

# A Snitch in Time: An Historical Sketch of Black Informing During Slavery

Andrea L. Dennis

University of Georgia School of Law, [aldennis@uga.edu](mailto:aldennis@uga.edu)

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# **A SNITCH IN TIME: AN HISTORICAL SKETCH OF BLACK INFORMING DURING SLAVERY**

ANDREA L. DENNIS\*

*Although potentially offering the benefits of crime control and sentence reduction, some Blacks are convinced that cooperation with criminal investigations and prosecutions should be avoided. One factor contributing to this perspective is America's reliance on Black informants to police and socially control Blacks during slavery, the Civil Rights Movement, and the Wars on Drugs, Crime, and Gangs. Notwithstanding this historical justification for non-cooperation, only a few informant law and policy scholars have examined closely the Black community's relationship with informing. Furthermore, even among this small group, noticeably absent are historical explorations of Black America's experience with informing during slavery. Drawn using a variety of primary and secondary historical and legal sources, this Article sketches the socio-legal creation, use, and regulation of Black informants in the Black community during slavery, as well as Black society's response at that time. In developing a snapshot of the past, the Article reveals many similarities between the Black experience with informing while enslaved and in contemporary times. Consideration of these resemblances during present debate on the topic of cooperation may help to facilitate nuanced conversation as to whether and how modern Black citizens and the government should approach using informants in current times.*

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\*Associate Professor of Law, University of Georgia School of Law. Thanks are owed to Alfred L. Brophy, Stephen Clowney, Michael Rich, Lori Ringhand, and the Mid-Atlantic Criminal Law Research Collective. University of Georgia Law Librarian Thomas J. Striepe was immensely helpful in securing sources. Valuable research assistance was provided by Rachel Hudgins. All errors or omissions are my own. Thanks for everything, Plum.

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“Young generations of African-Americans, unmindful of their legacy of resistance against the slavery system, don’t understand that snitching is not cool.”

—Mumia Abu-Jamal<sup>1</sup>

## I. INTRODUCTION

The government relies upon a large, unregulated collection of snitches to ensure the operation of the modern criminal justice system.<sup>2</sup> Government officials claim snitches are necessary for efficient and effective crime-fighting.<sup>3</sup> Nevertheless, legal scholarship has documented a host of mischiefs bred by dependence on snitches.<sup>4</sup> It is especially troubling that these harms disproportionately fall upon the Black community, specifically those individuals who dwell in urban, impoverished, high-crime neighborhoods.<sup>5</sup>

Black viewpoints on snitching and informing are varied.<sup>6</sup> A particularly controversial mindset is reflected in the “Stop Snitching”

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1. Mumia Abu-Jamal, *The Snitch Factor*, REFUSE & RESIST! (Jan. 14, 1999), [http://www.refuseandresist.org/big\\_brother/020699maj398.html](http://www.refuseandresist.org/big_brother/020699maj398.html).

2. See ALEXANDRA NATAPOFF, SNITCHING: CRIMINAL INFORMANTS AND THE EROSION OF AMERICAN JUSTICE 1–3 (2009) [hereinafter NATAPOFF, CRIMINAL INFORMANTS]; Alexandra Natapoff, *Snitching: The Institutional and Communal Consequences*, 73 U. CIN. L. REV. 645, 645 (2004) [hereinafter Natapoff, *Communal Consequences*].

3. See MALACHI L. HARNEY & JOHN C. CROSS, THE INFORMER IN LAW ENFORCEMENT 12, 14 (2d ed. 1968) (discussing former law enforcement officers’ recognition of the necessity of informants); Rick Hampson, *Anti-snitch Campaign Riles Police, Prosecutors*, USA TODAY, Mar. 29, 2006, at A1 (quoting Pittsburgh police commander: “Informers are a necessary evil”).

4. See NATAPOFF, CRIMINAL INFORMANTS, *supra* note 2, at 36–38; Natapoff, *Communal Consequences*, *supra* note 2, at 646.

5. See NATAPOFF, CRIMINAL INFORMANTS, *supra* note 2, at 35, 118.

6. In this Article, I use “snitching” or “snitch” to exemplify individuals who expect or actually receive a government-conferred benefit in exchange for providing officials with incriminating information. I use the broader terms “inform” or “informant” or “informing” for those who provide information regardless of benefit, thus including snitches as well as bystander and victim-witnesses. See BLACK’S LAW DICTIONARY 794 (8th ed. 2004) (defining an informant as: “One who informs against another; esp., one who confidentially supplies information to the police about a crime, sometimes in exchange for a reward or special treatment”). I believe the broader concept is appropriately considered alongside the narrower term because limiting discussion to snitches may obscure the complexities of the issue: some Blacks discourage any type of informing and all types of informants may be troublesome to the criminal justice system.

ethic revealed by the 2004 publication of an underground video recording filmed in a Baltimore City neighborhood.<sup>7</sup> Today, Stop Snitching is often associated generally with urban or hip-hop culture.<sup>8</sup> The contours of the credo are debatable. At a minimum, Stop Snitching dictates that those engaging in criminal behavior not incriminate others engaging in crime.<sup>9</sup> In its strongest form, the expression prescribes that community residents—law-abiding or otherwise—refuse to provide information to government authorities for criminal investigations and prosecutions.<sup>10</sup>

Widespread awareness of the Stop Snitching idiom has provided a platform for robust debate—publicly and within the Black community—

Among scholars and the general public, there is no uniform agreement on the meaning or use of these terms. *See, e.g.*, PAUL BUTLER, LET'S GET FREE: A HIP-HOP THEORY OF JUSTICE 81–82 (2009) (distinguishing between snitches and witnesses); HARNEY & CROSS, *supra* note 3, at 31 (“All people who are sources of information, generically, and in the broad sense of the term, could be referred to as informers.”); BAKARI KITWANA, THE HIP HOP GENERATION 68 (2002) (“[I]nformants (also known as snitches) who agree to plead guilty and testify as government witnesses in exchange for special considerations, including leniency . . . .”); Natapoff, *Communal Consequences*, *supra* note 2, at 645 n.1, 652 (limiting her work to criminal informants who receive a government-conferred benefit in exchange for providing information); Marc Lamont Hill, *Damned If You Do. Damned if You Don't*, BARBERSHOP NOTEBOOKS, <http://www.popmatters.com/pm/column/hill060224-1/> (last visited Jan. 2, 2014).

7. *See* Jeremy Kahn, *The Story of a Snitch*, THE ATLANTIC, Apr. 2007, at 80, 86, available at <http://www.theatlantic.com/magazine/archive/2007/04/the-story-of-a-snitch/305703> (describing the *Stop Fucking Snitchin'* video and ethic, and spread of the motto); *see also* STOP FUCKIN SNITCHIN' (Skinny Surge Records 2004). Subsequently, the federal government prosecuted a primary participant in the film on racketeering charges. *See* Press Release, U.S. Atty's Office, E. Shore TTP Leader & Balt. TTP Bloods Member Who Produced “Stop Snitching” Videos Sentenced to Lengthy Prison Terms for Racketeering Activities (June 25, 2010), available at <http://www.fbi.gov/baltimore/press-releases/2010/ba062510.htm> (describing the prosecution of video producer).

8. *See* Touré, *A Snitch Like Me*, N.Y. TIMES, Mar. 23, 2008, at 3 (“I come from the hip-hop generation, in which snitching against a black person is treason.”).

9. *See* Tom Farrey, ‘Snitching’ Controversy Goes Well Beyond ‘Melo’, ESPN MAGAZINE (Jan. 18, 2006), [http://sports.espn.go.com/nba/columns/story?columnist=farrey\\_tom&id=2296590](http://sports.espn.go.com/nba/columns/story?columnist=farrey_tom&id=2296590) (quoting the producer of the *Stop Snitching* video: “The people in this documentary are referring to fellow criminals who snitch. And they’re saying, stop doing that. You did the crime, you do the time.”).

