The Privilege of Freedom: Disparities in Arrest and Sentencing Practices in Edgefield, South Carolina, 1865-1867

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Abstract

My thesis explores local law enforcement practices in Edgefield, South Carolina during Early Reconstruction (1865-1867). I trace the legal history of South Carolina with particular regard to the Black Codes, a series of discriminatory laws, which targeted freed-people and criminalized activities such as selling farm products without a master's permission or opening a business without a judge's signature. Alongside the law, I investigate arrest and trial records in order to understand how 'ordinary' people interacted with the criminal justice system and how state and federal legislation was implemented. Ultimately, I argue that the arrest and sentencing data from Edgefield County reveals concerning racial disparities in terms of what crimes people were arrested for and how they were sentenced.

Note: All figures, unless otherwise noted, are my own.

Introduction

When Phil arrived in the Edgefield Courthouse on July 21st, 1865, he was met with a flurry of action as Provost Court officials prepared for his trial. Phil was accused of stealing oats from Mr. James Ramsford, an offensive, yet petty and non-violent crime. He may have felt intimidated entering the Courthouse, as it was the central symbol of authority in the area and likely his first time in the building. Though the Courthouse stands in the center of Edgefield Village, prior to Phil's emancipation, he would have no reason to enter this building.[1] His life would have been highly restricted to his plantation. In 1865, Phil entered the courthouse as a free man; however, his new-found liberation was short lived. Phil was found guilty of theft and was sentenced to ten days in prison with a diet of only bread and water.[2]

Two months later, on September 29, Robert Turner entered the same Courthouse and stood before the same judge. There were only two major differences between Robert and Phil: Robert was white and he was accused of a heinous crime, shooting at a colored man. Despite committing a violent act, Robert was only fined ten dollars for his crime.[3] Phil, a Black man, stole oats and served ten days in prison. Robert, a white man, shot at another person and paid a ten dollar fine. The striking disparities in punishment are immediately evident and concerning.

Prior to the Civil War, few Southerners came into contact with the criminal justice system. Employers punished enslaved African Americans with physical violence and threat of removal from one's family through sale. On the other hand, white Southerners debated the necessity of penitentiaries well into the 19th century. In 1846, North Carolina had a referendum

[1] *The Story of Edgefield* (Edgefield County: Edgefield Historical Society, 2010), 2.
[2] *Journals of the Provost Court 1865* (Edgefield: Court of Common Pleas, 1865).
[3] *Journals of the Provost Court 1865*.

on whether the state should open penitentiaries. Only 28% of the civic population voted yes.[4] South Carolina did not have a single penitentiary until 1849.[5] The majority of the imprisoned population prior to the Civil War was poor, immigrant white men. Imprisoning an enslaved person not only did not make financial sense for a slaveholder, Black men were not considered to have civic virtue and therefore the concept of "penal reform" was inapplicable.[6] In this context, Phil and Robert Turner's trials were novel and important.

During Early Reconstruction, the use of imprisonment first became widespread in the South and racial disparities in the law, as well as in arrest and sentencing patterns, began to emerge. There is less historical literature dedicated to Early Reconstruction (1865-1867) than other periods because the records for these years can be sparse. The South was reeling from defeat, government programs were undergoing revision, and most states were in financial crisis. Despite these challenges, this thesis examines the Early Reconstruction period in order to analyze the moment at which the use of the formal legal system, including arrests, trials, and incarceration became popular.

The dominant legal system during Early Reconstruction was a series of statutes known as the Black Codes. These codes targeted freed-people. They criminalized everyday activities for African Americans including gathering at night, owning a gun, selling farm products without a master's permission, opening a business without a judge's signature, and vagrancy laws. Vagrancy laws stated that any freed-person who did not have a labor contract or appeared idle or drunk could be arrested. In the fall of 1865, Mississippi and South Carolina were the first states to pass Black Codes.

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[4]Edward Ayers, *Vengeance and Justice: Crime and Punishment in the Nineteenth-Century American South* (New York: Oxford University Press, 1984), 51.
[5]Edward Ayers, *Vengeance and Justice*, 59.
[6]Edward Ayers, *Vengeance and Justice*, 61.

Many historians have studied the complex legal system of the Reconstruction era (1865-1877) and several have focused on the Black Codes. There are two central approaches to how historians analyze the legacy of these laws. The first group of historians focus on the importance of Black Codes to the legal history of the United States. These historians believe that the Black Codes signified the commencement of a new legal system that relied upon incarceration. The second group of historians believe that convict leasing was the central legacy of the Black Codes. Convict leasing is a term for a system of forced labor, which was popular in the South from 1866 to the 1930s. The main victims of this system were Black people, who were arrested for non-violent, petty crimes and sentenced to forced labor in harsh conditions on public works or private companies. According to one statute in the South Carolina Black Code, a freed-person could be sentenced to a year of forced labor for stealing an item worth less than twenty dollars.[7]

The first group of historians, who focus on the legal importance of the Codes, their discriminatory nature, and their novel use of incarceration, include renowned historians Edward Ayers, Eric Foner, and Theodore Brantner Wilson.[8] In addition to these historians, there are other legal specialists who focus on specific aspects of the Black Codes. Dan T. Carter discusses how the Black Codes triggered federal intervention in the South.[9] Joseph A. Ranney focuses on the Black Codes at the state-level, detailing different states' legislation.[10] Amy Dru Stanley writes about the Black Codes to discuss how the concept of contract developed.[11] Though these

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[7]"An Act to Amend the Criminal Law," *Acts of the General Assembly of the State of South Carolina Passed at the Sessions of 1864-1865*, no. 4731 (Columbia: 1865).

[8]Edward Ayers, *Vengeance and Justice*, 150-184; Eric Foner, *A Short History of Reconstruction* (New York: Harper Perennial Modern Classics, 2015), 93-95; Theodore Brantner Wilson, *The Black Codes of the South* (Tuscaloosa: University of Alabama Press, 1965), 56-80.

[9]Dan T. Carter, *When the War Was Over: The Failure of Self-Reconstruction in the South, 1865–1867* (Baton Rouge: Louisiana State University Press, 1985), 1-5.

[10]Joseph A. Ranney, *In the Wake of Slavery: Civil War, Civil Rights, and the Reconstruction of Southern Law* (Westport: Praeger, 2006), 2.

[11]Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the*

historians differ in focus, they are bound by their common belief that the most important legacy of the Black Codes was its impact on legal and carceral history.

The second group of historians argue that the central legacy of the Black Codes is convict leasing. Within the group of historians who write extensively about convict leasing there are two camps. First, there are historians who believe convict leasing was a continuation of slavery. Unlike the legal historians, these historians do not see the Black Codes as novel. They view them as a continuation of the discrimination and criminalization that Black people have always experienced. In this group of historians are Michelle Alexander, Angela Davis, Douglas A. Blackmon, Milfred C. Fierce, and Daniel A. Novak.[12] They each demonstrate how Black Codes allowed for Black individuals to be subjected to forced labor and how convict leasing was similar to slavery.

Second, there are historians who write extensively about convict leasing, but do not view the system as a continuation of slavery. They argue that convict leasing is unique, though not necessarily better, than slavery. Alexander C. Lichtenstein argues that convict leasing was vital to the economic growth of the South in the post-war era and people who were not necessarily proponents of slavery supported convict leasing.[13] Matthew Mancini states that convict leasing is worse slavery. He argues that slave owners had an economic incentive to keep enslaved people alive. Instead, under convict leasing, private companies would work convicts to death.[14] Though

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Age of Slave Emancipation (New York: Cambridge University Press, 1998), 127.

[12]Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2012), 1-19; Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003), 28-29; Douglas A. Blackmon, *Slavery by Another Name: The Re-enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books, 2008), 10; Milfred C. Fierce, *Slavery Revisited: Blacks and the Southern Convict Lease System, 1865-1933* (New York: Brooklyn College, 1994), 1-13; Daniel A. Novak, *The Wheel of Servitude: Black Forced Labor after Slavery* (Lexington: University Press of Kentucky, 1978), 1-8.

[13]Alexander C. Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso, 1996), 73-104.

[14]Matthew Mancini, *Ones Dies, Get Another: Convict Leasing in the American South, 1866-1928* (Columbia: University of South Carolina Press, 1996), 1-12.

these two camps of historians disagree on whether convict leasing was a continuation of slavery or not, they agree that the central legacy of the Black Codes was the system of forced labor that it prescribed as a punishment for Black individuals who committed petty crimes.

These two fields of historiography are united through their interest in vagrancy. The vagrancy statute was one of the harshest in the Black Code. It attempted to recreate the plantation labor system through coercion and threat of arrest. Due to its extremity, many historians have centered discussions of the Black Codes on vagrancy. While I discuss vagrancy extensively in chapter one and refer to historians' claims regarding that statute, it is important to note that in this thesis I do not engage with overarching arguments of either historiographic group; I do not address whether the central legacy of the Black Codes is a novel legal era or convict leasing. Rather, my conclusions center around arrest and sentencing data from Edgefield County.

My contribution to the historiography of the Black Codes is about the local enforcement of the law. While many historians write about the importance of the Codes, few have attempted to quantify how the enforcement affected freed-people on a local scale during the 1865-1867 period. This focus leads to a handful of key research questions: how many freed-people were actually incarcerated during this period? What disparities exist in arrest and sentencing patterns? The quantity of arrests matters to this historiographical conversation as it illustrates how the Black Codes were applied in 'ordinary' people's lives. Additionally, the Black Codes were repealed a year after their passage, once Republican Congressional representatives observed their discriminatory nature. Did the repeal of the Black Codes change how African Americans experienced the criminal justice system in the South? Through a novel quantitative analysis of arrest and sentencing patterns for Edgefield, South Carolina, I attempt to answer these questions.

I have only located one other historian who has attempted a similar, quantitative project, John K. Bardes. Bardes investigates how vagrancy was enforced in New Orleans from 1862 to 1868. He analyzes arrest records, court recorder documents, newspapers, and Freedmen's Bureau documents to identify how many African Americans were arrested for vagrancy and what the impact of the Black Codes were on 'ordinary people.'[15] Bardes' study is similar to my own in that he asked questions regarding the local enforcement of the Black Codes in one location, New Orleans. This thesis shares much in common with Bardes' quantitative approach, but applies it to a far less urban environment.

My research focuses on Edgefield County, South Carolina for several reasons. Since historians have argued that Black Codes were a mechanism to coerce African Americans to return to plantation labor, I wanted to investigate arrest and sentencing data in an agrarian region. Edgefield is a plantation region that is representative of the greater rural South in many ways - the community was established in the colonial period, it was predominately agricultural, slavery was the basis of the labor force until emancipation, and there was a broad class distribution among the white residents.[16] Edgefield is also well-known due its size and prominence. In 1860, Edgefield was 951,451 acres, making it the largest district behind Charleston.[17] Additionally, in 1860, Edgefield led South Carolina in both animal and agricultural production.[18] Thus, Edgefield is a well-studied plantation region, which shared many qualities with other Southern agrarian regions during Reconstruction.

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[15]John K. Bardes, "Redefining Vagrancy: Policing Freedom and Disorder in Reconstruction New Orleans, 1862-1868," *The Journal of Southern History* 84, no. 1 (2018): 76-77.
[16]Orville Vernon Burton, *In My Father's House Are Many Mansions: Family and Community in Edgefield, South Carolina* (Chapel Hill: University of North Carolina Press, 1985), 35.
[17]Orville Vernon Burton, *In My Father's House Are Many Mansions*, 14.
[18]Orville Vernon Burton, *In My Father's House Are Many Mansions,* 35.

Additionally, Edgefield County is known for its white supremacist violence and its many prominent Democratic politicians who supported slavery, secession, and white supremacy. These politicians include Civil War governors Francis W. Pickens and Milledge Luke Bonham, Confederate generals Mathew Calbraith Butler and Martin Wither Gary, Representative James Henry Hammond, and notorious leader of a white redemption group, Benjamin Tillman.[19] The political successes of Edgefield's men could be owed to the legal prominence of Edgefield. When the cotton boom made Edgefield prosperous in the late eighteenth century, the Courthouse-village became known for law and politics.[20]

Edgefield's legal prominence may be the reason that many arrest and trial documents from Reconstruction survive today; these sources were essential to my research. In fact, Edgefield is the only county in South Carolina with a surviving, and publicly accessible, Sheriff's Jail Book for the years 1865-1867. In addition, Edgefield is home to the longest running, white owned newspaper in the state, *The Edgefield Advertiser*, which I rely upon to glean information about the attitudes of white people in the county. Thus, Edgefield was a plantation region, with legal prominence, surviving archival records, and an active newspaper. These factors allowed me to conduct a quantitative analysis of Edgefield County's law enforcement practices during Early Reconstruction (1865-1867).

In order to understand how everyday people, and especially emancipated individuals, interacted with the criminal justice system during Early Reconstruction, I explore three subjects: the South Carolina law, local law enforcement practices, and how the law and law enforcement can be understood together. The first chapter details the many laws that were passed and repealed

[19]Orville Vernon Burton, *In My Father's House Are Many Mansions*, 6.
[20]*The Story of Edgefield,* 2-3.

between 1865 and 1867 in South Carolina. It focuses on the 1865 South Carolina Constitution, the South Carolina Black Codes, and the Civil Rights Act of 1866. In this section, I refer to state assembly journals, legislation, and Governor Perry and Governor Orr's speeches. Alongside these sources, I use *The Edgefield Advertiser* to understand how white people in Edgefield reacted to the changing laws. Throughout the Civil War, *The Edgefield Advertiser* defended nullification, succession, and slavery. It was a major news source in the county; in fact, there was no Black owned newspaper in this county during Reconstruction, even though by percentage the population was predominantly African American. These sources allow me to offer a robust analysis of how South Carolina legislation was received in Edgefield.

