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THE NAT TURNER TRIALS*

ALFRED L. BROPHY**

“The Nat Turner Trials” locates the trials of slaves in the wake of the Nat Turner rebellion in the context of common and statutory law and extra-legal responses to slavery in Virginia and North Carolina during the early 1830s. The Article shows how trials were part of the whole system of slavery, held together by norms of white supremacy promulgated in the press, the pulpit, and on plantations. Decisions from local courts to appellate courts gave broad power to slaveowners to control enslaved people. There was little done in defense of slaves, though in some ways the states’ criminal procedure statutes and the actions of some slaveowners and defense lawyers may have helped to limit the number of convictions.

This Article is framed by two cases in North Carolina—one in 1830 of a white man who attacked a slave in his custody and was freed from punishment and another in 1834 of a slave who killed his overseer and was found guilty of manslaughter rather than premeditated murder. Sandwiched between those two cases was the Nat Turner rebellion in neighboring Virginia during August of 1831. The trials of those accused of rebellion and conspiracy, along with the vigilante violence that accompanied the rebellion, further illustrate the ways the legal system functioned to support slavery and order.

The Article highlights how trials of slaves in the wake of the Nat Turner rebellion worked to re-establish order and to mete out punishment. It also reveals how lawyers for the slaves labored—largely unsuccessfully—to free those most obviously not guilty. Those lawyers were committed to the re-establishment of order;

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** Judge John J. Parker Distinguished Professor, University of North Carolina School of Law. I would like to thank Mary Sarah Bilder, Jack Boger, Mark Chilton, Tricia Choi, Daniel M. Filler, Ariela Gross, Taja-Nia Henderson, Martha Jones, Richard E. Myers, Gregg Polsky, Dana A. Remus, Robert J. Smith, and Leslie A. Street for their help with this Article. Susannah Loumiet and Marc Kornegay provided excellent research assistance. The librarians of the Southern Historical Collection at the University of North Carolina at Chapel Hill, the North Carolina State Archives, the University of Virginia, and the Library of Virginia, particularly Tom Crew, were fabulously helpful.

all of the key lawyers had participated in the militia response to the rebellion. Yet the defense lawyers still tried to limit convictions, and they succeeded to some extent.

The trials worked in conjunction with—and sometimes in opposition to—the extra-legal violence that accompanied the suppression of the rebellion. The trials reveal, as did the two Supreme Court of North Carolina cases that bookend this Article, the conflicts within the community, as some emphasized the power of slaveowners to treat slaves as they wished, while others emphasized the subjection of everyone, including owners of slaves, to the rule of law. The court struggled in part with trying to keep the community from taking vigilante action. It also acted to punish the rebels and stop further rebellion.

The trials tell compact, linear stories about why someone is being punished (or not). The trials are obscure, but collectively they tell a powerful story about the role of law in American history as a vehicle for establishing order.

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INTRODUCTION

The legal system has grand aspirations. The reality is sometimes different. In her 1856 novel, *Dred: A Tale of the Great Dismal Swamp*, Harriet Beecher Stowe created a lawsuit that tested the boundaries of the legal profession's statements about the law's majesty.¹ Slaveowner Nina Gordon rented out a slave, Milly, to a man who abused her.² Nina then sued the man for the injury to Milly.³ The young lawyer who took the case, Edward Clayton, had grand ideas about the purposes of law.⁴ Edward took the case, hoping—perhaps expecting—that the result would be a judgment in favor of his client and thus in some way in favor of Milly.⁵

Stowe drew that vignette from the case of *State v. Mann*.⁶ In *Mann*, North Carolina Supreme Court Justice Thomas Ruffin overturned a conviction of a man for assault and battery who shot at a slave he had rented.⁷ Ruffin did not believe that the law should restrain the master's power over the slave: he wrote that “[t]he end [of slavery] is the profit of the master, his security and the public safety.”⁸ His grim conclusion was that “[t]he power of the master must be absolute to render the submission of the slave perfect.”⁹ Ruffin noted that courts should not even begin to question the master's authority:

We cannot allow the right of the master to be brought into discussion in the courts of justice. The slave, to remain a slave, must be made sensible that there is no appeal from his master; that his power is in no instance usurped; but is conferred by the laws of man at least, if not by the law of God. The danger would be great, indeed, if the tribunals of justice should be called on to

1. See 2 HARRIET BEECHER STOWE, *DRED: A TALE OF THE GREAT DISMAL SWAMP* 30–34 (Boston, Phillips, Sampson & Co. 1856).

2. See *id.* at 31–34, 102.

3. See *id.* at 33–35.

4. See *id.* at 21 (“Reading the theory is always magnificent and grand,” Clayton told a skeptical friend.)

5. See *id.* at 105.

6. 13 N.C. (2 Dev.) 263 (1829).

7. *Id.* at 263–68.

8. *Id.* at 266. See generally Anthony V. Baker, *Slavery and Tushnet and Mann, Oh Why? Finding “Big Law” in Small Places*, 26 QUINNIPIAC L. REV. 691 (2008) (commenting on Mark Tushnet's analysis of *Mann*).

9. *Mann*, 13 N.C. (2 Dev.) at 266; see also Sally Greene, *State v. Mann Exhumed*, 87 N.C. L. REV. 701, 727–37 (2009) (analyzing the ideological context of Ruffin's decision in *Mann*).

graduate the punishment appropriate to every temper, and every dereliction of menial duty.¹⁰

This decision established that the courts should not be a place of redress for such violence.¹¹

Because of Ruffin's honesty, abolitionists employed his opinion to show the brutality of slavery. In Stowe's fictional account, for example, she turned the case into a tort suit for injury to Nina's property—ground that Ruffin had left open in *State v. Mann*¹²—rather than a criminal prosecution for abuse of a slave.¹³ A slave might be protected from abuse by her renter if a court awarded money for the slave's physical injury based on the owner's property right. To heighten the conflict between the anti-slavery possibilities and the stark reality of southern law, the fictional judge—the stand-in for Ruffin—was anti-slavery.¹⁴ Yet, even in this context, Edward Clayton lost his case;¹⁵ the judge abided pro-slavery dictates and issued an opinion that repeated Ruffin's opinion in *Mann* almost word for word.¹⁶

Stowe's message was that the law left broad discretion to the possessor of a slave to abuse that slave, little room for anti-slavery lawyers to achieve positive results for their clients, and seemingly no room for judges to make the law more humane.¹⁷ The young anti-slavery lawyer Edward Clayton said the decision showed that slavery was not a "guardian institution, by which a stronger race might

10. *Mann*, 13 N.C. (2 Dev.) at 267.

11. *See id.*

12. *See id.* at 264 ("With the liabilities of the hirer to the general owner for an injury permanently impairing the value of the slave no rule now laid down is intended to interfere.").

13. *See* 2 STOWE, *supra* note 1, at 102. North Carolina law in fact supported recovery in a civil action for permanent damage inflicted upon a slave. *See Jones v. Glass*, 35 N.C. (13 Ired.) 305, 308–09 (1852); *see also Craig's Adm'r v. Lee*, 53 Ky. (14 B. Mon.) 96, 99–100 (1853) ("[T]he bailee is responsible for damages commensurate with the injury done to the slave . . .").

14. *See* 2 STOWE, *supra* note 1, at 106. The actual Thomas Ruffin was zealously pro-slavery. *See Eric L. Muller, Judging Thomas Ruffin and the Hindsight Defense*, 87 N.C. L. REV. 757, 797–98 (2009).

15. *See* 2 STOWE, *supra* note 1, at 105.

16. The fictional opinion in Milly's case omitted a few sentences on North Carolina, a sentence that distinguished the criminal case in *Mann* from a civil case, and the penultimate paragraph that argued that life was getting better for slaves because of the interest and benevolence of owners. *Compare* 2 STOWE, *supra* note 1, at 101–05 (fictional opinion), *with Mann*, 13 N.C. (2 Dev.) at 264–68 (Justice Ruffin's opinion in *Mann*).

17. This impression comes from Stowe's adoption of Ruffin's opinion, which said as much. *See* 2 STOWE, *supra* note 1, at 102 ("If we thought differently, we could not set our notions in array against the judgment of everybody else." (quoting *Mann*, 13 N.C. (2 Dev.) at 265)).

assume the care and instruction of the weaker one.”¹⁸ He then resigned from the practice of law.¹⁹

Opinions like *State v. Mann*—which proclaim that “[t]he end [of slavery] is the profit of the master, his security, and the public safety”²⁰—reflect the dominant ideas in southern society during that time. Both Stowe’s fictional case and *State v. Mann* detail the interaction of judges, lawyers, litigants, and the people who were affected by those actors on the stage constructed by law. The cases reveal how judges construed statutes and the common law to leave slaveowners free to abuse their slaves without criminal penalty.

“Law,” from slave patrols and courts to statutes and appellate decisions, was a tool of empire.²¹ “Law” functioned to bring order, as people in the antebellum era knew.²² Such ideas appeared with particular strength in the South. For instance, a Presbyterian minister in Richmond, Virginia, spoke of the role of law and lawyers in establishing order in an 1857 funeral oration.²³ That minister, Thomas V. Moore, had earlier developed the theme in an oration delivered before the execution of two slaves who had murdered their owners’ family members in Richmond in 1852.²⁴ Moore told the murdered

18. *See id.* at 105.

19. *See id.* at 105–06.

20. *Mann*, 13 N.C. (2 Dev.) at 266.

21. *See* MORTON J. HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW, 1780–1860*, at 1–30 (1977) (discussing “development of an instrumental conception of American law”); CHRISTOPHER TOMLINS, *FREEDOM BOUND: LAW, LABOR, AND CIVIC IDENTITY IN COLONIZING ENGLISH AMERICA, 1580–1865*, at 506 (2010). Law was a vehicle of control, as the author of the most recent comprehensive study of the Nat Turner rebellion has demonstrated. *See* Patrick H. Breen, *Nat Turner’s Revolt: Rebellion and Response in Southampton County, Virginia 11–12* (May 2005) (unpublished Ph.D. dissertation, University of Georgia), available at http://athenaeum.libs.uga.edu/bitstream/handle/10724/8269/breen_patrick_h_200505_phd.pdf?sequence=1; *see also* Stephen Duane Davis II & Alfred L. Brophy, “*The Most Solemn Act of My Life*”: *Family, Property, Will, and Trust in the Antebellum South*, 62 ALA. L. REV. 757, 789–91 (2011) (describing trusts as a legal technology that assisted in the administration of property).

22. *See* Daniel Lord, *On the Extra-Professional Influence of the Pulpit and the Bar: An Oration Delivered at New Haven, Before the Phi Beta Kappa Society, of Yale College* (July 30, 1851), in DANIEL LORD, *ON THE EXTRA-PROFESSIONAL INFLUENCE 3* (New York, S.S. Chatterton 1851).

23. *See* T.V. Moore, *The Christian Lawyer, or the Claims of Christianity on the Legal Profession: A Discourse Delivered at the Funeral of Richard W. Flournoy, Esq., in the First Presbyterian Church, Richmond, Va. 15–16* (Dec. 1, 1857), in T.V. MOORE, *THE CHRISTIAN LAWYER 15* (Richmond, MacFarlane & Fergusson 1858) (describing the practice of law as “the great conservator of social order”).

24. *See* T.V. Moore, *Funeral Discourse of Mrs. Virginia B. Winston, and Virginia B., Her Infant Child* (July 25, 1852), in PARTICULARS OF THE DREADFUL TRAGEDY IN RICHMOND, ON THE MORNING OF THE 19TH JULY, 1852: BEING A FULL ACCOUNT OF

family's congregation that "more attention should be directed to the causes of crime in our community, with a view to its prevention as well as its punishment."²⁵ The oration detailed the reasons why law should maintain control.²⁶ The legal system was about the maintenance of order.²⁷

At the same time Moore was calling for "one broad, flaming and unbroken front" to "rally around the majesty of the law, revering its lofty prerogatives, demanding the execution of its mandates in all cases from the highest and haughtiest to the lowest and meanest,"²⁸ the minister of an African American church in Richmond, Robert Ryland, was telling his congregation that they should obey the law.²⁹ The news of the murder had detrimental effects on the African American community.³⁰ Reverend Ryland continued:

It will increase the strictness of discipline to which you are subject in the family, in the factory, on the farm—from the City Police and from the State authorities. . . . [I]n your respective spheres of life you will have to be more obedient and submissive for the future than you have ever been heretofore, or else you will bring upon yourselves serious troubles. God has given this country to the white people. They are the law-makers . . . [and] the superiors. The people of color are the subjects—the servants—and even when not in bondage, the inferiors. In this state of things, God enjoins on you submission.³¹

There were, however, conflicting impulses within the judiciary. Whereas some Democrats like Thomas Ruffin developed rules that left owners and possessors of human property free to act with little interference from the courts, Whigs like William Gaston were not as comfortable with the release of owners from criminal liability for mistreatment of slaves.³² While both Democrat and Whig jurists in the South acted to uphold the system of slavery, Democrat jurists like Ruffin had different visions from the Whigs of the role that law ought

THE AWFUL MURDER OF THE WINSTON FAMILY 28, 33 (Richmond, John D. Hammersley 1852) [hereinafter DREADFUL TRAGEDY].

25. *Id.* at 32.

26. *See id.* at 32–33.

27. *Id.*

28. *Id.* at 33–34.

29. *See* Robert Ryland, Substance of a Sermon, in DREADFUL TRAGEDY, *supra* note 24, at 36.

30. *See id.*

31. *Id.*

32. *See infra* Part III.A. (discussing Gaston's opinion in *State v. Will*).

to serve regarding slaves.³³ Thus, while in many ways judges in the pro-slavery South had common goals, at other points there were dramatic differences in vision over how much the courts should police the behavior of slaveowners and slaves.

This Article uses trials stemming from the Nat Turner rebellion in Southampton, Virginia, in August 1831 to make several points. First, that slave trials were a means of establishing order. A large part of order is establishing punishment, though civil trials involving slaves often enforced rights of owners, renters, or purchasers. Establishing order involved not just punishment or a judgment, but presenting an official story to the community, establishing the truth of the matter as told by the government. The trials also reflected conflicts within the white community over how to respond to the violence of the rebellion—and the retribution in the wake of the rebellion—as well as divisions over who was culpable and how broadly the legal system should spread punishment.

Part I first sets the stage by briefly exploring the rebellion itself and its aftermath, including the extra-legal violence against enslaved people in Southampton and the petitions that owners made to the legislature for compensation for slaves killed during and immediately after the rebellion. The Part then turns to the trials to make some assessment of how the prosecutor and court interpreted what happened and how broadly the court cast blame for the rebellion. It then moves outward from Southampton, where the rebellion was centered and where the majority of trials took place, to neighboring counties where a few more trials were held. It looks in particular to the defense attorneys, who seem to have been genuinely interested in trying to limit the extent of punishment. Part II of the Article moves to North Carolina, where further echoes of the rebellion caused vigilante action and prosecutions. Part III turns to North Carolina Supreme Court Justice William Gaston's efforts to constrain the power of overseers over enslaved people in their custody. A concluding section returns to Sussex County, Virginia, where a slave who was sentenced to death in 1831 then escaped and was recaptured in 1835. The man's lawyer, the local judges, and leading members of the community revisited the trial and concluded that they had been too hasty to convict. The operation of law, even people at the time recognized, had been too harsh. Therein lies a story of how the legal

33. See Alfred L. Brophy, *The Republics of Liberty and Letters: Progress, Union, and Constitutionalism in Graduation Addresses at the Antebellum University of North Carolina*, 89 N.C. L. REV. 1879, 1926–37 (2011) (describing differences between Whig and Democrat ideology in college literary addresses).

process fit together with extra-legal violence, public opinion, and differing attitudes within the slave-owning community over the ways that law should restrain slaveowners as well as the enslaved.

I. NAT TURNER: REBELLION AND TRIALS

A. *The Setting*

The world of Nat Turner's rebellion was one of extraordinary power of the slaveowners and limited power of the enslaved. Justice Thomas Ruffin's decision in *Mann*, which gave masters essentially unbridled control over their slaves, was issued when slavery was coming under increasing scrutiny. For more than a decade, the mildly anti-slavery colonization movement had promoted the emancipation of slaves and their transportation to Africa.³⁴ But other movements, more threatening, were beginning to grow. In 1829, David Walker, who was born in North Carolina and made his way to Boston, published the radical *Appeal to the Coloured Citizens of the World*.³⁵ It is quite possible that no copies had made their way to Southampton County where Nat Turner resided, but the ideas represented in Walker's pamphlet of freedom were ones that might have been spread orally. One did not need to read his book—or any book—to dream of liberation or violent rebellion.

In 1830, the year of Justice Thomas Ruffin's *State v. Mann* opinion, the students of the Dialectic Society at the University of North Carolina at Chapel Hill debated the future of slavery.³⁶ They asked whether it was “probable that the slaves of the Southern States will ever be emancipated by their own exertions?”³⁷ That question was resolved in the negative.³⁸ Less than a year later, a slave by the name of Nat Turner and a small band of his friends tried to begin the journey toward emancipation through rebellion.³⁹ That short-lived

34. See, e.g., NEELY YOUNG, *RIPE FOR EMANCIPATION: ROCKBRIDGE AND SOUTHERN ANTISLAVERY FROM REVOLUTION TO CIVIL WAR* 57–74 (2011).

35. DAVID WALKER, *WALKER'S APPEAL IN FOUR ARTICLES: TOGETHER WITH A PREAMBLE TO THE COLOURED CITIZENS OF THE WORLD* 3 (Boston, David Walker rev. 3d ed. 1830).

36. See Dialectic Society Minutes, 1826–1833, at 289 (Oct. 27, 1830) (on file with the Wilson Library Southern Historical Collection, University of North Carolina at Chapel Hill).

37. *Id.*

38. See *id.*

39. See SCOT FRENCH, *THE REBELLIOUS SLAVE: NAT TURNER IN AMERICAN MEMORY* 1–3 (2004).

journey resulted in extraordinary violence on both sides and in several dozen trials.⁴⁰

B. *The Rebellion*

Nat Turner, a preacher and plantation laborer, had been planning rebellion for some time, perhaps years.⁴¹ But his plans were well hidden, for they first came to light after he and a handful of slaves—Henry, Hark, Nelson, Jack, Sam, and Will—gathered together at an apple orchard near a swamp by Turner's home on the evening of Sunday, August 21, 1831.⁴²

The men began their rebellion by killing the family that owned Turner—Joseph Travis, his wife, and three children—in the early morning of August 22nd.⁴³ They ransacked the house, took weapons, gun powder, ammunition, and horses and started bringing slaves along with them as converts to the cause or possibly as coerced rebels.⁴⁴ Travis's fifteen-year-old slave, Moses, came with the rebels—perhaps voluntarily or maybe through force; it is unclear.⁴⁵ The band then moved to Salathiel Francis's house where they killed him, then to Piety Reese's home, where they killed her, her son, and an overseer.⁴⁶ They reached Elizabeth Turner's house around dawn, where they killed Turner, her sister, and the overseer, Hartwell

40. *See id.* at 1–3, 33.

41. *See* THOMAS R. GRAY, *THE CONFESSIONS OF NAT TURNER* (Baltimore, Lucas & Deaver 1831), *reprinted in* HENRY IRVING FRAGLE, *THE SOUTHAMPTON SLAVE REVOLT OF 1831: A COMPILATION OF SOURCE MATERIAL* 300, 310 (1973) (mentioning Turner's thoughts of rebellion as early as 1828).

42. *See id.* at 310–11. Turner had, apparently, set July 4, 1831, as the initial date of rebellion. *See id.* at 310. Turner thought others could have the same ideas about rebellion as he did, yet his *Confessions* showed no direct references to the burgeoning anti-slavery literature, although it did emphasize Turner's literacy. *Id.* at 316. The trials reveal little evidence of serious planning.

43. *See* Thomas C. Parramore, *Covenant in Jerusalem*, in *NAT TURNER: A SLAVE REBELLION IN HISTORY AND MEMORY* 58, 59 (Kenneth S. Greenberg ed., 2003).

44. *See* FRENCH, *supra* note 39, at 1–3.

45. *See id.* Moses, the slave of Joseph Travis, was one of the last slaves tried, perhaps because he had seen so much of the rebellion and was in a position to provide an eyewitness account of what happened. *See* Extract from the Court Records of Southampton County, Virginia (1831) [hereinafter *Southampton County Court Records*], *reprinted in* *THE SOUTHAMPTON SLAVE REVOLT OF 1831: A COMPILATION OF SOURCE MATERIAL*, *supra* note 41, at 177, 220. Moses provided some of the most important testimony about the rebellion during the trials. *See, e.g., id.* at 185–86, 200–01. Despite his cooperation, he was convicted on October 21st and then sentenced to death. *See id.* at 221. However, the justices recommended that the governor commute his sentence to transportation outside of the state. *Id.*

46. *See* Parramore, *supra* note 43, at 59.