10. *See* OFFICE OF CMTY. ORIENTED POLICING SERVS., U.S. DEP’T OF JUSTICE, THE STOP SNITCHING PHENOMENON: BREAKING THE CODE OF SILENCE 10 (2009) (describing a “campaign urging people to ‘stop snitching’ when they are witnesses to, or victims of, crime”); Kahn, *supra* note 7 at 88; *60 Minutes: Stop Snitchin'*, (CBS television broadcast Apr. 22, 2007), transcript available at <http://www.cbsnews.com/stories/2007/04/19/60minutes/main2704565.shtml> (“‘Stop snitchin’ once meant ‘don’t tell on others if you’re caught committing a crime.’ . . . [I]t has come to mean something much more dangerous: ‘don’t cooperate with the police—no matter who you are.’”).

on snitching and informing. Citizens from widely varying walks of life have weighed in on Stop Snitching. Local community residents directly affected by informing and government officials charged with policing those communities have made known their perspectives.<sup>11</sup> It has attracted the attention of legal scholars.<sup>12</sup> Within the Black community, entertainers, journalists, public intellectuals, and academics have also contributed their viewpoints either for or against snitching and, more broadly, informing.<sup>13</sup>

Some proponents and opponents of informing make arguments reflecting modern-day practical concerns. Advocates for informing argue that it is necessary to prevent and solve crime, particularly drug crime and Black-on-Black crime, and that choosing to inform is understandable in light of the extreme criminal penalties faced by one who does not inform.<sup>14</sup> In response, their adversaries point to the litany

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11. See OFFICE OF CMTY. ORIENTED POLICING SERVS., *supra* note 10, at 14; Ronald Moten, *The Real Meaning of 'Snitching'*, WASH. POST, Aug. 19, 2007, at B2.

12. See Michael L. Rich, *Lessons of Disloyalty in the World of Criminal Informants*, 49 AM. CRIM. L. REV. 1493, 1513–18 (2012). See generally Bret D. Asbury, *Anti-Snitching Norms and Community Loyalty*, 89 OR. L. REV. 1257 (2011).

13. See BUTLER, *supra* note 6, at 85–87, 95–96, 98–100 (describing contested views within the hip-hop community and regular citizens from the perspective of a Black law professor, and advocating for noncooperation in some instances); Tony Norman, *A Snitch in Time Sometimes Saves Me and Mine*, PITTSBURGH POST-GAZETTE, June 16, 2006, at A2 (describing a black journalist's account of personal and communal debates over snitching in the context of raising three Black sons); Touré, *supra* note 8 (describing a Black journalist's personal, internal debate over calling police about a crack house in his Brooklyn neighborhood); Hill, *supra* note 6 (describing the complexity underlying the Stop Snitching mantra from the perspective of a Black education professor). Iconic rapper Chuck D publicly stated:

Rap is bridging jail mentality straight into the middle schools via radio and video overdosing. There's a big anti-snitching thing moving in the hoods of America, but dig this—the term 'snitch' was best applied to those that ratted revolutionaries like Huey P Newton, Bobby Seale, Che Guevera to the fascist governments during the 60's and 70s. Let's not let stupid cats use hip hop to again twist this meaning for the sake of some 'innerganghood' violent drug thug crime dogs, who've sacrificed the black community's women and children. Not the same . . . and rap needs to speak and protect the people sometimes and not contribute to genocidal systems.

Chuck D, *Chuck D's Christmas List: What I Should Want in HIP HOP 2006*, HIP HOP SPORTS NETWORK (Dec. 14, 2005, 12:24 PM), [http://hiphopsports.typepad.com/hhsn/2005/12/chuck\\_ds\\_christ.html](http://hiphopsports.typepad.com/hhsn/2005/12/chuck_ds_christ.html).

14. See BUTLER, *supra* note 6, at 79–100 (summarizing the debate surrounding informing); JUAN WILLIAMS, ENOUGH: THE PHONY LEADERS, DEAD END MOVEMENTS, AND CULTURE OF FAILURE THAT ARE UNDERMINING BLACK AMERICA—AND WHAT WE CAN DO ABOUT IT 111–18 (2006) (decrying the growth of the Stop Snitching movement for its increase in Black crime).

of bad outcomes for already marginalized Black communities, including: unnecessary and disproportionate incarceration of Black men; increased crime; government abuses such as police brutality; unreliable convictions; individual and communal intimidation and retaliation that the government is unwilling or unable to prevent; and a fractionated and suspicious Black community.<sup>15</sup>

America's history of criminal justice enforcement of and within the Black community—both recent and centuries old—provides another rationale for some Black Americans who oppose informing. During the American Civil Rights Movement, the United States government seeded Black communities with confidential informants instructed to monitor and report on the activities of movement participants—both famous and ordinary—as well as to act as agents provocateur.<sup>16</sup> Following on the heels of the Civil Rights Movement are the now decades-old Wars on Drugs, Crime, and Gangs.<sup>17</sup> During these “wars,” state and federal governments have relied heavily on criminal suspects, jailhouse informants, and street-based confidential informants to police communities, particularly Black ones.<sup>18</sup>

Reversing course in time, the Black American experience during slavery also offers a rationale against informing.<sup>19</sup> Quite pointedly,

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15. See NATAPOFF, CRIMINAL INFORMANTS, *supra* note 2, at 69, 104–06, 108–09, 116–18, 129–34; OFFICE OF CMTY. ORIENTED POLICING SERVS., *supra* note 10, at 3, 20–21 (citing a community activist's opinion that an unfair criminal justice system discourages cooperation, this report was funded by the U.S. Department of Justice Community Oriented Policing Services); Natapoff, *Communal Consequences*, *supra* note 2, at 646, 688, 690–92.

16. See KENNETH O'REILLY, “RACIAL MATTERS”: THE FBI'S SECRET FILE ON BLACK AMERICA, 1960–1972, at 261, 267 (1989).

17. See NATAPOFF, CRIMINAL INFORMANTS, *supra* note 2, at 128 (“Inner-city America has been living with drug informants for the duration of the war on drugs—over twenty years.”); Andrea L. Dennis, *Collateral Damage? Juvenile Snitches in America's “Wars” on Drugs, Crime, and Gangs*, 46 AM. CRIM. L. REV. 1145, 1147 (2009) (“Within the criminal justice system, a vibrant snitching institution operates to assist the government in its ‘wars’ on drugs, crime, and gangs.”).

18. See NATAPOFF, CRIMINAL INFORMANTS, *supra* note 2, at 128; Natapoff, *Communal Consequences*, *supra* note 2, at 692.

19. BUTLER, *supra* note 6, at 99 (citing the use of an informant to uncover Denmark Vesey's slave rebellion plot); Moten, *supra* note 11; Abu-Jamal, *supra* note 1 (citing examples of slave rebellions and revolts that failed because of snitches); Regina N. Bradley, *G.I.F.T. (Get It In Friday Thoughts) Vol. I*, RED CLAY SCHOLAR (Feb. 26, 2010), <http://redclayscholar.blogspot.com/2010/02/giift-get-it-in-friday-thoughts-vol-i.html> (citing FREDERICK DOUGLASS, NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS, AN AMERICAN SLAVE (1845), *reprinted in* EARLY AFRICAN-AMERICAN CLASSICS 13, 97 (Anthony Appiah ed., 1990)) (discussing Frederick Douglass' unwillingness to reveal how he escaped slavery).

Mumia Abu-Jamal, journalist and former Pennsylvania death row inmate, who is quoted to open this article, wrote:

Throughout the long, tortured centuries of oppression against Blacks in America, a special contempt was reserved for those who dared snitch against the endangered slave community, people who made their “livings” by selling out their own people, sending information to dreaded slave-catchers in the South, who used the infamous Fugitive Slave Act to track and re-enslave those who dared escape their fiendish clutches.<sup>20</sup>

Thus, since its earliest days, the United States’ approach to policing Blacks’ alleged criminality was often predicated on using Black citizens to target other Black citizens, sometimes fairly and sometimes shockingly unfairly. And these Black experiences of criminal justice policy are claimed to have bred deep distrust of government and informing.<sup>21</sup>

Legal scholars of informant law and policy tend to only modestly discuss historical aspects of the practice, and noticeably absent from even these brief discussions is Black America’s historical experience with informing. Two exceptions exist. Professor Randall Kennedy—in support of a larger work on race and criminal justice—wrote briefly regarding the FBI’s destructive use of informants in the Black community during the Civil Rights Movement.<sup>22</sup> Professor Alexandra Natapoff richly explored the harms of snitching during the War on Drugs, particularly for the Black community.<sup>23</sup> Notwithstanding the writings of Kennedy and Natapoff, at best, most informant law scholars have cursorily referenced the FBI’s use of informants to investigate Black leaders and organizations during the Civil Rights era, which coincided with the Vietnam War era.<sup>24</sup> Thus, Black snitching and

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20. Abu-Jamal, *supra* note 1.

