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Race, Property Rights, and the Economic Consequences of Reconstruction: A Case Study

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Race, Property Rights, and the Economic Consequences of Reconstruction: A Case Study†

Robert J. Haws and Michael V. Namorato***

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I. INTRODUCTION

The Reconstruction process in Mississippi was a trying experience for all concerned. Whether white or black, rich or poor, male or female, all Mississippians had to adjust to the political, economic, and social realities of the post-Civil War period. The State and its people not only were confronted with the economic devastation caused by the war, but also were required to conform to the dictates of the national government. While all branches of state government were involved in this struggle, the branch that proved to be the most effective was the judicial system. Aware of the federal government's demands and conscious of the needs of its own people, the State's legal system had to marshal its efforts toward developing a political-economic-social environment that would preserve order and stability in the State while satisfying the federal government's criteria for readmission to the Union. The attempt to harmonize these frequently conflicting concerns was undertaken by the State Supreme Court, as well as by the local judicial systems that had to adjust not only to the national and state requirements for

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Reconstruction, but also to the interests of their own constituency. While the courts in general were able to meet these varying concerns, they did so at the expense of the State's economic recovery and future development. In particular, the satisfaction of the local constituency attained paramount importance in many Mississippi counties. An analysis of the judicial system in Lafayette County—the subject of this case study—amply demonstrates how local interests were placated at the expense of long-term economic and social stability.

II. THE RECONSTRUCTION PROCESS

After the cessation of hostilities in the late spring of 1865, President Andrew Johnson began implementing a moderate plan for restoring normal relations between the former Confederate states and the national government. An initial step was the appointment of William L. Sharkey, an old Whig and former Chief Justice of the Mississippi High Court, as provisional governor of Mississippi. Sharkey presided over the calling of a constitutional convention in August 1865, the drafting of a new State constitution, and the first elections under the constitution in October 1865. In these elections the voters chose former Whig Benjamin G. Humphreys as governor and sent Sharkey and another former Whig, James L. Alcorn, to Congress. The Whig-dominated legislature convened on October 16, 1865, and turned immediately to the problems of reconstruction.¹

The difficulties facing the governor and legislature were formidable. First, the State was still under military occupation, and the division of authority between the newly elected civilian government and the occupying army was not clearly delineated. Second, a high level of social turmoil added to the task of reconstruction. Many blacks, enjoying freedom for the first time, left the plantations where they had been held in bondage. Those who migrated to the cities became disillusioned by the lack of jobs. Those who remained in rural areas found their hopes for acquisition of land frustrated. Whites, accustomed to a system of race relations based on slavery, feared a racial insurrection. Furthermore, white fears of racial violence were heightened by the fact that nearly all of the enlisted men in the 13,000 man occupying army were former slaves. Economic conditions further exaggerated these fears—labor to harvest the cotton crop of 1865 was scarce, and financial chaos confronted the

1. See generally J. GARNER, *RECONSTRUCTION IN MISSISSIPPI* (1901); W. HARRIS, *PRESIDENTIAL RECONSTRUCTION IN MISSISSIPPI* (1967); V. WHARTON, *THE NEGRO IN MISSISSIPPI, 1865-1890* (1947).

State's property owners.²

Although problems of recovering from the devastation of the Civil War dominated Mississippi, the State possessed the two most important resources needed for economic rehabilitation: land and population. What was lacking, however, was organization of these resources. In looking at the overall pattern of recovery in the post-bellum South, it is clear that certain sectors of the economy made rapid advancement toward prosperity. The transportation and manufacturing sectors, for example, reached their pre-Civil War levels of production by 1869. But the agricultural sector, by far the economically most important in the State, recovered poorly. The reasons for the poor economic performance of the post-bellum South, and Mississippi in particular, are attributable in large part to the institutions devised to restore agricultural productivity.³

These difficulties in the agricultural sector of the economy were reflected in the development of Lafayette County. Located in north-central Mississippi, Lafayette County was established in February 1836 along with eleven other counties arising from the Chickasaw cession. Two rich cotton growing regions developed in the county during the antebellum period: the valley of the Tallahatchie River in the northern part of the county, and the bottom lands of the Yocona River in the southern part of the county. The cultivation of cotton became the chief source of prosperity, and by 1860 Lafayette County ranked seventh in cotton production in Mississippi.⁴

The dislocations caused by the Civil War greatly altered the economic life of the county, an alteration representative of that prevalent in the State. On balance, the structure of the post-bellum economy in Lafayette County remained quite similar to that of the State as a whole. As Table I indicates, the county's population grew steadily through the Reconstruction period, with the white population remaining slightly larger than the black population. In addition, as Table II shows, the structure of the agricultural sector as indicated by farm size evolved in a manner similar to that of the rest of the State.

2. *Id.*

3. R. RANSOM & R. SUTCH, *ONE KIND OF FREEDOM: THE ECONOMIC CONSEQUENCES OF EMANCIPATION* 40-55 (1977).

4. 1 E. HILGARD, *REPORT ON COTTON PRODUCTION IN THE UNITED STATES ALSO EMBRACING AGRICULTURAL AND PHYSICO-GEOGRAPHICAL DESCRIPTIONS OF THE SEVERAL COTTON STATES AND OF CALIFORNIA* 312-14 (1884).