Chapter two analyzes arrest and sentencing practices in Edgefield from 1865 to 1867. To accomplish this goal, I built a dataset where I aggregated the arrests in the Edgefield Sheriff's Jail Book and the trials in the Criminal Court and Provost Court journals. I also relied upon the 1870 census, the first census to list African Americans in the South by name, in order to learn more about the individuals in the arrest and sentencing records. I analyze this dataset in several different segments in order to understand what patterns emerge. In chapter two, I quantify the data in two central categories: arrests and trials. In chapter three, I separate the data into three central categories: arrests and trials prior to the passage of the Black Code, while the Black Code was the law, and after the repeal of the Black Code.

In chapter three, I discuss how we can understand the information presented in chapters one and two in conjunction. I return to the sources used in the first chapters to demonstrate how the law and its local enforcement are related, but not identical. In this chapter, I question how responsive local law enforcement was to the law and whether they enforced the Black Codes.

Ultimately, through an investigation of the laws, arrests, and trials in Edgefield, South Carolina, I discovered racial disparities in local law enforcement's practices. Black people in Edgefield were more likely to be arrested for non-violent crimes including larceny, loitering, and breaking of the peace, whereas white people were more likely to be arrested for violent crimes including murder and assault. There were also disparities in sentencing. Black people were often punished with incarceration, whereas white people were often punished with monetary fines. Furthermore, those on trial for larceny and theft were found guilty more often than those on trial for murder. The 1865 Provost Court trials of Phil and Robert Turner exemplify these patterns: Phil was charged with non-violent theft and was incarcerated; Robert shot at another man and paid a small fine.

Additionally, my data indicates that arrest and sentencing patterns did not dramatically shift from 1865 to 1867, revealing that the passage and repeal of the Black Codes did not have a large impact on local law enforcement practices. Lastly, I did not find evidence of vagrancy arrests or convict leasing in my research. This begs the question: Was it the case that two major components of the Black Codes, vagrancy and forced labor, were not enforced in this period? If the law and local enforcement are not synonymous and components of the Black Codes were not enforced, then historians who study the Black Codes need to reevaluate what the true impact of these discriminatory laws were on ordinary Black Americans in the South.

Chapter One

The Legal History of South Carolina, 1865–1866

On June 12, 1865, Charles Soule, a Freedmen's Bureau official wrote to General O.O. Howard and expressed concern regarding the freed-people of Orangeburg, South Carolina. His letter states, "there are many [freedmen] whom the absence of the usual restraint and fear of punishment renders idle, insolent, vagrant and thievish."[21] Charles Soule was not the only person who was anxious about whether the newly emancipated African Americans would labor or not. In 1865, the South Carolina legislature instituted vagrancy laws. Vagrancy laws stipulated that all freed-people must sign labor contracts, which bound them to plantation labor. Those who did not sign a contract could be arrested and punished. Thus, vagrancy laws ensured that Black Americans continued to be employed as agrarian laborers.[22]

Several states passed vagrancy laws as a component in a legislative package entitled Black Codes. Three states passed such codes in 1865 (Mississippi, South Carolina, and Alabama), while the seven remaining Confederate states wrote legislation pertaining to freed-people in 1866.[23] Eric Foner argues that planters sought to reestablish a plantation labor system in the Black Codes through the punishment of any freedmen who did not agree to sign a contract for agrarian labor.[24] The 1865 Black Code of Mississippi includes an entire chapter defining and criminalizing vagrancy. Section one of their "Act to amend the Vagrant Laws" reads:

> Be it further enacted, That all rogues and vagabonds, idle and dissipated persons, beggars, jugglers, or persons practicing unlawful games or plays, runaways, common drunkards, common night-walkers, pilferers, lewd, wanton, or lascivious persons, in speech or behavior, common railers and brawlers, persons who neglect

[21]Ira Berlin et al., "The Terrain of Freedom: The Struggle over the Meaning of Free Labor in the U.S. South," *History Workshop Journal* 22, no.1 (1986): 118.
[22]John K. Bardes, "Redefining Vagrancy," 69.
[23]Theodore Brantner Wilson, *The Black Codes of the South*, 96.
[24]Eric Foner, *A Short History of Reconstruction*, 93.

> their calling or employment, misspend what they earn, or do not provide for the support of themselves or their families, or dependents, and all other idle and disorderly persons…shall be deemed and considered vagrants, under the provisions of this act, and upon conviction thereof shall be fined not exceeding one hundred dollars...and be imprisoned, at the discretion of the court, not exceeding ten days.[25]

The broad nature of this law reveals why historian John Bardes views vagrancy laws as a "catch-all" category of crime. The offenses are activities such as drinking, playing games, and taking a stroll at night. Furthermore, these laws specifically targeted Black people: the Mississippi vagrancy law commences, "all freedmen, free negroes and mulattoes in this State" and goes on to state that vagrants will be arrested and imprisoned.[26] Black Codes in Alabama and South Carolina used similar language to compel people of color into restrictive labor contracts. Black Codes eliminated virtually all labor options, except field work, for newly freed-people through the criminalization of Black unemployment and Black leisure. In doing so, these laws reinforced the racial hierarchy, wherein white owners profited and Black field-hands labored.

South Carolina was the second state to pass a Black Code. It was completed days after Mississippi's Code.[27] The South Carolina State legislature met in the Fall of 1865 and passed a series of statutes, which directly targeted "people of color." A more in-depth analysis of the South Carolina 1865 legislation, Constitutional Convention, and reaction to the Civil Rights Act of 1866, will illuminate how South Carolina created a discriminatory criminal justice system.

A. The Constitutional Convention in South Carolina

On May 26, 1865, General Simon Bolivar Buckner surrendered to the Union army and the Civil War concluded. The conclusion of the war, and the subsequent assassination of

[25]"An Act to Amend the Vagrant Laws of the State," *Act of the General Assembly of the State of Mississippi at the Sessions of 1864-1865* (Jackson: 1865), §I.
[26]"An Act to Amend the Vagrant Laws of the State," §II.
[27]Theodore Brantner Wilson, The *Black Codes of the South,* 71.

President Lincoln, left Andrew Johnson with the responsibility of restoring Confederate states to the Union. He immediately began appointing provisional governors and on June 30th, Johnson appointed Benjamin Franklin Perry as the provisional Governor of South Carolina. President Johnson released a proclamation announcing his gubernatorial selection and prescribed the following duties to Governor Perry: "at the earliest practicable period, to prescribe such rules and regulations as may be necessary and proper for convening a Convention…for the purpose of altering or amending the Constitution thereof…to restore said State to its Constitutional relations to the Federal Government."[28] Thus, Andrew Johnson ordered Governor Perry to hold elections for a Constitutional Convention. The proclamation implies that once the Constitution was rewritten, South Carolina would be readmitted to the Union.

President Johnson allowed Governor Perry to initiate delegate elections and hold a Constitutional Convention with minimal demands, which he detailed in his May 1865 Amnesty Proclamation: delegates must have "subscribed [to] the oath of amnesty" and the state was required to adopt the Thirteenth Amendment and repudiate Confederate debt.[29] Johnson's restoration of white property and political agency after fulfilling these simple demands is controversial. Historian Dan Carter deems the period from 1865 to 1867 "self-reconstruction," because Andrew Johnson gave Southern states almost complete power over their own reconstruction, including over writing laws pertaining to freed-people. The result was racially discriminatory constitutions and the Black Codes. Thus, Carter titles his book about this period, *When the War Was Over: The Failure of Self-Reconstruction in the South, 1865-1867* to illustrate the ineffective nature of President Johnson's practice of empowering provisional

[28]Proclamation No. 143 (June 30, 1865).
[29]Proclamation No. 134 (May 29, 1865).

Governors to lead reconstruction.[30] Sure enough, Benjamin Perry's first act as Governor was to reinstate Confederate politicians; "[I] hereby proclaim and declare that all civil officers in South Carolina, who were in office when the civil government was suspended in May last…shall, on taking the oath of allegiance...resume the duties of their office."[31] Benjamin Perry decided that the members of the Confederate legislature, the majority of whom supported slavery, were to be reinstated in 1865. This proclamation illustrates Governor Perry's ethos of reconstruction, which was to rejoin the Union as quickly as possible with the aid of former Confederate leaders.

Elections for the delegates to the Constitutional Convention occurred shortly after Governor Perry's August Proclamation. Edgefield, South Carolina sent six men to Columbia, South Carolina to participate in the Constitutional Convention: W.S. Mobley, G.D. Tillman, R.G.M. Dunovant, Jas. A. Talbert, R.W. Pickens, and P.F. Hammond.[32] According to the Federal Census of 1860, these men owned enslaved people prior to the Civil War. W.S. Mobley owned fifty-one enslaved people; G.D. Tillman owned one enslaved boy; R.G.M. Dunovant enslaved forty-seven people; Jas. A. Talbert owned seventy enslaved people, and I was unable to locate Pickens or Hammond on the census.[33] I note that many delegates were slaveholders to illustrate whose opinion was considered when South Carolina rewrote their Constitution. Many of the delegates were former Confederates, former slaveholders, and wealthy; their prejudices shaped the South Carolina Constitution of 1865, and the subsequent 1865 legislation.

The South Carolina Constitutional Convention commenced on September 13, 1865. Local and national newspapers, such as *The Edgefield Advertiser* and *The New York Times*,

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[30]Dan T. Carter, *When the War Was Over*, 3-5.

[31]"SOUTH CAROLINA; Gov. Perry's Proclamation for Reconstruction Loyal Citizens Urged to take Oath of Allegiance Elections to be Held According to the Laws of the State of South Carolina," *New York Times*, (New York, NY), August 6, 1865.

[32]*The Edgefield Advertiser* (Edgefield, SC), September 13, 1865.

[33]*Slave Schedules 1860*, Bureau of the Census (Washington D.C., 1860).

reported on the convention. The convention was composed of 124 delegates and on the first day these delegates elected Judge D.L. Wardlaw of Abbeville County as the presiding president.[34] *The Edgefield Advertiser* describes Judge Wardlaw as an "able, honest, dignified, and learned" man.[35] However, Judge Wardlaw was the former speaker of the House of Representatives in the South Carolina Assembly and had previously denied that the Emancipation Proclamation ended slavery, saying, "[I]t is preposterous to attribute such effect to the mere proclamation of President Lincoln."[36]

Before the first day of the convention adjourned, Mr. Dudley of Marlboro, introduced a resolution stating, "That, under the present extraordinary circumstances, it is both wise and politic to accept the condition in which we are placed; to endure patiently the evils which we cannot avert or correct and to await calmly the time and opportunity to affect our deliverance from unconstitutional rule."[37] His statement illuminates how the South Carolina delegates felt about the Union. They believed the Northern intervention into their politics was evil; this sentiment was expressed continuously at the convention, especially in the debate over emancipation.

On the third day of the convention, September 15th, Mr. Winsmith introduced a resolution accepting the terms of emancipation.[38] Several delegates, including Mr. Blair, argued that if the Constitution acknowledged emancipation, planters would never receive compensation for their "lost property," referring to enslaved people. Mr. Dawkins and Mr. Orr disagreed with

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[34]"Governor's Message Resolutions in Favor of Jeff. Davis Contested Seats Beginning the Work of Reconstruction," *The New York Times*, September 13-September 16, 1865.
[35]"The Convention," *The Edgefield Advertiser*, September 20, 1865.
[36]Thomas D. Morris, "Military Justice in the South, 1865-1868: South Carolina as a Test Case," *Cleveland State Law Review* (2006): 519.
[37]*Journal of the Convention of the People of South Carolina 1865* (Columbia, South Carolina, 1865), 6.
[38]*Journal of the Convention of the People of South Carolina 1865*, 30.

this approach. In their statements, they argued that if South Carolina accepted abolition in the Constitution, they would be readmitted to the Union, and military rule would conclude. Mr. Dawkins stated, "I am anxious to go back to civil law by agreeing to abolish slavery."[39] At the end of the debate, the emancipation amendment passed and was incorporated into the Constitution with sixty-one yeas, and forty-six nays.[40] The debate over whether to accept emancipation or not reveals that those in favor of acknowledging emancipation only supported such action because they believed it would end military occupation. The alarming forty-six nays also showcases the number of delegates at the Constitutional Convention who were unwilling to accept the abolition of slavery.

The final 1865 Constitution unapologetically discriminated against freed-people. First, the Constitution did not grant suffrage to Black men and reinforced that freed-people would be unable to serve in the government.[41] Second, the Constitution had a clause detailing a new legal system in South Carolina. Article three, section one reads, "The general assembly shall, as soon as possible, establish for each District in the State an Inferior Court or Courts, to be styled "The District Court"... [which] shall have jurisdiction of all civil causes wherein one or both of the parties are persons of color, and of all criminal cases wherein the accused is a person of color."[42] Thus, South Carolina intended to create an entirely separate court system for people of color. This proposed segregated District Court was further legislated upon in the Black Code.