Peebles.⁴⁷ At this point, the rebels divided their forces.⁴⁸ Some men on horses, led by Nat Turner, went on to Caty Whitehead's home, where they killed her and six other people.⁴⁹ They collected some other reluctant supporters at the Whitehead house.⁵⁰ The others, all on foot, went to Henry Bryant's house.⁵¹ At some point, the rebels rejoined forces and soon arrived at the farm of Nathaniel Francis.⁵² Several of Francis's nephews died there, as did his overseer.⁵³ Francis's wife was in hiding and so escaped the violence.⁵⁴ Francis's slave, Dred,⁵⁵ joined the rebels, and the rebels coerced three young slaves, Davy, Nathan, and Tom, into joining them as well.⁵⁶

Meanwhile, alarm was already spreading amongst slaveowners.⁵⁷ When the rebels came to Peter Edwards's farm, the white inhabitants had already fled.⁵⁸ Nonetheless, the rebels were able to recruit five slaves to join their forces.⁵⁹ At Captain John Barrow's house, the rebels killed Barrow, and one slave, Lucy, apparently tried to keep Barrow's wife from fleeing.⁶⁰ Moses, another of Barrow's slaves,

47. *Id.* at 60.

48. *Id.*

49. *Id.*

50. See Southampton County Court Records, *supra* note 45, at 180–82 (describing the trials of Jack and Andrew).

51. See *id.* at 185–86 (presenting the testimony of Moses during Davy's trial).

52. See Parramore, *supra* note 43, at 60–61.

53. See *id.* at 62.

54. See *id.* After the rebels left, one of Francis's slaves, Charlotte, threatened his wife. See F.N. Boney, *Nathaniel Francis, Representative Antebellum Southerner*, 118 A.M. PHIL. SOC'Y 449, 452 (1974). Perhaps significantly, Francis owned two of the men who had been with Turner from the start, Sam and Will. *Id.*

55. See Southampton County Court Records, *supra* note 45, at 198–99 (presenting the testimony of Levi Waller during Dred's trial). Stowe's novel also took inspiration, including the name of its title character, from the Nat Turner rebellion of 1831. See 2 STOWE, *supra* note 1, at 338. Stowe constructs a character around Nat Turner and then calls him Dred, whom she identified as “[o]ne of the principal conspirators” in the Turner rebellion. See *id.* Thus, Stowe links *Mann* with the rebellion.

56. See Southampton County Court Records, *supra* note 45, at 199–201; see also Parramore, *supra* note 43, at 62 (“Nat, Tom, and Davy, enrolled with the rebels after being told that they would be shot if they tried to escape.”).

57. See Parramore, *supra* note 43, at 63.

58. See *id.* at 62–63.

59. See *id.*; Southampton County Court Records, *supra* note 45, at 217–19 (describing the trial of Sam); Petition from Peter Edwards to the Gen. Assembly of Va., Cnty. of Southampton (undated, circa 1831) (asking for compensation for three slaves who were killed during the rebellion, Nelson, Austin, and Jim) (on file with the Library of Virginia, Southampton County Court Papers, Reel 184, Box 234, Folder 79).

60. See Parramore, *supra* note 43, at 63; Southampton County Court Records, *supra* note 45, at 208–09 (describing the trial of Lucy); Will of John T. Barrow, Cnty. of Southampton (Nov. 8, 1829) (leaving “to [his] wife . . . [his] land negroes and property of every description” except for two guns left to a half-brother and a rifle left to his nephew,

joined the rebels there.⁶¹ They continued to the deserted home of Captain Newitt Harris, then to Levi Waller's property, where they killed Mrs. Waller and about ten children, while Levi Waller watched, in hiding, from the garden.⁶² Later, during trials of the rebels, Waller provided haunting testimony of that incident:

[O]n Monday the 22d August 1831 a number of negroes, say between 40 and 50, came to the house of [Waller] mounted on horseback and armed with guns . . . and other weapons—[Waller] and all his family attempted to make their escape and [Waller] did make his escape but did not proceed far from his house before he hid himself in sight of the house where he could see nearly all things that transpired at the house—That [Waller] saw the prisoner Daniel [and] two other negroes . . . named Aaron and Sam . . . go into a log house where [Waller's] wife . . . and a small girl . . . had attempted to secrete themselves—[Waller] saw the negroes come out of the house and the prisoner Daniel had [his] wife's . . . chain in his hand— . . . the witness then made for a swamp further from the house and was pursued by two of the negroes but they did not overtake him After the negroes had left the [Waller's] house [Waller] returned to the house and found his wife and the small girl were murdered as well as many other members of his family murdered and an infant child mortally wounded who died the Wednesday evening following.⁶³

At Waller's house, Turner gathered two more recruits, Davy and Alfred.⁶⁴

The rebels then moved on to William Williams's home, where they killed four people, then to Jacob Williams's house, where they killed five.⁶⁵ Close to noon they reached Rebecca Vaughan's house,

James Turner) (on file with the Library of Virginia, Southampton County Wills, Will Book 10, at 347).

61. Southampton County Court Records, *supra* note 45, at 183 (testimony of Hark that Moses joined voluntarily).

62. *See, e.g., id.* at 177–78 (describing Daniel's trial).

63. *Id.* at 177–78. Since Aaron was never tried, presumably he died in the rebellion. Waller provided important eyewitness testimony in several other cases. *See id.* at 192–93, 221–23.

64. *See* Parramore, *supra* note 43, at 64; *see also* Petition from Levi Waller to the Gen. Assembly of Va., Cnty. of Southampton (Dec. 12, 1831) (asking compensation for Alfred) (on file with the Library of Virginia, Southampton County, Petitions to the Legislature, Reel 184).

65. *See* GRAY, *supra* note 41, at 319–20; Parramore, *supra* note 43, at 64.

where they killed her and her son.⁶⁶ Fifty-eight white people were dead or dying at this point.⁶⁷

The balance of the killing would be of the rebels and people suspected of cooperating with them.⁶⁸ As the rebels roamed the countryside, the white community was mobilizing a response. As the rebels were on the road to Jerusalem, the county seat of Southampton, they met a small band of the local militia.⁶⁹ At a brief skirmish, some of the rebels died and others trickled away.⁷⁰ Apparently, over the course of the late afternoon, Turner tried to rally his forces.⁷¹ The rebels spent the night at the slave quarters on Major Thomas Ridley's property, located to the west of Jerusalem.⁷² The rebels may have hoped to recruit some of Ridley's estimated seventy-nine slaves.⁷³ They may also have had friends at Ridley's property.⁷⁴ The rebels spent much of the evening trying to rally the forces who seemed to be wandering off.⁷⁵ Meanwhile, the forces opposing them gathered strength and numbers.⁷⁶

The next morning at about dawn, the rebels were on the move again.⁷⁷ The rebellion unraveled at the house of Dr. Blunt.⁷⁸ The approximately twenty-five remaining rebels attacked the house while Dr. Blunt and others returned fire.⁷⁹ Some accounts report that some of Blunt's thirty-six or so slaves⁸⁰ joined in Dr. Blunt's defense of the house.⁸¹ The attack was repulsed; some of the rebels were captured,

66. See Parramore, *supra* note 43, at 64.

67. *Id.* at 71.

68. See *id.* at 64–71.

69. See *id.* at 65–66.

70. See *id.* at 66.

71. See *id.* at 66–67. For instance, the slave Moses, whom the rebels had recruited from Thomas Barrow, was seen on a horse at Rebecca Vaughan's estate in the early evening as some rebels came up and coerced him into re-joining them. See Southampton County Court Records, *supra* note 45, at 182–83 (describing the testimony of a slave, Delsy, during the trial of Moses).

72. See Parramore, *supra* note 43, at 67.

73. *Id.*

74. See GRAY, *supra* note 41, at 315; Southampton County Tax Records, 1831, Second Book, at 21 (1831) [hereinafter Southampton County Tax Records] (on file with the Library of Virginia, Personal Property Tax Records, Southampton County, 1822–1836, Reel 323). Three of Ridley's slaves were tried after the rebellion; two of them, Curtis and Stephen, were convicted. See GRAY, *supra* note 41, at 320.

75. See GRAY, *supra* note 41, at 315.

76. See Parramore, *supra* note 43, at 64–71.

77. *Id.* at 67.

78. See *id.*

79. See *id.*

80. See Southampton County Tax Records, *supra* note 74, at 4.

81. See Parramore, *supra* note 43, at 67.

notably, the leader Hark.⁸² Those rebels who remained intact as a group retreated to another house, and there, they scattered.⁸³ Many tried to blend back into plantation life,⁸⁴ while perhaps a few others sought recruits.⁸⁵ Nat and a few others went into hiding.⁸⁶ Late in the day on Tuesday, Nat gave orders to the only two people still with him—Jacob and another slave named Nat—to go out, collect the people who had been with them from the beginning—Henry, Sam, Nelson, and Hark—and regroup at the Cabin Pond.⁸⁷ No one ever showed up.⁸⁸ The rebellion was at an end, but the violence was not. Turner eluded capture until October 30th.⁸⁹ He was delivered to jail in Jerusalem the next day; Thomas R. Gray, a local lawyer who represented several of the Turner rebels, subsequently began to take his statement.⁹⁰ Levi Waller and Samuel Trezvant provided testimony about the rebellion and Turner's confession at the trial on November 5th.⁹¹ The outcome was never in doubt.⁹² Six days later, on November 11, 1831, Turner was executed.⁹³

82. Hark, sometimes known as "Captain Moore," was also captured at Dr. Blunt's house. See Southampton County Court Records, *supra* note 45, at 192 (testimony of Levi Waller and Thomas Ridley); see also *Southampton Affair*, RICHMOND CONST. WHIG, Sept. 3, 1831, reprinted in THE SOUTHAMPTON SLAVE REVOLT OF 1831: A COMPILATION OF SOURCE MATERIAL, *supra* note 41, at 66, 67–68 (discussing Hark's injury at Dr. Blunt's house). Overseer Shadrach Futrell testified that Moses was part of the attack on Dr. Blunt's house and that he was captured about fifteen minutes after the attack began. See Southampton County Court Records, *supra* note 45, at 182.

83. See Parramore, *supra* note 43, at 67.

84. See Southampton County Court Records, *supra* note 45, at 199–200 (testimony that Nathan was put in jail in Greenville as a runaway).

85. These efforts, however, were unsuccessful. See, e.g., *id.* at 227 (testimony that several free people tried to recruit others and also threatened more violence).

86. See GRAY, *supra* note 41, at 315.

87. See Parramore, *supra* note 43, at 67–68.

88. See GRAY, *supra* note 41, at 315.

89. See David F. Allmendinger, *The Construction of the Confessions of Nat Turner*, in NAT TURNER: A SLAVE REBELLION IN HISTORY AND MEMORY, *supra* note 43, at 24.

90. See *id.*

91. See Southampton County Court Records, *supra* note 45, at 221, 222.

92. *The Murderer's Doom*, FAYETTEVILLE OBSERVER (Fayetteville, N.C.), Nov. 16, 1831, at 3 ("Nat Turner was tried at Jerusalem on Saturday last, and sentenced, of course, to be hung.")

93. NAT TURNER: A SLAVE REBELLION IN HISTORY AND MEMORY, *supra* note 43, at 8. The court, however, was not quite through. Ben, a slave owned by Benjamin Blunt, was tried on November 21st and found guilty of conspiracy. See Southampton County Court Records, *supra* note 45, at 223–27. Ben was the last slave tried for the rebellion. See Southampton County Court Records, *supra* note 45, at 245. Several free men and one apprentice were also tried by the Southampton Circuit Superior Court in April 1832. See Southampton County Court Order Book No. 4, 1831–1841, at 21 (Apr. 4, 1832) [hereinafter Southampton County Order Book] (trial of Barry Newsome) (on file with the Library of Virginia, Southampton Microfilm 189); *id.* (trial of Isham Turner on April 4);

In the immediate aftermath, suspected rebels were on the loose, trying to escape altogether or to blend back into Southampton society.⁹⁴ The militia roamed the countryside, rounded up suspects, and tortured—or outright killed—them.⁹⁵ The accounts of the immediate violence used to put down the rebellion were horrific. One North Carolina correspondent wrote to his sister in early September acknowledging that

if the conduct of the blacks was outrageous, that of the whites was most barbarous towards many of those who were arrested, for instance, they burnt off the foot of a negro whom they had taken into [custody] on suspicion & found at last that he was innocent. They had one of the ears cut off of another (who had to be sure been guilty of murdering his master in a most barbarous manner) & after rubbing the wound with sand, they tied him on a horse, had the horse mounted and rode, & then turned loose into the woods. Certainly this negro deserved to be punished in the most severe manner warranted by civilized society, but this Indian like treatment casts a great reflection on the troops by whom it was authorised.⁹⁶

In October, Halifax's *Roanoke Advocate* printed a letter from a volunteer troop in the Murfreesborough, North Carolina, militia that provides a detailed look at the violence the day after the rebellion ended.⁹⁷ The troop arrived in Southampton about sunset on the day the rebellion ended.⁹⁸ The next morning, they set out to find the remaining rebels.⁹⁹ One detachment captured a boy and three men:

id. at 22 (trial of Exum Artist, acquitted on April 5, 1832); *id.* at 24–25 (trial of Thomas Haithcock, acquitted on April 5). One free man, Bill Artis, had been found dead. See Southampton County Court Records, *supra* note 45, at 75. They were each charged with aiding in the rebellion. See Southampton County Order Book, *supra*, at 21–22, 24–25. Three were found not guilty. See *id.* Berry Newsome, an apprentice, was found guilty. See *id.* at 21. Although the court's order book records only the verdict, not the evidence in Newsome's trial, see *id.*, there is a hint of the evidence in the case of another slave, Hardy, heard on September 7th. One slave testified that Berry Newsome had remarked on the Monday of the rebellion that he would get his master before night. See Southampton County Court Records, *supra* note 45, at 202. Thus concluded the trials immediately associated with Nat Turner.

94. See Southampton County Court Records, *supra* note 45, at 199–200, 227.

95. See, e.g., Parramore, *supra* note 43, at 68.

96. Letter from George W. Mordecai to Rachel Mordecai Lazarus (Sept. 1831) (on file with the Wilson Library, University of North Carolina at Chapel Hill, in the George W. Mordecai Papers, #522).

97. See *To the Citizens of Southampton County, Virginia*, ROANOKE ADVOC., Sept. 28, 1831.

98. *Id.*

99. See *id.*

“[t]he boy they carried alive to Cross Keys; they shot the three men in a field near Mrs. Whitehead’s,” the militia explained.¹⁰⁰ Then they took twenty-three dollars and a gold watch from the men they had just killed.¹⁰¹ Another detachment was present at Mrs. Whitehead’s house when a rebel was captured and confessed.¹⁰² He was, they reported, immediately shot by several Southampton residents.¹⁰³

There were other reports of similar vigilante action. For instance, General Eppes, the leader of the troops sent from Richmond to take charge of Southampton, pleaded for the end of violence with the statement that “acts of barbarity and cruelty are never looked upon but with horror by any but savages.”¹⁰⁴ He threatened prosecution for any further vigilante action and observed that such violence put into jeopardy prosecutions “and in every instance must be attended with the total loss . . . of the value of the property; whereas, if preserved, and delivered to the civil authority, a public execution, in presence of thousands, will demonstrate a power of the law, and preserve the right of property.”¹⁰⁵

C. *The Aftermath: Petitions for Compensation*

How many suspected rebels were killed in the process of putting down the rebellion and its immediate aftermath remains unclear. Though many make much higher estimates,¹⁰⁶ the evidence suggests twenty-five to forty.¹⁰⁷ We know that at least ten were killed without trial because, in November and December 1831, six slaveowners petitioned the Virginia legislature to ask for compensation for a total of ten slaves who were killed during the rebellion and in the days immediately following.¹⁰⁸ The petitions—as well as the legislature’s

100. *Id.*

101. *See id.*

102. *See id.*

103. *Id.*

104. *Domestic Tranquility Restored*, RICHMOND ENQUIRER, Sept. 6, 1831, at 2 (letter issued by F.M. Boykin on behalf of General Eppes).

105. *Id.*

106. *See, e.g.*, NAT TURNER: A SLAVE REBELLION IN HISTORY AND MEMORY, *supra* note 43, at xi (estimating that perhaps 120 were killed without trial as part of putting down the rebellion and in its wake).

107. *See, e.g.*, *Southampton Affair*, *supra* note 82, at 69 (estimating that twenty-five to forty slaves were killed during the rebellion and aftermath).

108. *See* Petition of Peter Edwards to the Gen. Assembly of Va., Cnty. of Southampton (circa 1831) (on file with the Library of Virginia, Southampton County, Petitions to the Legislature, Reel 184, Box 234); Petition of the Estate of Elizabeth Turner to the Gen. Assembly of Va., Cnty. of Southampton (circa 1831) (on file with the Library of Virginia, Southampton County, Petitions to the Legislature, Reel 184, Box 234); Petition of Richard Porter to the Gen. Assembly of Va., Cnty. of Southampton (circa 1831) (on file with the

response—reveal a lot about the notions of justice and public responsibility. They also provide important and under-utilized evidence of the rebellion and its immediate aftermath because they reveal how confused and violent the militia response was to the rebellion and they provide a lower bound on the number of slaves killed.¹⁰⁹

Abraham Peete, a leader of the Southampton militia, wrote that he came upon Levi Waller's slave Alfred, a blacksmith, and "not having an opportunity to secure him otherwise he was disabled by cutting the large tendon just above the heel in each leg."¹¹⁰ Shortly afterwards the Greenville Dragoons, a militia company, came upon him and shot him.¹¹¹ Levi Waller recalled in his petition for compensation for Alfred that the Greenville Dragoons who found him "deemed that his immediate execution would operate as a beneficial example to the other insurgents—many of whom were still

Library of Virginia, Southampton County, Petitions to the Legislature, Reel 184, Box 234); Petition of Piety Reese to the Gen. Assembly of Va., Cnty. of Southampton (circa 1831) (on file with the Library of Virginia, Southampton County, Petitions to the Legislature, Reel 184, Box 234); Petition of Levi Waller to the Gen. Assembly of Va., Cnty. of Southampton (circa 1831) (on file with the Library of Virginia, Southampton County, Petitions to the Legislature, Reel 184, Box 234).

109. In addition to the ten slaves for whom there were petitions for compensation, two of the original conspirators, Henry and Will, seem to have died in the rebellion, for neither were tried. See GRAY, *supra* note 41, at 320–21. In addition, Elizabeth Turner's slave, Sam, was never tried, though he was mentioned in the indictment of Jack and Shadrach as a rebel. See *Commonwealth v. Jack and Shadrach* (Oct. 17, 1831) [hereinafter *Indictment of Jack and Shadrach*] (on file with the Library of Virginia, Southampton County Judgments—Commonwealth Causes Ended, Nat Turner Insurrection, 1831 Aug. 31–1831 Nov. 21, Reel 382). Slave Marmaduke was reported captured. See *Extract of a Letter from a Senior Editor*, CONSTITUTIONAL WHIG, Aug. 29, 1831, reprinted in THE SOUTHAMPTON SLAVE REVOLT OF 1831: A COMPILATION OF SOURCE MATERIAL, *supra* note 41, at 50, 52. Slaves Tom and Nelson were reported killed. *Id.* at 49. Finally, Charlotte, a slave owned by Nathaniel Francis, was reportedly killed by Francis. See WILLIAM SIDNEY DREWRY, THE SOUTHAMPTON INSURRECTION 85 (Johnson Publ'g Co. 1968) (1900). That is a total of sixteen killed without a trial. Additionally, the free man Billy Artis seems to have committed suicide rather than be captured. See CONSTITUTIONAL WHIG, Sept. 6, 1831, reprinted in THE SOUTHAMPTON SLAVE REVOLT OF 1831: A COMPILATION OF SOURCE MATERIAL, *supra* note 41, at 72–73. Patrick Breen argues persuasively that the numbers were likely on the lower end of the estimates. See Breen, *supra* note 21, at 162.

110. Affidavit of Abraham Peete (Nov. 22, 1831) (attached to Levi Waller's petition) (on file with the Library of Virginia, Southampton County Petitions to the Legislature, Reel 184, Box 234, Folder 79).