TABLE I
COMPOSITION OF POPULATION

Year	Mississippi			Lafayette County			
	White	%	Black	%	White	Black	%
1860	353,901	44.8	436,631	55.2	8989	7136	44.3
1870*	382,896	46.3	444,201	53.7	10,819	7983	42.5
1880	479,398	42.4	650,291	57.6	11,385	10,286	47.5

Source: U.S. Bureau of the Census, *Ninth Census, 1870* and *Tenth Census, 1880*.

* Problem of underenumeration of blacks in 1870 census.

TABLE II
DISTRIBUTION OF FARMS BASED ON FARM SIZE

Year	Mississippi					Lafayette County						
	3-20 Acres	% of Total	20- 100 Acres	% of Total	100+ Acres	% of Total	3-20 Acres	% of Total	20- 100 Acres	% of Total	100+ Acres	% of Total
1860	3079	8.3	20,171	54.5	13,757	37.2	56	6.1	556	60.9	301	33.0
1870	19,984	29.4	38,015	55.9	10,024	14.7	857	33.6	1531	60.0	163	6.4
1880	14,356	14.1	46,154	45.4	41,262	40.5	319	14.8	928	42.9	914	42.3

Source: U. S. Bureau of the Census, *Ninth Census, 1870 and Tenth Census, 1880.*

The pace of agricultural recovery, however, was somewhat slower in the county than in the State as a whole. The wartime devastation, the bad harvests of 1866 and 1867, and a general decline in the world's demand for southern cotton all contributed to the slow recovery of post-bellum southern agriculture. But these combined effects seem to have had a greater impact on Lafayette County than on the State generally. Tables III and IV, which show the decline in improved acreage and ginned bales of cotton in the State and in the county, suggest a slower rate of recovery for the county. One explanation for this discrepancy is that Lafayette County was occupied by Union troops as early as 1862 and later was used as a supply base for Grant's army. The destruction of farm land, in short, was probably more widespread in Lafayette than in other Mississippi counties.

TABLE III
ACRES OF IMPROVED/UNIMPROVED LAND IN FARMS

Year	Mississippi		Lafayette County	
	Improved	Unimproved	Improved	Unimproved
1860	5,065,755	10,773,929	101,500	271,977
1870	4,209,146	8,911,967	89,230	260,961
1880	5,216,937	10,638,525	89,044	222,983

Source: U.S. Bureau of the Census, *Ninth Census, 1870* and *Tenth Census, 1880*.

TABLE IV
GINNED BALES OF COTTON PRODUCED

Year	Mississippi	Lafayette County
1860	1,202,507	19,282
1870	564,938	9007
1880	963,111	15,214

Source: U.S. Bureau of the Census, *Ninth Census, 1870* and *Tenth Census, 1880*.

Despite these differences between the State and the county in the rate of agricultural recovery, these data still indicate that reasonable similarities did exist between the State and Lafayette County, especially in terms of population and distribution of farms.

III. THE PROBLEM OF RACE

Racial discrimination played a significant role in the economic retardation of the post-bellum South. By denying the former slaves a full return on their labor, white Southerners deprived not only blacks, but also themselves, of a large measure of the prosperity they otherwise might have enjoyed. With the South devastated by the Civil War and with a lack of available investment capital, white Southerners aggravated an already serious economic environment by denying the black population any significant input through their use of purchasing power or labor resources. In addition, to preserve white supremacy and to maintain control over the supply of field labor, the southern legislatures during Reconstruction enacted and enforced a series of laws that severely restricted the former slaves' efforts to exercise their newly acquired freedom. The most oppressive features of these laws defined where and under what conditions blacks could work. While many of these restrictive laws soon were invalidated by the courts or by federal reconstruction policy, they established a pattern of formal and eventually informal discrimination that frustrated the freedman's economic opportunities.⁵ This situation was particularly evident during the Reconstruction period in Mississippi.

In the fall of 1865, blacks in Mississippi found themselves in an anomalous position. The Mississippi Reconstruction Convention had abolished slavery in August 1865, but nothing had been done about the status of the freedmen. Few white Mississippians believed that equality between whites and blacks would ever be possible. Furthermore, landowners were greatly concerned about an adequate labor supply for the 1865 harvest season. As black males increasingly refused to work sunup to sundown hours and substantially fewer black women and children worked at all, landowners spoke bitterly about the blacks' inability to work in a free system and demanded the power to regulate the former slaves. As Vernon L. Wharton noted:

The approach of the end of the season of 1865 found both Negroes and planters . . . still bewildered and uncertain as to what they should expect. There had

5. Cohen, *Negro Involuntary Servitude in the South, 1865-1940: A Preliminary Analysis*, 42 J.S. HIST. 31 (1976).

been enough examples of breach of contract by laborers, and of non-payment of the freedmen by poverty-stricken planters, to create mutual distrust. Furthermore, it had become more and more apparent as the season progressed that thousands of the Negroes who had remained with their former masters in 1865 intended to look for new places for the next year.⁶

Deeply concerned about their futures, most whites welcomed restrictions on blacks. What remained to be clarified was the degree to which the blacks' freedom would be restrained.

