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## Sexualized Racism/Gendered Violence: Outraging the Body Politic in the Reconstruction South

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# SEXUALIZED RACISM/GENDERED VIOLENCE: OUTRAGING THE BODY POLITIC IN THE RECONSTRUCTION SOUTH

*Lisa Cardyn\**

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## INTRODUCTION

From its establishment in the months following the Civil War by a motley assortment of disgruntled former rebels, the first Ku Klux Klan, like its many vigilante counterparts, employed terror to realize its invidious social and political aspirations. This terror assumed disparate shapes — from the storied nightriding of disguised bands on horseback, to cryptic threats, horrific assaults, and, not infrequently, murder. While students of Reconstruction have considered many facets of klan violence,<sup>1</sup> none to date has focused exclusively on *sexual* violence in its historical specificity. Yet, as the work of Catherine Clinton,<sup>2</sup> Laura Edwards,<sup>3</sup> and Martha Hodes<sup>4</sup> persuasively demonstrates,<sup>5</sup> sexuality was a critical site upon which the complex and often

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1. I use the terms “Klan” and “KKK” to refer to the Ku Klux Klan itself and “klan,” with a lower-case “k,” to signify the broader category of post-Civil War white supremacist organizations of which the Ku Klux Klan was paradigmatic.

2. See generally Catherine Clinton, *Bloody Terrain: Freedwomen, Sexuality and Violence During Reconstruction*, 76 GA. HIST. Q. 313 (1992) [hereinafter Clinton, *Bloody Terrain*]. For a slightly revised version of this article, see Catherine Clinton, *Reconstructing Freedwomen*, in *DIVIDED HOUSES: GENDER AND THE CIVIL WAR* 306 (Catherine Clinton & Nina Silber eds., 1992) [hereinafter *DIVIDED HOUSES*].

3. See generally LAURA F. EDWARDS, *GENDERED STRIFE AND CONFUSION: THE POLITICAL CULTURE OF RECONSTRUCTION* (1997) [hereinafter EDWARDS, *GENDERED STRIFE AND CONFUSION*]; Laura F. Edwards, *The Disappearance of Susan Daniel and Henderson Cooper: Gender and Narratives of Political Conflict in the Reconstruction-Era U.S. South*, 22 FEMINIST STUD. 363 (1996); Laura F. Edwards, *Sexual Violence, Gender, Reconstruction, and the Extension of Patriarchy in Granville County, North Carolina*, 68 N.C. HIST. REV. 237 (1991); see also Laura F. Edwards, *The Politics of Manhood and Womanhood: Reconstruction in Granville County, North Carolina* (1991) (unpublished Ph.D. dissertation, University of North Carolina at Chapel Hill) (on file with the University of North Carolina at Chapel Hill Library).

4. See generally MARTHA HODES, *WHITE WOMEN, BLACK MEN: ILLICIT SEX IN THE NINETEENTH-CENTURY SOUTH* (1997) [hereinafter HODES, *WHITE WOMEN, BLACK MEN*]; Martha Hodes, *The Sexualization of Reconstruction Politics: White Women and Black Men in the South After the Civil War*, 3 J. HIST. SEXUALITY 402 (1993) [hereinafter Hodes, *The Sexualization of Reconstruction Politics*]; see also Martha Elizabeth Hodes, *Sex Across the Color Line: White Women and Black Men in the Nineteenth-Century American South* (1991) (unpublished Ph.D. dissertation, Princeton University) (on file with the Princeton University Library) [hereinafter Hodes, *Sex Across the Color Line*].

5. After this Article was written and circulated, an interesting chapter on klan rape that employs strikingly similar methods and sources appeared in the dissertation of another historian. See Hannah Rosen, *The Gender of Reconstruction: Rape, Race, and Citizenship in the Postemancipation South* 354-455 (1999) (unpublished Ph.D. dissertation, University of Chicago) (on file with the University of Chicago Library) [hereinafter Rosen, *The Gender of Reconstruction*].

convoluted racial, gender, and class conflicts of the era were waged, one that must be excavated and analyzed as part of a remarkably robust and resilient system of repression.

This Article examines the calculated deployment of sexualized violence by the Reconstruction-era klans and its relationship to competing notions of justice, citizenship, and sexual propriety. Exploring what is distinctly sexual about klan terror — the sheer pervasiveness, intensity, and ideological coherence of these acts perpetrated as they were within a system of racial dominance long marked by forced sex and procreation — establishes sexualized violence as an essential aspect of the postwar Southern condition. Resonant throughout these events was the infeasible legacy of slavery. Much as slaveowners and their minions used sexual violence and coercion in displaying and exercising mastery over their human chattel, klansmen systematically molested and violated their victims in an attempt to reconstitute white male dominance in its antebellum form, in effect replacing the legal infrastructure of slavery that had once authorized their status with extralegal supports of their own making. Violent sex was in both of these cases a performance of status by the dominant actors and a harshly lived reality for its victims. The enduring consequences of these experiences for the freedpeople, their white sympathizers, and subsequent generations lend important insights into the nature of historical traumatization, its potency and memorialization. Although contemporary historians rightly acknowledge that former slaves strived to resist racist assault in its many guises,<sup>6</sup> the terror of the klans imposed

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6. Following the lead of historians of slavery, scholars writing on diverse aspects of Reconstruction history have integrated the themes of resistance and rebellion into their analyses of the lives and labors of freedpeople. See, e.g., EDMUND L. DRAGO, *BLACK POLITICIANS AND RECONSTRUCTION IN GEORGIA: A SPLENDID FAILURE* (1982); MICHAEL W. FITZGERALD, *THE UNION LEAGUE MOVEMENT IN THE DEEP SOUTH: POLITICS AND AGRICULTURAL CHANGE DURING RECONSTRUCTION* (1989); HERBERT G. GUTMAN, *THE BLACK FAMILY IN SLAVERY AND FREEDOM, 1750-1925* (1976) [hereinafter GUTMAN, *THE BLACK FAMILY*]; LEON F. LITWACK, *BEEN IN THE STORM SO LONG: THE AFTERMATH OF SLAVERY* (1979) [hereinafter LITWACK, *BEEN IN THE STORM SO LONG*]; JAMES D. SCHMIDT, *FREE TO WORK: LABOR LAW, EMANCIPATION, AND RECONSTRUCTION, 1815-1880* (1998). It remains true, however, that far more work concerned with African Americans' assertion of what is today commonly termed "agency" has been undertaken within the context of slavery. Two excellent anthologies provide a useful entry in this vast literature. See AMERICAN SLAVERY: THE QUESTION OF RESISTANCE (John H. Bracey, Jr. et al. eds., 1971); REBELLIONS, RESISTANCE, AND RUNAWAYS WITHIN THE SLAVE SOUTH: 13 ARTICLES ON AMERICAN SLAVERY (Paul Finkelman ed., 1989). For inquiries into slave resistance that are attentive to the dynamics of sex and gender, see Mary Ellison, *Resistance to Oppression: Black Women's Response to Slavery in the United States*, 4 *SLAVERY & ABOLITION* 56 (1983); Elizabeth Fox-Genovese, *Strategies and Forms of Resistance: Focus on Slave Women in the United States*, in *IN RESISTANCE: STUDIES IN AFRICAN, CARIBBEAN, AND AFRO-AMERICAN HISTORY* 143 (Gary Y. Okihiro ed., 1986); and Darlene C. Hine, *Female Slave Resistance: The Economics of Sex*, 3 *W. J. BLACK STUD.* 123 (1979).

formidable obstacles in the paths of many.<sup>7</sup> As is often the case in the study of sexual trauma, the historical record is less forthcoming about the experience of victimization and survival than it is about the actions and designs of its perpetrators. What follows is in part intended to correct that imbalance.<sup>8</sup>

Using the Ku Klux Klan as an exemplar, Part I of this Article provides a brief overview of the structure, functions, and objectives of postbellum white supremacist organizations. Besides being the largest and most notorious of these bodies, the Klan affords the advantages of a comparatively vast and well-trodden documentary base, the import of which will become further apparent in the following pages. Part II assesses some of the impulses, implicit and explicit, said to have motivated klan violence, in particular the klans' near-obsession with behavior it perceived as sexually transgressive on the part of blacks and whites alike. With these concerns in mind, Part III ventures upon an extended discussion of the klans' purposeful application of sexualized violence towards the realization of their racialist agenda. Through whippings, rape, lynching, genital mutilation, and other nameless tortures, these groups sought aggressively to undermine the resolve of the freedpeople and their supporters in an effort to reinvigorate a system of uncontested white male supremacy. The objectives of klan terror, ordinarily founded on perceived violations of sexual, social, or political conventions are the subject of Part IV. It is here, where vengeance is inspired by some of the very same offenses that the terrorists themselves routinely committed, that the intricate relations of sex, violence, and klanishness<sup>9</sup> are perhaps most conspicuous.

The klans' reign of terror is also instructive in the perspective it offers on competing understandings of law and legal authority from the Civil War through the turn of the century. Part V takes up three such conceptions and assesses their role in the outbreak of sexual violence that beset the Reconstruction South: first, traditional legal mechanisms promulgated by overlapping federal, state, and local authorities charged with upholding the constitutional and affiliated rights of all citizens, including former slaves; second, the law of the klans, wherein

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7. Paul D. Escott offers a useful synopsis of the freedpeople's often futile efforts to defend themselves against the onslaught of the klans in *SLAVERY REMEMBERED: A RECORD OF TWENTIETH-CENTURY SLAVE NARRATIVES* 157-58 (1979).

8. For a kindred project focusing on the problem of child abuse in slavery, see Nell Irvin Painter's exemplary study, *Soul Murder and Slavery: Toward a Fully Loaded Cost Accounting*, in *U.S. HISTORY AS WOMEN'S HISTORY: NEW FEMINIST ESSAYS* 125 (Linda K. Kerber et al. eds., 1995) [hereinafter Painter, *Soul Murder and Slavery*]; see also NELL IRVIN PAINTER, *SOJOURNER TRUTH: A LIFE, A SYMBOL* 14-17 (1996) (portraying Isabella Van Wagenen, later known as Sojourner Truth, as an abused child), and WILMA KING, *STOLEN CHILDHOOD: SLAVE YOUTH IN NINETEENTH-CENTURY AMERICA* (1995) (depicting American slave childhood as intrinsically abusive).

9. This term is used to embody the perceptual universe and sensibility that were the raison d'être of these early white supremacist organizations.

klansmen interposed themselves as self-anointed defenders of a defeated social order; and, third, popular justice as it arose within the historical trajectory of American vigilantism. Although klansmen were not entirely successful in imposing their will as law, they nonetheless managed to exercise considerable sway over the populations they targeted in no small measure because of juridical failures to contain the terror swiftly and decisively, punish the guilty, and restore a semblance of order. Their immediate effectiveness aside, the legal processes brought to bear in the war against klan violence — the investigative bodies it engendered, the congressional acts it inspired, and the judicial decisions that ultimately emerged from it — helped lay the foundation of modern civil rights law. For that alone they must be regarded as enormously consequential.

Part VI interrogates the crisis of white masculinity that lay barely concealed beneath this pattern of atrocities, a crisis initiated by wartime losses and exacerbated by new laws guaranteeing racial equality that klan members were desperate to overcome. Not only had southern white men collectively suffered a catastrophic defeat in war and the concurrent destruction of their homeland, but they were further beset with fears that the emancipation of the slaves and their endowment with the rights of citizenship had left their own ranks diminished in stature. Drawing on some of the insights afforded by the growing field of trauma studies, Part VII contemplates the implications of the klans' exploitation of sexuality for the individuals, families, and communities whose lives were most directly impacted, along with the as yet unrealized capacity of law to remediate injuries of this kind. Much as the once unspeakable traumas of slavery touched the lives of those beyond its immediate grasp, (a fact starkly evinced by the current debate over slave reparations), the collective memory of klan sexual terror has persisted, contributing in intangible but nonetheless significant ways to the perpetuation of de facto subordination in the face of de jure equality.

Through a close analysis of the sexual crimes of the Reconstruction klans, this Article contends that the systematic deployment of sexualized violence against a despised population engenders extraordinary trauma that extends beyond its proximate victims to affect those who stand at a significant temporal, geographic, and imaginative remove. The klans used violent sex with design and deliberation, and they did so precisely because of its effectiveness in accomplishing their ends. This is not, however, a story of unmitigated victimization. Within the narratives that follow, and even more in the indomitable striving of generations of African Americans, there is much to inspire hope that the klans and their successors will be denied the last word. Advancing that aim demands that we recognize the disparate forms such terror has assumed, identify the sources of its potency as they are manifest in distinct historical contexts, and make creative use of the range of do-

mestic and international laws available to undermine its capacity to harm.

## I. THE RECONSTRUCTION-ERA KLANs

On the surface at least, the origins of the Ku Klux Klan, the first and most notorious of the Reconstruction-era klans, appear harmless enough: a handful of bored young men intent on enlivening their monotonous post-War days gathered in the town of Pulaski, Tennessee, where they formed a social club dedicated to their own amusement.<sup>10</sup> Common lore has it that the organization's name was derived from the Greek word *kuklos*, meaning "circle," with the final "klan" apparently added to enhance both its alliterative power as well as its popular mystique.<sup>11</sup> From the start, the Klan was a highly secretive, insular organi-

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10. The tale of the Klan's founding has frequently been told and thus will be recounted only briefly here. The most thorough and reliable study of the first KKK remains Allen W. Trelease's classic, *WHITE TERROR: THE KU KLUX KLAN CONSPIRACY AND SOUTHERN RECONSTRUCTION* (Louisiana State Univ. Press 1995) (1971), from which much of the following overview has been drawn. Trelease himself relies heavily upon the reminiscences of two former klansmen, John Lester and Daniel Wilson, in portraying this phase of the Klan's development. See J.C. LESTER & D.L. WILSON, *KU KLUX KLAN: ITS ORIGIN, GROWTH, AND DISBANDMENT* (Walter L. Fleming ed., Neale Publ'g Co. 1905) (1884). Many key facts and dates are set forth in an early twentieth-century study of Pulaski, Tennessee, W.T. RICHARDSON, *HISTORIC PULASKI: BIRTHPLACE OF THE KU KLUX KLAN 11-24* (1913) [hereinafter RICHARDSON, *HISTORIC PULASKI*], the larger utility of which is severely marred by its obvious pro-Klan sympathies. A number of general surveys of the KKK's long history also contain relevant, though often repetitive, information. See, e.g., DAVID M. CHALMERS, *HOODED AMERICANISM: THE HISTORY OF THE KU KLUX KLAN* (3d ed., Duke Univ. Press 1987) (1965); STANLEY F. HORN, *INVISIBLE EMPIRE: THE STORY OF THE KU KLUX KLAN, 1866-1871* (2d ed., Patterson Smith Publ'g Corp. 1969) (1939); WILLIAM PIERCE RANDEL, *THE KU KLUX KLAN: A CENTURY OF INFAMY* (1965); WYN CRAIG WADE, *THE FIERY CROSS: THE KU KLUX KLAN IN AMERICA* (Oxford Univ. Press 1998) (1987). In addition, several works, often little more than panegyrics, accompanied the Klan's reemergence in the 1920s. The most astute and balanced of these is JOHN MOFFATT MECKLIN, *THE KU KLUX KLAN: A STUDY OF THE AMERICAN MIND* (1924). Other productions of the period include SUSAN LAWRENCE DAVIS, *AUTHENTIC HISTORY, KU KLUX KLAN, 1865-1877* (1924) [hereinafter DAVIS, *AUTHENTIC HISTORY*]; WINFIELD JONES, *STORY OF THE KU KLUX KLAN* (1921) [hereinafter JONES, *STORY OF THE KU KLUX KLAN*]; and J.A. ROGERS, *THE KU KLUX SPIRIT: A BRIEF OUTLINE OF THE KU KLUX KLAN PAST AND PRESENT* (1923). For a provocative examination of the second KKK that foregrounds the themes of gender and sexuality, see NANCY MACLEAN, *BEHIND THE MASK OF CHIVALRY: THE MAKING OF THE SECOND KU KLUX KLAN* (1994) [hereinafter MACLEAN, *BEHIND THE MASK OF CHIVALRY*]. Also of interest is MacLean's earlier work, *White Women and Klan Violence in the 1920s: Agency, Complicity and the Politics of Women's History*, 3 *GENDER & HIST.* 285 (1991), examining white women's actions in support of Klan violence. The role of women in the 1920s Ku Klux Klan has been most fully explored by Kathleen Blee. See KATHLEEN M. BLEE, *WOMEN OF THE KLAN: RACISM AND GENDER IN THE 1920S* (1991) [hereinafter BLEE, *WOMEN OF THE KLAN*]; see also Kathleen M. Blee, *Gender Ideology and the Role of Women in the 1920s Klan Movement*, 1 *SOC. SPECTRUM* 73 (1987); Kathleen M. Blee, *Women in the 1920s' Ku Klux Klan Movement*, 17 *FEMINIST STUD.* 57 (1991).

11. See LESTER & WILSON, *supra* note 10, at 55; see also JOHN S. FARMER, *AMERICANISMS — OLD & NEW. A DICTIONARY OF WORDS, PHRASES AND COLLOQUIALISMS PECULIAR TO THE UNITED STATES, BRITISH AMERICA, THE WEST*

zation,<sup>12</sup> given to the manipulation of ritual and symbol in crafting an otherworldly identity.<sup>13</sup> Reflecting these predilections, its leadership devised an intricate hierarchical structure by which loosely defined geographical regions were to be overseen by officers decorated with outlandish titles from the loftiest Grand Wizard<sup>14</sup> down to the still regal Grand Ensign.<sup>15</sup> At the same time, elaborate schemes of codes,

INDIES, &C., &C., THEIR DERIVATION, MEANING AND APPLICATION, TOGETHER WITH NUMEROUS ANECDOTAL, HISTORICAL, EXPLANATORY, AND FOLK-LORE NOTES 336 (London, Thomas Poulter & Sons 1889).

12. See TRELEASE, *supra* note 10, at 3-5. The KKK was, not surprisingly, averse to maintaining detailed written records of its activities. See DAVIS, *AUTHENTIC HISTORY*, *supra* note 10, at 148. What modest documentation existed was typically destroyed shortly after it was created. See, e.g., 2 THE PAPERS OF RANDOLPH ABBOTT SHOTWELL 236 (J.G. de Roulhac Hamilton & Rebecca Cameron eds., 1931) [hereinafter 2 SHOTWELL PAPERS].

13. See generally GLADYS-MARIE FRY, *NIGHT RIDERS IN BLACK FOLK HISTORY* 110-47 (University of North Carolina Press 2001) (1975).

14. This office was first occupied by the former Confederate general Nathan Bedford Forrest. See TRELEASE, *supra* note 10, at 19. Additional information on Forrest's activities as Grand Wizard may be found in JACK HURST, *NATHAN BEDFORD FORREST: A BIOGRAPHY* 287, 291, 293-345, 361, 366 (1993), and BRIAN STEEL WILLS, *A BATTLE FROM THE START: THE LIFE OF NATHAN BEDFORD FORREST* 336-37, 338, 341-42, 343, 348-54, 357-59 (1992). Forrest gained a reputation for ruthlessness several years earlier when, at the Battle of Fort Pillow, Confederate soldiers under his command brutally massacred dozens of Union soldiers, showing particular enmity for the U.S. Colored Troops. As one of Forrest's biographers cryptically observes, this event may be seen "as a prelude to other horrors." HURST, *supra*, at 6. Modern assessments of the Fort Pillow Massacre and Forrest's role therein include RICHARD L. FUCHS, *AN UNERRING FIRE: THE MASSACRE AT FORT PILLOW* (Stackpole Books 2002) (1994); HURST, *supra*, at 165-81; WILLS, *supra*, at 179-96; James D. Lockett, *The Lynching Massacre of Black and White Soldiers at Fort Pillow, Tennessee, April 12, 1864*, 22 W. J. BLACK STUD. 84 (1998); Kenneth Bancroft Moore, *Fort Pillow, Forrest, and the United States Colored Troops in 1864*, 54 TENN. HIST. Q. 112 (1995); and Bruce Tap, "These Devils are not fit to live on God's earth": *War Crimes and the Committee on the Conduct of the War, 1864-1865*, 42 CIV. WAR HIST. 116 (1996). I am grateful to Nell Painter for pointing out the significance of Fort Pillow to Forrest's subsequent leadership of the KKK.

15. At the apex of the Klan hierarchy as it had been contrived by 1867 was the Grand Wizard, who was to be assisted in his duties by ten "Genii", beneath whom were:

[A] Grand Dragon of the Realm and his eight Hydras; a Grand Titan of the Dominion and his six Furies; a Grand Giant of the Province and his four Goblins; a Grand Cyclops of the Den and his two Night Hawks; a Grand Magi, a Grand Monk, a Grand Exchequer, a Grand Turk, a Grand Scribe, a Grand Sentinel, and a Grand Ensign.

13 JOINT SELECT COMM. ON CONDITIONS OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, 42D CONG., REPORT OF THE JOINT SELECT COMMITTEE TO INQUIRE INTO THE CONDITION OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, Miscellaneous and Florida, at 35-36 (Washington, D.C., Government Printing Office 1872) [hereinafter 13 KLAN REPORT]. This structure was formalized in the KKK's 1867 "Prescript," a sort of constitutional manifesto, authored by the former Confederate general George W. Gordon and published in readily accessible pamphlet form. See TRELEASE, *supra* note 10, at 13-16. This now rare document has since been reprinted in a number of sources, including 13 KLAN REPORT, *supra*, at 35-41; HORN, *supra* note 10, at 381-93; LESTER & WILSON, *supra* note 10, at 135-50; and WADE, *supra* note 10, at 409-18. A facsimile of the *Revised and Amended Prescript*, promulgated in 1868, may be found in 5 AM. HIST. MAG. 3 (1900); HORN, *supra* note 10, at 395-409; and LESTER & WILSON, *supra* note 10, at 153-76. The history of the Klan precripts is discussed in TRELEASE, *supra* note 10, at 13-21, 68, 432-33 n.27.



handshakes, and passwords were formulated to ensure fealty to the cause.<sup>16</sup> If the KKK was ever a purely recreational club, it was not so for long. With a preponderance of its membership drawn from the ranks of the former Confederate Army, embittered by the outcome of the War and the staggering transformations it had wrought, the Klan took pleasure in harassing the newly emancipated slaves and anyone else inclined to support their cause. The minacity of its practices became abundantly clear as the Klan's early attempts to frighten its self-styled antagonists by parading about in ghoulish costumes<sup>17</sup> precipi-

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16. See, e.g., RECORDS OF THE ADJUTANT GENERAL'S OFFICE, National Archives, Washington, D.C. [hereinafter AGO], Record Group [hereinafter RG] 94, Microfilm [hereinafter M] 666, Reel [hereinafter R] 26, File [hereinafter F] 2586, Letter from Major Lewis Merrill to Adjutant General, Department of the South, June 9, 1871; AGO, *supra*, RG 94, M 666, R 26, F 2586, Letter from Major Lewis Merrill to Adjutant General, Department of the South, Sept. 17, 1871; Ku Klux Klan Papers, Rare Book, Manuscript, and Special Collections Library, Duke University, Durham, N.C. [hereinafter KKK Papers], Testimony of John W. Long, cont'd. [State v. Tarpley], at 4; 2 JOINT SELECT COMM. ON CONDITIONS OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, 42D CONG., REPORT OF THE JOINT SELECT COMMITTEE TO INQUIRE INTO THE CONDITION OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, North Carolina, at 530 (Washington, D.C., Government Printing Office 1872) [hereinafter 2 KLAN REPORT]; 5 JOINT SELECT COMM. ON CONDITIONS OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, 42D CONG., REPORT OF THE JOINT SELECT COMMITTEE TO INQUIRE INTO THE CONDITION OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, South Carolina, pt. 3, at 1363, 1373-74, 1457-60 (Washington, D.C., Government Printing Office 1872) [hereinafter 5 KLAN REPORT]; 6 JOINT SELECT COMM. ON CONDITIONS OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, 42D CONG., REPORT OF THE JOINT SELECT COMMITTEE TO INQUIRE INTO THE CONDITION OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, Georgia, pt. 1, at 39 (Washington, D.C., Government Printing Office 1872) [hereinafter 6 KLAN REPORT]; 7 JOINT SELECT COMM. ON CONDITIONS OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, 42D CONG., REPORT OF THE JOINT SELECT COMMITTEE TO INQUIRE INTO THE CONDITION OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, Georgia, pt. 2, at 1012, 1200 (Washington, D.C., Government Printing Office 1872) [hereinafter 7 KLAN REPORT]; PROCEEDINGS IN THE KU KLUX KLAN TRIALS AT COLUMBIA, S.C. IN THE UNITED STATES CIRCUIT COURT, NOVEMBER TERM, 1871, at 181-82, 466, 477, 621, 626-27 (Columbia, Republican Printing Co. 1872) [hereinafter S.C. KLAN TRIALS]. A circular purporting to explain the "secret cypher" of the KKK is included in *Ku Klux Mysteries*, 6 AM. HIST. MAG. 46, 46-47 (1901). These mystical practices were not uniformly observed by rank-and-file klansmen; yet, however inconsequential they may have been in practice, the external trappings of klanishness became central to its popular mythos. See TRELEASE, *supra* note 10, at 18-19; WADE, *supra* note 10, at 60-61.

17. Others have posited that the use of disguises was intended less to frighten the supposedly gullible freedpeople than it was to conceal the identities of those wearing them. See Grady McWhiney & Francis B. Simkins, *The Ghostly Legend of the Ku Klux Klan*, 14 NEGRO HIST. BULL. 109, 111 (1951). While it is doubtless true that traditional iterations of the Klan's origination narrative tend to portray the freedpeople as unduly naïve, the objects of instilling fear and concealing identity, however incompletely realized, are in no way incompatible. Moreover, contrary expectations notwithstanding, it is plain that many freedpeople were not taken in by the widely propagated canard that disguised klansmen were ghostly incarnations of Confederate dead. See 3 JOINT SELECT COMM. ON CONDITIONS OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, 42D CONG., REPORT OF THE JOINT SELECT COMMITTEE TO INQUIRE INTO THE CONDITION OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, South Carolina, pt. 1, at 403, 414 (Washington, D.C., Government Printing Office 1872) [hereinafter 3 KLAN REPORT]; 5 KLAN REPORT, *supra* note 16, at 1949; 7 KLAN REPORT, *supra* note 16, at 599. This position has also been articulated by EVERETTE SWINNEY, SUPPRESSING THE KU KLUX KLAN: THE ENFORCEMENT OF THE

tately degenerated into a series of violent terroristic campaigns aimed at reversing the course of Reconstruction.<sup>18</sup>

In the months following its inception, the Ku Klux Klan spread gradually to encompass a number of counties throughout Tennessee, making its way into the bordering regions of Alabama in 1867.<sup>19</sup> Thereafter, the organization expanded more rapidly, establishing chapters, or “dens,” in every state of the former Confederacy by the end of 1868.<sup>20</sup> Drawing adherents from all corners of the South, Klan membership was a decidedly cross-class phenomenon that embraced similarly disposed white men<sup>21</sup> from hardscrabble farmers to wealthy planters, lawyers, physicians, and judges,<sup>22</sup> virtually all of whom were in some way aligned with the Democratic party.<sup>23</sup> The Klan was espe-

RECONSTRUCTION AMENDMENTS, 1870-1877, at 44 (1987); WADE, *supra* note 10, at 36-37, and Francis B. Simkins, *The Ku Klux Klan in South Carolina 1868-1871*, 12 J. NEGRO HIST. 606, 618 (1927).

18. Roy F. Baumeister offers an interesting psychological perspective on the Klan's transformation from a “group of pranksters” into “perpetrators of murder, rape, and violent assault” that contemplates the potential interplay of multiple, historically contingent variables. See ROY F. BAUMEISTER, *EVIL: INSIDE HUMAN CRUELTY AND VIOLENCE* 251-54 (1997).

19. See TRELEASE, *supra* note 10, at 21, 81.

20. See *id.* at 49.

21. Although the KKK and its progeny were all-male bodies, many white women supported the work of the klans by sewing costumes and providing food, shelter, and emotional sustenance to their members. See AGO, *supra* note 16, RG 94, M 666, R 12, F 1612, Letter from C.H. Morgan to Adjutant General, Department of the East, June 18, 1871; KKK Papers, *supra* note 16, Testimony of John W. Long [State v. Tarpley], at 11-12; H.R. MISC. DOC. NO. 41-53, at 293 (1870); ANNIE COOPER BURTON, *THE KU KLUX KLAN* 13 (1916); ELIZABETH M. HOWE, *A KU KLUX UNIFORM* 3, 19 n.10 (1921) (note that Howe mistakenly assumes that women's contributions entitled them to membership in the order); J.E. ROBUCK, *MY OWN PERSONAL EXPERIENCE AND OBSERVATION AS A SOLDIER IN THE CONFEDERATE ARMY DURING THE CIVIL WAR, 1861-1865; ALSO DURING THE PERIOD OF RECONSTRUCTION; APPENDING A HISTORY OF THE ORIGIN, RISE, CAREER AND DISBANDING OF THE FAMOUS KU KLUX, OR INVISIBLE EMPIRE. EXACTLY WHY, WHEN, AND WHERE IT ORIGINATED* 122 (1911); MR. & MRS. W.B. ROMINE, *A STORY OF THE ORIGINAL KU KLUX KLAN* 15 (rev. ed. 1924); MRS. S.E.F. ROSE, *THE KU KLUX KLAN OR INVISIBLE EMPIRE* 44, 45-46 (1914) [hereinafter ROSE, *KU KLUX KLAN*]; S.C. KLAN TRIALS, *supra* note 16, at 572; ROBERT SOMERS, *THE SOUTHERN STATES SINCE THE WAR* 152 (New York, Macmillan 1871); TENNESSEE GENERAL ASSEMBLY, *REPORT OF EVIDENCE TAKEN BEFORE THE MILITARY COMMITTEE IN RELATION TO OUTRAGES COMMITTED BY THE KU KLUX KLAN IN MIDDLE AND WEST TENNESSEE* 32, 48 (Nashville, Mercer 1868) [hereinafter TENNESSEE GENERAL ASSEMBLY, *REPORT OF EVIDENCE TAKEN BEFORE THE MILITARY COMMITTEE*]. Women's klan activities are also discussed in BLEE, *WOMEN OF THE KLAN*, *supra* note 10, at 13; HORN, *supra* note 10, at 58-60; TRELEASE, *supra* note 10, at 53-54, 439 n.9; and WADE, *supra* note 10, at 60.

22. See, e.g., TRELEASE, *supra* note 10, at 51-52. Leadership positions, however, were typically assumed by the more affluent and socially prominent klansmen. See, e.g., *id.* at 52.

23. In George Rable's pithy formulation, the Klan effectively acted as “the military arm of the Democratic party.” GEORGE C. RABLE, *BUT THERE WAS NO PEACE: THE ROLE OF VIOLENCE IN THE POLITICS OF RECONSTRUCTION* 95 (1984) [hereinafter RABLE, *BUT THERE WAS NO PEACE*]. Comparable interpretations are offered by DRAGO, *supra* note 6, at 151-52 (1982); ERIC FONER, *RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION 1863-1877*, at 425-26 (1988) [hereinafter FONER, *RECONSTRUCTION*]; TRELEASE, *supra* note

cially active in the rural South, where demographic conditions permitted it to prey upon a more dispersed, hence less daunting, enemy population.<sup>24</sup> While the Pulaski den served as its nominal headquarters during the early stages of its development, the Klan was from the start a highly decentralized body that proved exceedingly difficult to manage.<sup>25</sup> Despite this diffusion, it is not the case, as many sympathizers then and later would have it, that the worst outrages were perpetrated by isolated renegades who somehow managed to thwart the irreplicable aims of the genuine article.<sup>26</sup> Klan violence was simply too

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10, at xlvi; and Herbert Shapiro, *The Ku Klux Klan During Reconstruction: The South Carolina Episode*, 49 J. OF NEGRO HIST. 34, 36, 43-44 (1964).

24. See TRELEASE, *supra* note 10, at 64.

25. See *id.* at xlvi, 19.

26. Versions of this argument were advanced by a number of former klansmen, including Forrest and Shotwell. See 13 KLAN REPORT, *supra* note 15, at 16, 34; 2 SHOTWELL PAPERS, *supra* note 12, at 345-46; see also 2 KLAN REPORT, *supra* note 16, at 363-64; 8 JOINT SELECT COMM. ON CONDITIONS OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, 42D CONG., REPORT OF THE JOINT SELECT COMMITTEE TO INQUIRE INTO THE CONDITION OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, Alabama, pt. 1, at 260 (Washington, D.C., Government Printing Office 1872) [hereinafter 8 KLAN REPORT]; 9 JOINT SELECT COMM. ON CONDITIONS OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, 42D CONG., REPORT OF THE JOINT SELECT COMMITTEE TO INQUIRE INTO THE CONDITION OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, Alabama, pt. 2, at 726 (Washington, D.C., Government Printing Office 1872) [hereinafter 9 KLAN REPORT]. Early students and sympathizers of the order, often one and the same, tended to accept the posited division between "real" and "sham" Klans uncritically. See, e.g., JAMES MELVILLE BEARD, 'K.K.K. SKETCHES, HUMOROUS AND DIDACTIC, TREATING THE MORE IMPORTANT EVENTS OF THE KU-KLUX-KLAN MOVEMENT IN THE SOUTH. WITH A DISCUSSION OF THE CAUSES WHICH GAVE RISE TO IT, AND THE SOCIAL AND POLITICAL ISSUES EMANATING FROM IT 86, 154-60 (Philadelphia, Claxton, Remsen & Haffelfinger 1877); WILLIAM GARROTT BROWN, THE LOWER SOUTH IN AMERICAN HISTORY 208-09, 216 (1903) [hereinafter BROWN, THE LOWER SOUTH IN AMERICAN HISTORY]; BURTON, *supra* note 21, at 14; DAVIS, AUTHENTIC HISTORY, *supra* note 10, at 109, 173; HOWE, *supra* note 21, at 19-20; RICHARDSON, HISTORIC PULASKI, *supra* note 10, at 34, 42, 51; ROGERS, *supra* note 10, at 38; ROMINE & ROMINE, *supra* note 21, at 15, 16-17; ROSE, KU KLUX KLAN, *supra* note 21, at 28, 34-36, 69; SOMERS, *supra* note 21, at 152, 155. Thomas Dixon offers a characteristically vivid fictional representation of this viewpoint in his 1907 novel, *The Traitor*, a central theme of which is a threatened Klan takeover by "bad men" who possess none of the supposed judgment and forbearance of the founders. Repudiating the moderate course of the original organization, it was the "new Klan" that had recklessly "inaugurated a reign of folly and terror unprecedented in the history of the whole Reconstruction saturnalia." THOMAS DIXON, JR., THE TRAITOR: A STORY OF THE FALL OF THE INVISIBLE EMPIRE 96 (1907) [hereinafter DIXON, THE TRAITOR]; see also THOMAS DIXON, JR., THE BLACK HOOD 126 (1924) (reiterating that statement) [hereinafter DIXON, THE BLACK HOOD]. Critical assessments of Dixon's Reconstruction novels, which are briefly considered *infra* Part V.B, include RAYMOND ALLEN COOK, FIRE FROM THE FLINT: THE AMAZING CAREERS OF THOMAS DIXON (1968) [hereinafter COOK, FIRE FROM THE FLINT], RAYMOND ALLEN COOK, THOMAS DIXON (1974), and F. Garvin Davenport, Jr., *Thomas Dixon's Mythology of Southern History*, 36 J. S. HIST. 350 (1970). Another prominent Reconstruction novelist, Thomas Nelson Page, relies on the same unfounded distinction between genuine and ersatz klans to downplay the organization's misdeeds. See THOMAS NELSON PAGE, RED ROCK: A CHRONICLE OF RECONSTRUCTION 352-53 (New York, Charles Scribner's Sons 1898) [hereinafter PAGE, RED ROCK]. Page's life and works are examined in THEODORE L. GROSS, THOMAS NELSON PAGE (1967); HARRIET R. HOLMAN, THE LITERARY CAREER OF THOMAS NELSON PAGE (1978); and ROSEWELL PAGE, THOMAS NELSON PAGE: A MEMOIR

widespread, its manifestations too strikingly consistent, to lend credence to that view.<sup>27</sup> In the same way, the Klan's resort to terroristic methods cannot fairly be seen as aberrational within the context of nineteenth-century southern society.<sup>28</sup> As a number of scholars have convincingly shown, the Klan partook of a long tradition in which the use of extralegal violence against disfavored groups and individuals,<sup>29</sup> often black, enjoyed widespread legitimacy.<sup>30</sup> And in providing a con-

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OF A VIRGINIA GENTLEMAN (1923). For a more recent historical analysis that assumes a similar stance in assessing responsibility for klan atrocities, see HORN, *supra* note 10, at 361-67.

27. As Trelease points out, it is extremely difficult to distinguish between authorized and unauthorized violence with respect to organizations like the Klan, which almost invariably operated under cover of darkness and in disguise, dispensing almost entirely with written orders and membership rosters. See TRELEASE, *supra* note 10, at 18-19, 52-53; see also JOHN HOPE FRANKLIN, RECONSTRUCTION AFTER THE CIVIL WAR 157-58 (2d. ed. 1994); SWINNEY, *supra* note 17, at 45.

28. Commenting on the longer trajectory of southern vigilantism, Leon Litwack contends:

Much of the violence inflicted on the freedmen had been well organized, with bands of white men meting out extralegal "justice" and anticipating the Klan-type groups that would operate so effectively during Radical Reconstruction. The names by which these paramilitary self-styled vigilantes were known varied from place to place — "reformers," "regulators," "moderators," "rangers," — but the tactics of random terrorism and assassination they employed barely differed and they tended to attract men of all social classes.

LITWACK, BEEN IN THE STORM SO LONG, *supra* note 6, at 278. As this Article demonstrates, the terroristic methods employed by the klans were not as random as they often appeared.

29. See *infra* Part V.C and accompanying notes.

30. On the essential continuity of southern racial violence from the antebellum through the postbellum periods, see EDWARD L. AYERS, VENGEANCE AND JUSTICE: CRIME AND PUNISHMENT IN THE 19TH-CENTURY AMERICAN SOUTH 161 (1984) [hereinafter AYERS, VENGEANCE AND JUSTICE]; CHARLES L. FLYNN, JR., WHITE LAND, BLACK LABOR: CASTE AND CLASS IN LATE NINETEENTH-CENTURY GEORGIA 43 (1983); FRANKLIN, *supra* note 27, at 153; FRY, *supra* note 13, at 110-12; RABLE, BUT THERE WAS NO PEACE, *supra* note 23, at 92; and RICHARD ZUCZEK, STATE OF REBELLION: RECONSTRUCTION IN SOUTH CAROLINA 55-56 (1996). Several American historians, most notably Charles Flynn and Bertram Wyatt-Brown, have drawn on the work of such prominent Europeanists as Natalie Zemon Davis and E.P. Thompson to situate the phenomenon of klan violence within the context of the centuries-old practice of *charivari* (frequently translated "shivaree") — a highly ritualized communal event designed primarily to uphold social norms by publicly shaming transgressors. See FLYNN, *supra*, at 44-47; BERTRAM WYATT-BROWN, SOUTHERN HONOR: ETHICS AND BEHAVIOR IN THE OLD SOUTH 453-57 (1982); see also PAUL A. GILJE, RIOTING IN AMERICA 100 (1996). Iver Bernstein finds a corresponding parallel between the symbolical forms of popular violence emanating from early modern Europe and those enacted by rioters in Civil War New York. See IVER BERNSTEIN, THE NEW YORK CITY DRAFT RIOTS: THEIR SIGNIFICANCE FOR AMERICAN SOCIETY AND POLITICS IN THE AGE OF THE CIVIL WAR 5 (1982). On the role of *charivari* in early modern Europe, see NATALIE ZEMON DAVIS, *The Reasons of Misrule, in SOCIETY AND CULTURE IN EARLY MODERN FRANCE* 97 (1975), and E.P. THOMPSON, *Rough Music, in CUSTOMS IN COMMON: STUDIES IN TRADITIONAL POPULAR CULTURE* 467 (1993). Comparative studies of European and North American practices include Loretta T. Johnson, *Charivari/Shivaree: A European Folk Ritual on the American Plains*, 20 J. INTERDISCIPLINARY HIST. 371 (1990), and Bryan D. Palmer, *Discordant Music: Charivaris and Whitecapping in Nineteenth-Century North America*, 3 LABOUR/LE TRAVAILLEUR 5 (1978). For a brief study of *charivari* in one southern state, see E. Bagby Atwood, *Shivarees and Charivaris: Variations on a Theme, in A GOOD TALE AND A BONNIE TUNE* 64 (Mody C. Boatright et al. eds., 1964). The linguistic

venient forum for the collective expression of racial hatred, it succeeded masterfully.<sup>31</sup>

The Klan was hardly alone in employing terror against the freed-people and selected whites. In the aftermath of the Civil War, white supremacist groups — notably the Pale Faces,<sup>32</sup> the '76 Association,<sup>33</sup> the White Brotherhood,<sup>34</sup> and the Knights of the White Camelia<sup>35</sup> —

development of *charivari* is traced in Alva L. Davis & Raven I. McDavid, Jr., "*Shivaree*": *An Example of Cultural Diffusion*, 24 AM. SPEECH 249 (1949). On late-nineteenth-century whitecapping, a particularly violent form of vigilante activity that spread throughout much of the United States shortly after the Klan's decline, see CAS WALKER, *WHITE CAPS AND BLUE BILLS* (rev. ed., Sevier Publ'g and Distrib. 1974); *THE WHITE-CAPS: A HISTORY OF THE ORGANIZATION IN SEVIER COUNTY* (Knoxville, Bean, Warters & Gaut 1899) [hereinafter *THE WHITE-CAPS*]; William F. Holmes, *Moonshiners and Whitecaps in Alabama*, 34 ALA. REV. 31 (1981); William F. Holmes, *Moonshining and Collective Violence: Georgia, 1889-1895*, 67 J. AM. HIST. 589 (1980); William F. Holmes, *Whitecapping: Agrarian Violence in Mississippi, 1902-1906*, 35 J. S. HIST. 165 (1969); William F. Holmes, *Whitecapping: Anti-Semitism in the Populist Era*, 63 AM. JEWISH HIST. Q. 244 (1974); William F. Holmes, *Whitecapping in Georgia: Carroll and Houston Counties, 1893*, 64 GA. HIST. Q. 388 (1980); William F. Holmes, *Whitecapping in Mississippi: Agrarian Violence in the Populist Era*, 55 MID-AMERICA 134 (1973); William Joseph Cummings, *Community, Violence, and the Nature of Change: Whitecapping in Sevier County, Tennessee during the 1890s* (1988) (unpublished M.A. thesis, University of Tennessee) (on file with the University of Tennessee Library); Sally Leonard James, *American Violent Moral Regulation and the White Caps* (1969) (unpublished B.A. thesis, College of William and Mary) (on file with the College of William and Mary Library); and Madeleine M. Noble, *The White Caps of Harrison and Crawford County, Indiana: A Study in the Violent Enforcement of Morality* (1973) (unpublished Ph.D. dissertation, University of Michigan) (on file with the University of Michigan Library). It is worth emphasizing that the correspondence of Klan violence with the older form of *charivari* and the whitecapping that was soon to come is at best imperfect. Beyond their resort to extralegal measures in the pursuit of moral, especially sexual, regulation, these similarities were confined largely to surface attributes, with the KKK diverging in such fundamental ways as the nature and degree of violence it perpetrated and in its determined enforcement of the liminality of its chosen victims.

31. ALAN CONWAY, *THE RECONSTRUCTION OF GEORGIA* 67 (1966).

32. According to the reminiscences of a former rebel private, "[t]he Pale Faces were auxiliaries of the Kuklux, and were composed of young men who were too young to go in the war of 1861." MARCUS B. TONEY, *THE PRIVATIONS OF A PRIVATE* 124 (1905). For further discussion of the Order of the Pale Faces, see HORN, *supra* note 10, at 317-18, 346-48, and TRELEASE, *supra* note 10, at 26-27, 30.

33. The Preamble to the Constitution of the '76 Association is reprinted in two document collections, both edited by Walter Fleming, 2 DOCUMENTARY HISTORY OF RECONSTRUCTION: POLITICAL, MILITARY, SOCIAL, RELIGIOUS, EDUCATIONAL & INDUSTRIAL, 1865 TO THE PRESENT TIME 355 (Walter L. Fleming, ed. 1907) [hereinafter 2 DOCUMENTARY HISTORY OF RECONSTRUCTION], and DOCUMENTS RELATING TO RECONSTRUCTION Nos. 4 & 5, at 59-60 (Walter L. Fleming, ed. 1904). The '76 Association is briefly considered in HORN, *supra* note 10, at 350-51, and TRELEASE, *supra* note 10, at 136.

34. The Initiation Oath of the White Brotherhood appears in S. REP. NO. 42-1, at lv (1871), and 4 JOINT SELECT COMM. ON CONDITIONS OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, 42D CONG., REPORT OF THE JOINT SELECT COMMITTEE TO INQUIRE INTO THE CONDITION OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, South Carolina, pt. 2, at 653 (Washington, D.C., Government Printing Office 1872) [hereinafter 4 KLAN REPORT]. It is reprinted in its entirety in DOCUMENTS RELATING TO RECONSTRUCTION, *supra* note 33, at 30, and in part in 2 DOCUMENTARY HISTORY OF RECONSTRUCTION, *supra* note 33, at 354. For testimony by members of the White Brotherhood that refers to that organization by name, see KKK Papers, *supra* note 16, Testimony of James E. Boyd [State v. Andrews], at 1-5, 22-23; KKK Papers, *supra* note 16, Testimony of

proliferated, adopting means and ends that rendered them substantially indistinguishable from the “real” KKK.<sup>36</sup> Given its powerful

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William Tickel [State v. Somers], at 1-10; and KKK Papers, *supra* note 16, Testimony of William R. Tickel [State v. Somers], at 1, 4, 6-7. Additional information concerning the White Brotherhood may be found in HORN, *supra* note 10, at 193, 352, and TRELEASE, *supra* note 10, at 68-69, 114, 192, 198, 386-87.

35. The Constitution and Ritual of the Knights of the White Camelia [KWC] is reprinted in DOCUMENTS RELATING TO RECONSTRUCTION, *supra* note 33, No. 1, at 8-29. Excerpts of this document appear in 2 DOCUMENTARY HISTORY OF RECONSTRUCTION, *supra* note 33, at 349-54; LOUISIANA GENERAL ASSEMBLY, REPORT OF [THE] JOINT COMMITTEE OF THE GENERAL ASSEMBLY OF LOUISIANA ON THE CONDUCT OF THE LATE ELECTIONS, AND THE CONDITION OF PEACE AND ORDER IN THE STATE 259-62 (New Orleans, A.L. Lee 1869) [hereinafter LOUISIANA GENERAL ASSEMBLY, REPORT OF [THE] JOINT COMMITTEE (1869)]; LOUISIANA GENERAL ASSEMBLY, SUPPLEMENTAL REPORT OF [THE] JOINT COMMITTEE OF THE GENERAL ASSEMBLY OF LOUISIANA ON THE CONDUCT OF THE LATE ELECTIONS, AND THE CONDITION OF PEACE AND GOOD ORDER IN THE STATE 213-15 (New Orleans, A.L. Lee 1869) [hereinafter LOUISIANA GENERAL ASSEMBLY, SUPPLEMENTAL REPORT]; and JOB. E. STEVENSON, KU KLUX KLAN. LET US PROTECT THE PEOPLE IN THE ENJOYMENT OF LIFE, LIBERTY, AND PROPERTY, AND IMPARTIAL SUFFRAGE IN PEACE, SPEECH OF [THE] HON. JOB E. STEVENSON, OF OHIO, DELIVERED IN THE HOUSE OF REPRESENTATIVES, APRIL 4, 1871, at 30-31 (Washington, D.C., F. & J. Rives & Geo. A. Bailey 1871) [hereinafter STEVENSON, KU KLUX KLAN]. A handwritten charter outlining the procedures to be followed in establishing branches of the organization in Texas is held by that state's Library and Archives Commission. See George A. Rouser Papers, Texas State Library and Archives Commission, Archives and Information Services Division, Austin, Tex.), Manuscript [hereinafter MS] 60. The KWC is discussed in greater depth in JAMES BREWSTER, SKETCHES OF SOUTHERN MYSTERY, TREASON AND MURDER. THE SECRET POLITICAL SOCIETIES OF THE SOUTH, THEIR METHODS AND MANNERS. THE PHAGEDENIC CANCER ON OUR NATIONAL LIFE 139-53 (1903); BROWN, THE LOWER SOUTH IN AMERICAN HISTORY, *supra* note 26, at 209-10, 211-12; WALTER L. FLEMING, CIVIL WAR AND RECONSTRUCTION IN ALABAMA 669-73, 684 (1905) [hereinafter FLEMING, CIVIL WAR AND RECONSTRUCTION]; HORN, *supra* note 10, at 285-87, 292, 318, 331, 342-45; TRELEASE, *supra* note 10, at xlvi, 51, 82-83, 92-94, 101, 109, 127-29, 131-36, 173, 184, 247, 305; TED TUNNELL, CRUCIBLE OF RECONSTRUCTION: WAR, RADICALISM AND RACE IN LOUISIANA, 1862-1877, at 6, 153, 156-57, 159 (1984); and Allie Bayne Windham Webb, *Organization and Activities of the Knights of the White Camelia in Louisiana, 1867-1869*, 17 LA. ACAD. SCI. PROCEEDINGS 110 (1954).

36. The records of the Freedmen's Bureau make reference to a number of other vigilante groups — among them “Yellow Jackets,” “Red Caps,” “Regulators,” “Jayhawks,” and “Desperadoes” — in terms consistent with those used to describe the KKK. See, e.g., Records of the Bureau of Refugees, Freedmen, and Abandoned Lands, National Archives, Washington, D.C. [hereinafter BRFAL], RG 105, Vol. 135, Assistant Adjutant General, Synopses of Reports, Washington, D.C., Nov. 10, 1866 (describing attacks upon freedpeople perpetrated by “Regulators” and “Jayhawkers”); BRFAL, *supra*, RG 105, Vol. 135, Assistant Adjutant General, Synopses of Reports, Washington, D.C., Nov. 10, 1866 (recounting the offenses of unknown “regulators”); BRFAL, *supra*, RG 105, Vol. 135, Assistant Adjutant General, Synopses of Reports, Washington, D.C., Feb. 19, 1868 (reporting on the activities of “lawless mounted and disguised bands styling themselves ‘Yellow Jackets’ ‘Red Caps,’ &c.”); BRFAL, *supra*, RG 105, Vol. 136, Assistant Adjutant General, Synopses of Reports, Washington, D.C., Oct. 15, 1868 (chronicling outrages committed by the KKK “or by desperadoes apparently belonging to it”); BRFAL, *supra*, RG 105, Vol. 136, Assistant Adjutant General, Synopses of Reports, Washington, D.C., Oct. 31, 1868 (commenting on the difficulty of determining whether those responsible for a murderous assault were “Regulators or Ku Klux”). Similar references are scattered throughout the historical record. See, e.g., H.R. REP. OF APRIL 4, 1871, at 444 (1871) (noting the presence of a Klan-like organization calling itself the “Innocents’ Club”); 3 KLAN REPORT, *supra* note 17, at 2, 23-25, 102-05, 122 (testifying to the practices of a South Carolina group known as the “Council of Safety”); 4 KLAN REPORT, *supra* note 34, at 820 (discussing the activities of the Council of

sway over popular imagination and the frequency with which parallel bodies were assimilated both as a practical and rhetorical matter,<sup>37</sup> the

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Safety); 5 KLAN REPORT, *supra* note 16, at 1291 (adverting to that same group). General Howard himself remarked on these nominal variations in his memoirs. See O.O. HOWARD, 2 AUTOBIOGRAPHY OF OLIVER OTIS HOWARD, MAJOR GENERAL, UNITED STATES ARMY, 380-81 (1907) [hereinafter HOWARD, 2 AUTOBIOGRAPHY OF OLIVER OTIS HOWARD]. The evidence contained in these representative sources demonstrates the aptness of Shotwell's description of the KKK as a "generic title" or "colloquial epithet" that may fairly be applied to "all the Southern Secret Societies of similar character." 2 SHOTWELL PAPERS, *supra* note 12, at 256, 281; see also *id.* at 235, 256, 277-78 (referring to several of these bodies by name). Albion Tourgée's fictional presentation of the origins of klan violence leads him to much the same conclusion, though he insists that the group denominated the "Invisible Empire" enjoyed a special renown. See ALBION W. TOURGÉE, A FOOL'S ERRAND, BY ONE OF THE FOOLS; THE FAMOUS ROMANCE OF AMERICAN HISTORY. PART II: THE INVISIBLE EMPIRE: A CONCISE REVIEW OF THE EPOCH ON WHICH THE TALE IS BASED 396 (new, enlarged, & illustrated ed., New York, Fords, Howard, & Hulbert 1880). But see HORN, *supra* note 10, at 193 (arguing that "Invisible Empire," at least as it was employed in North Carolina, was merely an alternative label for the Ku Klux Klan). Trelease likewise maintains that the KKK became "synonymous with all nocturnal regulators, regardless of what they called themselves." TRELEASE, *supra* note 10, at xlvi. Writing in the early 1900s, Brewster offers a consonant interpretation, albeit within a developmental framework: "This conspiracy is more widely known than any of the other secret societies of similar character and design. Yet it differed only slightly . . ."; in other words, he asserts, "all these societies, and the many branches and kindred orders, may be considered as one order in different stages of development." BREWSTER, *supra* note 35, at 236; see also BROWN, THE LOWER SOUTH IN AMERICAN HISTORY, *supra* note 26, at 208, 210.

37. This is also consistent with the findings of a Senate Select Committee organized to investigate alleged outrages in North Carolina. "The offenses charged against the Ku-Klux (and we use that term to cover the three associations [Invisible Empire, Ku Klux Klan, White Brotherhood] whose purposes and modes of operation are shown to have been the same, and concealed under this name) are numerous." S. REP. NO. 42-1, at xviii. Variants of this proposition are reiterated in: AGO, *supra* note 16, RG 94, M 666, R 1, F 60, Confession of Undersigned Citizens of Alamance County, July 28, 1870; AGO, *supra* note 16, RG 94, M 666, R 1, F 60, Letter from W.W. Holden to General U.S. Grant, Jan. 1, 1871; KKK Papers, *supra* note 16, Testimony of James E. Boyd [State v. Andrews], at 5-6, 15-16; KKK Papers, *supra* note 16, Testimony of Eli S. Euliss [State v. Andrews], at 4; KKK Papers, *supra* note 16, Testimony of Milton Huffines [State v. Somers], at 1, 5, 6; KKK Papers, *supra* note 16, Testimony of William R. Tickel [State v. Somers], at 1, 8, 10; KKK Papers, *supra* note 16, Testimony of Daniel Whitesell [State v. Somers], at 1; Ku-Klux-Klan Broadside Collection, Rare Book and Special Collections Division, Library of Congress, Washington, D.C., [hereinafter KKK Broadside Collection]; *Ku-Kluxism and Democracy* (n.p. 1872); S. REP. NO. 42-1, at iv, xxii, liv; CONG. GLOBE, 42d Cong., 1st Sess. 443, 444 (1871); WILLIAM W. HOLDEN, THIRD ANNUAL MESSAGE OF W.W. HOLDEN, GOVERNOR OF NORTH CAROLINA 14-15, app. 74 (Raleigh, J.W. Holden 1870) [hereinafter HOLDEN, THIRD ANNUAL MESSAGE]; 2 KLAN REPORT, *supra* note 16, at 17, 44, 50, 181, 209, 230, 309; OLIVER P. MORTON, PROTECTION OF LIFE, ETC., AT THE SOUTH. SPEECH OF [THE] HON. OLIVER P. MORTON, OF INDIANA, DELIVERED IN THE SENATE OF THE UNITED STATES, APRIL 4, 1871, at 4-5 (Washington, D.C., F. & J. Rives & Geo. A. Bailey 1871) [hereinafter MORTON, PROTECTION OF LIFE]; NORTH CAROLINA SENATE, 2 TRIAL OF WILLIAM W. HOLDEN, GOVERNOR OF NORTH CAROLINA, BEFORE THE SENATE OF NORTH CAROLINA, ON IMPEACHMENT BY THE HOUSE OF REPRESENTATIVES FOR HIGH CRIMES AND MISDEMEANORS 1262 (Raleigh, Sentinel 1871) [hereinafter 2 HOLDEN TRIAL]; and STEVENSON, KU KLUX KLAN, *supra* note 35, at 13, 14. Speaking of white supremacist groups in Middle Tennessee, Nathan Bedford Forrest allowed, "Some called them Pale Faces; some called them Ku-Klux." 13 KLAN REPORT, *supra* note 15, at 6. Similarly, the Louisiana General Assembly pronounced the Knights of the White Camelia to be "the same organization which, under the common name of 'Ku Klux Klan,' has committed so many crimes and spread such terror throughout the South for the past two years." LOUISIANA GENERAL

Ku Klux Klan may best be understood as a kind of umbrella organization embodying the array of white supremacist groups that grew up in the postwar years.<sup>38</sup> This larger phenomenon of southern vigilante organizations reliant on terroristic methods and sustained by a resolutely hierarchical conception of interracial relations — often termed “kukluxism” by contemporaries<sup>39</sup> — provided the material and ideological basis for the diffusion of sexualized violence throughout the Reconstruction South.

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ASSEMBLY, SUPPLEMENTAL REPORT, *supra* note 35, at 212. For additional information concerning klan naming patterns in Louisiana, see BEARD, *supra* note 26, at 137; LOUISIANA GENERAL ASSEMBLY, REPORT OF [THE] JOINT COMMITTEE (1869), *supra* note 35, at 258; and STEVENSON, KU KLUX KLAN, *supra* note 35, at 27. Examples relating to Georgia and Alabama may be found in 7 KLAN REPORT, *supra* note 16, at 1045, and 8 KLAN REPORT, *supra* note 26, at 9.

38. Swinney makes an especially compelling case:

Since there is no practical way to distinguish between the Klan and imitators like the Knights of the White Camelia, the White Brotherhood, the White Line, the Seventy-Six Association, or any other group, organized or spontaneous, which donned sheets and hoods, all such terroristic societies must be treated together as part of a generic Ku Klux movement.

SWINNEY, *supra* note 17, at 46-47. Analogous positions are espoused by STEWART E. TOLNAY & E.M. BECK, A FESTIVAL OF VIOLENCE: AN ANALYSIS OF SOUTHERN LYNCHINGS, 1882-1930, at 6 (1995); TRELEASE, *supra* note 10, at xlv-vi; FORREST G. WOOD, BLACK SCARE: THE RACIST RESPONSE TO EMANCIPATION AND RECONSTRUCTION 159 (1970) [hereinafter WOOD, BLACK SCARE]; and Thomas B. Alexander, *Kukluxism in Tennessee, 1865-1869*, 8 TENN. HIST. Q. 195, 195, 202 (1949). However, Stanley Horn offers an important stipulation:

Granting that [postwar white supremacist groups] were all actuated by the same basic motive . . . it should be borne in mind that the Ku Klux Klan as such had no official connection with any of these other organizations. The Klan was *sui generis*. It had more members and more advertising and more fearsome prestige than any of the other organizations, being approached only by the Knights of the White Camelia; and although the Klan, by its very pre-eminence, had its name used as a tag for all similar enterprises, they were all entirely independent of each other.

HORN, *supra* note 10, at 343. With a single caveat, the interpretation I am positing here is in accord with Swinney’s — that is, in isolated instances, even the KKK operated undisguised. See, e.g., BRFAL, *supra* note 36, RG 105, M 999, R 34, Affidavits of Owen Grundy and Samuel Voorhees, Maury County, Tenn., Jan. 21, 1868; ALABAMA GENERAL ASSEMBLY, REPORT OF [THE] JOINT COMMITTEE ON OUTRAGES 5 (Montgomery, J.G. Stokes & Co. 1868); ALFRED E. BUCK, CONDITION OF THE SOUTH — THE KUKLUX KLAN AN ORGANIZATION IN ALABAMA. SPEECH OF [THE] HON. ALFRED E. BUCK, OF ALABAMA, IN THE HOUSE OF REPRESENTATIVES, FEBRUARY 8, 1871, at 9-10 (Washington, D.C., F. & J. Rives & Geo. A. Bailey 1871); see also Shapiro, *supra* note 23, at 36.

39. See, e.g., C.C. CROWE, ADDRESS OF COL. C.C. CROWE, DELIVERED AT SELMA, ALABAMA, JUNE 23D, 1869, ON THE ISSUES OF THE DAY 17 (Montgomery, Barrett & Brown 1869); JOHN P. GREEN, RECOLLECTIONS OF THE INHABITANTS, LOCALITIES, SUPERSTITIONS, AND KUKLUX OUTRAGES OF THE CAROLINAS. BY A “CARPET-BAGGER” WHO WAS BORN AND LIVED THERE 135 (Cleveland, John P. Green 1880) [hereinafter GREEN, RECOLLECTIONS OF THE INHABITANTS]; MORTON, PROTECTION OF LIFE, *supra* note 37, at 5. “Ku-klux” was also used as a verb, as when John L. Coley testified, “I considered that I had done nothing to be Ku-Kluxed for.” 6 KLAN REPORT, *supra* note 16, at 364. Differing grammatical uses of the phrase survived at least until the end of the nineteenth century to characterize the terror tactics employed by southern vigilante organizations. See, e.g., THE WHITE-CAPS, *supra* note 30, at 12 (describing whitecapping as a “new method of kukluxing”). The same terminology also appears in a later revision of this work. See WALKER, *supra* note 30, at 11.



## II. TERRORIZING POLITICS

The impulses animating the founding of the klans were, broadly speaking, political in nature.<sup>40</sup> Although their specific concerns were necessarily influenced by local conditions, the enduring mission of each of these organizations was the advancement of white supremacy in every sector of southern society.<sup>41</sup> A prominent Alabama newspa-

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40. Evidence supporting this view exists in abundance in the testimony of the Joint Select Committee and numerous other contemporaneous sources. The Committee's investigation is considered *infra* notes 76-79 and accompanying text. For a forthright colloquy on the KKK's political orientation involving a U.S. Commissioner and Congressman Philadelph Van Trump, see 2 KLAN REPORT, *supra* note 16, at 48-49. *See also, e.g.*, AGO, *supra* note 16, RG 94, M 666, R 26, F 2586, Letter from Major Lewis Merrill to Adjutant General, Department of the South, June 9, 1871 (stating that the object of the Klan is to "restore the political supremacy of the white race"). A number of distinguished historians have also advanced this interpretation. *See, e.g.*, FONER, RECONSTRUCTION, *supra* note 23, at 425-26; TRELEASE, *supra* note 10, at 49. Not surprisingly, klansmen and klan sympathizers rehearsed a range of self-serving explanations for the establishment of white supremacist groups. Some, including Forrest, expressly denied that the klans were politically motivated. Instead, he and many of his confederates contended that the klans' emergence was impelled by the expansion of the Union and Loyal Leagues and the profusion of black violence and criminality that purportedly accompanied it. *See* 13 KLAN REPORT, *supra* note 15, at 7; *see also* STEVENSON, KU KLUX KLAN, *supra* note 35, at 6. Comparable statements are recorded in KKK Papers, *supra* note 16, Testimony of James E. Boyd [State v. Andrews], at 26-27; KKK Papers, *supra* note 16, Testimony of John A. Moore [State v. Tarpley], at 4-5; 2 KLAN REPORT, *supra* note 16, at 250-51; 5 KLAN REPORT, *supra* note 16, at 1409; 6 KLAN REPORT, *supra* note 16, at 68; 8 KLAN REPORT, *supra* note 26, at 170-71; 9 KLAN REPORT, *supra* note 26, at 781, 783, 840, 872; 11 JOINT SELECT COMM. ON CONDITIONS OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, 42D CONG., REPORT OF THE JOINT SELECT COMMITTEE TO INQUIRE INTO THE CONDITION OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, Mississippi, pt. 1, at 556 (Washington, D.C., Government Printing Office 1872) [hereinafter 11 KLAN REPORT]; and STEVENSON, KU KLUX KLAN, *supra* note 35, at 4. For a thoughtful discussion of the relationship of the Leagues to the klans' rise *see*, FITZGERALD, *supra* note 6, at 200-233. Primary sources relating to the Union League movement are gathered in 2 DOCUMENTARY HISTORY OF RECONSTRUCTION, *supra* note 33, at 7-29.

41. *See, e.g.*, 6 KLAN REPORT, *supra* note 16, at 27. A northern visitor related an encounter he had with a white Southerner who acknowledged that the Klan was devised "to keep the negro down, and always make the darkies stand in the fear of their masters, as they did before emancipation." BENJAMIN BRYANT, EXPERIENCE OF A NORTHERN MAN AMONG THE KU-KLUX: OR THE CONDITION OF THE SOUTH 17 (Hartford, Benjamin Bryant 1872) [hereinafter BRYANT, EXPERIENCE OF A NORTHERN MAN]. For other expressions of the klans' overarching purpose, *see* HOWARD, 2 AUTOBIOGRAPHY OF OLIVER OTIS HOWARD, *supra* note 36, at 388; CHARLES STEARNS, THE BLACK MAN OF THE SOUTH, AND THE REBELS; OR, THE CHARACTERISTICS OF THE FORMER, AND THE RECENT OUTRAGES OF THE LATTER 426 (New York, American News Co. 1872); and John C. Reed, *What I Know of the Ku Klux Klan* (pt. 1), UNCLE REMUS'S MAGAZINE, Jan. 1908, at 24, 26 [hereinafter Reed, *What I Know of the Ku Klux Klan* (pt. 1)]. So vigorously and unambiguously was this belief expounded that no less tendentious an observer than William Dunning (the Columbia University historian who was the eponymous founder of a school of early-twentieth-century Reconstruction historiography now recognized primarily for its racist underpinnings) himself conceded that "[t]he explicit purpose of these organizations was to preserve the social and political ascendancy of the white race." WILLIAM DUNNING, RECONSTRUCTION: POLITICAL AND ECONOMIC, 1865-1877, at 122 (1907). For more on the Dunning tradition, *see infra* notes 518-528 and accompanying text. Since the mid-twentieth century, historians have almost uniformly stressed the centrality of these white supremacist ambitions to the Klan's reactionary agenda. *See, e.g.*, FONER, RECONSTRUCTION, *supra* note 23, at 426; RAYFORD W. LOGAN, THE BETRAYAL OF THE NEGRO: FROM RUTHERFORD B.

per editor whose perceptions were doubtless shared by many whites of the region used especially colorful language to portray this situation:

The fact is transparent to all thinking men that the origin of the Ku-klux Klan is the galling despotism which broods like a nightmare over these Southern States. It may be deemed a *fungus growth of military tyranny*, superinduced by the fostering of Loyal Leagues, the abrogation of our civil laws, the habitual violation of our national Constitution, and a persistent prostitution of all governmental resources and powers, to degrade the white man by the establishment of negro supremacy.<sup>42</sup>

Despite the fact that the freedpeople's condition was ameliorated only slowly, and incompletely at that, many whites perceived themselves as having been suddenly wrenched from their rightful supremacy and cruelly subjugated to an innately inferior people.<sup>43</sup> Echoing the sentiments of many of his contemporaries, one witness explained, "the bottom rail has got on top, the negro being suddenly placed in that relation";<sup>44</sup> "[t]hat very circumstance," he imparted, "has produced in

HAYES TO WOODROW WILSON 10 (Da Capo Press 1997) (1954); RABLE, BUT THERE WAS NO PEACE, *supra* note 23, at 96; RANDEL, *supra* note 10, at 16-17; SWINNEY, *supra* note 17, at 47; TRELEASE, *supra* note 10, at xlvi.

42. [Ryland Randolph], *Military "Bull Against the Comet" — The Ku-Klux Klan*, INDEPENDENT MONITOR (Tuscaloosa, Ala.), Apr. 14, 1868, at 2.

43. See, e.g., BEARD, *supra* note 26, at 28, 62, 90; DAVIS, AUTHENTIC HISTORY, *supra* note 10, at 72; 2 KLAN REPORT, *supra* note 16, at 11, 317-18, 363; 4 KLAN REPORT, *supra* note 34, at 797; 6 KLAN REPORT, *supra* note 16, at 23, 308; 8 KLAN REPORT, *supra* note 26, at 170-71, 229, 259-60; 13 KLAN REPORT, *supra* note 15, at 94; EDWARD A. POLLARD, THE KEY TO THE KU KLUX: INDIVIDUAL REPORT AND REVELATION BY EDWARD A. POLLARD OF THE CONDITION OF THE SOUTH 14 (n.p. 1872); RICHARDSON, HISTORIC PULASKI, *supra* note 10, at 35; 2 SHOTWELL PAPERS, *supra* note 12, at 277; SOMERS, *supra* note 21, at 153. For a fictional rendering of this perspective, see DIXON, THE TRAITOR, *supra* note 26, at 95. Dixon makes much the same point in THE BLACK HOOD, *supra* note 26, at 126.

44. 4 KLAN REPORT, *supra* note 34, at 796. The metaphor of "the bottom rail" was commonly employed to describe the apparent inversion in relations of power between black and white Southerners in the postbellum period. See, e.g., DEBATES AND PROCEEDINGS OF THE CONVENTION WHICH ASSEMBLED AT LITTLE ROCK, JANUARY 7TH, 1868, UNDER THE PROVISIONS OF THE ACT OF CONGRESS OF MARCH 2D, 1867, AND THE ACTS OF MARCH 23D AND JULY 19TH, 1867, SUPPLEMENTARY THERETO, TO FORM A CONSTITUTION FOR THE STATE OF ARKANSAS 495 (Little Rock, J.G. Price 1868); EDWARD KING, THE GREAT SOUTH: A RECORD OF JOURNEYS IN LOUISIANA, TEXAS, THE INDIAN TERRITORY, MISSOURI, ARKANSAS, MISSISSIPPI, ALABAMA, GEORGIA, FLORIDA, SOUTH CAROLINA, NORTH CAROLINA, KENTUCKY, TENNESSEE, VIRGINIA, WEST VIRGINIA, AND MARYLAND 453 (Hartford, American Publ'g Co. 1875); 1 JOINT SELECT COMM. ON CONDITIONS OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, 42D CONG., REPORT OF THE JOINT SELECT COMMITTEE TO INQUIRE INTO THE CONDITION OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, Majority and Minority Reports 540 (Washington, D.C., Government Printing Office 1872) [hereinafter 1 KLAN REPORT]; 4 KLAN REPORT, *supra* note 34, at 1237; 12 JOINT SELECT COMM. ON CONDITIONS OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, 42D CONG., REPORT OF THE JOINT SELECT COMMITTEE TO INQUIRE INTO THE CONDITION OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, Mississippi, pt. 2, at 635 (Washington, D.C., Government Printing Office 1872) [hereinafter 12 KLAN REPORT]; A.T. MORGAN, YAZOO; OR, ON THE PICKET LINE OF FREEDOM IN THE SOUTH 237 (Washington, D.C., A.T. Morgan 1884); 1 MISSISSIPPI IN 1875. REPORT OF THE SELECT COMMITTEE TO INQUIRE INTO THE MISSISSIPPI ELECTION OF 1875, WITH THE TESTIMONY AND DOCUMENTARY EVIDENCE 872 (Washington, D.C., Government Printing

itself a very unpleasant state of feeling.”<sup>45</sup> That “unpleasant state of feeling” awakened throughout the white South a resolute determination to restore the balance of racial power to approximate prewar conditions.

In the absence of the legal regime of slavery, new methods were required to compel black submission. With uncommon candor, a former klansman testified that the depredations of the KKK were “a political thing” intended to “frighten the colored people into a kind of obedience to them, so that they could be subverted to the interests of the democratic party.”<sup>46</sup> John W. Long, a one-time member of the White Brotherhood, another notorious Reconstruction-era klan, likewise acknowledged that “[t]he chief purpose of [klanism] was as I understood it to keep the negroes from elevating themselves to white people and keep them from going to the polls and voting and to overthrow the republican party.”<sup>47</sup> With party politics now inextricably linked to the shifting dynamics of race and power, the Klan targeted individuals, men and women, black and white, Northerners and Southerners alike, whose alignment with the radical program was considered antithetical to its cause.<sup>48</sup> As one contemporary put it, “they spared neither age, sex nor color, and the reputation of being a ‘black republican’ was all that was needed to place one under the ban of their condemnation.”<sup>49</sup>

The Klan manifested its determination to reassert white racial dominance with particular clarity in its abiding hostility to the notion

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Office 1876); 2 SHOTWELL PAPERS, *supra* note 12, at 258; STAUNTON SPECTATOR, Oct. 3, 1865, at 3, available at <http://www.iath.virginia.edu/vshadow2/HIUS403/freedmen/local/10-3-65.html> (last visited Oct. 28, 2001); see also LERONE BENNETT, JR., BEFORE THE MAYFLOWER: A HISTORY OF BLACK AMERICA 231 (6th rev. ed., Penguin Books 1993) (1962); FLEMING, CIVIL WAR AND RECONSTRUCTION, *supra* note 35, at 656 (remarking on this usage).

45. 4 KLAN REPORT, *supra* note 34, at 796.

46. 5 KLAN REPORT, *supra* note 16, at 1371. The foundational principles of hierarchy and submission, and the reliance on terror to attain them, are also addressed in BRYANT, EXPERIENCE OF A NORTHERN MAN, *supra* note 41, at 17. Similar views are expressed throughout the *Klan Report*. See, e.g., 3 KLAN REPORT, *supra* note 17, at 22, 30, 79; 6 KLAN REPORT, *supra* note 16, at 14, 23.

47. 2 HOLDEN TRIAL, *supra* note 37, at 2019. For additional illustrations of this perspective, see KKK Papers, *supra* note 16, Testimony of John W. Long [State v. Tarpley], at 12; KKK Papers, *supra* note 16, Testimony of John W. Long [State v. Gray], at 13; and 2 HOLDEN TRIAL, *supra* note 37, at 1993.

48. Based on its investigation, Alabama’s Joint Committee on Outrages found, “[T]his organization is purely political in its character. None but those of one particular party are known to belong to it, while Union men and Republicans are made the special objects of their fiendish abuse and violence.” ALABAMA GENERAL ASSEMBLY, *supra* note 38, at 4. Former klansmen occasionally provided revealing testimony on this point, thus further validating what could be easily deduced from their modus operandi. See, e.g., S.C. KLAN TRIALS, *supra* note 16, at 178, 203.

49. GREEN, RECOLLECTIONS OF THE INHABITANTS, *supra* note 39, at 136.

of “social equality,” which, in addition to its literal meanings, was an oft-deployed euphemism for interracial sex.<sup>50</sup> Though Southerners had never regarded sexual relations across the color line with approbation, above all when they involved a white woman and a black man, the emancipation and enfranchisement of the freedmen helped transform the largely repressed unease of the antebellum era into a virtual obsession thereafter. As a Georgia man described it,

If you talk about equality, they at once conclude that you must take the negro into your parlor or into your bed — everywhere that you would take your wife. They seem to be diseased upon that subject. They do not seem to consider that he is merely equal before the law, but take it, I suppose designedly, to mean equality in the broadest sense; and hence they stir themselves up and lash themselves into a fury about it.<sup>51</sup>

This discourse of a slippery slope leading all but inevitably from emancipation to biracial suffrage, education, love, and marriage, was handily available for manipulation by klansmen seeking to undermine the prospects of the former slaves. James H. Rives, a white lawyer, explained:

[T]he apprehension seems to be this, that the conferring of the right of suffrage on the negro, and his equality before the law, and his right to all the privileges of the free schools, will in process of time bring the two races together in the school-room as children, and that in that way the principles of their children and the rising generation will be more or less affected. That is the apprehension.<sup>52</sup>

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50. As one legal historian has succinctly maintained, “by the time of Reconstruction, ‘social equality’ would become virtually synonymous with miscegenation.” Emily Field Van Tassel, *“Only the Law Would Rule Between Us”: Antimiscegenation, the Moral Economy of Dependency, and the Debate Over Rights after the Civil War*, 70 CHI.-KENT L. REV. 873, 876 n.10 (1994). Among the most insightful reflections on this state of affairs is Nell Iryin Painter, “Social Equality,” *Miscegenation, Labor, and Power, in THE EVOLUTION OF SOUTHERN CULTURE* 47, 53 (Numan V. Bartley ed., 1988) [hereinafter Painter, “Social Equality”]. Notwithstanding their preoccupation with miscegenous relationships, the klans did not confine their attentions to explicitly sexual matters; rather, they sought to forcibly impose their own vision of a moral society by policing a range of behaviors they construed as dangerously transgressive. See, e.g., BEARD, *supra* note 26, at 121; BREWSTER, *supra* note 35, at 246. For historical commentary on this point, see FLYNN, *supra* note 30, at 31, 40, 43-51, and GILJE, *supra* note 30, at 100. This subject is explored in depth *infra* Part IV.

51. 6 KLAN REPORT, *supra* note 16, at 529. An English traveler to the Reconstruction South confirmed that “this idea of introducing a fashion of love and wedlock among white women and black men excites the wildest rage.” WILLIAM HEPWORTH DIXON, 2 NEW AMERICA 335 (London, Hurst & Blackett 1867) [hereinafter DIXON, 2 NEW AMERICA]. Exposing the hypocrisy of white men’s avowed abhorrence for the very thought of interracial sex, Dixon remarked:

[I]t would appear from a review of the facts and sentiments, that this sudden and alarming theory of miscegenation is no more than an effort to make free for all that which is now only free for some; an effort to give legal standing, moral sanction, to what is already a habit of the stronger sex.

*Id.*

52. 11 KLAN REPORT, *supra* note 40, at 559.

Whereas white children had previously been taught to assume their superiority and behave accordingly, the “natural” order of social relationships between the offspring of master and slave had been irretrievably upset.<sup>53</sup> Rejecting the intimation that the power dynamics of racial slavery introduced a coercive element into black women’s sexual choices,<sup>54</sup> Rives goes on to assert, “as the black woman sought the superior, or white man, to have intercourse with him, the black man has always sought, as we understand, to have intercourse with the white woman when he could, on account of this superiority of race.”<sup>55</sup> Yet, while the barely contained dread of forbidden attraction voiced by many white Southerners was undoubtedly real enough,<sup>56</sup> the ideal of social equality was scarcely perceptible in practice.

A pointed exchange between Z.B. Hargrove, an attorney and former Confederate officer, and his congressional examiner suggests some of the ways in which the white South’s distorted conception of a growing black menace was inflected by prevailing notions of race, gender, and class:

Q: Do the negroes assert social equality with the whites?

A: No, not in the least. In my section of the State they are very humble and very obedient . . . .

Q: Do they make any attempt to intermarry and mix with the whites?

A: I believe in one or two instances white women have married colored men; that is all a question of taste.

Q: Is it a rule, or do they, as a rule, confine themselves to their own color?

A: Yes, some poor, outcast, abandoned woman will sometimes marry a colored man for the aid and assistance that he can give her; but these are very rare occurrences.

Q: Is there any ground to fear miscegenation with the colored race?

A: No, sir; it is all on the other foot.

Q: What do you mean by the other foot?

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53. *See id.*

54. *See id.*

55. *Id.* at 559-60.

56. Rives betrayed another potent source of white anxiety in the course of questioning by the chairman of the congressional subcommittee charged with investigating conditions in Mississippi. To the question, “[i]n this matter of miscegenation in this part of the country, is it your information that the black women seduce the white men, or that the white men seduce the black women,” Rives candidly replied, “I think they are both pretty well seduced together. I do not think there is much seduction either way.” *Id.* at 558. The Mississippi Subcommittee was a constituent of a landmark joint select committee that was formed largely in response to pervasive reports of klan violence. Its membership and purposes are described *infra* note 76 and accompanying text.

A: I mean that colored women have a great deal more to fear from white men.<sup>57</sup>

As this excerpt suggests, Hargrove was an unusually astute witness, providing frank and truthful testimony to the Committee on various aspects of postwar southern society. In his estimation, blacks had been neither overly aggressive in their assertion of equal rights nor had they failed to exercise due deference in their interactions with whites, all of which was from his perspective as it should be. Moreover, he reports that interracial sex was relatively uncommon at the time, encounters being ordinarily initiated by white men who, by implication, were not generally averse to employing intimidation or worse to regain sexual access to black women.<sup>58</sup>

That black women had by any objective measure “more to fear” than white women in this regard did little to alter the conviction that southern white womanhood was gravely imperiled by slavery’s demise. This belief was cast as a prominent feature of klan ideology almost from the beginning. Upon initiation, the KKK required would-be members to take an oath, promising that “[f]emales, friends, widows, and their households, shall be the special object of my care and protection.”<sup>59</sup> In defending the existence of these fraternities, former klansmen routinely insisted that they were forced to organize by the growing incidence of black-on-white sexual assault, a crime that the legitimately constituted authorities had assertedly failed to prosecute energetically.<sup>60</sup> According to Forrest, “Ladies were ravished by some of these negroes, who were tried and put in the penitentiary, but were

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57. 6 KLAN REPORT, *supra* note 16, at 82-83. Hargrove was not the only Southerner to regard “social equality” as a Democratic ruse. Although hardly ubiquitous, similar perceptions were at times conveyed by other witnesses. *See, e.g.*, 11 KLAN REPORT, *supra* note 40, at 76.

58. *See* 6 KLAN REPORT, *supra* note 16, at 82-83.

59. 1 KLAN REPORT, *supra* note 44, at 25. This conception of manly obligation was widely recalled by whites when asked about their perceptions of the KKK. *See, e.g.*, S.C. KLAN TRIALS, *supra* note 16, at 175. Similar injunctions were incorporated into the initiation rites of other white supremacist groups of the era. Members of the Knights of the White Camelia were thus exhorted to “protect and defend” fellow whites from the unnamed “encroachments and aggressions of an inferior race.” “The Constitution and the Ritual of the Knights of the White Camelia,” in DOCUMENTS RELATING TO RECONSTRUCTION, *supra* note 33, No. 1, at 24 (1904). Likewise, initiates into the White Brotherhood were bound to repel “insults offered to female members of each others families.” KKK Papers, *supra* note 16, Testimony of James E. Boyd [State v. Andrews], at 2. To avoid distracting the reader with frequent use of “sic,” errors in punctuation, grammar, and spelling appearing in primary sources (as in the preceding quoted phrase where “others” is employed in place of “others’ ”) will be reproduced without comment. For a highly sensationalized account of these proceedings penned by a man claiming to have observed them first-hand, see THE OATHS, SIGNS, CEREMONIES AND OBJECTS OF THE KU-KLUX-KLAN. A FULL EXPOSÉ. BY A LATE MEMBER. 10-15 (Cleveland, n.p. 1868).

60. *See* 2 KLAN REPORT, *supra* note 16, at 8, 142; 6 KLAN REPORT, *supra* note 16, at 308.

turned out a few days afterward.”<sup>61</sup> Shotwell offers much the same rationale, again emphasizing the exigency of prevailing conditions. “This very crime of rape of white women by brutal negroes was the origin of the Ku Klux Klan in the original instance.”<sup>62</sup> A significant segment of the southern white imaginary was imbued with the fiction that black men, whose base passions were artificially restrained by the apparatus of slavery and habitually so during the War, were now free to exercise them over the bodies of innocent white women.<sup>63</sup> “The rapist is a product of the reconstruction period,” declared a well-known turn-of-the-century apologist. “His chrysalis was a uniform . . . He came into life in the abnormal atmosphere of a time rife with discussions of social equality theories, contentions for coeducation and intermarriage.”<sup>64</sup> Although this narrative was not fully elaborated until the

61. 13 KLAN REPORT, *supra* note 15, at 7.

62. 3 THE PAPERS OF RANDOLPH ABBOTT SHOTWELL 382 (J.G. de Roulhac Hamilton & Rebecca Cameron eds., 1931). Unfounded allegations like these became increasingly frequent as Reconstruction progressed. *See, e.g.*, S. REP. NO. 42-1, at 292 (1871); 2 KLAN REPORT, *supra* note 16, at 8-9, 142, 148, 235; 6 KLAN REPORT, *supra* note 16, at 214; ROBUCK, *supra* note 21, at 111. This defense of the klans was sometimes presented in more delicate terms by contemporaries who invoked the image of pure white women subjected to nebulous “insults” and “abuses” at the hands of intolerably impudent freedmen. *See, e.g.*, 2 KLAN REPORT, *supra* note 16, at 11; 7 KLAN REPORT, *supra* note 16, at 1166; *see also* MRS. T.J. JARVIS, THE CONDITIONS THAT LED TO THE KU-KLUX KLAN 18 (1902); ROMINE & ROMINE, *supra* note 21, at 12; ROSE, KU KLUX KLAN, *supra* note 21, at 27, 69; W.S. Simkins, *Why the Ku Klux*, 4 ALCADE 735, 740, 741 (1916). An elderly white woman interviewed decades later under the auspices of the Works Progress Administration (“WPA”) likewise insisted that the Klan helped “to make it safer for the white women” of the South. American Memory Collection, Manuscripts from the Federal Writers’ Project, 1936-1940, Library of Congress, Washington, D.C. [hereinafter American Memory Collection], Interview by Effie Cowan with Sarah Ann Ross Pringle, Marlin, Tex., at 4, at <http://memory.loc.gov/ammem/collections/finder.html> (last visited Nov. 6, 2001). These claims reverberated in the writings of Reconstruction historians well into the twentieth century. *See, e.g.*, CLAUDE BOWERS, THE TRAGIC ERA: THE REVOLUTION AFTER LINCOLN 308 (1929) (“It was not until the original Klan began to ride that white women felt some sense of security.”).

