“ALL MATTERS AND THINGS SHALL CENTER THERE”: A STUDY OF ELITE POLITICAL POWER IN SOUTH CAROLINA, 1763-1776

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ABSTRACT

This dissertation addresses a fundamental question about the nature of political power in South Carolina on the eve of the American Revolution: how did the lowcountry elite wield political power in the colony and to what end? It argues that the ability to control the law, shape legal and governing structures, and determine how the law was enforced were the primary tools that allowed the lowcountry elite to establish the most centralized system of colonial government in North America.

The Commons House of Assembly, which represented only lowcountry parishes until the revolution, seized control of the law, courts, law enforcement, infrastructure, and even the Church of England’s vestries through legislation. These government entities existed to protect property, manage society and maintain order. Yet, the lowcountry elite faced many challenges in the late eighteenth century. Slaves and plantations had to be carefully regulated to protect the economy. Growing population and rising poverty in the colonial metropolis led to higher taxes, disorder and threats to personal property. Most of the colony’s white population lived in the backcountry, and they resented their exclusion from the political and legal systems. British authority, however, posed the greatest threat to the centralized political system.
By the time of the imperial crisis, the Commons House had effectively built a system that could manage the colony without autonomous local governments. However, British officials remained beyond the assembly’s direct control. The colonial legislature used an array of established tactics to bring officials to heel. A long series of battles with British officials merged with the imperial crisis by 1775. The lowcountry elite saw their political system challenged by royal executive authority and Parliamentary legislative power, and they could not win those political battles within the old system. Hence, they resurrected it through a resistance government that produced an independent state government. The new government resembled the old but featured a key difference: British and independent executive authority had disappeared.
For my parents, Charles and Nancy Palmer, who gave me so much.

“\textit{I can do all things through Christ which strengtheneth me.}”—Philippians 4:13
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List of Abbreviations

SCAHC—South Carolina Archives and History Center, Columbia, South Carolina
SCHS—South Carolina Historical Society, Charleston, South Carolina
CLS—Charleston Library Society, Charleston, South Carolina
Introduction

This dissertation addresses a fundamental question about the nature of government in South Carolina on the eve of the American Revolution: how did the lowcountry elite wield political power? Broadly defined, the political system included all the various realms where life was managed. From this perspective, the most important questions when studying South Carolina’s political system are who governed, how, and to what end? The colonial elite used the legislature’s authority to structure and control a host of institutions that have not been considered as strictly political to manage or govern society in ways that secured the authority and protected the interests of the ruling class. When one approaches politics as a practical science—as the art rather than just the philosophy of governing—one has to go beyond the legislative and the ideological to examine all the tools of political power, how they were wielded, and what the ruling party hoped to accomplish.

The lowcountry elite used South Carolina’s lower legislative house--the Commons House of Assembly--to bend other government institutions to their needs and shape them to govern in accordance with the ruling party’s agenda. That agenda included managing, ordering and preserving the plantation economy by creating, defining or extending legislative authority over administrative and legal entities that served to define and preserve social order and limit or direct the activities of all members of colonial society. South Carolina’s elite held a strong grip on authority over local matters in the colony, and they waged continuous battles with groups within the colony (i.e. lower class whites and slaves) and British officials to gain more control of government institutions.
The royal governor was theoretically very powerful, but long established precedents had reduced those powers. Moreover, though colonists revered the king, that reverence did not always translate into support for the king’s ministers, governors, and appointees. Governors lacked patronage powers, had no independent revenue, had a weak statutory backing, and had to depend on their legislatures for support. The king and his colonial representatives were important sources of political authority, but the people, represented in the legislature, were the “moral equal of the king.” The assembly, acting in the people’s name, could resist the king and his subordinates.

The provincial elite and the assembly united around most issues, but they often fought with governors and other imperial officials. Provincial and imperial leaders fought especially difficult battles over the definition and control of other governing institutions. When the assembly successfully gained control over such institutions, it even further diminished the political authority of imperial officials. The system the elite fought to build was tremendously powerful, but it faced constant challenges that questioned or threatened the elite’s ability to maintain their control over local institutions.

British imperial policy itself presented the most critical challenge. The American

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3 Ibid., 4.
4 Robert M. Weir, “The Harmony We Were Famous for: An Interpretation of Prerevolutionary South Carolina Politics,” in *The Last of American Freemen: Studies in the Political Culture of the Colonial and Revolutionary South*, ed. Robert M. Weir (Macon, GA: Mercer University Press, 1986). Also see Mercantini, *Who Shall Rule*... Weir presents the traditional position that the unifying force of a shared ideology led to a high degree of political harmony within the South Carolina elite. Mercantini challenges the position by focusing on major conflicts between imperial and local authorities, arguing that these conflicts also reveal differences among local elites.
Revolution in South Carolina was thus a defense of the old order and a continuation of the elite’s struggle to maintain it that was informed by the model of government they had employed to rule the province during the eighteenth century.

Historians have already provided a rich portrait of politics in colonial South Carolina. These studies focus on the assembly, its membership, its structure, and its ideologically driven conflicts with imperial officials. They have thoughtfully and thoroughly studied legislative privilege, the membership of the assembly, battles with royal governors, the institutional structure of the assembly, and constitutional ideologies that influenced the political behavior of assembly members. All of these works cover different pieces of the puzzle, but they share one common element. All of them focus on the assembly within the context of conflicts with royal governors and “country” or Whig constitutional ideology. Those struggles are critical issues, and this dissertation will also devote attention to them in the final two chapters. However, this work will frame the assembly’s political struggles in the context of how the elite wielded political power in the colony through institutions that the assembly created and controlled.

Previous studies have then shown how the legislative assembly accumulated power at the expense of royal officials. They have further studied who sat in the

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assembly, how the assembly itself operated, and the members’ ideological motivations. This dissertation specifically focuses on the exercise of elite political power and the challenges that beset it. Instead of examining the assembly and its membership in isolation, it examines how the lowcountry elite exercised political power in other spheres and through other institutions that they controlled with the assembly’s lawmaking authority. It then focuses on how the governing elite wielded power through those institutions to manage colonial society in ways congruent with elite economic, social and ideological interests. Finally, understanding how the lowcountry elite worked to control the colony’s resources and population through these institutions before and during the imperial crisis demonstrates continuity between the colonial, revolutionary, and early national periods in South Carolina.

No one has yet comprehensively studied those institutions as primary tools through which the elite wielded political power. Thus, this work will also make use of sources that other political historians do not usually exploit. Those sources include the law itself (especially the criminal law), records of the criminal and civil courts, law enforcement records, minutes of parish vestries, plantation records, runaway slave advertisements, and the slave code. This study will also employ more commonly used sources such as newspapers, minutes of the assembly and council, imperial records, and personal papers of major figures like Henry Laurens. These more widely used sources will help complete the picture of institutions this dissertation focuses on, and they will be used to frame familiar conflicts (including the imperial crisis) within the context of how the elite exercised political power through non-legislative institutions.
This study covers the years from 1763 to 1776—the years after the Seven Year’s War when British policy and colonial resistance sparked an imperial crisis. It examines the nature of elite political power in South Carolina as it had developed to the time of the imperial crisis and concludes with the establishment of independent government in 1776. The years of the imperial crisis leading to independence were the most crucial, because these were the years when the old order faced its greatest challenges, overcame them and was re-established so strongly that it would take the Civil War to change radically the nature of South Carolina’s government.

Chapter one demonstrates how the assembly seized control of the courts, used the law to manage colonial resources, and limited access to the legal system. Chapter two focuses on the criminal law and the criminal justice system, which the assembly also defined and controlled. The lowcountry elite relied upon the criminal justice system to prevent and punish crime, modify behavior in white society, and protect property. Chapter three examines how the lowcountry elite relied upon the law to protect the smooth operation of the plantation system. The law placed restrictions on slaves and slave owners to achieve a balance that prevented economic disruption. Chapter four moves beyond the law itself and studies how the assembly regulated the bottom tier of white society. It usurped the Church of England’s authority to administer relief to the colony’s growing number of poor whites. Chapter five centers on the problem of British appointed officials—placemen—who were beyond the assembly’s control and who often interfered with the legislature’s ability to centrally and autonomously govern the province. The assembly used established tactics to manipulate British officials.
successfully until the final days of the colonial period when royal government collapsed. Finally, chapter six traces how the lowcountry elite organized resistance and built state governments in the image of the old colonial system. They successfully resurrected and augmented the old order and employed familiar governing precedents and traditions in that process.

**Political Power in South Carolina**

The lowcountry elite exercised political power—the power of the ruling party to govern—and implemented their agenda through a variety of instruments including courts, churches and plantations. The elite, represented in the Commons House of Assembly, controlled these critical government institutions by using the law to create rules that shaped how they were constituted and used. South Carolina had no local governments that were not directly controlled and supervised by the elite Commons House of Assembly. South Carolina had no autonomous town meetings, county courts, municipal councils, slave patrols, slave courts or county sheriffs. Instead, the Commons House itself controlled institutions that carried out these government functions. The elite ruling class centralized political power in Charles Town, so that these instruments of government would serve and protect their interests.

The elite used the law to define and shape instruments through which they exercised political authority in the colony. E.P. Thompson has argued that law in eighteenth-century England existed as “an instrument of the de facto ruling class.” Law defined and defended “these ruling claims upon resources and labor power,” and law
defined “what shall be property and what shall be crime.” The South Carolina elite (i.e. the ruling party) also used law in this way. They bent old legal forms and made new laws to defend their own property and authority. They defined property (including an entire class of human beings), law, crime, punishment, legal processes, resource distribution, poverty and local administration to support the economy that made them wealthy and was based on plantation slavery.

The Commons House of Assembly and its lawmaking powers were thus the foundations of the political system that the lowcountry elite had constructed during the colonial period. However, the lowcountry elite wielded their political authority through the institutions that their legislature controlled. The local elite had to defend their legislature’s authority when it was challenged by royal officials, because its lawmaking functions gave them the power to define how these other instruments could be used. More specifically, the elite often had to fight political battles with royal officials and even other groups within the colony to defend the legislature’s exclusive authority to dominate other branches of government.

Thus, the lowcountry elite utterly controlled the Commons House in the eighteenth century, and the assembly aggressively fought to secure its top position within the colonial government. An elite legislature was not unique to South Carolina, and one might apply the same description to Virginia or other colonies. South Carolina, however, did have a unique system of government in other respects. First, a united planter-merchant elite controlled the government more completely than in any other North

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American colony. Second, the elite held such firm control, because their domination of the legislature gave them a firm grip on all of these other instruments of political power. The Commons House and the elite controlled the law, the courts, the parish vestries, the distribution of resources, the selection of clergy, and the supervision of the plantation economy. The colony had no autonomous town, city, county or parish governments. Both facts reflect how the elite strove to monopolize political power in South Carolina.

The Commons House of Assembly’s authority derived from the immense wealth of the lowcountry planter-merchant elite. They based their wealth on slave labor and plantation agriculture. South Carolina was the only North American colony with a slave majority. Only about one quarter of the white population lived in the lowcountry where the vast majority of the slave population also resided. Slave owners ruled in the legislature, and they used its power to manage colonial society through institutions it controlled. An individual slave owner might be able to coerce his laborers into submission, but only the law provided the means of ensuring colony-wide order and the continued operation of the vital plantation economy. Hence, the lowcountry elite constructed a system of government that used the law and law enforcement to structure government and extend elite authority and the assembly’s political power throughout the colony. The law allowed the lowcountry elite to manage black and white society from Charles Town, and the assembly’s power to determine who could participate in and access the political and legal systems was especially strong. The assembly represented only lowcountry parishes until the revolution. The elite shaped the other institutions it dominated to protect property, manage society and maintain order.
Despite their domination of the political system, the lowcountry elite faced many challenges in the late eighteenth century. Slaves and slave owners had to be carefully regulated to protect the economy. Growing population and rising poverty in the colonial metropolis led to higher taxes, disorder and threats to personal property. Most of the colony’s white population lived in the backcountry, and they resented their exclusion from the political and legal systems. The encroachment of British authority presented the greatest challenge, since it most seriously threatened the lowcountry elite’s control of these local institutions.

By the time of the imperial crisis, the Commons House had effectively built a system that could govern the colony without autonomous local institutions. However, British officials remained beyond the assembly’s direct control. The assembly used an array of established tactics to bring officials to heel, and it repeatedly drove out any British official who either challenged the assembly’s power or hampered its efforts to structure governing institutions like the courts or the Church of England. A long series of battles with British officials merged with the imperial crisis by 1775. The lowcountry elite saw their political system challenged by royal executive authority and Parliamentary legislative power, and they could not win those political battles within the old system. Hence, they resurrected it through a resistance government that produced an independent state government. The new government resembled the old but featured a key difference: British and independent executive authority had disappeared. The break with Britain was more than a clash of ideologies or theories of empire. It was also a clash of governing
systems—imperial and provincial—that finally proved incompatible given how political power was exercised in colonial South Carolina.

Ideology justified this system of government the lowcountry elite created. It supported their domination within the colony and how they wielded political power through the institutions they controlled. The lowcountry elite primarily relied upon two strains of thought—late seventeenth-century English constitutionalism and eighteenth-century fears about the corrupting influence of executive political power. This Whig or Country ideology was coherent and widely shared by the mid-eighteenth century in South Carolina. South Carolina elites commonly read major Whig authors. The *South Carolina Gazette* reprinted many of Trenchard and Gordon’s *Cato’s Letters*, and the Charleston Library Society held the full collection. Henry Laurens commented that the *Independent Whig* could be found in almost every gentleman’s private library by 1772. Personal inventories also indicate that eighteenth-century Whig historians, seventeenth-century classical republicans, and other major Whig authors like Bolingbroke and Locke were common to private collections. This ideology stressed natural rights to life, liberty and property. Moreover, it argued that representative government and the rule of law were the surest ways to safeguard those precious rights. Executive authority (i.e. the king or a governor) was beneath the rule of law. Eighteenth-century authors like

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7 Weir, “The Harmony We Were Famous For,” 2.
8 Ibid., 15.
Trenchard and Gordon feared that liberty could easily be lost if executive power supplanting or corrupted legislative authority and officials could not be held accountable for their actions. Like the English Parliament, the Commons House of Assembly claimed a paramount position within the provincial government. It claimed the power to check executive and imperial authority, as Parliament claimed the right to hold a king’s power in check and defend liberty in England.¹¹

South Carolina was founded on the principles of hierarchy and property ownership.¹² John Locke, friend of Whig leader and South Carolina proprietor Anthony Ashley Cooper, wrote the colony’s first constitution.¹³ The “Fundamental Constitutions” was never fully implemented. However, as Locke’s original constitution intended, South Carolina’s society remained hierarchical, and wealthy landowners continued to dominate the colony.¹⁴ Political power relied upon property, rule of law and hierarchy in colonial South Carolina, which was also how writers like Locke conceived power in early modern English thought. Locke himself wrote that “the great end of men’s entering into society being the enjoyment of their property in peace and safety, and the great instrument and means of that being the laws established in that society,” the legislature should stand supreme in any given political system.¹⁵ Thus, John Locke clearly linked property,

¹¹ Ibid., 140.
¹⁴ Roper, 157.
political power, representative government, liberty and law directly together. Those who ruled eighteenth-century England and South Carolina did the same, which is evidenced in how they constructed systems of government.

England’s landed gentry used their domination of Parliament in the eighteenth century to establish a political system designed to protect elite property and authority. As E.P. Thompson has written, “The British state…existed to preserve the property and, incidentally, the lives and liberties of the propertied.”16 Thus, English Whigs (the party of John Locke and Anthony Ashley Cooper) used Locke’s thinking to the exclusive advantage of the elite. The English elite moved to protect every sort of property in the eighteenth century.17 Court statistics support these claims. From 1734 to 1737, 85% of prosecutions before nine English county courts involved property crimes.18 The law (or the rule of law) was one of the fundamental tools of elite political power. It was used to regulate society and protect property in a way that supported elite rule and was congruent—at least in general principle—to Whig ideology.

The sanctity of property and domination of the legislature (with its ability to control other governing institutions) were then major tenets of elite rule in England. Monarchy (or royal authority in South Carolina) was “limited and mixed” or under the

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16 Thompson, 21.
rule of law. The elite attempted to define that rule of law through the power of the legislature. Similar principles apply to eighteenth-century South Carolina. Lowcountry elite political power was rooted in the wealth generated by plantations. Collectively, the planter class that ruled South Carolina imposed order on their slaves, white society, and each other by using the lawmaking power of the Commons House of Assembly. The legislature created or shaped institutions the ruling class could use to protect the economy and control their human property. It was the main pillar on which their authority over the province depended. Without the rule of law, slavery and the plantation economy could not have functioned.

Indeed, slavery and political power in South Carolina shared an important relationship. Robert Olwell, for example, has studied how slavery in eighteenth-century South Carolina modified English institutions in the colony. Olwell places slavery at the heart of colonial society and politics, going so far as to argue that the master-slave relationship defined “the entire social order.” He has shown how it altered English models of law, economy and religion. Slavery also plays a prominent role in this dissertation’s understanding of political power in South Carolina. This study places the plantation and the legal tools used to control slaves and regulate slave owners within the larger political system. Maintaining slavery and the plantation economy (i.e. property or prosperity) were two of the most important functions of South Carolina’s government.

The lowcountry elite’s governing philosophy was also rooted in English precedents that

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19 Speck, 141.
stressed the protection of property (including the control of human property in South Carolina) through rule of law and representative government.

Thus, this study argues that political power was rooted in the wealth generated by plantation slavery in colonial South Carolina. As Robert Olwell has written, the South Carolina elite “owed their position in society to the labor of black slaves, to the profits of the slave trade, or to both.”21 Moreover, the law and the legislature’s ability to extend, shape and control other parts of government were the primary tools used to impose elite authority and regulate the economy and population. The legislature was supreme within South Carolina’s political system, but elite power was effectively exercised through other institutions that had become dependent on the legislature. This study’s focus is not only on legislative politics in the traditional sense. Instead of highlighting the philosophies and activities of legislators in the context of conflicts between the assembly and royal government, this dissertation studies tools that gave the elite power to order the colony centrally and protect their sources of wealth. Those instruments of government had to reach down to the local level. The law, courts, and law enforcement mechanisms were the most powerful and important of those instruments. The assembly extended its authority over these tools along with other non-legal elements (i.e. the Church of England) to regulate behavior and manage colonial society and economy.

Previous works on South Carolina’s colonial politics have detailed how the assembly developed and functioned and have studied ideological and constitutional rivalries within the imperial system. Jack Greene’s work in particular, by explaining how

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21 Olwell, 14.
the legislature accumulated prominence at the expense of royal authority, has shown that the colonial elites exercised considerable political authority. By examining how the elite used other instruments of political power, this dissertation demonstrates that the lowcountry elite were even stronger than one might have previously expected. It shows how the elite—represented in the assembly—used important political and legal tools to order the colony for the protection of their property and the economy and how they successfully faced the many and various threats to their rule in the years before the American Revolution. While the elites were powerful, they were not always secure. Within this context, the imperial crisis in South Carolina can be understood as a challenge to how the elite exercised political power through the system they dominated.

The Elite

Who were the eighteenth-century South Carolina elite? What did it mean to be a member of the political elite? First and foremost, they were men of wealth and property from the lowcountry, and their wealth was based on plantation slavery. The South Carolina lowcountry was the wealthiest region in North America just before the American Revolution, and its wealth increased toward the end of the colonial period. Rice exports, for example, were up over 30% above annual averages between 1770 and 1773. In 1774, the South had 55% of all the colonies’ wealth in land, property, and

22 See Greene, *The Quest for Power* and Greene, *Negotiated Authorities.*
goods and 95% of the slave and servant wealth.\textsuperscript{25} In the parishes surrounding Charles Town, some seventy individuals who left probate inventories behind owned 2,346 slaves (a ratio of 33.5 slaves per owner compared to a ratio of 8.7 in Virginia).\textsuperscript{26} Based on estimates derived from probate records, the richest 10% of the population held 49% of South Carolina’s wealth, and nine of the ten richest men in the thirteen colonies resided in the South Carolina lowcountry.\textsuperscript{27}

Most of the colony’s wealth was concentrated in and around Charles Town. Two parishes divided Charles Town in the late eighteenth century—St. Michael’s and St. Philip’s. In 1769, residents of just those two parishes owned some 26,695 slaves and 938,124 acres of land. Another lowcountry coastal parish—St. Bartholomew’s—was the next wealthiest. In the same year, residents of this parish owned 5,494 slaves and 138,214 acres. All backcountry residents in 1769 owned 3,552 slaves and held 559,429 acres of land. These figures reveal that the lowcountry parishes in and around Charles Town held the vast majority of the colony’s wealth in land and slaves.\textsuperscript{28} Charles Town was the center of elite wealth, and it was the center of elite political power.

If the South Carolina lowcountry was a place of great wealth, the Commons House of Assembly (i.e. the lower house of the colonial legislature) represented an extraordinary concentration of wealth. The Commons House was the central provincial governing institution, and wealthy planters and merchants dominated it. Between 1721 and 1775, the majority of assembly members held estates valued (at their death) between

\textsuperscript{25} Alice Hanson Jones, \textit{Wealth of a Nation to Be} (New York: Columbia University Press, 1980), 51.
\textsuperscript{26} Ibid., 114.
\textsuperscript{27} Ibid., 114.
\textsuperscript{28} Waterhouse, 133.
£1,001 and £3,000 Sterling. Another 16% had estates valued between £5,001 and £10,000 Sterling. The top 11% owned estates worth between £10,001 and £60,000 Sterling. Moreover, between the years 1761 and 1775, all assembly members had estates valued at £2,000 Sterling or more. The percent of assembly members who owned estates at this value level increased from 30% between 1721 and 1730 to 44% between 1741 and 1750. 29 Hence, the overall wealth of assembly members increased as the eighteenth century passed, even though the official requirements to hold office did not mandate increased wealth.

In order to hold office in the Commons House of Assembly, a South Carolinian had to meet official qualifications defined by the election act of 1721. First, one had to be a free white man over the age of twenty-one and a Christian who had resided in the colony for at least one year. These requirements, in addition to owning at least a fifty acre freehold or paying twenty Shillings per year in provincial taxes, applied to voters who elected assembly members. A potential assembly member also had to possess 500 acres of property or ten slaves or houses and town lots worth at least £1000. The law did not require one to reside in the parish he represented nor did it specifically require him to own slaves. A member’s ability to live outside the parish that elected him meant that the majority of members resided in Charles Town all or part of the year. 30

Professionally, the majority of assembly members were planters (65.36%) between the years 1721 and 1775. An additional 19.57% were merchants and only

29 Waterhouse, 163.
30 George C. Rogers, Charleston in the Age of the Pickneys (Columbia: University of South Carolina Press, 1969), 19.
4.68% were lawyers. After 1750, not a single British official sat in the assembly. The most numerous were also the wealthiest, as 78.2% of members whose estates totaled more than £1,000 Sterling were planters. If planters were most influential in terms of their wealth, merchants and lawyers came to play increasingly important leadership roles. Merchants made up the largest percentage of members serving in leadership roles followed by planters and lawyers. However, during the 1760s and 1770s, both planters and merchants were increasingly replaced by lawyers in leadership positions. This development came at a time when their legal expertise might prove most useful, but numbers alone are deceiving. Almost all professional leaders also owned plantations and had blurred categorical distinctions through intermarriage by the end of the colonial period. The statistics suggest that wealth was the chief requirement for assembly membership.

The elite went to great lengths to reinforce their legislature’s authority symbolically. Josiah Quincy remarked about the extent to which the Commons House imitated the House of Commons. Each meeting began by bringing out the mace (“a very superb and elegant one which cost 90 guineas”), which was laid on the table before the speaker (as it was in England). The speaker, robed in black with a large wig of state, entered in procession behind the mace. All the members sat with hats on (the House of

31 Waterhouse, 168-170.
32 Ibid., 182.
Commons tradition) and only removed them when they rose to speak. One cannot help but notice the similarity even in the names—Commons House and House of Commons. All of this pomp was intended to project the importance, British nature, and proper place (on par with Parliament) of the Commons House and its members.

The assembly oversaw all aspects of colonial governance and sat in long sessions. The election act required the assembly to meet at least every six months and hold elections every three years. Sessions were always in Charles Town (with one notorious exception), making it difficult for those who lived distantly to attend. Few could afford the time and expense of serving in the Commons House. Other factors played an important role as well. Prominence meant more than just pure wealth, and lineage played a major role in determining status. Long established families with a history of political service would often have multiple family members in the assembly and other branches of government. For example, a core of very wealthy and powerful men sat on multiple assembly committees and dominated the most important committees. These included committees to draft new legislation, to communicate with the governor and council, and for internal improvements. These three committees had the highest number of prominent members, followed by the committees for Charles Town and slavery. Finance committees were much smaller and were almost totally dominated by the most prominent men. The committee for public accounts usually had only two members, compared to the

35Weir, 122-123.
twenty-eight members on the committee to draft bills. Even the assembly featured an internal hierarchy.\textsuperscript{36}

Two examples illustrate the wealthiest families’ political influence. Gabriel Manigault’s personal property (not including land) was estimated to have been worth £13,569. Daniel Huger’s personal property (land and goods) was estimated to have been worth £119,501, and he owned 452 slaves.\textsuperscript{37} Daniel Huger sat in the assembly and had four sons who also held seats.\textsuperscript{38} Gabriel Manigault’s son Peter also sat in the assembly and eventually served as speaker.\textsuperscript{39} In 1769, 41.82\% of assemblymen were third generation members. An additional 21.82\% were second generation. The percentage of “legacy” members increased after 1773. For example, the second 1773 assembly’s membership consisted of 10.2\% members who were beyond fourth generation, whereas that group in 1769 only made up 5.45\% of the assembly’s membership.\textsuperscript{40} Fifty percent of members elected from St. Philip’s and St. Michael’s parishes had close relatives (fathers, brothers, and sons) who also served in the assembly at the same time.\textsuperscript{41} The Commons House was like a tight-knit club for the provincial elite’s top families. Family

\textsuperscript{36} Frakes, 84.
\textsuperscript{37} Arthur Hirsch, \textit{The Huguenots of Colonial South Carolina} (Columbia: University of South Carolina Press, 1999), 177-178. Hirsch’s figures are based on records of the South Carolina probate court. Walter Edgar provides slightly different but equally impressive statistics: Huger (1688-1754) owned four lowcountry plantations with a total of 13,913.4 acres between all of his holdings. He also owned nine houses in Charles Town, and Edgar writes that he owned 369 slaves. Huger, the child of Huguenot immigrants, married four times and each of these marriages came with large estates. See Walter B. Edgar, ed., \textit{Biographical Directory of the South Carolina House of Representatives} (Columbia: University of South Carolina Press, 1977), 2:339-340.
\textsuperscript{38} Edgar, 2:337-345.
\textsuperscript{39} \textit{Ibid.}, 2:428-433.
\textsuperscript{40} Waterhouse, 172.
\textsuperscript{41} \textit{Ibid.}, 176.
connections were essential to a successful political career in eighteenth-century plantation colonies like Virginia and South Carolina.\(^{42}\)

The Commons House of Assembly represented a great concentration of wealth and prestige. What of the colony’s population in general? From 1763 to 1776, 166 individuals served in the Commons House—only a fraction of the population.\(^{43}\)

Estimates based on probate inventories indicate that about 25% of the men in St. John’s Parish from 1769 to 1779 owned fifty or more slaves. Sixty percent in that parish owned at least ten slaves, and 95% owned at least one there.\(^{44}\) These figures for St. John’s demonstrate the extent to which slave ownership was spread among the entire population. However, the wealthiest planters owned far more than ten or slaves. By 1750, most slaves worked on plantations with fifty or more slaves.\(^{45}\) Planters with about ten slaves could no doubt live comfortably, but they were not on par with the large planters. Henry Laurens’s Mepkin Plantation, for example, housed about seventy slaves. One of its primary functions was to produce food for his other plantations. All of his plantations worked together to produce commodities (i.e. rice) for the international market.\(^{46}\)

Planters, merchants and professionals occupied the top tiers of South Carolina’s economic structure, with the largest landowners and wealthiest merchants like Henry Laurens or Daniel Huger at the pinnacle. They also sat atop the political and social

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\(^{43}\) Compiled from Edgar, *Biographical Directory of the South Carolina House of Representatives*.

\(^{44}\) Olwell, 45.


Josiah Quincy of Massachusetts, who visited Charles Town in 1774 and sat with the Commons House of Assembly, asked a vital question:

Tis true they have a house of Assembly, but who do they represent? The laborer, the mechanic, the tradesmen, the farmer, the husbandman or yeoman? No. The representatives are almost if not wholly rich planters. The planting interest is therefore represented, but I conceive nothing else (as it ought to be)...The members of this house are all very wealthy, and such kind of men have in general but little solicitude about the interests or concerns of the many; and frequently the fittest instruments to enslave and oppress the commonality. 47

Through observation, Quincy learned what one can also see through statistics and research. The assembly was dominated by the wealthiest of the planter and merchant elite, and their interests prevailed in the government.

Yet, a large portion of Charles Town’s population was made up of artisans (or mechanics). How could Quincy say that the “planting interest” dominated the assembly, when many artisans could vote? Lieutenant Governor William Bull estimated that the city’s population was 5,030 in 1770. The 1790 Charleston Directory listed 429 master mechanics, meaning roughly 20% of the city’s adult population consisted of just master mechanics. 48 Most artisans qualified to vote based on the tax requirement, but their participation in legislation did not go beyond voting. Artisans never sat in the Commons House. No law excluded them, but, by custom or influence, merchants, planters and professionals dominated legislative policy in the assembly as well as its membership. 49

Mechanics and artisans who wished to make their opinions known would have to

47 Howe, 454.
48 Richard Walsh, Charleston’s Sons of Liberty (Columbia: University of South Carolina Press, 1959), ix-x.
49 Ibid., 26.
approach the assembly through petition, express grievances through the court system, or pool their collective political strength as voters to find a spokesman.

The mechanics, though not planters or part of a “planting interest,” shared many political and economic sympathies with the planter class who dominated the assembly. Artisans had many grievances against the British system that the planters shared, including restrictive mercantile laws and restrictions on paper currency (creating a scarcity of money and specie in the colony). Mechanics especially disliked policies that restricted colonial manufacturing. They hoped to be able to compete with British products, and their advertisements in local newspapers often claimed their wares were good as or better than imports. However, artisans could not stop British manufactures from pouring into the colony. Many artisans also turned to slavery to meet their labor needs. Of seventy-nine mechanics who left wills from 1760 to 1785, thirty-four specifically mentioned slaves. The 1790 census identified 194 artisans and noted that 159 held slaves. It was not uncommon, as indicated by newspaper advertising, for an artisan to buy and train a slave and then sell him for an increased value. Though this practice could hurt artisans in the sense that trained plantation slaves might compete with them, it was an avenue of profit. The artisans were natural allies of the “planting interest” in many respects. They shared involvement in slavery, took pride in their local attachments, resented British interference, and politically identified with planters on monetary and anti-mercantile issues. Mechanics did not compose a political or economic class that stood in direct opposition to the primary ruling elite. Planters might also

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50 Ibid., 19-25.
patronize local artisan shops. Artisans, like silversmiths and joiners, might provide utensils and furniture for great estates and hoped that planters and aspiring gentry would turn to them—not Britain—when seeking luxurious products.

The ultimate aspiration for a planter or merchant was to emulate the lifestyle of the English gentry, which meant the ability to attain refinement, luxury and independence. Attaining this status included the ability to display one’s wealth by obtaining the latest fashions, the best wines, fine furniture and tableware from England, family portraits by the best artists, and building a great house (or a country seat). Such wealth also gave one the ability to fully participate in the colony’s social life. A wealthy man and his family could enjoy horse racing, theater and balls, or he might join and support various civic and charitable societies. Enjoyable as these luxuries may have been, they were, as Robert Dalzell and Lee Baldwin Dalzell have written of Virginia, “more than pleasant diversions: such things stood as the mark of a well-bred person.”

Horse racing, certainly more than a pleasant diversion, was quite popular, and the Charles Town races were renowned throughout the colonies. Josiah Quincy made a special point of attending, noting that £2,000 was won and lost at one race. He also visited the concert hall upon arrival and remarked that it was “preposterously and out of all proportion large.” Charles Town had many such social organizations. The Library Society, for example, owned over 8,000 volumes by 1778. The South Carolina Society (a benevolent organization) lent out over £7,500 Sterling in the 1760s and 1770s. The

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52 Howe, 451.
53 Ibid., 441-442.
elite’s wealth also helped fund public building projects such as the grand St. Michael’s Church, the State House and the Exchange in the years after 1750. Several prominent individuals hoped to found a local college in Charles Town, but the wealthiest families like the Manigaults, Draytons, Middletons, Pinckneys and Rutledges could afford to have their children educated in Britain.\textsuperscript{54}

The building of great public structures and the formation of social, civic or educational organizations were collective marks of a wealthy class trying to improve itself. Statistics are not enough to define the elite in this case, and the numbers may be deceiving. Perhaps a majority of the white population could afford some luxuries, but very few could afford to build great estates and live the gentry lifestyle. By the eighteenth century, to be genteel was to be elite. Gentility validated wealth, securing one’s status as truly upper class.\textsuperscript{55} This validation was even more important for colonials, who had to overcome criticisms that they were provincial or rustic. Provincialism was thus a motivating factor in attaining gentility for colonial elites.\textsuperscript{56} Planters usually responded with increased determination to attain the traits (e.g. social organizations, homes, clothing, education, etc.) of genteel style.\textsuperscript{57} By the mid-eighteenth century, they had successfully built a genteel society with all of its trappings. As Trevor Burnard writes of the Maryland elite, wealthy planters were “reasonably secure in their

\textsuperscript{54} Weir, \textit{Colonial South Carolina}, 237-247.
\textsuperscript{56} Michal Rozbiki, \textit{The Complete Colonial Gentleman: Cultural Legitimacy in Plantation America} (Charlottesville: University of Virginia Press, 1998), 77.
\textsuperscript{57} \textit{Ibid.}, 103.
understanding of themselves as gentlemen” and saw themselves as “deserving members of the British gentry and resented metropolitan condescension.”

The South Carolina elite were wealthy, politically dominant and aspired to gentility. It is important, however, to understand that the South Carolina elite were not a totally closed group. It was possible to rise socially, especially through marriage. Elites were active, always at the center of colonial politics and power (as opposed to a caste elite that has withdrawn from power and adopted a reclusive attitude) and were willing to welcome new talent.

Rawlins Lowndes, who served as Speaker of the Commons House and later President of South Carolina during the war, is a good example. His family immigrated to Charles Town from St. Kitts in 1730. His father soon found himself imprisoned (and died in 1736), and his mother left for St. Kitts. She left her two sons in the custody of Provost Marshall Robert Hall. Lowndes studied law and became deputy Provost Marshall through his association with Hall, which gave him a way into the upper ranks of power and society. He built his wealth in planting and first won election to the Commons House in 1749. He eventually served as a judge on the courts of Common Pleas and General Sessions. Though he was an immigrant boy whose father killed himself in prison, Lowndes rose to elite status. He only needed the initial connection to Robert Hall.

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59 Rogers, 24.
to build a legal career, acquire property, marry well and join the top ranks of the South Carolina planter gentry.\textsuperscript{60}

Members of the elite often forged connections through marriage. As George Rogers has written, marriage was “the cement of the South Carolina elite.”\textsuperscript{61} Elite families in plantation societies like Virginia and South Carolina merged to create a “self-perpetuating oligarchy.”\textsuperscript{62} Separate family groups became one through intermarriage, and large families aided in this process. Colonial treasurer Jacob Motte had nineteen children. His sons-in-law included Thomas Lynch, William Moultrie, William Drayton, Henry Peronneau, John Sanford Dart, John Huger, Dr. James Irving and Thomas Shubrick. These marriages tied Motte to several of the colony’s most prominent families.\textsuperscript{63} Thomas Lynch would go on to sign the Declaration of Independence and inherited the opulent Hopseewe Plantation north of Charles Town. William Drayton was a member of one of the colony’s most wealthy and prominent families. His father Thomas established the great Magnolia Plantation, and his uncle built one of the finest Georgian mansions in all of America at Drayton Hall Plantation.

Family seats like Drayton Hall demonstrated a family’s elite status. Even the word “hall” contained symbolic meaning, harkening back to Anglo-Saxon lordship.\textsuperscript{64} Building a great plantation or townhouse was an option open only to the top tier of the


\textsuperscript{61} Rogers, 23.


\textsuperscript{63} Rogers, 23-24.

elite (i.e. the political elite). Miles Brewton, the wealthiest merchant in Charles Town, built a home costing £8,000 Sterling in 1769. Josiah Quincy described Brewton’s home as “the grandest hall I ever beheld.” Quincy described the extravagant dinner Brewton laid out for his guests: “A most elegant table, three courses, nick-nacks, jellies, preserves, sweetmeats, etc. After dinner two sorts of nuts, almonds, raisins, three sorts of olives, apples, orange, etc. By odds the richest wine I ever tasted: Exceeds Mr. Hancock’s.” Many planters owned dual residences. Charles Pinckney owned several plantation homes, including Snee Farm and one of the grandest town homes in Charles Town, which would have been comparable to Brewton’s. It took some 300,000 bricks to build his mansion. Like other houses of the era, it was designed according to fashionable standards (Georgian / Palladian design) and emulated the great houses of the English gentry. Houses, such as those of Brewton, Pinckney and Drayton (all similar in appearance and design) took their forms from popular English design books.

The ability to build such a great house and emulate the lifestyle of the English gentry was an important social component of elite status. Owning slaves and building wealth were half the battle, but individuals needed something more than property (human or otherwise) to fully distinguish themselves as elite. Hence, they desired to build great seats, establish family dynasties and live a lifestyle of luxury reflective of English gentry standards. “Elite” status was a combination of quantitative and qualitative elements.

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65 Edgar, 2:96.
66 Howe, 444.
67 *Ibid*, 445-446. Mr. Hancock, of course, refers to the famous John Hancock of Boston.
68 Rogers, 68.
Wealth was the precursor to gentility, and the Commons House of Assembly was the center of wealth, power, and status in eighteenth-century South Carolina.
Chapter 1
Rule through Law: Legal Culture, the Courts and Elite Political Power

The legal system gave the lowcountry elite tremendous advantages. They controlled the legislature, which constructed the system within the British legal tradition. Through that power, the assembly extended lowcountry elite influence to every corner of the province and refused to grant autonomy to local communities. The Commons House of Assembly acted as both legislature and municipal government. It controlled local administration and infrastructure through the legislative process to a point unknown in other colonies or even in England. Even Charles Town remained unincorporated until after the American Revolution. The legislature distributed colonial resources and selectively responded to grievances. The legal culture itself was dominated by those wealthy enough to obtain the best legal training. Legal training and knowledge of the law were restricted to the lowcountry elite, who could use their knowledge to shape and manipulate the system for their own benefit. If one hoped to navigate the system, one would have to seek assistance from the same people who controlled and ultimately limited access to the system.

This centralized system existed to protect elite property, order the province and mediate between interests. The lowcountry elite protected their property and increased their political domination of the province by tightly controlling the definition, function and constitution of legal institutions. By limiting access to the courts in formal and informal ways, the colony’s governing elite set themselves up as the gatekeepers of legal processes. The legislature used its authority over the law and courts to centralize the
legal system, strictly control it from Charles Town, and administer colonial resources in ways that mainly benefitted the ruling class. Defining and controlling the law and the courts and guarding access to the legal system allowed the elite to determine “who is who and who should be where” in colonial society and served to perpetuate elite control of the government and economy.¹

Little overall and virtually nothing recent has been written on South Carolina’s colonial courts or legal system. Since no one has ever produced a comprehensive study of the colony’s legal system, this chapter will focus on several key questions. How were the courts structured and how did they operate? How did the constitution of the courts contribute to elite political power? How and why did the elite work to maintain exclusive control over the courts and limit access to the legal system? What advantages did the legal culture provide for the elite? The answers to these questions reveal conservative, provincial elites who were satisfied with the centralized structure of the legal system and government in eighteenth-century South Carolina. They were unwilling to engage in any meaningful debate over how the legal system was constituted or who would gain access to it. The provincial elite crafted the legal system. They consistently fought to limit access, centralize the system in their lowcountry stronghold and prevent any internal or external interference. South Carolina’s courts were impositions of elite authority used to manage provincial society and resources.

**Accessing the Legal System and the Legal Culture**

J. Hector St. John de Crevecoeur thought Charles Town’s prevailing legal culture dominated by a select few, who exercised great political and economic influence through their domination of the legal system:

The three principal classes of inhabitants are lawyers, planters, and merchants; this is the province which has afforded to the first the richest spoils, for nothing can exceed their wealth, their power, and their influence. They have reached the *ne plus ultra* of worldly felicity; no plantation is secured, no title good, no will is valid, but what they dictate, regulate, and approve. The whole mass of provincial property is become tributary to this society, which far above priests and bishops, disdain to be satisfied with the poor Mosaical portion of the tenth. I appeal to the many inhabitants who, while contending perhaps for their right to a few hundred acres, have lost by the mazes of the law their whole patrimony. These men are more properly lawgivers than interpreters of the law, and have united here, as well as in most other provinces, the skill and dexterity of the scribe with the power and ambition of the prince…The nature of our laws and the spirit of freedom, which often tends to make us litigious, must necessarily throw the greatest part of the property of the colonies into the hands of these gentlemen.²

It is surprising that Crevecoeur puts lawyers atop the social structure. Planting was the most lucrative economic activity in the province, and planters held a majority in the

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² J. Hector St. John de Crevecoeur, *Letters from an American Farmer* (New York: Penguin Group, 1986), 167-168. Crevecoeur may have had a specific agenda in mind with his piece on Charles Town. The ninth letter stands in stark contrast to his others, and Crevecoeur comes off as not at all fond of the slave society he finds in South Carolina. Norman Grabo argues that the letters show “both the American dream and its brutal subversive nightmare.” This letter about Charles Town, which places heavy emphasis on elite rule and the brutality of slavery, may have been meant to stand in contrast to his image of the ideal and democratic “American farmer.” Crevecoeur may have exaggerated certain aspects of Charles Town’s society for this purpose. See Norman S. Grabo, “Crevecoeur’s American: Beginning the World Anew,” *William and Mary Quarterly* 48.2 (April 1991), 159-172. Christopher Iannini suggests a similar line of thinking on Crevecoeur’s ninth letter, arguing that it may be the point where he simply despairs over the crimes of humanity and that the horrors of slavery in South Carolina shook Crevecoeur’s faith in republicanism. Hence, this letter has a dark tone and may serve as a warning or an example of republicanism corrupted. See Christopher Iannini, “The Itinerant Man,” *William and Mary Quarterly* 50 (April 2004), 227-230. Elayne Rapping also address the ninth letter in terms of its contrast to the others. She makes a particularly important comment in the context of this study. She argues that Crevecoeur portrays law in America as acting on human nature and propelled by self interest. This theory works for “American farmers” who are all landowners and relatively equal. It breaks down in Charles Town. Self-interest there led to tyranny, as “the interest of the master is not the interest of the slave.” She argues that Crevecoeur presents Charles Town as an example of what happens when reason fails to govern human nature. See Elayne Antler Rapping, “Theory and Experience in Crevecoeur’s America,” *American Quarterly* 19.4 (Winter 1967), 707-718.
Commons House of Assembly. Yet, he deemed lawyers the most powerful and influential members of society and identified the law as the key tool of political power in the colony. His analysis, however, was flawed. He did not consider that many planters and merchants often doubled as lawyers. He also placed stress in the wrong place. Lawyers were important, because the planter and merchant classes created a great demand for their services. The law was important to these classes because of their business interests, which often required skilled legal navigators. However, it was also important because the legal culture was highly restrictive, and only those privileged to have sound legal training would be able to navigate the colony’s legal mazes properly.\(^3\) As the lawyers, judges, lawmakers and primary holders of wealth, they were also the mediators or gatekeepers in the province. If one had a legal issue or needed to appear before the civil court to seek justice, one had to go through the elite in some way. Since the elite used the legal system to govern the colony and manage resources, limiting access to it also limited political influence.

Crevecoeur was at least correct in that Charles Town’s top lawyers were a small, elite club that included some of the most powerful political figures in the colony, many of whom would go on to be revolutionary leaders. Names such as Rutledge, Middleton and Pinckney appeared regularly on civil court dockets. He was also right in that the civil courts in South Carolina were very busy, especially with debt cases.

John Rutledge, for example, was one of the most powerful political figures in South Carolina. Rutledge came from a planter family, whose wealth was able to provide him the best legal training possible. Hence, his services were in high demand. Between 1761 and 1779, he recorded 562 entries in his client account book. Though this document has survived, its poor condition makes many entries illegible, so a complete case by case analysis is impossible. Nevertheless, it is still quite revealing. First, it shows how active a prominent Charles Town lawyer could be in these years before the revolution. Second, it reveals what legal services a prominent lawyer commonly provided. Most of the entries were for drawing up deeds, bills of sale, wills, writs, notes and various other property-based legal documents, not for trial services. Rutledge was also a busy trial lawyer. The judgment docket of the Court of Common Pleas indicates that he had 506 cases between 1761 and 1773.5

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4 Rutledge’s list of political offices is extensive. He served in the Commons House of Assembly from 1761-1775 and went on to serve in the Provincial Congress and General Assembly. In 1764, he served as acting Attorney General. The following year he was one of three delegates sent to the Stamp Act Congress and chaired the committee responsible for drafting the petition to Parliament. In the Commons House, he served on the committees that produced the Circuit Court Act and vagrancy bill. In addition to his legislative duties, Rutledge also served as a Justice of the Peace in Berkeley County and the Charleston District. During the Revolution, Rutledge was a delegate to both Continental Congresses. He was chosen as the first President of South Carolina’s new government in 1776. Aside from his very active political and legal careers, Rutledge also owed about 30,000 acres in the colony. He received his legal education at the Middle Temple in London and was called to the English bar in 1760. He attended the English courts and probably rode one of the Assize circuits to learn procedure. His family was connected to the most wealthy and powerful families in the lowcountry. He married into the Grimke family, and his children married into the Kinloch and Laurens families. His daughter Elizabeth married Henry Laurens. John’s brother Edward, also a prominent politician, married into the extremely powerful and wealthy Middleton family. Walter Edgar and Louise Bailey, eds., Biographical Directory of the South Carolina House of Representatives (Columbia: University of South Carolina Press, 1977), 2:579-81. See also James Haw, John and Edward Rutledge of South Carolina (Athens, GA: University of Georgia Press, 1997) and Richard F. Barry, Mr. Rutledge of South Carolina (New York, 1942).

Even non-trial work could be quite profitable. Rutledge charged Thomas Parsons £35 for a land deed drawn up in 1768 and charged William Bayotor Jr. £25 for a similar document in 1773. Given the heavy case load, one can see how even just drawing up documents or consulting with clients could be a lucrative business. Most of his clients had land interests, came with repeat business, and had no problem paying. Most of Rutledge’s business was in documents and consultation for clients who were not part of the political and economic elite. He certainly also had elite clients including William Henry and John Drayton (owners of the vast Drayton Hall and Magnolia plantations), Rawlins Lowndes (Judge and Commons House Speaker), William and Roger Pinckney (Provost Marshall), Andrew Rutledge, Benjamin Mazyck, and Henry Poroneau (Treasurer). Not all of his clients were quick with their payments, as many entries indicated bad credit or insolvency in the margins. Some were marked “give up,” perhaps indicating Rutledge had lost patience trying to collect his fees. He forgave some accounts, like a 1771 debt of £26.15 owed him by “Portsmouth,” a free black man who came for advice on manumission.6

Colonial subjects relied upon lawyers like Rutledge to help them make sense of the law, and elite South Carolinians needed these lawyers (or legal training of their own) to protect their property and business interests. Simple documents (though still requiring careful wording and formatting) like deeds, titles, labor agreements, real estate sales agreements and so forth were vital to the day to day business of a planter, merchant and even a small farmer or artisan. If one did not have legal training, he would require help

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6 Account Book of John Rutledge, 1761-1779, SCHS.
to navigate through the maze of colonial and imperial law, which was not easily accessible.

Lawyers like Rutledge were powerful and in high demand, but they were a small part of the assembly. From 1721 to 1775, lawyers constituted only 5% of the assembly’s membership. However, these statistics can be deceiving, since many of the assembly’s most prominent members had a legal background regardless of their occupations. Legal training would have been highly useful to a planter, merchant or legislator. For the wealthiest families, a British education (including legal training) also marked status. Only the wealthiest individuals could afford such an education.

From 1763 to 1783, twenty-three members who served in South Carolina’s legislatures received their legal training at one of the British Inns of Court, which represents only 4% of legislative membership. All five of South Carolina’s delegates to the Second Continental Congress attended the Inns of Court. Among the powerful politicians who had trained there: John and Edward Rutledge, Arthur Middleton, Thomas Heyward, Thomas Lynch, William Blake, William Drayton, David Graeme, William Wragg, Charles Cotesworth Pinckney, and Peter Manigault. Both Rutledges had even been called to the English bar. As evidenced by John Rutledge’s account book, the services of such an extensively trained lawyer were in high demand.

Most of these men were not actually practicing lawyers. Middleton, Heyward, Lynch, Drayton, Wragg, Manigault, Pinckney and Blake were all planters. Graeme was a

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judge, and, though the Rutledges were lawyers, they also had major planting interests. Indeed, it was not uncommon to study the law regardless of professional aspirations. The Marylander Charles Carroll of Carrollton for example was sent to St. Omer’s school and later to the Inns of Court by his father, not necessarily to pursue a legal career, but as part of his general education. His father wanted him to “understand and be able to use the law, be able to conduct and monitor extensive financial ventures, comprehend the management of an estate…and possess the refined social graces required to move with ease among the powerful members of genteel society.” His father specifically expected him to return “improved in proportion to Money Time and Care laid out on you…[they] will at least be undeniable Testimonies of my Attention to your Welfare and a Constant Reproach to you for not corresponding on your part to that attention.”

Peter Manigault also received the best legal training, equipping him for his political career. Born in 1731, Peter Manigault was the only son of the wealthy Gabriel Manigault. After receiving a classical education from private tutors in Charles Town, Manigault’s father sent him off to Britain to study under Thomas Corbett. Corbett was more of a guardian and guide than a tutor, and Manigault received his formal legal training at the Inner Temple, after which he was called to the English Bar in February

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10 Corbett himself had studied law at the Inner Temple in London, and was a native South Carolinian with a law practice in Charles Town who also served in the Commons House of Assembly. Edgar, Biographical Directory of the South Carolina House of Representatives, 2:166.
1754. His mode of education would have been the ideal for an elite planter in South Carolina. He, like John Rutledge, rode on the Assize circuits in England with his tutor. He eventually went on to become a wealthy planter, merchant, and Speaker of the Commons House of Assembly but not a practicing lawyer.

Gabriel Manigault was often plagued by his son’s expenses in London. In 1752, Peter Manigault moved into an apartment at the Inner Temple. He continued to request money from home. For example, his new law books would cost £10. He noted that he bought them second hand, saving £25 in the process. His call to the bar would cost an additional £50. He believed that he could learn much more about the law in London than at home in Charles Town, especially since one of the English Courts was always sitting. He hoped to learn procedure and “acquire proper manner of address.” In other words, he wanted to learn the public manners of a gentleman, something that could serve him in any profession. Peter Manigault briefly established a law office when he came home but soon found politics and planting to be much more interesting and lucrative activities. He still remained proud of his educational background, usually signing his name as Peter Manigault, Barrister of the Inner Temple. It was a badge of his status as a member of the elite’s upper echelon.

Peter Manigault’s was not the only path to the South Carolina bar, and it was not even the most common one. It was, however, the route of the most successful lawyers

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11 Ibid., 431.
12 Peter Manigault to Gabriel Manigault, July 13, 1751, Manigault Family Papers, SCHS.
13 Peter Manigault to Gabriel Manigault, July 22, 1753 and August 1753; Peter Manigault to Gabriel Manigault and Ann Manigault, August 18, 1753 and August 25, 1753, Manigault Family Papers, SCHS.
14 Edgar, 2:431.
and some of the most powerful and wealthy members of the provincial elite. Most did not have the option of attending the Inns of Court in London. As Peter Manigault’s case suggests, it was a very expensive educational option that relatively few could afford. Instead, most served apprenticeships to practicing South Carolina lawyers. South Carolina had no local college, such as William and Mary in Virginia, to train young men in the law, so all locally trained lawyers were educated privately. Such a clerkship would cost between £100 and £300, considerably less than spending years in England. Between 1752 and 1780, 75% of those admitted to practice law in the colony were trained at home. Up to one third supplemented this training by spending some time in England. Since the law did not prescribe a course of study for potential lawyers, standards and methods of training may have varied a great deal.  

The variety of books available was dependent on one’s teacher and private resources. Publicly available resources were nonexistent. The printer Robert Wells, for example, advertised a long list of books for sale at his “Great Stationary and Book Shop in Charles Town.” His list of books took up two-thirds of one newspaper page and included over 1,000 titles. Most books were fiction or theology, but the list also included a section on law with the following titles: Hawkins’s Pleas of the Crown; Burn’s Justice with Additions (4 vols.); Jacob’s Law Dictionary; Shaw’s Justice; Burn’s Ecclesiastical Law; Cunningham’s Reports of Cries in K.B. in 7, 8, 9, and 10 George II; and Vattel’s Law of Nations. Thus, planters, merchants and lawyers able to afford these books (Wells

\[\text{\footnotesize 15 Canady, 99-105.}\]
did not list prices) would have had works on English law and jurisprudence available to them for purchase right in the city.\footnote{South Carolina and American General Gazette, December 18, 1767.}

There was also some interest in publishing the colony’s own laws in a private, comprehensive edition. No such collection was available in this period. Judge Nicholas Trott published a limited collection of the colony’s laws in effect before 1734 in folio form.\footnote{Nicholas Trott, Laws of the Province of South Carolina Before 1734 (Charles Town: Lewis Timothy, 1736).} John Rutledge advertised a proposal to publish a complete set of the colony’s laws or “ordinances of the general assembly of this province now extant and in force” in 1768. The proposed work would include “marginal notes and references” and a full index. Rutledge’s proposal was purely speculative. The volumes had not been printed yet, and he was seeking individual subscribers at a rate of £30 per set. He wrote that payment would be due two months after publication, which would be announced in the newspapers. The proposal never came to fruition. Judge John Faucheraud Grimke published the next compilation in 1790. He wrote,

\begin{quote}
The obscurity in which the laws of South Carolina were involved, and the impossibility of obtaining a collection thereof to assist the citizen who was desirous of becoming acquainted with the legal rules proscribed for his conduct, or to facilitate the improvements of young practitioners of the bar, suggested to me the propriety of forming such a compilation.\footnote{John Faucheraud Grimke, The Public Laws of the State of South Carolina (Philadelphia: Aitken and Son, 1790), 1.}
\end{quote}

Grimke’s 1790 compilation became the first since Trott’s in 1736. Rutledge also proposed publishing a similar set of volumes covering Britain’s statutory law (only those...
“express made of force in this province”). Several grand juries suggested the assembly print such a collection, but it allocated no funds to do so. Rutledge’s plan, one should note, was not a public service. The books would only have been printed for private subscribers. Access to the law was not widely available, and even Grimke’s 1790 edition only fully reprinted a minority of South Carolina’s laws. The full collection was not compiled until the 1830s and 1840s.

One also had the opportunity to subscribe to the elite-sponsored Charles Town Library Society. It was founded in 1748 by seventeen men as a membership society and actively collected books from London sellers. The “gentlemen’s library” had only 128 members by 1750, including prominent men like Christopher Gadsden, Henry Laurens, and Charles Pinckney. Members abided by strict rules and personally funded the collection, which resided at various places. Fire destroyed all but 185 volumes in 1778, but the collection had reached 6,000 to 7,000 volumes before the blaze. An appointed committee of members made purchases.


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19 *South Carolina and American General Gazette*, April 29, 1768.
21 Raven, 40, 47.
The library tended to collect philosophical legal works rather than practical ones. It possessed only a few legal manuals, including Geoffrey Gilbert’s \textit{Law of Evidence} and Thomas Simpson’s \textit{Annuities and Reversions}. The library also held journals from the House of Lords and collections of English statutes and court rulings. The most widely used eighteenth-century Justice of the Peace manual (Richard Burn, \textit{Justice of the Peace and Parish Officer}) also resided in the library. Practical legal guides like Burn’s manual, Michael Dalton’s \textit{Country Justice}, Joseph Shaw’s \textit{Practical Justice of the Peace}, and William Nelson’s \textit{Office and Authority of the Justice of the Peace} were also common to private libraries in South Carolina.\textsuperscript{23} James Raven characterizes the society’s legal collection as “impressive” compared to other similar collections of the period. In comparing other catalogues (including private ones), Raven finds that only William Byrd II of Virginia had a comparable legal collection.\textsuperscript{24} Both of these impressive collections were privately funded and controlled. No major law collection in South Carolina was publicly available.

Observing courts would have been even more problematic than access to books, as the Court of Common Pleas and Court of General Sessions only met several times per year. The Court of Chancery, technically always in session, met irregularly whenever business demanded. It is a testament to their British training that the most popular law tutors in South Carolina attended the Inns of Court, where they had ample opportunity for practical training and observation in English courts. The Court of Chancery in Charles

\textsuperscript{23} \textit{Ibid.}, 155.
\textsuperscript{24} \textit{Ibid.}, 155-158. Members of the Redwood Library in Rhode Island (founded in 1747) also used their organizational rules to build a law library for that colony’s small group of elite lawyers. See Bilder, 119-120.
Town heard petitions and admitted men to the colony’s bar. Records of twenty-six such petitions survive. John Rutledge and Charles Pinckney, both trained in Britain, were the two most commonly listed as sponsor and teacher. John Rutledge was listed as the tutor in four cases. Charles Pinckney Sr. was listed three times. Edward Rutledge (one listing) and David Graeme (two listings) also received legal training in Britain. John Rattray, a wealthy, British-trained placeman who served as the Vice-Admiralty Judge from 1760 to 1761 and on the royal council from 1761 to 1763, was also listed two times.25

Well trained lawyers with access to critical legal writings were in high demand for a number of important economic reasons. Good land in the lowcountry was becoming less available and the center of commerce (Charles Town) busier and more populous. Land disputes were becoming more common. Moreover, many transactions (within the colony and transatlantic) were based on credit, which often led to legal disputes. Since specie was not always abundant in the colonies, credit was a vital part of the economy.26 James Poyas’ merchant account book lists orders for luxury items the gentry elite of Charles Town would have coveted, including buttons, shoes, linens, tea, silk, brass door locks, china, rum, and sugar. Customers purchased a majority of these

26 Trevor Burnard, Creole Gentlemen: The Maryland Elite, 1691-1776 (New York: Routledge, 2002), 61. Burnard writes that capital was accumulated by borrowing and then reinvesting profits from plantations. Without credit, he argues, Americans (especially in plantation colonies) would not have had the cash needed for land development and for acquiring labor. Credit was a tool, even though many viewed indebtedness of any kind in a very negative way (61-62).
items on credit.\textsuperscript{27} A merchant like Poyas would have probably spent a great deal of time trying to collect debts as he worked between European sellers and colonial buyers.

Debt and credit were crucial to South Carolina’s planters and merchants. Colonial planters sold their staples on consignment and purchased imported goods through local merchants or London factors.\textsuperscript{28} Most local specie went to handle these transactions. One could use paper currency in the colony, but it was often devalued or scarce. Given the inadequate money supply, planters and merchants had to rely on local networks of credit to conduct normal business.\textsuperscript{29} Large planters were themselves sources of credit, which only added to their legal and financial power.\textsuperscript{30}

By the 1770s, for example, large lowcountry planters were expanding to the more undeveloped Pee Dee River area. Planters with established wealth could do so rapidly, but those without large amounts of fluid capital had to purchase land from owners or speculators (who were themselves often planters) on credit. In fact, 61\% of tracts advertised in the \textit{South Carolina Gazette} that listed terms offered one year’s credit. This year-long term offered new planters enough time to get established, accumulate some capital, and begin to repay their debt.\textsuperscript{31} Rice planters might also extend credit to local merchants. In order to secure the best prices in a volatile market, a planter could sell his rice on credit to secure the best market prices if a merchant could not afford to pay

\begin{footnotesize}
\begin{enumerate}
\item James Poyas, Day Book, 1764, SCHS.
\item \textit{Ibid.}, 96.
\item Burnard, 63.
\end{enumerate}
\end{footnotesize}
immediately.\textsuperscript{32} Rice planting produced capital, and it could also be a way for large merchants like Henry Laurens to invest and avoid debts (especially to British factors) that merchants so often had to rely on.\textsuperscript{33}

Lending obligated debtors to creditors. Many planters owed debts to each other. It was more common for a colonial planter to owe money to another colonial planter or merchant than to a British creditor. Trevor Burnard likens business between gentlemen as “more akin to friendship,” but disputes did arise. Planters might charge each other interest and insist it be paid along with the principle. If it was not, a court case might ensue. Hence, lawsuits could arise over non-payment or disputes over the terms of repayment.\textsuperscript{34} They might be between members of the elite or between an elite planter and a small farmer. In that regard, the civil court acted as a mediator between members of the elite and between the elite and others who may have borrowed from them (artisans for example who needed money to set up in Charles Town). In these cases, law acted as a means to pursue one’s interests and affect the interests of others.\textsuperscript{35} Maybe Henry Laurens advised not casting aspersions on creditors because creditors were probably neighbors and fellow planters. The volume of debt cases in the courts (especially of large debt cases) suggests that this was the case in South Carolina. Provincials would not be suing British merchants in a colonial court. Hence, one of the main functions of the colony’s civil court was to protect credit and resolve problems between members of the elite in this potentially profitable aspect of business.

\textsuperscript{32} Ibid., 179.
\textsuperscript{33} Ibid., 209.
\textsuperscript{34} Burnard, 89-96.
\textsuperscript{35} Tomlins and Mann, 217.
That civil court, called the Court of Commons Pleas, was created in 1712 by an act that gave it the same powers as similar English courts. It was the only colonial South Carolina court that left behind voluminous documentation. Its judgment rolls for 1763 to 1776 fill over forty reels of microfilm. A complete analysis of this massive record is not within the purview of this study. A brief analysis of a single year of court activity shows what kind of cases most commonly appeared and the volume of civil cases the judges had before them.

The 1763 Court of Common Pleas judgment roll contains the records of eighty-six cases. The Court of General Sessions decided only 240 cases between 1769 and 1776. Thus, in a single year, the civil court handled 36% of the total number of cases handled by the criminal court in an eight year period. The caseload for the Court of Common Pleas may have approached nearly one thousand cases in a fourteen year period, assuming this pattern remained fairly constant. For further contrast, the Court of General Sessions held only sixteen trials in the single year of 1769.

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36 Cooper, Statutes at Large, vol. 2, #322.
37 Only the journal from 1769 to 1776 has survived for the Court of General Sessions (criminal). Far more complete records exist (though many have become illegible) for the Court of Common Pleas (civil).
38 South Carolina Court of Common Pleas, Judgment Rolls, 1703-1790, SCAHC. Over this entire period, the rolls contain records of nearly 15,000 cases.
39 South Carolina Court of General Sessions, Criminal Journals, 1769-1776, SCAHC. This number represents cases actually brought to trial as recorded in the journal. It does not include indictments, many of which were thrown out. If one includes indictments, the “case load” would be higher.
The vast majority of cases involved delinquent debtors.

Table 1.1
Court of Common Pleas Cases, 1763

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Number of Cases</th>
<th>Percent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt (all amounts)</td>
<td>60</td>
<td>63</td>
</tr>
<tr>
<td>Debt (up to £500)</td>
<td>19</td>
<td>20</td>
</tr>
<tr>
<td>Debt (£500-1000)</td>
<td>12</td>
<td>13</td>
</tr>
<tr>
<td>Debt (over £1000)</td>
<td>12</td>
<td>13</td>
</tr>
<tr>
<td>Trespass Upon the Case⁴⁰</td>
<td>28</td>
<td>29</td>
</tr>
<tr>
<td>Estate Dispute</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Assault</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Property Damage</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>96</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Court of Common Pleas, Judgment Rolls, 1763⁴¹

Sixty-three percent of all cases involved debt. The total amount of debt in cases brought before the court in 1763 exceeded £55,000. If one assumes at least a degree of consistency in court activity over this period, the total of debt cases brought from 1763 to 1776 would have exceeded £700,000. Not only do these figures show that there was a great amount of debt (and the amount of total indebtedness certainly exceeded the amount of debt cases), but they show that many people were having trouble collecting debts. Surely all of this debt was not just owed between members of the elite. Much of it would have been owed by others to elite merchants and planters acting as creditors. This

⁴⁰ Trespass upon the case refers to “an action to recover damages that are not the immediate result of a wrongful act, but rather a latter consequence. This action was the precursor to a variety of modern tort claims, including negligence, nuisance, and business torts.” Bryan A. Garner, ed., *Black’s Law Dictionary* (St. Paul, MN: West Publishing Co., 1996), 721.

⁴¹ Some debt cases were also denoted as trespass cases. “Trespass” cases are those in which some agreement, generally a promissory note, was breached. In the record, “trespass” does not literally mean encroachment upon another’s property. Also note that actual amounts for some cases were not available or illegible in the record. Those cases have been excluded from the debt sub-categories but included in the overall figure for debt.
financial patronage also added to their influence, and the court acted as an enforcer of credit relations between members of the elite and between elites and non-elite whites.

These figures only account for one type of case handled by the Court of Commons Pleas. As Table 1.1 shows, the court also dealt with a substantial number of “trespass” cases, as well as estate disputes, property damage cases and assault claims. In the assault case of Matthew Warner vs. Archibald Scott, for example, the court awarded £1,000 damages to the plaintiff.\(^{42}\) Vandalism might also be treated as a civil matter. Unlike the Court of General Sessions, most Common Pleas cases involved lawyers. Given the numbers of debt cases alone, lawyers could make a potential fortune in legal fees. This court was vital to colonial business, and businessmen who needed to settle cases would have naturally turned to experienced, well-trained lawyers to protect their interests.

As a wealthy merchant and planter who had many investments in the colony, Henry Laurens was often in court protecting his interests. Though not a lawyer, Laurens’s experience in court was so extensive that he was a great source of legal advice. When Edward Graham solicited his advice on how to handle a debt suit before the Court in 1766, Laurens advised a Machiavellian form of etiquette. He told Graham to “deport yourself suitable to your misfortunes.” In other words, when brought before the judges on a debt suit, a defendant should play on their emotions and elicit sympathy. A defendant should not appear ostentatious, but he should present himself as a humble and honest man who had fallen upon some difficulty. Humility is a virtue, but Laurens

\(^{42}\) Court of Common Pleas, Judgment Rolls, 1763, SCAHC.
advised Graham to appear virtuous for calculated reasons. Laurens, however, did not advocate dishonestly arguing one’s case, and he warned Graham to give a true account of all his holdings. He should be modest and submissive, casting no reflections upon his creditors. Moreover, Graham should express “unfeigned sorrow that it is not within your power to do them all justice,” and assure them that he would endeavor to repay them. Of course, he must follow through by actually repaying his debt.\textsuperscript{43} Hence, Laurens advised his friend to employ a calculated portrayal of virtue along with good faith business dealings to successfully emerge from a debt suit.

This advice shows that successful suits required more than simple knowledge of the law. They required a highly refined form of acting that could only be learned by practice and long participation in the colony’s legal culture. It is also interesting how Laurens depicted justice. He implied that not paying one’s legally accumulated debt was a serious injustice to the creditor. Defaulted debts damaged debtor-creditor relations in general. In a place where credit was vital to the functioning of the economy, defaulters could potentially have a negative impact on everyone if outside creditors were not willing to do business in South Carolina. It would be equally harmful if credit abuse eroded trust among peers within the provincial elite or between elite patrons and non-elite clients. Laurens’s admonition to be honest in one’s business dealings was ultimately self-serving. He was not just advocating virtue for its own sake, but warning his friend not to damage the legal and business environments by his own foolish actions.

Lowcountry businessmen often turned to the Court of Common Pleas, and it was vital to their interests. However, if one needed to resolve civil issues outside of this court, the options were very limited and often difficult or unappealing. The colony’s Court of Chancery (established in 1671) also dealt with civil cases, and it could act as a quasi-appeals court. For example, a failed attempt at private arbitration might result in a Chancery case. John Guerard, acting as an agent, filed such a suit in a dispute over a client’s (Mr. Hill) grandfather’s estate. Hill’s grandmother and an uncle had disputed the distribution of the estate, which was settled in private arbitration. When the uncle failed to live up to the settlement, Guerard filed a suit in Chancery on the grandmother’s behalf, and the court confirmed the settlement in her favor. The case took over a year to settle, indicating the Court of Chancery’s slow pace.

Cases could also originate in the Chancery. Traditionally, a Chancery court “operated in individual cases of hardship where either the common law provided no remedy or such remedy had proved ‘inadequate or abortive.’” One could bring a case directly to the Chancery if the party believed that the normal court process would not be enough to satisfy his complaint, but doing so meant that the case came before a court that met on an irregular basis and operated without a jury. The royal council doubled as the court, so the case would also come before a group that included British appointees who may not have shared colonial sympathies or understood local circumstances. The surviving records reflect that far fewer cases were brought before the Chancery than the

44 John Guerard to Charles Hill, November 21, 1753, John Guerard Letterbook, SCHS.
Court of Common Pleas. The Court of Chancery only decided twenty-two cases between 1760 and 1766. Seventeen dealt with disputed estates or wills. Only three involved a “civil cause.” Individuals brought an equal number of cases to halt proceedings at law.\(^{46}\)

The cases brought before the Court of Common Pleas and the Court of Chancery do not reflect the entire picture of civil legal activity. Private arbitration was quite common. Moreover, Justices of the Peace had power to hear (and had original jurisdiction over) cases of up to £20. Any person could issue a complaint to a justice in such a case for non-payment of debt, injury, trespass or defamation. The justice could then hold a hearing and issue warrants requiring the defendant and witnesses to appear before him.\(^{47}\) There is simply no way of determining how many of these cases might have been heard.