The responsibility for defining the legal status of blacks fell to the legislature. The white leadership of the state of Mississippi that had been elected in October 1865 consisted primarily of individuals who had opposed the extreme secessionists in 1860, but had nonetheless joined the Confederacy. These Mississippi moderates faced an uncertain future. The state had not been readmitted to the Union, and James L. Alcorn and William L. Sharkey, Mississippi's congressional representatives, were not allowed to take their seats since Congress refused to recognize southern representatives elected under President Johnson's Reconstruction plan.⁷

In late November, after five weeks of heated discussion, the Mississippi legislature enacted four laws, exemplary of the "Black Codes" common in the Reconstruction South, that legally defined the status of the freedmen. Without any noticeable sense of irony, the legislators entitled the principal statute, "An Act to Confer Civil Rights on Freedmen, and for other purposes."⁸ The laws defined Negro, accorded legal recognition to marriages between blacks while they were slaves, forbade interracial marriage, and allowed blacks to testify in court when they or other blacks were parties in the case, but refused to allow blacks to sit on juries. The labor clauses of these laws were even more restrictive. In a provision designed to make labor available to landowners, blacks were forbidden to lease or rent land in rural areas. Blacks could purchase land, but virtually none of the former slaves possessed the resources to do so. In addition, by a specified date in January 1866, blacks were required to show written evidence that they had a home and were gainfully employed.⁹ The law also defined the form and procedure of labor contracts and established legal remedies to insure compliance by the freedmen. Law enforcement officials were required to assist in the return of any freedman who had not faithfully fulfilled his contract and to aid in the prosecution of freedmen or whites who enticed

6. V. WHARTON, *supra* note 1, at 81.

7. W. HARRIS, *supra* note 1, at 144.

8. An Act to Confer Civil Rights on Freedmen, and for other purposes, MISS. LAWS ch. 4, § 1 (1865).

9. *Id.* §§ 1, 3-5.

other freedmen from the employment of a white person.¹⁰

In order to provide a means of dealing with blacks who did not show evidence of self-support, the legislature also established a stringent vagrancy statute. Freedmen over the age of eighteen who could not provide written evidence of self-support were declared vagrants and subject to fines up to fifty dollars and imprisonment up to ten days. If the fine was not paid after five days of imprisonment, the sheriff was to hire out the vagrant for the shortest period of time to any person who would pay the fine. Special consideration was given to employers who were authorized to withhold wages up to the amount of the fine. White persons "associating with freedmen . . . on terms of equality"¹¹ also were deemed vagrants, and the maximum fine for this offense was set at two hundred dollars, with a maximum jail term of six months. The final section of the vagrancy statute imposed a poll tax of not more than one dollar per year on blacks for the support of black indigents. Failure to pay this tax was considered *prima facie* evidence of vagrancy, and the sheriff was to move immediately to hire out the offender.¹²

To complete this system of social control, the Mississippi legislature also passed an apprenticeship law to deal with blacks who were under the age of eighteen and were either orphans or lacked parental support. Local law enforcement officials were required to report the number of blacks in this category to the county probate court each January and June. The probate judge then apprenticed these blacks to "suitable and competent persons," with preference given to the former owners of the freedmen.¹³

The constitutionality of the apprenticeship statute was tested in the State courts in 1866.¹⁴ The case arose when the probate court of Copeiah County apprenticed a freedman named Jack to Jesse Thompson until the expiration of Jack's minority, without notice to Jack. Justice Harris, writing for the Mississippi Supreme Court, held that while notice was not specifically required by the statute, even in the case of freedmen "no judgment, order, or decree is valid or binding upon a party who has had no notice of such proceeding against him."¹⁵ Thus, without declaring the statute unconstitutional, the decree of the probate court was reversed and a rehearing

10. *Id.* §§ 6-7, 9. It was popularly believed that these sections prevented blacks from *owning* real property. See R. RANSOM & R. SUTCH, *supra* note 3, at 87.

11. An Act to amend the vagrant laws of this state, Miss. LAWS ch. 6, § 2 (1865).

12. *Id.* §§ 6-7.

13. An Act to regulate the relation of Master and Apprentice, as relates to Freedmen, Free Negroes, and Mulattoes, Miss. LAWS ch. 5 (1865).

14. *Jack, a Freedman v. Thompson*, 41 Miss. 49 (1866).

15. *Id.* at 50.

ordered, with a directive to the probate court to apply the traditional judicial standards of personal jurisdiction in cases arising under the Black Code.

Finally, the legislature recognized a degree of citizenship for blacks by subjecting them, although with significant modifications, to the general criminal laws of the State. Freedmen who were convicted of misdemeanors and failed to pay the fine imposed within five days after conviction were to be hired out by the sheriff to any white person for the shortest period of time necessary to pay the fine.¹⁶ This statute provided the last institutional tool needed to consign blacks once again to a system of involuntary servitude.

Recognizing the likelihood of an increase in legal actions as a result of emancipation and the enactment of the Black Code, the Mississippi legislature created a new trial court. Located between the justice of the peace and the circuit and chancery courts, the county court was to be presided over by the probate judge and two justices of the peace. It had jurisdiction over all crimes below the grade of felony and in civil matters in which the value of the property involved did not exceed 250 dollars. A grand jury indictment was not required for trial of crimes, but jury trials could be held and decisions could be appealed to the circuit court. A county court existed in Lafayette as well as other Mississippi counties until they were abolished four years later by the constitution of 1870.¹⁷

The combined force of the Black Code gave white Mississippians the tools necessary to control the conduct of the freedmen and to guarantee control of the labor supply in a way they believed necessary for economic recovery. As William Harris has written, "[i]n formulating a comprehensive system for regulating the freedmen, legislators undoubtedly were influenced more by contemporary conditions in Mississippi, and their interpretation of these conditions based upon experience and prejudice, than by outside forces and precedents."¹⁸

The implementation of this new system, however, ran into some initial difficulties. Federal intervention from the occupying army and the Freedman's Bureau¹⁹ nullified a part of the legislature's work almost immediately. On November 30, 1865, General O. O.