63. In the mind of one observer, rape, along with numerous other crimes, had “run riot in the parishes” as a result of emancipation. J. DICKSON BRUNS, ADDRESS TO THE WHITE LEAGUE OF NEW ORLEANS 5 (New Orleans, A.W. Hyatt 1875).

64. MYRTA LOCKETT AVARY, DIXIE AFTER THE WAR: AN EXPOSITION OF SOCIAL CONDITIONS EXISTING IN THE SOUTH, DURING THE TWELVE YEARS SUCCEEDING THE FALL OF RICHMOND 377 (1906). Borrowing a page from Avary’s book, though without attribution, Bowers too proclaims that “[r]ape is the foul daughter of Reconstruction.” BOWERS, *supra* note 62, at 308. For additional pronouncements of this kind, see CHARLES CARROLL, “THE NEGRO A BEAST” OR “IN THE IMAGE OF GOD” 292 (1900); JAMES CUTLER, LYNCH-LAW: AN INVESTIGATION INTO THE HISTORY OF LYNCHING IN THE UNITED STATES 207 (1905); Atticus G. Haygood, *The Black Shadow in the South*, 16 FORUM 167, 172 (1893); and Charles H. Smith, *Have American Negroes Too Much Liberty?* 16 FORUM 176, 182 (1893). By the turn of the century, popular commentary often contrasted the upstanding behavior of black men left at home with white women and children during the Civil War with the wantonness that assertedly followed. *See* AVARY, *supra*, at 384; BREWSTER, *supra* note 35, at 276; WINFIELD H. COLLINS, THE TRUTH ABOUT LYNCHING AND THE NEGRO IN THE SOUTH 31-32 (1918); DAVIS, AUTHENTIC HISTORY, *supra* note 10, at 172-73; THOMAS NELSON PAGE, THE NEGRO: THE SOUTHERNER’S PROBLEM 111 (1904); TOURGÉE, *supra* note 36, at 428; Philip Bruce, *The American Negro of To-Day*, 77 CONT.

decades following Reconstruction, its genesis lies on the troubled ground of Reconstruction politics and society.<sup>65</sup>

Popular perceptions aside, klansmen and their sympathizers found themselves hard pressed to document these purportedly ubiquitous assaults. This tension between myth and reality is amplified by the following dialogue in which a klan sympathizer is questioned about the prevalence of rape in Mecklenburgh County, North Carolina:

Q: Have there been any rapes by colored men on white women in your county?

A: I do not recollect . . . Mecklenburgh has always been famous for rapes.

Q: Do you recollect any rape committed upon a white woman by a colored man?

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REV. 284, 290 (1900) [hereinafter Bruce, *The American Negro*]; John C. Reed, *What I Know of the Ku Klux Klan* (pt. 2), UNCLE REMUS'S MAGAZINE, Feb. 1908, at 20. This proposition is also reflected in the scientific and pseudoscientific literature of the period. See, e.g., PAUL B. BARRINGER, THE AMERICAN NEGRO, HIS PAST AND FUTURE 13, 15 (3d ed. 1900); Frederick L. Hoffman, *Race Traits and Tendencies of the American Negro*, in 11 PUBL'NS OF THE AM. ECON. ASS'N, at 217 (New York, Macmillan 1896); Hunter McGuire & G. Frank Lydston, *Sexual Crimes Among the Southern Negroes — Scientifically Considered*, 20 VA. MED. MONTHLY 105, 105 (1893); Henry McHatton, *The Sexual Status of the Negro — Past and Present*, 10 AM. J. DERMATOLOGY 6, 8 (1906). Even African Americans seeking to defend black men against wrongful accusations of sexual crimes sometimes relied on the trope of the wartime "good negro" to advance their cause. See, e.g., R.C.O. BENJAMIN, SOUTHERN OUTRAGES: A STATISTICAL RECORD OF LAWLESS DOINGS 11-12 (n.p., R.C.O. Benjamin 1894); JOHN EDWARD BRUCE, *The Blood Red Record: A Review of the Horrible Lynchings and Burning of Negroes By Civilized White Men in the United States*, in THE SELECTED WRITINGS OF JOHN EDWARD BRUCE: MILITANT BLACK JOURNALIST 68, 81 (Peter Gilbert ed., 1971); FREDERICK DOUGLASS, *Why Is the Negro Lynched?*, in 4 THE LIFE AND WRITINGS OF FREDERICK DOUGLASS 491, 499 (Philip Foner ed., 1955); REV. E.K. LOVE, A SERMON ON LYNCH LAW AND RAPING 7 (Augusta, Georgia Baptist Print 1894); IDA B. WELLS-BARNETT, *Southern Horrors: Lynch Law in All Its Phases*, in SELECTED WORKS OF IDA B. WELLS-BARNETT 14, 18 (Trudier Harris ed., 1991); Frederick Douglass, *Lynch Law in the South*, 155 N. AM. REV. 17, 22-23 (1892); Mary Church Terrell, *Lynching from a Negro's Point of View*, 178 N. AM. REV. 853, 862 (1904).

65. By contrast, Madelin Olds argues that "rape was not yet associated with black rights nor incorporated in racist doctrine" during the early phase of the "southern rape complex," which she proposes to have extended from 1877 through the 1880s. Madelin Joan Olds, *The Rape Complex in the Postbellum South* 5-6 (1989) (unpublished D.A. dissertation, Carnegie-Mellon University) (on file with the Carnegie-Mellon University Library). In her view, whites were more often apprehensive that interracial marriage, not rape, would result from the extension of civil rights to the freedmen. See *id.* While Olds rightly emphasizes white angst surrounding the ultimate purport of "social equality," the image of the black rapist was by no means inconsequential in the immediate postwar years. Although the so-called "rape complex" did not reach its apogee until the later nineteenth century, there is ample evidence to suggest that the white South experienced a growing preoccupation with black-male-on-white-female sex crime during and immediately after Reconstruction. See *infra* notes 293-294 and accompanying text. Olds' position further rests on the assumption that whites consciously and consistently distinguished between consensual and non-consensual sex, particularly as between white women and black men, a conclusion that is not borne out in extant records of klan violence. In that context, it was the race of the individuals involved rather than the presence or absence of consent that was most determinative of the outcome.



A: I think there has been.

Q: Can you name a case at all?

A: No, sir, I cannot; but I am pretty sure there has been more than one.<sup>66</sup>

Although the witness eventually succeeds in recollecting one episode in which two black men were accused of raping a white woman and her daughter,<sup>67</sup> his inability to provide the Committee with further evidence to substantiate his original claim suggests that these crimes need not have occurred frequently to have inspired panic among whites. The deft manipulation of these anxieties by white supremacist organizations proved critical to their propagation. That influence is discernible in the words of John W. Gordon, who, when asked if there had been many black-on-white rapes in Georgia, earnestly replied, "O, no sir; but one case of rape by a negro upon a white woman was enough to alarm the whole people of the State."<sup>68</sup>

Even in regions where such crimes were unheard of, apprehensions often ran high. Such was the case in Rome, Georgia, where there were no known incidents of black-male-on-white-female sexual assault and only a single rape reported by a freedman upon a freedwoman.<sup>69</sup> While there are relatively few documented instances of black men sexually assaulting white women during these years,<sup>70</sup> it cannot be said that the legal system as a matter of course ignored those victims who did come forward with allegations against their assailants.<sup>71</sup> In one

66. 2 KLAN REPORT, *supra* note 16, at 268-69. Also suggestive is the testimony of Augustus R. Wright, a Georgia lawyer who confidently declared:

Rape is a very common crime among the black man; it seems to be vastly more so with him than with the white man, and it is vastly more frequent now than it was when he was in a state of slavery . . . I think we have had more rapes by negroes upon white women than almost in the whole history of the country before [the War].

67. 6 KLAN REPORT, *supra* note 16, at 124. Yet, when pressed, Wright was unable to recollect a single instance of such an assault taking place anywhere in his circuit. *See id.* at 124-25. Similarly indicative evidence may be found in 2 KLAN REPORT, *supra* note 16, at 310, 315, and 8 KLAN REPORT, *supra* note 26, at 242.

68. *See* 2 KLAN REPORT, *supra* note 16, at 269.

69. 6 KLAN REPORT, *supra* note 16, at 338.

70. *See* 6 KLAN REPORT, *supra* note 16, at 124-25. The one freedman who was formally charged with rape was also convicted. *See id.* at 40. For further testimony concerning the absence of charges of black-male-on-white-female sexual assault in various southern locales, see 2 KLAN REPORT, *supra* note 16, at 148; 6 KLAN REPORT, *supra* note 16, at 40, 54, 214; and 8 KLAN REPORT, *supra* note 26, at 701-02.

71. To say that sexual assaults by black men upon white women were rare during these years is in no way intended to diminish the significance of those that did occur. Several such allegations are contained in the *Klan Report*. *See, e.g.*, 2 KLAN REPORT, *supra* note 16, at 269, 310, 315; 6 KLAN REPORT, *supra* note 16, at 214, 275; and 8 KLAN REPORT, *supra* note 26, at 446.

71. In her examination of court records from Granville County, North Carolina, Laura Edwards found twenty-four cases in which sexual assaults involving victims and perpetrators of mixed classes and races were prosecuted during the twenty years following the Civil War.

prosecution said to have been based on “very slight” evidence, a black man was convicted of attempting to rape a white woman and sentenced to ten years in the state penitentiary.<sup>72</sup> Freedmen were also unusually vulnerable to false charges of rape, on occasion by white women who had engaged in consensual sex with former slaves but later found it expedient to deny it.<sup>73</sup> Despite the authorities’ willingness, if not eagerness, to respond to such charges, klansmen frequently intervened, imposing their own peculiar brand of justice in the place of lawful sentencing.<sup>74</sup> In light of the klans’ own fixation on sexual transgression as a menace to racial purity, it is darkly ironic that so much of the violence they perpetrated against others would assume a sexualized cast.

### III. SEXUALIZED VIOLENCE: THEMES AND VARIATIONS

To comprehend fully the sexualization of terror as it was perpetrated by the Reconstruction-era klans, I adopt a broad definition of sexual violence, one that encompasses not only rape and attempted rape, but also certain types of whippings, (most obviously those in which victims were forcibly stripped of some or all of their clothing), genital mutilation, and other idiosyncratic, often grotesque forms of sexual torture and humiliation that are less readily categorized.<sup>75</sup> Although it is impossible to know for certain how often these attacks occurred, extant sources, both manuscript and published, provide crucial insights into their scale and significance. Within this diverse body of materials, the thirteen-volume report of the Joint Select Committee established by Congress in 1871 to “inquire into the condition of af-

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As she incisively argues, “These cases unmask the fiction of black-male-on-white-female rape perpetuated by conservative Democrats. Emancipation did not invert the social hierarchy: white men were not reduced to abject powerlessness, nor were their womenfolk exposed to sexually predatory black men.” EDWARDS, *GENDERED STRIFE AND CONFUSION*, *supra* note 3, at 199.

72. See 11 *KLAN REPORT*, *supra* note 40, at 364; see also 2 *KLAN REPORT*, *supra* note 16, at 269; 6 *KLAN REPORT*, *supra* note 16, at 275; 8 *KLAN REPORT*, *supra* note 26, at 242; 12 *KLAN REPORT*, *supra* note 44, at 879. It should be noted that local whites often perceived these sentences to be unduly lenient. See, e.g., 6 *KLAN REPORT*, *supra* note 16, at 275, 291.

73. See, e.g., 7 *KLAN REPORT*, *supra* note 16, at 701-02.

74. George Flemister, a freedman, described one instance in which a black man was found not guilty of attempting to rape a white girl only to be imprisoned for a second time on the same charge and subsequently murdered by a KKK mob. See 7 *KLAN REPORT*, *supra* note 16, at 657; see also *id.* at 723, 725.

75. Employing a similarly comprehensive paradigm, Kathleen Blee affirms that Reconstruction klansmen were “particularly expert in the use of sexual violence and brutality.” BLEE, *WOMEN OF THE KLAN*, *supra* note 10, at 13. By contrast, a recent survey of American lynching based predominantly on secondary sources limits the scope of klan sex crimes to heterosexual rape and finds assaults of this kind to be surprisingly uncommon. See PHILIP DRAY, *AT THE HANDS OF PERSONS UNKNOWN: THE LYNCHING OF BLACK AMERICA* 43 (2002).

fairs in the late insurrectionary states"<sup>76</sup> is an invaluable resource.<sup>77</sup> The *Klan Report* contains dozens of accounts, many of them firsthand, of men and women of both races who were the objects of sexual terror.<sup>78</sup> The utility of the *Report* is further enhanced by the fact that testimony, substantial portions of which are confirmed by external sources, was elicited across a wide spectrum of southern society, from the humblest freedpeople to the most esteemed planters and politicians. Notwithstanding the highly stylized, often obfuscatory, character of the proceedings, this is one of the few Reconstruction-era documents that preserves the voices of so many individuals so dispar-

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76. 1 KLAN REPORT, *supra* note 44, at 1. The Joint Select Committee was tasked to conduct a thorough investigation of mounting reports of klan violence emanating from throughout the South and present its findings to the full Congress expeditiously. What followed was the most extensive congressional inquiry ever undertaken. A formally bipartisan effort, the Committee was composed of 21 members, 13 Republicans and 8 Democrats, including Senators John Scott (Chairman), Zachariah Chandler, Benjamin F. Rice, T.F. Bayard, Frank P. Blair, John Pool, and Daniel D. Pratt, and Representatives Luke P. Poland, Horace Maynard, Glenni W. Scofield, Burton C. Cook, John Coburn, Job E. Stevenson, Charles W. Buckley, William E. Lansing, Samuel S. Cox, James B. Beck, Daniel W. Voorhees, Philadelph Van Trump, Alfred M. Waddell, and James C. Robinson. During the hearings, Buckley, Cook, and Voorhees stepped down and were replaced by John F. Farnsworth, Benjamin F. Butler, and James M. Hanks. See HORN, *supra* note 10, at 296-97; see also TRELEASE, *supra* note 10, at 392; WADE, *supra* note 10, at 86. Hearings began in May of 1871 in Washington, D.C., with subcommittees subsequently dispatched to Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee. The Committee made only cursory attempts to procure evidence concerning outrages in Arkansas, Louisiana, Texas, and Virginia, where the klans were said (for the most part incorrectly) to have essentially disbanded. Meanwhile, klan activity in Kentucky was considered beyond the purview of its investigation because that state had never joined the Confederacy. See TRELEASE, *supra* note 10, at 392.

77. A number of previous scholars have recognized the richness of these volumes for illuminating issues of race, gender, and power in the Reconstruction South. See HODES, WHITE WOMEN, BLACK MEN, *supra* note 4, at 152-74; TRELEASE, *supra* note 10; LOU FALKNER WILLIAMS, THE GREAT SOUTH CAROLINA KU KLUX KLAN TRIALS, 1871-1872 (1996) [hereinafter WILLIAMS, THE GREAT SOUTH CAROLINA KU KLUX KLAN TRIALS]; Hodes, *The Sexualization of Reconstruction Politics*, *supra* note 4; Lou Falkner Williams, *The Constitution and the Ku Klux Klan on Trial: Federal Enforcement and Local Resistance in South Carolina, 1871-1872*, 2 GA. J. S. LEGAL HIST. 41 (1993) [hereinafter Williams, *The Constitution and the Ku Klux Klan on Trial*]; Hodes, *Sex Across the Color Line*, *supra* note 4; Lou Falkner Williams, *The Great South Carolina Ku Klux Klan Trials, 1871-1872* (1991) (unpublished Ph.D. dissertation, University of Florida) (on file with the University of Florida Library) [hereinafter Williams, *The Great South Carolina Ku Klux Klan Trials*]. Excerpts from the *Report* may be found in 2 DOCUMENTARY HISTORY OF RECONSTRUCTION, *supra* note 33, at 331-35, 337-44, 354, 355-57, 372-74; EYEWITNESS: A LIVING DOCUMENTARY OF THE AFRICAN AMERICAN CONTRIBUTION TO AMERICAN HISTORY 261-262 (William Loren Katz ed., 1995); BLACK WOMEN IN WHITE AMERICA: A DOCUMENTARY HISTORY 182-88 (Gerda Lerner ed., 1973); THE TROUBLE THEY SEEN: THE STORY OF RECONSTRUCTION IN THE WORDS OF AFRICAN AMERICANS (Dorothy Sterling ed., Da Capo Press 1994) (1976) [hereinafter THE TROUBLE THEY SEEN]; and WE ARE YOUR SISTERS: BLACK WOMEN IN THE NINETEENTH CENTURY (Dorothy Sterling ed., W.W. Norton & Co. 1997) (1984) [hereinafter WE ARE YOUR SISTERS].

78. An unfortunate consequence of the Committee's intense preoccupation with the obviously political aspects of klan violence, namely those that involved interference with the exercise of the franchise, is that relatively few black women and even fewer white women were sought for questioning.

ately situated with respect to these events.<sup>79</sup> In addition to these volumes, the records of a number of other juridical and quasi-juridical inquiries into the violence that convulsed the states of the former Confederacy further elucidate the problem of sexual terror. Notable among them are the transcripts of the impeachment trial of North Carolina Governor William W. Holden,<sup>80</sup> the multiple state reports on local outrages,<sup>81</sup> the records of federal anti-klan prosecutions,<sup>82</sup> and the

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79. The *Klan Report* inevitably presents certain liabilities, most of which result from the politically divisive nature of the investigation itself. Especially troublesome for historians attempting to sift through its contents is the admissibility of hearsay evidence, a circumstance that gave witnesses the opportunity to introduce rumor and innuendo into the official record without fear of judicial reprisal. Another complication is posed by the high probability that some testimony on each side of the ideological divide was either embellished or fabricated outright, there often being no way to reliably distinguish what is veracious from what is not. Moreover, there is substantial evidence indicating that victims of klan violence were routinely deterred from testifying, or at least from testifying truthfully, by the threat of retaliation, a consideration that obviously does not apply to witnesses sympathetic to "The Democracy." Given that fact, and the seemingly eternal penchant of perpetrators to seek to destroy the credibility of witnesses when secrecy and silence begin to break down, this is a risk that must be assumed if the story of sexualized violence is to be told at all. These qualifications stand in stark contrast to those expressed by earlier students of the period who were generally hostile to the fundamental aims of Reconstruction. Fleming, for example, pronounced the testimony "practically without value for the historian" in no small measure "because of the character [read: race] of the witnesses whose statements are unsupported." WALTER L. FLEMING, *THE KU-KLUX TESTIMONY RELATING TO ALABAMA 2* (1903). Expanding on these remarks, he rather incongruously declares that "negro testimony, however worthless it may appear at first sight, becomes as clear as day to one who, knowing the negro mind, remembers the influences operating upon it." *Id.* at 4.

80. See 2 HOLDEN TRIAL, *supra* note 37. Governor Holden was impeached and ultimately removed from office as a consequence of his actions in the so-called "Kirk-Holden War." Although his support for Radical Reconstruction had long inspired the enmity of Conservatives, it was this episode — during which he directed Colonel George W. Kirk to lead a state militia into two western counties (Alamance and Caswell) for the purpose of suppressing the KKK — that finally sealed his fate with the North Carolina legislature. See *id.* In addition to the trial transcript, a variety of archival and printed primary sources contain valuable information concerning Holden's actions as Governor of North Carolina. See Papers of William Woods Holden, Division of Archives and History, North Carolina Department of Cultural Resources, Raleigh, N.C.; W.W. Holden Papers, Southern Historical Collection, Manuscripts Department, Library of the University of North Carolina at Chapel Hill, Chapel Hill, N.C.; W.W. HOLDEN, *MEMOIRS OF W.W. HOLDEN* (1911), available at <http://docsouth.unc.edu/holden/menu.html> (vol. 2 only) (last modified Nov. 7, 2000); PAPERS OF WILLIAM WOODS HOLDEN (Horace W. Raper ed., 2000) [hereinafter PAPERS OF WILLIAM WOODS HOLDEN]. For further consideration of Holden's personal and political biography, see EDGAR E. FOLK & BYNAM SHAW, *W.W. HOLDEN, A POLITICAL BIOGRAPHY* (1982); WILLIAM C. HARRIS, *WILLIAM WOODS HOLDEN: FIREBRAND OF NORTH CAROLINA POLITICS* (1987); and HORACE W. RAPER, *WILLIAM W. HOLDEN: NORTH CAROLINA'S POLITICAL ENIGMA* (1985).

81. Although these inquiries tended to focus on interference with the electoral process rather than on the larger problem of vigilantism, they nevertheless generated much useful data on klan practices. See, e.g., ALABAMA GENERAL ASSEMBLY, *supra* note 38; LOUISIANA GENERAL ASSEMBLY, REPORT OF [THE] JOINT COMMITTEE OF THE GENERAL ASSEMBLY OF LOUISIANA ON THE CONDUCT OF THE LATE ELECTIONS, AND THE CONDITION OF PEACE AND ORDER IN THE STATE (New Orleans, A.L. Lee 1868); LOUISIANA GENERAL ASSEMBLY, REPORT OF [THE] JOINT COMMITTEE (1869), *supra* note 35; LOUISIANA GENERAL ASSEMBLY, SUPPLEMENTAL REPORT, *supra* note 35; SOUTH CAROLINA GENERAL ASSEMBLY, REPORT ON THE EVIDENCE TAKEN BY THE COMMITTEE

results of the overlapping governmental investigations of the causes and effects of the infamous Memphis riots.<sup>83</sup> Equally crucial is the congressional record of the protracted, often contentious legislative debates surrounding the drafting and implementation of the Ku Klux Klan Act and the enforcement of the Fourteenth and Fifteenth Amendments more broadly.<sup>84</sup> Useful information is also scattered throughout the records of the Bureau of Refugees, Freedmen, and Abandoned Lands (commonly known as the Freedmen's Bureau),<sup>85</sup>

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OF INVESTIGATION OF THE THIRD CONGRESSIONAL DISTRICT UNDER AUTHORITY OF THE GENERAL ASSEMBLY OF SOUTH CAROLINA. MADE AT REGULAR SESSION, 1869-'70 (Columbia, John W. Denny 1870) [hereinafter SOUTH CAROLINA GENERAL ASSEMBLY, REPORT ON THE EVIDENCE TAKEN BY THE COMMITTEE OF INVESTIGATION]; TENNESSEE GENERAL ASSEMBLY, REPORT OF EVIDENCE TAKEN BEFORE THE MILITARY COMMITTEE, *supra* note 21.

82. For Mississippi, see District Court Records [hereinafter DCR], National Archives, East Point, Ga., RG 21, Northern District, Miss., and FULL REPORT OF THE GREAT KU-KLUX TRIAL IN THE U.S. DISTRICT COURT AT OXFORD, MISS. (Memphis, William J. Mansford 1871) [hereinafter MISSISSIPPI KLAN TRIAL]. For North Carolina, see DCR, RG 21, *supra*, Eastern District, N.C. For South Carolina, see DANIEL H. CHAMBERLAIN, ARGUMENTS OF D.H. CHAMBERLAIN DURING THE KU KLUX TRIALS AT COLUMBIA, S.C. (Columbia, Republican Printing Co. 1872); DAVID T. CORBIN, ARGUMENT OF [THE] HON. D.T. CORBIN IN THE TRIAL OF THE KU-KLUX, BEFORE THE UNITED STATES CIRCUIT COURT (Washington, D.C., Chronicle Publ'g Co. 1872) [hereinafter CORBIN'S ARGUMENT]; DCR, RG 21, *supra*, Eastern District, S.C.; S.C. KLAN TRIALS, *supra* note 16; UNITED STATES CIRCUIT COURT, THE GREAT KU KLUX TRIALS. OFFICIAL REPORT OF THE PROCEEDINGS BEFORE [THE] U.S. CIRCUIT COURT, HON. HUGH L. BOND, CIRCUIT JUDGE, PRESIDING, AND HON. GEORGE S. BRYAN, DISTRICT JUDGE, ASSOCIATE, HELD AT COLUMBIA, S.C. NOVEMBER TERM, 1871 (Columbia, Columbia Union 1872).

83. See MEMPHIS RIOTS AND MASSACRES, H.R. REP. NO. 39-101 (1866). This document has been reprinted as MEMPHIS RIOTS AND MASSACRES (Mnemosyne Publ'g Co. 1969) (1866) [hereinafter MEMPHIS RIOTS]. See also AGO, *supra* note 16, RG 94, M 666, R 26, F 2586; BRFal, *supra* note 36, RG 105, Box [hereinafter B] 68, Reports Relating to [the] Memphis Riots, Memphis, Tenn., 1866 (including an "Abstract of Persons Killed, Wounded, and Mistreated and Losses by Fire and Robbery during the Riots at Memphis, Tennessee," a "Report of Casualties and Property Destroyed during the Memphis Riots," and a "Report Concerning the Late Riots at Memphis, Tenn."); BRFal, *supra* note 36, RG 105, B 71, Affidavits (Memphis Riots), Memphis, Tenn., 1866 (including the affidavits of Peter Bloom, Rebecca Bloom, Mary Grady, Lucy Tibbs, Cynthia Townsend, and Elvira Walker, all of whom were either sexually assaulted themselves or friends of those who were so victimized). Portions of this testimony are also included in BACKGROUND FOR RADICAL RECONSTRUCTION: TESTIMONY TAKEN FROM THE HEARINGS OF THE JOINT COMMITTEE ON RECONSTRUCTION, THE SELECT COMMITTEE ON THE MEMPHIS RIOTS AND MASSACRES, AND THE SELECT COMMITTEE ON THE NEW ORLEANS RIOTS, 1866 AND 1867 (Hans L. Trefousse ed., 1970), and BLACK WOMEN IN WHITE AMERICA, *supra* note 77, at 174-79.

84. See generally 39th-43d Congress, Senate and House Documents and Reports; CONG. GLOBE, 1866-1872. For a compendium of relevant congressional sources, see THE RECONSTRUCTION AMENDMENTS DEBATES: THE LEGISLATIVE HISTORY AND CONTEMPORARY DEBATES IN CONGRESS ON THE 13TH, 14TH, AND 15TH AMENDMENTS (Alfred Avins, ed. 1967).

85. See BRFal, *supra* note 36, RG 105. Selections from the Freedmen's Bureau records are also available in several outstanding document collections produced by The Freedmen and Southern Society Project. See 1 THE DESTRUCTION OF SLAVERY (Ser. 1) (Ira Berlin et al. eds., 1985); 2 THE WARTIME GENESIS OF FREE LABOR: THE LOWER SOUTH (Ser. 1) (Ira Berlin et al. eds., 1990); 3 THE WARTIME GENESIS OF FREE LABOR: THE UPPER SOUTH

northern and southern newspapers of the period,<sup>86</sup> and the writings of contemporary journalists and social critics.<sup>87</sup> While this survey by no means exhausts the universe of viable resources, it does underscore the centrality of legal-historical texts in examining the terroristic practices of organizations like the KKK, whose operations were largely covert, pervasively sexualized, and directed against a population that was disproportionately illiterate, materially overpowered, and fearing for its very survival.

An illustrative example from one of South Carolina's major Ku Klux Klan trials evokes something of the texture and meanings that may be gleaned from the historical record of these atrocities. Arguing for the defense, Cyrus Melton seeks to vindicate his client by employing a familiar courtroom tactic — refuting guilt through emotive reference to the heinousness of the crime alleged. With studied disbelief, he queries “Was ravishing helpless women a part of this conspiracy?”<sup>88</sup> To which there was of course but one “correct” answer.<sup>89</sup> Continuing his argument, Melton endeavors to appeal to the loftiest notions of southern white manhood, and in doing so to render assaults against freedwomen that were in truth unremarkable as somehow fabricated or fantastical.

We have had here, from women, details of the most disgusting character, put forward for the purpose of showing from this act that ravishing women was one of the purposes of this organization. Now, I ask you, do you believe it, and that there did exist upon the face of God's earth an organization which would have among its purposes that of committing these gross outrages upon helpless women?<sup>90</sup>

The evidence adduced below demonstrates that Melton was wrong in his estimation of the manly righteousness of the Klan. While he plainly oversimplified the prosecution's position for rhetorical effect, it is nonetheless true that the KKK and its imitators purposefully re-

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(Ser. 1) (Ira Berlin et al. eds., 1993); *THE BLACK MILITARY EXPERIENCE* (Ser. 2) (Ira Berlin et al. eds., 1982); *FAMILIES AND FREEDOM: A DOCUMENTARY HISTORY OF AFRICAN-AMERICAN KINSHIP IN THE CIVIL WAR ERA* (Ira Berlin & Leslie S. Rowland eds., 1997); *FREE AT LAST: A DOCUMENTARY HISTORY OF SLAVERY, FREEDOM, AND THE CIVIL WAR* (Ira Berlin et al. eds., 1992).

86. See, e.g., *COLORED AMERICAN* (Augusta, Ga.); *INDEPENDENT MONITOR* (Tuscaloosa, Ala.); *LOYAL GEORGIAN* (Augusta); *NEW NAT'L. ERA* (Washington, D.C.); *N.Y. TRIB.*; *N.Y. TIMES*.

87. See generally *SIDNEY ANDREWS, THE SOUTH SINCE THE WAR* (Boston, Ticknor & Fields 1866); *DIXON, NEW AMERICA*, *supra* note 51; *SOMERS*, *supra* note 21; *JOHN TROWBRIDGE, THE SOUTH: A TOUR OF ITS BATTLE-FIELDS AND RUINED CITIES* (Hartford, L. Stebbins 1866).

88. S.C. *KLAN TRIALS*, *supra* note 16, at 582.

89. This deduction is confirmed by the attorney's gentle remonstrance, “And yet you have been made to believe so, if you are to be guided by testimony of that kind.” *Id.*

90. *Id.*

sorted not only to rape, but to an entire spectrum of sexual crime as a means of advancing their agenda.<sup>91</sup> Whereas Melton depicts the “ravishing” of freedwomen as an unintended, even regrettable, consequence of klansmanship, this Part contends that sexual terror was in actuality among its most starkly defining features, designedly effected to compromise the stability, resolve, and selfhood of the newly freed slaves at the same time it punished their white “accomplices” as traitors to their race, thereby denying them the privileges of color that would otherwise have accrued. Whatever else may be gleaned from Melton’s polemics, it must be said that the charges he takes such pains to disavow provide but a glimpse at klansmen’s use of sexualized violence against African Americans and those who would befriend them. Part III is intended to provide as complete an understanding of these offenses as can be educed by examining the diverse texts that have survived to witness them.

### A. Whipping

Of the thousands of physical assaults perpetrated by the Reconstruction-era klans,<sup>92</sup> whipping was by far the most commonplace.<sup>93</sup> Klansmen exercised little restraint in these attacks, subjecting men, women, and children of all ages and colors to brutal lashings that resulted in the deaths of many and serious injury to countless more.<sup>94</sup>

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91. Responding to Melton’s assertion, Daniel Chamberlain argued for the prosecution:

[M]y eloquent friend asked yesterday, if, when they are ravishing women, and whipping women, if they are still pursuing Radicalism? I answer, yes, yes. When they whipped Mary Robertson it was to make her tell where her husband was; when they ravished Jane [sic] Simril, it was to punish her as well as to gratify their lusts, and to punish her because she would not tell where her Radical husband was . . . Its general and constant purpose was the terrorizing of colored people by injuring them; by injuring their families until they shall have paid the penalty for their Radicalism, and be deterred from voting at future elections.

*Id.* at 593-94. In keeping with the times, Chamberlain implicitly relies on a definition of “politics” that privileges activities relating to parties and elections. Contemporary interpretations of the era, however, including this one, generally reflect a broader understanding of the political that encompasses relations of power beyond strictly partisan contestation. Thus, while women’s involvement in Reconstruction politics was considerably more varied and complex than this passage alone suggests, it nonetheless posits an integral connection between political behavior and sexualized violence that is not gender-exclusive.

92. There are no reliable figures available to measure the extent of klan violence during Reconstruction and the years immediately following. By one conservative estimate, more than 23,000 persons were molested by the klans from their inception to the summer of 1872. See *The Ku-Klux Laws*, NEW NAT’L ERA (Washington, D.C.), Aug. 8, 1872, at 1; *Startling Facts*, EVENING EXPRESS (Los Angeles), Aug. 22, 1872, at 1. For another contemporaneous assessment, see STEVENSON, *KU KLUX KLAN*, *supra* note 35, at 32 (setting the number of victims at approximately 15,000).

93. Evidence of these attacks is especially prolific in the records of the governmental committees and agencies that undertook formal investigations of the freedpeople’s condition in the postwar era. See, e.g., 1-13 *KLAN REPORT*, *supra* notes 15, 16, 17, 26, 34, 40, 44, 59, and *infra* note 113.

94. See *id.*

Whipping and its omnipresent threat had been a central feature of slave life,<sup>95</sup> one that white Southerners as a body were demonstrably unwilling to forsake.<sup>96</sup> While it would be an overstatement to assert that all, or even most, of these attacks were unambiguously sexual in nature, it is fair to say that even “ordinary” klan whippings often bore a distinctly sexualized cast.<sup>97</sup> Indicative of this group are the many whippings that contain some deliberately unnamed element bearing vaguely, yet palpably, sexual overtones. Otherwise inhibited witnesses frequently manage to communicate a great deal of important information through their silences, pauses, and carefully chosen words. Thus, when a Freedmen’s Bureau official describes a klan raid in which several freedpeople have been “taken from their beds at night and severely whipped and *shamefully* bruised,”<sup>98</sup> there is every possibility

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95. For discussion of this point by historians of slavery and the Old South, see JOHN W. BLASSINGAME, *THE SLAVE COMMUNITY: PLANTATION LIFE IN THE ANTEBELLUM SOUTH* 293-97, 300-03, 317-19 (rev. ed. 1979) [hereinafter *BLASSINGAME, THE SLAVE COMMUNITY*]; DICKSON D. BRUCE, JR., *VIOLENCE AND CULTURE IN THE ANTEBELLUM SOUTH* 115, 124-25, 139-43 (1979) [hereinafter *BRUCE, VIOLENCE AND CULTURE IN THE ANTEBELLUM SOUTH*]; ESCOTT, *supra* note 7, at 26-27, 42-44; JOHN HOPE FRANKLIN & LOREN SCHWENINGER, *RUNAWAY SLAVES: REBELS ON THE PLANTATION* 42-48, 239-40, 251-52 (1999); EUGENE D. GENOVESE, *ROLL, JORDAN, ROLL: THE WORLD THE SLAVES MADE* 63-67, 307-08, 322, 374, 379-80, 475, 619-20, 649 (1974); PETER KOLCHIN, *AMERICAN SLAVERY, 1619-1877*, at 57-60, 120-22, 142, 159, 164, 167 (1993); and KENNETH M. STAMPP, *THE PECULIAR INSTITUTION: SLAVERY IN THE ANTE-BELLUM SOUTH* 114, 174-79, 186-87 (1989) [hereinafter *STAMPP, THE PECULIAR INSTITUTION*]. Students of corporal punishment have arrived at analogous conclusions regarding the prevalence of slave whipping. *See, e.g.*, GEORGE RYLEY SCOTT, *THE HISTORY OF CORPORAL PUNISHMENT: A SURVEY OF FLAGELLATION IN ITS HISTORICAL ANTHROPOLOGICAL AND SOCIOLOGICAL ASPECTS* 72-78 (8th impression 1950); R.G. VAN YELLYR, *THE WHIP AND THE ROD: AN ACCOUNT OF CORPORAL PUNISHMENT AMONG ALL NATIONS AND FOR ALL PURPOSES* 154-59 (1941). More recently, a number of art, literary, and social historians have contemplated the implications of the antebellum preoccupation with the corporeal experience of slavery. Especially provocative are SAIDIYA V. HARTMAN, *SCENES OF SUBJECTION: TERROR, SLAVERY, AND SELF-MAKING IN NINETEENTH-CENTURY AMERICA* 3-112 (1997); KAREN SÁNCHEZ-EPPLER, *TOUCHING LIBERTY: ABOLITION, FEMINISM, AND THE POLITICS OF THE BODY* (1993); MARCUS WOOD, *BLIND MEMORY: VISUAL REPRESENTATIONS OF SLAVERY IN ENGLAND AND AMERICA 1780-1865*, at 183-85, 236-39, 260-63 (2000); and Karen Halttunen, *Humanitarianism and the Pornography of Pain in Anglo-American Culture*, 100 *AM. HIST. REV.* 303, 320-34 (1995). These works, while highly suggestive, do not speak directly to the sexualization of terror by those most responsible for effectuating it.

96. Indeed, many freedpeople insisted that whippings were harsher and more frequent in the post-emancipation period. *See, e.g.*, 12 *THE AMERICAN SLAVE: A COMPOSITE AUTOBIOGRAPHY*, ser. 2, pt. 1, at 210 (George P. Rawick ed., 1972) [hereinafter *AMERICAN SLAVE*, ser. 2]; 7 *KLAN REPORT*, *supra* note 16, at 925; 9 *KLAN REPORT*, *supra* note 26, at 858-59; *N.Y. TIMES*, Oct. 13, 1868, at 4. Catherine Clinton remarks on the apparent shift in the severity of punishment in *Bloody Terrain*, *supra* note 2, at 328.

97. In this too the klans could find ready inspiration in slavery’s nefarious example. For consideration of what Deborah Gray White has termed the “sexually suggestive” character of many slave whippings, see DEBORAH GRAY WHITE, *AR’N’T I A WOMAN? FEMALE SLAVES IN THE PLANTATION SOUTH* 33 (1985) [hereinafter *WHITE, AR’N’T I A WOMAN?*], and Ervin L. Jordan, Jr., *Sleeping With the Enemy: Sex, Black Women, and the Civil War*, 18 *W. J. BLACK STUD.* 55, 57 (1994) [hereinafter *Jordan, Sleeping With the Enemy*].



that what is “shameful” is not merely the violence itself, but its implied sexualization.<sup>99</sup>

At the same time, there are many more explicit examples of the klans’ propensity for sexualized whipping. Although these assaults vary considerably in their particulars, with rare exception they reveal klansmen actively inducing their victims’ humiliation. This propensity was readily evidenced when, in the midst of a nighttime offensive, the KKK came upon the daughter of a freedman who had somehow provoked their ire and promptly set about to punish her in her father’s stead. Not satisfied with the tangible effects of the lashing they had imposed, the klansmen continued to make her dance for their amusement.<sup>100</sup> Hannah Travis, an ex-slave intimately familiar with the ways of the Klan, describes an almost identical episode in which the night-riders pulled a pregnant woman from her bed and demanded that she dance while her husband helplessly looked on.<sup>101</sup> Some attacks were more overtly sexual still. Thomas Settle provided testimony regarding an episode in which klansmen “took a young negro man who was in the house that night and whipped him, and compelled him to go through the form of sexual intercourse with one of the girls, whipping him at the same time,” all of this in the presence of the girl’s father.<sup>102</sup>

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98. BRFAL, *supra* note 36, RG 105, Vol. 30, Murders and Outrages, New Orleans, La., May 31, 1868 (emphasis added); *see also* *The Ku-Klux*, NEW NAT’L ERA (Washington, D.C.), Mar. 2, 1871, at 3 (“many persons have been whipped and otherwise shamefully abused”) [hereinafter *The Ku-Klux*].

99. There are of course alternative explanations for the witness’s choice of words. But the cumulative impression left by extant accounts of klansmen descending upon victims in their bedrooms and committing what are quite often literally unspeakable acts of vengeance is that there is more going on than the plain language of the text typically communicates.

100. *See* 5 KLAN REPORT, *supra* note 16, at 1475. Anthony Foster, an elderly white man suspected of radicalism, was forced to engage in a similar performance for the benefit his assailants. *See* 3 KLAN REPORT, *supra* note 17, at 574-75. For additional examples of this form of abuse, *see* AGO, *supra* note 16, RG 94, M 666, R 67, F 2146, Letter from Colonel S.W. Crawford to Assistant Adjutant General, Department of the South, Mar. 31, 1870; S. EXEC. DOC. NO. 41-16, at 60 (1871); S. REP. NO. 42-1, at 73 (1871); 10 AMERICAN SLAVE, ser. 2, *supra* note 96, pt. 6, at 86; 11 AMERICAN SLAVE, ser. 2, *supra* note 96, at 80-81; 1 KLAN REPORT, *supra* note 44, at 64; 3 KLAN REPORT, *supra* note 17, at 47, 574-75; 4 KLAN REPORT, *supra* note 34, at 734, 757-58; 5 KLAN REPORT, *supra* note 16, at 1868-69, 1876, 1922; 6 KLAN REPORT, *supra* note 16, at 85, 481; 7 KLAN REPORT, *supra* note 16, at 886, 914, 921, 950; 8 KLAN REPORT, *supra* note 26, at 79, 100, 474, 476; 9 KLAN REPORT, *supra* note 26, at 1211; and S.C. KLAN TRIALS, *supra* note 16, at 515, 765. Although coerced terpsichorean spectacles may have been institutionalized by klansmen, they were also orchestrated by slave patrollers, some of whom also made their charges dance as a matter of sport. *See* FRY, *supra* note 13, at 146-47.

101. *See* 10 AMERICAN SLAVE, ser. 2, *supra* note 96, pt. 6, at 350.

102. S. REP. NO. 42-1, at 85. This incident is also recounted in Holden Papers, Rare Book, Manuscript, and Special Collections Library, Duke University, Durham, N.C. [hereinafter Holden Papers], Letter from Justice Thomas Settle to Governor William W. Holden (July 28, 1869), *cited in* TRELEASE, *supra* note 10, at 195. An elderly North Carolina freedman was likewise forced to simulate intercourse with another man’s wife. *See* AGO, *supra* note 16, RG 94, M 666, R 12, F 1612, Letter from Edward Field to C.H. Morgan, Oct. 3,

In other instances, freedmen who had themselves been scourged were forced to whip one another as klansmen directed the proceedings.<sup>103</sup> So it was with a former slave in South Carolina who was ordered to turn the lash against one of his fellows while his assailants, seemingly intoxicated by the scene of mastery reasserted, persisted in compulsively lashing him.<sup>104</sup> In no case were klan members content with the infliction of physical pain alone; instead, they insisted on further debasing their victims, deriving sadistic pleasure from the spectacle of humiliation they had staged. Zealous perpetrators and approving bystanders alike were complicitous in generating the voyeuristic atmos-

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1871; see also AGO, *supra* note 16, RG 94, M 666, R 12, F 1612, Affidavit of Gabriel Rialls, Oct. 5, 1871 (chronicling a similar episode in that state).

103. Slaves, too, occasionally suffered abuses of this kind. See, e.g., JOHN THOMPSON, *THE LIFE OF JOHN THOMPSON, A FUGITIVE SLAVE; CONTAINING HIS HISTORY OF 25 YEARS IN BONDAGE, AND HIS PROVIDENTIAL ESCAPE* 20 (Worcester, John Thompson 1856) [hereinafter THOMPSON, *THE LIFE OF JOHN THOMPSON*].

104. See 4 KLAN REPORT, *supra* note 34, at 613. In another encounter closely resembling this one, a white South Carolinian was constrained by nightriders to whip a former slave. See 3 KLAN REPORT, *supra* note 17, at 366. In an obverse scenario, a mob of white men, this time undisguised, directed several freedmen to whip a white Republican. See 9 KLAN REPORT, *supra* note 26, at 695. Parallel methods of terrorizing and debasing an enemy population were seen in the early 1990s, when Serb troops forced Muslim detainees to assault one another on command. See U.N. SCOR, *Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780* (1992), U.N. Doc. S/1994/674, at 247 (1994) [hereinafter BASSIOUNI REPORT]; see also M. CHERIF BASSIOUNI & MARCIA MCCORMICK, *SEXUAL VIOLENCE: AN INVISIBLE WEAPON OF WAR IN THE FORMER YUGOSLAVIA* 6, 17-18, 20 (DePaul University College of Law Occasional Paper No. 1, 1996); Maria B. Olujić, *Embodiment of Terror: Gendered Violence in Peacetime and Wartime in Croatia and Bosnia-Herzegovina*, 12 *MED. ANTHRO. Q.* 31, 41 (1998); Todd A. Salzman, *Rape Camps as a Means of Ethnic Cleansing: Religious, Cultural, and Ethical Responses to Rape Victims in the Former Yugoslavia*, 20 *HUM. RTS. Q.* 348, 359 (1998). In one notorious instance, a male prisoner was ordered to bite off another man's testicle. See *Prosecutor v. Tadic*, Opinion and Judgment, Case No. IT-94-1, ¶¶ 45, 194, 197-98, 206 (Int'l Crim. Trib. for the Former Yugoslavia May 7, 1997); *Prosecutor v. Tadic*, Tadic Initial Indictment, Case No. IT-94-1, ¶ 5.1 (Feb. 13, 1995); *Prosecutor v. Tadic*, First Amended Indictment, Case No. IT-94-1, ¶ 6 (Sept. 1, 1995); *Prosecutor v. Tadic*, Tadic Second Amended Indictment, Case No. IT-94-1, ¶ 6 (Dec. 14, 1995); see also ROY GUTMAN, *A WITNESS TO GENOCIDE: THE 1993 PULITZER PRIZE-WINNING DISPATCHES ON THE 'ETHNIC CLEANSING' OF BOSNIA* 98-99 (1993) [hereinafter GUTMAN, *A WITNESS TO GENOCIDE*]; Kelly D. Askin, *Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current Status*, 93 *AM. J. INT'L L.* 97, 101, 102-03 (1999). For further information concerning sexual violence perpetrated against men in this conflict, see BASSIOUNI REPORT, *supra*, at Annex IX. See also BASSIOUNI & MCCORMICK, *supra*, at 17-18, 20; GUTMAN, *A WITNESS TO GENOCIDE*, *supra*, at 51, 100, 144; Søren Buus Jensen & Mladen Lončar, *Sexually Violated Men: A Pilot Study from Bosnia-Herzegovina and Croatia*, WORLD HEALTH ORGANIZATION OFFICE OF THE SPECIAL REPRESENTATIVE FOR HUMANITARIAN ASSISTANCE (copy on file with the author); Mladen Lončar, *Sexual Torture of Men in the War*, in *WAR VIOLENCE, TRAUMA AND THE COPING PROCESS* 212 (Libby Tata Arcel ed., 1998) [hereinafter *WAR VIOLENCE*]; Fred Pelka, *Voices from a War Zone*, 55 *HUMANIST* 6, 7 (1995); *Thousands of Men Raped in Bosnia. A Taboo on War Reporting*, BOSNET DIG., at <http://www.bosnet.org/archive/bosnet.w3archive/9503/msg00106.html> (Mar. 15, 1995). Similar episodes were subsequently chronicled in Chechnya. See, e.g., Patrick Cockburn, *Chechens "Raped and Beaten" in Detention Camps*, *INDEPENDENT* (London), Feb. 10, 2000, at 14; Michael Wines, *Chechens Tell of Torture in Russian Camp*, *N.Y. TIMES*, Feb. 18, 2000, at A12.

phere that was symptomatic of these encounters.<sup>105</sup> When victims danced, feigned sex acts, or went through the motions of flagellation, they were performing their own subjugation. In doing so, they were being used to fulfill both the specular and the sexual needs of klansmen seeking to revive the privileges of white masculinity over the bodies of their former slaves.

The sexualized nature of many klan whippings can be read most clearly by looking to the locus of punishment and the manner in which these chastisements were administered. Surveying what is known about the injured body, ample testimony suggests that klansmen frequently chose victims' breasts and genitals as special targets of their enmity.<sup>106</sup> Exemplifying this method, Sally Hall and her two daughters were taken from their home and severely lashed, whereupon "one of them [was] made to exhibit her person whilst the fiends proceeded to inflict blows upon her private parts."<sup>107</sup> A similar dynamic is manifest in the Klan's attack on Mr. Downey, a white man accused of betraying the order's secrets. According to a witness who had observed Downey's injuries firsthand, "there was a very severe bruise on his thigh, up near the groin, and some other severe bruises."<sup>108</sup> The choice of a genital assault was not adventitious. Driven by concerns largely based on sex, klansmen often gravitated towards this most reflexive form of sexualized violence to punish those whose conduct or beliefs were inimical to the racial hierarchy they were seeking to consolidate.<sup>109</sup>

In addition to having their sexual parts sadistically marked by pre-dacious klan members, victims were often placed in sexually evocative positions by their attackers. George Taylor, a former slave from Alabama, offers a rueful account of an experience that was wholly unexceptional among the freedpeople and their allies: being dragged out of bed in the middle of the night by a band of disguised men only to be abducted and subjected to further indignities.

105. See, e.g., *infra* text accompanying notes 168-169.

106. An especially horrific account of a freedwoman abused in this fashion is contained in *Fiendish Cruelty, Hellish Barbarity!! Inhuman Treatment of a Freedwoman. A Relic of Barbarism — The Whipping-Post In Vogue*, LOYAL GEORGIAN (Augusta), Oct. 13, 1866, at 3 [hereinafter *Fiendish Cruelty*]. This case also appears in BRFAL, *supra* note 36, RG 105, Vol. 270, Complaints and Cases Tried, Griffen, Ga., Sept. 24, 1866, and BRFAL, *supra* note 36, RG 105, M 798, R 14, Letters Received, Ga., Sept. 25, 1866. It is discussed in greater depth *infra* text accompanying notes 168-169. For related examples, see 2 HOLDEN TRIAL, *supra* note 37, at 1366, and 11 KLAN REPORT, *supra* note 40, at 330.

107. AGO, *supra* note 16, RG 94, M 666, R 1, F 60, Outrages Committed by Persons in Disguise in the County of Alamance Since the 1st of December 1868, Dec. 22, 1870; see also S. REP. NO. 42-1, at lxvi (chronicling these same attacks).

108. 2 KLAN REPORT, *supra* note 16, at 130.

109. Outrages of this kind are considered in Part III.C *infra*.

[T]hey laid me down on the face, and sat on my head and on my arms and on my feet, and they whipped me. I think they all whipped; they took it around and around. After they got through whipping me, they took some sharp instrument and stuck it into me all about over me.<sup>110</sup>

While the witness does not specify into what parts of his body the “sharp instrument” was introduced, he does express the torment and confusion of a man who has endured something beyond a superficial physical injury. Having been overpowered by his assailants, thrust to the ground and forced to endure the indignity of having a klansman’s groin suspended directly overhead, it is not difficult to imagine how profound a violation he must have suffered.<sup>111</sup> The same is true of an elderly North Carolina freedman visited by a dozen or so nightriders who “broke his door open, rushed in and seized him, took him to the woods, and while one of their number held his head between the knees of one of them, the rest struck him twenty-five lashes apiece with a leather strap.”<sup>112</sup> In these and many other assaults, the objectives of chastisement were not realized through the generation of pain and fear alone; rather, the klans actively set out to degrade their victims, and regularly did so by employing methods laden with sexual overtones.

The category of whipping that is perhaps most indisputably sexualized involved forcibly stripping victims prior to or during a klan offensive.<sup>113</sup> Much as they had been under slavery, these disciplinary

110. 8 KLAN REPORT, *supra* note 26, at 572.

111. Further emblemizing the sexual brutality with which much of the violence of the era was imbued, klansmen at times forced victims to their knees and whipped them from behind, assuming a stance not unlike that commonly portrayed in modern sadomasochistic pornography. *See, e.g.*, 3 KLAN REPORT, *supra* note 17, at 350; 6 KLAN REPORT, *supra* note 16, at 465.

112. S. REP. NO. 42-1, at cxiii.

113. These cases pervade the literature on klan violence. Although I will hereafter refrain from proffering a similarly expansive list of sources, this note is intended to give readers a sense of the scope and variety of evidence available to document the sexualization of terror in the postbellum South. Even this catalog, however, is by no means exhaustive. *See, e.g.*, AGO, *supra* note 16, RG 94, M 666, R 1, F 60, Outrages Committed by Persons in Disguise in the County of Alamance Since the 1st of December 1868, Dec. 22, 1870; AGO, *supra* note 16, RG 94, M 666, R 12, F 1612, Letter from C.H. Morgan to Adjutant General, Department of the East, May 4, 1871; AGO, *supra* note 16, RG 94, M 666, R 67, F 2146, Affidavit of E.M. Mulligan, July 30, 1869; BRFal, *supra* note 36, RG 105, M 999, R 34, Affidavit of Frank Dickerson, Nashville, Tenn., Jan. 14, 1868; BRFal, *supra* note 36, RG 105, B 91, Affidavit of Lewis Slegald, Tenn., July 8, 1868; BRFal, *supra* note 36, RG 105, Vol. 136, Assistant Adjutant General, Synopses of Reports, Washington, D.C., July 18, 1868; BRFal, *supra* note 36, RG 105, Vol. 136, Assistant Adjutant General, Synopses of Reports, Oct. 29, 1868. KKK Papers, *supra* note 16, Testimony of John W. Long [State v. Tarpley], at 9; KKK Papers, *supra* note 16, Testimony of Sandy Sellers [State v. Andrews], at 1; H.R. MISC. DOC. NO. 41-53, at 165, 299, 300 (1870); S. REP. NO. 42-1, at lxvi, 85; CONG. GLOBE, 42d Cong., 1st Sess. 155 (1871); ALABAMA GENERAL ASSEMBLY, *supra* note 38, at 74-75; 14 AMERICAN SLAVE, ser. 2, *supra* note 96, pt. 1 at 15; 2 HOLDEN TRIAL, *supra* note 37, at 1170, 1382, 1383, 1388, 1442, 1444, 1471, 1510, 1762; 2 KLAN REPORT, *supra* note 16, at 167, 204-05; 3 KLAN REPORT, *supra* note 17, at 36, 297, 350, 380, 403, 417, 436-37, 441, 521, 577, 580; 4 KLAN REPORT, *supra* note 34, at 697, 699, 701; 5 KLAN REPORT, *supra* note 16, at

practices were designed at least in part to shame a threatening “other” into abject submission.<sup>114</sup> Therefore, although whites desperate to maintain control over the region’s African American population no longer had the force of law to sustain them, they had readily available models of coercion and no shortage of human and material reserves with which to enact them. An especially egregious instance of this familiar punishment involved a Georgia freedwoman named Mary Brown, who, along with several friends and family members, was treated to a brutally salacious klan attack. As one of the women described it,

They had a show of us all there; they had us all lying in the road, Mary Brown, Mary Neal, and my next youngest daughter. They had us all stripped there, and laughed and made great sport. Some of them squealed the same as if they were stable horses just brought out.<sup>115</sup>

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1407, 1864; 6 KLAN REPORT, *supra* note 16, at 18, 375-77, 386, 387, 389, 400, 401, 407, 463, 464, 465-66, 473, 479, 501-02, 566; 7 KLAN REPORT, *supra* note 16, at 597-98, 642, 647, 669, 697, 732, 972, 1022, 1114; 10 JOINT SELECT COMM. ON CONDITIONS OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, 42D CONG., REPORT OF THE JOINT SELECT COMMITTEE TO INQUIRE INTO THE CONDITION OF AFFAIRS IN THE LATE INSURRECTIONARY STATES, Alabama, pt. 3, at 1993-94, 1997 (Washington, D.C., Government Printing Office 1872) [hereinafter 10 KLAN REPORT]; 11 KLAN REPORT, *supra* note 40, at 270, 326, 328, 485; 13 KLAN REPORT, *supra* note 15, at 55, 59-60, 65, 73, 307; S.C. KLAN TRIALS, *supra* note 16, at 205, 283, 481, 482, 488, 490, 511, 570; SOUTH CAROLINA GENERAL ASSEMBLY, REPORT ON THE EVIDENCE TAKEN BY THE COMMITTEE OF INVESTIGATION, *supra* note 81, at 1063; STEVENSON, KU KLUX KLAN, *supra* note 35, at 10, 11-12; TENNESSEE GENERAL ASSEMBLY, REPORT OF EVIDENCE TAKEN BEFORE THE MILITARY COMMITTEE, *supra* note 21, at 6, 20, 28, 46, 55; *Ku-Kluxism! The Last Ku-Klux Outrage, One Negro Murdered in Cold Blood, and Another not Expected to Live*, NEW NAT’L ERA (Washington, D.C.), Jan. 26, 1871, at 1; *School Teacher Whipped in Bullock County*, COLORED TRIB. (Savannah), June 3, 1876, at 2; *Still Another Ku-Klux Outrage*, NEW NAT’L ERA (Washington, D.C.), Feb. 23, 1871, at 1. This form of abuse was not the exclusive province of the Reconstruction-era klans. In her study of the second Ku Klux Klan, Nancy MacLean writes: “More than a few Klan flogging teams stripped their victims or pulled down their pants and underwear for the whippings, which sometimes continued until blood flowed freely — in one case, even after the terrified victim had defecated all over himself.” MACLEAN, BEHIND THE MASK OF CHIVALRY, *supra* note 10, at 163. Glenn Feldman provides further substantiation of this point in his discussion of a Tennessee editor who “drew attention to the obvious sexual component” of many klan floggings, contending “that the Klansmen who participated were not only brutes, cowards, and moral fanatics but also sadistic sexual perverts.” GLENN FELDMAN, POLITICS, SOCIETY, AND THE KLAN IN ALABAMA 1915-1949, at 100 (1999).

114. See BELL HOOKS, AIN’T I A WOMAN: BLACK WOMEN AND FEMINISM 37-38 (1981). For a graphic account of the stripping and whipping of slave women, see 4 THE AMERICAN SLAVE: A COMPOSITE AUTOBIOGRAPHY, supp. ser. 1, pt. 2, at 464 (George P. Rawick ed., 1977) [hereinafter AMERICAN SLAVE, supp. ser. 1]. Additional examples of this method of punishment as it was employed in the slave South may be found in 4 THE AMERICAN SLAVE: A COMPOSITE AUTOBIOGRAPHY, ser. 1, pt. 1, at 180 (George P. Rawick ed., 1972) [hereinafter AMERICAN SLAVE, ser. 1]; 5 AMERICAN SLAVE, ser. 1, *supra*, pt. 3, at 244; 4 AMERICAN SLAVE, supp. ser. 1, *supra*, pt. 2, at 466-67; LEWIS HUGHES, THIRTY YEARS A SLAVE, FROM BONDAGE TO FREEDOM, THE INSTITUTION OF SLAVERY AS SEEN ON THE PLANTATION AND IN THE HOME OF THE PLANTER 45-46, 74 (Mnemosyne Publ’g Co. 1969) (1897); THOMPSON, THE LIFE OF JOHN THOMPSON, *supra* note 103, at 22, 25, 31, 32, 49; and WEEVILS IN THE WHEAT: INTERVIEWS WITH VIRGINIA EX-SLAVES 266, 267 (Charles L. Perdue, Jr., et al. eds., 1976).

115. 6 KLAN REPORT, *supra* note 16, at 387.

Further underscoring the scopophilic quality of this onslaught, which was plainly recognized as such by the women who endured it, another witness remarked, "they had a powerful show; you never heard the like."<sup>116</sup> If the statement of a former slave whose recollections were recorded by the Works Progress Administration is any indication, what they endured was by no means unusual; in her experience, young women were favored targets of stripping and whipping by the klans.<sup>117</sup>

The fact that Committee members themselves often exhibited a keen interest in the lurid details of klan atrocities is also suggestive. Although it may reflect nothing more than curiosity borne of titillation, it might just as well bespeak their recognition of the special pains inflicted by sexualized violence. In the Brown case, for example, each of the women who testified to the stripping and whipping was asked to describe the assaults in some detail.<sup>118</sup> The following exchange between Rachel Arnold and the Chairman of the Joint Select Committee is fairly representative of this pattern:

Q: Was she dressed when they whipped her?

A: No, sir; they tore her clothes off and made her lie down in the yard. Two men stood on her, one on her head, and the other on her feet; and then they whipped her while they were standing on her.

...

Q: Was she naked when they whipped her?

A: Yes, sir.

Q: Did they interfere with your clothes at all?

A: Not any more than they made us all lay down, children and all, and show ourselves.<sup>119</sup>

Even if examiners were inspired by simple prurience, it is nonetheless significant that this subject matter — overtly sexual and deeply implicative — was deemed worthy of inclusion in an official government document at a time when discussions surrounding it were at best uncommon. Although sexualized assaults like these were not routinely categorized as such, it is plausible that at least some of the more perspicacious federal examiners recognized them as distinctly traumatic.

Investigators evidently found these episodes disturbing in part because of the deeply gendered resonances that necessarily attend the practice of compelling another human being to expose the most vulnerable parts of the body at the command of a presumptively superior

116. *Id.* at 377.

117. See 16 AMERICAN SLAVE, ser. 2, *supra* note 96, at 100-01.

118. See 6 KLAN REPORT, *supra* note 16, at 376, 377, 386, 387, 389, 501, 502.

119. *Id.* at 389. For a case in which a white male was faced with the same line of questioning, see 11 KLAN REPORT, *supra* note 40, at 328.

force. Generally speaking, women have most often been victims of assaults such as these. In the postwar South, however, it was freedmen who were more apt to be placed in the subjugated position. That a sense of emasculation would complicate the feelings of abasement that this treatment demonstrably inspired was, in this cultural context, all but inevitable. Indeed, the abusive words that some klansmen hurled while purveying these outrages suggests that they were self-consciously invoking gender conventions only to upend them in pursuit of their larger aims, degendering their victims as a means of dehumanizing them.<sup>120</sup> Dick Wilson, a South Carolina freedman, offers the following testimony concerning an assault in which he was beaten by a band of nightriders armed with ramrods:

'Drop your breeches, God damn you.' I just ran out of them. 'Stretch out; we want to make a Democrat out of you tonight.' I stretched out full length, just as long as I could get; I would have got a little longer if I could. . . . [T]hey commenced whipping me; I commenced begging them so powerful. 'Don't beg, God damn you; if you beg I'll kill you.' . . . [T]hey just ruined me; they cut me all to pieces. . . . they stopped on me then for a while. 'Will you vote the Democratic ticket next time?' 'Yes, I will vote any way you want me to vote; I don't care how you want me to vote, master, I will vote.'<sup>121</sup>

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120. Scholars have discussed the concept of degendering principally in the context of slavery, where masters routinely assessed their slaves' claims to traditional markers of gender identity in terms of their own interests. Thus, for instance, a black woman was expected to perform "like a man" in the fields, but also to provide feminine sexual and reproductive services in the slave cabin, all the while being accorded none of the privileges associated with that role when undertaken by white women of modest or better means. See, e.g., ANGELA DAVIS, *WOMEN, RACE AND CLASS* 6-7 (Vintage Books 1983) (1981) [hereinafter DAVIS, *WOMEN, RACE AND CLASS*]; Hortense Spillers, *Mama's Baby, Papa's Maybe: An American Grammar Book*, 17 *DIACRITICS* 65, 67 (1987).

121. S.C. *KLAN TRIALS*, *supra* note 16, at 283-84. Language of this sort was not uncommon among klansmen who felt personally threatened by evidence of self-regarding behavior among freedpeople. See, e.g., 10 *KLAN REPORT*, *supra* note 113, at 1789-90; S.C. *KLAN TRIALS*, *supra* note 16, at 496. In response to a query posed by the historian Walter L. Fleming regarding the import of a series of ominous klan warnings that had been printed in several southern newspapers of the period, Ryland Randolph, the onetime editor of Tuscaloosa's *Independent Monitor*, located the genesis of three such admonitions in the actions of several "notably offensive negro men" who "were dragged out of their beds . . . and thrashed in regular ante bellum style until their unnatural nigger pride had a tumble, and humbleness to the white man reigned supreme." Walter L. Fleming Papers, Manuscripts and Archives Division, New York Public Library, New York, N.Y., B 3, F 12-13, Letter from Ryland Randolph, Sr., to Walter L. Fleming, Aug. 21, 1901. One of many indications of the effectiveness of these tactics was a notice placed in the *Oglethorpe Echo*, a conservative Georgia gazette, on behalf of a freedman who had learned a harsh lesson in Reconstruction politics:

Anthony Thurster, the negro preacher who was so severely whipped by a party of disguised men near Maxley's lately, asks that we announce to his white friends that from this time forward he will prove himself a better man; will never again make a political speech, deliver a sermon, or vote a Republican ticket; from henceforth he is an unswerving Democrat.

GREEN, *RECOLLECTIONS OF THE INHABITANTS*, *supra* note 39, at 144.

Here, it is perfectly evident that sexual humiliation was an essential component of the klansmen's strategy of domination. Yet, not even the assailants could divest themselves of their understanding of what it meant for a *man* (even if he was "only" a "nigger") to be so debased long enough to enjoy the terror they had induced. When Wilson exceeded their expectations and behaved even more submissively than they thought fitting, his torturers became so revolted that they escalated their rhetoric, in the end threatening to kill him for traversing a line he did not even know existed.<sup>122</sup> Another South Carolina man, this one white, received nearly identical treatment at the hands of klansmen intending "to make a good citizen" out of him<sup>123</sup> — a result they endeavored to accomplish by stripping him, throwing him to the ground, and lashing him while on all fours.<sup>124</sup> That victims were also inclined to interpret the command to disrobe in gender-hierarchical terms is evident in the testimony of Abram Colby, a Georgia legislator who refused to comply when he was ordered to remove his shirt, instead asserting categorically, "I never do that for any man."<sup>125</sup> In each of these encounters, men committed sexually violent crimes against other men as a means of protecting their own social and political status. The klans, for their part, expressed no equivocation about their right to define the requisites of national citizenship for the states of the former Confederacy, requisites that only white, Democratic males could hope to satisfy.

Along with the forebodings of emasculation that suffuse many of the attacks suffered by men, many women's experiences of forced stripping and whipping are marked by the conventionally "feminine" threat of rape. Whether or not a rape was ever accomplished is neither always knowable nor the only meaningful indicator of the level of sexual danger apprehended by victims. More significant for the present inquiry is the implication discernible in much of the relevant testimony that rape was a predictable consequence of the klans' assaults on female victims.<sup>126</sup> Hannah Tutson, a Florida freedwoman attacked by a band of nightriders, was subjected to lewd comments and gestures by

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122. See S.C. KLAN TRIALS, *supra* note 15, at 282-84.

123. 3 KLAN REPORT, *supra* note 17, at 350. A group of North Carolina klansmen issued a similar threat to J.P. Gillespie, a white man whose assailants boasted that "two hundred lashes would make a good conservative of him." 2 KLAN REPORT, *supra* note 16, at 138; see *also id.* at 115, 156.

124. See 3 KLAN REPORT, *supra* note 17, at 350.

125. 7 KLAN REPORT, *supra* note 16, at 697. This was no mere posturing on Colby's part. He goes on to explain how his attackers struggled to overpower him, eventually bringing him to the ground where he was stripped and viciously chastised on account of his political activities.

126. See, e.g., CONG. GLOBE, 42d Cong., 1st Sess. 155 (1871); 6 KLAN REPORT, *supra* note 16, at 566; 7 KLAN REPORT, *supra* note 16, at 958, 972; S.C. KLAN TRIALS, *supra* note 16, at 511.



an assailant who subsequently attempted to rape her. In her vivid testimony, Tutson recalls how “[h]e would get his knees between my legs and say ‘God damn you, open your legs.’”<sup>127</sup> She further confided, “I tell you, men, that he did act ridiculously and shamefully, that same George McCrea. He sat down there and said, ‘Old lady, if you don’t let me have to do with you, I will kill you.’”<sup>128</sup> Tutson escaped further violation only because McCrea’s comrades were less eager than he was to “have to do with” her.<sup>129</sup> Similar intimations can be read in Charles Smith’s depiction of a klan raid on his female relatives.

My wife was in there, and they took her out and made her get down on her knees, and then they stripped her dress down about her waist. They made my sister get down in the same way, in the yard, and, from all accounts, they stripped her stark naked as the day she came into the world.<sup>130</sup>

Smith later recounts an exchange that ensued between two klansmen immediately prior to his wife’s chastisement that is striking in its savagery: “‘Don’t you want to use this hickory?’ or something like that. He said, ‘Yes; I want to taste of her meat.’”<sup>131</sup> It would be difficult to conceive of a more explicit affirmation of the sexualized nature of such attacks than this one. By their words and deeds, the perpetrators expressed a desire at once to annihilate and consume their victim, demanding that she metaphorically, if not literally, assume whatever posture they might devise to revitalize their waning sense of mastery.

Among freedpeople and others who favored the Republican cause, the klans were notorious for the practice of “bucking,” a carryover from antebellum days where the victim, often wholly or partially naked, was forced to lay bound across a log upon which a vigorous whipping would be staged.<sup>132</sup> Like other styles of whipping that have thus

127. 13 KLAN REPORT, *supra* note 15, at 60.

128. *Id.*

129. *Id.*

130. 7 KLAN REPORT, *supra* note 16, at 597.

131. *Id.* at 598.

132. According to the Oxford English Dictionary, this use of the term was first documented in October 1865. For centuries prior, however, “bucking” had indisputably sexual connotations, primarily in its application to copulation between certain farm animals. See OXFORD ENGLISH DICTIONARY 611 (2d ed. 1989). In the antebellum South, bucking was commonly used as a means of disciplining recalcitrant slaves. See BRUCE, VIOLENCE AND CULTURE IN THE ANTEBELLUM SOUTH, *supra* note 95, at 141. Ella Wilson, a former slave interviewed by the WPA, described her personal experience with this form of punishment:

My mars . . . would put my hands together and tie them. Then he would strip me naked. Then he would make me squat down. Then he would run a stick through behind my knees and in front of my elbows. My knees was up against my chest. My hands was tied together just in front of my shins. The stick between my arms and my knees held me in a squat. That’s what they called a buck . . . You couldn’t do nothin’ but just squat there and take what he put on you. You couldn’t move no way at all.

far been considered, this one too was sexualized and gendered in ways consistent with klan objectives. Klansmen inflicted this punishment on black and white men as well as women, presumably for much the same reasons — to elicit fear, pain, humiliation and, in the end, compliance with their self-aggrandizing purposes. William Long offers this first-hand account of a bucking carried out by a band of North Carolina vigilantes.

[T]hey untied me the way they had me and then tied me again sufficient to stretch my arms across and bucked me — you all know what that means I suppose. They took down my clothes — they did not take off anything but they tore my clothes. . . . And they whipped me awhile and then asked me questions and would whip me again and asked more questions.<sup>133</sup>

He goes on to describe a method commonly employed by klansmen to restrain their quarry. “My wrists were tied that way, (showing the wrists crossed,) then they threw me down, put my arms over my legs and ran a stick through.”<sup>134</sup> Long’s narrative reveals an interesting tendency evident in the testimony of other male victims. After volunteering that he had been stripped by his captors, Long promptly recants, admitting only that his clothing had been torn during the attack. For a white man in this former slaveholding culture, being compelled to stand naked before one’s assailants implies a thoroughgoing loss of racial status (such treatment having been reserved for slaves until recently), which was itself a dehumanizing, to wit unmanning, ordeal. Yet for the klans, race was no barrier to punishing political opponents. One of the many African Americans subjected to bucking in the post-bellum years, Caswell Holt, a North Carolina freedman, testified that a band of nightriders “put my arms over my knees, as I sat down, and run a stick across through on both arms — bucked me, you know — then they all formed in a line before me . . . and all gave me three licks apiece.”<sup>135</sup> While Holt admits that his back was bare at the time of the flogging, he does not mention whether or not he had been stripped of

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11 AMERICAN SLAVE, ser. 2, *supra* note 96, pt. 7, at 202. Additional descriptions of slave buckings are available in 15 AMERICAN SLAVE, ser. 2, *supra* note 96, pt. 2, at 61-62; HENRY BIBB, NARRATIVE OF THE LIFE AND ADVENTURES OF HENRY BIBB, AN AMERICAN SLAVE, WRITTEN BY HIMSELF 103-05 (University of Wisconsin Press 2001) (1850); and HUGHES, *supra* note 114, at 45.

133. 2 HOLDEN TRIAL, *supra* note 37, at 1350.

134. *Id.* at 1351.

135. *Id.* at 1313. Pursuing the matter further, Holt’s examiner requested that he “[s]tate how the bucking was.” To which Holt replied, “They had my arms tied this way (showing,) and then I sat down on the ground and they put my arms over my knees and ran a stick through under here (under the legs,) and over both arms.” *Id.* at 1320. For additional evidence of the klans’ perpetuation of these practices, see BRFAL, *supra* note 36, RG 105, B 56, Semi-Monthly Report of Outrages, Lincolnton, N.C., July 21, 1866; S. REP. NO. 42-1, at 342 (1871); 2 HOLDEN TRIAL, *supra* note 37, at 1221, 1224, 1564; and 3 KLAN REPORT, *supra* note 17, at 282.

any other garments<sup>136</sup>, a topic he seems as interested in avoiding as the hapless Mr. Long. Based on these accounts, it is evident that the entire production — from the bent over stance, to the bindings, to the whipping of naked flesh — was for men an immanently emasculating experience, the intensity of which was surely heightened by the sadistic homoerotics reflected in the perpetrators' acts.

As with the rest of the nightriders' violent repertoire, women were not spared the tortures of bucking. A witness who appeared before the Joint Select Committee in Georgia related an episode in which a number of white women who had offended the local klan were "bucked down across a log," "their clothes stripped up over their heads" as they were "paddled severely."<sup>137</sup> Another woman, Harriet Kink, was taken from her home in the dead of night and dragged into the nearby woods where she was "whipped with boards and switches on her naked body, while lying across a log."<sup>138</sup> In this, as in other instances, the form of violation remains clearly recognizable even when the word "bucking" is not expressly invoked. Regardless of the gender of their victims or the terminology applied, these attacks tended to adhere to a prescribed formula that reveals patterns of abuse deeply imbued with sexual meaning. If bucking a male was associated with emasculation, that same punishment was bound to engender a sense of sexual exposure and vulnerability highly reminiscent of rape when applied to women. Likewise, as the constituent elements of binding and whipping recalled freedmen's experience of the violence of slavery, the same was surely true of freedwomen, for whom the sexual brutality inherent in bucking's prescribed posture must also have been frighteningly familiar.

### B. Rape

For decades prior to the Civil War, critics of the South's "peculiar institution" had recognized the unique vulnerability of female slaves to rape and other forms of sexual abuse.<sup>139</sup> Acknowledging the impossibility of determining at this remove the precise frequency with which

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136. See 2 HOLDEN TRIAL, *supra* note 37, at 1313.

137. 7 KLAN REPORT, *supra* note 16, at 1022.

138. H.R. MISC. DOC. NO. 40-52, at 127 (1869). Extant sources do not indicate if Kink's assailants were members of any white supremacist organization; regardless, their methods were identical to those regularly employed by the klans. See also BRFAL, *supra* note 36, RG 105, M 999, R 34, Affidavit of Frank Dickerson, Nashville, Tenn., Jan. 14, 1868 (depicting another case of bucking by a band of masked white men).

139. On abolitionists' deployment of the imagery of sexual violation, see generally BRUCE, VIOLENCE AND CULTURE IN THE ANTEBELLUM SOUTH, *supra* note 95, at 140; SÁNCHEZ-EPPLER, *supra* note 95, at 14-49, 83-104; Halttunen, *supra* note 95, at 324-25; and Ronald G. Walters, *The Erotic South: Civilization and Sexuality in American Abolitionism*, 25 AM. Q. 177 (1973).

these assaults took place, scholars generally agree that the experience of sexual violation was common among women (and to a lesser extent men) held in bondage.<sup>140</sup> That slaves were effectively denied ownership of their bodies further enabled white jurists and legislators to exclude slave women from the criminal law of rape, a circumstance that at once reflected and perpetuated their corporeal subjugation.<sup>141</sup> These

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140. Among the many contemporaneous observers who have commented on this state of affairs, most widely cited are HARRIET A. JACOBS, *INCIDENTS IN THE LIFE OF A SLAVE GIRL: WRITTEN BY HERSELF* 27-30, 31-36, 51-52, 53-56, 58-59, 64, 74, 77, 122 (Jean Fagan Yellin ed., enlarged ed., Harvard Univ. Press 2000) (1861); ELIZABETH KECKLEY, *BEHIND THE SCENES. OR, THIRTY YEARS A SLAVE, AND FOUR YEARS IN THE WHITE HOUSE* 24 (Frances Smith Foster ed., University of Illinois Press 2001) (1868); and FRANCES ANNE KEMBLE, *JOURNAL OF A RESIDENCE ON A GEORGIAN PLANTATION IN 1838-1839*, at 238, 270, 362 (John A. Scott ed., Alfred A. Knopf 1961) (1863). Historical assessments include BLASSINGAME, *THE SLAVE COMMUNITY*, *supra* note 95, at 154-55, 172-73; CATHERINE CLINTON, *THE PLANTATION MISTRESS: WOMAN'S WORLD IN THE OLD SOUTH* 201 (1982) [hereinafter CLINTON, *THE PLANTATION MISTRESS*]; ESCOTT, *supra* note 7, at 46; ELIZABETH FOX-GENOVESE, *WITHIN THE PLANTATION HOUSEHOLD: BLACK AND WHITE WOMEN OF THE OLD SOUTH* 49, 294, 297, 299, 315, 325-26 (1988); HOOKS, *supra* note 114, at 24-28, 32-37; KOLCHIN, *supra* note 95, at 123-25; Catherine Clinton, *Caught in the Web of the Big House: Women and Slavery*, in *THE WEB OF SOUTHERN SOCIAL RELATIONS: WOMEN, FAMILY, AND EDUCATION* 19 (Walter J. Fraser, Jr. et al. eds., 1985); Catherine Clinton, "Southern Dishonor": *Flesh, Blood, Race, and Bondage*, in *IN JOY AND IN SORROW: WOMEN, FAMILY, AND MARRIAGE IN THE VICTORIAN SOUTH, 1830-1900*, at 52 (Carol Bleser ed., 1991) [hereinafter Clinton, "Southern Dishonor"]; Catherine Clinton, "With a Whip in His Hand": *Rape, Memory, and African-American Women*, in *HISTORY AND MEMORY IN AFRICAN-AMERICAN CULTURE* 205 (Geneviève Fabre & Robert O'Meally eds., 1994); Angela Davis, *Reflections on the Black Woman's Role in the Community of Slaves*, 3 *THE BLACK SCHOLAR* 3, 12-14 (1971); Patricia L. Gay, *Slavery As a Sexual Atrocity*, 6 *SEXUAL ADDICTION & COMPULSIVITY* 5 (1999); Karen A. Getman, Note, *Sexual Control in the Slaveholding South: The Implementation and Maintenance of a Racial Caste System*, 7 *HARV. WOMEN'S L.J.* 115, 115, 142-143 (1994); Thelma Jennings, "Us Colored Women Had To Go Through A Plenty": *Sexual Exploitation of African American Slave Women*, 1 *J. OF WOMEN'S HIST.* 45 (1990); H el ene Lecaudey, *Behind the Mask: Ex-Slave Women and Interracial Sexual Relations*, in *DISCOVERING THE WOMEN IN SLAVERY* 260, 261 (Patricia Morton ed., 1996); Jennifer Wriggins, Note, *Rape, Racism, and the Law*, 6 *HARV. WOMEN'S L.J.* 103, 118 (1983) and Gloria Shepherd, *The Rape of Black Women in Slavery* (1988) (unpublished D.A. dissertation, State University of New York at Albany) (on file with the State University at Albany Library). While not denying the fact that slaves were at times sexually coerced and violated by members of the "master" race, others have chosen to emphasize the occurrence of consensual interracial sex in the slave South. See, e.g., GENOVESE, *supra* note 95, at 422-23; STAMPP, *THE PECULIAR INSTITUTION*, *supra* note 95, at 350-61; EARL E. THORPE, *EROS AND FREEDOM IN SOUTHERN LIFE AND THOUGHT* 8-9 (1967).

141. In his classic treatise on slave law, Thomas Cobb writes, "Another consequence of slavery is, that the violation of the person of a female slave, carries with it no other punishment than the damages which the master may recover for the trespass upon his property." THOMAS R.R. COBB, *AN INQUIRY INTO THE LAW OF NEGRO SLAVERY IN THE UNITED STATES OF AMERICA* § 107, at 99 (Philadelphia, T. & J.W. Johnson & Co. 1858); see also WILLIAM GOODELL, *THE AMERICAN SLAVE CODE* 86 (New York, American & Foreign Anti-Slavery Society 1853) ("Rape committed on a female slave is an offense not recognized in law.") (quoting Judge Jay). Some minor exceptions to this rule were instituted prior to the Civil War when Georgia and Mississippi passed laws extending limited protection against sexual assault to female slaves; nevertheless, race continued to be a central factor in the practical application of the law. See PETER BARDAGLIO, *RECONSTRUCTING THE HOUSEHOLD: FAMILIES, SEX, AND THE LAW IN THE NINETEENTH-CENTURY AMERICAN SOUTH* 68-69 (1995). For additional discussion of the place of rape within the law of slavery,

conditions were not immediately eliminated with slavery's demise.<sup>142</sup> To the contrary, a number of historians have recently contended that the threat of sexual abuse was even greater for black women in the postwar era than it had been when they were slaves.<sup>143</sup> Given the pau-

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see THOMAS D. MORRIS, *SOUTHERN SLAVERY AND THE LAW, 1618-1860*, at 305-07, 321 (1996).

142. There has to date been no detailed study of rape during the Civil War. Most historians who have addressed the subject acknowledge that rapes were perpetrated upon black and white women alike by Union as well as Confederate soldiers. Yet, as Victoria Bynum points out, it is reasonable to suppose that those women who had traditionally been considered "unrapeable" because presumptively unchaste would have been more often victimized during these years of upheaval. See VICTORIA E. BYNUM, *UNRULY WOMEN: THE POLITICS OF SOCIAL AND SEXUAL CONTROL IN THE OLD SOUTH* 118 (1992). Thomas P. Lowry's examination of a portion of the Federal courts martial records housed in the National Archives supports this supposition. See THOMAS P. LOWRY, *THE STORY THE SOLDIERS WOULDN'T TELL: SEX IN THE CIVIL WAR* 130 (1994). Further information concerning rape in the Civil War may be found in ROBERT I. ALOTTA, *CIVIL WAR JUSTICE: UNION ARMY EXECUTIONS UNDER LINCOLN* 30-31 (1989); STEPHEN V. ASH, *WHEN THE YANKEES CAME: CONFLICT AND CHAOS IN THE OCCUPIED SOUTH, 1861-1865*, at 19-20, 158-59, 197-98, 200-01 (1995); CATHERINE CLINTON, *TARA REVISITED: WOMEN, WAR, AND THE PLANTATION LEGEND* 128-30 (1995); DREW GILPIN FAUST, *MOTHERS OF INVENTION: WOMEN OF THE SLAVEHOLDING SOUTH IN THE AMERICAN CIVIL WAR* 200 (1996) [hereinafter FAUST, *MOTHERS OF INVENTION*]; MICHAEL FELLMAN, *INSIDE WAR: THE GUERRILLA CONFLICT IN MISSOURI DURING THE AMERICAN CIVIL WAR* 207-13 (1989) [hereinafter FELLMAN, *INSIDE WAR*]; NORALEE FRANKEL, *FREEDOM'S WOMEN: BLACK WOMEN AND FAMILIES IN CIVIL WAR ERA MISSISSIPPI* 23-24 (1999) [hereinafter FRANKEL, *FREEDOM'S WOMEN*]; GUTMAN, *THE BLACK FAMILY*, *supra* note 6, at 386-88; HOOKS, *supra* note 114, at 56-62; LITWACK, *BEEN IN THE STORM SO LONG*, *supra* note 6, at 129-30, 151; LOWRY, *supra*, at 31-32, 36, 39, 123-31, 136; REID MITCHELL, *THE VACANT CHAIR: THE NORTHERN SOLDIER LEAVES HOME* 102-12 (1993); ALLAN NEVINS, *3 THE WAR FOR THE UNION: THE ORGANIZED WAR 1863-1864*, at 31-32 (1971); GEORGE C. RABLE, *CIVIL WARS: WOMEN AND THE CRISIS OF SOUTHERN NATIONALISM* 160-61 (1989); LESLIE A. SCHWALM, *A HARD FIGHT FOR WE: WOMEN'S TRANSITION FROM SLAVERY TO FREEDOM IN SOUTH CAROLINA* 102-03, 119-22, 247, 314-15 n.23 (1997); BELL IRVIN WILEY, *THE LIFE OF BILLY YANK: THE COMMON SOLDIER OF THE UNION* 114 (Louisiana State Univ. Press 1978) (1951); Michael Fellman, *Women and Guerrilla Warfare, in DIVIDED HOUSES*, *supra* note 2, at 147, 149-50, 153; Jordan, *Sleeping With the Enemy*, *supra* note 97, at 57-58; and Diane Miller Sommerville, *The Rape Myth Reconsidered: The Intersection of Race, Class and Gender in the American South, 1800-1877*, at 362-63 (1995) (unpublished Ph.D. dissertation, Rutgers University) (on file with the Rutgers University Library) [hereinafter *The Rape Myth Reconsidered*]. For a fictional representation of wartime rape, see N.J. FLOYD, *THORNS IN THE FLESH. [A ROMANCE OF THE WAR AND KU KLUX PERIODS.] A VOICE OF VINDICATION FROM THE SOUTH IN ANSWER TO 'A FOOL'S ERRAND' AND OTHER SLANDERS* 283-84 (Lynchburg, J.P. Bell & Co. 1884). Although its utility is somewhat marred by a profusion of grammatical and syntactical errors, (a function of its creation by a non-native speaker of English), the website of the *Club confédéré et fédéral de France* provides convenient access to excerpts from a number of primary sources on the subject. See [http://members.aol.com/\\_ht\\_a/cwrapes/index.htm](http://members.aol.com/_ht_a/cwrapes/index.htm) (last modified Apr. 2000).