21. See BUTLER, *supra* note 6, at 99; Norman, *supra* note 13 (mentioning the impact of slavery); see also *60 Minutes: Stop Snitchin’*, *supra* note 10 (discussing the “Stop Snitchin’” motto and Blacks’ reluctance to talk to police); Abu-Jamal, *supra* note 1 (citing government activities during the Civil Rights Movement).

22. See RANDALL KENNEDY, *RACE, CRIME, AND THE LAW* 107–13 (1997). History professor Kenneth O’Reilly documented in painstaking detail the FBI’s program of informants in the Black community. O’REILLY, *supra* note 16, at 107, 224, 265–70, 274, 292, 301, 306, 309, 334, 337, 346, 356.

23. See Natapoff, *Communal Consequences*, *supra* note 2, at 692.

24. Generally speaking, scholars detailing the historical use of informants point to their use in ancient Greek and Roman society, Biblical times, the Middle Ages, and Enlightenment. See, e.g., ROBERT M. BLOOM, *RATTING: THE USE AND ABUSE OF*



informing during slavery remain completely unexamined. This omission is striking in light of the centrality of slavery to the Black American and United States experience, historical justifications offered for Blacks' unwillingness to inform, and the disproportionate impact of modern informing policies and practices on Black communities.

This Article fills a gap in knowledge by sketching the socio-legal creation, use, and regulation of informants in the Black community during slavery and the Black community's response at that time.<sup>25</sup> This Article proceeds in six parts, using primary and secondary historical and legal sources from a variety of locales. The various primary sources referenced include slave codes, legislative and judicial petitions, case law, and narratives. The petitions and narratives are the products of enslaved as well as free Blacks, and Whites. These first person accounts are often profound and moving, thus at times these sources are heavily quoted. Secondary sources include academic works by historians—legal and non-legal—of slavery.

Part II describes Whites' need for and cultivation of Black informants who were vital to the White community's prevention,

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INFORMANTS IN THE AMERICAN JUSTICE SYSTEM 1–6 (2002) (providing an overview of informing in a variety of historical contexts). Not surprisingly, given the historical connection between the English and American legal systems, scholars describe the development of a government-backed system of informants in England and translation to policing in the American colonies. *See, e.g., id.* at 6; Graham Hughes, *Agreements for Cooperation in Criminal Cases*, 45 VAND. L. REV. 1, 7–8 (1992) (surveying the history of agreements between informants and prosecutors in exchange for cooperation in criminal cases). Moving forward in the U.S. history timeline, the American government's formal use of informants has been linked historically with post-WWI Bolshevism (the Red Scare), McCarthyism (the Second Red Scare), the Vietnam War era, and Mafia RICO prosecutions. *See, e.g.,* BLOOM, *supra*, at 7, 81–92; Ellen Schrecker, *McCarthyism: Political Repression and the Fear of Communism*, 71 SOC. RES. 1041, 1049, 1058, 1064 (2004). Finally, the present-day snitching institution in relation to the War on Drugs and War on Terror has received treatment. *See generally* Natapoff, *Communal Consequences*, *supra* note 2; Wadie E. Said, *The Terrorist Informant*, 85 WASH. L. REV. 687, 715–38 (2010).

25. The institutionalization of Black slavery gradually occurred over time through social and legal means. A. LEON HIGGINBOTHAM, JR., *IN THE MATTER OF COLOR: THE COLONIAL PERIOD* 20–22 (1978). In 1619, the first Africans arrived in Jamestown, Virginia—likely as indentured servants. *Id.* at 20. By 1660, statutory law in the colony of Virginia began to recognize life-long servitude by Blacks. *Id.* at 34 (citing Act of English Running Away with Negroes, Act XXII (1660), in 2 THE STATUTES AT LARGE; BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA, FROM THE FIRST SESSION OF THE LEGISLATURE, IN THE YEAR 1619, at 26 (William Waller Hening ed., N.Y.C., R. & W. & G. Bartow 1823)). By 1705, Virginia had formally and fully excluded Blacks from legal and social society. HIGGINBOTHAM, *supra* at 58. The other colonies followed Virginia's lead. *Id.* at 60. Slavery continued in the colonies and then the states until the Thirteenth Amendment was ratified on December 6, 1865. U.S. CONST. amend. XIII.

detection, investigation, and prosecution of Black misconduct affecting White communal or personal interests. Informants were used to police a wide assortment of offending behavior and were deemed especially helpful at preventing and squelching rebellions.<sup>26</sup> Part II also distinguishes among informants. Some cooperators merely provided information while others actively assisted Whites in regulating Black misconduct.<sup>27</sup>

Blacks confronted with making a choice as to whether to inform likely weighed multiple factors. Part III lists and exemplifies commonplace factors. Weighing in on the side of informing were loyalty to owner, preservation of one's life or status, communal self-regulation, attainment of liberty or criminal leniency, and financial reward.<sup>28</sup> Communal solidarity, resistance ethic, and fear of retaliation, as well as protection of others countenanced not informing.<sup>29</sup> Religious conviction was a swing factor depending on the particular individual or circumstance.<sup>30</sup>

Debates on informing commonly implicate questions of loyalty. In so keeping, Parts IV through VI more closely examine three loyalty-related themes exposed in Parts II and III: (1) the creditable existence of what may be termed a "code of silence" held by Blacks during slavery; (2) the revelation of slave rebellions and runaways as the ultimate betrayal by one Black person of another Black person; and (3) the claimed willingness of domestic slaves to freely inform to their owners out of misplaced loyalty. Part IV argues that some Blacks rejected the legal and socially based opportunities and motivations to inform. Such individual or communal response offered a means to resist White oppression and build group loyalty. Notwithstanding this possible code of silence, some Blacks did inform on other Blacks, and Part V offers descriptions of arguably the utmost form of betrayal—the disclosure of information regarding a slave rebellion or the location of a runaway slave.

Part VI briefly defends domestic, or house, slaves who hold an especially negative place in the mind of the modern Black community. This Part speaks to the allegation that domestic slaves frequently and

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26. *See infra* Part II.B.

27. *See infra* Part II.B.

28. *See infra* Part III.

29. *See infra* Part III.

30. *See infra* Part III.E.

unabashedly betrayed their fellow enslaved, sometimes for little benefit. Part VI concludes that while undoubtedly some house slaves did inform, it is unfair to malign the entire class of domestic slaves.

Finally, in light of the reality that some Blacks did inform, Part VII describes the impact of informing on the Black community. Not surprisingly, informant betrayals bred distrust and disunity, both of which are posited as modern-day consequences of informing in the Black community.<sup>31</sup> Black informants arguably also engendered inaction among slaves who might have been reluctant to engage in rebellious misconduct for fear of being exposed to Whites.<sup>32</sup>

The Article concludes by mentioning future avenues of historical inquiry on Black informing during slavery and ruminating on the implications of the current state of knowledge on contemporary informant law and policy. This Article does not, however, offer any normative or prescriptive conclusions. Thus, no opinion is offered as to whether Blacks should continue or give up reliance on slavery, and history more generally, to support an anti-cooperative ethic. Similarly, whether government officials should cease employing informants to police Blacks because of the painful experiences of Blacks with informing throughout American history remains unresolved. Until such time as the historical picture of the Black experience with informing is flush, answers to those matters are speculative.

The way in which Black people experienced informing during slavery is surely but one factor among a multitude of factors influencing modern Black Americans' perspectives on informing. Ideally, the historical information herein will be expanded upon and then coupled with information—extant or to be discovered—regarding the Black experience with informing during other historical eras such as Reconstruction, Jim Crow, the Civil Rights Movement, and the War on Drugs. Black America's experience during these times also likely has both independent and cumulative force in establishing modern attitudes on informing. Once complete, this collective information should facilitate nuanced conversation as to whether historically grounded justifications for anti-cooperation today are sensible; whether the Black community should be demonized for holding any anti-cooperative ethic; whether Blacks—individually and communally—should or can endorse

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31. *See infra* Part VII.