16. An Act to Punish certain offenses therein named and for other purposes, Miss. LAWS ch. 23, §§ 2, 5 (1865).

17. An Act to establish County Courts, Miss. LAWS ch. 2 (1865).

18. W. HARRIS, *supra* note 1, at 128.

19. The Freedmen's Bureau, or the Bureau of Refugees, Freedmen, and Abandoned Lands, was established on March 3, 1865. Headed by General O. O. Howard, it was designed to help the emancipated slaves adjust to their freedom. In addition to providing emergency care for the freedmen, it also protected the former slaves' political and civil rights.

Howard, Director of the Freedman's Bureau, ordered his representatives to prevent the implementation of the Black Code provision that prevented blacks from renting or leasing real property in rural areas. Nevertheless, in spite of such actions, much of the new system devised by the legislature was put into practice. General Thomas Wood, for example, who served as military commander in Mississippi, believed the passage of the Civil Rights Act of 1866 nullified the Black Code provisions that prevented freedmen from carrying arms without a permit and required them to show evidence of self-sufficiency. General Wood never issued a formal order expressing this view,²⁰ however, and the Mississippi High Court of Errors and Appeals sustained this provision in October 1866.²¹ In general, the Johnson Administration left the fate of these state laws to determination by the civil courts.²²

Despite the presence of the federal army in Mississippi and the stationing of a Freedman's Bureau representative in Oxford, the county seat, blacks in Lafayette County received no real protection of their rights. Enforcement of the various labor provisions of the Black Code placed the freedmen in a position of involuntary servitude only slightly removed from slavery. Violations of the Black Code were taken to the county court, and in examining the records of the county court of Lafayette County, a pattern of oppression begins to emerge. Throughout 1866 local law enforcement officials made effective use of the Black Code and the criminal law to clearly establish a subordinate status for the freedmen.²³ It should be noted, however, that in using the Black Code and the criminal law to enforce white domination, what was important was *not* the high incidence of enforcement, which did not exist, but rather the use of criminal sanctions to define the limits of acceptable behavior by blacks.

As Table V shows, there were forty-two crimes docketed for trial by the county court in 1866. While this is hardly evidence of lawlessness by the population, the type of crimes that blacks were accused of is indicative of the manner in which the Black Code was used for

20. W. HARRIS, *supra* note 1, at 147-48.

21. For a comment on Justice Handy's opinion in *Lewis v. State* (Miss. H. Ct. Err. & App. 1866), see the *New York Times*, Oct. 26, 1866, at 2, col. 3.

22. W. HARRIS, *supra* note 1, at 147.

23. An Act to establish County Courts, approved Nov. 24, 1865, Miss. LAWS ch. 1, § 1 (1866). It should be noted that in the fall of 1866 the legislature modified the court terms from monthly to quarterly, and from January 1867 to January 1870 only a few new cases appeared on the county court docket. Apparently, local officials decided that criminal matters that might have been taken to the county court could be dispensed with as easily and cheaply during the spring, vacation, and fall terms of the Circuit Court.

restrictive purposes. In three cases a bill of information was filed against blacks for enticing other blacks from the employment of whites. In the first case, a freedman named Jack Barr was accused of enticing his wife Caroline from a labor contract under which she had agreed to work for Dr. L. E. Warrington.²⁴ A jury of white citizens acquitted Jack Barr of the charge of enticement after being instructed by the court "that a woman had no right to contract without the consent of her husband."²⁵ While the two other enticement cases also were dismissed,²⁶ it may be assumed that these actions served to notify blacks of their potential fate should they encourage members of their race to leave the employment of whites. While some scholars have argued that enticement laws actually were designed to prevent conflict within the planter class,²⁷ this does not appear to be the case in Lafayette County where the enticement clause of the Black Code was used exclusively against blacks.²⁸

While the Black Code provided law enforcement officials with the means for restricting the life and labor of the freedmen, the criminal law proved to be an equally powerful instrument for repression. The criminal docket of the July 1866 county court term illustrates this point. Four cases²⁹ appear on the docket in which blacks were charged with misdemeanors. A freedman named Noah entered a guilty plea to a charge of petit larceny and two different freedmen named Sam entered a similar plea to charges of assault and battery. A freedwoman named Milley entered a not guilty plea to a charge of assault and battery and requested a jury trial. Her request was denied, and she, along with the three freedmen, was subsequently convicted and fined. Milley was ordered to pay one cent and the men one dollar each. Since none of them had the money to pay their fines, all four were hired out to J. E. Markett, a Lafayette County landowner. The convictions, coming at the height of the cotton-chopping season, gave Markett an inexpensive labor force. The county court judge cooperated in minimizing the cost of his labor

24. *State v. Barr, a Freedman*, Lafayette County Court, Feb. 5, 1866.

25. *Oxford Falcon*, Feb. 1, 1866.

26. *State v. Tidwell, a Freedman*, Lafayette County Court, April 2, 1866; *State v. Sandy, a Freedman*, Lafayette County Court, March 6, 1866.

27. R. HIGGS, *COMPETITION AND COERCION: BLACKS IN THE AMERICAN ECONOMY, 1865-1914*, at 75 (1977).

28. *State v. Tidwell, a Freedman*, Lafayette County Court, April 2, 1866; *State v. Sandy, a Freedman*, Lafayette County Court, March 6, 1866; *State v. Barr, a Freedman*, Lafayette County Court, Feb. 5, 1866. *See also Oxford Falcon*, Feb. 1, 1866.