A small group of highly trained and wealthy lawyers dominated South Carolina’s legal culture. It featured overburdened courts that heard voluminous and expensive debt cases. Access to the legal system, legal writings, the law itself and the best legal training was limited to the lowcountry elite. Practicing lawyers did not numerically dominate provincial political institutions, but their influence as gatekeepers of the law was far out of proportion to their numbers. Planters understood the power that came with legal knowledge, and occasionally trained as lawyers to help navigate the legal maze, especially in handling issues of credit and debt that were vital to their business interests.

\(^{46}\) Gregorie, *Records of the Court of Chancery*, “Minute Book, 1731-66.” These injunction cases occurred when an individual filed suit in Chancery to stay proceeding in another court. Such as suit could have been used as a delay tactic, or it could have been a legitimate plea for justice from an individual who thought his case was not receiving due justice in the regular court.

Charles Town and the plantation dominated Lowcountry were extremely prosperous—at least for the elite—in this period. Prosperity, expanding business connections, land increasingly dominated by a core of very wealthy merchants and planters, and a desire to obtain the finer things in life (often in an attempt to imitate the English gentry lifestyle) led to dispute and debt. The civil courts existed to defend property and business interests. While the legal culture limited access, empowered the elite and served their interests, the colony’s ruling class used their control of the legislature to centralize the entire court structure and impose their authority over it. This structure, and the law itself, also limited access and functioned as a tool through which the colonial elite could manage the economy and society.

**The Court Structure of South Carolina**

Until 1772, South Carolina only had two major courts. The Court of General Sessions heard criminal cases, and the Court of Common Pleas handled civil matters. Both courts met in the state house on the corner of Broad and Meeting streets in Charles Town. The cornerstone for the impressive state house, which still serves as the Charleston County courthouse today, was laid on June 22, 1753. 48 Court sessions were held on the first floor, which was almost entirely devoted to housing the court and its officers. The chambers for the Commons House of Assembly and Royal Council were

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This intersection of Broad and Meeting streets was the center of political power in colonial South Carolina. On the four corners stood St. Michael’s Church, the town watch house, the public marketplace and the statehouse. The large exchange building could be seen just to the north on Broad Street. This intersection represented the centralization of power in planter-dominated South Carolina. All the branches of authority—church, legislative, executive, imperial, commercial, judicial—were gathered at this little corner.

Compared to other colonies, South Carolina did not have an extensive court system. South Carolina’s court system did not include county or local courts to handle petty cases. One body of royally appointed judges was responsible for trying nearly all criminal and civil cases. The colony had no separate court for either minor criminal cases or small civil suits. If one sought a legal resolution in South Carolina, one had to seek it in Charles Town until 1772. Despite its highly centralized administration, the courts in

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49 Ibid., 28-30. Loundsbury compares the statehouse’s architecture to shire halls and Assize courts in England. Its Palladian style of architecture was similar to halls found in English towns such as Nottingham and Exeter.


51 Barbados, for example, developed a very sophisticated court system closely resembling that of England. As early as the 1630s, Barbadian Justices of the Peace were holding Quarter Sessions every three months to hear minor criminal cases. In 1631, Justices began holding Courts of Common Pleas on a monthly basis in four different precincts. A Court of Grand (or general) Sessions in Bridgetown heard felony cases twice per year. In the 1650s, Courts of Oyer and Terminer were commissioned to deal with crimes committed by slaves. For a recent and detailed account of the early development of institutions in Barbados, see Larry Cragg, Englishmen Transplanted: The English Colonization of Barbados, 1627-1660 (Oxford: Oxford University Press, 2003). Farther to the north, the plantation colony of Virginia also developed a more extensive court system. County courts handled minor criminal cases, while a superior court in Williamsburg heard felony cases. For more on the Virginia court system see A. G. Roeber, Faithful Magistrates and Republican Lawyers: Creators of Virginia Legal Culture, 1660-1820 (Chapel Hill: University of North Carolina Press, 1981). See also A. G. Roeber, “Authority, Law, and Custom: The Rituals of Court Day in Tidewater Virginia, 1720-1750,” William and Mary Quarterly 37 (1980): 29-52; and Arthur Scott, The Criminal Law in Colonial Virginia (Chicago: University of Chicago Press, 1930).
South Carolina followed English forms rather closely. The static nature of law and judiciary in South Carolina also suggests that, aside from one major revision in 1769, the elite only saw need for occasional updating and revising. The system reflected the elite’s desire to maintain central control over the entire province. Reforming the system was not an easy process, and it was something that the elite fiercely resisted.

The Court of General Sessions was the only criminal court in South Carolina. It served the same function as the English Quarter Sessions and Assizes (trial of minor and major criminal matters respectively), though it was fixed in Charles Town until 1772 when the Circuit Court Act finally took effect.\(^5\) Its official name was the Court of General Sessions of the Peace, Oyer and Terminer, Assize, and General Gaol Delivery, a name that accurately reflects how the functions of the several English criminal courts were infused into this single body.\(^6\) As in the English Assizes, business was carried out in the King’s name before a panel of royally appointed judges or justices.

The South Carolina Commons House of Assembly created the court system between 1721 and 1732. It changed little until the Circuit Court Act went into effect in

\(^5\) For a full description of the English criminal justice system in the early modern period see J. A. Sharpe, *Crime in Early Modern England, 1550-1750* (New York: Longman, 1999). By the eighteenth century, the main criminal courts in England were the Assizes, which heard most felony cases. By 1550, the Assizes consisted of six circuits ridden by two royal judges each twice annually (summer and winter). The Quarter Sessions, which originated in fourteenth-century statues that required justices to meet four times each year to enforce new legislation, heard cases involving minor offenses or misdemeanors. South Carolina never had the equivalent of Quarter Sessions or county courts to hear minor offenses. Thus, it had one of the most centralized court systems in the British Empire. When South Carolina did finally develop circuit courts, they too heard all criminal cases and were thought to be more like the Assizes.

\(^6\) English Assizes based their authority on three royal commissions: the Assize Commission, the Commission of Oyer and Terminer, and the Commission of Gaol Delivery. Oyer and terminer gave judges the power to hear and determine all cases within their jurisdiction. Gaol delivery allowed judges to empty jails and bring prisoners to trial. Sharpe, *Crime in Early Modern England*, 32. As the full name of the Court of General Sessions suggests, it served the same function with the same powers as the English Assizes. In so much as it also heard minor criminal cases, it also served the function of the Quarter Sessions.
1772. The Court of General Sessions was created through the Jury Act of 1731. The act also granted more rights to those who would appear before South Carolina’s criminal court than those appearing before English courts in this period. The accused were to be provided with a full copy of the indictment against them at least three days before trial. The court could appoint legal counsel, and the accused had the right to compel witnesses to appear before the court. The act also provided for random jury selection (names were selected from those qualified to vote in assembly elections). Only whites could qualify. The Commons House of Assembly gave colonists more rights than their brethren enjoyed in other colonies or even in England, yet the law inherently favored the lowcountry elite.\footnote{Thomas Cooper and David McCord, eds., The Statutes at Large of South Carolina (Columbia: 1836-41), vol. 3, #531; William McAninch, “Criminal Procedure and the South Carolina Jury Act of 1731” in South Carolina Legal History, ed. Herbert Johnson (Columbia: University of South Carolina Press, 1980), 183-190.} The court held all meetings in Charles Town. Hence, jurors might have to travel long distances to fulfill their obligations or face stiff fines for defaulting on their duty. It would, for example, be very difficult for a small farmer in the backcountry to serve on a jury, whereas a planter from the Charles Town area would have little trouble traveling to court or meeting the expense. As the colony continued to grow throughout the eighteenth century, a more diffuse population would find the difficulty of accessing the courts a greater grievance.

The Commons House, however, did not have absolute control of the court system. The provincial elite had to work with royal officials. Justice was carried out in the King’s name, not in the assembly’s. The Chief Justice, appointed by the crown, was the highest judicial official in the colony. Governors were authorized to appoint up to
four assistant judges. These judges were to have voices equal to the Chief Justice, and a majority of judges present made decisions.55 Traditionally, royal administration of justice had served as one of the most important factors for centralizing English government authority in the Middle Ages. The crown’s ability to control the judiciary was a major blow to the independence of the nobility. Imperial officials understood the power of the courts as a tool of government, and they worked to keep the administration of justice in royal hands. However, this task proved difficult. Assembly acts that established courts (effectively taking the power to define and structure the administration of justice out of royal hands) were rarely disallowed by the monarchs until after the 1750s.56

The monarch obviously could not be present in the colonies, so the crown empowered governors to bring royal authority to the colonies. By virtue of their instructions, governors were *ex officio* chancellors of their provinces, which gave them custody of the provincial seal. This clause empowered governors to carry out justice in the king’s name, including holding chancery courts. Moreover, governors were primarily responsible for selecting judicial and criminal justice officials.57 After 1671, the crown required governors to appoint judges only with the consent of their councils, and by 1761, all judicial appointments were made at the king’s pleasure (i.e. the king could remove any judicial official at will without cause). Starting in 1661, the crown also instructed

55 Hence, when Chief Justice Shinner rejected the ruling of the assistant judges that the court could stay open during the Stamp Act crisis, he was in fact in violation of the court’s own rules.
governors to establish all civil and criminal courts necessary in their colonies. Later instructions required royal assent for creating or dissolving courts, and the Board of Trade required all newly appointed governors to report on their colonies’ court structure.\textsuperscript{58}

Despite these broad, theoretical powers, the royal governors were often at the mercy of the colonial assemblies due to finances and a lack of strong support from London. Governors had no permanent salary (South Carolina’s governor did not even have a permanent, official residence) and often had to disregard their instructions because of the practical realities of colonial politics. Colonial governors also did not have strong patronage powers.\textsuperscript{59} They ceded important powers to the assemblies, including the power to establish courts. Assemblies like the Commons House created courts by statute (instead of through the governor’s prerogative power), and governors or London officials seldom rejected those statutes. Over time, the assemblies came to look at these powers accumulated at the expense of royal governors as a right. Governors were stuck between a lack of support from London and dependency on demanding legislatures.\textsuperscript{60} Thus, royal power over court structures was significantly weaker in the colonies than it was in Britain, where Parliament never tried to infringe on the crown’s right to establish courts.\textsuperscript{61}

\textsuperscript{60} \textit{Ibid.}, 161.
\textsuperscript{61} Greene, \textit{Quest for Power}, 342.
The governor and the crown did still have the power to control personnel, even if the assembly had usurped power to structure the courts. In fact, British officials fiercely resisted assembly efforts to make judges and other criminal justice officials dependent on the colonial legislature. Along with judges, South Carolina had a number of other important criminal justice officials who the assembly did not directly appoint or control. Rather than Sheriffs, as might be found in England or Virginia, South Carolina had only one judicial officer—the Provost Marshall. Sheriffs were only added with the circuit courts in 1772. Provost Marshall was a patent office, owned by an individual who had jurisdiction over the entire colony. He had the power to summon juries, execute processes from Charles Town courts and was required to maintain a jail at his own expense. The Provost Marshall was not, strictly speaking, a royal appointee. Patent offices were patronage positions, used by high British officials for political purposes. The Duke of Newcastle alone controlled ninety-two colonial patent offices by 1747. As Ian Steele writes, these officers “could not be removed by governors, became magnets for political intrigue against governors, and often sought the financial rewards of office without regard for royal policy.”

South Carolina’s Provost Marshall resided in England. He in turn appointed or sold the right to exercise his authority to a deputy in the colony. Justices of the Peace, constables and coroners served as local officials. The

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62 Labaree, 394.
Attorney General, also a royal official, acted as the colony’s chief prosecutor. The crown and the governor appointed all of these officials. Hence, most of the top criminal justice officers in the colony did not answer directly to the Commons House. The local elite might be able to control the structure of the courts, but they could not control these appointments. The assembly fought many battles to correct this problem.

The Court of General Sessions justices also presided over the Court of Common Pleas. The 1712 act, which created the court, adopted the laws and judicial forms of England, listing specific statutes put into force. The Chief Justice, for example, received the same powers as the Chief Justice of the King’s Bench, Common Pleas, Chief Barons, Barons of the Court of Exchequer, Justices of the Sessions, and Commissioners of Oyer and Terminer and Gaol Delivery. Justices of the Peace in South Carolina possessed all the individual powers of their English counterparts. The assembly also adopted the whole of English Common Law, where it was not altered by colonial statute or inconsistent with provincial law.\(^65\) The functions and powers of South Carolina’s courts originally flowed from the powers granted the Chief Justice by this 1712 act. The colony adopted the majority of English law and procedure in condensed form to be specifically tailored to the needs of the colony. Slavery and the plantation complex came to dominate South Carolina in the eighteenth century. The population increased, and the poor became more numerous. Tensions between the colonial elite and royal officials grew. By the late eighteenth century, the court system faced new stresses, and the elite saw their control over a centralized system beset by many challenges.

\(^65\) Cooper, *Statutes at Large*, vol. 2 #322.
Several other courts also operated in South Carolina on the eve of the Revolution. They were also located in Charles Town and were never expanded or reformed before independence. The Court of Chancery (or Court of Equity) was nothing more than the royal governor and his council sitting as a court of chancery. The 1712 act also gave the governor and council the same powers in regards to common law that the Lord Chancellor or Lord Keeper of the Great Seal of England possessed. Thus, South Carolina adopted England’s chancery law by statute.66 The legislature formally recognized it in 1721 by an act that granted the court broad powers to hear and determine “cases and suits in equity.”67 In theory, the court always sat in session, as a 1731 law gave the governor power to call the court into session whenever the need might arise.68 The governor and a majority of the council present could decide cases until the assembly passed a new law in 1746 that required the governor and only members actually present in South Carolina at the time to decide cases. The provincial elite were responding to absenteeism among royal governors and council members. By asserting authority over the chancery court, they hoped cases would be decided by more provincially invested men. The composition of this court (along with the probate court) was beyond assembly control, but it used

67 Alexia J. Helsley and Michael E. Stauffer, South Carolina Court Records (Columbia: South Carolina Department of Archives and History, 1993), 17.
68 Gregorie, 9. Courts of Chancery or Equity were, in theory, designed to hear civil cases where plaintiffs thought the normal judicial process would not meet their needs fairly. In that sense, it operated as a court of appeal. Since the royal governor acted as the crown’s colonial representative, he acted as the Keeper of the Great Seal in the colony. The governor thus held the powers and responsibilities of the English Chancellor, which included holding these courts of equity. The court’s power was derived from the notion that all justice flowed from the monarch, and the crown always reserved the right to personally execute justice. In the Middle Ages, the King’s secretary (or Chancellor) was usually a church official and exercised these personal, royal privileges of justice for the King (Gregorie, 28-29).
legislative power to define its function and operation, as it did with every other court. Moreover, defining the court’s functions by statute successfully usurped the Governor’s inherent right (as the keeper of the provincial seal and king’s representative) to establish a chancery court independently.

Chancery procedure differed from the more traditional courts of Common Pleas and General Sessions. A complainant and defendant commenced litigation through a bill of complaint and an answer to the complaint on oath. The parties then had to face interrogations in the form of written questions and provide written answers. Cross examinations could only be conducted by mutual consent, but a defendant was forced to answer every accusation under oath. When all parties had entered pleas and presented evidence, the court could consider and decide the case. No juries were involved in deciding the case—only the governor and council. The court could not hear criminal matters. It was restricted to civil disputes, usually involving property claims or debt cases.

Other courts operating in Charles Town on the eve of the Revolution served very specialized functions. The Court of Ordinary (probate) dealt with the validation of wills, settling estates and granting marriage licenses. Once again, this “court” consisted of the governor and council. Finally, the Court of Vice Admiralty, usually consisting of a single, royally appointed judge, heard cases of maritime law, violation of customs regulations or the navigations acts, and piracy cases. This court also lacked a jury and

was often a focal point of controversy between the provincial elite and royal officials. Two common themes run through all of these courts’ structures: British officials appointed court officers, even though (except for the vice-admiralty court) the colonial assembly crafted the structure and established procedural rules. Second, all of these courts were located in Charles Town before 1772, which effectively limited access to individuals in the lowcountry. If geography and structure favored the elite, so did procedure and policy.

The Court of General Sessions never handled many cases at once. However, one must consider that the court met only three times per year at most, and the sessions only lasted for about one week. The May 1773 session, for example, sat from May 18 to May 27—a total of ten days. During such brief sessions, the court had to charge juries, hear indictments, conduct full trials, pass sentences and produce grand jury presentments. The typical case load was usually between two and five trials per day. The May 1773 court heard only seven total cases, which was about average. The October 1773 court heard fourteen cases, while the February 1774 court heard only seven again. The February 1772 court was particularly active, holding sixteen trials. The court only heard criminal trials, and the statistics show the vast majority were assault cases (see tables in chapter 2). Hence, one not only had to be in Charles Town to attend court, but one had to be in Charles Town at one of the few times per year the court was sitting and hope the court

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71 South Carolina Court of General Sessions, Criminal Journals, 1769-1776, SCAHC.
handled the case in the short session. If the court decided against a case, an individual had very limited options.

Punishment was swift and often brutal in South Carolina, but there were only limited options for appeal, none of which involved a real court or a jury trial. The Board of Trade issued instructions in 1702 regarding appeals from colonial courts. The governor and his council acted as the colony’s high court of appeal in civil cases. If a council member happened to be a judge who presided over the case in question, he was not allowed to hear the appeal as a councilor. If one of the parties was still not satisfied, he might appeal to the King in Council within fourteen days and provide a monetary security deposit. Hence, the appeals process favored the wealthy who could more easily afford security. These regulations remained in effect until 1753. The Board of Trade, then under the direction of Lord Halifax, issued revised instructions. The Board confirmed that the governor and council had no jurisdiction to hear criminal appeals. Presumably to limit frivolous appeals, the new regulations also demanded that cases appealed to the governor involve at least £300 and cases appealed to the King in Council involve £500.72 South Carolinians had the option of bypassing the Court of Common Pleas and going to the Court of Chancery to avoid a jury trial, but this bypass was not an appeal. The Board of Trade sent instructions to Governor Boone on April 29, 1765 confirming this appeals process. The instructions did clarify that judges who doubled as councilors were allowed to be present at the appeal to explain their original decision.73

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72 Labaree, 403–405.
73 South Carolina Royal Council, Journals, 32, April 29, 1765, SCAHC.
Civil appeals were limited and favored the wealthy. Criminal appeals were even more limited. South Carolina had no criminal court higher than the Court of General Sessions. Once the Circuit Court Act went into effect, the district courts were deemed equal, and the law still did not provide for appeal to a higher court. If the governor and council could not sit as a criminal appeals court and the Court of Chancery itself heard only civil cases, where was one to turn? Within the colony, the only possible person one might appeal to was the governor, who had the power to grant a pardon or commutation. In cases of treason and murder, the governor would have to defer to the King. One might appeal directly to the King in misdemeanor cases involving fines of at least £100, but most cases had to go through the governor.74

The council participated in the criminal appeals process and served as a filter for cases sent to the governor. On May 30, 1768, Lt. Governor William Bull reported to the council that Edward Wells (sentenced to death) had appealed to the governor for a pardon. The Council considered the appeal but decided that Wells was a “notorious villain” whose crime was surrounded by “aggravating circumstances.” They did not recommend a pardon. The following day, the council questioned Justices Pringel and Doyley about the trial of Hezekiah Tyrel, who had been sentenced to death for arson and appealed to the governor for mercy. The council asked the judges if there had been any favorable circumstances that came up during the trial that might warrant a pardon. Both judges answered in the negative, claiming he too was a “notorious offender.” The council again refused to recommend a pardon. However, Lt. Governor Bull issued a one

74 Labaree, 419.
day reprieve on June 16 when new circumstances were brought to his attention about Tyrel’s case. The council considered the new information and recommended a pardon, which Bull promptly issued.\textsuperscript{75} The council took some of the burden from the royal governor by acting in an advisory capacity. It even conducted what might be considered hearings, but there could be no formal appeals trial. Criminals received only one jury trial, after which the appeals process was almost entirely in the hands of royal officials. Court appointments were also in the hands of royal officials. In order to exercise control over an important branch of government, the local elite had to use the power of their legislature to define court functions and structure. They jealously guarded those powers, worked to maintain the ability to limit participation in the legal system, and endeavored to encroach on royal influence over the judicial system.

On the eve of the Revolution, South Carolina’s court system consisted of only two jury-based courts. The legal system certainly contained many familiar English components, but it was more difficult to access and limited in scope. It clearly favored those who resided in the lowcountry or had enough wealth to make a trip to Charles Town. This concentration of power in Charles Town was a great benefit to lowcountry planters and merchants. They structured the system and limited access to it through assembly legislation. Only court personnel were beyond the assembly’s direct control, but they were not beyond its influence. The elite had many reasons to be satisfied with the court system. However, many backcountry South Carolinians expressed grievances against the concentrated system from which they were excluded. The backcountry,

\textsuperscript{75} South Carolina Royal Council, Journals, 32, May 30-31; June 16, 1768, SCAHC.
which was not divided into parishes prior to 1769, did not even elect one assembly member. These people had no official voice in crafting the legal system, and they challenged the lowcountry elite on this point. The assembly might desire to keep total control in Charles Town as a means of upholding elite status and power, but the elite were finding it more and more difficult to do so and maintain order at the same time. The elite desire to maintain central authority alienated those living in the backcountry, and some of those provincial residents took action into their own hands when lowcountry elite self-interest would not give way to redressing legitimate backcountry grievances.

**The Assembly, Petitions and Redressing Grievances**

Since colonial South Carolina did not have autonomous local governments or county courts, one would have to lobby the centralized government in Charles Town to seek redress for grievances or a policy change. Only acts of the legislature could appropriate funds, improve or add infrastructure, or alter the basic structures of the colony’s legal and government systems. If one wanted some change in government or portion of colonial resources, one had to formally petition the assembly for it to produce the appropriate legislative act. Petitions were a vital part of the formal lawmaking process, so the Commons House of Assembly spent a vast amount of time considering them from all over the colony. Most petitions requested an appropriation or reapportionment of colonial resources. Others sought easier access to or greater participation in the colonial government or legal system. Because the assembly had the power to distribute resources and to structure the political and legal systems through the legislative process, the elite who dominated the assembly held powerful positions as
gatekeepers or mediators. Jack Greene and other historians who have studied colonial legislatures often focus on powers of taxation and appropriation rather than petitions.\footnote{See Greene, \textit{The Quest for Power}; and M. Eugene Sirmans, \textit{Colonial South Carolina: A Political History, 1663-1763} (Chapel Hill: University of North Carolina Press, 1966).} Yet, the assembly spent so much time considering and answering petitions that it must be viewed as one of its most important functions. Petitioning the assembly also directly relates to the nature of the court system and the assembly’s power to exclude vast portions of the colony’s population from direct participation in all forms of government.

It is hard to place an exact percent value on the amount of time the assembly spent on any one activity. Sessions could greatly vary in length. However, an average assembly session would have been dominated by hearing petitions, referring them to committees and hearing committee reports. The work of actually considering a petition and producing a recommended course of action always fell to a committee. Many important resolutions and laws (including the Circuit Court Act) resulted from petitions and subsequent committee resolutions.

Petitions came in regularly from all corners of the colony, and many of them contradicted each other. One planter might want a road built, while another complained that the same road unfairly divided his land. Some petitioned for bounties if they brought immigrants to the colony, while others lamented the presence of poor newcomers. The assembly oversaw public works by appointing commissioners for various projects. Under the assembly’s watchful eye, the commissioners acted as local agents, overseeing the construction of roads, collecting tolls, or maintaining ferries and bridges. These
commissioners all served without pay, and most positions were not permanent. Yet, the assembly held tight control over the appointment of commissioners, which extended its patronage influence and control of local authority. The commissions had no power to disburse funds, distribute resources or make independent decisions. Thus, commissions could extend the assembly’s authority into localities, and many were created as a direct result of infrastructure petitions.

Table 1.2
Petitions to the Commons House of Assembly, 1763-1776

<table>
<thead>
<tr>
<th>Petition Type</th>
<th>Percent of Total (205 total petitions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Infrastructure</td>
<td>47</td>
</tr>
<tr>
<td>Trade / Commodities</td>
<td>9</td>
</tr>
<tr>
<td>Request for Government Post</td>
<td>7</td>
</tr>
<tr>
<td>Government Structure or Tax Policy</td>
<td>5</td>
</tr>
<tr>
<td>Slaves / Slave Crime</td>
<td>5</td>
</tr>
<tr>
<td>Legal / Judiciary</td>
<td>4</td>
</tr>
<tr>
<td>Representation / Parish Boundaries</td>
<td>4</td>
</tr>
<tr>
<td>Disorder</td>
<td>4</td>
</tr>
<tr>
<td>Dealing with the Poor</td>
<td>3</td>
</tr>
<tr>
<td>Church Personnel</td>
<td>4</td>
</tr>
<tr>
<td>Immigration</td>
<td>2</td>
</tr>
<tr>
<td>Crime</td>
<td>1</td>
</tr>
<tr>
<td>Restoration of Honor</td>
<td>1</td>
</tr>
<tr>
<td>Imperial Issues</td>
<td>1</td>
</tr>
<tr>
<td>Relief from Poverty</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>98</td>
</tr>
</tbody>
</table>

Source: South Carolina Commons House of Assembly Journals, 1763-1776.

Most petitions were quite mundane and included requests for new or improved roads, ferries, bridges, or church buildings. For example, the “church wardens, vestry, and inhabitants” of Prince Frederick Parish, claiming that the parish was too large and the current facilities too distant for all residents, asked the assembly to build a chapel of ease

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77 Greene, The Quest for Power, 251-259.
in the parish to supplement the main church. At other times, individuals might petition for or against a planned public work. Richard Beresford, for example, asked the assembly not to demolish the Wappehaw Bridge. The assembly had to consider this man’s individual interest against the best interests of the locality or the colony. Most importantly, groups like the residents of Prince Frederick Parish and individuals like Beresford had no other place to turn to lobby for their interests. They could appear before no town councils or county boards. If they wanted a share of colonial resources, they had to turn to the powerful Commons House, which acted as legislature, local government and sometime executive.

A petition from the “freeholders of St. Stephen’s Parish” demonstrates how the assembly elite held the power of political as well as economic gatekeepers. St. Stephen’s only had one member in the Commons House of Assembly at the time of the petition. The freeholders argued that the parish deserved another representative, because they feared the parish could not get its proper portion of resources from the treasury without adequate assembly representation. Their petition is remarkably like the cry of “no taxation without representation.” The freeholders knew very well that the Commons House served as the great mediator and gatekeeper, and they realized that their best chance to advocate for their local interests was through increased assembly representation. Moreover, St. Stephen’s was a lowcountry parish dominated by planters.

78 South Carolina Commons House of Assembly, Journals, 37.1, November 24, 1766, SCAHC. A “chapel of ease” is a “chapel built for the convenience of parishioners who live far from the parish church.” It is not a new parish or congregation, but an extension of an existing one. Oxford English Dictionary Online. Accessed July 25, 2008.

79 Ibid.
Increasing their representation would not adversely affect the planter class’s assembly majority. Days after receiving the petition, Christopher Gadsden reported from the committee to which it had been sent and recommended that St. Stephen’s get its second member.⁸⁰ About a month later, the inhabitants of the Congaree, Saludy and Ninety-Six backcountry regions complained that their territories were not divided up into parishes and had no representation in the Commons House whatsoever. They argued that it was unfair that they contributed to the treasury without assembly representation.⁸¹ Even though the backcountry inhabitants made nearly the same argument as the St. Stephen’s petitioners, their request was ignored. The assembly doled out its patronage selectively and with an eye toward elite interests, in this case allowing more representation for the lowcountry elite and ignoring similar demands for representation from areas not dominated by wealthy planters. Backcountry residents petitioned the assembly many times to redress grievances related to the political and legal systems (and the distribution of resources in relation to exclusion from those systems). The assembly either ignored or gave half-hearted responses to their pleas.

The lowcountry elite took little interest in the backcountry unless problems there directly threatened their own interests. For example, backcountry petitioners complained in 1766 that “idle and vagrant” persons were hunting deer only for the skins and leaving the corpses to rot, which attracted dangerous predators. The petitioners requested that the assembly empower magistrates to arrest these vagrants. The journal records no action by

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⁸⁰ South Carolina Commons House of Assembly, Journals, 37.1, January 29-31, 1766, SCAHC.
⁸¹ Ibid., February 27, 1766.
the assembly, which could have easily addressed the problem with no major impact on centralized authority. Yet, they did not act. The petitioners were from a relatively remote area that had no representation in the assembly. They were simply dismissed as not important enough to warrant a response. Moreover, until 1772, backcountry residents were left without any local courts and no assembly representation. Lawlessness beset the area in the 1760s, and its residents repeatedly sought aid from Charles Town with little success. When backcountry residents took the law into their own hands, the lowcountry elite finally took interest.

Two more petitions from the backcountry arrived in July 1769 (after the initial passage of the Circuit Court Act). Given the state of communications at the time, it is entirely possible that news of the act’s passage had not yet reached the backcountry. Nevertheless, the petitions demonstrate the level of discontent in the backcountry and how its residents challenged the elite’s role as legal and political gatekeepers. First, Thomas Bell, “an inhabitant of the backcountry,” claimed for himself and his fellow backcountry residents the full liberties of British subjects. He wrote that they had a right to court access and that the assembly must put its own selfish interests aside and pass a bill that King George III would assent to. Bell recognized a major problem related to dealing with the Commons House: it often put the protection of legislative privilege and elite interests before the needs of other, substantial groups within the colony or the public interest. Bell also pointed out the need for better roads, new parishes and a vagrant act. He drew attention to the fact that the backcountry had very little say over how the

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82 Ibid., January 6, 1768.
colony’s resources were divided. A second petition came the next day from “inhabitants of the frontier and backcountry.” Their demands were similar to Bell’s, but they warned that the back settlements were “in a state of anarchy, disorder, and confusion” due to the lack of governmental and legal institutions. Again, the petitioners demanded courts and parishes (i.e. assembly representation), but they also wanted public schools and a law exonerating vigilantes. The petitioners defended vigilantes—the Regulators—as the only ones who were protecting good subjects from rampant lawlessness in the region.83

Thus, the petitioning process both worked for and against the lowcountry elite. The centralized nature of government in South Carolina and the assembly’s control over colonial resources gave the elite great political power as mediators and gatekeepers. The assembly decided who would have access to colonial resources and who could participate in the colonial legal and political systems. However, by not fully addressing backcountry grievances and by not granting backcountry residents access to political and legal institutions, the assembly sowed discontent among a large portion of South Carolina’s white population. Backcountry residents persistently demanded full inclusion in the political and legal systems. When the assembly refused to act, acted slowly, offered only half-measures or placed its own privilege ahead of important reforms, backcountry residents violently challenged the lowcountry elite’s construction of the political and legal systems.

83 Ibid., July 4-5, 1769.
The Regulators and the Circuit Court Act of 1769

Following the end of the Cherokee War in 1761 and the establishment of a negotiated boundary with the Indians, settlers began to pour into South Carolina’s backcountry. The lowcountry was very well ordered legally, with courts, parishes and law enforcement systems emanating from Charles Town and all dominated by the lowcountry elite. The backcountry, however, remained unorganized into the 1760s. It was not divided into parishes, had no representation in the Commons House of Assembly and residents were forced to travel to Charles Town to attend criminal or civil courts. Many transients and outlaws came to the backcountry along with law abiding settlers. Without any official means to maintain order in this relatively remote area, outbreaks of robbery, housebreaking and horse stealing became major problems.\textsuperscript{84} Organized gangs of bandits had launched a campaign of arson, torture and robbery against the region’s small planters and farmers by 1766.

There are various explanations for the outbreak of lawlessness and the ways that backcountry settlers handled it. Respectable farmers and rising planters / slaveholders clashed with the landless gangs of roaming outlaws and hunters.\textsuperscript{85} The backcountry disturbances were also related to the tension between the backcountry and the lowcountry. Specifically, the benefits of government were denied to backcountry settlers,

\textsuperscript{85} See Richard Maxwell Brown, \textit{The South Carolina Regulators} (Cambridge, MA: Harvard University Press, 1963), and Rachel Klein, \textit{Unification of a Slave State: The Rise of the Planter Class in the South Carolina Backcountry, 1760-1808} (Chapel Hill: University of North Carolina Press, 1990). Both take a generally similar approach (i.e. the clash of the landed and the landless), but Klein focuses on the rise of slavery and provides a detailed analysis of the backcountry’s population.
which resulted in the outbreak of crime, violence and the Regulation.\textsuperscript{86} However, the fundamental complaints issued by law-abiding subjects had to do with their exclusion from the colony’s legal system. Backcountry residents thus fought a political battle for inclusion in that system and for a share of the legislature’s political power, which could shape the legal system. The lowcountry elite only acted when the Regulator movement threatened to turn into general chaos that would damage the stability of the entire economic and political order. The lowcountry elite compromised by finally allowing backcountry subjects access to the legal system, but they staunchly refused to give up their exclusive power to define and shape that system. The Regulator movement was a major moment of crisis for the lowcountry elite. They met the challenge, but the movement hints at another threat: British imperial policy also could challenge the elite’s legislative power to structure the legal system.

In 1767, a number of bandit leaders were captured and tried by the Court of General Sessions in Charles Town. However, the newly arrived Governor Charles Montague delayed their punishment. Montague pardoned the offenders of their convictions for robbery and horse theft, hoping that he could create a climate of clemency and good will in the midst of turbulent imperial politics.\textsuperscript{87} Rev. Charles Woodmason, an


\textsuperscript{87} Brown, 38.
itinerant Anglican priest who spent six years ministering to backcountry subjects, criticized Montague in his December 24, 1767 journal entry, writing that this clemency was “carried to such an excess” that the pardoned robbers “came back 50 times worse than before. The fellows thus pardoned form’d themselves into a large Gang, ranging the province with Impunity.”

Seeing that the authorities in Charles Town would not help them, backcountry planters and yeomen farmers armed themselves and formed bands of “Regulators” who hunted down suspected criminals and dispensed summary judgment. Leading men from the backcountry also organized petitions and asked the Commons House to pass legislation dealing with their problems.

A new backcountry planter class was on the rise in the 1760s, and they were just beginning to establish their authority as the wave of lawlessness hit. About 35,000 settlers lived in the backcountry at this time. The lowcountry, especially the parishes around Charles Town, held about 86% of the colony’s wealth and 90% of its slaves.

Despite those figures, only 25% of the colony’s white population lived in the lowcountry. Backcountry planters held most of the Justice of the Peace and militia positions there, but they shared grievances and allied with the yeomanry. Both groups resented coastal centralization of political and legal authority and believed the backcountry was neglected by the Commons House of Assembly.

The people of the backcountry did not just face random acts of crime and violence at the hands of a few outlaws. Farmers and planters were at the mercy of organized

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89 Weir, 276.
90 Klein, 9, 45.
criminal gangs. The *South Carolina Gazette* described the actions of these outlaw groups:

We have received the following authentic account of the robberies and cruelties committed by Black, Moon, Anderson, Joyner, Farrel, Watson, etc, heads of the different gangs of robbers and horse stealers…The number of those fellows which are embodied, and under the command of these notorious villains, is not known, but they are very numerous.91

The newspaper recounted a month’s worth of the gangs’ activities. On June 15, 1767, when Captain Besard encountered one of the gangs and demanded their pass, one of the outlaws drew a pistol, told him “there it was” and shot him in the chest and shoulder. They returned a few days later to rob him of all his horses and household furniture. The gang then proceeded to the home of one “Wilson,” where they tortured the man by poking him with burning wood and hot irons before they robbed him.92 The gang’s “next tour” (suggesting they made regular raids) took them to the home of Gabriel Brown, “whom they beat, bruised, and burned” before they robbed him of horses and goods.93

Governor Montague, as advised by the council, issued a proclamation to stop the outlaw gangs. He offered a reward of £30 to anyone who would apprehend and bring the “principals in any of the murders and robberies” to jail. Montague further commanded all royal officers and subjects to aid in this endeavor.94 Montague abandoned the idea of clemency and gave backcountry residents permission to defend themselves, which is exactly what they did.

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91 *South Carolina Gazette*, July 28, 1767.
92 Ibid.
93 Ibid.
94 *South Carolina Gazette*, August 25, 1767.
In October 1767, a private subject named Job Elliott brought “Moon” to jail in Charles Town. The newspaper described Moon as “chief of the villains who have done so much damage to the back parts of this province and whose name has struck such horror in to the minds of his Majesty’s subjects.” Elliott, who knew Moon as a boy, came upon him by chance. He then lured Moon to a “convenient place,” turned on him and secured him without any help from the authorities. The paper described Moon’s gang as a family affair: it reported that Moon was the brother of one gang leader and half-brother to another called “Black,” who had already been captured and executed.95

Backcountry residents were then encouraged by Governor Montague to take the law into their own hands, and the Regulator movement was born as a result. Crime, however, was only a symptom of the larger political and legal issues in the backcountry. Backcountry residents were not satisfied with a temporary, ad-hoc solution such as the one Montague offered. They wanted major institutional reform that would provide permanent solutions. Moreover, the Regulators’ own rhetoric suggests they did not trust Charles Town to fully address the issue until such institutional changes were made. The main issue, of course, was inclusion in the legislature that defined crime, law enforcement and criminal justice.

Charles Woodmason clearly recognized the political causes of the backcountry’s plight. He had no affinity for the Regulators, but he was equally harsh toward the government in Charles Town that refused to take the actions necessary to bring peace and justice to the backcountry:

95 *South Carolina Gazette*, October 29, 1767.
But the people wearied out with being expos’d to the Depredations of Robbers—Set down here just as a Barrier between the Rich Planters and the Indians to secure the Former against the Latter—Without laws or government Churches Schools or Ministers—No Police established—and all Property quite insecure…rich men afraid to set Slaves to work…lest they become a Prey to the Banditti—No regard had to the numberless petitions and Complaints of the people—Thus Neglected and slighted by those in authority, they rose in arms.\footnote{Hooker, 27.}

Woodmason believed that the Commons House of Assembly (the only body with the power to create the institutions he said the backcountry lacked) created the Regulator movement through inaction and self-interest. Why not divide the backcountry into parishes and bring the benefits of government there? Woodmason thought that the answer was simple: “they do not want to increase numbers of the Members of Assembly.”\footnote{Ibid., 28.} The lowcountry elite, in other words, did not want to loosen their grasp on political power in the assembly.

The Regulators did attempt to petition Charles Town for redress. They sent a long remonstrance to Governor Montague and the Commons House in 1767 that made the problem clear in both philosophical and practical terms.\footnote{“The Remonstrance and Petition of the Inhabitants of the Upper and Interior Parts of the Province,” in Hooker, 214-215.} The Regulators directly addressed the absence of local courts and government that residents of the backcountry had always faced and blamed it for the uncontrolled violence and lawlessness now threatening them. The petitioners wrote:

\begin{quote}
We are Free Men—British Subjects—Not Born Slaves—We contribute our proportion in all public taxations, and discharge our duty to the public, equally with our fellow provincials, Yet we do not participate with them in the rights and benefits which they enjoy, tho equally entitled to them.\footnote{Ibid., 215.}
\end{quote}
These statements would have been hauntingly familiar to the members of the Commons House who had recently sent similarly worded petitions to King and Parliament protesting the Stamp Act. Moreover, the Regulators specifically identified themselves as provincials who had been denied their rights by a distant power, just as the Commons House had done in many of its political and judicial disputes with the crown and Parliament.

The Regulators squarely placed the blame for their situation on the Commons House, and they were very accurate in their criticisms. They wrote, “This evil we apprehend to arise from the selfish views of those, whose fortune and estates, are in or near Charles Town, which makes them endeavor, that all matters and things shall center there, however detrimental to the body politic.”\textsuperscript{100} The petitioners intentionally threw barbs at the assembly, wondering why the Commons could spend £60,000 of public money on a new exchange for the merchants and a new ballroom for Charles Town’s ladies, while “near 60,000 of us back settlers” had no minister, parish or place of worship\textsuperscript{101} Simply put, the Regulators blasted the centralization of political authority in South Carolina and how that authority was used for the benefit of the elite who resided in one region.

The Regulators wanted to establish institutions and policies that would allow them to realize order in the backcountry, prevent lawlessness through education and an effective poor law, and allow “respectable” men to fully participate in the provincial

\textsuperscript{100} Ibid., 221. \\
\textsuperscript{101} Ibid., 221.
political and legal systems. They wanted real circuit and county courts, including a system of appeals. Local clerks should be able to issue writs in all cases, expediting and reducing the costs of lawsuits. They demanded local courthouses and jails, reducing the cost and difficulty of prosecuting and punishing outlaws. Regulators wanted a new poor law that would better provide for widows and orphans along with a public education system. Tavern laws, they believed, should be amended to prevent retailing on public roads. Hunters ought to be restricted, and the assembly should pass stronger laws against illegally branding cattle and stealing horses. Most importantly, the backcountry must be divided into parishes so that churches could be built, ministers sent and, of course, representatives to the assembly elected. The Regulators also demanded locally impaneled juries. The interests of the Regulators’ and the lowcountry elite were similar in that both groups sought power to autonomously order their societies. However, if the lowcountry elite satisfied backcountry demands, they would have to relinquish a large measure of centralized authority.

The Regulators only got a very small proportion of what they wanted, as the assembly was ever reluctant to relinquish any power from Charles Town or spend money to develop this remote area and help rising planters and farmers who might one day compete with them for power and wealth. Because Charles Town authorities did not want to see lawlessness defeated by lawlessness, the assembly raised two companies of rangers who were authorized to hunt down and destroy the bandit gangs. With the rangers’ help, the Regulators broke the gangs’ backs by 1768 and brought order to the backcountry.

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102 Ibid., 230-33.
However, the Regulators did not stop there. They then turned to “regulating” other disorderly, problematic or marginal social elements in an effort to make all conform to their standards of industry and morality. The Regulators instituted their own government and denied the authority of the Commons House and Charles Town courts that they believed did not represent them. They even went so far as to block the delivery of all judicial writs (save those on debt) from Charles Town.¹⁰³

Lt. Governor William Bull, himself a wealthy lowcountry planter, issued a proclamation to suppress the Regulators in August 1768 that was remarkably similar to the one Montague issued against the outlaw gangs a year earlier.¹⁰⁴ Suppression, though, would have to be accompanied by some degree of reform if the colonial government wanted to reestablish authority in the backcountry. The assembly faced a dilemma with the Regulator movement. Should they give into demands for circuit courts and representation (meaning relinquishing power and decentralizing authority) or should they try to crush the movement with force? The assembly had been considering the problem of circuit courts since 1766 and passed the Circuit Court Act in 1769, but the process was halting and half-hearted. It was delayed many times by privilege controversies between the Commons House of Assembly and royal officials.

In 1766, the Commons House instructed its London agent Charles Garth to “treat with” Provost Marshall Cumberland (who held the office by patent, lived in England and appointed a deputy in South Carolina). Garth was to negotiate the sale and termination of

¹⁰³ Brown, 46-51.
¹⁰⁴ South Carolina Gazette, August 9, 1768.
the office. Cumberland would receive £4,000 compensation when the province gained
the right to appoint local sheriffs.\textsuperscript{105} Though Cumberland could have held up reform had
he clung to his sinecure, he did not prove to be the major roadblock to reforming the
court system. Replacing the Provost Marshall with sheriffs would not have forced the
elite to relinquish any political authority. It could have potentially added to their
authority over the legal system, in that law enforcement would have been totally removed
from a patentee and his deputies and potentially placed in the hands of the assembly’s
provincial appointees, adding to its patronage resources and power over legal personnel.
Buying out the Provost Marshall was a step toward expanding the criminal justice
system, but it was certainly not a devolution of authority on the assembly’s part.

The Commons House moved slowly, and the matter of criminal justice reform
stayed in committees until violence in the backcountry necessitated speedier action. In
November 1767, William Wragg reported to the Assembly from the committee
considering the problems in the backcountry. Wragg’s committee proposed major
political and legal reforms. The committee concluded that circuit courts must ride
throughout the province at least twice per year. It went further, suggesting that new
county courts handle all criminal cases “not extending to life and limb” and all civil suits
under £50. Matters decided in the county courts could be appealed to the circuit courts,
which would handle all major criminal cases and all civil suits over £50. Wragg’s report
also urged forming two companies of twenty-nine men to crush the backcountry

\textsuperscript{105} South Carolina Commons House of Assembly, Journals, 37.1, December 10, 1766, SCAHC.
disturbances. The committee did not propose extending Commons House representation to the backcountry. It also refused to give into the notion that the Regulators were somehow legitimate and justified in their actions. Hence, Wragg proposed to provide backcountry subjects with access to the legal system, but not to the political system that structured it and used it as a tool of government. The lowcountry elite would grant access but not control.

The proposal, however, was also designed to weaken royal control of the legal system. Until this time, appeals had to rely on imperial officials, which would no longer have been the case under the proposal. It also would have significantly weakened the power of royal officials such as the Attorney General. So, the assembly found a way to use the Regulator crisis to its own advantage, possibly weakening the power of royal placeholders. Attorney General Egerton Leigh recognized the scheme. He sent a memorial to the assembly stating that he was “very apprehensive” that the proposed court structure would cut into his “accustomed profits” from court fees. He clearly did not want to give up his monopoly on bringing all prosecutions before South Carolina courts and insisted that the Attorney General alone appoint prosecutors in all future circuit and county courts. Dougal Campbell, clerk of the Court of Common Pleas, also issued a memorial voicing similar concerns. Leigh and Campbell argued that their income came mainly from these fees. Without the fees, they might have to rely on whatever salary the assembly decided to give them, which would limit their independence as royal officials. The assembly would certainly have liked to cut into the independence of royal

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106 Ibid., November 11, 1767.
placeholders and have more control over these offices. Meanwhile, the backcountry continued its descent toward chaos.

The assembly continued, if somewhat slowly, to put together a circuit court act that would placate all sides and preserve as much central power as possible. They had to walk a fine line between maintaining or expanding their own power, and giving up just enough to secure order in the backcountry. As they continued to work, complaints continued to arrive. A petition from the inhabitants living south of the Combahee River, for example, complained that they did not want to be included in a circuit district for Beaufort. Beaufort, they wrote, would be even further away than Charles Town, which defeated the entire purpose of the circuit court bill. Another petition considered that day came from the inhabitants of Beaufort and Eutaw, who did want the court established in Beaufort. The assembly would never please all interests, but the Circuit Court Act finally passed the Commons House on March 31, 1768.107

Parliament did not traditionally control England’s courts, which makes the arrangement in colonial South Carolina a departure from English precedent. Establishing courts and appointing judges had traditionally been a prerogative power of the monarch. Parliament only passed statues to set up courts on extraordinary occasions. The Long

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107 Ibid., March 26-31, 1768. The act itself established circuit courts in Beaufort, Camden, Cheraw, Georgetown, Ninety-Six and Orangeburg. Its stated purpose was the preservation of justice and the rights, liberties and property of all of the colony’s residents. It also aimed to reduce the distance and cost of obtaining justice and reduce the strain on jurors required to travel to Charles Town to fulfill their duties. The courts would operate just as the Court of General Sessions in Charleston always had, meeting according to the 1767 act for the more frequent meeting of the Court of General Sessions, which required three sessions per year, rather than the previously required two. This act cited the great increase in business in recent years as well as the long wait many faced in jail for their trials. Cooper, Statues at Large, Vol. 7, #958, 980.
Parliament abolished prerogative courts in 1641 during its fight with Charles I. Parliament also had to resurrect some of these courts after Charles II was restored to the throne in 1660. The crown also traditionally appointed judges, though Parliament did have some say in the conditions of appointment. After 1661, the crown devolved prerogative power to the colonial governors to establish courts in the colonies.\textsuperscript{108} South Carolina, founded in 1670, broke with this directive and English tradition when the assembly established courts by statute. The Circuit Court Act again defied the traditional English arrangement, but it was entirely consistent with the South Carolina precedent that the legislature established and controlled the functions of the colonial courts. The Commons House tied controlling and defining the legal system directly to legislative privilege. The lowcountry elite attempted to expand the assembly’s control over the legal system through the Circuit Court Act, which initiated a series of privilege battles with the royal government and delayed reform. The backcountry remained politically and legally excluded while the assembly fought to expand its own power, making the Regulators’ charges of political selfishness all the more pointed.

The Circuit Court Act was long delayed because the crown disallowed the act on the grounds that it violated prerogative. George III did not specifically object to the assembly creating the courts, but he did not assent to how they defined judicial tenure.\textsuperscript{109}

When the assembly finally met in 1769 after a series of prorogations related to the

\textsuperscript{108} Greene, \textit{The Quest for Power}, 330-331.
\textsuperscript{109} \textit{Ibid.}, 336-343. Jack Greene points out that other colonies also established courts by statute. Virginia had done so as early as 1624. Greene also notes that the debate over judicial tenure was serious only in South Carolina before 1763, and the colony had a history of wrangling with royal officials over defining a judge’s tenure (i.e. assembly attempts to make judges answerable to the colonial legislature and not crown officials).
Townshend Duties, Governor Montague presented them with the Board of Trade’s explanation for the act’s disallowance. The assembly then went to work immediately on a revised bill.  

The King originally disallowed the act, because it appointed judges on “good behavior.” The Board of Trade had consistently advised against this practice, since it was an effort by the assemblies to further usurp royal prerogative. Judges in England were traditionally appointed on “good behavior,” but judges were appointed “at pleasure” (i.e. the pleasure of the monarch) in the colonies. “Good behavior” meant that judges served so long as they effectively performed their duties. The governor or the crown could not remove them for political or capricious reasons. “At pleasure” simply meant that the crown could remove a judge at any time for any reason. So, if the king or governor wanted to replace a colonial with a British placeholder, nothing stood in his way. If a judge challenged royal policies, he could also be removed for his outspokenness. The assembly wanted judges appointed on “good behavior” so that the governor and the crown would have less influence over these officials.

On July 4, 1769, the Commons House took the advice of committee chairman George Gabriel Powell, who said the provision for appointing judges on “good behavior” must be removed if the King were ever to approve. Governor Montague received the new bill on July 21, but he initially refused to sign, believing that the bill still did not answer all of the Board of Trade’s objections. The Board had written that the new

110 Brown, 97.
111 Labaree, 394.
112 Weir, 279-81.
district sheriffs should properly be appointed by the governor and that salaries for other officers (clerks and the Attorney General) should be fixed permanently to the office and not tied to a specific individual or an annual vote in the legislature. By only providing a salary for an individual and not an office, the assembly hoped to have some clout in dealing with future appointees (or perhaps influence the appointments themselves by withholding proper salary). Leigh and Campbell objected to this practice when they complained their fees were being cut by the proposed legislation. The assembly, under pressure to do something about the backcountry situation, again bowed to Montague’s objections. It rewrote the bill with judges appointed “at pleasure” and sheriffs appointed by the governor. Montague finally signed a revised bill on July 29.113

Hence, the assembly did not make any major concession to the backcountry on the issues of inclusion within the political system. They granted access to courts but not a voice in structuring those courts. The assembly was, however, forced to abandon its quest to make its authority over the legal system even more extensive when resistance from George III and the Board of Trade threatened to delay reform and exacerbate the situation in the backcountry. The assembly first learned of George III’s final approval on February 22, 1770, but the law could not take effect until the colony built courthouses and jails in the new districts, which would not be complete until 1772.114 The final act did not include a provision for county courts. It was a stripped down version that simply moved the existing courts to different locations at various times. The legal system now

113 Brown, 97-98.
114 Commons House Journal, 38.2.
reached the backcountry. Juries would be selected from district lists. However, the court system was still more centralized than backcountry petitions had originally hoped for and still did not include new appeal options.

These district circuit courts had full power to handle all cases within their boundaries and operated as the old courts in Charles Town had before. The Court of Common Pleas had the power to nominate candidates for sheriff (who replaced the Provost Marshall and his deputies and acted as jailor, not policeman), and the governor would then appoint an individual from that list. This provision denied the governor total control over the appointments. The assembly also set fixed salaries for court officers and judges, but it maintained leverage in the simple fact that the legislature, not London, provided that salary. The act also stipulated that jury lists would be compiled locally (at least within each district), and each district would have its own clerk appointed by the governor.\(^\text{115}\)

The law that went into effect in 1772 was a far cry from what backcountry subjects demanded. The initial committee report presented by William Wragg suggested a more far-reaching solution. The final act only established circuit courts manned by the same judges who had always presided over the Charles Town courts. Furthermore, the backcountry was not fully divided into parishes. The assembly recognized the need to extend the legal system to the backcountry, but they were unwilling to relinquish any great amount of control to do so. They were also prepared to use force to restore order in

\(^{115}\) "The Circuit Court Act of 1769," in Brown, 148-158.
the backcountry and crush the Regulators, who directly challenged the Charles Town government’s authority.

Throughout the process of passing the Circuit Court Act, the Regulators continued to fight for inclusion and impose their order in the backcountry. They resolved to block all writs from Charles Town (save debt writs). Moreover, they invaded three lowcountry parishes and successfully elected three of their candidates in nearby St. James Goose Creek Parish. Startled churchwardens allowed them to vote (bowing to the arguments that the parish’s western boundary was undefined and extended into the backcountry), despite their not technically residing in the parish. The boundary technicality that allowed voting and the establishment of circuit courts were enough to placate many involved in the Regulator movement. Some also came to believe the Regulators had gone too far and formed their own “Moderator” movement to curb excesses. Charles Woodmason was one who condemned the Regulators for usurping government authority and imposing a puritanical rule on the backcountry. He described the Regulators as a “Pack of vile, leveling, common wealth Presbyterians In whom the Republican Spirit of 41 yet dwells, and who would willingly put the Solemn League and Covenant now in force.”

By the end of 1769, the Regulation was all but over thanks to the suppression of backcountry gangs, limited concessions from Charles Town and a

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116 Klein, 1.
117 Hooker, 55. “41” refers to 1641 and the events leading to the English Civil War. The Solemn League and Covenant was an alliance between Scottish Presbyterians and English Parliamentarians that was concluded in 1643 for mutual protection against the forces of Charles I. See Conrad Russell, The Causes of the English Civil War (Oxford: Oxford University Press, 1990).
backlash against Regulator extremism. Yet, the fundamental nature of the colony’s political system had not changed in any significant way.

Thus, backcountry residents challenged how the lowcountry elite constructed the political and legal systems but only gained limited concessions. At the same time, the lowcountry elite fought royal officials for more political power within the province. In both cases, the legal system was at the heart of the conflict, because all parties understood that the legal system was a powerful tool of centralized political authority. The Regulators challenged the lowcountry elite’s authority, so their actions were condemned as disorder. However, elite provincial leaders were not always so fast to condemn disorder. Their responses to “lawlessness” were dictated by the extent to which a given episode threatened their rule of the province. Such episodes might even present opportunities to challenge royal authority.

In 1772, for example, a disagreement between Chief Justice Gordon and Judge Rawlins Lowndes came before the council. A case had been brought before the Court of Common Pleas in which John Harvey charged David Robinson with assault. Harvey claimed that a mob of fifty or sixty people led by Robinson seized him in September 1769. They chained Harvey to a tree, stripped him bare and whipped him with bundles of rods and switches ten times per person for a total of 500 to 600 lashes. He was lucky to survive. Robinson and the mob claimed Harvey was a rogue horse thief, and they were intent on punishing him. Chief Justice Gordon, making a perfectly reasonable argument, told the jury that this incident was a proven assault and the mob had no right to “assume

118 Brown, 61-83.
to themselves a power of judging of his [Harvey’s] conduct according to their own absurd and crude and indigested idea of justice.” The jury, he said, had to punish this wanton violation of the peace.  

Lowndes, however, disagreed. Lowndes was a provincial who had risen from nothing to become a wealthy man and one of the colony’s most powerful political leaders. He reminded Gordon that he was an English appointee and a stranger to South Carolina who did not understand local circumstances. Though Lowndes could not justify the mob’s violence, he believed they were provoked by Harvey (an “infamous character”), and their action was just an explainable if not excusable explosion of longstanding resentments. Gordon admitted he was a stranger but reminded Lowndes that grievances were to be settled in courts and not by mobs. Thus, he ordered the jury to disregard Lowndes’s statements about Harvey’s character. Gordon charged Lowndes with unconstitutional conduct before the council, but it dismissed the charge.

What this mob did was no different than the Regulators’ actions. A group of people unlawfully bound and tortured a troublemaker. Lowndes used the incident to pick a fight with royal officials and overlooked the same kind of violence he and his fellow assemblymen hoped to crush in the backcountry. He was a consistent opponent of royal authority who was embittered by the fact that an outsider supplanted him on the court.

Lowndes was carrying forward the argument that courts should be staffed by provincials

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119 South Carolina Royal Council, Journals, 36, February 3, 1772, SCAHC. 
120 Ibid. 
121 Following the implementation of the Circuit Court Act, the crown sent its own judges to preside over South Carolina’s court system. Thomas Knox Gordon was one of these judges. He was appointed chief justice instead of Rawlins Lowndes, who had hoped to obtain the position himself. He and Gordon became regular adversaries in the court. Weir, 280.
instead of British political appointees. The assembly attempted to erode royal prerogative power over the courts through the circuit court proposals as well. Both incidents reveal that the provincial elite continually fought royal authorities for the right to construct, shape and manage the legal system. The legal system, as it existed in 1763, was constructed by the lowcountry elite for their benefit. They fought to maintain it as such and were successful in contending with those who challenged their right to shape the system. Defining the legal system and limiting access to it gave the elite a tremendous political advantage. Even the legal culture itself added to that advantage by further restricting access to the legal system.

**Conclusion**

The Lowcountry elite constructed and dominated the legal system during the years before independence. However, the elite faced internal and external challenges from those who demanded a voice in shaping it. The elite resisted such challenges, understanding that power to define the system and control access to it were powerful political advantages. Even the Circuit Court Act of 1769, which hardly met the full demands of backcountry residents, maintained central elite control over the legal system. Circuit judges were the same judges who had always sat in Charles Town. Sheriffs, though a new creation, were not locally elected or appointed but owed their positions to officials in Charles Town.

All South Carolina courts operated exclusively in Charles Town until 1772. The backcountry, which contained a majority of the colony’s white population, had no representation in the legislature and only limited access to the legal system. When the
backcountry slipped into chaos and its residents cried for redress, the lowcountry elite only responded when disorder threatened to disrupt the entire province. Even then, the elite refused to grant backcountry residents true representation in the legislature and only provided minimal access to a legal system still constructed and controlled from Charles Town. Reform was delayed while the provincial elite fought George III and imperial authorities to determine whether legislative or royal power would control court personnel. The assembly lost this battle in 1769, and acceded to royal demands so that a measure of legal reform might restore order and protect the stability of the province and its plantation economy.

Thus, the legal system was a critical component supporting elite political power. The lowcountry elite spent a great deal of time building and defending this limited and centralized system. They controlled legal structures and personnel and determined who could access the courts and under what circumstances. The elite engaged in two conflicts about the legal system in this period, both of which involved access and control. In these political struggles with the Regulators and royal officials, the assembly fought for the legislative right to define the legal system and control access to it. The lowcountry elite compromised, but they never altered the fundamental nature of the system and they never ceased—in principle or practice—insisting on the exclusive power to define and shape the legal system.
Chapter 2
“Crimes of the Most Heinous Nature”: Criminal Justice and Law Enforcement

After *The Lord of the Rings* gained wide popularity in the 1960s, obsessive fans plagued J.R.R. Tolkien with a flood of letters demanding to know every omitted detail of his fantastical history of Middle Earth. Tolkien often humored them, but he could never provide enough to satisfy rabid readers. He wrote,

I feel it is better not to state everything (and indeed it is more realistic, since in chronicles and accounts of ‘real’ history, many facts that some enquirer would like to know are omitted, and the truth has to be discovered or guessed from such evidence as there is).

No one has ever written the complete history of crime in colonial South Carolina, and no one ever will. The destruction of colonial South Carolina’s criminal court records is among the many legacies of General William Tecumseh Sherman’s “March to the Sea.” The Court of General Sessions journal from 1769 to 1776 is all that survives—just eight years worth of records. Hence, it is impossible to study long-term patterns of crime and punishment in colonial South Carolina.

Historians who have studied crime and punishment in early America and early modern Europe most often study these long-term patterns using statistics compiled from extensive court records. These studies look at patterns to demonstrate how the courts “served as a critical core of stability, both representing and imposing order,” or they

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follow the lead of European scholars by using detailed court records to study the “lower orders” of society. In the latter case, the records provide a population sample used to illustrate larger social history issues in a given colony. This methodology centers upon a painstaking process of examining and quantifying thousands of criminal cases and countless pages of court records.

South Carolina does not possess the records necessary to produce this kind of study. The surviving journal only lists the defendant’s name, the crime, the outcome and the punishment. Even this information is not always complete. Only one historian has attempted to quantify this information as part of a long-term study of crime and punishment, but only as a limited preface to a much longer study of the nineteenth century. While studying long-term patterns of crime and punishment can reveal much about social development, criminal justice systems can also be studied as political tools used by ruling elites. Such studies focusing on England recognize that the propertied elite crafted and controlled the criminal justice system, and these historians have attempted to understand the English political system by detailing how the elite used criminal justice to protect their economic interests.

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3 Spindel, x.
5 See Hindus, *Prison and Plantation*. Hindus included the surviving colonial records in his comparative study of crime in South Carolina and Massachusetts. However, the vast majority of his book focuses on long-term patterns during the period from independence to the Gilded Age. He uses a comparative approach to illustrate the overall development of “the modern criminal justice system” in America, which he argues has its roots in the nineteenth century (xviii).
Douglas Greenberg applies a similar methodology to colonial criminal justice.\textsuperscript{7} Greenberg argues that colonies with unified elites had more effective law enforcement systems, demonstrated in high rates of conviction. He lists Virginia as an example of a colony that (much like South Carolina) had “a unified class possessing wealth, acknowledged status, and fundamentally unchallenged political power” who were “able to use the legal system in a single-minded attempt to secure their own goals.”\textsuperscript{8} Law and criminal justice, as instruments of rule or government, allowed elites to extend their authority throughout a given place and over all society. Criminal justice was an important way though which an elite extended authority over subordinate groups in society.\textsuperscript{9}

Chapter one demonstrated how the elite took control of the legal system to solidify their political power in Charles Town at the expense of backcountry residents and British authorities. This chapter studies one aspect of that legal system—criminal justice. South Carolina’s highly centralized and effective criminal justice system was an important extension of elite political power throughout the colony. It served two major political functions: first, it served to protect property, which was the ultimate basis of elite political power. Second, by protecting property (even though the system often focused on elite property) and upholding order, the lowcountry elite united their interests with the interests of the general population who would also benefit from protections against property crime and disorder. Since the lowcountry elite also had to control a vast

\textsuperscript{8} \textit{Ibid.}, 320.
\textsuperscript{9} Hindus, 1.
number of slaves and had to rely on all of the colony’s white population to do so, providing effective government could serve as an important way to cultivate popular support.

South Carolina’s criminal justice system focused on punishing property crimes. Violent crime was not the major concern in late-eighteenth-century South Carolina, though the elite worried about increasing disorder in the growing city of Charles Town. As in England, South Carolina's law enforcement system was amateur rather than professional, and focused on deterrence through punishment rather than prevention through police. Between 1763 and 1776, the Assembly kept close watch over the system, proposing new laws and reforms when it deemed necessary – especially in response to disturbing signs of increased disorder in Charles Town. In the end, though, the imperial crisis and conflict between the assembly and the council blocked wholesale modernization of criminal justice before the Revolution.

The Criminal Law, 1750-1776

South Carolina adopted the bulk of English statutory and Common Law in 1712. Thus, the colony had a pre-existing code of laws and set of legal traditions. Of course, South Carolina was not Britain, and many changes and additions had to be made over the years to meet specific circumstances. The assembly often reacted to specific problems or issues, but the assembly’s legislative activity shows that the elite were generally satisfied with the overall criminal code in the late eighteenth century. When the assembly chose to augment the existing criminal law, it usually did so to protect property. To that end, the
lowcountry elite expanded the death penalty in the hope that it would lead to more effective deterrence.

The lowcountry elite used the law as a political tool in three ways. First, the majority of legislation managed colonial resources and infrastructure, allowing the elite-controlled assembly to act as a colony-wide administrative body. Second, the assembly took the example of England’s Parliament by expanding the death penalty to severely punish and deter property crimes, especially those that could harm elite economic interests. Third, the assembly defined order by passing and enforcing strict regulations against moral and sexual crimes, including crimes that might contribute to the growing problem of poverty in Charles Town. The assembly derived much of its authority from its ability to exclusively administer and manage society through these legal methods.

A statistical analysis of laws passed by the Commons House of Assembly from 1750 to 1776 demonstrates the reactive nature of the assembly’s law making process. In a period of just twenty-six years, 248 of its acts became law. From 1763 to 1776, 176 acts became law. Hence, over half of the legislature’s activity during the latter half of the eighteenth century occurred during the last thirteen years of the period under consideration. This amount of activity is impressive for a part-time legislature that was often embroiled in conflicts with royal officials. However, only a small proportion of laws passed from 1750 to 1776 dealt with crime. Even fewer dealt with the colony’s legal structure or were meant to alter or strengthen its law enforcement mechanisms. Very surprisingly, considering that South Carolina had the largest slave population of any North American colony, only two percent of laws passed in this period concerned slavery.
or blacks. What then was the South Carolina legislature doing? More often than not, the assembly simply managed the colony. It acted as a central administrative body, even while it sat as a legislature. The assembly filled the void left by the lack of any county or municipal government structures in South Carolina. A plurality of assembly legislation managed and administered provincial resources and infrastructure, usually in a way that directly benefitted the lowcountry elite. The relatively few criminal laws passed in this period were not sweeping overhauls of the code but reactions to very specific problems. These criminal statutes reveal an overriding concern for protecting property (i.e. wealth or sources of wealth) and better disciplining colonial society.

Though the assembly did not spend the majority of its time on crime, the laws it did pass speak to the assembly’s priorities and methods in dealing with crimes it deemed worthy of attention. For example, it passed two acts to counter the perceived epidemic of horse stealing. Any quick review of advertisements in Charles Town newspapers will reveal the scope of this problem. There is no way to know for certain how many horses were stolen. Many newspaper ads only suspect theft. One such example appeared in the South Carolina Gazette. The ad stated that the horse was “strayed or stolen,” gave a detailed description and offered a £5 reward for its return. The ad also warned that if

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10 South Carolina had no town or local governmental organizations corresponding to those found in England. There was no city council in Charles Town before the Revolution. Various bodies of commissioners (streets, workhouse, market, etc) carried out the day to day operations for municipal needs, but the legislature set policy. It acted as both colonial assembly and common council. Legislative acts included their own method for execution (e.g. establishing a commission) that remained under assembly control. See “The Government of the City of Charleston, 1682-1882,” Yearbook of the City of Charleston (Charleston, 1881).
anyone were discovered “illegally possessing” the horse, he “may expect the severest prosecution.”

Table 2.1
South Carolina Statutes, 1750-1776 and 1763-1776

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Source: Compiled from Thomas Cooper and David McCord, eds. The Statues at Large of South Carolina. Columbia, 1836-1841.

Horses were important work animals in South Carolina, but they were also a profitable commodity for the elite. Many newspaper issues featured ads from horse breeders. For example, breeding a mare with the horse “Skim” would cost £25. Some of these horses were bred for racing, which was a very popular elite pastime in Charles Town. The Jockey Club was formed in 1735 and built a race track at the “Quarter

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11 South Carolina Gazette, November 28, 1767.
12 I have provided numbers for 1750-1776 and 1763 to 1776 for two reasons: first, doing so isolates the specific period under consideration, while still providing a broader overview of legislative activity. Second, it shows that the period under consideration represents continuity in pattern rather than disparity.
13 South Carolina Gazette, March 16, 1767.
House” outside of Charles Town.\(^{14}\) Gentlemen prized well-bred horses as valuable investments and symbols of status. When Josiah Quincy of Massachusetts toured Charles Town, he visited all the grand spots where the elite gathered for social occasions. He noted in his journal that his group spent an entire day viewing horses and receiving compliments on them.\(^{15}\) On March 16, 1773, Quincy wrote that he was “going to the famous races.” He had an enjoyable experience, writing that the races were “well performed.” A horse named “Little David” (a sixteen time winner) had been the favorite but lost to Filmnap. Quincy noted rather casually that the sum of £2,000 was won and lost at the race. Filmnap’s owner made a great profit that day by selling his champion horse for £300. Overall, Quincy called the horses he saw “excellent, though high priced.”\(^{16}\) No other social topic commands so much attention in his journal. Horse racing was an elite entertainment and business enterprise. Horses were vital to most people for transportation, but it is unlikely that horse theft would have garnered so much attention unless it had directly affected the elites’ pocketbooks in such a way. Severely punishing this problematic crime thus united common and elite interests.

The assembly passed the first of two new acts against horse theft in 1762. It claimed the laws currently in effect insufficiently dealt with the problem. It now defined horse stealing as a felony, and persons convicted under the law could not receive commutation. The assembly included harsher punishments, but it also added more

\(^{14}\) Walter Fraser, *Charleston! Charleston! The History of a Southern City* (Columbia: University of South Carolina Press, 1989), 58.


\(^{16}\) Ibid., 451.
regulation. The new law directed Justices of the Peace to appoint toll masters to regulate the movement of horses and cattle between colonies. Anyone claiming to have brought horses or cattle in from another colony was required to present official paperwork certifying their brand. The law set a £20 fine for anyone unlawfully branding horses or cattle, and an offender would be held in jail until he paid the fine. Corporal punishment could be substituted if one lacked the means to pay. The law also offered a £20 reward to anyone providing information about the false branding of horses and cattle. If a slave branded horses or cattle, he had to do so in the presence of a white person. Failure to comply would result in “severe whipping.” Stray horses or cattle had to be reported to the local toll master, who was then required to advertise them. If no one claimed the animal, it would be sold at public auction.\(^\text{17}\) This criminal statute is the only one passed in this period that actually set up new enforcement mechanisms.

