

June 1993

South Carolina's Largest Slave Auctioneering Firm - Symposium on the Law of Slavery: Criminal and Civil Law of Slavery

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Recommended Citation

Thomas D. Russell, *South Carolina's Largest Slave Auctioneering Firm - Symposium on the Law of Slavery: Criminal and Civil Law of Slavery*, 68 Chi.-Kent L. Rev. 1241 (1992).

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SOUTH CAROLINA'S LARGEST SLAVE AUCTIONEERING FIRM*

THOMAS D. RUSSELL**

The South Carolina courts of law and equity acted as the state's greatest slave auctioneering firm. The courts were at the center of the domestic slave trade. At sheriffs', probate, and equity court sales, court officials and agents of law conducted 50% of the antebellum sales of slaves. These sales by operation of law were all auction sales. Because not all non-court sales were by auction, the courts' slave auctions comprised the majority of South Carolina's slave auctions. Thus, most slave auctions took place on the courthouse steps.

Historians have largely failed to notice the slave sales that courts ordered or supervised. The narrow but fundamentally important aim of this Article is the presentation of data that demonstrate that half of all slave sales were sales by operation of law. But in addition to making the argument that the courts were South Carolina's greatest slave auctioneering firm, this Article will gesture to some historiographic consequences of this conclusion. This basic finding must force historians to discard certain presumptions regarding the relationship of slavery, economy, and law. For example, analysts of the economics of slavery, now alert to the central role of the courts in the conduct of slave sales, can no longer regard the economic transactions of slavery as taking place within a realm of purely private ordering. Courts were neither marginal nor unimportant with regard to slave sales, and so economic historians must grapple with the role of legal institutions. Similarly, other historians of slavery can no longer justify treating the relationship of master and slave as largely hermetic. Masters were powerful, but through the operation of law, many additional actors, institutions, and norms joined the relationship of slaveowner and slave.

The basic quantitative finding of this Article is also important, of course, for participants in this Symposium and any others interested in

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** Thomas D. Russell, J.D. Stanford 1989, Ph.D. Stanford 1993. The author would like to thank Carl Degler, Paul Finkelman, Lawrence Friedman, Doug Laycock, Sandy Levinson, Scot Powe, David Rabban, John Robertson, and Gavin Wright for their comments and advice. Kathie Tovo and Heidi Mahon provided expert research assistance. This Article is a selection from Thomas D. Russell, *Sale Day in Antebellum South Carolina: Slavery, Law, Economy, and Court-Supervised Sales* (1993) (Ph.D. dissertation, Stanford University).

legal aspects of slavery's history. Obviously, the finding of the courts' central role in the domestic slave trade supports the efforts of any scholars who argue that one must comprehend the operation of law in order to understand slavery more fully. More interestingly, the finding supports the idea that in the United States, the history of law and the issues of race are necessarily and intimately linked. For example, this Article's central finding supports my colleague Sanford Levinson's effort to center slavery in the constitutional law canon.¹

Levinson's project is a good one, but this Article's finding can serve as a vaccine against the next step that other constitutional scholars could take, which would be to presume that the constitutional aspects of slavery were the most important legal aspects of the peculiar institution's history. Some germ—perhaps the supremacy clause?—causes constitutional scholars to take their subject somewhat too seriously. This Article's quantitative finding is a reminder that to the extent that law was important in the everyday lives of slaves, it was not the law offered by the United States Supreme Court, but rather it was the law as administered by local trial court judges, masters in chancery, sheriffs, ordinaries, magistrates, justices of the peace, and other miscellaneous and now-forgotten low-level legal officials.

I

For most people today, auctions are unusual events. But in antebellum South Carolina, especially in the cities of Charleston and Columbia, auctions were common. Any newspaper—*The Charleston Courier*, for example—was likely to carry at least a column, often more, of daily advertisements for auction sales.² These sales were predominately commercial, conducted by merchants. The merchants sold their wares at auction, not just in unusual situations of damaged, used, or one-of-a-kind goods, but in the ordinary course of business. These sales included every type of merchandise. Of course, not all the property was goods: there were slave auctions as well.

Included with and often mingled among the auction advertisements were notices of auction sales that courts had ordered or would supervise. For sales of property that agents of courts or other state legal institutions supervised, auctions were the typical and traditional manner of sale. For

1. Sanford Levinson, *Slavery in the Canon of Constitutional Law*, 68 CHI.-KENT L. REV. 1087 (1993); PAUL BREST & SANFORD LEVINSON, *PROCESSES OF CONSTITUTIONAL DECISIONMAKING* 129-33, 177-227 (3d ed. 1992).

2. See, e.g., CHARLESTON COURIER, June 23, 1818, at 3; June 17, 1845, at 3; March 2, 1846, at 3; May 1, 1834, at 3.

SALES AT AUCTION.

UNDER DECREE IN EQUITY.

Shelbert et al. vs. John W. Washington.
TO-MORROW, 3d March inst., at 11 o'clock, will be sold, near the Custom House.

The following SLAVES, viz: PHILLIS, Amelia, Rose, Marian and LIVETTE, Becky and 2 children. Chloe, Nelly and 3 children, Scipio and John.

Also two TRACTS of LAND in St. Paul's, Colleton, known as Drayton's Cow-Pens and Johnston's.

Terms—one-third cash; the balance on a credit of one and two years, secured by bond, with interest from date, payable annually, mortgage and personal security. Purchasers to pay for papers. **JAMES W. GRAY,** Master in Equity.

UNDER DECREE IN CHANCERY.

J. W. Gray, Master in Equity, et. al. vs. John Corby et. al.
TO-MORROW, 3d March, will be sold, near the Custom House, at 11 o'clock, or soon thereafter.

All that lot, piece or parcel of Land, and the buildings thereon, situate, lying and being in Vernon street, in the city of Charleston, formerly belonging to the Estate of Christopher Gadsden, deceased, and known by the No. 100 in a plan from a survey taken in March, 1806, by Joseph Purcell; measuring and containing in front on Vernon-street 39 feet, and in depth 110 feet, more or less—butting and bounding to the north on lot No. 95, to the south on Vernon street, to the east on lot No. 101, situated at the corner of Marsh and Vernon streets, and to the west on lot No. 99.

Conditions—one-third cash; the residue payable in one and two years, in bond with interest from date, payable annually, secured by a mortgage of the premises sold; purchasers to pay for papers.

EDWARD R. LAURENS,
 Master in Chancery.

Mh 2

UNDER DECREE IN CHANCERY.

Executors of J. P. Edwards vs. Thomas Gadsden.

On THURSDAY, 12th March, 1846, will be sold near the Custom House, at 11 o'clock, or soon thereafter.

All that lot of LAND at the corner of Rumney and Meeting streets, containing 224 feet on Meeting street, and on Rumney street 500 feet 6 inches, more or less.

Also that lot of LAND at the corner of Inspection and Marsh streets, known by the number 91, in the plan of General Gadsden's land.

Conditions, cash, purchasers to pay for title.

EDWARD R. LAURENS,
 Master in Chancery.

F 27

First Rate Cook.

BY CAPERS & HUGER.

Will be sold, on **THURSDAY, 5th March,** at the Mart, East Bay, at 11 o'clock,

BEN, a first rate cook—represented as a complete article.

Conditions cash; purchaser to pay for bill of sale.

F 28

CHESNUT HILL, GREENVILLE, S. C.

FOR SALE.

This very desirable PROPERTY, situate 4 miles east of the town of Greenville, S. C. will be sold, at public auction, at Greenville, S. C. on **MONDAY, the 16th March next,** at 10 o'clock, A. M.

The PLANTATION contains about seven hundred acres, the greater part of which is well timbered, and of excellent quality. A portion of the lands are cleared, and well adapted to the culture of Corn, Oats, Wheat, Rye, Potatoes, &c. On the place are several small streams of water.

The DWELLING House therein, is a handsome and convenient Wooden Building, in good repair, having 7 upright rooms, 6 of which have fire places, a pantry, double portico and piazza in front, and double piazza in the rear. It is beautifully situated on an elevation, and commands one of the most splendid mountain and valley prospects in the State. On the premises are Kitchen, Stable, Bathing House, and all convenient Out Buildings. Also, two Wooden Houses, well situated and easily convertible into small dwellings. A large Garden, a number of Peach, Apple, Cherry, Plum, and other Fruit Trees, a well and several springs of fine mountain water, and various other conveniences for a delightful residence or summer retreat.

Also,

At the same time and place, will be sold, Three NEGRO FELLOWS, Sharper, Andrew, and Abram; and a quantity of Household and Kitchen Furniture.

Conditions cash.

Any information relative to the property may be had upon addressing the subscribers at Greenville, S. C.

H. F. FERRY,
C. J. ELFORD,

Attorneys for the trustees of R. L. & J. C. Baker
 Greenville, Feb. 16, 1846.

[F 23 16]

BY THOS. N. GADSDEN.

On TUESDAY, the 10th day of March next, will be sold at the north of the Exchange, at 11 o'clock, without any manner of reserve,

All that establishment, known as PARKER'S FERRY, with all the Flax, Ropes, and Apparatus to the said Ferry belonging; together with the Chartered Ferry, and Rights of Toll connected therewith; together with all the Lands, Houses, and Out-Houses attached to the land therein described, that is to say All the Land on the east side of Edisto River, containing by Diamond's plat and by a plat more recently drawn by E. K. Payne, Surveyor, 50 acres, more or less; and all the Land on the north side of the Ferry House, on the road leading to the Round O, said to contain 14 acres of high land and 33 acres of swamp, more or less; and south on the Ferry House and on the Public Road; from thence down the Edisto River in an irregular line, as marked out, computed to contain 50 acres or thereabouts, more or less.

Conditions—one-half cash; balance in one and two years, by bond bearing interest from date, with a mortgage of the property; purchaser to pay for all necessary papers.

F 27

Estate Sale, by order of Executor.

BY ALONZO J. WHITE.

On WEDNESDAY, the 4th of March, at 11 o'clock, at the North side of the Custom House, will be sold, The following REAL ESTATE, belonging to the Estate of M. D. Ummsenetter deceased:

That HOUSE and LOT, situate at the south east corner of Beaufain and Wilson streets, lot measuring 48 feet more or less on Braufain-street, by 136 feet in depth, be the same more or less; see enclosure allowing endrops on the vacant lot to the east. On the premises are a two story Wooden House, Brick Kitchen, &c.

Also,

That vacant LOT to the east of the above, immediately next to Mr. C. B. Hillard's residence, measuring about 40 feet front on Beaufain-street, by about 136 feet deep, with a Wooden Stable and Carriage House at the foot of the lot.

Also,

That HOUSE and LOT, situate on south side of Beaufain-street, immediately opposite Pitt-street, at present occupied by Mr. Copee, lot measures 50 feet more or less on Beaufain-street, by 156 feet in depth, be the same more or less; see enclosure. The house is of wood, on brick foundation, having a two story piazza. On the premises are convenient out-buildings.

Conditions—one-third cash; balance payable in four equal annual instalments, with interest from day of sale, payable annually, secured by bond and mortgage, buildings to be kept insured and policy assigned. Purchasers to pay for the requisite papers.

F 26

Estate Sale of Eighty Negroes and Real Estate.

BY ALONZO J. WHITE.

On THURSDAY, the 5th March, at 11 o'clock, at the north side of the Custom House, will be sold,

The long established BRICK YARD on Cooper River, known by the name of Moorland, and as part of the Estate of the late Col. John Gordon. The bricks manufactured at this place commands the highest market price, and ordinarily it yields from twelve to fifteen hundred thousand bricks per annum; the whole Tract contains about two thousand eight hundred and thirty-one Acres, as per re-survey made by R. Q. Pinckney, April, 1841; six hundred acres are River Swamp, a portion of which has been embanked and cultivated.

Also,

A TRACT OF LAND, known as Church Tract, situate in St. Thomas' Parish, containing about two hundred and eighty-two (282) acres, which is well timbered, having access to two convenient landings.

Also,

On the same day at half past 11 o'clock, at the Mart on East Bay, will be sold in families,

A gang of eighty (80) NEGROES, having been accustomed to the culture of Rice, when not engaged in the brick-making business.

Conditions—one-third cash; the balance payable in three equal annual instalments, with interest from day of sale, payable annually; secured by bond and mortgage, and approved personal security on the credit portion of the negroes. Purchasers to pay for papers.

The above property may be treated for at private sale up to 20th February, after which time, will only be sold at auction, as advertised.

Lists of the Negroes, Plats of the Tracts, and every particular information can be obtained at my office 87 Broad street.