B. The Black Codes of South Carolina

[39]"Governor's Message," *The New York Times,* September 13-September 16, 1865.
[40]*Journal of the Convention of the People of South Carolina 1865*, 62.
[41]SC. CONST. art. IV, § I. 1865 (amended 1868); SC. CONST. art. I, § XIII. 1865.
[42]SC. CONST. art. III, § I. 1865.

Once the South Carolina Constitution was ratified, the state moved forward with elections for governor and representatives to the General Assembly. When the newly elected legislators of the General Assembly met in October 1865, they wrote and passed South Carolina's notorious Black Code. The General Assembly was tasked with legislating on behalf of the newly emancipated African Americans and with this power they decided to write restrictive, harsh, and discriminatory laws. Four acts compose the South Carolina Black Code: "An Act preliminary to the legislation induced by the emancipation of slaves," "An Act to amend the criminal law," "An Act to establish District Courts," and "An Act to establish and regulate the domestic relations of persons of color, and to amend the law in relation to paupers and vagrancy." Though these acts were only enforced from November 1865 to November 1866, they are extremely important in the legal history of discrimination. The South Carolina legislators learned how to perpetuate racism through the Black Codes, and once criticized for the openly discriminatory nature of these laws, how to rewrite the same laws in race neutral terms.[43]

The first act of the South Carolina Black Code, "An Act preliminary to the legislation induced by the emancipation of slaves," acknowledged emancipation and stated that the Constitution allowed the General Assembly to legislate on behalf of freed-people. This initial act also defines the term "person of color": "all free negroes, mulattoes and mestizoes, all freedmen and freedwomen, and all descendants through either sex of any of these persons, shall be known as *persons of color*."[44] This provision makes clear that the Black Code will apply to all people of color, not only the formerly enslaved. Therefore, this act is one of the first to legislate in regards to race rather than labor status. Prior to emancipation, enslaved people and free Black people

[43]Edward Ayers, *Vengeance and Justice*, 151.

[44]"An Act Preliminary to the Legislation Induced by the Emancipation of Slaves," *Acts of the General Assembly of the State of South Carolina Passed at the Sessions of 1864*-65, no. 4730 (Columbia: 1865).

were not treated identically in the law. Thus, the definition of "people of color" marks the beginning of a new racial category. The act ends with a list of rights granted to people of color including the right to own property, make contracts, and receive protection from the law.[45]

The second act of the South Carolina Black Code, "An Act to amend the criminal law," defined civil and criminal offenses, as well as prescribed punishments. The act lists several actions, which are legal for white people, but are hereby made illegal for people of color, including selling farm products without a master's permission, joining the militia, owning a fire-arm or an alcoholic distillery, and presenting false contracts.[46] Alongside these harsh restrictions, the act details how people of color should be punished for minor crimes. Section six of the act reads, "All simple larcenies and thefts, where the values of the goods and chattels, moneys and valuable securities stolen is less than ten dollars, shall be misdemeanors, punishable by whipping, corporal punishment, hard labor, and the necessary imprisonment."[47] This act is egregious. It allows a person of color to be punished to hard labor or whipped for stealing less than ten dollars. Hard labor is defined later in the act as "work on the roads, streets, or public works...or in any business of a private individual."[48] Many historians define this system of arresting people of color for petty crimes and sentencing them to hard labor as convict leasing. With this one sentence statement about the punishment for petty larceny, we can trace the origins of convict leasing.

The third act of the South Carolina Black Code, "An Act to establish District Courts," expands upon the constitutional proposal to create segregated courts. The act orders each district

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[45]"An Act Preliminary to the Legislation Induced by the Emancipation of Slaves."
[46]"An Act to Amend the Criminal Law," *Acts of the General Assembly of the State of South Carolina Passed at the Sessions of 1864*-65, no. 4731 (Columbia: 1865).
[4747]"An Act to Amend the Criminal Law."
[4848]"An Act to Amend the Criminal Law," §XXV.

to establish a court which shall have "exclusive jurisdiction...of all civil causes where one or both of the parties are persons of color, and of all criminal cases wherein the accused is a person of color."[49] Alongside this clear segregation, the act states that the District Court will also have jurisdiction over all cases of misdemeanor, bastardy, and vagrancy.[50] This section of the act implies that Black individuals were the sole perpetrators of vagrancy, misdemeanor, and bastardy. Thus, the legislature openly associated freed-people with these crimes. After the Civil Rights Act of 1866, legislatures could no longer discriminate in such manners. Yet, because vagrancy, bastardy, and petty larceny were already coded as Black crimes in the Black Code, Black people continued to be arrested and prosecuted for these crimes.

The fourth and final act of the South Carolina Black Code is "An Act to establish and regulate the domestic relations of persons of color, and to amend the law in relation to paupers and vagrancy." This act discusses topics such as master and apprentice relations, contracts, the rights of "servants," and vagrancy. The act explains the stipulations of a contract: contracts over one month in length must be in writing and the legislature sets the wages. Freed-people are expected to work from sunrise to sunset every day, except for Sunday. All hours lost due to illness can be deducted from wages, and the employer has no obligation to provide medical care. On Sundays, servants are permitted to leave the premises, but must return by sundown and no visitors shall be allowed onto the premises without the permission of the master.[51] Lastly, the act states that no person of color is allowed to work as an artisan, mechanic, or shop-keeper without the permission of a District Judge.[52] While this act clarifies that freed-people will earn a wage for

[49]"An Act to Establish District Courts," *Acts of the General Assembly of the State of South Carolina Passed at the Sessions of 1864*-65, no. 4732 (Columbia: 1865), §VII.
[50]"An Act to Establish District Courts," §VII.
[51]"An Act to Establish and Regulate the Domestic Relations of Persons of Color," *Acts of the General Assembly of the State of South Carolina Passed at the Sessions of 1864*-65, no. 4733 (Columbia: 1865), § XXXV-LXIV.
[52]"An Act to Establish and Regulate the Domestic Relations of Persons of Color," § LXXII.

their labor, it imposes harsh restrictions on African Americans' new-found freedom. Additionally, the act is clear that people of color must continue to work in agricultural labor, as it restricts self-employment and artisan labor. Black Codes sought to control freed-people's mobility, labor, and life and eliminate all means of sustenance other than plantation labor, thereby maintaining the Southern agrarian system that reified a strict racial hierarchy.

The last subsection of this act is titled "vagrancy and idleness" and includes five clauses which explain that vagrancy is a crime for which a person of color can be arrested and punished. The act defines vagrancy in broad terms:

> All persons who have not some fixed and known place of abode, and some lawful and reputable employment; those who have not some visible and known means of a fair, honest and reputable livelihood; all common prostitutes; those who are found wandering from place to place, rendering, bartering or peddling any articles or commodities, without a license from the District Judge, or other proper authority; all common gamblers; persons who lead idle or disorderly lives, or keep or frequent disorderly or disreputable houses or places; those who, not having sufficient means of support, are able to work and do not work…fortune-tellers, sturdy beggars; common drunkards; those who hunt game of any description, or fish on the land of others, or frequent the premises, contrary to the will of the occupants, shall be deemed vagrants, and be liable to the punishment hereinafter prescribed.[53]

The length of the clause alone is alarming. There are fifteen lines of actions considered criminal including vague and subjective terms such as "wandering" and "leading a disorderly life." However, the main action that is considered vagrancy, stated in the first line, is unemployment. Due to the blatant discrimination in this act and the way in which the crime of vagrancy is broadly defined, historians of Reconstruction often focus on the vagrancy statute as one of the pinnacles of American legal discrimination. The act goes on to prescribe the punishment for

[53]"An Act to Establish and Regulate the Domestic Relations of Persons of Color," § XCVI.

vagrancy in similar terms to the punishment for larceny. If arrested for vagrancy, the law states the defendant can be punished with imprisonment or hard labor.[54]

The South Carolina Constitution and Black Code created an openly discriminatory legal system. The Constitution denied the formerly enslaved the right of suffrage and created a segregated court system. The legislators expanded upon the Constitution and enacted laws regulating people of color that restricted their mobility, reinstated an agricultural labor system under threat of arrest, elaborated upon the segregated court system, and prescribed hard labor as a punishment for petty crimes. However, these Black Codes did not go unnoticed by Northerners observing the South's self-reconstruction. Soon after the passage of the Black Codes, the Civil Rights Act nullified racial discrimination in legislation.

C. The Civil Rights Act of 1866

On January 5, 1866, Senator Lyman Trumbull introduced a bill to Congress to give "practical effect" to the Thirteenth Amendment. This bill would become the Civil Rights Act of 1866. Trumbull argued that though the Thirteenth Amendment freed African Americans, their rights were not protected. Republican support allowed Trumbull's bill to pass the Senate and the House on March 13, 1866 with thirty-three yeas, twelve nays in the Senate and 111 yeas, thirty-eight nays in the House. When President Johnson vetoed the bill, legislators formed a super majority and passed it into law regardless of the President's disapproval.[55] The Act clarified the civil rights of African Americans and banned racial discrimination. In doing so, the Civil Rights Act overturned the vast majority of statutes in South Carolina's Black Code.[56]

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[54]"An Act to Establish and Regulate the Domestic Relations of Persons of Color," § XCVII.

[55]Christian G. Samito, *The Greatest and Grandest Act: The Civil Rights Act of 1866 from Reconstruction to Today*, ed. Christian G. Samito (Carbondale: Southern Illinois University Press, 2018), 7-8.

[56]In other states, including Georgia and North Carolina, key aspects of Black Codes had been blocked by the Freedmen's Bureau prior to the Civil Rights Act. The Civil Rights Act of 1866 had the largest impact on the three states that passed Black Codes in the Fall of 1865, as they had the most openly discriminatory laws.

In section one, the Civil Rights Act of 1866 grants citizenship to any person born in the United States, regardless of race. It also states that Black Americans have the right, "to make and enforce contracts…inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens."[57] With this clause, the federal government challenged the Black Codes. Here, it is made clear that any statute which does not grant people of color the same benefits of the law "as is enjoyed by white citizens" is invalid. In section three, the Civil Rights Act states that people who experience violations of their civil rights can bring a lawsuit to a federal court, giving the federal government jurisdiction over civil rights violations, rather than the local government.[58] The last sections of the Act clarify that federal marshals can enforce the Civil Rights Act and those caught obstructing the implementation of this act will be punished.[59]

In totality, the Civil Rights Act of 1866 was extremely important. It overturned the explicitly discriminatory Black Codes in South Carolina, Mississippi, and Alabama and demonstrated that the federal government was monitoring Southern legislators. Yet, historians largely ignore the Civil Rights Act of 1866 because the Fourteenth Amendment was passed shortly after, and guaranteed many of the same rights, including birth right citizenship.[60] Though less studied, the Civil Rights Act of 1866 forced South Carolina legislators to rewrite their laws in a race neutral manner. Yet, as demonstrated in chapter two, the end of explicit racial discrimination in the law did not correlate with an end to racial discrimination in arrests. Therefore, the study of the Civil Rights Act, and subsequent repeal of the Black Code, is

[57]Civil Rights Act of 1866, 14 Stat. 27-30 (1866), §I.
[58]Civil Rights Act of 1866, §III.
[59]Civil Rights Act of 1866, §IV-IX.
[60]Christian G. Samito, *The Greatest and Grandest Act*, 10.

essential to understanding how laws can be race neutral, yet law enforcement can continue to perpetuate racial discrimination.

Historian Jeff Strickland studies how South Carolinians reacted to the passage of the Civil Rights Act of 1866. He argues that while many white legislators believed that the Civil Rights Act was unconstitutional, they quickly repealed Black Codes with the hopes of ending federal oversight and military occupation.[61] Strickland writes that many white South Carolinians agreed with President Johnson's veto of the Civil Rights Act and saw the Black Codes as necessary to a well-functioning labor system.[62] We see this even at the local level in Edgefield. On April 18th, shortly after the passage of the act, *The Edgefield Advertiser* published an article entitled "Fearful Stride Towards Despotism," which states that the Civil Rights Act was a form of slavery for white Southerners: "if it works as its framers intended it should, then the Southern people have before them oppression and tyranny and humiliation; in short, chains and slavery."[63] The author goes as far as to say that the Civil Rights Act establishes "negro superiority" and that the act is a worse betrayal of the Constitution than secession.[64]

Though many white South Carolinians vehemently opposed the Civil Rights Act, as the local newspaper coverage demonstrates, others were quick to acknowledge that it had overturned the Black Codes. Fleming, a former slave owner, wrote that the passage of the Civil Rights Act would "necessitate additional state legislation. Our own legislature must undo much of its last winter's work…Under the high pressure now brought to bear, we have no option."[65] Fleming was correct that South Carolina had no choice but to acquiesce to the federal law. On September

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[61] Jeff Strickland, *The Greatest and Grandest Act: The Civil Rights Act of 1866 from Reconstruction to Today*, ed. Christian G. Samito (Carbondale: Southern Illinois University Press, 2018), 88-89.
[62] Jeff Strickland, *The Greatest and Grandest Act*, 96-97.
[63] *The Edgefield Advertiser*, April 18, 1866.
[64] *The Edgefield Advertiser*, April 18, 1866.
[65] Jeff Strickland, *The Greatest and Grandest Act*, 97.