143. As Laura Edwards maintains, "If anything, emancipation heightened the vulnerability of African American women to violence at the hands of white men, who used rape and other ritualized forms of sexual abuse to limit black women's freedom and to reinscribe antebellum racial hierarchies." EDWARDS, *GENDERED STRIFE AND CONFUSION*, *supra* note 3, at 199. See also Clinton, *Bloody Terrain*, *supra* note 2, at 330-31; Wriggins, *supra* note 140, at 119. A number of historians have contended that freedwomen's efforts to reduce the time they spent laboring in the fields — the famously overstated "withdrawal" of black women from the agricultural work force — in part reflected a collective determination to minimize the opportunities for sexual assault by white men. See JACQUELINE JONES, *LABOR OF*

city of reliable data on nineteenth-century sex crimes, it is difficult to know for certain whether such a shift actually occurred. That said, the evidence of klan violence graphically demonstrates that black women remained vulnerable to rape and attempted rape by white men long after Emancipation.<sup>144</sup> Klansmen did not, however, restrict themselves

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LOVE, LABOR OF SORROW: BLACK WOMEN, WORK AND THE FAMILY, FROM SLAVERY TO THE PRESENT 60 (1985) [hereinafter JONES, LABOR OF LOVE, LABOR OF SORROW]; Jacquelyn Dowd Hall, "The Mind That Burns in Each Body": Women, Rape, and Racial Violence, in POWERS OF DESIRE: THE POLITICS OF SEXUALITY 328, 332 (Ann Snitow et al. eds., 1983) [hereinafter Hall, "The Mind That Burns in Each Body"]; Clinton, *Bloody Terrain*, *supra* note 2, at 331; Susan A. Mann, *Slavery, Sharecropping, and Sexual Inequality*, 14 SIGNS 774, 782, 794 (1989). Significant works emphasizing black families' relative success in minimizing the time women spent working as hired field hands include GERALD DAVID JAYNES, BRANCHES WITHOUT ROOTS: GENESIS OF THE BLACK WORKING CLASS IN THE AMERICAN SOUTH, 1862-1882, at 230-32 (1986), and ROGER L. RANSOM & RICHARD SUTCH, ONE KIND OF FREEDOM: THE ECONOMIC CONSEQUENCES OF EMANCIPATION 44-45, 232-34 (2d ed. 2001). The changing character of freedwomen's participation in southern agriculture is the subject of a recent dissertation by Carol Lemley Montgomery, "Charity Signs for Herself": Gender and the Withdrawal of Black Women from Field Labor, Alabama, 1865-1876 (1991) (unpublished Ph.D. dissertation, University of California, at Irvine) (on file with the University of California, Irvine Library). On the work lives of freedwomen generally, see FRANKEL, FREEDOM'S WOMEN, *supra* note 142, at 56-78; GUTMAN, THE BLACK FAMILY, *supra* note 6; TERA W. HUNTER, TO 'JOY MY FREEDOM: SOUTHERN BLACK WOMEN'S LIVES AND LABORS AFTER THE CIVIL WAR (1997); JONES, LABOR OF LOVE, LABOR OF SORROW, *supra*, at 44-78; LITWACK, BEEN IN THE STORM SO LONG, *supra* note 6; JULIE SAVILLE, THE WORK OF RECONSTRUCTION: FROM SLAVE TO WAGE LABORER IN SOUTH CAROLINA, 1860-1870 (1994); SCHWALM, *supra* note 142; Nancy Dunlap Bercaw, Politics of Household during the Transition from Slavery to Freedom in the Yazoo-Mississippi Delta, 1861-1876 (1996) (unpublished Ph.D. dissertation, University of Pennsylvania) (on file with the University of Pennsylvania Library); and LaVonne Roberts Jackson, "Freedom and Family": The Freedmen's Bureau and African-American Women in Texas in the Reconstruction Era, 1865-1872, at 150-82 (1996) (unpublished Ph.D. dissertation, Howard University) (on file with the Howard University Library).

144. The pervasive problem of white-male-on-black-female sexual assault in postbellum southern society is noted in BARDAGLIO, *supra* note 141, at 195; SUSAN BROWNMILLER, AGAINST OUR WILL: MEN, WOMEN AND RAPE 126, 129 (1975); HAZEL V. CARBY, RECONSTRUCTING WOMANHOOD 39 (1987); DAVIS, WOMEN, RACE AND CLASS, *supra* note 120, at 175-76; JOHN D'EMILIO & ESTELLE B. FREEDMAN, INTIMATE MATTERS: A HISTORY OF SEXUALITY IN AMERICA 105-06 (2d ed. 1997); GUTMAN, THE BLACK FAMILY, *supra* note 6, at 393-99; JACQUELYN DOWD HALL, REVOLT AGAINST CHIVALRY: JESSIE DANIEL AMES AND THE WOMEN'S CAMPAIGN AGAINST LYNCHING, at xxv-vi (rev. ed. 1993) [hereinafter HALL, REVOLT AGAINST CHIVALRY]; HODES, WHITE WOMEN, BLACK MEN, *supra* note 4, at 152, 160; HOOKS, *supra* note 114, at 56-57; TRELEASE, *supra* note 10, at 232, 341; WADE, *supra* note 10, at 76; Elsa Barkley Brown, *Negotiating and Transforming the Public Sphere: African American Political Life in the Transition from Slavery to Freedom*, 7 PUBLIC CULTURE 107, 112 (1994); James Smallwood, *Black Freedwomen After Emancipation: The Texas Experience*, 27 PROLOGUE 303, 313-14 (1995); Wriggins, *supra* note 140, at 119; and Sommerville, *The Rape Myth Reconsidered*, *supra* note 142, at 379. Underscoring the insidiousness of the problem, Randy Finley has found compelling evidence of Freedmen's Bureau agents acting on their presumed right of sexual access to the black women who were seeking their aid. See BRFAL, *supra* note 36, RG 105, Assistant Commissioner, Ark., Letter from William Dawes and Thomas Abel to Williams, July 27, 1866, cited in RANDY FINLEY, FROM SLAVERY TO UNCERTAIN FREEDOM: THE FREEDMEN'S BUREAU IN ARKANSAS, 1865-1869, at 20 (1996) [hereinafter FINLEY, FROM SLAVERY TO UNCERTAIN FREEDOM]; BRFAL, *supra* note 36, RG 105, Assistant Commissioner, Ark., J.W. Shaw Report, June 8, 1867, cited in FINLEY, FROM SLAVERY TO UNCERTAIN FREEDOM, *supra*, at 20, 40; BRFAL, *supra* note 36, RG 105, Assistant Commissioner, Ark., Letter from H. C. De-

to molesting women of the supposedly “inferior” race, for while extant sources suggest that white women were singled out far less often for abuses of this kind, women of both races were subject to their deprivations.<sup>145</sup>

The klans’ propensity for employing rape as an instrument of terror has long been a matter of public record. Witnesses who gave testimony at a number of Reconstruction-era tribunals often confronted the issue directly. Essic Harris, a North Carolina freedman, had this to say on the subject:

Q: I understood you to say that a colored woman was ravaged by the Ku-Klux?

A: Yes, sir.

Q: Did you hear of any other case of that sort?

A: Oh, yes, several times. *That has been very common.* The case I spoke of was close by me, and that is the reason I spoke of it. It has got to be an old saying.

Q: You say it was common for the Ku-Klux to do that?

A: Yes, sir. They say that if the women tell anything about it, they will kill them.<sup>146</sup>

Although murderous threats issued to those who might disclose these violations would naturally have exerted a powerful inhibitory ef-

Wolf to John Bennett, Feb. 4, 1868 *cited in* FINLEY, FROM SLAVERY TO UNCERTAIN FREEDOM, *supra*, at 20, 40. *But see* James Smallwood, *Emancipation and the Black Family: A Case Study in Texas*, SOC. SCI. Q. 849, 851-52 (1977) (presenting examples of agents who endeavored to protect freedwomen from sexual abuse and exploitation).

145. I have been able to locate only two cases documenting the rape of white women by klansmen during the Reconstruction period. (Sommerville incorrectly reports that the victims in an Alabama case involving rape and attempted rape were white when in actuality they were former slaves. *See* Sommerville, *The Rape Myth Reconsidered*, *supra* note 142, at 381. This episode is reported in 9 KLAN REPORT, *supra* note 26, at 1188-89.) Recounting what he had learned about one of these assaults, U.S. District Attorney John A. Minnis testified that “[t]he violence upon her was so great that [her assailants] became alarmed, thinking that she would die, or was dead, and they themselves sent for a physician, who gave her some medicine.” 8 KLAN REPORT, *supra* note 26, at 549. The klansmen’s extraordinary response to the logical effects of their own brutality is indicative of the privileges of whiteness generally, the self-serving esteem accorded white women in particular, and the rapists’ justifiable fears of retribution should their victim die. For a North Carolina case bearing similar features, see S. REP. NO. 42-1, at 118 (1871). Where the rape of white women is referenced elsewhere, the perpetrators are not identified as klansmen, though many doubtless were affiliated with one or another white supremacist group. *See, e.g.*, 2 KLAN REPORT, *supra* note 16, at 186; S. REP. NO. 42-1, at lxvi. The susceptibility of white women — especially those positioned on the lower end of the socioeconomic scale — to klan rape is mentioned in EDWARDS, GENDERED STRIFE AND CONFUSION, *supra* note 3, at 200, and HODES, WHITE WOMEN, BLACK MEN, *supra* note 4, at 161. It should not be inferred from this relative paucity of evidence that white women escaped sexual terror entirely; rather, it appears that klansmen preferred other methods of sexualized violence, such as stripping and whipping, when dealing with women of their own race.

146. 2 KLAN REPORT, *supra* note 16, at 99-100 (emphasis added).

fect, some women did take the risk and speak openly of their rapes. Besides the various governmental commissions that investigated reports of southern atrocities,<sup>147</sup> black as well as mainstream newspapers included occasional articles exposing these practices.<sup>148</sup> Notwithstanding this history of at least modest public recognition,<sup>149</sup> the terroristic rape of women, particularly black women, has seldom been accorded the attention it merits both as a blunt instrument for the assertion of racial, gender, and class dominance, and as a traumatic ordeal that was feared, if not personally endured, by countless women in the years following the Civil War. Yet, while it is crucial that these events be understood as part of a broader system of oppression, it is equally important to bear in mind what they meant in human terms. As Catherine Clinton trenchantly avers, these women were not mere “symbols of their race, but persons subjected to torture.”<sup>150</sup>

Scattered throughout the thirteen-volume *Klan Report* and a range of other contemporaneous sources are numerous accounts of freedwomen who have been outraged in this manner,<sup>151</sup> often in the pres-

147. Indeed, as a result of these investigations, the problem of klan rape was raised in the halls of Congress. See, e.g., DANIEL D. PRATT, EXTENSION OF [THE] KU KLUX ACT. SPEECH OF [THE] HON. DANIEL D. PRATT, OF INDIANA, DELIVERED IN THE SENATE OF THE UNITED STATES, MAY 17, 1872, at 5, 13 (Washington, D.C., F. & J. Rives & Geo. A. Bailey 1872).

148. See, e.g., *Fiendish Cruelty*, *supra* note 106, at 3; *The Kentucky Kuklux: A Catalogue of Recent Outrages in Shelby County — A Fearful List of Murders, Arsons and Floggings Committed by a Band of Lawless Criminals*, N.Y. TIMES, Nov. 8, 1872, at 3 [hereinafter *The Kentucky Kuklux*]; *Ku Klux in Kentucky*, N.Y. TIMES, Aug. 26, 1873, at 1 [hereinafter *Ku Klux in Kentucky*]; N.Y. TIMES, Oct. 13, 1868, *supra* note 96; *Palliation of the Ku-Klux by the Golden Age*, NEW NAT'L ERA (Washington, D.C.), Oct. 3, 1872, at 2; *The Southern States: The Ku Klux — Eleven Freedmen Almost Beaten to Death, Another Shot Dead, and a Mulatto Girl Whipped and Outraged, in One Night*, N.Y. TRIB., Mar. 17, 1869, at 5 [hereinafter *The Southern States*]. Despite evidence from diverse sources, there were those who continued to deny that klansmen were guilty of perpetrating sexual assaults. According to Winfield Jones, an avowedly objective Washington journalist, “[i]n all the history of the operation of the Ku Klux Klan in the South there is not one recorded instance, as far as the writer can find, where any woman, white or black, was molested by the klansmen.” JONES, STORY OF THE KU KLUX KLAN, *supra* note 10, at 37.

149. Given the years of virtual silence that followed, it is interesting to note that the author of one of the earliest popular histories of the Reconstruction klans made lurid reference to the centrality of sex crimes within their repertoire of violence: “In the reign of terror that followed, white Unionists and Negroes were lynched by the thousands, white women teachers were murdered, whipped and raped; women, black and white, were outraged; and pregnant women ripped open.” ROGERS, *supra* note 10, at 22-23.

150. Clinton, *Bloody Terrain*, *supra* note 2, at 329; see also HALL, REVOLT AGAINST CHIVALRY, *supra* note 144, at xxvi (maintaining that the rape of black women “was first and foremost a crime against women, a violent expression of both racism and misogyny.”).

151. For instances of the rape and attempted rape of freedwomen and girls that are not discussed separately below, see: AGO, *supra* note 16, RG 94, M 666, R 12, F 1612, Letter from Edward Field to C. H. Morgan, Oct. 3, 1871; AGO, *supra* note 16, RG 94, M 666, R 67, F 2146, Affidavit of John Hamilton, Aug. 29, 1869; AGO, *supra* note 16, RG 94, M 666, R 67, F 2146, Affidavit of George Moore, Aug. 26, 1869; AGO, *supra* note 16, RG 94, M 666, R 67, F 2146, Affidavit of Robert Roundtree, Aug. 26, 1869; BRFal, *supra* note 36, RG 105, M 999, R 34, Affidavit of Owen Grundy, Maury County, Tenn., Jan. 21, 1868; BRFal, *supra*



ence of family members powerless to intervene on their behalf.<sup>152</sup> In response to a question about the prevalence of rape in and around Rutherford County, North Carolina, state representative James M. Justice replied,

I was told by an old colored woman, and one entitled to credit, I think — her word, I think, would be believed by everybody who knows her — that some of her kinfolk who lived down in the country were in great trouble about things of that sort. She said that when the Ku-Klux had gone after a negro man in some places they had attempted, and in other places they had actually committed, rape upon colored women in the presence of their husbands. This old woman told it to me as a secret, for she said she was afraid to have it known, for fear they would kill her.<sup>153</sup>

During their incursion upon the home of Anthony Gillespie and his family, several klansmen assailed the terrorized inhabitants while one of them “abused Gillespie’s wife, who was pregnant, ‘so badly as to

note 36, RG 105, Vol. 136, Assistant Adjutant General, Synopses of Reports, Washington, D.C., Dec. 19, 1868; H.R. MISC. DOC. NO. 41-53, at 291, 297, 300, 301 (1870); S. REP. NO. 42-1, at lii (1871); 2 KLAN REPORT, *supra* note 16, at 88, 148; 4 KLAN REPORT, *supra* note 34, at 660; 5 KLAN REPORT, *supra* note 16, at 1409, 1475; 7 KLAN REPORT, *supra* note 16, at 914; 8 KLAN REPORT, *supra* note 26, at 547, 548, 553; 9 KLAN REPORT, *supra* note 26, at 1188, 1189; 10 KLAN REPORT, *supra* note 113, at 1753; 12 KLAN REPORT, *supra* note 44, at 1165; 13 KLAN REPORT, *supra* note 15, at 63; S.C. KLAN TRIALS, *supra* note 16, at 516; STEVENSON, KU KLUX KLAN, *supra* note 35, at 6; *The Kentucky Ku Klux*, *supra* note 148; *Ku Klux in Kentucky*, *supra* note 148; and N.Y. TIMES, Oct. 13, 1868, *supra* note 96.

152. The practice of raping victims in the presence of family members is hardly unique to klansmen. According to Ken Franzblau, who monitors international sexual exploitation for the New York-based human rights organization Equality Now, modern terroristic rapists in places like Bosnia-Herzegovina routinely compound the injuries they inflict by assaulting women in front of their intimates. See Barbara Crossette, *An Old Scourge of War Becomes Its Latest Crime*, N.Y. TIMES, June 14, 1998, § 4, at 1. So commonplace was this ordeal among Bosnian Muslim and Croat women in the early 1990s that the UN’s International Criminal Tribunal for the Former Yugoslavia (“ICTY”) included the publicness of the offense as an aggravating circumstance to be taken into account in sentencing when it drew up its Rules of Evidence and Procedure. See Fionnuala Ni Aolain, *Radical Rules: The Effects of Evidential and Procedural Rules on the Regulation of Sexual Violence in War*, 60 ALB. L. REV. 883, 899 (1997). For additional commentary on this brand of criminal exhibitionism by Serb forces operating in Bosnia-Herzegovina, see BASSIOUNI & MCCORMICK, *supra* note 104, at 6, 16, 17, 18, 20; Aolain, *supra* at 899, 899 n.80; Laurel Fletcher et al., *Human Rights Violations Against Women*, 15 WHITTIER L. REV. 319, 320 (1994); Int’l Human Rights Law Group, *No Justice, No Peace: Accountability for Rape and Gender-Based Violence in the Former Yugoslavia*, 5 HASTINGS WOMEN’S L.J. 89, 95, 108, 109 (1994); and Salzman, *supra* note 104, at 348, 359. The ongoing appeal of sexual violence as a method of terror was demonstrated in the late 1990s, when reports of similar abuses emerged from Kosovo. See, e.g., Mark Mueller, *Cambridge Counselors to Aid Kosovo Rape Victims*, BOSTON HERALD, June 5, 1999, at 13; Natasha Walter, Comment, *Rape as a Weapon of War*, INDEPENDENT (London), May 10, 1999 (THE MONDAY REVIEW), at 5; Carol J. Williams, *In Kosovo, Rape Seen as Awful as Death*, L.A. TIMES, May 27, 1999, at A1 [hereinafter Williams, *In Kosovo*].

153. 2 KLAN REPORT, *supra* note 16, at 148. Though plainly defensive about his willingness to credit the word of a black woman, Justice obviously took seriously both her explicit claims and the implication that the known cases of rape represented but a fraction of those committed.

almost kill her.’”<sup>154</sup> Additional evidence comes from G.B. Burnett, a Georgia planter who admitted that several black women had been sexually assaulted by klansmen on area plantations. “I do not think there is any question about that; they were treated very brutally.”<sup>155</sup> In many cases, the rape of freedwomen appears to have been a mere afterthought to a more sweeping klan attack. A Freedmen’s Bureau agent thus recounted an extended KKK rampage in which participants traveled from Haysville, Georgia, towards Meriden, Louisiana, “stopping at all cabins on their route committing violence and maltreating women.”<sup>156</sup> Another Georgia witness, Z.B. Hargrove, chronicles several additional episodes in which freedwomen had been raped by men in disguise.<sup>157</sup> Naively presuming these to be isolated incidents, Hargrove refuses to condemn the entire KKK, insisting instead that the Klan “as a body” would never “subscribe to such a thing as that.”<sup>158</sup> Other witnesses are even more skeptical, rejecting out of hand any implication that klansmen might engage in criminal conduct of this sort. Among the most determined is C.D. Forsyth, the solicitor general of the Rome, Georgia judicial circuit, who doubted the Klan’s responsibility for the single rape he was willing to allow had taken place at

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154. BRFAL, *supra* note 36, RG 105, Vol. 136, Assistant Adjutant General, Synopses of Reports, Washington, D.C., Mar. 17, 1868. Reflecting another facet of the endemic racism underlying such attacks, there is no reason to believe that local nightriders ever contemplated extending this African American victim the comparatively generous treatment accorded the white woman whose condition so alarmed her assailants that they felt compelled to summon medical aid. *See supra* note 145.

155. 7 KLAN REPORT, *supra* note 16, at 949.

156. BRFAL, *supra* note 36, RG 105, Vol. 30, Murders and Outrages, New Orleans, La., Nov. 10, 1868. Additional evidence of this pattern appears in 14 AMERICAN SLAVE, ser. 2, *supra* note 96, pt. 1, at 15. Note as well that reliance on euphemistic terminology such as that employed by the agent quoted above (“maltreating” as code for “rape”) is more the norm than the exception in descriptions of klan sexual atrocities. *See, e.g.*, S. REP. NO. 42-1, at lxvi (“A Mrs. Foy and her daughter, (white,) thrown out of her house, and both of them badly beaten and maltreated.”); *Petition from Kentucky Negroes, in 2 A DOCUMENTARY HISTORY OF THE NEGRO PEOPLE IN THE UNITED STATES 594, 599* (Herbert Aptheker ed., Citadel Press 1992) (1951) (“Ku Klux maltreated Demar his two sons and Joseph Allen in Franklin Jan. 1871”) [hereinafter 2 DOCUMENTARY HISTORY OF THE NEGRO PEOPLE].

157. *See* 6 KLAN REPORT, *supra* note 16, at 75.

158. *Id.* Like many southern Democrats, Hargrove preferred to accept the theory, however implausible, that the klans had been overtaken by “bad” elements rather than risk lending credence to other less congenial explanations. As he puts it,

[I]t is well known to them that where there are so many men together such things will be done, as it used to be during the rebellion . . . I believe there were some clever men in the Ku-Klux organization, who fostered it for its political effect, but who would have no intention to countenance any crime of assassination or murder.

*Id.* at 75-76. Tellingly, while Hargrove casually adverts to the prototypical violence of all-male groups in response to a question about the rape of freedwomen, he promptly redirects his attention to crimes most commonly committed against men, excluding women from further consideration.

all. "I have reason to think," he cryptically remarked, "that was not the truth."<sup>159</sup>

By calling into question the veracity of a reported rape, Forsyth is doing nothing unusual; he is simply mirroring the heightened degree of skepticism with which women's claims of sexual victimization have historically been met. Although it is conceivable that rumor, misunderstanding, or even outright deception may have distorted the dimensions of klan rape as they have been thus far presented, the same may be said of any of the activities of a clandestine order such as the Ku Klux Klan. Given that possibility, approaching reports of sexual violation with anything more than ordinary skepticism, as has occasionally been suggested, effectively lends credence to the age-old yarn that women are prone to disseminating fictitious narratives of their own rapes,<sup>160</sup> and thereby replicates the process by which much evidence of sexual violation came to be erased in the first instance.<sup>161</sup> Far from inventing rapes that did not occur, freedpeople had an unusually compelling incentive to maintain their silence.

Some of the most powerful testimony concerning the klans' history of sexual terror is found in the wrenching details of individual experiences of rape as they have been set forth by victims and other informed sources. In a sworn statement taken in the aftermath of the Meridian riots, Ellen Parton, a Mississippi freedwoman, tells of having her home raided by a band of nightriders in search of suspected members of the Union League. "[O]n Wednesday night," she recalled, "they came and broke open the wardrobe and trunks, and committed rape upon me; there were eight of them in the house; I do not know

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159. *Id.* at 40. Forsyth's none-too-subtle innuendo partakes of the timeworn stereotype of the hypersexual black woman. See PATRICIA MORTON, *DISFIGURED IMAGES: THE HISTORICAL ASSAULT ON AFRO-AMERICAN WOMEN* (1991); see also CLINTON, *THE PLANTATION MISTRESS*, *supra* note 140, at 204; DAVIS, *WOMEN, RACE AND CLASS*, *supra* note 120, at 182-83; HOOKS, *supra* note 114, at 55-60; WINTHROP JORDAN, *WHITE OVER BLACK: AMERICAN ATTITUDES TOWARD THE NEGRO, 1550-1812*, at 150-51 (1968) [hereinafter JORDAN, *WHITE OVER BLACK*]; WHITE, *AR'N'T I A WOMAN*, *supra* note 97, at 27-46.

160. Within law, this position was most famously articulated by Sir Matthew Hale: "Rape is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho' never so innocent." MATTHEW HALE, 1 *HISTORY OF THE PLEAS OF THE CROWN* 634 (Philadelphia, R.H. Small 1847). Hale's admonition was widely recapitulated in the medical jurisprudence of rape, thus enhancing its legitimacy and extending its influence. See, e.g., J. Clifton Edgar and Jas. C. Johnston, *Medico-Legal Consideration of Rape*, in 1 *MEDICAL JURISPRUDENCE: FORENSIC MEDICINE AND TOXICOLOGY* 456 (R.A. Witthaus & Tracy C. Becker eds., 1894). For feminist commentary on the myth of women's false accusations, see BROWN MILLER, *AGAINST OUR WILL*, *supra* note 144, at 369-70, and ROSEMARIE TONG, *WOMEN, SEX, AND THE LAW* 100-02 (1984).

161. While many victims of klan rape were apparently dissuaded from coming forward by the very real threat of reprisals, it is likely that their awareness of the disbelief and disinterest with which their accusations would almost surely be greeted by state and local authorities equally conduced to their silence.

how many of them were outside."<sup>162</sup> Parton goes on to describe her futile attempts to appeal to a white male acquaintance for assistance:

I called upon Mr. Mike Slamon, who was one of the crowd, for protection; I said to him 'please protect me to-night, you have known me a long time' . . . Mr. Slamon had an oil-cloth and put it before his face, trying to conceal himself, and the man that had hold of me told me not to call Mr. Slamon's name any more; he then took me in the dining room, and told me that I had to do just what he said: I told him I could do nothing of that sort; that was not my way, and he replied 'by God, you have got to,' and then threw me down . . . I yielded to him because he had a pistol drawn; when he took me down he hurt me of course; I yielded to him on that account.<sup>163</sup>

Beyond relating the essential facts of the crime, Parton narrates her ordeal in a manner that suggests at least passing familiarity with the legal elements necessary to establish rape as a cause of action,<sup>164</sup> and with it some uncertainty about whether her audience will credit her story. At a time when an imminent threat of serious bodily harm was essential to showing that a rape had been committed, Parton is careful to point out that Slamon threatened her not only verbally, but physically as well. In addition, she stresses the fact that her assailant employed a lethal weapon to accomplish the rape, thus providing a relatively objective measure of the gravity of the situation in which she found herself. Similarly telling is the emphasis Parton places on her own reasonable efforts to resist Slamon's ultimately overwhelming violence. By framing her testimony this way, she effectively addresses another of the standard requisites that a woman was expected to satisfy to show that she had been raped. Parton's scrupulousness further implies that she may well have anticipated the possibility that her listeners, in the absence of a compelling (white) witness willing to testify on her behalf, would question her veracity, perhaps suspecting her of intentionally misrepresenting a sexual encounter in which she was a willing participant, or of concocting the entire event outright. In this, she would have experienced the apprehensions of legions of sex crime victims at other times and places who have come forward with such charges at enormous personal cost only to be met with skepticism and worse.<sup>165</sup> It is also significant that Parton's rape was in part facilitated,

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162. 11 KLAN REPORT, *supra* note 40, at 38.

163. *Id.*

164. The prevailing legal standard is outlined in JOEL PRENTISS BISHOP, 2 COMMENTARIES ON THE CRIMINAL LAW § 935, at 622 (Boston, Little, Brown & Co. 1858); JOEL PRENTISS BISHOP, 2 COMMENTARIES ON THE CRIMINAL LAW § 1113, at 607 (5th ed., Boston, Little, Brown, & Co. 1872); FRANCIS WHARTON, A TREATISE ON THE CRIMINAL LAW OF THE UNITED STATES 438 (2d ed., Philadelphia, James Kay, Jun. & Brother 1852); and FRANCIS WHARTON, 1 A TREATISE ON THE CRIMINAL LAW § 550, at 484 (8th ed., Philadelphia, Kay & Brother 1880).

165. *See infra* notes 751-765 and accompanying text.

though not wholly accomplished, by a man she knew and, with whatever reservations, trusted not to attack her. Here too, her testimony is in accord with contemporary research on rape, which finds that women are far likelier to be victimized by familiars than strangers.<sup>166</sup> Despite what Parton would probably have learned about the depravity of the klans from other former slaves, even she was struck by their callousness and cruelty when confronted with it directly. In the end, what is most critical for comprehending the broader contours of sexual terrorism as it was manifest in this period is the sense of aggressive entitlement to black women's bodies and sexuality that this narrative conveys.<sup>167</sup> Through his speech and actions, Parton's rapist instantiates the attitudes of many southern white men who, from the early days of slavery, were determined to arrogate to themselves intimacies that were not given freely irrespective of the consequences to themselves or their families, much less to their chosen victims.

Providing further insight into the nature of klan sexual terror is the ordeal of Rhoda Ann Childs, a freedwoman married to a former Union soldier who provided an unusually detailed account of her violation by a number of Georgia klansmen. Like so many others, she recalls being suddenly beset by an angry mob, seized, and carried off some distance from her home.

[T]hey 'bucked' me down across a log, stripped my clothes over my head, one of the men standing astride my neck, and two men holding my legs. In this position I was beaten with a strap until they were tired. Then they turned me parallel with the log, laying my neck on a limb which projected from the log, and one man placing his foot upon my neck, beat me again on my hip and thigh.<sup>168</sup>

Though the klansmen's actions were doubtless execrable, nothing that has occurred to this point in the attack distinguishes Childs' experience from that of hundreds of other freedwomen. Stripping, whipping, and bucking were, after all, favorite vigilante sports. What followed,

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166. See, e.g., RONE BACHMAN & LINDA E. SALTZMAN, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT, VIOLENCE AGAINST WOMEN: ESTIMATES FROM THE REDESIGNED SURVEY 3 (1995) (finding that less than 20% of rapes are committed by perpetrators unknown to the victim); DIANA E.H. RUSSELL & REBECCA M. BOLEN, THE EPIDEMIC OF RAPE AND CHILD SEXUAL ABUSE IN THE UNITED STATES 57 (2000) (reporting the results of a survey indicating that only 17% of rapes are committed by strangers).

167. As Dorothy Sterling maintains, " 'Splitting a nigger woman,' the coarse phrase of an Alabama doctor, was not only considered a white man's prerogative, but was also a way to express his anger and contempt." WE ARE YOUR SISTERS, *supra* note 77, at 353. The original remark appears in 10 KLAN REPORT, *supra* note 113, at 1493. Another like it is quoted *infra* note 354.

168. BRFAL, *supra* note 36, RG 105, M 798, R 14, Affidavit of Rhoda Ann Childs, Letters Received, Ga., Sept. 25, 1866. Childs' statement also appears with slight variations in BRFAL, *supra* note 36, RG 105, Vol. 270, Complaints and Cases Tried, Griffen, Ga., Sept. 25, 1866, and in *Fiendish Cruelty*, *supra* note 106, at 3.

however, strongly underscores the abiding racial enmity manifest in so many klan sexual assaults.

Then I was thrown upon the ground on my back, one of the men stood upon my breast, while two others took hold of my feet and stretched my limbs as far apart as they could, while the man standing upon my breast applied the strap to my private parts until fatigued into stopping, and I was more dead than alive. Then a man, I suppose a Confederate soldier, as he had crutches, fell upon me and ravished me. During the whipping, one of the men ran his pistol into me, and said he 'had a hell of a mind to pull the trigger,' and swore they ought to shoot me, as my husband had been in the 'God damned Yankee army,' and swore they meant to kill every black-son-of-a-bitch they could find that had ever fought against them.<sup>169</sup>

The nightriders who perpetrated this atrocity were plainly not content with the gratifications of "ordinary" rape. Instead, they violated Childs again with yet another foreign object — this time a gun — that they then used to threaten her life. The obvious symbolism that inheres in the act of thrusting such a weapon into a woman's vagina requires little explication. Suffice it to say, when the phallus of the first klansman failed to obliterate her, the next assailant chose to avail himself of an even more potent weapon to accomplish the same objective.

As the sordid details of the attack on Childs seem to presage, freedwomen were not only raped by individual klansmen. Gang rapes, hardly an unknown phenomenon in the years prior to Emancipation,<sup>170</sup> also took place with alarming regularity afterwards.<sup>171</sup> In the early

169. BRFAL, *supra* note 36, RG 105, M 798, R 14, Affidavit of Rhoda Ann Childs, Letters Received, Ga., Sept. 25, 1866.

170. One former slave recollected that her sister, while still a young girl, was repeatedly forced to have intercourse with a group of white men. See 4 AMERICAN SLAVE, *supp.* ser. 1, *supra* note 114, pt. 2, at 373. In his memoirs, Lewis F. Kakuske, a private in the Union Army, describes the horrific scene of a slave woman being gang raped by three Confederate soldiers. The depravity of the assault was accentuated by the outrageously callous behavior of a group of white female onlookers who, he says, "clapped their hands in delight and they laughed as if they were applauding actors at a theater." LEWIS F. KAKUSKE, A CIVIL WAR DRAMA: THE ADVENTURES OF A UNION SOLDIER IN SOUTHERN IMPRISONMENT 41-42 (Herbert P. Kakuske trans., 1970). A prominent abolitionist newspaper reported a similar episode in which two Union soldiers "seized a colored woman . . . each in turn gratifying his brutal lusts. . . ." THE LIBERATOR, Aug. 22, 1862, *cited in* WE ARE YOUR SISTERS, *supra* note 77, at 239. For further information on wartime gang rapes, see LOWRY, *supra* note 142, at 123-24, 126, 127, 130; WE ARE YOUR SISTERS, *supra* note 77, at 353; and WILEY, *supra* note 142, at 114. Although the paucity of extant records detailing black women's experiences of gang rape during slavery and the Civil War renders speculation on this point somewhat perilous, it would appear that these assaults became more prevalent in the postwar period, when external constraints — notably the presence of slaveowners interested in preserving the value of their human property and military officers seeking to cultivate a positive image of themselves and their troops — were relaxed if not entirely eliminated.

171. For examples of klan gang rapes of freedwomen and girls that are not discussed separately below, see BRFAL, *supra* note 36, RG 105, M 826, R 33, Assistant Commissioner, Narrative Reports from Subordinate Officers, Oct. 30, 1868, *cited in* FRANKEL, FREEDOM'S WOMEN, *supra* note 142, at 111; BRFAL, *supra* note 36, RG 105, Vol. 30, Murders and Outrages, New Orleans, La., Nov. 10, 1868; BRFAL, *supra* note 36, RG 105, Vol.

weeks of 1866, the *Loyal Georgian* portentously reported the descent of five disguised men upon the home of Chandler Garrot, “a colored man,” where “each violated the person of his wife, a colored woman.”<sup>172</sup> Freedpeople required no assistance to interpret the intimation that white men would continue to employ violence to surmount the color line they so vigorously guarded when it suited their immediate aims. Appearing as a witness at the South Carolina Ku Klux Klan trials, Harriet Simril offered this unadorned sketch of her own ravaging:

Well, they were spitting in my face, and throwing dirt in my eyes . . . and after awhile they took me out of doors, and told me all they wanted was

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136, Assistant Adjutant General, Synopses of Reports, Washington, D.C., Jan. 5, 1869; 5 KLAN REPORT, *supra* note 16, at 1861-62; 7 KLAN REPORT, *supra* note 16, at 884-85; 8 KLAN REPORT, *supra* note 26, at 80, 547; 9 KLAN REPORT, *supra* note 26, at 930, 1188, 1189; TENNESSEE GENERAL ASSEMBLY, REPORT OF EVIDENCE TAKEN BEFORE THE MILITARY COMMITTEE, *supra* note 21, at 65; and *The Southern States*, *supra* note 148, at 5. The subject is also briefly addressed in DAVIS, WOMEN, RACE AND CLASS, *supra* note 120, at 175-76.

Besides the assaults perpetrated by known or suspected klansmen, gang rapes of black women also occurred in the context of large-scale racial conflagrations, most notoriously in the Memphis Riot of 1866. The majority report of the congressional committee established to inquire into those events concluded:

The crowning acts of atrocity and diabolism committed during these terrible nights were the ravishing of five different colored women by these fiends in human shape, independent of other attempts at rape. The details of these outrages are of too shocking and disgusting a character to be given at length . . . It is a singular fact, that while this mob was breathing vengeance against the negroes and shooting them down like dogs, yet when they found unprotected colored women they at once “conquered their prejudices,” and proceeded to violate them under circumstances of the most licentious brutality.

H.R. REP. NO. 39-101, at 13 (1866). The experiences of four women who were sexually violated by multiple perpetrators during the mayhem — Harriet Armour, Lucy Smith, Frances Thompson (whose sex was intriguingly ambiguous), and Lucy Tibbs — are chronicled in MEMPHIS RIOTS, *supra* note 83, at 161, 163, 176-77, 187, 196-97. Portions of this testimony are reprinted in BLACK WOMEN IN WHITE AMERICA, *supra* note 77, at 173-78. Additional information concerning acts of rape and attempted rape may be found in MEMPHIS RIOTS, *supra*, note 83, at 167-68, 186, 193-94, 348, 351. Beverly Greene Bond was the first historian to undertake a sustained analysis of the role of sexual violence in the Memphis Riot. See Beverly Greene Bond, “Till Fair Aurora Rise”: African American Women in Memphis, Tennessee 1840-1915, at 69-103 (1996) (unpublished Ph.D. dissertation, University of Memphis) (on file with the University of Memphis library); see also Hannah Rosen “Not That Sort of Women”: Race, Gender, and Sexual Violence during the Memphis Riot of 1866, in SEX, LOVE, RACE: CROSSING BOUNDARIES IN NORTH AMERICAN HISTORY 267 (Martha Hodes ed., 1999); Rosen, The Gender of Reconstruction, *supra* note 5, at 100-47. The sexualized aspect of these events is also considered in BROWNMILLER, *supra* note 144, at 126-28, and GUTMAN, THE BLACK FAMILY, *supra* note 6, at 24-28, 35. General studies of the riot, all of which mention the rape of freedwomen as among its salient features, include WILLIAM S. MCFEELY, YANKEE STEPFATHER: GENERAL O.O. HOWARD AND THE FREEDMEN 274-82 (1994); Kevin R. Hardwick, “Your Old Father Abe Lincoln is Dead and Damned”: Black Soldiers and the Memphis Race Riot of 1866, 27 J. SOC. HIST. 109 (1993); Jack D.L. Holmes, *The Underlying Causes of the Memphis Race Riot of 1866*, 17 TENN. HIST. Q. 195 (1958); Bobby L. Lovett, *Memphis Riots: White Reaction to Blacks in Memphis, May 1865-July 1866*, 38 TENN. HIST. Q. 9 (1979); James G. Ryan, *The Memphis Riot of 1866: Terror in a Black Community During Reconstruction*, 62 J. NEGRO HIST. 243 (1977); and Altina L. Waller, *Community, Class and Race in the Memphis Riot of 1866*, 18 J. SOC. HIST. 233 (1984).

172. *Horrible Outrage*, LOYAL GEORGIAN (Augusta), Jan. 27, 1866, at 2.

my old man to join the Democratic ticket; if he joined the Democratic ticket, they would have no more to do with him; and after they had got me out of doors, they dragged me into the big road, and they ravished me out there.<sup>173</sup>

Simril was raped by three of her white neighbors, Chester McCollum, Tom McCollum, and Jim Harper, who, in addition to assaulting her physically and sexually, treated her to a barrage of verbal abuse characterized by her examiners as being “of too obscene a nature to permit of publication.”<sup>174</sup> Variants on that phrase would be heard time and time again before the klans were finally subdued.<sup>175</sup>

In the intervening years, the klans conducted raids like this one throughout the former Confederacy, with freedwomen and girls their usual targets. Henry Willis provided testimony in an illustrative case involving a Klan-style attack on the homes of several freedpeople residing in Robertson County, Tennessee. After threatening sexual violence against Willis’s mother, the culprits turned instead to his twelve-year-old sister, raping her “one after the other.”<sup>176</sup> The daughter of

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173. S.C. KLAN TRIALS, *supra* note 16, at 502. This incident is also recounted in 5 KLAN REPORT, *supra* note 16, at 1861-62. Lou Falkner Williams contends that the attack on Simril was “more than a matter of sadistic lust, more than a crime against women,” but rather a crime “layered with social and political meaning directed primarily against the assertion of black male political power rather than against women per se.” WILLIAMS, THE GREAT SOUTH CAROLINA KU KLUX KLAN TRIALS, *supra* note 77, at 35. Although I agree with Williams’ basic proposition regarding the inherently politicized nature of sexual assaults such as this one, I cannot accept her conclusion that Simril’s ordeal was not equally an attack upon her as a black woman. To dismiss the significance of the misogyny evident in the klansmen’s actions not only distorts the general character of klan terror, but also has the effect of blunting the specificity of sexualized violence and rendering attacks against all but black male victims a mere afterthought to the organizations’ larger purposes, which they clearly were not.

174. S.C. KLAN TRIALS, *supra* note 16, at 502; *see also* 5 KLAN REPORT, *supra* note 16, at 1862.

175. Government officers frequently responded to sexually explicit evidence by suppressing it. *See, e.g.*, BRFAL, *supra* note 36, RG 105, M 821, R 32, Murders and Outrages, July 27, 1868 (stating that a murdered freedboy had been “mutilated in a manner of which decency forbids further description”); HOLDEN, THIRD ANNUAL MESSAGE, *supra* note 37, at 156 (declaring that the details of a freedman’s genital mutilation were “not proper to publish”); 2 HOLDEN TRIAL, *supra* note 37, at 2008 (refusing to hear testimony concerning same-sex sexual violence); 5 KLAN REPORT, *supra* note 16, at 1983 (omitting description of rapes as “too indecent for public mention”); *see also* HOLDEN, THIRD ANNUAL MESSAGE, *supra* note 37, at 157 (excluding information concerning a sexual offense alleged against a former slave who was visited by klansmen on that pretext). The tendency of jurists and governmental authorities to recoil from the unpleasant details of sexualized violence is by no means a thing of the past; indeed, even the modern Supreme Court has allowed itself this indulgence. Writing for the Court in *Oncale v. Sundowner Offshore Services, Inc.*, Justice Scalia pronounced that the interests of “brevity and dignity” dictated that the particulars of the harassment alleged by Oncale be omitted from the opinion. 523 U.S. 75, 76-77 (1998). It is worth contemplating who ultimately benefits from these calculated omissions, both in the past as well as today.

176. BRFAL, *supra* note 36, RG 105, M 999, R 34, Affidavit of Henry Willis, Nashville, Tenn., Oct. 23, 1866; *see also* BRFAL, *supra* note 36, RG 105, M 999, R 34, Affidavit of Amanda Willis, Nashville, Tenn., Oct. 23, 1866 (both providing additional testimony on this case).



Edward Carter, a Mississippi freedman, was similarly assailed by two local klansmen, John Cook and Diller Suddith, while performing her daily household chores. "She went to holler," her father explained, prompting one of her attackers to "put a leather girth on her neck, to prevent her hollering, and they carried her about a quarter or a half a mile from the house and they ravished her."<sup>177</sup> As with all of the atrocities considered here, these assaults were carried out by groups of white men impelled to violence by a complex of racial and sexual animus. At the same time, they exhibit distinctive features that bear mention. To begin with, gang rape is a crime often fraught with homoerotic overtones,<sup>178</sup> and those committed by klansmen were no exception.<sup>179</sup> As one historian opined, "[i]t appears . . . that the desire for group intercourse was sometimes sufficient reason for a den to go out on a raid."<sup>180</sup> One need not adopt a strictly psychoanalytic approach to recognize that part of the allure of raping in groups is precisely the fact that others are available to witness and participate in the act and applaud their collective accomplishment. Moreover, there is a way in which watching violent sex is itself a sexual act.<sup>181</sup> Catharine MacKinnon makes a related point with respect to pornography in the present day, submitting that consumers "experience this *being done* by watching it *being done*."<sup>182</sup> In this sense, klan rape, a group event re-

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177. 12 KLAN REPORT, *supra* note 44, at 1084.

178. Psychologists have for decades recognized the implicit homoeroticism of gang rape, an activity that by definition involves the concurrent (or successive) physiological arousal of multiple men engaging in forcible intercourse with a shared (typically female) object. See, e.g., W.H. Blanchard, *The Group Process in Gang Rape*, 49 J. SOC. PSYCH. 259, 259 (1959). An alternative, yet still compatible, position holds that participants in gang rape, while lacking reciprocal sexual feeling, may use the body of their victim as a means of communicating among themselves, typically over the distribution of power within the group. See, e.g., A. NICHOLAS GROTH, *MEN WHO RAPE: THE PSYCHOLOGY OF THE OFFENDER* 115 (1979). This idea derives from Claude Lévi-Strauss's anthropological observations of men's tendency to use women as a means of establishing relative positions of dominance and subordination. In Robin Morgan's acute description, "men use women as the verbs by which they communicate with one another (they themselves are the nouns, of course), rape being the means for communicating defeat to the men of a conquered tribe, so overpowered that they cannot even defend 'their' woman from the victors." Robin Morgan, *Theory and Practice: Pornography and Rape*, in TAKE BACK THE NIGHT: WOMEN ON PORNOGRAPHY 134, 140 (Laura Lederer ed., 1980). Jacquelyn Dowd Hall has since applied Lévi-Strauss's interpretation to the crime of rape in the postwar South. See Hall, "The Mind That Burns in Each Body," *supra* note 143, at 332; HALL, *REVOLT AGAINST CHIVALRY*, *supra* note 144, at xxvi; see also BROWNMILLER, *supra* note 144, at 125 (characterizing rape as "an expression of power and dominance" in which "[w]omen are used almost as inanimate objects, to prove a point among men," though not citing Lévi-Strauss).

179. A similar dynamic is at work in the paradigmatic klan lynching. See *infra* notes 252-255 and accompanying text.

180. WADE, *supra* note 10, at 76.

181. I am indebted to Catharine MacKinnon for this insight and for numerous conversations surrounding the eroticization of violence throughout American history.

182. CATHARINE A. MACKINNON, *ONLY WORDS* 17 (1993) [hereinafter MACKINNON, *ONLY WORDS*].

ardless of whether it is physically consummated by one or more members, reflects an impulse that is at once profoundly sadistic and thoroughly narcissistic — a combination that produced devastating consequences.

Whatever their individual paraphilias, perpetrators enacted these assaults on the bodies of real women (and sometimes men) whose stories must remain unfortunately incomplete. Extant sources documenting incidents of gang rape, most elliptically recounted,<sup>183</sup> offer important insights into the difficulty of accessing the traumatic effects of klan sexual violence in the absence of the sort of unmediated first-hand accounts that have only recently become widely available.<sup>184</sup> Although we do not know, for instance, how the young victims themselves understood their ordeals or how they responded to them over the long term, they may have been more fortunate than many in having family members able and willing to come forward and attempt to achieve justice on their behalf.

In addition to the methods of rape centering on forced intercourse, klansmen committed equally heinous acts of oral rape. Although few descriptions of such acts have yet been recovered,<sup>185</sup> those that have suggest something of the traumatic impact engendered by these atrocities, while their perspectival limitations underscore the scant attention accorded the lived experience of sexual terror during this period, par-

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183. Any explanation of this phenomenon must rely in part on what Darlene Clark Hine has evocatively termed the “culture of dissemblance” that grew up among black women as a result of their historical experiences of sexual abuse and discrimination. See Darlene Clark Hine, *Rape and the Inner Lives of Black Women in the Middle West: Preliminary Thoughts on the Culture of Dissemblance*, 14 *SIGNS* 912 (1989).

184. I am referring here primarily to the growing body of memoir literature in which women’s individual histories of sexual abuse are narrated. See, e.g., SUSAN J. BRISON, *AFTERMATH: VIOLENCE AND THE REMAKING OF A SELF* (2002); PATRICIA WEAVER FRANCISCO, *TELLING: A MEMOIR OF RAPE AND RECOVERY* (1999); NANCY VENABLE RAINE, *AFTER SILENCE: RAPE AND MY JOURNEY BACK* (1998); MARTHA RAMSEY, *WHERE I STOPPED: REMEMBERING RAPE AT THIRTEEN* (1995); ALICE SEBOLD, *LUCKY* (1999); see also CHARLOTTE PIERCE-BAKER, *SURVIVING THE SILENCE: BLACK WOMEN’S STORIES OF RAPE* (1998) (surveying the rape narratives of several black female survivors).

185. There are, however, a number of accounts of freedwomen being orally sodomized by white men not identified as members of a white supremacist group. Cynthia Townsend, for example, describes an assault upon her friend, Harriet Armour, (née, Merriweather), during the Memphis riots: “They all had connexion with her in turn around, and then one of them tried to use her mouth.” *MEMPHIS RIOTS*, *supra* note 83, at 163, 176. Similarly, Andrew B. Payne forced the head of a young freedwoman between his legs while beating her with a stick. See *BRFAL*, *supra* note 36, RG 105, M 999, R 34, Report of Outrages, Riots, and Murders, Tenn., Jan. 15, 1866-Aug. 12, 1868. Another former slave, Mary Jane Forrest, of Baton Rouge, Louisiana, filed a complaint with the Freedmen’s Bureau after being attacked by Joseph McKittrick, who “stopped her on the sidewalk and asked her to s — k his privates.” *BRFAL*, *supra* note 36, RG 105, Vol. 222, Complaint of Mary Jane Forrest against Joseph McKittrick, Baton Rouge, La., June 15, 1867. As Herbert Gutman pointedly observes, the perpetuation of sexual violence by the Reconstruction-era klans suggests that attacks such as these “may have been more than personal idiosyncrasy.” *GUTMAN, THE BLACK FAMILY*, *supra* note 6, at 394 n.\*.

ticularly in its psychological effects. In an obvious instance of symbolic oral rape — this one accomplished by an inanimate object rather than a penis — klansmen responded to the terrified cries of a freedwoman whose husband was in imminent, potentially mortal, danger by thrusting a firebrand down her throat.<sup>186</sup> The only known record of this assault offers few hints of how the victim herself might have interpreted these events, but while her personal apprehensions are largely irretrievable, the description provided by the white man who reported it reveals that the sexually charged tenor of the attack was obscure neither to him nor to his contemporaries.<sup>187</sup> Thomas White, a North Carolinian, came forward with testimony regarding another unambiguously sexual attack, this time on a freedwoman named Violet Wallace. After having lashed, kicked, and pummeled her about the head with a pistol, “one of the number stripped his pants down and sat down upon her face.”<sup>188</sup> While perpetrating these abuses, the nightriders mocked, “‘You think you are white, you think you are rich, you curse white folks.’”<sup>189</sup> The witness’s further observations provide a glimmer of insight into Wallace’s struggle to recover from her rape. Like most others who commented on the immediate consequences of klan sexual violence, White offers specific information only about the victim’s bodily injuries, which included multiple rib fractures. Beyond that, he reports that Wallace was confined to her bed for two weeks following the attack, when she was presumably struggling to recuperate from the psychological as well as the physical effects of the trauma she had endured. As for the nature and extent of those scars, we can only conjecture. Like countless other victims, Wallace refused either to file a complaint or to speak publicly of the attack, fearing, as White put it, that the klansmen would “repeat the deed or take her life.”<sup>190</sup> Her compelled silence is perhaps the most poignant reflection that remains of the devastating impact of klan rape upon its victims.

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186. See S. REP. NO. 42-1, at 85-86 (1871) (providing another account of this episode); see also Holden Papers, *supra* note 102, Letter from Justice Thomas Settle to William W. Holden, July 28, 1869, cited in TRELEASE, *supra* note 10, at 195. Matilda Frix suffered a comparable ordeal when her attackers “[p]ulled out a pistol, rubbed it over her face, [and] said they would blow her brains out if she made any noise.” BRFAL, *supra* note 36, RG 105, Records of the Assistant Commissioner for the State of Georgia, Statement of Matilda Frix, reprinted in STANDING UPON THE MOUTH OF A VOLCANO: NEW SOUTH GEORGIA 101, 101 (Mills Lane ed., 1993) [hereinafter STANDING UPON THE MOUTH OF A VOLCANO].

187. See Holden Papers, *supra* note 102, Letter from Justice Thomas Settle to William W. Holden, July 28, 1869, cited in TRELEASE, *supra* note 10, at 195.

188. N.Y. TIMES, Oct. 13, 1868, *supra* note 96. This incident is also described by T.J. White in testimony before a state committee investigating reports of Klan violence in Tennessee. See TENNESSEE GENERAL ASSEMBLY, REPORT OF EVIDENCE TAKEN BEFORE THE MILITARY COMMITTEE, *supra* note 21, at 22.

189. N.Y. TIMES, Oct. 13, 1868, *supra* note 96.

190. *Id.*

Indicative of postbellum culture's relative inattention to the sexualized aspects of violence and the predominance of heterosexual intercourse in conceptions of the sexual, extant sources detailing the klans' methods of sexual terrorization are all but devoid of reference to homosexual rape. Considering not only the cultural biases of that era but also the subliminal purposes of sexualized violence, this is not an especially surprising discovery. The sparseness of the historical record, of course, does not establish that such attacks were completely anomalous; rather, the historical record suggests that same-sex sexual violence was a potent, if little used, weapon in the klans' arsenal.<sup>191</sup> John W. Long narrates one such incident in which klansmen assaulted a white male who was spending the night at a freedman's home.<sup>192</sup> Although there is no hint of a physical relationship between the two men, their mere familiarity was sufficient to incite the clan's wrath. Just as he begins to describe the precise nature of the assault — "they made the colored man get down on his all-fours and made him take his nose — " the examining attorney cuts off his testimony with a peremptory, "Never mind that."<sup>193</sup> When Long attempts to continue, he is brusquely instructed, "You need not name it."<sup>194</sup> Two inferences may be drawn from this exchange with relative confidence: first, the klansmen who participated in the raid sought, perhaps successfully, to force their victims to engage in some form of nonconsensual sexual activity for their own gratification; and second, the presiding examiner determinedly thwarted a full account of the episode before a tribunal that had already been presented with extensive testimony of klan atrocities, sexual and otherwise.<sup>195</sup> That a sex crime committed by one man against another could be deemed utterly unspeakable in such a context provides compelling evidence of its dangerously stigmatic force.

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191. Given the terseness and ambiguity of the historical record and the impossibility of thoroughly documenting any one form of same-sex sexual violence, the discussion that follows will encompass not only rape, but homosexual assaults broadly construed.

192. See 2 HOLDEN TRIAL, *supra* note 37, at 2008. The white man, referred to in testimony as "Mr. Boone," is a reputed klan member. The freedman is unidentified. Needless to say, if the betrayal of klan principles embodied in Boone's choice of resting place did not foreordain a violent response, it surely contributed to its severity. However these considerations may have figured in the klansmen's decision to target him, they are not alone sufficient to explain the sexualized mode of the retribution exacted; understanding that aspect of the attack requires taking into account such factors as the evolving character of white racial fears, racially specific conceptions of honor and manhood, and the communicative value of the punishment chosen. For another example of a klan outrage against a white man who violated racial ethics by staying at the home of a black family, see *id.* at 1331, 1334.

193. *Id.* at 2008.

194. *Id.*

195. The resistance evidenced by various government officials to incorporating the details of sexual violence into the published record of klan atrocities is discussed *supra* note 175 and accompanying text.

William M. Champion, a white radical from Limestone Township, North Carolina, set forth a more extended description of his confrontation with area klansmen.

They took me then and led me off, and took down my shirt and breeches, and whipped me . . . I think I was about to faint and they ceased whipping me. There were some negroes they had there, but I had never seen them. I saw when they led me to the place that there was a number of them there before they blindfolded me. Well, they made me kiss the negro man's posterior, and held it open and made me kiss it, and as well as I remember a negro woman's, too, and also her private parts, and then told me to have sexual connection with her. I told them they knew, of course, I could not do that. They struck me, and some of them begged for me. They asked how I liked that for nigger equality.<sup>196</sup>

Clem Bowen, a freedman who witnessed the assault, confirmed, "That was what they professed, that he was equalizing himself too much, and that was the reason they made him take that kissing negro equality."<sup>197</sup> In the course of his interrogation before members of the Joint Select Committee, Champion revealed that he was among the few white men in the area to join the Loyal League, and, if that were not enough to anathematize him among local whites, he further admitted that he had taught at a freedmen's Sunday school.<sup>198</sup> As they did with countless whites whose behavior they found racially treacherous, klansmen informed him that he would be murdered if he persisted in either of these activities.<sup>199</sup> Some time later, that threat was revived in written form: "We have been told that our visit to you was not a sufficient hint. We now notify you to leave the country within thirty days from the reception of this notice, or abide the consequences. 'K.K.K.'"<sup>200</sup>

As in the episode alluded to by John W. Long,<sup>201</sup> there is no indication that Champion was himself actually sodomized. Nor is there evidence, besides what appears in the passage quoted above, that any of

196. See 3 KLAN REPORT, *supra* note 17, at 366. Comparable methods of degradation were more recently employed in Bosnia-Herzegovina, where Serb captors were known to force prisoners, sometimes relatives, to engage in sexual relations with each other, and in Chechnya, where Russian troops stationed at the Chernokozovo prison camp appear to have replicated this pattern. See BASSIOUNI & MCCORMICK, *supra* note 104, at 6, 17, 18, 20; GUTMAN, A WITNESS TO GENOCIDE, *supra* note 104, at 144; Pelka, *supra* note 104, at 7 (all discussing Serb atrocities in Bosnia-Herzegovina); Cockburn, *supra* note 104, at 14 (describing similar crimes in Chechnya).

197. 3 KLAN REPORT, *supra* note 17, at 382. A gang of fourteen Arkansas klansmen chose a more literal means of conveying the same message. Having murdered two men, one white the other black, they "tied the white man and negro together in the attitude of kissing and embracing, and left them in the public road where they remained for about two days." POWELL CLAYTON, THE AFTERMATH OF THE CIVIL WAR, IN ARKANSAS 117 (1915).

198. 3 KLAN REPORT, *supra* note 17, at 371, 382.

199. *Id.* at 366.

200. *Id.* at 367.

201. See *supra* notes 192-194 and accompanying text.

the other freedpeople present were molested in the course of this encounter. Rather, the klansmen involved were quite concertedly seeking to exploit some of the most powerful fears and prejudices of their day, using shame as a means of exerting their dominion over white men who in some way had failed to abide by prevailing white supremacist strictures. And treating other men "like women," dominating them sexually, physically, and emotionally, was then, as now, a readily available means of humiliating a male enemy. Klansmen thus relied on rape and other sex crimes against men as a convenient and effective means of accomplishing their larger aims.

Outrages such as these were also perpetrated against freedmen and boys, and, while their interpretation presents somewhat different challenges, it is nonetheless striking that they appear in much the same guise as sexual assaults upon white men. As with white-on-white male sex crimes, the surviving record of these encounters is rather tenuous, warranting no more than cautious speculation. More often than not, what evidence exists must be garnered deductively, through close attention to witnesses' choice of words and the plausible meanings they might represent within a given document. A Freedmen's Bureau agent stationed in Columbia, Tennessee thus attested that one Mr. Thurman and his two sons had been taken from their home by "a squad of Ku Klux" and dragged deep into the woods "where they were *shamefully abused*, knocked about with pistols & clubs, &c."<sup>202</sup> Although it is by no means certain that these nameless abuses involved forcible sodomy or some other sex crime, the fact that a selected aspect of this assault was left unspecified suggests that some form of sexual violation might well have occurred. The KKK likewise "maltreated" Preston Bush in the course of a raid upon the freedman's home, and were said to have perpetrated a "similar outrage" against two other local freedmen.<sup>203</sup> Somewhat more forthcoming is the testimony of an ex-slave from Tennessee who acknowledges having "had to submit to insults which make a man despise himself for bearing."<sup>204</sup> Plainly he had endured some form of degradation that he, and presumably others like him, were disposed to apprehend as compromising his manhood. The evidence glimpsed through these sources, while not incontrovertible, is nonetheless consistent with what one would expect following a homosexual assault<sup>205</sup> in this place and time: shame, humiliation, and si-

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202. BRFAL, *supra* note 36, RG 105, Vol. 136, Assistant Adjutant General, Synopses of Reports, Washington, D.C., May 18, 1868 (italics added).

203. *Id.* Sept. 18, 1868.

204. *Id.* July 27, 1868.

205. These events predated the construction of "homosexuality," thus I use the term only suggestively. The emergence of the modern homosexual as that concept is presently interpreted dates to the late nineteenth century. This critical moment in the history of sexuality has been insightfully explored by a number of American historians. See George Chauncey, Jr., *From Sexual Inversion to Homosexuality: Medicine and the Changing Con-*

lence.<sup>206</sup> Here, acts of same-sex sexual violence are best understood as occurring within a loosely heterosexual paradigm in which the victim is gendered female. And under conditions of gender hierarchy, the metaphorical extension of feminine status is all but certain to effect stigmatic harms in men so afflicted. Resorting to purposefully vague language to portray these outrages within reports that otherwise graphically chronicle whippings, beatings, rapes, murders, and myriad other flagrantly sexualized crimes, indicates that many male speakers, with the tacit connivance of those recording their words, felt compelled to withhold details of the offense when men were sexually molested. It is as if by reporting their metaphorical feminization or that of other males they would not only forfeit their right of access to masculine prerogatives, but to their very manhood itself.

### C. Genital Torture and Mutilation

Whipping and rape were by no means the only forms of sexual terror employed by the klans; genital torture and mutilation also figured prominently among their methods.<sup>207</sup> Extant sources suggest that men and women, overwhelmingly black, were subjected to these abuses in roughly equal numbers, either as casualties of nightriding directed towards other ends or, in some instances, as victims of savage premedita-

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*ceptualization of Female Deviance*, 58-59 SALMAGUNDI 114 (1982-83); Lisa Duggan, *The Trials of Alice Mitchell: Sensationalism, Sexology, and the Lesbian Subject in Turn-of-the-Century America*, 18 SIGNS 791 (1992); see also JENNIFER TERRY, AN AMERICAN OBSESSION: SCIENCE, MEDICINE, AND HOMOSEXUALITY IN THE MODERN ERA (1999) (addressing the problem as it has been manifested within American science and medicine over time).

206. That this reaction closely approximates what might be seen today in the case of male same-sex sexual assault is not, however, an indication of its inevitability or transhistoricity. Like any other form of traumatization, it is shaped by the historical contingencies borne of its own sociocultural milieu. While research on the sexual assault of males was virtually nonexistent prior to 1980, it has since attracted increasing scholarly notice. For an entry into recent medical and psychological research on the subject, consult MICHAEL SCARCE, MALE ON MALE RAPE: THE HIDDEN TOLL OF STIGMA AND SHAME (1997); MALE RAPE: A CASEBOOK OF SEXUAL AGGRESSIONS (Anthony M. Scacco, Jr. ed., 1982); MALE VICTIMS OF SEXUAL ASSAULT (Gillian C. Mezey & Michael B. King eds., 2d ed. 2000); THE SEXUALLY ABUSED MALE (Mic Hunter ed., 1990); Deryck Calderwood, *The Male Rape Victim*, 21 MED. ASPECTS HUM. SEX. 53 (1987); Adrian W. Coxell, et al., *Sexual Molestation of Men: Interviews with 224 Men Attending a Genitourinary Medicine Service*, 11 INT'L J. STD & AIDS 574 (2000); Nicholas A. Groth & Ann W. Burgess, *Male Rape: Offenders and Victims*, 137 AM. J. PSYCHIATRY 806 (1980); Paul J. Isley & David Gehreneck-Shim, *Sexual Assault of Men in the Community*, 25 J. COMM. PSYCH. 159 (1997); and Gillian Mezey & Michael King, *The Effects of Sexual Assault on Men: A Survey of 22 Victims*, 19 PSYCH. MED. 205 (1989).

207. See, e.g., 2 KLAN REPORT, *supra* note 16, at 39 (testifying to the contents of an unsigned affidavit indicating that one hundred men had been "whipped and mutilated" by the klans); see also ARTHUR F. RAPER, THE TRAGEDY OF LYNCHING 124 (1933) (stating that "in 1870, the Ku Klux Klan emasculated eleven Negroes") [hereinafter RAPER, THE TRAGEDY OF LYNCHING].

tion.<sup>208</sup> Much as the antecedents of other forms of sexual terror are readily discernible in antebellum practices, so too did genital torture and mutilation occur within the context of slavery.<sup>209</sup> Outrages of this sort persisted during the Civil War, when they were arbitrarily carried out by marauding soldiers from both camps,<sup>210</sup> and after, when they were executed with heightened intensity and systematicity by the white supremacist klans.<sup>211</sup> Presaging events to follow, a Southern ob-

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208. Some of this evidence is merely suggestive, as when Brevet Major General J.J. Reynolds writes that freedmen were at times "terribly mutilated" by outraging "desperadoes." BRFAL, *supra* note 36, RG 105, Vol. 136, Assistant Adjutant General, Synopses of Reports, Washington, D.C., Sept. 28, 1868. Analogous terms were frequently used to depict klan attacks. *See, e.g.*, HOLDEN, THIRD ANNUAL MESSAGE, *supra* note 37, at 15, 16, app. 8, 14, 74; WILLIAM W. HOLDEN, PROCLAMATIONS BY THE GOVERNOR OF NORTH CAROLINA: TOGETHER WITH THE OPINION OF CHIEF-JUSTICE PEARSON 10, 16, 31 (Raleigh, Standard Steam Book & Job Printing 1870) [hereinafter HOLDEN, PROCLAMATIONS]; NORTH CAROLINA SENATE, 1 TRIAL OF WILLIAM W. HOLDEN, GOVERNOR OF NORTH CAROLINA, BEFORE THE SENATE OF NORTH CAROLINA, ON IMPEACHMENT BY THE HOUSE OF REPRESENTATIVES FOR HIGH CRIMES AND MISDEMEANORS 32 (Raleigh, Sentinel 1871) [hereinafter 1 HOLDEN TRIAL].

209. *See* BLASSINGAME, THE SLAVE COMMUNITY, *supra* note 95, at 233, 263; BLEE, WOMEN OF THE KLAN, *supra* note 10, at 13; ESCOTT, *supra* note 7, at 45; KOLCHIN, *supra* note 95, at 58, 121-22; STAMP, THE PECULIAR INSTITUTION, *supra* note 95, at 188; WE ARE YOUR SISTERS, *supra* note 77, at 353. Based on her study of antebellum Louisiana, Judith Schafer surmises that cases such as these, while not uncommon, were routinely obscured or omitted entirely from state court records. However, Schafer found a critical exception to this pattern in *Humphreys v. Utz*, a Louisiana Supreme Court case arising from the genital mutilation of a male slave for which the complete trial transcript, briefs, and handwritten decision survive. *See* Judith K. Schafer, *Sexual Cruelty to Slaves: The Unreported Case of Humphreys v. Utz*, 68 CHI.-KENT L. REV. 1313 (1993). For a perceptive study of castration in an earlier period of Southern history, see Diane Miller Sommerville, *Rape, Race, and Castration in Slave Law in the Colonial and Early South*, in THE DEVIL'S LANE: SEX AND RACE IN THE EARLY SOUTH 74 (Catherine Clinton & Michele Gillespie eds., 1997).

210. Thomas Lowry has located a number of relevant cases in his examination of the files of federal courts martial, including one episode in which a Union soldier attempted to rape a freedwoman and, failing that, "pulled up her dress and threw a [flaming] torch between her legs." Records of the Judge Advocate General's Office (Army), National Archives, Washington, D.C., RG 153 [hereinafter JAG], Court Martial Case Files, M 2471, *cited in* LOWRY, *supra* note 142, at 123-24. In another incident, a Union soldier reportedly castrated a young boy simply "because he gloried in being a rebel." CHARLES W. TURNER, CIVIL WAR LETTERS OF ARABELLAS SPEAIRS AND WILLIAM BEVERLY PETTIT OF FLUVANNA COUNTY, VIRGINIA 155 (1988), *cited in* LOWRY, *supra* note 142, at 130.

211. The klans' reliance on genital violence as a method of terror was widely noted at the time. *See, e.g.*, PRATT, *supra* note 147, at 4, 5; COLORED TRIB. (Savannah), Jan. 15, 1878, at 2; N.Y. TIMES, Mar. 17, 1871, at 4. A number of historians have since remarked on this pattern. *See, e.g.*, FRANKLIN, *supra* note 27, at 155; FRY, *supra* note 13, at 159; GUTMAN, THE BLACK FAMILY, *supra* note 6, at 394; HODES, WHITE WOMEN, BLACK MEN, *supra* note 4, at 152, 154-56, 161; LITWACK, BEEN IN THE STORM SO LONG, *supra* note 6, at 276-77; TRELEASE, *supra* note 10, at 202, 323-24; WADE, *supra* note 10, at 78-79. Ironically, whites would in subsequent years insist that it was black men who were prone to sexually mutilate their victims. *See* R.W. SHUFELDT, THE NEGRO: A MENACE TO AMERICAN CIVILIZATION 133-34, 177-78 (1907); *Genital Peculiarities of the Negro*, 4 ATLANTA J.-REC. MED. 842, 843 (1903). Meanwhile, not only did klansmen far exceed any potential rivals in their resort to these methods, but it was again white men, this time reputable physicians and jurists, who eventually proposed castration as a suitable penalty for sex crime with a view toward disciplining black perpetrators. *See* Simeon E. Baldwin, *Whipping and Castration as Punishments for Crime*, 8 YALE L.J. 371, 381-82 (1899); *Castration Instead of Lynching*, 8 ATLANTA J.-



server chronicles an atrocious wartime episode in which several Union soldiers stationed in Virginia seized two freedwomen, “turned them upon their heads, & put tobacco, chips, sticks, lighted cigars & sand into their behinds.”<sup>212</sup> Although this incident bears certain distinctive features that set it apart from others of its kind, the potent animosity it so plainly bespeaks was pervasive during these years. With the klans, such malicious practices assumed even greater prominence. It was with little hyperbole that Albion Tourgée’s “Fool” characterized Reconstruction as an era marred by “the mutilation of men and women in methods too shocking and barbarous to be recounted,” replete with tragic encounters that left freedmen “mutilated beyond description, tortured beyond conception,” some “mangled,” “despoiled of manhood!”<sup>213</sup>

Numerous witnesses provided evidence of the klans’ peculiar fascination with the genitalia of freedmen.<sup>214</sup> John W. Long, the erstwhile klansman who provided crucial evidence of klan sexual atrocities, testified to the notorious mutilation of the former slave Nathan Trollinger. In multiple venues, he reported that a band of disguised men “gave [Trollinger] a thrashing and made him take out his privates and stick a knife through it . . . five or six times.”<sup>215</sup> Henry Lowther, a freedman who had himself suffered equally horrific torments, recounted a Klan attack upon Bill Brigam, another former slave. “The

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REC. MED. 456, 457 (1906); W.T. English, *The Negro Problem from the Physician's Point of View*, 5 ATLANTA J.-REC. MED. 459, 470-71 (1903); McGuire & Lydston, *supra* note 64, at 122. For an argument against this approach, see J.A. de Armand, *Asexualization as a Punishment for Rape*, 20 MED. BULL. 55 (1898).

212. Henry J.H. Thompson Papers, Rare Book, Manuscript, and Special Collections Library, Duke University, Durham, N.C., Letter from Henry J.H. Thompson to his wife, June 20, 1863, *quoted in* WILEY, *supra* note 142, at 114.

213. TOURGÉE, *supra* note 36, at 241, 246.

214. *See, e.g.*, 2 KLAN REPORT, *supra* note 16, at 39. Although the site of bodily injury often remains unspoken, accounts of the widespread mutilation of freedmen’s bodies strongly imply that these were commonly, if not uniformly, genital attacks. White men’s preoccupation with black male genitalia was by no means limited to klansmen. Iver Bernstein, for example, identifies crucial moments in the New York City draft riots of 1863 when Irishmen sexually tortured and mutilated their black antagonists. In one such episode, a white teenager dragged the remains of a lame black coachman through the streets by his genitals to the delight of the assembled crowd. As Bernstein persuasively argues, behavior like this reflected “a need among rioters of this stripe to prove sexual conquest of the black male community through symbolic acts.” BERNSTEIN, *supra* note 30, at 29.

215. 2 HOLDEN TRIAL, *supra* note 37, at 2007. Elsewhere, Long states, “They went and whipped Nathan Trollinger and made him draw out his ‘tool’ and peck it with his own knife.” KKK Papers, *supra* note 16, Testimony of John W. Long [State v. Tarpley], at 23. Additional information on Trollinger’s ordeal is available in AGO, *supra* note 16, RG 94, M 666, R 1, F 60, Letter from W.W. Holden to General U.S. Grant, Enclosure, Jan. 1, 1871; KKK Papers, *supra* note 16, Testimony of John W. Long [State v. Andrews], at 2; and S. REP. NO. 42-1, at xix, lxvi, 34, 36 (1871). Note that when this testimony was subsequently made public, the particulars of the assault on Trollinger were excised as unfit for publication. *See* HOLDEN, THIRD ANNUAL MESSAGE, *supra* note 37, at 156; *supra* note 175 and accompanying text.

way they did him was, they tied him down on a log and took a buggy-trace to him, and whipped one of his seed out and the other very nearly out."<sup>216</sup> Furthermore, he attested, a white man named Register "was castrated in an adjoining county."<sup>217</sup> As was often the case, klansmen offered no specific justification for any of these crimes. That reserve was nowhere in view, however, in the klan's threat against George W. Hollowell: " 'You have been fighting in the United States service; you are a Yankee, you black son of a bitch[,] and we are going to cut out your stones and skin you alive.' "<sup>218</sup> Nor was it present in the narrative depicting the torture of a Jackson County freedman accused of cohabiting with a white woman.

[T]he colored man was taken out into the woods, a hole dug in the ground and a block buried in it, and his *penis* taken out, and a nail driven through it into the block; that a large butcher or cheese knife, as they call it, very sharp, was laid down by him, and lightwood piled around him and set on fire; the knife was put there so that he could cut it off and get away, or stay there and burn up. Doctor Swinney said that he cut it off and jumped out.<sup>219</sup>

This passage illustrates one of several instances in which a former slave confronted the choice between death or castration, here, by his own hand.<sup>220</sup>

In one of the few first-hand accounts of genital mutilation by the klans, Henry Lowther gives the following testimony regarding his own castration:

They asked me whether I preferred to be altered or to be killed. I said I preferred to be altered. After laying me down and getting through they said: "Now, as soon as you can get to a doctor, go to one; you know the doctors in this country, and as soon as you are able to leave do it, or we

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216. 6 KLAN REPORT, *supra* note 16, at 359. Trelease refers to three cases, including those of Brigan and Lowther, in which freedmen in Wilkinson County, Georgia were castrated by klansmen. See TRELEASE, *supra* note 10, at 323-24; see also HODES, WHITE WOMEN, BLACK MEN, *supra* note 4, at 156 (discussing the castrations of Lowther, Trollinger, and others).

217. 6 KLAN REPORT, *supra* note 16, at 360.

218. 8 KLAN REPORT, *supra* note 26, at 166. The report presented by Governor Lindsay's Recording Secretary offers another perspective on the matter. That inquiry found Hollowell, a Michigan resident whose encounter with the klan took place while he was visiting relatives in Alabama, guilty of a number of breaches of racial decorum:

As soon as he reached Morgan County he began to assume offensive airs toward the white persons he met, and boasted loudly and often of having married a wealthy white lady in Michigan, with whom he was then living, asserting his equality with any white man, and utter contempt for them generally, at the same time giving it as his mission to convert the colored people of Alabama to the same belief.

*Id.*

219. 7 KLAN REPORT, *supra* note 16, at 1120.

220. See *infra* notes 221-230 and accompanying text.

will kill you next time." I asked how long it would take to get well, and they said five or six weeks. I was naked and bleeding very much.<sup>221</sup>

Lowther's account contains a number of striking features. First, the victim was given a choice between two extremely unpalatable punishments: murder and castration. Not surprisingly, he preferred to remain alive in a physically "altered" state, something that his assailants confirmed through an emissary before commencing their work.<sup>222</sup> Then, in a perverse display of concern, (if indeed that is what it was), Lowther's assailants instructed him to visit a nearby physician to mend the wounds they had inflicted,<sup>223</sup> after which he was expected to leave town lest he be victimized again.<sup>224</sup> Together, these statements suggest that the klansmen were less interested in killing Lowther, an action that was well within their powers to accomplish and one that they obviously considered warranted, than they were in forcing him to live emasculated and in fear.<sup>225</sup> The question of why they wanted to see him alive in this diminished condition is less easily resolved.<sup>226</sup> Lowther, who was active in Republican politics and comparatively well-off financially, contended that it was his successful adaptation to freedom that had inspired the Klan's fury.<sup>227</sup> But the evidence also suggests other viable explanations for the crime. For example, Reverend J.H. Caldwell, a district court judge employed by the United States Attorney General to investigate then-rampant vigilante activity in the region, believed that Lowther was actually assaulted because of

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221. 6 KLAN REPORT, *supra* note 16, at 357.

222. When asked by one of the nightriders, "Harry, are you willing to give up your stones to save your life?", Lowther resolved that he preferred to live and thus agreed to accept his punishment without further resistance. *Id.* at 356.

223. There is some indication that it was a physician who performed the castration, but Lowther himself ultimately concluded that it was not. *See id.* at 357-58, 361.

224. *See id.* at 357.

225. Numerous freedmen who were castrated by the klans were also lynched. *See, e.g.*, 4 KLAN REPORT, *supra* note 34, at 1031, 1184; 8 KLAN REPORT, *supra* note 26, at 2; N.Y. TIMES, July 30, 1871, at 1; *see also* TRUDIER HARRIS, EXORCISING BLACKNESS: HISTORICAL AND LITERARY LYNCHING AND BURNING RITUALS 5 (1984) [hereinafter HARRIS, EXORCISING BLACKNESS]; Van Tassel, *supra* note 50, at 917. There is, however, no mention of castration in the majority of cases involving former slaves accused of violating white women who were subsequently lynched by the klans. *See, e.g.*, H.R. MISC. DOC. NO. 40-52, at 108 (1869); 5 AMERICAN SLAVE, *supp. ser. 1*, *supra* note 114, at 426; 2 KLAN REPORT, *supra* note 16, at 8; 4 KLAN REPORT, *supra* note 34, at 1184; 6 KLAN REPORT, *supra* note 16, at 214, 338, 574, 577-78; 7 KLAN REPORT, *supra* note 16, at 611, 1190, 1192; 10 KLAN REPORT, *supra* note 113, at 1753.

226. One witness informed the Committee of a rumor that Lowther had been castrated by freedpeople for raping his stepdaughter. Considering the extensive evidence of klan involvement in the attack and the absence of blacks within the organization's ranks, this scenario is at best remote. *See* 7 KLAN REPORT, *supra* note 16, at 973.

227. *See* 6 KLAN REPORT, *supra* note 16, at 359.

his intimacy with a white woman.<sup>228</sup> His reasoning, however, is less than persuasive. Finding it inconceivable that any man could be so abused as a result of his political views, Caldwell simply concluded that rumors of Lowther's sexual improprieties must have been true.<sup>229</sup> Yet, contrary to Caldwell's presupposition, these factors are not mutually exclusive.<sup>230</sup> It is far likelier that communal perceptions of concurrent racial boundary violations — economic and sexual — rendered Lowther anathema to local whites as they endeavored to negotiate the diminished value of whiteness in vastly reduced material circumstances. Given klansmen's collective desire to restrain the social, political, and economic aspirations of freedmen in particular, they apparently decided that their victim was more useful to them alive, where he could serve as an example to other former slaves who might risk such incursions, than dead.

Although castration is surely the most infamous form of genital mutilation practiced in this period, the klans also administered comparable punishments to women and children of both sexes. In one such episode, nightriders set upon a group of freedpeople, forcing the women to "lie down, and they jabbed them with sticks, and made them show their nakedness."<sup>231</sup> Neither did they spare the children present. Klan members instead descended upon them, "jabbed them with a stick, and went to playing with their backsides with a piece of fishing-pole."<sup>232</sup> Other assaults were still more severe. The son of a former Alabama slave spoke of a klansman, John Lyons, who "would cut off a woman's breast" with little compunction.<sup>233</sup> In the same vein,

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228. *See id.* at 426. Caldwell explains, "I drew that out from him finally; that was not the cause he alleged at first; and he denied all the way through that that was the cause of the treatment he received; but he admitted that he had had such connection." *Id.* at 426. Lowther vociferously denied this charge when he appeared before the Committee. *See id.* at 362, 363.

229. *See id.* at 426, 430-31. "I do not believe that, anywhere in the land, any body of men, unless they are a band of very low and vile creatures, would inflict such punishment for a political offense." 6 *KLAN REPORT*, *supra* note 16, at 431. *See also id.* at 443. Caldwell's denial notwithstanding, a well-respected black newspaper referred several years later to the case of an unnamed Wilkinson County freedman who had been castrated during the Reconstruction years for belonging to the Republican Party. *See COLORED TRIB.* (Savannah), Jan. 15, 1876, at 2. At that time, Lowther was, of course, a resident of Wilkinson County. *See* 6 *KLAN REPORT*, *supra* note 16, at 356.

230. Martha Hodes offers a congruent reading of these events. In her view, "white Southerners invoked charges of illicit sexual behavior toward or with white women deemed respectable in white eyes, together with charges of Republican activism or successful crops — that is, of political and economic independence." *HODES, WHITE WOMEN, BLACK MEN*, *supra* note 4, at 155.

231. 6 *KLAN REPORT*, *supra* note 16, at 502.

232. *Id.*

233. 6 *AMERICAN SLAVE*, ser. 1, *supra* note 114, at 308. This same man was also said to have cut off a freedman's "ears or thumb." *Id.* However, there is no mention of sexual mutilation in that context.

A. Webster Shaffer, a U.S. Commissioner in Raleigh, North Carolina, depicts what he termed the “most outrageous cutting” of a freedwoman known to have been committed by the Ku Klux Klan.<sup>234</sup> Acknowledging that he did not observe the victim’s wounds firsthand, Shaffer delineates the attack based on the statements of witnesses that he obviously considered unimpeachable.

They gave her the knife and made her cut the hair off, because she would not give them a pair of scissors. . . . Then they took her out of doors and cut her hair off for the second time; they had done it about four or five months before. They then whipped her and made her cut the hair off her private parts with a knife, and then they cut her with the knife two or three times — stabbed her with the knife in the same place. I could not ascertain any reason why they did it. She was not living with any white man. She was not doing anything, so far as I could ascertain by the testimony, that would justify it at all. It appeared to be mere fiendishness.<sup>235</sup>

When an examiner later asked “[w]hat political objects were to be obtained by such proceedings,” Shaffer curtly replied, “The driving of the whole negro race out of the country, I should suppose. . . .”<sup>236</sup>

Another freedwoman, Frances Gilmore, was subjected to similar tortures at the hands of a klan mob. As Shaffer recounts:

She came to my office and complained that she had been whipped; that disguised persons had visited her house in the night-time, taken her out, and whipped her; laid her on the floor, taken her clothes off, and whipped her with a board; turned her over and whipped her again; then with matches burned the hair from her private parts, and cut her with a knife; and that she had been lying there about three weeks, unable to get to me before.<sup>237</sup>

Edwin Hull, a white railroad worker, refers to an analogous incident in testimony concerning a klan raid on a group of contract laborers whose politics were obnoxious to the order.<sup>238</sup> Among the injured was a young black woman, the daughter of one of the offending laborers, who was sadistically tortured by several hooded nightriders.

A: She stated — and I even saw the marks — that she had been whipped on her body and limbs. She also stated — which I did not see — that while she was prostrate on the floor, one of them lit a match and burned the hair off from her private parts.

Q: Was she cut with a knife in any way?

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234. 2 KLAN REPORT, *supra* note 16, at 49.

235. *Id.*

236. *Id.*

237. *Id.* at 36-37. This case is also discussed in AGO, *supra* note 16, RG 94, M 666, R 12, F 1612, Letter from C.H. Morgan to Adjutant General, Department of the East, May 4, 1871, and Bond Papers, Maryland Historical Society, Baltimore, Md., Letter from Hugo L. Bond to Anna Bond, June 14, 1871.

238. See 2 KLAN REPORT, *supra* note 16, at 65, 67-68.

A: It appears to me she said was, but I am not positive.<sup>239</sup>

The klans occasionally employed genital torture and mutilation to discipline white women as well. A Georgia man recalled that klansmen had stripped, whipped, and genitally mutilated a number of poor whites of both sexes. Clearly unmoved by these events, the witness believed that the victims' status as "low characters" mitigated whatever harm might have been done.<sup>240</sup> During another such raid, this one in North Carolina, the only white girl on the premises was stripped and cruelly lashed by klansmen who then "lit a match and burned her hair off, and made her cut off herself the part that they did not burn off with the match."<sup>241</sup> Even more gruesome is the testimony of a supposedly reformed klansmen, Shaffer Bowens, regarding the torture of a white woman (referred to only as "Skates") in which he had been directly involved:

They was going to take that woman out; and they had a pot of tar and lime, and was going to pour her full of it. . . . Joe Harding said he was going to have it done; [He] went back and ordered her out; made her lie down and held up her clothes. . . . He then poured it into her, as much as he could; and took a paddle and rubbed it on her.<sup>242</sup>

Significantly, the fact that this substance had been prepared and transported to the scene of the crime where at least one of the participants was seen instructing the others on how it should be applied indicates that this diabolical punishment had been contrived in advance.<sup>243</sup>

239. *Id.* at 67.