29. *State v. Milley, a Freedwoman*, Lafayette County Court, July 2, 1866; *State v. Noah, a Freedman*, Lafayette County Court, July 2, 1866; *State v. Sam, a Freedman I*, Lafayette County Court, July 2, 1866; *State v. Sam, a Freedman II*, Lafayette County Court, July 2, 1866.

by imposing fines substantially lower than those imposed on whites for similar crimes.³⁰

TABLE V
CRIMINAL DOCKET IN LAFAYETTE COUNTY COURT, 1866-1867

Crime	Num- ber	Guilty		Not Guilty		Dismissed	
		White	Black	White	Black	White	Black
Crimes Against Property							
Petit Larceny	(7)		4	1		1	1
Malicious Mischief	(3)	2				1	
Crimes Against Persons							
Assault	(17)	4	4	2		6	1
Crimes Against Morals							
Adultery	(3)				2		1
Crimes Against White Authority							
Enticement	(3)				1		2
Exhibiting Deadly Weapon	(1)		1				
Regulatory Violations							
Toll Fare Violations	(2)			1		1	
Illegal Liquor Sales	(1)	1					
Cases With Information On	(37)	7	9	4	3	9	5
Cases With No Information On	(5)						
Total	42						

Source: Final Record Book, Lafayette County Courthouse, Oxford, Mississippi.

Similarly, blacks appeared to fare no better in county court cases that were decided by a jury rather than a judge. Of significance here, though, is the fact that the juries were composed of people who had the most to gain from restricting the freedman's

30. This conclusion is based on an analysis of the criminal docket at the Lafayette County Court from 1866 to 1870.

activities. Of the 159 jurors who served on the Lafayette county court between 1866-1870, information is available on 130.³¹ This information indicates that age was definitely a factor in jury selection, with 68.9% of the jurors being forty years or older. Because of the legal limitations of the Black Code, all the jurors were white. Moreover, their occupations were limited, with 79.2% listing themselves as farmers, 8.5% as merchants, and 3.1% as clerks. Most of the county court jurors had either personal or real estate wealth, with 31.7% having wealth of \$1000 or less, 50% having wealth ranging from \$1000 to \$4000, 12% having wealth ranging from \$4000 to \$30,000, and the remaining 6.3% having no recorded wealth. Practically all jurors were southern born and were literate. Finally, the evidence definitely shows that the wealthier a juror was, the better his chances were for serving on a jury again. This data demonstrates that the Lafayette County juries consisted of people with a motive to restrict the freedman's economic activities, because they might have considered the freedman as a threat to their own economic position. Thus, the jury profile demonstrates a significant potential for solidifying the racially restrictive institutional framework created by the Mississippi legislature and courts.

While evidence of racial discrimination with significant economic consequences existed in the use of the criminal law, a somewhat different situation emerged on the civil side of the county court docket. Eleven cases on the civil docket involved blacks.³² In four of these cases, the court found for the black defendant and in three cases for the black plaintiff.³³ The remaining cases were dismissed. These results are hardly conclusive, but they do not suggest that blacks who were parties in civil cases were treated unfairly when property rights were at issue. Two cases arising from violations of labor contracts, however, suggest racial discrimination. In the first, the court found for a white plaintiff against a black woman,³⁴ but ruled in favor of a white defendant when the defendant was accused of failing to provide the necessary clothing and materials agreed upon.³⁵

31. U.S. BUREAU OF THE CENSUS, POPULATION SCHEDULES OF THE NINTH CENSUS OF THE UNITED STATES, 1870. RG 29, M593, Roll 734 (Lafayette County, Miss.).

32. This observation is based on an identification of the race of all litigants involved in docketed civil cases in the Lafayette County Court from 1866 to 1870.

33. *Id.*

34. *Gist v. Barringer*, a Freedwoman, Lafayette County Court, Feb. 5, 1866; *Richmond*, a Freedman v. *Richmond*, Lafayette County Court, Feb. 5, 1866.

35. *Richmond*, a Freedman v. *Richmond*, Lafayette County Court, Feb. 5, 1866.

The enforcement of the Black Code and other criminal laws during the early stages of Reconstruction, followed by the persistent use of vagrancy statutes and other criminal laws after 1867, illustrates the manner in which the legal system became an instrument for denying blacks the fruits of their labor. Not only was the freedom of the former slaves effectively circumscribed, but these actions also proved to be a major impediment to the economic recovery of the county, and inferentially, the State and region since a large portion of the working population was not accorded equitable payment for its labor services. When combined with the South's other economic problems such as limited investment capital, the net result was economic stagnation.

IV. THE PROBLEM OF PRIVATE DEBTS

Most white Mississippians believed the legislature had developed a satisfactory framework for a new system of race relations in the State. The other major problem facing the State was the restoration of its devastated economy. Even with abundant land and a sufficient supply of labor, the State's economy lacked adequate capital and credit institutions for rapid recovery. Moreover, in the fall of 1865, demands for debtor relief began to build. Closely related to these demands for debtor relief was the problem of Confederate money. The defeat of the Confederacy had rendered the Confederate currency absolutely worthless, and in its place, United States currency was substituted as the only currency courts of law could recognize.³⁶ This shift in currency was extremely detrimental to the many debtors who had entered into money obligations after the summer of 1863, when prices in the Confederacy dramatically increased because of the depreciation of the currency.³⁷ To require these debtors to pay off their debts in a currency that had a much greater purchasing power would enormously increase their burdens and slow economic recovery.