(th)

F 9

example, after the War of Independence, the new state's Commissioners of Confiscated Estates seized the property of Tories and sold it at public outcry.³ From time to time, legislation authorized auction sale of state-owned land.⁴ Officials of the Court of the Ordinary, now called Probate Court, supervised and sometimes conducted sales of decedents' estates.⁵ Masters or Commissioners in Equity frequently conducted public sales as part of the resolution of suits—technically called bills or petitions—in the equity court. Like the sales of ordinaries, these were most often sales of the estates of dead persons that were necessary either to pay debts or to partition the estate among heirs. Litigants turned to the equity court when the estates were large or when the matter involved issues more complicated than the Court of the Ordinary could manage.⁶ Even coroners conducted sales under some circumstances: such as when the sheriff was a party to the case or when the sheriff simply refused to conduct the sale.⁷

When slave sales by operation of law have attracted scholarly concern, probate sales have received the most attention. Among scholars interested in legal, social, or economic history, the few who have commented upon courts' slave sales have usually noticed only sales occasioned by the death of the slaveowner and the subsequent division of the decedent's estate. Historians, often uninterested in or uncomfortable with the mundane details of nineteenth-century law, have largely ignored sheriffs' and other court-ordered sales. When they have noticed such sales, they have generally failed to recognize their importance.⁸

3. An Act for Disposing of Certain Estates, and Banishing Certain Persons, Therein Mentioned, No. 1153, (1782) in 4 THE STATUTES AT LARGE OF SOUTH CAROLINA 516 (1838) [hereinafter STATUTES]; *Haig v. Comm'rs of Confiscated Estates*, 1 S.C. Eq. 144, 1 Des. 7 (1787); *Wainwright v. Read*, 1 S.C. Eq. 573, 1 Des. 22 (1787).

4. An Ordinance for the Sale of Sundry Lands Belonging to the Public, No. 1469, STATUTES 5:132 (1789); An Act to Provide for the Sale of Certain Lands Belonging to the State, No. 4361, STATUTES 12:544 (1857).

5. An Act Concerning the Office and Duties of Ordinary, No. 2781, § XVIII, STATUTES 11:62 (1839).

6. *Id.* § XXVI, STATUTES 11:64. See also *M'Guire v. M'Gowan*, 4 S.C. Eq. 486, 4 Des. 41 (1814); *Young v. Teague*, 8 S.C. Eq. 13, 1 Bail. Eq. 2 (1830).

7. An Act Concerning the Office, Duties, and Liabilities of Coroner, No. 2782, § XLI, STATUTES 11:78 (1839).

8. See, e.g., WILLIAM J. COOPER, JR. & THOMAS E. TERRILL, *THE AMERICAN SOUTH: A HISTORY* 215-21 (1991); ROBERT W. FOGEL & STANLEY L. ENGERMAN, *TIME ON THE CROSS: THE ECONOMICS OF AMERICAN NEGRO SLAVERY* 55 (1974); HERBERT G. GUTMAN, *SLAVERY AND THE NUMBERS GAME: A CRITIQUE OF TIME ON THE CROSS* 132-37 (1975); Edward W. Phifer, *Slavery in Microcosm: Burke County, North Carolina*, 28 J.S. HIST. 153-56 (1962); William Calderhead, *How Extensive was the Border State Slave Trade: A New Look*, 18 CIVIL WAR HIST. 42, 47-48 (1972). An important early exception is KENNETH M. STAMPP, *THE PECULIAR INSTITUTION: SLAVERY IN THE ANTE-BELLUM SOUTH* 237-44 (1956). Another historian who has noticed the importance of slave sales by operation of law is Bobby F. Jones, *A Cultural Middle Passage:*

Probate sales, the sales most often seen by historians, were not the most important type of sales by operation of law. This Article shows that sheriffs sold more property than other agents of the state. Antebellum sheriffs, it is important to understand, had roles different from the gun-slinging crime-fighter of cinematic or operatic fame.⁹ The great bulk of sheriffs' work concerned civil litigation, not peace-keeping functions such as catching stagecoach robbers and horse thieves. To be sure, sheriffs had a role in the history of antebellum criminal justice, but the duties that consumed most of their effort were civil, rather than criminal, in character.¹⁰

The conduct of sales was among a sheriff's important duties. Most of these sales were execution sales: sales connected with execution of a court's judgment. Execution sales nearly always involved debt. Indeed, the sheriff's office was crucial in the functioning of antebellum economic transactions. The sheriff and the common law courts played a key role in the conduct and security of credit transactions, a role that did not begin only after the debtor failed to pay a pre-existing loan, but rather, began with the initiation of the loan.¹¹ In addition to selling the property of debtors, the sheriff also auctioned property for other reasons. He conducted tax sales when property owners did not pay taxes, usually selling only the use of the property for a term of years, not the absolute ownership of the property.¹²

In specific circumstances, sheriffs could also auction free blacks and convert them into property. In 1820, the South Carolina legislature prohibited free blacks from entering the state and authorized the sheriff to sell, for a term of up to five years, any free black who entered the state, stayed more than fifteen days after being ordered to leave, and could not

Slave Marriage and Family in the Ante-Bellum South 189-94 (1965) (unpublished Ph.D. dissertation, University of North Carolina (Chapel Hill)).

9. *THE OXBOW INCIDENT* (20th Century-Fox Film Corp. 1943); *LAW AND ORDER* (Universal Pictures 1932); *STAGECOACH* (Walter Wanger Prods. 1939); *DODGE CITY* (Warner Bros. 1939); *LA FANCIULLA DEL WEST* (G. Ricordi & Co. 1910).

10. For a comparison of the office of sheriff in England and colonial Virginia, see CYRUS H. KARRAKER, *THE SEVENTEENTH-CENTURY SHERIFF: A COMPARATIVE STUDY OF THE SHERIFF IN ENGLAND AND THE CHESAPEAKE COLONIES, 1607-1689*, at 93-156 (1930), which notes that the colonial sheriff had greater political and economic functions and a lesser judicial role than his English counterpart.

11. Creditors secured themselves by filing lawsuits against their debtors at the time of the loan. If the debtors failed to repay the debt, then the creditor was already in the position of an execution creditor, which meant that the next step was simply to have the sheriff execute the judgment and sell the debtor's property. On the preponderance of debt actions in civil trial courts, see Thomas D. Russell, *Historical Study of Personal Injury Litigation: A Comment on Method*, 1 GA. J.S. LEGAL HIST. 109 (1991).

12. An Act to Raise Supplies for the Year One Thousand Eight Hundred and Thirty-Nine, No. 2772, § II STATUTES 11:1 (1839).

pay the \$20 fine for overstaying her or his welcome.¹³ In December 1822, as part of the stiffening of laws that followed the thwarting of Denmark Vesey's Charleston rebellion, the legislature authorized the auction sale of "every free male negro or person of color, between the ages of fifteen and fifty years" who was either not a South Carolina native or had not lived in the state for more than five years, and who did not pay a \$50 tax—a huge sum at the time.¹⁴ Other free blacks—females and those males who met the nativity or residency tests—were subject to a more modest \$2 annual tax.¹⁵ "[S]uch free negroes, mulattoes and mustizoes, as shall neglect or refuse to pay the tax imposed by law," the sheriff was to sell, for a term long enough to pay the tax.¹⁶

In 1831, for example, Fairfield District tax collector James Beaty directed Sheriff Yongue to arrest Legs and Christina Bird, two free blacks who had failed to pay \$9.60 in taxes.¹⁷ The sheriff's fees for making the arrest and other costs were added to the delinquent tax bill, nearly doubling the sum for which the Birds were liable. Fortunately for the Birds, before they were sold, someone helped them by paying the tax bill and associated costs.¹⁸ Thus the sheriffs' powers and responsibilities included the auction conversion of free blacks into property. Generally speaking, however, sales of free blacks who were illegally present in the state or who failed to pay the annual tax on their freedom were extremely rare events.

The more ordinary sales that sheriffs conducted every month—sales of the property of debtors—figure prominently in this Article. South Carolina sheriffs' sales took place on the first Monday of each month, a day known as Sale Day.¹⁹ Sometimes sales would continue on Tuesday as well. This Article documents the human and wealth consequences by aggregating data drawn from records of these sales. In addition to sheriffs' sales, this Article charts the empirical contours of sales that other legal officials either ordered or supervised, specifically probate and equity court sales. Like sheriffs' sales, these sales also took place on Sale Day.

13. An Act to Restrain the Emancipation of Slaves, and to Prevent Free Persons of Color from entering into this State, No. 2236, § II, STATUTES 7:459 (1820).

14. An Act for the Better Regulation and Government of Free Negroes and Persons of Color, No. 2277, § II, STATUTES 7:461 (1822).

15. An Act to Raise Supplies for the Year, No. 2922, STATUTES 11:285 (1844).

16. An Act Prescribing the Duties of Certain Officers in the Collection of Supplies, the Payment of Salaries, No. 2885, § II, STATUTES 11:246 (1843).

17. Tax Collector's Execution, May 29, 1831, Fairfield County Sheriff's Executions, Tax Collections, South Carolina Department of Archives and History [hereinafter SCDAH].

18. *Id.*

19. An Act Prescribing the Mode of Electing Clerks, Sheriffs, [sic] and Ordinaries, No. 2779, § LVIII, STATUTES 11:54 (1839).

This Article also presents a large body of quantified data for the sales of about 2,100 slaves between 1823 and 1865. These data come from the sale books of sheriffs, masters in chancery, and probate courts in five different South Carolina districts: Edgefield, Fairfield, Marlboro, Newberry, and Union.²⁰ The different sale books included similar details regarding the sale of slaves and other property. The sheriff's sale book was one of three records books "of good material and strongly bound" that the state legislature directed the sheriff to keep.²¹ The sheriff was to record all relevant details of executions, levies, advertisements, and sales. These data included the names of the parties, descriptions of property sold, dates of sales, purchasers' names, sale prices, and statements about the distribution of proceeds.²² Sheriffs usually identified the slaves they sold by name but only rarely indicated a slave's age. The records of masters in chancery—the equity court officials who ordered sales—and probate courts contained the same or analogous information.²³ Probate records also generally contained inventories and appraisals of decedents' estates.

TABLE ONE
DATA SAMPLE: DISTRICTS, SLAVES SOLD, AND MONTHS²⁴

	Sheriffs'		Probate		Equity Court	
	Slaves Sold	Months of Data	Slaves Sold	Months of Data	Slaves Sold	Months of Data
Edgefield	—	—	420	184	—	—
Fairfield	504	142	—	—	63	49
Marlboro	445	377	384	180	65	100
Newberry	93	15	—	—	—	—
Union	88	40	—	—	45	81
Total	1,130	574	804	364	173	230

20. Edgefield: Judge of Probate, Sale Book, WPA typescript, South Caroliniana Library [hereinafter SCL]. Fairfield: Sheriffs' Sale Books, 1831-35, 1844-48, 1852-56; Master in Equity Sale Book, 1841-63, SCDAH. Marlboro: Sheriffs' Sale Books, 1823-63; Master in Equity Sale Book, 1856-69; Ordinary/Probate Judge's Inventories, Appraisements, and Sales, 1840-60, SCDAH. Newberry: Sheriffs' Sale Book, 1832-33, SCDAH. Union: Sheriffs' Sale Book, 1823-26; Master in Equity Sale Book, 1823-34, SCDAH.

21. An Act Concerning the Office, Duties and Liabilities of Sheriff, No. 2780, § VI, STATUTES 11:39-40 (1939).

22. *Id.* at 11:40.

23. See, e.g., Edgefield: Judge of Probate, Sale Book, *supra* note 20; Fairfield: Master in Equity Sale Books, *supra* note 20; Marlboro: Master in Equity Sale Book and Ordinary/Probate Judge's Inventories, Appraisements, and Sales, *supra* note 20; Union: Master in Equity Sale Book, *supra* note 20.

24. *Supra* note 20.