The assembly still did not deem the act sufficient to address the problem, so it passed a second act in 1768. The new law set the punishment for a first time offender as the loss of an ear and public whipping not to exceed fifty-nine lashes (the standard was thirty-nine). A two-time offender faced execution without the possibility of commutation. The assembly’s main alteration was the expanded death penalty for second-time offenders.\(^\text{18}\) It was not the only statute passed in this period that expanded the death penalty in matters of crime that threatened elite property. The same pattern

\(^{17}\) Cooper, *Statues at Large*, vol. 4, #924.
\(^{18}\) *Ibid*, vol. 4, #963.
prevailed in eighteenth-century England, where the gentry increasingly used the death penalty to deter (or attempt to deter) crimes against property.\textsuperscript{19}

It was the generally accepted hope in the early modern era that punishment would deter crime.\textsuperscript{20} However, deterring crime through punishment was no easy task. As Michael R. Geerken and Walter R. Gove argue, a “system of deterrence” as a “communication mechanism” relies on three fundamental principles. First, the chance of detecting crime must be high. Second, there must be a high probability of capture after detection, swiftly followed by conviction and punishment. Third, punishment must be severe enough to offset any gain possibly made in committing the crime.\textsuperscript{21} Eighteenth-century South Carolina had no professional police or crime detection agencies, so it was hardly certain one would be detected or caught. Prosecution was selective, and amateur officials gathered evidence. If a crime was brought to trial, conviction was highly probable, but one must wonder how many crimes were never brought to trial due to unreliable means of detecting crime. The third principle was the only realistic option:

\textsuperscript{19} See Hay, \textit{Albion’s Fatal Tree}, and Peter Linebaugh, \textit{The London Hanged: Crime and Civil Society in the Eighteenth Century}, 2\textsuperscript{nd} ed. (New York: Verso, 2006). See also E.P. Thompson, \textit{Whigs and Hunters: The Origin of the Black Act} (London: Pantheon, 1975). Hay, Linebaugh, and Thompson explore the great expansion of the death penalty in eighteenth-century England. In \textit{Albion’s Fatal Tree}, Hay argues that the threat of death served in place of professional police forces in this period, during which the number of capital crimes increased from fifty to over 200 from 1688 to 1820. Almost all of these dealt with property crime. This period marked the peak of the landed gentry’s power, a situation not unlike that of the South Carolina lowcountry.

\textsuperscript{20} J.A. Sharpe, \textit{Crime in Early Modern England, 1550-1750} (New York: Longman, 1999), 256. Sharpe, however, notes that English authorities had other punishment options not available in the colonies. Houses of correction, for example, were becoming more prominent in the eighteenth century and may have signaled a new desire to discipline (or reform) more than to simply deter or exact retribution on a criminal (255-257).

\textsuperscript{21} Michael R. Geerken and Walter R. Gove, “Deterrence: Some Theoretical Considerations,” \textit{Law and Society Review} 9.3 (Spring, 1975), 499. The authors’ basic arguments agree with those of the eighteenth-century Enlightenment thinker Caesare Beccaria, whose book on crime and punishment was available in Charles Town.
make the pain of crime outweigh its pleasure or benefit. The assembly thus hoped to decrease horse theft through the pain inflicted by and fear of mutilation, heavy lashing or even death. The assembly continued to apply the principle to an increasing number of property crimes during this period.

Burglary provides another example. Newspapers ran announcements of burglaries with some regularity. In the September 26, 1765 *South Carolina Gazette*, Roger Pinckney (who ironically held the post of deputy Provost Marshall) offered a £100 reward for the discovery and conviction of the man or men who broke into his house on September 12. He claimed that someone had stolen £1,430 paper currency and about £50 silver currency from his office drawers. He even offered up to twenty-five percent of any money recovered as a reward and urged his fellow citizens to take “some pains…to examine and discover” how suspicious persons may have come by large bills (i.e. people who should not normally have large bills). He hoped such vigilance would result in “a timely stop…to the frequent robberies of this kind lately committed.”

The assembly passed the 1769 act “to encourage the discovery and apprehending of house breakers and buyers of stolen goods” to crack down on the problem. Again, the assembly turned to harsher punishments in the hopes of increased deterrence. The act stated that:

The crime of burglary and breaking open houses in a felonious manner, are of late years become more frequent than formerly, to the great disquiet, terror, and impoverishing of his majesty’s subjects…which crimes might be prevented if due

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22 *South Carolina Gazette*, September 26, 1765.
encouragement be given to such as shall rigorously endeavor the discovery and apprehending of such malefactors, and some severe punishments inflicted.\textsuperscript{23} The law mentioned all three principles of deterrence: discovery, apprehension and punishment. However, it stressed “severe punishments.” The assembly offered a £10 reward to any person apprehending a burglar. This measure might help accomplish the first two goals of detection and apprehension without adding new law enforcement mechanisms. It also promised that any who were “maimed or killed” in the attempt would be entitled to an annuity. The law also attacked the problem from a market perspective. Any person caught receiving stolen goods would be considered an accessory to the felony of burglary. On the mere evidence of one or more “credible” witnesses and in conjunction with the conviction of the burglar himself, the receiver of stolen goods would be executed. If the burglar was not also convicted, the crime of receipt was considered a misdemeanor, punishable by a fine, public whipping or time in the pillory.\textsuperscript{24} Again, burglary was not a crime that only affected the elite. The 1769 law itself cited protecting the general public as a justification. It enlisted public aid to suppress the crime.

While the elite again moved to protect property through harsher punishments meant to deter offenders, the language in the law itself stressed the government’s (i.e. the political elite’s) role as protector. Practically, it also united the public and the elite government against the threat of burglary with financial rewards to any subject who helped the government stamp out this crime. Thus, the law united the elite and the

\textsuperscript{23} Cooper, \textit{Statutes at Large}, vol. 4, #981.
\textsuperscript{24} \textit{Ibid.}, vol. 4, #981.
common interest in two ways—the image of government as benevolent protector and the appropriation of public help in suppressing property crime. Elite homes and business like Roger Pinckney’s, which naturally presented burglars with the most fruitful targets, relied on both the watchfulness of the public and the deterrence provided by harsh punishment for protection.

The assembly also worked to better control counterfeiting through deterrence. Inflation and scarcity of hard money were problems in all the British colonies. In fact, South Carolina became a royal colony partly because of the currency issue. The population in 1719 was about 9,000, and the colony labored under heavy taxation and poverty. Too much paper currency had been issued to pay for Indian wars, and hard money was scarce. Provincial leaders in Charles Town revolted against the incompetence of the proprietors in dealing with these issues. If the lowcountry elite did not provide competent government, in this case in protecting the currency, they might have faced the wrath of businessmen, artisans, and the general public themselves.

South Carolina was the first southern colony to issue paper currency in 1703. When it became a royal colony, governors were told not to allow laws issuing paper money unless the money had a finite lifespan as legal tender. The exchange rate for paper currency to Pounds Sterling was about 5:1 at that time. Royal governors, though, did not always enforce imperial instructions limiting paper money issues due to pressure from planters and merchants. British merchants especially insisted on having a sound

paper currency, as they did not want their own bottom lines hurt by worthless money. Paper money continued to circulate despite British opposition. The King disallowed two Commons House attempts to create a stable, permanent paper currency. Hence, the colony had to rely on ad hoc public orders or tax certificates issued by the assembly (of limited usefulness and duration) that served as a kind of paper currency. After 1739, the exchange rate worsened but remained a fairly consistent 7:1 (currency to Pounds).²⁶

Counterfeiting contributed to inflation, making it dangerous to the economy. However, Edward III’s Treason Act of 1352 also defined it as a form of treason. The law considered counterfeiting akin to usurping royal authority.²⁷ Since the assembly claimed the right to regulate the economy and issue currency, counterfeit was also a usurpation of the assembly’s authority as well as a dangerous attack on economic stability. Thus, the lowcountry elite rigorously punished counterfeit, because it attacked their economic interests, threatened the perception that they could provide competent government, and usurped the assembly’s political authority. A 1775 act dealt with the problem: it applied the death penalty (with no possibility of commutation) to the printing or even passing of counterfeit bills.²⁸

The assembly strengthened other laws dealing with major and minor property crimes in similar ways: it imposed stronger penalties without erecting new enforcement mechanisms. A 1754 act prescribed the death penalty for stealing slaves or aiding

²⁸ Cooper, *Statutes at Large*, vol. 4, #1010.
runaway slaves. The same law made stealing schooners a capital crime.\textsuperscript{29} Though it did
not impose the death penalty, another harsh 1769 act set out to deal with “mischiefs
arising from hunting at unseasonable times.” The act complained that “idle, loose, and
disorderly persons” had been constantly killing deer just for the skins, leaving rotting
carcasses, which attracted wolves and predators that attacked cattle. Thus, the assembly
banned deer hunting from January 1 to July 31 to protect cattle farmers’ property. Courts
could impose £2 fines for every deer killed out of season, but the law did not apply to
friendly Indians. No one was to hunt more than seven miles away from his own home,
but no fines would be levied against those hunting strictly for food.\textsuperscript{30} The act set a
relatively minor punishment, but this crime was also very minor. Yet, the assembly once
again acted to protect property, relying on the fear of potential punishment to curb a
threat and project an aura of competent government.

Of course, the law went beyond protecting property. It also attempted to control
or modify undesirable behavior—especially in areas of morality. Some moral and sexual
crimes were punished very severely in the hopes of deterring potential offenders and
eliminating undesirable behavior. For example, if a woman was suspected of having a
bastard child, a Justice of the Peace could summon mother and child to examine her (or
them) under oath to determine paternity. If she was convicted of the crime, the first
offense carried a small fine of £10. To a poor mother, however, this fine could be quite a
financial blow. “Mercy” tempered the penalty in this case by allowing for poor mothers

\textsuperscript{29} Ibid., vol. 7, #822
\textsuperscript{30} Ibid., vol. 4, #988.
to be whipped up to thirty-nine times in place of the fine. If some unfortunate soul committed a third offense, she would be tied to the back of a cart, led through Charles Town, and publicly whipped all the while. The father would only receive a £5 to £10 fine.\textsuperscript{31}

The law contained harsh punishments for bastardy, rape and other sexual crimes, but they were also rarely prosecuted. The Court of General Sessions did not try any bastardy cases from 1769 to 1776 and only tried one “assault with intent to rape” case in the same period.\textsuperscript{32} The law also prescribed death without possibility of pardon or commutation for buggery (bestiality) and sodomy, but it tried few of these cases as well.\textsuperscript{33} Only one sodomy case and no buggery cases came before the Court of General Sessions in this period. It is important to remember that particular crimes may have been committed despite a lack of prosecutions. Sexual crimes are especially difficult to quantify. Two aspects of sexual crimes make statistical evidence problematic. First, sexual relationships are usually private in nature. Second, proscribed sexual relationships

\textsuperscript{31} William Simpson, \textit{The Practical Justice of the Peace and Parish Officer of His Majesty’s Province of South Carolina} (Charles Town: Robert Wells, 1761), 40-43. This book is a guide for Justices of the Peace commissioned by Lt. Governor William Bull III and written by Chief Justice William Simpson. Such guides were fairly common in England and in other colonies.

\textsuperscript{32} \textit{Ibid.}, 207. Sharon Block has noted that the issue of whether or not a woman had consented in rape accusations was a major barrier to the prosecution of rape in early America. Death was the common penalty for rape in the colonies, but eighteenth-century courts were not always willing to prosecute rape cases. Evidence and testimony were often very difficult to gather and present. Juries would have been all male, and it would have been difficult to make a convincing case or prove rape. There would rarely be witnesses to sexual crimes. Block also notes an “early American double standard” that held women responsible for extra-marital sex. See Sharon Block, “Bringing Rapes to Court,” \textit{Common Place} 3.3 (April 2003) \url{http://www.common-place.org}. For her full study on the issue of rape and sexual coercion, see Sharon Block, \textit{Rape and Sexual Power in Early America} (Chapel Hill: University of North Carolina Press, 2006).

\textsuperscript{33} Simpson, 58-59.
tended to go against social norms (i.e. homosexuality / sodomy), and the parties involved
would deliberately try to keep these things hidden.  

Sharon Block also suggests that rape, as portrayed in early America, was more
about males than it was about females. She stresses the revolutionary era notion that rape
represented a contest between men (i.e. their competence as protectors of wives and
daughters).  

Severe, public punishment used shame to turn the public against offenders
and deter others. Rape laws, however, had more to do with projecting an image of
protective government than shame and deterrence. Block also argues that rape was
actually an attack on the social order. It was an attack on a patriarch and his family, and
a rape could indicate a need for a patriarch (individually or collectively) to reinforce the
patriarchy.  

In this context, the law punished rape harshly to uphold male protection of
women, while bastardy punished women (even raped women) harshly to protect the
sanctity of the family and marriage—two pillars of the moral order cherished by the elite
whose marriages connected them to networks of power and wealth. If one follows
Block’s logic, rape laws defended a man’s position as family patriarch and restrained
individual immorality in support of the predominant family power structure.

The assembly also passed several acts against non-sexual moral or nuisance
crimes. It targeted “lewd and idle behavior,” which included gambling, public
drunkenness and vagrancy. These offenses were minor, but they could lead to other acts

34 Jennifer M. Spear, “Colonial Intimacies: Legislating Sex in French Louisiana,” William and Mary
Quarterly 60.1 (January 2003), 75-98.
35 Sharon Block, "Rape without Women: Print Culture and the Politicization of Rape, 1765–1815,” The
36 Sharon Block, “Coerced Sex in British North America, 1700-1820,” Ph.D. Diss., Princeton University,
1995, 67-84.
that might threaten property and general safety. Poverty and personal immorality were often associated with crime. A 1754 act, for example, defined vagrancy as “all lewd, idle, disorderly men who have no habitations or settled place of abode or no visible means of maintaining themselves, all sturdy beggars, and all strolling or straggling persons.” The law suggested that vagrants suffered from inherent moral corruption from which society must be defended. Hence, Justices of the Peace were authorized to issue a warrant (executable by any subject or constable) for their arrest. One Justice of the Peace and two freeholders (the same structure as a slave court) could meet and judge whether or not the person in question was in fact a vagrant. If convicted, he would then be sent to the nearest recruiting office and forcibly enlisted in the South Carolina militia in the hopes of offering him the discipline that might then lead to a productive life. Thus, white male vagrants were treated as something less than full members of society who needed correction. They were punished and carefully controlled because of their perceived moral corruption. Idleness and other corrupt behavior could also cause one to remain in or fall into a state of destitution, which could potentially cost the provincial treasury in poor relief funds. Regulating vagrants then served to defend property, and the law again highlighted the elite government’s role as protector of public welfare.

Two additional acts attempted to defend morality and social order by limiting gaming and lotteries. Neither law directly dealt with elite property, but the assembly

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37 Cooper, Statues at Large, vol. 7, #822.
38 Ibid., vol. 4, #966. South Carolina law did make a distinction between vagrants and “the poor.” In 1768, acting in its capacity as a municipal government, the assembly passed an act “for making the work house a place of correction.” Legislators wanted to separate the poor from less desirable social elements such as seamen, vagrants, slaves and disorderly persons. Instead of grouping everyone in the workhouse, those undesirables would go to a house of correction. See chapter four for a full account.
framed both laws in terms of correcting social ills and protecting less powerful elements of society. The law against illicit gaming set out to protect the young from corruption and to prevent attracting the wrong sort of person to the city. It stated that:

Many mischiefs and inconveniences do arise and are daily found, to the maintaining and encouraging of sundry, idle, loose, and disorderly persons in their dishonest, lewd, and dissolute course of life, and to the circumventing, deceiving, and debauching of many of the younger sort of people.39

Cheating in such private games was to be heavily punished, with the cheater forfeiting five times the value he won through deceit. Any assault or challenge (to duel) stemming from gaming would result in a £100 fine and one year in jail. All journeymen, apprentices and laborers were totally forbidden from participating. Justices of the Peace decided these cases, and the act gave them authority to enter gaming houses and make arrests.40 The restrictions (especially for apprentices and journeymen) were intended to prevent the corruption of productive young people who might be lured into idleness, vagrancy and poverty. It aimed to address criminal and economic issues (poverty, vagrancy and assault) by addressing an underlying moral problem. Moral laws allowed the lowcountry elite to regulate and mold society through legislation and law enforcement.

Most laws passed by the Commons House of Assembly did not deal with crime. Rather, the assembly spent the majority of its time distributing colonial resources, supervising infrastructure projects (often in response to petitions), and appropriating funds. The law then allowed the elite to control the colony’s public resources entirely.

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from Charles Town and distribute those resources in ways that benefitted the ruling party’s interests. Relatively few of the Commons House’s laws concerned crime, but its actions against crime are nevertheless revealing.

First, the assembly focused on adding harsher punishments to property crimes that were particularly problematic in the colony. Since the elite based their wealth and authority on the profits derived from property ownership, protecting these assets was an important part of their governing or political agenda. However, protecting property served another political purpose: it united the interests of the general white population with the governing elite, which cultivated popular support for the government. Combating disorder and moral crime served much the same purpose. When the elite regulated behavior, they imposed their vision or morality and order upon society (which could in itself serve to protect property in some cases), and the government posed as a protector of less powerful social groups like women and children. That image of elite government as protector could also have been used to cultivate popular support. Political authority relied on at least a degree of consent from white, non-elite society, and the elite shaped the criminal law to directly protect their own interests and to build, as William Offutt writes, a “legal consensus supportive of authority” by presenting a competent and protective government.41

Second, harsher laws against property crimes and disorderly behavior (i.e. gambling and vagrancy) reveal the elite’s concern about the difficulties of a growing

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urban center that was increasingly linked to the trans-Atlantic commercial economy in the eighteenth century. Charles Town’s population had grown 35% between 1740 and 1760 from about 6,300 to 9,700 inhabitants. Other major seaports, including Philadelphia, Boston, and New York experienced similar rates of growth.\textsuperscript{42} Increased commercial wealth in major cities relied upon the Atlantic economy. Charles Town’s merchants and planters grew wealthy, for example, by exporting rice and indigo. The elite and the middle classes also consumed imported British goods and patronized local artisans.\textsuperscript{43}

While ties to trans-Atlantic trade networks promoted wealth for some, they also linked colonial cities to the fluctuations of the Atlantic market. As Gary Nash writes, colonial cities “were becoming locked into an impersonal market world, which on the one hand promised new opportunities for wealth and material comfort and on the other hand produced discontinuities in the demand for goods and services, periodic economic dislocation [and] unemployment.”\textsuperscript{44} Increasing population coupled with severe economic downturns (i.e. the depression following the Seven Year’s War) resulted in the growth of an impoverished class in major colonial cities.\textsuperscript{45} The elite linked poverty to disorder and criminality. Taverns, gambling, and a black market economy fueled by stolen goods could corrupt the young, the poor, and slaves.\textsuperscript{46} Chapter four will examine how the elite

\textsuperscript{43} \textit{Ibid.}, 6-7.
\textsuperscript{45} \textit{Ibid.}, 159.
\textsuperscript{46} Carp, 21.
struggled with this increasing poverty, but the assembly’s actions against property crime and disorder also show how the elite tried to counter the perceived negative impacts of urban growth and commercialization in Charles Town—the center of elite wealth and political power.

**Law Enforcement**

Professional law enforcement did not exist in the eighteenth century. The justice, the constable and the coroner were the three principal law enforcement officers throughout South Carolina in this period. They reacted to crimes already committed rather than prevented crime. Property crimes and disorder in the city were real problems that presented challenges to elite interests, but they did not rise to the same level of general threat that disruptions to the plantation economy posed. Limited though it was, the existing criminal justice system prioritized crimes against property and order (i.e. those that most troubled the ruling elite) and effectively punished those criminals who attacked these bases of elite rule. Had the imperial crisis not intervened, it is likely that the assembly would have moved to strengthen and professionalize this law enforcement system and balance deterrence with more regulation to better meet the increasing challenges of governing a growing colony and colonial metropolis that were more and more troubled by crimes against property and order.

The Justice of the Peace was the most important law enforcement figure in England and colonial South Carolina. Because the office itself was so critical, and members of the elite valued and often held the office, it also allowed colonials to circumvent royal control of judicial offices and play a direct role in law enforcement,
criminal justice, and enforcing the slave code. As the crown’s representative and conservator of the peace, the royal governor appointed many justices, who in theory extended the king’s personal authority in the province. In practice, because the assembly could define the office’s functions, Justices of the Peace also extended the provincial elite’s authority.

The colony had many Justices of the Peace, and, though the elite did not exclusively hold the office, even the most prominent members of the political elite sought, held, and exercised its powers. Berkeley County (northwest of Charles Town) had over eighty justices listed in 1765 alone. Prominent justices included John Rutledge, Henry Middleton, John Drayton, Robert Pringle, Rawlins Lowndes, Thomas Heyward, John Wragg and Gabriel Manigault. These particular men were among the wealthiest planters, merchants and lawyers in the colony. They also served as assemblymen, councilors or judicial officials. These already powerful planters could use the office to act as country squires, and their plantation homes at Drayton Hall, Magnolia or Middleton Place might then serve as ad-hoc, informal courthouses.

Even though the governor appointed these officials, the assembly could dictate their actual duties and functions. The legislation creating the Courts of Justices and Freeholders (slave courts) was one such example. Justices of the Peace were potentially very powerful given the lack of local courts and governments in South Carolina and the assembly’s ability to define the office’s duties. Justices played critical roles in both the black and white law enforcement and judicial systems. The assembly’s legislation made

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47 *South Carolina and American General Gazette*, October 20, 1765.
them the primary judges in the slave courts. They did not have such extensive powers in matters of white crime, but their role was nevertheless critical to the criminal justice system.

Justices swore to enforce the laws of Britain and South Carolina “made for the quiet rule and government of our people.” They had the power to summon “any and all of those persons who shall threaten any of the people,” and to investigate all “manners of felonies, trespasses, and of all singular other misdeeds” reported within their jurisdictions. 48 Thus, a justice served important law enforcement and judicial functions. Justices’ oaths reflected their responsibilities. As the crown’s direct agents, they all swore loyalty to the king and swore to uphold his authority. Justices also had to swear to “do equal right to the poor and rich,” not to serve as counsel for any party brought before them, account for all fines and forfeitures paid, and receive no pay or gifts for their services beyond their official fees. They swore to preserve the peace in a fair and impartial way and avoid conflicts of interest. Their most important duty was less abstract: they had the power to arrest, examine and hold over all those who broke the peace. 49 A justice’s major law enforcement duties were entirely reactive.

Justices had a number of more specifically defined yet wide ranging duties. They had the power of arrest in all criminal matters and only needed “information upon oath or grounds of suspicion” to make an arrest. Though justices could not try misdemeanors or felonies committed by whites, they did have some direct judicial authority over white

49 Ibid., 5-7.
crime. Any two justices could summarily send “rogues, vagabonds, lewd and idle persons, beggars, stubborn and obstinate apprentices, and servants and children, drunkards, night walkers, pilferers, scolds, brawlers, neglectful tradesmen, and laborers” to the Charles Town workhouse for a period of three days to three months.\textsuperscript{50} Since justices also played the critical role in slave trials, the office was a powerful tool for the management of both white and black society.

In matters of white crime, justices laid the groundwork for prosecutions and prepared cases for the Court of General Sessions. They were responsible for issuing warrants, gathering evidence and examining witnesses in felony cases. Justices examined suspected criminals and made preliminary determinations.\textsuperscript{51} The law also required justices to keep written records of all cases heard and determined on confession or by oath of witnesses. In cases of forgery, for example, the justice had to bind over the informer, examine the offender, certify the examination for the court, and commit said offender to jail to await trial. Justices did the legwork for the court, acting almost as assistant prosecutors as well as police with arrest powers.\textsuperscript{52} Their duties of gathering evidence and testimony were absolutely critical to the criminal justice system.

However, these justices were only part-time officials. While their work could be thorough and professional, it greatly depended on the competence of the individual involved. An individual justice’s priorities might also affect how vigorously he investigated certain crimes. For example, two justices, George Gabriel Powell (also a

\textsuperscript{50} Ibid., 82.
\textsuperscript{51} Ibid., 100-101.
\textsuperscript{52} Ibid., 109.
judge on the Court of General Sessions) and Maurice Simons, examined William Hunter in early 1768. The justices left a detailed record. Hunter testified that he was at the house of John M’Dugall in Kings Town on October 28, 1767, where he saw Joseph Jerdon brandishing a sword and whip and threatening to flog M’Dugall. The two argued, and Jerdon challenged M’Dugall to “box him.” M’Dugall ignored this challenge, and the two seemed to put aside their argument for a time. Later that evening, the argument arose again when Jerdon demanded (ironically) some punch, but M’Dugall resolved to make him pay for it. The argument escalated, and the two traded insults. Finally, Jerdon drew a sword, and M’Dugall produced a knife. M’Dugall stabbed and killed Jerdon and admitted as much in Hunter’s presence, though Hunter did not believe it was intentional. Hunter told the justices that M’Dugall was “proud and imperious” and a very passionate man with a generally bad character. M’Dugall himself served as a justice, as Hunter said he was unfit for the role of “magistrate.”

Though a fairly entertaining story about two truculent individuals having it out, it provides an example of a thorough examination and its record. Powell and Simmons took the time to draw the full story from Hunter and record the details, which is exactly what they were supposed to do.

The previous account also shows that the quality of a justice could vary widely. M’Dugall was charged with keeping the peace, but Hunter accused him of losing his calm and murdering another man. Hunter also pointed to serious character flaws that should have disqualified M’Dugall from a law enforcement role. The primary witness in the case declared that M’Dugall was “apt to strike and assault people who were at times

53 South Carolina Gazette, May 2, 1768.
at his house, and [was] an unfit man for a magistrate, who himself so frequently broke the peace.”

Justices had no formal training, and may have had only Simpson’s manual as their guide. The law only required the governor’s appointment and status of freeholder to hold office. There may have been many more M’Dugalls than Powells among South Carolina’s justices.

The colony’s top legal authorities did not ignore the problem of unprofessional conduct among justices. In 1772, the Court of General Sessions publicly scolded the colony’s justices. The judges decried the fact that justices and coroners frequently failed to examine criminals and take testimony from witnesses properly. Many justices were not appearing before the court to give the evidence they had gathered, so the court’s business was often delayed. The judges ordered the justices to take good written examinations of all witnesses and criminals. The court demanded that justices certify all such written accounts and send them to the clerk within four days for Charles Town cases or “at the first convenient opportunity” for those outside Charles Town. Any justice or coroner who failed to comply would be charged with neglect and fined.

The quality of a justice’s work must have indeed been a great concern, as a justice had so many wide and varying duties. A justice’s power was not limited to criminal affairs. He also had civil and administrative duties. In the category of “causes and small means,” a person could issue a complaint to the local justice for non-payment of a debt of £20 or less, a minor trespass, minor injury, or the use of scandalous or defamatory words.

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54 Ibid.
55 South Carolina Gazette and Country Journal, May 19, 1772.
The justice would then issue a warrant for the accused to appear before him, and any witnesses desired by either party would be summoned. The justice had exclusive jurisdiction to decide all civil cases of £20 or less and acted as a juryless small claims court.56 A justice could also act as an arbiter between two mutually consenting parties. Whatever award the justice decided upon was then binding.57 Thus, justices could provide a civil option outside of the normal court system.

Justices also had a wide range of administrative powers, which could be created or modified by assembly legislation. In many ways, they (and parish vestries) were the only form of local government in the colony. For example, justices were supposed to govern “hawkers and peddlers” or traveling traders, who were required to have licenses and forbidden to do business with slaves. A justice could fine those without licenses up to £200 without a trial.58 Justices were also responsible for issuing liquor licenses. Local justices met as a board on a given day and allowed individuals to apply for licenses to retail liquor. In the summer of 1768, for example, Charles Town’s justices met on the first Monday of August at the home of Robert Dillon to sit as a licensing board for retailing alcohol and setting up billiard tables.59 To obtain licenses, the individual had to present a recommendation signed by the wardens of his parish church or the recommendation of “two credible, disinterested persons, showing the petitioner to be worthy and fit.”60

57 Ibid., 33-34.
58 Ibid., 115.
59 *South Carolina Gazette and Country Journal*, July 12, 1768.
60 *South Carolina Gazette*, March 15, 1773.
In a similar fashion, a 1762 law gave justices power to regulate gambling. Stating that “games” should only be considered “innocent and moderate recreations,” the law decreed that any bills, bonds, judgments, mortgages, notes of hand and other securities won in games would be void. Yet, one could sometimes recover money or goods lost through gaming in court. Persons who won by cheating forfeited five times the value of what they won, and any assault or challenge stemming from a game would result in a £100 fine and one year in jail. Those licensed to sell liquor who allowed gaming in their establishments faced a forty Shilling fine. Justices had the exclusive jurisdiction to decide these crimes and were authorized to enter, inspect and make arrests in any “gaming houses.”61 Thus, in addition to serving as law enforcers, judges and prosecutors, justices also acted as regulatory agents. They had an array of traditional duties and specific functions dictated by the assembly that gave them great power to regulate provincial society. The governor appointed them, but the assembly could shape their functions, and members of the elite undoubtedly sought the office because of its many powers.

Though they bore a heavy load of responsibility, justices were not alone in carrying out their law enforcement and judicial duties. Constables served as their main pillars of support. All men between the ages of sixteen and sixty, except apothecaries, doctors, lawyers, court officers, justices, clergy and religious teachers, were liable to serve as constables. If a man was called to serve and ignored or failed to do his duty, he could be fined £25. Constables were not elected, but the chief and assistant judges of the

61 Cooper, Statutes at Large, vol. 4, #922.
Court of General Sessions appointed them. Constables served to execute warrants, make arrests or searches, attend court and give evidence. In addition, if a private citizen discovered a felony, he could go to the nearest constable and report what he knew. The constable then raised the “hue and cry,” in which he would “raise the power of his district” to apprehend the felon. He could deputize any white person he found.\textsuperscript{62} Constables also served in slave trials and often carried out sentences. The constable was the workhorse of the English criminal justice system, and the elite did not generally hold these offices. Constables were subordinate to justices, and this minor but important office allowed the provincial elite to draft members of the lower orders into their service.

Coroners also served the justices in a supporting role. A coroner made inquests into felonious or other violent and casual deaths in his precinct. Once he completed his initial investigation, a coroner had the power to call upon the constables to summon a local fourteen man jury, which would declare whether or not the person in question had died as a result of a felony, mischief, accident or act of God (i.e. natural causes). The jury also determined, in the case of felonious death, whether the man had died committing a felony or as the victim of one. The coroner and the jury hoped to gather and review enough evidence to determine who might have been involved in the death and discover what sort of instrument might have been used. The coroner also had the power to summon witnesses before the special inquest jury.\textsuperscript{63} Neither the law nor justices’ manuals indicate that coroners performed these functions for slave trials. Coroners were

\textsuperscript{62} Simpson, \textit{The Practical Justice of the Peace}, 85-86.
\textsuperscript{63} \textit{Ibid.}, 87-89; 121-122.
appointed crown officers. They were not full time officials, but they served a specialized, professional function that was critical in prosecuting violent crimes.

Charles Town's urban space called for additional law enforcement mechanisms. At least from the elite view, Charles Town was becoming an increasingly disorderly place in the 1760s and 1770s. The growing city experienced an influx of poor people following the Cherokee War in 1760.64 As population and poverty increased, so did the number of bars and tippling houses, which the elite identified as further sources of disorder. The number of bars increased from sixty-six in 1763 to 115 in 1773.65 Newspaper reports, legislative activity and grand jury presentments all point to growing elite concern about disorder in the city. The high number of assault prosecutions also suggests that disorder was a problem that the court system took seriously. New laws and regulations against moral crimes such as gambling, drunkenness and vagrancy were efforts to remove perceived root causes of disorder and assault. New, harsh penalties for horse theft, burglary and the receipt of stolen goods aimed to protect property in a growing city with growing problems. Deterrence, though, was not enough in Charles Town. Complaints about disorder continued despite harsher penalties and new regulations. The city’s watch system needed reform and expansion. However, despite calls to do so, the assembly never accomplished sweeping police reform.

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64 See chapter 4 for more on this increase in poverty and disorder and poor relief.
65 Walter J. Fraser, Jr., Charleston! Charleston!: The History of a Southern City (Columbia: University of South Carolina Press, 1989), 122.
Like other sizeable English and American towns and cities, Charles Town had a night watch system.\textsuperscript{66} It was relatively extensive and well organized for its time. The Charles Town night watch dated back to the 1680s and originally operated from ten at night until a half hour before sunrise. It mainly existed to regulate drunken sailors and various other disorderly people.\textsuperscript{67} The watch dealt with all kinds of disorder. Though it did not primarily exist to enforce the slave code, it could arrest slaves and blacks who violated its provisions (i.e. not having a ticket, frequenting taverns, or selling without a license).\textsuperscript{68}

As the Provost Marshall maintained the jail privately, it was usually rather inadequate. By the middle of the eighteenth century, citizens and officials regularly noted the poor quality of Charles Town’s facilities. Gambling, drunkenness, smuggling and the presence of the poor and disorderly were constant complaints, and the town watch was often accused of neglect or deemed too small. The unprofessional and untrained watch and the poor jail seemed overwhelmed as the city continued to grow. In 1745, nearly all the jail’s residents broke free, set fire the jail and burned it to the ground.\textsuperscript{69}

After many petitions and much outcry, the assembly attempted to impose better order on the metropolis. Building a more secure jail and providing adequate facilities to handle the greater number of people seeking poor relief drew the assembly’s attention.

\textsuperscript{67} Fraser, 10.
\textsuperscript{68} \textit{Ibid.}, 122-123.
\textsuperscript{69} \textit{Ibid.}, 77.
Numerous jail-breaks in the 1760s proved that the old facility was neither secure nor adequate. For example, the “Common Gaol” was “broke open” on February 21, 1769. Five criminals managed to escape, two of whom were under sentence of death. Given the absence of a professional police force, the royal governor could only appeal to the public and offer a reward for their capture.70 Similar instances and proclamations appeared in December 1766, when a convicted murderer escaped.71 Just a few months before, the prisoners themselves had taken out an ad in one of the local newspapers to complain about conditions and thank private citizens for their help:

We, the poor prisoners confined in the Charles-Town Gaol, beg leave to return our most grateful acknowledgements to the gentlemen and others who were so charitable as to consider our poor, unhappy, and miserable situation for some time past, by sending us money and other necessaries; and also for the sum of thirty one Pounds given to Mr. Dunnavan by Roger Pinckney, esq; Provost Marshall, to be applied to our relief.72

Pressure from the public, increased jail breaks and even complaints from prisoners convinced the assembly that reform was needed. Construction finally began on the new jail in 1770.73

The assembly took several other actions in 1768 and 1769 to combat the rise in disorder. First, the assembly passed an act to reform the operation of the Charles Town workhouse and make it a “house of correction.” The original workhouse had been constructed in 1736. The town had grown enormously since then, making the current facilities inadequate. The poor were incarcerated along with “fugitive seamen, runaway

70 South Carolina Gazette, February 28, 1769.
71 South Carolina Gazette and Country Journal, December 16, 1766.
72 Ibid., May 13, 1766.
73 Fraser, 123.
slaves, vagrants, and disorderly persons.” The assembly wanted to separate the poor from these undesirables, who would go to a separate “house of correction.” Once divided from the workhouse, the house of correction would only house “rogues, vagabonds, lewd and idle persons, beggars, stubborn and obstinate persons, drunkards, night-walkers, pilferers, common scolds, brawlers, and runaway slaves.” Three Justices of the Peace could send a person to the house of correction by convicting him or her of membership in one of the aforementioned disorderly groups. One’s stay could last from three days to three months. The warden was obliged to put all able-bodied people to work and could punish his inmates by shackling or whipping (not more than nineteen lashes per day). He could even withhold food from anyone who refused to work or misbehaved.

Building a new facility to discipline disorderly persons was only half the battle. An augmented police force would also be necessary, but this measure proved far more difficult. Three offices led the unreformed watch: a captain, a lieutenant and an ensign. It was staffed by a number of men recruited for patrol duty. On December 12, 1766, a committee considering revisions to the Town Watch Act recommended several changes. First, they believed a company of not less than seventy-five men would be required to do the job. The watch should be on guard year round—Sundays, holidays, day and night. The three principal officers remained the same, but their pay would be increased to between £200 and £250, specifically to recruit “men of character and property.” Watchmen would also get a pay increase for similar reasons. In the assembly’s thinking,

74 Cooper, Statutes at Large, vol. 7, #966.
76 South Carolina Gazette, August 2, 1770. The Charles Town news section in this issue reported that a number of watch officers had been fired for disobeying an order from Lt. Governor William Bull.
good character could not come without property ownership. The committee also wanted two sentinels permanently placed at the magazine and the state house. Other reforms included requiring officers on duty to wear uniforms or badges similar to the militia regiment and allowing the watch to use the public arms to perform their duties. Money from tavern licenses would fund the new police force.\textsuperscript{77} The committee proposed a substantial reform. The new watch would not have been a professional police force, but it would have placed greater numbers of patrolmen on permanent duty. However, conflict between the Assembly and the Council stalled reform.

The Assembly passed a bill following these guidelines on December 16 (the same day a major jail break took place), but it hit a wall in the council.\textsuperscript{78} It languished there until March 1767. The council made many changes to the bill, which the assembly viewed as unacceptable. The Commons House claimed it was a “money bill,” which it had long demanded exclusive jurisdiction over. Responding to the council, the assembly stated that “the many fruitless attempts you have made to unrest from this House that valuable privilege of the sole framing of money bills ought to have discouraged you from so vain an attack.” The House refused to accept the council’s alterations.\textsuperscript{79} It was not the first time: privilege disputes with the crown long delayed final passage of the Circuit Court Act. In the end, the elite preferred to secure its privilege before dealing with problems of internal disorder or government reform.

\textsuperscript{77} South Carolina Commons House of Assembly, Journals, 37.1, December 12, 1766, SCAHC.
\textsuperscript{78} Ibid., December 16, 1766.
\textsuperscript{79} Ibid., March 26, 1767. The record does not indicate that the town watch reform was ever taken up again by either the Commons House or the council.
Thus, law enforcement in Charles Town and the colony remained unreformed as the American Revolution approached. Attempts at reform placed greater emphasis on enforcement, prevention and discipline than on punishment-based deterrence. Even so, protecting property from disorder was still the assembly’s top priority within the criminal justice system. The attempted police reform even stressed that men of property ought to lead the police force, since those men would be of superior character and have a vested interest in the assembly’s top law enforcement priority. Yet, the assembly fought to protect its legislative authority, upon which all of its other powers rested, and failed at police reform as a result.

Crime and Punishment

There is no way discover what percentage of crimes actually committed were known to authorities. Thus, this chapter cannot fully chronicle the history of crime even in the last phase of the colonial period. It can, however, examine the workings of South Carolina’s criminal justice system and that system’s priorities. By studying patterns in prosecution and punishment, one can see that the courts successfully attended to elite priorities, even though law enforcement was in need of reform and augmentation. The lowcountry elite constructed the criminal justice system and dominated juries that determined guilt or innocence. Careful analysis reveals that property crimes were most commonly and effectively punished.

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80 Sharpe, *Crime in Early Modern England*, provides an excellent overview of the perils of court-based statistical studies of crime. See especially the introduction and chapter three.
Violent crime was not the top concern of South Carolina’s law makers and judicial authorities. In fact, the plurality of trials before the Court of General Sessions concerned crimes resulting in either the loss or damage of property. These crimes made up 45% of the court’s total caseload from 1769 to 1776. Violent, non-sexual crimes made up another 40%. On the surface, these percentages seem relatively close. However, the most commonly tried violent crime was assault, which represented 27% of all crimes the court tried. Without aggravating circumstances (i.e. with intent to kill), assault was a misdemeanor, so sixty-four of the ninety-seven violent crimes the court tried (66%) were not felony cases. The most commonly tried property crime was larceny (i.e. theft), which the law defined as a felony. It made up 20% of all trials during these years and represented forty-seven of the 108 property crimes (44%) the court tried. The second most commonly tried property crime—also a felony punishable by death for repeat offenses—was horse stealing. It made up another 11% of all crimes the court tried and 24% of all property crimes. Therefore, whereas less than 45% of violent crimes the court tried were felonies, more than 68% of its property crime trials involved felony cases. The court vigorously prosecuted major and minor property crimes (the third most common property crime being receipt of stolen goods). However, it punished major violent crime with far less frequency: the court, for example, only tried seventeen murder cases (7% of all crimes), and it then downgraded twelve of the convictions to manslaughter (punishable by branding rather than death).

81 See the Appendix for a complete list of all crimes tried by the court.
82 Simpson, 25.
<table>
<thead>
<tr>
<th>Category</th>
<th>Guilty</th>
<th>Innocent</th>
<th>Total</th>
<th>Percent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property Crime</td>
<td>82</td>
<td>26</td>
<td>108</td>
<td>45%</td>
</tr>
<tr>
<td>Violent Crime</td>
<td>69</td>
<td>28</td>
<td>97</td>
<td>40%</td>
</tr>
<tr>
<td>Crimes against Slaves</td>
<td>10</td>
<td>5</td>
<td>15</td>
<td>6%</td>
</tr>
<tr>
<td>Disorder</td>
<td>9</td>
<td>1</td>
<td>10</td>
<td>4%</td>
</tr>
<tr>
<td>Fraud</td>
<td>7</td>
<td>1</td>
<td>8</td>
<td>3%</td>
</tr>
<tr>
<td>Sexual Crimes</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>1%</td>
</tr>
<tr>
<td>Totals</td>
<td>178</td>
<td>62</td>
<td>240</td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: South Carolina Court of General Sessions, Criminal Journals, 1769-1776.

The high number of assault cases then should not lead one to believe that the courts primarily focused on violent crime. Michael Stephen Hindus argues that the courts were mainly concerned with suppressing violence because of the high number of assault cases. However, by lumping crimes only into very broad categories rather than classifying based on the actual terms used by the court (as is done in this dissertation’s appendix), assault as a percentage of all crimes tried before the court greatly increases. This study includes the thirty-seven types of crime that were listed in the court journal. Hindus uses only twelve broad categories (without any discussion of what makes up

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83 For a complete list of all crimes recorded in the court record, see the Appendix. Categories are made up only of specific crimes listed in the court journal. Property crime (i.e. resulting in property loss or damage) includes eleven kinds of crime recorded in the journal: larceny, burglary, horse stealing, receipt of stolen goods, robbery, stealing a schooner, killing a calf, arson, highway robbery, unlawful branding of cattle, and unlawful killing of a mare. Violent crime (i.e. non-sexual attacks on one’s person) includes six kinds of crime recorded in the journal: assault, manslaughter, assault on a constable, assault and false imprisonment, murder, and assault with intent to kill. Crimes against slaves include five types of crime recorded in the journal: stealing a slave, killing a slave, murder of a slave, and employing a slave on Sunday. Disorder (i.e. disorderly conduct or crimes against the public peace that do not, in and of themselves, involve direct attacks on property or persons) includes eight kinds of crime recorded in the journal: keeping a disorderly house, breaking gaol, felonious escape, poaching, selling liquor without a license, giving challenge to duel, and provoking a fight. Fraud (i.e. crimes of dishonesty that do not directly result in the loss or damage of personal property) includes four types of crime: counterfeit, perjury, libel, and deceit. Finally, sexual crimes (i.e. crimes primarily prosecuted because of their sexual nature rather than possible attacks on persons) includes two types of crime: assault with intent to rape, and sodomy.

84 Hindus, 64.
those categories), making his conclusions about assault as a percent of total crimes potentially, though no doubt unintentionally, misleading.

When one breaks down the statistics according to the specific crimes actually listed by the court in the eighteenth century, assault as a percentage of all crimes drops from Hindus’ 48% to 27%. Assault was the only violent crime the court tried with any frequency. Moreover, the court prosecuted a much wider variety of property crimes than it did violent crimes. From 1769 to 1776, the Court of General Sessions tried six kinds of sexual crime, four kinds of fraud, five kinds of crime against slaves, eight kinds of disorderly behavior, and eleven different property crimes. The types of property crimes the court tried were therefore almost double the types of violent crime.

The court did not prosecute so many assault cases because its main goal was to suppress violence, but because the law enforcement and criminal justice systems had effectively extended elite authority over society and limited violent crime. When one considers growing complaints against disorder in Charles Town from grand juries, the city’s growing population, problems with poverty, and the number of assault cases, the fact that assault represented a plurality of Court of General Sessions cases is another sign that Charles Town was experiencing growth pains. Its law enforcement system was addressing those pains, and the system would likely have been altered to better address them had the imperial crisis and political battles not intervened in the 1760s and 1770s. Disorderly behavior only made up 4% of all Court of General Sessions trials, but many of these crimes did not require a trial before this court. Justices of the Peace could jail
groups the law deemed disorderly without trial, and justices also had the power to regulate taverns and gambling.

The court also imposed harsher punishments on property crimes than it did upon most violent crimes. The court treated larceny (the most common property crime, which was defined as a felony) much more harshly than assault.\textsuperscript{85} A larceny convict usually faced thirty-nine lashes in public (e.g. in the market or “the four corners of the town”). Assault convicts usually only received fines, some not even amounting to £1. One could also face stiff fines for larceny in addition to harsh corporal punishment.\textsuperscript{86} The journal does not record a single case where larceny was punished by mutilation. Mutilation, however, was relatively common in cases of horse stealing, which constituted a further 10\% of cases before the Court of General Sessions in this period. Receipt of stolen goods constituted another 10\% of all cases, and it was also punished far more severely than assault. Offenders usually received substantial fines. The heaviest fine levied was £500. That particular sentence also included one hour in the pillory and thirty-nine lashes. The crime became a capital felony if the stolen goods had been burgled. Other property crimes were treated even more harshly by modern standards. Burglars, violent robbers, arsonists, those who stole schooners or slaves and repeat horse thieves were all liable to be hanged. They were treated no differently than murderers and were far greater in numbers.

\textsuperscript{85} Simpson, 103.
\textsuperscript{86} King vs. Moses Thompson, Court of General Sessions, Criminal Journal, SCAHC. The court sentenced Thompson to thirty-nine lashes and a £10 fine. Women did not necessarily receive any special treatment in larceny cases. In the 1739 case of King vs. Ruth Malone, it sentenced her to receive thirty-five lashes on the back.
The criminal court clearly prioritized property crimes in terms of the number of crimes tried and severity of punishment, but it also convicted criminals at a high rate. High rates of resolution and conviction correlate to the strength of elite rule and the quality of the criminal justice system. The elite had successfully taken charge of the criminal justice system, shaped it to fit their agenda, and effectively used it to punish crime according to their priorities. While focusing on protecting property—the basis of elite power—benefitted the ruling party, a strong criminal justice system that effectively punished crime and upheld order also benefitted the rest of free society. By running an effective government that offered protection, the colony’s elite ruling party could cultivate the support of lower class voters and small property owners who were important allies given the colony’s slave majority.

There are no similar statistics for slave / black crime tried by the Courts of Justices and Freeholders. However, much of the slave law and methods of enforcement did in fact focus on protecting property—be it human or otherwise—from crimes committed by slaves, blacks, or whites. The Court of General Sessions conducted 240 trials between 1769 and 1776. The Commons House of Assembly compensated 274 individuals for constable service or performing executions at slave trials between 1763 and 1774. Due to conflicts with royal officials and the imperial crisis, these figures derived from annual treasurers’ reports are not available for 1764, 1769 and 1775. Assuming that compensated individuals served unique cases or trials, the activity of slave

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88 See tables in chapter 3 for details and sources.
courts definitely exceeded that of the Court of General Sessions. These numbers suggest that either the Courts of Justices and Freeholders prosecuted crimes more vigorously, more slave and black crimes were reported, or more slave crimes were actually committed and detected than white crimes. Given the more extensive nature of the slave/black law enforcement system, the first two possibilities seem the most likely. There is simply no way to know how many slave/black crimes were actually committed or the rate of conviction (no indictment information is available). Taken together, these systems were very active, conducting more than 500 trials in about a decade.

If one had the misfortune of finding oneself standing accused before the Court of General Sessions in this period, one had a 75% chance of facing a guilty verdict. The court even found 70% of those tried for the relatively minor crime of assault guilty. Rates of conviction for property and violent crime were fairly even. Of all property crimes tried, 76% resulted in a guilty verdict, whereas 70% of trials involving violent crime resulted in a guilty verdict. This figure is even higher than Richmond County, Virginia, where the criminal court convicted 70.4% of those accused between 1711 and 1754. Moreover, 70% of indicted criminals were brought to trial, which indicates a high rate of resolution. Given that the court relied upon non-professional, part time officials like Justices of the Peace to take initial examinations and gather evidence, these rates of conviction and rates of indictments brought to trial are even more impressive. They indicate that the system was highly effective when set into motion and that grand

juries (dominated by the elite) carefully filtered cases according to their priorities and a reasonable possibility of conviction.

Indictments might not be brought to trial for several reasons. Either a grand jury refused to return a “true bill” of indictment, or the Attorney General refused to prosecute. The Court of General Sessions left behind records of grand jury indictments as well as trials. Elite dominated grand juries and royal prosecutors might base decisions to prosecute on evidence, but they also inserted their own priorities into the process. Prosecuting criminals involved high transaction costs, so prosecutors and grand jurors had to choose their cases carefully. Court expenses and the potential difficulty of traversing long distances to bring the principals in a trial together presented great deterrents to trying criminals in England. Potential trouble and cost could also act as a disincentive for a victim to make a charge in the first place. These problems of cost and distance were equally if not more present in South Carolina, which had fewer legal and law enforcement personnel and less (in terms of quality and quantity) infrastructure. The high default rate among people called to serve as jurors for the Court of General Sessions attests to the fact that cost and distance were indeed great deterrents. Hence, it is logical to assume that officials chose to prosecute only those whom they either had a reasonable chance of convicting or those whose offenses warranted an individual victim or official to take the trouble to bring a court action. Since 70% of indictments were brought to trial despite these challenges, the criminal justice system must be viewed as limited but also highly effective when working.

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90 Sharpe, 63-64.
The indictments show the same pattern as the trial statistics. Assault and property crime dominate.\textsuperscript{91} However, there were far more indictments for assault than actual trials. The Court actually tried only 41% of assault indictments. First, this number reveals that there were many more assaults (or at least accusations of assault) taking place than trials. On the other hand, the court tried 90% of indictments for horse stealing, 82% of indictments for receipt of stolen goods and all indictments for larceny in the same period. Overall, the court tried 95% of property crime indictments and only 55% of violent crime indictments. Violent crime actually had the lowest percentage of indictments tried. The variety of property crime indictments again far exceeds that of any other category: grand juries indicted criminals for twelve different kinds of property crime and five different kinds of violent crime.

Table 2.3
Grand Jury Indictments, Court of General Sessions, 1769-1776

<table>
<thead>
<tr>
<th>Category</th>
<th>Indictments</th>
<th>Trials</th>
<th>Percent Tried</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property Crime</td>
<td>113</td>
<td>108</td>
<td>95</td>
</tr>
<tr>
<td>Violent Crime</td>
<td>177</td>
<td>97</td>
<td>55</td>
</tr>
<tr>
<td>Crimes against Slaves</td>
<td>15</td>
<td>15</td>
<td>100</td>
</tr>
<tr>
<td>Disorder</td>
<td>14</td>
<td>10</td>
<td>71</td>
</tr>
<tr>
<td>Fraud</td>
<td>9</td>
<td>8</td>
<td>89</td>
</tr>
<tr>
<td>Sexual Crimes</td>
<td>2</td>
<td>2</td>
<td>100</td>
</tr>
<tr>
<td>Totals</td>
<td>330</td>
<td>240</td>
<td>73</td>
</tr>
</tbody>
</table>

Source: South Carolina Court of General Sessions, Criminal Journals, 1769-1776

These numbers again suggest that prosecutors chose their cases with selectivity and care, and grand jurors were careful to return true bills of indictment for the crimes they prioritized only in cases where conviction was reasonably possible. Assault cases, when

\textsuperscript{91} See the Appendix for a full table of indicted crimes and percentages of indictments tried by the court according to crime.
evidence might be entirely based on one man’s word against another’s or hearsay, could be difficult to prove, or the Attorney General and jurors deemed many cases not worthy of the court’s attention. Property crimes were a priority for the courts and the assembly.

Even though the court prioritized property crime, it also effectively dealt with serious violent crime. The Court of General Sessions tried 100% of indicted murderers but acquitted 70% of them. Many benefitted from commutation to manslaughter, which accounts for the fact that only two indictments for manslaughter led to eleven convictions. It is interesting to note that many killers or murderers received some degree of reprieve from the court, whereas the court rarely offered those convicted of the far lesser crimes of larceny, receipt of stolen goods and horse stealing such options.

Aside from the statistics gleaned from court records and indictments, the local Charles Town newspapers give further insight into what crimes may have been troubling the lowcountry’s reading public.92 Advertisements and announcements were totally driven by the subscribers and members of the community who had something to communicate to the general readership. The printer did not usually initiate stories about crime, but one must consider the nature of the newspaper business. The printer had no reporters. He relied on other newspapers and individual submissions to fill his pages with news that readers would find useful, interesting or entertaining. Victims or government officials drove crime reports. The crime reports all revolve around specific instances or ongoing issues and do not address crime in general terms.

92 Charles Town had three newspapers in this era: The South Carolina Gazette, The South Carolina Gazette and Country Journal, and The South Carolina and American General Gazette. For a history of The South Carolina Gazette, see Henning Cohen, The South Carolina Gazette (Columbia: University of South Carolina Press, 1953). All three newspapers are archived at the Charleston Library Society.
In terms of crime actually taking place in Charles Town and the lowcountry, property crime—including burglary, robbery, theft and arson—dominated newspaper reports. Assault only appeared twice, and that number represents two reports of an assault on a postal official. The papers never mentioned murder and rape. The three papers contained a total of eight articles about Charles Town jail breaks, showing a potential concern that the criminal justice system was under strain in the city. Overall, the papers included relatively few reports of crime by white people in general and negligible numbers of violent crimes committed by white people in the lowcountry.

Table 2.4
Newspaper Reports on Local Crime in South Carolina Newspapers, 1763-1776

<table>
<thead>
<tr>
<th>Crime</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robbery</td>
<td>5</td>
</tr>
<tr>
<td>Theft</td>
<td>6</td>
</tr>
<tr>
<td>Burglary</td>
<td>3</td>
</tr>
<tr>
<td>Arson</td>
<td>4</td>
</tr>
<tr>
<td>Counterfeit</td>
<td>1</td>
</tr>
<tr>
<td>Tax Evasion</td>
<td>1</td>
</tr>
<tr>
<td>Trespassing</td>
<td>1</td>
</tr>
<tr>
<td>Outlaws / Regulators</td>
<td>11</td>
</tr>
<tr>
<td>Assault</td>
<td>2</td>
</tr>
<tr>
<td>Stolen Goods</td>
<td>1</td>
</tr>
<tr>
<td>Killing of a Horse</td>
<td>1</td>
</tr>
<tr>
<td>Breaking Jail</td>
<td>8</td>
</tr>
<tr>
<td>Total</td>
<td>44</td>
</tr>
</tbody>
</table>

Sources: South Carolina Gazette, South Carolina Gazette and Country Journal, South Carolina and American General Gazette, 1763-1776. Crimes may be counted multiple times if reported in multiple newspapers. These numbers do not include ads for missing horses or horses suspected of being stolen or for runaway slaves. Also note that reports on outlaws and Regulators in the backcountry do not reflect crimes reported or committed in the Charles Town area.

The numbers look very different if one includes slave crime. If one were, merely for the purposes of historical analysis, to consider a slave running away as a sort of
property crime (i.e. the slave had deprived the master of labor to which the master claimed ownership), the 374 unique run-away slave ads in the *South Carolina Gazette* alone (1763-1776) dwarf reports of all other crimes and clearly place property crime as the top overall category. Runaway slaves also clearly emerge as the number one law enforcement problem for the lowcountry elite, again dwarfing the 155 indictments for assault and the mere two newspaper reports of assault. This comparison suggests the need, from the planters’ perspective, for a more extensive law-enforcement system for slaves and blacks. Additionally, 473 slaves were brought to the Charles Town workhouse in the same period, which suggests that, though this “crime” was a major problem, the system was able to capture a large number of runaway slaves.

Just as hundreds of individuals sought the public’s aid in recapturing runaway slaves, one might print an announcement in response to crime: Laughlin Martin offered a two-dollar reward to anyone who could stop the thief who took several cheeses from his counter.\(^93\) In another case, Thomas Bee offered a £100 reward for the capture of a man (and return of the goods) who robbed his slave near Goose Creek Road and took a horse and several other items.\(^94\) Note that the slave had no recourse to the criminal justice system. The master—not the slave—was seeking justice for this crime. One might also take out an advertisement in the hopes of preventing crime: Thomas Gadsden complained, “Many people have committed trespasses on my plantation on Charles-Town Neck” and were illegally cutting wood and breaking fences. Thus, he warned that

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\(^93\) *South Carolina Gazette*, November 21, 1774.  
\(^94\) *South Carolina Gazette*, April 26, 1774.
he would “make examples” of anyone caught violating his property. While individual readers initiated most crime reports, the printer himself occasionally included crime in the local news section, which usually concerned itself with maritime and mercantile news. Peter Timothy, printer of the South Carolina Gazette, reported a series of burglaries that took place on the same night in Charles Town. Joseph Hutchins’s home was broken into and robbed of nearly £500. Mr. Lee’s watch shop was also attacked, and several of his watches were taken. Timothy warned the public “to be particularly on their guard.” Neither Timothy nor other printers ever made such reports regarding violent crime, other than the disturbances taking place in the backcountry. Property crime, not violent crime, made it into the newspapers.

Grand juries also had a chance to express their concerns about crime in the form of presentments, which can offer further insight into what crimes received most attention and priority. At the close of each session, the Grand Jury made presentments to the court, which the judges ordered printed in the various Charles Town newspapers. The jurors mostly came from the lowcountry parishes near Charles Town, since traveling to the court from more distant areas was difficult and expensive. To qualify for jury service, one had to qualify for the vote, which made planters, merchants and many small farmers and artisans eligible. Many of the colony’s most prominent and wealthy men repeatedly served on the juries. Prominent names regularly appearing on the jury lists include Galliard, Guerrard, Mazyck, Rutledge, Ravenel, Motte, Savage, Beresford,

95 South Carolina Gazette and Country Journal, March 10, 1767.
96 South Carolina Gazette, May 11, 1769.
Legaree, Bacot, Heyward, Huger, Guerin, Gibbes, Porcher, Horry, Poyas and Wragg.

Artisans and lesser planters and merchants also sat on the juries, but the wealthy planters and merchants dominated the foreman position. Almost every jury selected a wealthy planter or merchant who served in the assembly and held other offices as its foreman, indicating deference to these powerful men.97 Planter and merchants from wealthy families who served in the Commons House and at least one other office were selected as jury foreman 75% of the time from 1769 to 1776 (including one future signer of the Declaration of Independence and one former Public Treasurer of South Carolina). These men, who had many local offices open to them, did not disregard grand jury service. The list also includes one known artisan, but, as a silver-smith, he practiced one of the most profitable artisanal crafts. This particular artisan also had aspirations to join the planter class.98 The jury system, in short, reflected the dominance of the colonial elite.

The presentments reveal very little worry over personal, violent crime. General disorder and the better regulation of Charles Town most concerned grand juries in this period. Violent crime only appeared as a concern in one presentment. At the end of the October 1774 session, the grand jurors presented the “evil of giving and receiving of

97 See the Appendix for a complete list, including offices held and occupations, of all known grand jury foremen between 1769 and 1776.

98 John Paul Grimke was a Charles Town silversmith who earned enough to purchase a small plantation. His son, John Faucheraud Grimke, became a judge and continued the family’s social rise. J.F. Grimke’s son Thomas married Sarah Daniel Drayton. The family continued to rise in later generations. Their son changed his name to John Grimke Drayton in order to inherit the opulent Magnolia Plantation, which was once the home of William Henry Drayton. It was John Grimke Drayton who eventually built the current mansion at Magnolia and began its transition into a public garden. J.F. Grimke also fathered the famous abolitionists Sarah and Angelina Grimke. For a brief introduction to the Grimke family and J.F. Grimke’s children and grandchildren, see Grace H. Long, “The Grimkes, Southern Iconoclasts,” *Peabody Journal of Education* 20.6 (May 1943): 359-364.
challenges” as something that had become far too common and posed a danger to the inhabitants of Charles Town. 99

Table 2.5
Grand Jury Presentments, Court of General Sessions, 1769-1776

<table>
<thead>
<tr>
<th>Category / Topic</th>
<th>Percent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violent Crime</td>
<td>.5</td>
</tr>
<tr>
<td>Defense of Property / Property Crime</td>
<td>1</td>
</tr>
<tr>
<td>Regulation of Slaves</td>
<td>11</td>
</tr>
<tr>
<td>Improvement of Law Enforcement</td>
<td>8</td>
</tr>
<tr>
<td>Disorder</td>
<td>13</td>
</tr>
<tr>
<td>State of the Military</td>
<td>7</td>
</tr>
<tr>
<td>Morality</td>
<td>7</td>
</tr>
<tr>
<td>Reform of the Courts</td>
<td>2</td>
</tr>
<tr>
<td>Regulating Charles Town</td>
<td>20</td>
</tr>
<tr>
<td>Reform of the Law</td>
<td>3</td>
</tr>
<tr>
<td>Other Crime (e.g. counterfeit)</td>
<td>2</td>
</tr>
</tbody>
</table>

Source: Grand Jury Presentments, South Carolina Court of General Sessions. Criminal Journals, 1769-1776. (Note: Many presentments fit more than one category and are thus counted in more than one category).

Yet, the court only tried one person for “giving challenge” (i.e. dueling) in this entire period, and it found him innocent. The only other specific crime the grand jurors cited was receipt of stolen goods, which the courts and the assembly both seriously addressed. On February 19, 1774, the jury recommended making it a felony. The same jury complained that “Negros” were being allowed to “huckster and sell” goods in the market and on the streets. Since the jury claimed that black people were naturally inclined to steal, the jurors also suggested that improper regulation and supervision of slaves and blacks greatly contributed to the crime of receipt of stolen goods. 100

99 Grand Jury Presentments, October 24, 1774, Court of General Sessions, Criminal Journal, SCAHC.
100 Grand Jury Presentments, February 19, 1774, Ibid.
The assembly frequently worried about public disorder, such as the problem of black street peddlers. Thirteen percent of all presentments concerned disorder of some kind. Many of these presentments dealt with disorderly slaves and blacks. However, slaves were only part of the problem. The jury complained of people firing guns into the air on celebratory occasions or firing guns too close to houses.\textsuperscript{101} Jurors also complained about the number of “dram shops” and “tippling houses” in Charles Town, which attracted “Negroes and other disorderly persons.”\textsuperscript{102} The jury recommended that magistrates more carefully regulate such “pests of society.”\textsuperscript{103} Other undesirables included Catholics and increasing numbers of poor individuals, who the jurors believed had inferior morals.\textsuperscript{104}

It must be noted that this court was functioning as the circuit court for the Charles Town district after 1772. Lowcountry residents dominated the grand juries before 1772 but completely controlled them afterwards. Twenty percent of the total presentments concerned the better regulation of Charles Town. Most of these presentments also dealt with perceived threats to public order. There were several calls for better maintenance in Charles Town, including one demand that the assembly make breaking street lamps a felony.\textsuperscript{105} Other presentments complained of filthy streets, blacks and slaves roaming

\textsuperscript{101} Grand Jury Presentments, October 24, 1772 and February 19, 1773, \textit{Ibid.}

\textsuperscript{102} A dram shop is defined as “a shop or bar where spirituous liquor is sold in drams or small quantities.” The term was synonymous with tavern in eighteenth-century America. A tippling house is similarly defined as a “house where intoxicating liquor is sold and drunk; an ale-house, a tavern.” Historically, the term has negative connotations. \textit{Oxford English Dictionary Online}, s.v. “dram-shop” and “tippling-house,” (accessed June 12, 2007).

\textsuperscript{103} Grand Jury Presentments, January 14, 1772, Court of General Sessions, Criminal Journal, SCAHC.

\textsuperscript{104} Grand Jury Presentments, January 1770 and April 27, 1769, \textit{Ibid.}

\textsuperscript{105} Grand Jury Presentments, February 19, 1774, \textit{Ibid.}
about freely, the problem of the poor flocking to the city, and the lack of city government in Charles Town. The assembly did not even entertain the notion of establishing municipal government in Charles Town before the American Revolution. It was unwilling to relinquish direct control over the colonial metropolis, even if an autonomous city government may have been better equipped to govern a city than the provincial legislature.

Disorder could pose a direct threat to elite interests on various levels. In a general sense, a disorderly city might reflect poorly on the effectiveness of elite government. Some presentments did in fact call for incorporating Charles Town and giving it an autonomous city government. Losing direct control of the colony’s greatest center of population and commerce would have been a major blow for a governing elite that had worked so hard to concentrate political authority in its hands. In more concrete ways, trafficking in stolen goods could harm business and influence prices. A disorderly, unsafe and filthy city could affect property value and the enjoyment of city life for elites who owned opulent townhouses and attended balls, dances, horse races and concerts there. Most kinds of disorder that the juries cited were not life-threatening and, taken individually, did not threaten to topple the social or economic order. Taken together, the jury presentments convey a sense that the city—possibly the entire colony—was becoming harder to govern. Despite the extensive slave code and enforcement system, urban slaves proved difficult to govern without the full cooperation of whites who may have given slaves and blacks places to gather at “tippling houses” or bought goods (stolen or otherwise) from “hucksters.” The poor were increasing in number, and existing
institutions designed to manage them were strained. Juries perceived an upsurge in property crimes. Assaults of various kinds also contributed to a general sense of growing disorder.

The assembly did act to address many grand jury complaints, but it did not relinquish political authority in doing so. It increased punishments for a number of crimes that the grand juries addressed, including receipt of stolen goods. The regulation of slaves and blacks remained as it was. The assembly created new institutions and laws to handle vagrants and the poor. Yet, the legislature did not incorporate the city or reform the “police force.” The assembly did not introduce major innovations in city or colony government as a result of grand jury presentments. Instead, the assembly handled individual problems as they arose, preferring to maintain direct control over the city and not relinquish even a measure of power to any other institution. Centralized authority was a detriment in this case, because the assembly was often embroiled in imperial disputes and unable to give full attention to municipal government.

What did the juries recommend to counter disorder? Whether it came from loosely governed slaves, broken street lights or the poor, grand jurors believed that more regulation and control had to be imposed. In most cases, they asked for order imposed from the top down—from assembly action. Sometimes grand juries went further. Jurors often feared that law enforcement could not cope. Despite a fear that slaves and blacks had too much leeway in Charles Town, the grand jury complained that the town watch was itself disorderly, and it often beat and abused slaves who masters had sent on
legitimate errands. The grand juries also questioned the quality of judges. A 1773 grand jury demanded that judges should be men of “independent wealth” rather than men who used the offices to make their living. In other words, judges should properly be interested members of the provincial elite and not English placeholders. The jurors viewed the judges and the assembly as protectors of order and property, and consistently pushed the legislature to use its power to create and shape law and governing institutions to more completely and competently regulate white and black society in ways that better protected elite economic, social or business interests. Though juries worried that law enforcement was not elaborate enough to curb increasing disorder, the assembly still relied upon punishment and deterrence.

The courts mainly imposed corporal punishments and fines in this period. Though criminals sometimes faced time in jail, South Carolina did not have a modern prison, and confinements were usually limited to several months. The Court of General Sessions most commonly levied fines, but the raw numbers can be deceptive. First, because assault cases were so common and usually punished with a fine, the numbers naturally tip heavily in that direction. Second, the court often imposed fines in conjunction with other punishments. For example, it often fined and lashed a receiver of stolen goods. Larceny, which almost always resulted in heavy lashing, often additionally resulted in a fine.

106 Grand Jury Presentments, January 24, 1772. Ibid.
107 Grand Jury Presentments, May 21, 1773. Ibid.
If one takes assault out of the equation, then corporal punishment becomes by far the most common means of “correction.” Sixteen percent of all sentences handed down by the court resulted in heavy lashing. The court branded seven percent of convicts, usually because of benefit of clergy. The pillory, a shame based but still physical punishment, accounted for an additional 7% of all punishments. Another 4% involved mutilation, usually the loss of an ear. The court imposed some form of corporal punishment with 34% of all sentences. A further 9% of criminals were hanged, making the combined total of all physical punishments 43%. Fines made up 48% of all punishments, but one must note that corporal and capital punishments were only inflicted in felony cases. The law almost always regarded assault as a misdemeanor, and the court nearly always punished serious crimes physically and publically.

Table 2.6
Punishments, Court of General Sessions, 1769-1776

<table>
<thead>
<tr>
<th>Punishment</th>
<th>Number Inflicted</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Death / Hanging</td>
<td>18</td>
<td>9</td>
</tr>
<tr>
<td>Branding</td>
<td>14</td>
<td>7</td>
</tr>
<tr>
<td>Lashing</td>
<td>34</td>
<td>16</td>
</tr>
<tr>
<td>Pillory</td>
<td>14</td>
<td>7</td>
</tr>
<tr>
<td>Mutilation</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>Fine</td>
<td>100</td>
<td>48</td>
</tr>
<tr>
<td>Jail</td>
<td>20</td>
<td>10</td>
</tr>
<tr>
<td>Removal from Office</td>
<td>1</td>
<td>.5</td>
</tr>
<tr>
<td>TOTAL</td>
<td>209</td>
<td>NA</td>
</tr>
</tbody>
</table>

Source: South Carolina Court of General Sessions, Criminal Journals, 1769-1776.

One can gain further insight by examining several of the major felonies the court tried and how it punished them. Seventy-one percent of larceny convicts faced severe lashing. The court only once fined a person without further corporal punishment, and ten
individuals either found reprieve in pardon or benefit of clergy, which included the brand “T.” The journal records four executions for murder. Many tried for the crime received pardons or benefit of clergy, resulting in the reduced conviction of manslaughter and the “M” brand. All convicted horse thieves but one received corporal punishment. In many cases, the convict received lashes and lost an ear. All burglars and robbers, except one who received benefit of clergy and the “T” brand, faced execution. The court hanged seventy-one percent of those convicted of stealing slaves. Only two individuals received pardons for the crime. Both men convicted of arson went to the gallows. Those convicted of receiving stolen goods faced the greatest variety of punishment. Punishments for this crime are divided almost evenly between corporal punishment, fine, and the pillory (roughly 30% for each sentence). Convicts received multiple forms of punishment in most of these cases.