4th, 1866, Governor Orr called the legislature to an extra session to repeal the Black Code, stating, "In the series of Acts, passed in December last, known as the Code, there are various discriminations against freedmen, which should be repealed, and civil rights and liabilities as to crime should be accorded to all inhabitants alike."[66] Orr even observed that Provost Courts imposed harsher penalties on defendants of color than on white defendants for the same offenses, and called for a revision to the "District Court Act," which intended to implement a segregated court system.

In the September Assembly session, legislators responded to Governor Orr's demands and rewrote three of the four acts in the Black Code. Legislators drafted "An Act to Declare the Rights of Persons Lately Known as Slaves and as Free Persons of Color" in order to acknowledge the provisions of the Civil Rights Act of 1866.[67] Section two of this act states that discriminatory legislation should be repealed. It also explicitly repeals "An Act to establish and regulate the domestic relations of persons of color, and to amend the law in relation to paupers and vagrancy," nullifying the notorious vagrancy statute.[68] On September 10th, another bill was introduced to amend "An Act to establish District Courts," which removed all mentions of segregation and race in the District Court Act.[69] In addition to amending Black Codes, the legislature wrote and passed "An Act to make parties plaintiffs and defendants competent to give testimony in such cases, in like manner as other witnesses," which allowed Black citizens to sue, give testimony, and serve as witnesses.[70]

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[66] *Journal of the Senate of the State of South Carolina 1866* (Columbia: South Carolina, 1866), 1-2.
[67] Governor Orr signed this act into law on September 21st, 1866.
[68] *Journal of the Senate of the State of South Carolina 1866*, 3-65; "An Act to Establish and Regulate the Domestic Relations of Persons of Color," § XIII; "Adjournment of the Legislature," *The Edgefield Advertiser*, September 26, 1866.
[69] *Journal of the Senate of the State of South Carolina 1866*, 10-32.
[70] *Journal of the Senate of the State of South Carolina 1866*, 33-65.

In the November legislative session, representatives finally amended the criminal law. The "Act to alter the act entitled 'An Act to amend the criminal law'" begins with repealing the Black Code statute: "That the act entitled 'an act to amend the criminal law,' which was ratified on the nineteenth day of December, in the year of our Lord one hundred sixty-five, be, and the same is hereby, repealed."[71] The act goes on, in race neutral language, to define crimes. For example, the act defines any theft below the value of twenty dollars to be petit larceny.[72] Therefore, during the Fall 1866 legislative sessions representatives repealed the Black Codes and rewrote their laws in race neutral language, demonstrating the massive impact of the Civil Rights Act on state laws.

As the above exploration illustrates, the Civil Rights Act of 1866 was essential to the overturning of the Black Codes. Federal legislators noted that the Thirteenth Amendment had not guaranteed equality under the law and used the Civil Rights Act to rectify the discrimination they observed in the Black Codes. Consequently, Black Codes were only enforced from November 1865 to November 1866. While many historians have examined the Black Codes carefully and noted their importance in the history of America's legal system, few have quantified the ways in which the Black Codes, and their subsequent replacement with race-neutral laws, affected freed-people in terms of arrests and sentencing practices in local counties. Due to the lack of information on the local enforcement of the Black Codes, I will attempt such an undertaking in the following chapter. I will demonstrate that this process of rewriting discriminatory laws in race neutral language did not correlate with an end to racial discrimination in local arrest and sentencing practices.

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[71]"Act to alter the act entitled 'an act to amend the criminal law," *Acts of the General Assembly of the State of South Carolina Passed at the General Sessions of 1866*, no. 4779 (Columbia: 1866), §I.
[72]"Act to alter the act entitled 'an act to amend the criminal law," §XIV.

Chapter Two

Arrest and Sentencing Practices in Edgefield, 1865-1867

On February 7, 1866, *The Edgefield Advertiser* reprinted a story from the *Laurensville Herald* entitled "The Privilege of Freedom." The story begins:

> Three negroes stole a hog from the plantation of Dr. M., about fifteen miles from Madison, Fla. They were apprehended, duly tried, convicted, and sentenced to six month's imprisonment. On hearing the sentence they all looked somewhat blank; but, after a short conference amongst themselves, one of them, who acted as spokesman, said to the officer, "Massa judge, spasen we take de ole fash'n whippin and be let go. How dat do?" The good-natured official, smiling, replied that he had no authority to order a whipping, nor had he any one to lay it on if he did commute the punishment.[73]

The story goes on to say that the three Black men convinced a former overseer to whip them and the judge accepted this punishment. When the overseer insisted on being paid for his work, the three freedmen borrowed ten dollars and fifty cents from friends. Finally, they received their punishment. The story ends with one of the Black men confronting the judge after the whipping, "Massa judge, dis am a hard case, time use to been when we could get a proper whippen for nuffin, but dey is free us and now we can't get a whippen wid out payin for em. Massa judge, I wish dey would make us as we usen be!"[74]

Whether this story is factual or fabricated is impossible to confirm. Yet, the reprinting of this tale in the Edgefield paper demonstrates how the white community felt about the changes in the criminal justice system. This story notes that the justice system relocated from the hands of plantation owners and overseers to the official court system. The transference of the location of punishment was accompanied by a change in the form of punishment. As the judge says, he cannot order a whipping. Instead, his position grants him the right to incarcerate people. This is a

[73] *The Edgefield Advertiser*, February 7, 1866.
[74] *The Edgefield Advertiser*, February 7, 1866.

vital transformation in the South. For the first time, Black men were punished with jail time, rather than brutalized within their space of work. Additionally, the story highlights how the white communities of Laurensville and Edgefield disapproved of these changes; the plot line focuses on how the freedmen would rather be whipped than incarcerated. Thus, the article presents a narrative that even Black people preferred the punishment system during slavery. This story encapsulates the "halting and tenuous" transition from an informal and violent justice system to the formal, state-sanctioned court system in Edgefield.[75] The novel process of arrest, trial, and imprisonment is why this period is essential to study. How did freed-people experience the commencement of the formal court system? In the initial moments of post-war justice, what patterns emerge in arrest and sentencing data from Southern counties?

In this chapter, I explore arrest and sentencing practices throughout the course of Early Reconstruction in Edgefield, South Carolina. In the previous chapter, I explored the Black Codes in South Carolina. I also discussed how South Carolina rewrote these discriminatory laws in race neutral language after the passage of the Civil Rights Act of 1866. While other historians have dedicated entire books to these legal changes, in this chapter I will examine how the rapidly shifting law affected people in Edgefield. Few historians have attempted to quantify how the passage of the Black Codes, and the subsequent repeal, affected local arrest data. Historian Joseph A. Ranney argues that "little attention has been paid to the postwar evolution of law in the South at the state level" and his book fills this gap.[76] My research goes one step further to look at the "postwar evolution of the law" at the county level. In doing so, I hope to understand how 'ordinary' freed-people interacted with the criminal justice system.

[75]Edward Ayers, *Vengeance and Justice*, 150.
[76]Joseph A. Ranney, *In the Wake of Slavery*, 2.

A. The Sheriff's Jail Book: Arrests in Edgefield

In order to analyze patterns in Edgefield's sentencing and arrest data, I relied upon the Edgefield Sheriff's Jail Book (1866-1867), Criminal Court journals (1866-1867), and Provost Court records (1865). The Sheriff's Jail Book recorded arrests and included information on the name of the arrestee, date of arrest, date of release, and crime committed. The Criminal Court journals and the Provost Court records detail the process of trials in Edgefield. These records include information on indictments, presiding judges, jury members, verdicts, and sentences. As with any quantitative study, this data is incomplete. It is possible that the Sheriff failed to record every arrest made in Edgefield and there are several trials recorded in the Criminal Court journals, whose outcome is excluded from the official record. Additionally, inconsistencies and illegibility are unavoidable components of handwritten documents, a hurdle that we must keep in mind when considering the dataset.

Moreover, I investigate the way in which race played a role in arrest and sentencing practices. Yet, the Sheriff Jail Books, Criminal Court journals, and Provost Court logs often failed to record the race of those arrested or on trial. There were fifty arrests recorded in the Sheriff's Jail Book from 1866-1867 and the race of the arrestee was specified in twenty cases, or 40% of these arrests;[77] There were forty-one trials detailed in the Provost Court journal during 1865, and the race of the defendant was only specified in five cases, or 12.2%;[78] Lastly, there were thirty-one criminal trials detailed in the Criminal Court logs from 1866-1867 and the race of the defendant was never specified.[79] It is important to note that race was only specified when

[77] *Jail books of the Sheriff 1865-1961* (Edgefield, 1866-1867).
[78] *Journals of the Provost Court 1865* (Edgefield: Court of Common Pleas, 1865).
[79] *Criminal Journals 1802-1879* (Edgefield: Court of General Sessions, 1865).

the arrestee or defendant was African American (these records use the term "colored"). In attempts to determine the racial identity of unlabeled persons, I referred to the 1870 census.

The census data garnered many questions. In several cases, I found a person listed on the census with the same name as the arrestee. In 1866, a man named M.D. Green went to Criminal Court for arson. On the 1870 census, there is a man named M.D. Green, who lived in Edgefield and was a white farmer.[80] It is certainly possible that these are the same people, but I cannot be certain. In other cases, I found a person on the census with a similar name to the one in the records. In the Sheriff's Jail Book, a Thomas W. Watts was arrested for murder.[81] On the 1870 census, there is a man named Thomas Waits who was sixty-nine years old and white.[82] Could Thomas Watts and Thomas Waits be the same person? Finally, in several cases, I found multiple people living in Edgefield with the same name as the one recorded in the archival logs. For example, in 1865, the Provost Court prosecuted Thomas McKie for "striking a colored girl."[83] On the 1870 census records, there are two Thomas McKie's living in Edgefield county, one was thirty-five and white and one was forty-two and white.[84] This context allows me to tentatively conclude that Thomas McKie was white. This process of drawing conclusions about people's race is challenging. Thus, throughout this section, I will note when a person's race was officially recorded, or whether I inferred their race based on context clues and the 1870 census.

With these complications in mind, the contents of the Sheriff's Jail Book reveal a pattern of disparate arrests; the data indicates that white people were often arrested for crimes of violence, whereas Black people were often arrested for petty crimes. The Sheriff's Jail Book has

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[80] *Criminal Journals 1802-1879*; *Population Schedule 1870,* Bureau of the Census (Washington D.C., 1870).
[81] *Jail books of the Sheriff 1865-1961*.
[82] *Population Schedule 1870.*
[83] *Journals of the Provost Court 1865*.
[84] *Population Schedule 1870.*

fifty arrest entries for the two-year period from 1866 to 1867. The race of the arrestee was recorded in 40% of these arrests.[85] Since the Jail Book recorded the race of the arrestee in almost half of all cases, and as mentioned, the only time race was recorded was if the person arrested was African American, it is possible to tentatively conclude that all arrestees whose race was not officially labeled, were white people. In fact, even though there are fifty arrest entries, the arrest log includes the names of eighty-five people who were arrested, since people were often arrested in groups under one entry. Of the eighty-five people arrested, thirty-five were labeled as "colored" in the register, or 41.2% of all people arrested.[86] With the assumption that the 59.8% of unlabeled arrestees were white, fascinating disparities are visible.

Forty-nine people were arrested in Edgefield for burglary, robbery, larceny or stealing; eight people were arrested for murder; eighteen people were arrested for assault; and, eleven people were arrested for other crimes, including burning (five arrests), bigamy (one arrest), and breaking the peace (two arrests).[87] Though burglary, robbery, larceny, and stealing all carry different legal meanings, I grouped these arrests together, as these terms all indicate theft. Only one of these forty-nine arrests was for grand larceny, implying the other cases were petit larceny (the value of the goods stolen was below $20).[88] Petit larceny is generally considered a petty crime, alongside breaking the peace and vagrancy, since these crimes are relatively minor and non-violent. Of the forty-nine people arrested for stealing, thirty-two were "colored" people. Therefore, of the thirty-five African Americans arrested in Edgefield in 1866 and 1867, thirty-two were arrested for stealing. Rather, 88.8% of all African American crime in Edgefield was

[85] *Jail books of the Sheriff 1865-1961.*
[86] *Jail books of the Sheriff 1865-1961.*
[87] *Jail books of the Sheriff 1865-1961.*
[88] *Jail books of the Sheriff 1865-1961.*

petty theft (Figure A). In contrast, of the eighteen people arrested for assault, only one person was "colored." Similarly, eight people were arrested for murder, and not one was African American (Figure B). Lastly, the two people arrested for breaking the peace, an arbitrary crime, were people of color. Therefore, thirty-four of the thirty-five crimes African Americans committed were petty. Whereas, of the fifty white people arrested in Edgefield in this two-year span, twenty-five of them were arrested for violent crime (either assault or murder), meaning 50% of white crime was violent versus 2.8% of African American crime (Figure C). In other words, 50% of white crime was petty, whereas 88.8% of African American crime was petty.[89]

The data gathered from the Sheriff's Jail Book paints an unexpected picture. Though Edgefield was approximately 60% Black during this period, only 40% of all arrestees were people of color.[90] Therefore, at this period, there was not a great racial disparity in who was arrested. However, there was a dramatic disparity in what crimes people were arrested for. Almost every Black arrestee was jailed for stealing and only one person of color in a two-year span committed a violent crime. On the other hand, white people in Edgefield were just as likely to commit violent crimes as they were non-violent thefts. This largely indicates that African American crime was primarily economic in the earliest Reconstruction period, which is not surprising given the economic hardships associated with sudden emancipation. This data also disproves the white fear that emancipation would lead to violent uprisings. On June 14, 1865, *The Edgefield Advertiser* published an article that commences with "Because the slaves of the South have been, by the fortunes of war, declared free, it does not follow that hereafter their career will be permitted to be one of idleness, and consequently of crime."[91] The implication in

[89] *Jail books of the Sheriff 1865-1961*.
[90] E. Hergesheimer, *Map showing the distribution of the slave population of the southern states of the United States Compiled from the census of*, Washington Henry S. Graham, 1861. Map. https://www.loc.gov/item/99447026/.
[91] "Recognized Status of the Negro," *The Edgefield Advertiser*, June 14, 1865.

this messaging is that freed-people would not work and would commit crimes. Furthermore, historian Joseph A. Ranney argues that the Black Codes reflected the fear that education and economic stability would foster Black rebellion.[92] Instead, the data illustrates that people of color were arrested for small thefts, rather than violent crimes and white people were the ones perpetuating violence in Edgefield's community. Beyond disparities in what crime people were arrested for, there are also disparities in terms of how long people remained in jail after their arrest.