32. *See infra* Part VII.

informing; and how current policy should respond in light of the Black community's viewpoints.<sup>33</sup>

Unquestionably, obvious and significant differences between the Black community's position in today's society and during slave times serve to undermine reference to slavery as a rationalization for not informing. Most apparently, Blacks today are not slaves and so they are not focused on the most basic recognition of their individual and collective humanity. Relatedly, informing on fellow slave subjects poses greater moral dilemmas than informing on a neighborhood drug dealer.<sup>34</sup> Also, even if marginalized, Blacks currently receive significantly more social and legal protections than during slavery. Finally, during slavery, the prime beneficiary of law and legal policy—including that related to informants—was White society, while Black informants currently are credited with benefiting Black communities, particularly those besieged by crime. This non-exhaustive list only touches the surface; certainly, more distinctions may be offered.

In light of these dissimilarities, concluding that no comparison can or should be made between experiences and positions today and in the past is tenable. On the other hand, drawing a line from past to present by recovering the experiences of slave and free Blacks with informing offers a sounder position from which to understand the modern Black community's ambivalence regarding informing. Thus, even without drawing normative conclusions or offering prescriptive solutions, this Article importantly advances our understanding as to why contemporary Blacks may distrust informants and government promotion of informing, which in turn, at a minimum, may undergird our response.

## II. THE DEMAND FOR BLACK INFORMANTS

Slave owners, and Whites more widely, needed Black informants to protect personal and communal interests as well as to preserve the institution of slavery. Information about the misdeeds of Blacks was helpful to Whites, but Whites also benefited from the active efforts of Blacks to police other Blacks. Governments promoted informing by

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33. See Alfred L. Brophy, *Introducing Applied Legal History*, 31 *LAW & HIST. REV.* 233, 233 (2013) (describing applied legal history as “deeply researched, serious scholarship that is motivated by, engages with, or speaks to contemporary issues”).

34. See Norman, *supra* note 13; Bradley, *supra* note 19.

Blacks. State codes expressly authorized legislatures to reward “informers” who acted as private prosecutors.<sup>35</sup> It is highly likely, though, that Blacks were not eligible for these “informer” rewards, only Whites.<sup>36</sup> Instead, legislatures enacted distinct code provisions allowing slaves in limited circumstances to be compensated for informing.<sup>37</sup>

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35. See *Marvin v. Trout*, 199 U.S. 212, 225 (1905) (“Statutes providing for actions by a common informer, who himself had no interest whatever in the controversy other than that given by statute, have been in existence for hundreds of years in England, and in this country ever since the foundation of our Government.”); Clifford S. Zimmerman, *Toward a New Vision of Informants: A History of Abuses and Suggestions for Reform*, 22 HASTINGS CONST. L.Q. 81, 157–67 (1994) (describing the history of informers in England and the United States).

36. Statutory language was not clear as to whether slaves and free Blacks could be “informers” (i.e., private prosecutors). See Zimmerman, *supra* note 35, at 157–66. Where White misconduct was at issue, courts would have been highly unlikely to interpret statutes to allow slaves to collect these rewards. See LOUISIANA BLACK CODE § 16 (June 7, 1806), in 2 STATUTES ON SLAVERY: SLAVERY, RACE, AND THE AMERICAN LEGAL SYSTEM 1700–1872, at 47, 50 (Paul Finkleman ed., 1988) [hereinafter 2 STATUTES ON SLAVERY]. Slaves could not legally own property. LOUISIANA BLACK CODE § 15 (June 7, 1806), in 2 STATUTES ON SLAVERY, *supra* at 50. Slaves could not offer evidence or testimony against Whites, only against Blacks. LOUISIANA BLACK CODE § 16 (June 7, 1806), in 2 STATUTES ON SLAVERY, *supra* at 50. Possibly, free Blacks or other non-Whites could be “informers” in order to maintain the distinction between slaves and all others; yet, case law suggests that such a conclusion is not forgone. In a civil case, a White property owner argued that Blacks could not be “informers.” *Ruth v. Maryland*, 20 Md. 436, 438 (1864). A free Black property owner filed suit concerning the destruction by a neighboring White owner of a tree alleged to be on the plaintiff’s property. *Id.* at 436. Though an “informer” is competent to be a witness, the defendant argued that a negro, “free or slave,” could not be an “informer” because he was incompetent to testify (presumably against a White person). *Id.* at 438. The defendant further argued that a slave could not be an “informer” because he could not own a boundary and cannot initiate a *qui tam* action. *Id.* at 439. Though the issue was not resolved by the court, the case provides some sense of the tenor of the argument as to whether a slave or free Black could be an “informer.” See generally *id.* at 438–42.

37. See, e.g., HERBERT APTHEKER, AMERICAN NEGRO SLAVE REVOLTS 143 (5th ed. 1983) (citing An Act for Ordering and Governing Slaves within This Province, and for Establishing a Jurisdiction for the Trial of Offences Committed by Such Slaves, and Other Persons Therein Mentioned, and to Prevent the Inveighling, and Carrying Away Slaves from Their Masters, Owners, or Employers, §§ 13–14 (1770), in DIGEST OF THE LAWS OF THE STATE OF GEORGIA, FROM ITS SETTLEMENT AS A BRITISH PROVINCE, IN 1775, TO THE SESSION OF THE GENERAL ASSEMBLY IN 1880, INCLUSIVE, 426, 430–31 (Horatio Marbury & William H. Crawford, eds., Savannah, Seymour, Woolhopter & Stebbins 1802) [hereinafter DIGEST OF THE LAWS OF THE STATE OF GEORGIA]). During slavery, legislatures enacted statutes called Slave Codes (or occasionally Black Codes) designed to legally effectuate the total submission of slaves to their owners. See HIGGINBOTHAM, *supra* note 25, at 9; Joseph Conan Thompson, *Toward a More Humane Oppression: Florida’s Slave Codes, 1821–1861*, 71 FLA. HIST. Q. 324, 324 (1993). Within these slave codes are informant provisions. See, e.g., LOUISIANA BLACK CODE § 5 (June 7, 1806), in 2 STATUTES ON SLAVERY, *supra* note 36, at 54–55.

*A. Necessity of Informants*

Whites relied on informants out of necessity. Because Whites were outsiders to the slave community, and thus not personally privy to the inner workings of that community, detection and investigation of much slave misconduct would have been nearly impossible without information from slaves. If Whites were unable to access such otherwise secreted information, their personal safety, communal safety, financial interests, and ultimately the institution of slavery would have been seriously threatened.<sup>38</sup> Consequently, the necessity for protection of White interests was the driving factor respecting the types of offenses or misconduct meriting societal endorsement of slave informing.<sup>39</sup> Commonly, Whites sought slave informants to detect and prosecute offenses that could result in the loss of White lives.<sup>40</sup> Additionally, informing was necessary to protect financial interests.<sup>41</sup>

Because slaves could attack or kill their owners, owner awareness of what was happening among their slaves was a vital preventive measure. Some owners were desperate for information to protect their personal safety.<sup>42</sup> For example, Martha L. Nelson, a slave owner, wrote her state Governor seeking her slave's pardon because he was a valuable informant.<sup>43</sup> She wrote:

[He] would inform on the negroes, as soon as any white person would, if he knew or suspected anything wrong was plan[n]ing among them . . . I am almost a maniac from the loss of sleep, now in the dept[h] of night I write, beseeching you to pardon my

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38. See APTHEKER, *supra* note 37, at 63 (citing a letter from Martha L. Nelson to Governor Henry Wise seeking a pardon of her slave); EUGENE D. GENOVESE, ROLL, JORDAN, ROLL 599 (1st ed. 1974).

39. See, e.g., PETER CHARLES HOFFER, THE GREAT NEW YORK CONSPIRACY OF 1741: SLAVERY, CRIME, AND COLONIAL LAW 74–76 (2003).

40. See, e.g., An Additional and Explanatory Act to an Act of the General Assembly of This Province, Entitled “An Act for the Better Ordering and Governing Negroes and Other Slaves in This Province;” and for Continuing Such Part of the Said Act as Is Not Altered or Amended by This Present Act, for the Term Therein Mentioned, no. 790, § VII (1751), in 7 THE STATUTES AT LARGE OF SOUTH CAROLINA 420, 422 (David J. McCord ed., Columbia, A.S. Johnston 1840) [hereinafter 7 STATUTES AT LARGE OF SOUTH CAROLINA].

41. See, e.g., GENOVESE, *supra* note 38, at 599; NORRECE T. JONES, JR., BORN A CHILD OF FREEDOM, YET A SLAVE 189–90 (1990).