Hence, the chances were very good that a convicted felon would face severe physical punishment. Only murder by whites had a high pardon or benefit of clergy rate. Larceny, the most abundant felony, ranked second with twenty-six of those convicted receiving either a pardon or benefit of clergy. The numbers for other crimes are negligible. Only two convicts who stole slaves and only one burglar or robber received pardons or benefit of clergy. No horse thieves or receivers of stolen goods ever benefited from such mercy. Criminals guilty of crimes against property received more severe and rigid punishments. These figures further highlight how the criminal justice system was designed to protect property. It prioritized prosecuting and mercilessly punished property crimes (especially those that disrupted the economy or were detrimental to elite interests).
Yet, many murderers escaped the hangman’s rope through a legal technicality. Benefit of clergy provided a convenient way out of terrible corporal punishment for some violent criminals. The convict had the chance to plead for mercy based on the fact that he was in some way associated with the clergy. This glitch in English law allowed any white person who could read a Bible verse—often Psalm 51—to gain mercy from the court. However, one could only invoke the benefit once, and the law specifically forbade it for some crimes (such as the new law against horse theft).

Several prominent scholars of crime and punishment in early modern Europe and England have argued that “terror” punishments were on the decline by the mid to late eighteenth century, which was not the case in South Carolina. Douglas Hay, for example, has written that the number of capital offenses greatly increased in early modern England, but the number of people actually executed did not. He explains this problem by arguing that the law, though certainly an instrument of terror used by the ruling elite to control the population, was also an ideological instrument. The gentry maintained a “prerogative of mercy” in support of their paternalistic social attitudes. By increasingly tempering terror with mercy, the gentry maintained their “façade of power.”

Given the evidence of how crimes were punished and how few felons guilty of property crimes got reprieve, the

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108 Peter Charles Hoffer, *Law and People in Colonial America* (Baltimore: Johns Hopkins University Press, 1998), 112-113. Hugh Rankin offers further insight into benefit of clergy: “This holdover from medieval times could be claimed if the prisoner had not committed willful murder, rape, treason, arson, horse-stealing, burglary, or robbery. Originally, this privilege had been based on the premise of protecting the better-educated English clergy from the vengeance of the temporal courts. Thus, to show himself entitled, the prisoner was required to demonstrate his ability to read a passage from the Bible. If customary English usage was followed, the clerk turned to the fifty-first Psalm...Upon the successful reading of the passage, the prisoner was granted his clergy and became a ‘clerk convict.’” Hugh F. Rankin, *Criminal Trial Proceedings in the General Court of Colonial Virginia* (Charlottesville: University of Virginia Press, 1965), 107.

“prerogative of mercy” was not much used in South Carolina. The assembly actually abolished the “prerogative of mercy” for several crimes. Moreover, this prerogative was never available to slaves or blacks who were convicted by the Courts of Justices and Freeholders, which executed at least eighty people between 1763 and 1774.

J. A. Sharpe has also pointed to this pattern in English history, showing that only about 10% of those accused of a felony before the Assize courts were actually executed by 1750. He cites the growing appeal of alternatives such as transportation as one major factor behind this decline. When one compares his statistics from the English assize courts to the statistics from the Court of General Sessions, the difference is quite remarkable. Sharpe catalogues verdicts from the Norfolk and Suffolk Assizes from 1734 to 1737. In this short period, more people were transported (twenty-eight) or reprieved (nineteen) than whipped (seventeen). The courts imposed no corporal punishments for arson or robbery. They transported (seventeen) rather than hanged (sixteen) a majority of burglars.\textsuperscript{110} Out of a total of 251 trials (resulting in both conviction and acquittal), the courts transported 21% of convicts and remanded or reprieved 33%. Only 10% were either whipped or branded, and only 12% executed. Compared to the 70% rate of lashing for larceny in South Carolina, the nearly 100% rate of execution for burglary robbery, and arson, or the zero percent commutation / reprieve rate for slaves sentenced to die, this difference is quite astonishing. Criminal justice and punishment in South Carolina followed English precedents in terms of form and procedure, but it did not evolve or soften as the English system did later in the eighteenth century. Of course, South  

\textsuperscript{110}{Sharpe, 94.}
Carolina’s judges did not have the option to transport criminals. South Carolina did not even have a modern penitentiary until after the Civil War.\footnote{For more on the rise of transportation as a penal alternative, see A. Roger Ekirch, Bound for America: The Transportation of British Convicts to the Colonies, 1718-1775 (Oxford: Clarendon Press, 1987). See also Gwenda Morgan and Peter Rushton, Eighteenth-century Criminal Transportation: The Formation of the Criminal Atlantic (New York: Palgrave, 2004).}

Punishment in South Carolina was brutal, swift, public and rarely tempered by mercy. The Sheriff or Provost Marshall (before the Circuit Court Act) carried out punishments within a matter of days or weeks. For example, the court convicted David Smith of forgery on March 2, 1775 and sentenced him to hang. His execution took place just one month later on April 3.\footnote{March 3, 1775 Sentencing, South Carolina Court of General Sessions, Criminal Journals, SCAHC.} About a year earlier, the court sentenced a man convicted of larceny to thirty-nine lashes (a typical sentence). Punishment took place just two days following sentencing.\footnote{February 26, 1774 Sentencing, Ibid.} Convicts enjoyed little or no chance of appeal. Yet, the court was not wholly without mercy. The insanity defense existed even in eighteenth-century South Carolina. Ronald McDonald was tried and convicted of murdering William McKenzie on April 18, 1770. However, the murder charge was dropped once it became clear that Ronald McDonald was insane.\footnote{King vs. Ronald McDonald, April 18, 1770, Ibid.} According to a newspaper account, “the jury returned a special verdict, ‘That the Prisoner was insane, deprived of memory and understanding at the time of killing the said McKenzie, and ever since.’”\footnote{South Carolina Gazette and Country Journal, April 4, 1770.}

Most were not as lucky as poor, insane Ronald McDonald and faced quick, harsh and very public punishment in Charles Town. The court journal does not always indicate
where or when punishments were carried out, but in some cases it was quite specific. Those sent to the pillory faced shame in one of the town’s most public places—the market. The market also hosted most corporal punishments. Some corporal punishments were carried out in multiple locations for maximum exposure. At least eight larceny convicts received their lashes in “the four corners of the town.” One horse thief also faced this fate plus the loss of his right ear. The judges had total discretion in where they could conduct punishments. One man earned the special ire of the court and had to stand in front of the courthouse holding a notice stating his crime (contempt). Punishments were designed to deter crime through terror and shame, and South Carolina’s criminal justice system relentlessly protected elite property and economic interests and managed white society by using punishment as a form of law enforcement and social control. The system focused on punishment and deterrence rather than detection and rehabilitation.

**Conclusion**

Criminal Justice in South Carolina was a highly centralized system crafted and controlled by the assembly in Charles Town. Like the English system, it focused on protecting property and preserving order. Its courts effectively prosecuted crime, and punishment was mainly designed to deter rather than reform. Most importantly, the criminal justice system was a political tool that allowed the lowcountry elite to extend and exercise their authority over and manage all of provincial society from their seat of power in Charles Town. It served important administrative as well as legal functions, and all of its functions clearly reflect the priorities of the ruling elite. Patterns in legislation, prosecution, and punishment show that crimes against property or that damaged the
economy most concerned the lowcountry elite. Serious violent crime was not a major problem. Assault may have been the single most prosecuted crime, but it was punished very lightly, and the Commons House saw no need to create harsher punishments than those already in existence for the crime. Moreover, the high number of assault cases was a symptom of the larger problem of increasing disorder in Charles Town, which grand juries often noted in their presentments.

Why all the attention to property crime? Property, whether real or human, was the ultimate source of political power for the planter and merchant classes who ruled South Carolina. Property supplied wealth, social status and the opportunity to hold high office. Any assault on property, no matter how minor, was an assault on elite political power. Disorder was no less of a concern. A slave society, in which power depended upon owning property and controlling people, relied on the strict maintenance of order. Assaults, disorderly houses or taverns, wandering vagabonds, masses of the poor or errant seamen would not be tolerated, as they all posed a threat to stability and strained the existing systems of government, law enforcement and criminal justice.

The lowcountry elite’s ability to direct the criminal justice system and the system’s governing power had limits. The assembly could not appoint judges, prosecutors, coroners, justices, or even constables. Appointments were entirely in royal hands, and these important officials owed their positions to either the governor or the king rather than the provincial elite. Moreover, the royal government increasingly filled these offices with placeholders rather than prominent local men by the 1770s. This inability to control court and criminal justice appointments resulted in several important
political conflicts in the late colonial period that, along with the imperial crisis, strained ties between the lowcountry elite and the empire. Given how the elite relied upon the courts and criminal justice to protect their interests and shore up their political power, the colony’s ruling class fought British interference or attacks on the assembly’s legislative power to control this system.
Chapter 3
“Nothing but Terrors and Punishments”: Slavery and the Law

The most striking section of J. Hector St. John de Crevecoeur’s Letters from an American Farmer is his ninth letter describing Charles Town, South Carolina. The descriptions he offered in this letter are quite unlike anything else found in the book. He encountered the darkest side of late-eighteenth-century British America in Charles Town, and he was not at all shy in describing what he saw. The title of the letter itself, unlike other titles that address customs or inhabitants, includes the phrases “on physical evil” and “a melancholy scene.”¹ He focused on what he saw as the dominant element of Charles Town’s society and the most important pillar that upheld elite political power—slavery.

Crevecoeur compared Charles Town to Lima, Peru, writing “both are capitals of the richest provinces of their respective hemispheres.” Both were great seats of luxury, wealth, and commerce. One relied on gold and precious metals (and forced Indian labor), and the other relied on staple crops (and forced African labor). Unlike Josiah Quincy, who also chronicled his experiences and impressions of elite society in Charles Town, Crevecoeur wrote little about Charles Town’s white society and culture except to contrast the luxury among whites in Charles Town and apparent misery among its slaves. After seeing this contrast and the divergence between the perceived republican, agrarian virtues of the north versus a “decadent plantation society,” Crevecoeur was disillusioned.² South

² Christopher Iannini, “The Itinerant Man,” William and Mary Quarterly 50 (April 2004), 209.
Carolina, where Crevecoeur saw the full horrors of slavery, seemed more like the Caribbean colony of Jamaica than republican Massachusetts.  

He asked,  

While all is joy, festivity, and happiness in Charles Town, would you imagine that scenes of misery over-spread in the country? Their ears by habit are become deaf, their hearts are hardened; they neither see, hear, nor feel for the woes of their poor slaves, from whose painful labors all their wealth proceeds. Here the horrors of slavery, the hardship of incessant toils, are unseen and no one thinks with compassion of those showers of sweat and of tears which from the bodies of Africans daily drop and moisten the ground they till.

Crevecoeur thought slavery had a numbing and corrupting effect on the masters. Slave owners had become so used to seeing slavery around them and so dependent upon slave labor as the source of their wealth that they may not have even recognized the injustice perpetrated on these people.

South Carolina’s elite slave owners ruled their province. They were among the wealthiest elites in North America. Plantation slavery was the most important pillar that supported these elites’ wealth and power to govern the colony. As such, they most certainly understood the need to control the plantation economy and its captive workforce strictly. While slavery provided great wealth and opportunity for the colony’s elite, it also presented the most difficult problems of government and law enforcement in the colony. The majority of South Carolina’s population was not there by choice, and these slaves far outnumbered whites in low country parishes. Moreover, slaves constantly demonstrated the will to resist oppression, forcing the planters to grant some concessions to their slaves as a matter of self-interest or self-preservation. The oppressive, even brutal, nature of

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3 Ibid., 227.
4 Crevecoeur, 168.
slavery and the difficulty of suppressing the free will of human beings who were also considered to be property become readily apparent.

Every individual planter faced the challenge of how to govern his slaves in a way that turned a profit on the plantation. Planters did not envision plantation government as “nothing but terror and punishments.” Their vision usually entailed working toward some kind of balance between disciplining, caring for, and making concessions (e.g. allowing slaves some kind of private / social life) to the slaves. Planters like Henry Laurens did not see themselves as the inflictors of terror and brutality. Rather, they chose to portray themselves as fatherly monarchs, ruling over and caring for their families and servants. They framed concessions made to slaves as benevolent, just, or a part of their duties as masters. Likewise, it was the natural duty of slaves to serve their masters. Thus, masters framed plantation government in terms of reciprocal duties. The reality was much different. A planter’s benevolence was self-serving. Any concessions he made could be revoked at a moment’s notice. Slaves had no guaranteed personal, family, or legal rights and were bought and sold as commodities. The constant fear of punishment and the oppressive nature of slavery forced obedience and motivated a constant undercurrent of resistance. Governing slaves and plantations, therefore, may have been framed in terms of mutual restraint and obligation, but it actually served to secure the forced labor system and contain the resistance that system naturally produced.

Governing slaves was not just an individual endeavor. The planter class had to control the slave majority collectively and ensure the profitability of the plantation economy. The low country elite thus crafted South Carolina’s slave code as another
essential tool of the ruling class—a system of legal, economic, and social control
designed to modify and manipulate the behavior of blacks and whites for the benefit of
the slave-owning elite. The planters collectively imposed standards of behavior and
sanction on themselves, which they often framed in terms of care and justice.\(^5\) These
laws attempted to standardize how individual plantations functioned as units of
government. The colony’s ruling class also used their political power to create a range of
coercive institutions responsible for containing slave resistance, including a detailed slave
code, an entirely separate criminal justice system for slaves, and the most powerful and
extensive law enforcement agencies in the colony. Legal standards for plantation
government that placed limits on individual owners were self-imposed, self-enforced, and
self-serving. This most elaborate branch of South Carolina’s colonial government was
based on force and, whatever the justification or rhetoric, that force overwhelmingly fell
on the black majority while it propped up the rule of the planter class and enlisted the
support of lower class whites. These functions were the most important and powerful
governing tools that the South Carolina elite created.

Historians who have studied South Carolina’s slave laws have mainly focused on
the origins of the slave code in relation to slave uprisings and the growing numbers of
slaves in the lowcountry. Others have studied how slavery modified English legal forms
or how conditions specific to a given colony influenced the development of slavery,

controlling slaves, and black culture.\(^6\) None of these works provide a comprehensive study of South Carolina’s colonial slave code or how the ruling class applied it to govern plantation slavery. Even so, historians of American slavery have consistently recognized that the law was a tool that established “the hegemony of the ruling class” and defined relationships or moderated between groups of humans (i.e. masters and slaves or individual masters).\(^7\)

This chapter will then provide an extensive study of how the South Carolina elite used the plantation, the law, and the criminal justice system to govern the majority of the colony’s population. The chapter’s coverage of planters and their political institutions

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\(^7\) Genovese, 27, 47. Genovese’s conception of how elites used the law is similar, in general terms, to that of Douglas Hay and E.P. Thompson (see chapters 1-2). For the most comprehensive study on the relationship between slavery and the law see Thomas D. Morris, Southern Slavery and the Law, 1619-1860 (Chapel Hill: University of North Carolina Press, 1996). Morris deals with slave codes, but his study is more broadly concerned with the evolving relationship between slavery and the criminal and civil law in general. For slavery and law enforcement, see Sally E. Hadden, Law and Violence in Virginia and the Carolinas (Cambridge MA: Harvard University Press, 2001). Hadden especially tries to place slave patrols within the context and history of English law enforcement and demonstrates how slavery caused English law enforcement mechanisms to evolve and strengthen to meet the challenges of controlling large numbers of slaves in America. For a study of criminal justice in the nineteenth century, see Michael Stephen Hindus, Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878 (Chapel Hill: University of North Carolina Press, 1980). Hindus focuses on the development of the “modern criminal justice system.” He argues that criminal law was used for the purposes of class and race control. While he gives a brief overview of South Carolina’s 1740 Negro Act, he presents virtually no analysis of the slave law or slave courts for the colonial period. For the relationship between slavery, the law, and social change see Mark Tushnet, The American Law of Slavery (Princeton: Princeton University Press, 1981).
indeed includes territory handled by other historians. However, it offers a new
collection contributions by importing insights from the past study of slavery and applying them to a
broader discussion of the nature of elite political power on the eve of the American
Revolution in South Carolina. South Carolina’s legal and governing systems for slavery
were absolutely vital to exercising the ruling elite’s will. One cannot hope to understand
government and political authority in this colony completely without fully examining
how the elite governed slavery and the plantation economy. Examining these aspects of
colonial government demonstrates that controlling slaves had to be a collective governing
enterprise. It reflected how the elite governed the colony in general, and the collective
syndrome drew on rationalizations and realities individual members of the elite constructed
and faced everyday on their own plantations.

The Slave Code

The Commons House created South Carolina’s comprehensive slave code in 1740
after the Stono slave rebellion of 1739, though laws governing slaves dated back to the
seventeenth century. The assembly had been working on a comprehensive slave code
before the Stono rebellion. The late 1730s witnessed a period of intensifying unrest
among the colony’s growing slave population. Stono was the culmination and turning
point that finally pushed the assembly to act. The new slave code was designed to more
thoroughly regulate plantations and control slaves. It was designed to prevent anyone—
black or white—from disrupting the plantation economy. It imposed the assembly’s
authority on all colonial subjects and gave the lowcountry elite a means of collectively

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8 Wood, 308-309.
managing the economy and their plantations. While it did impose requirements and regulations upon slave owners and other whites, the law was ultimately designed to increase the collective power of the planter class over their captive laborers.

The colonial and later state legislatures made minor alterations to the code as circumstances demanded, but the 1740 Negro Act served as the basis for South Carolina slave law through the Civil War.9 The colony’s slave laws had been developing since the 1690s, but this code was the first attempt to overhaul and rationalize the entire system. By 1740, South Carolina was fully a plantation based economy and slave society.

Writing about Virginia, Philip Schwarz observes, “The more any society was based on slavery, the greater was the chance that legislators would develop an independent set of laws and courts for slaves alone.”10 The 1740 code was similar to slave codes in other southern and West Indian colonies, but South Carolina created the most extensive law enforcement system to control slaves in North America.11

The assembly could wield a great deal of power by simply using legislation to create definitions. To begin with, the slave code had to clearly define who was a slave, how one became free, and how slaves were tried and punished for violations. Defining who was enslaved was relatively simple in the South Carolina slave code: the law

11 Georgia adopted South Carolina’s slave code. Delaware used a system of freeholder courts similar to South Carolina’s until 1785. Virginia, however, had a central court to try felony level slave crimes and also gave far more power to single magistrates to punish minor offenses. After 1740, only multiple justices along with several freeholders could order punishment in South Carolina. In part, this provision was meant to protect planters’ property interests and to prevent overzealous magistrates from potentially provoking rebellion with extreme punishments. Morris, Southern Slavery and the Law, 211-215.
considered all blacks slaves unless they could prove otherwise. Hence, the burden of proof was on the individual black person in question. The law did not limit itself to blacks, but declared that all “negroes, mulattoes, mustizoes and Indians” not currently free would hereafter be “absolute slaves.”\textsuperscript{12} The status of the mother determined the status of the child. This definition was a product of planters’ self interest: if a white overseer or slave owner fathered an illegitimate child with a slave woman, the father’s free status had no effect on the child’s legal standing. The law also forbade masters from manumitting slaves except with the assembly’s permission, which potentially placed a limit on the numbers of free blacks, who planters viewed as a nefarious influence on the slaves. Slavery was thus officially and irrevocably tied to race in South Carolina, just as it was in Virginia and elsewhere in the British Empire.\textsuperscript{13}

The slave code set up universal definitions and standards to govern the relationships between owners and slaves and blacks and whites in general. It had the overall purpose of defining the extent of whose power over such slaves ought to be settled and limited by positive laws, so that the slave may be kept in due subjugation and obedience and the owners and other persons having the care and government of slaves may be restrained from exercising too great rigor and cruelty over them, and that the public peace and order of this province may be persevered.\textsuperscript{14}

\textsuperscript{12}Thomas Cooper and David McCord, eds., The Statues at Large of South Carolina, vol. 7 (Columbia: 1836-1841), #670.


\textsuperscript{14} Cooper and McCord, vol. 7, #670.
From the very start, the code set out to define the powers individual masters possessed over their slaves and place limits on that power for the greater good of the plantation economy. The code implied that slave violence and other disruptions to the plantation economy are the result of poor management, weak regulation, or poor care. The code also aimed to prevent cruelty. The code’s elite authors did not understand slavery itself to be cruel, abusive, or oppressive. They believed those inherent aspects of slavery were instead dangerous aberrations. The evidence, however, shows that the laws’ rhetoric and aims did not match the terrible realities of slavery.

Quantitatively, the code did indeed place more regulations on owners than on slaves. The 1740 Negro Act placed twenty restrictions and impositions on owners, twelve restrictions on the employees of owners (e.g. overseers, plantation managers, or drivers), thirteen restrictions or impositions on whites in general, four restrictions specifically on free blacks, and eighteen on slaves themselves. The Court of General Sessions only tried seven whites for major violations of the slave code, but Justices of the Peace or the slave patrol enforced most of the minor provisions (e.g. standards for feeding and clothing slaves) and did not leave behind records of violations.\(^\text{15}\) In both cases, the slave-owning elite self-enforced this code. Prosecution totally depended on white testimony, since blacks could not give evidence against whites. These restrictions then depended on the cooperation of slave owners, whereas provisions for slaves depended on coercion. Slaves and blacks had no direct part in the construction of this

\(^{15}\) Four individuals were tried for killing a slave, one for murdering a slave, one for employing a slave on Sunday, and one for wounding a slave. See tables in chapter 2.
code or its enforcement, and they had virtually no rights within the criminal justice system.

Table 3.1
Restrictions and Impositions of the 1740 Negro Act

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
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<td>18</td>
<td>27</td>
</tr>
<tr>
<td>Owners</td>
<td>20</td>
<td>30</td>
</tr>
<tr>
<td>Employees of Owners</td>
<td>12</td>
<td>18</td>
</tr>
<tr>
<td>Whites in General</td>
<td>13</td>
<td>19</td>
</tr>
<tr>
<td>Free Blacks</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>Total</td>
<td>67</td>
<td>100</td>
</tr>
</tbody>
</table>

Compiled from: *Statutes at Large of South Carolina*

Table 3.2
Restrictions and Impositions of all slave laws, 1740-1775

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
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<td>27</td>
</tr>
<tr>
<td>Owners</td>
<td>23</td>
<td>25</td>
</tr>
<tr>
<td>Employees of Owners</td>
<td>13</td>
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<tr>
<td>Whites in General</td>
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<td>22</td>
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<tr>
<td>Free Blacks</td>
<td>12</td>
<td>13</td>
</tr>
<tr>
<td>Total</td>
<td>93</td>
<td>100</td>
</tr>
</tbody>
</table>

Compiled from: *Statutes at Large of South Carolina*

Statistically, the code lived up to its stated purpose of defining and restricting individual behavior. When additional laws passed through 1775 (the lifespan of the Commons House of Assembly) are also taken into consideration, the overall statistics remain very similar, with nearly as many restrictions placed on owners as on slaves. However, restrictions on free blacks and whites in general increased significantly. This fact is most likely due to the perception (detailed in chapters one and two) that Charles Town was becoming more disorderly, in part because of the increased number of the poor, free blacks, and unsupervised slaves. From the planters’ perspective, all of the
restrictions served one of four purposes: to limit slave activity that might be conducive to disorder or plotting insurrection, to limit the behavior of free blacks or whites that might contribute to slave disorder or aid the plotting of insurrection, to enlist the support of all whites in enforcing the slave code, and to define or limit the power of individual owners and their employees in a way that protected general order.

Even the code’s restrictions on slave owners still sought to limit the freedom of slaves. For example, the code explicitly forbade slaves from trading or keeping boats, horses and cattle, making owners responsible for preventing slaves from doing these things. This provision specifically blamed owners for not properly governing their slaves, stating that some owners had permitted slaves to raise cattle and barter, which only encouraged the rampant crime of receipt of stolen goods. Moreover, allowing slaves to carry on such independent economic activities offered them opportunities to "confederate together and plot." The law also prohibited slaves from bartering, trading commodities, keeping livestock, or participating in any economic activity for their own profit. If slaves were caught violating this law, all goods involved (even goods belonging to a master) would be confiscated and sold at public auction. These regulations demonstrate a fundamentally unrealistic understanding of slave resistance on the part of masters. The law they wrote approached slave resistance as a problem of poor management (either "abuse" or not enough supervision). The fundamental cause of slave resistance, of course, was slavery itself.

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16 Cooper and McCord, vol. 7, #670.
The law made masters (individually and as a community) responsible for controlling the behavior of their slaves and imposed limits on the extent of a master’s power over his slaves because of their understanding of slave resistance. The code forbade cruelty (defined as purposelessly depriving, harming, or killing slaves contrary to the limits imposed by law), which it deemed “not only highly unbecoming of those who profess themselves Christians, but is odious in the eyes of all men who have any sense of virtue and humanity.” Thus, the code was supposed to “restrain and prevent barbarity being exercised towards slaves.”17 Again, the elite separated slavery itself from “barbarity” or “cruelty.” Properly administered, the law suggested that slavery could in fact be compatible with “virtue” and “humanity.” In other words, the law’s provisions outline a proper, virtuous kind of slavery and a cruel kind of slavery. These limits were ultimately the result of self-interest. They protected a master’s human property and, by limiting “cruelty,” they hoped to limit the possibility of slave resistance and disruption to the plantation economy. These restrictions were again based on false assumptions about the nature of slavery resistance and the relationship between slavery and cruelty. In many ways, they reinforced the notion that slaves were first and foremost valuable commodities.

The code did not punish killing or murdering a slave as it did killing or murdering a white person. The crime, in the planters’ minds, primarily caused a loss of property. The code imposed a £700 fine and a ban on holding public office on those who murdered a slave. If the offender could not pay the fine, he could be exiled to serve in a frontier

17 Ibid.
garrison or be confined to the workhouse at hard labor (ironically with runaway slaves) for up to seven years. If one murdered another’s slave, the murderer would also have to pay restitution. If someone killed a slave in the “heat of passion” or as the result of overzealous “correction,” the law dictated only a £350 fine. The law thus expected owners and their employees to physically punish slaves without any qualms. It only tried to define the terms of punishment. It banned mutilation (i.e. castration, blinding, cutting out the tongue, etc.), and the law defined cruel punishment as anything other than the clapping on of irons or whipping with a horse whip, cow skin, switch or small stick. Violators could face a £100 fine.\textsuperscript{18}

The code also imposed requirements upon owners relating to the care of slaves. The law required owners to provide sufficient “clothing, covering and food.” Any white person could report inadequate conditions to a Justice of the Peace on behalf of the slaves in question, but slaves could not offer testimony. The justice could hold a hearing and order relief and a fine of up to £20 per individual offense, which was payable by the sale of the offender’s goods. Slaves, however, could not give evidence. The law did attempt to define “sufficient” in terms of clothing but not for food or housing. The law required masters to dress slaves simply, using only “negro cloth,” duffils, kerseys, osnabrigs, blue linen, check linen, coarse garlix, checked cotton, Scottish plaids, or calicoes.\textsuperscript{19} These standards served as minimums and maximums, and the law clearly stated that anyone who found a slave dressed better could report the owner and seize the clothing. The

\textsuperscript{18} Ibid.
\textsuperscript{19} Ibid. According to eighteenth-century usages in the Oxford English Dictionary, all of these clothes (save cotton) were cheap, common and course woolens or linens.
minimum was meant to prevent abuse (and hence resistance), and the maximum was meant to set common standards for slaves that might reduce theft and the receipt of stolen goods. These regulations primarily served the masters’ interests. The law assumed that more comfortable slaves might make them more accepting of their fate or at least less likely to offer open resistance. Moreover, since Justices of the Peace would have commonly included members of the slave-owning elite and all evidence had to come from whites, these regulations were self-enforced. There are no records of slave owners being punished under these provisions.

The code also regulated free blacks. First, the burden to prove one’s freedom fell on blacks who claimed it. If one claimed freedom, the Court of Common Pleas could appoint a guardian until the case was decided. Free blacks were also excluded from the white criminal justice system. All crimes committed by free blacks were tried by the Courts of Justices and Freeholders without a jury. The law provided a rationale: “slaves may be encouraged to commit offenses and concealed and received by free negroes, and such free negroes may escape punishment for their crimes for want of sufficient and legal evidence against them.” Free blacks were allowed to give testimony for or against slaves and other blacks (and vice versa), but they were forbidden from testifying against a white person under oath. Hence, the law removed free blacks from the jurisdiction of white courts for fear that, under the normal rules of evidence and procedure, convicting free

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20 Genovese, 50.
21 The lack of records may, in part, be due to the fact that Justices of the Peace did not systematically archive records of their cases, and the major courts did not conduct trials for violations of these provisions of the slave code.
22 Cooper and McCord, vol. 7, #670
blacks of encouraging or aiding slave crime (including running away) would be difficult. The assembly used its powers to define court procedures to strip an entire class of people of what any Englishman would have considered a fundamental right—trial by jury under the normal rules. This measure, like others, was designed to prevent individuals from upsetting the plantation economy and extended the low country elite’s authority over criminal justice.

Free blacks were not specifically included in many of the laws’ restrictive features. Provisions that forbade slaves from carrying out commerce, from traveling freely in groups, from renting rooms, from learning to write, or from consuming alcohol did not apply to free blacks. However, free blacks—like whites—could not aid any slave or join slaves in these activities. Plantation owners were also not allowed to staff their plantations solely with free blacks. The law required a white presence on all plantations at all times to prevent them from becoming safe havens for runaways. The law did not restrict free blacks as thoroughly as it did slaves, but it also clearly did not trust free blacks and assumed they were a secret menace to the plantation economy.

The law placed a host of burdensome restrictions on slaves. Slaves could not leave the master’s property without a written pass. Slaves who resisted when asked to produce written travel tickets could be killed without any legal consequence. Any slave who left the province without a pass would face execution. Slaves could not own horses, cattle, hogs, boats, or canoes and were forbidden from carrying on any trade solely for their own profit. Restricting ownership of horses and boats was also meant to retard

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23 Ibid.
slaves’ ability to travel quickly. This provision could limit inter-plantation communication and might prevent large rebellions or make running away in groups more difficult. The law further stated that anyone who taught a slave to write could be fined up to £100.\textsuperscript{24}

The South Carolina legislature passed only a few minor alterations to the slave code from 1750 to 1776, which reacted to specific problems and shored up the old 1740 code. Like the original code, these laws often aimed to limit and regulate behavior that could threaten the plantation economy. These supplemental laws made slavery harsher, controls tighter, and were not progressive reforms.\textsuperscript{25} The first revision came in 1754. Entitled “An Act Against Stealing Negroes,” the law again clearly defined black slaves as property. “Slaves,” the law stated, “are as much the property of their owners as any other goods or chattels are.” It described stealing slaves as a “great and growing evil,” which was not adequately punished. The Court of General Sessions tried seven people (four guilty and three innocent verdicts) for this crime. The court tried 88\% of all indictments for this crime.\textsuperscript{26} Thus, the law made stealing slaves and even aiding runaways capital felonies. The law then reinforced slaves’ status and made it clear that whites who disrupted the system by stealing slaves or by aiding runaways were enemies of elite order.\textsuperscript{27}

\footnotesize
\textsuperscript{24} Ibid.
\textsuperscript{25} Jeffrey Young, \textit{Domesticating Slavery: The Master Class in Georgia and South Carolina, 1670-1837} (Chapel Hill: University of North Carolina Press, 1999), 46.
\textsuperscript{26} See the Appendix.
\textsuperscript{27} Cooper, \textit{Statues at Large}, vol., 7, 822.
To further restrict a slave’s ability to conduct commerce (possibly acquiring funds to aid rebellious activities or harm his master’s property), a 1762 law forbade slaves from branding cattle except in the presence of a white person. A lone Justice of the Peace (a title held by many planters) could have a slave “severely whipped” for any violation. It is hard to know how often slaves had been illegally branding cattle. There are no court records from which one can compile statistics. However, increasing numbers of slaves worried Charles Town authorities. The assembly was concerned that too many new slaves—unaccustomed to slavery in America—were being brought into the colony. The assembly probably passed the cattle branding law in response to specific complaints about that issue, but it may also have been part of renewed general concerns that controlling a larger and less acculturated slave population was becoming more difficult.

In 1764, the Commons House passed an act that placed an additional duty on importing slaves and showed continued worry over slave insurrection. Limiting the slave trade might cost some members of the merchant elite, but the assembly deemed it necessary for the overall good of the plantation economy. Newly arrived slaves were thought more likely to resist, cause disorder or even revolt. The assembly specifically stated that “an importation of negroes, equal in number to what have been imported of late years may prove of the most dangerous consequence…the best way to obviate this danger will be imposing such an additional duty upon them as may totally prevent the evils.” The assembly could benefit from the additional duty, but the economy would

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28 Cooper, Statutes at Large, vol. 4, 177.
29 Cooper, Statutes at Large, vol. 4, 187.
benefit from this additional regulation designed to limit the growing number of blacks and reduce the number of potentially disruptive slaves coming into the colony.

Owners looked upon newly imported slaves as an investment. Planters estimated that a newly imported or purchased slave paid for himself within four or five years, so the real profits from slave labor came after that period. Slaves, of course, had to survive long enough for a master to see this return, and experienced slaves held more value. Governor James Glenn stressed that this process was more than an economic matter. Native Carolina slaves, he insisted, had “no notion of liberty” and “no longing for any other country.” Glen believed these slaves had been conditioned to service under whites and trained to labor.

The assembly was very much aware of this issue and feared the population balance between colony born and newly imported slaves was becoming too skewed in the latter’s favor, so the Commons House enacted legislation to restrict the slave trade. Indeed, the colony’s black population nearly doubled between 1750 and 1770, growing from 40,000 in 1750 to 75,178 in 1770. The white population also nearly doubled, growing from 25,000 in 1750 to 49,066 in 1770. However, despite similar growth rates, the black population was 65% higher than the white population, and blacks made up over 60% of the colony’s population. Thus, the elite enacted self-imposed limits on actions (i.e. importing slaves) that might benefit individual members of the lowcountry elite but

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were perceived to be harmful to white society or the plantation economy as a whole. Governor Glen and the assembly also again assumed that slavery, in and of itself, was something that Africans should and could become accustomed to. Newly imported slaves were only a source of resistance because they had not been assimilated into the system. They did not consider the system itself to be the root problem. The assembly again turned to more regulation as the answer to slave resistance and stabilizing the plantation economy.

The legislature itself did not always initiate new measures. Outside individuals or groups often voiced their own concerns, but they usually brought them directly to the assembly’s attention with the hope of legislative redress. White South Carolinians often made their complaints and concerns public through petitions to the legislature and grand jury presentments. Most petitions and presentments pointed to the same problem: petitioners and jurors believed that owners who did not properly regulate their slaves caused resistance and the resulting threats to a stable plantation economy. More thorough government regulation would protect order and the economy from such irresponsible individuals. These petitions and presentments do not address the fact that that slaves resisted simply because they were slaves. Slavery could not work without being oppressive, unjust and cruel.

Two grand juries (1773 and 1774) suggested that the assembly should entirely revise the slave code to address a host of concerns.\(^{33}\) Three juries demanded that all free

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\(^{33}\) Grand Jury Presentments, May 20, 1774 and February 19, 1773, South Carolina Court of General Sessions, Criminal Journals, 1769-1775, SCAHC.
blacks be required to wear some sort of badge to distinguish them from slaves. Others asked for a more extreme measure to prevent all blacks from freely walking the streets. Two juries proposed that the assembly pass a law that would place stocks on every street corner in Charles Town. Any white person could then apprehend any black person who had no ticket (free or slave) and place him in the stocks until he was claimed or proven to be free. The jurors hoped this measure would provide an additional law enforcement mechanism. The presence of stocks could instill fear and inspire more obedience in slaves. The grand jurors were also targeting individual slave owners, whose relaxed supervision threatened the established order. While the jurors hoped the stocks would frighten slaves into obedience, they might also have an impact on masters. For masters, the inconvenience of having to retrieve disobedient slaves from the stocks might motivate stricter discipline. It could be viewed as weakness for a master to have his slaves publicly disciplined for unruliness. Others also might perceive that such as master was a poor manager of men and a poor planter or businessman. This pillory scheme also drafted all whites into the law enforcement system.

Other presentments focused on general disorder stemming from the same perceived problem: there were too many unsupervised or under-supervised blacks and slaves in Charles Town. Grand juries cited a myriad of problems. They complained of

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34 Grand Jury Presentments, October 20, 1769; January 1770; January 25, 1771, Ibid.
35 Grand Jury Presentments, May 20, 1774 and February 19, 1773, Ibid.
36 Young, 41-44.
37 There are no reliable estimates for how many free blacks may have been living in Charles Town in this era. The 1790 census listed 1,801 free blacks in South Carolina. Over half of them lived in Charles Town. Records for 379 manumissions between 1737 and 1785 survive. See Olwell, “Becoming Free,” 1-6. The
too many disorderly people in the city. Free and enslaved Blacks enabled disorder by being allowed to “huckster and sell” in the streets contrary to law, which hurt retailers and contributed to the problem of trafficking in stolen goods. Some slaves came to the city dressed too ornately according to the slave code’s standards. However, grand juries also complained that masters were not following the law requiring them to properly clothe their slaves, which caused some to steal.38 One jury issued a summary complaint. There were simply too many “idle and useless” blacks in Charles Town, and blacks were perceived as generally “wanton, mischievous, and thievish.”39 Thus, the presentments again reveal the divide between elite perception and the realities of slavery. The jurors blamed a lack of regulation, suggested the need for more government, and refused to admit that holding human beings as property naturally resulted in what the master class defined as crime and disorder. The juries argued that government needed to place more regulations on masters, but, in the end, they were really insisting on a more thoroughly oppressive slavery.

Even though the assembly did not respond with new legislation in most cases, grand juries continued to complain. The most extensive set of presentments addressing nearly all of the aforementioned issues came in May 1774, but royal government had all but ceased to function in South Carolina by then. Throughout the 1760s and 1770s, the assembly engaged in constant battles over legislative privilege with royal governors,

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38 Grand Jury Presentments, May 20, 1774 and February 19, 1773, South Carolina Court of General Sessions, Criminal Journals, 1769-1775, SCAHS.
39 Grand Jury Presentments, May 20, 1774, Ibid.
royal councils and other imperial officials that often slowed or halted normal government business. Grand juries, however, were not engaged in political contests with the assembly. These presentments originated in Charles Town courts, and they naturally focused on issues important to the city. Powerful assembly members played prominent roles on the juries. One 1774 jury that vociferously complained about disorderly slaves counted Brewtons, Mazycks and Savages among its members (among the most prominent merchant and planter families in the colony).\footnote{Grand Jury List, May 17, 1774, Ibid. See chapter 2 for an analysis of Court of General Sessions juries.} As tensions with Britain increased, the elite saw the primary challenge to their political power coming from above, and threats from below simply received less attention.

Grand juries were not alone in expressing concerns. The legislature also received a number of petitions, reports or warnings relating to slavery and occasionally took action to counter immediate threats. Only one major incident involved the threat of a slave uprising. On December 17, 1765, Lt. Governor Bull reported to the royal council that Isaac Huger’s wife overheard two slaves talking on the street. They spoke of a planned revolt and massacre on Christmas Eve. Similar reports came in from several other slaves on John’s Island. Bull issued a decree prohibiting the firing of guns in Charles Town on Christmas Eve. This practice was common in celebrating holidays or special events, and Bull did not want celebration confused with a state of general alarm. He also ordered 100 militia men to stand guard in Charles Town and sought the aid of ship captains and sailors visiting the port. Bull also said he would seek help from the Indians. \footnote{South Carolina Royal Council, Journals, 32, December 17-25, 1765, SCAHC.} The
council took no action on the matter, and this incident was the sole mention of slave insurrection in its journals for the period under study.

On December 18, 1765, a Commons House committee appointed to look into this suspected slave revolt reported to the whole assembly. After extensively questioning a slave named Andrew, they determined that he was the lead organizer of the failed plot. However, other than holding Andrew for further questioning and requesting that the Governor order the militia to be extra watchful over the holidays, the assembly took no immediate action. Henry Laurens, an assembly member, commented upon this incident in a letter to John Lewis Gervais. Laurens reported a “disturbance” among the slaves that caused patrols to ride through the country day and night. However, he believed the whole affair was a hoax. “Some negroes had mimicked their betters in crying ‘liberty,’” and when the slaves came to fear the consequences of this act, they made false reports about slave insurrection to distract from their own actions and “stimulate the white men to extra watchfulness to draw off attention.” Laurens thought the colonial government overreacted and reported that only one slave was banished to “save appearances.” 42 This particular slave (Andrew) is not mentioned in any other documents. The interrogation is not recorded in the assembly or council journals, though normal procedure would have been for a Commons House committee to handle the investigation (and the interrogation). In writing that the slaves “mimicked their betters in crying ‘Liberty,’” Laurens was referring to the recent public protests against the Stamp Act, which slaves present in Charles Town would have certainly been able to observe.

Lieutenant Governor Bull appeared to issue a further report on the incident at the assembly’s first meeting in 1766. Even though the plan, supposed to have taken place on Christmas of the previous year, never came to fruition, Bull raised the colony’s defenses according to the militia and patrol laws. He also reported that 107 slaves had fled and joined others in Colleton County. Thus, he called upon the local Catawba Indians to “strike terror into the negroes” and break up any gatherings, since their hunting experience made them well suited to tracking runaways.43 Several slaves were captured and charged with planning an insurrection. Though the threat passed, Bull warned the assembly not to fall into a state of complacency and false security. The assembly voted a resolution approving his actions and voted to offer a £30 reward for every slave the Indians took alive and £15 for every one they brought back dead. The assembly also stated its willingness to pay £40 per month for officers and £20 per month for up to fifteen men to help the Indians in this task.44 They took no action to augment or reform the watch and patrol acts.

43 By this point in South Carolina’s colonial history, very few Native Americans remained within 300 miles of the coast. In 1770, Lt. Governor Bull observed that “in this province settled in 1670…then swarming with tribes of Indians, there remain now, except the few Cawtawbas, nothing of them but their names, within three hundred miles of our sea coast.” War and disease were the main factors contributing to Indian depopulation. The 1715 Yamasee War drove that tribe from the colony and into Florida. Bull also reflected the prevailing attitude toward Indians in saying they were trapped in “savagism.” They would not evolve from this state and thus had to be brushed aside by progress. The roaming Catawbas kept some leverage through clientage with the powers that be in Charles Town. Hence, they would allow themselves to be employed in endeavors such as hunting for runaway slaves to keep the good will of the colony’s dominant powers. See Robert Weir, Colonial South Carolina: A History (Columbia: University of South Carolina Press, 1997), 21-32. See also Chapman J. Milling, Red Carolinians (Columbia: University of South Carolina Press, 1969) and Gene Waddell, Indians of the South Carolina Lowcountry (Columbia: University of South Carolina Press, 1980) for narrative surveys of Indians in colonial South Carolina.

44 South Carolina Commons House of Assembly, Journals, 37.1, January 6-15, 1766, SCAHC.
The Commons House and the Lieutenant Governor agreed on strong and harsh measures to crush a potential slave revolt. In this case, there was no revolt—only the rumor or threat of one. Whether or not these slaves were planning a bloodbath on the Christmas of 1765 is unknown, but the assembly chose to believe the worst case scenario and acted accordingly. The assembly thus reacted strongly to the threat of insurrection, but it did not institute any major legal or institutional reforms as a result. It was content with the existing system, even in the wake of an exposed plot.

Hoax or not, the assembly formed a committee to serve as a judicial panel and took upon itself the power to commit a slave to jail without even the minimal trial a slave would normally receive. Despite the slave code’s rhetoric about “natural justice” and the need for due process for even slaves, this incident shows how easily the elite would resort to bending and manipulating established legal forms to meet imminent threats. It also clearly shows that whatever limits the law placed on elite power were voluntary and could be easily cast aside to accomplish the slave law’s true purpose—protecting elite property, dominating the slave labor force, and maintaining the normal operation of the plantation economy.

This incident is the last mention of slave insurrection in the assembly journal, and the assembly never did pass reforms to the militia, patrol, or watch acts. Surviving records do not reveal the extent to which the elite enforced measures of the code that restricted masters. Grand jury reports indicate that there was at least some dissatisfaction in how provisions relating to slaves were enforced as well. However, the elite clearly took the threat of slave resistance seriously, and the system was strong and extensive
enough to suppress or prevent major uprisings. No major slave insurrections took place between 1763 and 1776, and slave violence occupied very little of the assembly’s time.\footnote{There were two further incidents not mentioned in the legislative records: a prominent free black man named Thomas Jeremiah was hanged and burned in 1775 for allegedly inciting other blacks and slaves to aid the British. Another free black man named Scipio Handley was convicted of spying for the British and executed. See Robert Olwell, “Domestick Enemies: Slavery and Political Independence in South Carolina, May 1775-March 1776,” \textit{Journal of Southern History} 50 (1989): 33-43. For the Jeremiah affair situated within the climate of “accusation and suspicion” of the early days of revolution in Charles Town, see William R. Ryan, “Under the Color of Law: The Ordeal of Thomas Jeremiah, a Free Black Man, and the Struggle for Power in Revolutionary South Carolina,” in \textit{George Washington's South}, ed. Tamara Harvey and Greg O’Brien (Gainesville: University Press of Florida, 2004).}

\textbf{Control on the Plantation}

The plantation itself was an important unit of Government in colonial South Carolina. The disconnect between the elite’s collective vision of governing slaves and the reality of what governance actually meant can be seen on the plantation. Masters believed they had to limit their exercise of power on the plantation to maintain harmony or a balance that ensured productivity and profitability. They sometimes framed these restrictions in terms of mutual obligations: masters were obligated to provide care and slaves were obligated to provide dutiful service. Force and coercion were only applied when all else failed. However, a master’s so called obligations were entirely voluntary and self-serving, just as the elite collectively imposed legal restrictions on members of the planter class. A slave owner could not have ruled on his plantation without force.

Slave owners like Henry Laurens indeed thought of their plantation as little kingdoms with the master as lord over a hierarchical order. Masters ruled the plantation individually, just as they collectively ruled South Carolina itself. Henry Laurens specifically referred to himself as an “absolute monarch” over his plantation.
Yet, Henry Laurens and all masters had to impose some limits in how they exercised absolute power on their plantations to keep these economic engines running smoothly. Limiting the use of force or granting concessions to slaves were not designed to benefit the slaves and did not spring from a sense of benevolence among owners. Owners used these limits or concessions to prevent rebellion against the “little kingdom” by running away, sabotaging equipment or even committing acts of violence. However, these voluntary restraints did not and could not prevent rebellion and resistance, and masters had to return to coercive force to control their laborers in the end.

Masters had discretion in how they punished slaves for misbehavior, and the law only forbade them from maiming or killing a slave without trial before one of the slave courts. The courts, which might be nothing more than a gathering of local planters, had no limits on how they could punish slaves. Owners and their representatives also could not beat, bruise, maim, or disable a slave without “sufficient cause” (left undefined). Justices of the Peace (often other planters) judged what constituted sufficient cause, and they had the power to issue fines of up to 40 Shillings plus damage to slave property (if for example someone beat a slave without authorization from the master or overseer). This law offered little real protection for slaves, and it was really meant to protect owners’ property from negligent or overzealous overseers and servants and to protect the provincial economy from insurrections, disturbances or slave resistance sparked by violent or arbitrary punishments. It also gave owners recourse if an unknown person tried to punish a slave for some offense while the slave was away from the plantation.

Morgan, 258-259.
The law gave the slave no rights to take an abuser to court. Only a white person could go before a Justice of the Peace and issue a complaint.\textsuperscript{47} The courts then existed to protect the rights of slave owners rather than provide justice to slaves.

The Court of General Sessions recorded two distinct kinds of crime involving the death of slaves, but it prosecuted them both rarely. It tried four men for “killing a Negro,” and the court found three guilty and fined them £350 each. It also convicted one man of “murdering a negro” and fined him £700. The normal penalty for murder in South Carolina was death by hanging, so clearly even murdering a slave did not rise to the same level in eighteenth-century South Carolina. The killing or maiming of slaves was not a widely prosecuted crime during the period under consideration. The court also fined one man £100 for “wounding a Negro.” Another man received a £100 fine for “working Negroes on Sunday.” In total, the court only convicted six men of crimes against slaves.\textsuperscript{48} Either masters were abiding by the law’s restrictions, or crimes were going unreported or unprosecuted. Given that slaves could not testify against whites and that the slave-owning elite constructed and operated the criminal justice system, gathering hard evidence in these cases would be have been very difficult, which doubtless contributed to the lack of prosecutions.

Owners often had limited day-to-day contact with the majority of their slaves, so plantation owners relied on overseers to exercise their authority by proxy, enforce order,

\textsuperscript{47} William Simpson, \textit{The Practical Justice of the Peace and Parish Officer} (Charles Town: Robert Wells, 1761), 163-164.

\textsuperscript{48} Crime statistics and tables can be found in chapter 2 and the appendix.
and keep plantations productive. Effective overseers were then essential to the operation of any major plantation, especially since planters often took up governmental and professional duties. Owners often left their plantations for extended periods. Planters commonly maintained both a plantation home and a residence in Charles Town. Hence, planters placed a great deal of trust in overseers, who ran the plantation in the master’s absence. In fact, one of the major benefits provided to owners by the laws limiting slave punishment was the legal recourse it gave them should their appointed managers kill or wound a slave. Owners could also seek compensation in cases of embezzlement and neglect. Justices of the Peace could examine such cases and issue summary judgments. Owners could legally withhold up to £20 of the overseer’s or manager’s wages before even applying to a Justice for redress. If an overseer worked the master’s slaves for his own purposes, the planter could charge the overseer up to twenty Shillings per day until the value of the labor was satisfied. Planters were then legally protected from abusive employees and had vast powers over their slaves and free workers. They only needed to show “sufficient cause” in punishing slaves and refrain from killing or maiming them.

49 Philip Morgan highlights this issue in *Slave Counterpoint*, arguing that lowcountry planters were less involved in the day to day operations of their plantations than Chesapeake planters. Lowcountry planters were wealthier and could afford to be away (35-38). Lowcountry planters had more slaves to manage, many of whom were relatively unacculturated (64). Indeed, by 1760 there were only three parishes in the lowcountry that were less than 70% black (95). The lowcountry task system, through which slaves worked on assigned tasks until the job was finished, provided the slaves with more autonomy than Chesapeake slaves possessed (185). Hence, Morgan argues that drivers, who actually supervised the slaves’ work, were the “most important” employees on a plantation (218). They were even more important, because quality overseers who managed all plantation operations were relatively difficult to find (220-221).

50 Simpson, 193.
South Carolina planters were not true absentees. Charles Town was never so far that a planter could not be informed and involved, but running a lowcountry plantation was a complex task that demanded full time supervision. As seen in surviving plantation records, planters or employees had to manage land usage, maintain buildings, oversee the complex production of rice and indigo and supervise personnel. Though planters might build ornate town homes, they continued to build elaborate English style residences on their plantations and often divided their time between homes.\textsuperscript{51} As genteel lords and ladies, plantation masters and mistresses desired to be above day to day managerial interactions with slaves. Hence, they needed a trustworthy, reliable, reasonable and obedient overseer to do the dirty work.

Henry Laurens, one of the colony’s wealthiest merchants and planters, provides an excellent example of plantation hierarchy and the master’s real and perceived roles. He was also one of the few planters from this era who left behind a vast and easily accessible treasure of personal documents. As a man of many and varied business and official interests, Laurens did not typically spend a great deal of time on his plantations. He had to rely heavily on his overseers to run his plantations properly. Unfortunately for Laurens, this task was not always easy to accomplish.

In the spring of 1766, Henry Laurens encountered trouble with an overseer whose actions threatened to upset the order on one of his plantations. A slave named Adam came directly to Laurens with a “trifling complaint,” telling Laurens that overseer

Frederick Wiggins was going to send Adam to the work house for “proper chastisement.” Laurens, acting the part of the plantation’s sovereign, pardoned Adam for whatever he had done and sent him back to the plantation. Laurens showed little concern that this slave had been maltreated. His wrath instead turned toward Wiggins for violating the chain of command. Laurens immediately wrote to Wiggins and commanded him to reprimand the slave only. However, he also ordered Wiggins to punish Adam severely if he misbehaved again. Laurens then chastised Wiggins: “I hear that you entertain much company and live in a manner unbecoming of your station.” Laurens added that he did not believe every story he heard, but warned that Wiggins must “walk honestly and discreetly, whereby your conduct will put silence to all evil report.”

The issue did not end there. Laurens was very upset that Adam came directly to him, and he wanted to be certain that everyone knew his role on the plantation. Wiggins should not behave as if he were the master. Moreover, the overseer must not threaten plantation productivity by being so harsh that slaves had to come directly to Laurens, thus upsetting the plantation hierarchy. Laurens also worried that the slaves would misinterpret his role as master. “They [the slaves],” he wrote to Wiggins, “must expect no indulgence from me but in proportion to their good behavior, but remember on your part not to make ill use of your power.” The slaves must not be allowed to see Laurens as a way around punishment, and Wiggins must not abuse his power in a way that could

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52“Henry Laurens to Frederick Wiggins, March 19, 1766,” Papers of Henry Laurens, 5:91. Laurens says nothing about who “Adam” might have been or what his role on the plantation was. He is only mentioned in these few letters dealing with Wiggins.
harm Laurens’s control over the plantation and its slaves.\textsuperscript{53} In other words, Laurens could not be seen as “soft” by nullifying hard punishments. He also did not want to rob his overseers of authority by allowing slaves to bypass them.

Laurens criticized another of his associates, John Jackson, for taking unauthorized initiative to chastise Wiggins.\textsuperscript{54} Jackson had written a scathing letter to Wiggins saying, “You are an impudent, saucy fellow, and I tell you further if you don’t behave in another manner I shall get you turned out of the doors very soon. I am informed what a fine parcel of company you keep and must whip wenches til they miscarry.”\textsuperscript{55} Laurens did not record Wiggins’ response, but Laurens was not quick to believe the harsh accusations Jackson had made. He accused Wiggins of living above his station and abusing slaves. Furthermore, he implied that Wiggins beat slave women to miscarry when he had impregnated them. Laurens reminded Jackson it was not his place to reprimand his employees and entreated Jackson to “let that man alone…unless you have any legal demands upon him.”\textsuperscript{56} Again, Laurens showed little concern about the mistreatment of slaves. His letters do not indicate that he made any attempt to personally investigate these charges. Laurens was most concerned with maintaining his authority and the chain of command, which stands in contrast to his self-described role as a monarchical figure, presumably obligated with duties of care.

\textsuperscript{53}“Henry Laurens to Frederick Wiggins, March 20, 1766,”\textit{Ibid.}, 92.
\textsuperscript{54} John Jackson was Henry Laurens’s former ward. Like Laurens, Jackson’s father owned a plantation in Colleton County.\textit{Ibid.}, 90, fn. 2. Laurens’s correspondence does not indicate why Jackson and Wiggins apparently became enemies.
\textsuperscript{55}“Henry Laurens to John Jackson, April 2, 1766,”\textit{Ibid.}, 96.
\textsuperscript{56}\textit{Ibid.}
Peter Manigault also had to intervene with an overseer on at least one occasion. In this case, the overseer simply could not manage the slaves. Overseer William Thompson wrote Manigault that two slaves had quarreled on the road and were always at odds with each other. Manigault intervened and ordered Thompson to separate them permanently and “keep a strict hand over them.”

Manigault knew the importance of keeping order through discipline, but he also thought it was important to maintain harmony on the plantation. When advising his friend Ralph Izard on the purchase of new plantation lands, he told Izard to purchase land close to existing plantations, “especially as it will be very hard upon the old negroes to be moved such a distance from their friends.” Manigault suggested that Izard reward old slaves who had, in his view, given faithful service. However, he also understood that a slave’s happiness was most important to the extent that it helped preserve order and harmony on the plantation. If a master did not take slave families and friendships into at least some account, it could give the slaves more cause to run away or otherwise cause disruptions. Benevolence was not the planter’s major motivation. He needed his slaves productive and peaceful to keep the plantation profitable and the master wealthy. Any privileges involving travel, non-work activities, or family could be taken away at any time.

Eliza Lucas Pinckney, often credited as a pioneer in indigo production and a member of one of South Carolina’s wealthiest and most prominent planter families, had

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57 Peter Manigault to William Thompson, July 4, 1771, Peter Manigault Letterbook, 1763-1773, Manigault Family Papers, SCHS.
58 Peter Manigault to Ralph Izard, April 19, 1765, Ibid.
similar problems with overseers. Upon returning from England in 1760, she lamented that her plantation was in a deplorable state of disrepair. She had hoped for a good crop that year, but drought severely limited her profits. She also found her lands mismanaged by “ignorant and dishonest” overseers, so she decided to hire an “experienced planter” to supervise and instruct all her overseers in plantation operations. Eliza Pinckney knew the importance of reliable employees, writing that a South Carolina plantation required “great care, attention, and activity.” Given these kind of staffing problems and the fact that many planters owned multiple, scattered plantations, hiring an expert plantation manager, especially if the owner went on a long trip like Pinckney, was an appealing management technique.

Planters usually signed formal articles of agreement with overseers that laid out their duties and compensation. John Ball drew up such a contract for overseer Arthur MacFarlane that specifically discussed his slave management duties. MacFarlane was “to be active and diligent in promoting the interest of John Ball, taking care of the negroes, especially when sick; treating them when well with moderation and humanity, and is on no occasion to beat them with sticks—when necessary always to correct them with switches.” Ball set no limit on how many lashes a slave could receive or how any specific problem should be punished. MacFarlane had discretion in these matters. He may have been a replacement for another overseer, but Ball’s records are unclear.

61 “Articles of Agreement—John Ball and Overseer Arthur MacFarlane,” Ball Family Papers, SCHS
However, a planter regularly had to seek new overseers and probably had many opportunities to draw up contracts that expressed obligations, compensation and privileges. Isaac Hayne’s register indicated that he hired at least ten overseers between 1773 and 1780.62

The records of several prominent planter families including the Ravenels, Balls and Pinckneys survived fire, hurricane, earthquake and war, but such eighteenth-century plantation records (and even plantation houses) are relatively rare in South Carolina. Most records consist of account books. Keeping very careful account of provisions given to slaves, plantation tools and slaves sold or traded (and in some cases for what reason) are common elements found in these documents. These records, kept by the plantation owner himself, show a deep level of involvement in the business side of the plantation, including an intimate knowledge of the slave work force. However, that involvement was not personal. These business records treat slaves as mere commodities that supported the planters’ wealth. However, detailed account books reveal the efforts planters made to account for their property and maintain discipline and productivity. Though these records do not recount actual slave punishments, the account books do reveal some ways in which slaves resisted the master’s authority and how masters responded,

Isaac Hayne’s plantation register is one of the more enlightening documents to have survived. The register reveals how planters used slaves as profit-generating commodities. It includes no record of slave punishments, but Hayne kept very close

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62 Isaac Hayne Plantation Register, 1764-1781, SCHS.
account of the slaves he sold and traded. The record, which stretches from 1764 to 1781, lists that he sold thirty-three slaves during that time. Hayne sold seventeen of these slaves to an iron works. He also listed several runaways. “Big Jack” ran away and died. Ovid was “lost” in 1774 and then “found” four years later. Hayne had no compunction about breaking up slave families. He sold five of Elsey’s children to the iron works. Hayne sold two of Peggy’s children after selling her to the iron works.63 His slaves’ families existed as commodities that served the master’s wealth. Despite whatever “concession” a master made in allowing slaves to have families, these families had no legal standing and mainly existed to serve the master’s business interests.

Hayne treated slave women like Elsey, who were prolific mothers, as valuable assets. Her many children could be sold for anything between £500 and £1,300 (based on actual sale prices listed for other slaves). Other records indicate that planters kept close records of slave marriages. The record book for Fairfield Plantation (owned by the Pinckney family) lists husbands, wives and children by name. These marriages were not legally sanctioned, but the Pinckneys at least informally recognized the unions. Planters, however, had no qualms about breaking up a family or a marriage by selling husbands, wives or children. The Fairfield book also carefully lists tools and blankets given out each year.64 Not only did slave families have no legal existence, their possessions ultimately belonged to the planter.

63 Isaac Hayne Register, 1764-1781, SCHS.
64 Fairfield Plantation Book, 1773-1797, Pinckney Family Papers, SCHS.
John Ball’s memo book, spanning the years from 1774 to 1780, is also a very
detailed daily account of the exact clothing items sent to wash by the slaves from his
family’s home. Why would a planter personally keep such a record? Only one entry
(September 18 with no year) complains “things missing, breeches and stockings.” A
planter like Ball would keep such a record to keep track of his property and expenses.
The record never indicates that slaves received compensation for this work, so it is not a
payroll. Slaves also did not own these laundered items. They were the master’s property
entrusted to the slaves. Ball clearly did not, however, trust them to return clothing
without a daily log.65

Masters also kept a very close watch over supplies and food given to slaves.
These records existed to keep track of and control costs, but detailed records of food,
blankets and tools supplied by masters could also help satisfy a magistrate if anyone
raised a complaint. Moreover, keeping close account of items (especially blankets and
tools) could inform the master if any sabotage were taking place and possibly (if the
record were detailed enough) of who was doing it. William Wragg, one of the wealthiest
planters in the colony and a prominent member of the Commons House of Assembly,
kept such an account. His plantation journal tracks how much corn field and house slaves
received and exactly how many axes and hoes he had to issue. He noted that one slave in
particular—Charles—went through two axes and hoes in one year alone. Several other
slaves appear on the list of individuals whose tools needed replacing. The only real
reasons to associate tools with individuals were to monitor either negligence, bad work

65 Memo Book of John Ball, 1774-1780, Ball Family Papers, SCHS.
habits (which might result in broken tools) or outright theft and sabotage. His lists served the same purpose as John Ball’s and allowed him to monitor which slaves were damaging the master’s property and possibly causing work stoppages or driving up expenses.\(^66\)

By allowing for slave families and providing adequate necessities to slaves, masters and slaves exchanged (though this exchange or negotiation was decidedly uneven) goods or privileges for services.\(^67\) Philip Morgan argues that slave owners like Landon Carter or Henry Laurens sometimes thought in terms of these “reciprocal obligations and duties between master and servant.”\(^68\) Slaves had a duty to work, and masters had an obligation to provide: “A master who could not provide support relinquished his claims to his slaves’ obedience.”\(^69\) For example, when Ralph Izard’s financial woes led to poor supplies of clothing on his plantations, many of his slaves “deserted” his plantation for Charles Town to make their complaints to Henry Laurens, who was managing Izard’s properties. Work on Izard’s plantations ground to a halt because of how conditions for the slaves deteriorated.\(^70\) Masters may have thought in terms of duty and obligation, but these exchanges were hardly reciprocal. Slaves did not have a duty to obey. Rather, they obeyed because the threat of punishment always hung over them. Masters did not make concessions or offer provisions just because of a sense of patriarchal duty. They allowed slave behavior and provided material that led to profit.

\(^{66}\) William Wragg Plantation Journal, 1773, SCHS.
\(^{68}\) Morgan, 280.
\(^{69}\) Ibid., 280.
\(^{70}\) Ibid., 280.
and productivity. Records like Hayne’s, Ball’s and Wragg’s recognize the constant problem of slave resistance by keeping track of slave behavior that needed correction.

Owners might also involve themselves in punishing or managing slaves by selling them. Henry Laurens had particular trouble with two slaves. One, named Sampson, had been purchased recently and worked at Mepkin Plantation. A harsh overseer drove Sampson to run away. Sampson was a relatively new slave who had been at Mepkin just over a year. He fled to Santee and “fell in with a poor worthless fellow who entertained him near eighteen months.” This fellow eventually sent Sampson back to Laurens for fear that he would be caught by the slave patrol for harboring a runaway. Laurens himself got involved and ordered the slave back to work without any punishment. He blamed the overseer’s abuse and wanted to restore order at Mepkin. Sampson, however, ran back to “the knave,” (unmotivated by any apparent “abuse”) who again returned him when he learned Laurens was preparing a prosecution. By now Henry Laurens had reached wit’s end with Sampson and consigned him to Joseph Brown for sale. Laurens rationalized his decision by saying he could not keep a repeated runaway. “Indeed this is the first and only one [sold because he was] a bad example to the rest of my slaves who are in general very orderly and give me little trouble.” Laurens banished Sampson out of fear he might lead other slaves to resist the master’s power by simply fleeing from it.71

Henry Laurens had acted the part of a benevolent lord, first giving Sampson a second chance. When the slave’s action became a threat to productivity and peace on the plantation, Laurens sold him. The Sampson incident serves as a very good example of

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how planters perceived that their authority at least partially depended on benevolence, but they ultimately relied upon force to maintain order and productivity. When he had to sell another disruptive slave named Abram, Laurens specifically used the word “banishment.” Laurens hoped that “this kind of banishment” would alarm the other slaves and teach them that repeatedly disrupting productivity was unforgivable. Laurens hoped that “this kind of banishment” would alarm the other slaves and teach them that repeatedly disrupting productivity was unforgivable.72 Slaves were allowed family life, and, especially on the larger plantations, they could create a community or a “world of their own” in the slave quarters.73 The term “banishment” implied that Laurens recognized that, though there were slave communities on his plantations, he was still the ruler of this little kingdom. Disrupting the plantation (i.e. cutting into the master’s profits) was tantamount to rebellion against the master’s authority, so Laurens acted to remove this source of subversion.74 He used force, not benevolence, to control his slaves’ behavior in the end.

Instead of banishing a slave, Henry Middleton freed one man as a reward for what he considered to be loyal service. In his will, Middleton requested that his servant Caesar be manumitted for “his good conduct.” Furthermore, he ordered that £1,000 be put out on loan and Caesar given the interest as a steady income for the rest of his life. As for the other slaves, he only directed that his heirs keep the slaves on the Combahee plantation together until the crops they planted were brought to market.75 He made no other specific provisions about them. Middleton recognized the utility of not breaking up groups of slaves, which likely included family and friends, for the sake of productivity. Breaking

72 “Henry Laurens to George Dick, June 1764,” Ibid., 298.
73 Berlin, 162.
74 Isaac, 228.
75 Will of Henry Middleton, 1784, Benjamin Huger Rutledge Family Papers, 1675-1867, SCHS.
up a community of slaves in the middle of a harvest could lead to disruption and loss of profit.

Some planters may have genuinely believed that slavery could be benevolent, but discipline and profitability on the plantation were never put out of mind. Eliza Lucas Pinckney, for example, included slaves in her daily prayers:

I am resolved to make a good mistress to my servants, to treat them with humanity and good nature, to give them sufficient and comfortable clothing and provisions and all things necessary for them, to be careful and tender of them in their sickness, to reprove them of their faults, to encourage them when they do well, and pass over small faults, not to be tyrannical, peevish, or impatient towards them, but to make their lives as comfortable as I can. She considered arbitrary cruelty to her slaves a sinful form of tyranny but did not consider slavery itself a kind of abuse. She accepted slavery as normal, and she expected obedience as a matter of obligation. Middleton, Pinckney, and Laurens never indicated that they saw slavery itself as a kind of abuse. Pinckney did not even consider discipline to be abuse. It was just a part of her natural duties as plantation mistress. They all evidence a belief that plantations needed to be governed by balancing discipline and care. Planters could maintain this unrealistic belief because they distanced themselves from the daily realities of governing and punishing slaves by employing overseers to manage these tasks. Runaway slave ads reveal the oftentimes brutal reality of slave management that planters like Pinckney and Laurens did not care to acknowledge.

The advertisements reveal the kinds of punishments plantation operators used to force obedience. As the slave code also indicates, whipping and chaining were the most

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76 Eliza Lucas Pinckney Prayer Book, Pinckney Family Papers, SCHS.
common forms of punishment. Several announcements indicate mutilation (which the law forbade) but do not indicate how it came to be. For example, a workhouse announcement from 1775 read as follows: “A negro fellow, of the Guinea country, says his name is Joe and his master’s name Saunders, who lives in Dorchester. He is 5 feet 8 inches high, has his country marks down each side of his cheeks and his breast, and has a piece of his right ear cut off.” This slave’s ear may have been cropped, but it is impossible to know when, how, or who did it. Several ads mention iron boots: “Runaway the 28th May last, a lusty Negro fellow named James, about 16 years of age, born in North Carolina or Virginia…he had also an Iron Boot on his right leg, but as he has taken two files with him, may perhaps get it off.” The ads that describe whipping usually only tell where the lash marks appear on the slave’s body (mostly on the back, but in once instance on the stomach). Many of these advertisements use the term “marks of an old offender” as a euphemism for whipping: “Topsam…had on when he went away, an iron on each leg, with three or four links of chain between, and carries on his back the marks of an old offender.”

Plantations served as a basic unit of government in colonial South Carolina. Planters had to govern the employees, slaves, and operations of these complex little kingdoms with care. The slave code provided standards for masters in managing plantations, but it did not primarily exist to govern the behavior of planters. Just as

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78 Ibid., June 10, 1766.
79 Ibid., August 4, 1767.
plantation government ultimately relied on the owner's ability to use coercion and force (despite how the planters saw themselves) to deal with the ever-present threat of slave resistance, the planter class collectively relied on the legal tools their assembly created to address larger issues of slave resistance. One might be tempted to look at the slave code and the planter elite's concern about slave resistance as a ruling class living in fear of those they oppressed. In truth, planters imposed fear; they did not live in it.

**The Slave Courts and Enforcing the Slave Code**

The Courts of Justices and Freeholders tried slave crimes. These courts also had jurisdiction over free blacks. The 1740 Negro Act erected a separate, racially based criminal justice system. Severe crimes committed by slaves that would result in death had to be brought to trial. The courts did not exist to protect slaves' rights or provide them with due process. They existed to punish slaves and protect the property rights of slave owners. Since the court condemned slaves as criminals instead of planters punishing them as rule breakers, a master expected compensation when the government deprived him of his human property. Thus, the law required the assembly to compensate the owner from general treasury funds if a court condemned a slave to death. The courts also officially sanctioned the most oppressive and brutal aspects of plantation government—executing and mutilating slaves.