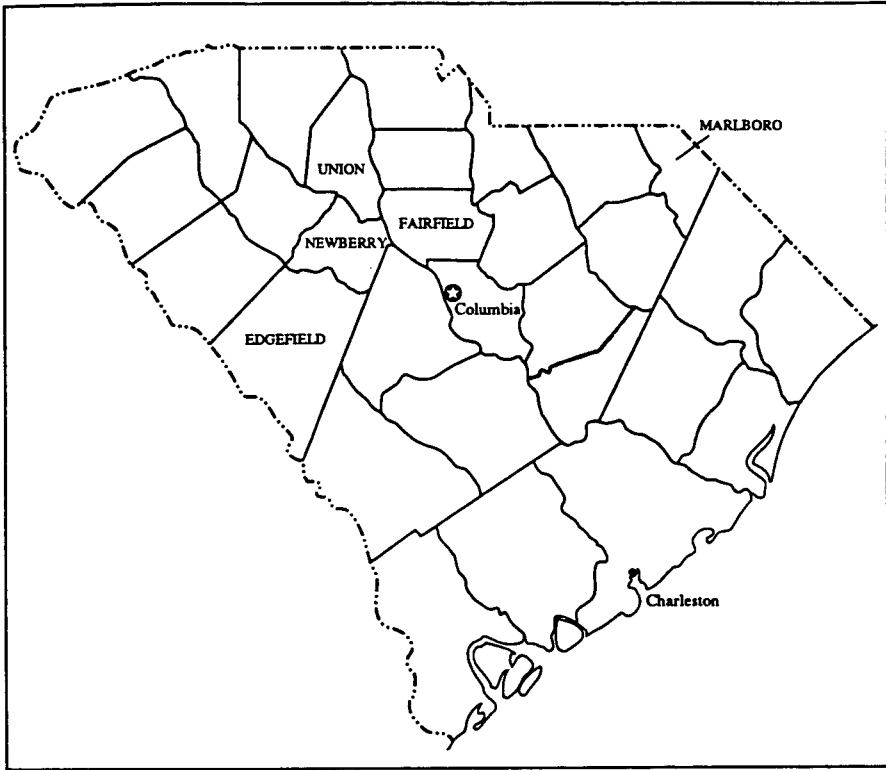
The data that form the basis of the quantitative conclusions of this Article are not from a statistically random sample. Not all of the original sources of the sales data still exist, and the five districts that supplied the data are but a sample of the districts with extant data. Execution of a true, statistically random sample of the extant records would have had three principal effects. First, a research design that included a random sample would have greatly magnified the cost and time necessary for this study. Second, a random sample would not have produced longitudinal data for individual districts. Without such contiguous data, it would be impossible to describe trends over time within individual districts.²⁵ Third, a statistically random sample would draw a bevy of complicated statistics into an otherwise relatively simple, quantitative study.

The five districts that supplied the data comprised one-sixth or 16.6% of the total number of South Carolina districts in 1860. In 1820, twenty-eight South Carolina districts existed; by 1860, division of two existing districts had raised the number of districts to thirty.²⁶ In the five decennial censuses between 1820 and 1860, these five districts accounted for just under one-sixth of the state's total population, an average of 16.4%. Overall, the five districts averaged a somewhat smaller proportion of the state's slaves, with an overall average of 15.7% of the state's slaves residing in the five districts.²⁷

25. For a general introduction to longitudinal historical studies of courts, see Lawrence M. Friedman, *Opening the Time Capsule: A Progress Report on Studies of Courts Over Time*, 24 L. & SOC'Y REV. 229-40 (1990).

26. "South Carolina County Records," WPA typescript, SCL, at 2; DEP'T OF THE INTERIOR, 1 THE STATISTICS OF THE POPULATION OF THE UNITED STATES, . . . NINTH CENSUS 60 (1872) [hereinafter NINTH CENSUS]. Beginning with the Reconstruction Constitution of 1868, South Carolina's districts were called counties. S.C. CONST. OF 1868, art. II, § 3, in FRANCIS NEWTON THORPE, THE FEDERAL AND STATE CONSTITUTIONS 3285 (1909).

27. NINTH CENSUS, *supra* note 26, at 61.

ANTEBELLUM SOUTH CAROLINA²⁸

Map by Ellen Lougee

Edgefield District was representative of not only South Carolina but the South as a whole, according to historian Orville Vernon Burton. Burton is the author of, in his own true words, “a total, almost encyclopedic, history of nineteenth-century Edgefield families and their communities.”²⁹ After careful, serious accumulation and comparison of statistical evidence, Burton concluded that Edgefield District “was representative of rural South Carolina in the mid-nineteenth century”; that the “demographic patterns (age and gender structure, death and birth rates) were also remarkably like those of rural South Carolina as a whole”; and that the district’s “black population as a proportion of the total paralleled that of South Carolina for most of the nineteenth century.”³⁰ Furthermore, Edgefield “was representative of the large Pied-

28. Map by Ellen Lougee.

29. ORVILLE V. BURTON, *IN MY FATHER'S HOUSE ARE MANY MANSIONS: FAMILY AND COMMUNITY IN EDGEFIELD, SOUTH CAROLINA* xvii (1985).

30. *Id.* at 4.

mont section of the up-country," which stretched from Georgia through South and North Carolina and into Virginia, and the district's violence was also typical of the South.³¹ Burton also found that a number of other historians, including Richard Hofstadter and Clement Eaton, had described events in Edgefield as typical of the South as a whole.³² However, unlike Burton's history, the conclusions of this Article are not founded upon the analysis of one district. Edgefield, which had at all times the greatest population of the five districts, supplied data for fifteen consecutive years of probate sales. As Table One indicates, during these years of probate sales, 420 slaves were sold in Edgefield.

Four of the five districts—Edgefield, Fairfield, Union, and Newberry—were in the South Carolina upcountry. The upcountry is a section of the Piedmont that forms a rough triangle in the northwestern part of the state. Fairfield District lies above the fall line and sand hills that divide the lowcountry from the lower Piedmont and is just north of Richland District, which contains Columbia.³³ Columbia, at almost the geographic center of the state, is the city where since 1790, the state's legislature has met. Newberry, third in terms of population, lies between Fairfield and Edgefield, with Union District lying above Newberry, to the northwest of Fairfield.

Fairfield, which provided data for sheriffs' and equity court sales accounting for more than one-quarter of the 2,107 slave sales this Article considers, differed most importantly from Edgefield by its greater proportion of slaves. Fairfield was the second largest of the five districts. In 1850, Edgefield, the largest district, had a total population of 39,262, while Fairfield had 21,404.³⁴ Edgefield's population in 1820 was 48.6% slave, with this proportion growing to 60.3% by 1860. Fairfield in 1820 had proportionally fewer slaves, 45.1%; but over the next four decades, that proportion grew steadily and reached 70.3% in 1860. Fairfield was thus somewhat wealthier and even more deeply committed to slavery than Edgefield and the other districts. In this way, Fairfield matched some of the common stereotypical views of the Old South that have grown since the Civil War.

The other two upcountry districts that supplied data for this study, Newberry³⁵ and Union, were both smaller than Fairfield, with propor-

31. *Id.* at 4-6.

32. *Id.*

33. This description is from LACY K. FORD, JR., *ORIGINS OF SOUTHERN RADICALISM: THE SOUTH CAROLINA UPCOUNTRY, 1800-1860*, at viii-ix (1988).

34. *NINTH CENSUS*, *supra* note 26, at 60.

35. For a local history of Newberry, see THOMAS H. POPE, *THE HISTORY OF NEWBERRY COUNTY, SOUTH CAROLINA: VOLUME ONE: 1749-1860* (1973).

tions of slaves that were generally intermediate between the very high concentration of Fairfield and the high concentration of Edgefield.³⁶ As Table One indicates, only a small portion of the data, just fifteen months during 1832 and 1833, comes from Newberry District. Union District supplied just over 120 months of data, with a total of 133 slave sales.

The institution of slavery prospered in each of the five districts during the antebellum years. The trends in slave population growth are good indicators of how well slavery fared in the various districts. From 1820 to 1860, a majority of South Carolina's residents were slaves.³⁷ During these years, the slave populations of each of the five districts grew steadily in size, with the increase in the slave populations of the districts outpacing the statewide growth in slave population. In 1820, 12.8% of South Carolina's slaves lived in these five districts; by 1860, that fraction had grown to 17.6%. By the 1850 and 1860 censuses, a majority of the residents in each of the five districts were slaves, with proportions ranging from 52% slaves in Marlboro and Union districts in 1850 to just over 70% of Fairfield's residents being slaves in 1860. In 1820, the ratio of slaves to total population in the five districts averaged 80% of the state proportion; by 1860, the ratio of slaves to total population in the districts was greater than the overall state figure by about 7%.

Marlboro District, the only one of the five districts not in the up-country, was a small district with a richness of extant records. This lowcountry but not tidewater district is tucked between the Great Pee Dee River and the westward bend that the South Carolina/North Carolina border makes about 120 miles from the Atlantic Ocean. Marlboro's population nearly doubled from 6,425 in 1820 to 12,434 in 1860. During this time, the proportion of slaves to total population increased from 47.2% to 55.4%.³⁸ As Table One indicates, the district supplied data for all three types of sales. The records yielded complete sheriffs' sales book data for each month during the years from 1826 to 1856, with the exception of 1851, as well as a few other scattered months of data. In addition, Marlboro supplied 180 months of probate data and 65 months of equity court sales data. In total, Marlboro District supplied data for the sales of 894 slaves.

The five districts are a sample of the state's total number of districts, and the sales data are a sample of all the sales that took place within the districts. The three types of sales took place on a monthly schedule;

36. NINTH CENSUS, *supra* note 26, at 60-61.

37. *Id.* All of the information discussed in this paragraph is taken from the NINTH CENSUS.

38. *Id.*

often each of the three types of sales took place on the same Sale Day. If each of the three types of sales occurred every month between 1823 and 1865 in each of the five districts, there would have been a maximum total of 7,740 sales: 2,580 of each type. There was not, however, a sale of each type each month in each district. The sampled data include 1,168 of the possible universe of 7,740 sales, or 15.1%. Sales data from every South Carolina district would amount to a maximum 45,144 sales statewide; the sample comprises 2.6% of that largest imaginable collection of sales data.

No statistical test can offer the assurance that these sales data were representative of the state as a whole. Any direct comparison is impossible, because, with the partial exception of Charleston district—which will be discussed below—there are no collected data for sales by operation of law in other districts. The sample is sufficiently large to warrant the frank guess that the data represent well the rest of the state. Furthermore, to the extent that the sampled districts differ from other parts of the state in terms of the relatively greater prosperity of the slave economy in these areas, this difference should tend to reduce and not enlarge the volume of sales by operation of law. Thus, if the sample is unrepresentative, the bias is likely to be conservative.

The next issue is whether the South Carolina courts' slave sales were representative of the rest of the South. No one can yet say. Often, or perhaps typically, historians regard South Carolina as exceptional. What marks the Palmetto State's peculiarity in the historiography is its "ultra-ness": ultra-southern, ultra-slave, ultra-aristocratic, ultra-anti-Yankee. For historians who seek to document differences between the antebellum North and South, South Carolina is certain to provide striking contrast.³⁹ This may mean that South Carolina cannot represent the rest of the South; but if unrepresentative, then the "ultra-ness" of South Carolina in its aristocratic and paternalistic tendencies would tend to suggest that there would be fewer rather than greater numbers of slave sales by operation of law when compared with other states that guarded less jealously the prerogatives of the slave master. But this can only be a guess. At the very least, with the partial exception of Louisiana, there were not differences in laws or legal institutions that would suggest that South Carolina's high volume of court sales of slaves were exceptional within

39. See, e.g., WILLIAM H. PEASE & JANE H. PEASE, *THE WEB OF PROGRESS: PRIVATE VALUES AND PUBLIC STYLES IN BOSTON AND CHARLESTON, 1828-1843* (1985); MICHAEL S. HINDUS, *PRISON AND PLANTATION: CRIME, JUSTICE, AND AUTHORITY IN MASSACHUSETTS AND SOUTH CAROLINA, 1767-1878* (1980). For a discussion of the issues of Southern distinctiveness, see CARL N. DEGLER, *PLACE OVER TIME: THE CONTINUITY OF SOUTHERN DISTINCTIVENESS* (1977).

the South. So, the pattern of slave sales by operation of law in South Carolina was probably much like that in other slave states.

II

In 1845 and 1846, in just over 100 sales at the beginning of twenty-two different months, Fairfield District Sheriff Jeremiah Cockrell sold 311 slaves, 15,450.5 acres (24.1 square miles) of land, 99 cows, 102 pigs, 36 horses, 28 mules, 44 sheep, 3 yokes of oxen, 3 pianos, and a variety of other personal property of between 80 and 90 debtors, and then distributed the total proceeds of \$127,589.50 to more than 225 creditors.⁴⁰ The quantity and value of property the sheriff sold in this particular district demonstrate the importance of sheriffs' sales. Through law, the sales channeled power into the lives of those whose property was sold, and further, into the lives of those sold as property.

By no sensible standard can the sheriff's sales be regarded as marginal or unimportant to social, economic, or legal life. For example, the 311 slaves that Sheriff Cockrell sold during the two-year period comprised 2.3% of the district's total slave population in 1845.⁴¹ On average, Fairfield District's sheriff sold 1.2% of the district's slaves during each of the two years. Excluding the sales of houses and lots, he sold forty-two different parcels of land, an average of 7,720 acres per year. Using the 1850 federal census figures as a rough approximation of the 1845-46 figures,⁴² Cockrell thus sold an average of 2.2% of the district's farmland each year.