240. See 7 KLAN REPORT, *supra* note 16, at 1022.

241. 2 KLAN REPORT, *supra* note 16, at 37. In addition to cutting and burning the pubic hair of some of their female victims, klansmen were also known to cut and shave the heads of men as well as women, a quasi-sexual form of humiliation that was entirely consistent with the klans' larger enterprise. See, e.g., BRFAL, *supra* note 36, RG 105, Records of the Assistant Commissioner for the State of Georgia, Statement of Johanna Gilbert, *reprinted in* STANDING UPON THE MOUTH OF A VOLCANO, *supra* note 186, at 94; 2 KLAN REPORT, *supra* note 16, at 4. Similarly, a white man testified that a band of nightriders broke into his home and "took me out of bed and cut off one side of my beard and one side of my hair." 2 HOLDEN TRIAL, *supra* note 37, at 1485; see also AGO, *supra* note 16, RG 94, M 666, R 1, F 60, Outrages Committed by Persons in Disguise in the County of Alamance Since the 1st of December 1868, Dec. 22, 1870; S. REP. NO. 42-1, at lxvi, xci, 145 (1871); 2 HOLDEN TRIAL, *supra* note 37, at 1708. The descendant of a Union officer involved in the suppression of Klan violence in North Carolina emphasizes the frequency with which punishments involving hair-burning were inflicted by the order. See HOWE, *supra* note 21, at 24 & n.16, 27. As with most forms of sexualized violence considered here, this one was not without precedent in southern history. Mildred Graves, an ex-slave from Virginia, was accosted by a gang of marauding Union soldiers during the War. "[B]out six o' 'em," she said, "stopped an' took a razor blade and cut off my hair. I had long black hair dat hung way down my back. I kicked an' fit as much as I could, but I couldn' stop 'em." WEEVILS IN THE WHEAT, *supra* note 114, at 121.

242. S.C. KLAN TRIALS, *supra* note 16, at 508. When asked to specify where the tar and lime had been placed, Bowens replied "I don't like to tell." Only when pressed did he admit, "He poured it in her privates." 5 KLAN REPORT, *supra* note 16, at 1865.

243. See 5 KLAN REPORT, *supra* note 16, at 1865.

Moreover, Bowens affirmed that there was no particular reason for the attack; instead, it appears to have been one of the innumerable acts of sexual terror perpetrated by klansmen out of “mere fiendishness.”<sup>244</sup> Explanations were of course not always so amorphous. Klansmen, for instance, devised a hideous punishment for a white woman found to be cohabiting with a black man.<sup>245</sup> “[T]hey took the woman, laid her down on the ground, then cut a slit on each side of her orifice, put a large padlock in it, locked it up, and threw away the key, and then turned her loose.”<sup>246</sup> For two or three days she suffered, in excruciating pain and nearly immobilized, before finally sending for a local doctor who helped free her from the klan’s torturous device.<sup>247</sup>

It may be tempting to dismiss so grotesque an attack as an isolated manifestation of personal depravity. Yet, while each of these accounts of genital torture and mutilation contains an element of idiosyncrasy, individual psychopathologies do not adequately explain their occurrence. Assaults such as these, with their genesis in the stark inequalities of slavery, are historically contingent events whose meaning is fully legible only when construed in relation to the time, place, and manner of their appearance. That such tortures have been imposed by antagonists in other settings in no way diminishes the specificity of klan violence. Although their actions evince varying degrees of impulse and premeditation, klansmen were engaged in an ongoing struggle to define the political and social contours of the postwar South, a struggle in which sexuality quickly emerged as a principal site of contestation. White men who joined groups like the Ku Klux Klan did so at least in part in an effort to circumscribe the sexual knowledge and expression of a newly emancipated population whose freedom they perceived as fundamentally inimical to their interests. In past times, members of the “master race” (its patriarchs in particular) had exercised considerable control over these and most other facets of the lives of their slaves,<sup>248</sup> and they were not inclined to relinquish that power willingly. With remarkable frequency, klansmen attempted to realize their objectives by ravaging the very body parts that instantiated the challenge to their continued dominion.

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244. S.C. KLAN TRIALS, *supra* note 16, at 508. Bowens himself acknowledged that such atrocities were part of “the general object” of the order. 5 KLAN REPORT, *supra* note 16, at 1865.

245. See 7 KLAN REPORT, *supra* note 16, at 1120.

246. *Id.*

247. See *id.*

248. The sexual coercion endemic to the Old South’s system of racial slavery is discussed *supra* notes 139-141 and accompanying text.

### D. Lynching

For all of its relentlessly sexual connotations, postbellum southern lynching has not traditionally been understood as a sex crime per se;<sup>249</sup> more often, it has been regarded as an archetypal act of racial enmity, with black men identified as its principal object.<sup>250</sup> As Catharine MacKinnon incisively observes, “[i]n this country, nothing has at once expressed racial hatred and effectuated racial subordination more effectively than the murder and hanging of a mutilated body, usually of a Black man.”<sup>251</sup> Yet, irrespective of its classification, it is hardly the case that commentators on the practice as it developed over time have been insensible to the connections between sex and lynching, for sexual transgressions, real and imagined, have been standard justifications for the crime since the antebellum era.<sup>252</sup> Although the problem of lynching in the New South in particular has inspired extensive popular and scholarly discussion,<sup>253</sup> its character as a distinct form of

249. Cases involving genital mutilation may fairly be seen as an exception to this rule.

250. Insofar as lynch mobs from the Reconstruction period forward *have* routinely targeted black men on fundamentally racial grounds, this is an entirely unobjectionable proposition. Therefore, while acknowledging the obvious centrality of race to any comprehensive interpretation of lynching as a sociopolitical phenomenon, I am attempting here to focalize a single dimension — the manifestly sexual — of what is plainly a multidimensional crime.

251. MACKINNON, ONLY WORDS, *supra* note 182, at 34.

252. Concentrating on the late-nineteenth- and early-twentieth-century South, scholars have examined aspects of the subject from a variety of disciplinary perspectives. Psychoanalytically-oriented psychologists were among the first to interrogate lynching's sexual undercurrents. *See, e.g.*, Owen A.R. Berkeley-Hill, *The 'Color Question' From a Psychoanalytic Standpoint*, 11 *PSYCHOANALYTIC REV.* 246, 251-52 (1924); Philip Resnikoff, *A Psychoanalytic Study of Lynching*, 20 *PSYCHOANALYTIC REV.* 421 (1933). Social theorists of diverse political persuasions have also taken up the question. Among the most influential contributions to this literature have been JAMES P. COMER, *BEYOND BLACK AND WHITE* 134 (1972); FRANTZ FANON, *BLACK SKIN WHITE MASKS* 159 (Charles Lam Markmann trans., 1967); and GUNNAR MYRDAL, 2 *AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY* 561-62 (1962). Historians have likewise offered nuanced interpretations of the sexual dynamics of lynching in its later incarnations. *See* GRACE ELIZABETH HALE, *MAKING WHITENESS: THE CULTURE OF SEGREGATION IN THE SOUTH, 1890-1940*, at 199-239 (1998) [hereinafter HALE, *MAKING WHITENESS*]; HALL, *REVOLT AGAINST CHIVALRY*, *supra* note 144, at xxv-xxvi, 145-57; JOEL WILLIAMSON, *THE CRUCIBLE OF RACE: BLACK-WHITE RELATIONS IN THE AMERICAN SOUTH SINCE EMANCIPATION* 183-89 (1984) [hereinafter WILLIAMSON, *THE CRUCIBLE OF RACE*]; and Hall, “*The Mind That Burns in Each Body*,” *supra* note 143. Acutely sensitive to the sexualized aspects of the crime, literary and cultural critics have been instrumental in shifting the hermeneutics of lynching as it was manifest during its heyday. *See, e.g.*, SANDRA GUNNING, *RACE, RAPE, AND LYNCHING: THE RED RECORD OF AMERICAN LITERATURE, 1890-1912* (1996); HARRIS, *EXORCISING BLACKNESS*, *supra* note 225; FELIPE SMITH, *AMERICAN BODY POLITICS: RACE, GENDER, AND BLACK LITERARY RENAISSANCE* (1998); ROBYN WIEGMAN, *AMERICAN ANATOMIES: THEORIZING RACE AND GENDER* (1995).

253. This sustained interest in the lynching of African-American men stands in stark contrast to the sporadic attention accorded the rape of African-American women. As Hazel Carby rightly avers, “the institutionalized rape of black women has never been as powerful a symbol of black oppression as the spectacle of lynching.” CARBY, *supra* note 144, at 39. An example of this propensity to privilege the lynching of black men over the rape of black women appears in HARRIS, *EXORCISING BLACKNESS*, *supra* note 225, at 188, where the



sexualized violence has not been thoroughly explored even in that context.<sup>254</sup> Most lynchings, to be sure, were not inscribed on the body in the unequivocally sexualized manner of rape and some of the other terroristic acts discussed here. However, setting aside for a moment any intuitive incongruity that may arise, lynching often assumed features that lend it quite readily to analysis within this framework. Like other methods of sexualized violence purveyed by the Reconstruction klans, perpetrators as well as sympathetic bystanders could approach lynching as a sexual encounter.<sup>255</sup> That is not to say that every such atrocity expressed this impulse either in motivation or appearance. Nonetheless, these blood-drenched spectacles, with their defilement, desecration, and display of the oppositional body, are at times as suffused with sexual meaning as was their sustaining logic.

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author maintains, "More often than not, when black women were raped, they were psychologically warped, but the violation led to a tainted addition [pregnancy], not to a subtraction [castration] from their persons." For Harris, the latter clearly constitutes the more serious harm. For a perceptive critique of this view, see Katrin Schwenk, *Lynching and Rape: Border Cases in African American History and Fiction*, in *THE BLACK COLUMBIAD: DEFINING MOMENTS IN AFRICAN AMERICAN LITERATURE AND CULTURE* 312, 319-20 (Werner Sollors & Maria Diedrich eds., 1994). Rather than elevating one form of terror over another, it is more useful as an epistemological and historical matter to consider lynching and rape as wholly complementary tactics within the klans' broader strategy of postwar terror. A variant of this position is articulated by Angela Davis in *WOMEN, RACE AND CLASS*, *supra* note 120, at 185. For a related argument, wherein rape is seen as marking a reassertion of white supremacy within the private sphere while lynching serves a parallel function in the public domain, see Hall, "*The Mind That Burns in Each Body*," *supra* note 143, at 331-33. See also PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT* 147 (2d ed. 2000) (discussing lynching and rape as analogous modes of sexual oppression); CATHARINE A. MACKINNON, *Rape: On Coercion and Consent*, in *TOWARD A FEMINIST THEORY OF THE STATE* 171, 172 (1989) (offering a feminist analysis of rape as comparable to lynching in that it is "not an isolated event or moral transgression or individual interchange gone wrong but an act of terrorism and torture within a systemic context of group subjection") [hereinafter MACKINNON, *Rape: On Coercion and Consent*]; Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 *YALE L.J.* 1281, 1303 (1991) (observing that "sexual assault in the United States today resembles lynching prior to its recognition as a civil rights violation") [hereinafter MacKinnon, *Reflections on Sex Equality Under Law*]; Catharine A. MacKinnon, *The Palm Beach Hanging*, *N.Y. TIMES*, Dec. 15, 1991, § 4 at 15 (describing these forms of violence as rituals of "sexual humiliation" in which "victims are often killed").

254. I mean this assessment to apply specifically to klan lynchings such as those examined below.

255. There is a striking analogy to be drawn here between lynching and snuff films, which are described by MacKinnon in the following terms:

Doing the murder is sex for those who do it. The climax is the moment of death. The intended consumer has a sexual experience watching it. Those who kill as and for sex are having sex through the murder; those who watch the film are having sex through watching the murder.

MACKINNON, *ONLY WORDS*, *supra* note 182, at 35. Also remarking on the similitude of lynching and snuff films, Trudier Harris, by contrast, emphasizes the unwitting role of the victim in satiating the perpetrator's desires. "Comparable to sexual snuff films, in which the victims participate against their wills, or without knowing what the end of the film will be, and provide pleasure without intending to do so, the lynched black man becomes a source of sexual pleasure to those who kill him." HARRIS, *EXORCISING BLACKNESS*, *supra* note 225, at 23.

While antebellum lynch mobs occasionally targeted slaves, their status as property along with the pretenses of *noblesse oblige* sustained by the fabled tradition of planter paternalism tended to inhibit widespread resort to lethal violence against them.<sup>256</sup> Notwithstanding the unavoidable limitations of an incomplete evidentiary base, historians cite factors such as these to explain the fact that white men were far likelier than blacks to endure the ravages of the lynch mob in the years prior to Emancipation.<sup>257</sup> Keeping in mind that data were not systematically gathered until 1882,<sup>258</sup> it appears that lynchings, certainly those involving black males, increased modestly during the Civil War and

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256. See GENOVESE, *supra* note 95, at 32-33; Clement Eaton, *Mob Violence in the Old South*, 29 MISS. VALLEY HIST. REV. 351, 367 (1942).

257. For further analysis of lynching in the antebellum South, see BARDAGLIO, *supra* note 141, at 69, 77; JOHN W. BLASSINGAME, *BLACK NEW ORLEANS 1860-1880*, at 204-05 (1973) [hereinafter *BLASSINGAME, BLACK NEW ORLEANS*]; BRUCE, *VIOLENCE AND CULTURE IN THE ANTEBELLUM SOUTH*, *supra* note 95, at 82-83, 110-11; W. FITZHUGH BRUNDAGE, *LYNCHING IN THE NEW SOUTH: GEORGIA AND VIRGINIA, 1880-1930*, at 5-6 (1993); W.J. CASH, *THE MIND OF THE SOUTH* 43 (Vintage Books 1991) (1941); CUTLER, *supra* note 64, at 124, 127-28, 135; GENOVESE, *supra* note 95, at 32-33; HALL, *REVOLT AGAINST CHIVALRY*, *supra* note 144, at 131; JORDAN, *WHITE OVER BLACK*, *supra* note 159, at 121, 473; CLARENCE L. MOHR, *ON THE THRESHOLD OF FREEDOM: MASTERS AND SLAVES IN CIVIL WAR GEORGIA* 32-36, 53 (1986); ULRICH B. PHILLIPS, *AMERICAN NEGRO SLAVERY* 460-63, 511-12 (Louisiana State Univ. Press 1966) (1918); PHILIP J. SCHWARZ, *TWICE CONDEMNED: SLAVES AND THE CRIMINAL LAWS OF VIRGINIA, 1705-1865*, at 291-92 (1988); FRANK SHAY, *JUDGE LYNCH: HIS FIRST HUNDRED YEARS* 63-64 (1938); STAMPP, *THE PECULIAR INSTITUTION*, *supra* note 95, at 190-91; WALTER WHITE, *ROPE AND FAGGOT* 92-93 (1929) [hereinafter *WHITE, ROPE AND FAGGOT*]; WYATT-BROWN, *supra* note 30, at 400, 436-37, 453; Thomas G. Dyer, "A Most Unexampled Exhibition of Madness and Brutality": *Judge Lynch in Saline County, Missouri, 1859, Part 1*, 89 MO. HIST. REV. 269; Thomas G. Dyer, "A Most Unexampled Exhibition of Madness and Brutality": *Judge Lynch in Saline County, Missouri, 1859, Part 2*, 89 MO. HIST. REV. 367 (1995); Eaton, *supra* note 256; and John Raymond Ross, *At the Bar of Judge Lynch: Lynching and Lynch Mobs in America* 81-90, 98-102, 117, 257-58, 330-31 (unpublished Ph.D. dissertation, Texas Tech University, 1983) (on file with the Texas Tech University Library).

258. The *Chicago Tribune* was the first organization to attempt to compile a comprehensive listing of all lynchings reported in the United States. See TOLNAY & BECK, *supra* note 38, at 14-15 n.4, 259. In constructing their own inventory, Tolnay and Beck relied upon the *Tribune* as well as a number of additional sources, in particular NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *THIRTY YEARS OF LYNCHING IN THE UNITED STATES, 1889-1918* (1919) and Daniel T. Williams, *Amid the Gathering Multitude: The Story of Lynching in America: A Classified Listing* (1968) (unpublished manuscript, Tuskegee University) (on file with the Tuskegee University Library). See TOLNAY & BECK, *supra* note 38, at apps. A, B, & C. Similar lists may be found in NEGRO YEAR BOOK 316 (1914); NEGRO YEAR BOOK 276-78 (1952); and SOUTHERN COMM'N ON THE STUDY OF LYNCHING, *LYNCHINGS AND WHAT THEY MEAN: GENERAL FINDINGS OF THE SOUTHERN COMMISSION ON THE STUDY OF LYNCHING* (1931). Beyond those lynchings that have been included in compilations such as these, there are almost surely many more that remain uncounted. See TOLNAY & BECK, *supra* note 38, at 261; GEORGE C. WRIGHT, *RACIAL VIOLENCE IN KENTUCKY, 1865-1940: LYNCHINGS, MOB RULE, AND "LEGAL LYNCHINGS"* 9 (1990). Wells-Barnett offers one of the highest estimates, positing that upwards of 10,000 southern blacks were lynched between 1865 and 1895. See IDA B. WELLS-BARNETT, *A Red Record*, in *SELECTED WORKS OF IDA B. WELLS-BARNETT*, *supra* note 64, at 138, 141.

significantly thereafter,<sup>259</sup> when freedmen were at once divested of whatever security had inhered in their monetary valuation and endowed with the capacity to impinge upon the longstanding perquisites of white manhood.<sup>260</sup> Sir George Campbell, an English traveler, penned these reflections on postwar southern lynching:

One thing did astonish me during my tour, and that is, to find how much 'Judge Lynch' survives, especially when the accused are blacks. I imag-

259. One correspondent reported that there had been at least 25 hangings — not all of them perpetrated by klansmen — in the vicinity of Harrodsburg, Kentucky alone between 1867 and 1869. See N.Y. TIMES, Aug. 4, 1869, at 1. Offering a somewhat different perspective, Ross contends that lynching may in fact have declined during the Civil War years only to witness a dramatic resurgence immediately thereafter. See Ross, *supra* note 257, at 102, 110, 112. According to his research, “[i]n the Klan’s peak year, 1868, the number of victims probably exceeded the 226 of 1892, the peak during the years for which there are reasonably reliable statistics.” *Id.* at 115. Challenging the deference traditionally accorded the *Chicago Tribune* statistics, Christopher Waldrep conjectures that “[h]ad the *Tribune* started counting earlier, Tolnay and Beck, Williamson, and many other writers might well have written that the ‘frenzy’ started in 1870 or 1860 or 1850.” Christopher Waldrep, *Word and Deed: The Language of Lynching, 1820-1953*, in LETHAL IMAGINATION: VIOLENCE AND BRUTALITY IN AMERICAN HISTORY 229, 256 n.67 (Michael A. Bellesiles ed., 1999) [hereinafter Waldrep, *Word and Deed*]. For an intriguing exploration of the lynching of a slave in the early Civil War years, see Joan E. Cashin, *A Lynching in Wartime Carolina: The Death of Saxe Joiner*, in UNDER SENTENCE OF DEATH: LYNCHING IN THE SOUTH 109 (W. Fitzhugh Brundage ed., 1997). Useful information concerning wartime lynchings may also be found in FAUST, MOTHERS OF INVENTION, *supra* note 142, at 126; FELLMAN, INSIDE WAR, *supra* note 142, at 70; HODES, WHITE WOMEN, BLACK MEN, *supra* note 4, at 143; MOHR, *supra* note 257, at 219-20; PHILLIP S. PALUDAN, VICTIMS: A TRUE STORY OF THE CIVIL WAR (1981); and Ross, *supra* note 257, at 102-10, 117-18, 331.

260. See RABLE, BUT THERE WAS NO PEACE, *supra* note 23, at 98. The problem of lynching in the Reconstruction era is further considered in BRUNDAGE, LYNCHING IN THE NEW SOUTH, *supra* note 257, at 6-7; CONWAY, *supra* note 31, at 66-67; CUTLER, *supra* note 64, at 135-36, 150-54; FRY, *supra* note 13, at 159; HALL, REVOLT AGAINST CHIVALRY, *supra* note 144, at 131; HODES, WHITE WOMEN, BLACK MEN, *supra* note 4, at 156-57, 162; WHITE, ROPE AND FAGGOT, *supra* note 257, at 93-100; WILLIAMSON, THE CRUCIBLE OF RACE, *supra* note 252, at 183; WRIGHT, *supra* note 258, at 3-6, 8-9, 41-53; Richard M. Brown, *Legal and Behavioral Perspectives on American Vigilantism*, 5 PERSP. AM. HIST. 95, 105-06 (1971); Hall, “*The Mind That Burns in Each Body*,” *supra* note 143, at 330; Diane Miller Sommerville, *The Rape Myth in the Old South Reconsidered*, 61 J. S. HIST. 481, 483, 485 (1995) [hereinafter Sommerville, *The Rape Myth in the Old South Reconsidered*]; and Ross, *supra* note 257, at 110-18, 177-80, 187, 189, 331, 332. For additional insight into what Mark Twain designated the lynching “epidemic” that afflicted the South in the decades surrounding the turn of the century, see EDWARD L. AYERS, THE PROMISE OF THE NEW SOUTH: LIFE AFTER RECONSTRUCTION 156-59 (1992); AYERS, VENGEANCE AND JUSTICE, *supra* note 30, at 239-43; RICHARD MAXWELL BROWN, STRAIN OF VIOLENCE: HISTORICAL STUDIES OF AMERICAN VIOLENCE AND VIGILANTISM 151, 214-18 (1975) [hereinafter BROWN, STRAIN OF VIOLENCE]; BRUNDAGE, LYNCHING IN THE NEW SOUTH, *supra* note 257; CASH, *supra* note 257, at 113; GILJE, *supra* note 30, at 101-03; HALE, MAKING WHITENESS, *supra* note 252, at 199-239; HALL, REVOLT AGAINST CHIVALRY, *supra* note 144; HODES, WHITE WOMEN, BLACK MEN, *supra* note 4, at 176-208; TOLNAY & BECK, *supra* note 38; WHITE, ROPE AND FAGGOT, *supra* note 257; WILLIAMSON, THE CRUCIBLE OF RACE, *supra* note 252, at 117-18, 128-29, 133, 183-89, 282, 301, 308-09, 318-19; WRIGHT, *supra* note 258, at 3-10, 76-125; W. Fitzhugh Brundage, *Introduction* to UNDER SENTENCE OF DEATH, *supra* note 259, at 1; Crystal Nicole Feimster, “*Ladies and Lynching*”: The Gendered Discourse of Mob Violence in the New South, 1880-1930 (2000) (unpublished Ph.D. dissertation, Princeton University) (on file with the Princeton University Library); and Ross, *supra* note 257.

ined he was a thing of the past, but I found that several lynching cases of atrocity occurred before I had been many weeks in the States . . . .<sup>261</sup>

As Campbell quickly discovered, lynching indeed was not “a thing of the past.” Instead, like other forms of klan violence, it was a logical outgrowth of the deeply solipsistic understanding of law and legal processes in which many nineteenth-century Southerners indulged.<sup>262</sup> This attitude is evident in O.F. Hershey’s study of the nature of lynch law, where he concludes, “In lynching an enemy of society they do not mean to violate or despise the law, but rather to vindicate and en-throne it. They are acting simply in their sovereign capacity as law-makers.”<sup>263</sup> Denying the protective function of the duly constituted authorities, the lyncher “becomes in his own estimation an officer of the law himself, until consciously or unconsciously he comes to regard lynching as one of his sacred and inalienable rights; the power to lynch inspires in him a belief in the right to lynch.”<sup>264</sup> These remarks baldly

261. SIR GEORGE CAMPBELL, *WHITE AND BLACK: THE OUTCOME OF A VISIT TO THE UNITED STATES* 171 (London, Chatto & Windus 1879).

262. As with most postwar southern social phenomena, what I refer to here as a “solipsistic understanding of law and legal processes” prevalent among white males of the period was integrally related to the development and maintenance of the institution of slavery. The extraordinarily diverse, conspicuously self-referential arguments set forth to justify the enslavement of 4 million African Americans offer an especially fruitful body of evidence demonstrative of this point. The history and historiography of proslavery thought is explored in JOHN DAVID SMITH, *AN OLD CREED FOR THE NEW SOUTH: PROSLAVERY IDEOLOGY AND HISTORIOGRAPHY, 1865-1918* (1985); LARRY E. TISE, *PROSLAVERY: A HISTORY OF THE DEFENSE OF SLAVERY IN AMERICA, 1701-1840* (1987); and *PROSLAVERY THOUGHT, IDEOLOGY, AND POLITICS* (Paul Finkelman ed., 1989). Of the numerous anthologies of proslavery writings available, two of the most significant antebellum texts are *COTTON IS KING, AND PRO-SLAVERY ARGUMENTS: COMPRISING THE WRITINGS OF HAMMOND, HARPER, CHRISTY, STRINGFELLOW, HODGE, BLEDSOE, AND CARTWRIGHT, ON THIS IMPORTANT SUBJECT* (E.N. Elliott, ed., Augusta, Pritchard, Abbott & Loomis 1860), and *THE PRO-SLAVERY ARGUMENT; AS MAINTAINED BY THE MOST DISTINGUISHED WRITERS OF THE SOUTHERN STATES, CONTAINING THE SEVERAL ESSAYS, ON THE SUBJECT, OF CHANCELLOR HARPER, GOVERNOR HAMMOND, DR. SIMMS, AND PROFESSOR DEW* (Charleston, Walker, Richards & Co. 1852), while exemplary modern works include *THE IDEOLOGY OF SLAVERY: PROSLAVERY THOUGHT IN THE ANTEBELLUM SOUTH, 1830-1860* (Drew Gilpin Faust ed., 1981), and *SLAVERY DEFENDED: THE VIEWS OF THE OLD SOUTH* (Eric L. McKittrick ed., 1963). The persistence and concretization of these attitudes as “klan law” are the implicit subject of Part V.C *infra*.

263. O.F. Hershey, *Lynch Law*, 12 GREEN BAG 466, 467 (1900). For analysis of the klans as lawmaking and enforcement bodies, see *infra* Part V.B.

264. *Id.* at 468. Although Hershey’s research concerned late-nineteenth-century lynching, the psychological processes he describes are equally apposite with respect to Reconstruction-era attacks. By the same token, recent historical work on the 1934 lynching of Claude Neal demonstrates the relevance of this construction for a later period as well. See JAMES R. MCGOVERN, *ANATOMY OF A LYNCHING: THE KILLING OF CLAUDE NEAL* 151 (1982). The definitions of “lynch law” provided by specialized dictionaries of law and culture are also instructive. See *BLACK’S LAW DICTIONARY* 949 (6th ed. 1990) (defining “lynch law” as “[a] term descriptive of the action of unofficial persons, organized bands, or mobs, who seize persons charged with or suspected of crimes, or take them out of the custody of the law, and inflict summary punishment upon them, without legal trial, and without the warrant or authority of law.”); JOHN RUSSELL BARTLETT, *DICTIONARY OF AMERICANISMS: A GLOSSARY OF WORDS AND PHRASES USUALLY REGARDED AS PECULIAR TO THE UNITED*

expose the extraordinary arrogance of white male privilege that was an essential precondition for klan lynchings.

As with other modes of sexualized violence, the Reconstruction klans were neither the originators nor the exclusive exponents of lynching. Rather, to borrow Allen Trelease's fitting locution, organizations such as the Ku Klux Klan "helped to institutionalize a practice which preceded and long outlived it."<sup>265</sup> In the process of reifying the terror of the lynch mob, the KKK alone (according to one of the more conservative estimates) lynched upwards of four hundred freedpeople between 1868 and 1871.<sup>266</sup> Given its growing prominence on the cultural landscape as well as its horrific finality,<sup>267</sup> the specter of lynching grew to haunt the collective imagination of the former slaves as had not been the case in times past.<sup>268</sup>

Notwithstanding the fact that comparatively few extant records offer detailed descriptions of postbellum lynchings,<sup>269</sup> there is no reason

STATES 376 (4th ed. 1877) (defining "lynch law" as "[a]n irregular and revengeful species of justice, administered by the populace or a mob, without any legal authority or trial"); MITFORD M. MATHEWS, 2 A DICTIONARY OF AMERICANISMS ON HISTORICAL PRINCIPLES 1010 (1951) (defining "lynch law" as "[t]he practice or custom by which persons are punished for real or alleged crimes without due process of law; the punishment so meted out"). More thorough considerations of the evolution of this concept may be found in Howell Colston Featherston, *The Origin and History of Lynch Law*, 12 GREEN BAG 150 (1900), and Ross, *supra* note 257, at 6-25.

265. TRELEASE, *supra* note 10, at xxi.

266. See BROWN, STRAIN OF VIOLENCE, *supra* note 260, at 214, 323. George Wright argues that, by restricting his study to fully documented cases, Brown significantly underestimates the number of postbellum lynchings. See WRIGHT, *supra* note 258, at 41. Rable likewise contends that lynching was "widespread" during these years. See RABLE, BUT THERE WAS NO PEACE, *supra* note 23, at 98.

267. "Lynching" has not always denoted a necessarily lethal outcome. For much of the nineteenth century, the word was used to refer to the spectrum of corporal punishments — from tarring and feathering to whipping — that were the common province of vigilante groups. See CUTLER, *supra* note 64, at 116-18. For a fascinating study of lynching's shifting rhetorical valences, see Waldrep, *Word and Deed*, *supra* note 259.

268. Comparing the terror of the postbellum years with what he had experienced prior to Emancipation, one former slave declared, "we were worse off than if we had remained under slavery as there was countless numbers of our color that were hung, whipped and beat unmerciful through the KKK and the patterrollers together before we could get readjusted to our new station. . . ." 9 THE AMERICAN SLAVE: A COMPOSITE AUTOBIOGRAPHY, supp. ser. 2, pt. 8, at 3685 (George P. Rawick ed., 1979) [hereinafter AMERICAN SLAVE, supp. ser. 2]. Many of his contemporaries shared this point of view. See, e.g., 5 AMERICAN SLAVE, supp. ser. 2, *supra*, pt. 6, at 2289.

269. In contrast to the extensive, albeit still incomplete, documentation that exists for lynchings carried out since the 1880s, references to those perpetrated during the postbellum years tend to be terse, lacking in narrative content, and often limited to a simple quantitative assessment of the incidence of the crime in a particular location. See, e.g., N.Y. TIMES, Aug. 4, 1869, *supra* note 259. There are, moreover, no known photographs of lynchings dating to this period. See E-mail from James E. Allen, Jim Allen Antiques (Apr. 3, 2000, 11:30:00 ET) (on file with author). The only contemporaneous illustrations of these atrocities are a few surviving sketches and woodcuts produced by artists such as Thomas Nast, whose works regularly appeared in popular periodicals of the day. See, e.g., FRANK LESLIE'S ILLUSTRATED NEWSPAPER, Oct. 7, 1871, at 60; HARPER'S WKLY., Oct. 10, 1868, at 648;

to suppose that the klans would have measurably departed from their modus operandi while propagating this particular species of terror. Thus, to the extent that such a thing as a “typical” klan lynching can be said to have existed, it was likely accomplished by a group of disguised white men who had conspired to act under cover of night in defense of their traditional racial prerogatives.<sup>270</sup> Though white men and black women were occasionally targeted by these mobs,<sup>271</sup> the usual

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HARPER'S WKLY., Oct. 19, 1872, at 805. The earliest lynching photos identified to date depict two victims who met their deaths on Helena, Montana's “Hangman's Tree” in 1870. These images, along with dozens more like them, are part of an extraordinary collection assembled by James E. Allen and John Littlefield that has been placed on deposit at Emory University. See Allen-Littlefield Photograph Collection, MS 812, Robert W. Woodruff Library, Emory University, Atlanta, Ga. An exhibit including sixty of these real-photo postcards and photographs premiered in New York City in 2000, where it attracted sizable crowds and extensive press coverage. The exhibition (which has been mounted in a number of American cities since that time) is reviewed in Michel Marriot, *An Image Left Twisting in the Wind*, N.Y. TIMES, Feb. 13, 2000, § 4 at 3; J.R. Moehringer, *An Obsessive Quest to Make People See*, L.A. TIMES, Aug. 27, 2000, at A1; Robin Pogrebin, *A Quest for Photographs He Could Barely Look At*, N.Y. TIMES, Jan. 13, 2000, at E8; Somini Sengupta, *Racist Hatred in America's Past Stirs Emotions at Exhibition*, N.Y. TIMES, Jan. 24, 2000, at B1; and Roberta Smith, *An Ugly Legacy Lives On, Its Glare Unsoftened by Age*, N.Y. TIMES, Jan. 13, 2000, at E1. An even larger selection of images drawn from the Allen-Littlefield Collection has been reproduced in WITHOUT SANCTUARY: LYNCHING PHOTOGRAPHY IN AMERICA (James Allen ed., 2000). In its unvarnished portrait of white mobs proudly surveying the desecrated remains of their victims, now fodder for the creation and distribution of enduring sadistic images, this work exposes a flagrant instance of the cultural production of what Karen Halttunen has aptly termed the “pornography of pain.” Halttunen, *supra* note 95. Catharine MacKinnon's revelations concerning Serbian troops' further exploitation of raped Bosnian and Croatian women in the making of pornography are strikingly resonant here. See Catharine A. MacKinnon, *Turning Rape into Pornography: Postmodern Genocide*, MS. 24 (July-Aug. 1993). By transforming sexual atrocities into erotic entertainment, perpetrators compound the original violation and exacerbate the trauma sustained by its primary and secondary victims. What is ultimately being pornographized in both contexts is death: whether literal or figurative, sexual excitement derives precisely from the dominant group's triumphant annihilation of a marked other.

270. Klan lynch mobs varied in size from a handful to several hundred members. See, e.g., 5 KLAN REPORT, *supra* note 16, at 1470, 1472. One of the most prodigious attacks of the period occurred in Union County, South Carolina, where an estimated 300-800 klansmen participated in a raid upon a local jail. See 4 KLAN REPORT, *supra* note 34, at 979. Arthur Raper refers to another postwar klan offensive said to have involved anywhere from 1000 to 1500 members. See RAPER, THE TRAGEDY OF LYNCHING, *supra* note 207, at 300.

271. Three white women found guilty of the most egregious racial transgression — “miscegenation” — were burned alive with their black lovers by a band of Georgia klansmen. See STEARNS, *supra* note 41, at 409. The case of a freedwoman who was hung from a shade tree in her own yard and, at the last moment, cut down by a white neighbor, is recounted in 6 KLAN REPORT, *supra* note 16, at 209. See also HALL, REVOLT AGAINST CHIVALRY, *supra* note 144, at xxv-xxvi (citing the lynching of freedwomen as a recognized klan practice); Hall, “*The Mind That Burns in Each Body*,” *supra* note 143, at 332 (reiterating that observation). Coverage of the KKKs lynching of an entire family of former slaves is included in *The Ku Klux. Greeley's Friends at Work in Kentucky — They Hang a Man, His Wife, and Daughter to the Same Tree*, N.Y. TIMES, Nov. 5, 1872, at 1. For discussion of the Klan's murder of a freedwoman and her daughter that was incited by the political activities of the male head-of-household, see WRIGHT, *supra* note 258, at 51-52. Examples of Reconstruction-era lynchings of white men are available in 8 KLAN REPORT, *supra* note 26, at 77, and 9 KLAN REPORT, *supra* note 26, at 1173, 1235. See also WRIGHT, *supra* note 258, at 52-53 (relating the case of one of numerous white men lynched by Kentucky klansmen); and

victim was a black man suddenly wrested from his home or, as often happened, forcibly removed from judicial custody,<sup>272</sup> verbally assaulted, beaten, and possibly tortured.<sup>273</sup> He might also be castrated by his assailants,<sup>274</sup> reflecting what one southern historian has described as the “subconscious envy and sexual frustration” that animated the

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RABLE, BUT THERE WAS NO PEACE, *supra* note 23, at 98 (affirming that white men were also murdered by the klans, albeit in far lesser numbers than blacks).

272. In a front-page article titled “Slaughter of Negroes,” the *New York Times* reported that “[a] body of 500 masked horsemen surrounded the jail of Union County on Sunday night, tied the jailer, and took out ten negro prisoners confined on charges of murder and arson. Six of these were shot, two hanged, and two are missing.” *Slaughter of Negroes*, N.Y. TIMES, Feb. 15, 1871, at 1 [hereinafter *Slaughter of Negroes*]. For other instances of klan lynchings in which victims were forcibly removed from judicial custody, see BRFAL, *supra* note 36, RG 105, B 90, Reports of Violence, Nashville, Tenn., July 16, 1868; BRFAL, *supra* note 36, RG 105, M 821, R 32, Criminal Offenses Committed in the State of Texas, Columbia, Tex., Aug. 31, 1868; BRFAL, *supra* note 36, RG 105, M 798, R 32, Murders and Outrages, Augusta, Ga., 1868; BRFAL, *supra* note 36, RG 105, M 999, R 34, Outrages, Riots, and Murders, Tenn., 1868; KKK Papers, *supra* note 16, Testimony of James E. Boyd [State v. Andrews], at 40-42; H.R. MISC. DOC. NO. 40-52, at 108 (1869); H.R. REP. NO. 41-37, at 1 (1871); S. REP. NO. 42-1, at li (1871); 16 AMERICAN SLAVE, ser. 2, *supra* note 96, at 44; 5 AMERICAN SLAVE, supp. ser. 2, *supra* note 268, pt. 4, at 1649; BUCK, *supra* note 38, at 4-5; 2 HOLDEN TRIAL, *supra* note 37, at 1853; 1 KLAN REPORT, *supra* note 44, at 36; 4 KLAN REPORT, *supra* note 34, at 976-81; 6 KLAN REPORT, *supra* note 16, at 574, 577-78; 7 KLAN REPORT, *supra* note 16, at 655-56, 1190; 8 KLAN REPORT, *supra* note 26, at 77-78, 386, 445-46, 548; 9 KLAN REPORT, *supra* note 26, at 1173, 1235; 11 KLAN REPORT, *supra* note 40, at 486-87, 495; 12 KLAN REPORT, *supra* note 44, at 639, 641, 642-46, 657, 698-99; STEVENSON, KU KLUX KLAN, *supra* note 35, at 28; TENNESSEE GENERAL ASSEMBLY, REPORT OF EVIDENCE TAKEN BEFORE THE MILITARY COMMITTEE, *supra* note 21, at 14, 21-22, 59; *The Ku-Klux*, *supra* note 98; and *The Troubles in Frankfort, Ky.*, N.Y. TIMES, Aug. 9, 1871, at 1 [hereinafter *The Troubles in Frankfort*].

273. Observing that klan lynchings were strongly inflected by the perpetrators’ desire to shame their victims, Bertram Wyatt-Brown situates the practice within the longer history of *charivari*, which relied heavily on ritual humiliation, often surrounding sexual matters. See WYATT-BROWN, *supra* note 30, at 453. The *charivari* tradition is also considered *supra* note 30, and *infra* note 636 and accompanying text.

274. Although there are no statistics available to determine the proportion of lynchings that were accompanied by castration, references to this practice appear throughout the literature of klan violence. See, e.g., AGO, *supra* note 16, RG 94, M 666, R 26, F 2586, Letter from Major Lewis Merrill to Assistant Adjutant General, Department of the South, July 17, 1871; WILLIAM E. CHANDLER, LOUISIANA INVESTIGATION AND LOUISIANA AND TEXAS POLITICAL MURDERS. SPEECH OF [THE] HON. WILLIAM E. CHANDLER, OF NEW HAMPSHIRE, INCLUDING THE REMARKS ON THE RIGHT OF INVESTIGATION MADE BY [THE] HON. GEORGE F. EDMUNDS, IN THE UNITED STATES SENATE, SEPTEMBER 27, 1888, at 20 (Washington, D.C., n.p. 1888). Scholars speculate that sexual torture and mutilation, especially as they were applied to black victims, had become relatively commonplace by the turn of the century. See BROWN, STRAIN OF VIOLENCE, *supra* note 260, at 151; SHAY, *supra* note 257, at 98; WHITE, ROPE AND FAGGOT, *supra* note 257, at 33-34, 38-39, 96; WILLIAMSON, THE CRUCIBLE OF RACE, *supra* note 252, at 188, 309; Brown, *Legal and Behavioral Perspectives on American Vigilantism*, *supra* note 260, at 105; Hall, “*The Mind That Burns in Each Body*,” *supra* note 143, at 330-31. However, in his investigation of lynchings that occurred in the New South states of Georgia and Virginia, where sexual violations were frequently alleged, Brundage discovered that only a minority of victims were genitally mutilated by their attackers. Nevertheless, he emphasizes that “the most relevant measure of the importance of mutilation during lynchings for sexual crimes was never the percentage of black victims who were mutilated, but rather the lasting impression that each incident left upon observers.” BRUNDAGE, LYNCHING IN THE NEW SOUTH, *supra* note 257, at 65-66.

behavior of so many lynching participants.<sup>275</sup> At some point in this ordeal, the victim would be brutally murdered — hanged, riddled with bullets, possibly burned at the stake — by klansmen acting as comrades in arms to kill a newly emergent rival, and with him the political, economic, social, and sexual threat he posed.<sup>276</sup> In this respect, the lynch mob can be seen as enacting a metaphorical rape, one in which the feared black man is made to act “like a woman,” submitting to the superior will of his antagonists. As Trudier Harris perceptively argues, lynchings function as a “communal rape of the black man by the crowd which executes him. They violate him by exposing the most private parts of his body and by forcing him, finally, into ultimate submission to them.”<sup>277</sup> In the end, she observes, “the lynched black man be-

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275. BRUNDAGE, *LYNCHING IN THE NEW SOUTH*, *supra* note 257, at 65. Brundage's assessment, while meant to apply to a later period, is also pertinent to the castration-lynchings of the Reconstruction years. For further reflections on the persistence of these psychological propensities, see FANON, *supra* note 252, at 157, 159; GILJE, *supra* note 30, at 107-08; LILLIAN SMITH, *KILLERS OF THE DREAM* 162-63 (1994) (1949); and WILLIAMSON, *THE CRUCIBLE OF RACE*, *supra* note 252, at 306-09.

276. One or more of these characteristics may be seen in the dozens of lynchings reported to the Joint Select Committee. See 1-13 *KLAN REPORT*, *supra* notes 15, 16, 17, 26, 34, 40, 44, 59, 113. A number of coeval sources contain comparable information. See, e.g., AGO, *supra* note 16, RG 94, M 666, R 1, F 61, Names of Some of the Persons Who Have Been Put to Death in Alabama; BRFAL, *supra* note 36, RG 105, Vol. 136, Assistant Adjutant General, Synopses of Reports, Washington, D.C., Aug. 19, 1867; BRFAL, *supra* note 36, RG 105, M 999, R 34, Reports of Outrages, Riots, and Murders, Columbia, Tenn., Mar. 21, 1868; BRFAL, *supra* note 36, RG 105, Vol. 136, Assistant Adjutant General, Synopses of Reports, Washington, D.C., Apr. 21, 1868; BRFAL, *supra* note 36, RG 105, M 999, R 34, Reports of Outrages, Riots, and Murders, Tenn., June 29, 1868; BRFAL, *supra* note 36, RG 105, B 90, Reports of Violence, Nashville, Tenn., July 16, 1868; BRFAL, *supra* note 36, RG 105, M 821, R 32, Criminal Offenses Committed in the State of Texas, Columbia, Tex., Aug. 31, 1868; BRFAL, *supra* note 36, RG 105, Vol. 30, Murders and Outrages, New Orleans, La., Oct. 23, 1868; BRFAL, *supra* note 36, RG 105, M 798, R 32, Murders and Outrages, Augusta, Ga., 1868; BRFAL, *supra* note 36, RG 105, M 999, R 34, Outrages, Riots, and Murders, Tenn., 1868; KKK Papers, *supra* note 16, Testimony of James E. Boyd [State v. Andrews], at 10-13, 26; H.R. MISC. DOC. NO. 41-53, at 291, 295, 296, 298, 299 (1870); S. REP. NO. 42-1, at xl-xli, xlii, li, lxv, cxii; BUCK, *supra* note 38, at 5; HOLDEN, *THIRD ANNUAL MESSAGE*, *supra* note 37, at 16, & app. 8, 9, 10-11, 13-14, 47; 2 *HOLDEN TRIAL*, *supra* note 37, at 1184-87, 1301-11, 1363-69, 1793-1805, 1856; STEARNS, *supra* note 41, at 409. Lynchings have also been recorded that not only diverge from this general pattern, but at times appear to defy logic entirely. In one such case, a freedboy was lynched at random while walking home from church in broad daylight. See 9 *KLAN REPORT*, *supra* note 26, at 930. Similarly confounding was the murder of a former Kentucky slave prompted by the fact that his cow had traipsed into the garden of a neighboring white widow. Here, an animal's unwitting incursion was effectively imputed to its owner, a rebuke, perhaps, for the freedman's impermissible prosperity or inadequate show of deference to local whites. See *The Kentucky Kuklux*, *supra* note 148; *KANSAS CITY J.*, Jan. 5, 1881, at 5; *PULASKI CITIZEN*, July 3, 1868, cited in *TRELEASE*, *supra* note 10, at 33.

277. HARRIS, *EXORCISING BLACKNESS*, *supra* note 225, at 23. Nell Painter likewise interprets klan lynchings as metaphorical rapes:

Rapes of a sort did occur when Ku Klux Klansmen administered beatings, white supremacists of North Carolina and Georgia incited riots, and nameless whites joined lynch mobs. But these lynchings, symbolic rapes, were by white men against black men. Symbolic rapes, like actual rape against women, were rituals of power and degradation, as white men burned, whipped, and murdered in an attempt to close the circle of their power over black men. Ap-



comes a source of sexual pleasure to those who kill him.”<sup>278</sup> In becoming a source of sexual pleasure, lynching, like rape, becomes sex itself.<sup>279</sup> This is perhaps nowhere more tangible than in the rapacious desire expressed by one klansman for “fried nigger meat.”<sup>280</sup> A plainer statement of *lustmord* would indeed be difficult to fathom.<sup>281</sup>

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ing the forms of legal executions, these symbolic rapes constituted the bodily aspect of the maintenance of white men’s physical power over black men.

Painter, “*Social Equality*”, *supra* note 50, at 63.

278. HARRIS, EXORCISING BLACKNESS, *supra* note 225, at 23.

279. This observation comes in part from my engagement with Catharine MacKinnon and her work on this and related topics. MacKinnon’s writings are replete with insights into the dynamics of sexualized violence. *See, e.g.*, MACKINNON, ONLY WORDS, *supra* note 182; MACKINNON, *Rape: On Coercion and Consent*, *supra* note 253; CATHARINE A. MACKINNON, *Sex and Violence A Perspective*, in FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 85 (1987); CATHARINE A. MACKINNON, SEX EQUALITY (2001); CATHARINE A. MACKINNON, *Sexuality*, in TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 253, at 126; Catharine A. MacKinnon, *Prostitution and Civil Rights*, 1 MICH. J. RACE & L. 13 (1993); MacKinnon, *Reflections on Sex Equality Under Law*, *supra* note 253, at 1297, 1299, 1300-08.

280. STEVENSON, KU KLUX KLAN, *supra* note 35, at 12 (quoting John Dunlap). Stevenson elaborates, “This threat of burning was not idle, for in Georgia the Ku Klux Klan actually burned a man alive at the stake.” *Id.* The substance of this atrocity is verified in a 1868 report by General Howard. *See id.* at 26. John Dunlap, a teacher at a Tennessee freedpeople’s school, was threatened with immolation by klansmen who paraded about town in search of “Dunlap and fried meat.” HOWARD, 2 AUTOBIOGRAPHY OF OLIVER OTIS HOWARD, *supra* note 36, at 379. The anthropophagic implications of statements like these have been borne out in recent psychophysical research, most significantly in the conclusion that there is “no true sensory inhibition between olfaction and taste,” their stimuli being processed almost identically by the brain. Claire Murphy, *Olfactory Psychophysics*, in NEUROBIOLOGY OF TASTE AND SMELL 251 (Thomas E. Finger & Wayne Silver eds., 1987), cited in ORLANDO PATTERSON, RITUALS OF BLOOD: CONSEQUENCES OF SLAVERY IN TWO AMERICAN CENTURIES 198 (1998) [hereinafter PATTERSON, RITUALS OF BLOOD]. “The experience,” says Patterson, “of being suffused with the odor of the lynch victim’s roasting body amounted literally to the cannibalistic devouring of the body.” PATTERSON, RITUALS OF BLOOD, *supra*, at 198.

281. De River’s portrayal of offenders displaying this proclivity is especially pertinent in this regard. “Very often the sadistic lust murderer not only destroys his victim but he has a great desire to consume the body of his victim as seen in cannibalism when portions of the body are eaten. There is a mad desire of possession, annihilation, and consummation of the victim.” J. PAUL DE RIVER, CRIME AND THE SEXUAL PSYCHOPATH 276 (1958) [hereinafter DE RIVER, CRIME AND THE SEXUAL PSYCHOPATH]. Further discussion of this phenomenon may be found in CLIFFORD ALLEN, A TEXTBOOK OF PSYCHOSEXUAL DISORDERS 127-57 (2d ed. 1969); DEBORAH CAMERON & ELIZABETH FRAZER, THE LUST TO KILL: A FEMINIST INVESTIGATION OF SEXUAL MURDER (1987); J. PAUL DE RIVER, THE SEXUAL CRIMINAL: A PSYCHOANALYTIC STUDY 99-142 (1950) [hereinafter DE RIVER, THE SEXUAL CRIMINAL]; MAGNUS HIRSCHFELD, SEXUAL PATHOLOGY: A STUDY OF DERANGEMENTS OF THE SEXUAL INSTINCT 218-25 (Jerome Gibbs, trans., rev. ed. 1940); ROBERT K. RESSLER ET AL., SEXUAL HOMICIDE: PATTERNS AND MOTIVES (1988); EUGENE REVITCH & LOUIS B. SCHLESINGER, SEX MURDER AND SEX AGGRESSION: PHENOMENOLOGY, PSYCHOPATHOLOGY, PSYCHODYNAMICS AND PROGNOSIS (1989); RICHARD VON KRAFFT-EBING, PSYCHOPATHIA SEXUALIS WITH ESPECIAL REFERENCE TO THE ANTIPATHIC SEXUAL INSTINCT: A MEDICO-FORENSIC STUDY 88-99, 526-27, 532-33 (F.J. Rebman trans., rev. ed. 1935); Ann W. Burgess et al., *Sexual Homicide: A Motivational Model*, 1 J. INTERPERSONAL VIOLENCE 251 (1986); Robert R. Hazelwood & John E. Douglas, *The Lust Murderer*, 49 FBI L. ENFORCEMENT BULL. 18 (1990); J. Reid Meloy, *The Nature and Dynamics of Sexual Homicide: An Integrative Review*, 5 AGGRESSION & VIOLENT BEHAV. 1

Describing a more or less representative lynching scenario, Rose Williams testified in federal court regarding the Klan's murder of her husband, Jim:

They came to my house that night. They took my husband, Jim Williams, out, and the last I heard of him was a struggle, as though he was choking. I followed them to the door, and tried to go, and begged them not to hurt him; but they drove me back, and told me to go to bed with the children. I looked through the crack, and saw them retreating to the woods. I never saw him alive again. I saw him next morning dead, with a rope around his neck, hanging on a pine tree.<sup>282</sup>

Although we know nothing of what occurred between the time Williams was taken from his home and the time he was discovered the next day with a rope around his neck, the dynamics and figuration of this encounter bespeak its sexualized underpinnings. There are, needless to say, many ways to take a life. Here, a number of white men, resolute in their determination to kill, overpowered a lone black man in the presence of his wife, seeking to dishonor him and terrorize them both in the event.<sup>283</sup> Like the vast majority of klan attacks, this one was a decidedly group endeavor. That so many members were impelled to participate — many more, certainly, than would have been required to carry out a single homicide — establishes their prey as an immensely threatening figure, one whose absolute subjugation was integral to the resolution of the drama. Indicative of the near mythic quality invested in the figure of the black male, Klan lynchings were frequently marked by overkill, either in the number of men enlisted or the amount of violence expended to carry them out.<sup>284</sup> Death finally comes as a triumphant annihilation, an occasion for the release of the klansmen's otherwise ungovernable anxieties and the sadistic celebration of white male dominion.

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(2000); and Victoria L. Swigert, et al., *Sexual Homicide: Social, Psychological, and Legal Aspects*, 5 ARCHIVES SEX. BEHAV. 391 (1976). For a fascinating exploration of lust murder in Weimar cultural history, see MARIA TATAR, *LUSTMORD: SEXUAL MURDER IN WEIMAR GERMANY* (1995).

282. CORBIN'S ARGUMENT, *supra* note 82, at 17. Additional testimony concerning the Williams lynching is contained in S.C. KLAN TRIALS, *supra* note 16, at 221-24, 236-37, 242-43.

283. Lucinda Morrow, a North Carolina freedwoman, describes the events leading up to her husband's murder in remarkably similar terms: "He was in bed. They took him out of bed and they tied the rope around his neck and took him out of doors." 2 HOLDEN TRIAL, *supra* note 37, at 1794. The scene that ensued was predictably chaotic, as Morrow was dragged from his home leaving his distraught wife and children to plead vainly for his life. Like Williams, he was found dead the next day, hanging from a tree with a note pinned to his breast as certification of his assassins' handiwork. *Id.* at 1795-97.

284. This tendency is exemplified in the lynching of Sam Colvin, a freedman who "was found hung to a tree . . . with sixteen bullet-holes in him." 8 KLAN REPORT, *supra* note 26, at 3; see also *id.* at 265, 266, 273, 301, 312, 313, 318; 9 KLAN REPORT, *supra* note 26, at 1214 (both providing further testimony on Colvin's murder). Other examples of the klans' murderous excesses include 10 KLAN REPORT, *supra* note 113, at 1841, and LOUISIANA GENERAL ASSEMBLY, REPORT OF [THE] JOINT COMMITTEE (1869), *supra* note 35, at 199.

Another noteworthy feature of this attack and others like it is its deliberately public character. Beyond the lynch mob, there were often dozens or more bystanders and passersby present who were, if not subjected to the horror of the lynching itself, forcefully confronted by the sight of the brutalized corpse.<sup>285</sup> Describing the lynching of a black man accused of having raped a white woman in Jefferson County, Georgia, a resident testified, "They caught that negro, tied him to a stake, and burned him in the day time before, I suppose, a thousand people."<sup>286</sup> The murder need not have been witnessed by a mass of onlookers in order to have produced the desired effect. Even a few would assure that word of a killing to travel. To be certain, the victim's remains could be left where unsuspecting freedpeople would happen upon them.<sup>287</sup> Susan Smith recalled the shock she experienced in coming face to face with "a man hangin' in de wood" one day when she was picking blackberries: "His tongue was hangin' out. De buzzards fly down on his shoulder. When de breeze blow, it set him to swingin' and de buzzards fly off."<sup>288</sup> Doubtless consistent with the lynchers' designs, Smith immediately ventured forth to spread the news of the killing to her neighbors, some of whom returned to bear witness to the grisly scene before burying the deceased former slave.<sup>289</sup> Others were denied even the consolation of a proper burial. The body of a North Carolina freedboy, accused of having made "some improper and foolish remark about the white ladies," was left to hang "ten days until vultures partly consumed it, and no one during that time dared to take him down."<sup>290</sup> Surely, this would have persuaded

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285. See, e.g., 6 AMERICAN SLAVE, ser. 1, *supra* note 114, at 139, 140. Likening its impact to that of whipping under slavery, Jacquelyn Dowd Hall describes lynching as "an instrument of coercion intended to impress not only the immediate victim but all who saw or heard about the event." Hall, "The Mind That Burns in Each Body," *supra* note 143, at 330.

286. 6 KLAN REPORT, *supra* note 16, at 214. This lynching is unusual in that it was carried out in the light of day. Given that their quarry was a suspected rapist, the self-styled defenders of white womanhood who slayed him could safely assume that their actions had the tacit authorization of crucial sectors of the white population, including local law enforcement. Other examples of lynchings involving large numbers of perpetrators and bystanders are found in S. REP. NO. 42-1, at li (1871); 2 HOLDEN TRIAL, *supra* note 37, at 1186-87, 1794-95, 1856; 3 KLAN REPORT, *supra* note 17, at 4; 7 KLAN REPORT, *supra* note 16, at 656; PULASKI CITIZEN, July 3, 1868, cited in TRELEASE, *supra* note 10, at 33; *Slaughter of Negroes*, *supra* note 272; and *The Troubles in Frankfort*, *supra* note 272.

287. See, e.g., S. REP. NO. 42-1, at 106; 5 AMERICAN SLAVE, supp. ser. 2, *supra* note 268, pt. 4, at 1648; 8 AMERICAN SLAVE, supp. ser. 2, *supra* note 268, pt. 7, at 2982; 2 HOLDEN TRIAL, *supra* note 37, at 1186.

288. 9 AMERICAN SLAVE, supp. ser. 2, *supra* note 268, pt. 8, at 3669.

289. See *id.*

290. AGO, *supra* note 16, RG 94, M 666, R 1, F 60, Letter from W.W. Holden to General U.S. Grant, Enclosure, Jan. 1, 1871. Lest their tacit message be somehow overlooked, the assailants of one nameless freedman left behind a note instructing those who found him, "Whoever cuts him down receives the same fate." STEVENSON, KU KLUX KLAN, *supra* note 35, at 12. A similar warning was found on the body of Wyatt Outlaw, an African American political leader who was the victim of a notorious murder carried out by North

most who learned of the young man's fate to be cautious to avoid even the appearance of actions that could prompt another atrocity of this kind.

On occasion, klansmen went so far as to issue explicit pronouncements citing the impetus behind a given raid, leaving little doubt in the minds of their intended audience about the lessons they were to expect to draw from the event. "I judged in this way," explained Pride Jones, a white North Carolinian who had taken part in Governor Holden's investigation into klan violence in that State, "there were papers generally attached to the persons of those who were hung. In one case it would be, 'You are hung for barn-burning;' in another case it would be, 'You are hung for threatening to ravish' some one; or something to that effect."<sup>291</sup> "Those cards," she continued, "were attached to the bodies of the persons who were executed — or rather hung, not executed."<sup>292</sup> As Diane Sommerville has shown, southern whites in general and vigilantes in particular would over time increasingly converge upon sexual misdeeds, frequently contrived, to authorize resort to the lynch mob.<sup>293</sup> Indeed, in Jacquelyn Dowd Hall's

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Carolina klansmen in 1870. See *id.* at 16. Outlaw's life and death are situated within their broader historical context in Carole Watterson Troxler, "To look more closely at the man": Wyatt Outlaw, a Nexus of National, Local, and Personal History, 77 N.C. HIST. REV. 403 (2000). Among the numerous primary sources that reference the case, see especially KKK Papers, *supra* note 16, and 2 HOLDEN TRIAL, *supra* note 37.

291. 2 KLAN REPORT, *supra* note 16, at 3.

292. *Id.*; see also *id.* at 2, 8. Episodes resembling this one appear in American Memory Collection, *supra* note 62, Interview by Elmer Turnage with David A. McCreight, at 3-4, at <http://memory.loc.gov/ammem/collections/finder.html> (last visited Nov. 6, 2001); S. REP. NO. 42-1, at 106, 191; 2 HOLDEN TRIAL, *supra* note 37, at 1187, 1796, 1797, 1803-04; and ROBUCK, *supra* note 21, at 81.

293. See Sommerville, *The Rape Myth in the Old South Reconsidered*, *supra* note 260, at 485-87; Sommerville, *The Rape Myth Reconsidered*, *supra* note 142. The mythology that holds black men's supposed propensity for raping white women responsible for most lynchings has never accurately reflected reality. In his widely cited study of the causes and prevalence of that crime, Cutler found that only 34.3% of men lynched between 1881 and 1903 had been accused, much less convicted, of rape or attempted rape. See CUTLER, *supra* note 64, at 171-75, 273. His basic findings were later substantiated in a study conducted by the Southern Commission on the Study of Lynching covering the period 1889-1929; it concluded that only 16.7% of victims had been accused of rape, while another 6.7% had been accused of attempted rape. See SOUTHERN COMM'N ON THE STUDY OF LYNCHING, *supra* note 258, at 19. Most recently, Tolnay and Beck found that 31.1% of southern lynchings perpetrated between 1882 and 1930 involved accusations of sexual assault. See TOLNAY & BECK, *supra* note 38, at 48. For further analysis of this point, see AYERS, VENGEANCE AND JUSTICE, *supra* note 30, at 239-50; GAIL BEDERMAN, MANLINESS & CIVILIZATION: A CULTURAL HISTORY OF GENDER AND RACE IN THE UNITED STATES, 1880-1917, at 46-49 (1995); MARY FRANCES BERRY, THE PIG FARMER'S DAUGHTER AND OTHER TALES OF AMERICAN JUSTICE 203-05 (1999) [hereinafter BERRY, THE PIG FARMER'S DAUGHTER]; BRUNDAGE, LYNCHING IN THE NEW SOUTH, *supra* note 257, at 58-72; JAMES HARMON CHADBOURN, LYNCHING AND THE LAW 111 (1933); DAVIS, WOMEN, RACE AND CLASS, *supra* note 120, at 184-90; GILJE, *supra* note 30, at 102-04; HALL, REVOLT AGAINST CHIVALRY, *supra* note 144, at 145-57; JORDAN, WHITE OVER BLACK, *supra* note 159, at 151-52; LEON F. LITWACK, TROUBLE IN MIND: BLACK SOUTHERNERS IN THE AGE OF JIM CROW 304-08, 429-30 (1998); MACLEAN, BEHIND THE MASK OF CHIVALRY, *supra* note 10,

pointed phrasing, “[r]ape and rumors of rape became the folk pornography of the Bible Belt.”<sup>294</sup> For now, however, this was simply one of many possible justifications for the mortification of the black male body.<sup>295</sup>

The most overtly sexualized lynchings were doubtless those accompanied by castration. As with other klan murders, surviving descriptions of klan castration-lynchings are typically sparse, but telling. The nature of the mutilation suffered is often presented allusively, as in the case of Jacob Lighter, whose murder was said to have had “no superior in atrocity yet chronicled by any writer on crime.”<sup>296</sup> In an 1869 proclamation, Governor Holden gestured obliquely to the fact that “others, of both sexes, were subjected to indignities which were disgraceful not merely to civilization but to humanity itself.”<sup>297</sup> Similarly, a witness providing testimony in the lynching death of the freedman Nelson Harris conveyed that the victim had been castrated through casual reference to “the parts found.”<sup>298</sup> The most savage of these killings involved a black man whose tortured remains were found along the roadside by a freedman fleeing the klan-ridden county of Maury, Tennessee. “He had been skinned. His skin was hanging over his neck, and his privates had been cut off and put in his mouth.”<sup>299</sup> Although there is no perfect correlation between the type of violence inflicted and its asserted justification, it is significant that Harris was accused of having been “too intimate with some white woman,”<sup>300</sup> a fact that is central to understanding the conspicuously sexual character of this atrocity.

at 142, 146; RABLE, BUT THERE WAS NO PEACE, *supra* note 23, at 98; WHITE, ROPE AND FAGGOT, *supra* note 257, at 251-53, 259-69; WILLIAMSON, THE CRUCIBLE OF RACE, *supra* note 252, at 117; WYATT-BROWN, *supra* note 30, at 453-54; Hall, “*The Mind That Burns in Each Body*,” *supra* note 143, at 334; and Ross, *supra* note 257, at 45, 113-14, 147, 277-94.

294. Hall, “*The Mind That Burns Each Body*,” *supra* note 143, at 335.

295. For additional cases in which sex crimes were alleged to justify lynching, see H.R. MISC. DOC. NO. 40-52 at 108 (1869); 5 AMERICAN SLAVE, *supp. ser. 1*, *supra* note 114, at 426; 6 KLAN REPORT, *supra* note 16, at 214; PULASKI CITIZEN, July 3, 1868, *cited in* TRELEASE, *supra* note 10, at 33; and *The Troubles in Frankfort*, *supra* note 272. Some of the rationalizations adduced for postbellum lynchings are considered in RABLE, BUT THERE WAS NO PEACE, *supra* note 23, at 98; WILLIAMSON, THE CRUCIBLE OF RACE, *supra* note 252, at 183-87; and WRIGHT, *supra* note 258, at 43 & app. A.

296. *The Kentucky Kuklux*, *supra* note 148. Senator Pratt employed comparable terms in characterizing these atrocities. “The cruel scourgings and mutilations exceed by a hundredfold the murders. The cruelties inflicted of whatever description are marked by a ferocity, a heartlessness, indifference to human suffering that find parallel in the barbarities of savages.” PRATT, *supra* note 147, at 4.

297. 1 HOLDEN TRIAL, *supra* note 208, at 33.

298. 8 KLAN REPORT, *supra* note 26, at 2; *see also id.* at 272-73.

299. TENNESSEE GENERAL ASSEMBLY, REPORT OF EVIDENCE TAKEN BEFORE THE MILITARY COMMITTEE, *supra* note 21, at 37. The klan threatened to impose a similarly ruthless punishment on an Alabama freedman. *See* 8 KLAN REPORT, *supra* note 26, at 166.

300. 2 KLAN REPORT, *supra* note 16, at 213.

At the same time, it is important to exercise caution in drawing any conclusions based on the stated motives for klan violence, which as often as not were wholly unrelated to sex. The significance of this caveat becomes clear in examining the lynching of Lewis Thompson, a South Carolina freedman whose only known transgression was his service as a Methodist minister to the freed black community.<sup>301</sup> Here, too, a witness recounted the discovery of Thompson's body "stabbed — cut open . . . his privates were cut off, and his body was dragged along the road and stabbed — cut all about with stabs in the body."<sup>302</sup> In Robyn Wiegman's compelling analysis, events such as these constitute "a sadistic enactment of the homoerotic at the very moment of its most extreme disavowal."<sup>303</sup> Even when genital mutilation did not accompany lynching, "the idea of castration," as Joel Kovel perceptively observes, "was immanent in the entire procedure."<sup>304</sup> This ideational symmetry between lynching and castration was, moreover, critical to the production of psychological reality within the implicated communities.<sup>305</sup> Just as the prospect of sexual mutilation can be seen to permeate the entire exhibition, so too did sex itself, for in their quest to possess, inscribe, and finally obliterate the bodies of their victims, lynch mobs unwittingly revealed the awful coalescence of sexual rage, desire, frustration, and obsession that constrained them to act as they did.

The physiology of hanging is further demonstrative of the powerful sexual undercurrent legible in the murderous actions of klan lynch mobs.<sup>306</sup> For centuries, observers have remarked on the fact that hanged men often display erection and even ejaculation in the throes

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301. See 4 KLAN REPORT, *supra* note 34, at 1182-83.

302. *Id.* at 1184. Further details of the murder are available in *id.* at 982, 994, 1031, 1182, 1183.

303. WIEGMAN, *supra* note 252, at 99. Wiegman goes on to argue,

From this perspective, we might understand the lynching scenario and its obsession with the sexual dismemberment of black men to mark the limit of the homosexual/heterosexual binary — that point at which the oppositional relation reveals its inherent and mutual dependence — and the heterosexuality of the black male 'rapist' is transformed into a violently homoerotic exchange.

*Id.* at 99. For a consonant interpretation, see HARRIS, EXORCISING BLACKNESS, *supra* note 225, at 22-24.

304. JOEL KOVEL, WHITE RACISM: A PSYCHOHISTORY 67 (1984).

305. This follows from Robyn Wiegman's explication of the comparable disciplinary functions served by castration-lynchings as representation and as corporeal fact. See WIEGMAN, *supra* note 252, at 221 n.3 ("The ideological script of lynching as castration thus produces at the level of representation a psychic reality and material force that are equally weighty.").

306. Although the exact proportion of klan lynchings accomplished through hanging is unknown, this method was significant both numerically and in the quantum of terror it induced among freedpeople and other vulnerable populations.

of death.<sup>307</sup> An old English rhyme offers a poetic rendering of this phenomenon:

In our town the other day  
 They hanged a man to make him pay  
 For having raped a little girl.  
 As life departed from the churl  
 The townsfolk saw, with great dismay  
 His organ rise in boldest way  
 A sign to all who stood around  
 That pleasure e'en in death is found.<sup>308</sup>

Contemporary evidence suggests that erection under these conditions, rather than signifying sexual arousal, is a purely physiological response emanating from a combination of excitatory and inhibitory innervations that converge upon the lumbar cord reflex center during asphyxiation.<sup>309</sup> Indeed, so predictable are these functions that self-suspension and asphyxiation as a means of inducing orgasm are characteristic features of a little-known sexual disorder — autoerotic asphyxia — that not uncommonly results in the masturbator's death.<sup>310</sup>

307. Professor Thoinot writes, "A very disputed problem in the past concerns *erection* and *ejaculation* during hanging. In most cases, semen is found in the urethra of men hanged and, often, spots of semen on the clothing." At issue, he suggests, is whether "this presence of semen [is] a common phenomenon of death equally observed in the hanged as in all corpses, owing to the relaxation of the sphincter muscles, or does it result from a vital activity: true erection and ejaculation?" He finally concludes that, "in certain cases, exceptional no doubt but authenticated, erection and true ejaculation do take place during hanging." LEON H. THOINOT, 1 *PRECIS DE MEDECINE LEGALE* 638-39 (1913). It is important to point out that Thoinot is concerned here with "true," as opposed to merely physiological, erection and ejaculation. It is the former, more complex response, that he contends is uncommon in hanging victims. For a sampling of scholarly reflections on these processes drawn from different disciplines, see MARIE BONAPARTE, *THE LIFE AND WORKS OF EDGAR ALLAN POE: A PSYCHO-ANALYTIC INTERPRETATION* 393-98 (John Rodker trans., 1949); Edmund W. Holmes, *Anatomy of Hanging*, 4 *PA. MED. J.* 737, 742, 743 (1901); and Jeffrey Meyers, *Erotic Hangings* in "Cyclops," 34 *JAMES JOYCE Q.* 345 (1997). Meyers advances an interesting interpretation of James Joyce's portrayal of the physiological arousal of hanged men in *Ulysses*, a scene said to have been based on actual events. Quoting from the novel, he writes: "I heard that from the head warder that was in Kilmainham [jail] when they hanged Joe Brady, the invincible. He told me when they cut him down after the drop it was standing up in their faces like a poker." Meyers, *supra*, at 346. In a later chapter, Joyce includes a graphic account of the Croppy Boy exhibiting the "violent erection of the hanged send[ing] gout of sperm spouting through his deathclothes on to the cobblestones" when he was executed by Rumbold. *Id.* According to Meyers, "[t]hese hanging episodes are firmly grounded on the physiological effects of a rare sexual disorder, which has been described in medical literature as well as in both pornographic and avant-garde fiction and drama." *Id.*

308. H.L.P. Resnik, *Eroticized Repetitive Hangings: A Form of Self-Destructive Behavior*, 26 *AM. J. PSYCHOTHERAPY* 4, 7 (1972) (quoting an unattributed verse).

309. *See id.* at 10.

310. *See* Shearon A. Lowery & Charles V. Wetli, *Sexual Asphyxia: A Neglected Area of Study*, 4 *DEVIANT BEHAV.* 19 (1982). Resnik explains that, because of the patently transgressive nature of this behavior, few who engage in it have chosen to make themselves available for clinical research; therefore, the vast majority of cases examined to date have involved men who accidentally strangled themselves in their quest for sexual pleasure, a factor obviously not conducive to theory production in this area. *See* Resnik, *Eroticized Repetitive*

Considering what can be extrapolated from other forms of klan violence,<sup>311</sup> along with information derived from the numerous twentieth-century lynchings carried out by their successors,<sup>312</sup> it can be surmised that many victims were either wholly or partially naked at the moment when signs of physiological arousal would have been apparent. Even where this was not the case, klansmen so inclined could have readily discerned evidence of genital movement through their victim's clothing.

Although there is nothing to suggest that lynch mobs were consciously actuated by the desire to produce such a reaction, neither is it reasonable to conclude on that basis that the foreseeable result of their actions was entirely absent from the perpetrators' collective will. After all, alternative, less strenuous methods of homicide were surely available yet repeatedly rejected in favor of hanging. When klansmen chose this method of lynching their antagonists, they became participants in the entirety of the spectacle, not just part of it, and that spectacle often included the studied exposure of the size, shape, and power of the mythological black penis.<sup>313</sup> Given the persistence of that my-

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*Hangings*, *supra* note 308, at 4-5. In another provocative study, Park Elliot Dietz, Ann Wolbert Burgess, and Robert R. Hazelwood postulate "a possible link between autoerotic asphyxia and certain sexual homicides." Park Elliot Dietz et al., *Autoerotic Asphyxia, the Paraphilias, and Mental Disorder*, in ROBERT R. HAZELWOOD ET AL., *AUTOEROTIC FATALITIES* 77, 89 (1983). For a selection of psychological and forensic investigations of autoerotic asphyxia, see JOHN MONEY ET AL., *THE BREATHLESS ORGASM: A LOVEMAP BIOGRAPHY OF ASPHYXIOPHILIA* (1991); HAZELWOOD ET AL., *AUTOEROTIC FATALITIES*, *supra*; William N. Friedrich & Paul N. Gerber, *Autoerotic Asphyxia: The Development of a Paraphilia*, 33 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 970 (1994); Robert R. Hazelwood, et al., *The Investigation of Autoerotic Fatalities*, 9 J. POLICE SCI. & ADMIN. 404 (1981); Jo Johnstone & Rhodri Huws, *Autoerotic Asphyxia: A Case Report*, 23 J. SEX & MARITAL THERAPY 326 (1997); Zane R. Kime, *Aberrant Sexual Behavior, Violence, and Reproduction*, 18 J. SEX EDUC. & THERAPY 231 (1992); and Jane Uva, *Review: Autoerotic Asphyxia in the United States*, 40 J. FORENSIC SCI. 574 (1995).

311. See *supra* Part III.A-C and accompanying notes.

312. Numerous extant photographs depict lynching victims who have been stripped of their clothing. See WITHOUT SANCTUARY, *supra* note 269.

313. The "scientific" appraisal of one turn-of-the-century physician is symptomatic of the delusion that gripped much of white southern society: "Among negroes the virile organ attains its maximum development often reaching massive proportions." *Genital Peculiarities of the Negro*, *supra* note 211, at 842. Another renowned medical doctor opined that "[w]hen education will reduce the large size of the negro's penis as well as bring about the sensitiveness of the terminal fibers which exist in the Caucasian, then will it also be able to prevent the African's birthright to sexual madness and excess." William Lee Howard, *The Negro as a Distinct Ethnic Factor in Civilization*, 9 MED. 423, 424 (1903). On the tendency for white fears of black male power to be concentrated at the genital level, see LERONE BENNETT, JR., *BLACK POWER U.S.A.: THE HUMAN SIDE OF RECONSTRUCTION 1867-1877*, at 370 (1969); BERRY, *THE PIG FARMER'S DAUGHTER*, *supra* note 293, at 27; BLASSINGAME, *BLACK NEW ORLEANS*, *supra* note 257, at 203-04; JOHN DOLLARD, *CASTE AND CLASS IN A SOUTHERN TOWN* 160-62 (Anchor Books 1957) (1937); FANON, *supra* note 252, at 157; GENOVESE, *supra* note 95, at 461-62; JORDAN, *WHITE OVER BLACK*, *supra* note 159, at 34-35, 152, 156, 158-59, 501; ABRAM KARDINER & LIONEL OVESEY, *THE MARK OF OPPRESSION: EXPLORATIONS IN THE PERSONALITY OF THE AMERICAN NEGRO* 45 (1951); KOVEL, *supra* note 304, at 67, 68, 69, 70; ALEXANDER THOMAS & SAMUEL SILLEN, *RACISM*



thology and the hold it has historically exerted upon the southern white imagination, there is good reason to speculate that exposing, arousing, and ultimately extinguishing its life force was indeed part of the point.

Regardless of their particularities, each of these forms of sexual terror reflects a simultaneous attraction toward and repulsion from the body of a subordinated other. Though most of the klans' victims were black and male, countless others did not fit that description. The commonality among them was the challenge they posed, in their actions, words, and very being, to the maintenance of white supremacy. Discernible in each of the klans' terroristic methods is a link to the disciplinary practices of slavery — a system in which violence and its omnipresent threat were crucial to the maintenance of order. Persisting throughout the Civil War, these abuses became more prevalent in the aftermath of emancipation, in large measure due to exaggerated white fears of emerging black political and social power. That so much klan violence would assume a distinctly sexual cast is a reflection not only of the magnitude of these fears, but also of their deeply personal nature, driven as they were by a set of imperatives that included regenerating a white masculinity severely depleted by defeat in war, maintaining racial hierarchy in the face of freedpeople's demands for access to the full benefits of citizenship, and, finally, reasserting the right of sexual property in women of both races. With defeat on any of these fronts an intolerable proposition, klan members unleashed a wave of sexual terror that engulfed much of the Reconstruction South.

#### IV. TERROR'S OBJECTS

As this portrait of sexualized violence has thus far revealed, members of the Reconstruction-era klans supplied no consistent explanation for the terrors they wrought. In some instances victims were chosen seemingly at random, one freedperson or sympathetic white more or less interchangeable with the next, while in others nothing more than the most dubious post facto rationalization was ever proffered. Yet, beneath the veneer of capriciousness, these acts evince a semblance of logic and predictability, however perverse, that is most readily apprehensible at the rhetorical level. A perusal of the stated motives for klan violence suggests that certain behaviors heightened the vulnerability of those whose race or political inclinations alone would have been sufficient to inspire contempt. As historians of lynching have amply demonstrated, there is good reason to be skeptical of the

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AND PSYCHIATRY 102 (1972); THORPE, *supra* note 140, at 161; WOOD, BLACK SCARE, *supra* note 38, at 143; Berkeley-Hill, *supra* note 252, at 251-52; and Coramae Richey Mann & Lance H. Selva, *The Sexualization of Racism: The Black as Rapist and White Justice*, 3 W. J. BLACK STUD. 168, 168-70 (1979).

validity of such claims when propounded by self-serving terrorists.<sup>314</sup> Nevertheless, when they are recapitulated in the testimony of numerous of witnesses of diverse backgrounds and personalities, the commonalities among them assume a significance beyond mere justificatory rhetoric.<sup>315</sup> In particular, the explanations collectively adduced show that actions — whether established or merely suspected — construed as sexually, socially, or politically transgressive were liable to be met with a swift and savage response by the klans. So effective were they in ordering the klans' system of retribution that these devices were often drawn upon regardless of their applicability, making distinctions between fact and fiction, cause and effect, unusually elusive.

### A. *Sexual Transgressions*

In their quest to realize their own vision of a righteous society, klansmen sought to regulate a range of sexual behaviors, from widely indulged consensual activities like nonmarital sex and adultery, to more generally reprehended violations such as prostitution and rape. In the plain-spoken language of one North Carolinian, "They are trying to correct the morals of the country, as they say now."<sup>316</sup> Under the klans' surveillance, intraracial couples living together out of wedlock were occasionally punished.<sup>317</sup> Far more common, however, were attacks on individuals like Alfred Hambric, a married white man who was whipped by klansmen after he reputedly "took up with a [white] woman."<sup>318</sup> The klans' retribution was often dramatically disproportionate to the offense ascribed, as in the case of Isham Ezell, a freedman reputedly murdered for committing adultery with a freedwoman,<sup>319</sup> whatever the validity of that charge, it is plausible that Ezell's supposed disdain for whites would, if true, also have contributed to the harshness of his punishment.<sup>320</sup> In another apparent at-

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314. See *supra* note 293.

315. I am, therefore, less concerned with the truth of these assertions than I am with the habits of mind that may be revealed in examining them.

316. S. REP. NO. 42-1, at 418 (1871).

317. See, e.g., 8 AMERICAN SLAVE, ser. 2, *supra* note 96, pt. 1, at 277.

318. 2 KLAN REPORT, *supra* note 16, at 547. Other examples of klan violence targeting reputed adulterers are recorded in S. REP. NO. 42-1, at 386-87; 2 HOLDEN TRIAL, *supra* note 37, at 1477, 1486, 1491; 2 KLAN REPORT, *supra* note 16, at 270, 330; 6 KLAN REPORT, *supra* note 16, at 310, 7 KLAN REPORT, *supra* note 16, at 642, 874-75; 8 KLAN REPORT, *supra* note 26, at 476; and 11 KLAN REPORT, *supra* note 40, at 514.

319. It appears that Jane Ward, the woman accused, had once been married to Ezell, although she was single at the time of the attack. Ezell, however, was by then married to another freedwoman. See 9 KLAN REPORT, *supra* note 26, at 1361, 1364.

320. According to one witness, "Some said he was killed about a woman he had took down, and some said he had cursed the white people, and all such as that, so I never could get nothing straight of that. I just tell you that as I heard it." 9 KLAN REPORT, *supra* note 26, at 1361.

tempt to regulate intraracial morality, a band of nightriders chastised a man for the equivalent of breach of promise — “fooling a girl, courting her awhile and then marrying another.”<sup>321</sup> And a white man was punished for having “compromised a bastardy suit with a sister-in-law.”<sup>322</sup> Even klansmen could be targeted for conduct unbecoming. In circumstances resembling those of prior cases, a former member of the Invisible Empire admitted that his brethren had trained their wrath on one of their own after adjudging him guilty of intraracial bigamy.<sup>323</sup>

Those who violated the incest taboo — one that white slaveowners and managers had not strictly observed in the recent past, at least with regard to their human property — were also subject to klan discipline. As with other forms of sexual violation, the klan punished white men, including a Mississippian known simply as “Eckles” (or “Eccles”), “on account of his being supposed to be guilty of the crime of incest,”<sup>324</sup> as well as freedmen, such as Joe Gill, who was said to be involved in an incestuous relationship with his daughter.<sup>325</sup> Robert S. Foster, a Georgia farmer, recalled a similar klan raid upon a freedman named Watkins following his conviction and subsequent pardon for the rape of his daughter.<sup>326</sup> Klansmen likewise exhibited keen interest in the personal affairs of John Hunnicut, also white, serving notice “that he was a little too intimate with his mother.”<sup>327</sup> Whereas testimony presented before the Joint Select Committee implies that Eckles, Watkins, and Hunnicut were likely guilty as charged,<sup>328</sup> the same cannot be said of the case against the former slave Gill, whose only offense may well have been “saucing” a poor white man with whom he had a financial dispute.<sup>329</sup>

Prostitution was yet another sexual transgression that some klansmen felt moved to eradicate by force. Needless to say, this offense inspired no comparable expression of disapproval among southern white males when the prostituted women had been slaves in no position to

321. S. REP. NO. 42-1, at 418.

322. 2 HOLDEN TRIAL, *supra* note 37, at 1341.

323. See 2 KLAN REPORT, *supra* note 16, at 539. For more klan outrages evidently prompted by their victims' involvement in bigamous relationships, see 7 KLAN REPORT, *supra* note 16, at 1044, and 10 KLAN REPORT, *supra* note 113, at 1901.

324. 12 KLAN REPORT, *supra* note 44, at 921; see also *id.* at 849 (referring to the case of “a man named Eccles” who was “whipped for incest”).

325. See 9 KLAN REPORT, *supra* note 26, at 916, 918, 922. The klan also justified its whipping of Abraham Colby, a mulatto legislator, on the basis of allegations that he had committed incest with his daughter. See 7 KLAN REPORT, *supra* note 16, at 1114.

326. See 7 KLAN REPORT, *supra* note 16, at 1076; see also *id.* at 1075, 1077.

327. See 12 KLAN REPORT, *supra* note 44, at 1078.

328. See 7 KLAN REPORT, *supra* note 16, at 1075-77; 12 KLAN REPORT, *supra* note 44, at 849, 921, 1078.

329. See 9 KLAN REPORT, *supra* note 26, at 918.

demand payment for the sexual services extracted from them.<sup>330</sup> Night-riders attacked prostitution as a manifestation of licentiousness, non-marital sex that was all the worse if interracial. In its cavalier defense of hearth and home, a witness explained that the KKK would often visit “a house of ill-fame, and commit some outrage there.”<sup>331</sup> This was also the purport behind the tarring and feathering of a white South Carolina woman “of low character” rumored to have “kept a sort of low house.”<sup>332</sup> In an unusual display of even-handedness, klansmen intent on interposing their version of propriety sometimes visited men who patronized brothels.<sup>333</sup> Although prostitution was doubtless prevalent throughout the postbellum South, the charge could also be issued as a means of concealing the klans’ genuine purposes. Exemplifying this pattern, after destroying a freedmen’s schoolhouse in Alabama, klansmen maliciously portrayed it as a house of ill-fame.<sup>334</sup>

Caution is equally warranted in evaluating the klans’ assertions regarding the supposed rape and attempted rape of white women. While these crimes, too, surely occurred throughout the period, charges of this nature were also routinely fabricated and manipulated by klansmen bent on portraying themselves as defenders of vulnerable white womanhood. Part of the difficulty in evaluating extant accounts arises from the extremely elastic conception of sexual assault liable to be applied whenever freedmen were involved. As one observer remarked, “Merely for paying a compliment where it is thought he should not, a negro would be flogged and tarred and hung. No punishment would

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330. There were, of course, individuals within and without the South who condemned this behavior. Regrettably, some of the more compelling southern voices were consigned by sex and social convention to speak only privately, the opportunity to reach a larger audience awaiting another age. Their published reflections, often less concerned with humanitarianism than self-interest, are especially useful in illumining the complex emotional landscape that was generally known as “concubinage.” The renowned diarist, Mary Chesnut, and doubtless many of her anonymous contemporaries, was highly critical of the de facto system of enforced prostitution that thrived on plantations throughout the antebellum South. Only weeks before the first shots of the Civil War were fired, she lamented, “we live surrounded by prostitutes. An abandoned woman is sent out of any decent house elsewhere. Who thinks any worse of a Negro or mulatto woman for being a thing we can’t name? God forgive us, but ours is a *monstrous* system and wrong and iniquity.” Diary Entry (Mar. 18, 1861), in *MARY CHESNUT’S CIVIL WAR* 29 (C. Vann Woodward ed., 1981). Ella Clanton Thomas, another southern woman of the slaveholding classes, also expressed her disdain for these conditions in the pages of her private diary, and, like Chesnut, she heaped scorn upon the slave women she saw as sexual competitors, enticing white men to wrongdoing. See Diary Entry (Jan. 2, 1859) in *THE SECRET EYE: THE JOURNAL OF ELLA GERTRUDE CLANTON THOMAS, 1848-1889*, at 167-69 (Virginia Ingraham Burr ed., 1990).