111. Affidavit of Thomas Porter (undated, circa 1831) (on file with the Library of Virginia, Southampton County, Petitions to the Legislature, Reel 184, Box 234, Folder 79). William Sidney Drewry tells a somewhat different story; he has Levi Waller bandaging Alfred (whom he calls Albert) when the dragoons arrived. See DREWRY, *supra* note 109, at 64.

in arms and unsubdued.”¹¹² Perhaps it was Alfred whose head was then placed on a pole as a warning to others. To this day, that road bears the name “Blackhead Signpost Road.”¹¹³

Joseph Joiner, a captain of the Southampton militia, provided an affidavit about the circumstances surrounding the death of several of Peter Edwards’s slaves. Edwards brought one of his slaves, James, to the militia with a request that Joiner prevent James from “being shot, if [he] could. [He] immediately tied him and placed him against the side of the house, when a party rushed up and shot him. He fell dead at my feet.”¹¹⁴ In another case the militia mistakenly killed Jordan, a slave owned by Thomas Fitzhugh’s widow, who had fought alongside Dr. Blunt and against the rebels.¹¹⁵ On the Tuesday evening of Jordan’s death, there was a rumor that the rebels were returning to Dr. Blunt’s house.¹¹⁶ Peete, a leader of the local militia, testified, “[S]uch was the confusion that by accident a young man by the name of Harris fired and killed Fitzhugh’s negro man.”¹¹⁷

The remaining seven suspected rebels whose owners petitioned for compensation were killed in the search for rebels over the next several days.¹¹⁸ On Wednesday, August 24th, the day after the rebellion had ended, Sampson Reese and John Barnes saw Elizabeth Turner’s slave, Jordan, shot and killed.¹¹⁹ The next day, the militia was at Peter Edwards’s house, searching for his slave, Nelson, and heard that he was in Edwards’s orchard, but they did not find him.¹²⁰ On returning to the house, they came across Edwards’s slave Austin,

112. Petition of Levi Waller, *supra* note 108.

113. See Vincent Harding, *Symptoms of Liberty and Blackhead Signposts: David Walker and Nat Turner*, in NAT TURNER: A SLAVERY REBELLION IN HISTORY AND MEMORY, *supra* note 43, at 79, 102.

114. Affidavit of Joseph Joiner (circa 1831) (attached to Peter Edwards’s petition) (on file with the Library of Virginia, Southampton County Petitions to the Legislature, Reel 184, Box 234, Folder 79).

115. See Affidavit of Abraham Peete, *supra* note 110.

116. *Id.*

117. *Id.*

118. See Petition of Peter Edwards to the Gen. Assembly of Va., *supra* note 108; Petition of the Estate of Elizabeth Turner to the Gen. Assembly of Va., *supra* note 108; Petition of Richard Porter to the Gen. Assembly of Va., *supra* note 108; Petition of Piety Reese to the Gen. Assembly of Va., *supra* note 108; Petition of Levi Waller to the Gen. Assembly of Va., *supra* note 108.

119. Affidavit of Sampson Reese and John H. Barnes (Dec. 19, 1831) (attached to Elizabeth Turner’s Estate’s Petition) (on file with the Library of Virginia, Southampton County Petitions to the Legislature, Reel 184, Box 234, Folder 79).

120. Affidavit of John Womack (Nov. 21, 1831) (attached to Peter Edwards’s Petition) (on file with the Library of Virginia, Southampton County Petitions to the Legislature, Reel 184, Box 234, Folder 79).

“standing in the yard by himself perfectly defenseless.”¹²¹ One of the militia “shot him down instantly.”¹²² Shortly afterwards the militia came upon Nelson, and as Nelson retreated, the militia fired and killed him.¹²³ Lest there be any doubt of the guilt, Levi Waller provided a brief affidavit that recited, “James, Austin, and Nelson were at his house with the other insurgents, at the time [his] family were [sic] massacred, and he saw Nelson knock one of the family’s brains out with the butt of his musket.”¹²⁴ On Friday, August 26th, several men saw one of Piety Reese’s slaves shot.¹²⁵

The petitions have other important uses beyond providing the number of people killed; they reveal the arguments used to appeal to the legislature’s sympathy for compensation.¹²⁶ Several petitions—using identical wording—first appealed to the general sense of justice and property:

The people of Virginia have at all times been renowned for a generous sympathy with individual suffering and he feels assured that there is not a man among them who would not rather impose a small tax upon himself than that an innocent person should suffer such a heavy loss of property.¹²⁷

The petitioners then turned to history, arguing that such compensation was well-established policy of the state.¹²⁸ They referred specifically to the legislature’s ancient practice, stretching

121. *Id.*

122. *Id.*

123. Affidavit of Joseph Joiner, *supra* note 114.

124. Affidavit of Levi Waller, *supra* note 108.

125. Affidavit of Harwell Harris, Harry Moon, and Richard Moore (Dec. 19, 1831) (attached to Piety Reese’s petition) (on file with the Library of Virginia, Southampton County Petitions to the Legislature, Reel 184, Box 234, Folder 79). Piety Reese’s petition, which was submitted on December 29, 1831, purports to be signed by her. *See* Petition of Piety Reese, *supra* note 108. It must have been signed by an executor, for she was killed in the rebellion and her will was probated on October 17, 1831. *See* Will of Piety Reese, Cnty. of Southampton (Jan. 26, 1831) (on file with the Library of Virginia, Southampton County Wills, Will Book 10, at 346).

126. As such they reveal the arguments that petitioners thought might be useful, and in particular the combination of history, philosophy, and law that framed pre-Civil War moral and political thought. *See* Alfred L. Brophy, *Reason and Sentiment: The Moral Worlds and Modes of Reasoning of Antebellum Jurists*, 79 B.U. L. REV. 1161, 1169–84 (1999) (reviewing PETER KARSTEN, *HEART VERSUS HEAD: JUDGE-MADE LAW IN NINETEENTH CENTURY AMERICA* (1997) and discussing pre-Civil War moral philosophy).

127. Petition of Peter Edwards, *supra* note 108; Petition of Richard Porter, *supra* note 108.

128. *See, e.g.*, Petition of Peter Edwards, *supra* note 108; Petition of Richard Porter, *supra* note 108.

back to the seventeenth century, of compensating slaveowners whose slaves were killed by the sheriff to make the case for compensation.¹²⁹ Moreover, it made no sense to hold the slaveowner liable for the acts of rebellion or to expect the slaveowner to look to the people who killed the slave for compensation, for no jury “would award damages against persons that they might think were acting under a sense of duty and with a view to the public safety.”¹³⁰ Other petitioners were more direct. For instance, Piety Reese simply stated that “a negro boy of hers nearly grown” had “joined the insurgents and was killed subsequently . . . without the intervention of any legal trial.”¹³¹ This meant that Reese would have to bear the loss unless she received compensation from the legislature.¹³² In the end, the legislature denied all of the petitions.¹³³

129. Petition of Peter Edwards, *supra* note 108; Petition of Richard Porter, *supra* note 108.

130. Edwards’s petition continues: “Such of the slaves as were killed in pursuit your petitioner presumes were rightly slain and where the evidence of guilt was clear those that were captured would certainly have paid at the gallows . . .” Petition of Peter Edwards, *supra* note 108. Porter had a slightly different conclusion. See Petition of Richard Porter, *supra* note 108. The widow of a man who was killed in the rebellion, Thomas Fitzhugh, asked for compensation for a slave who was mistakenly killed, on the principle that the government provided compensation for damage during war. Mrs. Fitzhugh prayed to be

indemnified for the loss of property sustained . . . in war—which upon general principles, your petitioners are advised, has uniformly been recognized by our government in a spirit of equity, as just as it is humane,—a war in this instance tho’ limited in the extent of its ravages & undertaking—carrying with it all the horrors invariably incident to those of servile character.

Petition of Thomas Fitzhugh’s Widow to the Gen. Assembly of Va., County of Southampton (Dec. 1831) (on file with the Library of Virginia, Southampton County, Petitions to the Legislature, Reel 184, Box 234, Folder 79).

131. Petition of Piety Reese, *supra* note 108. A similar statement appeared in the petition on behalf of Elizabeth Turner’s estate:

Jordan united himself with the band of insurgents, which lately arose in the County of Southampton, and was one of those concerned in the perpetration of their horrible scenes which there occurred . . . [H]e was shot by the white persons who happily suppressed that insurrection, but without any legal trial before a court of law, so that your petitioner will sustain the entire loss of his value, to which they would of course have been entitled, had his death been adjudged in the regular mode

Petition of the Estate of Elizabeth Turner, *supra* note 108.

132. See Petition of the Estate of Elizabeth Turner, *supra* note 108.

133. The legislature also denied a petition from neighboring Greenville County by the operator of a public house, Mary Powell, who housed and fed about thirty people for five days. Petition of Mary B. Powell to the Gen. Assembly of Va., Cnty. of Greenville (Dec. 1831) (on file with the Library of Virginia, Greenville County, Petitions to the Legislature, Reel 184).

Those petitions remain useful in that they collectively provide a lower bound of ten on the number of slaves killed during the rebellion and its immediate aftermath.¹³⁴ It is certainly possible that a substantial number of other owners whose slaves were killed in the rebellion and in its immediate aftermath failed to petition for relief, perhaps because they had a sense that relief was futile, they thought they should bear the losses themselves, or they were unable to find people who would provide affidavits about the circumstances of the slaves' deaths.¹³⁵ For instance, Nathaniel Francis did not petition for either of his slaves who died in the rebellion and its immediate aftermath.¹³⁶ He sought no compensation for his slave, Will, who was a leader of the rebellion and apparently died during it, for he was never tried; nor did Francis seek compensation for the slave Charlotte whom he allegedly killed himself.¹³⁷ However, the lack of petitions may very well suggest something else: that a small number of slaves died in the process of the rebellion, and in its wake, through extra-legal means.

D. The Interpretation of the Rebellion

Running alongside the violence was an inquiry into the motives for the rebellion. Once motives were assigned, there could be a better sense of how to respond. Many slaveowners had a good idea already of the reasons for rebellion—the enslaved people had been stirred by talk of abolitionists and control over slaves had been too loose. They were quick to assign blame without inspecting the slave system as a cause. But one correspondent was more introspective. Rachel Lazarus, a young woman with relatives in Raleigh, asked whether the impetus was the desire for freedom or bloodlust: “I know not whether to ascribe [Turner’s rebellion] to the evil inherent in man, or the powerful influence [of] that noble principle the love of freedom,” Lazarus wrote from Wilmington, North Carolina, at the end of

134. See, e.g., *supra* note 118 and accompanying text.

135. Even Levi Waller’s petition acknowledged that he did not know who had killed his slave, Alfred, but he had two affidavits that gave additional details on what happened. See Petition of Levi Waller, *supra* note 108.

136. See Boney, *supra* note 54, at 453.

137. *Id.*

September.¹³⁸ What Lazarus did know was that though peace had been restored, the fear of slave rebellion would continue.¹³⁹

The relative importance of abolitionists, ideas of freedom, and baser motives of violence as impetus for the rebellion remains unclear. There was widespread fear and belief that the desire for freedom was propagated in pulpits and via the press.¹⁴⁰ In September 1831, for instance, anti-slavery activist Sherlock Gregory sent from Albany, New York, a circular to postmasters in North Carolina and Virginia that emphasized the Declaration of Independence's promise of freedom.¹⁴¹ Perhaps such ideas were then whispered between family members and spread along the Roanoke River.¹⁴²

138. Letter from Rachel Lazarus to My Dear Friend [Maria Edgeworth] (Sept. 29, 1831) (on file with the Wilson Library, University of North Carolina at Chapel Hill, in the Mordecai Family Papers, Box 10, Folder 126).

139. "What can be more dreary than a state of security thus purchased? What more painful than the consciousness of being served by those who regard us as oppressors & wait but the opportunity to shake off the yoke," Lazarus wondered to her correspondent in England. *Id.* Maria Edgeworth, Lazarus's correspondent, had a somewhat different take on the rebellion based on newspaper accounts she received in England. She believed that the march of progress had set too many radical ideas in motion. She wrote:

The instructors of the people do not seem to consider sufficiently that it is not sufficient or rather it is too much to set the intellect marching unless they clearly know and can direct to what good purpose it is marching—to give power without the certain and good direction of that power is most dangerous either in mechanics or education—or legislation.

Letter from Maria Edgeworth to Mrs. Lazarus (Nov. 4, 1831) (typescript copy on file with the Wilson Library, University of North Carolina at Chapel Hill, in the Mordecai Family Papers, #847, Box 10, Folder 125).

140. See FRENCH, *supra* note 39, at 53–54; Letter from J. Borland to Governor Montfort Stokes (Sept. 18, 1831) (suggesting that there were widespread sentiments of insurrection and that a Baptist preacher set the rebellion in motion at a funeral sermon) (on file with North Carolina State Archives, in 2 Montfort Stokes Papers, 313, 314); Letter from E.P. Guion to Thomas Ruffin (Aug. 28, 1831) ("[N]o dout [sic] that these very Slaves would have Remained quiet but for this fanatic Black that has excited them to this diabolical deed . . ."), *reprinted in* 2 THE PAPERS OF THOMAS RUFFIN 45 (J.G. de Roulhac Hamilton ed., Edwards & Broughton Printing Co. 1973) (1918).

141. Letter from George Chancellor to John Floyd (Sept. 29, 1831) (on file with the Library of Virginia, Reel 5391, Box 14; another copy of the handbill, dated September 18, 1831, is in on file with the North Carolina State Archives, in 2 Montfort Stokes Papers). Governor Floyd's "Slave and Free Negro Letterbook" collected samples of abolitionist literature, including *Minutes and Proceedings of the First Annual Convention of the People of Colour* (1831), David Walker's *Appeal*, *supra* note 35, and William Garrison's *An Address Delivered Before the Free People of Color in Philadelphia, New York, and Other Cities* (1831). See FRENCH, *supra* note 39, at 53.

North Carolinians feared slave literacy, and by the time of Nat Turner, North Carolina had already taken steps to limit slaves from learning to read and write. See *An Act to Prevent All Persons from Teaching Slaves to Read or Write, The Use of Figures Excepted*, ch. 6, 1830–31 N.C. Sess. Laws 11. The North Carolina legislature subsequently limited the ability of African Americans to serve as preachers. See *An Act for the Better*

While the state government took action to control North Carolina's enslaved people, white North Carolinians continued to fear the possibility of slave rebellion. Isaiah H. Spencer wrote at the end of September to the governor to report that his county was

satisfied there [was] danger and the Justice ha[d] ordered the Colonel to call all the militia out to keep Guard. The Colonel ha[d] obeyed orders and ha[d] commanded the Guards to travel all night long and to whip all slaves which they [caught] off their owners [sic] plantations without a pass from his or her owner.¹⁴³

However, Spencer worried this would not be enough, for so many slaves had passes from their owners: “[W]hat good can or does the guard do [when] there is [sic] slaves in the lower part of this county that has wives in the upper part which can and does carry the news there and so on threw [sic] the whole state[?]”¹⁴⁴

The problem was that religion and the press had been mobilized in support of rebellion.¹⁴⁵ The grim conclusion amongst the white population was that the enslaved population could be intimidated into submission.¹⁴⁶ Closely linked to the religious sentiments was the printing press, which had generated David Walker's *Appeal*.¹⁴⁷ One legislator, Bryan Triland, wrote to North Carolina Governor Montfort Stokes asking for a copy of Walker's *Appeal*, which would reveal the radical ideas that slaves were reading:

Regulation of the Conduct of Negroes, Slaves and Free Persons of Color, ch. 4, 1831–32 N.C. Sess. Laws 7 (prohibiting enslaved people from preaching to groups of slaves).

142. Letter from Salon Borland to R.C. Borland (Aug. 31, 1831) (“It is thought that what we most want here are arms, that efficient guards may be kept near the Southampton line in order to cut off all communication between the infected neighborhoods and us . . .”) (on file with North Carolina State Archives, 2 Montfort Stokes Papers, at 259).

143. Letter from Isaiah H. Spencer to Governor Montfort Stokes (Sept. 20, 1831) (on file with North Carolina State Archives, in 2 Montfort Stokes Papers).

144. *Id.* Some historians point to evidence that hints at a far-reaching conspiracy. See, e.g., Douglas R. Egerton, *Nat Turner in a Hemispheric Context*, in *NAT TURNER: A SLAVE REBELLION IN HISTORY AND MEMORY*, *supra* note 43, at 134, 137. But the evidence indicates that the rebellion was local in nature. See Anthony E. Kaye, *Neighborhoods and Nat Turner: The Making of a Slave Rebel and the Unmaking of a Slave Rebellion*, 27 *J. EARLY REPUBLIC* 705, 705 (2007).

145. Letter from Salon Borland to R.C. Borland, *supra* note 142 (“Religion has been brought to their aid. Their leaders, who you know are preachers, have convinced many of them that to die in the cause in which they are engaged affords them a passport to heaven—many have said so when about to be put to death.”).

146. See CHARLES IRONS, *THE ORIGINS OF PROSLAVERY CHRISTIANITY: WHITE AND BLACK EVANGELICALS IN COLONIAL AND ANTEBELLUM VIRGINIA 133–68* (2008); Letter from J. Borland to His Excellency 4–5 (Sept. 18, 1831) (on file with the North Carolina State Archives, in 2 Montfort Stokes Papers, 314–15).

147. WALKER, *supra* note 35.

I have been assailed in my last Electioneering campaign in relation to my votes as to Education of slaves & I have often spoken of this pamphlet & as I have been called on to produce it is the reason why I make this request, in order that I may make my word good also to endeavor to prove to some . . . that their ideas as to slaves are founded on false philanthropy . . . [F]or I fear it will be Long, Long, before we can rid ourselves of this Evil . . .¹⁴⁸

Just how much the printing press had been used in spreading the spirit of rebellion in Southampton remains unclear. As the trials unfolded there was no talk of ideas of freedom spread through print.¹⁴⁹

Whatever the causes of slaves' dissatisfaction, many of the slave-owning class believed that the proper response to the slaves' assertions of freedom was better control over them. For example,

148. Letter from Bryan Triland to Governor Montfort Stokes (Sept. 3, 1831) (on file with North Carolina State Archives, in 2 Montfort Stokes Papers 277); see Louis P. Masur, *Nat Turner and Sectional Crisis*, in NAT TURNER: A SLAVE REBELLION IN HISTORY AND MEMORY, *supra* note 43, at 148, 150–52; *Incendiary Publications*, RALEIGH REG. & N.C. GAZETTE, Sept. 22, 1831, at 3 (complaining of circulation of *The Liberator* in North Carolina and attributing Southampton rebellion to David Walker's *Appeal*, *supra* note 35).

149. Instead, testimony related to the violence witnessed by whites, *e.g.*, Southampton County Court Records, *supra* note 45, at 177–78, 191, 192, 198 (reciting Levi Waller's eyewitness testimony about the defendants at his house), and slaves, *e.g.*, *id.* at 185 (testimony of Hubbard that Davy was with rebels who murdered Caty Whitehead and testimony of Moses who said Davy was not with the rebels when they murdered Caty Whitehead and Davy was forced to join them), vague talk of freedom, revenge, or a coming rebellion, which might have been some sign of conspiracy, *see id.* at 203 (testimony of Henry that Isham told him the Saturday before the rebellion that "Capt. Nat was going to collect his company and rise and kill all the white people"); *id.* at 214 (Beck's testimony that defendants said "if the black people came they would join and help kill the white people"); *id.* at 215 (Beck's testimony that Frank said "his master had cropped him and he would be cropped before the end of the year"), insolent behavior by slaves, *see id.* at 193–94 (testimony of Cynthia that Nelson took meat from the kitchen and stepped over the bodies of Jacob Williams's family "without any manifestation of grief"); *id.* at 194 (testimony of Stephen that Nelson went with the rebels) and allegations of religious fanaticism. *See id.* at 222.

An odd, ten-page letter that purported to be from a former slave in Boston was sent to the Southampton post office shortly after the rebellion. *See* Ira Berlin, *After Nat Turner: A Letter from the North*, 55 J. NEGRO HIST. 144, 144 (1970). It threatened further violence and alluded to a network of rebels, white and black, throughout the South. *Id.* The rebels were allegedly motivated by religious sentiments, and the letter stated that there would soon be "handbills and placards" sent through the United States mail. *Id.* at 148. The letter illustrates the role that the press was perceived to play in the dissemination of abolitionist ideas, though it may have been authored by someone who wanted to stir up hatred against northern abolitionists. At least that is what the postmaster at Jerusalem thought, for he apparently wrote on it "evidently a hoax" before forwarding it to Governor Floyd in Richmond. *Id.* at 145.