42. See APTHEKER, *supra* note 37, at 63 (citing a letter from Martha L. Nelson to Governor Henry Wise seeking a pardon of her slave). Nelson's request was unsuccessful. See *id.* at 63 n.27.

43. See *id.* at 63.

servant . . . such a servant ought not to be sent away particularly in these perilous times of insurrection.<sup>44</sup>

In recognition of the concern for personal safety, legislatures—such as those in Georgia and South Carolina—enacted statutory provisions rewarding slaves who provided information regarding poisonings by slaves. South Carolina’s 1751 Code provided a four-pound reward for information regarding the attempt to poison an owner that resulted in conviction.<sup>45</sup> In the 1770 and 1848 Georgia Codes, a slave who informed about the poisoning of another received twenty shillings per year till death and on the day he received the reward was excused from work.<sup>46</sup>

Every negro, mulatto, or mustizoe, who shall hereafter give information of the intention of any other slave to poison any person, or of any slave that hath furnished, procured or conveyed any poison to be administered to any person, shall, upon conviction of the offender or offenders, be entitled to and receive from the public of this province, a reward of twenty shillings, to be paid him or her by the treasurer yearly and every year, during the abode of such negro, mulatto, or mustizoe in this province, on the day that such discovery was made, and shall also be exempted from the labor of his or her master on that day . . . .<sup>47</sup>

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44. *See id.* (quoting a letter from Martha L. Nelson to Governor Henry Wise seeking a pardon of her slave).

45. An Additional and Explanatory Act to an Act of the General Assembly of This Province, Entitled “An Act for the Better Ordering and Governing Negroes and Other Slaves in This Province;” and for Continuing Such Part of the Said Act as Is Not Altered or Amended by This Present Act, for the Term Therein Mentioned, no. 790, § VIII (1751), *in* 7 STATUTES AT LARGE OF SOUTH CAROLINA, *supra* note 40, at 420, 423.

46. Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 34, art. 1, § 2(19), *in* 4 A CODIFICATION OF THE STATUTE LAW OF GEORGIA 841 (William A. Hotchkiss ed., Augusta, Charles E. Grenville, 2d ed. 1848) [hereinafter STATUTE LAW OF GEORGIA]; APTHEKER, *supra* note 37, at 143 (citing An Act for Ordering and Governing Slaves within This Province, and for Establishing a Jurisdiction for the Trial of Offences Committed by Such Slaves, and Other Persons Therein Mentioned, and to Prevent the Inveighling, and Carrying Away Slaves from Their Masters, Owners, or Employers, §§ 13–14 (1770), *in* DIGEST OF THE LAWS OF THE STATE OF GEORGIA, *supra* note 37, at 426, 430–31).

47. Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 34, art. 1, § 2(19), *in* STATUTE LAW OF GEORGIA, *supra* note 46, at 841; *see also* APTHEKER, *supra* note 37, at 143 (citing An Act for Ordering and Governing Slaves within This Province, and for Establishing a Jurisdiction for the Trial of Offences Committed by Such Slaves, and Other Persons Therein Mentioned, and to Prevent the Inveighling, and Carrying Away Slaves from Their Masters, Owners, or Employers, § 14 (1770), *in* DIGEST OF THE LAWS OF THE STATE OF GEORGIA, *supra* note 37, at 426, 430–31).

White communities sought state-based rewards for slaves whose informing efforts protected the White community's safety by preventing slave insurrection. The following are descriptions from three legislative or judicial petitions filed by Whites seeking rewards for slave informing. First, a slave named Abram, owned by William Kirk, revealed an alleged plot by Blacks to "massacre" Whites in the community, thereby preventing the insurrection and resulting in punishment of those (allegedly) involved.<sup>48</sup> For his efforts, ninety-two community members petitioned the South Carolina Senate to reward Abram for his "highly meritorious conduct," "fidelity and services."<sup>49</sup> Additionally, if the Senate determined to emancipate Abrams, the petitioners asked that Kirk be compensated "handsome[ly]" for the loss of Abram's labor.<sup>50</sup>

Second, a slave named Henrietta overheard a slave named Charles conspiring to start an insurrection.<sup>51</sup> Henrietta reported what she heard to her owner, Ann Paisley. Charles was thus arrested, and upon being confronted with Henrietta's information, he confessed, implicating other Blacks.<sup>52</sup> Because of her informing, "[B]lacks were very generally excited" against Henrietta and one even attacked her, leading to his execution.<sup>53</sup> Because of her "fealty" and need for protection, six members of the community petitioned the legislature to free Henrietta and her child, provide Paisley a stipend, and indemnify Paisley for the loss of Henrietta.<sup>54</sup>

Third, a slave named Monday, several other slaves, and three White men, who were selling the slaves as part of an estate sale, were traveling in Georgia.<sup>55</sup> Some of the slaves conspired to kill the White men and

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48. LEGISLATIVE PETITION FROM JOHN MCCUMBEE ET AL. TO THE PRESIDENT AND MEMBERS OF THE SENATE OF SOUTH CAROLINA (1803), *microformed on Race, Slavery, and Free Blacks: Petitions to Southern Legislatures, 1777-1867*, at Series 1, Reel 9, Frame 0019 (Univ. Publ'ns of Am.).

49. *Id.*

50. *Id.*

51. LEGISLATIVE PETITION FROM JOHN WILSON ET AL. TO THE PRESIDENT AND MEMBERS OF THE SENATE OF SOUTH CAROLINA (1829), *microformed on Race, Slavery, and Free Blacks: Petitions to Southern Legislatures, 1777-1867*, at Series 1, Reel 10, Frame 0527 (Univ. Publ'ns of Am.) [hereinafter JOHN WILSON ET AL. PETITION].

52. *Id.*

53. *Id.*

54. *Id.*

55. Petition to the Court of Pleas for Wake County, North Carolina from Allen Rogers & Henry Moring, *microformed on Race, Slavery, and Free Blacks: Petitions to Southern County Courts, 1775-1867*, at Series 2, Part D, Reel 1, Frame 0043, PAR 21200014 (Univ. Publ'ns of Am.).



any slave who would not join the conspiracy.<sup>56</sup> Having armed themselves to carry out the plan, they awakened Monday to enlist his involvement.<sup>57</sup> He refused to join, whereupon the conspirators tried to silence him.<sup>58</sup> They were unsuccessful and Monday managed to run and tell of the plot, saving the White men's lives.<sup>59</sup> As a result, the petitioner—one of the saved men—asked the court to emancipate Monday.<sup>60</sup>

Not only did Whites concern themselves with personal and communal safety, White slave owners worried about protecting and maximizing their financial interests, and slave informants were able to assist with this concern as well. Slaves “stole” from their masters in three ways. First, slaves would “steal” the owner's personal property, including food and tools.<sup>61</sup> Second, slaves would “steal” the owner's rights to the slave's physical labor or reproduction, by, for example, malingering, stalling, or preventing another from working to capacity.<sup>62</sup> Finally, at the extreme, slaves would “steal” themselves by running away or assisting other runaways.<sup>63</sup> All of these behaviors by slaves resulted in the reduction of the owner's financial interests. To combat these financial losses, South Carolina rewarded those slaves who provided information regarding stolen goods:

[A]ny negro or slave shall inform any justice of the peace of any stolen goods sold to any white person by any negro or slave, and if upon search, by virtue of a warrant from the said justice, the said goods shall be found and proved to be so stolen, the said negro or slave so informing, shall receive from the person offending, the sum of two pounds, over and above the penalty by law appointed.<sup>64</sup>

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56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *See* GENOVESE, *supra* note 38, at 599.

62. *See id.* at 620–21.

63. *See id.* at 648, 653.

64. An Additional Act to an Act Entitled “An Act for the Better Ordering and Governing Negroes and All Other Slaves,” no. 344, § VIII (1714), in 7 STATUTES AT LARGE OF SOUTH CAROLINA, *supra* note 40, at 365, 367; *see also* HIGGINBOTHAM, *supra* note 25, at 173 (citing An Additional Act to an Act Entitled “An Act for the Better Ordering and Governing Negroes and All Other Slaves,” no. 344, § VIII (1714), in 7 STATUTES AT LARGE OF SOUTH CAROLINA, *supra* note 40, at 365, 367).