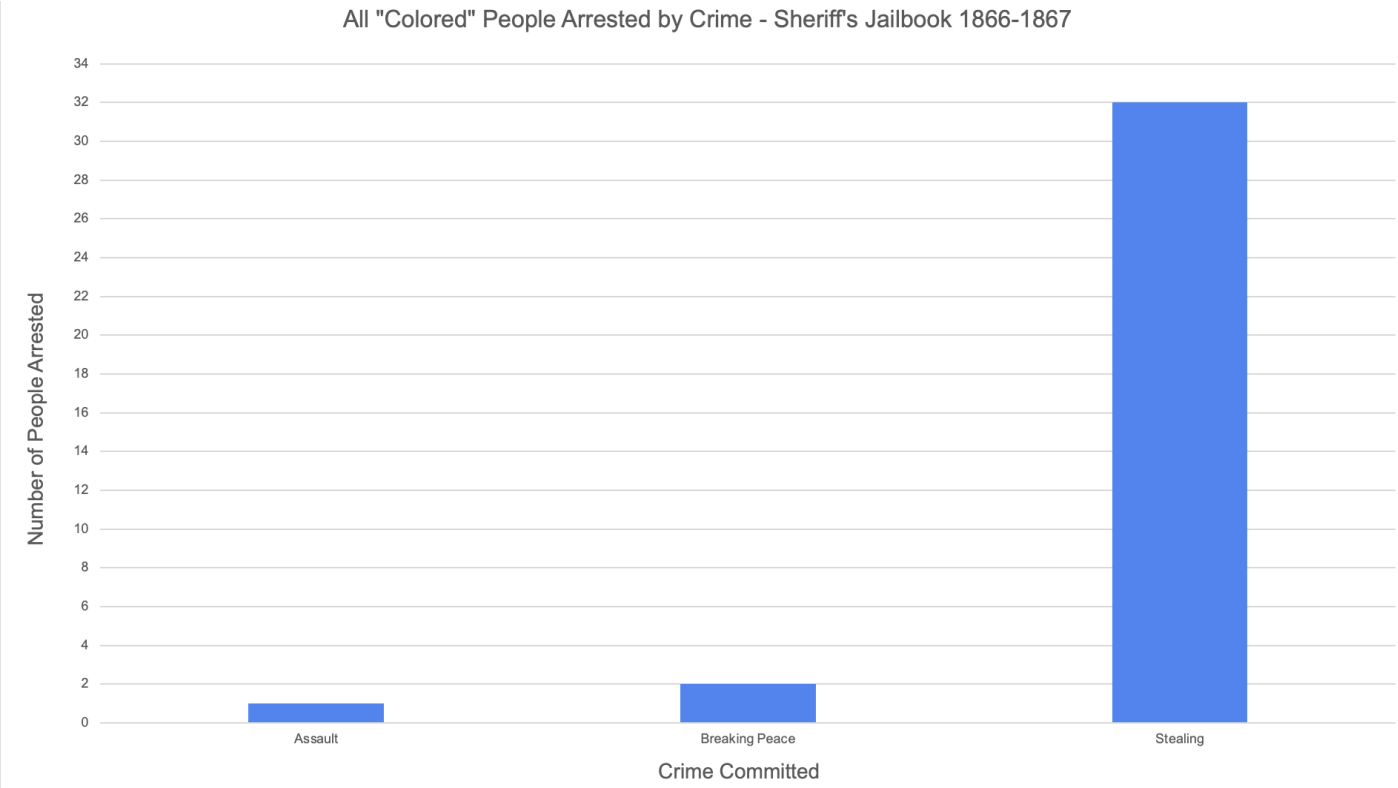

Figure A

[92]Joseph A. Ranney, *In the Wake of Slavery*, 16.

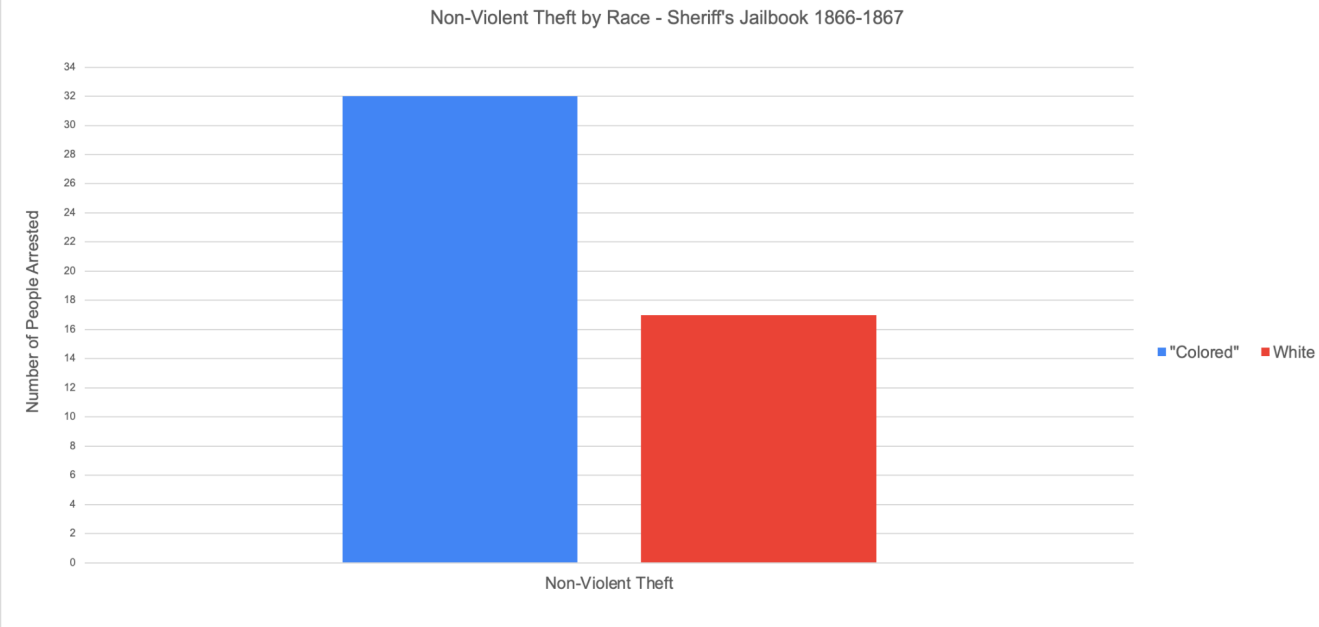

Figure B

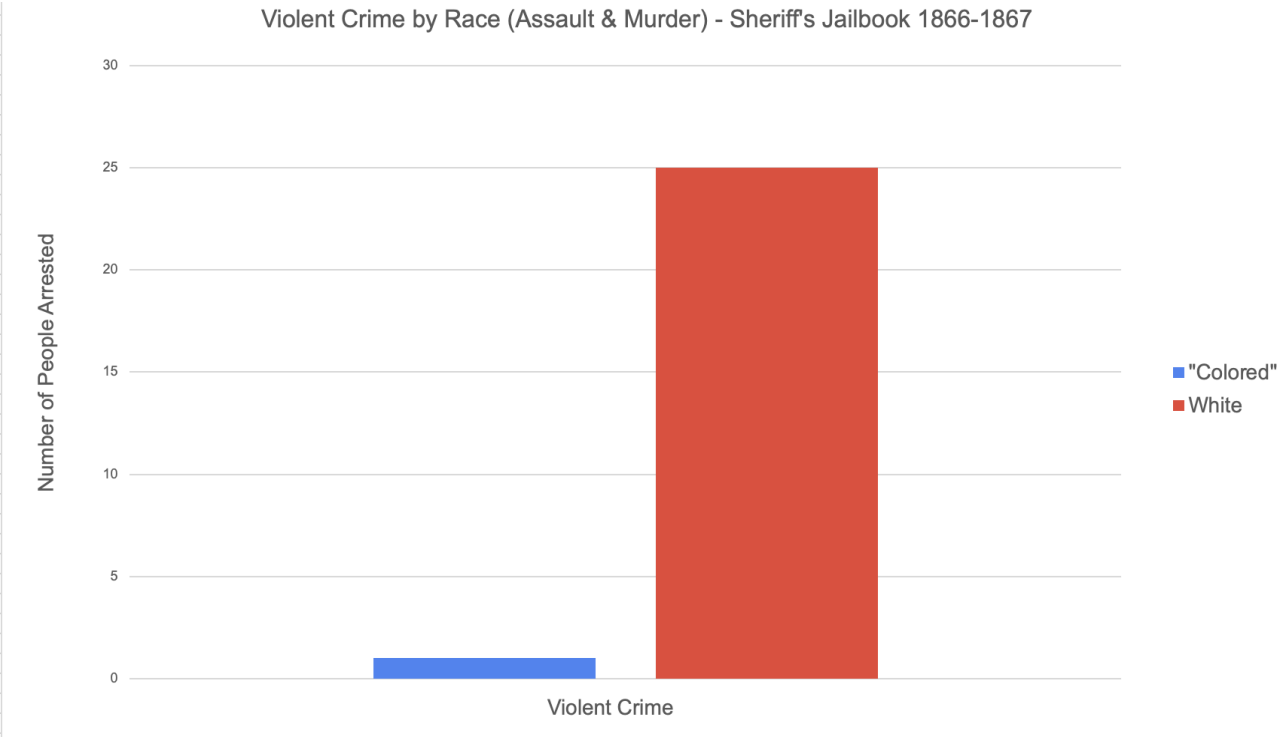

Figure C

The Sheriff's Jail Book recorded the number of days a person was detained prior to posting bail.[93] This data was extremely variable. For example, Jim [Zuathbaum], who is listed as "colored" in the register, was arrested for larceny and was in jail for forty days. Tony Sillman, also "colored" and also arrested for larceny, only remained behind bars for two days.[94] This range calls into question whether a comparison between the average number of days spent in jail for white and Black arrestees is a useful metric. However, I found that on average "colored" people spent fifty-three days in jail, whereas white people spent thirty days in jail. Yet, there is one extreme outlier in the dataset for African American jail times (341 days, exceeding any other length of time in this dataset). When I removed that outlier, African American arrestees spent thirty-three days in jail on average, which is similar to the thirty days white people were imprisoned on average.[95] However, the reason that this disparity may be noteworthy is due to the crime disparity. White people were responsible for most of the violent crime and yet they spent the same amount of time (or less) in jail. While pretrial jail time does not equate to one's final punishment, and therefore is less important than the outcome of the trial, this information allows us to reconstruct the disparate arrest and detention experiences of white and Black arrestees in Edgefield.

This data reveals interesting disparities. First, freed-people were predominately arrested for small thefts, whereas white people were arrested for thefts and violent crime. Second, white and Black people seemed to spend similar lengths of time in jail before being released on bail. However, due to the discrepancies in violent crime statistics, this carries serious consequences. People who committed violent crimes, such as murder or assault, did not spend longer in jail than

[93]It is evident that Edgefield operated on a bail system and used pretrial detention because the *Jail books of the Sheriff 1865-1961* often includes the date of when someone was "discharged on bail."
[94]*Jail books of the Sheriff 1865-1961*.
[95]*Jail books of the Sheriff 1865-1961*.

those who committed petty crimes, such as breaking the peace or petit larceny. Lastly, though this data reveals concerning patterns regarding racial discrimination, there did not appear to be a disparity in the quantity of Black arrests; there were only fifty arrests in two years in Edgefield, and 40% of the arrestees were people of color in a town that was 60% Black.

B. Provost and Criminal Court Journals: Trials and Sentencing in Edgefield

The official records from the 1865 Provost Court proceedings and the 1866-1867 Criminal Court journals largely complement the findings from the Sheriff's Jail Book and provide greater insight into how certain crimes were punished during Early Reconstruction. The Provost Court was a war-time court operated by Union officials. While several states had Provost Courts, South Carolina had particularly active and well-functioning ones. Other Southern states, such as Georgia, relied upon the Freedmen's Bureau to prosecute cases of discrimination and violent crimes against freed-people, whereas in South Carolina, the Provost Court handled such cases.[96] Each district in South Carolina was under the command of a Union officer who divided the district into sub-districts and appointed a Provost judge in each sub-district. Provost judges selected two citizens to serve as members of the superior Provost Court and together, the three officials presided over cases involving freed-people.[97] Since these courts were established in the name of war proceedings, the official records only cover 1865, and the courts were disbanded shortly after.[98] Notably, the Sheriff's Jail Book and the Criminal Court journals do not have records for 1865, most likely because during that year the Union army was handling criminal proceedings in the Provost Court.