George Mordecai of North Carolina wrote to his father on September 2, 1831, that he thought the violence would make white people more vigilant and black people more afraid:

I have no doubt it will have a favorable effect on both whites & blacks. The former will be hereafter more on their guard & will not extend so many unwarrantable indulgences to the slaves as their mistaken ideas of philanthropy & humanity have hitherto inclined them to do. While the latter must be now satisfied that though they may succeed in doing much private injury in particular neighborhoods, yet they can never succeed to any extent, & they may therefore be induced to submit quietly to the evils of their unfortunate condition. What a dreadful state of murder & barbarity must have been exhibited in Southampton. . . . [T]his is now as still as if nothing of the kind had occurred.¹⁵⁰

The belief that violence would quiet a growing desire for rebellion among slaves was common. One lengthy letter written from Northampton, just over the North Carolina border from Southampton County, detailed the belief in the need for extraordinary violence:

It seems necessary that very decisive and severe means should be resorted to by us, as the murders in Southampton are of such a kind as plainly to show the horrible nature and temper of our

150. Letter from George Mordecai to My Dear Father 2-3 (Sept. 2, 1831) (on file with the Wilson Library, University of North Carolina at Chapel Hill, in the Mordecai Family Papers, Series 1.2.1, Box 4, Folder 56). In fact, pro-slavery writers in the 1830s frequently painted enslaved men as savage beasts. See, e.g., Sarah N. Roth, *The Politics of the Page: Black Disfranchisement and the Image of the Savage Slave*, PA. MAG. HIST. & BIOGRAPHY, July 2010, at 209, 214. Another prominent example of this imagery of savage slaves, stirred to action by anti-slavery ideas, came from Virginia legislator James McDowell in a speech at Princeton in 1838. See James McDowell, Address Delivered Before the Alumni Association of the College of New Jersey 36 (Sept. 26, 1838). McDowell predicted that rebellion would lead to violence in response and to disunion:

For one moment—one palsied moment—a shivering and convulsive horror seizes upon the heart of millions of our people—in the next, a dreadful wrath drives on to a dreadful retribution. But if the blood of our people is ever thus to stream in our dwellings, and ooze from the very bosom of the soil that feeds us, it will cry from the ground like that of Abel for vengeance, vengeance against the brother hand that shed it, and vengeance would be had, though every drop that was left should be poured out in one anguished and dying effort to obtain it. Nothing—no nothing but heaven could prevent a people, so lashed up to frenzy by rage and suffering and wrong, from pouring back, upon the fields and firesides of the guilty, that visitation of calamity and death which had been sent to desolate their own.

internal enemy—old women—girls—boys—infants of the smallest size butchered and mangled . . . It is really requisite for some time yet to show in full force, that the blacks may have view of the power which can be speedily used against [them]. The impression must be on their fears through the medium of their eyes and bodily feelings. By reason or calculation, their minds cannot be convinced of the great disparity between them and the whites in point of power, resources, etc. They must be convinced that, they must and will be soon destroyed if their conduct makes it in the least necessary.¹⁵¹

On August 24th, the Norfolk city court received a dispatch informing it of the rebellion.¹⁵² The court wanted to “crush this movement instantly to prevent the mischief of its extension,” so it requested that the mayor write a letter to the commander of Fort Monroe requesting 150 to 200 men and a steamboat to take them to Southampton.¹⁵³ That same day, the court requested 250 to 300 stand of arms from the Navy yard and also instructed the local militia to procure another 1000 musket balls.¹⁵⁴ A few weeks later the court took steps to secure a permanent guard, to seek advice on how the militia could best protect the city, and to have United States soldiers stationed permanently in Norfolk.¹⁵⁵

The slave-owning community thus responded to the violence of the rebellion with violence and with a request for more control over slaves. The next part of the community’s response came through the local court system. The Southampton court channeled—though it did not necessarily do much to temper—the passions stirred against the rebels. As the trials of the rebels worked their way through the court in Southampton and then in neighboring counties, witnesses revealed that defendants had different levels of culpability in the rebellion. The courts sorted the defendants into those who would receive death, those who would be recommended for transportation outside the state, and those who would be returned to their owners for continued service in slavery. The vehicle of the legal system was harnessed to investigate, punish, and promote slavery. Yet, there were countervailing values in the community, where some sought more punishment and others sought less. The defense lawyers made some

151. Letter from Salon Borland to R.C. Borland, *supra* note 142.

152. See Norfolk Court Order Book, 1829–32 (Sept. 21, 1831) (on file with the Library of Virginia, Norfolk City Records, Reel 37).

153. See *id.* (Aug. 24, 1831).

154. See *id.*

155. See *id.* (Sept. 21, 1831); *id.* (Oct. 13, 1831).

efforts—perhaps more than some, but it is now difficult to tell—to limit the scope of punishment for suspected rebels.

E. *The Southampton Trials*

In addition to the immediate violence and the discussion of what to do about ideas of rebellion, Virginians turned to the technology of law to sort out what had happened and how to respond. For enslaved people accused of participating in the rebellion who survived the initial violence, there were bench trials held before a court composed of local justices of the peace, which was convened specially for the trial of the rebels.¹⁵⁶

The trials reveal the legal system's concern for restoration of order, sorting the most guilty from those with less guilt, and providing vengeance for the slave-owning community. The trials reveal the question of how (if at all) anti-slavery ideas may have conflicted with the pro-slavery forces so prevalent in tidewater Virginia in that era and the imperfect ways in which the legal system responded. The judges cast a broad net in assigning blame and ultimately sentenced people with little relation to the rebellion to death.

Because of the vigilante violence, it was difficult to sort out what really happened. This difficulty raised the possibilities that not all the guilty would be punished and that the slaveowners would lose their property. A local militia official asking for the course of law in place of extra-legal violence, pled, however, that if people were tried, “a public execution, in presence of thousands, would demonstrate the power of the law, and preserve the right of property.”¹⁵⁷

There were trials for forty-three enslaved people and five free African Americans (including one apprentice) in Southampton,¹⁵⁸ twelve slaves in Sussex,¹⁵⁹ at least four people in Greenville,¹⁶⁰ at

156. See 1 THE REVISED CODE OF VIRGINIA 428–29 (1819) (mandating trial of slaves for felonies from five to ten days after jailing before the county justices of the peace who sit as a court of Oyer and Terminer). Slaves sentenced to death had thirty days to appeal, except during insurrection. *Id.* at 429.

157. *Domestic Tranquility Restored*, RICHMOND ENQUIRER, Sept. 6, 1831, at 2 (letter issued by F.M. Boykin on behalf of General Eppes).

158. Four other slaves were charged but never brought to trial in Southampton. See Southampton County Court Records, *supra* note 45, at 184 (Jacob, charged on September 2, 1831); *id.* at 205 (Fery and Wright, charged on Sept. 7, 1831); *id.* at 212 (Joe, charged on September 20, 1831).

159. *From the Petersburg Intelligencer of Sep 16. The Late Insurrection*, REPUBLICAN STAR, Sept. 27, 1831, at 3 (reporting eight convictions in Sussex and the conviction of Christopher, a blacksmith and preacher owned by Henry Heath, in Prince George, in connection with the Southampton plot). A ninth trial in Sussex, of Ann Key's slave, Fed, resulted in a not guilty verdict. See Sussex County Court Order Book, 1827–35, at 255

least one person in Nansemond,¹⁶¹ and a free African American preacher in Norfolk.¹⁶² The records of these trials outside of Southampton and Sussex are sparse or non-existent.¹⁶³

A report published in 1831 concerned money paid by the state to compensate slaveowners whose slaves were sentenced to death or to transportation outside of the state. It is admittedly incomplete. From the available records from Southampton County, there were thirty slaves convicted and eighteen executed in Southampton; eight were convicted in Sussex and sentenced to execution; and one slave

[hereinafter Sussex County Order Book] (on file with the Library of Virginia, Reel 26). Three other slaves, Preston, Jim, and Isaac, were charged in Sussex County but had their cases transferred to Southampton County. See Southampton County Court Records, *supra* note 45, at 213–15. Jim and Isaac, both owned by Samuel Champion, were convicted. See *id.* Preston, owned by Hannah Williamson, was subsequently acquitted. See *id.* at 215.

160. See Greensville County Court Order Book 1827–32, at 432–33 (1831) [hereinafter Greensville County Order Book] (on file with the Library of Virginia, Greensville County Microfilm Reel 12); *A Statement Showing the Amount Paid from the Public Treasury, Annually, Since 1819, for Slaves Executed, Transported, and Escaped, Document* (Dec. 19, 1831), in JOURNAL OF THE HOUSE OF DELEGATES OF THE COMMONWEALTH OF VIRGINIA, BEGUN AND HELD IN THE CITY OF RICHMOND, ON MONDAY, THE FIFTH DAY OF DECEMBER, 1831, at Doc. No. 14. (Richmond, Thomas Ritchie 1831) [hereinafter JOURNAL OF THE HOUSE OF DELEGATES], available at http://books.google.com/books?id=_WJNAAAAYAAJ&dq=journal+of+the+house+of+delegates+virginia+1831-32&q=document+14#v=onepage&q=doc.%20no.%2014&f=false; see also Greensville County Order Book, *supra*, at 433 (discharging Shadrack, George, and Jeper, all owned by Meriwether Brodnax). Whether the felonies Hal, Peter, and Richard were charged with related to the insurrection is unknown. See *id.* at 432–34.

161. See *Banditti*, FAYETTEVILLE OBSERVER, Sept. 28, 1831, at 2 (estimating that thirty to forty had been examined or tried at Nansemond, but only one convicted). The state provided compensation for the slave Jack Niles who was sentenced to transportation from Nansemond. See JOURNAL OF THE HOUSE OF DELEGATES, *supra* note 160, at 9.

162. See *Grimes Acquitted*, DAILY NAT'L INTELLIGENCER, Nov. 11, 1831, at 3 (noting that a Norfolk court acquitted James Grimes, a “colored preacher” of “conspiring to rebel” in Southampton).

There were other prosecutions around the state in the wake of the Turner rebellion, but whether the prosecutions were related to the Turner rebellion in any way is unknown. See, e.g., *The Court of Spotsylvania County Has Been in Session for the Last Four Days*, RALEIGH REG., Sept. 22, 1831, at 3 (reporting that a slave had been sentenced to death on charges of planning insurrection). In fact, on September 8th, Jacob was convicted of planning insurrection on July 3, 1831. See Spotsylvania County Court Minute Book, 1829–32, at 328 (Sept. 8, 1831) (on file with the Library of Virginia, Spotsylvania County Records, Reel 53). Solomon and George were also found guilty of planning insurrection on July 3, 1831. See *id.* at 330–31. Similarly, the Norfolk Borough Court convicted an enslaved woman, Elizabeth, of poisoning a free woman of color who was renting her in December 1831. Norfolk Court Order Book, 1829–32, *supra* note 152 (Dec. 1831) (on file with the Library of Virginia, Norfolk City Records, Reel 37).

163. FRENCH, *supra* note 39, at 41 (“The limited scope of [the courts’] inquiries and the widely diffused nature of their deliberations produced a series of vignettes rather than a coherent narrative that linked events in one locale to events in another.”).

convicted from both Nansemond and Greenville, for a total of forty.¹⁶⁴

It seems the trials served the desire for retribution, as did the vigilante action before the trials began on August 31st.¹⁶⁵ The trials also separated out those who deserved punishment, established a story about what happened, assigned a role for lawyers and witnesses, and created a standard for charges and levels of culpability.¹⁶⁶ Significantly, of the forty-three slaves who went to trial in Southampton, thirteen were found not guilty.¹⁶⁷ That nearly one-third of the slaves on trial were not convicted suggests that the court made some efforts to distinguish those most culpable.

The trials also needed to address a series of questions, such as who committed murder or were otherwise actively involved in the insurrection; who had some sort of advanced knowledge of the rebellion; who had no knowledge but joined after the rebellion began; who were willing participants; and who were coerced. Much of the evidence seems to point to a small group of conspirators—Nat and six

164. See JOURNAL OF THE HOUSE OF DELEGATES, *supra* note 160, Doc. No. 14, at 9. The list of compensation for slaves convicted in 1831 is incomplete, because at least one slave, Ben, convicted in November 1831, is not listed. See Southampton County Court Records, *supra* note 45, at 223–27. Unsurprisingly the compensation was made some time after the trials. For instance, in the case of Mesheck of Greenville, who was convicted on September 10th, compensation was paid on November 22, 1831. See JOURNAL OF THE HOUSE OF DELEGATES, *supra* note 160, Doc. No. 14, at 9; Greenville County Order Book, *supra* note 160, at 433 (finding Shadrack not guilty and discharging George and Jeper); Southampton County Court Records, *supra* note 45, at 254.

165. See Parramore, *supra* note 43, at 68–71 (discussing vigilante action and trials).

166. The trial records are sketchy. There are no complete transcripts. See Southampton County Minute Book, 1830–1835, at 72–113, 116–23, available at http://www.brantleyassociation.com/southampton_project/gallery/min_bk_1830-35/index.html (basic details of charges and for those convicted, lists of the witnesses and summaries of the testimony) (on file with the Library of Virginia), reprinted in THE SOUTHAMPTON SLAVE REVOLT OF 1831: A COMPILATION OF SOURCE MATERIAL, *supra* note 41, at 177–228.

Slaves found not guilty have no summaries of testimony. Sometimes the witnesses' names are available in the subpoenas that are preserved in the "Commonwealth Causes Ended" file for the "Nat Turner Insurrection, 1831" at the Library of Virginia, Southampton County, Reel 382. There is a somewhat longer version of Ben's trial, the last slave tried for the rebellion. See Southampton County Court Records, *supra* note 45, at 223–27. That record suggests that there were once better accounts of the trial testimony, even if not much better. See *id.* Finally, there are brief notations of the trials of four free African Americans in the Southampton County Court Order Book. See Southampton County Order Book, *supra* note 93, at 21. The Sussex County trials are recorded in the Sussex County Order Book, *supra* note 159, at 248–55.

167. Those acquitted were: Tom, Southampton County Court Records, *supra* note 45, at 179; Sam, *id.* at 204–205; Jim, *id.* at 205; Bob, *id.* at 205–206; Davy, *id.*; Daniel, *id.*; Matt, *id.* at 209; Jim, *id.*; Jack, *id.* at 211; Stephen, *id.* at 212–13; Preston, *id.* at 215; Nelson, *id.* at 217; and Archer. *Id.* at 219–20.

co-conspirators who were with him that Sunday afternoon at the pond near his home.¹⁶⁸ Other slaves seemed to join when the opportunity presented itself, though many were coerced into joining.¹⁶⁹

In addition to the uncertainty about who exactly was involved in the rebellion, there were questions as to the culpability of individual slave defendants. The most culpable were known to be directly involved in the killings. The first to be tried out of this group was the slave Daniel.¹⁷⁰ Levi Waller provided eyewitness testimony about Daniel's role in the killing of Waller's wife and one of his children during the rebellion.¹⁷¹ Others participated in some way in the rebellion, though there was no evidence they had planned it. Joseph Travis's fifteen-year-old slave Moses, for example, was a key witness for the state.¹⁷² He was also charged with conspiracy and murder, and ultimately convicted for his participation in the rebellion.¹⁷³

The next level of culpability involved evidence of knowledge of the rebellion, or sympathy for rebellion in the abstract. For instance, on the Saturday before the rebellion began, Isham, a slave owned by Benjamin Edwards, spoke about a rebellion led by General Nat.¹⁷⁴ The last trial of a slave, Ben, in November 1831, involved evidence that he said there would be a war on the morning the rebellion began, perhaps an hour before news reached his farm.¹⁷⁵ Such evidence suggested that Ben had some advance knowledge of the rebellion, or perhaps merely that he had heard of it slightly before others. Ben, too, was sentenced to death.¹⁷⁶

One way of sorting through the levels of culpability, as the prosecutor in Jerusalem understood them, is to look at the charges.¹⁷⁷ Fifty slaves, four free men, and one apprentice were charged in

168. See GRAY, *supra* note 41, at 310 (discussing initial conspirators).

169. See, e.g., Southampton County Court Records, *supra* note 45, at 220–21 (discussing coercion of Moses). Rebels joined and wandered away from the rebellion. See, e.g., *id.* at 202–03 (observing that Tom Haithcock, a free man, had separated from the rebels and then was going to rejoin them). Slaves also straggled behind and searched for rebels. See *id.* at 207–08, 217–19.

170. See *id.* at 177–79.

171. See *id.*

172. See *id.* at 220–21. He testified about a number of events and at multiple stops along the rebellion, so he was clearly working with the rebels in some way.

173. See *id.* at 220–21.

174. See *id.* at 202–03.

175. See *id.* at 223.

176. See *id.*

177. See 1 REVISED CODE OF VIRGINIA, ch. 111, § 23, at 427 (1819) (detailing crime of consulting, advising, or conspiring to make insurrection).

Southampton.¹⁷⁸ Of those fifty slaves charged in Southampton, twenty-five were charged with insurrection and/or murder; that is, with direct participation in the rebellion.¹⁷⁹ Of those twenty-five, fourteen were also charged with conspiracy.¹⁸⁰ Twenty-three were charged with conspiracy alone.¹⁸¹ Two were charged with treason.¹⁸²

Seven of those fifty slaves never went to trial.¹⁸³ The two charged with treason were discharged because the court concluded that slaves could not be tried for treason.¹⁸⁴ Five others were discharged without trial, apparently because the prosecutor was satisfied that those cases did not warrant prosecution.¹⁸⁵ Four of those who never stood trial had been charged with insurrection and murder and one had been charged with conspiracy alone.¹⁸⁶ Of the four free men and one apprentice charged, one free man, Arnold Artis, was dismissed before trial. The other four were sent on for prosecution by the Southampton Circuit Superior Court in 1832.¹⁸⁷

The outcomes of the forty-three trials of slaves in Southampton are in Table 1. Of the twenty-one charged with insurrection (or murder) who stood trial, eighteen were found guilty; only three were found not guilty.¹⁸⁸ Of the eighteen who were found guilty, twelve

178. See Southampton County Court Records, *supra* note 45, at 177–223.

179. See *id.* at 177–221.

180. See *id.*

181. See, e.g., *id.* at 184 (listing charges for Jacob and Isaac).

182. William Brodnax indicted two slaves, Jack and Shadrach, for treason. See Indictment of Jack and Shadrach, *supra* note 109. They were indicted for treason on the theory that Jack and Shadrach had provided aid and comfort; the extended indictment alleged that they had given food and assistance to Davy and to Sam, slaves owned by Elizabeth Turner, and that Sam had also given them a watch and a substantial sum of money. The indictment framed this as an issue of “allegiance and fidelity” that Jack and Shadrach owed to the Commonwealth of Virginia. *Id.*

183. See Southampton County Court Records, *supra* note 45, at 189–219. One free man was also discharged before trial. See *id.* at 199.

184. *Id.* at 217. There were no more proceedings against them. See *id.* Nor was Sam ever tried; he in all likelihood had been killed as the rebellion was put down. See *id.* at 177–223.

185. The five charged but not brought to trial were Jacob, see *id.* at 189, Ferry, see *id.* at 205, Wright, see *id.* at 205, Archer, see *id.* at 205, and Joe, see *id.* at 212, 219. Thomas Gray reports that Ferry, Archer, and Joe were dismissed without trial; he does not mention Jacob or Wright. See GRAY, *supra* note 41, at 320. Gray’s list of outcomes does not always square with the court record. He reports that Solomon Parker’s slave Daniel was discharged without trial, *id.*, but the trial record reveals that he was found not guilty. See Southampton County Court Records, *supra* note 45, at 205–06.

186. See *id.* at 189 (Jacob charged with conspiracy); *id.* at 205 (Ferry, Wright, and Archer charged with insurrection and murder); *id.* at 212, 219 (Joe charged with insurrection).

187. See *supra* note 93.

188. See *infra* Table 1.

were executed, and six were recommended for transportation outside the state. These presumably were cases where the court thought that execution was too harsh a punishment.¹⁸⁹

Of those twenty-two charged with conspiracy alone who went to trial, twelve slaves were found guilty and ten not guilty.¹⁹⁰ Of the twelve, seven were executed and five were recommended for transportation outside the state.¹⁹¹ Those charged with insurrection or murder, as opposed to only conspiracy, were found guilty at a much higher rate (18 out of 21, or approximately eighty-five percent) than those charged with conspiracy only (12 out of 22, or approximately fifty-five percent).¹⁹²

Table 1				
Outcomes of Trials of Enslaved People Accused in Turner Rebellion, Southampton County, 1831				
	Guilty	Guilty/Recommend for Transportation	Not Guilty	Totals
Conspiracy Alone	7	5	10	22
Insurrection or Murder ¹⁹³	12	6	3	21
Totals	19	11	13	43

There was some eyewitness evidence from white people who witnessed violence¹⁹⁴ or saw defendants in the company of rebels.¹⁹⁵

189. 1 THE REVISED CODE OF VIRGINIA, ch. 111, § 37, at 430 (1819) (permitting governor, upon advice of the Council, to sell convicted slaves out of the state).