There was no single court that handled slave crimes. The records of those courts were either not kept at all or destroyed, and very few records of slave trials have survived to this day. Yet, by examining assembly records, one can piece together how the slave courts worked, see the operation of the courts in the few records that survive, and
estimate how many cases the courts handled. The courts were one of many important law enforcement tools. Taken together, all of these enforcement mechanisms primarily served to maintain the social order and prevent disruptions to the plantation economy.

The Courts of Justices and Freeholders took their name from their composition. Not less than two Justices of the Peace and from three to five freeholders (voters) in the county where the offense was committed tried capital cases. In non-capital cases, a single Justice of the Peace and two freeholders presided. These courts had no permanent personnel, quarters or records. Since there were hundreds of Justices of the Peace and thousands of freeholders, a slave court might never have the same personnel from trial to trial. Being able to meet at any place and time allowed for quick responses to alleged slave crimes. Slaves could not appeal to a higher court, and the justices and freeholders had authority to act as judge, jury and executioner.

The section of the Negro Act outlining trial procedures set out the assembly’s purported philosophical purpose for creating these courts: “Natural justice forbids that any person of what condition soever be condemned unheard.” Ironically, the same Commons House that condemned blacks to perpetual slavery appealed to “natural justice” in establishing courts that resembled nothing within the English legal tradition.

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80 Georgia and Delaware used similar procedures. Virginia allowed a single Justice of the Peace to punish minor offenses and held a regular, single court in Williamsburg to try felony cases. Thomas Morris argues that the 1739 Stono Rebellion prompted a decline in a single magistrate’s power in South Carolina. After Stono, freeholders were added to the equation. Morris argues that the property interests of slave owners trumped magistrates’ power in South Carolina. Freeholders could also moderate overzealous Justices of the Peace and prevent possible insurrections or other acts of slave retribution in response to harsh or unwarranted punishments. Morris, 210-226.

81 Simpson, 165.

82 Cooper, Statutes at Large, vol. 7, 401.
“Natural justice” meant very little for the slaves who would come before these courts, especially since white testimony would take precedence over black testimony every time, and slave defendants had virtually no legal rights before the courts. The courts could do what individual masters could not: impose official state sanctions and inflict sometimes brutal public punishments and executions in order to inspire fear enough in the colony’s slave population to deter other acts of resistance. Despite the assembly’s grand declaration about “natural justice,” the courts only existed to impose the power of the master class.

Procedure was simple and clearly outlined in the law. If a slave committed a crime, he was handed over to a parish constable. The constable then summoned justices and freeholders to hold a trial, which had to occur no later than six days after the arrest. Upon conviction in capital cases, the court also had power to determine whatever method of execution it deemed appropriate. The procedure remained the same in non-capital cases, but the court could only inflict corporal punishment short of death and dismemberment. Free Indians and slaves could give testimony but not under oath.83

The assembly limited judicial discretion for certain crimes perceived to be the most generally threatening. Any slave convicted of participating in an insurrection or encouraging others to run away had to be executed. To further demonstrate the slave’s place in society, constables could recruit any slave to carry out punishments handed down by the courts. Slaves who taught another to make poison also faced certain execution, and no black was allowed to administer medicine to a slave except under white

83 Simpson, 166-167.
supervision. The assembly would compensate owners for executed slaves based on a preset value determined by the assembly. The slave code listed several additional offenses as capital felonies with no benefit of clergy including arson (i.e. burning crops, commodities or goods), poisoning, stealing a slave, murder, insurrection or “deluding and enticing” slaves to run away. All of these crimes fall under two categories: crimes against property or overt attacks on white power. Moreover, they all represented breakdowns of order that could potentially impact more than just one owner or one plantation.

Henry Laurens preserved a partial record of a 1769 trial. A “mulatto man” named Dick was brought before a Court of Justices and Freeholders and accused of instigating the poisoning of one Mr. Sands and his family. He was tried according to the Negro Act, convicted and given twenty-five lashes in each corner of Charles Town over two days (totaling 200 lashes). Dick’s right ear was also cut off. However, he was spared the death penalty, since he was a free mulatto and did not actually teach anyone to make poison or poison anyone himself. The court also tried two slaves named Dolly and Liverpoole (the former owned by James Sands and the latter by William Price) and executed them for the actual poisoning of James Sands and his infant. Liverpoole was a black “doctor” who supplied the poison. The two were burned alive on the workhouse

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84 Ibid., 172-173, 186
85 Cooper, Statues at Large, vol. 7, 413.
86 The only full record of a slave trial is from 1749 and is recorded as part of a Governor’s report in the Council Journal. In that trial, a slave John was tried and hanged for the murder of another slave called Duff. The trial was held at “Edmundsbury” and was typical of slave trials in this era. For details of the trial see Robert Olwell, Masters, Slaves, and Subjects: The Culture of Power in the South Carolina Lowcountry, 1740-1790 (Ithaca: Cornell University Press, 1998), 57-59.
green. No privately sanctioned punishment taking place on a plantation could create the kind of terror of the public spectacle of two slaves burning alive at the stake.

The court punished these individuals exactly as specified by law to teach a very hard and very public lesson: direct attacks (or aiding and abetting direct attacks) on masters by slaves, free blacks or mulattos would be met by the most terrible retribution. By comparison, the Court of General Sessions did not burn any white convicts or impose so severe a lashing on a white convict in this period. All executions took the form of hanging. Lashings were almost always limited to thirty-nine stripes. The courts might also hang slaves, but they used public burning to instill fear and terror for the purpose of deterring other potential offenders. Poisoning was a particularly grievous offense. Slaves commonly prepared food for their masters. Even attempted or rumored poisonings had to be taken very seriously, so Dick, though he did not poison anyone himself, was lashed nearly five times the normal limit for white crimes and mutilated (something the law forbade masters to do individually). Punishments like burning or

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87 “Extract from the South Carolina Gazette, August 17, 1769,” Papers of Henry Laurens, 6:126. It should be noted that this is not a complete trial record. It is a recounting of the basic facts of the case from the newspaper as preserved by Henry Laurens. Laurens included the story along with a letter of the same date to James Habersham. The original story containing the same details can be found in the August 1, 1769 edition of the South Carolina Gazette. Neither Sands nor Price appear to have been among the top tier of the elite, as neither served in the Commons House of Assembly. No follow up stories were printed in the newspapers, and Henry Laurens did not write or speak of it again. All known facts of this particular trial come from the forwarded newspaper article. Henry Laurens is also one of the main sources of information about the Court of Justices and Freeholders trials of the free black man Thomas Jeremiah. Jeremiah was convicted of perjury and suspected treason against the revolutionary government in 1775. He was hanged and then burned, unlike Dolly and Liverpoole who were burned alive. See Ryan, “Under the Color of Law.”

88 In Europe, extremely brutal forms of execution such as burning at the stake, breaking on the wheel, or disembowelment were reserved only for “heinous” crimes such as witchcraft, treason, or aggravated murder. They were specifically designed to inspire a terror of committing these crimes. See Julius Ruff, Violence in Early Modern Europe, 1500-1800 (Cambridge: Cambridge University Press, 2001), 96-113. See also Pieter Spierenburg, The Spectacle of Suffering: Executions and the Evolution of Repression (Cambridge: Cambridge University Press, 1984).
mutilation were tools the master class could only effectively exercise through the courts, which could then publicly inflict these horrors to send unmistakable messages to the general slave population.89

The courts did not leave behind full records, so it is very difficult to estimate how many slaves they tried. However, the Commons House recorded slave executions so that owners could be compensated. The Commons House journal records that eighty individuals received between £200 and £400 per slave executed between the years 1763 and 1774. Since masters would almost certainly seek compensation, one can surmise that the Courts of Justices and Freeholders tried and convicted at least eighty slaves of capital offenses in this period.90 The assembly also compensated constables who had to bring slaves to trial and summon the courts. From 1763 to 1774, 194 constables received funds for apprehending slaves, summoning courts and attending trials. The record does not indicate which constables served in what trial, so individuals may have served in the same trial and received compensation multiple times.

90 These figures have been compiled from the Accounts of Public Creditors and Schedule of Charges to the Treasury drawn up each year (for the previous year) by the Commons House of Assembly. There are no records for 1764, 1769, and 1775, as the House was unable to complete its fiscal duties in those years. The house was tied up by the Stamp Act crisis in 1765 and the Wilkes Fund Controversy in 1770. The Commons House had ceased to function as a legislature and been all but replaced by the Provincial Congress by 1776. South Carolina Commons House of Assembly, Journals, 1763-1775, SCAHC.
Table 3.3
Slave Trials and Executions, 1763-1774

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<tr>
<td>Constables Compensated for Trials</td>
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<td>16</td>
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Source: South Carolina Commons House of Assembly Journals, 1763-1775.

Table 3.4
Slave Trials and Executions by Year

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<th>Year</th>
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</tr>
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<td>22</td>
</tr>
<tr>
<td>Total</td>
<td>80</td>
<td>199</td>
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</table>

Source: South Carolina Commons House of Assembly, Journals, 1763-1775. “Constable Trial Compensations” include only those constables compensated for summoning courts and attending trials.

On average, the Courts of Justices and Freeholders executed seven slaves per year. If one assumes that each constable compensated by the assembly served in a unique trial, the record indicates an average of sixteen slave trials per year and approximately 200 trials in the period from 1763 to 1776. These figures should be treated with some caution just like figures from any criminal court. One must be aware of a potential “dark figure.”

The assembly records also never specify what charges resulted in an

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91 Not all crimes that were committed were reported or handled by the courts, and incomplete or unclear records do not even provide a total picture of crimes coming before the courts.
execution. By comparison, the Court of General Sessions (which handled white crime) handed down nearly 250 verdicts in only an eight year period from 1769 to 1776. The most striking figure is the number of executions. While the Court of General Sessions only ordered eighteen people to their deaths from 1769 to 1776, the Courts of Justices and Freeholders executed more than four times that number from a potentially smaller number of cases. The Court of General Sessions, in other words, imposed the death penalty in about 3% of its cases, whereas the Courts of Justices and Freeholders did so in approximately 40% of its cases. There were far more blacks than whites in South Carolina at this time (49,066 whites and 75,178 blacks in 1770), so the Courts of Justices and Freeholders had a much larger population under their jurisdiction. Nevertheless, the Courts of Justices and Freeholders relied on the death penalty (and the fear it was meant to inspire) far more frequently than did the Court of General Sessions.

Whites certainly faced a large and growing number of capital crimes, but they had some limited options for appeal or commutation. Slaves had no similar options. When a slave faced the death sentence from a Court of Justices and Freeholders, the verdict was final. From the white perspective, how could a slave, who was expected to be illiterate, be able to recite a Psalm and claim benefit of clergy? Slaves had no part in any of the white legal systems protections. Trial and punishment for slave crime was swifter, more localized and far more severe. It is also important to note that the number of trials and executions did not decrease over time. More executions took place in 1774 than any year

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92 Coclanis, 66.
save 1763. The assembly records clearly suggest that this criminal justice system was not merely for show or some “prescriptive fantasy.”

However, the courts did not enforce the colony’s slave laws alone. By law, every white person in South Carolina served some role in enforcing the slave code, but the slave patrol was the most important agency. The patrols, organized by act of assembly in 1734 and revised several times thereafter, were composed of militia and organized into districts. Each district patrol consisted of one captain and four men. The governor appointed the captain who recruited his men. Three commissioners supervised each district patrol and had to approve the captain’s recruiting choices. The districts were based on locations of foot militia companies. Each man had to own a horse, pistol, gun, cutlass and a cartridge box with at least twelve cartridges. The patrols had precedents in the European *posse comitatus*. The *posse* consisted of armed bands of men in England called out to capture fugitives. It also may have had roots in the “hue and cry,” which constables issued to call out the local population to apprehend a criminal. Slave patrols were permanent versions of these institutions and a new innovation for the colonies.

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93 Edelson, 10. Edelson argues that South Carolina was too large and slaves too numerous to realize the code’s ideal of an “immobilized slave, whose every step beyond the plantation was to be authorized by the master.” Moreover, owners often kept slaves moving between settled and wild spaces to link dispersed land holdings. He is correct in that masters did often move slaves and put them out of their immediate supervision, but he does not account for the actual activities of the courts or consider the extensive nature of law enforcement (even beyond the 1740 code), which drafted every white person in the colony into service. Certainly, eighteenth-century law enforcement could never completely control the behaviors of a large class of people, but the assembly records show the system was active, and the overall record indicates no major slave rebellions after the code was enacted. Complaints about the law’s effectiveness and enforcement were not uncommon in Charles Town, but those complaints were directed mostly at individual actions, not the collective actions of the ruling class in the form of the law. Again, the law enforcement and criminal justice systems for slaves were the most extensive in the colony and among the most extensive systems (by English standards) of any—white or black—in any North American colony.

England also had a strong militia tradition in the seventeenth and eighteenth centuries, and it was often used to put down insurrections and limit dissenters.\textsuperscript{95}

Patrols rode out and examined each plantation in the district once a month. They had power to arrest any slave off the plantation without a permission ticket and could “correct” captured slaves with up to twenty lashes. They also possessed extensive powers of search and seizure. Patrolmen could enter the house of any black person without warning and search for weapons or stolen goods. Officers could even inventory all items within the house and check with the slave’s master for discrepancies. Any goods deemed stolen would be sent to the district commissioners. If a slave were suspected of illegal activity, the patrol could even enter the slave’s home without the master’s permission.\textsuperscript{96} A subsequent revision to the law allowed the patrol to enter the homes of those suspected of trafficking with slaves.\textsuperscript{97}

Patrols existed to guard against slave insurrection and enforce community standards for governing slaves. However, the patrol mainly existed to deal with the persistent issue of runaways. The law required each patrol to ride out once every two weeks to search for runaways, but if an overzealous patrolman lashed a slave with a ticket or on the plantation, the patrolman would receive a forty Shilling fine.\textsuperscript{98} With its regular patrols and powers of search, the institution was designed to restrict slaves’ movement, keep slaves from forming groups outside the plantation, and prevent slaves from possessing illegal goods. When the royal government collapsed and colonial leaders

\textsuperscript{95} Hadden, 1-2, 42.
\textsuperscript{96} Ibid., 396.
\textsuperscript{97} Ibid., 684.
\textsuperscript{98} Simpson, 198.
feared the British might try to encourage slave revolts, the patrols’ powers become more extensive.

The elite also relied upon lower-class whites to enforce their order and rule. Any white person could legally capture a runaway and return the slave to his master or the Charles Town workhouse (if the master was unknown) for a twenty Shilling reward. This power was not limited to recovering runaways. Any white person had the right to question any slave or black person and demand to see a ticket. If a slave refused to cooperate, the white person could apprehend him and apply “moderate correction,” which the law left undefined. Should the slave assault or strike a white person, the white person could legally kill the slave. For fear that slaves might rise during the most vulnerable times, a 1743 supplement to the slave code required every white man under sixty to carry a gun or pair of pistols to church on Sundays and Christmas. Violators would receive a twenty Shilling fine. The law also required the entire Charles Town watch to be armed and on duty on Sundays. Hence, as Lathan Windley writes, “all of white society served as an extension of the owner’s control.”

The workhouse was another punitive tool used to protect the plantation economy and maintain the oppression of slaves. The workhouse master had the power to hold slaves for up to eighteen months and publish lists of those recently brought in. He could

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99 Ibid., 176.
100 Ibid., 163-64.
101 Cooper, Statues at Large, vol. 3, 417-418.
sell unclaimed individuals at auction. The workhouse was a universal dumping ground for the colony’s undesirables until it was reformed and split into a hospital and a house of corrections. The warden forced all able-bodied individuals to work and could withhold food from those who refused. The law allowed him to shackle and whip inmates (up to nineteen lashes per day). Captured or slaves whose masters had committed them for punishment (slaves who were “stubborn, obstinate or incorrigible”) would be put to hard labor every day or receive other punishment at the master’s expense. None of the people incarcerated in the workhouse received a trial, and many would never even be charged with a crime.

Runaways and the Charles Town Workhouse

Slaves ran away to seek relief from oppression, and they presented the most difficult problem for the slave law enforcement system. The very large (known) numbers of runaways force a modern observer to reject everything the planters thought about themselves. Slaves ran away to escape from or at least temporarily ease the inherent oppression of slavery, not because one bad master was abusing the system. The extensive criminal justice and law enforcement systems governing slavery existed because the unnatural, oppressive system could not function without force applied first by individual masters and then collectively through the power of the state. For individual

103 Simpson, 176-77.
104 Ibid., 262-264.
planters, runaways represented lost labor and a lost investment. Recovering runaway slaves was crucial for planters, and the problem posed a threat to the plantation economy. Running away was an overt act of rebellion against an owner’s authority, and, in the minds of the planters, the natural social order.\textsuperscript{106} Individual owners could not deal with the scope of this problem on their own. They used communication (especially through the colony’s newspapers) and a strong law enforcement system to contain—but never totally control—runaway slaves.

Advertisements placed by planters seeking to recapture their runaway slaves were among the most often repeated elements in South Carolina’s newspapers. A single issue might contain a dozen such advertisements. Some complained that a slave had run away several times already, and many advertisements and announcements placed by the workhouse indicate that a slave had been wounded, branded, chained, whipped or otherwise punished in the past. Running away did not necessarily indicate intent or hope to leave the plantation forever. Many advertisements indicate that the planter believed the slave had gone to see relatives or associates on another plantation or distant area, which suggests that running away could allow a slave to take time off to see distant family or friends or even find a mate on another plantation.\textsuperscript{107} Runaway slaves commonly tried to pass as free to either temporarily or permanently escape slavery. This behavior could relate to threats of punishment, crimes committed, fear of being sold or

\textsuperscript{106} Isaac, 228.
\textsuperscript{107} See Morgan, 525-530.
separated from family, an attack on an owner or overseer, or having been urged to flee by others.\textsuperscript{108}

While no single type of incident most influenced a slave to runaway, all runaways challenged the basic assumptions of slavery by seeking freedom in this way. In whatever ways masters believed they reached at least a limited accommodation with their slaves (i.e. by granting concessions) or limited what they deemed abuse or cruelty, they constantly had to deal with resistance. Punishment, force, and policing were the only ways they could attempt to contain runaways who challenged the master’s power by removing themselves from his control. It could be a dangerous issue for masters that might disrupt the plantation, encourage others to do the same or allow slaves to meet and possibly conspire away from white supervision. How individual masters responded to runaways varied according to specific circumstances, but the elite, despite the thoughts they expressed about “abuse” and self-restraint, realistically dealt with resistance through the coercive powers they possessed as owners and that they collectively wielded through the state.

The number of advertisements shows the scope of resistance. Charles Town’s three newspapers featured runaway ads and a column from the workhouse announcing the capture of runaways.\textsuperscript{109} The planters preferred the \textit{South Carolina Gazette and Country Journal} and \textit{The South Carolina Gazette}, posting roughly the same number of advertisements in each.

\textsuperscript{108} Windley, 107-108.
\textsuperscript{109} Only \textit{The South Carolina Gazette and Country Journal} posted the workhouse column without any breaks. The other two newspapers only posted it sporadically.
These figures represent only the number of runaways actually advertised and reported in the newspapers. There is simply no way of knowing how many slaves ran away from their plantations. Many instances may not have been reported, because the planter may have quickly recaptured a slave or decided not to seek the public’s aid. Some slaves may not have been caught or missed, having only run away to a neighboring plantation for a short time to visit family or friends. Yet, the large number of advertisements does

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110 SCGCJ: *South Carolina Gazette and Country Journal*; SCG: *South Carolina Gazette*; SCAGG: *South Carolina and American General Gazette*

111 The total includes all slaves in all advertisements (each ad counted only once) not just the advertisements themselves.

112 Includes indications of mutilation, scarring, having been shot, burned, etc.

113 Includes slaves known to have been fitted with chains, leg irons, iron boots or other restraint devices.
strongly suggest that planters usually had to seek legal or public help in recapturing their slaves.

The statistics indicate the magnitude of the law enforcement problem slavery presented to the white authorities in Charles Town and why controlling slaves required the exercise of political authority on the part of the ruling class. Moreover, advertisements that describe the marks of punishment or previous instances of running away show that slave resistance was of a much greater magnitude than even the actual number of runaway advertisements indicate. Slaves regularly resisted, and planters responded by branding, wounding, chaining, whipping, and hunting them. The Court of General Sessions tried sixty-four assault cases from 1769 to 1776 (155 individuals were indicted). The Workhouse processed and housed more than seven times that number of suspected runaways from 1763 to 1776.

Lathan Windley provides a broader array of statistics from South Carolina and Virginia for the years 1730 to 1787. His study reveals that most runaways were either country born (in the colony) or their birth was not indicated. The vast majority of runaways had some degree of acculturation, meaning they had lived in the colony for a number of years, were substantially assimilated or had been born there (only 21% were unaccultured). Thus, though slaves became acculturated, they did not increasingly come to accept slavery at the same time. “Bewilderment and desperation” and the strong desire to regain their recently lost freedom might make freshly imported slaves among

\[114\] Windley, 167-169.
the most likely to run away, but their chances of long evading recapture were low.\textsuperscript{115} Acculturated slaves, especially those who had traveled and had contacts outside the plantation, had a much better chance of avoiding recapture for longer periods of time.

Most advertised runaways were skilled slaves rather than field hands, and the most commonly reported occupations were house servant, tradesman, waterman or carpenter. Owners may have most commonly advertised these slaves, since they were more valuable, costly to replace, and harder to find. The vast majority, some 86\%, were suspected to have stayed within the colony. Some 70\% of runaways in his study were under the age of thirty, and most fled the plantation in the spring and summer months.\textsuperscript{116} Hence, the most commonly advertised runaway was a relatively young, skilled and acculturated slave who was of high value to his master. One might think these slaves least likely to risk punishment or death to seek freedom, since skilled slaves and house servants enjoyed far more freedoms than the field hands. However, they were also the ones who had tasted freedom and had some measure of autonomy. Many owners suggested that a slave might try to pass as free in their advertisements, which suggests that slaves who already had some autonomy and experience with the world outside of the plantation may have been more motivated to or confident in their ability to seek freedom through running away.

Some of the advertisements also give details about the circumstances of a slave’s disappearance. Most commonly, owners simply wrote that a slave had runaway or

\textsuperscript{115} Wood, 251-253. \\
\textsuperscript{116} Windley, 173-181.
“absented” from the plantation without further explanation. Nearly all of the ads contain very detailed physical descriptions, showing (like the plantation records) that owners kept very careful account of their human property. Owners could also be very persistent in pursuing a slave, running multiple advertisements and offering rewards for the public’s help in finding the slave. One advertisement offered £100 reward for the return of a slave who had been gone more than two years. This owner gives a typically detailed description:

One Hundred Pounds Reward. Run-Away from the subscriber’s plantation at Stono, upwards of two years ago, a Negro Fellow named Abraham, about 5 feet 9 inches high, has lost a joint off one of his great toes, and formerly belonged to the estate of Mr. Adams, and afterwards to Dr. Lloyd. He has been often seen on Edisto Island and lately with arms.117

This owner (Humphrey Sommers) had some news about his slave’s whereabouts, but that was normally not the case. Advertisers often listed any outstanding physical characteristics (scars, wounds, deformities, and marks) and places where the slave was known or suspected of hiding. Many slaves were “well known in Charles Town,” having often been there with the owner or overseer on plantation business or possibly having been “jobbed out” or “rented.”

Other advertisements listed specific places where the slave might be harbored. John Champneys advertised that a group of “Jamaica Negroes” in Charles Town were harboring Banaba, his female slave.118 Stephen Drayton warned that his escaped slave Tom would try to pass himself as a free man (a common warning). Drayton also believed

117 Ibid., May 5, 1767.
118 South Carolina and American General Gazette, May 9, 1772.
that Tom was being harbored by “some who strengthen him in his notion of freedom.”\textsuperscript{119}

Charles Town presented an opportunity for some slaves. They might be able to learn a skill working there or experience life away from the plantation if they were hired out. It was a dangerous situation for masters, because slaves could encounter free blacks (the “Jamaica Negroes”) or others who might encourage notions of freedom and provide safe harbor. This ad, like the code and grand jury presentments, highlights issues related to governing slaves in the city. It also again suggests the white perception that free blacks posed a constant nefarious influence.

All of these advertisements were written from the owner’s perspective, and do not directly reveal the reasons why a slave may have fled the plantation. Some, like Drayton’s, offer suggestions. For example, Tom had “his notion of freedom.” John Chapman advertised that a slave named Abraham, who had been chained and “bore the marks of an old offender,” had escaped. He warned others in the area against harboring him, since he knew that this slave had relatives in the area. If Chapman was correct, Abraham may have been trying to escape repeated physical punishment and find relief with relatives or friends. His escape may not have even been an attempt to permanently leave the plantation and could have just been an effort to avoid punishment or visit family. Peter Timothy, publisher of the \textit{South Carolina Gazette}, warned that his slave Amy had run away several times in the past and possessed stolen goods. He warned

\textsuperscript{119} \textit{Ibid.}, February 13, 1769. Slaves were ever present in Charles Town. A Jamaica merchant in 1773 noted the “swarms of Negroes about the town.” Slaves might be employed in the town as skilled craftsmen in shops. Owners might also hire out slaves on a daily or weekly basis, so slaves might be in Charles Town without direct and supervision. Walter J. Fraser, \textit{Patriots, Pistols and Petticoats: “Poor Sinful Charles Town” during the American Revolution} (Columbia: University of South Carolina Press, 1993), 9-11.
others not to employ her (a skilled slave, good at needlework) without his written permission. Timothy was sure that someone had harbored or illegally employed Amy in Charles Town. 120 Amy, who lived in Charles Town and knew it well, possessed skills and was trying to market them for her own profit. These few examples, though they do not give the slave’s perspective, reveal a variety of possible motivations for running away (and a variety of plans). They again demonstrate that law and enforcement were vital, not just in controlling slaves, but in making sure all slave owners, planters and whites in general worked to enforce this oppressive labor system.

The workhouse columns give similar details about captured slaves, focusing on physical descriptions. Many workhouse listings described the slave as either not knowing the master’s name or claiming not to. Given that masters were commonly distant from day to day interactions with their slaves, it is entirely possible that a slave did not know the master’s name. However, it may have also been a tactic to frustrate a master’s recovery effort. The workhouse warden was skeptical, never taking a slave’s word for anything. The law did not require the workhouse to take great care in verifying a slave’s status. The warden assumed that all blacks without documentation were slaves.

In one case, the warden advertised a young man who called himself Charles Time. Charles claimed to be a free man from Barbados, who came to South Carolina from Antigua about nine months before his capture. He also claimed to have been living “about” Stephen Bull’s plantation with a free “mustee” fellow named Bob Philips. The warden noted Charles had a certificate (stating his freedom), but it “seemed to be forged

120 South Carolina Gazette, June 2, 1766.
by some evil minded person.” Charles had marks of severe whipping about the belly, sides, and legs. He was presumed to be a lying, escaped slave, and the warden hoped someone would claim him. Charles had no right of appeal and no way to prove his documents authentic. The warden acted as his judge and jury, and Charles Time did not receive the due process that the assembly framed as “natural justice.” His freedom ended at the workhouse. If no one claimed him, he would be auctioned to the highest bidder.

Free blacks, thus, always had to live in a kind of legal limbo, never having any guarantee that their freedom would last or be upheld if questioned. Documentation could simply be dismissed as fraud, unless the individual in question could produce some other kind of proof (perhaps testimony from a former master or white friend).

The *South Carolina Gazette and Country Journal* occasionally printed advertisements from the workhouse featuring auctions for unclaimed captives. The warden often described them, as in the case of the captured Jack Jamie, as one who “pretends to be free but has no certificate to show.” The burden of proof was on the captured black man or woman, who often may not have had any proof. For example, a slave called Manard who did not know the master’s name and was described as “a new negro man of the Guinea country,” was put up for public auction. He had remained unclaimed for seventeen months and would be sold two weeks after the advertisement appeared. The proceeds went to the colonial treasury. It is entirely possible that Jack Jamie did not know his master’s name. As planting became more complex and owners

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121 *South Carolina Gazette and Country Journal*, September 23, 1766.
122 *South Carolina Gazette and Country Journal*, February 18, 1766.
123 *South Carolina Gazette and Country Journal*, March 17, 1775.
often managed many plantations from Charles Town, field slaves may in fact have had only the briefest contact with an owner, dealing instead with drivers and overseers on a daily basis. Oddly, no workhouse notice ever noted that a captured slave claimed not to know an overseer’s name.

The warden also kept watch over the runaway advertisements. In September of 1770, Wood Purman advertised that his slaves Sirrah, Molly and Glasgow had run away from his plantation in May, and he gave detailed descriptions of each. The next month the workhouse column advertised that the same slaves were captured on October 20, and they accurately gave their master’s name. The workhouse warden noted that they matched the description of the same slaves advertised the previous month in the newspaper. The three managed a six month absence from the plantation before capture.

The presence of runaways and the need to deal with slave resistance was a simple fact of existence for planters and their government in colonial South Carolina. As agricultural production increased and demands on labor intensified in the eighteenth century, the appeal of running away also increased. At the same time, the machinery to hold slaves in oppression and prevent escape became more elaborate. Running away was the slave’s most overt and significant individual act of rebellion. The more slaves asserted themselves (and the more the ratio of white to slave skewed in favor of the

125 *South Carolina Gazette and Country Journal*, September 4, 1770; October 30, 1770.
slave), the more it created anxiety and a need for greater control among the owner class.126

Conclusion

Crevecoeur’s ninth letter describes a scene of sheer horror. The narrator comes upon a slave locked up in a cage hanging from a tree. So great is the slave’s suffering, he asks the narrator to end his life. The narrator questions the slave’s owner, who reveals the slave killed an overseer and says that such punishments were necessary to prevent violent attacks. The episode is probably fictional or proverbial. Nevertheless, it stresses a crucial point: the planters rule in South Carolina depended on profits generated by slavery. Controlling slaves required the exercise of individual or institutional force. Punishments, restrictions, and close governance were meant to terrorize slaves into obedience.127

The planters never questioned slavery’s existence. Slavery and the plantation system created South Carolina’s ruling class. South Carolina’s ruling class, therefore, created government agencies to secure the most important source of their wealth and political power. The plantation itself functioned as a unit of government, in that individual members of the slave-owning class had to daily enforce the ruling order they collectively established as the colony’s governing class. In theory, individual planters sought to restrain themselves and their employees in an effort to achieve some kind of

126 Wood, 237.
127 Brown, 135.
patriarchal, harmonious coexistence with their slaves. Nevertheless, their rule—individually and as a governing class—depended on their ability to coerce and even terrorize their captive workers into submission.

Crevecoeur’s analysis of South Carolina slavery—that it was nothing but terrors and punishments—is indeed rooted in truth, at least in terms of how planters continually fought to control their slaves. Given the importance of the plantation economy to the low country elite, keeping slaves bound in slavery was the colonial government’s most important function. The government existed in large part to protect the property, political, and economic interests of the ruling class. It was designed to serve the interests of that ruling class, and, as a system designed by and for the primary benefit of the ruling elite, it was inherently political in nature. Whatever South Carolina’s leaders spoke and wrote about their government and its roots in representation and the protection of liberty, their government functioned primarily to control others in ways that benefitted the elite class.
Chapter 4
“Placed Therein and Managed”: The Church of England, Poor Relief, and Elite Political Power

South Carolina’s established church and its vestries were branches of colonial government, and the assembly made the church subservient to elite interests. The lowcountry elite used the political power of their legislature to define poverty, and they used the parish vestries and the Charles Town workhouse to govern the lowest orders of white society. The Church of England’s vestries in South Carolina lost the autonomy that their English counterparts enjoyed, as the legislature specifically outlined their functions and demarcated the bounds of their governing authority. Even the most powerful members of the lowcountry elite served on these local church councils that had the power to fund poor relief programs through a limited taxing authority. Poor relief did not necessarily focus on relieving the root causes of poverty. Like eighteenth-century English poor relief, South Carolina’s system focused on manipulating behavior or the “nuisance, disorder and crime” to which poverty—especially vagrancy—contributed.¹ The ruling party or class imposed its definitions of poverty and its causes, thus shaping the nature and work of this oft-neglected branch of colonial government. The assembly also attempted to enforce moral regulations, and the Church of England itself served to reinforce important values such as obedience and respect for authority.

Provincial leaders took complete control of parish vestries in South Carolina. These parish boards’ most powerful and important function was the administration of

poor relief. They mirrored England’s except in two important ways: first, the Commons House directly set, limited and supervised the vestries’ functions, and the provincial clergy and Church of England hierarchy had little or no authority over the vestries. Second, blacks and slaves were excluded from the poor relief system except through the Charles Town workhouse. A 1723 statute allowed English parishes to establish workhouses and withhold relief from those who refused to enter. They were meant to deter the able bodied from seeking relief and house those who could not care for themselves. However, a 1610 law required houses of correction to employ, punish and correct “sturdy beggars” (i.e. vagrants or those deemed undeserving of relief).\(^2\) South Carolina combined the workhouse and house of correction in Charles Town until 1769, and slaves or blacks taken to this institution were treated as inmates of the house of correction. Only non-able bodied whites could receive relief. All others faced institutional discipline or had to seek aid elsewhere. Under the assembly’s control, the system allowed the elite to punish undesirable behavior and control groups the elite deemed either nuisances or threats to their definition of order and property. Hence, the vestries played an important role in governing the colony. Like other government branches, the ruling elite’s political agenda directed how the vestries performed their governmental functions and who benefitted from those functions.

Recent studies of poor relief in colonial South Carolina frame the issue in terms of race and slavery, concepts of elite paternalism, or through prosopographical study of the

white poor. A number of historians have also studied the Church of England in the colonies. However, there is only one book-length study of South Carolina’s Anglican Church. Existing studies of the church focus on theology, the clergy, internal

3 See Tim Lockley, “Rural Poor Relief in Colonial South Carolina,” The History Journal 48.4 (2005): 955-976. Lockley studies the rural parishes and argues that poor relief united poor and elite whites in the face of black slavery. For Charles Town, see Brenda Thompson Schoolfied, “For the Better Relief of the Poor of this Parish: Public Poor relief in Eighteenth-century Charleston, South Carolina” (Ph.D. diss., University of South Carolina, 2006) and Michael Byrd, “White Poor and Poor Relief in Charles Town, 1725-1775” (Ph.D. diss., University of South Carolina, 2005). The former argues against Lockley’s interpretation, instead focusing on the “paternalism of white elites” (58). The latter is a prosopographical study of Charles Town’s poor and sets out to challenge the idea that poverty in colonial America was an insignificant problem. For orphans and the establishment of South Carolina’s first orphanage after the revolution, see John T. Murray, “Bound by Charity: The Abandoned Children of Late-Eighteenth-century Charleston,” in Down and Out in Early America, ed. Billy G. Smith (University Park: Pennsylvania State University Press, 2004).

4 Most studies of the colonial Church of England focus on church hierarchy, the clergy, and the controversies surrounding the attempt to establish bishops. For the classic study on the latter issue see Arthur Lyon Cross, The Anglican Episcopate and the American Colonies, New ed. (Hamden, CT: Archon Books, 1964). A more recent study of the episcopal controversy, especially colonial reactions to establishing bishops, can be found in Frederick V. Mills, Bishops by Ballot: An Eighteenth Century Ecclesiastical Revolution (Oxford: Oxford University Press, 1978). See also Carl Bridenbaugh, Mitre and Sceptre: Transatlantic Faiths, Ideas, Personalities, and Politics, 1689-1775 (Oxford: Oxford University press, 1962) and Nancy L. Rhoden, Revolutionary Anglicanism: The Colonial Church of England During the American Revolution (London: MacMillan, 1999). Bridenbaugh studies the church and colonial responses to and perceptions of English imperialism, while Rhoden traces the careers of over 300 Church of England clergymen during the revolution. Since there was never a serious episcopal controversy in South Carolina, that colony plays little part in these studies. For a more general survey of the colonial Church of England, see John Frederick Wolverton, Colonial Anglicanism in North America (Detroit: Wayne State University Press, 1984). For an interesting, recent study of how Anglicanism played a role in forming British imperial ideologies and adapted its own theology to account for colonial experiences, see Rowan Strong, Anglicanism and the British Empire, c. 1700-1850 (Oxford: Oxford University Press, 2007). See also Patricia Bonomi, Under the Cope of Heaven: Religion, Society, and Politics in Colonial America (Oxford: Oxford University Press, 1986). Bonomi studies the church’s role in public leadership and upholding morality and stability.

5 See S. Charles Bolton, Southern Anglicanism: The Church of England in Colonial South Carolina (Westport, CT: Greenwood Press, 1982). Bolton focuses on the clergy and the Church’s internal development, and does not focus on the vestries or their role in the political system. For dissenter churches in South Carolina, see Erskine Clarke, Our Southern Zion: A History of Calvinism in the South Carolina Low Country, 1690-1990 (Tuscaloosa: University of Alabama Press, 1996). Clarke stresses the importance of Calvinism in South Carolina religion, even within the Church of England. He notes the vestries’ independence from Church hierarchy, arguing that this arrangement may have stemmed from Calvinist influences. See also James Lowell Underwood, “The Dawn of Religious Freedom in South Carolina: The Journey from Limited Tolerance to Constitutional Right” in The Dawn of Religious Freedom in South Carolina, ed. James Lowell Underwood and W. Lewis Burk (Columbia: University of South Carolina Press, 2006). For slavery and the Church of England in South Carolina, see Robert Olwell,
development or more specialized issues. This chapter, however, studies poor relief, the parish vestries, and the Church of England within a comprehensive discussion of political power in colonial South Carolina. These institutions have not been examined in that context, nor has their role in carrying out the will of South Carolina’s ruling class as tools of government. The vestries and the administration of poor relief need to be considered as political, because the elite controlled the vestries, and their priorities, agendas, and governing philosophies directed how these parish committees carried out important government functions. The assembly thus extended the reach of its authority by preventing locally controlled or elected governments from assuming any of these functions outside of its (and hence the lowcountry elite’s) direct control.

The Church of England and Elite Society

Josiah Quincy of Massachusetts described eighteenth-century Charles Town as a worldly place. He was not impressed by what he found when he attended a Church of England service in Charles Town. He visited St. Philip’s on March 7, 1773. He first noted light attendance, and he thought the boy reading prayers had a “most gay, indifferent and gallant air.” Few of the men and no women stood when it came time to sing. Quincy thought the sermon eloquent, but remarked on its brevity—only seven and a half minutes. Perhaps it did not matter, as men commonly sat in church conversing rather than listening to the minister. He thought the church itself was splendidly decorated and commented upon the relative abundance of marble monuments in Charles

Town churches. Charles Woodmason, himself a minister, also noted Charles Town’s beautiful churches, describing St. Philip’s as the “most elegant religious edifice in British North America.” Overall, Quincy depicts a social gathering at a lovely public venue, not a somber experience. It may have been that Quincy was reacting based on the services he was used to in Massachusetts. However, Quincy aptly noted that, though it was a house of God, the Church of England in Charles Town also served secular purposes.

Historians have made similar observations about the religious climate in Charles Town in this era. Robert Weir describes Charles Town’s society as highly materialistic, where people had few qualms about enjoying their riches. Ministers sometimes lamented the focus on worldly goods and pleasures, and dissenters feared God might scourge South Carolina for its religious laxity. The wealthy and fashionable in Charles Town might demonstrate outwards signs of religiosity through displays of deference, manners, decency or philanthropy, but some perceived a lack of true spirituality.

Charles Town, however, was not exclusively Anglican. In fact, Anglicans were a minority in South Carolina. Charles Town boasted Congregationalist, Huguenot, Presbyterian, and Lutheran congregations. The city also hosted a Jewish synagogue.

In 1770, the entire colony featured twelve Presbyterian congregations, three

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Congregational churches, one French Huguenot church, one German Lutheran
congregation, seventeen Anglican churches and eleven Anglican chapels of ease.\textsuperscript{10}
Despite this array of denominations or religions, dissenters did not usually clash with the
established church. Charles Woodmason often preached to dissenter congregations in the
backcountry and commented that, “The Greatest Harmony subsists between these
Sectaries, and the Establishment—owing to the Candor, Prudence and regular demeanor
of the present Clergy, who are the best Sett of Men that Carolina were ever blest with at
one Time.”\textsuperscript{11}

Though Charles Town had many congregations, only the Church of England was
established by law. Its parishes were more than congregations; they were units of
government and social focus points for the colonial elite. Quincy was correct in observing
that the Church of England’s services were also social gatherings where members of the
elite displayed their wealth and standing. George Whitefield, the famous Great
Awakening preacher, also commented upon the opulent dress and politeness of those
gathered to see him preach when he visited the colony in 1755. It seemed to him as if his
audience thought they were attending a ball or great social occasion.\textsuperscript{12} Anne Ashby
Manigault, wife of Gabriel Manigault, was among the attendees at one of Whitefield’s
meetings. Her diary is nothing more than a list of mainly social events. Many of the

\textsuperscript{10} Clarke, 44.
\textsuperscript{11} “A Report on Religion in the South,” in Hooker, 75.
\textsuperscript{12} Rogers, 112. Whitefield was not implying spirituality had to be accompanied by poverty or poor
manners. He was making a point about Christian humility and wondering if a church service (where one
humbly comes before God to receive his gifts and offer praise) should resemble a social ball. His own
services were very simple, revolved around the preaching of the Word (especially law), and lacked
ceremony.
entries mention meetings with the governor for tea. She noted on March 8, 1755 that she “went to hear Mr. Whitefield” as if it were just another of these many social engagements or entertainments. Charles Woodmason also wrote that, “They run to hear Whitefield out of Curiosity only, as an Orator, but will not adopt his Principles…” Whitefield’s description of the opulent dress and politeness of the occasion along with Manigault’s rather passé reference to “Mr. Whitefield” suggest the social aspects of religion in Charles Town.

Opulence and grandeur were integral parts of the established church in England and Charles Town. St. Michael’s, for example, was built over an eleven year period at a cost of £50,000. The bells alone cost £600 and the steeple clock another £200. The magnificent organ cost £568, which was funded by private subscriptions. Pews in St. Michael’s could sell for nearly £2,000. St. Michael’s was one of three major public buildings constructed in the 1750s. The statehouse and the exchange were also grand, English style buildings that were constructed at considerable expense. Similar patterns held true in England, where communities expressed pride and identity in the building and maintaining of parish churches, which especially expressed the ruling elite’s cultural ideals. England itself experienced an urban church building boom between 1700 and 1750. The services held inside these grand buildings were marked, as Charles

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13 Diary of Mrs. Gabriel (Anne Ashby) Manigault, Manigault Family Papers, SCHS.
15 Bolton, 76.
Woodmason described, by “decency,” order, and “proper deference.” Woodmason saw nothing out of order in these “externals,” but he worried that there were “but few Communicants in any Congregations.”

Yet, one should not mistake grandeur for a lack of spirituality. Eliza Lucas Pinckney exemplified deep piety in her personal life, which is evident in her personally composed book of prayers. On the back of one prayer, she wrote a note reminding herself to “read over this daily to assist my memory…before I leave my chamber.” This prayer reveals a link between piety, hierarchy and order. It outlined her duties to everyone in her life. She resolved to believe in God; to govern her own passions; to make a good home for her husband and children; to be a good child herself and a good sister, aunt, and mother; and to be a good master to her “servants.” Her prayer served as a way to remind herself of her duties in the social order and to ask God’s help in carrying them out. The focus is on duty and obligation—her obligation as a mistress and the slaves’ obligation to serve. When she described Charles Town to a curious brother, she also stressed order and gentility: “Charlestown, the metropolis, is a very pretty place. The inhabitants are polite and live in a very genteel manner, the streets and houses are regularly built, the ladies and gentlemen gay in their dress.” She stressed that the white people were “hospitable” and “honest,” and the “better sort” displayed “genteel behavior.” She had no pity for the idle poor (black or white), stating flatly that they were

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18 Ibid., 75.
19 Pinckney Family Papers, Eliza Lucas Pinckney Prayers, SCHS.
“the most indolent people in the world, as they could never be wretched in so plentiful a country.” She equated poverty (in such a prosperous society) with sin and laziness, which reflected prevailing attitudes toward poverty in England and South Carolina. Eliza Pinckney took her religion and daily prayers seriously, but her morality was based on values of order, hierarchy and gentility. Her form of spirituality reinforced her high place in the colony’s social structure.

The Reverend Paul Turquand stressed similar themes in his sermons. Against the backdrop of the Regulator movement and the Stamp Act and Townshend Duties crises, his themes continually turned to obedience, authority, judgment and upholding society’s values. A 1769 sermon on Matthew 19:14 elaborated upon the nature of a kingdom. Turquand preached that belonging to a kingdom implied benefits and duties. One received protection but was expected to offer obedience. To gain the Kingdom of Heaven, one must conform and submit to God’s will as one would to a King’s will. However, he also warned parishioners to be wary of excess. His May 8, 1774 sermon focused on this last theme, as he implored his congregation to beware of what he saw as “a too great confidence in a day of prosperity, and excessive dejection in a time of trouble.” He continued to warn that “when by the favor of Providence my affairs became prosperous, I began to forget my dependence upon it, and foolishly imagine they would always continue so.” “Excessive fondness for Earthly enjoynments” chiefly contributed to

21 Ibid., 39-40.  
22 Matthew 19:14 (KJV): “But Jesus said, ‘Suffer little children, and forbid them not, to come unto me: for such is the kingdom of heaven.”  
23 Reverend Paul Turquand Sermon Books, 1769, SCHS. This sermon is only dated by year.  

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this problem. He found himself preaching virtually the same sermon one year later, warning his congregation that “there is certainly no greater enemy of virtue...than a love and fondness of temporal things.”

A 1766 sermon based on John 13:1-15 stressed the humility of Christ and a Christian’s duty to imitate Jesus’ humility and kindness. Many of his sermons touched upon this theme, as well as the need to preserve order and maintain proper authority. Turquand never questioned hierarchical order, but he worried that prosperity might lead to pride, complacency or sloth. Hence, he preached humility before God. Eliza Lucas Pinckney also never questioned hierarchy, but she daily reminded herself of her obligations and the need for a moderate and productive life.

The Church and its theology supported the state, playing a direct role in government (as defined by the assembly) and reinforcing elite rule. The clergy also worked to maintain a close relationship with the provincial elite. As W.M Jacob writes of the eighteenth-century Church of England, “citizenship and Christianity were coterminous.” However, South Carolina’s Church of England lacked episcopal hierarchy. In theory, the monarch was the head or governor of the Church, and the Bishop of London supervised colonial clergy. Clergymen swore an oath to the king as the head of the church. In reality, however, the Commons House of Assembly controlled the church’s government functions and its funding. Parish vestries controlled

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24 Ibid., May 8,1774.
25 Ibid., May 7, 1775.
26 Ibid. 1766. This sermon is only dated by year, but includes a notation that it was preached at five parishes including St. Michael’s. John 13:1-15 (KJV): This section recounts Jesus washing Peter’s feet, and concludes, “For I have given you an example, that ye should do as I have done to you.”
27 Jacob, 11.
28 James B. Bell, The Imperial Origins of the King’s Church in Early America (New York: Palgrave, 2004), 201.
personnel and insisted on playing the dominant role in parish governance. The Anglican Church was made subordinate to the colonial elite’s political authority. ²⁹

**The Parish Vestries**

The Church of England was established as the state church in South Carolina by a series of assembly acts starting in 1706. ³⁰ The “Act for the Establishment of Religious Worship in this Province according to the Church of England” asserted the colonial legislature’s authority over the Church of England’s functions. The Commons House also assumed responsibility for funding the church through this legislation. The act divided the colony into parishes and dictated the use of the Book of Common Prayer. It also decreed the building of six churches with parsonages and glebe lands. The legislature provided £2,000 for each church, and it appointed commissioners to supervise the establishment of new parishes. The assembly would also set and pay the salaries for ministers or rectors. Ministers also received all normal fees for services such as marriage and baptism. The act granted individual parishes the right to select their ministers but set the parameters and method. The majority of subjects within a given parish who attended a meeting (ten days notice had to be given) and were members of the Church of England chose ordained Anglican ministers. Parish voters also had to be freeholders or taxpayers. Parish freeholders and taxpayers annually elected churchwardens and seven freeholders.

²⁹ Strong, 111.
³⁰ For establishment in other colonies, see Elizabeth Davidson, *The Establishment of the English Church in Continental American Colonies* (New York: AMS Press, 1936).
to serve on the vestry with the rector. Vestries were also charged with appointing individuals to keep parish registers and maintain churches.\(^{31}\)

Several additional acts further outlined the governance of South Carolina’s established church. A 1708 act set the physical boundaries of the parishes.\(^{32}\) A 1712 act went much further in elaborating upon the church’s structure. It ordered that a minister would receive his salary retroactive to the date of his arrival in the hope of encouraging ministers from England to serve in South Carolina. The act did not alter the method of choosing ministers, stating that Anglican clergy would be chosen in consultation with the Bishop of London and the Society for the Propagation of the Gospel. Though the act offered an enticing financial incentive that might provide a new minister with an extra month’s salary, clergymen depended upon the assembly for their pay. The assembly also did not always live up to this provision once a minister had arrived. The Rev. Charles Woodmason complained that “the stipends of clergy here [South Carolina] are not a competent maintenance. It hardly subsists them here.”\(^{33}\) Woodmason arrived in Charles Town on August 12, 1766. He received his commission on September 7. The colonial government then told him his pay would begin on September 7 (the day of his commission, not his landing), regardless of what the law stipulated.\(^{34}\)

The 1708 and 1712 acts represented minor legislative tinkering or correction, but the 1712 “Act for the better observation of the Lord’s Day, commonly called Sunday,”

\(^{31}\) Thomas Cooper and David McCord, eds., *The Statutes at Large of South Carolina* (Columbia, 1836-1841), vol. 2, #256.

\(^{32}\) Ibid., #280.

\(^{33}\) “Letter to the Bishop of London—1766,” in Hooker, 91.

was a major step in using the church to regulate white society. It required all persons (i.e. free, white subjects—a minority of the population) to attend Sunday services in a Church of England parish or a “tolerated” church. No one was forced to attend Anglican services, but one was legally bound to attend a service of some sort. Charles Town had a Jewish congregation, and, though the law only addresses Christian churches, it presumably fell under the “tolerated” category. The assembly also banned work, commerce, sports, pastimes and travel on Sundays for all colonial residents. The law ordered churchwardens and constables to patrol their local areas twice on Sunday to “suppress and apprehend” any offenders. The assembly also authorized them to “break open” Public Houses suspected of disobeying the rules. To ensure that constables and wardens took their duties seriously, the law dictated a ten Shilling fine for neglect of duty. It only imposed a five shilling fine for failure to attend services or Sabbath breaking. Justices of the Peace had the power to convict all violators on the testimony of only one or more witnesses without a jury trial. To curb abuse, the law stated that complaints must be made within ten days of the violation. In addition to a fine, a justice could place violators in the public stocks for up to two hours. Dissenters did not have to attend Church of England services, but the assembly intended to strictly enforce religiosity. Church officials, thus, became part of the law enforcement system. By

comparison, Virginia law only required one to attend services once out of every four weeks.\textsuperscript{36}

Through establishment and subsequent laws, the assembly then assumed power over the Church of England’s structure in the colony, put ministers on the public payroll, and attempted to regulate public morality. Because the assembly set salaries and parish vestries independently chose their Anglican ministers, royal governors had little control over the clergy and lost any ability to use church offices for patronage purposes.\textsuperscript{37} The assembly erected a centralized church governance structure that was a departure from English precedent. However, that structure was entirely congruent with the overall patterns of government and political power in South Carolina.

While the Church of England’s episcopal hierarchy appointed ministers in English parishes, those parishes’ vestries still enjoyed a great deal of autonomy over other matters that South Carolina vestries did not. English “ratepayers” who owned or leased land within a parish were expected to contribute to building and maintaining community facilities and to care for the poor. Moreover, they were expected to repair local roads and highways and enforce “rudimentary law and order.”\textsuperscript{38} They elected parish vestries that levied taxes to pay for all of these local services. English vestries chose surveyors to supervise roadwork. They selected overseers to care for the poor. They chose a constable to enforce the law and churchwardens to care for parish buildings and “monitor

\textsuperscript{37}Wolverton, 171.  
\textsuperscript{38}Jacob, 9.
the spiritual welfare of the parishioners and the conduct of the clergy.”³⁹ Local vestries did not control the clergy. The monarch appointed bishops, and the bishops supervised their dioceses by performing visitations and licensing clergy, teachers, doctors and midwives.⁴⁰

The Church of England played a direct role in British government and even operated its own church courts. The church courts in England served a variety of purposes. They considered matters of doctrinal conformity and morality. They enforced public morality (the values a good subject should have such as chastity, sobriety, industry, and obedience). Church courts often heard cases involving sexual immorality, drunkenness, and other moral offenses. Ecclesiastical courts might also try other kinds of “disorderly behavior.” Church courts could also settle local social disputes or curb disorderly or immoral behavior, especially when it offended the powerful and socially upstanding members of a parish. The most common courts were those of the archdeacons in each parish. The courts relied on active cooperation of the community. They did not work like an inquisition seeking out sins to repress. Rather, individuals would be presented to the archdeacon for having committed some moral crime that needed correction.⁴¹

The Church of England had no courts in South Carolina. The functions of the ecclesiastical courts (save issues of doctrine) were under the Court of General Sessions’ jurisdiction. That court, whose functions were controlled by the Commons House,

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³⁹ Ibid., 10.
⁴⁰ Ibid., 11.
consolidated the duties of all English criminal courts (i.e. quarter sessions, assizes, etc.). The legislature, thus, vested these functions in an institution that it created and controlled. The church still played an important role in local colonial government, but only in ways that the assembly specifically allowed. South Carolina was divided according to church parishes. Parish vestries and churchwardens then distributed funds to the poor and oversaw and administered elections to the Commons House of Assembly. However, South Carolina’s vestries had far less autonomy and responsibilities than their English counterparts. Unlike South Carolina’s vestries, England’s paid clergy salaries and appointed constables. Moreover, South Carolina vestries could only tax to fund poor relief. They were forbidden from taxing for parochial charges as English vestries could do, which S. Charles Bolton argues was an early concession to dissenters in South Carolina who made up a majority of the population. The assembly levied a general tax that paid for church construction and repair, and it imposed a general duty that paid clergy salaries.  

Bolton may be correct in arguing that limiting vestry taxation power was a concession to dissenters. However, it also fits the general pattern of government in South Carolina. The Commons House of Assembly never allowed the creation of autonomous local governments of any kind during the colonial period, and it moved to control other government institutions that might otherwise fall under the sway of royal officials. The legislature always claimed the exclusive right to tax, and only made one exception for poor relief funds in the entire colonial period. Moreover, the assembly stripped vestries

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42 Bolton, 147.
of many traditional powers and subordinated them to the ruling elite. Road building and repair, for example, were placed in the hands of legislatively appointed commissions that answered directly to the Commons House of Assembly. The same was true for church building and all infrastructure projects in South Carolina. Petitions requesting chapels or church improvements did not go to the vestry. They went directly to the Commons House. In England, vestries autonomously funded and supervised these functions of local government. Hence, while Bolton argues that American vestries differed from English vestries primarily in their powers over the clergy, he does not account for how the overall political structure affected the structure of South Carolina’s established church: it was stripped of local autonomy and made dependent on the colonial legislature for all funding except that involving poor relief. If the vestries determined to control “ecclesiastical patronage” (i.e. appointment and discipline of clergy), the Commons House was determined to control the functions of the vestries and the Church’s role in government. The lowcountry elite structured the established church to provide the central government with maximum control over local institutions.

However, South Carolina’s vestries should not be thought of as powerless or unimportant. They carried out the critical, specialized function of poor relief according to guidelines established by the assembly’s legislation. Moreover, even the wealthiest and most powerful members of the lowcountry elite did not neglect serving on parish vestries. S. Charles Bolton reveals that seven parishes elected sixty-five officers in 1772.

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43 Strong, 116.
44 Mills, 121.
Of that number, 26% served in the assembly, and eight of the seventeen officials chosen from Charles Town parishes served in the assembly. Of the forty-eight men elected to the 1772 assembly, nineteen of them served in parish vestries. Thirteen of those nineteen (68%) were associated with the Charles Town parishes:

Nearly 50% of the urban church officials were considered Commons House material, while less than 20% of the rural vestrymen and churchwardens were in that category...The vestry was not a training ground for politicians; it was a responsibility that political and economic leaders were expected to accept.

Bolton’s percentages for a single year are similar to numbers for the entire period under study in this dissertation. From 1763 to 1775, 166 individuals served in the Commons House of Assembly. Thirty-five percent served as either vestrymen or churchwardens, which is higher than the single-year figure Bolton presents. Fifty-nine percent served in Charles Town parish vestries, which is also higher than the single-year figure Bolton presents. St. Helena parish (Port Royal / Beaufort area) had the second largest proportion of assembly members serving on its vestry.

Table 4.1
Assembly Member Service on Parish Vestries, 1763-1775

<table>
<thead>
<tr>
<th>Type of Service</th>
<th>Number of Members</th>
<th>Percent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vestry</td>
<td>48</td>
<td>29</td>
</tr>
<tr>
<td>Churchwarden</td>
<td>32</td>
<td>19</td>
</tr>
<tr>
<td>Both</td>
<td>22</td>
<td>13</td>
</tr>
<tr>
<td>Either</td>
<td>58</td>
<td>35</td>
</tr>
<tr>
<td>Total</td>
<td>160</td>
<td>96</td>
</tr>
</tbody>
</table>

Source: Compiled from *Biographical Directory of the South Carolina House of Representatives*
Assembly members served an average of two years on the vestries, but some members served much longer. Benjamin Smith served as either vestrymen or churchwarden in St. Philip’s parish (Charles Town) for twenty-five years. Charles Pinckney served St. Philip’s for seventeen years, and his son Charles Cotesworth Pinckney served for thirteen years. The wealthy Porcher planter family practically owned the St. Stephen’s parish vestry. Isaac, Philip and Peter Porcher collectively served thirty years on their vestry. The most prominent and wealthy political leaders did not neglect vestry service. Henry Laurens, Christopher Gadsden, Thomas Heyward, Rawlins Lowndes and Edward Rutledge all served on parish vestries.\(^{48}\) However, one must ask why these busy and powerful men devoted their time (in some cases a great deal of time) to local church councils that had very little autonomy.

Bolton correctly points out that the vestry was not a training ground, since these men often served in the assembly and on the vestry concurrently. In some cases, election to the Commons House was a member’s first or only kind of political service. Bolton and Patricia Bonomi suggest that vestry service was considered an important duty for local gentlemen. Bolton argues that the vestry’s power derived from its ability to choose clergymen, but that argument does not explain why so many assembly members from St. Philip’s and St. Michael’s in Charles Town served. Proximity is one possible explanation. Wealthy laymen could also profit by providing goods and services to the parish (i.e. supplies, rental property, church repairs, and food for workhouse inmates).\(^{49}\)

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\(^{48}\) Ibid.

\(^{49}\) Byrd, 95.
However, responsibility and political power are better explanations. The vestry’s most important power was not its authority over clergy, which it rarely exercised in South Carolina. Given their plantation holdings and mercantile connections, wealthy men like Henry Laurens did not need the small amount of business generated by the church or its poor relief efforts. Rather, the power to levy taxes to support the poor and determine how that money was spent attracted these men to the vestries. This tax mainly fell on the elite, and Charles Town had higher rates of poor relief than Boston, Philadelphia or New York. The tax was based on a parish’s individual need. In rural parishes like St. Helena’s or St. Stephen’s, the numbers of poor were low and the burden easy. In Charles Town, the situation was very different, and the vestry fully exercised its taxing power.

**Governing the Poor and “Disorderly”**

Charles Town was host to a growing poverty problem in the late eighteenth century, and distributing poor relief there was a significant task. Statistics from estate records, vestry expenditures, and the assembly’s actions to improve poor relief all testify to the growing problem and refute Charles Woodmason’s observation that there were

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“few or none [poor]” in Charles Town.\textsuperscript{51} Of the estimated 4,000 in inhabitants of Charles Town in 1761, about 800 (or 20\%) were poor.\textsuperscript{52} Additionally, twenty-six percent of estates from 1763 to 1788 were valued at zero to ninety-nine pounds.\textsuperscript{53} If, as Philip Morgan argues, slaves must be considered among the “laboring poor,” South Carolina would have had one of the largest poor populations in British North America.\textsuperscript{54} Wealthy residents had a vested interest in managing this significant portion of the population for the sake of preserving order and participating in the governing bodies that had the power to tap large portions of their incomes. Poor relief occupied most of the vestries’ time.\textsuperscript{55} On average, the St. Philip’s vestry met nine times per year, and most of those meetings concerned poor relief.\textsuperscript{56} Administering poor relief provided a way for the elite to control the province, because the vestries sought to correct, manipulate or even punish the behavior of potential recipients. Relief could be a disciplinary tool to correct undesirable behavior, and relief was not usually given to able bodied men who were seen as responsible for their own plight.\textsuperscript{57}

English attitudes toward poverty prevailed in South Carolina. Accordingly, the poor were divided into two classifications—deserving and undeserving. It was commonly believed that poverty resulted from “idleness, extravagance and

\textsuperscript{51} “A Report on Religion in the South,” in Hooker, 72.
\textsuperscript{52} Byrd, 48.
\textsuperscript{53} Peter Coclanis, \textit{The Shadow of a Dream: Economic Life and Death in the South Carolina Lowcountry, 1670-1920} (Oxford: Oxford University Press, 1989), 87. This rank is the lowest of the six ranks Coclanis provides for estate values.
\textsuperscript{55} Schoolfield, vii. Schoolfield goes so far as to state that “the prominent vestrymen spent all of their time relieving Charlestown’s poor.” She estimates that 90\% of the vestry minutes for St. Philips deal with poor relief.
\textsuperscript{56} Byrd, 92.
\textsuperscript{57} Weir, 223.
mismanagement” in one’s life. Vagrancy was especially troublesome, and the law placed emphasis, as Paul Langford describes, on the “nuisance, disorder and crime which vagrancy gave rise to rather than the unemployment or deprivation which helped produce it.” Laws established to deal with poverty clearly reflect such attitudes. Two statutes passed in 1598, for example, required that able bodied individuals who sought relief should be whipped and returned to their parish of birth. The Elizabethan poor laws and later statutes only allowed the “impotent” poor (i.e. the old, the sick, widows, orphans, etc.) to receive “outdoor relief” (i.e. pensions, food, and clothing). This collection of laws, passed between 1572 and 1723, remained the basis for poor relief in England until 1834. The 1723 law allowed parishes to build workhouses to employ the able bodied and deny relief to those who refused to enter. While they were meant to deter beggars, they were also built to discipline the idle and house the impotent. By 1776, England had about 2,000 such workhouses with a capacity to house about 90,000 people. Workhouses marked a move from “outdoor” to “indoor” poor relief, but workhouse conditions were often so awful (and sometimes intentionally so for the sake of deterrence) that only the most desperate sought help there. As William Doyle writes, “The remedies devised for poverty, in fact, were often more cruel than the condition itself

58 Langford, 150.
59 Ibid., 153.
60 Coward, 64.
61 Langford, 150-151.
and were persistently based on the mistaken belief that many paupers were idle from preference rather than necessity."\textsuperscript{63}

South Carolina vestries worked within these general attitudes and distributed money on a case by case basis. Only Charles Town had a workhouse, so all other parishes only provided “outdoor relief.” This kind of poor relief was emergency aid only, meant to enable poor individuals to find a new, productive life.\textsuperscript{64} In every case encountered in the vestry minutes that includes details, the board only provided money to support those who could not otherwise support themselves. In Charles Town, the St. Philip’s vestry handled poor relief, and it was becoming an increasingly expensive problem. In 1765, the vestry agreed that £8,000 could cover expenses. The sum jumped to £11,000 one year later. By 1775, the vestry had to collect £14,000, and it had to appoint two special overseers of the poor because of the “great increase” in transients by 1770.\textsuperscript{65} Boston saw a similar increase. The town never had to spend more than £730 on poor relief before 1751, but it was spending £2,000 annually by 1764. Philadelphia also dealt with a major influx of poor, and the city repeatedly requested aid from the colonial government.\textsuperscript{66}

Gary Nash argues that a post-war depression in the 1760s led to a major increase in poverty in northern seaports. Pauperism and destitution increased dramatically.\textsuperscript{67}

\textsuperscript{63}Ibid., 133-134.  
\textsuperscript{64}Byrd, 89.  
\textsuperscript{65}St. Philip’s Parish, Vestry Minutes, April 1765; June 25, 1766; July 31, 1775; April 23, 1770, SCHS.  
\textsuperscript{66}Nash, The Urban Crucible, 159-60.  
\textsuperscript{66}William Simpson, The Practical Justice of the Peace and Parish Officer, of His Majesty’s Province of South Carolina (Charles Town: Robert Wells, 1761), 262-264.  
\textsuperscript{67}Nash, The Urban Crucible, 147-159.
Nash also suggests that depression occurred because Americans were more exposed to the fluctuating Atlantic economy after Britain cracked down on smuggling in this period. Charles Town’s poor relief system was also strained during these years, and poor individuals from all over the colony (and outside it) sought relief in the city. Observers in South Carolina saw the wealth and opulence of the elite and the desperation of the many poor in Charles Town.” “Waves” of poor people flocked to the port during and after the Seven Years War, including a large group of Acadian refugees in 1756.

Walter Fraser argues that the great increase in the number of the poor made the Charles Town elite more “apprehensive” than elites in other port towns (i.e. Boston, Philadelphia, New York) that saw similar increases. The South Carolina elite feared that any kind of disorder or unrest might encourage slaves to follow a bad example. In that sense, providing poor relief may have helped bind poor whites to the elite in a patriarchal relationship. Poor white laborers, who already competed with slave labor, might also have been more embittered by having to compete against increasing unemployed poor from outside the city. Colonial leaders also thought that the indigent poor were more vulnerable to disease, which could create a health hazard and damage the city’s

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68 Ibid., 159-162.
69 Walter Fraser, Charleston! Charleston! The History of a Southern City (Columbia: University of South Carolina Press, 1989), 99.
70 Ibid., 99.
71 Ibid., 99.
72 Lockley, 972. Brenda Schoolfield notes that “no statements from the eighteenth century attest to conscious planning on the part of white elites to use poor relief as a bond to make race more important than class” (58). Instead, she argues that paternalism (i.e. using poor relief to inspire loyalty among the lower classes or to attain honor for themselves) motivated the elite. There may not have been “conscious planning,” but the planter elite absolutely needed the cooperation of lower class whites in the face of a black, slave majority. Poor relief may not have been part of a plan to unite the elite and the poor against this threat, but it was part of the government’s overall strategy to combat disorder among poor whites and blacks.
reputation (already viewed as unhealthy because of the climate). More poor seeking relief also led to higher taxes and demanded more services from Charles Town’s vestries. Hence, when one considers the attitudes of the age and the special circumstances in Charles Town, increasing poverty caused growing worry about crime, disease, taxation, and unrest among poor whites and possibly slaves.

The parishes, however, almost never supported able bodied men. Most parishes offered “outdoor relief” (i.e. a dole) to women, children, the disabled, or those who needed temporary relief and had no other means of support (e.g. poor father who had suffered an injury and could not work). In Charles Town, St. Michael’s and St. Philip’s parishes cared for orphans. They might receive schooling, or the vestry could bind out orphaned children in apprenticeships or send them to the workhouse or hospital. The urban vestries would support the mothers of bastard children, but only until the father was identified. The city did not have a proper orphanage until 1790, but that orphanage was the nation’s first municipal, publicly funded institution of its kind.

The so-called idle poor had only one government-sponsored option—the workhouse. The workhouse was supposed to be a place where the poor could work and be prevented from slipping into or cured of idleness. The elite regarded poverty due to idleness as sinful or at least shameful, and the government treated the idle poor very much like criminals. They had few options and fewer rights. The workhouse had always

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73 Fraser, 99-106.
74 Byrd, 89.
doubled as a “house of correction.” The workhouse warden had the power to chain, starve and whip the idle poor and criminals housed there. He could also add to his own salary by hiring out the inmates and taking a portion of their wages.76 The workhouse master was obliged to put all able-bodied people to work and could punish his inmates with shackling or whipping (not more than nineteen lashes per day). He could even withhold food from anyone who refused to work or who he considered disorderly.77

A 1766 petition from the vestrymen and churchwardens of St. Philip’s Parish in Charles Town highlights this institution’s problems and purposes. This petition also prompted workhouse reform, but that reform did not reflect a major alteration in attitudes toward the poor. The petitioners complained that the workhouse was packed with seamen, slaves and various other vagrants, leaving little room to care for the poor. Comingling the poor and these “disorderly” persons might also corrupt those seeking poor relief and contribute to their slipping into idleness or crime. The wardens lamented that poor from throughout the province now flocked to Charles Town and overwhelmed their resources.78 The assembly formed a committee to look into the matter, and Mr. Pinckney reported to the House as spokesman on March 4, 1767.79 They agreed that the current combined work house, poor house, hospital and house of correction was far too small and not able to accept even one third of the poor due to the large number of various disorderly persons confined within. Hence, the committee recommended building a new

76 Fraser, 57.
77 Simpson, 262-264.
78 South Carolina Commons House of Assembly. Journals, 37.1, November 24, 1766, SCAHC.
79 The journal provides no first name, but Charles Pinckney Sr. was the only Pinckney serving in the assembly in 1767.
structure solely for maintaining the poor, which would even include a schoolroom for poor children. Pinckney stated that the poor, “many of whom are pious and well disposed persons, should always be kept separate and apart from the house of correction.”80 Nevertheless, the workhouse would remain the only option for the able-bodied poor, where they would still be subjected to harsh conditions and rigorous discipline.