331. 2 *KLAN REPORT*, *supra* note 16, at 106; see also 2 *HOLDEN TRIAL*, *supra* note 37, at 1513, 1516-17; 8 *KLAN REPORT*, *supra* note 26, at 462.

332. 3 *KLAN REPORT*, *supra* note 17, at 44. For additional cases like this one, see 2 *HOLDEN TRIAL*, *supra* note 37, at 1401; 6 *KLAN REPORT*, *supra* note 16, at 184, 187; and 8 *KLAN REPORT*, *supra* note 26, at 476, 550-51.

333. See 2 *HOLDEN TRIAL*, *supra* note 37, at 1516-17.

334. See *ALABAMA GENERAL ASSEMBLY*, *supra* note 38, at 58-59.

be deemed brutal and fierce enough for such a sinner.”<sup>335</sup> Some accusations — notably those in which crucial pieces of evidence are recounted firsthand and are repeated by one or more preferably disinterested parties — were seemingly well founded. This may be seen in the case of the former slave Caswell Holt, who was reportedly attacked by klansmen after “he had drawn his penis on a white girl.”<sup>336</sup> That Holt was charged with an attempted rather than a completed rape,<sup>337</sup> combined with the fact that multiple witnesses called before several discrete juridical bodies attested to the incident,<sup>338</sup> lends it considerable credibility. Yet even here the dominant narrative was not uncontested. William R. Albright appeared before a Senate committee in 1871 where he opined that the charge against Holt “was altogether a mistake.”<sup>339</sup> In most instances, though, assessing the accuracy of such charges is still more precarious. Witnesses often demonstrated a palpable, if at times unintended, skepticism in discussing sexual assault allegations. A Columbia County judge, for example, describes how Nace Butler, a freedman “charged with committing a rape upon Mrs. Wright,” was taken from a jailhouse in Appling, Georgia, by a disguised mob and hung at a bridge despite there being “no proof of the fact whatever, only that the woman thought his voice sounded like that of the one who violated her person.”<sup>340</sup>

By contrast, klansmen rarely sought vengeance against white men accused of rape. In the single such incident chronicled by the Joint Select Committee, klansmen called upon a white man said to have taken advantage of an “idiot woman,” telling her that “she was diseased and he could cure her, and that was the medicine he used for a

335. DIXON, 2 NEW AMERICA, *supra* note 51, at 335-36.

336. KKK Papers, *supra* note 16, Testimony of John W. Long, cont’d. [State v. Tarpley], at 1. Here again, the sexual element of the offense was expunged from the published version of the testimony. See HOLDEN, THIRD ANNUAL MESSAGE, *supra* note 37, at 157. This pattern of suppression is discussed *supra* note 175 and accompanying text.

337. 2 HOLDEN TRIAL, *supra* note 37, at 1936 (“They charged him with showing his person in an apple orchard to a white lady.”).

338. See e.g., KKK Papers, *supra* note 16, Testimony of James E. Boyd [State v. Andrews], at 26; KKK Papers, *supra* note 16, Testimony of John A. Moore [State v. Tarpley], at 24.

339. S. REP. NO. 42-1, at 79 (1871).

340. H.R. MISC. DOC. NO. 40-52, at 108 (1869). Additional examples of klan lynchings arising from rape accusations may be found in 5 AMERICAN SLAVE, *supp. ser. 1*, *supra* note 114, at 426; 2 KLAN REPORT, *supra* note 16, at 8; 6 KLAN REPORT, *supra* note 16, at 214, 275, 338, 574, 575, 577-78; 7 KLAN REPORT, *supra* note 16, at 611, 657, 725, 1061; 10 KLAN REPORT, *supra* note 113, at 1753; and 12 KLAN REPORT, *supra* note 44, at 639, 642-43, 645, 656, 658, 698. In at least one of these cases there is conflicting testimony about the precipitating charge. Whereas all of the witnesses whose testimony is recorded in Volume 12 of the *Klan Report* assert that Allen Bird was lynched for attempted rape, see 12 KLAN REPORT, *supra* note 44, at 639, 642-43, 645, 656, 658, 698, a prior witness attests that that he was slain for “keeping a white girl.” 11 KLAN REPORT, *supra* note 40, at 486.

remedy."<sup>341</sup> In this obviously exceptional case, the perceived qualities of the victim — in particular her whiteness, respectability, and dependency — as opposed to an objective assessment of the harm of rape itself were most determinative of the perpetrator's fate.

If the klans' interest in regulating transgressive sexuality spanned a vast spectrum of behaviors and practices, nothing was more certain to incite their wrath than interracial sex.<sup>342</sup> Regardless of the race, gender, or marital status of the individuals involved, much of the white South perceived sex across the color line as an invitation to terror. As Ambrose R. Wright maintained in response to queries concerning the chastisement of interracial couples, "both parties are whipped . . . white and black the same."<sup>343</sup> Cases in which men and women of different races cohabited were treated far more severely than what one witness termed "occasional cases of sexual commerce."<sup>344</sup> Yet, despite the klans' blunt warnings,<sup>345</sup> these couplings, and the violence they provoked, inevitably persisted.<sup>346</sup> John C. Reed, a one-time klansman who chronicled his personal involvement in the violence of the era, related an otherwise unremarkable episode in which a black man was pursued by the KKK for the offense of living with a white woman. Al-

341. 9 KLAN REPORT, *supra* note 26, at 1143. For a similar episode in which a freedman was whipped for allegedly seducing a mentally impaired white girl, see 8 KLAN REPORT, *supra* note 26, at 536.

342. This problem has been explored most thoroughly and insightfully by Martha Hodes. See HODES, *WHITE WOMEN, BLACK MEN*, *supra* note 4; Martha Hodes, *Wartime Dialogues on Illicit Sex: White Women and Black Men*, in *DIVIDED HOUSES*, *supra* note 2, at 230; Hodes, *The Sexualization of Reconstruction Politics*, *supra* note 4. Hodes has also written separately on the subject of interracial romance. See Martha Hodes, *Romantic Love across the Color Line: White Women and Black Men in Nineteenth Century America*, in *NEW VIEWPOINTS IN WOMEN'S HISTORY: WORKING PAPERS FROM THE SCHLESINGER LIBRARY 50TH ANNIVERSARY CONFERENCE, MARCH 4-5, 1994*, at 81 (Susan Ware ed., 1994).

343. 6 KLAN REPORT, *supra* note 16, at 274.

344. 11 KLAN REPORT, *supra* note 40, at 559. This perception is supported by Marcus Wells, an admitted klansman who candidly acknowledged that his brethren "would not let whites and negroes live together as man and wife." 2 KLAN REPORT, *supra* note 16, at 229.

345. Shotwell, for instance, confirms that the KKK "warned" numerous "miscegenationists" to part company or suffer harsh retribution. 2 SHOTWELL PAPERS, *supra* note 12, at 346.

346. For examples of klan attacks upon interracial couples not discussed separately below, see AGO, *supra* note 16, RG 94, M 666, R 1, F 60, Anonymous Letter to Governor Holden, October 7, 1870; S. REP. NO. 42-1, at lxii, 389 (1871); 2 HOLDEN TRIAL, *supra* note 37, at 1694; 2 KLAN REPORT, *supra* note 16, at 330, 539; 3 KLAN REPORT, *supra* note 17, at 212, 214; 5 KLAN REPORT, *supra* note 16, at 1971; 6 KLAN REPORT, *supra* note 16, at 94, 184, 274, 310, 363; 7 KLAN REPORT, *supra* note 16, at 1096, 1204; 8 KLAN REPORT, *supra* note 26, at 476; 9 KLAN REPORT, *supra* note 26, at 1210; 10 KLAN REPORT, *supra* note 113, at 1441, 1854; 11 KLAN REPORT, *supra* note 40, at 226, 470, 486, 548, 558-59; 12 KLAN REPORT, *supra* note 44, at 623-24, 632, 672, 849, 879; 13 KLAN REPORT, *supra* note 15, at 46-47; STEARNS, *supra* note 41, at 409; LITTLE ROCK ARK. DAILY GAZETTE, Dec. 10, 1868, *cited in* FINLEY, *FROM SLAVERY TO UNCERTAIN FREEDOM*, *supra* note 144, at 38, Reed, *What I Know of the Ku Klux Klan* (pt. 1), *supra* note 41, at 26; and John C. Reed, *What I Know of the Ku Klux Klan* (pt. 3), *UNCLE REMUS'S MAGAZINE*, Apr. 1908, at 18 [hereinafter Reed, *What I Know of the Ku Klux Klan* (pt. 3)].

though their quarry ultimately eluded capture, Reed acknowledged, "We greatly desired to make a terror-striking example of his case."<sup>347</sup> Other couples were less fortunate. Bill Washington, an Alabama freedman, was murdered for refusing to abandon his white wife.<sup>348</sup> Another freedman was shot and his mulatto wife lashed as a consequence of their biracial marriage. "The charge they had against Joe Kennedy was that he had married this mulatto girl, and they did not intend he should marry so white a woman as she was; and they beat her also for marrying so black a negro as he was."<sup>349</sup> Black men might also find themselves especially imperiled when they married mulatto women whom klansmen, notwithstanding their crude pronouncements of racial fidelity, would have preferred to keep for themselves.<sup>350</sup> And as with other sexually transgressive behaviors, neither were white men always spared. Enduring the harshest form of retribution, a black woman and her white husband were murdered by the KKK for nothing more than residing as an openly married couple.<sup>351</sup>

Klansmen punished interracial cohabitation in the absence of marriage with equal vigor, and neither race, sex, professional stature, nor wealth provided certain protection from attack. Sources show that white men of diverse backgrounds were routinely assailed for living openly with freedwomen.<sup>352</sup> William T. Blackford, an Alabama judge, was said to have been targeted for this offense, a charge he vociferously denied even after being caught in bed with his lover.<sup>353</sup> Another band of nightriders "came near to scaring old man Judd to death" during a visit prompted by their disapproval of his longstanding relationship with "one of his negro women."<sup>354</sup> Black men accused of

347. Reed, *What I Know of the Ku Klux Klan* (pt. 3), *supra* note 346, at 18.

348. See 10 KLAN REPORT, *supra* note 113, at 1749, 1854.

349. 6 KLAN REPORT, *supra* note 16, at 75.

350. See 6 KLAN REPORT, *supra* note 16, at 79, 172; 9 KLAN REPORT, *supra* note 26, at 1390. It has also been reported that klansmen commonly "ravished" attractive mulatto women in the houses they raided. See 14 AMERICAN SLAVE, ser. 2, *supra* note 96, pt. 1, at 15.

351. See 6 KLAN REPORT, *supra* note 16, at 359. Likewise, "a white woman, her [negro] paramour, and their child" were found murdered in Colcasian, Louisiana, victims of a probable klan attack. BRFAL, *supra* note 36, RG 105, Vol. 136, Assistant Adjutant General, Synopses of Reports, Washington, D.C., Sept. 9, 1868. These killings are also referenced in BRFAL, *supra* note 36, RG 105, Vol. 30, Murders and Outrages, New Orleans, La., July 10, 1868.

352. 8 KLAN REPORT, *supra* note 26, at 433, 459.

353. See 9 KLAN REPORT, *supra* note 26, at 1297; 10 KLAN REPORT, *supra* note 113, at 1485, 1493. Public denials notwithstanding, Blackford himself was later heard to concede, that "if he had not been splitting a negro woman, they would not have got him." *Id.* at 1493.

354. See 2 KLAN REPORT, *supra* note 16, at 78. Henderson Judd was a prosperous North Carolinian whose social position suffered measurably as a result of his sexual activities. See *id.*

similar “crimes” were also liable to attract unwanted attention. It was partly on this basis that klansmen whipped Alfred White, who nonetheless refused to admit that he was “guilty of white women.”<sup>355</sup> More egregious still, “Ku-Klux” in Burke County, Georgia were reported to have “burned three colored men, and three white women, alive, because they lived together.”<sup>356</sup>

Consistent with the klans’ intent to maintain the imagined purity of white “blood” by undermining the integrity of interracial relationships wherever possible, members showed an especially keen interest in unions that produced mulatto offspring.<sup>357</sup> In one such instance, the family of a freedwoman who had given birth to a mulatto child was repeatedly attacked by klansmen demanding that she quit the area in deference to her lover’s white wife.<sup>358</sup> In another, a black woman who “gave birth to a very light-colored child” by “some trickery” was whipped due to suspicions that she had revealed the identity of the infant’s father.<sup>359</sup> Although they are not as well documented, reports also exist of cases in which victims were abused for purportedly engaging in casual sexual contact — anything from a kiss to intercourse — outside of their own race.<sup>360</sup> Taken together, these examples reveal that any tangible expression of physical attraction between men and women of different races was susceptible to policing by the klans.

Intimacy and affection need not have been expressed physically in order to incite the klans’ vengeance. Black men who expressed a desire to have sex with white women were, not surprisingly, acutely vulnerable to attack. “I am informed,” said a former congressman, “that they took a negro the other day and whipped him just simply for asking a white woman to have connection with him.”<sup>361</sup> A freedman could be killed merely for admitting his sexual interest in a white woman.<sup>362</sup>

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355. 2 HOLDEN TRIAL, *supra* note 37, at 1488; *see also id.* at 1489.

356. STEARNS, *supra* note 41, at 409.

357. *See, e.g.*, 7 AMERICAN SLAVE, ser. 1, *supra* note 114, at 167-68; 2 HOLDEN TRIAL, *supra* note 37, at 1400; 2 KLAN REPORT, *supra* note 16, at 78, 330; THE WPA OKLAHOMA SLAVE NARRATIVES 238 (T. Lindsay Baker & Julie P. Baker eds., 1996) [hereinafter OKLAHOMA SLAVE NARRATIVES].

358. *See* 4 KLAN REPORT, *supra* note 34, at 1051-52.

359. *See* 2 KLAN REPORT, *supra* note 16, at 134.

360. *See, e.g.*, S. REP. NO. 42-1, at 36, 45, 127 (1871); 10 AMERICAN SLAVE, *supp.* ser. 1, *supra* note 114, pt. 5, at 1914; 2 HOLDEN TRIAL, *supra* note 37, at 1474, 1944; 8 KLAN REPORT, *supra* note 26, at 476; 12 KLAN REPORT, *supra* note 72, at 704, 707.

361. 6 KLAN REPORT, *supra* note 16, at 108. Similar accounts are also recorded in KKK Papers, *supra* note 16, Testimony of John W. Long, *cont’d.* [State v. Andrews], at 2-3; S. REP. NO. 42-1, 191, 351-52, 357; DIXON, 2 NEW AMERICA, *supra* note 51, at 335-36; and 12 KLAN REPORT, *supra* note 44, at 891.

362. *See* 5 KLAN REPORT, *supra* note 16, at 1365; 6 KLAN REPORT, *supra* note 16, at 412-13. Although it is impossible to identify a single motive impelling either of these attacks, in at least one reported incident the proffered rationales were almost certainly pretextual. *See* 6 KLAN REPORT, *supra* note 16, at 474, 476; 7 KLAN REPORT, *supra* note 16, at 1010.



So attuned were the klans to the danger of miscegenation that the faintest hint of impropriety could serve as provocation. The depth of this anxiety is particularly palpable in the case of Frances Gilmore, a white woman who was besieged by dozens of klansmen after learning that she had allowed two black laborers to sleep on a pallet in her home.<sup>363</sup> While no evidence has been found to confirm the implication that Gilmore was sexually involved with either man, the witness who recounted the attack nonetheless attempted to minimize its ferocity by invoking the victim's "rather bad character,"<sup>364</sup> terms routinely employed to disparage women who defied the rules of propriety to form personal relationships outside of their own race.<sup>365</sup> In a similar episode, the freedman Santee Butler was whipped by klansmen for his supposed "intimacy with some white woman."<sup>366</sup> Here again, the "intimacy" complained of seems to have consisted entirely in Butler's permitting the woman and her female friend to reside temporarily on his land.<sup>367</sup> Consistent with this pattern, klansmen occasionally whipped white women who dared attend such mixed-race functions as "Negro dances,"<sup>368</sup> and the black men who violated the segregationist code by dancing with them.<sup>369</sup> Incidents such as these were apparently unremarkable, as whites sought to reinscribe the color line and with it a renewed sense of racial hierarchy in the aftermath of emancipation.<sup>370</sup>

### B. *Social Transgressions*

Klansmen did not respond (or claim to respond) only to perceived transgressions of the sexual order; violations of social norms were also widely deployed as justifications for terror. Many of these incrimi-

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Given the klans' penchant for fabricating explanations for their crimes, this case is likely not anomalous. See *supra* text accompanying note 335.

363. 2 KLAN REPORT, *supra* note 16, at 37. A former slave subsequently testified that the nightriders actually called on Sally Gilmore, not Frances Gilmore, the latter being a local freedwoman. See *id.* at 99.

364. *Id.* at 37.

365. See *infra* notes 611-616 and accompanying text.

366. 12 KLAN REPORT, *supra* note 44, at 1144.

367. See *id.* These women had previously been driven from the yard of another black man, Andy Burns, who had likewise been visited by the Klan as a result of their presence. For another example of a klan raid premised upon a racially suspect residential choice, see 6 KLAN REPORT, *supra* note 16, at 413.

368. BENNETT, *supra* note 313, at 344.

369. 11 KLAN REPORT, *supra* note 40, at 587. Casting a favored sexual aspersion of the day upon the dancing partner of a Mississippi freedman, the witness offhandedly dismisses her as "a white woman of low character." *Id.*

370. See, e.g., 2 KLAN REPORT, *supra* note 16, at 233; 6 KLAN REPORT, *supra* note 16, at 184, 187.

nated excesses were concentrated in the realm of familial behavior, a reflection of the klans' commitment to fostering stability, order, and homogeneity at all levels of southern society. Men who abused their spouses<sup>371</sup> or mistreated their children<sup>372</sup> could thus be subjected to violent censure. Lionel W. Day, a federal clerk for the northern district of Alabama, gave an account of one such intervention.

A man, I think in Lawrence County, was charged with cruelty to his wife; it was alleged to be a trifling case. He was charged with whipping and maltreating his wife, and a body of men, who I think were in disguise, went there and took him out and gave him a whipping on his bare back, and admonished him to more proper customs in his domestic habits, and turned him loose.<sup>373</sup>

Men who deserted their families or otherwise failed in their role as providers might also find themselves the objects of unwanted klan attention.<sup>374</sup> For instance, when a white Republican identified as "Brubaker" had "a little falling out" with his wife, "[t]hey went there and whipped him for that, I suppose . . . They made him go back to his wife."<sup>375</sup> Drinking to excess, especially by married men, could also provide the impetus for a klan raid.<sup>376</sup> Reflecting the same impulse to impose domestic harmony where it is not naturally occurring, klansmen whipped three freedwomen "because of some difficulty they had in the family teaching them to keep the peace."<sup>377</sup> Finally, at least one woman was said to have been whipped because "she wasn't keeping a nice house."<sup>378</sup> While there is some chance that this could be an oblique reference to a brothel, it is highly unlikely given the context of

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371. See, e.g., 10 AMERICAN SLAVE, ser. 2, *supra* note 96, pt. 5, at 165; 2 HOLDEN TRIAL, *supra* note 37, at 1878; 2 KLAN REPORT, *supra* note 16, at 270, 502; 3 KLAN REPORT, *supra* note 17, at 189; 4 KLAN REPORT, *supra* note 34, at 1017; 5 KLAN REPORT, *supra* note 16, at 1480; 7 KLAN REPORT, *supra* note 16, at 618; 8 KLAN REPORT, *supra* note 26, at 476; 9 KLAN REPORT, *supra* note 26, at 987, 1126; 10 KLAN REPORT, *supra* note 113, at 1808; 11 KLAN REPORT, *supra* note 40, at 330, 361; 12 KLAN REPORT, *supra* note 44, at 909; 13 KLAN REPORT, *supra* note 15, at 13; TONEY, *supra* note 32, at 125.

372. See, e.g., 2 KLAN REPORT, *supra* note 16, at 502; 9 KLAN REPORT, *supra* note 26, at 987, 1126.

373. 8 KLAN REPORT, *supra* note 26, at 611.

374. See, e.g., S. REP. NO. 42-1, at 73 (1871); 2 KLAN REPORT, *supra* note 16, at 330, 556; 8 KLAN REPORT, *supra* note 26, at 476; 12 KLAN REPORT, *supra* note 44, at 665; and 13 KLAN REPORT, *supra* note 15, at 48.

375. 13 KLAN REPORT, *supra* note 15, at 48.

376. See, e.g., 8 KLAN REPORT, *supra* note 26, at 476; 9 KLAN REPORT, *supra* note 26, at 1126; 11 KLAN REPORT, *supra* note 40, at 330.

377. 12 KLAN REPORT, *supra* note 44, at 672.

378. 9 KLAN REPORT, *supra* note 26, at 733. In another instance, klansmen accosted a woman with a reputation for slovenliness, bestowing an unwelcome scrubbing of her home and person. See JESSE FEARS, CONFESSION OF RICHARD H. SHUCK, A MEMBER OF THE OWEN AND HENRY COUNTY MARAUDERS, OF THE STATE OF KENTUCKY 20 (Frankfort, Major, Johnston & Barrett 1877).

the remark; rather, it is more probable that the nightriders intervened to impose their conception of an orderly home through terror. Klansmen used virtually any manifestation of discord to lend a veneer of moral authority to their violent incursions upon the families they sought to control.

On par with their efforts to monitor intrafamilial behavior was the clans' zealotry in punishing freedpeople who failed to accord whites the deference to which their skin color presumedly entitled them. This propensity is borne out in a variety of situations throughout the surviving record of klan violence. Much of the tension surrounding racial etiquette arose from whites' expectation that freedpeople comport themselves much as they had as slaves in ordinary social exchanges. Thus, for example, when the freedman Allen Mitchell failed to produce the appropriate response to the question of how he would greet a white passerby, his incensed inquisitors promptly flogged him.<sup>379</sup> Mitchell's experience was hardly unique. "In a great many places the colored people call the white people master and mistress, just as they ever did; if they do not do it they are whipped."<sup>380</sup> Freedpeople could also find themselves in jeopardy when whites perceived their demeanor as unbecoming their station: confidence and self-possession, much less arrogance or audacity, were seen as especially troublesome characteristics in a former slave.<sup>381</sup> As John W. Shropshire explained it, proud freedmen like Jourdan Ware were viewed with particular enmity. "This Jourdan Ware . . . was a big, mighty forward, pompous negro; I mean that he was a very consequential sort of fellow. I think they whipped him more for that than any thing else. I never heard anything alleged against him before that."<sup>382</sup> The same mindset is apparent in the case of two freedwomen who, after being stripped and

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379. According to his father,

[T]hey asked him about how did he do when he met a white man; did he take off his hat and bow to him. I believe he told them that if he was well acquainted with him he did; but if he was a young person like himself, he generally called him by his name. I think that is about the most they whipped him for.

7 KLAN REPORT, *supra* note 16, at 643. This impression was affirmed by his contemporaries. *See, e.g.*, 2 HOLDEN TRIAL, *supra* note 37, at 1214.

380. 7 KLAN REPORT, *supra* note 16, at 610-11.

381. For evidence of these attitudes, see H.R. MISC. DOC. NO. 41-53, at 292 (1870); S. REP. 42-1, at 418 (1871); 2 KLAN REPORT, *supra* note 16, at 502; and 13 KLAN REPORT, *supra* note 15, at 46.

382. 7 KLAN REPORT, *supra* note 16, at 920. Shropshire, a white merchant with no obvious stake in the outcome of the investigation, categorically denied that Ware was guilty of any violation of sexual mores. *See id.* The question of Ware's culpability is further addressed in 6 KLAN REPORT, *supra* note 16, at 66, 405, and 7 KLAN REPORT, *supra* note 16, at 885, 900.

whipped by a passel of klansmen, were advised, “ ‘don’t let’s hear any big talk . . . and don’t sass any white ladies.’ ”<sup>383</sup>

Humility was imperative in all situations where whites and blacks crossed paths. A freedperson’s refusal to heed the commands of a white person could be interpreted as a direct provocation, as in the case of Joe Gill, who was chastised for declining to surrender his horse when a white man demanded it.<sup>384</sup> Predictably, the klans were also given to react violently to attacks against them, even when those “attacks” were unmistakably defensive. Mike Dunn was therefore murdered after klansmen concluded that “he talked too much . . . [and] was putting out some threats of what he would do if the Ku-Klux came to his house after him.”<sup>385</sup> In a particularly egregious episode, nightriders inflicted one hundred lashes upon Millie Alston, a North Carolina freedwoman, because she dared remove the stick from the hands of a white woman who was using it to beat her nine-year-old granddaughter.<sup>386</sup>

Klansmen also retaliated against men and women whose words or deeds bespoke support for the notion of social equality. Especially vulnerable were teachers in freedmen’s schools, many of whom, irrespective of race, were victimized as a result of their commitment to educating the former slaves.<sup>387</sup> A committee of Tennessee freedmen tasked to report on the status of education in that State found that klan “outrages on the school teachers, to both white and colored

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383. 6 KLAN REPORT, *supra* note 16, at 401. Similarly, Sandy Sellers was brutally whipped for asking a white woman to keep her hogs away from the wheat fields he was tending. See KKK Papers, *supra* note 16, Testimony of Sandy Sellers [State v. Andrews], at 2; KKK Papers, *supra* note 16, Testimony of John W. Long, cont’d. [State v. Tarpley], at 1-2. The perspective of a klansman involved in this raid is further documented in KKK Papers, *supra* note 16, Testimony of John W. Long, cont’d. [State v. Andrews], at 1. Other encounters like this one are depicted in AGO, *supra* note 16, RG 94, M 666, R 1, F 60, Letter from W.W. Holden to General U.S. Grant, Enclosure, Jan. 1, 1871; 2 HOLDEN TRIAL, *supra* note 37, at 1434, 1488, 1497-98, 1499, 1558; 6 KLAN REPORT, *supra* note 16, at 86; and 9 KLAN REPORT, *supra* note 26, at 918.

384. See 9 KLAN REPORT, *supra* note 26, at 812. This was not, however, the klansmen’s only complaint against Gill; he was also accused of committing incest with his daughter, a charge that local freedpeople seemingly found credible. See *id.* at 916. Another freedman was said to have been attacked at least in part because he refused to relinquish his watch to a covetous nightrider. See 6 KLAN REPORT, *supra* note 16, at 66.

385. 9 KLAN REPORT, *supra* note 26, at 1361; see also 2 HOLDEN TRIAL, *supra* note 37, at 1215 (recounting a comparable episode).

386. See 2 HOLDEN TRIAL, *supra* note 37, at 1404-06.

387. See, e.g., 3 KLAN REPORT, *supra* note 17, at 382; 5 KLAN REPORT, *supra* note 16, at 502; 6 KLAN REPORT, *supra* note 16, at 402; 11 KLAN REPORT, *supra* note 40, at 226. Some were so intimidated by klan activity that they quit teaching entirely rather than risk the potentially lethal consequences. See, e.g., 12 KLAN REPORT, *supra* note 44, at 666. Howard addresses the rash of violence against schoolteachers in some detail. See HOWARD, 2 AUTOBIOGRAPHY OF OLIVER OTIS HOWARD, *supra* note 36, at 374-89. Among the circumstances he elucidates is klansmen’s use of obscene speech and writings as a method of overcoming educators’ resolve. See *id.* at 377, 383.

teachers in colored schools are so great that they have broken up nearly all schools outside of the large cities."<sup>388</sup> Neither did the sex of the transgressor affect the klans' determination to impose their will through violence. Arguing in favor of federal enforcement legislation, Representative Austin Blair thus decried klan assaults, some implicitly sexual, on female schoolteachers. "They scourge and outrage defenseless women whose only offense is teaching the ignorant and poor."<sup>389</sup> Proper social conduct was thus prescribed not only for former slaves, but also for any inhabitants who would participate in interracial exchange regardless of its purpose. This tendency to mistrust even the most innocuous encounters can be seen in the case of Simon White, a free black North Carolinian who was whipped by klansmen for the affront of eating his meals with local whites.<sup>390</sup> Those who went so far as to advocate interracial couplings were of course in an exceptionally precarious position. Few onlookers would thus have been surprised when the KKK ran a black man out of town who had reportedly been "preaching intermarriage of the races."<sup>391</sup>

### C. Political Transgressions

Finally, the klans targeted those who, by all appearances, were leading exemplary lives. Most conspicuous in this group are the numbers of striving freedpeople assaulted purely because of their economic success, an unwelcome signal that blacks were perhaps not so inferior as their assailants preferred to believe.<sup>392</sup> Ruing the con-

388. PROCEEDINGS OF THE STATE CONVENTION OF THE COLORED CITIZENS OF TENNESSEE, HELD IN NASHVILLE, FEB. 22D, 23D, 24TH & 25TH 1871, at 3 (Nashville, C. LeRoi 1871) [hereinafter PROCEEDINGS OF THE STATE CONVENTION OF THE COLORED CITIZENS OF TENNESSEE].

389. AUSTIN BLAIR, ENFORCEMENT OF [THE] FOURTEENTH AMENDMENT, SPEECH OF [THE] HON. AUSTIN BLAIR, OF MICHIGAN, DELIVERED IN THE HOUSE OF REPRESENTATIVES, MARCH 30, 1871, at 4-5 (Washington, D.C., F. & J. Rives & Geo. A. Bailey 1871).

390. See 2 HOLDEN TRIAL, *supra* note 37, at 1484; see also *id.* at 1495-96. White exhibits some confusion regarding his assailants' asserted motives, recollecting that "[t]hey said they whipped me because I eat with white folks. Some said so, and some said they whipped me to make an equality with the white folks." *Id.* at 1484. Whereas White sees these as competing explanations for his chastisement, it is more likely that they are different facets of a single cause. The provocation was almost certainly rooted in his habit of taking meals with whites, something that to klansmen would bespeak an unacceptable degree of social intimacy with his racial superiors — in other words, behavior suggesting that he was holding *himself* on "an equality with the white folks." For another case involving accusations of overfamiliarity between individuals of different races, see 8 KLAN REPORT, *supra* note 26, at 429.

391. Reed, *What I Know of the Ku Klux Klan* (pt. 1), *supra* note 41, at 25-26.

392. See, e.g., BRFAL, *supra* note 36, RG 105, M 821, R 32, Murders and Outrages, Carolina Falls County, Tex., July 11, 1868; CONG. GLOBE, 41st Cong., 3d Sess. App. 214 (1871); 1 AMERICAN SLAVE, supp. ser. 1, *supra* note 114, at 57-58; 3 AMERICAN SLAVE, supp. ser. 1, *supra* note 114, pt. 1, at 117; 5 AMERICAN SLAVE, supp. ser. 2, *supra* note 268, pt. 4, at 1648; 6 KLAN REPORT, *supra* note 16, at 2; 7 KLAN REPORT, *supra* note 16, at 701,

strained migration of so many “good industrious freedmen,” General O.O. Howard bitterly asserted, “the old slave holders cannot bear that they ‘should be getting up and doing well.’ Their intelligence and prosperity exiles them.”<sup>393</sup> Representative of this group is Jim Freeman, a Texas freedman who was taken from his home and hung by klansmen “cause he was making some money.”<sup>394</sup> As a result of similar circumstances, Henry Lowther was informed “that no such man as me should live there, white or black.”<sup>395</sup> In Lowther’s case, the social meanings inherent in this combination of good fortune and audacity were more than local klansmen could withstand.

They said they were going to kill out all the leading republican men, both white and black. They said I had taken too great a stand against them in the republican party. I worked for my money and carried on a shop. They all got broke and did not pay me, and I sued them. They have been working at me ever since I have been free. I had too much money.<sup>396</sup>

This potent brand of racial envy is also exhibited in cases where position, rather than monetary success, was at issue. A white Northerner working as a conductor in Alabama was the unfortunate recipient of a handwritten klan warning that underscores the threat that freed black men were thought to pose to white male entitlements. Replete with skull and crossbones and a hodgepodge of mystical symbols, the note begins with the ominous words, “Dam Your Soul,” and goes on to rail against the “carpetbagger” for having the audacity to offer a decent job to a black man away from the plantation: “We the undersigned understand through our Grand ‘Cyclops’ that you have recommended a big Black Nigger for Male agent on our nu rode; wel, sir, Jest you understand in time if he gets on the rode you make up your mind to pull roape.”<sup>397</sup> Should he fail to adhere to their instructions, the signators promised that he would be “led out by the Klan and learnt to stretch hemp.”<sup>398</sup>

Women who enjoyed comparable successes might also incite the terrorists’ wrath. When the midwifery practice of a North Carolina freedwoman began to impinge upon the terrain of a local physician-klansman, she was visited by nightriders determined to “learn her not

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732; 12 KLAN REPORT, *supra* note 44, at 891-92; 13 KLAN REPORT, *supra* note 15, at 279; STEVENSON, KU KLUX KLAN, *supra* note 35, at 4. Terror was also strategically deployed to coerce freedpeople employed in other economic sectors to return to agricultural labor. *See, e.g.*, 3 KLAN REPORT, *supra* note 17, at 27-28.

393. AGO, *supra* note 16, RG 94, M 666, R 13, F 1688, Letter from General O.O. Howard to Honorable W.W. Belknap, May 1, 1871.

394. 5 AMERICAN SLAVE, *supp. ser. 2, supra* note 268, pt. 4, at 1648.

395. 6 KLAN REPORT, *supra* note 16, at 359.

396. *Id.*

397. 9 KLAN REPORT, *supra* note 26, at 1054.

398. *Id.*

to go where she had no business.”<sup>399</sup> These events reveal a central conundrum in the lives of ex-slaves, who could do little to ensure that they would not become targets of a vengeful klan. In a universe in which working too little or too well could be a dangerous thing, the only safe option was diligent labor obediently performed on behalf of some white man, preferably one’s former master. Despite the enormous progress that has been realized since that time, the United States has not wholly overcome these racist beliefs or the actions they help foster. The residue of white ambivalence is visible today in such insidious practices as steering,<sup>400</sup> redlining,<sup>401</sup> welfare-baiting,<sup>402</sup> and retrenchment on affirmative action,<sup>403</sup> all transparent signs that some

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399. 2 HOLDEN TRIAL, *supra* note 37, at 1765; *see also id.* at 1764.

400. The term “steering” is used to denote the attempts of realtors to direct clients to properties in specific locations where the racial composition of residents matches that of prospective buyers. Historically informed discussions of the problem include DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 100, 104 (1993); *RESIDENTIAL APARTHEID: THE AMERICAN LEGACY* 31-33, 90, 91, 92, 242-43, 258 (Robert D. Bullard et al., eds., 1994); and James A. Kushner, *Apartheid in America: An Historical and Legal Analysis of Contemporary Racial Residential Segregation in the United States*, 22 HOW. L.J. 547 (1979).

401. “Redlining” refers to financial institutions’ discriminatory rejection of loan applications from a given geographic area as a result of its purportedly declining condition. Aspects of its historic use against African Americans are examined in MASSEY & DENTON, *supra* note 399, at 51, 52, 55, 105; MELVIN L. OLIVER & THOMAS M. SCHAPIRO, *BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* 18-22 (1995); *RESIDENTIAL APARTHEID*, *supra* note 399, at 1, 3, 4, 13, 35-36, 150, 151, 157, 183, 193, 251-52, 257, 258; Charles L. Nier, III, *Perpetuation of Segregation: Toward a New Historical and Legal Interpretation of Redlining Under the Fair Housing Act*, 32 J. MARSHALL L. REV. 617 (1999); and Willy E. Rice, *Race, Gender, ‘Redlining,’ and the Discriminatory Access to Loans, Credit, and Insurance: An Historical and Empirical Analysis of Consumers Who Sued Lenders and Insurers In Federal and State Courts, 1950-1995*, 33 SAN DIEGO L. REV. 583 (1996).

402. On the antecedents of contemporary welfare discourse and policy and their raced and gendered character, see especially MIMI ABRAMOVITZ, *REGULATING THE LIVES OF WOMEN: SOCIAL WELFARE POLICY FROM COLONIAL TIMES TO THE PRESENT* (rev. ed. 1996); MIMI ABRAMOVITZ, *UNDER ATTACK, FIGHTING BACK: WOMEN AND WELFARE IN THE UNITED STATES* (1996); LINDA GORDON, *PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE* (1994); ROBERT C. LIEBERMAN, *SHIFTING THE COLOR LINE: RACE AND THE AMERICAN WELFARE STATE* (1998); JILL S. QUADAGNO, *THE COLOR OF WELFARE: HOW RACISM UNDERMINED THE WAR ON POVERTY* (1994); Nancy Fraser & Linda Gordon, *A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State*, 19 SIGNS 309 (1994); Wahneema Lubiano, *Black Ladies, Welfare Queens, and State Minstrels: Ideological War by Narrative Means*, in *RACE-ING JUSTICE, EN-GENDERING POWER: ESSAYS ON ANITA HILL, CLARENCE THOMAS, AND THE CONSTRUCTION OF SOCIAL REALITY* 323 (Toni Morrison ed., 1992); Gwendolyn Mink, *The Lady and the Tramp: Gender, Race, and the Origins of the American Welfare State*, in *WOMEN, THE STATE, AND WELFARE* 92 (Linda Gordon ed., 1990); and Dorothy E. Roberts, *Welfare and the Problem of Black Citizenship*, 105 YALE L.J. 1563 (1996) (reviewing LINDA GORDON, *PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE* (1994) & JILL S. QUADAGNO, *THE COLOR OF WELFARE: HOW RACISM UNDERMINED THE WAR ON POVERTY* (1994)).

403. Commentators have employed a variety of approaches to illuminate the complex vicissitudes of affirmative action. Some recent examples include DENNIS DOVERSPIKE ET AL., *AFFIRMATIVE ACTION: A PSYCHOLOGICAL PERSPECTIVE* (2000); BRYAN K. FAIR,

portion of white America remains uncertain about the permissible boundaries of black economic performance. Much as African Americans are heirs of the traumatic histories of slavery and klan violence,<sup>404</sup> whites have inherited a tradition of racial prejudice and discrimination that is no less deeply entrenched if sometimes more difficult to recognize.<sup>405</sup>

As a number of contemporary observers readily conceded, klan terror derived its ultimate impetus from its perpetrators' intense resistance to the historical processes by which the former slaves were gaining access to the rights and responsibilities of citizenship.<sup>406</sup> The effects of terrorism were only intensified by the nightriders' evident determination to use every available resource to advance their own

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NOTES OF A RACIAL CASTE BABY: COLOR BLINDNESS AND THE END OF AFFIRMATIVE ACTION (1999); GIRARDEAU A. SPANN, *THE LAW OF AFFIRMATIVE ACTION: TWENTY FIVE YEARS OF SUPREME COURT DECISIONS ON RACE AND REMEDIES* (2001); AFFIRMATIVE ACTION REVISITED (Patricia Nelson ed., 2001); RACE AND REPRESENTATION: AFFIRMATIVE ACTION (Robert Post & Michael Rogin eds., 1998); and Susan Sturm & Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 CAL. L. REV. 953 (1996). The long history of affirmative action in the U.S. is chronicled by PHILIP F. RUBIO, *A HISTORY OF AFFIRMATIVE ACTION 1619-2000* (2001), and ROBERT J. WEISS, 'WE WANT JOBS': A HISTORY OF AFFIRMATIVE ACTION (1997). For a useful compendium of key historical texts, see AFFIRMATIVE ACTION: A DOCUMENTARY HISTORY (Jo Ann Ooiman Robinson ed., 2001).

404. See *infra* notes 728-729 and accompanying text.

405. See Robert Westley, *Many Billions Gone: Is It Time to Reconsider the Case for Black Reparations?* 40 B.C. L. REV. 429, 448 (1998) (arguing that structures of white supremacy "inhabit our literature and the canons of literary interpretation; they inhabit our speech; they inhabit popular culture, from films and television, to music, dance and fashion; they determine classroom curricula throughout the educational system; they influence the friends we make, the restaurants we choose to eat in, the places we shop; they establish national priorities and the means employed to resolve social problems; often, they define what it means to be a problem") (footnotes omitted); see also Barbara J. Flagg, "Was Blind, But Now I See": *White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953, 983-85 (1993) (surveying social science literature that shows how racial perceptions pervasively inform white decisionmaking, negatively impact blacks, and, to a lesser extent, afford often unseen advantages to whites); Charles R. Lawrence, III, *The Id, The Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987) (analyzing the juridical relevance of unconscious racism). An extensive and multifaceted literature explores these attitudes and practices within their larger historical context. See, e.g., GORDON W. ALLPORT, *THE NATURE OF PREJUDICE* (25th anniversary ed., Perseus Books 1979) (1954); DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992); JOE R. FEAGIN, ET AL., *WHITE RACISM: THE BASICS* (2d. ed. 2001); THOMAS F. GOSSETT, *RACE: THE HISTORY OF AN IDEA IN AMERICA* (new ed. 1997); JORDAN, *WHITE OVER BLACK*, *supra* note 159; KOVEL, *supra* note 304; and CARTER A. WILSON, *RACISM: FROM SLAVERY TO ADVANCED CAPITALISM* (1996). A number of illustrative primary sources are collected in STANLEY FELDSTEIN, *THE POISONED TONGUE: A DOCUMENTARY HISTORY OF AMERICAN RACISM AND PREJUDICE* (1972).

406. By this I mean to evoke those critical developments, beginning with Emancipation, (whether accomplished by individual initiative or presidential proclamation), and extending through such events as the enlistment of former slave men in the Union Army, and the passage of the Reconstruction Amendments and the various legislation enacted to further their fundamental aims, that together contributed measurably to the elevation of the freedpeople's legal status and a concomitant diminution in the benefits of whiteness.



political, social, and economic interests. While klansmen routinely denied any intention to interfere in the politics of the region when questioned, their standard practices starkly belied this claim.<sup>407</sup> Peter Hardin, a North Carolina magistrate, echoed the observations of many others when he remarked, "I do not think I know of an instance of a complaint made to me of an outrage but that the victims were republicans."<sup>408</sup> Freedmen were equally well aware of the connection between their radicalism and the abuses they suffered at the hands of the klans. When asked by his examiner, "What did they whip you for," Andrew Shoffner frankly replied, "Just because I voted for the radical ticket."<sup>409</sup>

Even women, still decades away from securing the vote in their own right, were assaulted for their political beliefs and the influence they exerted over their enfranchised male kin.<sup>410</sup> When asked if freedwomen were being whipped on account of their politics, J.B. Eaves replied, "I will state it in this way: that women were whipped, and when women were whipped, in every case, with the exception of one,

407. Klansmen made little effort to conceal their political motivations in the event, routinely interrogating victims about their past and future voting habits. See 1-13 KLAN REPORT, *supra* notes 15, 16, 17, 26, 34, 40, 44, 59, 113. Charles Stearns, a Northerner who resided in the South during the early Reconstruction years, includes in his account of the period the affidavits and letters of numerous Georgia Republicans who were dissuaded from voting by the threat of Klan reprisals. See STEARNS, *supra* note 41, at 285-304.

408. 2 HOLDEN TRIAL, *supra* note 37, at 1936. Many observers commented on the systematicity with which the klans assailed Republicans of both races. An example of one of the more explicit remarks may be found in 2 KLAN REPORT, *supra* note 16, at 99.

409. 2 HOLDEN TRIAL, *supra* note 37, at 1763. Shortly before the attack, Shoffner was informed by one of his assailants that the klan "would show me how to be a man." *Id.* Blacks and whites sympathetic to the Republican cause were subjected to punishments that ran the gamut from threats to murder. These incidents are extensively documented in the records of the Freedmen's Bureau, with hundreds more set forth in the evidence compiled by the Joint Select Committee and a number of other governmental bodies. See, e.g., BRFAL, *supra* note 36, RG 105; 2 HOLDEN TRIAL, *supra* note 37; 1-13 KLAN REPORT, *supra* notes 15, 16, 17, 26, 34, 40, 44, 59, 113. They were also widely reported in both the northern and the southern press. See, e.g., INDEPENDENT MONITOR (Tuscaloosa, Ala.), 1866-1872; N.Y. TIMES, 1866-1875. In one particularly telling encounter, klansmen informed the wife of John Allred that they would slit her husband's throat if he didn't "change his politics and *be a white man.*" 2 HOLDEN TRIAL, *supra* note 37, at 1373 (*italics added*).

410. See 2 KLAN REPORT, *supra* note 16, at 233; SOUTH CAROLINA GENERAL ASSEMBLY, REPORT ON THE EVIDENCE TAKEN BY THE COMMITTEE OF INVESTIGATION, *supra* note 81, at 627, 1417-18. Historians of gender and politics have recently transformed traditional conceptions of the political, expanding them to encompass the diversity and significance of women's political engagement in the years prior to the passage of the Nineteenth Amendment. See generally REBECCA EDWARDS, ANGELS IN THE MACHINERY: GENDER AND AMERICAN PARTY POLITICS FROM THE CIVIL WAR TO THE PROGRESSIVE ERA (1997); GLENDA ELIZABETH GILMORE, GENDER AND JIM CROW: WOMEN AND THE POLITICS OF WHITE SUPREMACY IN NORTH CAROLINA, 1896-1920 (1996); MELANIE S. GUSTAFSON, WOMEN AND THE REPUBLICAN PARTY, 1854-1924 (2001); ELIZABETH VARON, WE MEAN TO BE COUNTED: WHITE WOMEN AND POLITICS IN ANTEBELLUM VIRGINIA (1998); Paula Baker, *The Domestication of Politics: Women and American Political Society, 1780-1920*, 89 AM. HIST. REV. 620 (1984).

the man at the house voted for the republican ticket.”<sup>411</sup> This pattern suggests that klansmen recognized that freedwomen were often integrally involved in the electoral choices formally exercised by their men at the polls. It is also consistent with the conclusion of an historical study of former slave narratives indicating that women “played a large role in political decision making.”<sup>412</sup> Indeed, some of them, acting independently or at their ministers’ bidding, refused to sleep with husbands who failed to vote the Radical ticket,<sup>413</sup> while others put on trousers and ventured forth to cast ballots of their own with the knowledge and approbation of their communities.<sup>414</sup> Democrats in one district went so far as to admit that “they would have gained the day, if it hadn’t been for the women.”<sup>415</sup> Not surprisingly, freedmen who were vocal about their pragmatic political allegiances,<sup>416</sup> who rose to positions of prominence within the Republican Party,<sup>417</sup> or who were considered leaders in their communities<sup>418</sup> were in particular peril. For Pickens Stewart, it was his evident political acumen that drew the ire of local klansmen. “[T]hey said they whipped me because I was too smart,” Stewart attested, “as I was running to town too often to speeches, and bringing back the news, and reading papers too much, and carrying political pamphlets about.”<sup>419</sup> Accounting for the murder

411. 2 KLAN REPORT, *supra* note 16, at 195-96. Harriet Hernades, a South Carolina freedwoman, confirms that klansmen sought revenge not only on the men who voted Republican, but also “took the spite out on the women when they could get at them.” 3 KLAN REPORT, *supra* note 17, at 586.

412. ESCOTT, *supra* note 7, at 152; *see also* S. REP. 46-2, NO. 693, pt. 2, at 232-33 (1880), *excerpted in* 2 DOCUMENTARY HISTORY OF THE NEGRO PEOPLE, *supra* note 156, at 721-22 (documenting the persistence of this phenomenon over time); S. REP. 48-1, NO. 579, pt. 2, at 188-89 (1884), *excerpted in* 2 DOCUMENTARY HISTORY OF THE NEGRO PEOPLE, *supra* note 156, at 739-41. Other secondary works addressing the issue of freedwomen’s political activism include FRANKEL, FREEDOM’S WOMEN, *supra* note 142, at 124, 176-78; THOMAS HOLT, BLACK OVER WHITE: NEGRO POLITICAL LEADERSHIP IN SOUTH CAROLINA DURING RECONSTRUCTION 34-35 (1977); SAVILLE, *supra* note 143, at 169-70; and Elsa Barkley Brown, *To Catch the Vision of Freedom: Reconstructing Black Women’s Political History, 1865-1880*, in AFRICAN AMERICAN WOMEN AND THE VOTE, 1837-1965, at 66 (Ann D. Gordon ed. 1997).

413. *See* ESCOTT, *supra* note 7, at 153; *see also* M. WATERBURY, SEVEN YEARS AMONG THE FREEDMEN 90-91. (2d ed., Chicago, T.B. Arnold 1891) (paraphrasing freedwomen’s threats to leave politically wayward spouses).

414. *See* ESCOTT, *supra* note 7, at 153.

415. WATERBURY, *supra* note 413, at 91.

416. *See, e.g.*, 9 KLAN REPORT, *supra* note 26, at 998-99, 1273, 1296; 10 KLAN REPORT, *supra* note 113, at 1486; 12 KLAN REPORT, *supra* note 44, at 809.

417. *See, e.g.*, 6 KLAN REPORT, *supra* note 16, at 362; 7 KLAN REPORT, *supra* note 16, at 696-97; 8 KLAN REPORT, *supra* note 26, at 334-35; 11 KLAN REPORT, *supra* note 40, at 360, 435; 13 KLAN REPORT, *supra* note 15, at 94-95.

418. *See, e.g.*, 2 HOLDEN TRIAL, *supra* note 37, at 1190.

419. SOUTH CAROLINA GENERAL ASSEMBLY, REPORT ON THE EVIDENCE TAKEN BY THE COMMITTEE OF INVESTIGATION, *supra* note 81, at 1448.

of a Mississippi freedman, a former Confederate officer candidly allowed, "He was said to have been doing some considerable talking as a politician; it was thought better to silence him, and they did so."<sup>420</sup> The same approach was applied to those who participated in the Union and Loyal Leagues, organizations that were plainly inimical to the klans' fundamental interests.<sup>421</sup> As this survey suggests, partisan politics was only one of many locations in which the klans propagated politically motivated terror; rather, their animosity was trained on an expansive political arena newly inflected with the voices of freedpeople striving to assert their concerns, aspirations, and identities in a manner that was previously unfathomable.

Although many of these inciting factors, apparent and asserted, had some foundation in reality, many others were little more than post-facto justifications for terror, a habit that evolved into something of an art form among klansmen of the era. One witness with intimate knowledge of the KKK's modus operandi maintained that "they always get up some pretended charge against their victims."<sup>422</sup> J.H. Flood, an Army lieutenant, elaborated on this contention. "[M]y own opinion is [that these various charges, many of them sexual in nature, are] only a pretext for maltreating the colored people against whom a disguised party of men, known and commonly called Ku-Klux Klan, appear to have a special animosity, and the determination of driving them away."<sup>423</sup> Walter Brock, a white lawyer who remarked of the rationales proffered for a number of klan attacks, confirmed this general impression. "I am constrained to think it is nothing but a pretense."<sup>424</sup> Whether or not they were sincere, the expressed motives for klan violence serve as a powerful indicator of white fears of being divested of their place in the South's racial caste system. Though genuine equality was nothing more than a distant prospect at the time, the concept alone was enough to cause many whites to entrench themselves before further ground was lost.

This visceral aversion to the signifiers of blacks' prospective elevation was reflected most prominently in the sexual realm. Describing the "evils" regularly confronted by the KKK, a witness noted that "a

420. 11 KLAN REPORT, *supra* note 40, at 226.

421. See, e.g., BRFAL, *supra* note 36, RG 105, Vol. 174, Complaints Entered, Athens, Ga., n.d.; BRFAL, *supra* note 36, RG 105, M 999, R 34, Affidavit of Ben Mays, Davidson County, Tenn., July 17, 1868; 2 HOLDEN TRIAL, *supra* note 37, at 1191, 1443, 1445; 3 KLAN REPORT, *supra* note 17, at 371; 5 KLAN REPORT, *supra* note 16, at 1407.

422. 7 KLAN REPORT, *supra* note 16, at 920. This practice is further documented in S. REP. NO. 42-1, at xxii (1871); 2 HOLDEN TRIAL, *supra* note 37, at 1935, 1937; 5 KLAN REPORT, *supra* note 16, at 1983; 6 KLAN REPORT, *supra* note 16, at 452-53; 12 KLAN REPORT, *supra* note 44, at 1160; and 13 KLAN REPORT, *supra* note 15, at 225.

423. 9 KLAN REPORT, *supra* note 26, at 1210.

424. 7 KLAN REPORT, *supra* note 16, at 1010.

black man and a white woman sometimes get together and say that they are equal."<sup>425</sup> The "Ku-Klux," he declared, "would prevent a thing of that sort."<sup>426</sup> Reed, an early annalist of the KKK, likewise maintained that members were impelled by fear "that a day was near 'when white folks would be glad to marry niggers.'"<sup>427</sup> The klans' disdain for racial equality was demonstrated in a variety of other arenas as well. Cornelius McBride's assailants informed him that he had been singled out for punishment because he "wanted to make these niggers equal with the white men" despite their determination that "this was a white man's country,"<sup>428</sup> while James Dorman was brutally whipped for encouraging blacks to seek social and political equality with whites.<sup>429</sup> What is most striking in this rhetoric is the ease with which speakers traverse the sexual, the social, and the political. So intertwined had they become by this point in the South's historical development that the perceived violation of any one of them was transmuted effortlessly into another.<sup>430</sup> Interestingly, there is no perfect correspondence between the sexualized aspect of klan violence and the predication of sexual misdeeds to justify them. Sexual outrages were perpetrated for a variety of reasons, just as sexual motives were promulgated to explain diverse forms of nonsexual abuse. Instead of relying primarily on the symmetry of word and deed, what instead bears emphasis is the extraordinary degree to which the klans instantiated the broader sexualization of racial politics that distinguished the Reconstruction period and beyond. This is not to suggest that the sexual warfare of the klans was itself an overdetermined phenomenon; to the contrary, it was quite purposefully waged to advance the cause of white supremacy in all facets of southern life. And while sexualization need not inevitably amplify or particularize the experience of violation for any of its parties, under conditions then prevailing it accomplished that and more, spawning effects that contributed measurably to the deformity of race relations well into the twentieth century.

## V. CONTESTING "LAW" IN THE ERA OF THE KLANS

The story of the Reconstruction klans and their pervasive resort to sexual terror is deeply interwoven with the legal history of the post-bellum South as well as that of the nation as a whole. Throughout this

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425. 6 KLAN REPORT, *supra* note 16, at 124.

426. *Id.*

427. Reed, *What I Know of the Ku Klux Klan* (pt. 3), *supra* note 346, at 18.

428. 11 KLAN REPORT, *supra* note 40, at 326.

429. See 8 KLAN REPORT, *supra* note 26, at 163-64.

430. Martha Hodes makes much the same point in *WHITE WOMEN, BLACK MEN*, *supra* note 4, and *The Sexualization of Reconstruction Politics*, *supra* note 4.

examination, evidence has been presented of the myriad ways in which klansmen, their victims, supporters, and opponents variously invoked, disregarded, revised, defied, valorized, and discarded law. Yet the substance and significance ascribed to it was then, as now, highly unstable, with discrete groups defining the bounds of legality differently, depending, among other things, on their ideological predispositions, aspirations, and the exigencies of the moment. Seeking to unravel some of these complex interactions, Part V confronts the nexus of law and sexual violence to ask what klan terrorism reveals about juridical meanings in the years following the Civil War, with an eye toward later assessing how those interpretations might ultimately have impacted legal developments thereafter.

The extraordinary rise and gradual decline of the postbellum klans implicates law and legal structure in a number of overlapping, though not especially transparent, ways. Three facets of this relationship will be considered here: the klans and the operation of traditional legal mechanisms; the klans as vigilante organizations; and the articulation of what will here be termed “klan law.” On the most concrete level, the emergence of powerful extralegal bodies whose *raison d’être* was the reversal of the most hard-won results of a devastating civil war is testament to the profound failure of law insofar as that concept is traditionally understood to encompass protecting the essential rights of all those under its sway and providing the means for assuring order and stability throughout society. It is true that legal mechanisms were in the end partially responsible for the successful eradication of the klans. But that in no way alters the fact that it was the inability, oftentimes unwillingness, of crucial juridical actors to respond to the terror that enabled the proliferation of these organizations in the first instance.

At the same time, the KKK, the White Brotherhood, the Constitutional Union Guard, and other white supremacist organizations must be seen as participating in the longer trajectory of American, especially southern, vigilantism. While exhibiting considerable diversity in conception, form, and function, vigilante activity has, since the revolutionary years, been a common pursuit of men, and to a lesser degree women, dissatisfied with political, economic, and social conditions. Following directly from the klans’ problematic position in the historical development of vigilantism is the last significant legal intersection to be explored — the elaboration of a parallel system of justice, or klan law, created by and for southern whites (in particular those of the former slaveholding classes). By this alternate code of laws, white men held absolute power to regulate and punish, while blacks were reduced to their former servile status, albeit in superficially modern guise. Those who resisted, regardless of race or sex, were subject to whatever penalty local klansmen deemed most fitting, warning, exile, death, or

any of the innumerable sexualized punishments that were cultivated to serve their larger aims.

A. *The Failure of Traditional Legal Mechanisms*

As the sexual atrocities chronicled here graphically reveal, the law as it is traditionally understood did little to stem the tide of klan violence that inundated the South in the years following the Civil War.<sup>431</sup> Conditions in some localities deteriorated so severely that they threatened not only the lives and livelihoods of their inhabitants, but also the stability of governments. Holden's portrayal of the extent to which the klans had succeeded in corrupting democratic processes in the state of North Carolina is bleak, yet hardly overstated. "The Constitution and the laws of the United States and this State are set at naught; the civil courts are no longer a protection to life, liberty and property; assassinations and outrage go unpunished, and the civil magistrates are intimidated and are afraid to perform their functions."<sup>432</sup> Davis Tillson, a Brevet Major General stationed in a Georgia district where white supremacist terror was especially widespread, voiced the perception of countless others when he observed:

I am unaware of a single instance in which one of these villains has been arrested and brought to trial by the civil authorities, although habitually, upon ascertaining the existence of such bands, I have respectfully called upon the civil authorities to arrest and punish them, furnishing all the information in my possession, and offering the assistance of troops to make arrests, if desired. I am led to believe that, in some instances, the civil authorities and well-disposed citizens have been overawed by these organizations. In others, I fear the civil authorities have sympathized with them.<sup>433</sup>

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431. The historical record — in particular the *Klan Report*, the records of the Freedmen's Bureau, and the files of the Adjutant General's Office — is replete with evidence of the failure of law to contain klan violence. See 1-13 *KLAN REPORT*, *supra* notes 15, 16, 17, 26, 34, 40, 44, 59, 113; *BRFAL*, *supra* note 36, RG 105, *AGO*, *supra* note 16, RG 94, M 666, R 1, F 60; *AGO*, *supra* note 16, RG 94, M 666, R 26, F 2586. Valuable information may also be garnered from many other state and federal government documents. See, e.g., *KKK Papers*, *supra* note 16, Testimony of James E. Boyd [State v. Andrews], at 1-3, 22-25; *KKK Papers*, *supra* note 16, Testimony of John W. Long, [State v. Gray], at 7-14; *KKK Papers*, *supra* note 16, Testimony of William Tickel [State v. Somers], at 2-10; H.R. MISC. DOC. NO. 41-53, at 292, 293, 296 (1870); *BUCK*, *supra* note 38, at 8; *HOLDEN*, *THIRD ANNUAL MESSAGE*, *supra* note 37, at 15-18, app. 74-75; *STEVENSON*, *KU KLUX KLAN*, *supra* note 35, at 4-5, 7, 14, 26, 27, 31, 32.

432. *HOLDEN*, *PROCLAMATIONS*, *supra* note 208, at 18.

433. H.R. EXEC. DOC. NO. 39-6, at 55 (1867). Similar sentiments were expressed by a number of Tillson's contemporaries. See, e.g., 1 *HOLDEN TRIAL*, *supra* note 208, at 33; *PRATT*, *supra* note 147, at 5, 12-14; *JOHN SHERMAN*, *KU KLUX OUTRAGES. SPEECH OF [THE] HON. JOHN SHERMAN, OF OHIO, DELIVERED IN THE SENATE OF THE UNITED STATES, MARCH 18, 1871*, at 3, 11-14 (Washington, D.C., F. & J. Rives & Geo. A. Bailey 1871).

Although it would be an exaggeration to say that no klansman was successfully brought to justice for crimes committed during Reconstruction, Tillson's comments underscore several factors that severely inhibited that process. As a threshold matter, the authorities assigned to deal with the terror were often more sympathetic to the perpetrators than their victims.<sup>434</sup> At the same time, committed law enforcement officials at all levels were forced to contend with both broad popular support among southern whites for the aims, if not always the methods, espoused by the klans, and pervasive fear within that portion of the populace approving of neither.<sup>435</sup> Governor Holden expressed the exasperation of officials at all levels of government when, in justifying his decision to deploy the full range of executive powers against the KKK in Alamance County, he exclaimed, "I have invoked public opinion to aid me in suppressing treason! I have issued proclamation after proclamation to the people of the State to break up these unlawful combinations!"<sup>436</sup> All to no avail. For as the Governor and his allies learned through bitter experience, while any one of these obstacles would have been difficult to overcome in isolation, together they were nearly insurmountable.

The means by which the klansmen thwarted justice were at once extraordinary and strikingly familiar, many having since been resuscitated with considerable success by the modern KKK. Where law enforcement collusion was not itself the problem, the connivance of ordinary citizens often was. Grand and petit juries were routinely infiltrated by klansmen and sympathizers unwilling to hand down indictments or convictions against like-minded defendants.<sup>437</sup> When one of their own did come to trial, local whites commonly rallied to his defense, extending monetary as well as moral and material support to avert a successful prosecution. Privileging oaths that demanded the preservation of group integrity and the protection of individual identities above all else, members of white supremacist organizations who were called upon to testify did so falsely as a matter of course.<sup>438</sup>

These problems were exacerbated by the fact that officials tasked to rid the South of these terroristic bodies frequently lacked the strength and tenacity that would have been required to mount an ef-

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434. See, e.g., HOLDEN, PROCLAMATIONS, *supra* note 208, at 31.

435. For further consideration of these issues, see ROBERT J. KACZOROWSKI, THE POLITICS OF JUDICIAL INTERPRETATION: THE FEDERAL COURTS, DEPARTMENT OF JUSTICE AND CIVIL RIGHTS, 1866-1876 (1987) [hereinafter KACZOROWSKI, THE POLITICS OF JUDICIAL INTERPRETATION], and Robert J. Kaczorowski, *Federal Enforcement of Civil Rights during the First Reconstruction*, 23 FORDHAM URB. L.J. 155 (1995) [hereinafter Kaczorowski, *Federal Enforcement of Civil Rights*].

436. HOLDEN, PROCLAMATIONS, *supra* note 208, at 18.

437. See, e.g., *id.* at 31.

438. See, e.g., *id.*

fective defense against the formidable power of the klans. Whether these inhibitions were the product of budgetary constraints, inadequate administrative direction, community pressure, or temperament, they severely undermined efforts to punish those responsible for the terror of those years. Many who might otherwise have testified against the klans were naturally discouraged by mounting evidence of the futility of doing so, all the more so in the face of direct threats of retaliation.<sup>439</sup> Freedpeople as a class were furthermore disadvantaged by pervasive illiteracy and ignorance of the judicial system, legacies of slavery that could not be immediately overcome.<sup>440</sup> While the Freedmen's Bureau, along with individuals of both races, sought to rectify the situation, changes were not effected quickly or broadly enough to begin to equalize access to legal resources. For all of these reasons, ordinary juridical approaches largely failed to conduce to an environment in which the freedpeople or any of the klans' other "natural" enemies could adjust to the postwar order with the confidence that they would remain unmolested.

While state and local authorities were, in the main, less than steadfast in their determination to suppress the terror, there were some exceptions, among them leaders who confronted the klans at considerable personal and political risk. At the urging of Governor William G. "Parson" Brownlow,<sup>441</sup> Tennessee in 1868 became the first state to pass anti-klan legislation, with a number of others states, including Alabama, Arkansas, Mississippi, North Carolina, and South Carolina, following suit in the months and years to come. Availing themselves of

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439. See, e.g., *Murderous Mississippi Ku-Klux*, NEW NAT'L ERA (Washington, D.C.), Feb. 1, 1872, at 3 (discussing the murder of several federal witnesses against the KKK and threats to many more).

440. When Lucy McMillan was asked why she did not sue the klansmen responsible for destroying her house, she candidly replied, "I don't know how to sue them; I came down here [to the Joint Select Committee hearings] and reported them. I didn't know anything about suing." 4 KLAN REPORT, *supra* note 34, at 609. Another freedwoman offered the same explanation for her failure to seek an indictment against her klan assailants. See 2 HOLDEN TRIAL, *supra* note 37, at 1405, 1407.

441. William Brownlow, a one-time Methodist preacher and staunch Unionist whom Allen Trelease accurately describes as "one of the most abrasive and controversial personalities of the Reconstruction era," TRELEASE, *supra* note 10, at 6, was elected governor on a pro-Union platform in 1865 with the active involvement of President Andrew Johnson. See Wilson D. Miscamble, *Andrew Johnson and the Election of William G. ("Parson") Brownlow as Governor of Tennessee*, 37 TENN. HIST. Q. 308 (1978). For general assessments of Brownlow's life and career, consult E. MERTON COULTER, *WILLIAM G. BROWNLOW, FIGHTING PARSON OF THE SOUTHERN HIGHLANDS* (University of Tennessee Press 1999) (1937); STEVE HUMPHREY, "THAT D---D BROWNLOW": BEING A SAUCY AND MALICIOUS DESCRIPTION OF FIGHTING PARSON WILLIAM GANNAWAY BROWNLOW (1978); James C. Kelly, *William Gannaway Brownlow*, Part I, 43 TENN. HIST. Q. 25 (1984); and James C. Kelly, *William Gannaway Brownlow*, Part II, 43 TENN. HIST. Q. 155 (1984). Further discussion of Brownlow's role in the politics of postbellum Tennessee is contained in THOMAS B. ALEXANDER, *POLITICAL RECONSTRUCTION IN TENNESSEE* (1950), and JAMES WELCH PATTON, *UNIONISM AND RECONSTRUCTION IN TENNESSEE 1860-1869* (1934).



measures such as these, southern governors responded to klan violence by organizing militias, employing detectives, appointing special constabularies, offering rewards for the capture of suspected terrorists, initiating prosecutions, and declaring martial law in some of the most troubled regions. While these efforts did result in occasional successes, they also served to consolidate white resistance to legal authority throughout the region, a force that the states simply could not subdue in the absence of prolonged federal support.<sup>442</sup>

Abiding partisan disputes prevented the articulation of a coherent national policy on klan violence. Instead, the U.S. government (or more precisely, cohorts therein) pursued a number of strategies to quell the terror, including the establishment of special remedial and investigative bodies, the passage of major civil rights legislation enabling the indictment and prosecution of suspected klansmen, the dispatch of troops, and, in the most seriously afflicted areas, the suspension of habeas corpus. For countless victims, these efforts proved too little, too late. The Freedmen's Bureau was the agency to which freed-people willing and able to seek redress most often turned in the aftermath of violence.<sup>443</sup> Bureau agents recorded the complaints of thousands of black men and women who had been molested by whites, many active members of the burgeoning klan movement, investigating

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442. See FONER, RECONSTRUCTION, *supra* note 23, at 438-41; FRANKLIN, *supra* note 27, at 158-59; RABLE, BUT THERE WAS NO PEACE, *supra* note 23, at 104-06; TRELEASE, *supra* note 10, at 43-46, 159-60, 180-82, 203-04, 206, 209-10, 246-47, 264, 277-78, 349, 417; Stephen E. Massengill, *The Detectives of William W. Holden, 1869-1870*, 62 N.C. HIST. REV. 448 (1985).

443. General discussion of the Bureau and its work in ameliorating the condition of the former slaves may be found in GEORGE R. BENTLEY, A HISTORY OF THE FREEDMAN'S BUREAU (1955); THE FREEDMEN'S BUREAU AND BLACK FREEDOM (Donald G. Nieman ed., 1994) [hereinafter THE FREEDMEN'S BUREAU AND BLACK FREEDOM]; THE FREEDMEN'S BUREAU AND RECONSTRUCTION: RECONSIDERATIONS xiii (Paul A. Cimbala & Randall M. Miller eds., 1999) [hereinafter THE FREEDMEN'S BUREAU AND RECONSTRUCTION]; MCFEELY, *supra* note 171; DONALD G. NIEMAN, TO SET THE LAW IN MOTION: THE FREEDMEN'S BUREAU AND THE LEGAL RIGHTS OF BLACKS, 1865-1868 (1979); PAUL SKEELS PEIRCE, THE FREEDMEN'S BUREAU: A CHAPTER IN THE HISTORY OF RECONSTRUCTION (1904); and Charles Gray, *The Freedmen's Bureau: A Missing Chapter in Social Welfare History* (1994) (unpublished D.S.W. dissertation, Yeshiva University) (on file with the Yeshiva University Library). State studies include MARTIN ABBOTT, THE FREEDMEN'S BUREAU IN SOUTH CAROLINA, 1865-1872 (1967); PAUL A. CIMBALA, UNDER THE GUARDIANSHIP OF THE NATION: THE FREEDMEN'S BUREAU AND THE RECONSTRUCTION OF GEORGIA, 1865-1870 (1997); BARRY A. CROUCH, THE FREEDMEN'S BUREAU AND BLACK TEXANS (1992); SUSAN E. DOLLAR, THE FREEDMEN'S BUREAU SCHOOLS OF NATCHITOCHES PARISH, LOUISIANA, 1865-1868 (1998); FINLEY, FROM SLAVERY TO UNCERTAIN FREEDOM, *supra* note 144; WILLIAM L. RICHTER, OVERREACHED ON ALL SIDES: THE FREEDMEN'S BUREAU ADMINISTRATORS IN TEXAS, 1865-1868 (1991); HOWARD A. WHITE, THE FREEDMEN'S BUREAU IN LOUISIANA (1970); THE FREEDMEN'S BUREAU AND BLACK FREEDOM, *supra*; THE FREEDMEN'S BUREAU AND RECONSTRUCTION, *supra*; and Sara Rapport, *The Freedmen's Bureau as a Legal Agent for Black Men and Women in Georgia: 1865-1868*, 73 GA. HIST. Q. 26 (1989). For a useful historiographical review, see John David Smith, "The Work It Did Not Do Because It Could Not": Georgia and the "New" Freedmen's Bureau Historiography, 82 GA. HIST. Q. 331 (1998).

some, directing others to higher authorities, and concluding that still others merited no further action. The Freedmen's Bureau also afforded its constituents the dubious benefits of an alternative court system,<sup>444</sup> though parties availing themselves of this forum were more often seeking assistance in the resolution of labor disputes than relief for injuries sustained through encounters with the klans.<sup>445</sup> A number of factors rendered these courts practically impotent in the struggle against klan violence: well-founded fears of retribution discouraged potential witnesses from testifying; the meagerness of penalties that could be assessed against those found guilty provided no meaningful deterrent against future terroristic acts; and the frequency with which cases initiated at this level were removed to the regular justice system, where discrimination was endemic and convictions rare, left an appearance of irrelevance that readily translated into reality.<sup>446</sup> While the very presence of the Bureau with its many skilled and dedicated agents doubtless provided aid and comfort to many former slaves, in the end it had neither the institutional authority nor the logistical means to control rampant vigilantism.<sup>447</sup> Deprived of adequate funds and uncertain of its mission, the Bureau and its courts had, by 1868, all but ceased to function as an agent for freedpeople's rights.

Beyond what recourse was available under the auspices of the Freedmen's Bureau, congressional Republicans initiated a number of measures, intended in whole or in part to mitigate klan atrocities. The Military Reconstruction Act of 1867,<sup>448</sup> for instance, authorized the formation of biracial militias in the former Confederacy. These bodies, too, proved largely ineffectual, impaired both by governors' reluctance to risk further antagonizing an already hostile white population by marshalling them in the fight against terror, and also by the violence and intimidation their members regularly endured.<sup>449</sup> Prior to the es-

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444. See BENTLEY, *supra* note 443, at 152-68; PEIRCE, *supra* note 443, at 143-47; see also James Oakes, *A Failure of Vision: The Collapse of the Freedmen's Bureau Courts*, 25 CIV. WAR HIST. 66 (1979).

445. In her methodological study of the Freedmen's Bureau records, Noralee Frankel rightly emphasizes the ubiquity of labor disputes among the complaints registered. See Noralee Frankel, *From Slave Women to Free Women: The National Archives and Black Women's History in the Civil War Era*, 29 PROLOGUE 100, 102 (1997). For additional analysis of the Bureau's involvement in the transition from slave to free labor, see SAVILLE, *supra* note 143; Paul A. Cimbal, *The "Talisman Power": Davis Tillson, the Freedmen's Bureau, and Free Labor in Reconstruction Georgia, 1865-1866*, 28 CIV. WAR HIST. 153 (1982); and Rapport, *supra* note 443, at 29-34.

446. See Rapport, *supra* note 443, at 41-42.

447. As Edward Ayers justly concludes, the Freedmen's Bureau was "a well-intentioned experiment that exerted only a temporary and limited influence on the fundamental patterns of postwar Southern crime and punishment." AYERS, VENGEANCE AND JUSTICE, *supra* note 30, at 155.

448. Ch. 153, 14 Stat. 428.

449. See MARY FRANCES BERRY, MILITARY NECESSITY AND CIVIL RIGHTS POLICY: BLACK CITIZENSHIP AND THE CONSTITUTION, 1861-1868, at 99 (1977).

establishment of the Joint Select Committee in 1871,<sup>450</sup> the most significant anti-klan effort undertaken by Congress was a senatorial inquiry into alleged outrages in North Carolina, an early bastion of terrorism. After interrogating dozens of witnesses over a number of weeks, including several reputed klansmen, the Republican majority categorically affirmed the veracity of allegations that minority Democrats just as staunchly denied.<sup>451</sup> Notwithstanding Democratic attempts to minimize the gravity of the situation, mounting evidence from throughout the South confirmed the existence of a pervasive conspiracy to deprive the freedpeople of fundamental civil and human rights. In response, Congress, with the support of President Grant, passed the so-called Ku Klux Klan Act of 1871, the last in a series of enforcement acts designed to undergird federal attempts to implement the Fourteenth and Fifteenth Amendments.<sup>452</sup> This legislation made it a violation of federal criminal law for individuals to “conspire together, or go in disguise upon the public highway or upon the premises of another for the purpose . . . of depriving any person or any class of persons of the equal protection of the laws.”<sup>453</sup> The anti-klan sections of these acts resulted in the creation of a new federal crime, “conspiracy to deprive of civil rights,” which placed the maintenance of newly elaborated citizenship rights firmly in the hands of the United States government.<sup>454</sup>

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450. For a brief explication of the structure and composition of the Joint Select Committee, see *supra* note 76 and accompanying text.

451. The results of the Senate's inquiry are printed in S. REP. NO. 42-1 (1871), and published in book form as COMMITTEE TO INVESTIGATE ALLEGED OUTRAGES IN THE SOUTHERN STATES, REPORT ON THE ALLEGED OUTRAGES IN THE SOUTHERN STATES BY THE SELECT COMMITTEE OF THE SENATE (Washington, D.C., Government Printing Office 1871). Further information concerning this investigation is available in HORN, *supra* note 10, at 195-96; TRELEASE, *supra* note 10, at 386-87; and WADE, *supra* note 10, at 85-88. For crucial documentary evidence of the activities of the North Carolina klans, see AGO, *supra* note 16, RG 94, M 666, R 12, F 1612.

452. Most pertinent to this discussion, the Enforcement Act of May 31, 1870, rendered the notorious markers of klansmanship felonious, subjected those who interfered with the exercise of the franchise to a range of civil and criminal penalties, and federalized certain state crimes when they were committed in conjunction with violations of established United States civil rights laws. See First Enforcement Act, ch. 114, 16 Stat. 140 (1870) (codified as amended at 18 U.S.C. § 241 (2000)). Under the mandate of the Second Enforcement Act, passed on February 28, 1871, congressional elections could, under certain conditions, be placed under federal supervision with U.S. marshals authorized to appoint deputies to protect against unlawful interference in the electoral process. See Second Enforcement Act, ch. 99, 16 Stat. 433 (1871) (codified as amended at 2 U.S.C. § 9 (2000), 28 U.S.C. §§ 1357, 1442, 1446-1447, 1449-1450 (2000)). The Klan Act, designed primarily to expand upon the protections afforded by its antecedents, was signed into law on April 20, 1871. See Ku Klux Klan Act, ch. 22, 17 Stat. 13 (1871) (codified as amended at 42 U.S.C. §§ 1983, 1985 (2000)). For an insightful analysis of the enforcement acts and their place in Reconstruction history, see SWINNEY, *supra* note 17, 57-99, 154-76. Additional assessments include William Watson Davis, *The Federal Enforcement Acts*, in STUDIES IN SOUTHERN HISTORY AND POLITICS INSCRIBED TO PROFESSOR WILLIAM ARCHIBALD DUNNING 205 (1914), and Xi Wang, *The Making of Federal Enforcement Laws, 1870-1872*, 70 CHI.-KENT L. REV. 1013 (1995).

453. Ch. 22, 17 Stat. 13 (1871).

454. See SWINNEY, *supra* note 17, at 162.

More controversially, the President was empowered to deploy federal troops to troubled regions and to suspend the writ of habeas corpus under extreme circumstances.<sup>455</sup> Despite its clear origins in klan atrocities, sexual and otherwise, this legislation was generally constructed as vindicative of political, more narrowly, voting, rights. Those best able to demonstrate a legally cognizable injury were, therefore, enfranchised citizens, a category from which, needless to say, women of both races were uniformly excluded. This cramped vision of the purpose of these laws had profound implications not only for the victims of klan sexual violence, but also for those of subsequent generations, primarily women, who would endeavor to use them in a manner consistent their original purpose.<sup>456</sup>

The most sustained venture authorized by this legislation was undertaken in South Carolina in the midst of the Joint Committee's investigation, an occasion that produced considerable testimony regarding klan activities in that state that would later be used to combat them.<sup>457</sup> In October 1871, President Grant declared a "condition of lawlessness" in nine South Carolina counties and invoked the panoply of special powers at his disposal to restore order when klansmen initially ignored his invitation to surrender.<sup>458</sup> Hundreds of suspected nightriders eventually gave themselves up. Others were forcibly arrested and taken into custody,<sup>459</sup> and some of those were subsequently prosecuted and convicted in the celebrated Ku Klux Klan trials of 1871-1872.<sup>460</sup> Although they failed to punish more than a small propor-

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455. The literature on the Ku Klux Klan Act of 1871 is voluminous. For a concise overview of this legislation and its role in federal efforts to combat klan terror, consult FONER, *RECONSTRUCTION*, *supra* note 23, at 454-57. Additional discussion is included in KACZOROWSKI, *THE POLITICS OF JUDICIAL INTERPRETATION*, *supra* note 435, at 13-14, 174-75; SWINNEY, *supra* note 17, at 154-204; and Alfred Avins, *The Ku Klux Klan Act of 1871: Some Reflected Light on State Action and the Fourteenth Amendment*, 11 *ST. LOUIS U. L.J.* 331 (1967).

456. *See infra* notes 749-763 and accompanying text.

457. *See generally* DCR, *supra* note 82, RG 21, Eastern District, S.C.; S.C. KLAN TRIALS, *supra* note 16.

458. Valuable source material on the conditions underlying this declaration may be found in AGO, *supra* note 16, RG 94, M 666, R 26, F 2586.

459. John Leland, one of the dozens of South Carolinians indicted for murder and conspiracy during the government crackdown on the klans, documented his experiences of "political persecution" in his reminiscences of the period. *See* JOHN A. LELAND, *A VOICE FROM SOUTH CAROLINA* 86-132 (1879). Like many others against whom evidence was presented, Leland denied any "personal knowledge of the mystic organization . . . never having been associated with [the klans] in any way, or in any place, excepting in — the common jail." *Id.* at 86.

460. The South Carolina episode is rehearsed in HORN, *supra* note 10, at 235-42; TRELEASE, *supra* note 10, at 401-08; WADE, *supra* note 10, at 94-104; and Shapiro, *supra* note 23. Studies of the South Carolina Ku Klux Klan Trials include WILLIAMS, *THE GREAT SOUTH CAROLINA KU KLUX KLAN TRIALS*, *supra* note 77; Kermit L. Hall, *Political Power and Constitutional Legitimacy: The South Carolina Ku Klux Klan Trials, 1871-1872*, 33 *EMORY L.J.* 921 (1984); Williams, *The Constitution and the Ku Klux Klan on Trial*, *supra*

tion of those responsible for the terror, much less to compensate its untold victims, these and other juridical offensives gradually helped loosen the grip of the klans.<sup>461</sup> Yet, while such efforts had by 1872 done much to subvert the klans, only after the Democrats regained control of the state legislatures and a comparable retrenchment took hold at the national level did klan violence recede almost entirely from the southern landscape. With white supremacy safely reenshrined and blacks being forced into new forms of servitude, there was little need for these extreme forms of coercion. It was this circumstance, rather than the collective force of traditional legal mechanisms, that was most responsible for the return of conditions of relative peace. At no point during the klans' reign of terror was law employed with the sort of dexterity and resolve that might at once have ended the most violent expressions of racial hatred and allayed the trauma endured by so many of its victims.

### B. *The Reconstruction Klans and the American Vigilante Tradition*

For much of the twentieth century, historians of the United States interpreted vigilantism as a distinctly American phenomenon.<sup>462</sup> This interpretation has been actively promoted by a popular culture given to valorizing a mythic "Wild West" and the men said to have made it. At the same time, it elides the very real terror purveyed by the night-riders ordinarily associated with the southern states. While some recent scholarship has called into question the national provenance of vigilantism<sup>463</sup> — a term that may be properly applied to any organized, extralegal body whose members take the law into their own hands — its fundamental elements as they emerged in the U.S. context are not

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note 77; Lou Falkner Williams, *The South Carolina Ku Klux Klan Trials and Enforcement of Federal Rights, 1871-1872*, 39 CIV. WAR HIST. 47 (1993); and Richard Zuczek, *The Federal Government's Attack on the Ku Klux Klan: A Reassessment*, 97 S.C. HIST. MAG. 47 (1996).

461. U.S. Attorney General Williams reported that the South Carolina trials produced 831 indictments, of which only 27 resulted in convictions. Of the 804 cases remaining, there were 71 guilty pleas, 5 acquittals, 3 mistrials, and 54 discontinuances; all other cases were eventually dropped. See S. EXEC. DOC. NO. 42-32, at 11 (1873).

462. Richard Brown offers the most succinct statement of this position, declaring simply that "American vigilantism is indigenous." BROWN, STRAIN OF VIOLENCE, *supra* note 260, at 96. Elsewhere he remarks that "[t]he phenomenon of vigilantism appears to be native to America." *Id.* at 22. See also ROBERT P. INGALLS, URBAN VIGILANTES IN THE NEW SOUTH: TAMPA, 1882-1936, at xv (1988) ("Americans appear responsible for developing vigilantism, the consummate expression of conservative violence."); PATRICK B. NOLAN, VIGILANTES ON THE MIDDLE BORDER: A STUDY OF SELF-APPOINTED LAW ENFORCEMENT IN THE STATES OF THE UPPER MISSISSIPPI FROM 1840 TO 1880, at 1 (1987) ("From James E. Cutler in 1905 . . . to Richard M. Brown in 1969 . . . every writer upon the subject has remarked on the peculiarly native character of vigilante activity.").

463. See, e.g., J. Paul Grayson, *Vigilantism in Canada and the United States*, 16 LEGAL STUD. F. 21 (1992) (employing comparative methods to challenge the theory of the United States as the fountainhead of vigilantism).

much disputed.<sup>464</sup> Distinguishing vigilante activity from the more amorphous forms of mob violence with which it is sometimes confused, Patrick Nolan writes,

A mob may be considered a spontaneous, unorganized, ephemeral crowd or gathering of people, with tumultuous and disorderly activity. A vigilante movement, on the other hand, is characterized by some form of planning and long-range organization. It may not be in existence for more than a few days, but in that time a structure of authority is erected, officers elected, and planned operations undertaken.<sup>465</sup>

Within these parameters, vigilante organizations have varied tremendously in size, objects, and methods.

Were the klans who terrorized much of the postbellum southern population merely one of a long line of American vigilante movements, or were they unlike the extralegal formations that preceded them? In some respects, the klans who perpetrated the sexual atrocities examined here fit squarely within the American vigilante tradition.<sup>466</sup> In the words of one contemporary, "The 'Ku Klux Klan' itself is not a new institution. It is only a little more devilish than usual just now. In fact, it seems only a new phase of the popular system of 'lynch law,' which has prevailed in the South ever since we can remember."<sup>467</sup> As this analysis has shown, these were highly decentralized, yet internally hierarchical, semipermanent organizations that embarked upon a systematic campaign of terror calculated to destroy a despised adversary. That klansmen sometimes behaved in wanton or impetuous fashion in no way alters the movement's essential character. Approaching the violence of these years within this framework not only suggests some of the ways in which it participated in and exemplified the larger pattern of vigilantism but also highlights its more or less singular features.