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[96]Donald G. Nieman, *To Set the Law in Motion: The Freedmen's Bureau and the Legal Rights of Blacks, 1865-1868* (Millwood, NY: KTO Press, 1979), 10-11, 24-27.

[97]Donald G. Nieman, *To Set the Law in Motion*, 10.

[98]According to Donald G. Nieman, *To Set the Law in Motion,* 20-21, Andrew Johnson pressured Freedmen's Bureau Courts and Provost Courts to turn over their cases to official state courts as early as Fall 1865.

From June to November 1865, the Provost Court prosecuted forty-one cases. As mentioned above, in five of these forty-one cases the race of the defendant is listed as "colored."[99] Due to the small percentage of labeled cases, I relied on the 1870 census and the context of the crime to determine the race of the defendants. However, in cross referencing the names of the forty-one defendants with the census, I did not find that anyone who was not officially labeled as "colored" (the other thirty-six defendants) to be African American.[100] Instead, I found these defendants to be white, or I did not find them on the census at all. This begs the question as to why so few people of color were prosecuted in 1865. There are two plausible explanations. First, South Carolina surrendered to the Union army on February 18, 1865. Emancipation was new and unstable. Therefore, it is possible that many freed-people were still living on their former plantation and experiencing punishment there, rather than in the official court system. The other explanation is that the Union Army established Provost Courts in order to maintain control and law in the aftermath of surrender. One of the goals of the Union Army was to ensure that white Southerners accepted emancipation. Therefore, the focus of these courts may have been to prosecute white violence against freedmen.

While both theories may hold weight, the latter is corroborated by the Provost Court records. These records show that nineteen of the forty-one defendants were on trial for acts of violence against people of color. On June 30, James S. Savier fired a revolver at "a colored girl named Harriet." On July 10, C.P. [Quartz] was fined twenty dollars for "striking a colored boy with a stone." On August 14, Edward Coleman was charged with "striking a colored woman."[101] These are three examples of the nineteen cases that explicitly say African Americans were the

[99] *Journals of the Provost Court 1865*.
[100] *Population Schedule 1870.*
[101] *Journals of the Provost Court 1865*.

victims of the crime. However, the racial identities of C.P. [Quartz], James S. Savier, and Edward Coleman were not officially listed in the court logs and these men do not appear on the census.[102] While it is impossible to make definitive conclusions about the racial identities of these men, the fact that the victim of the crime was a person of color leads me to believe that [Quartz], Savier, and Coleman were white men.

Another reason that I believe white people were the perpetrators of crimes where the victim was noted to be a person of color is because a man hitting his wife would likely not result in trial in this period. Since women were the property of their husbands, it seems unlikely that if Edward Coleman was a Black man he would be on trial for "striking a colored woman" if that woman was his wife. In fact, Joe Harris, one of the five "colored" men to appear in the Provost Court journal, was arrested for "ill-treating his wife."[103] The record specifically says "his wife" and not "a colored woman," leading me to believe that "striking a colored woman" was a crime committed by a white person. These are inferences based on the context of the Provost Court, alongside the census information. Of the forty-one defendants, five people's racial identities were officially recorded; I located eight (white) people on the census; I inferred fourteen people were white based on the crime they committed (the victim of the crime was African American); and I could not locate any information about the racial identities of fourteen people.[104]

With this dataset, clear racial disparities are visible. Of the five African American people prosecuted, two were arrested for stealing, one was arrested for loitering, one was arrested for threatening to shoot another man, and one was arrested for ill-treating his wife.[105] I categorized

[102] *Population Schedule 1870.*
[103] *Journals of the Provost Court 1865*.
[104] *Journals of the Provost Court 1865*; *Population Schedule 1870.*
[105] *Journals of the Provost Court 1865*.

stealing and loitering as non-violent crimes and "ill-treating" and "threatening to shoot" as violent crimes, concluding that three African Americans were arrested for non-violent crime, and two for violent crime. Of the twenty-two white people prosecuted in 1865, eighteen were arrested for violent crimes, three were arrested for "turning away people from their plantation," and one person's crime was unlabeled. Within violent crime there was firing a revolver, striking, abusing, assaulting, beating, flogging, choking, and cutting.[106] Thus, three out of the five crimes African Americans committed were non-violent, whereas only three out of the twenty-two crimes white people committed were non-violent. Lastly, for the fourteen people whose race was indeterminable, six committed violent crimes (whipping, abusing, flogging, assault), three committed non-violent crimes (stealing, child support), and five people's crimes were unlabeled (Figure D).[107]

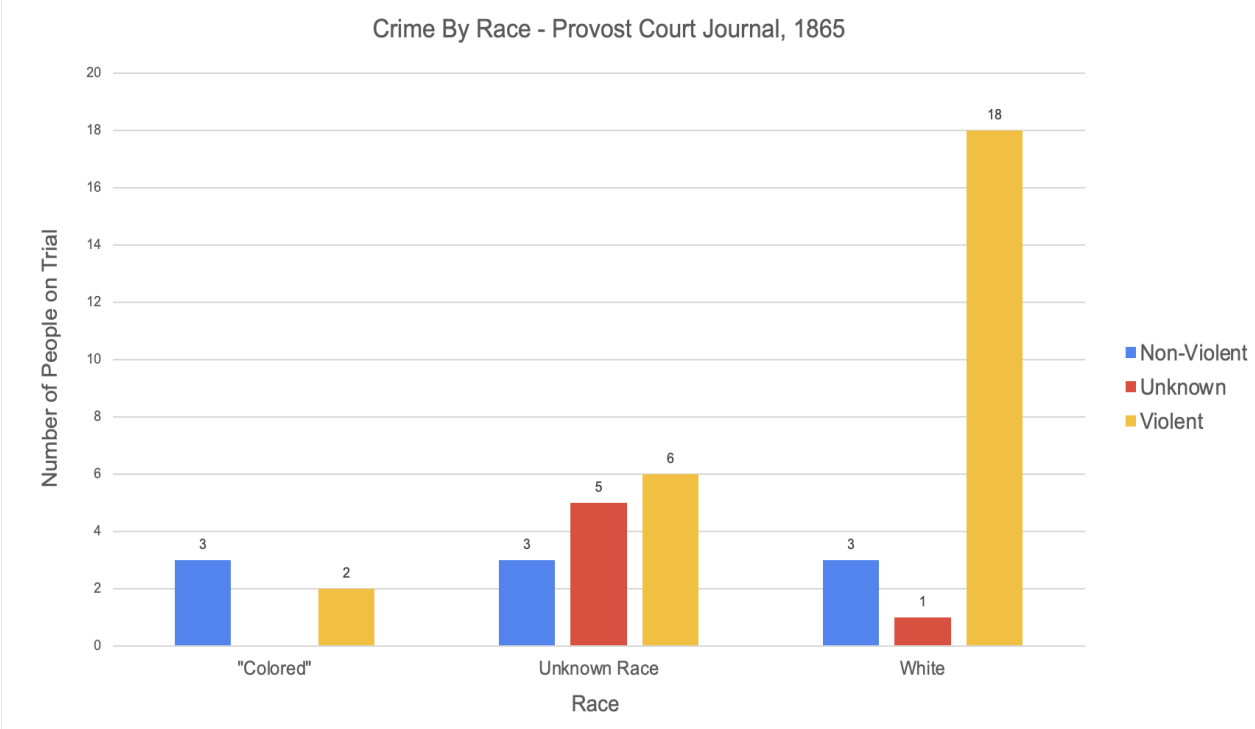

Figure D

[106] *Journals of the Provost Court, 1865*.
[107] *Journals of the Provost Court 1865*.

The Provost Court and Sheriff's Jail Book data paint a similar picture: white people were often arrested for crimes of violence, whereas Black people were often arrested for non-violent crimes, such as stealing. Dramatic disparities in punishment are also visible in the Provost Court logs. Of the five African American people arrested, three were incarcerated (ranging from a ten day to a six-month sentence) and two of their punishments were not officially recorded. In the group of twenty-two white people, twenty-one paid fines, ranging from $10 to $100, and only one person was imprisoned (for one month). Lastly, in the group of fourteen people whose race is indeterminable, twelve people paid fines (ranging from $5 to $125) and two served jail time (ten days, three months) (Figure E).[108] While five people is a small dataset to work with, these numbers show that 60% of African Americans tried in the Provost Court served jail time, whereas only 4.5% of the white people did so. Once again, this disparity is concerning because it appears as though white people committed more violent crime than African Americans.

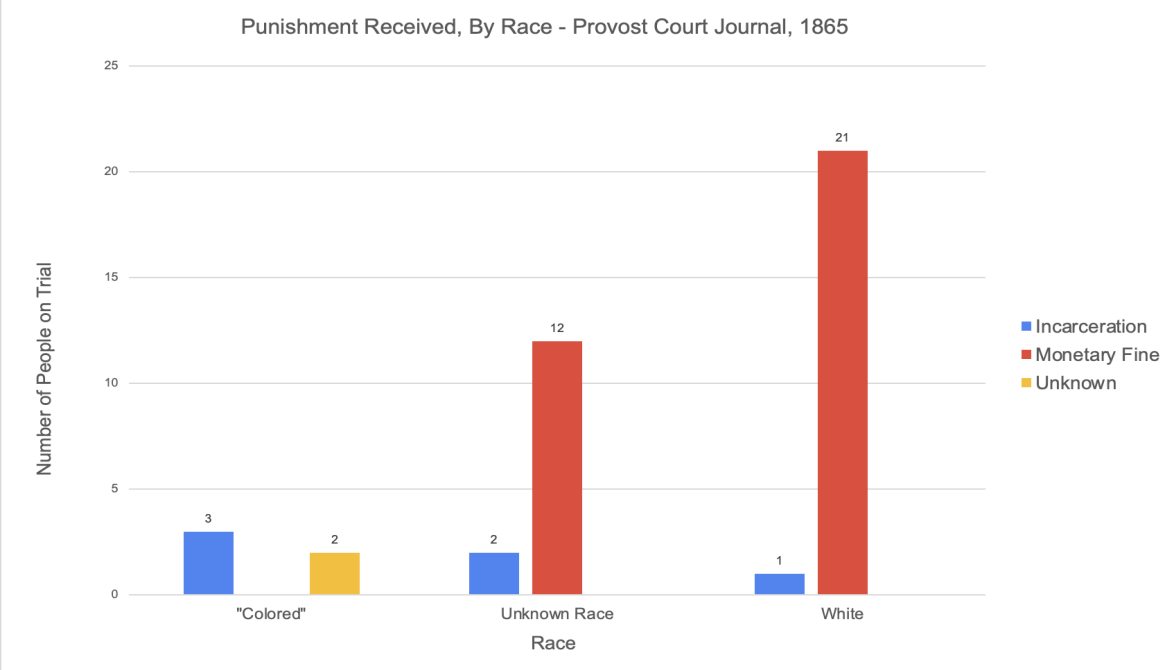

Figure E

[108] *Journals of the Provost Court 1865*.

The Criminal Court journal findings corroborate the sentencing disparities visible in the Provost Court journal. The Criminal journal commences in the Spring term of 1866 and during the years of 1866 and 1867, the court presided over thirty-one criminal trials. However, the race of the defendant is never specified in these records.[109] Unlike in the Provost Court log or Sheriff's Jail Book, here it is not possible to infer that the people not specifically recorded as "colored" were white. Therefore, instead of analyzing the racial disparities in these court proceedings, I will only discuss the outcomes of these criminal trials. Of the thirty-one defendants on trial in the Edgefield Criminal Court, only seven appeared in the arrest logs.[110] This either indicates that the Sheriff's Jail Book is dreadfully incomplete, or that twenty-four people were arrested in neighboring counties, but appeared in court in Edgefield. Additionally, the Criminal Court journal provides inconsistent information. In some cases, it contains an in-depth description of the trial and details the verdict and punishment. In many other cases, only the indictment is stated.

There are eleven criminal trials in the journal that include detailed information about the outcome of the trial. Of these eleven trials, seven were for murder and four were for stealing (horse stealing, mule stealing, and larceny). In five of the murder cases, the defendant was found not guilty. In two of the murder cases, the defendant was found guilty of manslaughter. One was sentenced to six months in prison with a one-hundred dollar fine; the other was sentenced to four months in prison with a one dollar fine. In three of the four stealing cases, the defendant was found guilty. In two of these cases, the perpetrator of the crime was punished with imprisonment and whippings; At the end of four months in prison, they were ordered to receive thirty lashes,

[109] *Criminal Journals 1802-1879*.
[110] *Criminal Journals 1802-1879*; *Jail books of the Sheriff 1865-1961*.

then return to prison for two additional months. At the end of the six-month period, they received another thirty lashes before their release. The other person found guilty of robbery was "committed to jail," but there was no indication as to how long they were imprisoned.[111] Thus, more people were found guilty of stealing than murder (Figure F). Those found guilty of stealing were more likely to receive a punishment that included jail time and whipping, whereas those found guilty of murder received jail time and a fine. Though it is impossible to determine the racial identities of the people on trial in the Criminal Court, the Sheriff's Jail Book and the Provost Court data indicate that white people were often arrested for violent crimes and Black people for non-violent crime, particularly theft. Therefore, the fact that more people indicted for murder were found "not guilty," than people indicted for stealing has serious implications.