The large amount of cash that Sheriff Cockrell handled as part of his conduct of sales also demonstrates the magnitude of his sales and, therefore, the power of the courts. For purposes of comparison, the total tax revenue and total expenditures of South Carolina's state government are useful figures. The total state tax revenue during 1845 and 1846 was \$607,321.⁴³ The state's expenditures amounted to slightly more, a total of \$611,102; over one-third of this amount paid salaries in the judiciary, legislature, and executive branch, and another one-tenth maintained the state's militia and arsenals.⁴⁴ Cockrell's receipts, that is, the money that

40. Fairfield: Sheriffs' Sale Books, *supra* note 20.

41. The 1845 figures are the average of the 1840 and 1850 census figures. DEP'T OF STATE, SIXTH CENSUS OR ENUMERATION OF THE INHABITANTS OF THE UNITED STATES . . . IN 1840, at 229 (1841) [hereinafter SIXTH CENSUS]; STATISTICAL VIEW OF THE UNITED STATES . . . COMPENDIUM OF THE SEVENTH CENSUS 302 (1854) [hereinafter COMPENDIUM OF THE SEVENTH CENSUS].

42. COMPENDIUM OF THE SEVENTH CENSUS, *supra* note 41, at 304. The SIXTH CENSUS did not enumerate acres of improved and unimproved farmland.

43. FORD, *supra* note 33, at 32.

44. *Id.* at 308-11.

passed through his hands, equaled just over 20% of the entire state's tax receipts. The Fairfield sheriff handled and disbursed one-fifth of the amount of money that the state's treasurer managed.

Another indicator of the great volume of Sheriff Cockrell's sales comes from his livestock sales. During the same two years, Cockrell sold about the same number of animals as human beings. Again, using the 1850 census figures as an approximation of the 1845-46 figures,⁴⁵ the sheriff sold 0.8% of the horses, 0.4% of the cows, 4.5% of the oxen, 0.6% of the mules, and 0.3% of the sheep each year. His livestock sales were substantial, especially of horses and mules, although the percentage of the district's livestock that he sold, with the exception of the three yokes of oxen, did not reach the yearly averages for slave (1.2%) and land (2.2%)⁴⁶ sales. One possible explanation for the smaller fraction of livestock sold is that debtor-farmers might have had proportionally less livestock than solvent farmers. Another explanation is that slaves—the farmer's capital assets that were the most liquid, valuable, and in demand—were usually among the first property that the sheriff offered for sale. Although statute allowed a debtor-slaveholder to reserve slaves from sale until other property was sold,⁴⁷ sale books indicated that typically the sheriff would not sell the farmer's livestock, farm implements, and household goods until the end of the sale and would not sell them at all if receipts from the other property sold met the debt. Usually, the slaves were the first sold.⁴⁸ The sale of each slave that Cockrell sold in 1845-46 settled an average debt of \$276.90, minus the sheriff's commission.⁴⁹

For debts sufficiently great that even the sale of slaves would not generate receipts sufficient to satisfy the creditor, Sheriff Cockrell sold everything, except certain property that the statute made exempt from sale. For each family, goods exempt from sale included two beds and bedding, two bedsteads, a spinning wheel with two pairs of cards, a loom, one cow and calf, cooking utensils, and \$10 worth of provisions, as well as the tools of a farmer or mechanic.⁵⁰ This statutory exemption did not include land, and was not, therefore, a homestead exemption like that

45. DEP'T OF INTERIOR, THE SEVENTH CENSUS OF THE UNITED STATES: 1850, at 345-46 (1853).

46. *Id.*

47. An Act for Establishing County Courts, and for Regulating the Proceedings Therein, No. 1281, § XXXVII STATUTES 7:229 (1785) ("no lands or tenements, or slaves, shall be taken in execution . . . where other goods and chattels are shewn by the defendant or debtor to the sheriff or other officer, sufficient to satisfy the demands of such sheriff or other officer.")

48. *Supra* note 20.

49. *Id.*

50. An Act to Prohibit Sheriffs and their Deputies, under Certain Penalties, from Purchasing

enacted by the Republic of Texas during the 1830s.⁵¹ Not until 1851, ten years after Mississippi became the first state to adopt a homestead exemption, did the South Carolina legislature pass its own exemption law. South Carolina's act exempted fifty acres of real estate—so long as its value was less than \$500—and up to \$25 in provisions from levy and sale.⁵² But in response to the credit constriction that followed the Panic of 1857, the legislature repealed the homestead exemption; legislators yielded to the pressure of merchants and small farmers, all of whom sought to loosen the flow of credit by renewing creditors' entitlement to take debtors' homesteads.⁵³

Sheriff Cockrell's Fairfield District sales included every sort of property, as did similar sales that masters in equity and probate officials ordered. In cases of full sale, the sale books provide fascinating, full inventories of antebellum households. The diversity of the property sold at these sales makes containment of the analysis difficult. What did it mean to property owners to be divested fully of their households, left only with the nucleus of property that the statute allowed? Consider the buyers. How did they feel as they carted off their new, but previously owned possessions or moved into property formerly occupied by the debtor? Did the ghosts of previous title walk the rooms? What did J.D. Starke and his wife see when they peered into the looking glass that he brought home on March 2, 1846 after the sale that broke up N.S. Perry's household?⁵⁴ Did Perry's image linger on the silvered glass? Fleeting as Perry's image, the answers to these questions are probably beyond the reach of historians.

III

The sales confronted debtors with the opportunity to reflect, perhaps despairingly, on the meaning of property. Like the property owners, slaves were also in a desperate situation. The sale books record nothing of slaves' reactions to their sale. Henceforth, this section will narrow in focus to consider slaves, while expanding temporally and geo-

Executions Lodged in their Offices; and for other Purchases therein Mentioned, No. 2315, § IV, STATUTES 6:214 (1823).

51. HENRY W. FARNAM, CHAPTERS IN THE HISTORY OF SOCIAL LEGISLATION IN THE UNITED STATES TO 1860, at 150-51 (1938); LAWRENCE M. FRIEDMAN, HISTORY OF AMERICAN LAW 244 (2d ed. 1985); An Act to Increase the Amount of Property Exempt from Levy and Sale, No. 4041, § I, STATUTES 12:77 (1851).

52. An Act to Increase the Amount of Property Exempt from Levy and Sale, No. 4041, § I, STATUTES 12:77 (1851).

53. FORD, *supra* note 33, at 322-23.

54. Fairfield: Sheriff's Sale Book, March 2, 1846, at 44, SCDAAH.

graphically to include sales in five districts during the period from 1823 to 1865.

Slaves were the central assets of the Southern economy. At sales, they were the most important assets sold; more important than the accumulated personal property of households; more important than the crops, farm implements, and livestock; and more important than the land itself. Roger Ransom and Richard Sutch have estimated that in 1859, in the South's major cotton-growing states, capital investment in slaves represented 44% of the South's wealth, with real estate, including both land and buildings, representing around 25% of all wealth.⁵⁵ By 1860, on the eve of the Civil War, Ransom and Sutch estimate the value of slave capital to have been more than three billion dollars.⁵⁶

Among assets, the centrality of slaves, even, or especially, over the land, cannot be stated too strongly. As Gavin Wright, the leading economic historian of the antebellum South, puts it, "even a few slaves would dominate the portfolio of all but the wealthiest capitalist or landlord."⁵⁷ Slavery was profitable, and Wright explains "that the essence of the profitability of slavery was the financial value of slave property."⁵⁸ He compares the outlook of slaveholders to that of "homeownership today—most families," he notes, "buy one house to live in and do not frequently buy and sell in response to fluctuations in price; yet these households maintain an active and sometimes intense interest in the value of their homes."⁵⁹ Although recent research suggests that slave owners sold their slaves more frequently than Wright implies, his analogy between slave and home ownership is useful and accurate. The wealth of slave owners increased as the value of their slave assets climbed. Much like California's housing price curve in the 1970s and most of the 1980s,⁶⁰ the slave price curve was especially steep in the 1850s. Indeed, Wright argues for protection of these upward gains as the cause of the Civil War.⁶¹

55. Roger L. Ransom & Richard Sutch, *Capitalists Without Capital: The Burden of Slavery and the Impact of Emancipation*, 62 *AGRIC. HIST.* 133, 138-39 (1988).

56. *Id.* at 151.

57. GAVIN WRIGHT, *THE POLITICAL ECONOMY OF THE COTTON SOUTH: HOUSEHOLDS, MARKETS, AND WEALTH IN THE NINETEENTH CENTURY* 41-42 (1978).

58. *Id.* at 141-42.

59. *Id.* at 143.

60. Steve Kerch, *Affordable Housing Shrinks But First-Time Buyers Still 40% of Market*, *CHI. TRIB.*, May 27, 1989, Home Guide, at 3 (explaining that "[f]rom 1970 to 1988, the median price of a home in California has risen from \$24,300 to \$165,600, more than a six-fold leap").

61. WRIGHT, *supra* note 57, at 144. On the importance of the upward gains in slave prices, see JAMES OAKES, *THE RULING RACE: A HISTORY OF AMERICAN SLAVEHOLDERS* 171-79 (1982). On the myth of the reluctance of slave owners to sell their slaves, see MICHAEL TADMAN, *SPECULATORS AND SLAVES: MASTERS, TRADERS, AND SLAVES IN THE OLD SOUTH* 111-32 (1989).

Most important among assets, slaves also lay at the foundation of Southern social order. In his 1990 book, *Slavery and Freedom*, James Oakes describes the antebellum South as one of the few slave societies in history. There have been many societies with slaves, but the mere presence of slaves did not constitute a slave society. "A slave society," Oakes explains, "was one in which a relatively high proportion of slaves signaled the central place of slavery in the social hierarchy, the economic structure, and the political system."⁶² He nicely illustrates the point hypothetically. Imagine the pre-revolutionary North without slaves and imagine the antebellum South without slaves. The society fundamentally altered in this hypothetical is a slave society, the other a society with slaves. In a slave society, "[s]ocial standing was determined by whether one was slave or free and, if free, whether one owned or did not own slaves," Oakes explains. "The most important economic activities, the basis of a society's wealth," he continues, "derived from slavery."⁶³ The centrality of slaves in the southern economic and social order supports this study's predominant concern with their sale. The number of slaves sold by operation of law is the best measure of the social consequences of sales by operation of law.

IV

After Sheriff Cockrell's election in 1844,⁶⁴ he sold few slaves at first. During the first two months of his term, Sheriff Cockrell sold only one slave; at that rate, he would have sold six slaves over the course of a year. But during the next calendar year, 1845, he sold 183 slaves or 1.4% of the district's enslaved population. In 1846, he sold about one-third fewer slaves—128—and in 1847 and 1848, the percentage of the slave population that he sold declined further still.⁶⁵ It is not difficult to account for the large number of Sheriff Cockrell's sales during 1845 and 1846. These were years of great agricultural distress in South Carolina.⁶⁶

62. JAMES OAKES, *SLAVERY AND FREEDOM: AN INTERPRETATION OF THE OLD SOUTH* 38 (1990).

63. *Id.*

64. In 1844, Fairfield's white men—who since 1810 had enjoyed universal suffrage—elected Cockrell to a four-year term. In a state in which the legislature tightly controlled the appointment of state officials, sheriffs were among the relatively small number of local officials of state government directly elected by each district's voters. FORD, *supra* note 33, at 102, 304-05; An Act Prescribing the Mode of Electing Clerks, Sheriffs, [sic] and Ordinaries, *supra* note 19, § I, 11:35-36, § IX, 11:37.

65. *Supra* note 20.

66. FORD, *supra* note 33, at 215; ALFRED G. SMITH, *ECONOMIC READJUSTMENT OF AN OLD COTTON STATE: SOUTH CAROLINA, 1820-1860*, at 2-8, 50-54, 110 (1958).