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464. See BROWN, STRAIN OF VIOLENCE, *supra* note 260, at 95-96; Richard Maxwell Brown, *The History of Extralegal Violence in Support of Community Values*, in VIOLENCE IN AMERICA: A HISTORICAL AND CONTEMPORARY READER 86, 90-91 (Thomas Rose ed., 1969) [hereinafter Brown, *The History of Extralegal Violence*]. This, according to Brown, reflects the "classic" understanding of vigilante activity. That definition has been complicated somewhat by the work of scholars like Nolan, for whom extralegality is not an essential precondition of vigilantism. See NOLAN, *supra* note 462, at 35. It bears mentioning, however, that there have apparently been no statutorily authorized vigilante organizations in the southern United States. *Id.* at 75.

465. NOLAN, *supra* note 462, at 2.

466. See RABLE, BUT THERE WAS NO PEACE, *supra* note 23, at 92. *But see* BROWN, STRAIN OF VIOLENCE, *supra* note 260, at 124 (portraying the three Klan movements as operating parallel to genuine vigilante groups); Brown, *The History of Extralegal Violence*, *supra* note 464, at 86-87 (characterizing the violence of the Ku Klux Klans as related but not identical to vigilantism).

467. BLAIR, *supra* note 389, at 4.

A leading historian of American violence identifies the origins of vigilantism with the South Carolina Regulators,<sup>468</sup> a movement that flourished between 1767 and 1769 in response to the outlawry that followed the Cherokee War and the absence of any supervening power to restore order.<sup>469</sup> Beyond their conservative law and order disposition, these early vigilantes demonstrated a keen interest in moral regulation, an interest that would be shared by many of their successors.<sup>470</sup> Another Regulator organization, albeit not one whose activities have generally been classed as “vigilantism,”<sup>471</sup> was formed almost contemporaneously in North Carolina, where it persisted until 1771 when it was put down at the Battle of Alamance, which has the distinction of being “the largest single instance of collective violence in colonial America.”<sup>472</sup> Both movements, explains Gordon Wood, “were efforts by discontented groups to use violence and intimidation to redress diverse grievances unsatisfied by weak and unresponsive governments.”<sup>473</sup> From another perspective, the use of extralegal means in

468. See BROWN, STRAIN OF VIOLENCE, *supra* note 260, at 96. Brown’s study of the South Carolina Regulators remains the standard work on the subject. See RICHARD MAXWELL BROWN, THE SOUTH CAROLINA REGULATORS (1963) [hereinafter BROWN, THE SOUTH CAROLINA REGULATORS]. The term “regulator” was the common descriptor for vigilante movements until the mid-nineteenth century, when “committee of vigilance” was adopted by a group of citizen-reformers seeking to differentiate themselves from an outlaw band of self-styled “Regulators.” See NOLAN, *supra* note 462, at 2 n.4.

469. See generally BROWN, THE SOUTH CAROLINA REGULATORS, *supra* note 468; BROWN, STRAIN OF VIOLENCE, *supra* note 260, at 22, 58-59, 71-73, 98; Rachel N. Klein, *Ordering the Backcountry: The South Carolina Regulation*, 3d ser., 38 WM. & MARY Q. 661 (1981).

470. See BROWN, THE SOUTH CAROLINA REGULATORS, *supra* note 468, at 50-51; BROWN, STRAIN OF VIOLENCE, *supra* note 260, at 25, 59.

471. See, e.g., BROWN, STRAIN OF VIOLENCE, *supra* note 260, at 31, 349 n.7.

472. A. Roger Ekirch, *The North Carolina Regulators on Liberty and Corruption, 1776-1771*, 11 PERSP. AM. HIST. 197, 199 (1977-78). The North Carolina Regulator Movement (also known as “the Regulation”) is the subject of a substantial historical literature. John Spencer Bassett’s early examination of these events has been singularly influential in the development of the field. See John Spencer Bassett, *The Regulators of North Carolina*, 1895 AM. HIST. ASS’N ANN. REP. 141. For a sampling of more recent scholarly interpretations, see Andrew C. Denson, *Diversity, Religion, and the North Carolina Regulators*, 72 N.C. HIST. REV. 30 (1995); Ekirch, *supra*; Marvin L. Michael Kay, *The North Carolina Regulation, 1766-1776: A Class Conflict*, in THE AMERICAN REVOLUTION: EXPLORATIONS IN THE HISTORY OF AMERICAN RADICALISM 71 (Alfred F. Young ed., 1976); Alan D. Watson, *The Origin of the Regulation in North Carolina*, 47 MISS. Q. 567 (1994); James P. Whittenburg, *Planters, Merchants, and Lawyers: Social Change and the Origins of the North Carolina Regulators*, 3d ser., 34 WM. & MARY Q. 215 (1977); Wayne Emmett Lee, *Careful Riot, Virtuous War: The Legitimation of Public Violence in Eighteenth-Century North Carolina* (unpublished Ph.D. dissertation, Duke University) (on file with the Duke University Library); and James P. Whittenburg, *Backwoods Revolutionaries: Social Context and Constitutional Theories of the North Carolina Regulators, 1765-1771* (1974) (unpublished Ph.D. dissertation, University of Georgia) (on file with the University of Georgia Library).

473. GORDON S. WOOD, THE CREATION OF THE AMERICAN REPUBLIC 1776-1787, at 320 (Norton 1993) (1969). For a brief historiographic review of the Carolina Regulator movements, see George R. Adams, *The Carolina Regulators: A Note on Changing Interpretations*, 49 N.C. HIST. REV. 345 (1972).

pursuit of political and social aims was further buttressed by the tumultuous events that led to the Republic's founding, not to mention the Revolution itself.<sup>474</sup> During these years, groups modeled on South Carolina's Regulators grew up in nearly all the colonies, violently enforcing their own conception of patriotism at the expense of suspected loyalists.<sup>475</sup>

By one estimate, there have been hundreds of such groups since the formation of that first band of citizen Regulators, many of which have yet to be the subject of sustained scholarly inquiry.<sup>476</sup> In the decades that followed, the terms "vigilante" and "regulator" were used synonymously to refer to a broad spectrum of organized, extralegal activity. By the mid-nineteenth century, the heyday of vigilantism, "regulator" had fallen into desuetude and organizations fitting this description were more often known as "committees of vigilance" (or "vigilance committees"),<sup>477</sup> the preference for which was fostered by the publicity attending the rise of San Francisco's first major vigilante organization, the 1851 Committee of Vigilance.<sup>478</sup> This Committee was the model for a celebrated movement that emerged in the same region five years later and remains perhaps the preeminent vigilante movement in American history.<sup>479</sup> Whether they are known as "whitecap-

474. Major treatments of the popular upheavals of the Revolutionary era include PAULINE MAIER, *FROM RESISTANCE TO REVOLUTION: COLONIAL RADICALS AND THE DEVELOPMENT OF AMERICAN OPPOSITION TO BRITAIN, 1765-1776* (Norton 1991) (1972); Pauline Maier, *Popular Uprisings and Civil Authority in Eighteenth-Century America*, 3d ser., 27 WM. & MARY Q. 3 (1970); John Phillip Reid, *In a Defensive Rage: The Uses of the Mob, the Justification in Law, and the Coming of the American Revolution*, 49 N.Y.U. L. REV. 1043 (1974); and Gordon S. Wood, *A Note on Mobs in the American Revolution*, 3d ser., 23 WM. & MARY Q. 635 (1966). For analysis of related events in England and France, see GEORGE RUDÉ, *THE CROWD IN HISTORY: A STUDY OF POPULAR DISTURBANCES IN FRANCE AND ENGLAND, 1730-1848* (rev. ed., Serif 1995) (1964).

475. See NOLAN, *supra* note 462, at 4.

476. See BROWN, *STRAIN OF VIOLENCE*, *supra* note 260, at 96, 349 n.1, & app. 3.

477. See BROWN, *STRAIN OF VIOLENCE*, *supra* note 260, at 58, 97. Brown further observes that "[v]ariant names for vigilante groups were 'slickers,' 'stranglers,' 'committees of safety,' and, in central Texas, simply, 'mobs.'" *Id.* at 97.

478. See NOLAN, *supra* note 462, at 2 n.4. Chronicles of the 1851 Committee include GEORGE R. STEWART, *COMMITTEE OF VIGILANCE: REVOLUTION IN SAN FRANCISCO, 1851: AN ACCOUNT OF THE HUNDRED DAYS WHEN CERTAIN CITIZENS UNDERTOOK THE SUPPRESSION OF THE CRIMINAL ACTIVITIES OF THE SYDNEY DUCKS* (1964), and MARY FLOYD WILLIAMS, *HISTORY OF THE SAN FRANCISCO COMMITTEE OF VIGILANCE OF 1851: A STUDY OF SOCIAL CONTROL ON THE CALIFORNIA FRONTIER IN THE DAYS OF THE GOLD RUSH* (1921).

479. See BROWN, *STRAIN OF VIOLENCE*, *supra* note 260, at 22, 97. San Francisco's renowned Committee of Vigilance is discussed in HUBERT HOWE BANCROFT, *2 POPULAR TRIBUNALS* (San Francisco, History Co. 1887) [hereinafter BANCROFT, *2 POPULAR TRIBUNALS*]; BROWN, *STRAIN OF VIOLENCE*, *supra* note 260, at 93-94, 100-01, 102-03, 124, 127-28, 134-43; and JOHN D. GORDAN III, *AUTHORIZED BY NO LAW: THE SAN FRANCISCO COMMITTEE OF VIGILANCE OF 1856 AND THE UNITED STATES CIRCUIT COURT FOR THE DISTRICTS OF CALIFORNIA* (1987). For a broader examination of politics and society in mid-nineteenth-century San Francisco that encompasses both the 1851 and 1856 committees, see ROBERT M. SENKEWICZ, *VIGILANTES IN GOLD RUSH SAN FRANCISCO* (1985). The histori-



ping,<sup>480</sup> “bald knobbing,”<sup>481</sup> “nightriding,”<sup>482</sup> or something else, all of these undertakings reflect a fundamental belief in the use of extralegal activity in pursuit of ends that they, and often the majority of their communities, conceive as just.

The Reconstruction klans have the distinction of being among the most notorious practitioners of a venerable philosophy of vigilance. Founded on familiar democratic principles — the right of revolution, popular sovereignty, and self-defense — it dates back to the waning days of the colonies and received its fullest expression during the revolutionary epoch.<sup>483</sup> Whatever its stated justification, vigilante activity is implicitly premised on the right of citizens in a democracy to rebel against authority, which in its original American exposition was used to defend colonists’ right to take up arms against a British gov-

ography of San Francisco vigilantism is briefly considered in Joseph M. Kelly, *Shifting Interpretation of the San Francisco Vigilantes*, 24 J. WEST 39 (1985).

480. According to Brown, the White Caps first emerged in southern Indiana in 1887, “spread into Ohio the next year, and, by 1889, had surfaced in New York, New Jersey, West Virginia, Arkansas, Iowa, and Texas.” BROWN, STRAIN OF VIOLENCE, *supra* note 260, at 150. Moreover, he explains “[f]rom 1887 through 1900 at least 239 cases of white capping occurred throughout America.” *Id.* Brown defines whitecapping as “a movement of violent moral regulation by local masked bands” whose members “usually punished by whipping,” and whose “most common victims were wife beaters, drunkards, poor providers, immoral couples and individuals, lazy and shiftless men, and petty neighborhood thieves.” *Id.* This description closely resembles one set forth in a 1969 staff report to the National Commission on the Causes and Prevention of Violence, which relied heavily on Brown’s research to provide historical context. See JAMES F. KIRKHAM ET AL., 8 ASSASSINATION AND POLITICAL VIOLENCE: A REPORT TO THE NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE 175 (1969). For additional information on the whitecaps and their kinship with the klans, see *supra* note 30, and *infra* note 632 and accompanying text.

481. The Bald Knobbers, a vigilante group that flourished in the Missouri Ozarks in the mid-to-late 1880s, seem to have taken their name from the barren mound upon which many of their meetings took place. See Gerry Darnell, *Bald Knobbers: The Ozark Vigilantes*, 6 BITTERSWEET 20 (1979). The history of the Bald Knobbers is surveyed in MARY HARTMAN & ELMO INGENTHON, BALD KNOBBERS: VIGILANTES ON THE OZARKS FRONTIER (1988), and LUCILE MORRIS, BALD KNOBBERS (1939).

482. A popular dictionary of Americanisms defines a “night rider” as “[a] horseman who rides on sinister missions at night; esp. a member of a secret organization formed by southern white men just after the Civil War to overawe and keep in subjection the newly freed Negroes.” MATHEWS, *supra* note 264, at 1132. The larger cultural phenomenon of nightriding as it was apprehended by slaves and their descendants is addressed in FRY, *supra* note 13. For a focused study of grass-roots violence undertaken by a group of Kentucky tobacco farmers commonly termed “Night Riders,” see CHRISTOPHER WALDREP, NIGHT RIDERS: DEFENDING COMMUNITY IN THE BLACK PATCH, 1890-1915 (1993).

483. Nolan asserts that “by the mid-nineteenth century, a fairly cohesive body of thought which recognized the legitimacy of self-appointed law enforcement was current throughout the nation.” NOLAN, *supra* note 462, at 226. Beyond the three components of vigilance theory outlined below, Nolan adds that extralegal justice is typically far less costly than authorized methods of law enforcement. See *id.* For a survey of the philosophical underpinnings of vigilantism, see HUBERT HOWE BANCROFT, 1 POPULAR TRIBUNALS 9-11, 41-43 (San Francisco, History Co. 1887) [hereinafter BANCROFT, 1 POPULAR TRIBUNALS]; BANCROFT, 2 POPULAR TRIBUNALS, *supra* note 479, at 678-81; BROWN, STRAIN OF VIOLENCE, *supra* note 260, at 115-18; NOLAN, *supra* note 462, at 218-26; and Brown, *The History of Extralegal Violence*, *supra* note 464, at 90-91.

ernment seen as corrupt and tyrannical.<sup>484</sup> Klansmen, and much of the white South with them, were similarly resolute in their conviction that the Reconstruction state governments and the national power that ushered them in were so imbued with tyranny and corruption that rebellion was the only fitting response. Integrally related to the right of revolution is the concept of popular sovereignty, whereby the final source of governmental authority resides within “the people” as a body. An expression of this democratic ideal, albeit perverted, may be seen in the determination of klansmen — legally disenfranchised and practically alienated from federal, state, and sometimes local authority — to overthrow the Reconstruction regimes in favor of more amenable, to them legitimate, alternatives in which they themselves would take an active part. The last of the standard bases for vigilantism is the right of self-protection permitting citizens to repulse unlawful incursions upon life, liberty, and property. Members of the white supremacist klans tended to believe they were in danger of being overtaken by an odious force, their lives and identities forever compromised, submerged in a sea of blackness.<sup>485</sup> Heightening their anxiety was the collective nightmare shared by growing numbers of white men who envisioned their women raped, their land despoiled, their manhood threatened by the depredations of freedmen, a figment of the racial imaginary that appeared no less horrifying for being completely unreal. Some klan members surely internalized their own rhetoric, which held that the organizations they created were purely defensive in nature, and were thus authorized, even demanded, by the founding principles of the nation.

In contrast to many of the vigilante organizations that have been studied to date, the klan movement was built on premises that were faulty at best, and at worst demonstrate a determined effort on the part of adherents to distort what were to them the unpleasant realities of Reconstruction in order to justify the promiscuous unleashing of racial antipathy upon the freed black population and those aligned with them. Whatever their failings, and in some places they were manifold, the governance of Reconstruction had not deteriorated to such an extent that the right of revolution could be fairly invoked by its critics. In a speech describing political and social conditions in the former Confederacy, Senator Oliver Morton of Indiana contrasted “true” (and impliedly commendable) vigilantism with the violence of the klans:

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484. The relationship between two prongs of this theory — the right of revolution and popular sovereignty — and vigilantism is examined in Christian G. Fritz, *Popular Sovereignty, Vigilantism, and the Constitutional Right of Revolution*, 63 PAC. HIST. REV. 39 (1994).

485. So powerful were these fears that they could be reiterated in nearly identical terms over a half century later. See ROBERT WATSON WINSTON, *IT'S A FAR CRY* 30 (1937) (declaring that the KKK was the product of whites' determination “that their civilization should not be submerged by the blacks”).

[Y]ou sometimes hear of bands of regulators in the northern States sometimes called vigilant committees; but what do these regulators do? They punish men who are guilty of horse-stealing, or of great crimes, where the courts have failed to administer punishment; but this institution does not partake of the nature of regulators, but these outrages are committed upon men of certain politics, men of certain political views who have had no connection whatever with the maladministration that is complained of.<sup>486</sup>

According to the second of these three justificatory precepts, vigilante action might also be undertaken for the vindication of popular sovereignty. Yet, given that the klans at no point represented “the people” of the South, much less those of the nation as a whole, their attempts to co-opt the revolutionary ideal of popular sovereignty were equally inapt. The same must be said with respect to the last of these three principles, the right of self-defense. Although the Civil War produced vast ruin throughout the former Confederate states, compounding the already monumental challenges presented to a law enforcement regime still in its nascency, it was freedpeople, not the white men populating the ranks of the klans, who were most likely to suffer from the resulting deficiencies.

Additionally, there is no evidence to suggest that rates of black criminality had risen to such an extent in the aftermath of slavery as to require the formation of nightriding bands to suppress it; when freedmen (as well as freedwomen and children) were found to have violated the law, punishment was almost certainly to follow, notwithstanding klansmen’s assertions to the contrary. Inasmuch as their attacks were directed against some of the weakest denizens of the postbellum South, the question logically arises of how substantial a threat their designated enemies really posed. By all indications, the former slaves, teachers, politicians, and government officials who dominated this cohort were at no time focused on compromising the physical integrity of klan members, suggesting that such threat as was apprehended was either a direct consequence of their own actions or an illusion borne of prejudice; whatever it was, it surely was not reasonable self-defense. In the end, none of the usual justifications for vigilantism authorized klan violence. Despite their self-interested distortions, klansmen were neither rebelling against an unlawful government, enacting the dictates of popular sovereignty, nor defending themselves against the aggression of some formidable foe. From the beginning, theirs was a racist program that was more parochial, more partisan, and more obviously driven by group pathology than the theoretical conception of vigilante justice would allow.

Notably, however, the identity of sex and violence so apparent in the history of the KKK and kindred organizations is not one of the dis-

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486. MORTON, PROTECTION OF LIFE, *supra* note 37, at 5.

tinguishing features of vigilantism generally. Given that similar goals have often been accomplished without resort to such means, there were plainly other factors at work that made terror's sexualization seem feasible and rewarding. A range of circumstances, including the long history of white men's sexual access to their slave property,<sup>487</sup> the reality of superficial physical difference and the psychological distance and exoticizing habits that grew up around it,<sup>488</sup> a tradition of patriarchy and rigid gender proscriptions,<sup>489</sup> the loss of a devastating civil war,<sup>490</sup> and the culture of violence for which the region was justifiably notorious,<sup>491</sup> combined to make the postbellum South fertile territory for the development of sexualized violence. Likewise, the cultural proclivities embodied by the Reconstruction klans were carried forward by later vigilante groups, notably the "white caps." So pronounced were the similarities between the KKK and the white caps, for instance, that observers sometimes used the names synonymously, as when an ex-slave alternated between the two in describing the lynchings of three black men carried out in Georgia in the mid-to-late 1870s.<sup>492</sup>

It is not the resort to violence per se that renders the klans distinctive, nor is it their use of punishments such as whipping, lynching, or, less frequently, tarring and feathering. As this brief overview of the origins and nature of vigilantism suggests, violence itself, though not a necessary condition of vigilantism, was a common one, and there are surely similarities in the basic forms of punishments prescribed by American vigilance committees of different times and places. Rather, it is the pervasive exploitation of sex that is the most notable feature of klan violence. In each of its instantiations, for instance, the Ku Klux Klan has taken advantage of both timeworn and newly ignited sexual fears in furtherance of its cause. And while it is true that the extent to which violence has been sexualized has varied over time, it has never

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487. See *supra* notes 139-141 and accompanying text.

488. See generally GEORGE M. FREDRICKSON, *THE BLACK IMAGE IN THE WHITE MIND: THE DEBATE ON AFRO-AMERICAN CHARACTER AND DESTINY, 1817-1914* (Wesleyan Univ. Press 1987) (1971); GOSSETT, *supra* note 404; JORDAN, *WHITE OVER BLACK*, *supra* note 159.

489. See generally CLINTON, *THE PLANTATION MISTRESS*, *supra* note 140; FOX-GENOVESE, *supra* note 140; ANNE FIROR SCOTT, *THE SOUTHERN LADY: FROM PEDESTAL TO POLITICS 1830-1930* (University Press of Virginia 1995) (1970) [hereinafter SCOTT, *THE SOUTHERN LADY*].

490. Some of the implications of defeat for southern white men are explored in GAINES M. FOSTER, *GHOSTS OF THE CONFEDERACY: DEFEAT, THE LOST CAUSE, AND THE EMERGENCE OF THE NEW SOUTH, 1865 TO 1913*, at 11-35 (1987); see also CUTLER, *supra* note 64, at 142.

491. See generally AYERS, *VENGEANCE AND JUSTICE*, *supra* note 30; BRUCE, *supra* note 95; WYATT-BROWN, *supra* note 30.

492. See LEVI BRANHAM, *MY LIFE AND TRAVELS* 52, 55 (1929).

been wholly absent. As this Article demonstrates, sexual terror typified the work of the Reconstruction klans,<sup>493</sup> yet no single case emerged to galvanize opposition. The same cannot be said for the Second Ku Klux Klan. Whereas sexual violence was overall far less commonplace, it was the brutal rape and mutilation of a young woman by a powerful Klan leader, D.C. Stephenson of Indiana, that was most responsible for hastening the order's demise.<sup>494</sup> Whether by accident or design, modern klansmen have done much to perpetuate their ancestors' prurient ways, frequently targeting victims on the basis of ascribed sexual improprieties and imposing punishments with a distinctly sexualized cast.<sup>495</sup> In light of evidence suggesting that the best

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493. See *supra* Sections III.A-D.

494. In 1925, Stephenson was charged and convicted of second degree murder in the death of twenty-eight-year-old Madge Oberholtzer. During the trial, it was revealed that Stephenson had first attempted to seduce Oberholtzer, and, failing that, abducted and sexually assaulted her, leaving severe bite wounds all over her body. Details of the attack and the numerous injuries Oberholtzer sustained are contained in the Indiana Supreme Court's lengthy decision affirming Stephenson's conviction. See *Stephenson v. State*, 205 Ind. 141 (1932). For further discussion of the Oberholtzer case, see M. WILLIAM LUTHOLTZ, *GRAND DRAGON: D.C. STEPHENSON AND THE KU KLUX KLAN IN INDIANA* 178-301 (1991); LEONARD J. MOORE, *CITIZEN KLANSMEN: THE KU KLUX KLAN IN INDIANA, 1921-1928*, at 181-82, 185 (1991); and RICHARD K. TUCKER, *THE DRAGON AND THE CROSS: THE RISE AND FALL OF THE KU KLUX KLAN IN MIDDLE AMERICA* 134-43 (1991). On the second Ku Klux Klan generally, see CHALMERS, *supra* note 10, at 28-303, and WADE, *supra* note 10, at 117-254.

495. Evidence of these abuses is widely available in local and national newspapers. A handful of examples will suffice to convey a sense of the striking continuities in klan violence from the Reconstruction era to the present day. In one illustrative case reported in the fall of 1957, an Alabama Klan leader was convicted of mayhem in the "Ku-Klux Klan castration of a Negro" and sentenced to twenty years in prison. *Alabaman Gets 20 Years in Klan Negro Mutilation*, N.Y. HERALD TRIB., Nov. 1, 1957, at 3. A witness testified that the "sex mutilation" was "carried out as a test of the worthiness of [one of the six defendants] for promotion to Klan captain." *Klansman Jailed in Mutilation Case*, N.Y. TIMES, Nov. 1, 1957, at 14. Reports of the barbarous 1998 lynching of James Byrd, Jr. in Jasper, Texas indicate that one of the perpetrators was driven by a similar aspiration. See *infra* text accompanying note 787. In the late 1970s, two men with close ties to the KKK and the American Nazi Party were arrested for the rape of a nineteen-year-old woman who had infiltrated those organizations on behalf of the Jewish Defense League. See Donald Janson, *Leaders in Klan and Nazi Party Accused of Rape*, N.Y. TIMES, July 7, 1979, at 20; see also Donald Janson, *Is Klan Role In the State Waning?* N.Y. TIMES, Aug. 26, 1979, § 11, at 1. Almost twenty years later, a Louisiana Klansman was charged with aggravated rape, oral sexual battery, and crimes against nature for allegedly attacking a black man whom he had lured to his vehicle by impersonating a police officer. See Chris Frink, *Klan Organizer Facing Trial in Man's 1997 Rape*, *ADVOCATE* (Baton Rouge), May 20, 1999 at 3B; see also Chris Frink, *Rape-Trial Delays, Racial Overtones Haunt Aging Case*, *ADVOCATE* (Baton Rouge), Feb. 24, 2000, at 3B. More recently, the Imperial Wizard of the Tristate Knight Riders of the Ku Klux Klan was sentenced to fifty-five years in prison for the rape, sodomy, and sexual abuse of two young girls, while several members of the Indiana-based American Knights of the Ku Klux Klan were convicted of gang rape. See Brian Barber, *Indiana-Based Klan Branch to Hold Rally in Tulsa*, *TULSA WORLD*, Sept. 24, 2000, at A17; Gregory A. Hall, *Klan Wizard Gets 55 Years for Child Rape*, *CINCINNATI ENQUIRER*, Mar. 17, 1998, at B2. Assaults like these at times appear to have extended into klansmen's own families, as in the cases Bobby Frank Cherry and Robert E. Chambliss, two of three former KKK members convicted of murdering four young African American girls who died in the 1963 bombing of the 16th Street Baptist Church in Birmingham, Alabama. See Rick Bragg, *38 Years Later, Last of Suspects is Con-*

predictor of future violence is a history of violent behavior,<sup>496</sup> it is reasonable to speculate that twentieth-century klans' ready access to a tradition of expressly sexual violence encouraged members to see it as a viable option, one whose prominence within their own institutional history made it appear more inviting than forbidding, and thereby helped to sustain it.

### C. Klan Law

If all vigilante groups are by definition alike in asserting the right to deploy extralegal violence in pursuit of their aims, then the klans went a step farther than most, becoming in effect a law unto themselves. This distinction can be traced directly to their founding assumptions and conception of their mission. Whereas the classical vigilance committee was established to impose order where legally constituted authorities were either nonexistent or might as well have been, this was not strictly true of the klans. Admittedly, the criminal justice system in general and local policing in particular was far from perfect anywhere in the nineteenth-century United States, and even less so in the largely rural and war-ravaged Southern states than elsewhere; yet it cannot be said that the communities from which klansmen arose suffered unusually in this respect. The men who joined the klans were responding not to a measurable increase in outlawry, malfeasance, or violence, (though members perceived "Black Reconstruction" to be all that and more),<sup>497</sup> but rather to a felt need to restore

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victed in *Church Bombing*, N.Y. TIMES, May 23, 2002, at A1. Multiple female family members have accused both Cherry and Chambliss of sexually molesting them as children. See Jean Marbella, *Chipping at the Silence in 1963 Church Bombing; Some Klan Women Key in Case Coming to Trial in Alabama*, BALTIMORE SUN, Apr. 23, 2001, at 1A. For a survey of the history of the modern Klan, see CHALMERS, *supra* note 10, at 304-438, and WADE, *supra* note 10, at 257-367.

496. James Clarke offers the following summary of the relevant social science data in his analysis of southern lynching:

A history of previous violence remains the single best known predictor of future violence, whether in individuals, families or societies. A violent past not only predisposes one to violence, it is also likely that violence itself becomes a causal determinant of violence. Whether the basis for such behavior is biological, learned or some combination of both, remains a subject of continuing research and debate.

James W. Clarke, *Without Fear or Shame: Lynching, Capital Punishment and the Subculture of Violence in the American South*, 28 BRIT. J. POL. SCI. 269, 274 (1998).

497. This justification was captured by a postwar southern traveler.

The law, which must be always more or less weak in all thinly populated countries, was all but powerless; and the new Governments in the South, supposing them to have been most willing, were certainly unable to repress disorder, or to spread a general sense of security throughout the community. A real terror reigned for a time among the white people; and in this situation the "Ku-Klux" started into being. It was one of those secret organizations which spring up in disordered states of society, when the bonds of law and government are all but dissolved, and when no confidence is felt in the regular public administration of justice.

white hegemonic power to its formerly unrivaled position in the aftermath of its diminution by entirely lawful means. Through their actions, klansmen articulated a new law — a law created in their own image and interest. Like all vigilantes, they were supremely confident in the righteousness of their cause. Accustomed to viewing African Americans as born slaves, naturally beneath them and undeserving of the benefits of citizenship, they construed freedpeople and those allied with them as interlopers who had robbed them of their birthright. By this logic it was their self-proclaimed enemies, and not the klans themselves, who were the illegitimate force.

Klansmen and other sympathizers frequently attested to their belief in the fundamental law of the klans, portraying it as the just defense of a besieged people. In Randolph Shotwell's extravagant phrasing, the Ku Klux Klan "was the legitimate and inevitable offspring of Radical malice, mis-rule, and outrage, engendered and protected by what are termed the 'Southern Reconstruction Acts!'"<sup>498</sup> Erstwhile members like Shotwell were hardly alone in their convictions. Another prominent white Southerner, James Chesnut, perceived the klans as a counterrevolutionary movement borne of the tyranny then gripping the white South. "These people are under an absolute despotism, and you will find that the countries where governments are most despotic are precisely those in which secret associations appear; associations of parties ardent and seeking redress for real or fancied wrongs which they think cannot be avenged through the government."<sup>499</sup> That, he stressed, "is the true secret of all this thing."<sup>500</sup> Decades later, romanticizers of the order continued to trumpet variants of the "law and order" defense. For Mrs. S.E.F. Rose, an early historian of the Mississippi Chapter of the United Daughters of the Confederacy, the Klan served to vindicate the "real law" against illegitimate incursion.<sup>501</sup> Acknowledging that the organization was technically illegal, "in a higher sense," she argued, "it was lawful, for the laws of the land had been diverted from their original purposes and trampled underfoot by ignorant and vicious negroes and adventurers who were unable properly to interpret the laws and unfit to enforce them. The Ku Klux Klan was organized to meet these condi-

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SOMERS, *supra* note 21, at 153. While there is some truth in Somers' observations, specifically concerning laxity in law enforcement practices as a factor of demographic patterns, the notion that these deficiencies redounded with special force on a white population besieged by hostile blacks is wholly fanciful.

498. 2 SHOTWELL PAPERS, *supra* note 12, at 256-57.

499. 3 KLAN REPORT, *supra* note 17, at 449.

500. *Id.*

501. Mrs. S.E.F. Rose, *The Ku Klux Klan and Birth of a Nation*, CONFEDERATE VETERAN, Apr. 1916, at 157 [hereinafter Rose, *Ku Klux Klan and Birth of a Nation*].

tions, to resist lawlessness, to defend justice, to preserve the integrity of the white race, and to enforce civil and racial law."<sup>502</sup>

At the time, countless witnesses contended fervently for the essential illegality of Reconstruction policies before a number of federal and state tribunals. They denounced everything from the establishment of the Freedmen's Bureau to the installation of federal troops as an egregious abuse of power, an affront that no white man (or woman) was bound to tolerate. This attitude is reiterated in the testimony of John A. Minnis, a district attorney who participated in the prosecution of the KKK:

The reconstruction measures of Congress were regarded by the great body of the white people of the South as usurpations, unconstitutional, and void, and all those who sustained them were most bitterly denounced as enemies to the people. These measures, conferring on the Negroes the rights of citizens, under these acts even the right to vote in reconstructing the State, met all the prejudice, bitter hostility, and denunciations that could well be entertained by any people, and every prejudice and passion was appealed to bring them into odium and contempt, and defeat, if possible, their operation.<sup>503</sup>

As one legal historian explains, southern whites widely "believed that resistance to federal law enforcement was required to defend legitimate law and order. By this logic, the Klan was not a criminal organization, but rather a group of patriots striving to restore power to the legitimate leaders of [s]outhern white communities."<sup>504</sup> Typical was the assessment of a southern white woman who, after casually dismissing the Klan's many "abuses," knowingly pronounced that "the work of the Ku Klux was done in a patriotic spirit for patriotic purposes."<sup>505</sup> Given the prevalence of views like these, the klans could safely rely on broad public support for their counterrevolutionary program.

The establishment of terrorist organizations afforded a means by which beleaguered southern whites could recreate important components of the old order in new guises. Prior to Emancipation, traditional legal mechanisms — most notably the common law of slavery and with it the institution of the slave patrol — had been deployed to maintain control over the enslaved population; afterwards, terror, much of it sexualized, would be used to accomplish this objective. Immediately following the Civil War, southern legislatures put their imprimatur on race relations through the passage of a series of "Black Codes," statutes that regulated vagrancy, labor, family, and other social relations

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502. *Id.*

503. 8 KLAN REPORT, *supra* note 26, at 567.

504. Kaczorowski, *Federal Enforcement of Civil Rights*, *supra* note 435, at 164-65.

505. ELIZABETH AVERY MERIWETHER, RECOLLECTIONS OF 92 YEARS: 1824-1916, at 209 (1958).



in an effort to compel blacks to live and work in accordance with whites' changing needs.<sup>506</sup> These discriminatory laws, which survived until the height of Radical Reconstruction when they were largely invalidated on constitutional grounds, carried on the animating spirit of slave law. In much the same way that the Black Codes were designed to deny former slaves genuine ownership of their lives and labors by observing the letter but not the spirit of the Thirteenth Amendment,<sup>507</sup> the klans superceded the slave patrols, albeit in extralegal form.<sup>508</sup> In the antebellum era, slave masters and whites of the nonslaveholding classes had formed slave patrols to monitor and contain the behavior of enslaved blacks, at the same time quelling their own omnipresent fears of insurrection.<sup>509</sup> The patrols (or "patterollers," as the slaves ordinarily called them) were empowered to impose corporal punishment

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506. See generally THEODORE BRANTNER WILSON, *THE BLACK CODES OF THE SOUTH* (1965); see also Barry A. Crouch, "All the Vile Passions": *The Texas Black Code of 1866*, 97 SW. HIST. Q. 12 (1993); Donald G. Nieman, *The Freedmen's Bureau and the Mississippi Black Code*, 40 J. MISS. HIST. 91 (1978); Joe M. Richardson, *Florida Black Codes*, 47 FLA. HIST. Q. 365 (1969); Jerrell H. Shofner, *Custom, Law and History: The Enduring Influence of Florida's "Black Code"*, 55 FLA. HIST. Q. 277 (1977). The ambiguous legacy of one provision of the Black Codes — the inferior court system — as it developed in Warren County, Mississippi, is explored in Christopher Waldrep, *Substituting Law for the Lash: Emancipation and Legal Formalism in a Mississippi County Court*, 82 J. AM. HIST. 1425 (1996).

507. Jacobus tenBroek says of the Black Codes that "[t]hey were only less rigorous than the slave codes which they had replaced. . . . Slavery, abolished by the organic law of the nation, was in fact revived by these statutes of the states." JACOBUS TENBROEK, *EQUAL UNDER LAW* 180 (1965).

508. As Sally Hadden maintains, "Patrols continued to be used until the close of the Civil War, when many of their violent ways were adopted by the Ku Klux Klan and other white aggressors." Sally E. Hadden, *Colonial and Revolutionary Era Slave Patrols of Virginia*, in *LETHAL IMAGINATION*, *supra* note 259, at 82 n.2 [hereinafter Hadden, *Colonial and Revolutionary Era Slave Patrols*]. Complementary positions have been espoused by other historians, among them Gladys-Marie Fry, George P. Rawick, and Wyn Craig Wade. See, FRY, *supra* note 13, at 3; GEORGE P. RAWICK, *FROM SUNDOWN TO SUNUP: THE MAKING OF THE BLACK COMMUNITY* [hereinafter RAWICK, *FROM SUNDOWN TO SUNUP*], 1 *AMERICAN SLAVE*, ser. 1, *supra* note 114, at 142; WADE, *supra* note 10, at 37. Contemporaries also remarked on the functional similarities between the slave patrols and the klans that followed. See, e.g., 7 *KLAN REPORT*, *supra* note 16, at 649-50; 8 *KLAN REPORT*, *supra* note 26, at 443; 9 *KLAN REPORT*, *supra* note 26, at 872-73. For a detailed comparison of these institutions, see FRY, *supra* note 13, at 147-53, 154-60, and SALLY E. HADDEN, *SLAVE PATROLS: LAW AND VIOLENCE IN VIRGINIA AND THE CAROLINAS* 211-16, 219-20 (2001) [hereinafter HADDEN, *SLAVE PATROLS*].

509. See RAWICK, *FROM SUNDOWN TO SUNUP*, *supra* note 508; ANDREW FEDE, *PEOPLE WITHOUT RIGHTS: AN INTERPRETATION OF THE FUNDAMENTALS OF THE LAW OF SLAVERY IN THE U.S. SOUTH* 116-18 (1992); FRY, *supra* note 13, at 3, 44, 82-109; GENOVESE, *supra* note 95, at 617-19; 1 *AMERICAN SLAVE*, ser. 1, *supra* note 114, at 61-65. Several recent studies offer a more comprehensive portrait of the workings of the antebellum slave patrols. See HADDEN, *SLAVE PATROLS*, *supra* note 508; Hadden, *Colonial and Revolutionary Era Slave Patrols*, *supra* note 508; Ernest David Green, *Origins of American Policing: Slave Patrols in South Carolina from Colonial Times to 1865* (1996) (unpublished Ph.D. dissertation, Howard University) (on file with the Howard University Library); and Sally Elizabeth Hadden, *Law Enforcement in a New Nation: Slave Patrols and Public Authority in the Old South* (1993) (unpublished Ph.D. dissertation, Harvard University) (on file with the Harvard University Library).

for a variety of offenses, such as moving “abroad” without the requisite pass, and did not hesitate to do so within the bounds of law and custom. Abuses surely occurred, but slaves were valuable property and masters were disinclined to tolerate excessive violence that might undermine their capacity to labor. Cultivating the arts of fear and intimidation, klansmen, too, sought to extirpate any sign of resistance, and commonly did so by disciplining the body of that same “other” in whom anything but servility was perceived as a threat to be overcome.<sup>510</sup> For some former slaves, any distinctions between these two bodies was purely academic. “There was no difference between the patrols and the Ku-Klux that I know of. If they caught you, they all would whip you.”<sup>511</sup> Indeed, these similarities, along with what is already known about the composition of the Reconstruction klans, suggest that there was likely considerable overlap in membership, latter-day “patterollers” folding seamlessly into masked “ku-kluxers.” Despite these parallels, the two organizations were not one and the same. Rather, the patrols established a precedent for harsh methods of racial control that was borrowed and rapidly surpassed by the klans.<sup>512</sup> Absent the legal and economic constraints that once checked the violence of the slave patrols, the klans could more readily unleash their hostility against the former slaves to wage an all-out campaign of terror, a campaign marked by a dramatic intensification in sexualization and violence.

The vision of the klans as rightful exponents of southern law was firmly enshrined through the publication of numerous Reconstruction histories. Memoirists were among the first to enter the fray. In her widely read account of the period, Myrta Lockett Avary proclaimed that the Klan was forced to take the law into its own hands to protect

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510. The early Reconstruction historian Walter Fleming takes a curiously deterministic view of these events. “After the war,” he asserts, “some regulation was necessary; the whites were accustomed to settling such matters outside of law or courts; it was bred into their nature, and they returned perhaps unconsciously to the old system.” FLEMING, CIVIL WAR AND RECONSTRUCTION, *supra* note 35, at 658. Furthermore, he contends, with no applicable law available to control the newly freed black population, “[t]he result was natural — the movement to regulate society became a secret one.” *Id.*

511. 2 AMERICAN SLAVE, ser. 1, *supra* note 114, pt. 6, at 340, *cited in* WADE, *supra* note 10, at 37; *see also* OKLAHOMA SLAVE NARRATIVES 287 (“The Patrollers, Ku Kluxers or night riders come by sometimes at night to scare the niggers and ‘em behave.”); *id.* at 434 (“After the war we had the Ku Kluxers to take the place of the Patterollers. They was mighty hard on the colored folks.”). Making creative use of oral histories and other narrative accounts by ex-slaves, their descendants, and others, Gladys-Marie Fry presents a compelling case for blacks’ (and some whites’) recognition of the important continuities linking patterollers and klansmen. *See* FRY, *supra* note 13, at 147-52, 154-60; *see also* DAVID W. BLIGHT, RACE AND REUNION: THE CIVIL WAR IN AMERICAN MEMORY 108 (2001); HADDEN, SLAVE PATROLS, *supra* note 508, at 212-13.

512. Fry found that “the crimes of which the Klansmen are accused in black oral testimony far exceed their patroller counterparts in brutality and viciousness.” FRY, *supra* note 13, at 159. This view is recapitulated in HADDEN, SLAVE PATROLS, *supra* note 508, at 214-16.

white Southerners, women in particular, from the depredations of former bondsmen.<sup>513</sup> Once more, Radical policies were held directly responsible for these intolerable circumstances. Likewise, Eyre Damer presented the KKK as an organization established by force of necessity, which “rescued the commonwealth from the control of corrupt adventurers and ignorant freedmen, and established orderly government.”<sup>514</sup> Damer lauds its members — “devoted men who were impelled to deeds distasteful but regarded as a necessary choice of evils”<sup>515</sup> — for their valiant sacrifices in compelling the freedpeople “to discard those [ruthless] leaders and submit to the legitimate rulers of the land.”<sup>516</sup> It was not just klansmen, in his view, but “[t]he people” who rose up in opposition to the Republicans’ “high-handed tyranny.”<sup>517</sup> The right of the people to divest themselves of tyrannical government is, of course, a basis for vigilantism as old as the Republic itself, yet one that has not often been set forth to justify a program so blatantly partisan in aim and violently terroristic in method as that of the Reconstruction klans.

Scholarly examinations of the period dating from the early twentieth century, particularly those authored by members of the so-called “Dunning school,”<sup>518</sup> whose members included Walter L. Fleming, J.G. deRoulhac Hamilton, and C. Mildred Thompson, shaped perceptions of Reconstruction for years to come.<sup>519</sup> The Dunningites tended to be rather warmly disposed toward the klans, portraying them as a quasi-legal, stabilizing force necessitated by extraordinary circumstances. Propounding a more restrained version of the interpretation expressed by the former klansmen Randolph Shotwell decades earlier, Dunning himself argued that the klans were the “inevitable” outgrowth of Southerners’ “subjection to the freedmen and northern-

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513. See AVARY, *supra* note 64, at 267-68, 278; see also MERIWETHER, *supra* note 505, at 203, 206-07, 208.

514. EYRE DAMER, *WHEN THE KU KLUX RODE* 5 (1912).

515. *Id.* at 88.

516. *Id.* at 89.

517. *Id.* at 91.

518. This appellation is used to refer less to Dunning himself than to the productions of his graduate students, a number of whom went on to publish well-regarded state studies of Reconstruction politics and society. See Philip R. Muller, *Look Back without Anger: A Re-appraisal of William A. Dunning*, 61 J. AM. HIST. 325, 332, 332 n.26 (1974); see also John Hope Franklin, *Mirror for Americans: A Century of Reconstruction History*, 85 AM. HIST. REV. 1, 4 (1980) [hereinafter Franklin, *Mirror for Americans*]. For analysis of Dunning's scholarship and impact on the evolution of Reconstruction historiography, see Alan D. Harper, *William A. Dunning: The Historian As Nemesis*, 10 CIV. WAR HIST. 54 (1964); John Harelson Hosmer, *William A. Dunning: "The Greatest Historian,"* 68 MID-AM. 57 (1986); and John Harelson Hosmer, *The Dunning School and Reconstruction According to Jim Crow* (1983) (unpublished Ph.D. dissertation, University of Arizona) (on file with the University of Arizona Library).

519. See KENNETH M. STAMPP, *THE ERA OF RECONSTRUCTION 1865-1877*, at 6 (1965).

ers.”<sup>520</sup> While not a full-fledged apologia, this clearly identifies southern whites as Reconstruction’s principal victims and in so doing lends a sense of intellectual legitimacy to their rebellion against purportedly illegitimate domination. According to Walter Fleming, the klans were a manifestation of man’s innate drive to resist threats to his rightful position. “[W]hen a people find themselves persecuted by aliens or by the law, they will find some means outside the law for protecting themselves.”<sup>521</sup> He likewise maintained that the southern whites who founded the klans were acting in defense of their constitutionally enshrined freedoms: “The task before the secret orders was to regulate the conduct of the blacks and their leaders, in order that honor, life, and property might be secure.”<sup>522</sup> Once more, the klan movement is understood as hearkening back to a vaunted revolutionary era and the freedoms secured by the Founders. Most whites would have been well-disposed to this seemingly patriotic standpoint.

Hamilton also cites Radicalism’s excesses as the inspiration behind the KKK. Before the klans, the South was “a veritable hell through misrule which approximated to anarchy. Called into existence by this state of affairs, the Ku Klux lifted the South from its slough of despond by the application of illegal force which overthrew Reconstruction and ultimately restored political power to the white race.”<sup>523</sup> Like many of his predecessors, Hamilton saw the klan as a counterrevolutionary force unleashed to right a grievous wrong. As he put it, “the results of a revolution had been overthrown and a form of government, wickedly, illegally, and unconstitutionally imposed upon the people, had come into the hands of the class best fitted to administer government, and the supremacy of the white race and of Anglo-Saxon institutions was secure.”<sup>524</sup> Considering the “galling oppression” and “grievous misrule” endured by the white South, and the purported impossibility of securing a remedy through proper legal channels, he concludes that the original Ku Klux movement was an exemplary enactment of the “sacred right to revolution” (“if there be such a thing”).<sup>525</sup> While Hamilton, along with most other commentators, recognizes that the movement was not unproblematic,<sup>526</sup> he is clearly more taken with the “great good” it accomplished, downplaying its

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520. DUNNING, *supra* note 41, at 121.

521. FLEMING, CIVIL WAR AND RECONSTRUCTION, *supra* note 35, at 709.

522. *Id.* at 674.

523. J.G. DE ROULHAC HAMILTON, RECONSTRUCTION IN NORTH CAROLINA 453 (1914).

524. *Id.* at 453.

525. *Id.* at 454.

526. His most explicit statement to this effect being a rather perfunctory acknowledgment that “[t]he inherent evils of the movement are plain.” *Id.* at 453.

iniquities with the off-handed cliché “desperate diseases require desperate remedies.”<sup>527</sup>

Dunning student Mildred Thompson assumed a matter-of-fact, mainly nonjudgmental stance toward the klans, which she, like her colleagues, saw as a direct result of the gross injustices of Reconstruction policies. In Thompson’s view, these organizations as originally conceived were occupied with the wholly legitimate concerns of self-protection, the restoration of order, and the administration of justice. “This,” she concludes, “was primarily a movement of regulators, to administer rude justice where courts and officers of law were inadequate or distrusted, or where the standard of justice held by those in charge of the government differed from that of the regulators.”<sup>528</sup> Although far from the most extreme exponent of the law and order interpretation of klan violence, Thompson, however unwittingly, contributed measurably to the legitimization of the klans and their white supremacist program.

Beyond Dunning and his students, several other early twentieth-century historians did much to promote this explanation of postbellum terror. William Garrott Brown, for instance, contended that the Ku Klux movement was produced by pervasive social disorder and governmental mismanagement.<sup>529</sup> Like most of his contemporaries, he saw white Southerners as an oppressed and tyrannized population whose resort to terror was a necessary, if unfortunate, result of postwar exigencies.<sup>530</sup> Woodrow Wilson’s discussion of the klans in his popular turn-of-the-century American history develops along similar lines to much the same effect. There, he recalls the legions of southern white men “aroused by the mere instinct of self-preservation to rid themselves, by fair means or foul, of the intolerable burden of governments sustained by the votes of ignorant negroes and conducted in the interest of adventurers.”<sup>531</sup> Wilson likewise emphasized the fact that klansmen generally perceived the government as having abandoned any pretense of legality,<sup>532</sup> thus necessitating that they undertake “to enforce what they conceived to be the real laws of their States.”<sup>533</sup>

Far more influential was Claude Bowers’ *The Tragic Era*, memorably characterized by Eric Foner as a “best-selling work of fiction

527. *Id.*

528. C. MILDRED THOMPSON, RECONSTRUCTION IN GEORGIA: ECONOMIC, SOCIAL, POLITICAL 1865-1872, at 388 (1915).

529. See BROWN, THE LOWER SOUTH IN AMERICAN HISTORY, *supra* note 26, at 196-99.

530. *See id.* at 224.

531. WOODROW WILSON, 5 A HISTORY OF THE AMERICAN PEOPLE 58 (1902).

532. *Id.* at 60 (“[The] law seemed set aside by the very government itself. . .”).

533. *Id.* at 61-62.

masquerading as history.”<sup>534</sup> Published during the heyday of the Second Ku Klux Klan, this highly accessible and immensely popular text was largely responsible for communicating the traditional conception of Reconstruction forged by the Dunningites to a broader audience.<sup>535</sup> Reasoning within that framework, Bowers explicitly analogized the KKK to the heroic vigilantes of the recent past. “In the pioneer West, vigilance committees were formed for the protection of horses and cattle; in the South, the Klan was organized for the protection of women, property, [and] civilization itself.”<sup>536</sup> However, it was freedmen’s supposed propensity to rape white women that most captured his imagination. Bowers reiterated the patently false assertion of many early klan historians that once docile black men had taken to wantonly exploiting their new privileges, demanding, and where necessary, compelling, sexual access to women of the “superior” race, all with virtual impunity. “It was not,” Bowers maintained, “until the original Klan began to ride that white women felt some sense of security.”<sup>537</sup> Chivalry thus rose to the occasion in white sheets and hoods, joining in a noble quest for the restoration of genuine legality to which the book’s white audience was highly receptive.

Explicitly fictional works further sustained this conception of klan law.<sup>538</sup> Racist novels by southern authors, most notably Thomas Dixon, spun tales of white men driven by events to rise up as a body in defense of hearth and home lest their families be further debased by Radicalism’s misdeeds, or worse, fall prey to the lusts of increasingly brazen former slaves.<sup>539</sup> Here, klansmen are painted as heroic figures whose actions reflect an ancient code of honor that is at one with the only law that truly matters. Dixon’s Reconstruction trilogy — including *The Leopard’s Spots*, *The Clansman*, and *The Traitor* — recounts many of the views set forth by the early historians of the era, albeit in

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534. Eric Foner, *Reconstruction Revisited*, 10 REV. AM. HIST. 82, 82 (1982) [hereinafter Foner, *Reconstruction Revisited*]. Pointing to a specific fictional work on which Bowers appears to have relied in composing *The Tragic Era*, John Hope Franklin observes that “one is impressed if not awed by its faithful adherence to the case as argued in *Birth of a Nation*.” John Hope Franklin, “Birth of a Nation” — *Propaganda as History*, 20 MASS. REV. 417, 432 (1979) [hereinafter Franklin, “Birth of a Nation”].

535. See Foner, *Reconstruction Revisited*, *supra* note 534, at 82. Speaking of the productions of the Dunning School, John Hope Franklin opines that “[p]erhaps the most important impact of such writings was the influence they wielded on authors of textbooks, popular histories, and fiction.” Franklin, *Mirror for Americans*, *supra* note 518, at 4. This is nowhere more conspicuous than in the works of Claude Bowers and Thomas Dixon.

536. BOWERS, *supra* note 62, at 309.

537. *Id.* at 308.

538. For an astute analysis of the cultural context in which these works were created, see WILLIAMSON, *THE CRUCIBLE OF RACE*, *supra* note 252, at 140-79.

539. Although less prolific than Dixon on the subject of Reconstruction, Thomas Nelson Page must be counted among those most responsible for promulgating this position in fiction. See PAGE, *RED ROCK*, *supra* note 26.

a grandiose style that unabashedly conveys its animosity toward the freedpeople and white advocates of their cause and concomitant reverence for the original klansmen. It is reasonable to speculate that these viciously racist caricatures not only reflected widespread prejudices but also reinforced them. In an open letter to the author upon publication of *The Leopard's Spots*, an African American scholar fairly alleged, "Through the wide-spread influence of your writings you have become the chief priest of those who worship at the shrine of race hatred and wrath."<sup>540</sup> And, he might have added, legitimator of the law of the klans.

The imaginative universe created in *The Leopard's Spots*<sup>541</sup> is peopled by heroic nightriders who set about to right the wrongs of Reconstruction — protecting the defenseless, suppressing black criminality, reestablishing order, and ultimately salvaging Anglo-Saxon civilization.<sup>542</sup> Dixon emphasized klansmen's mysterious appearance as a way of romanticizing their actions. "The origin of this Law and Order League which sprang up like magic in a night and nullified the programme of Congress though backed by an army of a million veteran soldiers, is yet a mystery."<sup>543</sup> Nowhere are Dixon's racial antipathies more apparent than in his obsession with the subject of amalgamation. On this, he is merciless and unremitting. When a black man is found dangling from the end of a rope, neck broken, brutally lynched after daring to ask a young white girl for a kiss, the author celebrates the atrocity in all its gruesome detail: "His thick lips had been split with a sharp knife and from his teeth hung this placard: '*The answer of the Anglo-Saxon race to Negro lips that dare pollute with words the womanhood of the South. K.K.K.*'"<sup>544</sup> The exercise of klan law was swift and severe. "This Invisible Empire of White Robed Anglo-Saxon Knights was simply the old answer of organised manhood to organised crime."<sup>545</sup> For the novel's white characters and readers alike there was

540. KELLY MILLER, AS TO THE LEOPARD'S SPOTS; AN OPEN LETTER TO THOMAS DIXON, JR. 3 (1905). Given the vast readership of *The Leopard's Spots*, Miller had good reason to be concerned about its impact. See M. Karen Crowe, Southern Horizons: The Autobiography of Thomas Dixon: A Critical Edition 365 (1982) (unpublished Ph.D. dissertation, New York University) (on file with the New York University Library) (tallying the novel's sales and income) [hereinafter Crowe, Southern Horizons]; see also COOK, FIRE FROM THE FLINT, *supra* note 26, at 112 (noting that its strong domestic performance led to agreements for multiple foreign translations).

541. THOMAS DIXON, JR., THE LEOPARD'S SPOTS: A ROMANCE OF THE WHITE MAN'S BURDEN — 1865-1900 (1902) [hereinafter DIXON, THE LEOPARD'S SPOTS]. Literary-historical examinations of this text include GUNNING, *supra* note 252, at 12, 29-41, 42, 43; WILLIAMSON, THE CRUCIBLE OF RACE, *supra* note 252, at 140-76; and Maxwell Bloomfield, *Dixon's The Leopard's Spots: A Study in Popular Racism*, 16 AM. Q. 387 (1964).

542. See DIXON, THE LEOPARD'S SPOTS, *supra* note 541, at 150-51.

543. *Id.* at 150.

544. *Id.*

545. *Id.*

only one response befitting the transgression alleged. As the local Klan leader reminded an assembly of his minions in planning another terroristic onslaught, “You are asked to violate for a moment a statutory law. There is a higher law. You are the sworn officers of that higher law.”<sup>546</sup> For the “real” men of the South, the choice between competing allegiances was unambiguous.

Dixon continued his fictionalized exploration of the period in *The Clansman*,<sup>547</sup> a best-selling novel widely seen as having inspired a powerful resurgence of pro-Klan feeling in the early twentieth century.<sup>548</sup> There, he depicts a South beset by Black Republicanism, replete with colorful images of unworthy “negroes” populating the halls of Congress, behaving audaciously in the presence of their former masters and mistresses, and worst of all, demanding their right to enjoy social as well as political equality with members of the Anglo-Saxon race. A paradigmatic Dixonian hero pleads with a white collaborator to end the spectacle:

‘Black hordes of former slaves, with the intelligence of children and the instincts of savages, armed with modern rifles, parade daily in front of their unarmed former masters. A white man has no right a negro need respect. The children of the breed of men who speak the tongue of Burns and Shakespeare, Drake and Raleigh, have been disarmed and made subject to the black spawn of an African jungle! . . . No people in the history of the world have ever before been so basely betrayed, so wantonly humiliated and degraded!’<sup>549</sup>

It is the Ku Klux Klan that finally emerges to seek retribution for the wrongs occasioned by this unjust state of affairs and restore whites to their proper place in the southern racial order. Their actions, however

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546. *Id.* at 161.

547. THOMAS DIXON, JR., *THE CLANSMAN: AN HISTORICAL ROMANCE OF THE KU KLUX KLAN* (1905) [hereinafter DIXON, *THE CLANSMAN*]. For a literary historian’s perspective on *The Clansman*, see GUNNING, *supra* note 252, at 12, 28-29, 30, 31, 34-35, 41-44.

548. See TRELEASE, *supra* note 10, at 421. Dixon’s biographer reports that bookstores throughout the country had difficulty keeping up with demand, sales having exceeded one million copies within the first few months of the novel’s release. See COOK, *FIRE FROM THE FLINT*, *supra* note 26, at 131. Contemplating his adaptation of *The Clansman* into a stage play, Dixon wrote, “The printed page would be read by five million people. The play if successful would reach ten million and with an emotional power ten times as great as in cold type.” Crowe, *Southern Horizons*, *supra* note 540, at 383. The stage version [THOMAS DIXON, *THE CLANSMAN: AN AMERICAN DRAMA IN FOUR ACTS* (1905)] opened in Norfolk, Virginia in September, 1905, and thereafter embarked upon a highly successful tour of the southern and western United States. Following its New York premiere, two additional touring companies were formed to satisfy popular demand for tickets. See COOK, *FIRE FROM THE FLINT*, *supra* note 26, at 139, 145, 146. The theatrical and cinematic versions of *The Clansman* are discussed in John C. Inscoc, *The Clansman on Stage and Screen: North Carolina Reacts*, 64 N.C. HIST. REV. 139 (1987). Others were naturally inspired to attempt to replicate Dixon’s success, most notably the playwright Frank Dumont, who published a work based on a similar theme several years later. See FRANK DUMONT, *THE NIGHT RIDERS* (1919).

549. DIXON, *THE CLANSMAN*, *supra* note 547, at 289-90.



unfortunate, are necessitated by circumstances. Therefore, it was not they who acted unlawfully, but the freedmen and traitorous whites in power who are “criminals,” “usurpers placed there by the subversion of law.”<sup>550</sup> “There are laws of our race, old before this Republic was born in the souls of white freemen. The fiat of fools has repealed on paper these laws.”<sup>551</sup> Dixon closes the novel by reassuring readers that, “[c]ivilisation has been saved, and the South redeemed from shame.”<sup>552</sup> Although most of *The Traitor*, the final work in the trilogy, concerns events following the disbandment of the “good” klan, it, too, promotes a vision of the original klansmen as honorable soldiers in a war for the salvation of the white home, family, and civilization. Underscoring the rectitude of its mission and the sagacity of its leadership, Dixon’s heroic Grand Dragon dissolves the order once this objective is realized, solemnly avowing, “Our work is done. We have rescued our state from Negro rule . . . . We retreat from a field of victory.”<sup>553</sup> “The Klan,” he declares, “was the only way to save our civilisation.”<sup>554</sup>

These are some of the many tools used to promulgate a vision of the klans as a just response to prevailing postwar conditions. There were others as well. The most prominent example is D.W. Griffith’s classic motion picture, *The Birth of a Nation*, which transmuted the Dixonian image of the avenging nightrider to another medium capable of rendering it in newly realistic terms.<sup>555</sup> Dixon orchestrated private showings of the picture, first for President Woodrow Wilson and several Cabinet officers and then for the Justices of the Supreme Court and members of Congress, in an attempt to secure positive advance word and thereby thwart the antiracist challenges that threatened to

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550. *Id.* at 333, 334.

551. *Id.* at 338.

552. *Id.* at 374.

553. DIXON, *THE TRAITOR*, *supra* note 26, at 53-54; *see also id.* at 137 (“Whatever the leaders of public opinion might say, the masses of the people knew the necessity which had called this dreaded order into existence — the black threat of Negro dominion.”). Dixon presents a comparable portrait of the original Klan’s disbandment in his later novel, *The Black Hood*. *See* DIXON, *THE BLACK HOOD*, *supra* note 26, at 82-83.

554. DIXON, *THE TRAITOR*, *supra* note 26, at 58; *see also id.* at 230 (“[W]e were the sole guardians of white civilisation. It was a necessity — the last resort of desperation.”); DIXON, *THE BLACK HOOD*, *supra* note 26, at 82-83, 92 (repeating and expanding upon this justification).

555. “The Birth of a Nation” continuity script, along with contemporaneous reviews and subsequent commentary, are collected in *THE BIRTH OF A NATION* (Robert Lang ed., 1994). For additional analysis of the film, *see* Everett Carter, *Cultural History Written with Lightning: The Significance of “The Birth of a Nation,”* 12 *AM. Q.* 347 (1960); Franklin, “Birth of a Nation,” *supra* note 534; Cedric J. Robinson, *In the Year 1915: D.W. Griffith and the Whitening of America*, 3 *SOC. IDENTITIES* 161 (1997); and Michael Rogin, “*The Sword Became a Flashing Vision*”: D.W. Griffith’s Birth of a Nation, 9 *REPRESENTATIONS* 150 (1985).

impede distribution.<sup>556</sup> The scheme worked masterfully. Although the film remained highly controversial, the grant of tacit approval by the highest levels of government assured that it would reach a mass audience,<sup>557</sup> ultimately becoming the “very first movie blockbuster.”<sup>558</sup>

Building on the extraordinary popularity of Dixon’s Reconstruction novels and the rapid growth of the silent film industry, the release of *The Birth of a Nation* in 1915 is generally credited with inspiring the contemporaneous emergence of the Second Ku Klux Klan.<sup>559</sup> In the memorable phrasing of the film historian Terry Ramsaye, “The picture *The Birth of a Nation* and the K. K. K. secret society, which was the afterbirth of a nation, were sprouted from the same root.”<sup>560</sup> By casting the Klan as “the organization that saved the South from the anarchy of black rule,”<sup>561</sup> the film’s creators not only exposed their own racial biases, but also instantiated those of untold others for whom *Birth of a Nation* was truth. In the words of one Klan sympathizer, “it seems that the silent language of the photo drama has proved more powerful than all else in bringing about a realization of ‘things as they were’ during Reconstruction in the South.”<sup>562</sup> As in the novel on which it was based,<sup>563</sup> a central theme of the film is the growing threat of miscegenation, consensual as well as forced. When klansmen seek out Gus, the “black beast rapist” responsible for the death of a pure southern maiden to whom he sought to stake claim, the film’s subtitle underscores the inherent legality of the proceedings: “Townsmen enlisted in the search for the accused Gus, that he may be

556. See Crowe, *Southern Horizons*, *supra* note 540, 405-12. These special screenings were largely a product of personal relationships and chance: Woodrow Wilson was one of Dixon’s old college friends and Chief Justice White was a former member of the KKK. See *id.* at 407, 411.

557. See Crowe, *Southern Horizons*, *supra* note 540, at 413-14; see also COOK, *FIRE FROM THE FLINT*, *supra* note 26, at 173.

558. NEAL GABLER, *AN EMPIRE OF THEIR OWN: HOW THE JEWS INVENTED HOLLYWOOD* 91 (1988).

559. See, e.g., CASH, *supra* note 257, at 375-76; RANDEL, *supra* note 10, at 180-81; TRELEASE, *supra* note 10, at 421-22; Franklin, “Birth of a Nation,” *supra* note 534, at 431. Randel goes so far as to assert that “[w]ithout the novels glorifying the Klan, and without the film that one of them became, it may well be doubted whether the modern Klan would have been born.” RANDEL, *supra* note 10, at 181. Although this counterfactual is of course impossible to prove, from the outset the second Klan determinedly endeavored to exploit the film for its own purposes. See Maxim Simcovitch, *The Impact of Griffith’s Birth of a Nation on the Modern Ku Klux Klan*, 1 J. POP. FILM 45 (1972); see also Scott M. Cutlip, *Clarke and Tyler: Builders of the Ku Klux Klan*, in *THE UNSEEN POWER: PUBLIC RELATIONS. A HISTORY* 372 (1994) (portraying William Joseph Simmons’ early attempts to associate the resurgent Klan with *Birth of a Nation* as part of an elaborate public relations strategy that was deployed to expand the organization’s ranks).

560. TERRY RAMSAYE, *A MILLION AND ONE NIGHTS* 638 (1926).

561. *THE BIRTH OF A NATION*, *supra* note 555, at 114.

562. Rose, *The Ku Klux Klan and Birth of a Nation*, *supra* note 501, at 157.

563. See DIXON, *THE CLANSMAN*, *supra* note 548.

given a fair trial in the dim halls of the Invisible Empire.”<sup>564</sup> With this, the filmmakers’ successfully capture the essence of the klans’ conception of themselves and their mission. Their mock judicial proceedings have replaced those of traditional legal institutions, now compromised and coopted, in effect miscegenated, by the events of “Black Reconstruction.” Pure white klan law is held supreme, endowed with absolute authority and entrusted with the power to determine guilt and innocence and impose condign punishment as the interests of the once and future master race may demand.<sup>565</sup>

This dominant interpretation of the klans’ mission found a receptive audience during the Jim Crow years,<sup>566</sup> when propaganda surrounding black men’s supposedly insatiable desire for white female flesh was reaching a fever pitch and the problem of lynching persisted nearly unabated.<sup>567</sup> African-American historians have long been aware of the malign influence of such fictional representations on public perceptions. According to one decades-old assessment, the combined ef-

564. THE BIRTH OF A NATION, *supra* note 555, at 124. In pro-Klan fiction of later decades, the theme of justice triumphant persisted largely unchanged. In an otherwise unmemorable work published in the early 1940s, the leader of a band of North Carolina nightriders holds forth: “Comrades, it is a fearful thing we are called upon to do, but civil law and justice have failed. Orderly processes of law no longer protect us. The Ku Klux Klan has established its own courts of justice.” Askew Family Papers, MS 298, East Carolina Manuscript Collection, J.Y. Joyner Library, East Carolina State University, Greenville, N.C., TOM HENDERSON, ANN OF THE KU KLUX KLAN 5 (1942).

565. The stature of klan tribunals is also reflected in a number of sketches and woodcuts dating back to the 1860s and 1870s. Particularly telling are various images depicting the “trial” of a white man, John Campbell, found guilty of violating the racial law of the klans. In each, he is shown on his knees, pleading for his life before several members of a North Carolina Klan den in full regalia preparing to carry out his sentence. *See, e.g.*, Ku Klux Klan File, Prints and Photographs Division, Library of Congress, Washington, D.C [hereinafter Ku Klux Klan File], “North Carolina. — ‘The Ku-Klux Klan’ — Plan of the Contemplated Murder of John Campbell, on August 10th, 1871, in Moore County”; Ku Klux Klan File, “Plan of the Contemplated Murder of John Campbell”; *see also* R.O. Hummel Southeastern Broad-sides, Rare Book, Manuscript, and Special Collections Library, Duke University, Durham, N.C., *Plan of the Contemplated Murder of John Campbell* (n.p., 1871). For a portrayal of the imminent punishment of another white man, see Ku Klux Klan File, “Experience Among the Ku-Klux,” (illustration drawn from BRYANT, EXPERIENCE OF A NORTHERN MAN, *supra* note 41).

566. After observing the responses of the “cultured spectators” who had previewed *The Birth of a Nation* in Washington, D.C., Dixon became convinced that he and Griffith had “not only discovered a new universal language of man, but that an appeal to the human will through this tongue would be equally resistless to an audience of chauffeurs or a gathering of a thousand College Professors.” Crowe, *Southern Horizons*, *supra* note 540, at 412. Aside from Dixon’s grandiose claim for his own role in cinema history, this characteristically immoderate statement fairly conveys the unprecedented power of film to successfully commodify widely shared cultural archetypes and anxieties. As Leslie Fiedler acknowledges in his reflections on the film’s troubled history, “There is something profoundly disturbing about the power of vulgar works like Dixon’s and Griffith’s to move us at a level beneath that of our conscious allegiances, religious or political.” LESLIE A. FIEDLER, *THE INADVERTENT EPIC: FROM UNCLE TOM’S CABIN TO ROOTS* 56-57 (1979).

567. For secondary works addressing the wave of anti-black lynching that swept the United States during these years, *see supra* note 259.

forts of Dixon and Griffith — later supplemented by those of Margaret Mitchell, whose novel *Gone With the Wind* and the film derived from it are among the most successful on record — have “done more than historians and social scientists to implant in the American mind certain inflexible concepts of Reconstruction.”<sup>568</sup> And in so doing works like these helped perpetuate the distorted views of blackness and sexuality that animated much of the racial violence of the twentieth century.

## VI. THE CRISIS OF WHITE MASCULINITY

### A. *Manhood's Race*

In the immediate postwar years, and for some time thereafter, southern white men as a body underwent a crisis in masculinity that is essential to comprehending the seemingly irrepressible violence of Reconstruction. This crisis, marked by a profound sense of unease around issues of status and identity, was rooted as much in the peculiar conditions of southern history as it was in the deeply fraught nature of the military conflict that they did so much to engender.

At the close of the Civil War, white males were inundated with a sense of loss. While the same could be said of all inhabitants of the former Confederacy, its contours and meanings varied widely among different populations. For many white men, the loss of the War was itself experienced as a deeply personal defeat, one in which they, more than any other social group, were clearly implicated. On a purely physical level, it was their ranks that were most depleted, their bodies most ravaged, in the aftermath of the South's Lost Cause. They had further expended vast spiritual, psychological, and material resources

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568. THE NEGRO CARAVAN 2 (Sterling A. Brown et al. eds., 1941). The didactic effects of *The Birth of a Nation* were by no means accidental; they were actively encouraged by the filmmakers, who made much of their commitment to historical authenticity. See Thomas Dixon, *Fair Play for The Birth of a Nation*, BOSTON J., Apr. 26, 1915, excerpted in FOCUS ON THE BIRTH OF A NATION 90-91 (Fred Silva ed., 1971) (“For more than twenty years I have studied the history of the period of Reconstruction. In *The Birth of a Nation* I have given to the world the results of my work in an honest, earnest, and dignified presentation of the life of that turbulent era.”); D.W. Griffith, *The Birth of a Nation*, SIGHT & SOUND, Sept. 1947, at 32, quoted in Robert Lang, *The Birth of a Nation: History, Ideology, Narrative Form*, in THE BIRTH OF A NATION, *supra* note 555, at 3 (“In filming *The Birth of a Nation*, I gave to my best knowledge the proven facts, and presented the known truth, about the Reconstruction period in the American South. These facts are based on an overwhelming compilation of authentic evidence and testimony. My picturisation of history as it happens requires, therefore, no apology, no defence, no ‘explanations.’ ”). This aim is starkly revealed in a ministerial commendation used to market the film: “A boy can learn more true history and get more of the atmosphere of the period by sitting down for three hours before the film which Mr. Griffith has produced with such artistic skill than by weeks and months of study in the classroom. This drama is a telling illustration of the possibilities of motion pictures as an instrument of instruction in history.” Rev. Dr. Charles Parkhurst, “The Birth of a Nation,” in FOCUS ON THE BIRTH OF A NATION, *supra*, at 102-03. Unfortunately accuracy did not accompany influence.

in the War, all of which was ultimately for naught. Moreover, their land — rights to which were now widely contested — lay in ruins with little prospect of restoration. This sweeping loss of property was epitomized by Emancipation and the passage of the Civil Rights Acts and instantiated in the person of the freedman, developments that together deprived many white Southerners of a crucial source of labor, wealth, and prestige. Reflecting on “the psychological trauma of defeat,” David Blight contends that “their world had been turned upside down, and they simply could not abide the presence of assertive blacks wearing uniforms and carrying guns, organizing Union Leagues, or voting and serving in the legislature and on the judicial bench.”<sup>569</sup> And so a sizeable proportion of the region’s white male population joined in counterrevolution to turn it aright.

The War also affected relations between the sexes. Recent research suggests that traditionally subservient household members, particularly married women, forced to breach the bounds of antebellum gender roles in order to survive the innumerable challenges of life on the Confederate homefront, may as a result have become more inclined toward independence and self-assertion, whatever their ideological commitments.<sup>570</sup> For critical sectors of the population, these changes signaled the destruction of an entire way of life.<sup>571</sup> Fast disappearing was the slow-moving, rural, agricultural lifestyle, long sustained by slave labor that was for many the very essence of the white South. One need not have been a prosperous planter, or a slaveholder at all, to have partaken of its benefits. Being white and male was itself productive of status in a patriarchal society built on a system of racial slavery.<sup>572</sup> While some, of course, had far more to lose than others, the

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569. BLIGHT, *supra* note 511, at 110.

570. Exemplary studies of the Civil War’s impact on gendered norms and behaviors include FAUST, *MOTHERS OF INVENTION*, *supra* note 142; SCOTT, *THE SOUTHERN LADY*, *supra* note 489, at 92-98; LEEANN WHITES, *THE CIVIL WAR AS A CRISIS IN GENDER: AUGUSTA, GEORGIA, 1860-1890* (1995); Carol Bleser & Frederick M. Heath, *The Clays of Alabama: The Impact of the Civil War on a Southern Marriage*, in *IN JOY AND IN SORROW*, *supra* note 140, at 135; Joan Cashin, “*Since the War Broke Out*”: *The Marriage of Kate and William McClure*, in *DIVIDED HOUSES*, *supra* note 2, at 200; Drew Gilpin Faust, *Altars of Sacrifice: Confederate Women and the Narratives of War*, 76 *J. AM. HIST.* 1200 (1990); Drew Gilpin Faust, “*Trying to Do a Man’s Business*”: *Slavery, Violence, and Gender in the American Civil War*, 4 *GENDER & HIST.* 197 (1992); and Henry Walker, *Power, Sex, and Gender Roles: The Transformation of an Alabama Planter Family during the Civil War*, in *SOUTHERN FAMILIES AT WAR: LOYALTY AND CONFLICT IN THE CIVIL WAR SOUTH* 175 (Catherine Clinton ed., 2000).

571. The condition of the planter class in the postwar years is discussed in JAMES L. ROARK, *MASTERS WITHOUT SLAVES: SOUTHERN PLANTERS IN THE CIVIL WAR AND RECONSTRUCTION* 170-80 (1977).

572. For a recent examination of the position of the yeoman family within the Old South’s culture of mastery, see STEPHANIE MCCURRY, *MASTERS OF SMALL WORLDS: YEOMAN HOUSEHOLDS, GENDER RELATIONS, AND THE POLITICAL CULTURE OF THE ANTEBELLUM SOUTH CAROLINA LOW COUNTRY* (1995).

consequences of warfare brought an inescapable loss of power and position to all of the South's white men.<sup>573</sup>

With prior sources of masculine esteem no longer readily available, southern whites had good reason to fear that their manhood was in jeopardy. For many that was an intolerable state of affairs. Whereas once they had stood alone as "men," ruling not only the women and children of their own race but an entire population of black slaves as well, with Reconstruction came the expectation that they share that status and all of its advantages with those whose humanity many barely deigned to recognize. When freedmen enlisted in the Union Army and eventually took up arms against those who had enslaved them, their perception of themselves as gendered beings shifted, the import of participating in this quintessentially masculine activity seemingly heightened by a long history of denial.<sup>574</sup> Manhood was more than just a precondition for citizenship; it was, paradoxically, one of its consequences as well.<sup>575</sup>

All of these instruments, denied them as slaves, were eagerly grasped by black men in freedom. In the words of one perceptive commentator, "the colored men . . . are struggling to become *men*; they are struggling to exercise the rights of American citizens; they are struggling to protect themselves and become what the Constitution says they shall be — clothed in all the rights of American citizens."<sup>576</sup> This vision of black freedom was decidedly peaceable: freedmen striving to better themselves by means they had already been accorded. Ironically, when in later years a handful of black activists rose to advocate the use of force in answer to white racial violence, the requisites of manhood would be central to their reasoning. Responding to escalating attacks on southern blacks in the late 1880s, the radical journalist John Edward Bruce argued that "[s]ubmission to the *dicta* of Southern bulldozers is the basest cowardice, and there is no

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573. Analogous interpretations have been posited by James W. Messerschmidt, *Men Victimized Men: The Case of Lynching, 1865-1900*, in *MASCULINITIES AND VIOLENCE* 125 (Lee H. Bowker ed., 1998), and WIEGMAN, *supra* note 252.

574. See Jim Cullen, "I's a Man Now": *Gender and African American Men*, in *DIVIDED HOUSES*, *supra* note 2, at 76.

575. Representative Buck went so far as to declare that emancipation and enfranchisement had "made [the former slave] a man." BUCK, *supra* note 38, at 15. This perception was shared by General Samuel Chapman Armstrong, a one-time Freedmen's Bureau official who stated, "being a citizen and a voter has more than anything else made the Negro a man. The recognition of his manhood has done much to create it." EDITH ARMSTRONG TALBOT, *SAMUEL CHAPMAN ARMSTRONG: A BIOGRAPHICAL STUDY* 260 (1904).

576. CORBIN'S ARGUMENT, *supra* note 82, at 27. The speaker is referring specifically to the freedmen of South Carolina; however, his remarks are equally applicable to former slaves throughout the region. Using language much like that just quoted, the editors of a Texas newspaper introduced a short article on the centrality of education to African Americans' future success with the contention that "[o]ur claims for the black man rest on the proposition that he is a MAN. . ." *A Claim for the Black Man*, *WKLY. FREE MAN'S PRESS* (Galveston), Oct. 24, 1868, at 3.

just reason why manly men of any race should allow themselves to be continually outraged and oppressed by their equals before the law . . .  
<sup>577</sup> Given the extremity of the provocation, resistance was bound to assume many forms.

From the earliest days of Reconstruction, white men jealously guarded the traditional emblems of citizenship: the right to vote, the right to own property, the right to one's labor, and the right to bear arms. They evidenced a corresponding defensiveness with respect to the less formal signifiers of the masculine citizen, most notably the ability to order one's familial life from the position of household head. "There is," affirmed John Minnis, a U.S. district attorney, "no doubt, a very violent prejudice exists against negroes with white men generally, and especially against their exercising any of the privileges that they consider belonging to white men, and among that class of men who never held any negroes that prejudice is very violent."<sup>578</sup>

As we have seen, whites throughout the South demanded that freedmen perform their servility in disregard of their newly elevated status. According to George Burnett, a white merchant who also testified before the Joint Select Committee, "it is considered impudence for a negro not to be polite to a white man — not to pull off his hat and bow and scrape to a white man, as was always done formerly."<sup>579</sup> The freedmen's failure to behave according to that script was, in the minds of some, directly correlated to the rise of the klans.<sup>580</sup> Through their language as well as their methods, klansmen communicated variants on that message. George Flemister was visited by a klansman who instructed him to " 'be a good boy . . . [and] sign this paper in favor of the Ku-Klux, [and then] you can stay here safe.' "<sup>581</sup> Needless to say,

577. JOHN EDWARD BRUCE, *The Application of Force*, in THE SELECTED WRITINGS OF JOHN EDWARD BRUCE, *supra* note 64, at 29-30. Bruce goes on to claim of these conditions, "I venture to say that, if they are half as bad as reported, the Negroes display a woeful lack of manhood in not resenting with force and emphasis the assaults of the hordes of ignorant and presumptuous white ruffians whose acts of lawlessness and brutality are disgracing our civilization." *Id.* at 30.

578. 8 KLAN REPORT, *supra* note 26, at 550.

579. 6 KLAN REPORT, *supra* note 16, at 66. During one assault, Klansmen instructed several freedmen that "it was common for negroes, when they met their masters, to pull off their hats, and call them master," violent death being the penalty ascribed for failure. TENNESSEE GENERAL ASSEMBLY, REPORT OF EVIDENCE TAKEN BEFORE THE MILITARY COMMITTEE, *supra* note 21, at 24-25. For additional examples of this attitude, see H.R. MISC. DOC. NO. 41-53, at 295 (1870), and 6 KLAN REPORT, *supra* note 16, at 36. Some of the tensions surrounding vestiges of servile customs are addressed in BERTRAM WILBUR DOYLE, THE ETIQUETTE OF RACE RELATIONS IN THE SOUTH 110-14, 117, 118 (1937).

580. 2 KLAN REPORT, *supra* note 16, at 9; 6 KLAN REPORT, *supra* note 16, at 125. By contrast, their supporters often underscored blacks' willing capitulation to these demands for obeisance. A white Republican thus assured congressional investigators that freedpeople "are perfectly humble and obedient — as much so as I ever saw them during slave times." 6 KLAN REPORT, *supra* note 16, at 214.

581. 7 KLAN REPORT, *supra* note 16, at 656 (emphasis added).

klan members were not renowned for their subtlety. As statements such as this plainly reveal, the klansmen's refusal to recognize the manhood of their victims was but a poorly disguised effort to buttress their own.

Although white men were collectively opposed to nearly all of the freedmen's rightful claims, there was perhaps nothing more than galling for those who joined the klans than the sight of their former slaves armed and enfranchised.<sup>582</sup> Not only were these enterprises seen as integral complements of manhood, but their rigid circumscription under the regime of racial slavery rendered them badges of whiteness as well. Yet, this was a time when social signifiers were themselves in considerable flux and few were immune from its effects. Reflecting on the motive force behind this transformation, Eva Saks observes that "the value of white skin dropped when black skin ceased to signify slave status."<sup>583</sup> Klansmen and their ideological brethren had no intention of standing idly by while their position was further diminished.

For those ill disposed to the new racial order, arms and the ballot would prove crucial points of resistance. In a pattern that was repeated on countless occasions throughout the South, members of the Giles County, Tennessee, KKK descended upon a number of local

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582. Evidence of this hostility appears throughout the records of the Freedmen's Bureau and the Joint Select Committee. See BRFAL, *supra* note 36, RG 105; 1-13 KLAN REPORT, *supra* notes 15, 16, 17, 26, 34, 40, 44, 59, 113; see also H.R. MISC. DOC. NO. 41-53.

583. Eva Saks, *Representing Miscegenation Law*, 8 RARITAN 39, 47 (1988). For a legal history of whites' property interest in skin color extending from slavery through affirmative action, see Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993). Harris' influential work participates in a lively multidisciplinary conversation on the social construction of whiteness. Notable contributions to this literature include THEODORE W. ALLEN, 1 THE INVENTION OF THE WHITE RACE: RACIAL OPPRESSION AND SOCIAL CONTROL (1994); THEODORE W. ALLEN, 2 THE INVENTION OF THE WHITE RACE: THE ORIGIN OF RACIAL OPPRESSION IN ANGLO-AMERICA (1997); KAREN BRODKIN, HOW JEWS BECAME WHITE FOLKS AND WHAT THAT SAYS ABOUT RACE IN AMERICA (1998); RUTH FRANKENBERG, WHITE WOMEN, RACE MATTERS: THE SOCIAL CONSTRUCTION OF RACE (1993); Ariela J. Gross, "Like Master, Like Man": Constructing Whiteness in the Commercial Law of Slavery, 1800-1861, 18 CARDOZO L. REV. 263 (1996); Ariela J. Gross, *Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South*, 108 YALE L.J. 109 (1998); HALE, MAKING WHITENESS, *supra* note 252; MATTHEW FRYE JACOBSON, WHITENESS OF A DIFFERENT COLOR: EUROPEAN IMMIGRANTS AND THE ALCHEMY OF RACE (1998); IAN F. HANEY LÓPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE (1996); DAVID R. ROEDIGER, COLORED WHITE: TRANSCENDING THE RACIAL PAST (2002); DAVID R. ROEDIGER, THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS (1991); and ALEXANDER SAXTON, THE RISE AND FALL OF THE WHITE REPUBLIC: CLASS POLITICS AND MASS CULTURE IN NINETEENTH-CENTURY AMERICA (1990). The development of whiteness studies in the 1990s is examined in Shelly Fisher Fishkin, *Interrogating "Whiteness", Complicating "Blackness": Remapping American Culture*, 47 AM. Q. 428 (1995); Liz McMillen, *Lifting the Veil From Whiteness: Growing Body of Scholarship Challenges Racial "Norm"*, CHRON. HIGHER ED., Sept. 8, 1995, at A23; and David W. Stowe, *Uncolored People: The Rise of Whiteness Studies*, LINGUA FRANCA, Sept.-Oct. 1996, at 68. For a survey of critical thinking on the subject, see CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR (Richard Delgado & Jean Stefancic eds., 1997); OFF WHITE: READINGS ON RACE, POWER, AND SOCIETY (Michelle Fine et al. eds., 1997); and WHITENESS: A CRITICAL READER (Mike Hill ed., 1997).



freedmen, demanding their weapons and threatening them with violent death if they failed to comply.<sup>584</sup> So widespread were these practices that the confiscation of arms was in certain areas part of almost every reported klan raid.<sup>585</sup> Concomitantly, freedmen who had served in the Union Army were often singled out for attack, reviled as much for their access to weapons as they were for their political allegiance.<sup>586</sup> Black men attempting to exercise their newly won right of suffrage were likewise treated with considerable ferocity.<sup>587</sup> Suggesting something of the force of these combined preoccupations, a number of Tennessee freedmen testified that the Lincoln County Ku Klux Klan had explicitly threatened to kill every black soldier in the vicinity who had supported Governor Brownlow's 1867 reelection bid in contravention of the order's demands.<sup>588</sup> In the klansmen's worldview, the response was entirely commensurate with the provocation.