190. See *infra* Table 1.

191. See Southampton County Court Records, *supra* note 45, at 189–90, 198–99, 202–204, 207–09, 213–16, 220–23 (reporting the trials and outcomes of the trials for slaves Isaac, Dred, Hardy, Isham, Joe, Lucy, Jim, Isaac, Frank, Moses, Nat, and Ben).

192. See *infra* Table 1.

193. Some of the people charged with insurrection or murder were charged with conspiracy as well. Those cases have been collapsed here. In addition, Governor Floyd commuted the sentences of Jim and Isaac without recommendation by the Court. See JOURNAL OF THE HOUSE OF DELEGATES, *supra* note 160, at 9; Southampton County Court Records, *supra* note 45, at 213–15.

There was, similarly, eyewitness testimony from slaves about violence,¹⁹⁶ about traveling with rebels,¹⁹⁷ and about acting in concert with—or attempting to join—rebels.¹⁹⁸ There was also testimony from white witnesses about post-rebellion confessions¹⁹⁹ and testimony from slaves that defendants supported the idea of rebellion before it happened.²⁰⁰ Some defendants spoke in vague terms about rebellion.²⁰¹ Others made contemporaneous statements supporting rebellion.²⁰² White witnesses also testified about slaves' behavior during the rebellion, which called into question their innocence.²⁰³

Although the justices were likely too willing to convict, they were sometimes willing to acquit. The justices served a critical function of negotiating between competing considerations of the desire for vengeance, the need for punishment to terrify future rebels, and the need for some restraint in the violence. For this reason, it is unfortunate that not much is known about the justices. Details on their lives and thoughts are, indeed, hard to track down. There are scant surviving writings from even the most famous, Congressman James Trezvant.²⁰⁴ Two justices showed some anti-slavery tendencies. In the wake of the rebellion, Justice Thomas Pretlow sent some of his former slaves to Liberia.²⁰⁵ A few years later, in 1837, Justice Carr

194. See, e.g., Southampton County Court Records, *supra* note 45, at 177–79 (trial of Daniel); *id.* at 182–83 (trial of Moses); *id.* at 194–95 (trial of Davy); *id.* at 208–209 (trial of Lucy).

195. See, e.g., *id.* at 192–93 (trial of Hark); *id.* at 191 (trial of Sam); *id.* at 196–97 (trial of Nat). Similarly, during Daniel's trial, Sampson Reese, a member of the hastily assembled militia that fought with the rebels at Parker's field, testified that he saw Daniel there. See *id.* at 178.

196. See, e.g., *id.* at 180–82, 185 (reporting multiple slaves' eyewitness accounts of violence, including Hubbard's testimony about the murder of his mistress and her family's murder).

197. See, e.g., *id.* at 207 (documenting Hubbard's and Christian's testimony about seeing Nat, Davy, and other slaves together with rebels).

198. See, e.g., *id.* at 207 (documenting Hubbard's and Christian's testimony about seeing Nat, Davy, and other slaves together with rebels); *id.* at 215 (reporting Becky's conversations about joining the rebels if given the opportunity).

199. See *id.* at 186–87 (trial of Stephen); *id.* at 194–95 (trial of Davy); *id.* at 195–96 (trial of Jack).

200. See, e.g., *id.* at 202–03 (trial of Hardy); *id.* at 213–15 (trial of Jim and Isaac); *id.* at 215–16 (trial of Frank).

201. See, e.g., *id.* at 202.

202. See, e.g., *id.* at 203–04 (trial of Isham).

203. See, e.g., *id.* at 217–19 (trial of Sam).

204. See, e.g., PROCEEDINGS AND DEBATES OF THE VIRGINIA STATE CONVENTION OF 1829–1830, at 369–76, 596–98 (Richmond, Samuel Shepard & Co. 1830) (Trezvant's speech opposing universal white male suffrage for the Virginia Constitution).

205. *Unknown No Longer*, VA. HIST. SOC'Y, <http://unknownnolonger.vahistorical.org/record/78/41> (last visited May 8, 2013).

Bowers was a contributor to the American Colonization Society.²⁰⁶ But what is perhaps even more salient is that of the eighteen justices who participated in some way, seventeen were found in the 1831 Southampton tax records and all seventeen owned some human beings.²⁰⁷ For instance, of the justices who participated frequently in the trials, Justice Trezvant owned twenty-nine people over the age of twelve; Justice Orris Browne owned nine; Justice Robert Goodwyn owned twelve; Justice William Goodwyn owned sixteen; Justice Alexander Myrick owned thirteen; Justice James Massenburg owned nine; and Justice Alexander Peete owned seventeen.²⁰⁸ The justices were drawn from the slaveholding class and represented the wealthiest segment of the Southampton population. Very few people in Southampton owned more human beings than the justices overseeing these trials.²⁰⁹ The justices occupied a central place in Southampton society as among the wealthiest people in the relatively small community and as the people who exercised power over the lives of the slaves accused of rebellion.²¹⁰

F. *The Sussex Trials*

While there is good reason to think that the trials in Southampton may have resulted in the wrongful conviction of a number of slaves on the basis of flimsy evidence,²¹¹ the trials should be evaluated in comparison with the trials in neighboring Sussex County. In Sussex County there was no rebellion, yet twelve slaves were still tried for conspiracy and seditious words.²¹² Over the course of two days in September 1831, eight slaves were convicted and three

206. *Contributions*, 13 AFR. REPOSITORY & COLONIAL J. 104, 104 (1837) (noting contribution from “Dr. Carr Bowers, Southampton, Va”).

207. The judges were Jeremiah Cobb, James D. Massenburg, Alexander P. Peete, James Trezvant, Orris A. Browne, Robert Goodwyn, James W. Parker, Carr Bowers, Thomas Pretlow (formerly Quaker; opposed secession), Samuel Blow Hines, Dr. William B. Goodwyn (Democrat), B. Drewry, Benjamin Griffin, J. Claud, Alexander Myrick, J. Clayton, B. Drew, J. Barnes, J. Darden, and Richard Urquhart (a physician educated at Jefferson Medical College). See Southampton County Tax Records, *supra* note 74.

208. See *id.* at 24 (Trezvant); *id.* at 17 (Brown); *id.* at 12 (Goodwyn); *id.* at 17 (Myrick); *id.* at [no page number] (Massenburg); *id.* at 20 (Peete).

209. See *id.*

210. *Id.*

211. See, e.g., *supra* Part I.E.

212. See Sussex County Order Book, *supra* note 159, at 248.

were sent to Southampton for trial.²¹³ Only one was found not guilty.²¹⁴

In Sussex County the fear of long-simmering slave rebellion was stoked by the testimony of a young enslaved woman. That testimony suggested slaves had been seriously discussing rebellion for months. Yet the talk was also vague. Despite this, in what seems to be a panic of fear, borne perhaps by the ambiguity of what was happening, the court found the testimony credible enough to sustain convictions. The Sussex court was willing to convict on weaker evidence than the Southampton court. That puts into contrast the two neighboring counties and invites questions about the effect of an actual rebellion with real rebels on how judges saw claims that slaves threatened sedition. It was better, it seems, to have been a defendant who had expressed vague dissatisfaction with slavery in Southampton than in Sussex.

The trials in Sussex all relied heavily on testimony from a young enslaved girl, Beck, who was owned by Solomon D. Parker of Southampton.²¹⁵ As her mistress, Mrs. Parker, fled from Southampton to Sussex, Beck heard Mrs. Parker wonder aloud if any of her slaves were involved.²¹⁶ In fact, Beck testified that she had heard slaves talking back in May 1831 at a meeting of the Raccoon Swamp Baptist Church about their desire to rebel.²¹⁷ At first, her accusations were rejected by the Southampton court,²¹⁸ but in neighboring Sussex, such testimony was enough to convict.

213. See *id.* at 249–56 (noting that slaves Ned, Solomon, Nicholas, Shadrack, Boson, Frank, Booker, and Squire were convicted; Preston, Jim, and Isaac were transferred to Southampton County).

214. See *id.* at 255 (noting that a slave named Fed was found not guilty).

215. See *id.* at 250 (Boson's and Squire's trials); *id.* at 253 (trial of Solomon, Booker and Nicholas).

216. See *id.* at 250; *id.* at 251 (trial of Boson). William Goodwyn's family owned sixty-one slaves over age twelve in 1831. See Southampton County Tax Records, *supra* note 74, at Folder B, page 12.

217. See Randolph Ferguson Scully, "I Come Here Before You Did and I Shall Not Go Away": Race, Gender, and Evangelical Community on the Eve of the Nat Turner Rebellion, 27 J. EARLY REPUBLIC 661, 661–84 (2007) (discussing Raccoon Swamp Meeting Church and the Turner rebellion).

218. See *The Southampton Tragedy*, RICHMOND ENQUIRER, Sept. 30, 1831, reprinted in Southampton County Court Records, *supra* note 45, at 99 (reporting that Beck's testimony was rejected in Southampton). The letter, which Henry Irving Tragle misidentified as published on September 27, 1831, was likely written by William C. Parker. See Parramore, *supra* note 43, at 34–35. Scot French's extraordinary research uncovered the skepticism of Beck's testimony, and he has written extensively about the problems with it. See FRENCH, *supra* note 39, at 37–42, 61–63. Beck's testimony against Jim and Isaac during their trials in Southampton on September 22nd related to events the Monday

On September 2nd, in the Sussex court, one slave, Ned, was charged with having made “seditious speeches.”²¹⁹ Later that day, eleven other slaves were charged with “[h]aving uttered, said, and professed seditious words and threats to conspire and rebel and to assist and aid the blacks to murder the whites of this Commonwealth.”²²⁰ Beck testified in the first trial, on September 12th, that the slaves, Frank and Boson, said at the aforementioned meeting that they were “going to join the black people to kill the white people.”²²¹ Both were convicted and sentenced to execution.²²² Ned’s trial followed.²²³ The sole evidence against him came from a slave, Abram, who reported that Ned had told other slaves that the white people should beware.²²⁴ Despite the jailer’s testimony that Abram had originally said he was asleep and thus unable to hear Ned, the court convicted Ned and sentenced him to death.²²⁵

While Beck’s testimony against Frank and Boson had been about what she had heard months before at the Raccoon Meeting, her testimony against the next defendant, Squire, was related to events during the rebellion.²²⁶ When word of the rebellion reached the home of Beck’s owners, the Parkers, Mrs. Parker fled with Beck to Sussex to the plantation of her friend, Mrs. Goodwyn.²²⁷ While there, Beck had a conversation with Squire on the day that the Richmond troops arrived in Sussex County.²²⁸ Beck’s testimony claimed that when the rebels arrived in Sussex, “[Squire] meant to join them, for he did not mean to do George Goodwyn [his owner] much more good, that the white people need not come here . . . for they were not safe.”²²⁹ More witnesses testified for Squire’s defense—including his owner, George Goodwyn, and a white man who may have been Goodwyn’s overseer—than for any other defendant in either county,²³⁰ and

before the rebellion began. See Southampton County Court Records, *supra* note 45, at 214.

219. Sussex County Order Book, *supra* note 159, at 248.

220. *Id.*

221. *Id.* at 251 (trial of Frank); *id.* at 252 (trial of Boson).

222. See *id.* at 249.

223. See *id.*

224. See *id.*

225. *Id.*

226. See *id.* at 251 (trial of Squire).

227. See *id.*

228. See *id.*

229. See *id.* The defense challenged whether Squire had ever been in the kitchen, where Beck said she heard him. *Id.* Several slaves, including Squire’s mother and sister, testified that Squire had not come to the kitchen during the day. See *id.*

230. See *id.*

together, they called into question the facts surrounding Beck's testimony.²³¹ Yet, Squire too was convicted and sentenced to death, though apparently the governor commuted his sentence to transportation outside of the state.²³² Thus concluded the first day of trials: four defendants tried, four sentenced to execution.

On the next day, September 13th, there were eight trials. First, slaves Solomon, Nicholas, and Booker, who were also at the May meeting, went on trial together.²³³ Beck reported that when Nicholas and Booker said at the Raccoon Meeting the previous May they would join the negroes to murder the white people, Solomon said he would "join too, for God damn, the white people they had been reigning long enough."²³⁴ Again Beck's testimony was the center of the prosecution's case.²³⁵

Skepticism of Beck's testimony was brought to the Sussex trials by an unexpected source: the prosecutor in Southampton County, Meriwether Brodnax,²³⁶ who switched sides to serve as defense attorney for Solomon, Nicholas, and Booker.²³⁷ Because of his familiarity with the evidence of rebellion, Meriwether Brodnax was a good choice for defense counsel. For instance, Brodnax mentioned during the trial that he had prosecuted several slaves in Southampton on Beck's testimony, and that she had said she had no conversation at the May meeting of the Raccoon Swamp Church "by anybody related to the insurrection."²³⁸ But in addition to his familiarity with the evidence, Brodnax may also have had a more personal reason to be skeptical of allegations that Sussex County slaves were engaged in conspiracy, for on September 10th, one of his slaves was acquitted of conspiracy by the Greensville County Court, and charges against two of his others were dismissed.²³⁹ Despite Brodnax's efforts, Solomon,

231. *See id.*

232. *See* JOURNAL OF THE HOUSE OF DELEGATES, *supra* note 160, at 9 (listing Squire as transported); Sussex County Order Book, *supra* note 159, at 251–52.

233. *See* Sussex County Order Book, *supra* note 159, at 253.

234. *Id.*

235. *See id.* at 253–54.

236. *See, e.g.*, Southampton County Court Records, *supra* note 45, at 191.

237. *See id.* at 177 (noting Meriwether Brodnax as an attorney for the Commonwealth); Sussex County Order Book, *supra* note 159, at 251.

238. Sussex County Order Book, *supra* note 159, at 254. The slaves he unsuccessfully prosecuted with Beck's testimony were likely Bob, Davy, and Daniel, on September 7th. *See* Southampton County Court Records, *supra* note 45, at 205–06.

239. Greensville County Order Book, *supra* note 160, at 433 (acquitting Shadrach and dismissing prosecutions of George and Jepe).

Nicholas, and Booker were all convicted and sentenced to death on the basis of Beck's testimony.²⁴⁰

The court then heard the cases of two slaves, Jim and Isaac, and divided on their guilt.²⁴¹ The testimony is not preserved because the court did not find them guilty, but the court unanimously agreed that their crimes, if any, occurred in Southampton.²⁴² When they were tried in Southampton Beck was the lead witness and her testimony led to convictions in both those cases.²⁴³

The final two slaves tried were both owned by Ann Key.²⁴⁴ Apparently the prosecution's primary case against one of the slaves, Fed, was the suspicion—expressed multiple times by the family of his owners during the rebellion—that he would join the rebellion if given the opportunity.²⁴⁵ Yet, Fed was the only one of the twelve released by the Sussex County court, since he apparently never said anything about rebelling.²⁴⁶ Unfortunately, Fed's supposed desire to support the rebellion led another slave, Shadrack, to make an ill advised statement. When Ann Key's slave, Jenny, repeated such speculation about Fed, Shadrack said in the presence of Beck, "I would join them, too."²⁴⁷ On her testimony, Shadrack was convicted and sentenced to execution, though the governor apparently commuted his sentence to transportation outside the state.²⁴⁸

With that, the Sussex trials concluded: twelve slaves tried, eight of whom were sentenced to death, in two days. The Sussex court sent people with seemingly no connection to the events in Southampton to their deaths on the basis of another slave's questionable testimony. Beck's testimony—to the extent it is credible—suggests that the slaves were dissatisfied and spoke openly of rebellion, but the extent of pre-planning is still an open question. In the wake of such realization of the power of the idea of freedom, idle speculation that slaves participated in the rebellion was enough to receive a death sentence in Sussex. Three were transferred to Southampton for

240. See Sussex County Order Book, *supra* note 159, at 254.

241. See *id.* at 255.

242. See *id.*

243. See Southampton County Court Records, *supra* note 45, at 213–15 (trial of Jim and Isaac). The Sussex court also transferred the next case, that of Preston, to Southampton because his offenses, if any, occurred in Southampton rather than Sussex. *Id.* at 255. He was found not guilty in Southampton. Southampton County Court Records, *supra* note 45, at 215.

244. See Sussex County Order Book, *supra* note 159, at 255.

245. See *id.*

246. See *id.*

247. See *id.*

248. See *id.*; JOURNAL OF THE HOUSE OF DELEGATES, *supra* note 160, at 9.

further proceedings.²⁴⁹ One was returned to his owner, who feared that he would rebel at the first opportunity.²⁵⁰ The court ordered the clerk to compile a summary of these results and send them to Governor Floyd in Richmond.²⁵¹ These trials were not, however, the end of the story for Sussex County; this Article returns to Sussex at its conclusion to revisit how the slave-owning community repented its hasty actions a few years later.²⁵²

G. *The Defense Lawyers*

So far this Article has focused on the actions and ideas of the slave-owning community in response to rebellion. The story has been one of conflict within the slave-owning community over the extent of control that should be exercised over enslaved people and how much—if any—talk of discontent with slavery Virginia’s jurists and slaveowners would allow. But there were others who tried to provide some balance to the proceedings: the defense lawyers.

Defense lawyers occupy an odd place in the story of the legal system of slavery, for they were both part of the system—people who had to operate within the rules established by the legislature and the local courts and who were certainly beneficiaries of slavery—and they were also trying to limit the punishment that slaves faced for allegations of rebelling. While much has been written about the competing considerations that judges faced within the system of slavery, less has been written about the position of lawyers for the enslaved.²⁵³ The trials in Southampton and Sussex invite some further discussion of the ideas of the defense lawyers and the role they seem to have played in trying to change the trajectory of the prosecutions and the narrative that emerged about the rebellion. The defense lawyers ranged from two brothers who seemed to share some skepticism of slavery even as they represented the interests of Virginian slave society, to a young lawyer struggling with the morality of slavery, to another lawyer struggling with financial problems whose primary concern may have been telling the story of the rebellion.

249. See Sussex County Order Book, *supra* note 159, at 255.

250. See *id.* at 255–56 (discussing belief that Fed, who was acquitted, would join the rebels if they came to Sussex County).

251. See Sussex County Order Book, *supra* note 159, at 256.

252. See *infra* Part IV.

253. See, e.g., Jason A. Gillmer, *Lawyers and Slaves: A Remarkable Case of Representation from the Antebellum South*, 1 U. MIAMI RACE & SOC. JUST. L. REV. 37, 47 (2011).

1. William Henry Brodnax

The thirty-two-year-old Southampton prosecutor, Meriwether Brodnax, may have been a surprising choice as a defense lawyer in Sussex, but so was his brother, William Henry Brodnax, who also defended four slaves in Sussex County.²⁵⁴ William Henry Brodnax was one of the leaders of the militia sent to restore order in Southampton.²⁵⁵ However, by the time Brodnax's troops reached the scene of the rebellion, local forces had already put it down.²⁵⁶ Brodnax and his forces found an enraged community bent on vigilante justice. In the spring of 1832, as he was speaking in the Virginia House of Delegates about the steps the legislature should take regarding slavery, Brodnax recalled the violence he found in Southampton and predicted further violence against the African American community if there were ever another rebellion.²⁵⁷ In response to these threats of violence, Brodnax advanced a plan of colonization of free African Americans, though he opposed a plan of emancipation.²⁵⁸

Brodnax acknowledged the evils of slavery: "That slavery in Virginia is an evil, and a transcendent evil, it would be idle . . . for any human being to doubt or deny. It is a mildew which has blighted in its course every region it has touched, from the creation of the world."²⁵⁹ He also thought that the "spirit of the age" demanded a full exploration of the possibilities regarding slavery,²⁶⁰ but that investigation would show that Virginians had a strong moral and legal claim to their slaves.²⁶¹ Maybe nothing could be done to end slavery without causing more harm than slavery presented.²⁶² Moreover, Brodnax advanced three principles that seemed destined to slow the movement for emancipation: first, that any slaves who were freed

254. See *Brodnax Family*, 21 WM. & MARY Q. 265, 266 (1913) (listing William Henry Brodnax and Meriwether Brodnax as issue of William Brodnax). See *supra* note 238–40 and accompanying text (discussing Meriwether Brodnax as defense lawyer in Sussex County).

255. See William H. Brodnax, On the Policy of the State with Respect to Its Colored Population (Jan. 19, 1832), in THE SPEECH OF WILLIAM H. BRODNAX, IN THE HOUSE OF DELEGATES OF VIRGINIA, ON THE POLICY OF THE STATE WITH RESPECT TO ITS COLORED POPULATION 12 (Richmond, Thomas W. White 1832).

256. *Id.*

257. *Id.*

258. See *id.* at 12, 34–35.

259. *Id.* at 12.

260. *Id.* at 9.