The Assembly recognized the problems of a growing city, relieved St. Philip’s from some of its heavy burden, and took a major step to decriminalize poverty, in the sense that the poor would be separated and housed in a place of work and “reform,” instead of a house of correction. The house of correction would thereafter be reserved for groups deemed dangerous and disorderly. On the other hand, the committee wanted to refine the definition of disorder. The idle poor were still considered disorderly or undesirable. The restructured workhouse would serve as a rehabilitation and stop-gap containment facility. Though it was certainly charitable to provide better facilities for the poor, one must keep in mind that the assembly had a clear financial motive for acting. If the poor continued to flood into the city, the St. Philip’s vestry would only continue to raise taxes. This measure was designed to reduce the tax burden and better corral the poor. Workhouse discipline might also cure or prevent idleness, and this reformed behavior might itself reduce the tax burden and prevent disorder. Poor relief, as Rhys

80 South Carolina Commons House of Assembly, Journals, 37.1, March 4, 1767, SCAHC.
Isaac argues, was a kind of patronage power that could also contribute to the assemblymen’s collective reputation and influence.  

The issue did not end with Pinckney’s 1767 report. Just one year later, Henry Laurens reported for the “committee looking into the poor” with bad tidings for the Commons House. Laurens had also served St. Philip’s as a vestryman and churchwarden in the late 1750s for a total of six years. He reported that St. Philip’s and St. Michael’s Parishes maintained 130 people at the current time, and an additional fifty resided in the workhouse. The church wardens also maintained and tried to educate thirty-one poor boys and girls. The parishes and workhouse also had to deal with numerous transients on a daily basis. Laurens then went on to list the actual tax assessments that the parishes were collecting to maintain the poor (also known as the “poor rate”). The amount collected increased from £1,200 in 1747 to over £6,500 in 1766, a 550% increase in less than twenty years. Clearly, as Laurens went on to lament, the poor were beginning to overwhelm the system. He believed that part of the problem was that poor relief was too abundant in Charles Town and attracted hordes of idle poor to the city. He recommended that the assembly authorize the Charles Town parishes to turn away all non-residents. Furthermore, non-British immigrants who had been brought to the colony by individuals looking to obtain a bounty and poor from neighboring colonies added to the problem. Laurens also feared that an overabundance of taverns attracted the idle and disorderly.

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81 Isaac, 65.
82 Edgar, Biographical Directory of the South Carolina House of Representatives, 2:390-394.
83 South Carolina Commons House of Assembly, Journals, 37.1, April 6, 1767, SCAHC.
Laurens did not suggest dramatically increasing poor relief. Rather, treating the problem as a financial one, he advised that the assembly cease supporting those from outside Charles Town and send them back to their own parishes, which the law also authorized English parishes to do. Given that poor relief funds were far less abundant in other parishes, rural parishes had no workhouses, and that vestries were not always willing to open the coffers, Laurens’s solution might ease Charles Town’s burden, but it would not ease the problem of poverty. About 400 individuals in rural parishes received assistance from 1712 to 1776, compared to 880 in St. Philip’s from just 1751 to 1774. Vestry minutes record few refusals of poor relief, but churchwardens and overseers of the poor probably filtered out many cases that never reached the vestry itself. Those who received relief in rural parishes fared relatively well. The vestry gave rural relief recipients about £7 Sterling per year (more than enough for a year’s food supply), compared to £5 per year in Charles Town and £3 to £4 per year in Northern cities. Higher levels of poor relief may indicate “generosity” on the part of elite vestrymen, but there is no way to know how many times parishes turned poor individuals away. Moreover, prevailing attitudes about poverty in England and the colonies cannot be dismissed. Many whom the elite considered idle or disorderly could not qualify for

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84 Lockley, 959.
85 Ibid., 968.
86 Ibid., 969-970.
87 Ibid. Lockley argues that these numbers evidence generous levels of poor relief that reflect a “strong class ethos of public service” or a benevolent attitude toward poverty (955). Similarly, Brenda Schoolfield argues that the large sums spent by St. Philip’s on poor relief indicate that this generous amount of relief was “a point of pride for its wealthy, paternalistic citizens” (18). However, the assembly’s actions and definitions of poverty and disorder and the attitudes of leading individuals like Eliza Lucas Pinckney and Henry Laurens do not suggest a paternalistic or benevolent attitude toward poverty in general.
Laurens’s and the assembly’s attitude toward the poor was very much akin to English attitudes of the time: if the able bodied were poor, it was due to idleness and corrupting conditions. The best help government authorities could give was to eliminate conditions that contributed to this idleness and corruption, including relief that was too available to the “undeserving.” This report, thus, placed emphasis on discipline and management.

The law establishing the new “Poor House and Hospital” followed the committee’s recommendations. It cited two arguments for building the new structures. First, the act again mentioned the “great increase in the poor.” Second, the act addressed the need to “relieve them [the poor] from the company and noise of disorderly offenders.” The poor would be “placed therein, and managed” according to existing law. The only major policy change aside from separating the poor from various “disorderly” men was eligibility for relief. Under the new law, one had to spend twelve months within a parish as “a native, householder, sojourner, apprentice, or servant” to qualify as resident. The old law only required a three month stay to establish residency, so this new provision addressed the committee’s concern that Charles Town was becoming a haven for the idle poor, and it made obtaining relief more difficult. The assembly resolved to address the problem of increasing numbers of poor (and higher taxes) by instituting more thorough management of the poor and more rigorous qualifications for obtaining relief.88 The poor that would receive care in Charles Town would also be removed from the

88 Cooper, Statutes at Large, vol. 7, #966.
corrupting influence of the “disorderly” and placed in an institution where they would receive care and discipline.

When a poor person did seek relief, the process was not always an easy or successful one. The vestries did not seek out the poor. The poor had to come to the parish authorities and appeal for aid. The vestries acted as the patrons or gatekeepers. For example, a boy named Brenson came to St. Michael’s church in May 1774. Mrs. Gibbes hoped the parish would school and clothe the poor boy. However, he was turned away and told that St. Philip’s (a few blocks from St. Michael’s) handled all poor relief in Charles Town.99 Parishes could provide for those not living within their bounds, but many parishes had very limited funds available. St. Michael parish had no poor relief funds of any kind. Outlying parishes like St. Helena’s had far less of a burden (only six on the poor list in 1763), but the process remained the same. A man like Mr. Verdier might come and apply for relief. He asked for six months of schooling for his poor children. He was able bodied, so the vestry assisted his children and gave him nothing.90 St. Helena’s minutes include two other named individuals who received aid. Mrs. Murphy received £10, and Mr. Jones received £20. The former was a widow, and the vestry supported the latter’s children but not Mr. Jones himself.91

St. Helena’s members never shouldered a great poor relief burden, but other parishes closer to Charles Town experienced problems. St. Michael’s did not dole out aid, but the vestry had to deal with the urban poor in other ways. In 1773, the vestry

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99 St. Michael’s Parish, Vestry Minutes, May 27, 1764, SCHS.
91 Ibid., May 10, 1770.
ordered new benches placed in the aisles for poor whites. They had been standing in the aisles, and some had brought in their own makeshift chairs. The vestry thought the practice unseemly, and it decided to move blacks to the gallery and belfry to make room for the increasing numbers of poor whites. Blacks were absolutely forbidden from sitting on the new benches.⁹² St. Michael’s vestry also took note of transients. The vestry complained that most of the recently deceased transients were buried in the St. Michael’s church yard. They ordered the practice halted to preserve the yard for its regular members.⁹³

Other outlying parishes had varying experiences with the poor. St. Stephen’s (northwest of Charles Town bordering the Santee River) had a low one Shilling per slave or per 100 acres of land tax as late as 1770.⁹⁴ It only spent £95.15 on poor relief in 1772.⁹⁵ St. Philip’s, by comparison, levied £14,000 in 1775.⁹⁶ Christ Church (just north of the Cooper River from Charles Town) was forced to increase its poor relief funds to £135 in 1751. The vestry raised rates again in 1752, assessing an eighteen Pence tax per each slave or each 100 acres of land.⁹⁷ St. John Colleton (southwest of Charles Town on the coast, divided by the Stono River), however, had a much higher tax by 1764 and assessed residents three Shillings and nine Pence per slave or 100 acres of land.

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⁹² St. Michael’s Parish Vestry Minutes, April 27, 1773, SCHS.
⁹³ Ibid., December 23, 1768, SCHS.
⁹⁴ St. Stephen’s Parish Vestry Minutes, April 16, 1770, SCHS.
⁹⁵ Ibid., April 12, 1773.
⁹⁶ St. Philip’s Parish Vestry Minutes, July 31, 1775, SCHS.
⁹⁷ Christ Church Parish Vestry Minutes, October 11, 1751; March 30, 1752, SCHS. Christ Church’s vestry records for the 1760s through the 1780s have not survived.
Additionally, the vestry assessed half that sum for every £100 lent at interest.\textsuperscript{98} Many poor had clustered on Edisto Island, where the parish appointed a special overseer in 1763.\textsuperscript{99} This parish carefully guarded its funds. On one occasion, Vestryman William Boone hired a lawyer to recover the poor tax from Robert Seabrook, who was appointed receiver for the poor tax on Edisto Island in 1763 and mismanaged the money.\textsuperscript{100} The record does not indicate how he mismanaged funds, but the poor lists for St. John Colleton were very short, and its vestry distributed limited aid on a case by case basis. This parish actually saw a decrease in the numbers of poor seeking aid, and the vestry lowered the tax twice between 1765 and 1768.\textsuperscript{101} It raised the tax again in 1770, but at the new two Shillings and six Pence rate, it was still lower than it had been in 1764.\textsuperscript{102} Given the parish’s proximity to Charles Town and the many complaints about transient poor, it is likely that many poor left outlying parishes like St. John Colleton to tap Charles Town’s greater resources.

The parish vestries varied greatly in how much money they raised and distributed to the poor. No vestry ever raised taxes for anything other than poor relief. The power to tax and determine what sort of person was worthy of aid gave the vestries power to manage the lowest tiers of white society. St. Philip’s, which distributed a comparatively massive amount of relief and managed the Charles Town workhouse, had even more power over parish residents. Prominent St. Philip’s vestrymen tried to reduce their tax

\textsuperscript{98} St. John Colleton Parish Vestry Minutes, April 23, 1764, SCHS.
\textsuperscript{99} \textit{Ibid.}, April 4, 1763.
\textsuperscript{100} \textit{Ibid.}, April 15, 1765.
\textsuperscript{101} \textit{Ibid.}, April 15, 1765; April 4, 1768.
\textsuperscript{102} \textit{Ibid.}, April 15, 1770.
burden and control the poor and transient more carefully, but they required assembly help to do so.

The vestries served as important administrative boards. St. Philip’s, which also appointed firemasters, workhouse wardens, wood and coal measurers, and street commissioners, served as a virtual municipal government for Charles Town. The most powerful vestry included the greatest proportion of assembly members and some of the colony’s most prominent men. However, even St. Philip’s was not allowed significant autonomy. For example, it operated the workhouse, but only the assembly could enact structural reform. Administering poor relief was the vestry’s most important and powerful function.

The Clergy and Political Conflicts

The Church of England enjoyed tremendous advantages as the colony’s established church. The elite funded the church from the treasury, spending some £164,027 from 1765 to 1775 alone. The assembly paid the minister of St. Philip’s £1,450 per year plus housing costs. By contrast, a small planter averaged about £1,400 annually. The Church was very well funded, and the clergy were “among the more affluent white colonists.”

Vestries chose their own Anglican ministers. In the early days, the Bishop of London and the Society for the Propagation of the Gospel sent ministers, but they “ceased to be significant influences” after about 1740 in South Carolina. Vestries had to find Anglican ministers on their own, and, given that the vestries had to call ordained,

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103 Bolton, 52.
104 Ibid., 37.
Anglican ministers, the vast majority came from England. Only 3.8% came from the colonies between 1750 and 1778. From the Church of England’s beginnings in South Carolina to 1775, only two of the twenty Anglican ministers who served in South Carolina were native colonists. Thus, while the vestries and the assembly had a great deal of influence over the Church in the realms of poor relief and finance, the power to choose ministers was severely limited by the simple fact that ordained, American Anglican ministers were a rare commodity.

Still, the political elite could wield power over the clergy. Between the assembly’s control over clergy salaries and the vestries’ power (however limited) to choose ministers, parishioners had far more control over their clergy than their English counterparts. However, there are few recorded conflicts between vestries and ministers in South Carolina. Only two of South Carolina’s clergy from 1750 to 1778 became involved in scandal. None of the parish records indicate that any minister was ever driven from the parish or even so much as admonished for sinful behavior or ineptitude. Congregations only turned on their pastors when the pastors’ or church officers’ view of a political issue opposed their own.

There is no evidence that establishing bishops was ever a major controversy in South Carolina as it was in other colonies like Massachusetts. Any such effort would certainly have been opposed, and bishops would have likely been identified with imperial

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105 Ibid., 99.
106 Bell, 194.
107 Bolton, 95-96.
policies and “placemen.”\textsuperscript{108} Though some colonials saw efforts to establish bishops as part of a British conspiracy to establish tyrannical government in the colonies (i.e. part of an overall scheme in the 1760s and 1770s that included the Stamp Act), efforts to establish bishops were meant to correct the church’s institutional weaknesses and were mainly pushed forward by the colonial clergy, not British ministers of state.\textsuperscript{109} In any case, the imperial crisis divided the Anglican clergy. Many tried to remain neutral, but, having sworn allegiance to the King, others could not tolerate open resistance to his authority in the colonies. In 1775, the Church of England had 296 ministers serving in the thirteen colonies. By 1783, only 130 remained—a loss of 56%. Of those who no longer served, fifty-seven went into exile. In South Carolina, only nine of the twenty clergymen who had been serving in 1775 remained in 1783. Five fled to England, five died during this period, one is unaccounted for, and none were replaced.\textsuperscript{110} The Church of England was in a state of “shattered disarray” by 1783.\textsuperscript{111}

St. Michael’s parish witnessed an incident that highlights the political tensions between vestries (i.e. local, elite leaders) and ministers because of the political disputes in this period. In August 1774, Mr. John Bullman, assistant to the rector, preached what the vestry called an “offensive sermon.” The sermon was so offensive to the congregation that many parishioners threatened to abandon the parish (or even threatened the church

\textsuperscript{108} Mills, 131.
\textsuperscript{109} Rhoden, 8. For the episcopal controversies as part of the imperial crisis, see Bridenbaugh, \textit{Mitre and Sceptre}.
\textsuperscript{110} Bell, 201.
\textsuperscript{111} Bell, 202.
with “indignities” if Bullman was not called to account. The vestry reported Bullman’s offending text:

…every silly clown and illiterate mechanic will take upon him to censure the conduct of his prince or governor and contribute as much as in him lies to create and foment those misunderstandings, which being brooded by discontent and diffused through great multitudes come at last to end in schisms in the Church and sedition and rebellion in the state.  

Upset parishioners were not attacking Bullman’s moral fitness or competence as a church official. It was not as though he had committed some immoral act or preached heresy against established doctrine. He only preached against discontent, factionalism, schism and disloyalty to church and state (at a time of conflict with Britain). He also equated resisting British authority with illiteracy, stupidity, foolishness and low social standing (i.e. something a gentleman would never do). Bullman clearly spoke against anti-British activities and sentiments that had become very pronounced by August 1774. His elite parishioners would not stand his attacks on their gentility and did not share his political views. However, the congregation was divided on whether or not a clergyman should face political chastisement. The vestry led the charge and manipulated conditions to ensure Bullman’s removal.

The congregation met according to a public advertisement three days later. They voted 42-33 to disapprove of Bullman’s conduct. The vestry unanimously voted to fire Bullman, citing the majority vote.  

The following week, however, the vestry received a letter signed by seventy-four members (only one less than the number who had originally

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112 St. Michael’s Parish, Vestry Minutes, 1763-1776, August 15, 1774, SCHS.
113 Ibid., August 18, 1774. The vestry minutes do not indicate which parish members attended the meeting, nor do they indicate who signed the compliant.
voted) of the congregation who claimed they were never notified of the aforementioned meeting. The vestrymen ignored this complaint, saying they were satisfied with the propriety of their conduct. Who sat on this vestry? Among its member were Thomas Heyward (future signer of the Declaration of Independence), Miles Brewton (revolutionary leader and wealthiest merchant in Charles Town), Thomas Loughton Smith (another wealthy merchant and revolutionary), and Henry Laurens. Brewton, Laurens, and Smith also served as assembly representatives from St. Michaels at various times. When an English church official in South Carolina criticized their political conduct and called their status as gentlemen into question, that official was driven from office, much like how a judge, governor or customs official who opposed the assembly found himself shamed or driven from the colony.

A similar incident took place in St. Helena’s parish. In October 1772, sixteen parishioners signed a petition requesting an inquiry into the fitness of the Rev. Ellington as pastor, stating that his “conduct was so very disagreeable.” Again, there is no mention of any moral lapse or incompetence. The vestry met and considered the petition, but Ellington disputed the very legality of such an inquiry. He claimed that he was only answerable to the Bishop of London. Ellington made a mistake by challenging the vestry’s authority to hire and fire clergy, and it subsequently voted to remove him without even taking the matter up before the entire congregation. The vestry only stated that his conduct was “extremely offensive to the generality of the inhabitants of
The minutes do not reveal if this conflict was political. However, his refusal to recognize the vestry’s long established power over the clergy was certainly political and made the original offense irrelevant. Hence, the parish vestry saw it as a right and duty to subordinate and hold church officers and ministers accountable for their words and deeds. Members of the congregation initiated both complaints, but the vestries organized the removals. Neither congregation requested removal, but the vestries chose to pursue it. They sought to remove—not correct—clergy who challenged the supremacy of provincial lay-leaders, and the same pattern holds when provincial political leaders clashed with British officials who challenged elite dominance of other government institutions.

Church of England law did not recognize vestry power to terminate a minister. According to English law, only the Bishop of London could remove a minister from a parish’s rectorship. The rector was supposed to chair the vestry with life tenure. However, the South Carolina elite who controlled the vestries would not have British appointees (the equivalent of political placeholders) presiding over an arm of the centralized government. By leaving rectorships vacant and hiring clergy on a year to year basis, vestries were able to remove officials at will and deprive rectors of a vote on vestries. Rules for St. John’s Berkley Parish (west of Charles Town) demonstrate how a vestry might usurp the minister’s influence. This vestry’s regulations required monthly meetings except from July to October. They also stated that the vestry would select its

114 Salley, Minutes of the Vestry of St. Helena’s Parish, October 15-22, 1772.
115 Olwell, 113-114.
own chairman and treasurer (from their own ranks), and both had to cosign any expenditure. The minister, therefore, did not preside and was excluded from participating in the authorization of financial decisions. Ministers, who received salaries from the Commons House and answered to vestries, were decidedly subordinate to provincial political authorities. Indeed, South Carolinians had more control over Church of England clergy than any other administrative position staffed by English officials.

**Conclusion**

The elite’s political power extended far beyond the Commons House of Assembly itself. Using the assembly’s legislative authority, the elite were able to shape the structure, determine the functions of, or define the limits of other important parts of government including the courts and the Church of England’s parish vestries. The ruling party’s priorities and philosophies determined how these institutions governed.

It seems, then, that the lowcountry elite’s political reach was vast. As the Regulators once complained, “all matters and things” in terms of government centered on Charles Town, as the elite had worked to minimize competition for political authority in the colony from other areas and other groups of subjects. While this government served and protected elite interests, it also worked to project an aura of competency and cultivated the support of non-elites by upholding law, order and providing at least some relief for the poor. There were, however, some substantial limits to elite political authority, and the Church of England provides an excellent example.

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116 Rules for St. John’s Berkley Vestry, Ball Family Papers, SCHS.
First, the elite had to at least appear to govern in ways that benefitted the “common good.” The planters needed a measure of solidarity with lower-class whites given the colony’s slave majority. The elite also had to guard against disorder and discontentment. Thus, the vestries they controlled levied taxes (in some cases heavy taxes) to provide for the poor. Doing so reduced the threats of vagrancy and pauperism, allowed the gentry to appear charitable and paternal, and possibly reduced the threat of property crime. Defining poverty, vagrancy, and the terms under which a person could receive relief also gave the elite power to manipulate behavior according to their definitions of morality, work-ethic, and order.

Second, while the elite controlled the vestries and the church’s budget in South Carolina, they could not entirely control the clergy. Vestries could choose their own ministers and attempted to exclude the clergy from influencing the vestries’ decisions, but practical realities almost always limited their choices to Anglican ministers from England. The elite faced the same problem with the courts: they could shape the criminal law, define court structures, and outline court powers, but they could not control the appointment of judges. There would always be a measure of English control even within the institutions that the elite relied upon to govern the colony from Charles Town.
Chapter 5

“His Late Misconduct should not Pass”: The Commons House versus the Placeholders

The South Carolina elite, represented in the Commons House of Assembly, were remarkably united politically. There were no factions within the Commons House of Assembly. No proto-political parties operated in South Carolina as they did in Maryland or New York. The planter-merchant elite were the dominant political force in South Carolina. That interest’s will, most often expressed through the Common House of Assembly’s legislation, defined government structures and their functions. It controlled the process of colonial state building in South Carolina.¹ Throughout the eighteenth century, the Commons House used other government institutions like the criminal justice system and the Church of England and defined their functions. It created legal and law enforcement mechanisms to manage slavery and the plantation economy. All of these institutions governed according to the interests of the colony’s political elite. The Commons House centralized South Carolina’s government to a degree unheard of in other North American colonies.

Yet, powerful executive and judicial personnel remained beyond the assembly’s direct control. The problem of “placemen” then (i.e. English appointees who held powerful administrative positions that were often unavailable to colonials) emerges as one of the most critical political problems in the colony. The assembly had greatly encroached on English control over the institutions covered in the first four chapters of

this dissertation. In the last years of the colonial period, English appointees, whose very presence was obnoxious enough to the colonial elite, openly challenged elite control of the courts, finance, and even the vestries. Placemen also became more numerous during these years, and the elite fought constant political battles to limit their influence within colonial government. Placemen who in any way challenged elite control of the many tools through which they exercised political authority became the targets of especially vehement attack.

This fundamental problem led to a long series of conflicts between the lowcountry elite and British officials in the eighteenth century. These conflicts became especially heated when royal officials attempted to interfere with the assembly’s ability to define and control the colony’s other governmental institutions. This chapter studies the political behavior of the South Carolina lowcountry elite in the years immediately before the American Revolution. It asks three central questions. How did the lowcountry elite assert authority over British officials? What did they fight for? What were the consequences? These questions will be answered to further illustrate how the South Carolina elite wielded political power in their province and within the context of the governmental system they created.

While unified planter elites also dominated West Indian colonies like Barbados and Jamaica, the political situation in other North American colonies was very different.² New York politics revolved around the royal governor’s impressive patronage powers.

² For the political elite in the West Indian colonies, see Andrew Jackson O’Shaughnessy, An Empire Divided: The American Revolution and the British Caribbean (Philadelphia: University of Pennsylvania Press, 2000).
Factions centered on the governor, seeking his favor in the hope of benefitting from his patronage. Those left out formed cliques against a governor and his supporters. Maryland was divided between “Country” and “Proprietary” parties in the late eighteenth-century. South Carolina governors had no such patronage powers or political followings. Its elite did not divide into organized political parties. South Carolina had no local government that was not directly answerable to the Commons House of Assembly. Since there were no county courts, the governor’s appointment of judicial officials was very limited. Governors appointed Justices of the Peace, but the assembly could define or limit their functions through legislation. Royal officials had almost no control of how South Carolina’s government and legal system were structured. South Carolina’s royal governors and officials were actually quite weak because of how the elite had been able to structure and control the instruments of government in the colony. One can only fully appreciate this weakness in the broader context of how the South Carolina elite exercised political power through a vast array of institutions beyond the assembly itself.

By the 1730s, factions within the assembly ceased to exist, and the royal governor was not the center of the colony’s politics. An example of the assembly’s unity can be seen in how it chose its speakers. Since the start of the eighteenth century, the assembly traditionally chose its speaker unanimously, and this practice became a symbol

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of unity for the house.\textsuperscript{5} The Commons House passed most of its bills unanimously and never took roll call votes. Not every vote was unanimous, and some issues split the assembly.\textsuperscript{6} However, there were no permanent divisions. This lack of factionalism derived from several sources. First, assemblymen united to oppose the powers of royal governors. Second, the elite shared common economic interests and codes of political and personal behavior. The concentration of power and wealth in Charles Town, election from parishes in which one did not reside, and the exclusion of the backcountry from assembly representation until the final years of the colonial period also contributed to unity in the assembly.\textsuperscript{7} Moreover, all members of South Carolina’s elite were deeply invested in the plantation economy. They owed their wealth and power to the profits it generated, and they needed the government to ensure its continued profitability.

Yet, Britain’s power to appoint officials was beyond the lowcountry elite’s control, and it was a serious point of contention. The lowcountry elite often found themselves excluded from high office. No provincial, for example, ever held the post of royal governor. Placemen who did not share provincial agendas and priorities often held these top positions. Powerful (and sometimes corrupt) placemen in the executive and judicial branches of government could intervene, block and frustrate the assembly’s efforts to manage provincial society and maintain centralized political authority. The situation could become especially explosive if a placeman challenged long-standing

\textsuperscript{7} Weir, 136-137.
traditions and perceived rights that the lowcountry elite had come to practice and cherish. The assembly recognized this threat to their political authority and waged a constant struggle to hold royal officials accountable. Primarily, the lowcountry elite used shame, attacks on a placeman’s reputation, persistent petitioning for removal or policy change through the assembly’s London lobbyist, legal action, legislative tactics, and non-cooperation to bring offending British officials to heel. Many conflicts were not between the assembly and governor. They were fought between the elite and various officers who somehow threatened local control of key institutions that have been discussed in previous chapters. Institutions like the customs service, the courts, and the council could have a major impact on elite economic interests. Political struggles began when officials threatened these interests or attempted to wrest control of government institutions from the local elite.

The conflicts between the elite and the placeholders covered in this chapter do not always neatly fit into the traditional privilege versus prerogative narrative, which focuses on ideologies and the colonial struggle for English political rights. These conflicts are best understood within the context of how the provincial elite structured the government and exercised political power. They did not begin in the 1760s, and they were a part of the political culture in South Carolina. One cannot then say that they destroyed colonial government in and of themselves. However, these conflicts escalated in the 1760s and 1770s. They became entangled with the deepening imperial crisis, even though the conflicts were often only tangentially related to the larger crisis. The imperial crisis poisoned the political climate in the colony, causing even more distrust between royal
and provincial officials, resulting in frequent government shut-downs and deadlock. Royal government eventually collapsed because of this political deadlock.

Other historians have mainly focused on ideology and factionalism when studying conflict within colonial government. Some have stressed how the colonial assemblies fought to preserve legislative power against prerogative power in the same way Parliament itself had during its seventeenth-century battles with the Stuart monarchs. The imperial crisis was then constitutional, arising from colonials’ defense of their rights as Englishmen—primarily the right to representative government.8 Others have studied the issue of placeholders in the context of eighteenth-century English opposition thought that stressed the conflict between liberty and power (especially corrupt ministerial power that perverted and unbalanced the English constitution).9

The constitutional or “country” ideology of the late seventeenth-century, with its emphasis on the legislature or representative government, definitely influenced the South Carolina elite. For example, South Carolina included the following English constitutional acts and petitions among its own laws: the Petition of Right (1628), Charles I’s response and the further petition, the Habeus Corpus Act (1679), and the Bill of Rights (1689).10 The notion of ministerial corruption that was so important to

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10 Thomas Cooper and David McCord, eds., The Statues at Large of South Carolina (Columbia, 1836-1841), vol. 4, iv.

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eighteenth-century opposition thinkers was also very influential. South Carolina’s provincial leaders often accused placemen of corruption, attacked their reputations and questioned their honor, while they also approached conflicts with British officials from constitutional grounds. Both political ideologies were at work in colonial South Carolina, and they supported the concentration of political power in provincial elite hands. However, focusing exclusively on these ideological perspectives or on constitutional conflicts and legislative politics can obscure the tactics employed during these battles and their roots in the colonial political system.

This chapter will then revisit some familiar territory. However, instead of approaching conflicts within colonial government from these perspectives, it examines them as basic, integral components South Carolina’s mature political system. First, the elite had developed an established stable of tactics to fight the influence of royal appointees. Second, they fought that influence so fiercely for practical as much as ideological reasons: their system of government, tailored to uphold elite interests, rested on the elite’s ability to exercise political authority through a variety of institutions that the assembly could define but not staff. Conflict was built into the system, but the system could function as long as the elite could successfully use the tactics they developed to discipline royal officials.

The central question was whether or not provincial elites could maintain autonomous control of their colony within the empire. The imperial crisis did not initiate that debate. Placemen had been an issue throughout the eighteenth century. The conflicts in South Carolina always revolved around placeholders, because British
appointees were not directly accountable to the colonial assembly. Moreover, the exercise of royal or Parliamentary authority threatened the lowcountry elite’s hold on political power in South Carolina. A detailed examination of three of these conflicts—one over judges, another with customs officials, and the last with the council and governor—demonstrates the philosophical underpinnings of the colonial elite’s vision of government and the tactics they used to combat perhaps the gravest threat to their control of South Carolina’s government—placemen.

An Irish Jurist

Even an outsider like Josiah Quincy clearly saw that placeholders were a problem in South Carolina’s courts. He noted that when the Circuit Court Act finally passed, Lord Hillsborough sent new British judges to replace “natives, men of abilities, fortune, and good fame.”11 The courts were a critical part of South Carolina’s political system, and they were staffed by disinterested outsiders who did not share the lowcountry elite’s priorities after the Circuit Court Act took effect in 1772.

Of the thirteen judges appointed before 1771, eight served in the Commons House of assembly. Four of the eight were second generation or later colonial natives. The other four were immigrants who successfully established businesses and integrated into the colonial elite. British officials removed two of the four immigrants—Robert Pringle and George Gabriel Powell—for actively opposing British policy during the imperial

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crisis. Three of the thirteen can clearly be identified as placemen. Peter Leigh, for example, took the office of Chief Justice of South Carolina as a consolation appointment after he was removed from his post of High Bailiff of Westminster for improper conduct. He arrived in 1753 and immediately admitted his son Egerton to the bar with no legal training. He made him Clerk of Common Pleas in 1754 in a clear act of nepotism. The situation worsened after 1771. Of the six judges appointed between 1771 and 1774, only two served in the Commons House. Only one was a second generation or later colonial native. Four of the six came fresh from Britain. Such appointments became increasingly common in this period and not just in the judiciary. For example, William Wragg, a very wealthy and respected planter and member of the Commons House, was removed from the council in 1756 in favor of a British placer.

This overall phenomenon of favoring placemen over qualified members of the local elite, a trend growing stronger over a nearly twenty year period, combined with the sometimes offensive behavior of these placemen and the atmosphere of the Stamp Act Crisis, could lead to explosive political situations. In one instance, a firestorm erupted around Chief

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13 Ibid., 2:396-297.
14 Judge statistics were compiled from two sources. The first provided the list of judicial appointments, and the second provided biographical details for select members. Cooper, *Statutes at Large*, vol. 1, 420. Edgar, *Biographical Directory of the South Carolina House of Representatives*, vol. 2. John Belton O’Neall, *Biographical Sketches of the Bench and Bar of South Carolina* (Charleston: S.G. Courtenay & Company, 1859) only provides information on three colonial judges: Robert Pringle, Nicholas Trott and William Henry Drayton.
15 Robert Stansbury Lambert, *South Carolina Loyalists in the American Revolution* (New York: Columbia University Press, 1987), 8-9. Lambert notes that the general decline of the council’s prestige was due to placeholders. Wragg’s removal over a dispute with Governor William Henry Lyttleton was the culminating event that really damaged the council’s political clout in the colony. See also M. Eugene Sirmans, “The South Carolina Royal Council, 1720-1763,” *The William and Mary Quarterly* 18 (July 1961): 372-392.
Justice Shinner, leading to his disgrace and removal from office. However, the Stamp Act itself was incidental. The appointment, behavior, and accountability of placemen were the key issues.

The lowcountry elite had no shortage of venom for placemen and often blasted their lack of qualifications and displacement of qualified provincials. In a 1769 petition to the King, the Commons House referred to such men as “parasitic and novel ministerial officers.”\(^{16}\) Chief Justice Charles Shinner, an Irish jurist, was clearly one of the offending placemen. He became Chief Justice in 1761, but he also held a place on the colony’s royal council.\(^ {17}\) During the Stamp Act Crisis, he decided to close the courts when no stamped paper was available. The Stamp Act required that court documents had to be issued on stamped paper, so he was within his rights to close the court. However, the Commons House challenged the validity of the Stamp Act, and Shinner chose to support the House of Commons rather than the Commons House.\(^ {18}\)

Shinner faced a dilemma in 1765. The Stamp Act had gone into effect, and it required the courts to use stamped paper for official business. However, popular resistance effectively kept the stamps out of Charles Town. Shinner ordered the courts closed on November 13, 1765. Local leaders sprung into action and petitioned Lt. Governor William Bull for redress. In response, Bull appointed three provincial assistant

\(^{16}\) “Governor Charles Montague to Lord Hillsborough, June 30, 1769,” Records of the British Public Record Office Relating to South Carolina, 32:82.

\(^{17}\) Mercantini, 216.

judges—Rawlins Lowndes, Benjamin Smith (former Commons House Speakers) and Daniel Dooley—who would be able to overrule Shinner and open the court. On March 3, 1765, Shinner tried to immediately adjourn the court, but the three new justices allowed business to go forward. Shinner condemned the action, saying that the justices had no right to disobey the law and flout the will of Parliament. Shinner went further still. Following the resolution of the Stamp Act Crisis, he refused to recognize the legality of any actions taken by the court during the period when the law was in effect. His stubborn devotion to the letter of the law opened the door for the Commons House to unleash its fury upon him.\(^{19}\) The Stamp Act, however, did not make Shinner unpopular with the colonial elite. They already resented him as a placeholder, and the Stamp Act simply provided the opportunity to arouse a sustained campaign against him.

Christopher Gadsden, the leader of Charles Town’s Sons of Liberty, was one of Shinner’s most vocal opponents. Gadsden came from a wealthy, established family. His father had become a great landowner and a lawyer. The father had enough wealth to send his son to England at age seven to live with relatives and attend grammar school, where he began to learn Greek, French, and Latin. Christopher Gadsden returned home in 1740 to begin a business apprenticeship in Philadelphia. Unfortunately, his father died the following year, leaving him with a large estate of over 1,000 acres and several slaves. From 1745 to 1760, Gadsden focused on business rather than planting, also serving for a

\(^{19}\) Vipperman, 230-231. See also Weir, Colonial South Carolina, 297.
time in the Royal Navy. He became convinced in these later years that the British government had become corrupt, and evil ministers were pursuing policies that would deprive the colonists of their rightful liberties. He ardently defended colonial rights based on his reading of English history. His personal experiences with the Royal Navy, as a merchant in Philadelphia, and during the revolutionary crises only reinforced his conspiratorial suspicions.

Several years before the Shinner episode, Gadsden found himself embroiled in one of the South Carolina assembly’s privilege controversies, and it no doubt made him very sensitive to British interference in provincial government. In brief, Royal Governor Boone had invalidated Gadsden’s election to the Commons House. Gadsden and the assembly articulated their defense of the assembly’s rights within the provincial government, especially compared to the proper role (in their minds) of a placeman like Boone: Gadsden placed the assembly on equal footing with Parliament in the empire: “The Parliament of Great Britain and the general assembly of this or any American province, though they differ widely with regard to the extent of their different spheres of action, and the latter’s may be called a sphere within the former’s yet they differ not an iota on the point in dispute.” Britons did not shed their rights when they moved to the colonies, he argued. Since colonists could not be represented in Parliament, the assembly

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had to serve that role. It could not do so without the same privileges given to Parliament, or, as Gadsden asked, were “the British Americans to be represented nowhere?”

In its petition of September 13, 1763, the Commons House asserted its “most constitutional and essential privilege, solely to judge and finally to determine the election of their own members,” which Boone had violated. The Commons House members appealed to the King as the protector of their liberties, explaining their extreme action against Boone as a measure to simply force him to obey the orders the King himself had issued instructing the governor to respect the assembly’s right to determine its own elections. One of the problems here, which arose in all of the controversies with royal officials, was that the Commons House had no way to hold an officer like Boone directly accountable for misconduct (i.e. encroaching on the local elite’s authority). In this case, as in others, the assembly sought redress from London authorities. The Board of Trade responded to the assembly by finding fault with Boone, who it claimed acted with passion instead of prudence, but the Board also chastised the Commons House for “forgetting their duty” to the King and people by such an unjustifiable and disrespectful act as refusing to do business with Boone until he had been punished. The Commons House won this battle, since the Board instructed Lt. Governor William Bull to respect the assembly’s right of determining elections, but the Gadsden affair foreshadowed the

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25 Ibid., 158.
26 Journal of the Board of Trade, July 16, 1764, Ibid., 30:174.

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local elite’s future efforts to restrain the influence of placemen like Boone in colonial politics. It also strengthened Gadsden’s notions of British corruption.

Gadsden continued to develop his political views and became deeply involved with the Sons of Liberty as the imperial crisis played out. Time and again, he showed his willingness to go beyond the bounds of normal imperial procedure to defend the local government’s autonomy. During the imperial crisis, he feared that ministers in England were systematically denying Americans the rights they were entitled to under the British constitution, writing during the Stamp Act crisis that the attacks had “the appearance of design.”

By the time the Townshend Duties had stirred the colonists into frenzy, Gadsden thought, “everything ought to be risked rather than lose the two main rights we are contending for, the distinguishing characteristics of Englishmen.” The Shinner affair, and the general issues of placeholders, was an important part of this corruption that posed a danger the elite’s control of the colonial government.

Gadsden initiated the assembly’s attack upon Shinner’s decisions and his fitness to serve as Chief Justice. The Commons House also assaulted those who supported his actions in the hope of isolating and pressuring the Chief Justice. On March 6, 1766, Gadsden submitted a petition on behalf of the “merchants, traders, freeholders, and other inhabitants of Charles Town.” He wrote that many had sought justice in the Court of Common Pleas since November of the previous year only to be turned away by the clerk and Shinner because of the stamp issue. Shinner turned them away, despite the fact that all parties were prepared to pay all legal fees. Gadsden claimed that Shinner’s excuse

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that there could be no business without stamped paper was only pretense. It was not, Gadsden wrote, the business of suitors to provide the paper. There was simply no stamped paper to be found. Thus, Shinner perpetrated a “refusal of justice” on the colony and allowed “transitory persons in debt” to flee the province before action could be taken against them. The Stamp Act and the lack of stamped paper itself were grinding commerce and legal proceedings in the colony to a halt. Given how the Court of Common Pleas played a critical role in debt collection, Charles Town merchants like Gadsden relied upon it to conduct business. Shinner’s actions offended provincial political sensibilities, but his actions also damaged the local elite’s economic interests.

The assembly forwarded Gadsden’s petition to a special committee, which reported back to the full house on April 23. Mr. Parsons spoke for the committee and reported that they had questioned the clerk of Common Pleas. The committee discovered that Shinner’s clerk had made no effort to obtain stamped paper for the court. They also examined the court record and found that the Chief Justice alone had decreed the court closure. Hence, the committee believed the clerk was to blame because of his lack of effort in obtaining the paper, and they recommended that Lt. Governor Bull remove him from office. Bull replied that he would consider the matter, but he also said that “it is the first principle of justice, not to condemn any man unheard.” Bull understood that the clerk—Dougall Campbell—had ignored the orders of the assistant justices to re-open the court and had refused writs from them to summon juries. However, Bull argued that

28 South Carolina Commons House of Assembly, Journals, 37.1, March 6, 1766, SCAHC.
29 Ibid., April 23, 1766.
Shinner had only tried to obey an act of Parliament.\(^{30}\) Of course, obeying that act when it conflicted with the political and economic priorities of the ruling elite had been Shinner’s great sin in the eyes of the assembly.

Bull believed that Parliament’s laws demanded obedience from all subjects in the empire. The Commons House placed itself atop the provincial political structure. When Parliament’s laws undermined its authority or threatened the local economy, the majority of the lowcountry elite were perfectly willing to cast Parliamentary law aside and persecute those who tried to enforce it. Shinner, a temperamental placeholder who was clearly unfit for office, was an easy target. His clerk remained loyal to him and paid the price. In response to Bull, the assembly accused Campbell of usurping the court’s authority. Bull was apparently offended by the implication that he was supporting some kind of brigand and replied that “whenever my conduct is questioned by the King, I must stand or fall on the propriety or impropriety of my own judgment. It will be no excuse to me to have implicitly followed the opinion of the assembly if it shall be deemed improper by His Majesty.”\(^{31}\) Bull stood his ground and defended his devotion to the imperial hierarchy. The assembly, however, would not allow placemen to interfere with their political and legal systems. Despite Bull’s warnings, it pursued Campbell and Shinner relentlessly. The assembly asserted its right to define the clerk’s job description, determine the structure and function of the courts, and call corrupt or incompetent officials to account.


\(^{31}\) *Ibid.*, April 29-May 1, 1766.
The Commons House next passed a series of resolutions and took the matter a step farther. The assembly resolved that the court alone had the right to determine cases. The clerk obstructed the court’s business by refusing to register suits. The nature of his office was simply to obey the judges and carry out orders. Thus, Campbell was guilty of contempt of court for flouting the orders of three justices (a majority), and Bull ought to have suspended him immediately. Furthermore, the council had allowed Campbell to come forward and present his “pretended vindications.” It acquitted him, and the assembly claimed that the council had no such right, since the proper court judges had already declared Campbell guilty of contempt.32

The assembly next formed a committee to look at “the state of the province,” expanding the conflict beyond Shinner himself to the nature of judges in general. Mr. Lynch reported for the committee, and he stated that the practice of appointing American judges during “pleasure” (i.e. the King’s pleasure instead of “good behavior”) was a major problem in South Carolina. Since the practice resulted in politically appointed and corrupt judges like Shinner, the elite continued to dispute pleasure appointments during the debate over the Circuit Court Act. At this time, Lynch and the committee wanted Charles Garth—South Carolina’s colonial agent in London—to meet with other agents and work for judges who were constitutionally commissioned. Lynch also wrote that the province was

…much injured by the multiplicity of places of trust (some of which appear to be altogether incompatible with each other) held by gentlemen of this province, such

32 Ibid., May 2, 1766.
as those of Attorney and Surveyor General and of Judge of the Admiralty possessed by one honorable member of His Majesty’s Council.³³

Lynch pointed to two specific problems. First, the English constitution was not properly applied to South Carolina’s government. According to English constitutional tradition accumulated since at least the seventeenth century, judges were fully accountable to the legislature. Following the Glorious Revolution in England, it became practice for judges to be appointed on “good behavior” rather than the pleasure of the crown. The Act of Settlement of 1701 fixed judges’ salaries and required a vote of both houses of Parliament to remove them. Hence, when Lynch wanted a “constitutional” arrangement, he was speaking of the post-Glorious Revolution constitution under which the legislature could hold judges accountable for their behavior. He and the Commons House insisted that the colonial assembly also had the right to hold judges, who should retain office based on good behavior, accountable and answerable to the provincial legislature and not to the monarch or his representative (the pre-1689 arrangement).³⁴ Second, many important royal offices were simply patronage positions (i.e. appointments at the King’s pleasure). Placemen held multiple offices for their own profit and advancement, and the crown made appointments without regard to the proper governance of South Carolina. Once appointed, these men could not be easily called to account by established constitutional methods. Lynch’s report never questioned the crown’s right to appoint officials. It only questioned the quality of the appointees, who held them

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³³ South Carolina Commons House, Journals, 37.1, June 24, 1766, SCAHC. The individual Lynch refers to here is Egerton Leigh, who served for a time as a member of the council, attorney general, and sole judge of the Court of Vice-Admiralty. Note that Shinner also held multiple places.
accountable, and the reasons behind their appointments. Of course, the underlying issue was that these placemen threatened the lowcountry elite’s ability to structure provincial government as the colony’s dominant political force. The assembly failed to persuade London to change its policies, so it attacked individual placemen and found indirect means of holding them accountable for their political and personal behavior. Its two main lines of attack were reputation and competence. Two years after the passing of the Stamp Act Crisis, the assembly continued in its effort to hold the hapless Shinner accountable and make an example of him.

In April 1767, Christopher Gadsden rose and addressed the full house on behalf of the “committee on the state of the courts.” The circuit court debate was raging at this point, so Gadsden could have addressed a host of critical internal issues. He fired another shot in the war with Shinner instead, placing focus on appointed judges. Gadsden began by referring to him as “a person wholly inacquainted with and ignorant of the common law, acts of Parliament and assembly.” He went on with a specific list of charges: first, Shiner sent one of Richard Brandon’s slaves to jail without any sort of legal commitment document. The servant had been loading a wagon while Brandon briefly left him alone. Shinner came upon him and had the slave imprisoned, resulting in the theft of £50 of goods from the unattended cart. The only specific charge leveled against the slave was that he “smacked his whip” while Shinner was passing, which gave Shinner’s horse a “start.”

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35 South Carolina Commons House of Assembly, Journals, 37.1, April 8, 1767, SCAHC.
Gadsden went on to list more of Shinner’s crimes. In 1765, Shinner suspended a jury award in the case of William Harvey vs. William Elliott, because he claimed that the jury had not properly addressed the case’s main issue. Hence, Shinner nullified the jury’s (dominated by members of the provincial elite) decision. In another street incident, Shinner pulled out a pistol and personally took William Smith to prison, where he was forced to remain without a written commitment. Smith had insulted Elizabeth Brown, a woman who was living with Shinner, so the judge took matters into his own hands. Worse still, Gadsden presented a copy of a letter Shinner wrote asking the jailor to secretly banish Smith from the province. Shinner simply reasoned, “If I fall on him it may be much worse than he apprehends.” Was Shinner threatening Smith’s life? Gadsden did not say. He closed by stating that there were also many examples of Shinner’s inappropriate behavior in court, such as “levity, folly, ludicrousness, and indecency.”

Gadsden presented a damning view of Shinner, who was not present to defend himself. He effectively challenged his competence as a judge and his character and honor as a human being. Was this man the best Britain could provide? Should South Carolinians leave justice in the hands of men like Shinner, when very capable provincial men could be found? The report closed with several resolutions asking for Shinner’s removal from office, charging that he was ignorant of the law and had many times acted illegally, arbitrarily and oppressively. It did not take long for Governor Charles Montague (at this point still on decent terms with the assembly) to act. He wanted to hear Shinner’s
side of the story, but said “that gentleman’s deficiency in the knowledge of the laws of the land has appeared plain to me.”  

Montague’s words and deeds here were inconsistent, since he had initially defended Shinner. The Chief Justice sent a long and detailed complaint to London regarding the assistant judges’ conduct (in opening the court against his orders). Montague refused to allow the assembly to see a copy of the complaint or to hold an open hearing before the council. Thus, the assembly ordered colonial agent Charles Garth to speak on behalf of the assistant judges and delay any action until the Commons House could see the report. The young and inexperienced Montague, who relied on the assembly for his salary, caved to pressure. The council also unanimously voted to be rid of Shinner, so Montague suspended the judge until he consulted with the authorities in London. The governor may not have been comfortable with the assembly’s attack on a royal official, but he could not help but see Shinner’s unfitness for the job. Montague also had good reason to fear for his own place, especially since he had seen firsthand how the assembly could destroy royal officials who opposed its wishes.

Shinner never returned to the bench, and the Commons House was victorious in driving out another placeholder. Though the Stamp Act had sparked this controversy, the Shinner affair had deeper roots and should be understood in the larger context of how the lowcountry elite had accumulated authority, governed the colony, and dealt with

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36 Ibid.
38 South Carolina Commons House of Assembly, Journals, 37.1, May 19, 1767, SCAHC.
placeholders. Shinner was surely ignorant of the law before he closed the courts. He was surely just as much a placeholder before as after. His direct challenge to the lowcountry elite’s political system and his interference in the economy gave the assembly the opportunity it needed to end his tenure and assert control over his office. The assemblymen reacted so strongly, because they perceived in him a threat to their independent governance of the colony. They also saw him as the embodiment of the larger problem of ignorant or arbitrary placeholders who robbed the elite of imperial office, challenged the assembly’s domination of the political and legal systems, and menaced elite economic interests.

“Every Arbitrary and Oppressive Method”

The Commons House created the Court of Justices and Freeholders and the Court of Common Pleas. It controlled these courts’ functions, but had increasingly less control of who sat on the bench, which became a major point of dispute in both the circuit court debates and the Shinner controversy. Another court remained wholly beyond provincial control. The assembly had no authority to structure or staff it and could only hope to apply indirect influence. The Court of Vice Admiralty oversaw maritime issues critical to merchants and planters, so they had a keen interest in its operation. The customs service was also totally beyond their direct control, and it had an even greater daily

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39 Charles Woodmason, a friend of Shinner’s, believed he was simply removed for his support of the Stamp Act. He was a victim of the “rage of demons” (i.e. provincial leaders) that did not spare “a soul whom they thought were advocates of the act.” “The Journal of Charles Woodmason,” in The Carolina Backcountry on the Eve of the Revolution: The Journal and Other Writings of Charles Woodmason, Anglican Itinerant, ed. Richard Hooker (Chapel Hill: University of North Carolina Press, 1953), 21, 86. See also Mercantini, 216-218. Mercantini also links the Shinner episode to the Stamp Act, focusing more on its perceived ties to the imperial crisis than the overall issue of placemen.
impact upon their interests. These institutions were necessary and even useful. The lowcountry elite always resented their inability to control them, and provincial leaders actively resisted when they fell into the hands of corrupt placemen. Local business and political leaders were forced to ask themselves how Britain could allow these men to have such an influence over their lives and fortunes. They fought back, using tactics much like those employed against Justice Shinner.

The Court of Vice Admiralty was the only court directly erected by Britain in the colony. The court itself was not a problem. Some authority had to enforce maritime law in an Atlantic commercial empire. However, given its close relationship to elite economic interests, this branch of law enforcement was something the lowcountry elite fought to control. They expressed bitter grievances against the court’s structure, procedures and personnel. The Charles Town Admiralty court consisted of one appointed judge in this period. The judge heard and decided cases without a jury, and he was a notorious, self-admitted placeholder. Two explosive political conflicts in the late colonial period erupted when the lowcountry elite challenged the independent power of the Court of Vice Admiralty and the customs service.

The first was the conflict between Charles Town’s merchants and customs collector Daniel Moore. By 1767, the Charles Town merchants, led by Henry Laurens,

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mobilized to have this particular placeholder removed from office. In a lengthy complaint against Moore, the merchants wrote that “we had nothing to ask of the collector but justice, and that he would not subject us to vexatious, unprecedented demands.” The merchants asked that Moore uphold traditional practices. The customs collector should not innovate and harm provincial business simply for his own benefit.

It began when the merchants sought a meeting with their new customs collector (there had been only two others in the past forty-four years) to discuss policy, establish a table of fees and build a harmonious relationship. The merchants understandably wanted a hand in controlling a branch of government that so affected their businesses. Moore apparently had other ideas. He correctly thought the local merchants sought to dominate the customs house and influence him for their financial benefit. He countered by moving first and establishing his own policies without any input from them. As an appointed imperial official, Moore believed he was answerable only to the crown. The merchants accused Moore of being “determined to accomplish his purpose of accumulating money by every arbitrary and oppressive method he could devise.” Moore certainly sought to enrich himself through his office, but he also understood his duty to uphold the crown’s authority over imperial commerce. The merchants tried to disabuse him of both notions by attacking his reputation. They equated a royal appointee who actually fully exercised

41 A representation of facts, relative to the conduct of Daniel Moore, esquire, collector of His Majesty’s customs at Charles Town in South Carolina (Charles Town: Charles Crouch, 1767), SCHS. This brief pamphlet does not contain page numbers, so none are included in these citations.
42 Ibid.
the powers of his office with oppression and corruption. His abuse, combined with his insistence upon exercising royal power without any provincial influence, doomed him.

The merchants claimed that Moore simply refused to hear them. He would not listen to complaints and would even resort to violence and insult at the customs house to get his way. He never established formal rules. The fees he charged varied from person to person, and he alone set them. Moore also took money for permits he had no authority to grant. Moore refused to negotiate even after the merchants launched public attacks. Moore committed an offence. He disregarded protocol. He refused to meet and resolve the issue peacefully. The merchants could have turned to the Court of Vice Admiralty but feared that court would prove “dilatory and uncertain, expensive in any event to the party or parties informing, and in case of his acquittal, burdensome to them beyond belief.” Moreover, the Attorney General and the sole judge on the Court of Vice Admiralty were the same man—Egerton Leigh. Leigh threatened to prosecute any “combination” or “conspiracy” that tried to raise funds for such a case.43 The merchants began to believe they were facing an active conspiracy of British placemen who were abusing the customs system and potentially threatening vital aspects of the colonial economy.

43 *Ibid.* Egerton Leigh’s father made him clerk of the Court of Common Pleas in 1754. He received an appointment as Surveyor General in 1755. Leigh became judge of the Court of Vice Admiralty in 1761 and Attorney General in 1765. He held both offices to the end of the colonial period. Egerton Leigh, however, enjoyed friendly relations with the lowcountry elite at the beginning of his tenure. He even joined their ranks by marrying Henry Laurens’s niece. He also eventually gained a seat on the council. His multiplicity of offices, abuse of those offices, and defense of royal power eventually alienated him from the lowcountry elite. Walter Edgar and Louise Bailey, eds., *Biographical Directory of the South Carolina House of Representatives* (Columbia: University of South Carolina Press), 2:397-398.
Several merchants took action despite the legal roadblocks. Henry Laurens entered a suit in the Court of Common Pleas over the fees. Mr. Logan filed a case with the Court of General Sessions that charged Moore with extortion. Because Moore was also on the council, he could not be held to bail and was acquitted when Mr. Manigault brought a case before the Court of Vice Admiralty at his own expense. Thus, having failed to make Moore relent or negotiate through shaming or legal solutions, the merchants turned to their London lobbyist for help. Charles Garth, a Member of Parliament, was the assembly’s agent in London.\textsuperscript{44} Even though Garth never visited the colonies, his connections to the Colleton and Boone families linked him to South Carolina. Governor Thomas Boone most likely secured his appointment as colonial agent (before Boone’s relationship with the Commons House crumbled). Lewis Namier writes that Garth “took up his duties with a zeal which continued unabated for many years…He thoroughly identified himself with the interests of South Carolina.”\textsuperscript{45} As a Member of Parliament with connections to the Duke of Newcastle and George Grenville, Garth was ideally situated to lobby for the South Carolina elite in London. Thus, the Commons House charged their well-connected agent with bringing Moore’s actions to the attention of his superiors in London. Royal officials in the colonies refused to hold one of their own accountable, so the local merchants now appealed to higher authorities.


\textsuperscript{45} Namier, “Charles Garth, Agent for South Carolina,” 633.
The accountability (or lack thereof) of royal officers, in fact, became the major point in this dispute.

The complaint against Moore went beyond his merely enforcing royal authority or raising fees. Moore had acted arbitrarily and could not be held accountable in the colony where he had abused his powers. For example, many of the specific complaints lodged against him had to do with coasting schooners. Traditionally, schooners traveled up and down the coast and carried items from Charles Town to outlying farms and plantations. Planters relied on schooners like these to bring their produce to market, and, since they did not involve inter-colony or international shipping, these boats faced no interference from imperial customs. However, Moore ordered Royal Navy ships to compel all schooners to obtain special permits from the customs office. Moore would collect the fees for these illegal permits referenced in the merchants’ complaint. Planters and merchants believed that this constituted illegal interference with internal commerce, something the empire and certainly a single placeholder like Moore had no right to do.\(^46\)

Hence, Moore’s offence went beyond the arbitrary determination of fees. He attempted to extend royal authority to an area it had never touched, and that area had a direct economic impact on the most powerful classes in the colony.

Charles Garth took the case to London, where he presented evidence against Moore and had him charged with malpractice. The merchants supplied him with plenty

\(^46\) “Charles Garth to Mark Robinson, Commander *HMS Horrey*, November 16, 1767,” Memorials to the Board of Trade, SCHS. Garth was writing a remonstrance on behalf of the colony to this commander, who had been following Moore’s orders.
of ammunition, including their “Representation of Facts,” affidavits from individual victims of “extortion,” and a grand jury indictment against Moore for extortion.

Everything pointed to Moore’s illegal and arbitrary extension of royal authority and restriction of internal commerce. Garth took the charges and the evidence to the Duke of Grafton and Lord Shelburne, both of whom were displeased by the reports and agreed to start an inquiry. Garth also promised to bring a memorial to the Board of Treasury, which oversaw the customs service. Moore must have realized that his case would not survive scrutiny at that level, and he decided to leave the colony and make his case directly to the London officials. The planter-merchant elite had again driven a royal official—another placeholder—from the colony using familiar tactics.

Garth did not stop when Moore fled the province. It was not enough to remove the offending officer, because the problem was greater than one of individuals: it was a general problem of accountability within the imperial government. Thus, even after Moore had left the colony, Garth presented a devastating case. In his memorial against Moore, Garth provided a perfect summary of the placeholder problem from a provincial viewpoint. First, Garth cited precedent and tradition, which were two of the principal bases of the English constitution itself. For thirty years, he wrote, the list of standard fees had always been posted outside the customs house. Moore immediately began to add, raise and change fees, many of which doubled. He never made a new list or posted any official schedule. Moore created new inventory declaration requirements and new fees to

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47 “Charles Town Merchants to Charles Garth, December 4, 1767,” Ibid.
48 “Charles Garth to the Charles Town Merchants, December 10, 1767,” Ibid.
go along with them. The new customs collector demanded that schooners get permits for passing Ft. Johnson, decreeing that no vessel could legally pass the fort (technically pass out of the province to leave the harbor for coastal waters) without one. That regulation was actually an act of the Commons House that did not apply to coasting vessels, which Moore had no authority to enforce, alter or receives fees from. Moore decreed that if a schooner did not have the permit, customs officials must seize the cargo and treat it as an unauthorized ship on the high seas. If one questioned Moore’s policies, Garth wrote that he became angry, violent and issued challenges (i.e. to duel). Garth even recounted one incident where Moore threatened to throw a man down the customs house stairs.\(^{49}\)

Moore tried to defend himself and claimed he was only exercising his power as a royal official and fending off merchant conspiracies to avoid fees, but Garth’s attack was difficult for him to counter. Had he simply tried to extend or defend royal authority, London officials might have taken his side. Garth seized on his misbehavior and unfitness for office, which made Moore’s defense of royal power indefensible. Garth went on with a second memorial and brilliantly summed up the general problem:

> It is the felicity of the province that this matter has been brought before your Lordships, not doubting that but for once at least the officers sent to America may be thought that they are not only to be accountable for their misdemeanors in office and their misbehaviors to the people, but that their representations will not ever be taken \emph{pro data}, too often founded in passions, pique or resentment under the specious color of public service and faithful discharge of duty, the too easy credit such may have met with may perhaps be one of the principal causes which have led to the unhappy difference at this time subsisting between Great Britain and her colonies.\(^{50}\)

\(^{49}\)“Memorial Against Daniel Moore, January 12, 1768,” \emph{Ibid.}

\(^{50}\)“Further Memorial of Charles Garth Upon the Answer of Mr. Moore, April 19, 1768,” \emph{Ibid.}
The key word here is accountable. Colonial subjects had no direct way to hold royal officers accountable, and the problem was directly related to the quality (or lack thereof) of the appointees. Moreover, colonial officers could successfully defend their actions by stressing that they upheld royal authority or followed instructions, which London officials were likely to take “pro data.” Shinner, for example, had defended his closing of the courts by saying that he had only obeyed an act of Parliament. From Garth’s and the lowcountry elite’s perspective, the imperial system, as currently constructed, was itself the problem.

Garth, therefore, had to prove egregious misconduct to ensure appointees were held accountable. But who exactly was Garth suggesting should hold imperial officials to account? Such officials already were accountable to the monarch, the First Lord of the Treasury, the Board of Trade and other London officials. Garth himself may not have meant to insinuate it, but the elite merchants and assemblymen who employed him certainly behaved as though these officials should be accountable to provincial leaders—the men who claimed to represent the people in the Commons House. They held governors, judges, and now Moore to such account, though not through any official channel, when those men behaved in a way that challenged their domination of provincial government. Garth warned that colonial subjects would only become more alienated from Britain if London officials were not careful in whom they appointed to colonial offices and did not hold these appointees to account.
At least in Moore’s case, the London officials heeded his advice. The Board of Treasury officially removed Moore from office. The elite triumphed completely in this conflict and even had the ability to directly lobby some of London’s most powerful institutions through their faithful agent. The imperial system did work in this case. South Carolina’s leaders never challenged the empire itself or expressed any kind of disloyalty to George III or Parliament. Rather, the ruling elite exposed what they saw as a major flaw in the imperial government—the inability to hold royal executive and judicial appointees accountable. Not having the ability to correct the flaw itself, they successfully and skillfully manipulated the imperial system to secure their position within it—as the lords of South Carolina. Justice, in their eyes, was done in this individual case. Moore’s opponents had used only legal means to attain redress, and attacking the character of the royal offender had again been a key component of his ouster. No doubt successes against Shinner, Moore and others emboldened provincial leaders in seeking to limit the authority of British placemen, for the overall problem of accountability remained despite elite victories in these cases.

Egerton Leigh, who was connected to the Moore incident, soon met the same fate. Henry Laurens again led the charge in a political fight that turned very personal. Peter and Egerton Leigh were the most notorious placemen in the province. Egerton Leigh even applied the label to himself in 1773. Thomas Lynch, a Commons House member and signer of the Declaration of Independence, described Leigh as a “rascal.”

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51 “Charles Garth to the South Carolina Community of Merchants, August 2, 1768,” Ibid. 293
The terms, as Robert Calhoon and Robert Weir have observed, were synonymous with the Leigs in colonial South Carolina.\textsuperscript{52}

It all began over a dispute between Henry Laurens and the customs service during the period when the Townshend Duties were in effect. The case is long and complicated, but it came down to Laurens battling with two placeholders—George Roupell (customs inspector) and Egerton Leigh. Laurens’s ship Ann arrived from Bristol on May 24, 1768, loaded only with enumerated goods (those subject to customs duties). George Roupell searched the ship upon arrival and had it seized on June 4. Roupell claimed the ship had been loaded with non-enumerated goods without a bond. Laurens, who had just returned from Georgia, was unaware of the situation, and had not been able to get the appropriate paperwork before the ship was loaded. Laurens had experienced problems with Roupell in the past and even took him to court on one occasion, so it appeared to Laurens that a royal official was out to settle an old score with him.\textsuperscript{53} At this time, Henry Laurens was still friendly with Egerton Leigh, and Leigh cleared the charges against the Ann in the Court of Vice Admiralty. Leigh also severely admonished Roupell.\textsuperscript{54} In his ruling, Leigh wrote that customs regulations regarding loading enumerated and non-enumerated goods had been inconsistently enforced. Sometimes officials said bonds had to be issued before loading, and sometimes they allowed bonds to be given while the ship was loaded, which Roupell did not allow for Laurens’s ship. Such behavior, Leigh said, could be

\textsuperscript{53} “Henry Laurens to Peter Timothy, July 6, 1768,” \textit{Papers of Henry Laurens}, 5:730-733.
\textsuperscript{54} Henry Laurens to William Fisher, July 11, 1768,” \textit{Ibid}, 735.
used to “draw unwary persons into snares, and involve the most innocent in ruin.” In other words, officers like Roupell could set traps to collect more fees and fines. Moreover, Laurens had actually listed the non-enumerated goods on the ship’s manifest and just failed to obtain the bond in time for loading. Leigh wrote that “manners were so artfully conducted, that the claimant was unable to conform…before an actual seizure was made.” Judge Leigh suspected some “private design” on Roupell’s part.55

It seems that Leigh took Laurens’s side in this case and attempted to prevent a royal officer from arbitrarily exercising power. Leigh was an unpopular figure, especially because he was a placeman who held multiples offices. As Attorney General, Leigh was the sole government prosecutor in South Carolina and had power to decide which cases came to trial. As the lone Vice-Admiralty judge, Leigh had complete control of adjudicating imperial maritime law. Leigh also served on the council, which often put him on the wrong side of conflicts with the assembly. Laurens claimed that he once advised Leigh to “shake off his pluralities” of office, and the assembly also complained to London about Leigh holding too many offices in 1766.56

South Carolina’s provincial leaders resented placemen, but Leigh’s multiple offices made him particularly offensive. However, as long as he did not directly challenge provincial authority, there was no overt conflict. The Laurens case proved to be the incident that led to Leigh’s undoing. In a rather short amount of time following the incident, Leigh found his reputation in ruins. The dispute became so bitter that it

56 “Henry Laurens to William Fisher, August 1, 1768,” Papers of Henry Laurens, 6:3.
nearly led to a duel after Laurens launched a smear campaign and even insinuated that Leigh had committed manslaughter if not outright murder. How could a friendship have fallen apart so dramatically, and how could Leigh, who seemed to be on Laurens’s side in this case, have faced such scorn? Leigh prevented Henry Laurens from launching a full political assault upon Roupell in the courts. Hence, he attempted to stop the familiar political tactics used to remove an offensive—and in this case corrupt—placeman. Leigh chided Roupell for his inconsistent customs practices, but he allowed Roupell to clear his name and retain his place. The sole Vice-Admiralty judge refused to hold an obviously corrupt British official accountable.

Even though Leigh cleared Laurens of all charges and ordered restitution paid for the Ann’s seizure, Leigh ruled that the Ann was still technically liable for seizure. Leigh also had Roupell swear an oath of calumny that his actions were not motivated by personal malice or revenge. Because Leigh ruled this way and issued a certificate of probable cause and seizure, Laurens could not sue Roupell. Leigh, therefore, faced Laurens’s scorn.57 He did not just want his ship cleared, but he wanted the offending placeholder punished and humiliated (an already familiar pattern). With legal action out of the question, Laurens used all his influence to bring pressure on Leigh through public shame.

57 *Extracts from the Proceedings of the Court of Vice Admiralty* (Charles Town, David Bruce, 1769). SCHS.
Lauren’s printed a detailed attack pamphlet that effectively destroyed Leigh’s already shaky reputation. By the fall of 1768, Leigh resigned from the Court of Vice-Admiralty. Laurens wrote,

He felt the weight of public, almost universal contempt confirmed by his own consciousness of improper conduct too heavy for him to bear…his late misconduct should not pass without such public reprehension as may legally and with propriety be applied to it, as a caution to his successor. If the ministry knew how much injury is wrought to the true interest of Great Britain by the tyrannical oppression and misconduct of ministerial officers in America and the difficulty and almost impossibility of retaining redress upon complaints against them, they would certainly be more circumspect in their appointments.58

Laurens identified the same key political issue that Garth wrote of during the Moore case: the appointment of royal officials was beyond the assembly’s control, and they were not immediately accountable for their actions. His suggestion that redress was “almost impossible” is an exaggeration, as Charles Garth was able to secure the removal of offending officials. However, that process was slow and required a hired, capable agent. Moreover, Laurens and Garth both highlighted how unaccountable, abusive or corrupt officials damaged the relationship between Britain and the colonies. Both suggested the quality of appointees and the manner of appointment should be reexamined or reformed.

The Leigh-Laurens political feud also reveals concern about conspiracies between royal officials to prevent provincial leaders from calling them to account. The Moore dispute exemplifies the power of lobbying. The Leigh-Laurens conflict demonstrates the power and purpose of publicly shaming a royal official. Again, Laurens never attacked the empire, George III or Parliament. He expressed no disloyalty or revolutionary

sentiment. The unaccountability of placemen was the key issue in all of these disputes, and, though the assembly and the lowcountry elite never gained direct authority over royal officials, they successfully exercised tremendous indirect political influence. The general accountability issue then remained unresolved and had proven its ability to create dramatic political conflicts by the time that the imperial crisis reached its final stages.

“Violent Measures and Unwarranted Pretensions”

Extralegal bodies such as the Provincial Congress were operating in Charles Town by 1774. The rise of these bodies and their actions will be covered in the final chapter, but how did they spring into existence and gather power so early? Conflicts with royal officials like Shinner and Moore had been bitter, but, in and of themselves, did not do any apparent long-term damage to royal government. Moreover, provincial leaders emerged successful from these conflicts. The final conflict that destroyed royal government was more intense, because it represented the culmination of the fundamental issues and principles at the heart of these other disputes.

These conflicts were often intertwined with the imperial crisis, but the underlying issues predated Parliament’s attempt to legislate for the colonies in the 1760s and 1770s. The worst and final crisis came in 1769 when the assembly voted a sum of £1500 to support English radical John Wilkes. It did so without the approval of the council. The

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59 Jonathan Mercantini briefly addresses this dispute, arguing that, through it, “Laurens forever placed himself firmly in the Patriot cause.” See Mercantini, 234-236. Laurens remained cautious and conservative (and suspected by more radical elements within the revolutionary movement) throughout the imperial crisis (see chapter 6). This incident strained Laurens’s attachments to Britain and the Empire, but there is nothing revolutionary about the incident itself. It is not directly connected to the imperial crisis, and it was one in a long series of provincial battles with British placemen.
assembly claimed the sole right to approve money bills, but the governor had instructions not to allow any tax or money bill that did not have the council’s assent. The assembly refused to remove the Wilkes money from its appropriations, so no appropriation could pass the legislature during the dispute. The assembly funded virtually all government in the province. It paid the clergy, judicial and law enforcement personnel, royal officials and provided funding for the entire colony’s infrastructure. The colonial government was intentionally centralized and reliant upon the assembly. Moreover, these disputes with placemen like Shinner, Moore, Roupell, Montague and Campbell were consequences of how the elite had accumulated political power and used the assembly to structure and control other institutions. That situation was usually an advantage for the lowcountry elite, but a major privilege dispute had the negative effect of crippling the government by crippling the assembly.