Southern men in general and klansmen in particular were inclined to apprehend their struggle with the former slaves as a zero-sum game: whatever was granted to freedmen was necessarily relinquished by whites. Indeed, one commentator hyperbolized that the rise of the freedmen from a position of abject slavery had reduced southern

584. See BRFAL, *supra* note 36, RG 105, B 91, Affidavits of George Crittenden and Wallis Scott, Nashville, Tenn., July 8, 1868. Klansmen were not terribly discriminating in the types of weapons they stole. In an especially revealing episode, a group of KKK raiders made off with the shoe knife of the family patriarch when they were unable to locate any more traditional weaponry. See BRFAL, *supra* note 36, RG 105, Vol. 290, Cases Tried, La-Grange, Ga., Nov. 10, 1868.

585. Testimony regarding the klans' determination to divest the freedpeople of arms is plentiful. Among the clearest statements of this intention appears in the affidavit of Nathan Weeks, a freedman: "They found my gun and broke it up, and told me that they were coming again and if they found any arms they would kill me. They said they meant to disarm all 'niggers.'" ALABAMA GENERAL ASSEMBLY, *supra* note 38, at 68. Likewise, a Tennessee freedman testified, "They are taking guns from every colored man who has one. This is part of their plan of operation, so far as I can learn. They uniformly take guns or pistols wherever they find them in the hands of colored people." TENNESSEE GENERAL ASSEMBLY, REPORT OF EVIDENCE TAKEN BEFORE THE MILITARY COMMITTEE, *supra* note 21, at 54. For additional evidence of this pattern, see H.R. MISC. DOC. NO. 41-53; 3 KLAN REPORT, *supra* note 17, at 226; 9 KLAN REPORT, *supra* note 26, at 683, 935; STEVENSON, KU KLUX KLAN, *supra* note 35, at 10; and TENNESSEE GENERAL ASSEMBLY, REPORT OF EVIDENCE TAKEN BEFORE THE MILITARY COMMITTEE, *supra* note 21, at 6, 12, 19, 30, 35, 46, 49, 64, 66.

586. See BRFAL, *supra* note 36, RG 105, B 91, Affidavit of Lewis Slegald, Nashville, Tenn., July 8, 1868.

587. Reports of klan attacks animated by opposition to black suffrage are similarly abundant. See, e.g., 5 KLAN REPORT, *supra* note 16, at 1719.

588. BRFAL, *supra* note 36, RG 105, B 91, Affidavit of Nathan Harris, Henry McDaniels, and Leander Wright, Nashville, Tenn., July 8, 1868. As an incumbent with considerable control over the state's electoral process, Brownlow defeated his opponent, Henry Emerson Etheridge, by a comfortable margin. See Lonnie E. Maness, *Henry Emerson Etheridge and the Gubernatorial Election of 1867: A Study in Futility*, 47 W. TENN. HIST. SOC'Y PAPERS 37 (1993); see also COULTER, *supra* note 441, at 339. Additional works dealing with Brownlow and Reconstruction Tennessee politics are cited *supra* note 441.

whites to a “naked and defenceless condition.”<sup>589</sup> By stubbornly refusing to extend familiar notions of manhood to the former slaves, whites endeavored to protect themselves from what they saw as inevitable status loss. As Senator Pratt pointedly averred, the klans were driven by a series of negative desires.

[They aimed] to curb the growing spirit of independence in the colored man; to humble his pride; to teach him his place; to show him that though a freedman, citizen, and voter, he is only so on parchment; . . . to teach him that his condition is changed in nothing but name; that he is still the hewer of wood and drawer of water he was before slavery was abolished, and his status in this respect is not and will not be changed.<sup>590</sup>

That many men might experience feelings of loathing and despair when confronted with the reality of cataclysmic social change is reasonable enough on its face. What is most notable about this epoch is the extent to which terror — especially sexualized terror — was seen as a legitimate response.

Klansmen expressed their outrage in myriad ways, a number of which have been explored at length in preceding sections of this Article. Whatever form they assumed, the critical commonality in their methods was a powerful will to dominate a designated “other.” The fact that black men were conceived as formidable rivals, not only physically and sexually, but also politically, economically, and socially, is legible in the extraordinary measures that some whites undertook to restrain them. Looking at the totality of these events, the klans appear to have harbored a fantasy of extermination, a fantasy that was occasionally given voice. Benjamin Jordan, a Tennessee freedman, overheard a chilling conversation among several area klansmen. “[T]heir intentions,” he testified, “are to exterminate the col[ore]d men from [Maury County].”<sup>591</sup> Interestingly, their murderous designs did not in-

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589. BRUNS, *supra* note 63, at 5.

590. PRATT, *supra* note 147, at 8. Pratt’s appraisal is borne out by the experiences of Spencer Griffin, a former slave from Tennessee who was repeatedly informed by his assailants that southern blacks were wrong to believe they had been freed from bondage, a reality that the KKK promised shortly to instill. See TENNESSEE GENERAL ASSEMBLY, REPORT OF EVIDENCE TAKEN BEFORE THE MILITARY COMMITTEE, *supra* note 21, at 55; see also H.R. MISC. DOC. NO. 41-53, at 293.

591. The massacre feared was predictably linked to political action: it was freedmen who would vote “the Brownlow ticket” that were most imperiled. BRFAL, *supra* note 36, RG 105, B 91, Affidavits of Benjamin Jordan, and Daniel Jordan and Thomas Hamlet, Nashville, Tenn., Dec. 24, 1867. Further discussion of this point may be found in BRFAL, *supra* note 36, RG 105, Vol. 28, Register of Outrages, Tenn., July 5, 1868; BRFAL, *supra* note 36, RG 105, B 91, Affidavit of Nathan Harris, Henry McDaniels, and Leander Wright, Nashville, Tenn., July 8, 1868; BRFAL, *supra* note 36, RG 105, M 999, R 34, Affidavit of Gilbert Aiken, Davidson County, Tenn., n.d.; 4 AMERICAN SLAVE, ser. 1, *supra* note 114, pt. 2, at 30; H.R. MISC. DOC. NO. 41-53, at 295, 296, 298; SOUTH CAROLINA GENERAL ASSEMBLY, REPORT ON THE EVIDENCE TAKEN BY THE COMMITTEE OF INVESTIGATION, *supra* note 81, at 1033; TENNESSEE GENERAL ASSEMBLY, REPORT OF EVIDENCE TAKEN BEFORE THE MILITARY COMMITTEE, *supra* note 21, at 10, 26; and *The Ku-Klux Out Again*, NEW NAT’L ERA (Washington, D.C.), Feb. 9, 1871, at 3. Similar concerns were expressed elsewhere in

clude freedwomen. Instead, these klansmen envisioned a world in which they would exercise sovereign control over the lives and labors of black women, who would have little choice but to work the white man's land once their menfolk were dead and buried.<sup>592</sup>

The wish that the freedpeople would somehow vanish from the South was not confined to klansmen; others, however, expressed their desires in a more restrained fashion. Many southern whites believed (and arguably hoped) that the former slaves would not survive under conditions of freedom.<sup>593</sup> In this view, the freedpeople and their descendants were constitutionally predisposed to the carefree life of bondage and therefore incapable of assuming control of their own lives, providing for themselves, and negotiating life's vicissitudes without the benevolent oversight they had enjoyed as slaves.<sup>594</sup> This became something of a self-fulfilling prophecy as medical men and others increasingly identified in blacks the very mental and physical decline they themselves had foreseen.<sup>595</sup> A white Virginian articulated

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the South. Thus, in a letter written to North Carolina Governor William W. Holden, a Republican constituent said of the Klan, "I believe they intend to kill or at least shoot every man that will cast a vote for Collfax or Grant." PAPERS OF WILLIAM WOODS HOLDEN, *supra* note 80, at 354-55.

592. See BRFAL, *supra* note 36, RG 105, B 91, Affidavits of Benjamin Jordan, and Daniel Jordan and Thomas Hamlet, Nashville, Tenn., Dec. 24, 1867.

593. As was pointedly observed in one black newspaper, "We notice in certain journals of the cold-blooded, pseudo-metaphysical type, *pleasant speculations* about the early extinction of the negro race on this continent." *Destiny of the Negro Race in America*, COLORED TENNESSEAN (Nashville), Oct. 14, 1865, at 1 (emphasis added).

594. John Dennett, a northern journalist, found these perceptions commonplace in the months following the Civil War. JOHN RICHARD DENNETT, *THE SOUTH AS IT IS: 1865-1866*, at 6, 15, 102-03, 191, 366 (1965). The issue is also addressed in ANDREWS, *supra* note 87, at 394-95; CAMPBELL, *supra* note 261, at 197; HINTON ROWAN HELPER, *NOJOUQUE: A QUESTION FOR A CONTINENT* vii, 15, 83, 211-12, 214-15, 236, 237 (New York, George W. Carlton 1867); E.W. Gilliam, *The African in the United States*, 22 *POPULAR SCI. MONTHLY* 433, 435-36 (1883); Josiah C. Nott, *The Problem of the Black Races*, 5 *DEBOW'S REV.* 266, 269, 280-81 (1866); J.T. Walton, *The Comparative Mortality of the White and Colored Races in the South*, 10 *CHARLOTTE MED. J.* 291, 291, 292 (1899); *Negro Troubles*, *N.Y. TIMES*, Jan. 15, 1869, at 2; and *A Trip in South Carolina*, *NATION*, July 27, 1865, at 107. Postwar Southerners were not the first to advance such ideas; variants on the extinction theory had been circulated since the antebellum era by Northerners and Southerners alike. See, e.g., FREDRICKSON, *supra* note 488, at 154-64; JOEL WILLIAMSON, *AFTER SLAVERY: THE NEGRO IN SOUTH CAROLINA DURING RECONSTRUCTION, 1861-1877*, at 248-52 (1965) [hereinafter WILLIAMSON, *AFTER SLAVERY*]; John S. Haller, Jr., *The Negro and the Southern Physician: A Study of Medical and Racial Attitudes 1800-1860*, 16 *MED. HIST.* 238, 252-53 (1972); Robert Brent Toplin, *Between Black and White: Attitudes Toward Southern Mulattoes, 1830-1861*, 45 *J. S. HIST.* 185, 197-199 (1979). For further information on the role of extinction theories in the postbellum period and beyond, see ROBERT CRUDEN, *THE NEGRO IN RECONSTRUCTION* 90 (1969); FREDRICKSON, *supra* note 488, at 233, 236-39, 244-58; VERNON LANE WHARTON, *THE NEGRO IN MISSISSIPPI: 1865-1890*, at 53-55, 146 (1965); WILLIAMSON, *AFTER SLAVERY*, *supra*, at 247-48; John S. Haller, Jr., *The Physician Versus the Negro: Medical and Anthropological Concepts of Race in the Late Nineteenth Century*, 44 *BULL. HIST. MED.* 154, 154-57 (1970) [hereinafter Haller, *The Physician Versus the Negro*].

595. John S. Hughes, *Labeling and Treating Black Mental Illness in Alabama, 1861-1910*, 58 *J. S. HIST.* 435 (1993).

a widely held belief when he professed that, barring some unanticipated event, the former slaves were “doomed to undergo extinction” and bound to be “practically exterminated” in less than a century.<sup>596</sup> During and after Reconstruction, respected physicians like G. Frank Lydston confidently predicted that the region’s blacks were destined for extinction unless they were genetically “improved” by whites: “[N]o inferior race, without amalgamation, can exist for very many years in contact with the dominant white man.”<sup>597</sup> Needless to say, thoroughgoing race mixture was not the outcome contemplated.

In addition to extinction, some whites clung to the idea that a mass migration of former slaves could be orchestrated to rid the South of its “Negro Problem” once and for all, inaugurating a utopian state of racial homogeneity.<sup>598</sup> Though proponents of the mass exodus theory did

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596. DENNETT, *supra* note 594, at 15.

597. McGuire & Lydston, *supra* note 64, at 106. Similar theories were espoused by JOSIAH NOTT, *THE NEGRO RACE: ITS ETHNOLOGY AND HISTORY* 24, 25 (Mobile, Mobile Daily Times 1866); Eugene R. Corson, *The Future of the Colored Race in the United States from an Ethnic and Medical Standpoint*, 15 N.Y. MED. TIMES 193, 198, 199 (1887); Seale Harris, *The Future of the Negro from the Standpoint of the Southern Physician*, 14 ALA. MED. J. 57, 65, 66, 67 (1902); and Hoffman, *supra* note 64, at 312. Given the ascriptive degeneracy of those engaging in interracial procreation, this apparently contradictory strain of thinking blended seamlessly into the received wisdom that portrayed mulattoes as an enervated and precipitously declining population. See Hoffman, *supra* note 64, at 181-83, 206-07; Walton, *supra* note 594, at 294. Not surprisingly, juridical thought also bears the markings of this view, as in the opinion penned by Chief Judge Brown for the Georgia Supreme Court in one of the landmark miscegenation cases of the Reconstruction years: “The amalgamation of the races is not only unnatural, but is always productive of deplorable results. Our daily observation shows us, that the offspring of these unnatural connections are generally sickly and effeminate, and that they are inferior in physical development and strength, to the full blood of either race.” *Scott v. Georgia*, 39 Ga. 321, 323 (1869). Historical assessments of these ideas include JOHN G. MENCKE, *MULATTOES AND RACE MIXTURE: AMERICAN ATTITUDES AND IMAGES, 1865-1918*, at 50-61, 109, 123-27 (UMI Research Press 1979) (1976); JOEL WILLIAMSON, *NEW PEOPLE: MISCEGENATION AND MULATTOES IN THE UNITED STATES 94-96* (Louisiana State Univ. Press 1995) (1980); and Haller, *The Physician Versus the Negro*, *supra* note 595, at 165.

598. I am speaking here specifically of southern white advocates of colonization (or, deportation, depending upon the level of coercion involved). This alternative, a holdover from the antebellum era, was of negligible significance during Reconstruction, yet it nonetheless remained available to whites wishing to contemplate the emergence of a racially homogeneous South. Among the most vigorous advocates of this position was Hinton Rowan Helper, who addressed the issue in such works as *NOJOQUE*, *supra* note 594, at iii, v, 14-15, 66, 79, 211, 214-15, 221, 282, and *NOONDAY EXIGENCIES IN AMERICA* 75, 153, 193-94 (New York, Bible Bros. 1871). Corresponding views were expressed by the influential editor J.D.B. DeBow. See J.D.B. DeBow, *The Future of the Negro Population*, 1 *DEBOW'S REV.* 58 (1866). For a rebuttal of Helper’s argument, see JOHN H. GILMER, *WAR OF RACES: BY WHOM IT IS SOUGHT TO BE BROUGHT ABOUT. CONSIDERED IN TWO LETTERS, WITH COPIOUS EXTRACTS FROM THE RECENT WORK OF HILTON [sic] R. HELPER* (Richmond, n.p. 1867). This debate is further explored in LAWRENCE J. FRIEDMAN, *THE WHITE SAVAGE: RACIAL FANTASIES IN THE POSTBELLUM SOUTH* 22-23 (1970). Although blacks themselves demonstrated little enthusiasm for emigration in the years immediately following the War, the idea enjoyed a modest gain in popularity after Redemption, when hopes for racial progress at home were seriously diminished. See WILLIAM COHEN, *AT FREEDOM’S EDGE: BLACK MOBILITY AND THE SOUTHERN WHITE QUEST FOR RACIAL CONTROL 1861-1915*, at 138-67 (1991); FONER, *RECONSTRUCTION*, *supra* note 23, at 288-89, 598-600; LITWACK, *BEEN IN*

not openly advocate violence, neither were they averse to the use of coercion. As E.W. Gilliam argued, "Should the blacks not choose colonization, let the whites of the whole country demand it."<sup>599</sup> Others acknowledged the possibility that the elimination of blacks from the South may not be an entirely bloodless proposition. Race war, they felt, would be the inevitable result of blacks' "increasing arrogance."<sup>600</sup> In each of these ways, whites revealed their chimerical longing for a postwar order untainted by the former slaves, all the while their labor remained a prized commodity.<sup>601</sup> Barring blacks' return to legal bondage, efforts to expunge the most galling reminder of the white South's loss were doomed to failure.

Within this social framework, klansmen and other whites began to articulate a sex-based justification for their claim that the freedmen could not be trusted to govern themselves. In the aftermath of the

THE STORM SO LONG, *supra* note 6, at 308; Willis D. Boyd, *Negro Colonization in the Reconstruction Era, 1865-1870*, 40 GA. HIST. Q. 360, 364, 376-82 (1956). For additional information regarding colonization thinking from the antebellum period through the turn-of-the-century, see FREDRICKSON, *supra* note 488, at 6-21, 24-28, 30, 33, 43-44, 48, 115-17, 133-35, 147-54, 166-68, 228-29, 240, 263-66, 267; PHILIP J. STAUDENRAUS, THE AFRICAN COLONIZATION MOVEMENT, 1816-1865 (1961); Walter L. Fleming, *Deportation and Colonization: An Attempted Solution of the Race Problem*, in STUDIES IN SOUTHERN HISTORY AND POLITICS INSCRIBED TO PROFESSOR WILLIAM ARCHIBALD DUNNING, *supra* note 41, at 3; and Willis Boyd, *Negro Colonization in the National Crisis, 1860-1870* (1953) (unpublished Ph.D. dissertation, University of California, Los Angeles) (on file with the University of California, Los Angeles Library). Two recent anthologies contain a number of relevant primary sources. See 11 ANTI-BLACK THOUGHT: 1863-1925: THE AMERICAN COLONIZATION SOCIETY AND EMIGRATION: SOLUTIONS TO "THE NEGRO PROBLEM" (John David Smith ed., 1993); 10 ANTI-BLACK THOUGHT: 1863-1925: EMIGRATION AND MIGRATION PROPOSALS: SOLUTIONS TO "THE NEGRO PROBLEM" (John David Smith ed., 1993).

599. E.W. Gilliam, *The African Problem*, 139 N. AM. REV. 417, 428, 429 (1884) [hereinafter Gilliam, *The African Problem*]. He goes on to assert:

This is a white man's country, and a white man's government; and the white race will never allow a section of it to be Africanized. When colonization is accepted as the remedy, the whites will stand together to stimulate and assist it, or, *should it prove necessary to force it*.

*Id.* (emphasis added). Gilliam also addresses the colonization issue in *The African in the United States*, *supra* note 594, at 443-44.

600. The phrase belongs to J. Dickson Bruns. BRUNS, *supra* note 63, at 5. For a selection of illustrations of the contention that "Negro assertiveness" might lead to violent race war long before these supposedly "natural" processes had played themselves out, see *The African in the United States*, 15 S. REV. 148 (1874), cited in FREDERICKSON, *supra* note 488, at 239; Charles Gayarré, *The Southern Question*, 75 N. AM. REV. 497 (1877), cited in FREDERICKSON, *supra* note 488, at 239 (1987); *Good Advice to the Freedmen*, 3 DEBOW'S REV. 589, 589-90 (1867); and *A Trip in South Carolina*, *supra* note 594, at 107.

601. This was by no means the majority position; if anything, ambivalence about the freedpeople's presence was the order of the day throughout the postwar years. TROWBRIDGE, *supra* note 87, at 495. Wholly apart from their personal feelings about the newly-freed slaves, whites also expressed considerable anxiety at the prospect of losing the fundament of their workforce. See, e.g., 10 KLAN REPORT, *supra* note 113, at 1466; 11 KLAN REPORT, *supra* note 40, at 372; see also LITWACK, BEEN IN THE STORM SO LONG, *supra* note 6, at 515-16; ROARK, *supra* note 571, at 169.

War, many white men sought to revive and reenshrine the ideal of southern (white) womanhood, some with a zeal that brooked no disagreement. Indeed, an Alabaman “was whipped because he had stated he did not believe there was a virtuous woman in the world.”<sup>602</sup> At the same time, the oppositional figure of the “black beast rapist” slowly gained prominence. If the iconic white woman personified purity, sanctity, and virtue, all that was good about the South<sup>603</sup>, the imagined black man was her natural antithesis: base, predatory, and lascivious, a blight upon the region and its prospects. The rape of an esteemed white woman by a black man of this description was regarded with singular horror,<sup>604</sup> for such an assault defiled not only its proximate victim, but the entire southland as well. As Cash later mused,

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602. 10 KLAN REPORT, *supra* note 113, at 1748.

603. One of the most extravagant expositions of this ideal was penned by W.J. Cash in 1941:

She was the South's Palladium, this Southern woman — the shield-bearing Athena gleaming whitely in the clouds, the standard for its rallying, the mystic symbol of its nationality in the face of the foe. She was the lily-pure maid of Astolat and the hunting goddess of the Boetian hill.

CASH, *supra* note 257, at 86; see also LAURENCE ALAN BAUGHMAN, SOUTHERN RAPE COMPLEX: HUNDRED YEAR PSYCHOSIS 196 (1966); DOLLARD, *supra* note 313, at 136-38; KOVEL, *supra* note 304, at 69; and SCOTT, THE SOUTHERN LADY, *supra* note 489, at 4-21 (all providing further analysis of the image of the southern lady). For a succinct discussion of Cash's reflections on southern white womanhood, see Nell Irvin Painter, *Race, Gender, and Class in The Mind of the South: Cash's Maps of Sexuality and Power*, in W.J. CASH AND THE MINDS OF THE SOUTH 88, 98-99 (Paul D. Escott ed., 1992).

604. Shotwell, for instance, refers derisively to Governor Holden's supposed predilection for pardoning men like a “big buck negro” alleged to have raped a white girl. For him, as for many Southerners, so heinous a crime more than warranted the klans' vigilance. 2 SHOTWELL PAPERS, *supra* note 12, at 343. Whereas postwar klansmen enacted their antipathy for the animalistic black male through terror, it was not until the turn of the century that white supremacist ideologues concertedly endeavored to distill these sentiments in archetypal form and promulgate them for a larger audience. Philip Bruce's rant is typical:

Rape is one of the most beastly of crimes, even when a white man of refinement commits it. Conceive what it is when committed by one of these foul and bestial young savages on the person of a pure white woman, who has been caught unawares, as if by a baboon, in the woods.

Bruce, *The American Negro*, *supra* note 64, at 291. For a slightly earlier contribution to the elaboration of this myth, see Haygood, *supra* note 64, at 168, 172. Novelists of the era employed similar strategies of dehumanization in depicting the “black beast rapist.” In *Red Rock*, which purports to offer a faithful representation of postwar southern social relations, Thomas Nelson Page likens Moses, the perpetrator, to a mélange of nonhuman creatures, at first endowing him with the features of an ape (protruding jaw, flaring nostrils, and a low forehead), and later likening him to a “reptile,” “a species of worm,” and “a wild beast.” PAGE, RED ROCK, *supra* note 26, at 292, 356, 357, 358. Comparable terms appear in the most famous Reconstruction novel of the early twentieth century, Thomas Dixon's *The Clansman*. There, Dixon introduces the former slave Gus as a menacing figure exhibiting the traits of “the lower order of animals.” DIXON, THE CLANSMAN, *supra* note 547, at 216. Fulfilling his narrative destiny, the villain approaches a flower of southern womanhood with “an ugly leer, his flat nose dilated, his sinister bead-eyes wide apart gleaming ape-like.” He finally overpowers her with “[a] single tiger-spring, and the black claws of the beast sank into the soft white throat and she was still.” DIXON, THE CLANSMAN, *supra* note 547, at 304; see also *id.* at 323 (recounting the crime through use of hypnotic suggestion). For another fic-

To get at the ultimate secret of the Southern rape complex, we need to turn back and recall the central status that Southern woman had long ago taken up in Southern emotion — her identification with the very notion of the South itself. For, with this in view, it is obvious that the assault on the South would be felt as, in some true sense, an assault on her also, and that the South would inevitably translate its whole battle into terms of her defense.<sup>605</sup>

This vaunted feminine ideal did not, as a number of historians have shown, apply equally to all white women; rather, such benefits as it afforded were typically denied to lower-class women, prostitutes, and those who consorted with black men.<sup>606</sup> Evidence of these biases can be seen in the case of a freedman whipped by the Klan for propositioning a white woman. When asked about the woman's character, one witness replied, "I suppose it was fair, because if she had been a common whore or strumpet, I do not suppose they would have paid any attention to it."<sup>607</sup> Likewise, when the Committee sought an explanation for the comparatively light sentence imposed on a black man convicted of raping a white woman, they found it in her class position; while she was recognized as "a woman of good character," she was also "a woman of low position in society, and such a proceeding would not have been so great a shock to her, perhaps, as to one of higher refinement."<sup>608</sup> Their reasoning about feminine sensibilities was not unusual for its time; even judicial decisions sometimes weighed victims' capacities to withstand abuse in these categorical terms.<sup>609</sup>

Consistent with these prejudices and the agenda they helped spawn, the klans often targeted white women who chose black men as sexual partners. According to their logic, no "decent" white woman — no truly "white" woman — would willingly become involved with a

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tional rendering of this stock figure, see DIXON, *THE LEOPARD'S SPOTS*, *supra* note 541, at 126-27 (1902). Reflecting prevailing white (predominantly male) biases, each of these novels imagines death as preferable to defilement at the hands of the "black beast." See DIXON, *THE CLANSMAN*, *supra* note 547, at 305, 307, 308; DIXON, *THE LEOPARD'S SPOTS*, *supra* note 541, at 127.

605. CASH, *supra* note 257, at 115-16; see also BAUGHMAN, *supra* note 603, at 101 (advancing a consonant interpretation).

606. See generally BYNUM, *supra* note 142; EDWARDS, *GENDERED STRIFE AND CONFUSION*, *supra* note 3; see also BARDAGLIO, *supra* note 141, at 189.

607. 6 KLAN REPORT, *supra* note 16, at 125.

608. *Id.* at 291-92. For additional instances in which nightriders attacked "true" white women, see 2 KLAN REPORT, *supra* note 16, at 135, and 12 KLAN REPORT, *supra* note 44, at 823, 879, 923, 1075, 1165. Note that all of the citations to Volume 12 concern Anna Davis, a white Northerner whose dedication to the freedpeople's cause apparently instigated numerous didactic visits by the Klan. Not surprisingly, when witnesses hostile to the former slaves were asked to evaluate her character, they found it seriously wanting. See *id.* at 839, 912, 1165.

609. See Reva B. Siegel, "The Rule of Love": Wife Beating as Prerogative and Privacy, 105 YALE L.J. 2117, 2138-41 (1996).

black man. Whereas antebellum society had granted some space for consensual interracial unions, the bounds of toleration contracted significantly thereafter, as these relationships became increasingly freighted with social, political, and psychological meaning.<sup>610</sup> On numerous occasions, members of the Joint Select Committee asked witnesses to comment on the “character” of the klans’ female victims. Speaking of one white woman who had made sexual overtures to a black man, the Reverend J.H. Caldwell explained, “the inference I drew was that she was a very bad, abandoned character.”<sup>611</sup> When asked if she was “one of those low-down tramps which are scattered about the country?”, he replied, “I have no doubt of it.”<sup>612</sup> Verdicts like this were all the klans required to impel them to action. Almost invariably, attacks on white women were framed in congruous terms. To take just a small sampling of victims, the KKK whipped one woman “of bad character,”<sup>613</sup> another who was “regarded as a mighty sorry character,”<sup>614</sup> and yet another said to be “one of the meanest [women] you ever saw in the world, so mean that she ought to be hung.”<sup>615</sup> Although none of these witnesses were klansmen, they, along with some of their interrogators, accepted the klans’ implicit paradigm of how women ought to be appraised.<sup>616</sup> The crucial difference be-

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610. See HODES, WHITE WOMEN, BLACK MEN, *supra* note 4, at 1-2; Hodes, *The Sexualization of Reconstruction Politics*, *supra* note 4, at 402-03. Hodes distinguishes between “tolerance,” defined as “a liberal spirit towards those of a different mind,” and “toleration,” denoting “a measure of forbearance for that which is not approved.” It is the latter term that she finds applicable to southern white attitudes regarding sexual relationships between white women and black men prior to the Civil War. HODES, WHITE WOMEN, BLACK MEN, *supra* note 4, at 3. According to Joel Williamson, “Interested observers during Reconstruction and afterward unanimously agreed that miscegenation between whites and Negroes greatly declined in frequency after the war. The evidence supports their impression.” WILLIAMSON, NEW PEOPLE, *supra* note 597, at 88-89; see also JAMES DAVIS, WHO IS BLACK? ONE NATION’S DEFINITION 43, 49 (1991).

611. 6 KLAN REPORT, *supra* note 16, at 431.

612. *Id.*

613. 2 KLAN REPORT, *supra* note 16, at 106.

614. 12 KLAN REPORT, *supra* note 44, at 652.

615. 7 KLAN REPORT, *supra* note 16, at 920. Further examples of this pattern may be found in 2 KLAN REPORT, *supra* note 16, at 28, 37, 67, and 12 KLAN REPORT, *supra* note 44, at 839, 912, 1165. Citations to Volume 12 refer to Anna Davis. See *supra* note 608.

616. This is especially evident in an exchange regarding several white women with whom one of the KKK’s black male victims had been associated.

Q: Were they women of bad character?

A: Yes, sir; worst kind.

Q: What were their names?

A: They were named Keyes.

Q: How many were there?

A: There were four sisters of them, and one of them was old man Martin’s wife.

Q: Were they low white people?



tween them lay not in the judgment itself, but in what they chose to do with the information once marshaled.

While we cannot know for certain what white men ultimately gained from their participation in klan violence, their stated objectives, patterns of behavior, and hierarchical worldview provide a solid basis for conjecture when set against the backdrop of the rapidly changing social terrain of the postbellum South. Presuming a crisis of masculinity of the sort I have described, the task remains to understand how it was related to the range of terrorizing activities klansmen pursued — and, more specifically, how those activities themselves might have worked to ameliorate it. In distilled form, what the klans sought, and largely managed, to accomplish was the dissemination of fear, humiliation, and pain throughout a despised population and those who dared lend it support. Though none of this could do much to alter the klansmen's immediate physical circumstances, it could do a great deal to satisfy some of their most urgent emotional and psychological needs. By engendering an atmosphere of terror among blacks and sympathetic whites, they were able to dictate the tenor of race relations and reassert control, however imperfectly, over the lives of the former slaves: circumscribing their personal freedoms; proscribing their movements; determining their votes; limiting their employment options; depriving them of educational opportunities; injuring, maiming, and, in the most extreme cases, murdering them. Although klansmen lacked the wherewithal to bring about the full-scale reversion to racial slavery they so plainly desired, they nonetheless achieved much of what they set out to do, to the inordinate political, social, physical, and mental detriment of their victims. Thus, in addition to whatever personal satisfaction they derived from belonging to the klans and participating in their terroristic raids, white men could take pride in surveying the results of their exertions. As Klaus Theweleit has thoughtfully remarked, "The effect of torture is double-sided: to destroy the victim, to eliminate a 'threat' the victim embodies; and to construct the torturer as a new person."<sup>617</sup> Surrounded by evidence of their own domination, perpetrators of sexualized violence could see themselves once again as agents, successfully manipulating their supposed inferiors, doing their part to reinscribe the status quo ante in race and gen-

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A: Yes, sir.

6 KLAN REPORT, *supra* note 16, at 413. Lest there be any confusion surrounding this point, the Chairman returned to it at the first opportunity:

Q: These women, you say, were a low-down class of persons?

A: Yes, sir; not counted at all.

*Id.*

617. Klaus Theweleit, *The Bomb's Womb and the Genders of War (War Goes on Preventing Women from Becoming the Mothers of Invention)*, in GENDERING WAR TALK 283, 300 (Miriam Cooke & Angela Woollacott eds., 1993).

der relations. All of these considerations would have driven klansmen headlong towards the revitalization of manhood they so eagerly sought.

This does not, however, explain why klan violence so often assumed a sexual form. Yet, if there was nothing about the postwar order that necessitated a sexualized response, there were surely a number of factors that encouraged it. As we have seen, sexual anxieties were rife during this period, a product both of shifting racial alignments and evolving gender norms. White men had, for much of southern history, done much to determine the boundaries within which sexual relationships took place. Prior to the Civil War, slaveowners, overseers, and other white males had practically unrestricted access to female slaves, whom they routinely subjected to sexual coercion, assault, and rape. Slave women were also victims of masterly slave breeding, a less commonplace, but still widespread, phenomenon.<sup>618</sup> Although less often construed as a form of sexual abuse than slave rape, this practice did considerable violence both to the women who were directly victimized, as well as to their spouses, children, extended families, and communities. Women's bodies, their reproductivity, and, to an extent, their sexuality were co-opted by slave masters with the power to determine when, how often, and with whom their female slaves were to endure the burdens of childbearing, birth, and rearing, personal profit being their dominant consideration. This was all the more cruel given the enforced instability of slave families. In stark contrast to the sexually disempowered condition of bondswomen, all masters had the capacity both to form and to destroy slave families, and with them the sexual relationships slaves had freely undertaken. By the time racial slavery began to founder, white men had constructed an all but impervious boundary between black male and white female sexuality.

With the collapse of the old order, this longstanding arrangement became newly indeterminate. Suddenly, freedmen and women enjoyed an expanded capacity to control their own sexual fates, depriving white men of much of their former power to direct the course of blacks' intimate relationships according to their needs and desires. At the same time, the ideational force separating white women and black men was becoming far less redoubtable. Freedmen, no longer restrained by the dictates of slavery, might now unleash their supposedly

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618. See CLINTON, *THE PLANTATION MISTRESS*, *supra* note 140, at 204-05; ESCOTT, *supra* note 7, at 43-45; GENOVESE, *supra* note 95, at 464-65; STAMPP, *THE PECULIAR INSTITUTION*, *supra* note 95, at 247-51; WHITE, *AR'N'T I A WOMAN?*, *supra* note 97, at 99-103; Pamela D. Bridgewater, *Un/Re/Dis: Covering Slave Breeding in Thirteenth Amendment Jurisprudence*, 7 WASH. & LEE R.E.A.L. J. 11 (2001); Margaret A. Burnham, *An Impossible Marriage: Slave Law and Family Law*, 5 LAW & INEQ. J. 187, 197-200 (1987); Clinton, "Southern Dishonor," *supra* note 140, at 54-55; WE ARE YOUR SISTERS, *supra* note 77, at 31-33.

bestial tendencies upon unsuspecting white women. Worse still were signs that some white women — not all of them easy to dismiss — might actually prefer the sexual companionship of black men. Klan members quite correctly recognized that the maintenance of white supremacy in the American South demanded racial bipolarity and strict adherence to color line,<sup>619</sup> never more so than after the artificial constraints of slavery had been lifted.<sup>620</sup> Thus the prevalence of interracial sex and the propagation of mulatto offspring embodied a powerful, concrete threat, one that was reflected in Democratic anxieties concerning the uncertain status of antimiscegenation laws under a civil rights regime.<sup>621</sup> If these events did not alone produce it, they were critical determinants in the eroticization of violence that epitomized the activities of the Reconstruction-era klans combined with the free-floating rage that permeated the white South in the aftermath of the War.

Sexual motives impelled a vast range of klan attacks, some of which were explicitly sexualized, others of which were not. Where klansmen and other first-hand observers offer direct insight into the sexual inspiration behind a given offensive, unpacking its meaning is a relatively straightforward task. Within the social milieu I have described, it is safe to conclude that those who were assaulted on account of their involvement in interracial relationships were plainly victims of sexually motivated violence. Whether the assault itself assumed a sexual character is a separate question entirely. In those instances where the underlying cause was not expressly sexual but the incident itself was explicitly or implicitly so, interpretation follows a similar, if somewhat more tortuous, path. Take, for example, the case of a freedman who is stripped and whipped as a result of having voted the Republican ticket. Not only is the form of the attack sexual, but the underlying inspiration can be seen as partly so as well: if voting — the preeminent symbol of masculine political equality — marked the

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619. These conditions differ from those seen in many other slave cultures, such as Brazil, where gradations of color were recognized and the distinction between white and black far less stark. *See generally* CARL N. DEGLER, *NEITHER BLACK NOR WHITE: SLAVERY AND RACE RELATIONS IN BRAZIL AND THE UNITED STATES* 102-04 (1971). The history of scientific racism in Brazil is explored in LILIA MORITZ SCHWARCZ, *THE SPECTACLE OF THE RACES: SCIENTISTS, INSTITUTIONS, AND THE RACE QUESTION IN BRAZIL, 1870-1930* (Leland Guyer trans., 1999). I am grateful to Robert W. Gordon for sharing his insights into the history of comparative racism as they relate to the logic of klan sexual violence.

620. The fact that children followed the condition of their mothers provided both a layer of protection to white men who engaged in sexual relations with female slaves and an incentive for slaveowners to do so insofar as they reaped the economic benefits of their actions in the reproduction of unpaid laborers.

621. *See* Charles F. Robinson, II, *The Antimiscegenation Conversation: Love's Legislated Limits (1868-1967)*, at 16-17 (1998) (unpublished Ph.D. dissertation, University of Houston) (on file with the University of Houston Library).

freedman's ascent to citizenship, it was the next step — social equality, or, more accurately, interracial sex — that klansmen most dreaded.

The fear and rage of hundreds of thousands of white men found expression in the work of the klans, who made a practice of assailing the very parts of the body most implicated in the prevailing social upheaval. They abused “unworthy” women through rape and similar means; they mutilated white and black genitals when they had been where they presumably ought not. In these and other scenarios klansmen struggled to restore their manhood through the enactment of sexualized violence. And it would be remiss to ignore the profoundly sadistic quality that inhered in so many klan attacks. As James W. Clarke explains, “[t]error was also the means violent, embittered men used to indulge their more primitive passions; inflicting pain on black victims often seemed to serve as an end in itself, an exercise of power that the perpetrators savored as much as the sexual perversity that so often accompanied it.”<sup>622</sup> The pervasiveness of these sexualized atrocities raises the question of whether sadistic paraphilias analogous to those identified by contemporary clinicians were indeed as uncommon and benign in the postwar years as might otherwise be deduced.<sup>623</sup> Although the klans' barbaric methods in the end failed to decimate the larger black community, they brought incalculable suffering to the freedpeople and their descendants, a suffering that cannot be easily divorced from the sexual character of so much of the underlying abuse.

### B. *Transgendered Vigilance*

As a coda to this discussion, it is worthwhile to consider briefly the significance of klansmen's traditional garb in light of what I have contended were their animating objectives. While individual klans adopted slightly different costumes, all of them typically included a long robe, a head covering of some variety, and an insignia of the order.<sup>624</sup> A Bureau officer confronted by klansmen operating in

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622. JAMES W. CLARKE, *THE LINEAMENTS OF WRATH: RACE, VIOLENT CRIME, AND AMERICAN CULTURE* 93 (1998).

623. General discussions of sexual sadism include DE RIVER, *CRIME AND THE SEXUAL PSYCHOPATH*, *supra* note 281; DE RIVER, *THE SEXUAL CRIMINAL*, *supra* note 281; VON KRAFFT-EBING, *supra* note 281, at 80-88, 118-25; Park Elliot Dietz et al., *The Sexually Sadistic Criminal and His Offenses*, 18 *BULL. AM. ACAD. PSYCHIATRY & L.* 163 (1990); T. Gratzter & J.M.W. Bradford, *Offender and Offense Characteristics of Sexual Sadists: A Comparative Study*, 40 *J. FORENSIC SCI.* 450 (1995); Don Grubin, *Sexual Sadism*, 4 *CRIM. BEHAV. & MENTAL HEALTH* 3 (1994); Clive R. Hollin, *Sexual Sadism: Assessment and Treatment*, in *SEXUAL DEVIANCE: THEORY, ASSESSMENT, AND TREATMENT* 210 (D. Richard Laws & William O'Donohue eds., 1997); and Steven J. Hucker, *Sexual Sadism: Psychopathology and Theory*, in *SEXUAL DEVIANCE*, *supra*, at 194.

624. See, e.g., HORN, *supra* note 10, at 13, 58-66; TRELEASE, *supra* note 10, at 4-5, 53-54; WADE, *supra* note 10, at 33-34, 59-60.

Aberdeen, Mississippi provided this description of their disguises: "The gown they had on came just about half way down below the knee; it was cut rather like a tight night-gown, and was close fitting over their coats, and slashed up on each side, so as to allow them to step well."<sup>625</sup> What is most interesting here is the first element of the klansman's disguise — his gown. Although gowns (or "nightgowns," as observers often labeled them) are not an exclusively feminine garment, they are, and have long been, gendered female. This attribution is suggested by numerous observers who themselves found the accouterments of klansmanship rather curious.<sup>626</sup> Of the gown-clad participants in a Georgia raid, an eyewitness remarked, "at first they looked like a parcel of women."<sup>627</sup> Henry Reed, who observed a similar scene in

Florida, likewise attested that "there were men there with old black gowns on, and with old sunbonnets like women."<sup>628</sup> Klan robes are often described as dresses, as in the testimony of one man who swore, "[s]ome of them had calico dresses; others had on homespun dresses."<sup>629</sup> If there was some latitude regarding who might wear gowns, there was none with respect to the wearing of dresses.<sup>630</sup> This was unmistakably feminine attire that klansmen affirmatively chose to adopt. In a striking instance of gender inversion, a Tennessee klansman not only "dressed in women's clothes," but was "called the woman of the party" by his confederates, who displayed no apparent concern about its implications.<sup>631</sup> That the whitecappers of the 1880s and 1890s would evince a corresponding affinity for flowing white garments hints at the curious ways in which cultural borrowings be-

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625. 11 KLAN REPORT, *supra* note 40, at 274.

626. One former slave recalled klansmen who "wore their wives big wide nightgowns and caps and ugliest faces you eber did seed." 8 AMERICAN SLAVE, ser. 2, *supra* note 96, pt. 2, at 26.

627. 6 KLAN REPORT, *supra* note 16, at 551.

628. 13 KLAN REPORT, *supra* note 15, at 110. He proceeds to describe an episode in which a night rider "came into church and took a seat in the back part of the church." *Id.* To Reed, he "looked like a woman." *Id.*

629. 3 KLAN REPORT, *supra* note 17, at 42.

630. Another eyewitness recollected that klansmen "seemed to have on a different dress from what men generally wear." 3 KLAN REPORT, *supra* note 17, at 350. For additional comments on klansmen's "gowns" and "dresses," see KKK Papers, *supra* note 16, Testimony of John W. Long [State v. Tarpley], at 2, 11; KKK Papers, *supra* note 16, Testimony of William R. Tickel [State v. Somers], at 3; KKK Papers, *supra* note 16, Testimony of Daniel Whitesell [State v. Somers], at 2; HOLDEN, THIRD ANNUAL MESSAGE, *supra* note 37, at 87; 2 HOLDEN TRIAL, *supra* note 37; 1-13 KLAN REPORT, *supra* notes 15, 16, 17, 26, 34, 40, 44, 59, 113; and S.C. KLAN TRIALS, *supra* note 16.

631. TENNESSEE GENERAL ASSEMBLY, REPORT OF EVIDENCE TAKEN BEFORE THE MILITARY COMMITTEE, *supra* note 21, at 18-19.

tween temporally disconnected vigilante organizations could be manifest.<sup>632</sup>

A more unusual feature of the klansman's disguise were the horns that some wore as part of their headpiece.<sup>633</sup> These implements, a relic of the European *charivari* tradition,<sup>634</sup> were put to sinister uses by their perversely creative bearers. A klan member approached one North Carolina man and "made him feel of his horns."<sup>635</sup> Joseph F. Galloway, a white schoolteacher, offered this colorful description of his assailants' exhibition: "There were some shook their heads and horns at me, and acted like cows . . . They had horns, and they shook their horns at me when I was in the door."<sup>636</sup> However comical such an encounter might appear in hindsight, it was fearsome to the unsuspecting freed-people.<sup>637</sup> Extant sources suggest that the individual elements of the costume worked in concert to produce the desired effect. "There were seven came. They were disguised, and had on white dresses with ribbons, and bands and false hair. Two had horns, and they had red eyes and mouth, and some had black around the mouth, and one had a sheet around him."<sup>638</sup> The family of a white Republican was visited by klansmen, some of whom displayed "horns which were erect."<sup>639</sup>

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632. See THE WHITE-CAPS, *supra* note 30, at 31 ("They also had regular White-cap suits, but these were made in different styles. Sometimes after the fashion of men's suits, and sometimes large loose gowns more like women's apparel."); see also BROWN, STRAIN OF VIOLENCE, *supra* note 260, at 25, 151; KIRKHAM, *supra* note 480, at 175 (both noting the apparent influence of the Ku Klux Klan on the White Caps' choice of garb).

633. References to this element of the Klansman's wardrobe not discussed elsewhere include KKK Broadside Collection, *supra* note 37, *The Ku-Klux Organization* (n.p. 1872); KKK Papers, *supra* note 16, Testimony of John W. Long [State v. Tarpley], at 2; S. REP. NO. 42-1, at 2, 25, 124, 145, 162, 246, 342 (1871); 12 AMERICANS SLAVE, ser. 2, *supra* note 96, pt. 2, at 204; 2 HOLDEN TRIAL, *supra* note 37, at 1330, 1349, 1376, 1382, 1402, 1442, 1457, 1461, 1468, 1484, 1490, 1494, 1498, 1510, 1514, 1520, 1521, 1695, 1992, 2079, 2080, 2140; 3 KLAN REPORT, *supra* note 17, at 400, 401; 4 KLAN REPORT, *supra* note 34, at 699, 1093; S.C. KLAN TRIALS, *supra* note 16, at 204, 242, 246, 259, 441, 498-99, 511, 517, 687, 691, 694; and STEVENSON, KU KLUX KLAN, *supra* note 35, at 15. A prototype of the horned klansman's hood was captured by a Northern Army officer in North Carolina and subsequently deposited by his widow at the Buffalo Historical Society. See HOWE, *supra* note 21, at 2, 3, 23.

634. WYATT-BROWN, *supra* note 30, at 455. Although numerous aspects of klanishness, such as the use of disguises and the reflexive preoccupation with the preservation of sex and gender norms, bear the cultural residue of *charivari*, the survival of the horn with its manifest sexual connotations, is especially evocative of this ancient rite. For more on *charivari* practices as they relate to the klans, see *supra* notes 30, 273 and accompanying text.

635. AGO, *supra* note 16, RG 94, M 666, R 1, F 60, Ku Klux Outrages in Wayne Co., N.C.; see also S. REP. NO. 42-1, at lv.

636. 12 KLAN REPORT, *supra* note 44, at 663. Jerry Clowney, a South Carolina freedman, related a nearly identical ritual. 5 KLAN REPORT, *supra* note 16, at 1859.

637. Reporting on a collection of klan costumes captured in a North Carolina raid, a correspondent from a leading newspaper of the day perceptively submitted that they "suggest the mental terror to which victims were subjected." *The Ku-Klux of North Carolina*, FRANK LESLIE'S ILLUSTRATED NEWSPAPER, Oct. 7, 1871, at 60.

638. 2 HOLDEN TRIAL, *supra* note 37, at 1402.

639. 2 KLAN REPORT, *supra* note 16, at 116.

As if their phallic connotations were not obvious enough, some witnesses emphasized the size of the klansmen's horns. One astonished onlooker reported seeing "horns about as big as my arm";<sup>640</sup> another was overcome by the sight of "horns about two feet long — some stood strait up, and some hung down."<sup>641</sup> Far more disturbing was a North Carolina freedman's unwitting discovery of a klansman's lost horn. "I got down from my horse and looked about and I found a piece of cotton cloth in the shape of a horn from ten to fourteen inches long — it may be not quite so long — but it was stuffed with wheat chaff, and had blood on the end of it."<sup>642</sup> Here is at least one indication that klansmen sometimes used their horns as weapons in the literal sense.<sup>643</sup> How and to what effect we are left to imagine.

In addition to these established attributes of klansmanship are a number of more exceptional displays that bear analysis in this context. Numerous contemporaries, for instance, provided intriguing, though remarkably inconsistent, testimony regarding the peculiar voices affected by hooded nightriders.<sup>644</sup> John Gilstrap, a former slave from Mississippi, recalled that "they talked fine like a woman, — didn't talk like men."<sup>645</sup> More often, these sounds were likened to those emitted by animals, be it "a parcel of geese,"<sup>646</sup> "a set of hyenas,"<sup>647</sup> "little screech owls,"<sup>648</sup> "a pea fowl or guinea hen."<sup>649</sup> One of the quirkiest de-

640. *Id.* at 1467; *see also id.* at 1429.

641. S.C. KLAN TRIALS, *supra* note 16, at 572; *see also id.* at 233, 683.

642. 2 HOLDEN TRIAL, *supra* note 37, at 1849. Relatedly, Sandy Sellers testified that his assailants "came up and poked their horns at me, like they was going to hook me." KKK Papers, *supra* note 16, Testimony of Sandy Sellers [State v. Andrews], at 1.

643. There are also accounts of klansmen manipulating this component of their uniform to very different ends. A one-time member of the White Brotherhood described how he and his cohort would rub newcomers with their horns during initiation ceremonies. *See* KKK Papers, *supra* note 16, Testimony of James E. Boyd [State v. Andrews], at 4; *see also* KKK Papers, *supra* note 16, Testimony of Sandy Sellers [State v. Andrews], at 1. While the violence of these encounters was nowhere overt, neither was it entirely absent. For, what remains in the end is the problematic image of white men bonding with one another through a ritual suffused with homoerotic overtones as they enter into formal membership in a vigilante organization founded largely for the purpose of forcing black men into submission.

Finally, nightriders sometimes used loose horns as a means of communicating when they were out on a raid. A Georgia freedman thus testified that he had discovered "one of the little horns that [klansmen] blow when they are gathering, or when they get scattered and want to blow one another together." 6 KLAN REPORT, *supra* note 16, at 3. Perhaps this statement reflects nothing more than an infelicitous choice of words; or perhaps it is another evocation of the sexually charged nature of klan violence.

644. This habit is also mentioned in S. REP. NO. 42-1, at 2 (1871), and TENNESSEE GENERAL ASSEMBLY, REPORT OF EVIDENCE TAKEN BEFORE THE MILITARY COMMITTEE, *supra* note 21, at 3, 23.

645. 8 AMERICAN SLAVE, *supp. ser. 1*, *supra* note 114, pt. 3, at 849.

646. 2 HOLDEN TRIAL, *supra* note 37, at 1209.

647. *Id.* at 1928.

648. KKK Papers, *supra* note 16, Testimony of Sandy Sellers [State v. Andrews], at 1.

scriptions has klansmen “growling and moaning and halloaing and bellowing like bulls and all that sort of thing.”<sup>650</sup> Beyond the mere act of camouflaging one’s voice, presumably another means of preserving anonymity, almost none of these portrayals evokes a masculine image. The sounds emitted by klansmen appear alternatively feminine, shrill, high-pitched, and simply loud, only the last of which is clearly consistent with the klans’ known purposes.

A similar conundrum emerges from the dialogue between John Allred, whose wife was visited by nightriders, and the Honorable R.M. Pearson, Chief Justice in the impeachment of North Carolina Governor William W. Holden. Allred maintained that one klansman, in a stunning non sequitur, declared that he was in reality a she. When asked to repeat his testimony, Allred paraphrased the words of the intruder, “ ‘I like a woman that will tell the truth for I am a woman myself.’ ”<sup>651</sup> Was he simply being flippant? Perhaps attempting to further disarm his victim? Or might this be a manifestation of something akin to what today is termed a gender identity disorder? There is no way to know for certain. What is indisputable, however, is the stark disjunction between the masculine imperatives that the klan so vigorously defended and this adherent’s designedly feminine self-presentation.

The question yet to be answered is why, then, a group of men beset with a shrinking sense of their own masculinity would choose to outfit themselves in conventionally female garb and complete the transformation by donning a set of horns of almost absurdly phallic shape? Granting the plausibility of a handful of practical explanations for these choices — the simplicity of design and construction, the prospect of frightening onlookers, and the availability of traditional models for imitation — by themselves they are plainly incomplete. Rather, to grasp the contradictions of the klansman’s guise, these dynamics must be considered as part of the broader sexualization of Reconstruction politics. Taken together, no abstruse psychoanalytics are required to discern in them a strikingly homoerotic cast. White men, simultaneously drawn to and repelled by the presumed sexual potency of the freedman, respond by dressing like women and violently lashing out at the immediate source of their anxiety — the body of the former slave male. The image of the nightrider becomes only more grim and unsettling with the introduction of the sinister bloody horn. Yet, the diversity of victims alone militates against repressed interracial homoeroticism as the singular subterranean impulse behind klan violence. While black men were by far their favored targets, the klans preyed upon white men and women of both races as well, the commonality among

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649. 2 HOLDEN TRIAL, *supra* note 37, at 1856; *see also id.* at 1859.

650. *Id.* at 1859.

651. *Id.* at 1372.



them being a dangerous combination of perceived threat and genuine vulnerability.

A less obvious, but nonetheless significant homoerotic undercurrent can be read in the klans' assaults on white men. It was, after all, precisely because of their proximity to blacks that klan members violated men of their own race. Under the circumstances, attacking their white male supporters was an alternative means of gaining access to the black man himself. Neither is the spectacle of bands of gown-bedecked men overpowering often solitary women an especially flattering portrait of white manhood. However little these women — by virtue of their sexual, racial, or class status — may have approximated the reigning feminine ideal, they were women just the same, and that fact in itself should have afforded them some protection. And while it may seem counterintuitive on its face, the physical domination of women, and others of presumptively lesser strength, has often proved an expeditious means of enhancing masculine esteem. Although klansmen undoubtedly derived psychic, and sometimes material, rewards from terrorizing all of these supposed transgressors, in the end it was the freedman who remained their principal target. In seeking to revive their own manhood at his expense, members of white supremacist orders engaged in a series of behaviors that paradoxically provided temporary relief from some of their most pressing psychic needs.

## VII. THE TRAUMATICS OF KLAN VIOLENCE

The breadth of evidence presented here reveals that the freedpeople and those favoring their emancipation were, by any commonsense definition of the word, traumatized by the sexual violence of the klans. In addition to the reasonable expectation that exposure to abuses of this sort would likely engender traumatic consequences, factors peculiar to the postbellum South conditioned and often exacerbated these substantially predictable effects. In the first place, victims of klan violence lived at a time and place in which medical and psychological care were, by contemporary standards, woefully inadequate under the best of circumstances; needless to say, disfavored classes — freedpeople, Republicans, and Unionists — had little claim to such minimal resources as did exist.<sup>652</sup> Some physicians, moreover, refused treatment to injured freedpeople out of fear of klan reprisals.<sup>653</sup>

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652. These observations pertain to private and state-sponsored health care. The Medical Department of the Freedmen's Bureau assumed primary responsibility for the treatment of former slaves in the immediate postwar years, providing at least a modicum of health care for an estimated 430,466 men, women, and children between 1865 and June 30, 1872. See Robert Reyburn, *Type of Disease among the Freedpeople (Mixed Negro Races) of the United States*, 63 MED. NEWS 623, 623 (1893); see also ROBERT REYBURN, *TYPE OF DISEASE AMONG FREED PEOPLE OF THE UNITED STATES* (Washington, D.C., Gibson Bros. 1891). The work of the medical department of the Freedmen's Bureau is examined in Randy Finley, *In War's Wake: Health Care and Arkansas Freedmen, 1863-1868*, 51 ARK. HIST. Q.

Victims were even less able to depend upon the force of law to assist them in ameliorating these harms.<sup>654</sup> Although there were doubtless many responsible juridical actors scattered throughout the legal system, those predisposed to provide assistance were collectively overwhelmed by their antagonists. Further, the general secrecy attending klan attacks, combined with the perpetrators' demands for silence upon threat of all but certain retribution, contributed to a circular pattern in which sympathetic lawyers and judges lacked the evidence required to prosecute terrorists successfully, while victims were deprived of the tangible and intangible benefits that the act of bearing witness might have conferred.<sup>655</sup> Similarly, in a world where

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135 (1992); Gaines M. Foster, *The Limitations of Federal Health Care for Freedmen, 1862-1868*, 48 J. S. HIST. 349 (1982); Gail S. Hasson, *Health and Welfare of Freedmen in Reconstruction Alabama*, 35 ALA. REV. 94 (1982); J. Thomas May, *The Louisiana Negro in Transition: An Appraisal of the Medical Activities of the Freedmen's Bureau*, 26 BULL. TUL. U. MED. FAC. 29 (1973); J. Thomas May, *A 19th-Century Medical Care Program for Blacks: The Case of the Freedmen's Bureau*, 46 ANTHRO. Q. 160 (1973); Todd L. Savitt, *Politics in Medicine: The Georgia Freedmen's Bureau and the Organization of Health Care, 1865-1866*, 28 CIV. WAR HIST. 45 (1982); and Gail Snowden Hasson, *The Medical Activities of the Freedmen's Bureau in Reconstruction Alabama, 1865-1868* (1982) (unpublished Ph.D. dissertation, University of Alabama) (on file with the University of Alabama Library). On the general health of southern blacks during this period, see W. MICHAEL BYRD & LINDA A. CLAYTON, *AN AMERICAN HEALTH DILEMMA: A MEDICAL HISTORY OF AFRICAN AMERICANS AND THE PROBLEM OF RACE* (2000); Marshall Scott Legan, *Disease and the Freedmen in Mississippi During Reconstruction*, 28 J. HIST. MED. & ALLIED SCI. 257 (1973); Alan Raphael, *Health and Social Welfare of Kentucky Black People, 1865-1870*, 2 SOCIETAS 143 (1972); Michael Anthony Cooke, *The Health of Blacks during Reconstruction, 1862-1870* (1983) (unpublished Ph.D. dissertation, University of Maryland) (on file with the University of Maryland Library); Jude Thomas May, *The Medical Care of Blacks in Louisiana During Occupation and Reconstruction, 1862-1868: Its Social and Political Background* (1970) (unpublished Ph.D. dissertation, Tulane University) (on file with the Tulane University Library); and Alan Raphael, *Health and Medical Care of Black People in the United States during Reconstruction* (1972) (unpublished Ph.D. dissertation, University of Chicago) (on file with the University of Chicago Library). Useful information may also be derived from the annotated bibliography compiled by MITCHELL F. RICE & WOODROW JONES, JR., *HEALTH OF BLACK AMERICANS FROM POST-RECONSTRUCTION TO INTEGRATION, 1871-1960: AN ANNOTATED BIBLIOGRAPHY OF CONTEMPORARY SOURCES* (1990).

653. See FINLEY, *FROM SLAVERY TO UNCERTAIN FREEDOM*, *supra* note 144, at 114; James Smallwood, *When the Klan Rode: White Terror in Reconstruction Texas*, 25 J. WEST 4, 8 (1986).

654. See *supra* Part V.A and accompanying notes.

655. Students of the Holocaust have made tremendous strides in illuminating the importance of testifying — of speaking and of being heard — for survivors of massive psychic trauma. See generally HENRY GREENSPAN, *ON LISTENING TO HOLOCAUST SURVIVORS: RECOUNTING AND LIFE HISTORY* (1998); LAWRENCE L. LANGER, *HOLOCAUST TESTIMONIES: THE RUINS OF MEMORY* (1991); *HOLOCAUST REMEMBRANCE: THE SHAPES OF MEMORY* (Geoffrey H. Hartman ed., 1994); Dori Laub, *Bearing Witness, or the Vicissitudes of Listening*, in *TESTIMONY: CRISES OF WITNESSING IN LITERATURE, PSYCHOANALYSIS, AND HISTORY* 57 (Shoshana Felman & Dori Laub eds., 1992) [hereinafter *TESTIMONY*]; Dori Laub, *An Event Without a Witness: Truth, Testimony and Survival*, in *TESTIMONY*, *supra*, at 75. The proliferation of memoirs recounting these events that has persisted for over a half century offers poignant evidence of the role of personal narration in coping with trauma's aftermath. Recent examples from among the thousands of accounts published in English alone include EDITH HAHN BEER, *THE NAZI OFFICER'S WIFE: HOW*

virtually all sexual conversation was carefully circumscribed, the unspeakable nature of sexualized violence surely aggravated the problem. To all of this must be added the fact that victims were by definition isolated from the mainstream of white southern society, marginal if not entirely outcast. In the case of the former slaves, their poverty, educational deprivation, and inexperience in the ways of nominal freedom almost invariably reinforced their liminality. All told, these circumstances left the freedpeople, and to a lesser extent their white advocates, extremely vulnerable to the ravages of traumatic stress.

### A. *Terror and Traumatization*

Klan atrocities, both those that were sexualized and those that were not, produced a range of short and long-term effects with intense individual, familial, communal, and societal reverberations.<sup>656</sup> Though we will never comprehend fully the magnitude of those assaults and the myriad traumas they engendered, extant sources suggest that hundreds, if not thousands, of people were subjected to sexualized terror in all of its devastating aspects. Yet this violence need not have been experienced directly in order to be deemed creditable; researchers now argue that post traumatic symptoms can in fact be spread laterally across an oppressed group.<sup>657</sup> In the present case, the character, pervasiveness, and irremediability of sexualized attacks extended their impact to witnesses, friends, and families of victims, as well as to the

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ONE JEWISH WOMAN SURVIVED THE HOLOCAUST (1999); RUTH ELIAS, *TRIUMPH OF HOPE: FROM THERESIENSTADT AND AUSCHWITZ TO ISRAEL* (Margot Bettauer Dembo trans., 1998); HELEN FREMONT, *AFTER LONG SILENCE: A MEMOIR* (1999); and ROMAN FRISTER, *THE CAP: THE PRICE OF A LIFE* (Hillel Halkin trans., 2000). A number of groundbreaking oral history projects that seek to document and make available the testimony of Holocaust survivors further attest to the power of witnessing. See, e.g., Fortunoff Video Archive for Holocaust Testimonies, Yale University, New Haven, Conn., available at <http://www.library.yale.edu/testimonies/> (last modified Aug. 10, 2000); Oral History Department, United States Holocaust Memorial Museum, Washington, D.C., available at <http://www.ushmm.org/archives/oral.htm> (last visited Nov. 8, 2001); Survivors of the Shoah Visual History Foundation, Los Angeles, Cal., available at <http://vhf.org/> (2001).

656. Evidentiary constraints make it impossible to correlate systematically the specific character of assaults perpetrated with the traumatic responses they engendered. While vast quantities of data have survived to document each aspect of this equation, the information available for any given outrage is typically incomplete, omitting details essential to drawing the relevant inferences. To mitigate the problem, I emphasize the traumatic effects of overtly sexualized violence where possible, and, where not, endeavor to draw appropriate parallels between nonsexual klan terror and traumatogenesis. This is not to say that sexualized violence did not (and does not) produce distinct forms of trauma in its victims; rather, it is to reflect the fact that the underlying tenor of klan violence was so pervasively sexualized as to inflict the experience of all who were subjected to it.

657. See Laura S. Brown, *Not Outside the Range: One Feminist Perspective on Psychic Trauma*, 48 AM. IMAGO 119, 129 (1991) (discussing the concept of lateral transmission as it relates to female experience generally) [hereinafter Brown, *Not Outside the Range*]; see also Gay, *supra* note 140, at 5, 6 (describing the collective traumatization of black women resulting from the sexual violence of slavery).

countless black and white inhabitants of the South whose political or social inclinations made them suspect, including teachers, preachers, successful farmers, and suspected interracialists, along with Republicans, Unionists, militia members, and black politicians.<sup>658</sup> Because the events examined here mark a pivotal episode in the generation of collective trauma and memory,<sup>659</sup> we must look to all of these groups if we are to begin to comprehend the extraordinary human and material costs of sexual terror.<sup>660</sup>

The ubiquity of fear among susceptible black and white populations is abundantly apparent in the historical record of klan violence.<sup>661</sup>

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658. This approach takes seriously the reality of both intergenerational and lateral traumatization, the latter of which has only recently begun to be investigated by traumatologists. For perceptive commentary on this issue, see Brown, *Not Outside the Range*, *supra* note 657, at 129-30. Whatever findings this research might yield in relation to present-day populations will not, of course, be directly applicable to those living under radically different historical conditions. Although traumatic experience is, in all its facets, a complexly contingent phenomenon, psychological research has begun to afford fundamental insights regarding human responses to extreme stress that may judiciously be employed to shed light on the experiences of historical actors, in particular where reliable evidence is both plentiful and varied.

659. See ARTHUR G. NEAL, NATIONAL TRAUMA AND COLLECTIVE MEMORY: MAJOR EVENTS IN THE AMERICAN CENTURY 4 (1998) (noting that “[t]he concept of trauma may also be applied collectively to the experiences of an entire group of people”). On the accretion of collective, or social, memory more generally, see PAUL CONNERTON, HOW SOCIETIES REMEMBER (1989); JAMES FENTRESS & CHRIS WICKHAM, SOCIAL MEMORY (1992); COLLECTIVE MEMORY OF POLITICAL EVENTS: SOCIAL PSYCHOLOGICAL PERSPECTIVES (James W. Pennebaker et al. eds., 1997); and COLLECTIVE REMEMBERING (David Middleton & Derek Edwards eds., 1990). For a survey of recent historical writing on collective memory, see Susan A. Crane, *Writing the Individual Back into Collective Memory*, 102 AM. HIST. REV. 1372 (1997). Legal historians’ engagement with the concept is explored in a number of thought-provoking essays collected in HISTORY, MEMORY, AND THE LAW (Austin Sarat & Thomas R. Kearns eds., 1999). Additional works in this genre, all of which (consistent with the focus of existing scholarship) are concerned with aspects of the Holocaust, include MARK OSIEL, MASS ATROCITY, COLLECTIVE MEMORY, AND THE LAW (1997); Mark J. Osiel, *Ever Again: Remembrance of Administrative Massacre*, 144 U. PA. L. REV. 463 (1995); and Calvin Peeler, *The Politics of Memory: Reconstructing Vichy and the Past the French Chose to Forget*, 19 WHITTIER L. REV. 353 (1997).

660. Although this Article does not explore the traumatic experiences of perpetrators or facilitators of sexualized violence, such a project could contribute significantly to our understanding of the dynamics of historical traumatization.

661. See, e.g., S. REP. NO. 42-1, at 107, 346 (1871); 5 AMERICAN SLAVE, ser. 1, *supra* note 114, pt. 4, at 145; 6 AMERICAN SLAVE, ser. 1, *supra* note 114, at 163; 8 AMERICAN SLAVE, ser. 2, *supra* note 96, pt. 2, at 14; 9 AMERICAN SLAVE, ser. 2, *supra* note 96, pt. 3, at 3; 10 AMERICAN SLAVE, ser. 2, *supra* note 96, pt. 5, at 165, 169; 12 AMERICAN SLAVE, ser. 2, *supra* note 96, pt. 2, at 203; 14 AMERICAN SLAVE, ser. 2, *supra* note 96, pt. 1, at 15, 200; 15 AMERICAN SLAVE, ser. 2, *supra* note 96, pt. 2, at 136, 205, 419; 4 AMERICAN SLAVE, supp. ser. 1, *supra* note 114, pt. 2, at 557-58; 7 AMERICAN SLAVE, supp. ser. 1, *supra* note 114, pt. 2, at 515; 8 AMERICAN SLAVE, supp. ser. 1, *supra* note 114, pt. 3, at 966-967; 3 AMERICAN SLAVE, supp. ser. 2, *supra* note 268, pt. 2, at 779; 6 AMERICAN SLAVE, supp. ser. 2, *supra* note 268, pt. 5, at 2289; J.D. HALE, SKETCHES OF SCENES IN THE CAREER OF CHAMP FERGUSON AND HIS LIEUTENANT; WITH CHAMP’S CONFESSION. J.M. HUGHES AND THE KU KLUX KLAN 42 (n.p. 1870?) [hereinafter HALE, SKETCHES OF SCENES IN THE CAREER OF CHAMP FERGUSON]; 2 HOLDEN TRIAL, *supra* note 37, at 1782, 1857, 2090, 2136-37, 2151; 2 KLAN REPORT, *supra* note 16, at 63, 86, 139; 3 KLAN REPORT, *supra* note 17, at 39, 46, 197, 198, 587; 4 KLAN REPORT, *supra* note 34, at 623, 1174; 7 KLAN REPORT, *supra* note 16, at

Though reticent on many issues, witnesses and other independent commentators spoke forthrightly about the overwhelming sense of unease the klans inspired. The “kuklux,” wrote an Alabama diarist, was “a source of terror to all negroes and radicals.”<sup>662</sup> This impression is reinforced by the ruminations of a Union soldier stationed in Spartanburg, South Carolina. “It is impossible for me to explain the situation of this country. The K.K.K.s, as they style themselves, have scared the people out of their wits. They are afraid to speak above a whisper.”<sup>663</sup> And that, of course, was precisely the point. The insidiousness of klan violence suggested by the soldier’s comment is all the more palpable in the report of a frustrated Texas Bureau official, who describes freedmen and Unionists who are “hunted all through the night by the Ku-Kluxes,” occasioning an inevitable deluge of panicked queries each morning, “who was killed last night? how many?”<sup>664</sup> Agent Fred S. Palmer elaborates, “The white population, through these Ku-Klux Klans, have compelled a most complete system of surveillance over the freedmen, scarcely equaled under the old slave regime. They are completely subjugated—afraid to say their souls are their own—afraid to express their sentiments—and afraid to exercise the elective franchise conferred upon them by the laws of the State.”<sup>665</sup> While not every southern community was so thoroughly besieged, word traveled throughout the region that the possibility of terrorism was very real indeed. Much as the whipping of some slaves communicated a message to all the rest, klan atrocities had a powerful inhibiting effect on the freedpeople and their allies. What they might have been in the absence of terror — with its assault upon the psyche, distortion of identity, disruption of personal lives, and community upheaval — we will never know. What is perfectly plain, however, is that

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606; 9 KLAN REPORT, *supra* note 26, at 720, 1285; 10 KLAN REPORT, *supra* note 113, at 1759, 1848; 11 KLAN REPORT, *supra* note 40, at 238-39, 427, 442, 453, 502, 588; 12 KLAN REPORT, *supra* note 44, at 1029, 1087, 1151; 13 KLAN REPORT, *supra* note 15, at 46; S.C. KLAN TRIALS, *supra* note 16, at 334, 366, 394, 565, 569; MORTON, PROTECTION OF LIFE, *supra* note 37, at 4; *Letter from Mississippi*, NEW NAT'L ERA (Washington, D.C.), Mar. 14, 1872, at 1; *The Reign of Terror South*, NEW NAT'L ERA (Washington, D.C.), Feb. 2, 1871, at 2.

662. Palmer Family Collection, Alabama Department of Archives and History, Montgomery, Ala., [Palmer Diary], Diary Entry, at 11 (1871).

663. N.Y. TRIB., June 8, 1871, at 2. A Louisiana Bureau official likewise reported “[t]hat the freedmen are in complete subjection to the will of the whites by whom they were made to vote, subject to their dictation, under penalty of death from [the] KKK.” BRFAL, *supra* note 36, RG 105, Vol. 30, Murders and Outrages, New Orleans, La., Nov. 10, 1868. Much the same impression is conveyed in BRFAL, *supra* note 36, RG 105, Vol. 136, Assistant Adjutant General, Synopses of Reports, Washington, D.C., May 18, 1868; H.R. MISC. DOC. NO. 40-52, at 96 (1869); PROCEEDINGS OF THE STATE CONVENTION OF THE COLORED CITIZENS OF TENNESSEE, *supra* note 388, at 9; and S.C. KLAN TRIALS, *supra* note 16, at 308, 565.

664. BRFAL, *supra* note 36, RG 105, M 821, R 32, Murders and Outrages, Marion County, Tex., July 10, 1868.

665. H.R. MISC. DOC. NO. 41-53, at 301 (1870).

this persistent confrontation with mortal danger produced prodigious and lasting effects.<sup>666</sup>

Postwar Americans in general — and the disadvantaged, disfranchised, and beset in particular — were hardly given to the sort of extensive public ruminations about their mental and emotional lives that are easily taken for granted in today's psychologically minded society. But contemporaneous sources indicate that many victims of klan terror also suffered transparent psychic damage as a result of their ordeals.<sup>667</sup> Modern clinical research shows that disempowered and disconnected populations are indeed acutely vulnerable to traumatogenic disorders.<sup>668</sup> In the words of one noted traumatologist, “[p]sychological trauma is an affliction of the powerless.”<sup>669</sup> Some of the traumatic sequelae of klan violence are implicit in oblique, often cursory, references, as in Joseph Harvey's sorrowful admission that his once robust wife “has never been well” since being struck on the head in the course of a klan onslaught.<sup>670</sup> In another episode, a young woman who

666. Jean Améry's reflections on the psychic ramifications of torture, drawn from his experiences as a survivor of Nazi concentration camps, are particularly resonant here:

Whoever has succumbed to torture can no longer feel at home in the world. The shame of destruction cannot be erased. Trust in the world, which already collapsed in part at the first blow, but in the end, under torture, fully, will not be regained. . . . It is *fear* that henceforth reigns over him. Fear — and also what is called resentments. They remain, and have scarcely a chance to concentrate into a seething, purifying thirst for revenge.

JEAN AMÉRY, *AT THE MIND'S LIMITS: CONTEMPLATIONS BY A SURVIVOR ON AUSCHWITZ AND ITS REALITIES* 40 (1980).

667. Contemporary psychologists use the term posttraumatic stress disorder [PTSD] to describe traumatogenic mental illness. That was not, of course, always the case; since the late nineteenth century, observers have described, labeled, and categorized traumatically-induced symptomatology in various ways. For a discussion of evolving interpretations of these disorders, see MICHAEL R. TRIMBLE, *POST-TRAUMATIC NEUROSIS: FROM RAILWAY SPINE TO THE WHIPLASH* (1981); ALLAN YOUNG, *THE HARMONY OF ILLUSIONS: INVENTING POST-TRAUMATIC STRESS DISORDER* 13-116 (1995); Michael R. Trimble, *Post-Traumatic Stress Disorder: History of a Concept*, in *TRAUMA AND ITS WAKE: THE STUDY AND TREATMENT OF POST-TRAUMATIC STRESS DISORDER* (Charles R. Figley ed., 1985); Bessel A. van der Kolk et al., *History of Trauma in Psychiatry*, in *TRAUMATIC STRESS: THE EFFECTS OF OVERWHELMING EXPERIENCE ON MIND, BODY, AND SOCIETY* 47 (Bessel A. van der Kolk et al. eds., 1996); and John P. Wilson, *The Historical Evolution of PTSD Diagnostic Criteria: From Freud to DSM-IV*, in *PSYCHOTRAUMATOLOGY: KEY PAPERS AND CORE CONCEPTS IN POST-TRAUMATIC STRESS* (George S. Everly, Jr. & Jeffrey M. Lating eds., 1995) [hereinafter *PSYCHOTRAUMATOLOGY*].

668. JUDITH LEWIS HERMAN, *TRAUMA AND RECOVERY* 60 (1992) [hereinafter *HERMAN, TRAUMA AND RECOVERY*]. The primary factor in determining whether an individual develops what clinicians today identify as PTSD remains the nature of the traumatic event itself; personal characteristics, however, are crucial in determining the form the disorder assumes. *See id.* at 58.

669. *See id.* at 33.

670. 2 HOLDEN TRIAL, *supra* note 37, at 1429; *see also id.* at 1439, 1440; JOHN POOL, *PROTECTION OF LIFE, ETC., AT THE SOUTH — ENFORCEMENT OF [THE] FOURTEENTH AMENDMENT. SPEECH OF [THE] HON. JOHN POOL, OF NORTH CAROLINA, DELIVERED IN THE SENATE OF THE UNITED STATES, APRIL 5 AND 12, 1871*, at 26 (Washington, D.C., F. & J. Rives & Geo. A. Bailey 1871).

had been thrown violently to the ground during an attack upon her family home was said to have been “laid up for some time from the effects of the shock.”<sup>671</sup> And a Mississippi freedman confided to his examiners that ever since he was strung up by klansmen and left to die, “I have been uneasy. I have worked and made a crop, and worked in uneasiness all the time.”<sup>672</sup>

Still others addressed the psychological impact of klan terror more boldly, as in the testimony of Alexander H. Gustin, a white radical whose wife was “insulted” by klansmen who amused themselves by “poking out their tongues at her, and leaning over the bed” inducing symptoms severe enough to warrant medical intervention.<sup>673</sup> “[M]y wife was scared so I had to send for Dr. Grant; he sat up with her one night; Dr. Grant said she came very near having congestion of the brain.”<sup>674</sup> In a remarkably similar episode, one of four daughters who happened to be staying at her mother’s home when the klan paid a call was utterly devastated by the experience. “The doctor who attended [her] says that it was the cause of the daughter losing her mind . . . She has never been in her right mind since.”<sup>675</sup> Anxious that his wife might be similarly affected — that she would “get so uneasy and be tore up in mind” — a Mississippi freedman sheltered her from all news of a local klan outrage.<sup>676</sup> Men, too, were sometimes overcome by the klan’s menacing appearance. Though evidently not himself a target, a

671. 12 KLAN REPORT, *supra* note 44, at 1153. A North Carolina woman was left “insensible for some time” in the aftermath of a klan raid. 2 KLAN REPORT, *supra* note 16, at 109. Others sustained psychological injuries from which they appeared unlikely to recover. See 3 KLAN REPORT, *supra* note 17, at 349, 524.

672. 12 KLAN REPORT, *supra* note 44, at 889.

673. STEVENSON, KU KLUX KLAN, *supra* note 35, at 9; see also H.R. MISC. DOC. NO. 41-53, at 145 (1870).

674. STEVENSON, KU KLUX KLAN, *supra* note 35, at 9; see also H.R. MISC. DOC. NO. 41-53, at 145.

675. 12 KLAN REPORT, *supra* note 44, at 1087. Charles Chesnutt offers a sensitive literary rendering of the psychological devastation of klan violence in *The Marrow of Tradition*. Among the protagonists is the embittered son of a black woman whose mind was ravaged by an encounter with nightriders years before. He recalls how “[o]ne night a crowd er w’ite men come ter ou’ house an’ tuck my daddy out an’ shot ‘im ter death, an’ skeered my mammy so she ain’ be’n herse’f f’m dat day ter dis.” CHARLES W. CHESNUTT, *THE MARROW OF TRADITION* 111 (Eric J. Sundquist ed., Penguin Books 1993) (1901). On hearing this news, the man’s companion then sorrowfully recalls,

old Aunt Milly, — ‘Silly Milly,’ the children called her, — wandering aimlessly about the street, muttering to herself incoherently. He had felt a certain childish awe at the sight of one of God’s creatures who had lost the light of reason, and he had always vaguely understood that she was the victim of human cruelty . . . This was his first knowledge of the real facts of the case.

*Id.* at 112.

676. 11 KLAN REPORT, *supra* note 40, at 485.

Navasota, Texas, freedman "went mad with fright after seeing terrorists in full, hooded regalia."<sup>677</sup>

Contemporary theorists and clinicians have begun to explore the psychological and neurological bases underlying human responses to such ordeals. According to Herman, the severity of traumatogenic symptoms is positively correlated to the capacity of the original stressor to inspire fear and helplessness in its victims. "Traumatic events overwhelm the ordinary systems of care that give people a sense of control, connection, and meaning . . . produc[ing] profound and lasting changes in physiological arousal, emotion, cognition, and memory."<sup>678</sup> While we have neither the luxury of examining victims of klan violence for ourselves nor an historical record suited to drawing specific inferences regarding their clinical profiles, it is difficult to conceive that the dynamics of human psychobiology could have so transformed in the one-hundred-plus years that have intervened as to deprive this insight of all relevance.<sup>679</sup> Like any other terrorized population, this

677. JAMES SMALLWOOD, *TIME OF HOPE, TIME OF DESPAIR: BLACK TEXANS DURING RECONSTRUCTION* 142 (1981).

678. HERMAN, *TRAUMA AND RECOVERY*, *supra* note 668, at 33-34. She goes on to describe the three major symptom categories that distinguish traumatic response: hyperarousal, or, the persistent expectation of danger; intrusion, manifested in the constant re-experiencing of the traumatogenic moment; and constriction, which refers to the psychic numbing employed to cope with unbearable negative stimuli. *Id.* at 35-47. Though it is unlikely that this symptomatology perfectly maps onto the experiences of klan victims, it is nonetheless useful in imagining a range of possible reactions to terroristic sexual assault.

679. Bessel A. van der Kolk and his colleagues have been at the vanguard of research on the psychobiology of posttraumatic disorders. See José A. Saporta, Jr. & Bessel A. van der Kolk, *Psychobiological Consequences of Severe Trauma*, in *TORTURE AND ITS CONSEQUENCES: CURRENT TREATMENT APPROACHES* 151 (Metin Basglu ed., 1992); Bessel A. van der Kolk, *The Biological Response to Psychic Trauma*, in *POST-TRAUMATIC THERAPY AND VICTIMS OF VIOLENCE* 25 (Frank M. Ochberg ed., 1988); Bessel A. van der Kolk & José Saporta, *The Biological Response to Psychic Trauma: Mechanisms and Treatment of Intrusion and Numbing*, 4 *ANXIETY RES.* 199 (1991); Bessel A. van der Kolk, *The Body Keeps the Score: Memory and the Evolving Psychobiology of Posttraumatic Stress*, 1 *HARV. REV. PSYCHIATRY* 253 (1994); Bessel van der Kolk et al., *Inescapable Shock, Neurotransmitters, and Addiction to Trauma: Toward a Psychobiology of Post-Traumatic Stress*, 20 *BIOLOGICAL PSYCHIATRY* 314 (1985); Bessel A. van der Kolk, *The Psychobiology of Post-traumatic Stress Disorder*, 58 *J. CLINICAL PSYCHIATRY* 16 (1997); Bessel A. van der Kolk, et al., *The Psychobiology of Traumatic Memory: Clinical Implications of Neuroimaging Studies*, in *PSYCHOBIOLOGY OF POSTTRAUMATIC STRESS DISORDER* 99 (Rachel Yehuda & Alexander C. McFarlane eds., 1997) [hereinafter *PSYCHOBIOLOGY OF POSTTRAUMATIC STRESS DISORDER*]; Bessel A. van der Kolk, *The Trauma Spectrum: The Interaction of Biological and Social Events in the Genesis of the Trauma Response*, 1 *J. TRAUMATIC STRESS* 273 (1988). Important contributions have also been made by a number of other researcher-clinicians. See, e.g., Matthew J. Friedman, *Biological Approaches to the Diagnosis and Treatment of Post-Traumatic Stress Disorder*, in *PSYCHOTRAUMATOLOGY*, *supra* note 667, at 171; Matthew J. Friedman, *Psychobiological and Pharmacological Approaches to Treatment*, in *INTERNATIONAL HANDBOOK OF TRAUMATIC STRESS SYNDROMES* 785 (John P. Wilson & Beverley Raphael eds., 1993); Hassan Hagh-Shenas et al., *Psychobiology of Post-Traumatic Stress Disorder*, in *POST-TRAUMATIC STRESS DISORDERS: CONCEPTS AND THERAPY* 139 (William Yule ed., 1999); A. MacNeill Horton, Jr., *Neuropsychology of PTSD: Problems, Prospects, and Promises*, in *PSYCHOTRAUMATOLOGY*, *supra* note 667, at 147; Lawrence C. Kolb, *The Psychobiology of PTSD: Perspectives and Reflections on the*



one was afflicted with post traumatic injuries that ravaged mind, body, and spirit in ways that can be well imagined if not always thoroughly documented.

A number of cases from the era speak directly to the psychic trauma of sexualized violence. Testifying to the gang rape of her friend Harriet (née) Merriweather during the Memphis Riots,<sup>680</sup> Cynthia Townsend recalled, "she has sometimes been a little deranged since then, her husband left her for it."<sup>681</sup> The proximity of those two remarks is hardly accidental. Although Merriweather's assailant used the threat of lethal violence to force her to submit, her husband refused to accept a woman "tainted" by rape as his wife. "When he came out of the fort, and found what had been done," she continued, "he said he would not have anything to do with her any more."<sup>682</sup> However unremarkable reactions of this kind might be even today,<sup>683</sup> they surely must have exacerbated the psychological consequences of sexual terror, depriving the primary victim of critical emotional support and further undermining her sense of dignity during a period of extreme vulnerability.<sup>684</sup> At the same time, this incident vividly demonstrates some

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*Past, Present, and Future*, 6 J. TRAUMATIC STRESS 293 (1993); John H. Krystal et al., *Neurobiological Aspects of PTSD: Review of Clinical and Preclinical Studies*, 20 BEHAV. THERAPY 177 (1989); John H. Krystal et al., *Post Traumatic Stress Disorder: Psychobiological Mechanisms of Traumatic Remembrance*, in MEMORY DISTORTION: HOW MINDS, BRAINS, AND SOCIETIES RECONSTRUCT THE PAST 150 (Daniel L. Schacter ed., 1995); NEUROBIOLOGICAL AND CLINICAL CONSEQUENCES OF STRESS: FROM NORMAL ADAPTATION TO POST-TRAUMATIC STRESS DISORDER (Matthew J. Friedman et al. eds., 1995); PSYCHOBIOLOGY OF POSTTRAUMATIC STRESS DISORDER, *supra*; Steven M. Southwick et al., *Psychobiologic Research in Post-Traumatic Stress Disorder*, 17 PSYCHIATRIC CLINICS OF N. AM. 251 (1994).

680. Klansmen were not singled out for responsibility in the Memphis Riots. Yet those who perpetrated the sexual assaults of those days were white men deeply imbued with klan-like racial views.

681. MEMPHIS RIOTS, *supra* note 83, at 163. Harriet herself acknowledged, "I have not got well since my husband went away." *Id.* at 176; *see also id.* at 177.

682. *Id.* at 163.