States also rewarded slaves for turning in a runaway. For example, in South Carolina, a slave who informed on a runaway slave received money.<sup>65</sup>

As an interesting aside, even without government sanction, owners sought informants to protect their personal financial interests. An owner would want a slave to reveal an assault on another slave, which might reduce productivity.<sup>66</sup> Similarly, owners were interested to know if a White overseer too harshly punished a slave, thereby preventing a slave from working.<sup>67</sup> Also, if a White overseer had bad business acumen or committed crimes against the owner (such as theft), the owner might hope that a slave would provide such information.<sup>68</sup>

Finally, the formal criminal justice process presented means for a slave owner to prevent other Whites from interfering with the owner's interests. In *Harrington v. State*, a slave owner used one of his slaves to detect another White community member's illegal behavior concerning slaves.<sup>69</sup> The slave owner orally gave permission to his slave to purchase alcohol from an individual the owner suspected of unlawfully selling alcohol to his slaves.<sup>70</sup> The owner also gave his slave money to make the purchase.<sup>71</sup> The transaction occurred and the defendant was charged with distributing alcohol to a slave without written owner permission.<sup>72</sup> In her defense, the defendant argued consent, i.e., that the owner had given permission for the sale.<sup>73</sup> The court held that the defense was not available when the consent is:

[A]n experiment to detect a violation of the law. The master's delivery of money to a slave, with instructions to buy liquor from

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65. An Act for the Better Ordering of Slaves, no. 57, § VI (1690), in 7 STATUTES AT LARGE OF SOUTH CAROLINA, *supra* note 40, at 343, 345 (stating that if a slave were to "take up any runaway, he or she shall have the whole benefit thereof"); An Act for the Better Ordering and Governing of Negroes and Slaves, no. 314, § XXVI (1712) in 7 STATUTES AT LARGE OF SOUTH CAROLINA, *supra* note 40, at 352, 362 (stating that any slave who delivered a runaway to the owner or master of the slave would receive twenty shillings from the owner or the marshal).

66. GENOVESE, *supra* note 38, at 625–27.

67. *See id.* at 17–19. Owners used slaves to inform on overseers with bad business acumen, inflicting overly harsh discipline, and committing crimes against the owner. *Id.*

68. *See id.*

69. *Harrington v. State*, 36 Ala. 236, 239, 243 (1860).

70. *Id.*

71. *Id.*

72. *Id.* at 238.

73. *Id.* at 243.

a person whom he suspects of having unlawfully sold liquor to slaves for the purpose of detecting the offender, does not excuse the sale of liquor to the slave for such money.<sup>74</sup>

*B. Mere Informants and Active Agents*

Evidence firmly reveals that owners received incriminating information from Blacks about other Blacks.<sup>75</sup> Passive informants merely provided information that facilitated the detection, investigation, or punishment of misconduct. Information also demonstrates, however, that some slaves went a step further and actively assisted in uncovering or rectifying slave misconduct.

The passive provision of information was the bane of many a runaway slave. Numerous examples of slaves revealing to owners the location of a runaway can be found. *Incidents in the Life of a Slave Girl*, written by Harriet Jacobs using the pseudonym of Linda Brent, is “the most comprehensive slave narrative written by an Afro-American woman.”<sup>76</sup> Over the many years she hid away, Jacobs’ owner attempted to find her.<sup>77</sup> Desperate to locate her, he resorted to soliciting information from other Blacks as to her whereabouts.<sup>78</sup> In her autobiography, Jacobs writes of one such instance:

I [Harriet Jacobs] learned that the doctor had written to New York to a colored woman, who had been born and raised in our neighborhood, and had breathed his contaminating atmosphere. He offered her a reward if she could find out [anything] about me. I know not what was the nature of her reply; but he soon after started for New York in haste, saying to his family that he had business of importance to transact.<sup>79</sup>

Rebellions too were betrayed by the simple act of a slave telling many or few facts. Well-known rebellions planned by Denmark Vesey and Gabriel Prosser were undone by slave informants and so too were

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74. *Id.*

75. See JONES, *supra* note 41, at 127.

76. See Jean Fagan Yellin, *Harriet Ann Jacobs, c. 1813–1897*, LEGACY, Fall 1988, at 55, 55–58.

77. HARRIET A. JACOBS, INCIDENTS IN THE LIFE OF A SLAVE GIRL (L. Maria Child ed., 1861), reprinted in EARLY AFRICAN-AMERICAN CLASSICS, *supra* note 19, at 111, 222–24.

78. *Id.*

79. *Id.* at 222.

many lesser-known, planned rebellions.<sup>80</sup> Such revelations naturally led to the quashing of the plot before it even started.<sup>81</sup>

In contrast to the passive informant whose work was done once information was conveyed, the active informant assisted an owner in detecting or remediating misbehavior. Several scenarios exemplify various forms of active assistance, including acting as a guide, assisting in capture, and conducting undercover buys. A slave named Royal represents the first: acting as a guide. Royal's story is as follows. Joe was a notorious runaway slave who eluded capture and continued to hide out four years after murdering a White man.<sup>82</sup> While on the run, Joe established a camp that could not be found by Whites, yet to which other slaves ran.<sup>83</sup> Joe was reputed to have led his band of outlaws to commit much "mischief."<sup>84</sup> Community members were "in a constant state of uneasiness and alarm" and offered many rewards for Joe's capture.<sup>85</sup> The family of the slain White man offered a reward, as did the State.<sup>86</sup> Receiving no other assistance from the State, however, the community established groups to search for Joe and the encampment, but they were unsuccessful.<sup>87</sup> Enter Royal, who physically led a party of Whites to Joe's camp and somehow convinced Joe and his followers to make themselves known.<sup>88</sup> As a result, Joe and the other runaways were killed.<sup>89</sup> For his efforts, community members petitioned the South Carolina Senate to reward Royal.<sup>90</sup>

The story of a slave named Isaac, who allegedly suffered his demise at the hands of a slave named Jim, demonstrates another type of active informant: one who effectuates, or attempts to effectuate, the capture of a slave. Allegedly, Jim killed Isaac based on a belief that Whites had

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80. See discussion *infra* at Part V.

81. See, e.g., LERONE BENNETT JR., *BEFORE THE MAYFLOWER: A HISTORY OF BLACK AMERICA* 125–26, 130 (Penguin Books, 6th ed. 1993).

82. See LEGISLATIVE PETITION FROM JOHN MAGRANT JR. ET AL. TO THE PRESIDENT AND MEMBERS OF THE SENATE OF SOUTH CAROLINA (1824), *microformed on Race, Slavery, and Free Blacks: Petitions to Southern Legislatures, 1777–1867*, at Series 1, Reel 10, Frame 0244 (Univ. Publ'ns of Am.).

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

hired Isaac to assist in Jim's capture.<sup>91</sup> The underlying facts are that Jim was to be sold to satisfy the debts of his owner, whose property had been attached.<sup>92</sup> Jim ran, becoming one of two runaways who were being concealed by other slaves in the community.<sup>93</sup> The two runaways learned that Isaac had been hired by Whites executing the attachment to find and betray the runaways.<sup>94</sup> When Isaac was shot through a door at the home of a slave owner, Jim was believed to be the shooter.<sup>95</sup> Jim was found the next morning and arrested for the crime.<sup>96</sup>

Finally, a third type of active informant was the slave who was used by a White owner to make what would today be called an "undercover buy." *Harrington v. State*, discussed earlier, represents such an instance.<sup>97</sup> In *Harrington*, a White slave owner provided one of his slaves with the motive and means to attempt what would be the unlawful purchase of alcohol.<sup>98</sup> The slave was successful and the defendant was charged with distributing alcohol to a slave without written owner permission.<sup>99</sup> Though the slave was not knowingly acting as an informant—or for that matter acting with wrongful intent—this case still reveals a type of active informant that Whites would use.

### III. MOTIVATIONS AND CONSIDERATIONS FOR THE POTENTIAL INFORMANT

Slaves had many considerations to muse over in deciding whether to inform. In no particular order, this Part catalogs and exemplifies primary, though surely not all, concerns. Sometimes the considerations

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91. *See Jim v. State*, 24 Tenn. (5 Hum.) 145, 145–46 (1844).

92. *Id.*

93. *See id.*

94. *Id.* at 146.

95. *See id.* at 147.

96. *Id.* at 147–48.

97. *See* discussion *supra* notes 69–75 and accompanying text.

98. *Harrington v. State*, 36 Ala. 236, 239, 243 (1860).