A. *The Issue of Debtor Relief*

In response to demands for debtor relief, the Mississippi legislature took up this matter in the fall of 1865. The entire policy of debtor relief was opposed by many old Whigs in the legislature who continually conjured up the embarrassing repudiation of state debts in the 1840's. They argued that any effort to provide relief from

36. Dawson & Cooper, *The Effect of Inflation on Private Contracts: United States, 1861-1879*, 33 MICH. L. REV. 706, 715 (1935).

37. *Id.* at 708; see J. GARNER, *supra* note 1, at 49-50. The depreciation was tied to Union victories at Gettysburg and Vicksburg in the summer of 1863.

private obligations would greatly hinder the attraction of new capital that was so desperately needed for economic recovery. In addition, creditors in the commercial centers of the State successfully opposed any attempt to scale down private debts through legislative action.³⁸ Despite these objections, however, pressures for relief were so great that in November 1865 the legislature enacted a very broad "stay" law that delayed the collection of most private debts until January 1, 1868.³⁹ Governor Benjamin Humphreys, reflecting traditional Whig opposition to any form of repudiation, vetoed the law, but the veto was overridden on December 1, 1865. Although this law delayed the collection of private debts, it also provided that creditors ultimately were not to be denied any remedy provided by law. Legislators stressed the fairness of this provision by noting that the statute of limitations had been suspended in January 1862 and had not yet been reinstated. Creditors thus were guaranteed an opportunity to initiate their suits against debtors even if the statute of limitations was restored.⁴⁰ To counter criticism that the stay law would hinder the investment of new capital, a provision was added that exempted pending law suits and obligations entered into after its passage.⁴¹ Moreover, it was emphasized that this was a provisional measure designed to provide only temporary relief.

During the same session, the legislature also passed an amended exemption law that increased the types of property that were exempt from seizure and sale under attachment and execution for nonpayment of debt. The governor also vetoed this law, but like the stay law, it was passed over his veto. The types of property protected by this law included the tools of a mechanic, the books and maps of a teacher, work animals, and 240 acres of land.⁴² The exemption law did not apply to blacks at first, but in January 1866 General A. C. Gillom ordered that the exemption law be extended to blacks as well.

Opponents of debtor relief quickly arranged a test of the constitutionality of the stay law. A special session of the High Court of Errors and Appeals was convened in January 1866. The judges on

38. W. HARRIS, *supra* note 1, at 175-77; Dawson & Cooper, *supra* note 36, at 715-18.

39. An Act to modify the Collection Laws of this State, Miss. LAWS ch. 84 (1865); W. HARRIS, *supra* note 1, at 176.

40. An Act to modify the Collection Laws of this State, Miss. LAWS ch. 84, § 4 (1865). The statute of limitations was suspended until twelve months after the official end of hostilities. The official end of hostilities was eventually set on August 30, 1866, hence the statute of limitations commenced again on August 30, 1867.

41. *Id.* §§ 2, 5.

42. An Act to amend the exemption laws of this State, Miss. LAWS ch. 9 (1865); W. HARRIS, *supra* note 1, at 176.

the court at that time included Chief Justice Alexander H. Handy and Associate Justices William L. Harris and Henry T. Ellett. All three men had been active in Mississippi judicial and political circles prior to the Civil War, and all three had been ardent secessionists and staunch supporters of the Confederacy.⁴³ The court unanimously held that the stay law was unconstitutional.⁴⁴ In his opinion, Chief Justice Handy argued that the stay law violated the contract clause of the United States Constitution and section fourteen of the declaration of rights of the Mississippi constitution because it denied remedies for breach of contract that parties to contracts were clearly entitled to when the contracts were agreed upon. Furthermore, he argued that because the stay law denied access to the courts in selected areas of law until January 1, 1868, it violated section fifteen of the Mississippi declaration of rights.⁴⁵ Judge Handy's opinion also took notice of the difficult times.

It is a delicate duty, under any circumstances, for this court to pronounce an act of a coordinate department of the government unconstitutional and void; and the duty is especially painful when the act proceeded, as this evidently did, from the well-meant policy of relieving, as far as might be, the pecuniary distresses and prostration of a people unparalleled in all our history But when it is the clear and deliberate conviction of our judgments that the act is repugnant to either of these constitutions, we must perform the duty committed to us and pronounce our judgment accordingly.⁴⁶

While the court invalidated the stay law, it nonetheless reaffirmed the exemption provisions of the 1857 Mississippi code,⁴⁷ and four years later a court composed of justices appointed by the military government sustained the 1865 exemption law.⁴⁸ Rather than providing relief, however, the exemption law ultimately may have worked a hardship on the people of Mississippi by delaying recovery. In 1870 a Mississippi newspaper editor wrote "[c]redit is the honest poor man's only help, and so long as the exemption laws cover more property than 99 out of every 100 of our citizens have, so long will liens and mortgages be required, which pile up costs and which cover all descriptions of property."⁴⁹

43. J. SKATES, *A HISTORY OF THE MISSISSIPPI SUPREME COURT* 72, 79 (1973).

44. *Coffman v. Bank of Ky.*, 40 Miss. 29 (1866).

45. *Id.* at 36-37. Section 15 guaranteed access to the courts for all citizens.

46. *Id.* at 38-39.