FIGURE ONE
 FAIRFIELD SHERIFFS' SALES
 ANNUAL SALES OF SLAVE POPULATION⁶⁷

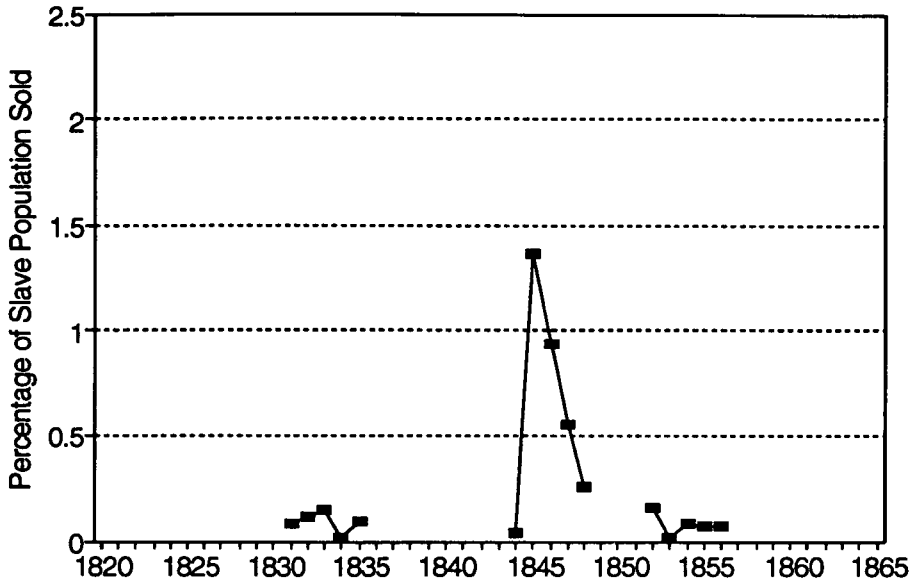
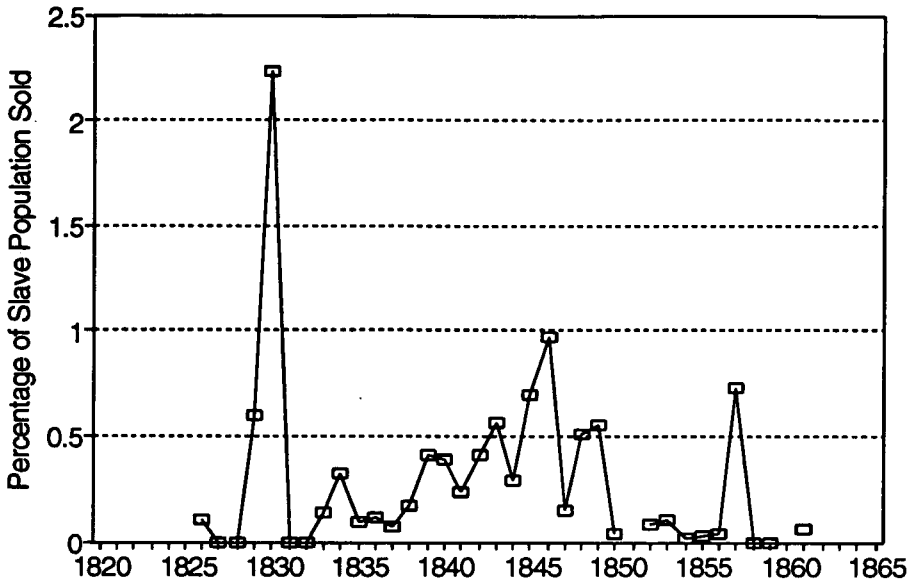


Figure One illustrates the annual sales of three different Fairfield District sheriffs. Sheriff Yongue began his term in 1831 and served until 1835. In the forty-five months of Yongue's term for which sale records are extant, he sold forty-two slaves, with an average annual rate of sale of around 0.1%, never selling more than 0.2% of Fairfield's slave population. The sharply peaked curve to the right of Sheriff Yongue's sales are those of Cockrell, with a maximum rate of sale of 1.4% of the population in 1845, and thereafter a sales rate that declined to about 0.3% in 1846. Finally, to the right of Cockrell's curve, is the term of Sheriff Ellison between 1852 and 1856, during which time he, like Yongue, never sold more than 0.2% of the District's slaves.

67. Fairfield: Sheriffs' Sale Books, *supra* note 20.

FIGURE TWO
MARLBORO SHERIFFS' SALES
ANNUAL SALES OF SLAVE POPULATION⁶⁸



The records of Marlboro District present a slightly different picture than Fairfield District. With the exception of the year 1851, sale records exist for each month between 1823 and 1856. Additional records exist for some of the months between 1857 and 1861. Figure Two presents these data. As with Sheriff Cockrell's sales, there is a relative maximum during the harsh, drought years of 1845 and 1846. With a district slave population of approximately 5,000, the Marlboro District sheriff sold 34 slaves in 1845 and 49 in 1846. In 1846, like Sheriff Cockrell, Marlboro's sheriff sold just under 1% of the district's slaves. The absolute maximum for the Marlboro sheriff's sales of slaves came earlier, in 1830. That year, the sheriff sold 97 of the district's 4,333 slaves, a total fraction of 2.2%. Overall, sheriffs sold an average of 0.3% of the slave population each year in both Marlboro and Fairfield Districts.

Sheriffs' sales were not, of course, the only type of sale by operation of law, and sheriffs were not the only agents of law who auctioned slaves at the direction of court officials. In terms of volume, the next most im-

68. Marlboro: Sheriffs' Sale Books, *supra* note 20.

portant type of sale after sheriffs' sales were those supervised by the Court of the Ordinary, that is, probate sales.

FIGURE THREE
MARLBORO PROBATE SALES
ANNUAL SALES OF SLAVE POPULATION⁶⁹

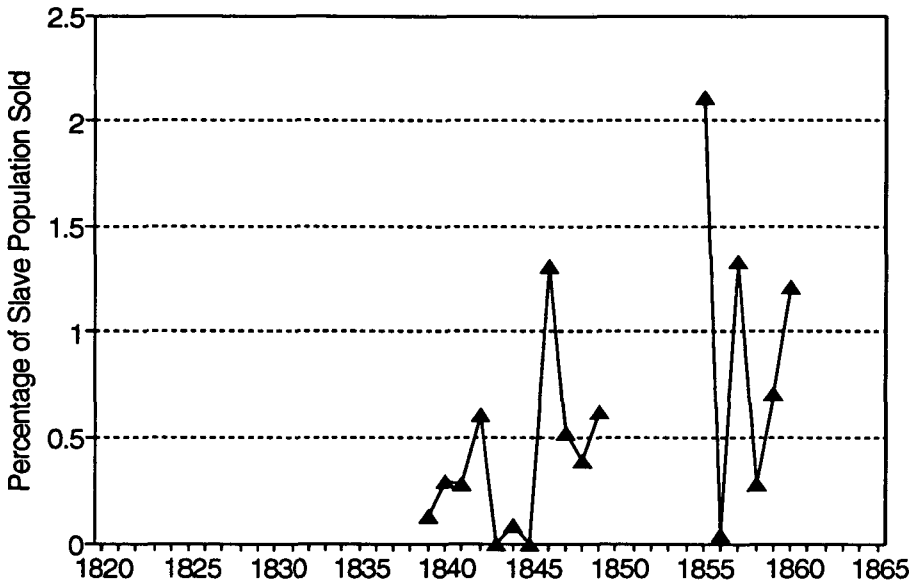


Figure Three illustrates slave sales the probate court ordered in Marlboro District. Maximum sales came in 1855, with just over 2% of the slave population sold. However, this high figure may not be entirely trustworthy, as incomplete sales data for that year made extrapolation of annual sales volume necessary. As with the sheriffs' sales data for both Fairfield and Marlboro, a peak in sales volume occurred in 1846, with 1.3% of the district's slaves sold at probate sales. This relationship is unsurprising as more probate sales would likely occur during times of economic distress. As the estates of decedents proved insufficient to meet the demands of creditors, creditors would force a sale of the property. A similarly high sales figure recurred with the Panic of 1857, when the contraction of credit in New York and London caught South Carolina banks in an overextended position that forced them to suspend payments in

69. Marlboro: Ordinary/Probate Judge's Inventories, Appraisements, and Sales, *supra* note 20.

specie.⁷⁰ That year, probate sales again accounted for the sale of 1.3% of the slave population.

FIGURE FOUR
MARLBORO SALES
PROBATE AND SHERIFFS' SALES⁷¹

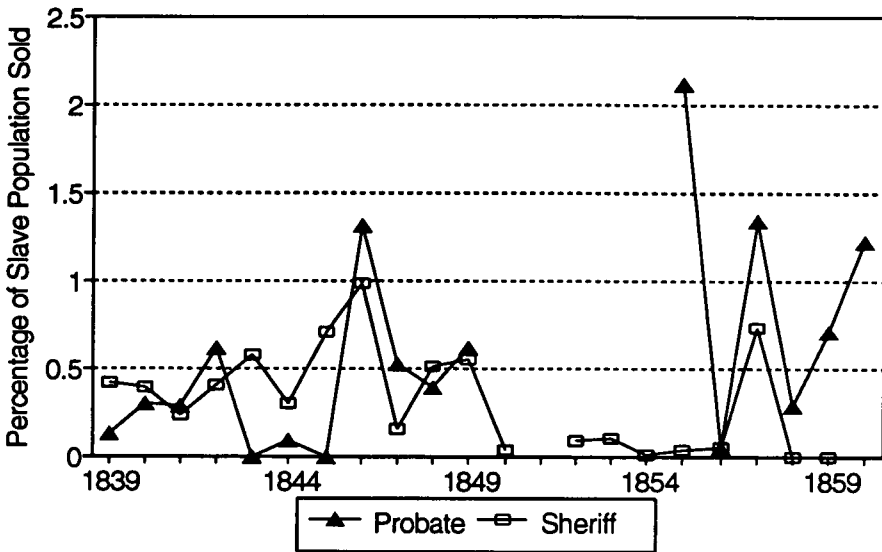


Figure Four combines sales curves from Figure Two and Figure Three and illustrates the percentage of the slave population sold at both Marlboro sheriffs' and probate sales between 1839 and 1860. Both curves depict variability in sales volume from year to year. Considered together, the curves suggest some relationship between the sales volume at different types of sales, especially with the relative peaks that come around 1846 and 1857. One suggestion for the similarity is that the same factors that brought about sheriffs' sales also led to probate sales. This combined depiction of these curves, which would not have been possible with a random sample, also begins to illustrate the great cumulative volume of slave sales by operation of law.

Table Two is a more complete representation of the cumulative vol-

70. J. MAULDIN LESESNE, *THE BANK OF THE STATE OF SOUTH CAROLINA: A GENERAL AND POLITICAL HISTORY* 109-13 (1970); FORD, *supra* note 33, at 330-31.

71. Marlboro: Sheriffs' Sale Book and Ordinary/Probate Judge's Inventories, Appraisements, and Sales, *supra* note 20.

ume of sales by operation of law than is Table One. The Table, which is a small section of the Appendix, presents Marlboro District data from each of the three types of sales this Article considers for the seven-year period between 1855 and 1861. Listed beneath the year is a figure for the district's slave population. These population figures are simple linear interpolations based on the decennial census figures. Next, indicated across the rows for Sheriff, Equity Court, and Probate, is the number of slaves sold at each type of sale during the specified year. Beneath this figure is the number of months for which data were available. The last row for each sale type indicates the annual percentage of the slave population sold at the particular type of sale.

For years in which not all the monthly sales were available, the annual sales figure is an extrapolation, based on those months with extant data. For example, if four months of sales data were available and these data recorded the sale of ten slaves, the annual percentage would derive from an estimated annual sale of thirty slaves. Extrapolated figures are underlined in Table Two and the Appendix. Of the 111 annual sales percentages in the Appendix, 88 are based upon twelve full months of data; the remaining 23 figures are based on less than one year's data. Because these extrapolations are mere guesses, they should be used with care. These figures were not included in the computation of overall average sales figures; they are included only in graphs, for which annual sales figures were necessary.

TABLE TWO
MARLBORO DISTRICT SLAVE SALES BY
OPERATION OF LAW⁷²
(EXCERPT FROM THE APPENDIX)

	1856	1857	1858	1859	1860
Slave Population	6376	6505	6634	6764	6893
Sheriff					
slaves sold	3	8	0	0	N/A
months of data	12	2	2	2	
% of population	0.05	<u>0.74</u>	<u>0.00</u>	<u>0.00</u>	
Equity Court					
slaves sold	0	16	8	29	0
months of data	12	12	12	12	12
% of population	0.00	0.24	0.12	0.42	0.00
Probate					
slaves sold	3	87	19	48	14
months of data	12	12	12	12	2
% of population	0.05	1.34	0.29	0.71	<u>1.22</u>

Table Two adds data from the third type of sales, those made on order of the equity court. South Carolina maintained two parallel sets of courts, equity and common law. Equity court sales originated with the filing of bills or petitions in equity. Sheriffs' sales originated in the common law courts. Even for lawyers, the differences between the courts are often quite mystical.⁷³ The simplest distinguishing characteristic between the two courts was the remedies available in each. Most simply, at common law, plaintiffs could seek and, if successful with the suit, win damages in the form of money from the defendant. When cash would not suffice or when, for some other reason, the remedy available to the plaintiff at law was inadequate, the plaintiff might turn to the equity courts in search of an alternative remedy.⁷⁴ Foreclosure is an equitable remedy, something that the equity court may order in response to the claim of the petitioner (the plaintiff's name in equity court) that someone has failed to pay a debt secured by a mortgage. Put briefly, foreclosure enabled the creditor to preclude forever the debtor's equitable right to

72. Total population and population by race from DEP'T OF THE INTERIOR, A COMPENDIUM OF THE TOTAL POPULATION AND POPULATION BY RACE FROM NINTH CENSUS 88-89 (1872). The volume has a very helpful summary of each county's population figures for each of the first nine censuses.