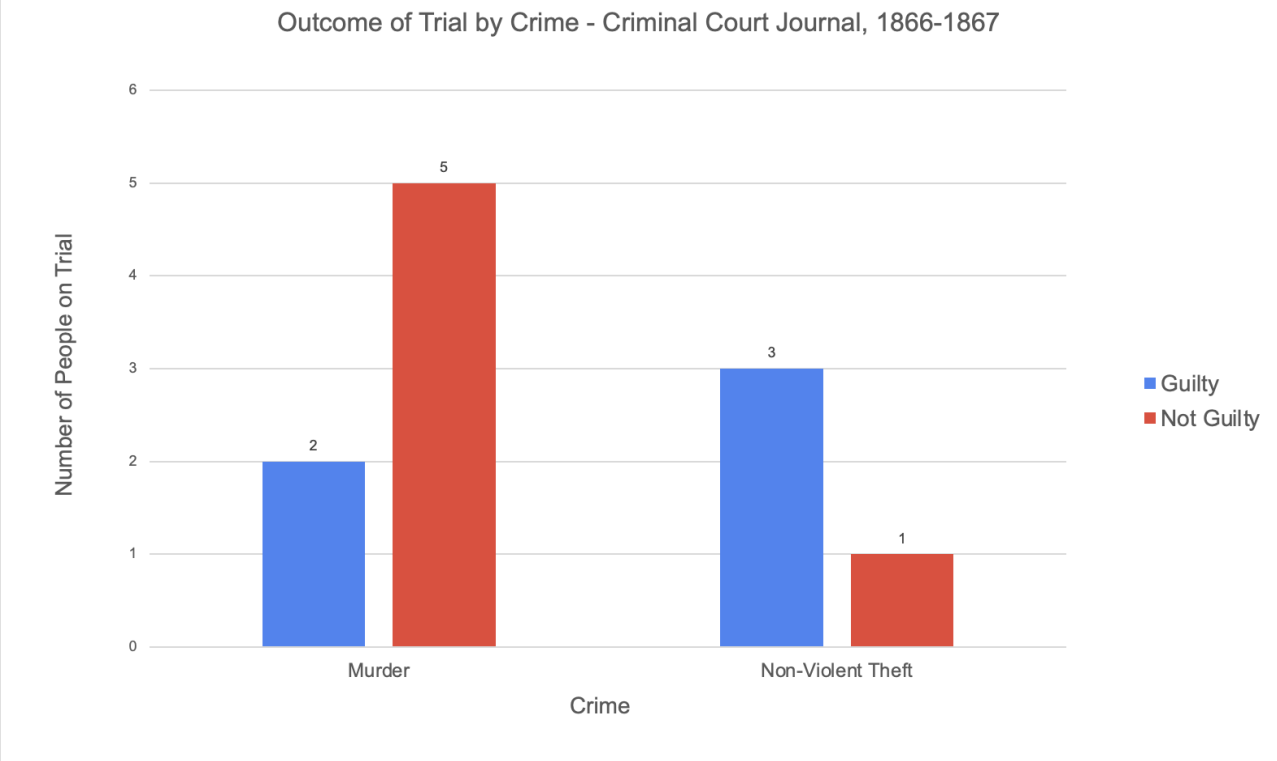

Figure F

[111] *Criminal Journals 1802-1879.*

In examining both the Provost Court logs and the Sheriff's Jail Book a clear pattern emerges: people of color were often prosecuted for crimes of theft, breaking the peace, and loitering. Alternatively, white people were often arrested for violent crimes of all sorts including murder, assault, and beating. Disparities in sentencing patterns also emerged. White individuals received monetary punishments more often than Black individuals, who were more likely to receive a sentence involving incarceration. Though it was not possible to determine the racial identities of the people on trial in the Criminal Court, in this data a similar pattern of disparities was visible. Those on trial for murder were found "not guilty" more often than those on trial for non-violent thefts. If it is true that white people were responsible for the majority of violent crime in Edgefield, the results of the Criminal Court trials are concerning. It is clear that in interactions with the new criminal justice system of the Reconstruction era, Black and white Edgefieldians experienced two different systems. Racial inequities in what crimes individuals were arrested for and the outcomes of trials emerged from the commencement of this new criminal justice system in 1865 and remained until 1867.

Chapter Three

The Amalgamation of State Laws and County Enforcement

> The Civil War and Reconstruction played a particularly crucial role in shaping modern American law, so much so that one legal historian has suggested American legal history can be divided into three eras: the years up to 1860, the decade of 1860-1870, and the years since 1870. New constitutions, statutes, and case law had to be developed to accommodate emancipation and the numerous economic problems that followed the Civil War.[112]

So begins Joseph A. Ranney in chapter one of his book. The law and its transformations shaped the Reconstruction era. On the federal level, moderates and radicals compromised to create three constitutional amendments that forever altered the United States, including the end to slavery, the commencement of birth right citizenship, and the right for all men to vote and hold office.

On the state level, Southern Democrats reacted to these federal changes begrudgingly or with outright anger. Initially, these legislators attempted to restrict the new-found freedom of African Americans with the Black Codes. Once the federal government rebuffed these discriminatory laws, state politicians were forced to accept the fact that legislation must be race neutral. In this process, state legislators amended, repealed, and rewrote legislation. On the local level, sheriffs, judges, and other administrators of the justice system were forced to adjust to constant legislative changes. The law is of little importance without enforcement; the two are inherently related as enforcement creates the social perception of the crime. Whereas many historians have analyzed the importance of Reconstruction era legislation, few have discussed the law and its relationship to local enforcement.

In chapter one, I explored the South Carolina 1865 Constitution, the Black Codes, and the Civil Rights Act of 1866. In chapter two, I explored the enforcement of the law, through a

[112]Joseph A. Ranney, *In the Wake of Slavery*, 2.

quantitative analysis of arrests and court proceedings. In this final chapter, I will explore how we can look at the information presented in chapter one and two together. What effect did the constant changes in legislation have on law enforcement? The discriminatory Black Codes have been a focus of Reconstruction studies for over fifty years and many have classified these laws as the pinnacle of legal discrimination.[113] Yet, few historians have investigated how the Black Codes were enforced through the local sheriff and court system. Additionally, one must consider if, and how, the repeal of the Black Codes altered local law enforcement's practices.

A. Was the South Carolina Black Code enforced in Edgefield?

To understand the relationship between Black Code legislation and local law enforcement, I will investigate two central inquiries. First, I will look at the language of the Black Codes and question whether these statutes were enforced. In this section, I will also investigate popular claims about the impact of the Codes. Historians focus on certain statutes of the Black Code more than others and I will ask if these statutes were enforced in Edgefield. Second, I will look at the repeal of the Black Code and subsequent rewriting of South Carolina legislation in race neutral language in relation to law enforcement's practices.

Was the Black Code enforced in Edgefield? As discussed in chapter one, there were four acts in the South Carolina Black Code and three focused on how emancipated people would interact with the criminal justice system. In "An Act to amend the criminal law," daily activities such as selling farm products and owning a firearm were defined as criminal for any person of color. This act prescribes forced labor as a punishment for petty theft.[114] In "An Act to establish District Courts," it states that segregated courts would handle all cases involving freed-people.

[113]Theodore Wilson published *The Black Codes of the South* in 1965.

[114]"An Act to Amend the Criminal Law," *Acts of the General Assembly of the State of South Carolina Passed at the Sessions of 1864-65*, no. 4731 (Columbia: 1865).

These courts would also oversee cases of bastardy, misdemeanor, and vagrancy, thereby implying Black individuals were the sole perpetrators of these crimes.[115] Finally, "An Act to establish and regulate the domestic relations of persons of color, and to amend the law in relation to paupers and vagrancy," states that any Black person who wanders, gambles, or does not sign a labor contract is a vagrant and criminal who could be arrested.[116]

Given the language of the South Carolina Black Code, one might assume that many African Americans in 1866 Edgefield were arrested for petty crimes, such as the ones defined in the criminal law and the vagrancy acts. One might also assume that many arrested African Americans received a punishment of forced labor. Additionally, since the Black Code emphasizes a new criminal justice system, which targets emancipated individuals, one might expect disproportionate arrest practices, wherein more African Americans were arrested than whites. Lastly, one might assume that all African Americans were prosecuted in a segregated District Court. These assumptions follow directly from the language of the Black Code.

For many years, historians have made these assumptions without investigating local law enforcement data. William Cohen writes that vagrancy statutes "enabled police to round up idle blacks in times of labor scarcity and also gave employers a coercive tool that might be used to keep workers on the job."[117] Thus, Cohen claims that vagrancy statutes were not only enforced, but that they allowed for entire labor forces to be constructed. Angela Davis makes the same claim. She writes, "Thus, vagrancy was coded as a black crime, one punishable by incarceration and forced labor, sometimes on the very plantations that previously had thrived on slave

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[115]"An Act to Establish District Courts," *Acts of the General Assembly of the State of South Carolina Passed at the Sessions of 1864-65*, no. 4732 (Columbia: 1865), §VII.
[116]"An Act to Establish and Regulate the Domestic Relations of Persons of Color," *Acts of the General Assembly of the State of South Carolina Passed at the Sessions of 1864-65*, no. 4733 (Columbia: 1865), § LXXII.
[117]William Cohen, "Negro Involuntary Servitude in the South, 1865-1940: A Preliminary Analysis," *The Journal of Southern History* 42, no. 1 (1976): 33-34.

labor."[118] These historians focus on the vagrancy statute in the Black Code and on the language which prescribes forced labor as the punishment for petty crimes.

Edgefield's arrest and sentencing data indicate a different reality. First, let us unpack the assumption that many African Americans were arrested for petty crimes, especially vagrancy. From November 1865 to November 1866, while the Black Code was the formal law of South Carolina, there were four arrests and fifteen criminal trials in Edgefield. Of the four people arrested, two were African American and two were white. The two white men were both arrested for murder. The two Black men were arrested for burglary and robbery.[119] Since the Criminal Court records fail to indicate the defendants' race, I cannot draw conclusions regarding racial disparities, though certain crimes were prosecuted more often than others. Of the fifteen cases brought before the Criminal Court while the Black Codes were in effect, four were for murder, six for stealing, three for assault, one for arson, and one for bigamy.[120] This data begins to demonstrate that Black people were arrested for petty crimes, particularly for non-violent thefts.

However, I was unable to locate a single arrest for vagrancy. Vagrancy has been discussed by almost all major scholars of Reconstruction legal history and there is an entire section of the Black Code dedicated to defining vagrancy. In fact, Cohen and Davis claim that vagrancy arrests were intimately connected to convict leasing. Yet, there seems to be no local enforcement of this statute in Edgefield. African Americans were certainly arrested for petty crime in Edgefield during the year of the Black Code, but they were arrested predominantly for theft, not for vagrancy.

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[118] Angela Davis, *Are Prisons Obsolete?* 29.
[119] *Jail books of the Sheriff 1865-1961*.
[120] *Criminal Journals 1802-1879*.

Second, let us unpack the assumption that African Americans were sentenced to forced labor after being arrested for insignificant crimes. There were extremely concerning disparities in the sentencing data from the Provost Court. However, these cases occurred before the passage of the Black Code and cannot be attributed to this legislation. There were also troubling disparities in the Criminal Court data. I found that people on trial for murder were more likely to be found not guilty than those on trial for non-violent theft. And, as mentioned, since it appears as though Black people were often arrested for theft, this disparity in sentencing is unsettling. However, not one person, Black or otherwise, appears to be sentenced to forced labor in Edgefield during 1865-1867. The punishments in the records were jail time, fines, and occasional whippings. Many people received a combination of these three punishments, whereas some people only paid fines. No one was sentenced to forced labor. This raises several questions: What year did convict leasing become popular? If it was several years after the repeal of the Black Code, is it fair to attribute the Black Code to the rise of said punishment system? My findings question the historical claims that connect vagrancy statutes to forced labor. While vagrancy statutes were the law of South Carolina, no one in Edgefield County was sentenced to forced labor.

Third, let us unpack the idea that since the Black Code instituted a criminal justice system which targeted African Americans, that many Black people were arrested during this period. There were only nineteen criminal cases (four arrests, fifteen trials) in Edgefield while the Black Code was on the books. William Cohen's statement that vagrancy laws were used to build labor forces in moments of scarcity seems inaccurate to the data from Edgefield County. Nineteen people could not build an entire county's labor force. Additionally, in chapter two, I noted that 40% of all people arrested in Edgefield during 1866-1867 were Black and the town's overall population was 60% Black. This implies that though the Black Codes targeted African

Americans and law enforcement charged African Americans at higher rates for petty crimes, law enforcement did not disproportionately arrest the Black people of Edgefield.

