants, and the right to call on bystanders for assistance. In ensuing years the governing bodies of municipalities gave police units the powers to offer rewards, close down "disorderly houses . . . which may be the resort of lewd and abandoned women," and to supervise activities of "inns, boarding houses, coffee houses, billiard halls, taverns, grog shops . . . and other public houses, balls and theatres."21

Ordinances were codified in New Orleans, and new regulations adopted for police conduct, in 1852. In regard to blacks, the code ordered officers to enforce all state laws and required the chief to maintain a "register of the free people of color within the city, (independent of the one kept by the Mayor,), their residences, occupations, ages, places of birth and the time of their arrival in this city." Only one local ordinance was listed in a booklet of police regulations as applicable only to blacks; it forbade "gambling or betting with free negroes, mulattoes or slaves; buying, selling, or receiving of, to or from any slave or slaves any produce or commodity whatsoever without the consent in writing of the master, owner, overseer or employer
of such slave or slaves." Otherwise, patrolmen were ordered to report to their captains all places frequented by blacks, to arrest all slaves found without passes "after gun-fire," to disperse "unlawful assemblies of negroes and slaves. . .²² and keep a sharp look-out for all cabarets or grog shops where spirituous liquors are sold to negroes and slaves," as well as to arrest slaves caught drinking or with weapons in their possession.

Despite the size of the police force, in spite of authority given by law, New Orleans police during the 1850's fit well the summary of Richard Wade that all southern, urban police departments during slavery "generally were more imposing on paper than in fact" and were often accused of corruption and incompetence.²³ Even before statehood, complaints were made against the early police to the effect that "whenever they reached the scene of a crime in time they generally got the worst of it." In 1808, when the Garde de Ville was cut to a third of its original size and its authority returned to militia volunteers, the reason given was "inefficiency." And, in the 1850's, even with a force of 400 men, the department was constantly criticized. Even the administration-backed Daily Crescent found it necessary to condemn:
The complaints against various and sundry of the newly appointed Night Watchmen, seem to be rapidly on the increase. Not a night passes now without from one to three being reported as either absent from duty or found asleep on their post. The last report from the Captain of the Watch showed no less than ten delinquents. This should be remedied at once. Before we are aware of it the torch of the incendiary or the midnight burglar will have committed devastation in our midst, fostered, as we might say, by our watchful guardians of the night.

That the new force was small improvement was again and again the comment of city newspapers and grand juries during the 1850's. Police laxity in enforcing laws to control slaves was among the most common faults criticized. Appropriate to that record, at the end of the period the Louisiana Legislature ordered a full investigation of the New Orleans Police Department due to an inexplicable number of escapes from city jails.
FOOTNOTES


3. *Louisiana Session Laws, 1804-1805*, Chapter 50; *ibid.*, 1806, Sections 1, 2, 3.

4. *Ibid.*, 1807, Chapter 1; *ibid.*, 1824-1825, p. 206; *ibid.*, 1827, p. 14; *ibid.*, 1830, p. 144.


7. *Ibid.*, 1806, Sections 5, 6; *ibid.*, 1807, Chapter 30, Section 4; *ibid.*, 1816, p. 146.


11. *Ibid.*, 1852, p. 44; *ibid.*, 1836, p. 31; *The New City Charter with the Amendments of 1853* (New Orleans, 1854), passim.


13. Miller, *Louisiana Judiciary*, pp. 17, 32-33; *Louisiana Session Laws, 1841-1842*, p. 212; *ibid.*, 1855, Number 43; *ibid.*, 1858, pp. 55-60.

15. Ibid., pp. 29, 31, 33, 37; Calhoun, Digest of Ordinances, pp. 206, 240. These designs of the Second Municipality Recorder stress the significance of the records extant, most of which are from the Second Municipality and Second District.


21. Ibid., 1833-1834, pp. 139-146; Calhoun, 1840 Digest, p. 284, pp 213, 214; Southmayd, 1848 Digest, p. 263.


23. New Orleans Police History, pp. 5, 3; Wade, Slavery in the Cities, p. 100.

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