47. MISS. REV. CODE §§ 528-529 (1857).

48. *Moseley v. Anderson*, 40 Miss. 49 (1866). This case is interesting because it involved a slave. In 1860, E. B. Moseley disposed of all his property except that which was exempt from attachment, *i.e.*, one slave under the 1857 Mississippi code. The sheriff seized the slave, claiming fraud, and sold her to satisfy Moseley's debts. Moseley sued the sheriff and in 1866 Justice Ellett, writing for the court, upheld Moseley's claim.

49. W. HARRIS, *supra* note 1, at 177 (quoting the Raymond Hinds County Gazette, April 27, 1870).

Creditors responded to the invalidation of the stay law by filing hundreds of suits in the circuit courts, demanding full payment of the money owed them. Many creditors feared the next session of the legislature would enact a debtor relief law that would be upheld.⁵⁰ In the April 1866 term of the Lafayette County Circuit Court, 180 cases were filed, more than nine times the average number of cases per term of the pre-Civil War years.⁵¹ Case loads were even heavier in other parts of the State. Reports indicated that nearly four hundred suits for the collection of debts were brought during one week in a central Mississippi county, and one legislator reported that in the spring of 1866, nearly 1500 suits for the recovery of debts were filed in a north Mississippi county circuit court.⁵² As one Mississippian observed, "the dockets groan under the weight of his [creditor's] notes and accounts. The sons of a certain character in Shakespeare's *Merchant of Venice* are abroad in the land seeking their pound of flesh."⁵³

As heavy caseloads involving private debts continued through the court terms in the fall of 1866, demands for further relief persisted.⁵⁴ During the legislature's fall term, however, no agreement for debtor relief could be reached that would satisfy Governor Humphreys. In the spring of 1867, attempts by the State to provide relief were abandoned after Congress passed the Bankruptcy Act of March 2, 1867. Some congressional radicals opposed this law, for as Thaddeus Stevens acidly remarked, "[t]his is not the time, when all rebeldom is in debt to us, to pass a law to free them from their debts."⁵⁵

B. *The Issue of Confederate Money*

The failure of the legislature to enact a broad debtor-relief program placed the burden of adjusting private debts on the courts. The first concern was to determine the validity of private acts that occurred during the Civil War. The Mississippi High Court of Errors and Appeals took up this matter in 1866 and drew a distinction

50. Oxford Falcon, Mar. 29, 1866.

51. Circuit Court Docket Book, 1866, Lafayette County Court House.

52. W. HARRIS, *supra* note 1, at 178.

53. *Id.*

54. Oxford Falcon, Oct. 25, 1866.

55. 1 C. FAIRMAN, RECONSTRUCTION AND REUNION, 1864-1888, at 364 (1971). No attempt has been made to calculate the number of bankruptcies filed in the Federal District Courts of Mississippi. In neighboring Tennessee, the impact of the law is illustrated by the fact that between July 1867 and December 1868 more than 1000 bankruptcy cases were filed in the Federal District Court for Western Tennessee. See Calvani, *The Early Legal Career of Howell Jackson*, 30 VAND. L. REV. 39, 56 (1977).

between those public acts that directly aided the rebellion and those private acts that did not assist the war effort. The former were declared illegal and the latter accorded legal recognition.⁵⁶

As far as creditors were concerned, the next step was to determine the status of the currency used in private contracts. The Confederacy had never declared Confederate money legal tender for payment of private debts.⁵⁷ Other types of paper currency that had circulated during the war were also of questionable legality. Nonetheless, in the fall of 1866, the Mississippi High Court of Errors and Appeals declared that Confederate treasury notes, as well as Mississippi treasury notes and "cotton money,"⁵⁸ were legal tender.⁵⁹ The court also upheld the validity of all private contracts founded on the consideration of Confederate money and Mississippi treasury notes. Chief Justice Handy noted that: "Since the termination of the war, there is no reason of public policy which demands that rights of private property, acquired during its existence, should be disturbed; and there are strong reasons of justice and sound policy why they should have the protection of law."⁶⁰ The court further clarified the money issue by sustaining the validity of executory contracts that were based on the consideration of Confederate money.⁶¹ The court also ruled that in determining the value of Confederate money, such notes should be compared with the legal tender notes of the federal government rather than with specie.⁶²

In the spring of 1867, the legislature provided help for the courts in dealing with money matters by enacting a statute permitting the use of parol evidence. This law stated that in all monetary contracts executed in Mississippi between May 1, 1862, and May 1, 1865, payment was to be made in Confederate treasury notes unless some other currency was specifically provided for in the agreement.⁶³ The courts thus had the power to adjust money obligations entered into

56. *Hill v. Boyland*, 40 Miss. 618 (1866). This distinction was further strengthened by the U.S. Supreme Court in *Thorington v. Smith*, 75 U.S. (8 Wall.) 1 (1869).

57. *Dawson & Cooper*, *supra* note 36, at 714.

58. "Cotton Money" was bank certificates issued on baled cotton and was used for commercial and financial transactions in the antebellum period. In 1861, Mississippi issued nearly \$5,000,000 in notes advanced against that year's cotton crop. It was the only Confederate state to do so, despite the cotton growers' demands that all the Confederate states issue such notes. In 1869, "cotton money" was repudiated as part of the Confederate debt. By this time, however, more than half of this money had been redeemed. See 2 *DICTIONARY OF AMERICAN HISTORY* 241, 267 (1976).

59. *Green v. Sizer*, 40 Miss. 530 (1866).

60. *Id.* at 556.

61. *McMath v. Johnson*, 41 Miss. 439 (1867).