99. *Id.* at 238–39. The defendant argued consent, i.e., that the owner had given permission for the sale. *Id.* at 243. The court held that the defense was not available because the consent was:

[A]n experiment to detect a violation of the law. The master's delivery of money to a slave, with instructions to buy liquor from a person whom he suspects of having unlawfully sold liquor to slaves for the purpose of detecting the offender, does not excuse the sale of liquor to the slave for such money.

*Id.*

overlapped or required the balancing of interests, and not all factors necessarily applied to each individual or in a particular circumstance.

Several motivations promoted informing, including loyalty to one's owner, self-preservation, criminal leniency, freedom, the right to live free in a state, and money. Additionally, when slaves needed White owners to police extreme misconduct by slaves that harmed other slaves, they might inform to spur action.<sup>100</sup> Factors discouraging informing were preservation of others, slave community loyalty, resistance, and fear of backlash from other slaves. A slave's religious convictions either promoted or discouraged informing, depending on the particular slave or context.

#### A. Owner Loyalty and Favor

Discussions of snitching invariably raise questions of loyalty.<sup>101</sup> To whom does the informant owe his loyalty? Himself? His community? Which community? The state? Whose loyalty is he betraying by informing? Is that betrayal acceptable?

Some slaves viewed their interests as aligned with their owners.<sup>102</sup> Thus, fidelity to their owners caused some of these slaves to inform. For example, Scipio, the "body servant" of his owner, revealed a potential uprising in Camden, South Carolina, in 1816 in order to save his owner.<sup>103</sup> Scipio was freed as a result of his efforts but continued to work for his master, although it is unclear whether he was paid for his work or unpaid.<sup>104</sup> Scipio's story raises the matter of whether domestic slaves were more likely to inform than other slaves because of their proximity to or relationship with their owners. Either proximity or relationship might encourage owner loyalty. Part VI addresses in detail the allegation against domestic slaves while this Part discusses the matter without regard to status.

Jim, a slave, presents another example of the extent to which a slave would go to protect an owner's interest. Jim killed another slave who was attacking property Jim's owner had entrusted to Jim.<sup>105</sup> The same

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100. See *infra* Part III.C.

101. See Rich, *supra* note 12, at 1518–23.

102. APTHEKER, *supra* note 37, at 62.

103. JONES, *supra* note 41, at 190; Rory T. Cornish, *Camden, South Carolina, Plot (1816)*, in 1 ENCYCLOPEDIA OF SLAVE RESISTANCE AND REBELLION 97, 97–98 (Junius P. Rodriguez ed., 2007).

104. JONES, *supra* note 41, at 190.

105. *Id.* (citing LEGISLATIVE PETITION FROM RICHARD JOHNSON TO THE SPEAKER

man owned both Jim and the victim.<sup>106</sup> Jim was charged with murder.<sup>107</sup> His owner, Reverend Richard Johnson, petitioned the legislature for Jim's release.<sup>108</sup>

Akin to those who informed because of owner loyalty are those Blacks who did so because of a poor self-image and in an effort to earn White recognition and respect.<sup>109</sup> Harriet Jacobs, as she hid from her owner in her grandmother's attic, observed a free Black man who informed on other Blacks in order to curry favor:

I was warned to keep extremely quiet, because two guests had been invited. One was the town constable, and the other was a free colored man, who tried to pass himself off for white, and who was always ready to do any mean work for the sake of currying favor with white people.<sup>110</sup>

Lew Cheney, a slave in Louisiana who organized a party of slaves to escape to Mexico, betrayed his group when he became "convinced of the ultimate failure of his project, in order to curry favor with his master."<sup>111</sup> Cheney was apparently successful, as he was eventually rewarded for his betrayal.<sup>112</sup> Many suspected slaves from his group, on the other hand, were captured and hurriedly executed.<sup>113</sup>

### *B. Communal Solidarity and Resistance*

If a slave viewed loyalty to the slave community as of prime importance, the slave might also take the position that refusing to inform evidenced and reinforced communal solidarity and resistance of

AND THE HOUSE OF REPRESENTATIVES OF SOUTH CAROLINA (1838), *microformed on Race, Slavery, and Free Blacks: Petitions to Southern Legislatures, 1777-1867*, at Series 1, Reel 11, Frame 0231 (Univ. Publ'ns of Am.) [hereinafter RICHARD JOHNSON PETITION].

106. JONES, *supra* note 41, at 190-91 (citing RICHARD JOHNSON PETITION, *supra* note 105).

107. JONES, *supra* note 41, at 191 (citing RICHARD JOHNSON PETITION, *supra* note 105).

108. JONES, *supra* note 41, at 190-91 (citing RICHARD JOHNSON PETITION, *supra* note 105); *see also* JONES, *supra* note 41, at 128 (documenting slaves' concerns for the safety of their owners).

109. *See* JACOBS, *supra* note 77, at 226 (describing a free Black "who tried to pass himself off for white" and would readily inform on other Blacks); JONES, *supra* note 41, at 190.

110. JACOBS, *supra* note 77, at 226.

111. JULIUS LESTER, *TO BE A SLAVE* 118 (1968) (quoting SOLOMON NORTHUP, *TWELVE YEARS A SLAVE* 188-89 (Sue Eakin & Joseph Logsdon eds., Library S. Civilization 1975) (1853)).

112. LESTER, *supra* note 111, at 118 (citing NORTHUP, *supra* note 111, at 189).

113. *Id.* (citing NORTHUP, *supra* note 111, at 189).

authority. Professor Norrece T. Jones contends that historical sources in South Carolina overwhelmingly support the conclusion that slaves who helped runaways did so voluntarily and reveled in doing so.<sup>114</sup> His position stands in stark contrast to Professor Eugene Genovese's claim that "slaves often refused to betray organized runaways not because of a sense of solidarity but because of fear of ghastly reprisals."<sup>115</sup> Both are likely correct.

In his narrative, Frederick Douglass opined that a slave who refused to inform was demonstrating fidelity to both the Black community and humanity at large.<sup>116</sup> Douglass wrote:

The slaveholders have been known to send in spies among their slaves, to ascertain their views and feelings in regard to their condition. The frequency of this has had the effect to establish among the slaves the maxim, that a still tongue makes a wise head. They suppress the truth rather than take the consequences of telling it, and in so doing prove themselves a part of the human family.<sup>117</sup>

Further, Douglass relates a story he heard when he was a free man in the North.<sup>118</sup> As he writes it, Douglass's tone indicates pleasant surprise at the lengths to which escaped slaves would go to protect each other from being sold back into slavery.<sup>119</sup>

I found the colored people much more spirited than I had supposed they would be. I found among them a determination to protect each other from the blood-thirsty kidnapper, at all hazards. Soon after my arrival, I was told of a circumstance which illustrated their spirit. A colored man and a fugitive slave were on unfriendly terms. The former was heard to threaten the latter with informing his master of his whereabouts. Straightaway a meeting was called among the colored people, under the stereotyped notice, "Business of importance!" The betrayer was invited to attend. The people came at the appointed hour, and organized the meeting by appointing a very religious old gentleman as president, who, I believe, made a

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114. JONES, *supra* note 41, at 168.

115. *See id.* (quoting EUGENE D. GENOVESE, FROM REBELLION TO REVOLUTION: AFRO-AMERICAN SLAVE REVOLTS IN THE MAKING OF THE MODERN WORLD 77 (1979)).

116. *See* DOUGLASS, *supra* note 19, at 30.

117. *Id.*

118. *See id.* at 102–03.

119. *See id.*



prayer, after which he addressed the meeting as follows: “*Friends, we have got him here, and I would recommend that you young men just take him outside the door, and kill him!*” With this, a number of them bolted at him; but they were intercepted by some more timid than themselves, and the betrayer escaped their vengeance, and has not been seen in New Bedford since. I believe there have been no more such threats, and should there be hereafter, I doubt not that death would be the consequence.<sup>120</sup>

### C. Communal Regulation

While slaves may have refused to cooperate as a measure of communal solidarity and resistance, at times they found it necessary to inform in order to ensure the security of the community. Most times, slaves internally controlled miscreants—so called “bad” men<sup>121</sup>—in order to protect each other and because slave owners ignored the negative behavior of slaves unless it affected owners’ property and financial interests.<sup>122</sup> However, when internal communal strife reached a sufficient level that was beyond their ability to control, or desire to control, slaves turned to their White owners to regulate communal behavior.<sup>123</sup> To initiate the involvement of an owner, a slave had to reveal the offending conduct.<sup>124</sup>

What type of behavior or person merited this tactic? Bully slaves who assaulted other slaves would be revealed.<sup>125</sup> Those slaves who taught slave children immoral behavior, such as how to gamble, were subject to outing.<sup>126</sup> A slave who shirked responsibilities, thus forcing others to do more work,<sup>127</sup> and a slave whose behavior might cause an owner to exact penalty upon the entire community could be handed over to an owner.<sup>128</sup> In all these instances, the bad slave would force the

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120. *Id.*

121. GENOVESE, *supra* note 38, at 625 (contrasting “ba-ad” men (respected and admired) and “bad” men (feared)).

122. *See id.* at 625–27, 629.