683. Reactions like these were widely reported among victims of the wars in the former Yugoslavia. *See, e.g.*, Vera Folnegovic-Smalc, *Psychiatric Aspects of the Rapes in the War against the Republics of Croatia and Bosnia-Herzegovina*, in MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA-HERZEGOVINA 174, 176, 179 n. 2 (Alexandra Stiglmeier ed., 1994) [hereinafter MASS RAPE]; Maria B. Olujić, *The Croatian War Experience*, in FIELDWORK UNDER FIRE: CONTEMPORARY STUDIES OF VIOLENCE AND SURVIVAL 186, 196-97 (Carolyn Nordstrom & Antonius C.G.M. Robben eds., 1995); Salzman, *supra* note 104, at 371; Elisabeth Bumiller, *Deny Rape or Be Hated: Kosovo Victims' Choice*, N.Y. TIMES, June 22, 1999, at A1; Emma Daly, *Silent Shame of Women's Wounds of War*, INDEP. (London), June 26, 1999, at 14; Thalif Deen, *Conflict-Women: Sexual Violence in Balkans*, INTER PRESS SERVICE (United Nations), May 25, 1999; Williams, *In Kosovo*, *supra* note 152; UNFPA Documents the Horror: Rape among Kosovo Refugees, 26 POPULI, June 1999, at 2, also available at <http://web.unfpa.org/modules/populi/issues99/june99/news2.htm> (June 1999).

684. For an example of current victimological thinking on this issue, see ROBERT ELIAS, THE POLITICS OF VICTIMIZATION: VICTIMS, VICTIMOLOGY, AND HUMAN RIGHTS 116, 117 (1986).

of the potential manifestations of secondary traumatization in such circumstances. Although little information is provided about the character and temperament of Merriwether's former spouse, he was apparently unable to reason outside of the dominant cultural paradigm, which dictated that sexual violations not only permanently scarred the female victim, but also subverted the manhood of her presumptive protector. Extrapolating from the insights of modern psychology, we can surmise that Merriwether's husband was himself indirectly traumatized as a result of the sexualized violence of the klans.<sup>685</sup> Whatever his failings in nineteenth- or twentieth-century terms, the fact remains that his life was forever altered by these events.

If a comparatively small number of observers were willing to discuss the psychological impact of klan violence, they were far less reticent about describing its physical effects. Many victims, in fact, preferred to display their injuries to officials potentially able to offer some relief.<sup>686</sup> A member of the North Carolina legislature called to testify before the Joint Select Committee reported:

I have seen a great many persons in Raleigh; I cannot tell how many, who have come there and exhibited their persons to any one who might wish to see them, with their backs lashed, and with wounds from gun and pistol-shots; I have seen a great many colored people, and some white men, who have come to the State capital and made known their troubles there.<sup>687</sup>

Although I am most interested here in the less concrete indicia of traumatic stress, such commentary suggests something of the ways in which trauma's varied instantiations are deeply, almost irretrievably, intertwined. Thus, in a number of cases that are ostensibly intended to chronicle "real" corporeal harms, the line between the physical and the psychological is rendered practically indistinguishable. One example may be seen in the earnest reflections of this South Carolina observer:

No one can imagine the sufferings those poor creatures have endured . . . the terrible anxiety, the constant fear of scourging and murder, the sleeping in the woods during the cold Winter nights and in the rains of Spring, and the actual torture that hundreds endured whose flesh was so horribly mangled by the blows of their brutal assailants that they will never fully recover.<sup>688</sup>

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685. Elias notes that victims often perceive rape's violation as extending beyond themselves to encompass those close to them. *See id.* at 117.

686. North Carolina State Supreme Court Judge Thomas Settle thus informed a Senate committee that many freedpeople who had been attacked by klansmen "came to me and showed their scars." S. REP. NO. 42-1, at 86 (1871).

687. 2 KLAN REPORT, *supra* note 16, at 103.

688. N.Y. TRIB., Nov. 16, 1871, at 2. Howard conveys the same sense of despair in recollecting the words of a Texas Bureau official who reported that "[t]he Negroes . . . never

Likewise, G. A. Smith confided to a correspondent, "Neither me nor my family have the fisical durability to go through again the anxiety we have went through the last month[.] [O]ur healths have already failed and now their is scarsely one of my family able to take care of the rest."<sup>689</sup> Interestingly, both of these passages begin with an express recognition of the reality of psychic trauma only to shift immediately to a depiction of the more readily described, and accepted, forms of bodily injury sustained in the course of klan raids.

This blurring of experience and its translation is equally apprehensible in the case of Frances Thompson, another freedwoman who was gang raped during the Memphis Riot.<sup>690</sup> After delineating the crude facts of her ordeal, she continues to recollect, "I was sick for two weeks. I lay for three days with a hot, burning fever."<sup>691</sup> Thompson's description of these events suggests that her illness was most likely the result of the combined effects of physical and emotional trauma, and that she herself experienced it that way. A comparable tenor appears in the testimony of Thompson's friend, Lucy Smith, another victim of the rampages at Memphis.

They tried to take advantage of me, and did. I told them I did not do such things, and would not. One of them said he would make me, and choked me by the neck. My neck was swollen up next day, and for two weeks I could not talk to any one. After the first man had connexion with me, another got hold of me and tried to violate me, but I was so bad he did not. He gave me a lick with his fist and said I was so damned near dead he would not have anything to do with me . . . I bled from what the first man had done to me. The man said, 'Oh, she is so near dead I won't have anything to do with her.' I was injured right smart, and kept my bed for two weeks after.<sup>692</sup>

The enormity of Smith's reaction was by no means unique among freedwomen subjected to sexual tortures. Hannah Tutson, a Florida freedwoman who had been stripped and whipped by klansmen, one of whom subsequently attempted to rape her, graphically recounts, "I tell you, men, he pulled my womb down so that sometimes now I can hardly walk."<sup>693</sup> Likewise, a black female student who was raped by suspected klansmen was "from his outrageous conduct . . . confined to

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recovered from the election murders of 1868." HOWARD, 2 AUTOBIOGRAPHY OF OLIVER OTIS HOWARD, *supra* note 36, at 386.

689. GOVERNOR SMITH PAPERS, Alabama Department of Archives and History, Montgomery, Ala., Letter from G.A. Smith to Hon. A.J. Applegate, Sept. 19, 1868, *cited in* FITZGERALD, *supra* note 6, at 222. For another of the rare occasions in which a freedman is the subject of such observations, see 10 KLAN REPORT, *supra* note 113, at 1789, 1796.

690. MEMPHIS RIOTS, *supra* note 83, at 196.

691. *Id.* at 197.

692. *Id.*

693. 13 KLAN REPORT, *supra* note 15, at 62.

her bed for weeks.”<sup>694</sup> Though it would be a mistake to rely solely, or even largely, upon the unmodified principles of contemporary psychology to interpret the experiences of historical actors, recent findings suggesting that sadistic rape is liable to produce serious, frequently protracted consequences in its victims might prove illuminating here. According to Groth, for example, women subjected to these traumas are not only at high risk for clinical depression and suicidality, but often bear physical scars that serve as constant reminders of the inciting event.<sup>695</sup> Injuries sustained at the hands of sadistic sex criminals cannot have been much simpler to overcome in the not-so-distant past than they are in our own day.

Numerous witnesses to the gamut of klan violence remarked on the length of time required for victims to recover from some of the worst atrocities.<sup>696</sup> Caswell Holt, for example, describes being confined for months following an attack by the KKK in which he received multiple gunshot wounds: “I could get about in April, but I couldn’t do anything. I was not able to do anything until away in the middle of the summer.”<sup>697</sup> His experience was in no way unusual; freedpeople who had been whipped and otherwise abused by klansmen often took to their beds for weeks following an attack.<sup>698</sup> Aaron Biggerstaff was flogged “until he could neither sit, stand, nor lie; they had just to prop him up in bed, and I think he remained there two weeks before he could leave the house.”<sup>699</sup> Some victims never recovered from their injuries.<sup>700</sup> Mrs. Hawkins, a white woman, was severely lashed by klan members who subsequently “dragged her down the steps of the house, inflicting a very severe wound on her back, and injuring her legs.”<sup>701</sup>

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694. 12 KLAN REPORT, *supra* note 44, at 1165. A similar ordeal is chronicled in 5 KLAN REPORT, *supra* note 16, at 1862.

695. See GROTH, *supra* note 178, at 57-58. Likewise, Herman reports that rape survivors generally exhibit high levels of persistent PTSD, a result of both the nature of the trauma itself and the physical, psychological, and moral violations it embodies. See HERMAN, TRAUMA AND RECOVERY, *supra* note 668, at 57-58.

696. Evoking the physically traumatic effects of klan violence, an observer beseeched, “Follow me to the sick chambers of thousands more, whose bodies are racked with pain, and their dislocated limbs tortured with indescribable anguish, the effect of the awful wounds inflicted by these vindictive men . . .” STEARNS, *supra* note 41, at 434.

697. 2 HOLDEN TRIAL, *supra* note 37, at 1318. Parallel cases may be found in 2 HOLDEN TRIAL, *supra* note 37, at 1323, 1876, and S. REP. NO. 42-1, at lxx-lxvi (1871).

698. See, e.g., S. REP. NO. 42-1, at lxiv, lxxix, 86, 345; 5 AMERICAN SLAVE, ser. 1, *supra* note 114, pt. 4, at 234; 2 HOLDEN TRIAL, *supra* note 37, at 1222, 1315, 1323, 1405; 7 KLAN REPORT, *supra* note 16, at 653; 9 KLAN REPORT, *supra* note 26, at 1364; 12 KLAN REPORT, *supra* note 44, at 889.

699. 2 KLAN REPORT, *supra* note 16, at 28.

700. See, e.g., 2 HOLDEN TRIAL, *supra* note 37, at 1356-57; 3 KLAN REPORT, *supra* note 17, at 432; 9 KLAN REPORT, *supra* note 26, at 858; S.C. KLAN TRIALS, *supra* note 16, at 685.

701. 2 KLAN REPORT, *supra* note 16, at 107.

The attack left her permanently disabled.<sup>702</sup> How she, and many others like her, negotiated the vicissitudes of life thereafter, we simply do not know. What is certain, however, is the fact that the consequences of klan violence extended well beyond what is immediately apparent.

More specific remarks concerning victims' inability to resume their former responsibilities, particularly as they relate to employment, provide additional insight into the complex ramifications of klan terror. In one exemplary case, a Tennessee freedman tells of being whipped "so badly that [he] could not plow for two days."<sup>703</sup> Another ex-slave sustained injuries so severe that "it was near two weeks before he was able to do much."<sup>704</sup> Similarly, the freedman Nathan Cannon was flogged to the point that he was unable to work for five weeks,<sup>705</sup> while a man who had been shot by the KKK suffered persistent spasms that interfered with his ability to support himself for some time after.<sup>706</sup> Beyond the obvious difficulties ensuing from the loss of full-time labor, these traumas exacted considerable human and material costs. For instance, one victim whose injuries prevented him from working was forced to send his two children away when he could no longer support them.<sup>707</sup> Jacob Brannock was likewise flogged to the point that "he will not be able to Do any more work this winter if ever, and he has a large family and one is not able to help the other."<sup>708</sup> Following a severe beating by klansmen, a South Carolina freedwomen reported, "I couldn't hold my child on my lap to suckle it; I had to lay it on the bed and stand by it."<sup>709</sup> The aftereffects of violence in cases such as this transcended the sphere of economics to impact the primary victim as well as her family and community.

As male heads of households, mothers, children, and sometimes entire families abandoned their homes desperate for relief from the terror, much valuable property was lost, including homes, livestock, and crops, and with it the security and independence they represented to the former slaves as a body. Caleb Jenkins, an ex-slave from South Carolina whom the Klan threatened to murder, admitted to being too

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702. *See id.*

703. H.R. MISC. DOC. NO. 41-53, at 167 (1870); *see also* STEVENSON, KU KLUX KLAN, *supra* note 35, at 10 (offering another account of this episode). Similarly debilitating attacks are set forth in 2 HOLDEN TRIAL, *supra* note 37, at 1445, 1690, 1704.

704. 2 HOLDEN TRIAL, *supra* note 37, at 1170; *see also id.* at 1239-40.

705. 11 KLAN REPORT, *supra* note 40, at 485.

706. 6 KLAN REPORT, *supra* note 16, at 517.

707. *Id.* at 563.

708. PAPERS OF WILLIAM WOODS HOLDEN, *supra* note 80, at 443.

709. 3 KLAN REPORT, *supra* note 17, at 524.

frightened to return to his home to collect his furnishings.<sup>710</sup> Recalling a klan attack that that occurred months before, another freedman attested, "I . . . am unable to do work even at this day and I am in a destitute condition being compelled to leave that neighborhood and my crops to the mercy of these men."<sup>711</sup> A white resident of Cornersville, Tennessee — a region all but overrun by the KKK — was likewise aggrieved. "I have made a good crop, but cannot go there to gather it without protection,"<sup>712</sup> protection that was not, it is safe to say, forthcoming. The magnitude of this tragedy as well as an intimation of its lasting psychological import was captured by General Hatch, who had ample opportunity to witness the destruction first-hand:

One of the most important and lamentable facts connected with these outrages is the loss of property to the freedmen. They commenced this year of their free life full of hope for the future, and in the majority of cases with an uncommon willingness and eagerness to do everything for their employers.

The planter received the benefit of their labor during the entire summer, and now as the freedmen had harvested their crops, and saw some little reward in store for them, the latter have either been ruthlessly murdered or driven from their homes robbed of their property, stripped of everything they possessed, torn from family and friends.<sup>713</sup>

Hatch's commentary plainly implies that dispossession was no mere byproduct of klan violence; in some vicinities at least it was the result of conscious design. Nor were these isolated incidents. So pervasive were they that Representative Job E. Stevenson used the House floor to underscore the pernicious economic effects of klanishness upon the entire region. "The Kuklux conspiracy is fatal to values. It disturbs business, disorganizes labor, paralyzes industry and commerce."<sup>714</sup> By his estimation, property values fell "by the million" in areas of exten-

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710. See 4 KLAN REPORT, *supra* note 34, at 697. Under harsh questioning by Representative Van Trump, Jenkins affirmed that his family fled with "only what the children have on their backs; we now just lay down on the floor with no covering, no beds." *Id.* at 698.

711. AGO, *supra* note 16, RG 94, M 666, R 67, F 2146, Affidavit of Dean Reynolds, Aug. 5, 1869. These consequences are further illustrated in AGO, *supra* note 16, RG 94, M 666, R 1, F 60, Affidavit of Wyatt Prince, Dec. 21, 1870; AGO, *supra* note 16, RG 94, M 666, R 12, F 1612, Letter from E.L. Huggins to S.N. Benjamin, Aug. 9, 1871; BRFal, *supra* note 36, RG 105, Vol. 30, Murders and Outrages, New Orleans, La., Sept. 10, 1868; BRFal, *supra* note 36, RG 105, M 666, M 821, R 32, Criminal Offenses Committed in the State of Texas, Walker County, Tex., July 31, 1868; 9 KLAN REPORT, *supra* note 26, at 1188; 12 KLAN REPORT, *supra* note 44, at 1084-85; and PROCEEDINGS OF THE STATE CONVENTION OF THE COLORED CITIZENS OF TENNESSEE, *supra* note 388, at 15.

712. H.R. MISC. DOC. NO. 41-53, at 297 (1870).

713. BRFal, *supra* note 36, RG 105, Vol. 136, Assistant Adjutant General, Synopses of Reports, Washington, D.C., Nov. 16, 1868.

714. JOB E. STEVENSON, KU-KLUX CONSPIRACY. SPEECH OF [THE] HON. JOB E. STEVENSON, OF OHIO, DELIVERED IN THE HOUSE OF REPRESENTATIVES, MAY 30, 1872, at 5 (Washington, D.C., Union Republican Congressional Committee 1872) [hereinafter STEVENSON, KU-KLUX CONSPIRACY].

sive klan activity.<sup>715</sup> Needless to say, these losses were ultimately shouldered in large part by those who were the principal objects of the klans' wrath.

The same may be said of the klans' ruthless assaults on black education. White supremacist efforts to thwart the freedpeople's educational aspirations targeted both its human and material foundations. An inquiry into the problem in one state concluded that "[i]n order to carry out their mischief, [the Kuklux outlaws] burn school-houses and the churches in which school is taught, besides inflicting punishment of the most horrible and atrocious character upon the persons of teachers."<sup>716</sup> The report further underscored the present and future implications of these acts. "The consequence is there are thousands of children who are growing up uneducated, and ignorance is by this course sown broadcast in our state, inviting every grade of crime and immorality that should alarm not only the lover of humanity, but the patriot, of the welfare of our country."<sup>717</sup> While the committee's claims regarding the likely moral effects of educational deprivation reflect class-based fears long since recognized as unfounded, the cumulative effects of the terror perpetrated against teachers and students and the destruction of the physical space in which learning was supposed to occur severely inhibited the freedpeople's capacity to realize their aspirations for social and economic advancement.

Equally consequential was the flight of countless victims and would-be victims who abandoned their homes in anticipation of violence. "The KuKlux's make the night hideous with their yells and cries, and frightful appearance, robbing and terrifying the freedmen to such an extent that many of them have run away from their homes."<sup>718</sup> Most of those who fled did so for a relatively brief period, sleeping in the nearby woods for days, sometimes weeks or months, at a time.<sup>719</sup>

715. *Id.* The long-term economic costs of klan violence are discussed in 1 KLAN REPORT, *supra* note 44, at 120, 121. A more general assessment is included in Eugene Lawrence, *The Ku-Klux Conspiracy*, HARPER'S WKLY., Oct. 19, 1872, at 805.

716. PROCEEDINGS OF THE STATE CONVENTION OF THE COLORED CITIZENS OF TENNESSEE, *supra* note 388, at 3.

717. *Id.*

718. BRFAL, *supra* note 36, RG 105, M 821, R 32, Criminal Offenses Committed in the State of Texas, Lamar County, Tex., Oct. 31, 1868.

719. *See, e.g.*, BRFAL, *supra* note 36, RG 105, M 869, R 34, Murders and Outrages, Abbeville County, S.C., Nov. 1868; S. REP. NO. 42-1, at xcii, cxiii (1871); H.R. MISC. DOC. NO. 41-53, at 145, 291, 292, 294, 295, 296, 297, 298, 299, 300, 301 (1870); 4 AMERICAN SLAVE, ser. 1, *supra* note 114, pt. 2, at 30, 158; 8 AMERICAN SLAVE, ser. 2, *supra* note 96, pt. 2, at 18, 26; 2 AMERICAN SLAVE, supp. ser. 2, *supra* note 268, pt. 1, at 141-42; 3 AMERICAN SLAVE, supp. ser. 2, *supra* note 268, pt. 2, at 780; 4 AMERICAN SLAVE, supp. ser. 2, *supra* note 268, pt. 3, at 1327; 5 AMERICAN SLAVE, supp. ser. 2, *supra* note 268, pt. 4, at 1638, 1801; 7 AMERICAN SLAVE, supp. ser. 2, *supra* note 268, pt. 6, at 2608; 8 AMERICAN SLAVE, supp. ser. 2, *supra* note 268, pt. 7, at 3142; BUCK, *supra* note 38, at 7; 2 HOLDEN TRIAL, *supra* note 37, at 2092, 2182; 1-13 KLAN REPORT, *supra* notes 15, 16, 17, 26, 34, 40, 44, 59, 113; S.C.

For others, however, the situation was even more dire.<sup>720</sup> In affidavits filed with the Freedmen's Bureau, a number of former slaves poignantly chronicled the ordeal of forced migration toward an uncertain future. Men like Taylor Bennett, Edwin Brown, Sam Harwell, Moses Tucker, and thousands of nameless others absconded under explicit threats of death.<sup>721</sup> In a report on the condition of affairs in Kentucky, Brevet Captain A. Benson Brown lamented that "[i]n several sections of the 'Jackson Purchase' the colored population has nearly disappeared, having been driven across the Ohio River by the outrages & violence of Regulators, &c."<sup>722</sup> Many of them left entire lives behind — "their homes crops & every thing they possess[ed]"<sup>723</sup> — as they sought refuge in the South's major urban centers.<sup>724</sup> C.J. Bowles, a white schoolteacher, saw one black neighbor after another abandon Giles County for Nashville, Tennessee, where they struggled to survive with no ready means of support, limited skills, and few prospects.<sup>725</sup>

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KLAN TRIALS, *supra* note 16, at 308, 309, 334, 335, 358, 367-68, 370-71, 394, 503, 515, 569-70, 643, 680.

720. See, e.g., BRFAL, *supra* note 36, RG 105, Vol. 30, Murders and Outrages, New Orleans, La., May 31, 1868; BRFAL, *supra* note 36, RG 105, Murders and Outrages, New Orleans, La., July 10, 1868; BRFAL, *supra* note 36, RG 105, Murders and Outrages, New Orleans, La., July 31, 1868; BRFAL, *supra* note 36, RG 105, Murders and Outrages, New Orleans, La., Sept. 20, 1868; STEVENSON, KU-KLUX CONSPIRACY, *supra* note 714, at 6; TENNESSEE GENERAL ASSEMBLY, REPORT OF EVIDENCE TAKEN BEFORE THE MILITARY COMMITTEE, *supra* note 21, at 5, 6, 8, 10, 11, 14, 18, 20, 21, 22, 23, 25, 26, 29, 32, 37, 38, 40, 54, 65, 66.

721. See BRFAL, *supra* note 36, RG 105, B 91, Affidavit of Taylor Bennett, Edwin Brown, Sam Harwell, and Moses Tucker, Nashville, Tenn., July 27, 1868. For additional cases in which death threats inspired their recipients' flight, see BRFAL, *supra* note 36, RG 105, B 91, Affidavits of Stanhope Birdy, Malinda Gregory, Spencer Gregory, and Nathan Harris, Henry McDaniels, and Leander Wright, and Pleasant Hillman, Nashville, Tenn., July 8, 1868; BRFAL, *supra* note 36, RG 105, B 91, Affidavits of C.J. Bowles, Silas Jackson, and Alex Moore, Nashville, Tenn., July 17, 1868; BRFAL, *supra* note 36, RG 105, B 91, Affidavit of George Harland, Nashville, Tenn., July 18, 1868; BRFAL, *supra* note 36, RG 105, M 999, R 34, Affidavits of Gilbert Aiken, Ben Mays, and Jacob Nail, Tenn., July 17, 1868; BRFAL, *supra* note 36, RG 105, M 999, R 34, Affidavit of Pink Harris, Tenn., July 27, 1868. A number of these incidents are also recorded in BRFAL, *supra* note 36, RG 105, Vol. 28, Register of Outrages, Tenn., July 5, 1868.

722. BRFAL, *supra* note 36, RG 105, Vol. 136, Assistant Adjutant General, Synopses of Reports, Washington, D.C., Oct. 31, 1868.

723. BRFAL, *supra* note 36, RG 105, Vol. 30, Murders and Outrages, New Orleans, La., Sept. 20, 1868.

724. *See id.*

725. See BRFAL, *supra* note 36, RG 105, B 91, Affidavit of C.J. Bowles, Nashville, Tenn., July 17, 1868; see also, BRFAL, *supra* note 36, RG 105, B 91, Affidavit of Silas Jackson, Nashville, Tenn., July 17, 1868 (stating that the affiant "left his home and came to Nashville where he's now staying without means of support"). Dozens of freedmen were driven to Nashville from Maury, Marshall, and Lincoln counties following the klan's widely promulgated threat to track down and murder every man who had voted for Brownlow in the recent gubernatorial election. See *supra* note 591 and accompanying text. By one estimate, klan violence forced approximately two hundred area freedmen from their homes during these



Economic insecurity was apparently preferable to many of those who had subsisted under the old regime, where, as one Bureau agent admitted, “[a]lmost nightly outrages are committed upon them; the one tenth of which are never told for fear of worse ones being enacted.”<sup>726</sup> If the white South as a whole was ambivalent about the place of the freedpeople in the postwar order, the actions of the klans suggest that their members were somewhat less so.<sup>727</sup> While the sexual terror they wrought was partly impelled by the challenge of installing a new form of racial subjugation in the aftermath of slavery, this aim was at times overshadowed by whites’ chimerical wish to be free of the former slaves entirely. The swell of migration within the former slave states further presaged the mass exodus of blacks from the region that was to begin shortly thereafter.<sup>728</sup> Significant numbers in each case were driven by a desperate quest for somewhere they might live unmolested by the seemingly omnipresent threat of sexualized violence.<sup>729</sup>

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months, “destitute of food, or any means of subsistence.” H.R. MISC. DOC. NO. 41-53, at 291 (1870).

726. BRFAL, *supra* note 36, RG 105, Vol. 136, Assistant Adjutant General, Synopses of Reports, Washington, D.C., May 18, 1868.

727. Contemporaries too occasionally expressed this idea. For instance, on the basis of his firsthand observations of klan activity in Alamance County, North Carolina, Lieutenant Paul R. Hambrick concluded that its “object appears to be to drive the *colored* men and *Union* men . . . from the . . . county and State.” S. EXEC. DOC. NO. 41-16, at 59 (1871).

728. I am suggesting a comparison between blacks’ internal flight from the ravages of the postwar klans and their migration several decades later from the region and the terror of the lynch mobs. The great migration is explored in COHEN, *supra* note 598; JAMES R. GROSSMAN, *LAND OF HOPE: CHICAGO, BLACK SOUTHERNERS, AND THE GREAT MIGRATION* (1989); DANIEL M. JOHNSON & REX R. CAMPBELL, *BLACK MIGRATION IN AMERICA: A SOCIAL DEMOGRAPHIC HISTORY* (1981); NICHOLAS LEMANN, *THE PROMISED LAND: THE GREAT BLACK MIGRATION AND HOW IT CHANGED AMERICA* (1991); CAROLE MARKS, *FAREWELL — WE’RE GOOD AND GONE: THE GREAT BLACK MIGRATION* (1989); NELL IRVIN PAINTER, *EXODUSTERS: BLACK MIGRATION TO KANSAS AFTER RECONSTRUCTION* (1976); *BLACK EXODUS: THE GREAT MIGRATION FROM THE AMERICAN SOUTH* (Alferdteen Harrison ed., 1991); and *THE GREAT MIGRATION IN HISTORICAL PERSPECTIVE: NEW DIMENSIONS OF RACE, CLASS, AND GENDER* (Joe William Trotter, Jr. ed., 1991).

729. There is an important parallel to be drawn here between the war in the former Yugoslavia, where rape was strategically deployed in a largely successful effort to force all non-Serbs out of certain territories, and klansmen’s undeclared war against African Americans in the Reconstruction era. While the klans did not fixate on the attainment of regional homogeneity with the single-mindedness of the Serbs, in both cases the proliferation of sex crimes and the rampant fear of attack were actively manipulated to advance concrete social and political agendas, and ultimately proved instrumental in driving despised populations from a besieged land. In Catharine MacKinnon’s cogent appraisal of the effects of sexual violence systematically applied, “It *makes them leave*.” Conversation with Catharine A. MacKinnon, in Hamden, Conn. (Apr. 28, 2000). MacKinnon has written most incisively on the use of sexual terrorism in effectuating this aim. See Catharine A. MacKinnon, *Crimes of War, Crimes of Peace*, 4 *UCLA WOMEN’S L.J.* 59, 66 (1993) [hereinafter MacKinnon, *Crimes of War, Crimes of Peace*]; see also Catharine A. MacKinnon, *Rape, Genocide, and Women’s Human Rights*, 17 *HARV. WOMEN’S L.J.* 5, 12 (1994) [hereinafter MacKinnon, *Rape, Genocide, and Women’s Human Rights*].

### B. Intergenerational Effects

And what of the next generation? And the one after that? Much as the memory of slavery has endured as a foundational trauma within the black community,<sup>730</sup> evidence of which may be seen in the resurgence of debate over reparations,<sup>731</sup> the violence of the klans and the

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730. The persistence of slavery's traumatic consequences is considered in PAUL GILROY, *THE BLACK ATLANTIC: MODERNITY AND DOUBLE CONSCIOUSNESS* (1993); PATTERSON, *RITUALS OF BLOOD*, *supra* note 280; VENETRIA K. PATTON, *WOMEN IN CHAINS: THE LEGACY OF SLAVERY IN BLACK WOMEN'S FICTION* (2000); Irving M. Allen, *PTSD Among African Americans*, in *ETHNOCULTURAL ASPECTS OF POSTTRAUMATIC STRESS DISORDER: ISSUES, RESEARCH, AND CLINICAL APPLICATIONS* 209, 220-23 (Anthony J. Marsella et al. eds., 1996); Adrien Katherine Wing & Sylke Merchán, *Rape, Ethnicity, and Culture: Spirit Injury from Bosnia to Black America*, 25 *COLUM. HUM. RTS. L. REV.* 1, 1-7, 25-38 (1993); and Pamela Lynette Jenkins, *African Americans: A Culture of Hope. Cultural Trauma: The Effects of Slavery on Contemporary African Americans as Communicated in the Folklore (Stories) of African Americans* (2001) (unpublished Ph.D. dissertation, California School of Professional Psychology) (on file with the California School of Professional Psychology Library). Addressing the pervasive sexual trauma of bondage more particularly, Patricia L. Gay asserts, "[a]s an African American psychologist, my clinical and personal experience suggests that African American women continue to live with the psychological consequences of the institutionalized sexual violence of slavery." Gay, *supra* note 140, at 5. For a pedagogical perspective on the prospects for overcoming slavery's pernicious effects, see Rinaldo Walcott, *Pedagogy and Trauma: The Middle Passage, Slavery, and the Problem of Creolization*, in *BETWEEN HOPE AND DESPAIR: PEDAGOGY AND THE REMEMBRANCE OF HISTORICAL TRAUMA* 135 (Roger I. Simon et al. eds., 2000). Afrocentric approaches to recovery from these traumatic sequelae are offered in NA'IM AKBAR, *BREAKING THE CHAINS OF PSYCHOLOGICAL SLAVERY* (1996), and SULTAN A. LATIF & NAIMAH LATIF, *SLAVERY: THE AFRICAN AMERICAN PSYCHIC TRAUMA* (1994). In contradistinction to physical and psychological traumas, which reside primarily in the realm of individual experience, Ron Eyerman characterizes slavery as an exemplar of "cultural trauma," a form of traumatization that entails a "dramatic loss of identity and meaning, a tear in the social fabric, affecting a group of people that has achieved some degree of cohesion." Elaborating, he posits that "cultural trauma implies that direct experience is not a necessary condition for the appearance of trauma"; rather, "[i]t is in time-delayed and negotiated recollection that cultural trauma is experienced, a process which places representation in a key role." Ron Eyerman, *Cultural Trauma: Slavery and the Formation of African American Identity from Emancipation to the Civil Rights Movement*, in *CULTURAL TRAUMA: THEORY AND APPLICATIONS* (Jeffrey C. Alexander et al. eds., forthcoming 2003) [hereinafter Eyerman, *Cultural Trauma: Slavery and the Formation of African American Identity from Emancipation to the Civil Rights Movement*]. These themes are explored in greater depth in RON EYERMAN, *CULTURAL TRAUMA: SLAVERY AND THE FORMATION OF AFRICAN AMERICAN IDENTITY* (2001) [hereinafter EYERMAN, *CULTURAL TRAUMA: SLAVERY AND THE FORMATION OF AFRICAN AMERICAN IDENTITY*] Cf. NEAL, *supra* note 659, at x (recognizing the institution of slavery as a national trauma). Although I generally agree with Eyerman's conception of cultural trauma, I would modify it to recognize the possibility that temporal distance is not prerequisite to the traumatization of a group *qua* group and thereby emphasize the fact that the ordeal of slavery and the violence of emancipation were traumatic to African Americans, both individually and collectively from their inception to the present day. This implies, of course, that an event as well as its memory may reasonably be construed as "traumatic."

731. The quest to secure some form of recompense for the manifold injuries of slavery and the profound racial discrimination it embodied is not a modern invention; it first emerged during the antebellum period and has persisted with varying degrees of intensity since. Aspects of this history are surveyed in DERRICK BELL, *RACE, RACISM, AND AMERICAN LAW* 54-55 (3d ed. 1992); MARY FRANCES BERRY & JOHN W. BLASSINGAME, *LONG MEMORY: THE BLACK EXPERIENCE IN AMERICA* 405-06 (1982); Tuneen E. Chisolm,

sense of immanent vulnerability that it engendered was a formative episode in the construction of African American identity. Although the toll exacted by klan violence does not lend itself to precise calibration, its horrors have doubtless been remembered, interpreted, and transmitted, time and again.<sup>732</sup> Their potency is perhaps most legible in the reiteration of klan and klan-style violence, often sexualized, in the literary productions of black writers from the late nineteenth century to the present.<sup>733</sup> In the words of one recent historian, “[m]ob violence and eventually lynching were so deeply embedded in black folk memory that virtually every major African American writer since emancipation has made these subjects central to his or her work in poetry and

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*Sweep around Your Own Front Door: Examining the Argument for Legislative African American Reparations*, 147 U. PA. L. REV. 677, 683-87 (1999); and Vincene Verdun, *If the Shoe Fits, Wear It: An Analysis of Reparations to African Americans*, 67 TUL. L. REV. 597, 600-07 (1993). For a sampling of the growing scholarly and popular literature on contemporary reparations, see JOE R. FEAGIN, *RACIST AMERICA: ROOTS, CURRENT REALITIES, AND FUTURE REPARATIONS* (2000); RANDALL ROBINSON, *THE DEBT: WHAT AMERICA OWES TO BLACKS* (2000); GEORGE SCHEDLER, *RACIST SYMBOLS AND REPARATIONS: PHILOSOPHICAL REFLECTIONS ON VESTIGES OF THE AMERICAN CIVIL WAR* (1998); Chisolm, *supra*; Adrienne D. Davis, *The Case for United States Reparations to African Americans*, 7 HUM. RTS. BR. 3 (2000); Rhonda V. Magee, Note, *The Master's Tools from the Bottom Up: Responses to African-American Reparations Theory in Mainstream and Outsider Remedies Discourse*, 79 VA. L. REV. 863 (1993); Irma Jacqueline Ozer, *Reparations for African Americans*, 41 HOW. L.J. 479 (1998); Verdun, *supra*; and Westley, *supra* note 405. Ongoing debates surrounding proposed reparations for human rights abuses worldwide are usefully set form in *WHEN SORRY ISN'T ENOUGH: THE CONTROVERSY OVER APOLOGIES AND REPARATIONS FOR HUMAN INJUSTICE* (Roy L. Brooks ed., 1999).

732. As David Blight argues,

For so many victims of the violence, the emotional and ideological legacies of their experiences endured as part of individual and community memories. These dangerous and painful memories undoubtedly caused conflicted emotions of guilt and rage, humiliation and vengeance, and profound distrust. . . . Mob violence injected poisons into Civil War memory that only resistance, decades of time, and turns in history could begin to eradicate.

BLIGHT, *supra* note 511, at 117.

733. A number of these works deal explicitly with the original Ku Klux Klan. See, e.g., CHESNUTT, *supra* note 675; FRANK BARBOUR COFFIN, *Retribution*, in *FACTUM FACTORUM* 40 (1947); GERARD MILLAR, *The Black Man's Plea*, in *LIFE, TRAVELS AND WORKS OF MISS FLORA BATSON: DECEASED QUEEN OF SONG 58*, (n.d.); HENRY MCNEAL TURNER, *THE CONFLICT FOR CIVIL RIGHTS: A POEM* (Washington, D.C., Judd & Dutweiler 1881); JOHN EDGAR WIDEMAN, *THE LYNCHERS* (1973). Curiously, though, the white supremacist klans are seldom mentioned by name in the literary productions of African Americans. See JERRY H. BRYANT, *VICTIMS AND HEROES: RACIAL VIOLENCE IN THE AFRICAN AMERICAN NOVEL* 53-54, 100 (1997) [hereinafter BRYANT, *VICTIMS AND HEROES*]; Phyllis R. Klotman, “*Tearing a Hole in History*”: *Lynching as Theme and Motif*, 19 BLACK AM. LIT. FORUM 55, 61 (1985). Far more pronounced, doubtless in part because of the intense publicity it drew, is the sexualization that so often attended the spectacular atrocities of the “lynching era.” See, e.g., JAMES BALDWIN, *GOING TO MEET THE MAN* (Vintage Books 1995) (1965); CHESNUTT, *supra* note 675; FRANCES E.W. HARPER, *IOLA LEROY* (Beacon Press 1999) (1892); ROBERT EARL HAYDEN, *Night, Death, Mississippi*, in *COLLECTED POEMS* 15 (1985); PAULINE E. HOPKINS, *CONTENDING FORCES* (Oxford Univ. Press 1988) (1900); Richard Wright, *Big Boy Leaves Home*, in *UNCLE TOM'S CHILDREN* (HarperPerennial 1993) (1936). For works examining this literature, see *supra* note 252, and BRYANT, *VICTIMS AND HEROES*, *supra*, at 71-104.

prose.”<sup>734</sup> This is not to suggest that either the inciting trauma or the memories it engenders are stable across time and space. Rather, the act of remembering is preeminently one of reconstitution, its experience and manifestations altered by shifting internal and external conditions.<sup>735</sup>

As a result, we are therefore no better situated to measure accurately the damage done to those reared on the lessons of klan violence than we are to comprehend fully its traumatic effects on the adults who were its principal targets. Klansmen, of course, made no special effort to avoid imperiling innocent children, untold numbers of whom found themselves caught up in what must have been bewildering as well as terrifying onslaughts.<sup>736</sup> Those who witnessed or sustained the trauma of a direct klan onslaught bore the most obvious scars. Exemplifying some of the more heinous attacks, the KKK broke into the home of a freedman, Daniel Blue, murdered his pregnant wife and five children, then burned their house to the ground.<sup>737</sup> There was, for example, the child of the Postles, who was “scared well nigh to death” by a band of nightriders, “and now, when the dog barks, it looks like it would go into fits.”<sup>738</sup> Long before sophisticated research into the symptomatology of posttraumatic stress had been undertaken, parents had no difficulty connecting the terrified response of a child to its underlying cause. The traumas endured by children like these, while critical to understanding the protracted effects of klan violence in the communities most deeply affected, tell only a fraction of the story.

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734. BLIGHT, *supra* note 511, at 109.

735. A brief overview of this process as it relates to slavery may be found in REMEMBERING SLAVERY: AFRICAN AMERICANS TALK ABOUT THEIR PERSONAL EXPERIENCES OF SLAVERY AND EMANCIPATION xiii-xiv (Ira Berlin ed., 1998). See also EYERMAN, CULTURAL TRAUMA: SLAVERY AND THE FORMATION OF AFRICAN AMERICAN IDENTITY, *supra* note 730, at 15, 33; Eyerman, *Cultural Trauma: Slavery and the Formation of African American Identity from Emancipation to the Civil Rights Movement*, *supra* note 730, at 14 (both maintaining that generations of African Americans have interpreted slavery differently based in part on their collective needs and means).

736. Additional information concerning children who either witnessed or were themselves victims of klan attacks is available in AGO, *supra* note 16, RG 94, M 666, R 1, F 60, Letter from W.W. Holden to General U.S. Grant, Enclosure, Jan. 1, 1871; AGO, *supra* note 16, RG 94, M 666, R 1, F 60, Outrages Committed by Persons in Disguise in the County of Alamance Since the 1st of December 1868, Dec. 22, 1870; AGO, *supra* note 16, RG 94, M 666, R 12, F 1612, Letter from S.N. Benjamin to C.H. Morgan, Aug. 11, 1871; H.R. MISC. DOC. NO. 40-52, at 29, 80, 139 (1869); S. REP. NO. 42-1, at lxx, lxvi, 31-32, 78, 344, 416 (1871); HALE, SKETCHES OF SCENES IN THE CAREER OF CHAMP FERGUSON, *supra* note 661, at 43; 2 HOLDEN TRIAL, *supra* note 37; 1-13 KLAN REPORT, *supra* notes 15, 16, 17, 26, 34, 40, 44, 59, 113; LOUISIANA GENERAL ASSEMBLY, REPORT OF [THE] JOINT COMMITTEE (1869), *supra* note 35, at 199; S.C. KLAN TRIALS, *supra* note 16, at 279-80, 440, 510, 689-90, 691, 692, 776; and SOUTH CAROLINA GENERAL ASSEMBLY, REPORT ON THE EVIDENCE TAKEN BY THE COMMITTEE OF INVESTIGATION, *supra* note 81, at 1129.

737. HOLDEN, PROCLAMATIONS, *supra* note 208, at 14-15.

738. S.C. KLAN TRIALS, *supra* note 16, at 691.

Brief vignettes scattered throughout the historical record further suggest something of the intergenerational impact of klan trauma.<sup>739</sup> One young freedwoman, overwhelmed by a KKK lashing, was found over a month later wandering “senseless, with her little child in the woods,” utterly detached from her surroundings.<sup>740</sup> Ill equipped to care even for herself, she was plainly in no condition to care for a small child. In addition to those who watched their parents suffer the ongoing psychological and physical effects of klan atrocities, some children saw their parents murdered right before them.<sup>741</sup> Others became so unnerved by the phantasmagoria of the klans that they inad-

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739. Scholars have explored the problem of intergenerational trauma most fully in the context of the Holocaust. Some of the most compelling of these works, exclusive of fiction and biography, include AARON HASS, *IN THE SHADOW OF THE HOLOCAUST: THE SECOND GENERATION* (1996); ILANY KOGAN, *THE CRY OF MUTE CHILDREN: A PSYCHOANALYTIC PERSPECTIVE OF THE SECOND GENERATION OF THE HOLOCAUST* (1995); ROBERT M. PRINCE, *THE LEGACY OF THE HOLOCAUST: PSYCHOHISTORICAL THEMES IN THE SECOND GENERATION* (1999); JOHN J. SIGAL & MORTON WEINFELD, *BREAKING CRYSTAL: WRITING AND MEMORY AFTER AUSCHWITZ* (Efraim Sicher ed., 1998); *CHILDREN SURVIVING PERSECUTION: AN INTERNATIONAL STUDY OF TRAUMA AND HEALING* (Judith S. Kestenberg & Charlotte Kahn eds., 1998); *GENERATIONS OF THE HOLOCAUST* (Martin S. Bergmann & Milton E. Jucovy eds., 1982); *THE HOLOCAUST IN THREE GENERATIONS: FAMILIES OF VICTIMS AND PERPETRATORS OF THE NAZI REGIME* (Gabriele Rosenthal ed., 1998); *TRAUMA AND REBIRTH: INTERGENERATIONAL EFFECTS OF THE HOLOCAUST* (1989); Jay B. Goldberg, *The Transmittal of the Trauma of the Holocaust to Survivor Children and American Jewish Children* (1983) (unpublished Ed.D. dissertation, Drake University) (on file with the Drake University Library); and Marc E. Klein, *Transmission of Trauma: The Defensive Styles of Children of Holocaust Survivors* (1987) (unpublished Ph.D. dissertation, California School of Professional Psychology) (on file with the California School of Professional Psychology Library). There are, however, some promising signs that Americanists are beginning to take seriously the phenomenon of cross-generational traumatization. See, e.g., EYERMAN, *CULTURAL TRAUMA: SLAVERY AND THE FORMATION OF AFRICAN AMERICAN IDENTITY*, *supra* note 730; William E. Cross, Jr., *Black Psychological Functioning and the Legacy of Slavery: Myths and Realities*, in *INTERNATIONAL HANDBOOK OF MULTIGENERATIONAL LEGACIES OF TRAUMA* 387 (Yael Danieli ed., 1998) [hereinafter *INTERNATIONAL HANDBOOK OF MULTIGENERATIONAL LEGACIES*]; Eduardo Duran et al., *Healing the American Indian Soul Wound*, in *INTERNATIONAL HANDBOOK OF MULTIGENERATIONAL LEGACIES*, *supra*, at 341; Eyerman, *Cultural Trauma: Slavery and the Formation of African American Identity from Emancipation to the Civil Rights Movement*, *supra* note 730; Marie-Anik Gagne, *The Role of Dependency and Colonialism in Generating Trauma in First Nations Citizens: The James Bay Cree*, in *INTERNATIONAL HANDBOOK OF MULTIGENERATIONAL LEGACIES*, *supra*, at 355; Carolyn Rae Bolling, *An Intergenerational Model of Posttraumatic Stress Disorder in the African American Community: An Analysis of the Autobiographies of Olaudah Equiano, Harriet A. Jacobs, Zora Neale Hurston, and Langston Hughes* (1997) (unpublished Ph.D. dissertation, Temple University) (on file with the Temple University Library).

740. 8 KLAN REPORT, *supra* note 26, at 553.

741. See 2 HOLDEN TRIAL, *supra* note 37, at 1365-66; PROCEEDINGS OF THE STATE CONVENTION OF THE COLORED CITIZENS OF TENNESSEE, *supra* note 388, at 9. Charles Chesnut presents one likely outcome of this experience in his portrayal of Josh, a black man who witnessed the KKK murder of his father in his youth and therefore harbored great hostility toward whites by adulthood. Contemplating Josh's emotional state, an observer was forced to confront the flaws in the “timeworn explanation that the Ku-Klux movement, in the main, was merely an ebullition of boyish spirits.” CHESNUTT, *supra* note 675, at 112. “Here, [in the person of Josh] was its tragic side, — the old wound still bleeding, the fruit of one tragedy, the seed of another.” *Id.*

vertently exposed friends and loved ones to greater harm by revealing their hiding places.<sup>742</sup> And then there were those who spoke decades later of the terror of watching klansmen descend upon their homes as if it had happened only yesterday.<sup>743</sup>

The devastating consequences of klan terror on the first post-emancipation generation can be seen at its most literal where it prevented families from flourishing as they would have under more propitious circumstances. Such was the case with the Murrays, whose four-month-old infant was left "mashed inside" by a klan raid such that she "just lay from that till [she] died."<sup>744</sup> Another former slave family, the Bryants, lost a child to miscarriage after the expectant mother witnessed a brutal Klan assault on her husband. A white neighbor familiar with the Bryants' loss testified, "Doctor Gordon told me it was caused by [the attack], and that she never would have good health again."<sup>745</sup> Abraham Colby provides heightened perspective on the unremitting toll terror exacted from young families. "One child was killed by the Ku-Klux, as I call it, for she was frightened to death."<sup>746</sup> That child was his own daughter.<sup>747</sup> "I have never got over it yet," he admits, "[t]hey broke something inside of me, and the doctor has been attending to me for more than a year . . . [s]ometimes I cannot get up and down off my bed."<sup>748</sup> Based on this information, a hypothetical retrospective diagnosis might indicate that Colby was suffering from chronic depression brought on by the trauma of his encounter with the KKK.<sup>749</sup> Yet, regardless of the precise nature of the symptoms or the diagnostic terminology applied to describe them, it is clear that neither he nor his family emerged from that night unscathed. And those scars can not but have affected the outlook and experiences of the next generation of Colbys.

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742. See BRFAL, *supra* note 36, RG 105, M 999, R 34, Affidavit of Ben Mays, Tenn., July 17, 1868.

743. 4 AMERICAN SLAVE, ser. 1, *supra* note 114, pt. 2, at 196; 6 AMERICAN SLAVE, ser. 1, *supra* note 114, at 139-140; 11 AMERICAN SLAVE, ser. 2, *supra* note 96, at 54, 80; 10 AMERICAN SLAVE, supp. ser. 1, *supra* note 114, pt. 5, at 2060; 4 AMERICAN SLAVE, supp. ser. 2, *supra* note 268, pt. 3, at 957.

744. 2 HOLDEN TRIAL, *supra* note 37, at 1376-77; *see also id.* at 1463-64, 1465. A case involving a five-month-old baby who succumbed to injuries sustained in a similar attack is discussed *id.* at 1428-29, 1433, while that of a somewhat older child is described in 7 KLAN REPORT, *supra* note 16, at 825.

745. 7 KLAN REPORT, *supra* note 16, at 1004; *see also* 11 KLAN REPORT, *supra* note 40, at 326.

746. 7 KLAN REPORT, *supra* note 16, at 706.

747. *Id.* at 697.

748. *Id.*

749. DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 339-45 (4th ed. 1994).

While this discussion has focused entirely upon the traumatic effects of sexual terror, it is important to recognize that the freedpeople and other targets of klan violence were never simply victims; resistance, including tacitly subversive acts and judiciously targeted reprisals, was also a meaningful factor in the rise and fall of the Reconstruction klans. As one discerning officer remarked to his superiors, "white people are fully convinced that because the negroes do not show any [outward] signs of resistance, they are completely cowed. This," he stressed, "is far from the truth . . ."<sup>750</sup> In the end, it was not the klans, but their antagonists, who survived the tumult of those years. That they did so is an enormous tribute to the strength and tenacity of African American communities, which have frequently been criticized as deficient in both. Despite enormous peril to themselves and their loved ones, blacks and whites alike filed complaints and offered testimony against their antagonists; voted according to the dictates of conscience; educated and preached to the former slaves; armed themselves in defense of life, family, and property; and demanded vindication of their rights as citizens, however futile that exercise at times may have been. If their efforts did not always succeed in thwarting klan violence, they nevertheless reinforced the bonds of solidarity that had already been forged among the freedpeople and others sympathetic to their plight. The experience of confronting the klans must also have served to heighten awareness among the former slaves and many other observers of the extraordinary struggles that lay before them as they pursued their individual and collective aspirations in a culture rife with racial tension. While they might reasonably have anticipated the prospect of relief in the nation's courts, the results all too often proved otherwise.

### C. *Law and the Legacy of Sexual Trauma*

According to a familiar lawyer's aphorism, there is no right without a remedy.<sup>751</sup> If this is true, then the case of the Reconstruction-era klans suggests that, contrary to the promise of the Fourteenth Amendment and the acts designed to enforce it, American citizens had no right to be free of sexual violence, whether or not it was motivated by race. Indeed, in the aftermath of *United States v. Morrison*,<sup>752</sup> much the same may be said today of sexual violence motivated in

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750. AGO, *supra* note 16, RG 94, M 666, R 26, F 2586, Letter from Major Lewis Merrill to Adjutant General, Department of the South, June 10, 1871.

751. See generally Donald H. Zeigler, *Rights Require Remedies: A New Approach to the Enforcement of Rights in the Federal Courts*, 38 HASTINGS L.J. 665 (1987).

752. *United States v. Morrison*, 529 U.S. 598 (2000).

whole or part by sex.<sup>753</sup> The long history of the law's neglect of victims of sexual traumatization, benign and otherwise, and ongoing resistance at all levels of government to the implementation of measures that might provide meaningful relief, suggests an even harsher reality, for where law fails to provide a remedy despite overwhelming evidence of its need, rights are reduced to mere rhetoric.

This Article has underscored a critical, yet largely unexplored, aspect of the origins of American civil rights law. From the early postwar years, congressional actions in defense of the rights of the newly freed slaves were animated by the imperatives of pervasive violence against them.<sup>754</sup> And as the history chronicled here starkly reveals, these atrocities were sexualized to an extent that would be difficult for subsequent generations to access, much less to fathom. Untold numbers of African Americans, along with many whites who supported their cause, were subjected to sexualized assaults of every imaginable description. It was from these events that the fundamentals of the modern civil rights regime were constructed. The significance of klan terror thus extends well beyond the narrowly regional or historical, inflecting the articulation of civil rights legislation at both the federal and state levels throughout the nation.

To the detriment of countless who have since been victims of sexual violence, much of what was known to the framers of that legislation appears to have been lost as a result of shifting political alignments, pervasive racial and sexual inequality, and the passage of time. Contrary to much subsequent juridical analysis, the Fourteenth Amendment was intended not only to protect citizens from violations involving state action, but also to encompass private violence as well. As the constitutional historian Jacobus tenBroek explains, “[p]rivate outrage and atrocity were, equally with the Black Codes, evils which this legislation was designed to correct.”<sup>755</sup> Moreover, state action itself may, in certain circumstances, take the form of inaction, by which the failure to protect may constitute a denial of equal protection. During the Reconstruction years, Republican lawmakers thus widely agreed that a “deprivation or denial of laws ‘not equal to all’ will occur just as

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753. In that case, the Supreme Court held that the federal civil cause of action granted to victims of gender-motivated violence by the Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1941 (codified as amended at 42 U.S.C. § 13981 (1994)), was an unconstitutional exercise of congressional power under both the Commerce Clause and the Fourteenth Amendment. *See Morrison*, 529 U.S. at 627.

754. Recounting the hearings before the Joint Committee on Reconstruction, which issued a revealing report on southern social and political conditions in 1866, tenBroek emphasized that “[w]itness after witness spoke of beatings and woundings, burnings and killings, as well as deprivations of property and earnings and interference with family relations — and the impossibility of redress or protection except through the United States Army and the Freedmen’s Bureau.” TENBROEK, *supra* note 507, at 203-04.

755. *Id.* at 181; *see also id.* at 203-04.



much by failure to supply the protection or impose the restraints as by Black Codes imposing special burdens on a selected class.<sup>756</sup> In cases such as *United States v. Hall*<sup>757</sup> and *United States v. Given*,<sup>758</sup> federal courts as well offered important recognition of this reading of state action.<sup>759</sup>

Despite these promising early decisions, judicial disregard of much of the legislative history of the Reconstruction Amendments and the statutes enacted to enforce them began shortly after their passage. Having declined to hear any of the appeals arising from the South Carolina Klan trials, the Supreme Court first broached the question of the parameters of the Fourteenth Amendment in the *Slaughterhouse Cases*,<sup>760</sup> the underlying circumstances of which were far removed from the exigencies of sexual violence.<sup>761</sup> The result, an extremely narrow construction of the Privileges and Immunities Clause and thereby of the scope of legitimate federal remedies for their encroachment, was hardly propitious for African Americans and others who might seek to vindicate their rights where the states had failed to do so. This was merely the first of several instances in which the justices elected to limit the reach of the Reconstruction Amendments and their Enforcement Acts.

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756. *Id.* at 188; see also Michael Les Benedict, *Preserving Federalism: Reconstruction and the Waite Court*, SUP. CT. REV. 39, 50 (1978) (“By 1871, when they passed the so-called Ku Klux Klan Act, Republicans had developed a carefully reasoned constitutional argument that State failure to protect rights guaranteed by the Fourteenth and Fifteenth Amendments amounted to such State action as justified congressional intervention.”); Laurent B. Frantz, *Congressional Power to Enforce the Fourteenth Amendment against Private Acts*, 73 YALE L.J. 1353, 1359 (1964) (advancing a similar interpretation of prevailing Republican opinion). *But see* Avins, *supra* note 455, at 377-78 (presenting a less proactive view of congressional intent with respect to state action).

757. 26 Fed. Cas. 79, 81 (C.C.D. Ala. 1871) (15,282) (“[T]o guard against the invasion of the citizen’s fundamental rights, and to insure their adequate protection, as well against state legislation as state inaction, or incompetency, the [Fourteenth] [A]mendment gives congress the power to enforce its provisions by appropriate legislation.”).

758. 25 Fed. Cas. 1324, 1328 (C.C.D. Del. 1873) (15,210) (“Undoubtedly, an act, or an omission to act, may be an offence both against the state law and the laws of the United States. Any other doctrine would place the national government entirely within the power of the states, and would leave constitutional rights guarded only by the protection which each state might choose to extend to them.”).

759. Although cautious in his overall assessment of the Court’s willingness to sanction the theory of state inaction, Benedict correctly avers that “the Justices never rejected absolutely and without cavil Republican legislators’ contentions that Congress might protect rights directly when they were violated by individuals in consequence of State inaction rather than action.” Benedict, *supra* note 756, at 66. According to Frantz, the Supreme Court was, if anything, even more receptive to such claims. See Frantz, *supra* note 756, at 1381-82.

760. *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873).

761. These cases arose from a Louisiana public health statute that incorporated a slaughtering facility at which all butchering undertaken in the City of New Orleans was thenceforth mandated to take place. *Id.* at 59-60.

Subsequent decisions in *United States v. Cruikshank*<sup>762</sup> and *United States v. Reese*<sup>763</sup> confirmed that the Court was not only determined to avoid confronting squarely the problem of klan violence, but also to downplay those aspects of the legislative history of early civil rights law that were inconsistent with its vision of dual federalism. That this approach has enjoyed something of a revival during the Rehnquist years is nowhere more plain than in *U.S. v. Morrison*.<sup>764</sup> Rejecting a long tradition of expansive readings of the Commerce Clause and more selectively inclusive applications of the Fourteenth Amendment's Equal Protection Clause, the *Morrison* Court failed to take account of the historical context of violent sex in which the nation's original Reconstruction-era statutes had been framed, a failure that only reinforced the majority's inclination to deny the relevance of contemporary evidence documenting the profound social, psychological, and economic consequences of pervasive sexual violation.<sup>765</sup> Those determined to make real the theoretical right to be free of discriminatory sexualized violence will have to look elsewhere, to state legislatures and perhaps to a revised federal Violence Against Women Act, for vindication.

#### CONCLUSION

Building upon the recent work of historians of gender and sexuality, this Article strives to further illuminate the complex sexualization of Reconstruction politics.<sup>766</sup> The violence I have interrogated here took place in an atmosphere in which racial danger was conceived in highly sexualized terms, just as sexual danger was pervasively refracted through racial lenses. So thoroughly enmeshed were they, it is virtually impossible at this remove to separate the various strands of postwar thinking on these subjects, particularly when ongoing efforts to police gender and class boundaries are factored into the equation. Yet, however imperfect our understanding of any of these elements may be, the sexualized violence of the postwar klans starkly attests to the intensity of feeling surrounding the allocation of power in the Reconstruction South.

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762. *United States v. Cruikshank*, 92 U.S. 542 (1876).

763. *United States v. Reese*, 92 U.S. 214 (1876).

764. 529 U.S. 598 (2000).

765. *Id.* For an historically astute feminist critique of *Morrison*, see Catharine A. MacKinnon, *Disputing Male Sovereignty: On United States v. Morrison*, 114 HARV. L. REV. 135 (2000).

766. I refer here primarily to the work of Catherine Clinton, Laura Edwards, and Martha Hodes. Interestingly, whereas popular and academic discourse has explored the notion of the South's metaphorical rape at least since 1865, sexual violence in its literal substantiation has only recently begun to be integrated into the historical narrative of the period.

Sexual violence is notoriously difficult to document and interpret objectively. Yet this cannot be a reason to avoid searching for what evidence exists, presenting it in all its horrific detail, and making what sense of it we can at this juncture. To avoid this responsibility is to perpetuate what Henry Krystal has famously termed the “conspiracy of silence” in which the experience of traumatization has historically been enshrouded.<sup>767</sup> Statistics concerning rape in contemporary America shed light on some of the impediments that conspire to perpetuate this silence. Research has consistently found that only a small proportion of attacks is ever reported; only a fraction of those is then selected for prosecution, with a smaller number still ending in convictions.<sup>768</sup> If evidence derived from the study of rape is any guide, victims’ reticence in filing complaints is justifiable, for, beyond the deeply personal nature of the injury itself, the criminal justice system has shown itself to be strikingly resistant to their claims.<sup>769</sup> Beyond the secrecy and shame attending “ordinary” sex crimes and the harshness with which they have routinely been treated by the courts, the threat of further violence and the insinuation of the klans into the machinery of justice further discouraged victims of klan atrocities from reporting violations. Given these circumstances, it is reasonable to posit that comparatively few sexual assaults would have generated a paper trail of the sort likely to survive for over a century. Yet, such evidence as does survive offers a horrifying portrait of pervasive sexual terror with which law and society have yet to reckon.

Among the innumerable victims of sexualized atrocities were freedpeople and allied whites of both genders and all ages. Drawing upon the insights of Kimberlé Crenshaw, the expositor of the concept of “intersectionality” now widely deployed by feminist and critical le-

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767. MASSIVE PSYCHIC TRAUMA 196, 341 (Henry Krystal ed., 1968).

768. A highly regarded study conducted by Diana Russell found that under 10% of all rapes are reported while approximately 1% result in conviction. See DIANA E.H. RUSSELL, SEXUAL EXPLOITATION: RAPE, CHILD SEXUAL ABUSE, AND WORKPLACE HARASSMENT 35, 284 (1984); see also Diana E.H. Russell & Nancy Howell, *The Prevalence of Rape in the United States Revisited*, 8 SIGNS 688 (1983).

769. Some of the institutional challenges with which rape victims are commonly confronted once the crime has been reported are considered in SUSAN ESTRICH, REAL RAPE 15-20 (1987); LYNDY LYTTLE HOLMSTROM & ANN WOLBERT BURGESS, THE VICTIM OF RAPE: INSTITUTIONAL REACTIONS (1978); GARY D. LAFREE, RAPE AND CRIMINAL JUSTICE: THE SOCIAL CONSTRUCTION OF SEXUAL ASSAULT 53-113 (1989); LEE MADIGAN & NANCY C. GAMBLE, THE SECOND RAPE: SOCIETY’S CONTINUED BETRAYAL OF THE VICTIM (1991); JUDITH ROWLAND, THE ULTIMATE VIOLATION (1985); Vivian Berger, *Man’s Trial, Woman’s Tribulation: Rape Cases in the Courtroom*, 77 COLUM. L. REV. 1 (1977); and Nancy Connolly, *Sexual Assault Victims: The Experience of Participating in the Legal System* (1993) (unpublished Psy.D. dissertation, Massachusetts School of Professional Psychology) (on file with the Massachusetts School of Professional Psychology Library). For an analysis of the problem as it is manifest in the Canadian context, see Cheryl-Anne Kelsey-Atlay, *Legal Trauma in Sex Offense Victim Witnesses: A Case Study* (1992) (unpublished M.S. thesis, Western Washington University) (on file with the Western Washington University Library).

gal theorists,<sup>770</sup> it is apparent that the victimization of each of these groups must be understood on its own terms, and not merely as a compound effect of the discrete oppressions of race, sex, class, politics, or age. One would be hard-pressed in this instance to weigh the relative harm done to the Republican castrated by one group of klansmen against that of the freedwoman gang raped by another. There would be little point to such a divisive exercise. We must instead look first to the qualities and characteristics that rendered victims vulnerable, and then to the impact of the ordeal and its aftermath.

Much as the cohort of victims varied in predictable ways, so too did the traumata to which they were exposed. As I have shown, klansmen resorted to a vast array of often sadistic torments to achieve their social and political aims. Yet, despite its seemingly random nature, there was a certain logic behind the violence of the klans. On the one hand, a diverse array of victims was linked by their investment in a broadly construed notion of emancipatory politics; on the other hand, atrocities running the gamut from whippings to lynchings to gang rapes revealed a decidedly sexualized inclination. While it would be an overstatement to assert that all klan terror was sexual at base, violence of this sort was far too prevalent, far too consistent, and far too effective to be merely coincidental. Sex was a central feature of the terror of Reconstruction, a salient marker of the tremendous upheaval witnessed during those years in relations of race, gender, and power. Neither the targets of klan violence, nor its traumatic effects were randomly distributed. We know today that different groups — African Americans, women, the poor — are differentially vulnerable to discrete traumatic stressors, and the Reconstruction era was likely no exception.<sup>771</sup>

It is also interesting to contemplate whether sexualized violence was in fact a uniquely efficient mode of terrorization, or if it was simply one among many alternatives that might have proved equally expeditious in advancing the cause of white supremacy in the postbellum South. Put another way, was it somehow “worse” to be tortured in a palpably sexualized fashion than otherwise if the resulting physical injury is identical in either case? As with any counterfactual, there is no way to be sure. Several factors, however, militate against the argument for distinctiveness: the klans’ deployment of an array of punishments, only some of which were sexualized; the pervasiveness of fear among the freedpeople and their supporters wholly apart from the character of violence perpetrated in their midst; and the failure of most witnesses to articulate explicitly their experience or apprehen-

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770. See Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

771. See Mary E. Gilfus, *The Price of the Ticket: A Survivor-Centered Appraisal of Trauma Theory*, 5 VIOLENCE AGAINST WOMEN 1238, 1243 (1999).

sion of sexual injury. Although each of these considerations bears some intuitive appeal, the evidence amassed here indicates that sexual assault and its constant threat did — and do — indeed have a special capacity to traumatize its victims. In the first place, violence need not be relentlessly sexualized in order for that prospect to be effectively communicated. Additionally, targets of violent assault need not expose and interrogate the substance of their fears to convey an awareness that sex might well be instrumentally deployed.

Moreover, though the bodily effects of some forms of klan terror may have been equally severe regardless of their sexualization,<sup>772</sup> prevailing attitudes toward sex and gender perforce complicated, and ultimately exacerbated, the experience of sexual terror, producing a heightened sense of shame, humiliation, degradation, and vulnerability in the part of oneself least likely to be open to public view in the absence of coercion. In the last decades of the nineteenth century, sexuality remained to a significant extent a mystified aspect of human existence, all the more so if it involved an encounter outside of the dominant heterosexual norm.<sup>773</sup> Sexual violence was by definition beyond the pale, a topic that most Americans were content to leave unspoken. Given this cultural reticence, there existed no established language in which to narrate the experience of sexual trauma, and that absence itself circumscribed the possibilities for conceptualizing and representing any but corporeal injuries.<sup>774</sup> This interpretation resonates well with Judith Butler's astute observation that the site of traumatization may be the very loss of what is narratable, hence, intelligible.<sup>775</sup> Victims of klan violence had good cause to avoid reporting their ordeals regardless of the shape they assumed. Under the circumstances, it is fair to say that sexualization served as a further inducement to silence at the same time it conduced to psychic pain. Without assuming a necessary identity between traumatic responses in the historical past and those observed today, recent studies indicating that "[s]exual assault is associated with greater psychological harm than other crimes"<sup>776</sup> are highly suggestive in this context.

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772. This of course does not apply to such acts as rape and castration. Likewise, it says nothing about the psychological harms that often accompany various forms of physical injury.

773. See, e.g., D'EMILIO & FREEDMAN, *supra* note 144.

774. See Lisa Cardyn, *The Construction of Female Sexual Trauma in Turn-of-the-Century American Mental Medicine*, in *TRAUMATIC PASTS: HISTORY, PSYCHIATRY AND TRAUMA IN THE MODERN AGE, 1860-1930*, at 172 (Mark Micale & Paul Lerner eds., 2001).

775. See Panel Discussion, *Psychoanalysis and Its Discontents*, WHOSE/WHO'S FREUD? THE PLACE OF PSYCHOANALYSIS IN CONTEMPORARY CULTURE, Conference held at Yale University, Apr. 3, 1998; see also Judith Butler, *Quandaries of the Incest Taboo*, in *WHOSE FREUD? THE PLACE OF PSYCHOANALYSIS IN CONTEMPORARY CULTURE* 39, 42-43 (Peter Brooks & Alex Woloch eds., 2000).

776. Lucy Berliner, *Sex Offenders: Policy and Practice*, 92 NW. U. L. REV. 1203, 1206 (1998). Sexual assault victims have also been found to experience more severe posttraumatic

Not surprisingly, few commentators closely attended the problem of sexual violence during the Reconstruction period or in the decades immediately following. If the individual experience of traumatization was of little interest to contemporaries, modern historians have not done much better.<sup>777</sup> Historical investigations of klan terror to this point have concentrated on the tasks of recording the incidence of violence, sexual and otherwise, and placing their findings within the larger context of Reconstruction politics. Yet, however important these constituents may be — and I believe them to be enormously so — they do not in themselves dispense with the significance of the topic. There is much more to the story than has heretofore been acknowledged.<sup>778</sup> In addition to their import as political events, acts of sexualized violence assaulted the psyches and bodies of victims, purveying incalculable injuries that merit consideration on their own terms. As I have argued, the terror perpetrated against freedpeople and sympathetic whites did much to determine victims' conceptions of their place in the world, their viability, and their worth. It undermined financial stability, limited residential and employment options, influenced the balance of power and the division of labor within families, and impinged upon child development. More insidiously, the sexual terrorism of those years inevitably circumscribed victims' sense of what was possible, of what they could dream about and strive for, and what was beyond their grasp. These effects were nothing if not thoroughgoing, as the psychological and physical experiences of terror have resounded across generations, contributing to secondary harms that are perceptible to this day in the pervasive inequality, poverty and ghettoization afflicting many African American communities, and in the racial tension and hostility they predictably engender.

So, why, ultimately, does all of this matter? According to Judith Herman, “[r]emembering and telling the truth about terrible events

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symptoms than do victims of nonsexual assault. See David P. Valentiner et al., *Coping Strategies and Posttraumatic Stress Disorder in Female Victims of Sexual and Nonsexual Assault*, 105 J. ABNORMAL PSYCH. 455, 456-57 (1996).

777. The outstanding exceptions to this rule are Catherine Clinton's *Bloody Terrain* and Nell Painter's *Soul Murder and Slavery*. See Clinton, *Bloody Terrain*, *supra* note 2; Painter, *Soul Murder and Slavery*, *supra* note 8. Judith Herman offers another important contribution to the conversation in *Crime and Memory*, where she seeks to integrate advances in the individual and collective psychology of trauma with a nuanced understanding of the politics of terror. See Judith Lewis Herman, *Crime and Memory*, in *TRAUMA AND SELF 3* (Charles B. Strozier & Michael Flynn eds., 1996) [hereinafter Herman, *Crime and Memory*]. As Herman puts it, “We are beginning to understand that rape, battery and incest are human rights violations; they are political crimes in the same sense that lynching is a political crime, that is, they serve to perpetuate an unjust social order through terror.” *Id.* at 13.

778. Historians of prior generations — along with many contemporary ones — have tended to limit their discussion of the impact of klan violence to its immediate inhibition on the exercise of black civil and political rights, notably the elective franchise. This assumes an unduly narrow conception of political injury and an equally cramped understanding of what “counts” as history.

are essential tasks both for the healing of individual victims, perpetrators, and families, and for the restoration of social order."<sup>779</sup> To this it should be added that both these tasks — the cognitive and the communicative — must be accomplished if subsequent generations are to understand and ameliorate the seemingly intractable racial and gender hostilities that continue to afflict American society today. And these reflections by no means exhausts the contemporary relevance of the use of sexual violence as a means of subjugating despised and vulnerable populations. One need only recall the events of Bosnia-Herzegovina in the first half of the 1990s,<sup>780</sup> and more recently Kosovo<sup>781</sup> and Chechnya,<sup>782</sup> in order to recognize that these abuses

779. Herman, *Crime and Memory*, *supra* note 777, at 4-5.

780. The use of rape as an instrument of warfare in the former Yugoslavia is discussed in BEVERLY ALLEN, *RAPE WARFARE: THE HIDDEN GENOCIDE IN BOSNIA-HERZEGOVINA AND CROATIA* (1996); GUTMAN, *A WITNESS TO GENOCIDE*, *supra* note 104; Euan Hague, *Rape, Power and Masculinity: The Construction of Gender and National Identities in the War in Bosnia-Herzegovina*, in GENDER AND CATASTROPHE 50 (Ronit Lentin ed., 1997); MacKinnon, *Crimes of War, Crimes of Peace*, *supra* note 729; MacKinnon, *Rape, Genocide, and Women's Human Rights*, *supra* note 729; MASS RAPE, *supra* note 683; and Ruth Seifert, *The Second Front: The Logic of Sexual Violence in Wars*, 19 WOMEN'S STUD. INT'L F. 35 (1996). For psychological assessments of the traumatic impact of rape on victims of the Bosnian conflict, see Libby Tata Arcel, *Deliberate Sexual Torture of Women in War: The Case of Bosnia-Herzegovina*, in INTERNATIONAL HANDBOOK OF HUMAN RESPONSE TO TRAUMA 179 (Arieh Y. Shalev et al. eds., 2000); Libby Tata Arcel, *Sexual Torture of Women As a Weapon of War — The Case of Bosnia-Herzegovina*, in WAR VIOLENCE, *supra* note 104, at 183; ASSAULT ON THE SOUL: WOMEN IN THE FORMER YUGOSLAVIA (Sara Sharratt & Ellyn Kaschak eds., 1999); Yael Fischman, *Sexual Torture as an Instrument of War*, 66 AM. J. ORTHOPSYCHIATRY 161 (1996); Folnegovic-Smalc, *supra* note 683; Slobodan Jakulić & Miomir Krstić, *Rape as Psychotrauma in War Conditions*, in THE STRESSES OF WAR 173 (Predrag Kalicanin et al. eds., 1993); Dragica Kozaric-Kovacic, et al., *Rape, Torture, and Traumatization of Bosnian and Croatian Women*, 65 AM. J. ORTHOPSYCHIATRY 428 (1995); Dragica Kozaric-Kovacic & Vera Folnegovic-Smalc, *Systematic Raping of Women in Croatia and Bosnia and Herzegovina: A Preliminary Psychiatric Report*, 34 CROATIAN MED. J. 86 (1993); Gillian Mezey, *Rape in War*, 5 J. FORENSIC PSYCHIATRY 583 (1994); and Mary Valentich, *Rape Revisited: Sexual Violence against Women in the Former Yugoslavia*, 3 CAN. J. HUM. SEXUALITY 53 (1994).

781. Accounts of widespread sexual violence against ethnic Albanian women at the hands of Serb forces are chronicled in Thalif Deen, *Conflict-Women: Sexual Violence in the Balkans*, INTER PRESS SERVICE (United Nations), May 25, 1999; *Kosovar Women Subject to Rape, Abduction by Serbs*, U.N. Says, DEUTSCH PRESSE-AGENTUR, May 25, 1999; Katarina Kratovac, *Upsurge in Rape Cases Reported*, DAYTON DAILY NEWS, May 26, 1999, at 7A; UNFPA Documents the Horror, *supra* note 683; U.S. DEP'T OF ST., ERASING HISTORY: ETHNIC CLEANSING IN KOSOVO 5, 7, 12-13 (May 1999); Nicholas Watt, *Serbs Have Rape Camp*, says Cook, GUARDIAN, Apr. 14, 1999, at 1; Williams, *In Kosovo*, *supra* note 152; and Assessment Report on Sexual Violence in Kosovo, UNFPA (1999), available at [www.unfpa.org/news/pressroom/1999/kosovo-report.doc](http://www.unfpa.org/news/pressroom/1999/kosovo-report.doc) (last visited Mar. 7, 2000). In recognition of his intense animosity for the Kosovar Albanians, a Serbian police officer was even said to have undertaken "a Ku Klux Klan-like campaign of beating, terror, and killing against ethnic Albanians." Charles M. Sennott, *Dissecting a War Crimes Machine*, BOSTON GLOBE, Jul. 1, 1999, at A1.

782. Reports of sexual violence and torture alleged to have been committed by soldiers on both sides of the Chechen conflict are related in *Rape Allegations Surface in Chechnya*, Human Rights Watch, available at <http://hrw.org/hrw/press/2000/01/chech0120.htm> (Jan. 20, 2000), and Wines, *supra* note 104, at A12.

have not been safely relegated to some distant barbaric past.<sup>783</sup> Nor need we look abroad for evidence of this troubling reality. As the gang rape of a mentally impaired teenage girl in Glen Ridge, New Jersey,<sup>784</sup> and the sexual torture and humiliation of the Haitian immigrant Abner Louima by New York City police officers<sup>785</sup> amply demon-

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783. The strategic use of sexual terror as an instrument of warfare did not originate with these conflicts. By the same token, sexualized violence in today's world is not identical to that of the klans either in form or in function; to take only the most striking example, the mass rapes perpetrated against women in Bosnia-Herzegovina as part of a campaign of "ethnic cleansing" obviously had no counterpart in the postbellum South. Yet, the persistence of such crimes under tremendously varied historical conditions is itself a key factor both in understanding and undermining their ongoing appeal to combatants actual and metaphorical. For a trenchant analysis of the Serbs' use of rape both as a "strategy in genocide" and a "practice of misogyny," see Catharine MacKinnon's *Crimes of War, Crimes of Peace*, *supra* note 729, at 64, and *Rape, Genocide, and Women's Human Rights*, *supra* note 729, at 8. MacKinnon and her colleagues successfully argued that these acts could be properly adjudicated in an American court in the course of a protracted civil action seeking to hold Radovan Karadzic accountable for sexual violations committed against Bosnian Muslim and Croat women and children. See *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995). A federal jury ultimately awarded the plaintiffs \$745 million in compensatory and punitive damages for the injuries they sustained at the hands of those under Karadzic's command. See *Kadic v. Karadzic*, 93 Civ. 1163 (S.D.N.Y. Aug. 16, 2000). Some of these atrocities are described in the Amended Complaint, *Kadic v. Karadzic*, No. 93 Civ. 1163 (S.D.N.Y. Dec. 8, 1997). Additional discussion of viable legal responses to the Serbs' use of sexual terror in Bosnia-Herzegovina may be found in Siobhán K. Fisher, *Occupation of the Womb: Forced Impregnation as Genocide*, 46 DUKE L.J. 91 (1996); Adriana Kovalovska, *Rape of Muslim Women in Wartime Bosnia*, 3 INT'L L. STUDENTS ASS'N J. INT'L & COMP. L. 931 (1997); Pelka, *supra* note 104, at 6-9; and Yolanda S. Wu, *Genocidal Rape in Bosnia: Redress in United States Courts under the Alien Tort Claims Act*, 4 UCLA WOMEN'S L.J. 101 (1993). General treatments of "ethnic cleansing" in Bosnia-Herzegovina include NORMAN L. CIGAR, *GENOCIDE IN BOSNIA: THE POLICY OF 'ETHNIC CLEANSING'* (1995); GUTMAN, *A WITNESS TO GENOCIDE*, *supra* note 104; and WHEN HISTORY IS A NIGHTMARE: LIVES AND MEMORIES OF ETHNIC CLEANSING IN BOSNIA-HERZEGOVINA (Stevan M. Weine ed., 1999). For a longer historical perspective, see NORMAN M. NAIMARK, *ETHNIC CLEANSING IN TWENTIETH-CENTURY EUROPE* (1998), and NORMAN M. NAIMARK, *FIRES OF HATRED: ETHNIC CLEANSING IN TWENTIETH-CENTURY EUROPE* (2001).

784. The facts of the case are recounted in *In re B.G.*, 589 A.2d 637, 640-42 (N.J. Super. Ct. App. Div. 1991). Further details are available in PETER LAUFER, *A QUESTION OF CONSENT: INNOCENCE AND COMPLICITY IN THE GLEN RIDGE RAPE CASE* (1994), and BERNARD LEFKOWITZ, *OUR GUYS: THE GLEN RIDGE RAPE AND THE SECRET LIFE OF THE PERFECT SUBURB* (1997). Some of the legal and jurisprudential issues raised in regard to the Glen Ridge litigation are considered in Deborah W. Denno, *Sexuality, Rape, and Mental Retardation*, 1997 U. ILL. L. REV. 315 (1997); Linda R. Hirshman, *Moral Philosophy and the Glen Ridge Rape Case*, 17 HARV. J. L. & PUB. POL'Y 101 (1994); and Linda Robayo, *The Glen Ridge Trial: New Jersey's Cue to Amend Its Rape Shield Statute*, 19 SETON HALL LEGIS. J. 272 (1994).

785. Initial accounts of the brutal assault inflicted upon Mr. Louima while in police custody include David Kocieniewski, *Injured Man Says Brooklyn Officers Tortured Him in Custody*, N.Y. TIMES, Aug. 13, 1997, at B1, and Mike McAlary, *The Frightful Whisperings from a Coney Island Hospital Bed*, N.Y. DAILY NEWS, Aug. 13, 1997, at 2. For more extended discussion of these events, see Richard Goldstein, *What's Sex Got to Do With It? The Assault of Abner Louima May Have Been Attempted Murder. But It Was Also Rape*, VILLAGE VOICE, Sept. 2, 1997, at 57. The description of the attack contained in the guilty plea to which former NYPD officer Justin Volpe finally agreed closely resembles those early reports. See David Barstow, *Officer, Seeking Some Mercy, Admits to Louima's Torture*, N.Y. TIMES, May 26, 1999, at A1. On the mixed verdicts that resulted from the government's prosecution of four other officers accused of participating in the crime, see Joseph P. Fried



strate, sexualized terror is alive and well right here in the United States. Less widely recounted evidence presented by the prosecution at the trial of Lawrence Brewer, the second of three white supremacists tried in the notorious “dragging death” of James Byrd, Jr. in Jasper, Texas,<sup>786</sup> exposes the sexualized undercurrents of that crime as well. In a letter written from his prison cell, the defendant, eager to attract attention for a new chapter of the Confederate Knights of America he hoped to form, boasted “ ‘no longer am I a virgin,’ ” adding that the experience [of killing Byrd] “ ‘was a rush & I’m still licking my lips for more.’ ”<sup>787</sup> Though Brewer’s lawyer denied that his client was referring to the murder in this passage,<sup>788</sup> its redolence with this nation’s violent past gives reason for pause.<sup>789</sup> The same is true

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& Blaine Harden, *Officer Is Guilty in Torture of Louima*, N.Y. TIMES, June 9, 1999, at A1. The Second Circuit subsequently overturned the convictions of several of Volpe’s accused accomplices. See *United States v. Schwarz et al.*, No. 00-1479, 2002 U.S. App. LEXIS 3163 (2d. Cir. Feb. 28, 2002). This decision was the subject of an extensive multipart analysis by *The New York Times*. See Dana Canedy, *The Louima Ruling: The Victim*, N.Y. TIMES, Mar. 2, 2002, at B4; Jim Dwyer, *The Louima Ruling: The Second Man*, N.Y. TIMES, Mar. 1, 2002, at B4; Alan Feuer, *The Louima Ruling: The Defendants*, N.Y. TIMES, Mar. 1, 2002, at B5; Kevin Flynn, *The Louima Ruling: News Analysis*, N.Y. TIMES, Mar. 2, 2002, at B1; William Glaberson, *The Louima Ruling: Hindsight*, N.Y. TIMES, Mar. 2, 2002, at B4; William Glaberson, *The Louima Ruling: News Analysis*, N.Y. TIMES, Mar. 1, 2002, at A1; William Glaberson, *The Louima Ruling: Retrial*, N.Y. TIMES, Mar. 2, 2002, at B1; David M. Herszenhorn, *The Louima Ruling: Chronology of the Case*, N.Y. TIMES, Mar. 1, 2002, at B5; Robert D. McFadden, *The Louima Ruling: Overview*, N.Y. TIMES, Mar. 1, 2002, at A1; Andy Newman, *The Louima Ruling: 70th Precinct*, N.Y. TIMES, Mar. 1, 2002, at B5. For a provocative analysis of the Louima case focusing upon its ascriptively sexual nature, see Katherine M. Franke, *Putting Sex To Work*, 75 DENV. U. L. REV. 1139 (1998). However, the perspective set forth in the present analysis reflects a rejection of Franke’s implicit contention that identification of the fundamentally sexual nature of an attack such as the one sustained by Abner Louima necessarily “occludes the way in which sex mediates other social relations of power.” *Id.* at 1141. While there is undoubtedly a risk that an inadequately theorized approach to sex crime might perpetuate the “essentialization of certain body parts and human behaviors as fundamentally sexual” that Franke seeks to avoid, acknowledging the importance of the “sexual” in certain forms of criminal conduct need not lead ineluctably to the erasure or elision of such crucial relations of power as race, gender, and ethnicity. See *id.* at 1143.

786. For an extended journalistic account of this case, see DINA TEMPLE-RASTON, *A DEATH IN TEXAS: A STORY OF RACE, MURDER AND A SMALL TOWN’S STRUGGLE FOR REDEMPTION* (2002).

787. *Dragging Death Trial Underway: In Their Opening Statement, Prosecutors Say White Supremacist Boasted of His Role in Killing of Black Man*, AUGUSTA CHRON., Sept. 14, 1999, at A3; Rick Lyman, *Dragging Death is Called Signal for Racist Plan*, N.Y. TIMES, Feb. 17, 1999, at A1.

788. Seemingly oblivious to the possibility that “sex” and “violence” may not be wholly discrete categories in this instance, defense counsel argued that Brewer was referring to a sexual experience as that phrase is most commonly understood. See *Trial Begins for 2d Suspect in Dragging Death*, N.Y. TIMES, Sept. 14, 1999, at A19. Countering that assertion, a specialist on gang behavior from the Texas Department of Criminal Justice testified that Brewer’s words indicated that he had “ ‘physically assaulted a member of the black race.’ ” Claudia Kolker, *2nd Guilty Verdict Reached in Dragging Murder Trial: Jury Begins to Consider Death Penalty for Lawrence Brewer, One of the Three Whites Accused in Slaying of Black Man*, L.A. TIMES, Sept. 21, 1999, at A16.

with respect to the declamation of Brewer's codefendant, John William King, that " 'any race-traitoring bitch should be hung up alongside' " her black lover,<sup>790</sup> and his crass message to the Byrd family upon conviction that they were "welcome to perform a sex act on him."<sup>791</sup>

I end this discussion on a note of both hope and lamentation. The lament is for the harsh fact that sexual violence remains a tool all too readily available for exploitation in modern warfare — be it real or metaphorical, domestic, civil, or international. The hope is that in recognizing its insidious designs we can succeed in undermining its power.

Those who imagine that because the conspirators are now still, they will remain so, do not understand them.

—Representative Job E. Stevenson, 1872.<sup>792</sup>

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789. Pointing to the near universal condemnation of the crime and the outsider status of its perpetrators, Orlando Patterson rightly notes that the events surrounding this modern-day lynching also stand as testament to the degree to which race relations have improved over the past century. See PATTERSON, *RITUALS OF BLOOD*, *supra* note 280, at 173. (1998). However true this may be, apprehending the lineage of sexualized racism and combating its recurrent incarnations demands that the comforts of whiggish progressivism be rejected in favor of a more critical historicist posture when analyzing events like this one.

790. Terri Langford, *Dragged to Death for Being Black: White Man on Trial for Killing That Shocked U.S.*, BIRMINGHAM POST, Feb. 17, 1999, at 9.

791. Bob Herbert, *Staring at Hatred*, N.Y. TIMES, Feb. 28, 1999, § 4 at 19. His precise words were, " 'They can suck my dick.' " Michael Berryhill, *Prisoner's Dilemma*, NEW REPUBLIC, Dec. 27, 1999, at 23.

792. STEVENSON, *KU-KLUX CONSPIRACY*, *supra* note 714, at 6.