Finally, let us address the District Court Act of the Black Code, which stated that any crime involving a person of color would be tried in a segregated court. These segregated District Courts were never established. In 1866, South Carolina was in the midst of a financial crisis, leading Edgefield residents to believe that the establishment of a District Court was unnecessary. The editor of *The Edgefield Advertiser* wrote that General Assembly members should "make a strong effort to abolish the District Courts, it being the sense of these meetings that the said Courts will be the cause of vast and entirely unnecessary expense to the State."[121] Regardless of expense, in November 1866, the Black Code was overturned and with it, the idea of a segregated court system was discarded. Thus, all criminal cases pertaining to freed-people were handled in the Provost Court in 1865 and the Criminal Court thereafter.

After unpacking these assumptions and historiographic claims, it becomes clear that Edgefield law enforcement did not completely adhere to the Black Code. The Code suggested African Americans be arrested for vagrancy and punished with forced labor, neither occurred. The Black Code also discussed a segregated court system which never came to fruition. However, Edgefield law enforcement did readily enforce one component of the Black Code, which was to arrest and punish African Americans at high rates for petty and non-violent crimes.

B. Did law enforcement practices change after the repeal of the Black Code?

In order to further understand the relationship between the law and law enforcement, we must turn to our second inquiry: How did arrests and sentencing practices shift in accordance to the constantly changing law during this period? To answer this question, I have divided my data

[121] *The Edgefield Advertiser*, November 21, 1866.

into three categories, before the passage of the Black Code (January 1865-October 1865), while the Black Code was the law of South Carolina (November 1865-November 1866), and after the repeal of the Black Code (December 1866-December 1867).

Prior to the passage of the Black Codes, the Provost Court prosecuted forty cases. Every trial in the Provost Court happened before the Black Codes became law, except for one.[122] Therefore, the data conclusions presented in chapter two regarding the Provost Court are applicable to the "pre-code" period here. Five African Americans were on trial in 1865 and three out of five were arrested for stealing or loitering. The other two Black men were arrested for violent crimes, one for ill-treating his wife and the other for threatening to shoot a man. On the other hand, of the twenty-one white people tried before the Provost Court, seventeen were arrested for committing acts of violence, three were arrested for turning people away from their plantation, and one person's crime was unlabeled.[123] These findings led to the conclusion that African Americans seem to have been arrested for non-violent and petty crimes more than white people who committed acts of violence at higher rates.[124] Additionally, the Provost Court data reveals concerning disparities in sentencing. White people were often punished with monetary fines, twenty of the twenty-one white defendants paid fines, whereas Black people were often punished with incarceration, three of the five Black defendants were incarcerated.

While the Black Code was the official law of South Carolina, there were four arrests and fifteen criminal trials. Of the four people arrested during the year of the Black Code, two were African American, both arrested for theft, and two were white, both arrested for murder.[125] In

[122] *Journals of the Provost Court 1865*.
[123] *Journals of the Provost Court 1865*.
[124] *Journals of the Provost Court 1865*.
[125] *Jail books of the Sheriff 1865-1961*.

1866, the Criminal Court prosecuted four murders, six thefts, three assaults, one arson, and one bigamy.[126] There was only information about the outcome of six of the fifteen trials. Four of the defendants were arrested for stealing, the other two for murder. Three of the four thieves were found guilty and one of the two murderers was found guilty. It is important to note that James Green, the man found guilty of murder, was sentenced to six months in prison with a one-hundred dollar fine. Two of the men found guilty of stealing were sentenced to six months in prison and sixty lashes of the whip. Thus, from November 1865-November 1866, while the Black Code was the law of South Carolina, African Americans continued to be arrested for petty theft at high rates. Furthermore, the Criminal Court punished people guilty of stealing and people guilty of murder with the same term of incarceration, though the crimes are dramatically different.

My largest dataset is from the period after the Black Codes were repealed. From December 1866 to December 1867, the Sheriff made eighty arrests and the Criminal Court tried sixteen defendants. There were forty-six people arrested for theft and twenty-nine of them were labeled as "colored." There were thirty-two people of color arrested that year total, of which, twenty-nine were arrested for non-violent theft. Furthermore, there were six murders and eighteen assaults during this year, and only one of those twenty-four assailants was Black.[127] At the Criminal Court, eight people were tried for murder, three for theft, four for assault, and one for bastardy.[128] There were only five cases in which the outcome of the trial was recorded and all were murder cases. Only one of the five men on trial for murder was found guilty. The larger dataset of the "postcode" period reifies the earlier findings: white men were often arrested for

[126] *Criminal Journals 1802-1879*.
[127] *Jail books of the Sheriff 1865-1961*.
[128] *Criminal Journals 1802-1879*.

violent crimes, and in Criminal Court, people on trial for murder were often found not guilty. Black people were often arrested for petty crimes and in Criminal Court, people on trial for theft were often found guilty.

With these three periods of data analysis, before, during, and after the Black Codes, it is possible to conclude that there were no major alterations in arrest and sentencing practices in accordance to the changing legislation. In all three datasets, Black people were arrested for petty thefts and white people were arrested for murder and assault. People charged with murder were found innocent more often than people charged with non-violent crimes in the Criminal Court. At the Provost Court, white people received monetary fines for crimes, whereas Black people were incarcerated. Thus, patterns in the data did not change according to the dramatic shifts in state and federal law, including the passage of the Black Code, the passage of the Civil Rights Act, and the repeal of the Black Code.

C. Conclusions and Unanswered Questions

In setting out on this research project, I aimed to understand how the Black Code affected the lives of ordinary freed-people. Though the Black Codes are well studied, few historians have attempted to quantify how these harsh laws were enforced.[129] In attempting to do so, I have reached several conclusions. African Americans were arrested for petty crimes, particularly theft, at high rates. The language of the Black Codes specifically associated Black people with petty crime and this was reflected in the arrest data. Additionally, the discriminatory nature of the Black Code was mirrored in sentencing disparities. Though Black people were most often arrested for non-violent crime, they were punished with incarceration more often than white

[129]John K. Bardes is the only historian I have located who has done a quantitative study of vagrancy arrests. His dissertation focuses on New Orleans. Other historians, such as Mary Farmer-Kaiser refer to specific local arrests for crimes associated with the Black Codes but do not offer an in-depth numerical analysis of total arrest patterns.

people, who often committed horrific and violent crimes, yet, often received a punishment involving monetary fines. Occasionally white people were sentenced to the same term of incarceration as Black people, but given the disparities in what crimes these groups were committing, this is concerning.

Yet in my research, I found that certain aspects of the Black Codes were not enforced in Edgefield. No one was arrested for vagrancy and no one was sentenced to forced labor. Vagrancy and convict leasing are two of the most studied topics in Reconstruction history. My findings, though not yet broadly applicable, challenge historians who focus on these statutes within the Black Codes. I question whether people were arrested for vagrancy in other Southern counties and urge future historians to address the non-enforcement of vagrancy. Historians must understand if vagrancy and coerced labor were enforced during Early Reconstruction in order to comprehensively understand the period.

Additionally, my research questions the relationship between the law and law enforcement. I found that law enforcement in Edgefield did not alter their practices in accordance to the changing state and federal legislation. While historians have studied the legal history of Reconstruction down to the minute details, I question the impact of these studies if the law was not enforced. Perhaps my findings indicate that studies which focus solely on the federal or state law should be reconsidered and that legal history should attempt to include local data more often. If the law and local enforcement are uneven, as they appeared to be in my research, historians of the Black Codes need to reevaluate what the true impact of discriminatory laws were on ordinary, everyday Black Americans.

Lastly, I did not find any indication that mass incarceration commenced in this period. In fact, the low numbers of arrests and trials during this period, especially during the year of the

Black Code, was surprising. These conclusions indicate a concerning, yet uneven pattern of racial discrimination in Edgefield's law enforcement, a town which was the epicenter of white supremacist violence. Perhaps white supremacists turned to violence to disempower freed-people *because* law enforcement would not do this through the enforcement of vagrancy statutes or mass arrests. When towns did not arrest many African Americans and did not enforce vagrancy statutes was white supremacist violence more common? I hope to address this question and others in future studies through the collection of arrest and sentencing data from more Southern counties.

Conclusion

On January 9th, 2006, Terry Gross interviewed Reconstruction historian Eric Foner on National Public Radio (NPR). The interview gives a succinct, yet detailed, overview of Reconstruction history and legislation. On June 5, 2020, NPR decided to air this archived interview. David Bianculli, the host of this episode, begins with an explanation as to why, a decade and a half later, this conversation is still relevant. He says, "Protests across the nation demanding justice and policing reforms after the death of George Floyd at the hands of police in Minneapolis are now in their second week. Today we listen back to an interview from our archives which examines some of the historical roots of institutionalized racism in our country."[130]

In 2020, participation in the Black Lives Matter (BLM) movement reached epic proportions, with approximately fifteen to twenty-six million Americans participating in protests.[131] The focus of these protests was the injustice of racialized policing. Press coverage of BLM protests, such as this NPR segment, turned to Reconstruction historians for an explanation of the root causes of current injustices in the legal system. In his book, Foner argues, "The unresolved legacy of Reconstruction remains a part of our lives. In movements for social justice that have built on the legal and political accomplishments of Reconstruction and in the racial tensions that still plague American society, the momentous events of Reconstruction reverberate in modern day America."[132]

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[130]Eric Foner, "Historian Eric Foner On The 'Unresolved Legacy of Reconstruction,'" Interviewed by Terry Gross, *Fresh Air*, NPR, January 9, 2006.
[131]Larry Buchanan et. al, "Black Lives Matter May be the Largest Movement in U.S. History," *New York Times* (New York, NY), July 3, 2020.
[132]Eric Foner, *Forever Free: The Story of Emancipation and Reconstruction* (New York: Vintage Books, 2006), 24-25.

Reconstruction history is relevant in 2022; The United States continues to reconcile with racial discrimination. Reconstruction legislation granted freedom to enslaved African Americans, allowed Black men to vote, and recognized the prevalence of white supremacist violence. Yet, these gains remain contested; voter identification laws continue to disenfranchise Black individuals and as I write this, three white men are on trial for the lynching of Ahmaud Arbery. The impact of Reconstruction legislation remains a topic of interest for historians who attempt to understand why racial discrimination continues today.

Many historians investigate how racial disparities in the justice system commenced through an analysis of the Black Codes. Initially, I set out to study how one statute in the notorious Black Codes was enforced, vagrancy. This research topic seemed like an obvious choice; in order to understand the modern carceral system, I would investigate how vagrancy inspired mass arrests and harsh punishments for emancipated peoples. However, my initial assumptions were incorrect; I found no arrests for vagrancy, no evidence of forced labor, and no mass arrests.

Instead, I discovered a pattern of disparate arrest and sentencing practices in Edgefield, South Carolina. From 1865 to 1867, Black individuals were often arrested for petty, non-violent crimes, including larceny, breaking the peace, and loitering. On the other hand, white individuals were often arrested for violent crimes, including murder and assault. This pattern of racial disparities did not change over the three-year period, nor did it coincide with state and federal legislation. Therefore, local law enforcement's practices complemented the discriminatory language in the Black Code, which associated people of color with petty crimes, but did not comprehensively adhere to the legislation. Additionally, the sentencing data illuminated a concerning picture: Black people were often punished with incarceration and white people were

often punished with monetary fines. Furthermore, those on trial for murder were found not guilty more often than those on trial for theft.

There is no question that the law was mobilized in discriminatory manners during Reconstruction. The sentencing patterns in Edgefield demonstrate that African Americans were harshly punished for minor crimes while white people paid small fees for violent crimes. Yet, my preliminary conclusions caution against generalizations about the impact of the Black Codes. The data from Edgefield destabilizes the idea that vagrancy was the central mechanism to coerce freed-people into field labor. This research also raises concerns about dating convict leasing to the Early Reconstruction period. It does not appear that convict leasing commenced in Edgefield while the Black Code was the law. Finally, it is important that historians be specific about when mass incarceration began. Arrest numbers in Edgefield were low; during the year of the Black Code, the Sheriff only arrested four people. While it is doubtful that the Sheriff's Jail Book illustrates the entire landscape of criminal justice in 1866, these initial conclusions indicate that mass incarceration did not commence in Edgefield during Early Reconstruction. I am fully aware of the limitations of my data; therefore, future studies of Reconstruction legislation should investigate the non-enforcement of key statutes of the Black Codes in order to understand the nuances of racial discrimination in the post-emancipation years.

At the end of his interview with Terry Gross, Eric Foner powerfully comments on the legacy of Reconstruction: "Reconstruction is that moment at which the country, for the first time, tried to address this question of equality. It didn't succeed. And because it didn't succeed, it made necessary another struggle a hundred years later, the civil rights revolution, which was called at the time the Second Reconstruction."[133] Reconstruction legislation did not comprehensively

[133]Eric Foner, "Historian Eric Foner On The 'Unresolved Legacy of Reconstruction.'"

implement racial equality. Therefore, Foner frames the Civil Rights Movement as a continuation of Reconstruction's goals. I would elaborate on Foner's statement to say that we are once again in a moment where millions of Americans are attempting to implement Reconstruction's ideals. In educational curricula, press coverage, and protests, people are demanding equality. In order to achieve justice in the legal system, we must understand why racism proliferated (even) during Reconstruction. This investigation into local law enforcement during Early Reconstruction is one step towards understanding how arrest and sentencing practices were imbued with racial disparities from their beginnings.

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