The narrative details of the Wilkes Fund controversy have been thoroughly recounted elsewhere, and the conflict has traditionally been understood as another episode of resistance to British policies and ministries during the imperial crisis.60

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60 The Commons included the Wilkes money in its tax bills, which the council and governor would not assent to. The fact that the money went to John Wilkes was particularly galling. Wilkes, as publisher of the North Briton newspaper, had criticized George III. He was subsequently charged with seditious libel, and forced to flee England. Upon his return in 1768, Wilkes was imprisoned but had been elected to serve in Parliament several times. The administration refused to allow him to sit. Wilkes became a rallying point for liberty and opposition to government corruption. Wilkes’s supporters formed the “Society of the Gentlemen Supporters of the Bill of Rights,” partly to help pay his debts. The Commons House of Assembly was the only American governing body to respond to the Society’s calls for financial aid. On the Wilkes movement in England, see George Rudé, Wilkes and Liberty (London: Clarendon Press, 1965). For the Wilkes controversy in South Carolina, see Jack P. Greene, The Nature of Colony Constitutions: Two Pamphlets on the Wilkes Fund Controversy in South Carolina By Sir Edgerton Leigh and Arthur Lee (Columbia: University of South Carolina Press, 1970). An earlier but nearly identical version of Greene’s analysis of the Wilkes Fund issue can be found in Jack P. Greene, “Bridge to Revolution: The Wilkes Fund Controversy in South Carolina, 1769-1775,” The Journal of Southern History 29.1 (February 1963): 19-52.
However, the controversy can and should also be understood within the context of how the elite governed South Carolina in this period and how provincial leaders fought to curb the influence of British placeholders. Though this conflict began as a financial issue, it quickly became an issue of accountability in two ways. First, the assembly did not believe it should be held accountable to royal officials for how it internally governed the colony and handled finances. Second, the assembly could not hold accountable royal executives who, in the legislators’ minds, violated the constitution.

In this context, it is important to understand the language and tactics used on both sides. The lowcountry elite’s battle to wrest power from British officials and make them accountable to the assembly, especially when they directly challenged the nature of the elite’s political system, was at the heart of this conflict. It is easy to tie the Wilkes fund dispute to the “flames of revolution.” The Wilkes money was indeed sent to support constitutional government against a corrupt ministry’s “conspiracy of power against liberty.” Christopher Gadsden, who had led the Sons of Liberty through the Stamp Act and Townshend Duties crises, also took a leading role in appropriating the Wilkes money. However, the Wilkes controversy became another in a series of battles with placemen (councilors and royal governors in this case). It had ultimately as much to do with the way the elite accumulated and exercised political power in the colony as the imperial crisis or “country ideology,” which the elite employed to defend their

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63 Godbold and Woody, 101.
construction of colonial government. The imperial crisis sparked and intensified this incident, and ideologies provided justifications, but the Wilkes crisis is best understood in the context of how the elite exercised, accumulated, and defended their political authority.

Josiah Quincy observed that South Carolina’s colonial government consisted of two aristocratic parts—assembly and council—that mutually disliked each other. He thought South Carolina an exceedingly aristocratic place, and he questioned the political leadership’s commitment to liberty and resisting British policy. However, Quincy identified a critical problem in South Carolina’s government. The lowcountry elite resented the council’s interference in colonial governance, because provincial leaders could not hold councilmen accountable. Quincy proposed a solution, but he worried about the consequences:

Compose the council of the first planters, fill all the public offices with them, give them the honors of state, and though they don’t want them, give them it and emoluments also: introduce Baronies and Lordships—their enormous estates will bear it—what will become of Carolinian freedom? The luxury, dissipation, life, sentiments, and manners of the leading people naturally tend to make them neglect, despise, and be careless of the true interests of mankind in general.

Like Charles Garth and Henry Laurens, Quincy identified the accountability issue that was often at the heart of South Carolina’s political conflicts. Quincy knew that the provincial elite’s ultimate goal was total control of colonial government, but he wondered

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64 Mercantini, 238. Mercantini also argues that the Wilkes fund should be understood in a larger context beyond the imperial crisis. He argues that it represents continuity with constitutional conflicts (i.e. conflicts fought in the defense of colonial English rights) going back to 1748.
65 Howe, 455.
if that control would be conducive to liberty and the common good. The lowcountry elite certainly believed in English liberties, but their rhetoric and political behavior reveal that notion of liberty was narrowly focused on legislative power, which allowed the lowcountry elite to impose order on society in ways that benefitted their economic interests.

Quincy was correct in suggesting a government absolutely controlled by South Carolina’s colonial aristocracy might not govern with regard to the “true interests of mankind.” He could have easily said the same thing about the British Parliament in the seventeenth and eighteenth centuries. Both governments and legislatures featured a limited franchise, unrepresentative legislative apportionment and legislatures dominated by wealthy, land-owning elites who sincerely believed in and defended the primacy of the legislature in their respective political systems. However, he was wrong to question the South Carolina political leadership’s devotion to resisting British policy that infringed on autonomous colonial government. They had been doing so for years in the fight against placeholders, and they continued that same fight amidst the imperial crisis with renewed ferocity.

Governor Charles Montague faced the assembly’s wrath for his role in the Wilkes fund controversy. He behaved foolishly and played into the assembly’s hands. The assembly responded by deploying well tested political tactics to force him to submit or drive him from office altogether. Previous conflicts have revealed many of the assembly’s tactics. The Montague conflict revealed the full power of those tactics and
the extent to which the assembly was willing to go in its fight against an offending British official. The assembly began its latest struggle as it always did—with a series of resolutions. In the summer of 1770, it passed a basic set of resolves that laid out the overall philosophical justification. First, the assembly members argued that no constitutional precedent dictated that the Commons House could only appropriate money for local causes. They argued that the assembly was the only elected legislative body in the colony. Since only elected representatives had the right to spend the people’s money, the council had no right to interfere.  

That argument was flawed in one sense. If, as Henry Laurens asserted, the Commons House was the provincial equal of the House of Commons, was the council not the equal of the House of Lords? Did the House of Lords not have the right to approve legislation from the Commons? Did George III and his Privy Council not have the right to disallow legislation as the governor claimed to? There was one critical difference, which Josiah Quincy observed: the members of the House of Lords and the monarch (with the historical exception of George I) resided in Britain and were interested members of British society. South Carolina’s councilmen were often (and increasingly in the 1760s and 1770s) British appointees who had little experience or investment in the colony. 

Henry Laurens had actually been approved for a seat on the council by the Board of Trade. However, he preferred the assembly and decided to refuse the post. Why

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66 South Carolina Commons House of Assembly, Journals, 38.2, August 16, 1770, SCAHC.
refuse an honor from one of the highest authorities in the Empire? First, Henry Laurens understood that the real power was in the assembly. It was the heart of the colonial political system. He also believed that the council had become a haven for placeholders. It was not an instrument of government, but a tool of patronage politics. He wrote, “I am sorry to see that Honorable Board so much slighted as it has been at some times by certain appointments which hath reduced its character with some people almost below contempt.”67 Hence, the council’s membership was that body’s chief fault and the prime reason why the elite would not accept it as a branch of the legislature. Had the council been composed of South Carolinians and members chosen at least in consultation with the colony’s ruling elite, the assembly might never have entered a dispute with the council involving its role in colonial finance and its status as a branch of the legislature. However, since its members were often placemen, the council was unrepresentative and could not govern according to the ruling party’s interests. Placeholders had no stake in South Carolina, yet they profited from patronage positions. Those positions could play important roles in the provincial government, but they could also be used to challenge the assembly’s power to structure the government and manage society. The same was true for judges, and governors were always British political appointees in this era. The council’s membership and appointment procedures naturally alienated the provincial elite. Personnel, their powers and their method of appointment were the central issues in all of these disputes. The particulars (i.e. the Wilkes fund itself) were incidental events

67 “Henry Laurens to Richard Oswald, October 10, 1764, Papers of Henry Laurens, 1:462.”
that sparked episodes in a deeper, long-standing conflict about the distribution of power within colonial government.

Governor Montague was away when the Wilkes dispute erupted, so Lt. Governor William Bull (a native colonial planter who never attained the post of governor) wisely tried to stay out of the dispute. He only lamented that public business had been ground to a halt by the conflict, as no tax or money bills could be moved forward as long as the assembly insisted on including the Wilkes Fund money in them. Hence, Bull did his duty as a royal officer and prorogued the assembly. The assembly again insisted that it alone had the right to tax and frame money bills. It was the only representative body in the colony. Henry Laurens summed up the argument, writing that the “right of the people to give and grant their money freely and voluntarily, and not in terms or under the restriction and limitations of a Royal and ministerial mandate” was essential. Of course, the King of Great Britain had the right to veto Parliament’s legislation. George III used royal influence in the House of Lords to block legislation even a decade after the American Revolution. Why would the king, through his appointed representative, not have the same right in South Carolina? Henry Laurens and the assembly suggested that British governors and councilmen did not, because they were not members of South Carolina’s society.

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68 Bull was viewed as a moderate and a voice of reason. Royal officials believed he was too close to the local elite and “leant to the interests and wishes of the people of the province...more than is usual.” Though royal officials may have thought his interests too provincial, provincials like Christopher Gadsden, though they respected Bull, saw him as too weak willed and not willing to fully support colonial causes. Geraldine M. Meroney, *Inseparable Loyalty: A Biography of William Bull* (Norcross, GA: The Harrison Publishing Company, 1991), 74.

69 South Carolina Commons House of Assembly, Journals, 38.2, September 8, 1770, SCAHC.

70 “Henry Laurens to Thomas Savage, December 5, 1771,” *Papers of Henry Laurens*, 8:74.
The situation soon became very heated when Governor Charles Montague returned. He was bent on carrying out his instructions and defending royal authority. He was also very young—just twenty-five—and proved to have disastrous political instincts. The assembly began by targeting Montague’s allies in an attempt to isolate him and weaken his resolve to defend royal power. It had used the same tactic against Chief Justice Shinner. In November 1771, the Commons House took on a judicial function and called the joint public treasurers Henry Peronneau and Benjamin Dart to testify.\(^{71}\) The assembly questioned them and resolved that the treasurers had refused to obey a direct order from the Commons House and stood in contempt. The assembly ordered them jailed until further notice.

In this extraordinary example of a legislature behaving as an ad hoc court, the Commons House trampled on the rights of two public officials, denied them a jury trial or any due process, and ordered them imprisoned for simply following the governor’s orders not to disburse funds without the council’s approval.\(^{72}\) The defense that they were merely following orders given by royal officials or following imperial law fell on deaf

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\(^{71}\) Peronneau was a third generation South Carolina native and descended from a Huguenot family. He lived in St. Phillip’s parish (Charles Town) and worked successfully as a merchant. He had himself served in the Commons House and as a Justice of the Peace. He had served with the treasury since 1770. Benjamin Dart, also a South Carolina native and Charles Town merchant and planter, served in the assembly as well. He had a history of working with the assembly against royal government, having voted for the Wilkes money in the assembly. Yet, he agreed with Peronneau that they could not issue funds from the treasury that had not been approved by the council. Only a timely dissolution of the assembly and the ongoing gridlock kept the two out of jail and in office until 1776. Both men were members of the provincial elite but had imperial connections and took their duties as royal officers seriously. Both later became loyalists. Peronneau was banished from South Carolina in 1777 for refusing a loyalty oath and Dart took refuge with the British during the occupation of Charles Town. Walter Edgar, ed., \textit{Biographical Directory of the South Carolina House of Representatives}\ (Columbia: University of South Carolina Press, 1977), 2:183-184; 517-518.

\(^{72}\) South Carolina Commons House of Assembly, Journals, 38.2, November 5, 1771, SCAHC.
ears, just as it had when Shinner, Campbell, and Moore had made the same argument. In the assembly’s view, the public treasurers were answerable to the legislature. If the assembly could force them to disburse money, it would have effectively usurped Montague’s authority and redefined Montague’s royal instructions, which forbade allowing the appropriation of any funds without the council’s approval. Thus, by pressuring, threatening and imprisoning the treasurers, the assembly hoped to redefine the colony’s constitutional structure in its favor, make royal officials answerable to the legislature, and greatly diminish British internal influence. The treasurers did not give in, and this strategy of isolating Montague failed.

Montague then decided to break the Commons House with a series of prorogations. When that tactic failed, Montague tried to toy with the assembly. He called the members to meet in Beaufort rather than Charles Town. Despite logistical challenges, the assembly met in Beaufort as ordered in October 1772, where Montague appeared and berated the members. The governor derided the continued gridlock caused by the Wilkes fund issue, yet he made his determination to maintain the rightful powers of each legislative “branch” very clear. Montague said all should “be careful to annihilate any innovation.”

The Commons House obviously did not accept the council as a legislative branch and did not see defending privilege as a constitutional innovation. The assembly rightly claimed the House of Commons had enjoyed similar rights over money bills for years.

\[73\text{ Ibid., October 8-23, 1772.}\]
The South Carolina assembly had also enjoyed the same privilege. Montague’s position seemed like innovation to them, and he failed to grasp the larger issue. The assembly refused to accept the council’s role as a legislative branch, because its members were always unelected and often British placemen. The assemblymen did not object to the notion of an upper house. All of South Carolina’s state constitutions included one. They objected to outside interference with internal provincial government. Montague’s suggestion that the council was to the assembly what the House of Lords was to the House of Commons falls apart precisely because of the origin of members. Montague’s actions only angered the assembly members and cemented their opposition. Upon returning to Charles Town, the assembly demanded to know why Montague had called them to Beaufort only to berate and then immediately dismiss them. Montague’s terse reply stated that he did not need a reason to summon the assembly, nor did he need a reason to use royal power for the public good (technically he was correct on both counts). In a letter to Lord Hillsborough, Montague elaborated on his motives, writing that he hoped leaders of the opposition would not be able to come to Beaufort and the deadlock might end. However, only three assembly members missed the meeting, and his plan backfired.

Montague had gone too far, and the assembly responded in kind. Since they could not isolate or coerce Montague, the assembly plotted to drive him from office. Once again, Christopher Gadsden presented a report from a committee to draw up

74 Ibid., October 8-23, 1772.
resolutions. Gadsden reported that Montague’s political trickery demonstrated his “ill will toward the free men of South Carolina.” The report argued that Montague had thumbed his nose at the assembly’s authority and the established political system, which had been erected by the legitimately elected representatives of South Carolina. Indeed, Montague had shown disrespect and resorted to questionable tactics to defend royal prerogative. However, he never denied the assembly's role as a colonial legislature. He only questioned the scope of its power, specifically its power in relation to royal officials.

He correctly believed that he was only carrying out the king’s instructions, but he either did not understand or did not care that he was challenging the supremacy of the lowcountry elite and their assembly over the provincial political system.

Gadsden went on damning Montague and his political tactics. He claimed the Beaufort meeting had only one purpose—oppression. Montague was also in violation of the election act, which required the assembly to meet at least every six months. The Beaufort meeting was a sham, and the constant prorogations and dissolutions were preventing the assembly from meeting and carrying out colony business. Gadsden concluded by recommending that the Commons House should instruct agent Charles Garth to work for Montague’s removal. The house approved all the committee’s recommendations, and the assembly’s established pattern of attacking an offending royal official continued to the next phase.  

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76 South Carolina Commons House of Assembly, Journals, 38.2, October 29-30, 1772, SCAHC.
Montague was under tremendous pressure from London to fight the assembly. As early as 1770, the Board of Trade had ordered Lt. Governor Bull to prevent the issue of treasury funds without council approval, and George III sent an additional instruction for the governor to the same effect.\footnote{Order of King in Council, April 5, 1770, \textit{Records of the British Public Record Office Relating to South Carolina}, 31:180.} London officials adamantly insisted upon the defense of royal power. Lord Hillsborough argued that the council was an equal legislative branch. He expressed anger at the assembly’s flouting of royal orders, calling it a “mark of disrespect to the crown” that the King’s instructions were ignored. Hillsborough also lamented the personal attacks on Montague, such as the assembly’s refusal to make provision for his residence, which was another way the colonial legislature tried to leverage their governor. Hillsborough called the assembly’s actions “violent measures and unwarranted pretensions.” He concluded by ordering Montague to use dissolutions and prorogations until the assembly ended unconstitutional spending.\footnote{Hillsborough to Montague, January 11, 1770, \textit{Ibid.}, 32:106-107.} The spending issue, however, was only a symptom of the larger issue, which was the assembly’s determined effort to bend royal officials to its will and secure its paramount place atop the colonial political structure. It continued to deny the legitimacy of British officials who claimed a role in the legislative process.

Neither side gave any ground, even if it meant years of governmental gridlock in the province. Montague continued to prorogue the assembly until March 1773.\footnote{South Carolina Commons House of Assembly, Journals, 38.2, January 6-9, 1773, SCAHC.} The beleaguered Governor was at wit’s end. Not only was he continually attacked by an
extremely defensive assembly, but he was facing more pressure from London. Lord Dartmouth, the new colonial secretary, disapproved of how Montague had handled the situation (i.e. Beaufort). He claimed that these actions were not leading to a resolution.  

Meanwhile, Charles Garth worked in London for Montague’s removal. On the assembly’s instructions, he petitioned George III to intervene. Garth’s petition damned Montague as an oppressive, arbitrary political bungler who was wholly responsible for the impasse in South Carolina. It laid out a history of Montague’s misconduct, recounting the Beaufort affair and Montague’s violation of the election act. Garth accused the governor of childishly harassing the assembly, which had only insisted on its constitutional rights (as the House of Commons itself would in a similar situation). Montague departed the colony in March 1773 for “health reasons” and left Bull in charge, but the situation did not improve immediately. The Commons House successfully drove Montague from the province, but had they won the battle in principle? Would a new governor be any more willing to bend to the assembly’s influence? Would the Board of Trade and the colonial secretaries stop pushing a new governor to uphold royal authority? If not, would royal government ever function again in South Carolina?  

Garth informed the assembly that Montague would be replaced. However, he followed instructions and planned to continue to press a misconduct case against Montague before the Board of Trade. Such relentless persecution of a now disgraced
official could serve as a warning to Montague’s successors. Lord William Campbell, son of the Duke of Argyle, would replace Montague as royal governor. Following Montague’s “resignation,” Garth asked Dartmouth not to include the “additional instruction” (ordering the governor to resist money bills not approved by the council) in Campbell’s new instructions. Dartmouth, he reported, would work to heal the rift, but did not agree to withdraw the instruction. Garth continued to press Dartmouth and told him that the gridlock only continued because of the “additional instruction.” The Board of Trade, which drafted instructions to the governors, refused to alter the instruction. It told Garth that it would not deny the council its proper role in provincial governance, and it would ignore any petitions to that effect. Campbell, who was not as intractable as Montague, offered to help get the instruction revoked but said he would still not assent to the Wilkes fund. He was willing to give up on the principle but not the specific incident that provoked the fight. The Board of Trade eventually withdrew the “additional instruction,” but it still ordered the governor not to assent to any bill that replaced treasury funds issued without the council’s consent. The issue was never resolved. Charles Garth himself finally told the assembly to drop the issue at the very end.

83 “Charles Garth to the Commons House, April 3, 1773; May 4, 1773,” Memorials to the Board of Trade, SCHS. Campbell had previously served as a Member of Parliament and Royal Governor of Nova Scotia. He was also married to Sarah Izard of South Carolina (daughter of Ralph Izard). The two had met during Campbell’s naval service during the Seven Years’ War. He had lobbied for the South Carolina governor’s position because of his wife’s unhappiness in Nova Scotia. Campbell had also proven to be unpopular in that colony. For biographical details, see Francis Couglin, “Lord William Campbell, Governor of Nova Scotia, 1766-1773,” Nova Scotia Historical Review 13.2 (1993).
84 “Charles Garth to the Commons House, May 20, 1773; July 5, 1773,” Memorials to the Board of Trade, SCHS.
85 “Charles Garth to the Commons House, July 19, 1774,” Ibid.
86 “Charles Garth to the Commons House, April 15, 1775,” Ibid.
While Garth, Campbell and London officials tried to work out a compromise, the assembly continued the attack in the colony. The Commons House had now become so defensive that it regarded almost any council action as an assault on its authority. The council played into the assembly’s hands when it ordered the printer Thomas Powell imprisoned for breaching its privilege (he had published excerpts of the council’s journal without its approval). The council claimed that Rawlins Lowndes and George Gabriel Powell further breached privilege by using their authority as Justices of the Peace to free Thomas Powell from jail. It held the two in contempt and claimed the power of commitment as a legislative privilege. In their official judgment in Thomas Powell’s case, Lowndes and George Gabriel Powell wrote that, “by the Great Charter it is provided that no freeman shall be taken or imprisoned but by the lawful judgment of his equals.” They argued that the council was not a legislative branch and had no power to commit anyone to jail. Unlike Parliament, the council consisted of members appointed at the King’s pleasure. It was not even a permanent, independent and hereditary body like the House of Lords. Any council or assembly that wanted to consider itself a true legislative branch required independence from the executive. In that sense, the council was more like the king’s Privy Council than the House of Lords. Rawlins Lowndes and George Gabriel Powell identified the key issue when they attacked how council members were chosen. The council lacked independence and autonomy and did not represent provincial interests.

87South Carolina Commons House of Assembly, Journals, 38.2, September 8, 1773, SCAHC.
The assembly viewed the council’s actions as a “gross and unparalleled insult to this house.” To fight back, it printed Lowndes’s and Powell’s judgment and instructed Charles Garth to work for the removal of offending council members. Hence, the assembly members used two of their key tactics in this case as well: they attempted to publicly attack, shame and discredit their enemies, and they used their hired man in London to undermine the placemen. Garth did as he was told and hired the lawyer William Chamberlayne to assist. He presented the case to the London authorities and attempted to get the offending council members removed. He reported, however, that he and Chamberlayne could not prove—from the council and assembly journals—that the council was not a legislative branch, since it had often acted as one.88 This dispute, like the Wilkes fund controversy, was never resolved to the assembly’s satisfaction. Its satisfaction would ultimately have been total victory and complete dominance within the colonial government. That goal was unattainable so long as royal government continued. Royal government was already moribund by the final phase of the imperial crisis—the so-called Intolerable Acts. The lowcountry elite spent the years from 1774 to 1776 rebuilding a new government, which permanently removed the obstacle of placeholders.

Conclusion

The Stamp Act Crisis forced the assembly to articulate ideas that help illuminate the fight against placemen. The assembly’s resolutions in response to the Stamp Act declared that provincials had the same political rights and duties as Britons living in

88“Charles Garth to the Commons House, December 27, 1773,” Memorials to the Board of Trade, SCHS.
England. True representative government was the basis for all of their resolves, and they insisted that only representatives elected by South Carolinians could meet as their legislature. The residents of Britain had no right to legislate for the residents of South Carolina. Therefore, the Stamp Act was unconstitutional. If the King required monetary support from South Carolina, the assembly would be more than happy to comply in a constitutional way, which meant that the assembly would voluntarily vote funds for the king. The assembly emphatically stated that colonial prosperity depended on the full exercise of its just privileges and rights.89

The assembly expressed two important principles in this petition. First, placeholders and direct British interference with internal provincial government were objectionable, because those things took the tools of government away from the elite, who needed them to maintain their prosperity. The lowcountry elite relied on their centralized government to manage society, distribute resources and protect the economy. Placeholders or Parliamentary interference upset that system. Second, the assembly claimed the right to representative government, which was the only kind of government that could effectively protect precious rights—life, liberty, and property (i.e. prosperity). Parliament had claimed these same rights in its seventeenth-century battles with Charles I and his sons.

South Carolina’s political system was rather narrow in the late eighteenth century. Power was concentrated in the hands of the lowcountry elite, and they used a variety of

89 South Carolina Commons House of Assembly, Journals, 37.1, November 21, 1765, SCAHC.
institutions to enforce order and manage society. However, their ability to control institutions like the courts and the Church of England stemmed from the Commons House of Assembly’s legislative authority. It was the lynchpin that held the political system together. The political conflicts outlined in this chapter all boil down to two facts: first, the Commons House was very powerful, but it could not control the appointment of royal officials. Second, the assembly could not directly hold those officials to account. The conflicts are particularly revealing in the light of how the lowcountry elite governed the province.

The conflicts outlined in this chapter erupted when royal appointees overtly challenged the lowcountry elite’s accumulation of political power and ability to independently manage the province. British officials often were only trying to carry out their instructions or assert traditional English prerogative powers. However, the assembly accumulated much power over areas the legislature traditionally did not control in England (i.e. local government, court structure, the Church of England), and its authority had faced few serious challenges from imperial officials. When the situation was challenged in the eighteenth century, British officials opposed established tradition supported by several venerable ideological strains. The assembly fought a conservative battle. Its members literally sought to conserve the political structure they had built and fend off royal incursion.

All of the disputes reveal a core of key issues. They revolved around placemen who had violated the traditionally established system of colonial government or directly
challenged the assembly’s authority. Provincial leaders responded by appealing to English liberties based on English constitutionalism that emphasized legislative authority and autonomy. Local leaders also launched charges of corruption and abuse of executive or judicial authority that had conspiratorial undertones. Those ideological positions supported the lowcountry elite when they attempted to resist the extension of unaccountable royal authority at the expense of their political and economic domination of the province. Political disputes became especially intense when royal officials persistently attacked the assembly’s ability to structure legal and governmental institutions or its independence from royally appointed officials. Many of the disputes can be reduced to accountability: every element of government in South Carolina—except for British officials—was directly accountable to and dependent upon the assembly. Disputes also erupted or intensified when the assembly attempted to weaken or usurp the powers and influence of royal officials.

The assembly never yielded in defending its position within the colonial political system, but this unwavering defense came at high cost. The fundamental dispute over whether or not the assembly ought to occupy a paramount, independent and extensively controlling place in the political system destroyed that very arrangement when these long-standing disputes merged with the imperial crisis and ground colonial government to a halt. However, the imperial crisis gave the lowcountry elite the opportunity to reconstruct the government without any imperial interference. That new government
corrected deficiencies in elite political power but remained remarkably faithful to the old model.
Chapter 6
“Sign or Die”: The Imperial Crisis and the Reconstruction of South Carolina’s Government

The South Carolina elite faced many challenges in building and maintaining the system of government they had created over the course of the eighteenth century. Their government was able to survive the challenges of slave resistance, crime, disorder, growing poverty, British placemen, and backcountry demands for access to important legal and political institutions. To meet these challenges, the lowcountry elite had to compromise occasionally but they never compromised the basic nature of their political system. In the end, the greatest challenge proved to be the imperial crisis, because it represented a convergence of forces that led to the demise of the old system. Historians have not satisfactorily addressed the question of how the lowcountry elite retained control throughout the imperial crisis and rebuilt a government that resurrected and even augmented the old system, especially within the vital context of the pre-revolutionary government system.

The South Carolina elite successfully survived independence as a ruling class, recreated their system of government by 1776, and finally reestablished their authority after the war. In doing so, they had to contend with four primary challenges. First, the Commons House of Assembly, upon which the entire colonial government depended, was utterly crippled by 1775 due to the placeholder conflicts. Second, the imperial crisis reached its crescendo in 1774 and 1775. By that time, the lowcountry elite had exhausted legal attempts to obtain redress from Britain. With the assembly and royal officials in a deadlock, the political elite needed a new focal point to carry on the fight for provincial...
autonomy. When it became clear that fight was hopeless within the old system, it became a fight for independence that required a new government. Both the extra-legal resistance organizations and the new state government were based on the centralized colonial system. Third, the imperial crisis provided new opportunities for lower class whites to enter the world of politics. Artisans and small farmers were important allies in the struggles with Britain and would be absolutely critical in the event of war. Thus, the lowcountry elite had to account for their increased politicization and activity in the resistance movement. They also had to accommodate them in a way that did not alter the system’s fundamental nature.

Finally, the elite had to deal with dissension. These men were not democrats, and many entered resistance to British authority very reluctantly. While the elite had to accommodate lower class whites, who made up the rank and file of the Sons of Liberty, they also had to channel and control the activities of the mob with a strong, centrally controlled organization. Slaves and free black people were also sources of dissent. The rhetoric of liberty could be a natural threat to a slave society, and the elite had to be careful to maintain and augment the system used to control slaves. The fight with Great Britain could not be allowed to destroy the plantation economy. A minority within elite ranks also dissented, because many were unwilling to adopt extra-legal means or to break with Britain. These conservatives feared that resistance might unleash more dangerous forces and could result in the death of liberty rather than its salvation. The resistance and state governments employed inquisitorial attacks on reputation and livelihood to bring these white loyalists to heel, which bore similarities to tactics employed during
placeholder struggles. By 1776, the revolutionary remnant of the lowcountry elite had purged the conservative loyalists from government, retained political authority, rebuilt the system and eliminated many of its old deficiencies. Their great political challenge after 1776 continued to be retaining the exclusive ability to structure and limit access to the new system in the face of war and a rising class of backcountry farmers and planters.

These difficult challenges merged and presented themselves simultaneously. There was never a substantial debate among lowcountry elites about whether or not to resist British encroachments on colonial autonomy. The debate centered on tactics, the consequences of resistance, and the nature of the imperial constitution. Did Parliament have a right to legislate within the entire empire? At what point did extra-legal resistance become legitimate? Could the elite stay in control of forces that the revolution might unleash? The conflict with Parliament over taxation was rooted in the same problem as the placeholder conflicts: to what extent should British authorities exercise political power within South Carolina? The placemen conflicts pitted royal executive authority against the assembly’s legislative authority and challenged the assembly’s power to structure, staff, and manage colonial government. During the imperial crisis, the assembly’s near monopoly on political authority in the colony stood opposed to Parliament’s power to legislate within the empire. The crisis also challenged the elite’s exclusive governance of the colony from below and threatened to break unity within the ruling class itself.

Two major strains of thought supported the majority of the lowcountry elite when they moved from protest to resistance to rebellion and faced these challenges. One
descended from the English opposition tradition, most famously put forth by Trenchard and Gordon in the early eighteenth century. Its main focus was the juxtaposition of power versus liberty and the inherent corrupting nature of power. Americans came to see English policy after 1763 as an “active conspiracy of power against liberty” due to an unbalancing or corruption of the constitution. Prerogative power had infested Parliament through ministerial politics, and this power filtered down into the colonies through placeholders and imperial policy. The corrupting influence of power was an ever-present threat that required constant vigilance. Colonists, in other words, appealed to opposition thought in condemning British corruption, while British officials condemned American conspiracies against imperial authority. The other strain of ideology was tied directly to the Glorious Revolution. Colonists insisted on the “rights of Englishmen” based on late seventeenth-century definitions of “rights.” The primary conflict had to do with the rights of legislatures versus royal prerogative. The issue was settled in Parliament’s favor after the Glorious Revolution, but the conflict continued in America through conflicts between governors and assemblies.

Both ideological strains supported elite efforts to limit the exercise of British authority within the province during the placeholder struggles and the imperial crisis. British encroachments threatened the lowcountry elite’s ability to autonomously govern the province for the continued protection of their interests. Ideology and rhetoric justified

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and supported colonial resistance, but the elite’s struggle against Britain was a defense of the established political order and a continuation or amplification of existing challenges to that order. The idea of liberty was tied to the idea of representative government. Representative government was government by the propertied—the elite—who used their legislature to rule the province. These ideas were not radical. Both strains of thought can be seen in how the elite structured their government and how they fought challenges from above. The critical question here is not the rhetoric the elite employed, but what tools they used to wage these battles and how they reconstituted their political domination in a time of great upheaval. The answer requires a comprehensive understanding and examination of the old order.

There have been relatively few political studies of the imperial crisis in South Carolina. Studies of the resistance movement have focused on organization and popular uprisings, but they have not detailed the resistance government’s evolution, which should be understood in the context of how the lowcountry elite governed South Carolina in the colonial period. The imperial crisis has also been studied in terms of why the elite responded so strongly to British policy in this period. While this approach emphasizes how British policy undermined the colonial elite and failed to make allies of them by not

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permitting “home rule,” it does not address the reconstruction of South Carolina’s political system before independence. This chapter will trace the evolution of South Carolina’s state government in the context of the structure and challenges to the old royal government from 1765 to 1776 (the Stamp Act through the drafting of the first state constitution). The lowcountry elite retained and even strengthened their authority by 1776, but the process was difficult and messy. The elite focused on petition and protest until the assembly finally deadlocked with royal officials in 1774 and 1775. After that point, a majority of the elite embraced the extra-legal tactics of the Sons of Liberty and worked to impose centralized order upon the resistance movement. The elite allied with and included lower class artisans and farmers in the new order out of necessity but did not alter the fundamental nature of the system. Such compromise also drew on established precedent (i.e. the Circuit Court Act).

The elite’s “crisis of legitimacy” was not as severe in South Carolina as other colonies because of its strong, pre-existing and centralized system of government. “Desperation,” for example, helped drive the Virginia elite toward the American Revolution. The Virginia elite had to contend with a number of “freedom struggles” and handle transformations of gentry relationships with other classes and races in Virginia. In South Carolina, however, many of these challenges had already been addressed by the

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6 Weir defines the “crisis” purely in the context of British colonial policy versus colonial constitutional definitions.
8 Ibid., xiii-xix.
time royal government collapsed. The lowcountry elite faced a number of very real challenges during the imperial crisis, but the system of government they had created and the experience they had gained meeting previous challenges from similar sources prepared them and informed their responses as they reconstructed South Carolina’s government.

The colony possessed an extensive law enforcement system to cope with slave resistance and violence, and the revolutionary government responded to “rising aspirations among blacks” by strengthening the existing system. Resisting British authority and ultimately joining the revolution challenged the elite’s ability to control the colony’s large slave population. Fear that external (i.e. Britain) and internal (i.e. slaves) enemies might unite against the colony’s ruling class may have actually “corroded the ties” between Britain and the lowcountry elite, and certainly led them to strengthen enforcement to prevent disturbances and retribution when problems did occur. As Robert Olwell has written, the lowcountry elite were “well aware that the eyes of their slaves were upon them and believed that their continued security depended on how well they seemed able to maintain order and make good their threats of terrible retribution for those slaves who rebelled.” South Carolina’s rulers were satisfied with the old order.

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9 Ibid., 143.
12 Ibid., 47.
Rumors of slave conspiracies and the threat of slaves joining the British led to the strengthening of the old system and did not fundamentally alter the nature of elite rule.

The backcountry also presented continued challenges, even though the Regulators had been pacified by the time of the imperial crisis. In fact, most former Regulators joined the lowcountry elite in resisting British authority.\textsuperscript{13} However, lowcountry leaders had difficulty in unifying the colony against the British. The backcountry was divided between loyalists and revolutionaries, whose differences led to violent conflict in 1775 and a war with the Cherokee Indians in 1776.\textsuperscript{14} Backcountry revolutionaries or Whigs actually benefitted politically from this situation. The lowcountry elite needed their support against Britain’s potential allies—backcountry loyalists, slaves, and Indians. Thus, the elite had to allow backcountry Whigs (i.e. rising planters and farmers) far more access to and influence within the reconstructed government to counter threats from loyalists and Indians.\textsuperscript{15} Nevertheless, the lowcountry elite had dealt with backcountry turmoil and demands for inclusion before. As in the past, they compromised but did not allow the situation to tip the balance of power within the new government away from the lowcountry elite.


\textsuperscript{15} Klein, 108.
Provincial leaders were also well positioned to cope with other potential struggles during the revolutionary period. Conflict with British officials had been a longstanding problem, and the elite developed effective tactics to resist their encroachments. Conflicts between colonial leaders and British officials had been frequent before the Stamp Act. As Jonathan Mercantini writes, these “decades of conflict had taught them [colonial leaders] how best to preserve their powers.”16 Indian tribes had been reduced to insignificance in the lowcountry by the time royal government collapsed. Plunging commodity prices did not affect rice as they did tobacco, and South Carolina even successfully lobbied to have rice excluded from the Continental Association.17

The lowcountry elite, thus, faced an array of challenges during the imperial crisis, but the governing system they had constructed prior to 1775 and the challenges it had faced prepared them for what lay ahead. They had to reconcile extra-legal and sometimes violent resistance to a constitutional ideology that stressed the rule of law. They had to face dissent within their own ranks and justify the employment of harsh tactics against political opponents. They had to ally with lower class whites (i.e. artisans and small farmers), and consequently reward that allegiance with greater political participation without sacrificing elite domination of the new order. They had to join in economic warfare against Britain without damaging the plantation economy. In the end, they had to preserve order and centralized authority in a time of crisis and change. The imperial crisis removed the most serious challenge to lowcountry elite authority within the

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17 Holton, 123.
province—royal power—and exposed others in the process. The lowcountry elite had to make limited compromises, but they effectively overcame obstacles and renewed the old order by 1776. The imperial crisis triggered a resistance movement and a rebellion meant to defend the local elite’s domination of South Carolina’s government. The colonial political structure continued to inform and define the reconstruction process after 1776.

**Ordering the Resistance**

The assembly was active in resisting British authority from 1765 to 1774, but it spent most of its energy fighting British placemen. It joined the struggle against Parliamentary taxation as well, but focused on legal tactics (i.e. petitions and remonstrance) and ordered extra legal resistance (i.e. non-importation). Violence was relatively limited in Charles Town, especially when compared to other major cities like New York or Boston. Some within the assembly feared that crowd action threatened order and the rule of law, but the Sons of Liberty were never a disorganized rabble. Members of the elite—especially Christopher Gadsden—led them and relied on the structure and organization of the General Meeting. The General Meeting offered the city’s artisans a political role they had never previously exercised. Most members of the lowcountry elite eschewed extra-legal resistance involving crowd actions. However, the

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19 Gadsden was a leading delegate at the Stamp Act Congress in New York. Even though he was away through November 13, 1765, he had left instructions for the Sons of Liberty. His association with the mechanics who made up the Sons of Liberty went back to the controversy over the Currency Act of 1764 (prohibiting colonies from issuing paper currency), which would have been very detrimental to the local artisans’ businesses. As leader of the Sons of Liberty, Gadsden championed extra-legal, crowd action and economic warfare to force Britain to change its policies. See E. Stanley Godbold, Jr. and Robert H. Woody, *Christopher Gadsden and the American Revolution* (Knoxville: University of Tennessee Press, 1982), 50-61. For the Sons of Liberty, see Walsh, *Charleston’s Sons of Liberty*. 328
Commons House of Assembly was permanently deadlocked in the placeholder battles by 1775. When the assembly ceased to function effectively and it became clear to a majority of the lowcountry elite that legal protest would never alter British policy, they moved to impose more structure on the resistance movement. Neither the artisans nor the planters wanted chaos, and, even after the Tea Act Crisis, many within the elite continued to urge moderation.

The Sons of Liberty were mainly artisans. The artisan and planter classes had long been allied, especially in opposing British mercantilism. There was no natural antagonism between these groups. Moreover, artisans relied on slave labor because of the scarcity of free labor in Charles Town. Artisans either owned slaves or hired slaves from planters. A master might hire out a slave who might then be trained by an artisan. That trained slave could then fetch a higher market value should the master wish to sell him. Meanwhile, the artisan obtained cheap labor. Artisans also often relied on the wealthier planters and merchants for much needed credit. According to franchise property qualifications, most artisans held the franchise. They never sat in the Commons House, but they could petition and sit on grand juries. John Paul Grimke, a wealthy silversmith and aspiring planter, once served as grand jury foreman. Yet, even he never sat in the assembly. Many artisans may have financially qualified for assembly service, but the artisans instead chose to rally behind an elite patron. Gadsden was the

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20 Walsh, 20.
21 Ibid., 23-24.
22 Ibid., 26.
The lowcountry elite were often uncomfortable with crowd actions, but the assembly never took any action to stop them. The crowds were not exclusively lower class, and their targets related to grievances the elite shared.\textsuperscript{23}

Though less dramatic and well known than events in Massachusetts, Charles Town experienced several outbreaks of crowd violence during the imperial crisis, beginning with protests over the Stamp Act in 1765. The ship \textit{Planter’s Venture} arrived in Charles Town on October 18 with stamped paper. The Sons of Liberty organized and constructed a gallows at Broad and Church streets the next day. It bore the inscription “Liberty and no Stamp Act.” The effigies of a stamp distributor and the devil hung from the gallows. On the back of the stamp distributor effigy, one could read the words, “Whoever shall dare attempt to pull down this effigy had better been born with a mill stone about his neck and cast into the sea.” The effigies hung undisturbed in the street all day. As evening fell, the crowd took them down, put them on a cart led by eight to ten horses and processed through the town. They stopped at the home of George Saxby, the appointed stamp distributor and did some damage to the windows. The procession continued to the tolling of bells from St. Michael’s church. A coffin inscribed “American Liberty” was added to the festivities, and the procession became a mock funeral. The crowd was remarkably peaceful, only causing some damage to Saxby’s windows. However, as the night went on, some fell under the influence of alcohol and sought

\textsuperscript{23} Ibid., 27, 31-32.
\textsuperscript{24} Maier, 13-17.
caches of stamps in private homes. The crowd targeted Henry Laurens. Laurens opposed the Stamp Act and became a leading figure in the Revolution. However, he was unsympathetic to extra-legal activities at this time and drew suspicion from more radical elements in the Sons of Liberty.

The resistance movement’s organization was also forming at this time. It began with a meeting of “some of the inhabitants” in Charles Town the week before. Laurens noted that the meeting was peaceful and the participants intended “no evil” to stamp officers. The participants were, in fact, inclined to “forswear riot and sedition.” Laurens still believed that peaceful protest was the only course of action, and he hoped that organizers of this and future meetings would, “encourage humble and dutiful acquiescence to an act of Parliament however oppressive it may be until by proper representations and remonstrances a repeal of that act can be obtained.” Laurens did not like the Stamp Act and believed it usurped provincial authority, but he wanted to protect the rule of law and exhaust legal means of obtaining redress. The assembly was still fully functional in 1765, and it was fighting the Stamp Act. Laurens, who did not want to see Charles Town follow Boston’s violent lead, wrote that “we in Carolina have now a glorious opportunity of standing distinguished for our loyalty, which we have sometimes boasted of very much.” He firmly believed that Britain would be more sympathetic to the petitions of demonstrably loyal subjects. Even organized crowd violence would make the situation more antagonistic.

Just after midnight on October 19, a loud noise at the door woke Henry Laurens and his family at their home in Charles Town. Laurens was jolted out of bed and heard loud cries of “Liberty, liberty and no stamped paper! Open your doors and let us search your house and cellars!” He went down to meet them and found a large crowd (sixty to eighty men by his estimate) assembled at his door. Laurens truthfully told them he had no stamped paper and that the men should leave at once. However, the crowd was not so easily satisfied. Laurens wrote, “When I found no words would pacify them, I accused them with cruelty to a poor sick woman far gone with child and produced Mrs. Laurens shrieking and wringing her hands.” Laurens said that “any man who owed him spite could settle the dispute immediately with a brace of pistols.” The crowd was unmoved. It “proclaimed love for him” but said that even his friends had recommended they search his home. The crowd gave Laurens the choice of voluntarily allowing the search or having his door broke down. Having little choice, Laurens allowed them in. “A brace of cutlasses across my chest was the salutation.” The crowd made a “superficial search,” found nothing, and demanded Laurens take a “Bible oath” that he did not know the location of any stamped paper. Laurens refused to bow to their will, and the crowd threatened to carry him away and “punish” him. He tried to explain his position: he also opposed the stamp act but equally opposed their methods of resistance. Laurens also refused to denounce anyone else. Finally, the crowd left his home without damaging his property and offered him praise and deference, saying “bless your honor.”

Laurens was outraged by the incident and believed that Peter Timothy, a leading artisan and publisher of the South Carolina Gazette, orchestrated the attack on his home. As secretary of the Post Office, Timothy detained some of Laurens’s letters and may have read his complaints about mob activity in Charles Town. Laurens took note of the ill effects such mob activity was having, especially as it caused some slaves and blacks to “mimic their betters” and cry out “liberty.” He also worried about the “interruptions to business” caused by resistance to the stamp act, a natural concern for a merchant like himself. Laurens saw the crowds as a potential threat to order and the economy. He was not ready to join their ranks and insisted on following a peaceful, loyal and orderly path to resisting the Stamp Act. When Parliament repealed the Stamp Act, Laurens was quite pleased but noted that the news was met with more crowd activity, as the Sons of Liberty “abused many people who had not illuminated their houses” in celebration. Mr. Manigault and Mr. Beaufain found themselves so abused.

Laurens had two major objections here: he fully understood that the Sons of Liberty aimed to keep stamped paper out of circulation, making enforcement of the Stamp Act impossible. Thus, he protested their attempt to circumvent even an objectionable law before proper means had failed. Second, he disapproved of pressure tactics and intimidation applied to those who hoped to protect property and the rule of law. He was not unique in these opinions. Even the most prominent revolutionary leaders were very slow to endorse crowd actions. John Adams publicly wrote of how he

28 “Henry Laurens to James Grant, November 1, 1765,” Ibid., 35.
29 “Henry Laurens to John Lewis Gervais, January 29, 1766,” Ibid., 51.
30 “Henry Laurens to John Lewis Gervais, May 12, 1766,” Ibid., 127.
scorned “atrocious violation of the peace” during the Stamp Act crisis in Boston. Freedom, he believed, was rooted in the rule of law.\textsuperscript{31} Benjamin Franklin also emphasized rule of law, and wrote of the “Madness of the Populace or their blind leaders, who can only bring themselves and their Country into Trouble, and draw on greater Burthens by Acts of rebellious Tendency.”\textsuperscript{32} Laurens, Adams, Franklin and others opposed the Stamp Act. However, they were not willing to overthrow the rule of law to combat it.

Rule of law was not the only concern. When Laurens wrote that some slaves had mimicked their “betters” and cried liberty in January 1766, he was referring to a specific and troubling incident. Rumors of a slave uprising in December 1765 caused a near panic within the government. The assembly, council and governor took strong actions to root out the so-called conspiracy, but it proved to be a hoax. Some of the blacks in question who had cried out liberty apparently made up rumors of a conspiracy to cover their own behavior. Even though the incident was a hoax, the assembly reacted quickly and strongly to prevent slaves from taking advantage of the colony’s political situation. It was clear that the rhetoric and political activities of the resistance movement could threaten to unbalance the plantation economy, the control of slaves, and of course the rule of law. Thus, moderates like Henry Laurens feared that the cost of resisting British policy might be greater than the reward.\textsuperscript{33} However, apart from the aforementioned incident, there were no major, recorded episodes of violent slave resistance or disorder.

\textsuperscript{33} The full account of this rumored uprising can be found in Chapter 3.
during the Stamp Act crisis. The existing system kept slaves subjected, but leaders like Laurens had to question whether or not violent resistance could lead to the weakening of that system. Elite leaders especially had to be careful that resistance did not subvert their control of ruling institutions and that resistance did not create new opportunities for slaves to resist as well.

Crowd actions may have been more intense during the Stamp Act Crisis in the northern colonies than they were in South Carolina, but the pattern remained similar. The Sons of Liberty used extra-legal measures to prevent enforcement of the Stamp Act, and they reserved the greatest fury for perceived collaborators. Once the Sons of Liberty learned the identity of stamp distributors or supporters of the act, it was easy to isolate and intimidate them, thus preventing the stamps from going into distribution.³⁴ Men like Laurens who opposed the Stamp Act on principle but favored the rule of law and feared the consequences of resistance also became targets. To Laurens, the Stamp Act was an assault on provincial autonomy, because it attacked the assembly’s sole right to tax and legislate. In that sense, it threatened one of the most important political foundations of elite rule in the colony. However, the elite did not want to upset the established political, economic and social order, so emphasis was placed on seeking redress through remonstrance, reasoned argument, petition, and restrained, organized or sanctioned resistance. The Sons of Liberty, however, would not disappear with the Stamp Act. The colony’s political elite would have to come to terms with their involvement, especially

when it became clear that no amount of remonstrance and petition could alter British policy. Moreover, as economic boycott became a standard tactic to fight British policy, elite leaders found they needed extra-legal organizations and pressure tactics to make a boycott effective.

When Parliament finally repealed the Stamp Act, many in the colonies rejoiced. Christopher Gadsden, who had worked so hard to organize resistance, nearly fainted when he heard the news. However, protest erupted anew with the Townshend Duties in 1767 and 1768. Resistance came from two fronts: the Commons House endorsed a circular letter from the Massachusetts assembly condemning the act and calling for a general boycott, and the Sons of Liberty, again led by the wealthy merchant Christopher Gadsden, organized protests. Gadsden sanctioned extra-legal protest, but Charles Town witnessed no violence as a result of the Townshend Duties. Instead, the Sons of Liberty now coordinated with the assembly to enforce the boycott and used shame and ostracism as their main tactics. These tactics had been effectively employed for years against British placemen.

The tactics changed because the Townshend Duties were so different than the Stamp Act. The Stamp Act could be thwarted if colonists kept stamps out of the colony or intimidated stamp officers. The Townshend Duties were not collected in the colonies and did not rely on stamps. The duties applied to consumer goods (e.g. tea) and commodities. The only way to prevent collection was to avoid buying the taxed goods.

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35 Godbold and Woody, 67.
Thus, the Townshend duties made the decision to consume imports political. The mid-eighteenth-century consumer revolution allowed even moderately wealthy families to obtain British products and manufactured goods to make their everyday lives more comfortable. Disrupting this consumer empire could place tremendous pressure on Parliament to repeal unpopular taxes or duties. Since consumption was widespread, politicizing consumption (i.e. making consumer choices a sign of political loyalty) through boycotts and non-importation could help unite the colonial populace against British policy. This appeal to boycott British imports could be especially powerful when cast as a means to combat American dependence on Britain—a dependence that British policy seemed bent on reinforcing through mercantile policies. In Charles Town, the demand for British goods was greater than in other parts of colonial British America, so a boycott there could be very effective, though getting everyone to sign and break away from popular British goods would be a difficult task.

The Townshend Duties also had a different policy goal than the Stamp Act. The latter had been passed to help pay for the cost of defending the empire after the Seven Years War. The Townshend Duties, however, had specifically been instituted to aid royal officials in their struggles with colonial legislatures. Townshend wanted the revenue from the duties to pay the salaries of royal officials, freeing them from

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36 Carp, 155.
38 Ibid., 192.
39 Ibid., xiv-xvi.
40 Ibid., 234.
41 Ibid., 125, 167.
dependence on the colonial assemblies. Thus, the Townshend Duties brought the placeholder battles and the imperial crisis together. The duties directly threatened the assembly’s domination of the provincial political system. Moreover, arbitrary enforcement of customs laws in the 1760s (i.e. the Moore case in Charles Town), drove moderate merchants and planters like Henry Laurens closer to the Sons of Liberty. The association document itself stressed the constitutional aspect of the organization, stating that the association would “continue in full force until reconciliation shall take place between Great Britain and America upon constitutional principles.”

The Townshend Duties also provoked a confrontation between the assembly and the royal governor. The assembly approved the Massachusetts circular letter encouraging extra-legal resistance, voted to petition George III in favor of repeal, and faced dissolution because of those actions. Governor Montague, determined to break the assembly, damned its acceptance of the Massachusetts letter as an act that enflamed people to “illegal combinations” (i.e. nonimportation). He dissolved the assembly in November 1768 and refused to allow it to meet again until June 1769. When the assembly finally met on June 28, it formulated a report on grievances, which accused Montague of violating the 1721 election act that required an assembly to meet at least every six months. Because of Montague’s actions, it had only met for five days in the

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43 Ibid., 35.
44 “Miscellaneous Papers of the General Committee and the Provincial Congress,” *South Carolina Historical and Genealogical Magazine* 8 (1907), 142.
45 South Carolina Commons House of Assembly, Journals, 38.1, November 19, 1768, SCAHC.
46 According to the journal, Montague dissolved the assembly on November 19. A new assembly met in March 1769 and was prorogued. Montague prorogued the assembly on March 28, April 11, April 26, May 17, May 25, and June 17.
last fourteen months, and public business had suffered accordingly. Business resumed after June 28, but the damage had been done. Moreover, the assembly’s inability to act in the previous months forced the lowcountry elite to find other means to resist odious British policy and the royal governor’s illegal dismissals of the assembly.

Critical constitutional issues and royal attacks upon their ability to manage the province drove the lowcountry elite toward organized, extra-legal resistance. Practical issues also united the assembly’s planters and the Sons of Liberty’s artisans. Artisans and merchants had a direct economic interest in the Townshend Duties. The Townshend Duties on glass, paint, lead, and other items cut directly into artisan profits. South Carolina’s merchants remained quiet about the duties, not wanting a disruption in trade to affect their businesses, while the majority of planters allied with the artisans and Gadsden against the Townshend Duties. A series of public meetings in 1769 led to a compromise between the three groups, who agreed to boycott most British manufactures. On July 22, a committee consisting of thirteen planters, merchants and artisans organized to collect signatures supporting the boycott. They agreed to take all necessary steps to enforce it. The committee’s slogan became “Sign or Die.” This tactic was certainly extra-legal, but this time it had the sanction of the political and economic elite, who applied traditional methods to enforce their will upon the colony. In particular, the resistance relied on centralized organization and attacks upon reputation to correct or deter offenders. Anyone who opposed the resistance movement faced political, economic

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47 South Carolina Commons House of Assembly, Journals, 38.1, June 28, 1769, SCAHC.
48 Walsh, 45-48.
49 The association excluded plantation tools, cloth for slave garments and blankets, and other items necessary to the plantation economy. Breen, 237.
and social ruin, much like an offending placeholder who dared to challenge the Commons House.

Intimidation and threats of social ostracism and even violence led 142 individuals to sign by August.\textsuperscript{50} Though there were no incidents of mob violence, the boycott represented the erection of ad-hoc legal and government systems in South Carolina designed to unite the colony behind an economic war with Britain. A group of private individuals who saw their political power or livelihoods threatened by Parliament created a quasi-legislature in the form of the public meeting. They passed what amounted to a law (the boycott) and formed an enforcement mechanism (the committee). Those who violated the extra-legal law soon found out that its enforcers were not afraid to punish offenders. Of course, some hesitated.

A group of Charles Town merchants published a protest against the boycott in the local newspapers. They feared that it would damage their businesses, but they also worried about the injustices this new extra-legal system could inflict. America, they wrote, “had just cause for complaint.” However, they also wondered, “have not the body of merchants equal reason to complain, when an attempt is made that strikes at the welfare of each individual? SIGN OR DIE was the motto on a late extraordinary occasion [the July 22 meeting]; SIGN OR BE RUINED is the motto now!”\textsuperscript{51} The merchants applauded the motive behind the boycott (for they shared it) but condemned the means. A longstanding boycott could potentially ruin a merchant. They also

\textsuperscript{50} South Carolina Gazette, July 27, 1769; Fraser, 43-44.
\textsuperscript{51} South Carolina and American General Gazette, July 13, 1769.

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questioned the legitimacy of law passed and enforced by an extra-legal resistance organization. If Parliament threatened colonial autonomy, did not the resistance organization threaten the rule of law itself and usurp the authority of the legitimate provincial government? Others in the minority, later called loyalists, continued to raise similar objections to little avail.

The General Committee worked hard to root out and punish violators. Though the Townshend Duties (save the duty on tea) were repealed in April 1770, the General Committee continued the boycott through December of that year. At its meeting in October, it even strengthened the boycott. Non-subscribers were already ostracized, but now the committee resolved that anyone who even associated with them would be treated with equal contempt. Non-subscribers were totally isolated to bring the greatest amount of pressure possible to bear upon them.\textsuperscript{52}

Philip Tidyman, a jeweler with a shop on Broad Street in Charles Town, was one man who ran afoul of the resistance. Tidyman was “detected importing in a secret and clandestine manner” several cases of jewels and other goods. The General Committee summoned him to appear and published the entire case in the \textit{South Carolina Gazette}. The paper noted that Tidyman had subscribed to the boycott association. The committee put him through a sort of trial, in which they examined his records and invoices. They determined that he had willfully violated the boycott. He was “guilty of the most flagrant falsehood and deceit, even so far as to produce a fictitious letter, pretending that certain articles contained within the six cases reported in the manifest were sent him as a present

\textsuperscript{52} \textit{South Carolina Gazette}, October 4, 1770.
from a kinsman in England.” The Committee resolved to summon Tidyman and ordered him to send the goods back to England. Tidyman, however, did not answer the summons, so the Committee issued summary judgment. It resolved to publish his name “as an audacious and incorrigible violator of the general resolutions [boycott], deserving the contempt of every good man; and it is expected that no subscriber will hereafter have any dealings with him, unless he shall make full atonement.” Tidyman had to bow to the committee’s pressure. It could not bring him to harm or punish him physically, but it set out to destroy his reputation and his business through this “ritual of consumer enforcement.” It used tactics against him similar to those used for years against British placemen. To save himself and his business, Tidyman promptly published an apology in the local papers, swearing not to sell any of the “illegally” imported goods. His shop would remain open, but Tidyman himself left for England. His public apology also served as an example to others, encouraging them to abide by the association and uphold its political values.

The committee, now chaired by Henry Laurens, finally voted to end the boycott in December 1770, but South Carolina was among the last colonies to do so. Wealthy planters like Laurens had taken a major step during the Townshend Duties Crisis. They had gone from insisting on exclusive reliance on legal and established methods for resistance to active leadership in organized extra-legal resistance and open alliance with the Sons of Liberty. The next major rounds of extra-legal resistance followed in the wake

53 South Carolina Gazette, November 1, 1770.
54 Breen, 261.
55 South Carolina Gazette, November 15, 1770.
56 Breen, 261.
of the Tea Act in 1773 and Coercive Acts in 1774. The vast majority of the elite embraced extra-legal resistance and established a revolutionary government based on the General Meeting and General Committee models from the Townshend Duties Crisis. The organizations fiercely demanded conformity as the old colonial government collapsed and British resolve hardened.

The Tea Act, perceived by many colonials as a corrupt scheme to force them into submitting to the remaining Townshend Duty, once again stirred colonial resistance to Parliamentary measures. The most drastic resistance measure took place in Boston on December 16, 1773. That night, members of the Sons of Liberty dressed as Indians and dumped approximately 340 barrels of East India tea into Boston Harbor. The reaction in Charles Town was not as severe. By this time, the assembly was embroiled in the Wilkes Fund controversy and other privilege arguments, so it could not provide a focus for organized resistance. Christopher Gadsden and the Sons of Liberty took the lead, passing out flyers and speaking in local taverns. They urged their fellow subjects not to accept the Tea Act without a fight, as it would establish a precedent for accepting any legislation Parliament made for the colonies. Gadsden and his followers organized another meeting (attended mainly by planters and artisans), which met outside of the Exchange in Charles Town on December 3. The meeting elected the respected and wealthy George Gabriel Powell (sometime judge for the Court of General Sessions and assemblyman) to preside. The meeting voted to circulate a resolution agreeing not to

import any tea that would generate revenue for the British government. Local tea importers were also summoned and convinced (or intimidated) not to import the tea. The meeting chose a five member committee to gather signatures for the resolution. It included Charles Cotesworth Pinckney and Thomas Ferguson, two wealthy planters who served in the assembly.\(^{58}\)

Organized extra-legal resistance resumed with the leadership of prominent members of the elite such as Pinckney and Powell. Resistance was becoming more orderly and regularized with the colony's political elite taking leadership roles from the very beginning. Meetings, for example, were no longer held outside underneath the Liberty Tree. They now took place inside the exchange’s great hall and followed strict parliamentary procedure. With the assembly locked in combat with Montague over the Wilkes fund, it could no longer serve as a rallying point for elite resistance. Worse, its ability to carry out its critical governing duties was severely compromised. The elite were not ready to abandon it by early 1774, but the time was approaching when they would have to restructure the government if it were to remain functional.

A similar situation developed in Maryland. The imperial crisis created a power vacuum when the government deadlocked. The elite feared chaos. Thus, they reestablished authority through extra-legal bodies.\(^{59}\) The elite in Maryland worked to maintain the social and political structure, even as they participated in resistance. Freemen (voters) did not “seize the occasion to topple the political elite.” Instead, “the

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\(^{58}\) Fraser, 52-54.

elite, with sensitivity to the popular mood, continued to lead…“60 Popular protest sprang up in Charles County, Maryland, but the gentry remained in the lead. They closed courthouses, organized nonimportation and an extra-legal inspection system to resist British policy there.61 The situation in South Carolina was similar, as the artisans and the lowcountry elite remained united against British policy.

At the Exchange meeting on December 17, Powell urged all involved to proceed with moderation: “the greatest order and regularity was accordingly observed, and no gentleman that had an inclination to speak suffered the least interruption, but was heard with the greatest attention.” The question of what to do with the East India tea naturally came up, and all sides were heard. The merchants, who had organized themselves into a Chamber of Commerce, had concerns. Many had already agreed to import tea or had East India tea in stock. What was to be done with it? Despite their protest, the meeting resolved not to allow any East India tea (now on a ship in the harbor) to be “landed, received, or vended in this province by any person or persons whosoever while subject to a duty to be paid in America.” They further resolved to send John Rutledge and a committee to inform the East India ship’s captain of their decision. The resolutions formed a “general agreement,” which the meeting deemed binding on “every inhabitant of this province who has a due regard for the welfare of his country.” The final agreement called for a repeal of the remaining Townshend Duty on tea, citing the “principles of constitutional right and justice.” The group then adjourned until January 7,

61 Ibid., 107.
but they already had begun to assume the veil of a provisional government centered in Charles Town and controlled by the elite.\textsuperscript{62}

The meeting specifically cited “justice,” which referred to “constitutional rights,” specifically the right to be taxed only by representative government. Indeed, that theory of taxation had been a key pillar of constitutional thought in England since the seventeenth century, and it supported how South Carolina’s leaders structured the government and fought their political battles. However, that ideology also stressed the rule of law. Authors like John Milton insisted that even the monarch was under the law. Milton wrote,

We see it manifest that all laws, both of God and man, are made without exemption of any person whomsoever; and that if kings presume to overtop the law by which they reign for the public good, they are by law to be reduced into order; and that can no way be more justly than by those who exalted them to that high place. For who should better understand their own laws and when they are transgressed than they who are governed by them and whose consent first made them?\textsuperscript{63}

No king or government could live outside of the rule of law, which was made only for the good of and by the consent of the people. Milton eloquently summarized a major tenet of constitutional thought, but it was a double-edged sword for revolutionaries. If Britain violated the constitution by unjustly usurping the powers of colonial legislatures, then resistance was justified. However, Parliament claimed legislative authority over the

\textsuperscript{62} \textit{South Carolina Gazette}, December 20, 1773.

entire empire. Were its laws—even odious ones—not to be obeyed? How could the resistance movement create law when the colonial and imperial legislatures still existed? The lowcountry elite took a very active role in leading and shaping resistance after the Tea Act Crisis, but a minority still pondered and worried about these questions. They would be even more troubled by how the resistance leadership set out to enforce their new rule of law, since the resistance leadership continued the “sign or die” mentality.

The tea still landed in Charles Town. On December 22, royal officials seized the East India tea and stored it in the Exchange’s cellar for safekeeping. Despite local discontent, the city remained “perfectly quiet,” but royal officials took no chances.64 Hence, the “Charles Town Tea Party” began peacefully. It would not remain so indefinitely. The tea, East India ships or anyone violating the prohibition on East India tea provided physical targets, much like the stamps. They practically invited some kind of crowd action. In November 1774, for example, the General Committee forced consignees (who had agreed to import East India tea brought to Charles Town on the Britannia) to board the ship and dump the tea into the Cooper River (seven barrels in all).65 This incident was not a random act of a crowd or mob. Rather, this violence against the East India Company’s property was carried out as a punishment or sentence handed down by an extra-legal body intent on enforcing its resolutions as law. The crowd itself was becoming a quasi-law enforcement mechanism.

64 South Carolina Gazette., December 27, 1773.
65 Fraser, 57.
Word of the Boston Tea Party reached London in January 1774 and resulted in the Intolerable or Coercive Acts that were designed to punish Massachusetts and cow the colonies into submission to Parliamentary law. Lord North admitted that the act was punitive in nature during the debate in Parliament. 66 Moreover, the acts set out to greatly reduce the power of the Massachusetts assembly. North stated that the Massachusetts Government Act would “take the executive power from the hands of the democratic part of the government.” 67 Thus, leaders in South Carolina saw the ministry directly assault the powers of a colonial legislature and attack colonial autonomy. Might their colony face the same fate? Might the Coercive Acts finally force colonials into the status of “second-class citizens?” 68 For many colonists, the Coercive Acts confirmed resistance leaders’ worst fears: Britain would not rest until constitutional government in America had been destroyed. They could justify their actions as a defense of the true constitution and the rule of law, which leaders in South Carolina sought to reestablish, first through the resistance government and then through the state government.

The Intolerable Acts prompted the Commons House of Assembly, still crippled by disputes with royal governors and British officials, to finally give official sanction to the extra legal government. At its meeting on August 4, 1774, the assembly noted that the “General Meeting of the Inhabitants of this Colony” met to consider the Intolerable Acts in July. It chose Henry Middleton, John Rutledge, Thomas Lynch, Christopher Gadsden and Edward Rutledge (elite planters and lawyers all) as delegates to the recently

67 Ibid., 1:320.
called Continental Congress (itself an extra-legal body). The Commons House voted its approval and support of the General Meeting’s actions. It was prorogued three consecutive times until January 1775 as a result. It would never function again as a legislature. However, the Commons House had given official provincial sanction to the General Meeting and the other bodies that would spring from it. The assembly elite passed the torch of their power to another body and began to craft an independent provincial government in earnest.69

The Revolutionary Government

The General Meeting continued through 1774. It empowered the General Committee to enforce its resolutions, allied with the New England colonies in solidarity against the Coercive Acts, appointed delegates to the Continental Congress, and called for a provincial meeting to establish procedures for all parishes and districts to send delegates to form a new government in November 1774. This provincial meeting took the name “Provincial Congress” and assumed full legislative powers and produced a constitution for South Carolina. It represented continuity with the old order in form, function and personnel. It consisted of between 184 and 209 members, with a quorum set at forty-nine. Though the Congress itself was a relatively large body, less than half participated on a regular basis (of the 269 men who served, only 127 ever sat on a committee). There were no known eligibility restrictions beyond voter qualification, which required a white man to own twenty Shillings worth of property. Forty-three of the forty-eight Commons House of Assembly members who served concurrently were

69 South Carolina Commons House of Assembly, Journals, 39, August 2, 1774, SCAHC.
sent to the congress. Additionally, twenty-five members from previous assemblies served in the congress, making it an extension or continuation (minus royal interference) of the Commons House. Planters, lawyers and merchants continued to dominate the Provincial Congress. Its three presidents were all prominent lowcountry planters—Charles Pinckney, William Henry Drayton and Henry Laurens. However, the congress also included members from the backcountry and artisans. The lowcountry elite continued to play the dominant leadership role, but they also understood the need to unite the colony against Britain. The new government would be more inclusive, but it conserved the leadership and structure.

The Provincial Congress met for its first session on January 11, 1775. It sat through January 17, and it reconvened for a second meeting from June 1 to June 22. Its attitude changed markedly from the first sitting to the second thanks to the outbreak of hostilities in New England. During its first session, the congress approved the Continental Congress’s “American Bill of Rights,” which reasserted the right to live under the protection of English law and enjoy trial by peers. The Provincial Congress also approved the “American Association.” However, South Carolina’s delegates to the Continental Congress would not allow the provincial economy to be crippled by resistance. They walked out in protest of the Association and only signed on when the Continental Congress agreed that rice could still be exported under the new rules.

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71 Ammerman, 83.
South Carolina’s leaders continued to defend the old order, even as they moved to build a new one.

This new Association prohibited imports from Britain and its dependencies, ended the external slave trade, banned consumption of East India Tea, and required each county, city or town to select an “observation committee” to enforce the Association. A majority of each committee could find a person in violation and publicly condemn him as an enemy of American liberty. The Provincial Congress did not allow committees to form on local initiative, even though the Association did not demand central organization. Instead, the Provincial Congress erected parish committees and appointed members. This arrangement was unique to South Carolina, but it was completely consistent with existing government traditions. Other colonies allowed locally elected committees. Committee membership in South Carolina was also comparatively small. Approximately 300 men served on these committees in South Carolina, whereas 1,600 served in Massachusetts. Even in the comparatively small New Hampshire, 650 men served. 72 The revolutionary government may have been new in form, but it was not new in essence. It remained centralized and under the direction of the few.

The Provincial Congress imposed more limits on individual and local autonomy after it approved the Association. It banned civil suits before the Court of Common Pleas without express permission from the local committee, which gave the revolutionary government control over the royal courts. 73 The congress insisted on its new role as

72 Ibid., 85-107.
73 Hemphill, 13-22.
provincial legislature and sent a petition to Governor William Campbell stating that it would never accept unconstitutional “ministerial mandates.” In a reference to the ongoing conflict over the Wilkes Fund, the congress complained that regular government (i.e. the Commons House) was crippled by an obstinate council “composed chiefly of placemen paying implicit and servile obedience to unconstitutional instructions.” Hence, the congress blamed royal officials for the present situation, and justified its seizure of power based on unconstitutional royal conduct and the resultant political gridlock. Lt. Governor Bull simply replied that the Commons House was currently prorogued, and he recognized no other legal representatives in the colony.  