261. See *id.* at 10, 21–22.

262. See *id.* at 11.

would need to leave Virginia;²⁶³ second, that nothing should be done to weaken the “security of private property” or diminish the value of slaves;²⁶⁴ and third, that no slaves should be taken from slaveowners without their consent or “ample compensation.”²⁶⁵

Brodnax also responded to those who thought that slaves might someday successfully rebel. He acknowledged that “a few misguided fanatics, like Nat Turner—or reckless infatuated desperadoes, like his followers”—might start a rebellion.²⁶⁶ But that would result, Brodnax felt sure, in the annihilation of the slaves.²⁶⁷ Brodnax proposed a plan to encourage free African Americans to leave the state for Liberia and then, perhaps, to pay owners at least a portion of the value of their slaves if they would emancipate them for colonization in Africa.²⁶⁸ Brodnax’s plan rested on a desire to end slavery, but not quickly or in a way that benefitted the enslaved.

These ideas seem to be deep-seated in Brodnax’s background. In 1810, Brodnax wrote a speech, perhaps for delivery to a Hampden-Sydney Literary Society, that evaluated Bartolomé de Las Casas’s defense of the Indians of South America that “the laws of humanity yield to those of policy.”²⁶⁹ Brodnax defended the idea that humanity ought to trump considerations of policy, an idea in decline by the nineteenth century.²⁷⁰ Brodnax remarked, for instance, “The idea that the Europeans had a right (as some people gravely maintain) to conquer the Indians with a view to their civilization & initiation into the religion is treated by Vattel with that just contempt and ridicule which it merits.”²⁷¹ Perhaps the impetus to represent the slaves resided, then, in Brodnax’s concern for humanity. In his January 1832

263. *See id.* at 12.

264. *Id.*

265. *Id.*

266. *Id.* at 25.

267. *See id.*

268. *See id.* at 29–30, 34, 36.

269. William Brodnax, Unnamed Speech (date unknown, circa 1811) (on file with the Library of Virginia, in the William H. Brodnax Papers).

270. *See, e.g.,* Brophy, *supra* note 126, at 1171 (discussing abolitionists’ criticism of considerations of utility to the exclusion of humanity).

271. Brodnax, *supra* note 269, at 5. Brodnax had obvious talents and interests in moral philosophy and was asked to apply for a position as a law professor at the University of Virginia in 1826. The person nominating him, William Atkinson, thought him the best qualified lawyer he could imagine. And Atkinson tried to persuade Brodnax to take the position by reference to the intellectual culture of Charlottesville. Atkinson emphasized that, as a professor, Brodnax “would have the further advantage of a more intellectual Society than you could enjoy almost anywhere else, in the state & your time of life.” Letter from William Atkinson to William H. Brodnax (Feb. 1, 1826) (on file with the Library of Virginia, in the William H. Brodnax Papers).

address to the Virginia legislature, he mentioned that free people were often unjustly accused and cruelly treated when there was an insurrection.²⁷² Similarly, he recalled, “[I]t was with the greatest difficulty, and at the hazard of personal popularity and esteem, that the coolest and most judicious among us could exert an influence sufficient to restrain an indiscriminate slaughter of the blacks who were suspected.”²⁷³ Brodnax desired “reason and prudence,” though he was far from supporting immediate abolition of slavery.²⁷⁴ Where one member of the House of Delegates likened the case of slaves to the freedom struggles of the Poles and French, Brodnax thought that such ideas resembled those of abolitionist “incendiaries [William Lloyd] Garrison and [David] Walker.”²⁷⁵ On the contrary, Brodnax predicted a race war and the extinction of enslaved people.²⁷⁶ This was a dire prediction, perhaps calculated more to appeal to his audience than reflect his deepest thoughts.²⁷⁷

William Brodnax was no more effective than the other lawyers in Sussex. Two of the four slaves he represented were found guilty and sentenced to execution.²⁷⁸ The other two slaves, Jim and Isaac, were accused of plotting insurrection at a Southampton resident’s estate the week before the rebellion began.²⁷⁹ The court was divided on its assessment of Jim and Isaac’s guilt in Sussex, but unanimous in its belief that they might be guilty of a crime in Southampton.²⁸⁰ Their cases were transferred to the Southampton court, where the alleged acts occurred.²⁸¹ There they were both convicted of conspiracy based on Beck’s testimony.²⁸²

272. See Brodnax, *supra* note 255, at 36; see also *id.* at 15 (opposing gradual abolition plan that might result in slaves being sold outside of the state rather than freed because “the injustice and inequality of such a system, on the African race themselves, constitutes one of its most powerful objections”).

273. *Id.* at 25.

274. *Id.* at 8.

275. *Id.* at 21.

276. See *id.* at 24–25.

277. See *id.*

278. Brodnax unsuccessfully defended Squire, who was accused of speaking in favor of the rebellion the day it happened, and Bason, who was convicted of plotting some months before at the Raccoon Swamp Church. See Sussex County Order Book, *supra* note 159, at 251–53 (Squire); *id.* at 253–54 (Bason).

279. See *id.* at 255.

280. See Southampton County Court Records, *supra* note 45, at 213–15.

281. See *id.*

282. See *id.*; Sussex County Order Book, *supra* note 159, at 255.

2. James Strange French

The leading defense lawyer was twenty-four-year-old James Strange French. He was primary trial counsel for twenty-three slaves, eight of whom were found not guilty.²⁸³ Relatively little is known about French, who was born in 1807 near Petersburg.²⁸⁴ In 1836, French published a novel set in Ohio around the time of the War of 1812, *Elkswatawa; or The Prophet of the West*.²⁸⁵ It featured a young lawyer, Richard Rolfe, who, like French, was from Petersburg and educated at William and Mary.²⁸⁶ In the preface, he explained his sympathy for Native Americans and their claim to the land.²⁸⁷ Rolfe portrayed the natives' case for land sympathetically and argued against the indiscriminate killing of them.²⁸⁸ It is tempting to read Rolfe as reflecting not just French's biography but also his thinking.²⁸⁹ Perhaps the parallels between the treatment of natives and that of the Nat Turner rebels suggest that French may have had a commitment to the rule of law that went beyond the punishment of accused rebels; it appears that he understood the claims that enslaved people had, that he understood some of the unfairness of the disproportionate punishment of slaves, and that he believed that at least the guilty should be separated from the innocent.²⁹⁰

283. See *infra* Table 2.

284. Curtis Carroll Davis, *Virginia's Unknown Novelist: The Career of J. S. French, a Southern Colonel of Parts*, 60 VA. MAG. HIST. & BIOGRAPHY 551, 555 n.13 (1952). He was educated for a while at William and Mary and then later at the University of Virginia before studying law with his relative Robert Strange in Fayetteville, North Carolina. *Id.* at 555. Two years after the trials, he authored a biography of David Crockett, *Sketches and Eccentricities of Col. David Crockett, of West Tennessee* (New York, J. & J. Harper 1833), which is an early example of the local color literature that so dominated southern literature in the antebellum era.

285. See JAMES S. FRENCH, *ELKSWATAWA; OR, THE PROPHET OF THE WEST: A TALE OF THE FRONTIER* (New York, Harper & Bros. 1836).

286. See *id.* at 39.

287. See *id.* at v. In a likely continuing parallel with French, Rolfe was more concerned with justice than attending to the business of clients in a Virginia county court, so he became disillusioned with the practice of law. See *id.* at 40–41. So he went west to seek his fortune as a hunter and there encountered Native Americans led by Tecumseh who were angered by their loss of land and in revolt against the white settlers. See *id.* at 72.

288. Edgar Allen Poe criticized the novel. See *Elkswatawa*, 2 S. LITERARY MESSENGER 589, 591–92 (Aug. 1836). French's other published work was *A Memorial to the Legislature of Virginia on Railways* (Richmond, Ritchies & Dunnivant 1852).

289. Here French (through Rolfe) shows sympathy for the natives and for the unjust ways they were treated. The Greenville, Ohio treaty deprived them of land; they turn over natives who are accused of killing white people, but the white people who kill them are never prosecuted. See 1 FRENCH, *supra* note 285, at 18–20.

290. Later in life French had some fame as a practitioner of mesmerism. How, if at all, those ideas related to his jurisprudence awaits further study. See Davis, *supra* note 284, at 570–73; J.S. French, *Mesmerism*, RICHMOND ENQUIRER, Sept. 30, 1842, at 2–3. One might

3. William C. Parker

William C. Parker, a thirty-nine-year-old lawyer, was lead counsel in thirteen cases, including that of Nat Turner.²⁹¹ Four of his thirteen cases (about thirty percent) resulted in a not guilty verdict.²⁹² Parker, who was a veteran of the War of 1812, took a prominent role in the defense of Jerusalem during the rebellion; he was one of the leaders of the local forces who fought the rebels at the estate of James W. Parker, one of Southampton's justices of the peace.²⁹³ William Parker sent a letter to a Richmond newspaper in late August or early September that gave key details of the rebellion and spoke of a confession extorted from a slave in Surry about a general plan of insurrection.²⁹⁴

In addition to having faced the rebels at one of the two battles, Parker then served as defense counsel to many of them.²⁹⁵ A few weeks later, Parker provided a description of Turner to Governor John Floyd.²⁹⁶ Where another defense attorney argued strenuously to limit convictions, William Parker seemed in some ways to accept the possibility that the conspiracy was broad. He questioned Beck's credibility in a letter that the *Richmond Enquirer* published on September 30, 1831, and questioned whether her testimony alone, without corroboration, could be used to convict another slave.²⁹⁷ This

speculate that the fascination with mesmerism suggested an interest in reform, mysticism, and perfectionism and also unorthodox thinking. See Davis, *supra* note 284, at 570–71. Perhaps French's and Turner's ideas, see THE SOUTHAMPTON SLAVE REVOLT OF 1831: A COMPILATION OF SOURCE MATERIAL, *supra* note 41, at 309 (discussing Turner's supposed healing through laying on of hands); Southampton County Court Records, *supra* note 45, at 222 (same), were drawn from a common core of Enlightenment thought. Other elements of that Enlightenment era thought appeared in the Declaration of Independence's call for equal rights. Though Turner may not have read much beyond the Bible, and perhaps never even read David Walker's *Appeal*, he inhabited a world of ideas and possibilities that set loose ideas about freedom.

291. See Allmendinger, *supra* note 89, at 26.

292. See *infra* Table 2

293. See Allmendinger, *supra* note 89, at 26; *From the Compiler of Yesterday*, RICHMOND ENQUIRER, Aug. 30, 1831, at 3 (discussing William C. Parker's role in suppressing the rebellion, noting him as a person of "much intrepidity" and noting that forty to fifty were in jail and "[t]he courts will discriminate the innocent from the guilty").

294. William C. Parker, *The Tragedy at Southampton*, RICHMOND COMPILER, Sept. 3, 1831, reprinted in THE SOUTHAMPTON SLAVE REVOLT OF 1831: A COMPILATION OF SOURCE MATERIAL, *supra* note 41, at 59–62. David Allmendinger attributes the letter to Parker. See Allmendinger, *supra* note 89, at 29.

295. See Allmendinger, *supra* note 89, at 26.

296. Letter from William Parker to Governor John Floyd (Sept. 14, 1831), reprinted in THE SOUTHAMPTON SLAVE REVOLT OF 1831: A COMPILATION OF SOURCE MATERIAL, *supra* note 41, at 420–21.

297. See *The Southampton Tragedy*, *supra* note 218, at 3.

argument appeared again from James French some years later.²⁹⁸ Unfortunately, there is little additional evidence on which to base an assessment of Parker's ideas about the role of the legal system and slavery.

4. Thomas R. Gray

While there is some evidence that William Henry Brodnax and James Strange French had a desire to establish justice for the enslaved people they represented in the face of the contempt of the community, it is difficult to draw inferences about the motives of the other lawyers. This is particularly true for Thomas Ruffin Gray, a thirty-one-year-old attorney of uncertain financial means.²⁹⁹ He was counsel of record for only four slaves—though he is one of the best known figures after Turner himself, for Gray was the author of the famous *Confessions of Nat Turner*.³⁰⁰

298. See Letter from James S. French to Littleton Tazewell (Feb. 14, 1835) (on file with the Library of Virginia, in 2 Littleton Tazewell Executive Papers). French asked whether “a single slave by his or her evidence legally deprive another slave of life. The declaration of what shall be deemed evidence, sec 44 title ‘Slaves, Free Negroes, & Mulattoes.’” *Id.* He was referring to the Revised Code of Virginia, which provided: “That the court may take for evidence the confession of the offender, the oath of one or more credible witnesses, or such testimony of negroes or mulattoes, bond or free, with pregnant circumstances, as to them shall seem convincing.” 1 THE REVISED CODE OF VIRGINIA, ch. 111, § 44, at 431 (1819).

299. Gray's father died in September 1831 and apparently bypassed his son in favor of his granddaughter to keep assets away from Thomas Gray, Jr.'s creditors. See Will of Thomas Gray, Cnty. of Southampton (executed Sept. 7, 1831 and entered for probate on Sept. 19, 1831) [hereinafter Will of Thomas Gray] (on file with the Library of Virginia, Southampton County Wills, Will Book 10, at 343–44); *id.* (inventory of estate of Thomas R. Gray) (on file with the Library of Virginia, Southampton County Wills, Will Book 10, at 386–87).

300. See Allmendinger, *supra* note 89, at 27–28 (speculating that Gray constructed part of the story that appeared in *Confessions* through testimony from his other clients even before meeting Turner). See generally GRAY, *supra* note 41 (providing an account of the insurrection). In fact, Gray was in Washington, D.C., pursuing the publication of *Confessions* the day before Turner was executed. See JEANNINE MARIE DELOMBARD, IN THE SHADOW OF THE GALLOWS: RACE, CRIME AND AMERICAN CIVIC IDENTITY 174 (2012). Many people have turned to *Confessions* to gauge Turner's motivations, though in recent years there has been substantial skepticism about just how much they reveal about Turner. See, e.g., NAT TURNER: A SLAVE REBELLION IN HISTORY AND MEMORY, *supra* note 43, at 7–10 (“It is also likely that Gray intentionally or inadvertently organized Turner's confession so that it confirmed his own interpretation of the rebellion.”); Allmendinger, *supra* note 89, at 26–28. But see Breen, *supra* note 21, at 261–63, 265 (suggesting that *Confessions* was substantially the work of Nat Turner). Instead, the hypothesis is that the rebellion was the work of a fanatic acting more or less independently. Such an interpretation fit with the expectation of Gray's audience that the rebellion was isolated and not likely to be repeated. See, e.g., LACY K. FORD, DELIVER US FROM EVIL: THE SLAVERY QUESTION IN THE OLD SOUTH 349 (2009). Some look for evidence that the rebellion was inspired by abolitionist literature, such as David Walker's

Gray's father died in September 1831 and commanded that his estate discharge a note that Thomas Gray owed, and his will left property to Thomas's daughter as a way of keeping it out of the hands of Gray's creditors.³⁰¹ The lawyer Thomas Gray's troubled history included a fight in August 1831, just a few days before the rebellion, during a meeting of the Southampton court, for which he was prosecuted in 1832.³⁰² Two years later, Gray spoke sharply about Orris A. Browne, one of the Southampton County magistrates, which led Browne to challenge Gray to a duel and to hint that Gray might be gay.³⁰³

Though Gray represented only four slaves, they were important figures in the rebellion—Sam and Jack, who were both with Turner from the beginning; the young Moses, who was perhaps coerced into joining and provided important testimony throughout the trials against other rebels; and Davy, who joined later.³⁰⁴ Though all four were convicted, two were recommended to be transported outside of the state instead of receiving the death penalty.³⁰⁵

Gray had some praise for the court's tolerance for "listening with unwearied patience to the examination of a multitude of witnesses,

Appeal. See WALKER, *supra* note 35. Two other lawyers defended one slave each. Robert Birchett defended Ben. See Southampton County Court Records, *supra* note 45, at 227. William Boyle defended Davy. See *id.* at 195.

301. See Will of Thomas Gray, *supra* note 299.

302. See Commonwealth v. John Vick & Thomas Gray (1832) (on file with the Library of Virginia, Southampton County Court Loose Papers). Thomas's father's estate was also the subject of a suit in 1832, in which Thomas R. Gray figured prominently. See Commonwealth to the Sheriff of Southampton County (1832) (on file with the Library of Virginia, Southampton County Court Loose Papers). The conflicts seemed to continue within the community. For instance, in March 1832, Edwin Gray and his overseer, John O'Donnely, were accused of killing a slave owned by Thomas Gray's estate. See Commonwealth v. Edwin Gray & John O'Donnely (1832) (on file with the Library of Virginia, Southampton Court Loose Papers). Similarly, Peter Pope and Henry Wells were presented before a grand jury in April 1832 for threatening the life of Justice Thomas Drewry while they were at Levi Waller's home. See Commonwealth v. Peter Pope (1832) (on file with the Library of Virginia, Southampton Court Loose Papers).

303. See ORRIS A. BROWNE, IRREFRAGABLE PROOF THAT THOMAS R. GRAY, OF THE COUNTY OF SOUTHAMPTON: IS ENTIRELY DESTITUTE OF "HONOR OR HONESTY" 4 (1834) (linking Gray with Henry D. Pegram, a gambler who operated, it was alleged, a faro table in Southampton) (on file with the University of Virginia Library); THOMAS R. GRAY, TO THE PUBLIC 2-3 (1834) (discussing challenge) (on file with the Library of Virginia). There was also a suit by Samuel Butler on behalf of Joseph Jordan against Thomas Gray's father's estate. See Untitled Summons (June 5, 1830) (on file with the Library of Virginia, Southampton Court Loose Papers).

304. See Southampton County Court Records, *supra* note 45, at 185-86 (trial of Davy); *id.* at 192 (trial of Sam); *id.* at 195-98 (trial of Jack); *id.* at 220-21 (trial of Moses).

305. See *id.* at 198, 220.

and to long and elaborate arguments of counsel.”³⁰⁶ He also thought that “[t]hose who have been condemned to death and those actually shot, exceed the number attributed to the insurgents,”³⁰⁷ meaning “several innocent persons must have suffered.”³⁰⁸ Gray asked for those who had executed the innocent to be held accountable.³⁰⁹ He observed: “[T]he matter has one day to be adjudicated before an impartial judge.”³¹⁰ Later in that same article, Gray argued for restraint in the conspiracy prosecutions: “[I]f mere declarations made by slaves, relative to what they would do if Captain Nat came that way, the insurrection, being at that time suppressed, Nat’s party dispersed, and most of them shot, are to be construed into evidences of guilt, there can be no end to convictions.”³¹¹

Defense lawyers, including the Brodnaxes, French, and perhaps Parker, attempted to limit convictions and executions in the trials. Their role was to try to curb the extra-legal violence as well as court-imposed violence. The court itself occupied a precarious position in the aftermath of rebellion. It needed to extract vengeance and to reimpose control in a community where violence was so central to its continued existence. Table 2 summarizes the outcome of the cases defended by the three lawyers who represented the most clients in the Southampton trials. It divides the cases by charges and the verdicts by those found guilty and sentenced to execution, those found guilty and recommended by the court to transportation outside of the state instead of execution, and those found not guilty.

Where Robert Cover wrote eloquently in *Justice Accused* about the conflicts of judges who were anti-slavery in private but required to act in pro-slavery ways,³¹² lawyers representing slaves in the Turner trials were also constrained by the legal system. Even as they pointed out the inconsistencies in testimony, as Meriwether Brodnax did when impeaching Beck’s testimony, or showed the apparent self-interest

306. CONSTITUTIONAL WHIG, Sept. 26, 1831, reprinted in THE SOUTHAMPTON SLAVE REVOLT OF 1831: A COMPILATION OF SOURCE MATERIAL, *supra* note 41, at 90, 98. David Allmendinger attributes this letter to Gray. See Allmendinger, *supra* note 89, at 31–32.

307. Gray, *supra* note 306, at 98.

308. *Id.*

309. See *id.*

310. *Id.*

311. *Id.*

312. See ROBERT M. COVER, JUSTICE ACCUSED: ANTISLAVERY AND THE JUDICIAL PROCESS 6 (1975).

that might exist for Beck if she gave incriminating testimony against slaves, as James Strange French did, their attempts to bring some semblance of justice to the enslaved people they represented frequently failed. They could have pleaded in the newspapers for a broad interpretation of Virginia’s statute that seemed to require corroborating evidence for testimony of a slave even against another slave.³¹³ In some cases, they could have also won acquittals or a recommendation for transportation instead of execution. However, their options were rather limited, and in the end, James Strange French seems to have taken the path that the fictional anti-slavery lawyer Edward Clayton took in Stowe’s *Dred: A Tale of the Great Dismal Swamp*: he left the practice of law.³¹⁴ Unlike Clayton, who moved north, however, French first went west, then returned to practice in Southampton and later operated a hotel in Norfolk.³¹⁵ The path for the lawyer concerned for his clients was difficult when operating in a world so necessarily devoted to the pro-slavery legal order.