73. Some have compounded the mysticism. See PERRY MILLER, *THE LIFE OF THE MIND IN AMERICA: FROM THE REVOLUTION TO THE CIVIL WAR 171-82* (1965).

74. On the differences between remedies in equity and at law, see ROBERT W. MILLAR, *CIVIL PROCEDURE OF THE TRIAL COURT IN HISTORICAL PERSPECTIVE 419-21, 474-80* (1952).

regain legal title to the property by repaying the debt at some point after it was due.⁷⁵ South Carolina mortgages were of real estate and sometimes of slaves as well.⁷⁶ Sheriffs did not foreclose on property or hold foreclosure sales, because sheriffs took their orders from the common law courts, not the equity courts. Sheriffs held sales when the plaintiffs had liens: claims on property that arose after the plaintiff won a judgment in a civil suit. Thus, foreclosure was associated with equity courts, and execution of liens with sheriffs and the common law courts. Despite the technical differences, the three types of sales by operation of law arose from essentially the same circumstances: death, non-payment of debts, or both together.

Table Two and the Appendix cumulate data from sales occasioned most often by debt or death. For example, looking down the column for 1857 in Table Two, one can see that the Marlboro sheriff sold eight slaves during the two months for which data are available. Similar sales over the course of the year would have resulted in the sheriff selling 0.7% of the district's 6,505 slaves; however, this extrapolation is merely a guess. At equity court sales, for which twelve full months of data for 1857 are extant, the commissioner in equity sold sixteen slaves or 0.2% of the slave population. During the same time, the probate court ordered sales of 1.3% of the slave population: a total of eighty-seven slaves. In total, at least 111 slaves were sold at Marlboro District sales by operation of law—likely more if complete sheriff's sale data were available. These 111 slaves comprised 1.7% of the total slave population of the district.

Table Three, which like Table Two is part of the Appendix, further aggregates and averages the five-district data for probate, equity, and sheriffs' sales. These data represent the sale of 2,107 slaves between 1823 and 1865. Of this total, 1,130 were sold by sheriffs, 804 by probate, and 173 by equity courts.⁷⁷ In the three different types of sales, the percentage of each district's slaves sold yearly varied considerably, from none sold during certain years in some districts to a high of 2.2% of the total slave population of Marlboro District sold by the sheriff in 1830.

75. Steven Wechsler, *Through the Looking Glass: Foreclosure by Sale as De Facto Strict Foreclosure—An Empirical Study of Mortgage Foreclosure and Subsequent Resale*, 70 CORNELL L. REV. 850, 855-62 (1985). The most common equitable remedies are injunctions, where the equity court tells someone to do or not to do something, and specific performance, where the court tells someone to perform a particular contract.

76. See, e.g., *Maniquault v. Holmes*, 8 S.C. Eq. 283, 1 Bail. Eq. 19 (1831); *Coleman v. Bank of Hamburg*, 2 S.C. Eq. 285, 2 Strob. Eq. 34 (1848); *Cummings v. Coleman*, 25 S.C. Eq. 509, 7 Rich. Eq. 32 (1852).

77. Note that these numbers do not represent the relative frequency of these types of sales.

TABLE THREE
SLAVE SALES BY OPERATION OF LAW:
TOTALS AND AVERAGES⁷⁸
(EXCERPT FROM THE APPENDIX)

	Slaves Sold	Months of Sales	Average Annual Percentage of Slave Population Sold
Edgefield Probate	420	184	0.12%
Fairfield Sheriff	504	142	0.32%
Equity	63	49	0.11%
Marlboro Sheriff	445	377	0.30%
Equity	65	100	0.11%
Probate	384	180	0.46%
Newberry Sheriff	93	15	0.86%
Union Sheriff	88	40	0.45%
Equity	45	81	0.12%
Total	2107	1168	0.73% ⁷⁹

Most importantly, Table Three includes average figures for the annual percentage of the slave population sold at each type of sale in the different districts. As stressed above, some of the annual sale percentage figures in the Appendix and Table Two include adjustments for those years for which the sale data were incomplete. But Table Three does not simply average those annual figures; rather, the derivation of the average figures presented in Table Three takes into account only those months for which there were actual sale data available. The convenient extrapolations of Table Two and the Appendix are not included in the calculation of average annual sales percentages in Table Three.

Table Three indicates that the Marlboro District sheriffs' sales averaged 0.30% of the slave population each year. The Marlboro probate court sold more slaves than the sheriff, averaging about 0.46% of the slaves; while the equity court sold proportionally fewer, just 0.11%. The highest figure is for the Newberry District sheriff, who averaged a 0.86%

78. *Supra* note 20; NINTH CENSUS, *supra* note 26, at 61.

79. This total is derived from monthly sales data and does not extrapolate sales figures for which data were not extant. This annual sales figure is a monthly sales average derived from data from 1,210 different sale months and multiplied by 12.

annual sales rate, but this figure is based on sales during only fifteen months, when the sheriff sold ninety-three slaves. The lowest figures in the group are the sales rates for equity courts, with Fairfield and Marlboro District equity courts having identical average annual rates of 0.11%.

FIGURE FIVE
SLAVE SALES BY OPERATION OF LAW
RELATIVE PROPORTION OF SALE TYPES⁸⁰

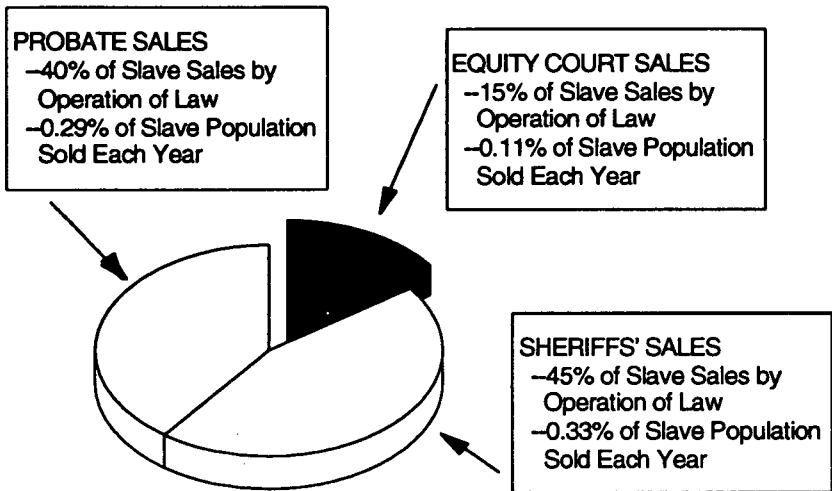


Figure Five further averages the annual sale percentage figures from Table Three. This pie-shaped figure represents the relative proportions of the three types of sales. Although there were occasionally other sales by operation of law besides probate, sheriffs', and equity court sales, this figure presumes that these sales were not significant. If there were significant numbers of other types of sales by operation of law—tax execution sales like the one that threatened the Birds,⁸¹ for example—this would only support my general argument regarding the importance of the human and wealth consequences of sales by operation of law. The largest of the three pie wedges represents sheriffs' sales, which comprised 45% of all slave sales by operation of law. The average, adjusted for the number of months of collected data, of the four different sheriffs' sale

80. *Supra* note 20.

81. *See supra* note 17 and accompanying text.

averages in Table Three is 0.33% of the slave population sold each year. In other words, between 1823 and 1865, sheriffs sold 0.33% of the slave population each year, that is, from a population of 3,000 slaves, the sheriff would sell 10.

The second greatest volume of slaves were sold at probate sales. Probate accounted for 40% of the slave sales by operation of law or 0.29% of the slave population each year. Again, with 3,000 slaves, between 8 and 9 would be sold each year at probate sales. Finally, the exploded pie section in Figure Five represents equity court sales, which accounted for 15% of slave sales by operation of law or 0.11% of the slave population annually, which equals just over 3 of every 3,000 slaves.

Aggregated, averaged, and added, sales of slaves at the three types of sales by operation of law—sheriffs', equity court, and probate—in the districts of Edgefield, Fairfield, Marlboro, Newberry, and Union amounted to a total of 0.73% of the slave population sold each year. From situations that typically began with either debt or death, or sometimes both, the agents and instruments of law brought the power of law to bear, each year, on about 7 out of every 1,000 slaves (and their owners) by selling them.

Seven out of 1,000 may seem a small figure; can less than 1% of anything amount to much? Some present-day comparison may help put this figure in context. In the United States during 1990, an estimated 2,162,000 people died, equalling a crude death rate of 861.9 deaths per 100,000.⁸² This death rate, which is about 18% greater than the annual rate of slave sales by operation of law, answers the question of whether an event that affects less than 1% can amount to much.

But death rates may not be the best figure with which to compare average slave rates of sale, because sale was something that could and would happen more than once in a slave's lifetime. A crime that can happen more than once to present-day residents of the United States is motor vehicle theft. The 1990 rate of such offenses known to the police—657.8 per 100,000, or 0.66%—was lower than the death rate.⁸³

82. Dep't of Health and Human Servs., 39 *Monthly Vital Stat. Rep.*, No. 13, 3 (1991). The age-adjusted death rate from all causes was 515.1 per 100,000. According to the National Center for Health Statistics, "[a]ge-adjusted death rates control for changes and variations in the age composition of the population; therefore, they are better indicators than crude death rates for showing changes in mortality risk over time and for showing differences between race-sex groups within the population." *Id.* at 4.

83. Table 3.128 in SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS—1992, U.S. DEP'T. OF JUSTICE, BUREAU OF JUSTICE STATISTICS 373 (Timothy J. Flanagan & Kathleen Maguire eds., 1992).

These figures equal about 90% of the rate of slave sales by operation of law.

Reported rates of rape were much lower than motor vehicle theft rates, with 41.2 reported rapes per 100,000 inhabitants—both men and women—or 0.041%.⁸⁴ Surveys in which the Census Bureau asks people directly whether they have been victimized yield much higher rape rates than police reports. The 1990 victimization survey indicated that 0.1% of females twelve years or older reported that they were victims of attempted or completed rape.⁸⁵ So, the rate at which agents of law sold slaves was about 85% of the 1990 death rates, 10% above car theft rates, and 7 times the victimization survey rape rate for women. In order for the rate of slave sale by operation of law to be so small as to be unimportant, car theft, rape, and death have to be too small to be worthy of notice as well.

V

A different way to comprehend the volume of slave sales by operation of law is to consider them as a proportion of all slave sales. The number of slave sales that courts of law and equity ordered or supervised was far from insignificant or unimportant in relation to all slave sales. Indeed, an average annual sales percentage rate of 0.73% of the slave population is quite high in proportion to the best existing estimates of the annual sales percentage from all sources, not just sales by operation of law.

Herbert Gutman's 1976 observation that there are few good estimates of the volume or frequency of slave sales, especially local sales, remains true today.⁸⁶ Until recently, the only systematic efforts at deriving a comprehensive estimate of all types of slave sales derived from data from one Maryland district—Anne Arundel—during the 1830s.⁸⁷ A variety of historians have manipulated this district's data and have derived annual slave sales figures ranging from 1% to 3.46%.⁸⁸

84. *Id.*

85. *Id.* at 275. These figures rely on a definition of rape that underreports the incidence of non-consensual sex. See SUSAN ESTRICH, *REAL RAPE* 10-15 (1987).

86. HERBERT G. GUTMAN, *THE BLACK FAMILY IN SLAVERY AND FREEDOM, 1750-1925*, at 145 (1976). The paucity of empirical estimates of slave sales is especially surprising in light of the well-understood threat that sale posed to slave lives and families. See *id.* 35-36, 128-29, 145-49, 285-90; JOHN W. BLASSINGAME, *THE SLAVE COMMUNITY: PLANTATION LIFE IN THE ANTE-BELLUM SOUTH* 173-77 (1979).