News of Lexington and Concord and predictions of slave and backcountry Indian uprisings stirred the Provincial Congress to take much stronger action. False rumors surfaced that the British planned to incite Indian invasions and slave revolts just when reports of those battles arrived. The Congress was motivated to take on even more power. Indeed, it assumed all the powers of the old government, created a defensive military structure, and established the Council of Safety to handle administrative responsibilities and oversee military organization. Congress created the council on June 14, 1775. It originally consisted of seven members (expanded to thirteen regular

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74 Ibid., 28-29.  
75 Weir, Colonial South Carolina, 319.  
76 South Carolina was not the only colony to create such a council. Maryland’s extra-legal “convention” also adopted the Association and created a Council of Safety as an executive body after Lexington and Concord. The convention (similar to the Provincial Congress) acted as the supreme legislature from June 1774 onwards. Maryland’s council also served to oversee defense, execute the convention’s resolves, coordinate with local committees, and enforce the Association. It was led by prominent merchants and planters, whose goal was to preserve order and beware of threats from slaves, unruly mobs, and etc. See Hoffman Spirit of Dissention, 139-145. On the other hand, the Massachusetts system was very different from South Carolina’s, in that it was decentralized and sprang from the ground up. Its committees of
members and the five Continental Congress delegates), and all were prominent lowcountry planters, merchants and professionals. Congress gave the council a myriad of duties including overseeing military organization, disbursing funds raised to support militia troops, and a vaguely worded charge to oversee the “securing and defending” of the colony.\textsuperscript{77}

The Provincial Congress continued to extend its authority in ways the Commons House had never been able to. It used the committees as courts and law enforcement bodies. Unlike the old courts, the congress had complete control of policy and personnel. It resolved “that every person having violated or refused obedience to the authority of the Provincial Congress, shall by the committee of the district or parish in which such offender resides, be questioned…and upon due conviction…declared and advertised as an enemy to the liberties of America.” In a single resolution, the congress declared itself a proper governing body with authority over South Carolina’s subjects, redefined treason and law enforcement, and granted its committees judicial power over any who challenged its position.\textsuperscript{78} The precedent of centrally organized government and criminal justice was correspondence were rooted in the Massachusetts tradition of town meetings and strong local government. The committees were not initially organized as enforcement bodies, but they were to communicate and instruct inhabitants of threats to their liberty. Massachusetts had a structure in place (the town meetings) so there was no need to innovate. The central Boston Committee did not act as a controlling body as the South Carolina Council of Safety did. It did not create other committees but acted as an example or foundation. See Richard D. Brown, \textit{Revolutionary Politics in Massachusetts: The Boston Committee of Correspondence and the Towns, 1772-1774} (New York: W. W. Norton, 1970), 21-46; 47-68; 79.\textsuperscript{77} Poythress, 293-247. Among the Council’s members were William Henry Drayton, Charles Pinckney, Arthur Middleton, Rawlins Lowndes, Miles Brewton, Thomas Hayward, John Huger, Benjamin Elliott, and Henry Laurens. They all had served in the Commons House, were among the colony’s richest men, and all hailed from the lowcountry parishes. The same men who led the Commons House through all its battles with placeholders, governors and British officials then came to lead the revolutionary government.\textsuperscript{78} Miscellaneous Papers of the General Committee and Provincial Congress,” \textit{South Carolina Historical and Genealogical Magazine} VIII (1907), 191.
well established, but the congress removed old limitations and vastly expanded the legislature’s power.

South Carolina was in a state of rebellion by mid 1775 and had a basic provisional government in place. The Council of Safety spent most of its time handling military affairs, but it also saw to the problem of dissent. In August 1775, the council proposed to appoint “proper persons to deprive non-associates from enjoying the benefits of a free intercourse with the inhabitants of this town (Charles Town)...hereafter such persons will not find it so easy to dispose of their flour and other merchandise.”

Thus, the council (a sort of cabinet of the Provincial Congress) created even more law enforcement to modify political behavior, this time by banishing individuals from the economy.

Parish committees also proved active in their charges. In September 1775, the committee for Little River wrote to the council’s Committee of Intelligence about “the necessity of exposing to the public the conduct and behavior of Daniel Robins.” Robins was a “coaster and trader” who signed the Association but openly violated the General Committee’s resolves banning trade with non-associates. The Little River committee recommended he be “dispossessed” of his vessel and publicly condemned. The committee acted as an inquisition, reporting and encouraging community members to report on others. It also assumed power to seize private property. In October, the Little

79 “Papers of the First Council of Safety,” South Carolina Historical and Genealogical Magazine 1 (1900), 132.
80 Ibid., 204-205. “Inquisitorial” refers to a kind of legal system in which the judge or panel has an investigatory role, serves as an advocate for the state’s interests, and determines innocence or guilt without a jury. In such a system, the accused is generally presumed to be guilty until proven innocent. See Herbert A. Johnson and Nancy Travis Wolf, A History of Criminal Justice, 4th ed. (New York: Anderson Publishing, 2008).
River committee again reported on Robins. It had requested punishment for his employment of a non-signer (James Hamilton) and doing business with other non-signers. Robins refused to appear before the committee, so it issued summary judgment and named him inimical to liberty. The committee, however, lacked the funds to “have him stigmatized” (i.e. print a newspaper ad). The Council of Safety cleared Robins, which outraged local committee men. The Little River committee voted to disband, since “from this affair we think we appear in so despicable a light as a Committee that one Man’s assertion should reach farther than six.”

The episode demonstrates how the elite-dominated council kept tight control over zealous local committees. The committees had no autonomy or independent funding, which was a traditional means the Commons House had used to control local bodies.

Local committees did more than seek out non-conformists. They also served as administrative bodies responsible to the Council of Safety for organizing local militia units. They were not unlike commissions the Commons House used to establish for infrastructure projects. Local committees also helped watch for slave unrest in these chaotic times. The Little River committee, for example, sent a bill to the council for £10 to pay Robert Bell for transporting a slave to the Georgetown committee for a hearing. The slave was accused of attempting to stir up a slave insurrection there. The outcome is unknown, but the episode demonstrates two points. First, it again shows that the committees relied on the central government for funding. Second, it reveals continued

81 Ibid., 205.
82 Committee for Little River to the Council of Safety, October 23, 1775,” South Carolina Historical and Genealogical Magazine III (1902), 136.
83 Ibid., 136.
concern about slave unrest, which was met by an additional law enforcement mechanism as the revolutionary government continued to expand its scope.

Meanwhile, the royal government continued to crumble. The royal courts closed by September 1775, since British judges refused to do any business with the resistance. Henry Laurens believed the customs house would soon follow.84 A mob had attacked royal governor Lord William Campbell in June 1775. Campbell wrote the Commons House that the mob seized him and issued “slight corporal punishment” before carting him through the streets of Charles Town. Campbell understandably came to fear for his family’s safety after this incident and asked the Commons House to do something to control the mob. It replied that it had no power to “proscribe limits on popular fury.”

This statement was patently untrue, as the Commons House had done everything in its power to manage colonial society before the imperial crisis. Campbell would certainly have cooperated to quell mob violence, but the Commons House found it convenient to let the mob have its way. It hoped Campbell would understand that “the populace [was] enraged by the daring and unprovoked insolence of a person who although he was supported by the public and by the country’s bread, openly and ungratefully uttered the most bitter curses and imprecations against the people of this colony and all of America.”85 As one who continued to obstruct the Commons’ legislative power,

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84 “Henry Laurens to the South Carolina Delegates to Congress, September 18, 1775,” South Carolina Historical and Genealogical Magazine I (1900), 288.
85 “Commons House to Governor William Campbell,” South Carolina Historical and Genealogical Magazine VIII (1907), 194. Campbell could not have appealed to the Provincial Congress given its extra-legal nature. Like Lt. Governor Bull, he could not recognize any legislative authority other than the Commons House, even though it was all but defunct at this time. Moreover, the core of lowcountry elite
Campbell was another in the long line of placemen needing chastisement, but the Commons House had never before gone so far.

The assembly’s reasons were highly calculated. It suggested that it had no power, and it explained that Campbell’s violation of provincial rights and continual interference had made it powerless. The Commons House also implied that Campbell should be dealing with the resistance government at this point, which he and Lt. Governor Bull repeatedly refused to even acknowledge. The Commons House closed by telling Campbell that it hoped his “wise and prudent conduct” in the future would eliminate any danger to him. 86 Campbell gave up, telling the Commons House that “the powers of government are wrested out of my hands…I can neither protect nor punish.” 87 This incident would be one of the last matters the assembly handled. Governor Campbell dissolved it for the final time on September 15, leaving the Provincial Congress as the only (though still extra-legal) legislative body in the colony. The Commons House won its last battle with a royal official, marking the ascendancy of the resistance government.

The resistance government also continued to tolerate crowd actions that aided the destruction of royal authority and enforced conformity to the revolutionary cause. Henry Laurens woke one morning in June of 1775 to the sound of the “popular bell” (a compulsory summons for Charlestonians to gather). The call had gone out to “collect a proper court for trying, condemning, and executing sentence on two impudent fellows who had not only refused to subscribe to the Association but threatened vengeance on the

86 Ibid.
87 South Carolina Commons House of Assembly, Journals, 39, August 15, 1775, SCAHC.
whole country by exciting an [slave] insurrection.\textsuperscript{88} The mob (“some of the lower people”) gathered and held a mock trial, even setting up a judge and calling witnesses. The ensuing ritual resembled a slave trial in its form and purpose: the men were quickly convicted and immediately tarred and feathered, a brutal, public punishment meant to terrorize other potential offenders into conformity.\textsuperscript{89} Following the ritual, the mob carted the men through the streets, put them on a ship, and banished them. Laurens noted that very few had refused to join the association, and almost all who did were royal officials.\textsuperscript{90}

Peter Timothy reported another tarring in August 1775. The gunner of Fort Johnson spoke “insolently” against the resistance. A mob captured him, tarred and feathered him, and paraded him through the streets. The mob stopped at “Tory houses” to demonstrate what happened to such men. Timothy wrote that there “was scarce a non-subscriber who did not tremble.”\textsuperscript{91} Given the horror of reprisal, it is little wonder few refused to subscribe. Fear of mob-enforced orthodoxy worked better than even the committees, so the crowds served a useful role in forcing conformity and, at least in one case, of squelching spoken threats to incite slave insurrection.

A month later, the General Committee attacked the problem of non-signers in an official capacity and summoned all non-associates to appear before them in Charles

\textsuperscript{88} Henry Laurens to John Laurens, June 8, 1775,” \textit{Papers of Henry Laurens}, 10:167.
\textsuperscript{89} \textit{Ibid.}, 167. This crowd action is not unlike incidents of “rough music” or “skimmington” that occurred in the colonies throughout the eighteenth century. In these incidents, the crowed took the law into its own hands and punished an individual who had somehow violated social or moral norms. Crowd actions often took place when the crowd did not believe “justice” would otherwise be done to an egregious offender. See William Pencak, Matthew Dennis, and Simon P. Newman, eds., \textit{Riot and Revelry in Early America} (University Park: Pennsylvania State University Press, 2002). See also Alfred F. Young, \textit{The Shoemaker and the Tea Party: Memory and the American Revolution} (Boston: Beacon Press, 1999).
\textsuperscript{91}“Peter Timothy to William Henry Drayton, August 13, 1775,” Arthur Middleton Papers, SCHS.
Town. They met inside the Commons House chambers at the state house (a sign that extra-legal bodies regarded themselves as legitimate governing institutions). William Wragg, a wealthy planter and assembly member, was one of those called. The Committee took down testimony to consider if reasons for not subscribing were valid or traitorous. William Wragg was outraged, writing to the Council of Safety that “it was not in the power of any body of men to force my signing.” He asked, “Can liberty be worth contending for or ever preserved, when the first principles, and the essential foundations are violated?” Wragg, a non-signer, railed against the notion that he was to be condemned before even receiving a hearing. The committee denied him due process, which had been an essential tenet of English liberty at least since the days of the Civil War and Glorious Revolution. He was convicted as an enemy of liberty and confined to his plantation.

The lowcountry elite were slowly but surely purging their enemies and clamping down on threats. As Henry Laurens observed, “The King’s officers have been disarmed; Captain Innes [Governor Campbell’s secretary] banished; Mr. Roupell confined to his house; William Wragg to his plantation; Lord William is gone on board the Tamar Man of War; The House of Assembly dissolved; the Judges have shut up the courts of Law.” He did not express concern for the fate of these men, but he worried about a power vacuum. The Provincial Congress and Council of Safety had to guide the resistance, but they also had to take over the Commons House of Assembly’s responsibilities for

93 William Wragg to the Council of Safety, September 5, 1775,” Ibid., 369.
94 William Wragg to the Council of Safety, September 5, 1775,” Ibid., 369.
95 Henry Laurens to John Laurens, September 18, 1775,” Ibid., 396.
managing society and economy—including slavery. The congress relied upon existing tools to meet those responsibilities, but its leaders expressed willingness to resort to extremely harsh measures to protect the plantation economy. Resistance organizations also provided extra vigilance. Every threat to slavery was taken most seriously. Even if threat or plots were merely hoaxes or rumors, the harsh responses to these incidents reveal that the elite were very apprehensive about the effects that the rebellion could have upon the plantation system.96

In June 1775, Laurens wrote that several slaves had been tried for plotting an insurrection. He said that the insurrection proved to be yet another hoax, but two blacks were flogged and banished. Laurens thought death the only suitable punishment for even hinting at slave insurrection in this time of crisis.97 Thomas Hutchinson reported to the Council of Safety from the Cheraw District (in the backcountry) about a rumored slave uprising. He told the Council that the supposed leaders had been arrested and convicted by a Court of Justices and Freeholders (which never ceased to operate). The plot had only been a series of meetings led by a white man named John Burnet. He held nightly meetings among local slaves “under sanction of religion” but was also supposedly infusing them with “rebellious doctrine.” The parish committee ordered the man shipped to Charles Town. The Court of Justices and Freeholders executed a slave named Jemmy, who provided testimony against Burnet for involvement in the supposed plot. There is no

97 Henry Laurens to John Laurens, June 18 1775,” Papers of Henry Laurens, 10:184-185.
indication that a well-developed plot to begin an insurrection was in place, but, given time, something more may have developed from Burnet’s meetings.98

Finally, a more serious and disturbing incident took place in March 1776. Though not an attempted insurrection, it did show weaknesses in slave management and control that the elite believed needed to be addressed urgently and harshly. Stephen Bull reported that nine of Arthur Middleton’s slaves had deserted to a nearby British ship. Up to 150 escaped slaves now resided on Tybee Island.99 Bull believed this congregation of fugitive slaves had to be dispersed at all costs. He wrote Henry Laurens that every single runaway on Tybee Island should be killed if they could not be captured. Bull worried that they could serve as a rallying point for future escapees, and the British might capture and sell them to support their war effort.100 Stephen Bull wanted the Council of Safety to act, but he worried that some of its members were too “timid.” Laurens, as chairman, gave Bull the authority to employ a party of Creek Indians to carry out the slaughter, but Bull still hoped for council sanction. He also hesitated to take the matter before the council for tactical reasons: “It [the slaughter] must be kept a profound secret, lest the

98 “Thomas Hutchinson to the Council of Safety, July 5, 1775,” Ibid., 206.
99 “Stephen Bull to Henry Laurens, March 13, 1776,” Ibid., 11:155. The British had no military forces in South Carolina. Thus, the British could not really implement plans to conspire with slaves. However, rumors of British support could prompt slaves to act on their own. In this atmosphere, all kinds of rumors of slave resistance spread, and masters reacted harshly to reassert their authority. Olwell, Masters, Slaves and Subjects, 230-232. See also Douglas R. Egerton, Death or Liberty: African Americans and Revolutionary America (Oxford: Oxford University Press, 2009), 60-61.
100 Stephen Bull to Henry Laurens, March 14, 1776, Ibid., 163-164. Seventy militia men dressed as Indians and thirty real Indians carried out the attack on March 25, 1776. Olwell, Masters, Slaves, and Subjects, 242. Another large group of runaways on Sullivan’s island was also violently dispersed in December 1775. Berlin, 293.
Negros should move off.”\textsuperscript{102} The council’s minutes contain no mention of the incident, and Laurens did not write of it again after this exchange of letters.

Therefore, the resistance movement took responsibility for enforcing slavery and protecting the economy. Committees kept watch and the council and congress set policy. They made no structural changes, and the Courts of Justices and Freeholders continued to operate. They were, in fact, the only formal courts still operating in the colony through most of 1775 and 1776. The Provincial Congress also monitored potential uprisings through a “committee on negro insurrection,” which was authorized to summon justices and freeholders.\textsuperscript{103} Provincial leaders took all threats seriously, and even a moderate like Henry Laurens sanctioned slaughter and brutality to ensure that the province’s labor force did not break free or aid the enemy. No major slave insurrection took place during the imperial crisis (to 1776), and the slave law enforcement system continued to operate. The resistance government placed more emphasis on monitoring slaves than it had in the past, as the government took a more active role in managing slavery. In all of the incidents outlined in this chapter, the revolutionary authorities were always most concerned about disruptions to the economy. Even Stephen Bull, who advised a massacre, only expressed concern that the British might seize and sell runaways and that the congregation on Tybee Island might inspire even more runaways. In that sense, though the new government put more emphasis on preventing insurrection, it still continued the old policy of emphasizing the protection of plantation economy from

\textsuperscript{102} Ibid., 163.
\textsuperscript{103} Hemphill, 66.
disruption. Even South Carolina’s successful demands that rice be excluded from the Continental Association stress that the elite continued to see this policy as a top priority.

The resistance government also took steps to continue the orderly management of white society and prevent anyone from potentially subverting its authority. In June 1775, the council resolved that no one in South Carolina “ought to withdraw themselves from its [the colony’s] service” without permission from or explanation to the congress, restricting freedom of movement to better enforce loyalty to the provisional government. The congress even appropriated the colony’s law enforcement mechanisms. It ordered the Sheriff of Charles Town to arrest Robert Cunningham in November 1775 on vague charges of “high crimes and misdemeanors against the liberties of this colony.” Cunningham was brought before congress and charged with expressing opinions (in an affidavit from one Captain Caldwell) contrary to the cause of resistance. Congress heard his case and then ordered the Sheriff not to allow Cunningham to communicate with anyone without its express consent. Cunningham was not the only one. In November, congress summoned John Dunn, who had been overheard speaking in favor of British policy. Congress put together a committee to look into the matter, and it reported that Dunn had been drunk at the time and should only be admonished. Congress, however, reprimanded him and branded him as inimical. Dunn had been under

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104 Ibid., 67.  
105 Ibid., 89.
confinement but was released upon taking an oath of neutrality. Congress warned him that further violations of his oath would result in imprisonment.106

The legislature had grown immeasurably stronger as the resistance government established its authority. As 1775 passed, the Provincial Congress acted more like a legislature and not a resistance organization. It acted as a court, erected new law enforcement institutions and created a new administrative system. It also began altering the criminal law. In November 1775, congress declared counterfeiting a capital crime (though no court currently existed to punish such crimes).107 Early in 1776, it banned the firing of guns in Charlestown, proscribing a £5 fine for violators.108 Congress also resolved that no one could leave the province without posting public notice at least ten days in advance on the state house door (in addition to the requirement of congressional permission).109 The harshest measure also came in March, when Congress passed a resolution against—ironically enough—rebellion. It resolved that anyone who took up arms against the Continental or Provincial Congresses would be tried before the parish committee. If convicted by a majority vote, the individual would be disarmed and taken into custody with military aid. The convict could choose to swear loyalty, but he would be confined if he refused.110

Despite the resistance government’s accumulation of authority, it was still very much ad-hoc, and elements of the old system (i.e. the courts) had ceased functioning.

106 Ibid., 97-100.
107 Ibid., 166.
108 Ibid., 185.
109 Ibid., 230.
110 Ibid., 231-232.
Thus, congress took the first step toward formalizing its status in February 1776 by creating an eleven member committee to draw up a new “plan of government” until the “present dispute” with Britain was resolved. Henry Laurens, Christopher Gadsden, Arthur and Henry Middleton, John Rutledge, Rawlins Lowndes, and Charles Cotesworth Pinckney—wealthy planters and officeholders all—were among the committee members.\textsuperscript{111} This committee was formed without any direct authorization or instructions from congress’s constituents and without new elections.\textsuperscript{112}

South Carolina’s first constitution came before the Provincial Congress on March 26, 1776. South Carolina was one of the first provinces, along with New Hampshire and New Jersey, to formalize its revolutionary government with a constitution.\textsuperscript{113} South Carolina’s new constitution preserved the old structure (social and political) intact, minus the imperial and royal elements. It made accommodations to backcountry farmers but preserved the essential nature of the system and the lowcountry elite’s dominance.

The new constitution began by outlining grievances against Britain, including unconstitutional measures that would reduce colonists “to a state of the most abject slavery.” In other words, Parliament and ministerial officers had attempted to destroy representative government in the province by invading the Commons House of Assembly’s power to manage the colony. Representative government was believed to be the only reliable means of protecting life, liberty and property. A slave—one who lacked freedom of will and action—had no right or means to protect life, liberty and property

\textsuperscript{111} Ibid., 185.
\textsuperscript{113} Ibid., xv.

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through self-government. A slave was a “non-being” in a legal sense.  

As a political term, slavery described the condition (without representative / autonomous government) when “a majority of citizens held their rights and property entirely at the will of the government.” It represented the exact opposite of liberty. Its “victims are rendered nameless, kinless, penniless, defenseless and hopeless, except by the mercy, convenience, or whim of the master.” The metaphor was intimately familiar to South Carolinians, and “added a note of immediacy and example.” The elite’s close contact with African slavery perhaps made them more sensitive when their own liberties were challenged. 

The new constitution complained that Britain had attempted to reduce them to slavery, because its authors believed British policy aimed to remove government, economy, defense and the continuation of liberty and protection of property from their control.

Congressmen erected a government based on their interpretation of true constitutional principles (i.e. one that vested authority in an elected legislature) until Britain withdrew offensive policy or the two sides reached an accommodation. A majority still only supported the new constitution as a provisional measure. The Provincial Congress became a General Assembly that would select a legislative council from among its own members. It also selected a president (to replace the governor) and

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116 Wyatt Brown, 50.
117 Ibid., 51.
119 Adams, 69.
vice-president from its membership (initially John Rutledge and Henry Laurens respectively). The assembly had to originate all money bills, and the constitution explicitly forbade the council from amending them (a legacy of the Wilkes Fund issue). The president had no power to adjourn, prorogue or dissolve the assembly at any time. Moreover, he was responsible to the assembly, not the electorate. Therefore, he was responsible to the elite. The assembly chose its own speaker, and members were elected according to the old election act of 1759. In structure, South Carolina’s government changed very little. Only the balance of power within the structure changed to favor the assembly and the elite.

The assembly also took direct control over the judiciary, giving itself power to nominate justices, sheriffs and judges (during its pleasure). The constitution resurrected the old imperial court structure under the assembly’s supervision, later making William Henry Drayton chief justice.120 Drayton justified the new order in his charge to the grand jury: grievances had been “unredressed and ever increasing; all patience being borne down; all hope destroyed; all confidence in royal government blasted! Behold! The empire is rent from pole to pole, perhaps to continue asunder forever.” The new government restored the constitution and the law, which Britain had attempted to pervert and usurp: “Under color of law” it had made “the most arbitrary attempts to enslave America.”121 Independence and the new constitution restored the old order where the elite-dominated legislature managed the province through the law, courts, criminal justice

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120 Hemphill, 256-263.
121 South Carolina and American General Gazette, May 22, 1776.
and other legislatively crafted institutions. The rhetoric and political behavior are congruent. Men like Drayton claimed to have acted to conserve constitutional government, which meant representative government. The new constitution, though it did not expand liberty for the vast majority of South Carolinians, did restore and greatly augment the legislature’s (and hence elite) political power. It granted the elite complete control over the areas of colonial government where they previously had the least control. Though the rebellion was then conservative in the literal sense, there were still those within the elite who objected to the destruction of royal government.

**Elite Loyalists and the Rule of Law**

The South Carolina governing elite were not always a monolithic group. As the imperial crisis deepened, each individual had to grapple with his loyalties. Henry Laurens constantly wrung his hands about resistance tactics and how resistance might destroy the rule of law. He was hardly alone in his worries. William Henry Drayton began the imperial crisis as a royalist and expressed similar concerns. Both Drayton and Laurens eventually took up major leadership roles within the revolutionary government. Others like William Wragg and William Bull, however, never joined the rebellion and paid dearly for their opposition. Despite different outcomes, all of these men expressed a conservative philosophy that stressed the rule of law. They ultimately came to differ in how they defined the rule of law (i.e. what was the source of law) and how best to defend it. Though a difficult decision for some within the elite, most chose to resist Britain. Of the 166 men who served in the Commons House of Assembly from 1763 to 1775, 126 had significant involvement with the imperial crisis through at least independence. Of
those 126, 77% actively opposed Britain during the revolution. Only 15% actively opposed the revolution, and 8% remained neutral, neither actively supporting nor opposing the revolution. The minority within the elite did not approve of either extra-legal resistance or independence. These men had often risen high enough to attain imperial offices or still aspired to such things during the imperial crisis. Others were staunch conservatives, who thought the tactics of resistance were a greater threat to the social order than British policy. Though they were members of the elite, the power of the majority came crashing down upon them.

Those who became loyalists believed, for practical and philosophical reasons, that preserving the empire was vital to preserving the wealth and safety of the province. They often cited rule of law in opposing extra-legal resistance and independence. Unlike moderates such as Henry Laurens, loyalists did not express alienation from Britain. Though William Wragg was removed from the council in favor of a placeman, he never went through political struggles with placemen and never expressed any alienation from the Empire. William Bull, who many thought should have been made royal governor, never achieved that office. Yet, he too remained loyal. If loyalists expressed concern

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122 Compiled from Walter Edgar, et. al., *Biographical Directory of the South Carolina House of Representatives* (Columbia: University of South Carolina Press, 1974-1992). “Actively supported” is defined as holding office / position within the revolutionary government, commanding or serving in a revolutionary military unit, or having consistently gone on record (i.e. letters, pamphlets, etc.) as supporting the rebellion. “Actively opposed” is defined as having consistently gone on record against the rebellion, serving with British / loyalist forces, having refused to take an oath to the revolutionary governments, or having been compensated by the post-revolutionary government for lost property (due to loyalism). Neutral is defined as not being clearly identifiable with either side or having specifically taken action to stay out of the conflict. In some cases, where allegiances changed, the individual’s final and thus dominant position was counted.
about the exercise of British authority within the colony (or which British appointees exercised that power), they believed that protest must remain peaceful and legal.

The revolutionary government, however, had redefined treason. Loyalists became criminals under the new order. They were pressured to conform and harshly punished if they failed. Patriotism was totally tied to one’s support of the revolutionary cause. Men like William Bull or William Wragg remained loyal to the empire and the rule of law as they understood it, which relied upon royal executive and Parliamentary authority at the expense of provincial autonomy. Their patriotism had Britain and the Empire as its object, whereas revolutionaries like William Henry Drayton and Henry Laurens ultimately remained loyal to the old provincial order that required legislative power and autonomy at the expense of royal executive or Parliamentary power.

Henry Laurens took a leading role in the revolutionary movement, but he was hesitant to embrace extra-legal activity. He was never comfortable with the “sign or die” attitude and resented the implication that anyone who did not agree with the resistance was an enemy of the country:

I believe I love my country as extensively and disinterestedly as any man in it, because I feel a willingness to sacrifice my life and fortune in defense of its true liberties, but I shall never be so much of a patriot, as to rush into measures which are at the same time unconstitutional and obstructive to our wishes. [We must] restrain ourselves, but make no attempt to lay violent and illegal prohibitions on others.¹²³

Laurens objected to how the resistance government had attacked individual conscience. He questioned the resistance government’s power to make and enforce law. However, he

¹²³ Henry Laurens to George Appleby, May 4, 1774, Papers of Henry Laurens, 9:428.
also feared the Coercive Acts were another step toward the destruction of constitutional government and the rule of law. He wrote a friend that if the Coercive Acts were allowed to stand, “your liberty and property will indeed become all imaginary.” In other words, if Parliament were successful, it could break the back of autonomous provincial government, and the entire structure of elite political power would crumble. If Britain prevailed, Laurens foresaw an America swarming with “locusts of dependents” from Britain who would come to “live in luxury and idleness by the sweat of our brows” with the support of “fleets and armies and military governors.” Thus, Henry Laurens and other reluctant revolutionaries chose the lesser of two evils. They had to support the resistance and reestablish the constitutional rule of law with a new government.

As President of the Provincial Congress, Laurens continued to urge caution. He feared the consequences the Continental Association might have and did not like the idea of holding “every man who shall refuse to sign it inimical to the liberty of the colonies.” In his notes from Provincial Congress meetings, Laurens wrote that his words were not welcomed by all members. Laurens noted that he “clearly perceived by the discomposure of a few countenances—displeasure was raised in as many hearts.” Yet, he pressed on, calling the policy “abhorrent and detestable.” He said:

I should be a mean wretch if I subscribed to it through fear with mental reservations; I should be a dishonest man, a villain, if I did so before I had made

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124 Henry Laurens to Thomas Savage, April 9, 1774, Ibid, 387.
125 Ibid, 387.
126 “Miscellaneous Papers of the General Committee and Provincial Congress,” South Carolina Historical and Genealogical Magazine VIII (1907), 143.
127 Ibid., 143.
this open declaration; that I hold it possible—I think probable—I know it certain—that there are men who are not inimical [who do not sign].

Laurens did not think the congress or the council should judge a man’s conscience and condemn him as a traitor without even allowing some kind of due process. The entire concept threatened his independence as a gentleman. It was a basic principle of justice (that Laurens expressed before) that no man be condemned unheard. The Association and its enforcement mechanisms did just that, and he did not want a resistance movement, ostensibly founded to defend liberty, to begin by perverting justice. He believed that some, though they supported the cause, might not sign simply because they did not approve of the Association’s coercive aspects. Laurens hated “all dogmatic and arbitrary dictates over men’s consciences,” and declared “that the spirit of persecution is hateful to me.”

In the end, Henry Laurens signed the Association, saying he would remember his duty to his neighbors and properly distinguish enemy from friend. As the threat from Britain worsened and the colonies were now facing military conflict, Laurens saw these tactics as a lesser evil than submitting to British policy. Other conservatives did not.

William Bull Jr. was among the wealthiest, best-connected and most powerful members of the South Carolina elite. In that sense, he had much in common with Henry Laurens. His Ashley Hall plantation was spread out over 1,180 acres, and some 284 slaves worked his lands. Upon confiscation in 1782, the total value of his holdings stood at £51,554. Bull held a long succession of political offices including Justice of the Peace.

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128 Ibid., 145-146.
129 Ibid., 147.
member of the Commons House of Assembly, Speaker of the Commons House, member of the council, and Lieutenant Governor (often serving as acting governor during much of the crisis period). Marriages tied his family directly to the Beale and Drayton families and indirectly to other powerful South Carolina families.\footnote{Edgar, Biographical Directory of the South Carolina House of Representatives, 1:118-127. See also Kinloch Bull, The Oligarchs in Colonial and Revolutionary Charleston: Lieutenant Governor William Bull II and His Family (Columbia, University of South Carolina Press, 1991).}

Bull was sensible, pragmatic and well respected. John Drayton, a revolutionary, wrote,

Having been liberally educated in Great Britain, his mind was informed, respecting the rights of his fellow citizens; as well as to the claims of the Sovereign, whose commission he held; and while he felt the full force of the first, his honor bound him to perform the duties of his station to the last.\footnote{John Drayton, Memoirs of the American Revolution as Relating to the State of South Carolina (Charleston: A.E. Miller, 1821), 1:37.}

He often worked behind the scenes to balance royal interests with rising revolutionary sentiments. Moderation, temperance, order and stability informed his political philosophy. He shared Laurens’s fear of mob rule and belief that “men of property” or a moderate aristocracy ought to temper the radicalization of the masses.\footnote{Bull, 6-7.} South Carolina had grown wealthy by the late eighteenth century, and Bull thought its interests were much more in line with Britain’s than those of the northern colonies. South Carolina’s natural role was as an exporter of commodities and an importer of finished goods. The Sons of Liberty presented an enormous threat to the imperial system and the position of a loyal, local aristocracy. If there were grievances, Bull believed they could and must be addressed within the institutional structure of the empire. When royal government
collapsed in South Carolina after 1775, Bull withdrew to retirement, but he was banished in 1777 when he refused to renounce the crown. He paid a dear price for his years of service and loyalty and lost his home, position and wealth.\textsuperscript{133}

Bull’s letters to the Board of Trade and the colonial secretaries reflect his conservative philosophy and tireless efforts to keep royal government functioning. His reports during the imperial crisis were dominated by normal government business, but Bull was not afraid to express outrage over the events taking place in his home colony. He wrote of the great opposition in South Carolina to the Stamp Act, noting that all the ports had been shut down, since no ship could be cleared without stamped papers. Bull was forced to allow exceptions to the stamp provision to keep the flow of supplies coming into the colony.\textsuperscript{134} He acted pragmatically, refusing to allow resistance to either close the government or severely hamper the economy. Bull also reported the “outrages” taking place in Charleston to the Board of Trade, and he argued that New Englanders had goaded South Carolinians into open defiance. He believed that men’s minds were “poisoned with the principles which were imbibed and propagated from Boston and Rhode Island.” Worse, the masses in Charleston were motivated by “some considerable men who stood behind the curtain.”\textsuperscript{135} Bull feared popular resistance, but he showed even greater contempt for elite-sponsored resistance that subverted the rule of law and legitimate government.

\textsuperscript{133} \textit{Ibid.}, 227-230.
\textsuperscript{135} “Bull to the Board of Trade, November 3, 1765,” \textit{Ibid.}, 30: 281-282.
Lieutenant Governor Bull was quite relieved to hear of the Stamp Act’s repeal.\textsuperscript{136} However, the Townshend Duties crisis produced similar but stronger reactions from Bull. He was especially outraged by the non-importation association’s tactics, which he considered little more than blackmail.\textsuperscript{137} He forwarded several letters to Colonial Secretary Hillsborough that had been written to the \emph{South Carolina Gazette} by William Wragg. Wragg wrote against the association, and Bull hoped his letters would show that some South Carolinians understood “arguments against the legality and propriety of associations.” According to Bull, Wragg showed a “disinterested zeal for the government and a competent [understanding] of our constitutional laws.”\textsuperscript{138} Bull believed that associations designed to destroy the reputations of those who did not sign were illegal and unjust. For him, there could be no justice or order without the rule of law. Resisters represented the rule of men and a corrupt understanding of the constitution.

During the final crisis involving the Tea Act and the Intolerable Acts, Bull expressed his beliefs even more strongly. Bull mostly worried about the increasingly extra-legal nature of colonial resistance and how the government had been reduced to utter deadlock. The Intolerable Acts were Bull’s worst nightmare. They confirmed the colonists’ worst suspicions about British Government (ill-founded or not):

They are deaf to the argument on the other side of the question…that in every Empire, an absolute power must necessarily be lodged somewhere, over all the parts and members thereof, which in Great Britain is the King and his Parliament. But liberty or slavery in their greatest latitude is the real alternative generally held forth in their popular meetings.\textsuperscript{139}

\textsuperscript{136} “Bull to the Board of Trade, May 8, 1766,” \emph{Ibid.}, 31: 300.
\textsuperscript{137} “Bull to Hillsborough, September 25, 1769,” \emph{Ibid.}, 32: 103.
\textsuperscript{138} “Bull to Hillsborough, December 5, 1769,” \emph{Ibid.}, 32: 121.
\textsuperscript{139} “Bull to Dartmouth, July 31, 1774,” \emph{Ibid.}, 34: 178-179.
Bull observed a fundamental problem of the imperial crisis: as time passed, both sides became less willing to compromise. Resistance leaders equated submitting to British authority with slavery (i.e. the total loss of constitutional, representative government) by 1775. They had gone from resisting royal authority or specific Parliamentary measures to denying the legitimacy of all royal authority. Bull insisted that King and Parliament must reign supreme within the empire, while revolutionaries insisted on the supremacy of local government organized and supervised by their legislature.

Bull was a philosophical conservative along the lines of Edmund Burke.\textsuperscript{140} Liberty, which allowed South Carolina to become as prosperous as it had, was guaranteed by the rule of law. Extra-legal protest subverted the very thing that guaranteed liberty, justice and prosperity in the first place. On the other hand, revolutionaries rejected rule of law within the British Empire, arguing that the exercise of British authority within the colony perverted true constitutional government and, hence, the rule of law. South Carolina’s revolutionary leaders argued that they had merely set out to restore the rule of constitutional law.\textsuperscript{141}

William Henry Drayton (at least initially) and William Wragg were also outspoken imperialists and defenders of the rule of law. Drayton was one of the “wealthy

\textsuperscript{140} Burke himself joined American opposition to Parliamentary policy during the imperial crisis, but he did so because he thought those policies threatened the empire and violated traditional constitutional arrangements. Conserving tradition was a key element in Burke’s philosophy, which condemned radical change (e.g. the French Revolution) as doomed to failure. See Russell Kirk, \textit{The Conservative Mind: From Burke to Eliot}, 7th ed. (Washington: Regnery Publishing, 1995).
\textsuperscript{141} Gregory Palmer, \textit{Biographical Sketches of Loyalists of the American Revolution} (Westport, CT: Meckler Publishers: 1984), 113.
politicians who might be supposed to have a terror of upsetting stable government.”

Drayton and his elite comrades like Henry Laurens did not want a new order. They hoped to strengthen their positions within the old. Yet, conservatives like Bull and Drayton worried about the consequences of overthrowing British rule. Drayton was a wealthy planter whose family was tied to the other great aristocratic clans of South Carolina by marriage. His grandfather, Thomas Drayton, was among the earliest settlers to come from Barbados in the seventeenth century. Thomas Drayton’s two sons, Thomas and John, set up adjacent plantations on the Ashley River—Magnolia Plantation and Drayton Hall. Both married daughters of William Bull Sr. William Henry Drayton was the son of John Drayton and Charlotte Bull. He left for England in 1753 with Charles Cotesworth Pinckney to receive a sound classical education at Westminster School and Balliol College Oxford. He returned in 1763, having spent half of his short life in Britain.  

Drayton remained a strong royalist in the years immediately following his return to South Carolina. He persistently tried to obtain high imperial office, but slights from the British would eventually change his thinking. Drayton’s background would seem to predispose him to loyalist or royalist sentiments. His father John was on the royal council, and his uncle William Bull served as Lt. Governor. He shared their moderate opposition to the Stamp Act, but he made his royalist sentiments clear in a series of letters to the *South Carolina Gazette* during the Townshend Duties crisis. He wrote these

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143 Ibid., 25-28.

In these letters, Drayton and Wragg describe themselves as true friends of the constitution. Those who resisted the Townshend Duties by extra-legal means were assuming powers that legitimately belonged only to the legislature and usurped the wills of free men. Drayton even compared the resistance leaders to Cromwell, cynically arguing that he too claimed to be a friend of liberty.144 His basic argument, like Bull’s and Laurens’s (at least his early thinking), was that once resistance to ill-conceived Parliamentary legislation went beyond the bounds of legal, institutional means of redress, such measures threatened to bring the rule of law and the entire imperial system crashing down.

Moreover, he believed the imperial system and the imperial constitution guaranteed the liberties of Britons regardless of which side of the Atlantic they lived on. A few disaffected men should not be allowed to subvert it. Governing power, exercised outside the rule of law, was arbitrary and dangerous. As Henry Laurens also feared, arbitrary power in the hands of one or many could lead to various kinds of tyranny. Drayton warned his fellow subjects of the dangers that even an incremental erosion of the legitimate rule of law would entail:

Oh! My countrymen! Suffer not an arbitrary power to get footing in this state: Rome was not built in one day, neither was the forging of her chains the work of a day, she was enslaved by almost imperceptible degrees…in like manner will you be robbed of your liberties, one after another, unless your bestir yourselves in the defense of them, upon the first attack, by greatly resolving to revoke an illegal resolution.145

Drayton believed that liberty depended upon respect and obedience to legitimate law. He even cited Locke in arguing that a legislature’s rules are to be obeyed (as it has been appointed by society to govern). Defying the legislature perverted basic tenets of government and law. Drayton defended Parliament, but he also defended the power of legislatures in general (including the Commons House). The signers of non-importation had wrongly granted themselves legislative authority, subverting the power of the South Carolina assembly and Parliament.146 They were resisting odious policy, but, by subverting legislative power and the rule of law, they put the power of the provincial assembly (and hence the elite) in danger as well. Order, temperance and stability within the imperial system marked Drayton’s ideology. Like the revolutionaries, Drayton also relied upon seventeenth-century constitutionalism to support his arguments about the rule of law.

Wragg added to Drayton’s argument and insisted that Parliament possessed legitimate legislative authority over the colonies. He also strongly asserted a right to express his beliefs without facing threats or coercion:

Where is the reason, the justice, the charity in locking up my property, with endeavors to force a compliance or starve me? Had I no other resource than what

145 “A Letter to the People,” William Henry Drayton, October 26, 1769,” Ibid., 57. The resolution Drayton refers to is the “association.”
146 Ibid., 54-55.
Wragg also stressed the rule of law. It protected individual liberty from so called “humors or capricious proscriptions of men.” Wragg implied that Parliament had a role that complemented—not subverted—the colonial legislature’s authority. It rightfully and necessarily regulated imperial commerce, upon which the wealth of the colonial elite depended. He expressed no problem with colonists legitimately seeking redress but abhorred the revolutionaries’ tactics.\(^\text{148}\)

No one, Wragg wrote, had any right to form associations or conspiracies to oppress others and commit injustices. No group, aside from the constitutional legislature, had a right to establish and enforce law: “An association to pervert the law, in order to procure and injure, is a crime of a high nature.”\(^\text{149}\) Wragg was especially upset over the association’s resolution forbidding associates from doing business with non-subscribers. Revolutionary leaders played a dangerous game. They subverted the rule of law for what they believed was a good cause. They destroyed the basis of liberty in the process. Where would it end? How could rule of law be reestablished once rent asunder? Wragg paid a heavy price for his defense of the old constitution. In 1777, he was virtually banished from South Carolina after refusing to take an oath of abjuration. He abandoned


all hope for the old imperial system and thought South Carolina’s future doomed.

Resolving to leave rather than bear witness, Wragg died on the voyage to Amsterdam.

His son Joseph continued his father’s loyalist tradition and was honored with an inscription in Westminster Abbey.\footnote{150 Edgar, Biographical Directory of the South Carolina House of Representatives, 2:729-733.}

Both Wragg and Drayton suffered at the hands of British placemen on the South Carolina council and had personal reasons to oppose British authority. Wragg was removed from the council in 1756 in favor of a placeman but never wavered in his loyalty.\footnote{151 Robert Stansbury Lambert, South Carolina Loyalists in the American Revolution (New York: Columbia University Press, 1987), 8-9. Lambert notes that the general decline of the council’s prestige was due the appointment of placeholders rather than prominent local men. Wragg’s removal over a dispute with Governor William Henry Lyttleton was the culminating event that really damaged the council’s political clout in the colony.}

Disgusted with the state of affairs in South Carolina, Drayton left for London in 1770 and was introduced at the court of George III. Imperial officials rewarded his loyalty with a seat on the South Carolina council, and Lt. Governor Bull recommended him for Postmaster General for the southeastern district.\footnote{152 Dabney and Dargan, 37-39.} Bull wrote of Drayton what seemed to be apparent to the King’s government: Drayton’s “loyalty and attachment to his majesty’s government” made him fit for the office.\footnote{153 “Bull to Hillsborough, August 9, 1771,” Records of the British Public Record Office Relating to South Carolina, 33:82.} Lords Sandwich and Hillsborough lobbied for him, but George Roupell—a British placeholder—received the appointment instead. Disappointed, Drayton returned to South Carolina and became involved in a land speculation scheme, which was thwarted by royal officials. It was at
this time that Drayton began shifting to a more anti-royal outlook and questioned the power of the South Carolina council.\textsuperscript{154}

Was Drayton’s conversion from ardent royalist to outstanding revolutionary sincere and based on principle? Only he knew, but one thing is clear: Drayton’s connections with the empire were strained and broken. Once those connections were cut and opportunities for advancement denied him, he questioned his understanding of the constitution. He had seen political appointees from Britain steal his opportunities for personal advancement. Drayton was qualified for these positions, but they went to men who had no stake in his polity. Thus, he came to believe that British authority was a corruption and not an integral part of the imperial constitution. More than two thirds of his fellow assembly members reached the same conclusion. They threw off the old empire and established a new order—a new rule of law—based on the key constitutional tenets of representative government and legislative supremacy. The same elite men continued to dominate under this new rule of law.

Conclusion

The imperial crisis forced the lowcountry elite to resolve longstanding issues within their system of government. The colonial assembly had fought many battles with imperial officials over the years, as it constantly worked to ensure its supreme position within the provincial government. It usually won these battles, but the imperial crisis merged with these older disputes and led to gridlock. The vast majority of the governing elite believed that Britain had no right to legislate for the colonies or interfere with

\textsuperscript{154} Dabney and Dargan, 39-47.
internal government. They were constitutionalists who prized a legislature that represented the propertied. However, the imperial crisis and the final placeholder battles convinced the majority that the exercise of royal and Parliamentary power within the province subverted these constitutional principles by attacking the assembly’s supremacy. Hence, even moderate men like Henry Laurens and William Henry Drayton took leading roles in resisting British policy and creating a new system of government that secured constitutional principles and the old order where the legislature dominated all aspects of the political and legal systems.

When the Provincial Congress, controlled by those who had always controlled the Commons House, met and finally created a new constitution for the province, the fundamental nature of government did not change. Urban artisans who had traditionally allied and deferred to the planter class drove the early resistance movement. A broader franchise gave them a greater voice, and artisans actively participated in the resistance government, but the lowcountry elite continued to hold the top positions. The new constitution preserved centralized government, though it provided representation for the backcountry. Slaves remained enslaved. The slave code also remained the same, though the new government employed harsher enforcement aided by the resistance organization. Criminals would be classified and punished as they always had been, and capital and corporal punishment were not scaled back. The criminal justice system was not altered. The Church of England retained its privileged place and continued its old functions under the 1776 constitution. The new General Assembly dominated all of these aspects of
government. However, the new constitution removed the threat of British authority and
included no independent executive authority.

Of course, none of these developments took place without debate. Men like
William Bull and William Wragg resisted the revolution. They debated the nature of the
constitution and the rule of law with revolutionary leaders. Revolutionaries argued that
British authority, as exercised during the imperial crisis, threatened to destroy the rule of
law, which was established by a representative legislature. Loyalists may have opposed
British policy, but they did not question the exercise of royal and Parliamentary authority
within the province. They cited the resistance government’s attacks upon individual
conscience as evidence that the revolution had produced an arbitrary government of men
rather than law. Revolutionaries insisted that they were reestablishing—not destroying—
true constitutional principles and the rule of law. The majority prevailed and established
a new rule of law in South Carolina. The establishment of the new order drew on
colonial precedents. The new rule of law resembled the old: “all matters and things”
centered upon Charles Town and the new legislature by 1776.
Epilogue

South Carolina witnessed some of the Revolutionary War’s most brutal fighting, including atrocities committed by both sides. However, South Carolina’s revolutionary government was strong and well prepared to meet early challenges. From 1775 to 1776, revolutionaries defeated loyalists in the backcountry, South Carolina’s militia stopped a British invasion, and the Cherokee Indians were decisively defeated.¹ A thirty month long period of calm followed these turbulent years. With the Cherokee defeated, settlers poured into the backcountry. When the British fleet left the area in 1776, trade with other European states boomed. The lowcountry elite, while they made concessions to backcountry property owners and urban artisans, remained firmly in control as South Carolina moved to establish a more permanent government in 1776.²

South Carolina revised its first independent constitution and adopted a permanent one after the Continental Congress approved independence, and the pattern of preserving the old elite order held firm. The assembly appointed another unelected committee in October of 1776 to draw up the new document. The revised constitution was passed like any other law. The 1776 constitution had been “temporary only,” meant to only last until the rift with Britain had been resolved.³ The 1778 constitution recognized the rift would never be healed and established a permanent and independent government. The form of

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² Edgar, Partisans and Redcoats, 40.
government changed slightly to accommodate certain realities within the state and unite the population in the war with Britain.

The legislature remained atop the political structure, but the new constitution replaced the Legislative Council with a Senate. The legislature chose the governor, lieutenant governor and privy council from among its own membership. The governor was not even allowed a veto. Hence, the new constitution (just like the 1776 version) did not create an independent executive branch. The House of Representatives (i.e. the successor to the Commons House) remained the most powerful branch of government. The constitution specifically stated that “all money bills for the support of government shall originate in the House of Representatives, and shall not be altered or amended by the senate.”

The legislature chose all judicial and administrative officials. The Church of England was disestablished, which simply recognized the reality that a majority of South Carolinians were not Anglican and that the Church of England had failed to “establish itself in a meaningful sense in the backcountry.” However, the constitution stated that the “poor shall be supported, and elections managed in the accustomed manner, until laws shall be provided to adjust those matters in the most equitable way.” The legislature did not give up the power to determine how the poor were cared for and managed. It merely intended to change the tools used for that purpose.

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4 Ibid.
Disestablishment and the addition of a senate were the only major alterations to the 1776 constitution. The basic structure of political power, the tools through which it was exercised, and the men who wielded power did not fundamentally change immediately after the American Revolution. The legislature remained in the paramount position and centrally controlled all aspects of government—including the selection of every major executive and judicial official. Every governor of South Carolina from 1778 to 1800 was a member of the lowcountry elite. During the war, prominent, lowcountry men also took leading roles in the militia and army: Charles Cotesworth Pinckney, Christopher Gadsden, Thomas Heyward, Isaac Huger, Isaac Hayne, and William Moultrie (among others) all led militia or army units. Pinckney even served as an aide to George Washington. Isaac Huger led an important contingent of troops in the backcountry.

The year 1779, however, brought new challenges, as British war strategy shifted to the South. On February 11, 1780, a large British army landed on John’s Island south of Charles Town. The British even captured assembly speaker Thomas Farr and forced him to herd cattle with the British supply train. As the state’s forces retreated toward Charles Town, the assembly turned over all authority to Governor John Rutledge, making him dictator in all but name. He would be the last civilian authority in South Carolina for

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7 In chronological order: Rawlins Lowndes, John Rutledge, John Matthews, Benjamin Guerard, William Moultrie, Thomas Pinckney, Charles Pinckney, William Moultrie, Arnoldus Van der Horst, Charles Pinckney, Edward Rutledge and John Drayton.
the next two years. Charles Town surrendered after a forty day siege on May 12, 1780. Rutledge managed to temporarily escape, but many members of the lowcountry elite, under a great deal of pressure from occupation forces, accepted “British protection.” Those who refused or who had played leading roles in the rebellion faced imprisonment. The British captured John Rutledge in 1780 and imprisoned him at St. Augustine for eleven months. British soldiers also imprisoned Charles Cotesworth Pinckney until he was exchanged in 1782. Henry Laurens never made it to Holland to negotiate a treaty in 1780. The Royal Navy seized his ship, and Laurens spent the next year in the Tower of London on charges of treason. These men emerged from the war as heroes who had suffered for the cause along with backcountry partisans. Their service only increased their political capital after the war, and all three went on to play leading roles in state and national politics after the war.

The British never managed to regain control of South Carolina and never even reestablished civil government. General Clinton imposed harsh policies including oaths of allegiance, which ran contrary to promises that former revolutionaries would be allowed to remain neutral. He also made the mistake of revoking the paroles of captured revolutionary leaders. Christopher Gadsden, for example, was arrested shortly after his parole in 1780 and exiled to St. Augustine with twenty-eight others. When the British

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offered him a second parole, he refused and spent the next ten months in prison.\textsuperscript{15} British atrocities, especially Banastre Tarleton’s slaughter of disarmed and surrendering Americans at Buford’s Massacre, led to a renewed backcountry uprising.\textsuperscript{16} British policy and the foolish actions of commanders like Tarleton made it much easier for even the most conservative men to discount a return to British rule. South Carolina became a quagmire for the British, who were forced to give up Charles Town in 1782 after they had suffered years of defeat in the former colony. When the South Carolina legislature met again in that year, the elite moved to reestablish their legitimacy and authority by passing measures to banish loyalists and confiscate their lands. These measures helped them to disassociate themselves from the “protection” many had accepted under the occupation and demonstrate the “militant spirit of patriotism.”\textsuperscript{17}

The 1778 constitution went back into effect after the war. The elite still had a constitutional grip on power, but they recognized the challenges of the post-war state. The legislature moved to placate backcountry concerns by establishing inland county courts, passing a vagrancy act, punishing loyalists, and printing paper currency. The legislature also placated artisans by finally incorporating Charles Town and giving it an autonomous city government. The lowcountry elite, therefore, contained opposition by addressing grievances but did not give up any real political power.\textsuperscript{18}

\textsuperscript{15} Edgar, Biographical Directory of the South Carolina House of Representatives, 2:261.
\textsuperscript{16} Edgar, Partisans and Redcoats, 57.
\textsuperscript{17} Weir, 37.
The backcountry continued to develop and grow in the 1780s and 1790s. The cotton boom produced a new class of wealthy planters, but the new constitution of 1790 upheld lowcountry dominance. The backcountry only received fifty-four assembly and seventeen senate seats (out of 125 and thirty-seven respectively).\(^{19}\) This constitution, as Rachael Klein observes, “capped a decade in which the coast-dominated legislature succeeded in quelling opposition to civil authority and limiting challenges to the Charleston-area elite by making limited concessions to opposition groups.”\(^{20}\) The lowcountry elite had made a major concession in moving the capital to Columbia, but doing so still did not dislodge the lowcountry elite. Charleston (renamed after the revolution) had duplicate government offices, and the lowcountry elite maintained their grip on political power.\(^{21}\)

The lowcountry elite continued to use legislative apportionment, high property requirements for holding office, and a limited franchise to retain their dominance over the new government. The lowcountry continued to hold 75% of the legislature’s seats.\(^{22}\) Property qualifications for voters were lowered slightly from a 100 acre freehold, a £60 house or lot or ten Shillings paid in taxes to a fifty acre freehold, town lot or the equivalent in taxes paid on the aforementioned property. Qualifications for assemblymen were the same as for electors, but qualifications to sit in the Senate or serve as governor were much higher. Senators had to own at least a £2,000 pound freehold and the

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\(^{19}\) Ibid., 145.  
\(^{20}\) Ibid., 147.  
\(^{21}\) Walter Fraser, *Charleston! Charleston!: The History of a Southern City* (Columbia: University of South Carolina Press, 1989), 176.  
\(^{22}\) Ibid., 177.
governor or council at least £10,000. The upper house and the executive were restricted to the wealthiest landowners.\textsuperscript{23}

South Carolina continued to have the highest property requirements for voters and officeholders of any state in the antebellum period. It was also the only state where slaveholders held a majority in the legislature (as they had in the colonial period). The state had virtually no electoral politics and no party system.\textsuperscript{24} Like the colony before it, the state was centrally ruled by gentlemen of the planter elite. The legislature reigned supreme and dominated a constitutionally weak executive. South Carolina’s leaders also continued to defend state autonomy within a larger polity. South Carolina’s legislature refused to accept congressional or federal supremacy when they threatened the plantation economy, which led to the nullification crisis and secession. South Carolina was “peculiar” and particularly adamant in defending states’ rights because of the ruling elite’s persistent conservatism. The reestablishment of the old order in 1776 concludes this study, because it preserved the established colonial power structure that continued to inform South Carolina politics and government through the Civil War.

The evolution of South Carolina’s government after 1776 continued to be guided by established colonial precedents. Charles Town became Charleston (which reflected the way the name was pronounced) and was finally given a municipal government in 1783. However, the assembly did so to preserve order and elite control. Following the


\textsuperscript{24} William Freehling, \textit{The Road to Disunion: Secessionists at Bay, 1776-1854} (New York: Oxford University Press, 1990), 220-223.
end of the war, the elite worked to reestablish trade with Britain, and the influx of British goods proved unpopular to the city’s numerous artisans. Attacks on former loyalists and protests against pro-British trade policies prompted the creation of a more comprehensive system of city government. The elite allowed some autonomy, but they threw their support behind Richard Hutson (the owner of 2,000 acres in the lowcountry) to secure his election as the first intendant (i.e. mayor). One of the new city government’s first acts was to create a thirty man City Guard to enforce order in the city. This innovation placated the artisans’ demands for municipal incorporation, but the elite-dominated city government moved to control unrest to protect elite economic interests. The compromise on city government was not unlike the compromise of the Circuit Court Act in spirit. Both satisfied just enough of a discontented and politically unequal group’s demands to restore harmony without altering the overall system’s basic nature. The lowcountry elite still remained in control. They still imposed their order upon the state. They wielded power and managed society through a centralized system based on the lawmaking power of the legislature, which now included the power to both structure and staff legal, law enforcement and government institutions.

Independence was not a bold assertion by elites who had naturally evolved to the point where they confidently “threw off the one remaining trammel to [their] power.” Rather, the elite approached the revolution with caution and ultimately conserved the old order. The independent government of 1776 was based on governing precedents and

25 Fraser, 169-170.
priorities that had been well established by that time. Moreover, after examining South Carolina’s government structure and the exercise of elite political power before and during the imperial crisis, it is difficult to see the revolution—at least in this colony—as a transformative stage in the creation of liberal democracy or a moment when “Americans suddenly saw themselves as a new society ideally equipped for a republican future.”

Independence did not create a liberal or democratic South Carolina. Established governing patterns remained intact. The same elite remained atop society. Perhaps the removal of royal authority and imperial placemen was the biggest change to South Carolina’s system of government. South Carolina’s leaders had “long and successful experiences resisting imperial authority” before 1776. Imperial policy in the 1760s and 1770s finally forced the elite to abandon the empire to protect their supreme political authority within the colony. The revolution was not inevitable or predestined in any way. However, once the elite became convinced that their rule within South Carolina was no longer safe within George III’s British Empire, they chose to leave royal government behind. South Carolina’s leaders deemed their need to autonomously command the tools of political authority more important than their ties to the monarch or the empire, however strong those ties may have been.

The colonial power structure proved to be very enduring. The South Carolina legislature derived its authority from the wealth of its members. That wealth was based

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29 For a recent study of colonial attachment to the monarchy through the imperial crisis, see Brendan McConville, *The King’s Three Faces: The Rise and Fall of Royal America, 1688-1776* (Chapel Hill: University of North Carolina Press, 2006).
upon plantation slavery. The legislature’s vast powers allowed the elite to centrally structure government and manage society through the law. These powers, in turn, allowed the lowcountry elite to govern and order the province—to extend their authority throughout it—in ways that protected their economic interests and constitutional philosophies. This study of how political power was exercised in the colonial period is also necessary in order to build an understanding of South Carolina’s government and society after the American Revolution.
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### Appendix

Table A.1
Criminal Trials, Court of General Sessions, 1769-1776

<table>
<thead>
<tr>
<th>Crime</th>
<th>Guilty</th>
<th>Innocent</th>
<th>Total</th>
<th>Percent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assault</td>
<td>50</td>
<td>14</td>
<td>64</td>
<td>27</td>
</tr>
<tr>
<td>Larceny</td>
<td>36</td>
<td>11</td>
<td>47</td>
<td>20</td>
</tr>
<tr>
<td>Disorderly House</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Burglary</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Breaking Gaol</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>.5</td>
</tr>
<tr>
<td>Manslaughter</td>
<td>11</td>
<td>1</td>
<td>12</td>
<td>5</td>
</tr>
<tr>
<td>Horse Stealing</td>
<td>20</td>
<td>6</td>
<td>26</td>
<td>11</td>
</tr>
<tr>
<td>Receipt of Stolen Goods</td>
<td>18</td>
<td>5</td>
<td>23</td>
<td>10</td>
</tr>
<tr>
<td>Stealing a Slave(^1)</td>
<td>4</td>
<td>3</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>Assault on a Constable</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Killing a Slave</td>
<td>3</td>
<td>1</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Accessory to the Felony</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>.5</td>
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<td>Forgery</td>
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<td>1</td>
</tr>
<tr>
<td>Assault with Intent to Rape</td>
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<td>0</td>
<td>1</td>
<td>.5</td>
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<tr>
<td>Assault and False Imprisonment</td>
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<td>0</td>
<td>1</td>
<td>.5</td>
</tr>
<tr>
<td>Murder</td>
<td>5</td>
<td>12</td>
<td>17</td>
<td>7</td>
</tr>
<tr>
<td>Assault with Intent to Kill</td>
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<td>.5</td>
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<td>Sodomy</td>
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<td>1</td>
<td>.5</td>
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<td>Robbery</td>
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<td>1</td>
<td>3</td>
<td>1</td>
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<td>Felonious Escape</td>
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<td>1</td>
<td>1</td>
<td>.5</td>
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<td>Perjury</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>1</td>
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<td>Stealing a Schooner</td>
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<td>0</td>
<td>1</td>
<td>.5</td>
</tr>
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<td>Murder of a Slave</td>
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<td>0</td>
<td>1</td>
<td>.5</td>
</tr>
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<td>Killing a Calf(^1)</td>
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<td>1</td>
<td>1</td>
<td>.5</td>
</tr>
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<td>Arson</td>
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<td>2</td>
<td>1</td>
</tr>
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<td>Highway Robbery</td>
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<td>1</td>
<td>.5</td>
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<td>Poaching</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>.5</td>
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<tr>
<td>Counterfeit</td>
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<td>0</td>
<td>1</td>
<td>.5</td>
</tr>
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<td>Selling Liquor without a License</td>
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<td>0</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Unlawful Branding of Cattle</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>.5</td>
</tr>
<tr>
<td>Unlawful Killing of a Mare</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>.5</td>
</tr>
<tr>
<td>Employing a Slave on Sunday</td>
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<td>0</td>
<td>1</td>
<td>.5</td>
</tr>
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</table>

\(^1\) The actual term used in the law and the court records is “Negro” (synonymous with slave in the law). The slave law of 1740 for example was not called the slave act but the “Negro Act.” Stealing a Negro infers that the “Negro” in question was considered slave property. “Killing a Negro” was distinct from “Murdering a Negro.” Killing inferred that the subject in question was killed unintentionally, possibly because of overzealous punishment or in the “heat of passion.” Murder refers to the intentional killing of a “Negro,” perhaps by someone other than the slave’s owner or the owner’s subordinates.
<table>
<thead>
<tr>
<th>Crime</th>
<th>Indictments</th>
<th>Trials</th>
<th>Percent Brought to Trial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Giving Challenge</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Provoking a Fight</td>
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<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Libel</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Deceit</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Wounding a Slave</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>179</strong></td>
<td><strong>61</strong></td>
<td><strong>240</strong></td>
</tr>
</tbody>
</table>

Source: South Carolina Court of General Sessions, Criminal Journals, 1769-1776.

Table A.2
Indictments, Court of General Sessions, 1769-1776

<table>
<thead>
<tr>
<th>Crime</th>
<th>Indictments</th>
<th>Trials</th>
<th>Percent Brought to Trial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assault</td>
<td>155</td>
<td>64</td>
<td>41</td>
</tr>
<tr>
<td>Disorderly House</td>
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<td>33</td>
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<td>Riot</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Deceit</td>
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<td>1</td>
<td>50</td>
</tr>
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<td>Horse Stealing</td>
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<td>26</td>
<td>90</td>
</tr>
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<td>0</td>
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<tr>
<td>Breaking Gaol</td>
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<td>1</td>
<td>100</td>
</tr>
<tr>
<td>Burglary</td>
<td>4</td>
<td>2</td>
<td>50</td>
</tr>
<tr>
<td>Assault with Intent to Rape</td>
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<td>1</td>
<td>33</td>
</tr>
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<td>Robbery</td>
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<td>2</td>
<td>66</td>
</tr>
<tr>
<td>Perjury</td>
<td>2</td>
<td>2</td>
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<td>88</td>
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<td>1</td>
<td>100</td>
</tr>
<tr>
<td>Receipt of Stolen Goods</td>
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<td>82</td>
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<tr>
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<td>2</td>
<td>100</td>
</tr>
<tr>
<td>Killing a Slave</td>
<td>4</td>
<td>4</td>
<td>100</td>
</tr>
<tr>
<td>Employing a Slave on Sunday</td>
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<td>1</td>
<td>100</td>
</tr>
<tr>
<td>Forgery</td>
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<td>25</td>
</tr>
<tr>
<td>Murder</td>
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<td>17</td>
<td>100</td>
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<tr>
<td>Assault with Intent to Kill</td>
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<td>1</td>
<td>50</td>
</tr>
<tr>
<td>Felonious Escape</td>
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<td>1</td>
<td>100</td>
</tr>
<tr>
<td>Stealing a Schooner</td>
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<td>100</td>
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<td>Stealing Hogs</td>
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<td>White Murder of a Negro Slave</td>
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</tr>
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<td>Killing a Mare</td>
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<td>Assault on a Free Black</td>
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</tr>
<tr>
<td>Crime</td>
<td>1769</td>
<td>1770</td>
<td>1771</td>
</tr>
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<td>Neglect of Duty</td>
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<td>100</td>
</tr>
<tr>
<td>Highway Robbery</td>
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<td>1</td>
<td>100</td>
</tr>
<tr>
<td>Unlawful Marking</td>
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<td>1</td>
<td>50</td>
</tr>
<tr>
<td>of Cattle</td>
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</tr>
<tr>
<td>Larceny</td>
<td>40</td>
<td>47</td>
<td>118</td>
</tr>
<tr>
<td>TOTAL</td>
<td>330</td>
<td>223</td>
<td>68</td>
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</table>

Source: South Carolina Court of General Sessions, Criminal Journals, 1769-1776. In non-murder cases where the percent of indictments brought to trial exceeds 100%, the excess of trials reflects the fact that some trials from years before 1769 were carried over into the 1769 sessions. Given the light caseload for each session, this practice was typical.

Table A.3
Court of General Sessions Grand Jury Foremen, 1769-1776

<table>
<thead>
<tr>
<th>Grand Jury</th>
<th>Name</th>
<th>Assembly</th>
<th>Profession</th>
<th>Offices</th>
</tr>
</thead>
<tbody>
<tr>
<td>10/1769</td>
<td>Theodore Galliard</td>
<td>1742-1775</td>
<td>Planter</td>
<td>Road Commissioner</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Tax Collector</td>
</tr>
<tr>
<td>1/1770</td>
<td>Charles Cantey</td>
<td>1757-1778</td>
<td>Planter</td>
<td>Vestry</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Churchwarden</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Militia Lieutenant</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Building Commission</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Justice of the Peace</td>
</tr>
<tr>
<td>3/1770</td>
<td>Jacob Motte, Jr.</td>
<td>1761-1780</td>
<td>Planter</td>
<td>Building Commission</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Tax Collector</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Justice of the Peace</td>
</tr>
<tr>
<td>1/1771</td>
<td>Gabriel Manigault</td>
<td>1733-1751</td>
<td>Merchant</td>
<td>Public Treasurer</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Planter</td>
<td>Tax Assessor</td>
</tr>
<tr>
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<td>Vestry</td>
</tr>
<tr>
<td></td>
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<td></td>
<td>Justice of the Peace</td>
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<td></td>
<td></td>
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<td>Various Commissions</td>
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<td>Firemaster</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td>Street Commissioner</td>
</tr>
<tr>
<td>4/1771</td>
<td>Isaac Porcher</td>
<td>1766-1780</td>
<td>Planter</td>
<td>Road Commissioner</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Vestry</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Justice of the Peace</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Planter</td>
<td>Vestry</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Firemaster</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Militia Captain</td>
</tr>
<tr>
<td>Date</td>
<td>Name</td>
<td>Years</td>
<td>Occupation</td>
<td>Other Roles</td>
</tr>
<tr>
<td>--------</td>
<td>-----------------</td>
<td>---------</td>
<td>--------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>1/1772</td>
<td>Thomas Heyward</td>
<td>1772-1790</td>
<td>Planter</td>
<td>Lawyer, Continental Congress (Declaration Signer), Various Commissions</td>
</tr>
<tr>
<td>4/1772</td>
<td>Isaac Huger²</td>
<td>1772-1784</td>
<td>Planter</td>
<td>Sheriff (110 slaves)</td>
</tr>
<tr>
<td>10/1772</td>
<td>John Huger</td>
<td>1768-1785</td>
<td>Planter</td>
<td>Council of Safety</td>
</tr>
<tr>
<td>2/1773</td>
<td>George Inglis³</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>5/1773</td>
<td>Robert MacKenzie⁴</td>
<td>No Service</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>10/1773</td>
<td>John Paul Grimke⁵</td>
<td>No Service</td>
<td>Silver Smith</td>
<td>N/A</td>
</tr>
<tr>
<td>2/1774</td>
<td>John Wragg</td>
<td>1752-1769</td>
<td>Planter</td>
<td>Vestry, Justice of the Peace</td>
</tr>
<tr>
<td>5/1774</td>
<td>Benjamin Fuller⁶</td>
<td>No Service</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>10/1774</td>
<td>Philip Porcher</td>
<td>1761-1780</td>
<td>Planter</td>
<td>Justice of the Peace, Various Commissions Vestry</td>
</tr>
<tr>
<td>2/1775</td>
<td>John Beale²</td>
<td>1762-1765</td>
<td>Merchant</td>
<td>Various Commissions</td>
</tr>
</tbody>
</table>

² The *Biographical* directory stresses this family’s political influence: Father Daniel was a wealth planter who served in the assembly for many years. Brother John was also a planter who sat in the assembly. Isaac owned some 6,000 acres and a Charles Town townhouse. The directory states “so great was the Huger family’s political influence, that Isaac’s son, Isaac Jr., succeeded him as Sheriff of Charleston District and another son, Daniel Lionel, succeeded him as federal marshal.” See, Edgar & Bailey, 342.

³ There was an Inglis (also spelled English or Inglish) family of planters living in Goose Creek near Charles Town. George’s relation to them is unknown. The same grand jury also included Daniel Legaree, Isaac Motte, and Elias Horry, all merchant / planter assembly members.

⁴ This jury included planter / merchant assembly members Benjamin Mazyck, Nathan Legaree, and Isaac Legaree.

⁵ John Paul Grimke was a prominent Charles Town silversmith. He also owned a small plantation of about 500 acres on Edisto Island. Richard Walsh, *Charleston’s Sons of Liberty: A Study of the Artisans* (Columbia: University of South Carolina Press, 1959), 11. His grandchildren married into the Drayton family, and eventually Magnolia Plantation passed into the family’s hands. For a brief introduction to the Grimke family and J.F. Grimke’s children and grandchildren, see Grace H. Long, “The Grimkes, Southern Iconoclasts,” *Peabody Journal of Education* 20.6 (May 1943): 359-364. Others on this jury included John Poyas, Benjamin Huger, Peter Porcher, John Savage and James Ravenel, all of whom were merchant / planters who served in the assembly.

⁶ Though Benjamin did not sit in the assembly, the Fuller’s were a very prominent planter family and often involved in Charles Town politics. Joseph, Thomas and two William Fullers served in the assembly.
5/1775   William Banbury   No Service   N/A   N/A

4/1776   Jury List Incomplete—no foreman

Sources: Compiled from South Carolina Court of General Sessions, Journal; Walter Edgar and Louise Bailey, Biographical Directory of the South Carolina House of Representatives, Vol. 2.

John was the son of Othnle Beale (1688-1773), who was one of Charles Town’s most active and successful merchants, though he never involved himself in the slave trade. Othnle served in the assembly and in many other local offices. Edgar and Bailey, 61-62.