Lawyer/Charge	Guilty	Guilty, Transported	Not Guilty	Total
French				
Conspiracy	4	3	7	14
Insurrection or Murder	3	5	1	9
Total	7	8	8	23
Gray				

313. See *supra* note 298 (discussing French’s citation of the Revised Code of Virginia to question sufficiency of slave’s testimony against another slave); cf. *The Southampton Tragedy*, *supra* note 218, at 3 (questioning whether there was sufficient corroboration of testimony of slave witness for conviction).

314. See 2 STOWE, *supra* note 1, at 105–06 (Clayton states, “I see but too clearly now the purpose and object of the law. I cannot, therefore, as a Christian man, remain in the practice of law in a slave state. I therefore relinquish the profession, into which I have just been inducted . . .”).

315. Davis, *supra* note 284, at 570–73 (noting French’s shift from law practice to hotel keeper).

Conspiracy	0	1	0	1
Insurrection or Murder	2	1	0	3
Total	2	2	0	4
Parker				
Conspiracy	2	1	2	5
Insurrection or Murder	6	0	2	8
Total	8	1	4	13

II. THE NORTH CAROLINA ECHOES OF TURNER

Nat Turner's rebellion spurred similar violence and trials in northern and coastal North Carolina. The best known—though still rather mysterious—alleged plot of insurrection in North Carolina was that supposedly led by a slave named Dave, who was owned by Colonel Thomas Morrissey,³¹⁶ the sheriff of Sampson County in far southeastern North Carolina.³¹⁷ The sheriff's investigation of Dave was set in motion by a claim by a free person that Dave was plotting insurrection.³¹⁸ Eyewitness James Pearsall reported the torture, trial, and then extra-legal violence associated with the alleged plot³¹⁹:

Dave was committed & after *very* severe punishment crimated several others, the whole of which was taken up & whipped without mercy (some will probably yet die of the wounds) & those who were most guilty, bore the most punishment, yea some almost died before they would make a disclosure³²⁰

316. See Letter from Nathan B. Whitfield (Sept. 12, 1831) (on file with the North Carolina State Archives, in 2 Montfort Stokes Papers).

317. See Lynn Veach Sadler, *Dr. Stephen Graham's Narration of the "Duplin Insurrection": Additional Evidence of the Impact of Nat Turner*, 12 J. AM. STUD. 359, 365 (1978).

318. Letter from Jeremiah Pearsall to Samuel Langdon (Sept. 19, 1831) [hereinafter Pearsall Letter] (on file with the Wilson Library, University of North Carolina at Chapel Hill, in the Langdon, Young, and Meares Family Papers).

319. *Id.*

320. See Letter from John Farior et al. to Governor Montfort Stokes (Nov. 1831) [hereinafter Farior Letter] ("[S]everal slaves of said Wright, were severely tortured, in order to obtain further discoveries. In this stage of the business, say on the apprehension

The torture of Dave led him to implicate many others, including Jim, Jerry, and several other slaves owned by Colonel James Wright, an elderly man in Duplin County.³²¹ The total number of slaves Dave implicated, however, remains unclear. At one point, the justices of Sampson County wrote to Governor Montfort Stokes reporting that they had “testimony that [would] implicate most of the negroes in the county.”³²² There was some skepticism about the extent of the plot, but one person confidently predicted that more torture would produce more evidence, including evidence that the plot stretched as far as the coast.³²³

Once Dave and Jim were convicted, however, vigilantes in Duplin County took action, and when a rumor spread that an army of slaves was coming to free Dave and Jim, they were summarily executed.³²⁴ James Pearsall wrote of the rumor, the violence that followed, and his hope that the violence would quiet further plans for slave rebellion:

When we first got the news of the negro army we heard they were marching directly to our Jail to rescue Dave & Jim who was [sic] designated as Genl & Col—but a company who were there would have prevented the rescue, for they were immediately brought out, shot down, their heads severed from their bodies, & elevated in the air. This affair has caused rigid treatment to negroes generally, & I flatter myself it will do good—hoping that it may, I quit the subject & pass on.³²⁵

The execution and beheadings of Dave and Jim were not, however, the end of the matter. There was substantial debate in the community over what to do with Jerry, another slave owned by James Wright,

of Dave & Jim Byrd, it was mentioned by some of those, who were most active in detecting the conspiracy, that they should act in a summary way, dealing out punishment according to circumstances: it was thus Jim Byrd was first punished, & then several other slaves belonging to the said James Wright, were punished . . .”) (on file with North Carolina State Archives).

321. *Id.*

322. Letter from William Blanks et al. to Governor Montfort Stokes (Sept. 13, 1831) (on file with the North Carolina State Archives, in 2 Montfort Stokes Papers, at 286).

323. One person wrote: “I don’t think the plot was known to many, tho I have *no* doubt but several of the Wilmington negroes are deeply concerned, & if they could receive such treatment as some got here they would disclose from one hundred to three hundred cracks of the paddle.” Pearsall Letter, *supra* note 318.

324. See Sadler, *supra* note 317, at 366 (account of Dr. Stephen Graham).

325. Pearsall Letter, *supra* note 318.

whom many thought should be pardoned.³²⁶ Jerry's owner provided an affidavit detailing how Jerry was coerced into confessing:

[A]fter his other Negroes had been taken and severely whipped and sent home, that if the white people [told Jerry] to acknowledge anything that [Jerry] thought would . . . please them . . . of the other Negroes that had been beaten and sent home, and . . . that they told, and that would lighten his whipping or punishment, consequently he did acknowledge as the deponent understands, which was the cause of his condemnation without any other evidence³²⁷

Others in the community were just as adamant that Jerry should be executed. Their petition emphasized the danger of the plot and the difficulty of determining who was involved:

The undersigned suggest to Your Excellency that the conspiracy has been among the deepest laid, best designed & widest spread attempts at insurrection ever attempted in the Southern States. That so well trained & organized, have been the actors in it that under the forms of Law probably not one in fifty of the guilty can or will be detected or punished; and the undersigned humbly conceive, that under such circumstances, to extend the right of pardon to said Jerry would be an abuse of the constitutional privilege of the Executive.³²⁸

Those who opposed a pardon acknowledged that Jerry was convicted using only his testimony (for Dave and Jim, who might have provided testimony against him, had been lynched before Jerry's trial).³²⁹ The son of Jerry's aged owner petitioned for leniency for Jerry, as he acknowledged the high passions on all sides:

I am fully aware . . . that this is a subject of no little importance; it has produced unparalleled excitement throughout the state. And I am by no means disposed to speak lightly of those who view Jerry's case different from myself The laws of North Carolina in relation to slaves are by no

326. Compare Farior Letter, *supra* note 320 (stating that there could be no doubt as to Jerry's guilt), with Affidavit of James Wright (Nov. 16, 1831) (describing how Jerry was coerced into confessing) (on file with North Carolina State Archives).

327. Affidavit of James Wright, *supra* note 326.

328. Farior Letter, *supra* note 320.

329. *Id.* ("[Petitioners] have no doubt of the propriety of the conviction or of the guilt of Jerry, and although his conviction may have been founded on his own confessions, yet from the statements of Dave (the property of Col Morrisey) and of Jim (the property of Col James Wright) who were among the ringleaders of the conspiracy & both of who were put to death before the trial of Jerry, there cannot exist a rational doubt on the minds of any man as to the guilt of Jerry.")

means sanguinary. They afford them adequate protection, but [in order] to prepare for a judicious application of them, called for more ability of mind and body than my aged [father possessed].³³⁰

Moreover, an October petition from jurors stated another reason for leniency: Jerry's importance as property. Jerry was "no inconsiderable part" of the personal property that was given (or perhaps more accurately, would be given) to the widowed daughter of Colonel Wright.³³¹

The violence in Duplin and Sampson County is one of the best known episodes in the wake of Nat Turner, but it was far from the only episode. For instance, in late August, a black man who was suspected of heading toward Southampton, perhaps in support of the rebellion, was summarily executed, and his head put on a pole in Murfreesborough, North Carolina.³³² Such was the state of mind of people that a week or two after the rebellion, when a wagon driver stopped for the night on the outskirts of Halifax and began to play his drum, "the warlike sounds was [sic] heard, & the alarm was in an instant spread through the town, that a body of negroes 500 strong were rapidly marching down the Halifax Road."³³³

Even in communities where there were no suspicions of rebellion, there was fear. One common response from county militia leaders was to ask the governor in Raleigh to send weapons.³³⁴ The

330. Letter from Wright (Dec. 5, 1831) (on file with the North Carolina State Archives).

331. Farior Letter, *supra* note 320.

332. Letter from Robert Parker to Rebecca Maur (Aug. 29, 1831) ("Last Thursday there was a negro from Ahosky Ridge, heading his course towards Southampton, [sic] and undertook to pass through the Boro' and when he had got as far through town[,] . . . there were about 8 or 10 shots fired at him by the Guard, they cut off his head, stuck it on a pole and planted the pole at the cross streets near old Mr. Rea's store house; his body was thrown in the bottom, between Mr. [illegible]'s office and the academy.") (on file with Wilson Library Kimberly Collection, University of North Carolina at Chapel Hill).

333. Letter to Rachel Lazarus (Oct. 9, 1831) (on file with Wilson Library, University of North Carolina at Chapel Hill, in the Mordecai Family Papers, Series 1.4, Box 4, Folder 56); *see also* Letter from Rachel Lazarus to Ellen Mordecai (Oct. 9, 1831) (discussing accusations against two Lazarus slaves for plotting rebellion) (on file with Wilson Library, University of North Carolina at Chapel Hill, in the Mordecai Family Papers, Series 1.4, Box 4, Folder 56).

334. *See, e.g.*, Petition from Edward Morecock to Governor Montfort Stokes (Sept. 21, 1831) (requesting commissions for officers of a militia cavalry and noting that "[t]he great excitement occasioned by the late insurrection of negroes in Virginia has created considerable alarm and apprehension in this section of the state, particularly near the margin of Roanoke, where the black population and free persons of Color are very numerous, and to which we are much exposed without the aid of such companies well armed") (on file with the North Carolina State Archives, in 2 Montfort Stokes Papers, at

recently passed militia law limited the amount of muskets that could be provided to sixty-five stand.³³⁵

What may be even more interesting to the Chapel Hill community is the University of North Carolina's response. Students formed a voluntary guard, then petitioned Governor Stokes for muskets. One student, for example, wrote to Governor Stokes:

The truly alarming attitude of a few . . . of our black population has reached our ears, and as you may well suppose has created no little excitement amongst us. . . . We do not know that we need apprehend danger in this quarter from insurrection, but the thing is possible, and in the event of an attack, we should in our present situation, destitute of weapons, be wholly unprepared to resist them. From these considerations we feel the imperious necessity of taking some step to equip ourselves with arms. We therefore have thought it expedient to request your Excellency to furnish us with sixty stand of arms, or more if practicable.³³⁶

University President Joseph Caldwell separately wrote to promise the governor that "measures will be taken agreeably to any directions that may be given . . . to inspect the muskets once a day, and deposit

334); Letter from Robert Williams to Montfort Stokes (Sept. 29, 1831) (asking for arms and noting that the recent militia law limiting the number of arms provided to counties "did not intend to include volunteer companies, which before provided that those companies should be furnished without limitation of the number of arms") (on file with the North Carolina State Archives, in 2 Montfort Stokes Papers, at 346).

335. An Act Concerning the Distribution of the Public Arms to the Police Authorities and to Provide in Case of Insurrection, ch. 21, 1830-31 N.C. Sess. Laws. 22, 22-23; *see also* An Act for the Distribution of a Part of the Public Arms Among the Several Counties of the State, and for the Preservation and Accounting for the Same, ch. 45, 1830-31 N.C. Sess. Laws. 34, 34 (allocating arms to particular counties varying in number from sixty-five to one hundred and sixty stand); An Act Pointing Out the Mode Whereby the Militia of this State Shall Hereafter Be Called into Service in Cases of Insurrection or Invasion, and Outlawed and Runaway Negroes, ch. 32, 1830-31 N.C. Sess. Laws 28, 28 ("[I]n all cases of insurrection among slaves or free persons of colour . . . it shall be the duty of the commanding officer forthwith to . . . make such contracts as he may think most to the interest of the State, for the requisite ammunition . . .").

336. Letter from Joseph B. Southell et al. to Governor Montfort Stokes (Sept. 17, 1831) (requesting arms and promising that "[w]e pledge ourselves that proper care shall be taken with the arms (should we obtain them)") (on file with the North Carolina State Archives, in 2 Montfort Stokes Papers at 307); *see also* Charles Edward Morris, *Panic and Reprisal: Reaction in North Carolina to the Nat Turner Insurrection, 1831*, 62 N.C. HIST. REV. 29, 52 (1985) (discussing appeal for weapons in Chapel Hill).

them when not in use, in a place of safe keeping, so that they may be preserved free from damage.”³³⁷

Only a couple of days before, the University’s Philanthropic Literary Society wrote to New Bern lawyer and soon-to-be North Carolina Supreme Court Justice William Gaston, asking him to deliver a speech at the following June commencement.³³⁸ Gaston was skeptical of the concern about slave rebellion³³⁹ and had a history of working against slavery. For instance, as a lawyer, Gaston drafted trusts for Quakers to assist them in holding slaves in a state of quasi-freedom.³⁴⁰

337. Letter from Joseph Caldwell, Chancellor, Univ. of N.C., to Governor Stokes (Sept. 17, 1831) (on file with the N.C. State Archives, in 2 Montfort Stokes Papers 305).

338. In fact, the Philanthropic Society issued their invitation on September 13, 1831. See Letter from Philanthropic Soc’y to William Gaston (Sept. 15, 1831) (on file with Wilson Library Southern Historical Collection, University of North Carolina at Chapel Hill, in the Gaston Papers).

339. Gaston had written his son-in-law in New York City, Ronald Donaldson, to assure him that everything was tranquil in New Bern and that rumors of revolt were exaggerated. See Letter from William Gaston to Robert Donaldson (Aug. 14, 1831) (“Yesterday evening a story reached this place that a parcel of black banditti had committed murders in Duplin County—and a great excitement was created.”) (on file with Wilson Library Southern Historical Collection, University of North Carolina at Chapel Hill, in the Gaston Papers); see also *Another Insurrection!*, RALEIGH REG., Sept. 15, 1831, at 3 (reporting on supposed insurrection in Duplin); *Court of Oyer and Terminer*, FAYETTEVILLE OBSERVER (Fayetteville, N.C.), Nov. 16, 1831, at 1 (reporting on the progress of trials for slaves participating in the rebellion in Franklin County, the Edenton Circuit and Northampton County); *Disturbances Among the Slaves!*, RALEIGH REG., Sept. 22, 1831, at 2 (reporting relative tranquility and some of the events in Duplin).

340. See *Green v. Lane*, 43 N.C. (8 Ired. Eq.) 70, 74–76, 78 (1851) (interpreting will for quasi-freedom written by William Gaston in 1831); see also *Thompson v. Newlin*, 38 N.C. (3 Ired. Eq.) 338, 341 (1844) (discussing trust for quasi-freedom); *Sorrey v. Bright*, 21 N.C. (1 Dev. & Bat. Eq.) 113, 115 (1835) (invalidating a trust for quasi-freedom or quasi-slavery). One correspondent asked Gaston for more help in supporting colonization. Letter from Lewis Williams to William Gaston (Dec. 21, 1831) (asking Gaston to support a request that the North Carolina legislature ask for congressional help in funding the colonization) (on file with the Wilson Library Southern Historical Collection, University of North Carolina at Chapel Hill, in the Gaston Papers); see also Letter from Henry to William Gaston (Dec. 30, 1831) (observing that some had interpreted Gaston as the “free negro” candidate and commenting that he had said “it was human frailty to see objects through the medium of our interests and affection”) (on file with Wilson Library Southern Historical Collection, University of North Carolina at Chapel Hill, in the Gaston Papers). Colonization was a very moderate anti-slavery measure, to be sure, but perhaps all that could be supported in the South at the time. One anonymous reader sent a three-page circular attacking the American Colonization Society as too ineffectual on the cause of abolition to North Carolina Governor Montfort Stokes with the note, “Read, Ponder, & Beware.” Presumably that was someone who feared that abolitionist sentiments in the North were running far ahead of the American Colonization Society. See William Lloyd Garrison, *A Voice from England!* (Oct. 1, 1831) (on file with North Carolina State Archives, 2 Montfort Stokes Papers 348). Though some opposed the American

In June 1832, he delivered an address at the University of North Carolina's graduation criticizing slavery, declaring it "the worst evil that afflicts the Southern part of our Confederacy."³⁴¹ His criticism was pointed, even if brief: slavery "stifles industry and represses enterprize [sic]—it is fatal to economy and providence—it discourages skill—impairs our strength as a community, and poisons morals at the fountain head."³⁴² Then he praised the Constitution for its role in promotion of the public good: though politicians may

destroy [the country's] harmony, impair its character, render its institutions unstable, pervert the public mind, and deprave the public morals[,] . . . [s]till we have that blessed Constitution, which, with all its pretended defects, and all its alleged violations, has conferred more benefit on man, than ever yet flowed from any human institution.³⁴³

Chief Justice Marshall wrote Gaston in praise of the address:

If those who become citizens, and, of course, partakers of the government of their country, would act upon the principles you recommend, a republic would indeed be the utopia which enthusiasm has painted, but which experience has too often shown to be so coloured by the hand of the artist as scarcely to resemble the original.³⁴⁴

Gaston's ideas of gradual reform comported with those of students in the University of North Carolina's literary societies, which debated the topic: "Ought we to be allowed to educate our slaves?"³⁴⁵ They voted "yes" to this question,³⁴⁶ but "no" a few months later to the question: "Would the United States flourish more were the slaves

Colonization Society as too moderate, people at the time of Nat Turner understood the dangers that colonization sentiments posed to slavery. See Alfred L. Brophy, *The Jurisprudence of Slavery, Freedom, and Union at Washington College, 1831–1861*, Hendricks Lecture at Washington and Lee University (Sept. 29, 2011) <http://www.youtube.com/watch?v=cP3tFgZ6iUs> (citing anti-slavery activity of Henry Ruffner) (manuscript on file with author).

341. William Gaston, *Address Delivered Before the Philanthropic and Dialectic Societies* (June 20, 1832), in WILLIAM GASTON, *ADDRESS DELIVERED BEFORE THE PHILANTHROPIC AND DIALECTIC SOCIETIES, AT CHAPEL-HILL, N.C.* 19 (Richmond, Thomas W. White, 2d ed. 1832).

342. *Id.*

343. *Id.* at 21.

344. Letter from Chief Justice John Marshall to William Gaston (July 22, 1832) (on file with Wilson Library Southern Historical Collection, University of North Carolina at Chapel Hill, in the Gaston Papers).

345. Dialectic Society Minutes, 1826–1833, *supra* note 36, at 361 (Aug. 31, 1830).

346. *See id.*

emancipated?"³⁴⁷ Still, the students concluded that emancipation followed by colonization of slaves was a desirable policy.³⁴⁸ This conclusion was in keeping with the university's Dialectic Society's conclusion in 1833 that slavery was not beneficial to American society.³⁴⁹

By April 1832, when the Turner trials concluded in Southampton, the echoes of Nat Turner had been heard across Virginia and North Carolina. In Richmond, the debate put in motion by petitioners asking for the legislature to take action against slavery was winding down.³⁵⁰ Though the anti-slavery forces had made their case, the legislature decided not to take further action.³⁵¹ The legislature passed a statute further restricting the ability of slaves to learn to read and to receive religious instruction and legislation to restrict slaves' freedom.³⁵² Though the immediate fear of slave rebellion was fading, the issues raised by Nat Turner and by the legal system's role in slavery remained salient.

III. THE WHIG LEGAL RESPONSE

This Article began with Thomas Ruffin's 1830 opinion in *State v. Mann*, which deregulated the criminal control over slaveowners for abuse of slaves in their custody. The ideology of control in *Mann* fit with what happened in Southampton and neighboring counties in the wake of the Nat Turner rebellion the next year. The legal system did not punish those who used extra-legal violence to suppress the rebellion; moreover the legal system seems to have cast a broad net to punish those associated even in fairly remote ways with the rebellion. The net was broad, but it did not reach all accused enslaved people.

347. Dialectic Society Minutes, 1826–1833, *supra* note 36, at 375 (Oct. 12, 1831). Roughly a year before, the Philanthropic Society also voted in the negative (twenty-two to twelve) to the question, "Should the southern states abolish slavery?" Philanthropic Society Minutes, 1821–1832 (Oct. 2, 1830) (on file with Wilson Library Southern Historical Collection, University of North Carolina at Chapel Hill).