62. *Ezelle v. Parker*, 41 Miss. 520 (1867).

63. An Act to change the Rules of Evidence in certain cases, *MISS. LAWS* ch. 282, § 2 (1867).

during this period of high inflation.

The composition of the Mississippi High Court of Errors and Appeals changed dramatically in 1867. To protest the imposition of military rule, Justices Handy, Harris, and Ellett resigned. The military government appointed a new court composed of Chief Justice Thomas G. Shackelford, and Associate Justices Ephraim Peyton and Elza Jeffords. Shackelford and Peyton were long-time Mississippi residents who had been active in the formation of the Republican party in the State. Jeffords served in the Union army and remained in Mississippi after the war.⁶⁴ Although the new court reaffirmed the validity of Confederate money,⁶⁵ it held that Mississippi treasury notes and cotton money were issued in direct aid to the war and were therefore illegal currency. Contracts founded on these notes thus were also illegal and void.⁶⁶

In 1870 the Mississippi High Court of Errors and Appeals became the Mississippi Supreme Court, and its composition changed once again. Ephraim G. Peyton was reappointed under the new constitution and was joined by Horatio Simrall and Jonathan Tarbell. Simrall was a highly respected Mississippian and Tarbell was a former Union soldier.⁶⁷ Between 1870 and 1873 Simrall and Tarbell drafted a series of opinions that greatly refined the role of Confederate money in Mississippi and aided those debtors seeking adjustment of debts. The right to juries to set the value of funds at the time and place of a contract was recognized.⁶⁸ In matters of debt, the test of value of the debt was established at the time of its creation, not when it was due.⁶⁹ Furthermore, the court ruled that the standard of value for Confederate money should be United States currency rather than specie.⁷⁰ In fact, juries could not legally render a verdict for gold unless specified in the contract.⁷¹ Justice Tarbell explained this policy by noting that:

This class of cases grow [*sic*] out of the anomalous condition of the country from 1861 to 1865. They are wholly unusual and exceptional. In their adjustment a just and equitable basis had been sought both by the legislature and the courts. Any other result in this case at bar would have been unjust.⁷²

64. J. SKATES, *supra* note 43, at 81, 85, 88.

65. *Frazer v. Robinson & Daniel*, 42 Miss. 121 (1868); *Beauchamp v. Comfort*, 42 Miss. 94 (1868).

66. *Thomas v. Taylor*, 42 Miss. 651 (1869).

67. J. SKATES, *supra* note 43, at 93, 98.

68. *Cowan v. McCutchen*, 43 Miss. 207 (1870).

69. *Darcy & Wheeler v. Shotwell*, 49 Miss. 631 (1873); *Gray v. Harris*, 43 Miss. 421 (1870).

70. *Gray v. Harris*, 43 Miss. 421 (1870).

71. *Jamison v. Moon*, 43 Miss. 598 (1870).

72. *Darcy & Wheeler v. Shotwell*, 49 Miss. 631, 637 (1873). In this case, Shotwell

While the battle over the definition and value of Confederate money raged in the appellate courts, trial courts disposed of these matters with great swiftness. In Lafayette County, local leaders strongly supported the idea of recognizing all forms of paper currency that had circulated during the Confederate period, especially cotton money. They also opposed any systematic adjustment of money obligations.⁷³ When cases did come before the county court, both judge and jury protected the rights of creditors. Of the seven cases that appeared on the docket involving money obligations originating under the Confederacy, the plaintiffs won in five instances and were awarded the full value of the contract plus any interest or damages requested in United States currency or gold.⁷⁴ The other two cases were dismissed.⁷⁵ The swiftness with which the trial court dealt with these matters led the local newspaper to comment in the fall of 1867 that the small number of cases was the result of "the wholesome condition of our moral community and the abrogation of the credit system."⁷⁶ While the appellate courts argued about the definition of Confederate money debts until 1873, the bulk of these matters were disposed of at the local level by the fall of 1867.

V. CONCLUSION

In assessing the problems of race and debtor relief in Mississippi during Reconstruction, it is clear that, on the local level, the Lafayette County court system, as represented by the Lafayette county court, effectively carried out an institutional framework established by the Mississippi legislature and the Mississippi Supreme Court in which the freedman was denied any meaningful role and/or opportunity in the economic environment of the community. In doing so, the county court system, by allegedly protecting the rights of private property, helped stifle the economic recovery of Lafayette County and, inferentially, the State as a whole.⁷⁷ Moreover, by quickly acting in accordance with the Mississippi legislature's and Mississippi Supreme Court's initial actions regarding private debtor relief, the county court system in Lafayette actively

borrowed \$1140 from Darcy & Wheeler on June 2, 1862, at eight percent interest. Payment was due March 1, 1864. Payment was made in highly depreciated currency. After the war Darcy & Wheeler filed suit and the jury awarded them \$177 in United States currency. Justice Tarbell upheld the jury decision.

73. Oxford Falcon, Feb. 22, 1866.

74. This observation is based on an analysis of the civil docket of the Lafayette County Court from 1866 to 1870.

75. *Id.*

76. Oxford Falcon, Oct. 12, 1867.

77. See text accompanying note 5 *supra*.

contributed to sustaining an economic environment which not only slowed the pace of economic recovery, but also assured that the economic elite or private property owners of the local community sustained their power and influence over the course of future developments. In general, the Lafayette county court demonstrated that, on the local level, the judicial system could and did adjust to the demands of the national and state government while simultaneously satisfying and promoting its own constituency's interests.