87. William Calderhead, *How Extensive Was the Border State Slave Trade? A New Look*, 18 *CIV. WAR HIST.* 42 (1972).

88. FOGEL & ENGERMAN, *supra* note 8, at 53; GUTMAN, *supra* note 8, at 126; GUTMAN, *supra* note 86, at 145, 569 n.25; Herbert G. Gutman & Richard Sutch, *The Slave Family*, in *RECKONING*

Recently, another historian has essayed some figures for total slave sales, this time for the 1850s. These data, as chance—or the plethora of extant records—would have it, come mostly from South Carolina, in particular the lowcountry districts of Charleston and Sumter. The new figures appear in Michael Tadman's 1989 book *Speculators and Slaves*, a fine book that has replaced Frederick Bancroft's *Slave Trading in the Old South* as the best book on the domestic slave trade.⁸⁹ Tadman does not directly derive a figure for total annual sales, but buried in his footnotes are data that make possible the calculation of this figure.⁹⁰ Tadman's total estimate for South Carolina slave sales in the 1850s is 114,600. Among total sales in the 1850s, Tadman's estimate of 67,500 court sales makes sales by operation of law 59.2% of all slave sales, a majority of all slave sales. Although Tadman's data indicate that sales by operation of law comprised a majority of slave sales, Tadman never calculates this figure, and he never mentions nor seems to notice the preponderance of sales by operation of law. In all, Tadman's figures yield an annual sales rate of 2.9% of the South Carolina slave population per year.⁹¹

WITH SLAVERY: A CRITICAL STUDY IN THE QUANTITATIVE HISTORY OF AMERICAN NEGRO SLAVERY 94, 106 (1976). The Anne Arundel data are revisited in Herman Freudenberger & Jonathon B. Pritchett, *The Domestic United States Slave Trade: New Evidence*, 21 J. INTERDISCIPLINARY HIST. 447, 467 n.28 (1991).

89. TADMAN, *supra* note 61; FREDERIC BANCROFT, *SLAVE TRADING IN THE OLD SOUTH* (1931). Most importantly, Tadman has disposed of the myth that slaveholders only reluctantly sold their slaves. TADMAN, *supra* note 61, at 111-32. He also presents convincing estimates of the total interregional movement of slaves. Calculating the Structure of the Interregional Movement, app. 3, *id.* at 237-47. Tadman displays considerable knowledge of domestic slave selling. Especially impressive is his identification of about 150 slave trading firms that operated in South Carolina in the 1850s. South Carolina Slave Traders of the 1850s: A Digest of Evidence, app. 4, *id.* at 248-76.

90. TADMAN, *supra* note 61, at 119-20 n.14. For the 1850s, Tadman estimated total statewide judicial sales of 67,500 slaves, with 54,000 sold locally and 20% of the total sold at court sales—13,500—sold out-of-state. *Id.* at 120. In addition, he estimated non-court local sales, sales that took place not by operation of law and resulted in the slaves remaining within the state. Tadman estimated that non-court local sales were 40% of local sales. *Id.* at 120-21 n.18. His figure for these local sales is thus 21,600. The final sales component is non-court, interregional sales. The total interregional movement of South Carolina slaves he estimates at 65,053 for the 1850s. *Id.* at 12. Sixty percent of this, or 39,000, he attributes to sales, the remainder to planter migration. *Id.* at 31, 120 n.16. Because 13,500 of these interregional sales were court sales, 25,500 were non-court, interregional sales.

91. This figure divides Tadman's figure for sales evenly over the decade and then further divides these figures by the average population between the censuses of 1840 and 1850. Tadman's estimates for statewide total judicial sales appear very large, particularly his probate totals. Using Charleston District records, Tadman derives sales figures that he extends to the whole state. But where this Article has found that sales by operation of law accounted each year for sales of 0.73% of South Carolina's antebellum slave population, Tadman's lowcountry figures yield a figure between 1.23% and 1.47% of the 1850s slave population. Table 5.2, *id.* at 119. The figure of 1.47% is based on the population mean of the decennial censuses of 1850 and 1860. The slave population of Charleston District declined very sharply between these censuses, from 54,775 to 37,290. NINTH CENSUS, *supra* note 26, at 61. Because much of this decline took place close to 1860, the lower figure of 1.23% uses the 1850 census figure. Tadman's rates of sale are 70 to more than 100% higher than those derived from Edgefield, Fairfield, Marlboro, Newberry, and Union District records.

Sales by operation of law are troubling to parts of Tadman's argument. When he looked at the manuscript records of slave traders and counted the sources of their slave purchases, he found, on average, that slave traders made only between 4% and 5% of their slave purchases at judicial sales.⁹² Tadman describes this large discrepancy between the supply of slaves at judicial sales and the purchases of traders as "not particularly surprising." However, he accounts for this difference rather poorly. Tadman argues that traders found unsuitable the long credit available to purchasers at judicial sales.⁹³ But it is hard to imagine why traders who dedicated their business lives to speculative profit in slave-selling would recoil from credit terms that often allowed three-year payment terms with 7% simple interest rates fixed by statute and held at 7% by the very courts that made the sales.⁹⁴ Those were good terms then, just as they are now. It is true that debt posed great problems for many in the nineteenth century, but typical complaints were not that purchases were available on terms that were too easy. And men of business would not be the group most likely to reject credit for ideological reasons.⁹⁵

The reasons for the discrepancy between Tadman's figures for sales by operation of law and those of this Article are unclear. Tadman appears to have handled his data well.⁹⁶ In the absence of a sound reason for disregarding Tadman's figures for sales by operation of law, the best approach is to incorporate them into the calculation of total sales volume. This Article's calculation of the final figure for sales volume thus

92. TADMAN, *supra* note 61, at 113.

93. *Id.* at 113-14.

94. An Act for the Reduction of Interest from £ 8 to £ 7 for Each Hundred Pounds, No. 1146, in THE FIRST LAWS OF THE STATE OF SOUTH CAROLINA 285-86 (1981).

95. There are further problems. Although Tadman is correct in identifying long, inexpensive credit as the usual possibility at equity court and probate sales, TADMAN, *supra* note 61, at 137 n.5, the medium of exchange at sheriffs' sales was cash. Even if Tadman were right that traders preferred to pay cash, they could have exercised that preference at sheriffs' sales. Tadman also suggests that traders avoided court sales because of the mixed lots sold at these sales. He says that court officials often sold lots of slaves that included groups, such as family fragments composed of mothers with small children, rather than selling slaves individually, as the traders would have preferred. *Id.* at 136. My research suggests that a greater fraction of slaves were sold individually at court sales than at other sales. Furthermore, prices were relatively lower than at non-judicial sales. See Thomas D. Russell, *Sale Day in Antebellum South Carolina: Slavery, Law, Economy, and Court-Supervised Sales 203-58* (1993) (Ph.D. dissertation, Stanford University). Thus, Tadman's explanation for the low rate of purchase by traders at judicial sales is unconvincing. But, because judicial sales are not central to his argument, this lapse does not mar his thorough and thoughtful treatment of other aspects of slave selling.

96. Letter from Dr. M. Tadman, Dep't of Economic and Social History, to the author, May 22, 1991. I rechecked and confirmed his data for probate sales. Charleston: Inventories, Appraisements, and Sales, Vol. C (1850-53), Vol. D (1854-57), and Vol. E (1856-60), SCDAH. I also checked and confirmed his data for equity court sales. Charleston: Master in Equity Sale Book, 1851-59, SCDAH. I am grateful to Ms. Carolyn Hamby of Columbia, South Carolina, for her assistance in confirming Tadman's data.

incorporates Tadman's figure of 1.47%⁹⁷ of the Charleston District's slave population sold each year at sales by operation of law. This figure is combined with this Article's lower figure of 0.73%, but combined in a conservative, weighted fashion that uses Tadman's figure only for the lowcountry Charleston District and this Article's lower figure for the rest of the state. The result is a composite average of 0.85% of the state's slave population sold each year by operation of law.⁹⁸

Over the four decades before the Civil War, the annual average of 0.85% of South Carolina's slaves sold at court-ordered or court-supervised sales roughly equaled the number of slaves sold locally and interregionally at non-judicial sales. Returning to the calculation of the total slave sales volume from all sources as depicted in Table Four, we find that over time the total average sales rate was 1.70%, with sales by operation of the court accounting for half of all sales. As Table Four indicates, during the antebellum decades in South Carolina, there were about 232,000 slave sales, with court sales of slaves numbering 115,000. Table Four also shows that the decades of greatest sales were those with the greatest out-migration; during the 1830s and 1850s, the total sales rates were around 2%. The 1840s, years of difficulty for the South Carolina economy, saw relatively fewer slave sales.

TABLE FOUR
TOTAL SLAVE SALES IN SOUTH CAROLINA⁹⁹

	1820s	1830s	1840s	1850s	
Sales by Operation of Law					
Interregional	4890	5474	6067	6709	
Local	19560	21897	24268	26837	
Total	24450	27371	30335	33546	115702
Non-Court Sales					
Interregional	7420	28536	11301	32323	
Local	7824	8759	9707	10735	
Total	15244	37295	21008	43058	116605
Total Decennial Sales	39694	64665	51343	76604	
Population Mean	286938	321220	356011	393695	
Annual Rate (%)	1.38%	2.01%	1.44%	1.95%	
Average Annual Rate (%)					1.70%

97. See *supra* note 95.

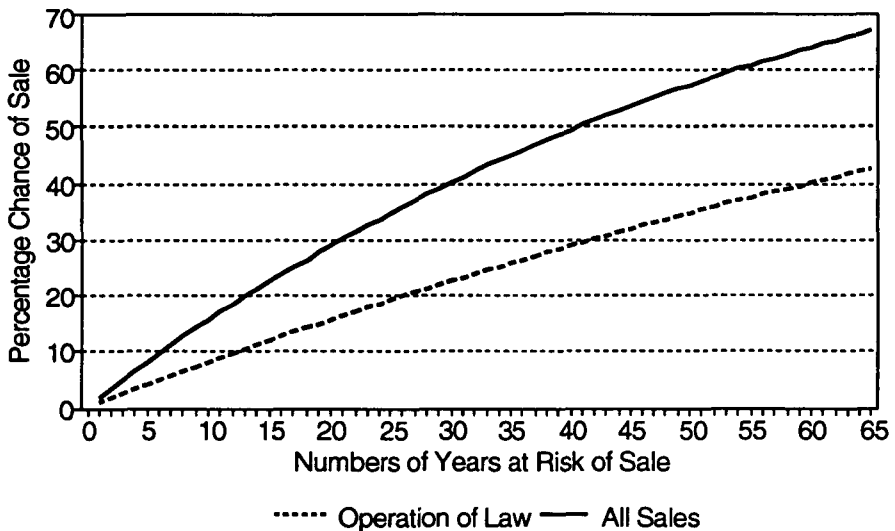
98. On average, the Charleston District slave population comprised 16.6% of South Carolina's total slave population between 1820 and 1860. The recalculation of the total sales percentage by operation of law uses this percentage to weight Tadman's higher figure:

$$(0.166 \times 1.47\%) + [(1 - 0.166) \times 0.73\%] = 0.85\%.$$

99. Table Four combines Tadman's figures for interregional and non-court local sales with this Article's figures for court sales. The figure for the total number of slave sales by operation of law

At first blush, these sales figures may not seem particularly substantial.¹⁰⁰ Annual rates for sales are figures of convenience. The real effects of sales on slave lives and slave families must take into account the additive risk of sales that slaves experienced over time. Figure Six, the last of this Article's figures, charts the cumulative risk of sale that South Carolina slaves faced over time. The figure has two curves. The upper curve is the cumulative risk to an individual slave of sale from all sources, using an annual average sales rate of 1.70%. The lower curve cumulates the risk of sale from sales by operation of law, with an average annual rate of 0.85%.

FIGURE SIX
CUMULATIVE LIKELIHOOD OF A SLAVE'S BEING SOLD
AT LEAST ONCE
(SALES BY OPERATION OF LAW AND ALL SALES)



A number of things are important about Figure Six. First, although

equals 0.85% of the mean of the decennial census figures, multiplied by 10 years. The Table divides these decennial sales totals into interregional and local sales using Tadman's estimate that 20% of the slaves sold at court sales were sold interregionally. TADMAN, *supra* note 61, at 120. The figure for non-court interregional sales subtracts the interregional court sales from Tadman's estimate for total interregional sales during each decade. *Id.* at 12. Finally, the local non-court sales figure employs Tadman's estimate that these sales equaled 40% of local court sales.

100. An annual sales rate of 1.70% is lower, after all, than the estimate of 1.92% in *TIME ON THE CROSS*, a book that came to be regarded as minimizing the degradation of slavery. FOGEL & ENGERMAN, *supra* note 8, at 53.

the rates of sale used to compute the cumulative risk of sale are constant, risk of sale actually varied through the course of a slave's lifetime. For example, younger slaves faced greater risk of commercial sale.¹⁰¹ Second, despite the constant rates, the curves are not flat. For example, although the annual risk of sale is 1.70%, after twenty years an individual slave's chance of having been sold during those twenty years would not be twenty times the annual rate, or 34%. The actual figure would be less, about 29%. This is not an unfathomable mystery of probability. The 29% figure represents the chance that an individual would be sold at least once during a twenty-year period.¹⁰² The difference of 5% represents multiple sales of slaves; during the twenty-year period, some slaves were sold more than once, others more than twice.¹⁰³

VI

The courts of South Carolina operated much like commission-merchant firms. Profit motivated the individuals who comprised the institutions. In firms, vendue masters—as commercial auctioneers were called in South Carolina—took a percentage of the sale amount as a commission. Fees also drove the work of sheriffs and other officials who conducted sales. Like auctioneers, they all worked on commission. As Table Five indicates, sheriffs earned a variety of fees from litigants as they served writs, executed judgments, housed slaves and prisoners, and conducted sales. For sales, sheriffs received a commission of 2% of the sale amount up to \$300 and 1% on sale proceeds above \$300. They also collected an additional 0.25% on the amount of money that they paid out, for example, on the disbursement of the proceeds to creditors. On the sales receipts alone, sheriffs received commissions from 1.25% to 2.25%.