348. The Philanthropic Society voted in the affirmative (twenty-five to five) that the United States ought "to emancipate our slaves and transport them to Liberia." Philanthropic Society Minutes, 1821–1832, *supra* note 347 (Sept. 14, 1831).

349. See Dialectic Society Minutes, 1826–1833, *supra* note 36, at 481 (Jan. 23, 1833) (answering in the negative the question, "Has this country been benefitted by Slavery?").

350. See, e.g., EVA SHEPPARD WOLF, RACE AND LIBERTY IN THE NEW NATION: EMANCIPATION IN VIRGINIA FROM THE REVOLUTION TO NAT TURNER'S REBELLION 217–29 (2006).

351. See *id.* at 229–34.

352. See An Act to Amend an Act, Entitled, "An Act Reducing into One the Several Acts Concerning Slaves, Free Negroes, and Mulattoes, and for Other Purposes", ch. 187, THE REVISED CODE OF VIRGINIA 246–48 (Supp. 1833) (limiting preaching and punishing distribution of abolitionist literature).

Yet there were other ideas percolating in the legal system, even in the Age of Jackson, which sought to control the behavior of slaveowners. Three years after the rebellion, the Supreme Court of North Carolina decided another case that subjected an overseer to additional control of law. These cases illustrate the competing values that clashed as slave-owning southerners tried to decide just how much control the legal system would cede to slaveowners over enslaved human beings and how much the legal system would try to retain control over slaveowners themselves.

A. *State v. Will and the Limitation of Authority*

One North Carolina case, *State v. Will*,³⁵³ provides an important counterweight to *State v. Mann* and shows the subtle way that Justice William Gaston subjected everyone, slaveowners as well as slaves, to the rule of law.³⁵⁴ The case involved an overseer who viciously abused a slave, Will.³⁵⁵ Will ran away and the overseer chased after him for several hundred yards—apparently intent on murdering him.³⁵⁶ When the overseer finally caught him, Will fought back, stabbing the overseer, which ultimately led to the latter's death.³⁵⁷ Will was then charged with homicide, leaving the question of whether Will was guilty of first-degree murder or a lesser offense, such as manslaughter.³⁵⁸ This case involved two issues—the extent to which Will had a legal right to resist the overseer, who was going to kill him, and the extent to which Will's actions stemmed from fearing for his life.³⁵⁹

Will's lawyer, famed North Carolina litigator B.F. Moore—subsequently attorney general of North Carolina³⁶⁰—argued that the overseer had no authority to threaten Will's life.³⁶¹ From there Moore developed Will's right to resist the attack. In an odd echo of Thomas Ruffin's statement in *State v. Mann*, B.F. Moore stated that the overseer felt, “as strongly as any man can, the inexorable necessity of

353. 18 N.C. (1 Dev. & Bat.) 121 (1834).

354. See *id.* at 171; Seth Koch & Robert Mosteller, *The Racial Justice Act and the Long Struggle with Race and the Death Penalty in North Carolina*, 88 N.C. L. REV. 2031, 2048–51 (2010).

355. *Will*, 18 N.C. (1 Dev. & Bat.) at 122.

356. *Id.* at 122–23.

357. *Id.* at 123–24.

358. *Id.* at 124–26.

359. *Id.*

360. See 4 DICTIONARY OF NORTH CAROLINA BIOGRAPHY 294–95 (William S. Powell ed., 1991) (entry on Bartholomew Figures Moore).

361. See *Will*, 18 N.C. (1 Dev. & Bat.) at 127–31.

keeping our slaves in a state of dependence and subservience to their masters.”³⁶² But Moore believed that while shooting is “necessary to prevent insolence and disobedience, it only serves to show the want of proper domestic rules, but it will never supply it; and never can a punishment like this effect any other purpose, but to produce open conflicts or secret assassinations.”³⁶³ North Carolina Attorney General John R. J. Daniel, who argued the case for the state, turned to *State v. Mann* to show the slaves’ obligation of obedience.³⁶⁴ Although he acknowledged that *Mann* had stated the master’s power too broadly (for instance, an owner could not kill a slave),³⁶⁵ Daniel maintained that Will had no legal right to resist the overseer, and moreover, that the law could not recognize Will’s reaction to the overseer’s attack by reducing the severity of Will’s crime.³⁶⁶ Such indulgence, Daniel argued, “would beget desires for another, until nothing short of absolute emancipation would satisfy. It must then be had, or an alternative the most shocking to humanity would then be resorted to.”³⁶⁷ Daniel invoked a common argument about the ubiquity of slavery³⁶⁸ and the dangers of failing to maintain vigilant control over the enslaved population,³⁶⁹ relying on fears of what could happen if slaves were granted more protection through legal reform or increased court oversight.³⁷⁰

Justice Gaston, however, focused on how any person would naturally feel passion upon being attacked and having his life threatened.³⁷¹ Gaston framed the question as whether, “if the passions of the slave be excited into unlawful violence, by the inhumanity of his master or temporary owner, or one clothed with the master’s authority, is it a *conclusion of law*, that such passions must spring

362. *Id.* at 145.

363. *Id.* In fact, contrary to those who argued for further control over slaves in the wake of the Turner rebellion, Moore believed that “[t]he despair of individuals cannot last forever; neither will that of a numerous people inflicted with common wrongs, and exchanging a common sympathy.” *Id.*

364. *Id.* at 153.

365. *Id.* at 160–61.

366. *Id.* at 161.

367. *Id.* at 163.

368. *Id.* at 153–54.

369. *Id.* at 162–63. For evidence of Daniel’s anti-internal improvement and anti-Whig speeches in Congress, see CONG. GLOBE, 28TH CONG., 2D SESS. app. at 288–92 (1845) (statement of Rep. Daniel); CONG. GLOBE, 28TH CONG., 1ST SESS. app. at 613–15 (1844) (statement of Rep. Daniel) (urging narrow construction of federal powers); CONG. GLOBE, 27TH CONG., 2D SESS. app. At 625–28 (1842) (statement of Rep. Daniel).

370. *Will*, 18 N.C. (1 Dev. & Bat.) at 162–63.

371. *Id.* at 171.

from diabolical malice?"³⁷² That is, did a judge have to conclude that a slave who resisted an overseer's *unlawful* attack—an attack that threatened the life of the slave—was guilty of murder? Or might a judge conclude that the slave had been provoked and, thus, his attack on the overseer was merely manslaughter? Justice Gaston concluded that reasonable human passions explained Will's behavior:

The prisoner is a human being, degraded indeed by slavery, but yet having "organs, dimensions, senses, affections, passions," like our own. The unfortunate man slain was for the time, indeed, his master, yet this dominion was not like that of a sovereign who can do no wrong.³⁷³

Will reflected Gaston's recognition of the humanity of enslaved people; it also had the effect of subjecting the overseer's behavior to scrutiny, for the court reviewed his behavior, concluded that it had given rise to the slave's resistance, and deemed it unlawful. *Will* represented an attempt to put everyone under the control of law, to recognize that an overseer could overstep his authority. It held that when that happened, the law would acknowledge that a slave might be understandably provoked. This step would allow courts to mitigate a slave's liability and lead to a punishment in line with his culpability.³⁷⁴

B. *Trials and Southern Institutions*

Thomas Ruffin's opinion in *State v. Mann* and William Gaston's opinion in *State v. Will* present different approaches to the degree of

372. *Id.*

373. *Id.* at 172.

374. *Will* helped to stem extra-legal violence. In fact, the resort to mob violence was a major part of the political agenda of the 1830s. See, e.g., William Gaston, An Address Delivered Before the American Whig and Cliosophic Societies of the College of New-Jersey, in AN ADDRESS DELIVERED BEFORE THE AMERICAN WHIG AND CLIOSOPHIC SOCIETIES OF THE COLLEGE OF NEW-JERSEY 27 (Princeton, R.E. Hornor 1835). In his address to the Princeton Whig and Cliosophic Literary Societies, Gaston further explained the dangers from the breakdown of law. In particular, Gaston worried about mob violence:

We have seen it in hostile bands of citizens arrayed against each other with murderous weapons, when exercising the duty of suffrage. We have seen it in innocent females driven forth from their dwellings by ferocious incendiaries. We have witnessed it in a city surrendered for days and nights to outrage and arson; in helpless people of colour hunted from their dwellings like beasts of prey from their caverns; and in mock-courts murdering in the face of day, and asking for the commendation of a virtuous people upon their lawless deeds!

Id. at 27.

control courts were willing to exert over slaveowners. Yet, Ruffin's opinion in *Mann*, the Turner trials, and Gaston's opinion in *Will* reflect a central place for law and courts in the regulation of southern institutions. *Will* narrowed the amount of control that owners could exert over slaves, to be sure, but it left broad room for owners to control their slaves and for courts to punish slaves criminally. The Nat Turner trials suggest that the trials were part of an extensive fabric of Southampton and Virginia culture that funneled violence into the court system. The trials restored order and were part of the violence that many people thought was necessary to demonstrate to the enslaved that rebellion would end in their destruction.

The trials also reveal conflicts within the white community. Some wanted even more violence; at one point the justices asked for twenty-five men to be sent to guard the jail to protect the prisoners, even after they had been convicted.³⁷⁵ On several occasions there were divisions even among the justices about the proper outcome.³⁷⁶ The trials were about the vision of order and justice, though there were wildly different visions of what justice meant. For some, it meant the sense of subordination, the acknowledgement of white rule, and the obedience of the enslaved.

For others, it meant fair treatment within the framework of subordination, which Ruffin's counterpart Justice William Gaston wrote about in *State v. Will*.³⁷⁷ Some of the defense lawyers wanted less punishment of slaves. For example, James Parker apparently took to the newspaper to plead that more evidence was needed than just the testimony of slaves to convict other slaves.³⁷⁸ A few slaveowners—and maybe other people in the community—felt the same way. For instance, George Goodwyn was a witness when his slave Squire was tried in Sussex.³⁷⁹ And for very few individuals, it meant something more like the right of the enslaved to rebel—a view that was promulgated by radical anti-slavery writers like David Walker.³⁸⁰

375. See Southampton County Court Records, *supra* note 45, at 213.

376. For example, the Sussex justices divided on the guilt of James and Isaac. See Sussex County Order Book, *supra* note 159, at 255. The Southampton justices recommended Jack for transportation by a divided vote (apparently three to two). See Southampton County Court Records, *supra* note 45, at 198.

377. See *supra* Part III.A.

378. See Parramore, *supra* note 43, at 34–35 (attributing article *The Southampton Tragedy*, *supra* note 218, to William Parker).

379. See Sussex County Order Book, *supra* note 159, at 252.

380. WALKER, *supra* note 35, at 3.

The trials reveal the law working in conjunction with statewide action, with local justices working in conjunction with, and sometimes as, the militia.³⁸¹ The trials reveal how the power of the local and state government functioned in conjunction with private action to maintain the slave system. There were points of disjuncture between visions of just what that system would look like.

The court was one place among many where control was exerted; it was part of the establishment of public and private institutions that together brought about a world of order and economic and technological advancement. Public constitutional ideas were promoted in many ways by public and private actors alike, from legal decisions like *State v. Will* to public addresses.³⁸²

These trials reveal the power of the state to achieve control and order—though there was a robust debate about just where to draw the line, such as between Democrats, like Ruffin, who supported substantial control on the part of slaveowners with little control by the state, and Whigs, who sought to subordinate everyone to the rule of law.³⁸³ During the trials of Southampton, the locals were concerned with the imposition of control. The vehicle of law worked in conjunction with other principles for asserting control, from the militia to public constitutional ideas.

IV. THE RETURN OF REASON

In 1835, the year after Justice William Gaston decided *State v. Will*, the echoes of Nat Turner were again heard in a Virginia courthouse. A slave, Boson, who had been convicted on the

381. The law is part of a whole fabric. Laura Edwards emphasizes this as a particular problem for antebellum history, where legal historians have tried to isolate the “law” variable from others, without understanding that it is so closely related to a series of other variables. See Laura F. Edwards, *The Peace: The Meaning and Production of Law in the Post-Revolutionary United States*, 1 U.C. IRVINE L. REV. 565, 567–68 (2011) (“Legal historians usually enter their research assuming the presence of the law as a readily identifiable, unified body of rules, enforced uniformly by a centralized institutional structure. It is an assumption fraught with difficulties because this kind of legal system did not exist, for the most part, in the post-Revolutionary United States.”). In her book, *The People and Their Peace*, Edwards emphasizes the conflict between local and centralizing impulses in law. See LAURA F. EDWARDS, *THE PEOPLE AND THEIR PEACE* 5–10 (2009). But the central tendency emerging from the trials is a different story from centralization: it is a struggle for control and the role that law and legal institutions should serve. Cf. Jessica K. Lowe, *A Separate Peace? The Politics of Localized Law in the Post-Revolutionary Era*, 36 LAW & SOC. INQUIRY 788, 791–94 (2011) (questioning Edwards’s framework of local and central control).

382. See generally Brophy, *supra* note 33 (discussing the shifting constitutional visions in graduation addresses at the University of North Carolina in the pre-Civil War era).

383. See *supra* notes 33–34 and accompanying text.

testimony of the slave Beck and then sentenced to death in Sussex County, had escaped before his execution.³⁸⁴ Another slave, Frank, who tried to escape with him had been shot and killed.³⁸⁵ Boson was captured and brought back to the court.³⁸⁶ The justices petitioned the governor to commute Boson's sentence to transportation outside of the state.³⁸⁷ James S. French, one of the lawyers for the accused in both Southampton and Sussex, wrote to Virginia Governor Littleton Tazewell arguing that he believed the accused slaves in Sussex were innocent: "They were all . . . living fully twenty five miles from the scenes of violence [N]o overt act whatsoever was proved against them, nor were they shown to . . . have committed one single disorderly act" ³⁸⁸ Yet all but one were convicted upon the charge of "a small black girl . . . twelve to fifteen years of age." ³⁸⁹

The inhabitants of Sussex County also signed a petition urging the Governor to accept the court's recommendation. They laid out the weak evidence against Boson.³⁹⁰ The petition continued:

We cannot see one suffer the penalty of *death* who, we believe not to have been a participator in it. We candidly admit that Boatswain was, perhaps, a discontented spirit; and, perhaps, a refractory slave: that he might have indulged in threats, amongst his fellow slaves, against the whites: that he might have been tempted to join the murder had they, for a time, proved successful [T]hese are probabilities, but not *facts*, or events and we surely will not now hang the vilest wretch for what he might possibly by induced to commit, when there is not one tittle of evidence to prove that he did commit any such crime.³⁹¹

384. See Petition of Sussex County Inhabitants (Feb. 28, 1835) (on file with the Library of Virginia, in the Executive Papers of Governor Littleton W. Tazewell). Boson seems to have been a shortened version of the name Boatswain. See *id.* at 1; see also FRENCH, *supra* note 39, at 60–64 (discussing the petitions on behalf of Boson).

385. Frank died in the escape attempt. See THE SOUTHAMPTON SLAVE REVOLT OF 1831: A COMPILATION OF SOURCE MATERIAL, *supra* note 41, at 452.

386. See *id.*

387. See Boson's Case (Feb. 21, 1835) (on file with the Library of Virginia, in the Executive Papers of Governor Littleton W. Tazewell).

388. Letter from James S. French to Governor Littleton Tazewell (Feb. 14, 1835) (on file with the Library of Virginia, in the Executive Papers of Governor Littleton W. Tazewell).

389. *Id.*

390. See Petition of Sussex County Inhabitants, *supra* note 384, at 1–2.

391. *Id.* at 1. The signers were skeptical of Beck's testimony: "On her evidence alone, nearly all the condemnations in Sussex were made; and very many of these in Southampton. Now we declare to you that many of the good Citizens of both of those Counties have strong doubts as to the correctness of her testimony . . ." *Id.* at 2.

The petition went on to examine in detail the evidence against Boson.³⁹² It quoted the paragraph of evidence against him from the Sussex Court Order book, which was that Beck had heard Boson and Solomon talking at the May meeting of the Raccoon Swamp Church and that Boson said he would join the “negroes to murder the white people.”³⁹³ The petitioners pointed out what must have been obvious, that “the conversation . . . had no connection whatsoever with the massacre in Southampton, and therefore . . . Boatswain [was] innocent of all participation in that crime.”³⁹⁴ But of course, he might still have been guilty of plotting a separate insurrection, and so they then impeached Beck’s testimony against Solomon, whom they argued could not possibly have been present at that meeting because he was fishing and assisting his owners with work that entire day.³⁹⁵ They appealed to the credibility of the white witnesses who posthumously were exonerating Solomon.³⁹⁶

The petitioners believed that they had been wrong to execute so many people. In the sober light, after passions had cooled, they realized that they had been too hasty: “Time has mellowed our feeling, and given full exercise to our reason. We can now view the events freed from that exasperation, which blinded our unbiased judgments.”³⁹⁷ That was the conclusion of many who looked back on the legal system’s actions during the era of slavery. Yet, the extraordinary violence the legal system used should come as no surprise. For, as Justice Thomas Ruffin wrote at the conclusion of *State v. Mann*, “dominion is essential to the value of slaves as property, to the security of the master, and the public tranquility, greatly dependent upon their subordination.”³⁹⁸

392. *Id.*

393. *Id.*

394. *Id.* at 2–3.

395. *Id.* at 3.

396. The petition read:

Here then you have the evidence of two white witnesses—persons of intelligence—of unblemished reputation, and standing as fair in our Society, as any other members of it:—who prove to you that the Girl of Parkers was certainly mistaken *in all* that she deposed and said about Solomon; and which led to his Execution and if wrong, as to him, can you consent to the sacrifice of another victim, on that identical testimony?

Id.

397. *Id.* at 1.

398. 13 N.C. (1 Dev.) 263, 268 (1830).

CONCLUSION

To what extent did the court protect innocent enslaved people—or even care about their innocence? The answer to this question is unknown. For instance, courts relied on testimony of an enslaved girl, who may have been bribed,³⁹⁹ and the confessions and testimony that may have been extracted by torture or threats of it. The Nat Turner trials contain multiple levels of evidence. They reveal intra-plantation conflicts, such as slaves testifying against other slaves, and all were owned by the same people. There are intra-community conflicts as some white people prosecuted slaves and others defended them, even defended their own slaves against charges. Those intra-community disputes involved conflicts over how enslaved people should be treated, as some thought that slaves who were treated too leniently might become rebellious—and those people then sought to further control slaves.⁴⁰⁰

The trials reveal how closely the key actors were known to each other; for instance, Levi Waller was able to identify by name the slaves who killed his family because he knew them.⁴⁰¹ In the wake of the rebellion, some white people argued for greater controls on slaves and others urged emancipation. In each instance, the legal system was central to their ideas and to their actions.

It is useful to return to the Turner trials to make some assessments of them. There remain broad confidence intervals around the interpretation of what happened and how to interpret what slaves and white people said. What is known is that there was anger in the white community and apparently some division as to the appropriate response. In addition to conflict over the immediate vigilante action, there was fear by courts of continued vigilante action.⁴⁰² The courts' decisions were too moderate for some. Others, perhaps few but at least some, saw the courts as too aggressive in their convictions.⁴⁰³

399. See Sussex County Order Book, *supra* note 159, at 249 (asking Beck whether she was promised freedom if her testimony convicted slaves).

400. See, e.g., Letter from George Mordecai to My Dear Father, *supra* note 150, at 2–3; see also Atwood's Heirs v. Beck, 21 Ala. 590, 616 (1852) (discussing arguments of counsel suggesting that emancipation, like printing of abolitionist literature, might lead to insurrection); Cleland v. Waters, 19 Ga. 35, 43–44 (1855) (discussing and seemingly endorsing argument that emancipation tends to loosen support for slavery).

401. Waller knew many of the slaves he testified against. See Southampton County Records, *supra* note 45, at 178 (trial of Daniel); *id.* at 191 (trial of Sam); *id.* at 192 (trial of Hark); *id.* at 197 (trial of Sam); *id.* at 198 (trial of Dred); *id.* at 217 (trial of Sam); *id.* at 221 (trial of Nat).

402. See, e.g., Southampton County Court Records, *supra* note 45, at 213 (noting that the court ordered twenty-five men to guard jail).

403. Letter from James S. French to Governor Littleton Tazewell, *supra* note 388.

How many innocent people were condemned remains unclear. There remain a range of issues about the culpability of people before the rebellion; the extent to which people with no advance knowledge joined willingly, or even at all, and the extent to which people would have joined if given the opportunity.

What emerges from this impressionist picture of the trials is that many conflicts, including a desire for extra-legal violence, were channeled through the court and resolved in a way that imposed harsh penalties on many. Principles of justice were subordinated—though perhaps not entirely eliminated—as the trials sorted the facts and sentenced many to death, others to transportation from the state, and freed others.