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Comment: Race, Property Rights, and the Economic Consequences of Reconstruction

*Robert B. Jones**

Professors Robert J. Haws and Michael V. Namorato have devoted considerable study to the operation of the county and circuit courts of Lafayette County, Mississippi, in the years 1865 to 1870. They have traced the disposition of 236 county court cases and 132 circuit court cases, and have analyzed the social and economic standing of 130 county court and 89 circuit court jurors. From this wealth of valuable information, they focus in their Article on the experiences of freedmen and creditors in the county court. These findings, in turn, form the basis of their general argument that the denial of the freedman's rights as a citizen and the support of creditors' efforts to collect wartime debts were the two major causes of the failure of the county's economy to recover swiftly after the Civil War.

The weakness of their Article lies in the authors' failure to present enough evidence to support their conclusions. They state, for example, that the refusal by white southerners to give the ex-slaves a "full return on their labor" also prevented the white landowners from realizing "a large measure of the prosperity they otherwise might have enjoyed." The authors present no real evidence to substantiate this conclusion, however, which seems to ignore the existence of widespread poverty among whites at the end of the Civil War, a condition that made it impossible for the black laborer to be given a full return for his work efforts by many white landowners even if they wished to follow this course. It was this cash-poor aspect of southern agriculture that gave rise to the sharecrop system in the years following the War.

In analyzing the application of the Black Code statutes and criminal laws to blacks in the county court of Lafayette County in 1866-1867, Haws and Namorato assert that "a pattern of oppression begins to emerge." They acknowledge that these laws generally were not enforced against blacks in the county, but they seem to believe nonetheless that the trying of a few cases supports their broad conclusion. A court docket containing seventeen cases out of thirty-seven that involved freedmen (Table V), however, does not indicate systematic legal oppression of the county's black population of over seven thousand. Blacks in Lafayette County were undoubtedly

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treated as second class citizens, but the evidence presented by the authors in Table V would seem to indicate that the ruling white society did not usually turn to the legal system to enforce its economic and social dominance. Moreover, the authors follow the same pattern when they cite only four cases in which blacks were convicted of petty larceny or assault and battery to support their conclusion that the criminal laws were a "powerful instrument for repression."

In the next section of their Article, Haws and Namorato present valuable data on the age, occupation, and other characteristics of county court jurors. This data is used to support the argument that these jurists had a personal interest in reaching verdicts that would restrict the ex-slave's economic freedom. Once again, however, the small number of cases involving blacks, coupled with the lack of information as to the circumstances surrounding these cases, makes it impossible to characterize the county's jurors as eager to convict blacks in order to constrain their economic mobility. Similarly, Haws and Namorato are unconvincing when they assert that the treatment accorded blacks by the county court "proved to be a major impediment to the economic recovery of the county, and inferentially, the State and region . . ." The authors have not presented nearly enough evidence to support this conclusion. More work on the economic problems of Lafayette County and Mississippi is necessary before one can contend that the legal system's influence on the county's blacks was a factor equal to wartime destruction of property and post-war indebtedness, the federal cotton tax, the shortage of currency, and the lack of investment capital in hindering economic growth. These factors seem to be far more significant with respect to the economic recovery of the region than the examples of the court's treatment of the freedmen presented by the authors.

In the last section of their Article, the authors describe the struggle over debtor relief in Mississippi after the Civil War and the related issue of the validity of wartime contracts and currency. The authors then state that Lafayette County leaders favored the recognition of all types of paper money used in the State during the war, and that the county court in five cases (two others were dismissed) upheld the validity of contracts negotiated during the war years. Based on this information, however, Haws and Namorato present another unsubstantiated conclusion. They argue that the county court system helped support an economic environment that "slowed the pace of economic recovery" and upheld the influence of the propertied elite in the county.

Although the court decisions can be seen as actions that sus-

tained the influence of the creditor element in the county, this in itself was not a significant obstacle to general economic recovery. It is hard to believe that such a small number of decisions, unless they involved large obligations and were widely discussed in the county, would have had a measurable impact on economic growth. The authors seem to infer, however, that if the county court had ruled in favor of the debtors, by either declaring the debts void or by scaling them down to less than the original amount, these decisions would have encouraged a faster rate of economic growth in the county. Although this is an intriguing proposition, the authors present no data to sustain it.

In conclusion, Professors Haws and Namorato are to be praised for their pioneer work in studying the operation of a county court system in the Reconstruction era. They break new historical ground in this effort that has the potential for greatly contributing to the study of the legal history of the South. More scholars must engage in this endeavor if the field of legal history is to reach its full maturity. While their efforts are to be complimented it must be pointed out, however, that they generally fail to make their case in this Article. They do not show a significant link between the county court's actions toward blacks and creditors and the general economic development of Lafayette County, much less the State and the South. Furthermore, additional attempts to develop this theme, given the nature of county court records and the clear influence of other factors on economic growth, may pose difficult research problems.