101. On the age-specific risks of commercial sale, see TADMAN, *supra* note 61, at 25-31, 43-44, 233-35.

102. See Gutman & Sutch, *supra* note 88, at 111 n.26. Gutman and Sutch employ the correct formula for computing the risk of sale. Where 0.0170 is the annual risk of sale, 0.9830 is the probability of *not* being sold. Where n = the number of years at risk,

$$1 - (0.9830)^n = \text{the cumulative risk of sale.}$$

103. In this way, the risk of sale was more like the earlier quoted rates of rape than death. After death, a victim does not rejoin the potential pool of victims. But those who survive rape, like those who experienced sale as slaves, face continuing risk with each successive moment of their lives.

TABLE FIVE
SELECT FEES OF SHERIFFS, ACT OF 1840¹⁰⁴

Sheriff's Action	Sheriff's Fee
Receiving writ	\$.25
Serving writ	\$1.00 + mileage
Mileage (going not returning)	\$.05/mile
Commitment & Release of Prisoner	\$.50
Search for persons/goods not found	\$.50
Dieting white persons in gaol	\$.30/day
Dieting slaves/free blacks in gaol	\$.18/day
Levying execution	\$1.00 plus mileage
Commissions—sums received	
Under \$300	2.0%
Over \$300	1.0% + \$6.00
Commissions—money paid out	0.25%
Execution lodged/no levy	\$.50
Serving <i>capias ad satisfaciendum</i>	\$1.50
Advertising	\$1.00 + printer's bill
Executing deed	\$3.00
Executing bill of sale	\$2.00

Just as commissions motivated auctioneers, commissions and fees inspired the work of the sheriff. The state's legislators recognized the fee-driven character of the sheriff's office when they changed the sheriff's oath of office in 1839. An act of 1785 required the sheriff to swear to serve the state faithfully, to the best of his ability, and also added the republican pledge to "do equal right to all persons, high and low, rich and poor, without malice, favour or affection." In addition, the sheriff promised "to truly execute all process" and not take "any other or greater fees than allowed by law."¹⁰⁵ This oath changed in 1839. The new oath, which Sheriff Cockrell took in 1844 when he began his first term, dropped the republican language regarding equality and focused instead on the fees. The law required Cockrell to say, "I, Jeremiah Cockrell, swear, (or affirm, as the case may be,) that I am under no promise, in honor or law, to share the profits of the office, to which I have been elected, and I will not, directly or indirectly, sell or dispose of said office, or the profits . . . thereof during the period fixed by law, if I so long live—so help me God!"¹⁰⁶ This new oath recognized that, as with com-

104. An Act to Regulate the Fees of Sheriffs, Magistrates, and Constables and Certain Fees of Clerks, No. 2808, § II, STATUTES 11:148 (1840).

105. An Act for Establishing County Courts, and for Regulating the Proceedings Therein, No. 1281, § XXVIII, STATUTES 7:224 (1785).

106. An Act Concerning the Office, Duties, and Liabilities of Sheriff, No. 2780, § II, STATUTES 11:38 (1839).

mission merchants, profits motivated the sheriff in the performance of his duty.

Profit motive alone did not make the South Carolina courts commission-merchant firms. The courts begin to resemble a statewide auctioneering firm when considered as an institution that coordinated a large assembly of sheriffs, masters in chancery, ordinaries, and other state officials in each of the state's districts who, on the first Monday of every month, conducted and drew profit from sales by operation of law. Using coordinated procedures and operating according to centralized rules, sheriffs and the agents and officials of probate and equity courts conducted one-half of all the South Carolina slave sales.

The agents, coordinated in statewide action, profited from the sales; but the state's legal system, as an institution, gained benefit as well. Just as the important assets of commercial firms included the intangible goodwill of the firm, agents of law benefitted with the maintenance and growth of goodwill toward the institutions and personnel of the legal system. Legitimacy—the confidence that people had in the court system—was the measure of the legal system's success in the distribution of its product. Just as the managers of commercial firms sought to expand their goodwill and profit, actors within the legal system also worked to establish and sustain the legitimacy and power of the legal system, even as they profited personally from the fees and commissions they received in the course of their official duties.

The goodwill that measured the legitimacy of the legal system could not be taken for granted. In South Carolina during the eighteenth century, on more than one occasion, lack of confidence in the courts, in particular, dissatisfaction with the treatment of debtors, inspired groups of South Carolinians to shut down the courts.¹⁰⁷ Such revolts would have seemed out of place in the relatively stable and harmonious post-Revolution domestic political environment of South Carolina.¹⁰⁸ Nonetheless, lack of confidence could lead to less demonstrative rejections of the court system. From the standpoint of creditors, lack of confidence in the courts might induce them to restrict the supply of credit. For example, if creditors felt uncertain about the ability of the courts to liquidate debtors' property after debtors failed to repay debts, they might choose to lend less money and divert it instead to different investments.

107. ROBERT M. WEIR, *COLONIAL SOUTH CAROLINA: A HISTORY* 108-09 (1983). See also HINDUS, *supra* note 39, at 3-15.

108. FORD, *supra* note 33, at 145-214. See Pauline Maier, *Popular Uprisings and Civil Authority in Eighteenth-Century America*, in *AMERICAN LAW AND THE CONSTITUTIONAL ORDER: HISTORICAL PERSPECTIVES* 69-84 (Lawrence M. Friedman & Harry N. Scheiber eds., 1988).

Like the managers of commercial firms and stock exchanges, the managers of the legal system aggregated individuals working in a variety of contexts into an institution that offered what can be called a product.¹⁰⁹ With antebellum sales by operation of law, liquidation of the assets of defendants, debtors, and decedents was the clearest goal of the sales. Liquidity, the capacity to turn assets into cash, was the most important characteristic of the product that the courts offered.¹¹⁰ The courts' sales offered ready mechanisms for the conversion of assets into cash that could be distributed to interested parties, particularly creditors.

In addition to liquidity, sales by operation of law offered other important things. Antebellum court sales reduced costs of selling property by standardizing the time, place, and manner of sales. This standardization reduced the costs that the recipients of sales proceeds would have faced if they had had to conduct the sales themselves. The standardization of advertising practices and the routinization of Sale Day also attracted buyers for the property the courts sold. The legislature and the courts provided the rules by which the sales would be conducted, and agents of the courts monitored the conduct of the sales. Courts were also able to provide some assurance to buyers with title-security functions and also through the entry of records of the transactions in sturdy volumes that any of the public could consult.¹¹¹

With regard to the selling of slaves, courts were what would today be called a very powerful market actor. Once again, Gavin Wright's useful analogy between the value of slave property and the present-day regard for home sales is an instructive comparison.¹¹² If, for example, one-half of present-day real estate sales were sales that courts ordered or conducted, this stunningly large proportion of sales would not escape the notice of those with houses to buy or sell.

109. Jonathan Macey and Hideki Kanda, law professors at the Cornell University and the University of Tokyo, respectively, have presented a framework useful for the evaluation of the product courts offered. Macey and Kanda examine the product that present-day, organized security exchanges—specifically the New York Stock Exchange and the Tokyo Stock Exchange—offer to firms with publicly traded stock. The product is the listing of the stock on the exchange. Macey and Kanda “unbundle” this product into four components. Exchanges, they say, offer: “(1) liquidity, (2) monitoring of exchange trading, (3) standard form, off-the-rack rules to reduce transactions costs, and (4) a signalling function that serves to inform investors that the issuing companies’ stock is of high quality.” Jonathan Macey & Hideki Kanda, *The Stock Exchange as a Firm: The Emergence of Close Substitutes for the New York and Tokyo Stock Exchanges*, 75 CORNELL L. REV. 1007, 1010 (1990).

110. ROBERT W. HAMILTON, *FUNDAMENTALS OF MODERN BUSINESS: A LAWYER'S GUIDE* 516-17 (1989). Liquidity, Macey and Kanda note, is “[t]he most widely understood function of an organized exchange” Macey & Kanda, *supra* note 109, at 1010.

111. These functions “all reduce the agency costs that are endemic to the modern publicly held corporation.” Macey & Kanda, *supra* note 109, at 1012.

112. See *supra* notes 55-63 and accompanying text.

One indication of the success of the courts in conducting the slave auction business is the extent to which the involvement of the courts has remained largely unnoticed. For example, to remain unnoticed and unseen is a goal of stock exchanges like those of New York or Tokyo. The New York Stock Exchange (NYSE) is a firm, with rules that define and limit trading of securities, but many would think of the NYSE as merely a place where trades take place. The rules and institutional structure of the NYSE are successful insofar as they remain innocuous and unseen. Whether the slave-selling courts are seen more like commission-merchant firms or more like commodities or stock exchanges, from the organizational point of view, the same goals that motivated commission merchants and exchange managers motivated the officials of South Carolina's court and legal system. Like commercial firms and stock exchanges, the courts sold a product, and these sales generated both individual and institutional profit.

CONCLUSION

Because court-supervised slave sales comprised one-half of all slave sales, scholars interested in any aspect of slave selling can no longer allow slave sales by operation of law to remain unseen. Scholars cannot look to and analyze commercial sales only. They cannot exclude court sales as if they were unimportant or of only marginal importance. This is particularly a problem for cliometric analyses of the economics of slavery. For historians interested in looking at "the market" for slaves, the reflexive tendency to exclude sales by operation of law as unimportant and marginal is insupportable. With regard to volume, prices, and importance, sales by operation of law must occupy a central place of the history of slave selling. Economic historians must think seriously about the role of legal institutions and about the motives of those who managed the courts and other agencies of law. Law and economy were closely linked in transactional life; slave sales did not take place in a free realm where only the preferences of buyers and sellers were important. The volume of slave sales by operation of law was too large not to have affected all aspects of slave selling.

Slave sales by operation of law not only generate the question of where one should look if interested in finding and collecting data on the conduct of slave sales, but also suggest the importance of courts and their sales in creating and generating the norms of transactional life. This issue is beyond the scope of this Article, but if, for example, one seeks to study the historical transformation in the very meaning of the market,

court sales must figure prominently. The agents of courts as well as the judges, chancellors, and justices not only supervised the conduct of sales, but they also influenced the interpretive context within which South Carolinians viewed transactions of economy. For example, if creditors or sellers colluded and thereby affected the outcome of a sale, this might generate litigation.¹¹³ The litigation would give judges and chancellors the opportunity to offer their own notions of what was proper and then back their interpretations with the imperative force of a judicial decree and sheriffs' writs. The volume of the courts' slave sales could establish these sales as benchmarks for valid procedures of exchange. Slave sales were central forges for the conceptual outlook of South Carolinians with regard to economy.

Slave sales by operation of law expressed social disregard for black families and slave humanity. Slaves thus sold experienced contradictions of American liberalism: racism and economics at odds with both their individuality and their place in families and communities. This is not news. However, no scholar has identified or considered the central role of law's institutions in these powered clashes of slavery, economy, humanity, and family. Indeed, the role of law and sales by operation of law in the destruction of slave families has remained largely invisible. This is unfortunate, for the examination of how people have used law to wield power, against one another or in defense or promotion of themselves, and how others have experienced law against themselves is among the most interesting tasks of legal history. Legal history recalls and considers law's imperative power.

Finally, the slave auction is perhaps the most powerful and disturbing image from the history of the United States. But the usual image conjured by the phrase "slave auction"—that of a commercial sale taking place in a large city such as Charleston, South Carolina or Richmond, Virginia—is misleading. The auction image from the commercial slave marts neglects and omits the most important actors and institutions in the slave auctioneering business. A more accurate vision of the slave auction would make clearer the full involvement of law and legal officials. The site of these sales was not an auction block beside an urban wharf, but rather the steps of any district's courthouse. South Carolina's courts were its greatest slave auctioneering firm. The stirring metaphor of the slave auction ought to bring to mind not a vision of commercial

113. See, e.g., *Carson v. Law*, 20 S.C. Eq. 296, 2 Rich. Eq. 37 (1846).

sale, but rather the image of courts and law, a vision of any district's courthouse, on the steps of which, each month, one-half of all auction sales of slaves took place.