123. *See id.*

124. *See id.*

125. *See id.* at 627.

126. *See id.*

127. *See id.* at 629.

128. *See id.* (citing ORVILLE W. TAYLOR, *NEGRO SLAVERY IN ARKANSAS* 108 (1959)) (describing a situation in which slaves turned in, rather than protected, a runaway who had killed an overseer).

normally silent slave into invoking White protection by telling on their caste mates.<sup>129</sup>

#### D. Communal Ostracism and Retaliation

Professor Eugene Genovese claimed that “slaves often refused to betray organized runaways . . . because of fear of ghastly reprisals.”<sup>130</sup> Plenty of evidence exists from a variety of sources that slaves who informed on other slaves were stigmatized by the slave community and faced violent physical retaliation.<sup>131</sup> According to Professor Norrece T. Jones, all slaves knew that revealing slave misconduct, with limited exceptions, would be viewed as “sacrilegious and sinful.”<sup>132</sup> Even Whites were aware of this viewpoint.<sup>133</sup>

A justice of the Tennessee Supreme Court—obviously White—confirmed both the nonviolent and violent repercussions in a case in which a slave informant—Isaac—was allegedly killed by another slave—Jim.<sup>134</sup> The Isaac-Jim saga was discussed earlier in the context of identifying active slave informants.<sup>135</sup> In an opinion the justice wrote reviewing Jim’s conviction, he claimed:

The truth seems to be that Isaac had not only excited the enmity of George and Jim, but he seems to have lost *caste* with the other negroes in the neighborhood. He had combined with the white folks to betray George to the sheriff, and it was thought he was also engaged to apprehend Jim.—This was no slight offence in their eyes: that one of their own color, subject to a like servitude, should abandon the interests of his *caste*, and, for hire, betray black folks to the white people, rendered him an object of general aversion. Hence it was, that George and Jim felt so little hesitation in the utterance of their threats; and hence it was, that Cindy did not wish to destroy Jim for such a fellow.<sup>136</sup>

Slave owners too were aware that slaves suspected of or found to be collaborating were subject to being ostracized, assaulted, or killed. Petitions formally filed on behalf of slaves by Whites hinted that slaves

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129. See GENOVESE, *supra* note 38, at 629.

130. JONES, *supra* note 41, at 168 (quoting GENOVESE, *supra* note 115, at 77).

131. See, e.g., JONES, *supra* note 41, at 118.

132. *Id.* at 125.

133. *Id.*

134. See *Jim v. State*, 24 Tenn. (5 Hum.) 145, 151 (1844).

135. See discussion *supra* notes 91–96 and accompanying text.

136. *Jim*, 24 Tenn. (5 Hum.) at 151.

who informed on slaves faced or feared retaliation by Blacks.<sup>137</sup> For these reasons, slave owners would protect the identities of their informants.<sup>138</sup> For example, in Camden, South Carolina, in 1816, a slave revealed a conspiracy scheduled for July 4, 1816.<sup>139</sup> Ultimately, the legislature freed the slave, paid the slave's owner \$1,100, and awarded the slave a life pension of \$50.<sup>140</sup> The slave asked his owner never to reveal the slave's name because he did not want to have "to leave this country, and he knew the negroes would not let him live here."<sup>141</sup>

### *E. Religion*

In the early days of slavery, Whites did not expose slaves to religion for a variety of reasons, including the belief that slaves did not need religion and the fear that slaves would learn to read and write.<sup>142</sup> Eventually, Whites believed that slaves who learned religion would be more subservient and that religion could be a useful tool in maintaining the institution of slavery.<sup>143</sup> White religious leaders strictly controlled Blacks' access to religion and cultivated and enlisted Black religious leaders to assist in detecting and investigating slave misconduct.<sup>144</sup>

Slaves who embraced a religious life told church authorities about formerly private matters handled within the slave community.<sup>145</sup> Some religious slaves would reveal both moral crimes (e.g., adultery, theft) as well as political crimes (e.g., not working, being rebellious, running

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137. *E.g.*, LEGISLATIVE PETITION FROM LEWIS BOLAH TO THE SENATE AND THE HOUSE OF DELEGATES OF THE COMMONWEALTH OF VIRGINIA (1824), *microformed on Race, Slavery, and Free Blacks: Petitions to Southern Legislatures, 1777–1867*, at Series 1, Reel 18, Frame 0450, PAR 11682404 (Univ. Publ'ns of Am.) [hereinafter LEWIS BOLAH PETITION]; JOHN WILSON ET AL. PETITION, *supra* note 51.

138. JONES, *supra* note 41, at 118–19.

139. APTHEKER, *supra* note 37, at 257.

140. *Id.* at 258 (citing An Act Making Appropriations for the Extra Session of the Legislature, in the Year One Thousand Eight Hundred and Seventeen; and for Other Purposes Therein Mentioned, no. 2132, § II, in 6 THE STATUTES AT LARGE OF SOUTH CAROLINA 57, 58 (David J. McCord ed., Columbia, A.S. Johnston 1839) [hereinafter 6 STATUTES AT LARGE OF SOUTH CAROLINA]).

141. APTHEKER, *supra* note 37, at 257 (quoting *Extract of a Letter from a Gentleman in Camden, S.C. to His Friend in Philadelphia, Dated July 4, 1816*, N.Y. EVENING POST, July 18, 1816, at 2).

142. *See* JONES, *supra* note 41, at 131.

143. *See id.* at 131–32.

144. *Id.* at 143–44.

145. *Id.* at 144–45.

away).<sup>146</sup> For example, according to records of the Salem Presbyterian Church dated August 28, 1831:

Cato Servant of John Shaw, was suspended for Six months for an assault made upon one of the Church members. Jack servant of R. Witherspoon, was suspended for six months for charging the above named Cato with theft and Causing the assault.<sup>147</sup>

Others, though religious, distinguished between moral and political crimes, with the latter not being subject to revelation.<sup>148</sup> Interestingly, for those who refused to betray political crimes, religion also provided the justification.<sup>149</sup> Some slaves believed it a deific decree not to reveal the whereabouts of runaways, among other “transgressions.”<sup>150</sup>

#### *F. Protection of Others*

Closely related to communal solidarity was the desire of a slave to protect another individual by not informing. Again, Frederick Douglass’s autobiographical writings are informative.<sup>151</sup> Before narrating how he escaped to freedom, Douglass set forth a caveat regarding his storytelling:

I now come to that part of my life during which I planned, and finally succeeded in making, my escape from slavery. But before narrating any of the peculiar circumstances, I deem it proper to make known my intention not to state all the facts connected with the transaction. My reasons for pursuing this course may be understood from the following: First, were I to give a minute statement of all the facts, it is not only possible, but quite probable, that others would thereby be involved in the most embarrassing difficulties. Secondly, such a statement would most undoubtedly induce greater vigilance on the part of the slaveholders than has existed heretofore among them; which would, of course, be the means of guarding a door whereby some dear brother bondsman might escape his galling chains.<sup>152</sup>

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146. *See id.* at 143, 145–46.

147. *Id.* at 143 (quoting SALEM PRESBYTERIAN CHURCH (BLAIR, S.C.) SESSION MINUTES AND REGISTERS, 1831–1946 (Aug. 28, 1831) (on file with Presbyterian Historical Society)).

148. *See JONES, supra* note 41, at 146.

149. *See id.* at 137.

150. *See id.*

151. *See generally* DOUGLASS, *supra* note 19.

152. *Id.* at 92.

He later reiterated:

But I remained firm, and, according to my resolution, on the third day of September, 1838, I left my chains, and succeeded in reaching New York without the slightest interruption of any kind. How I did so,—what means I adopted,—what direction I travelled, and by what mode of conveyance,—I must leave unexplained, for the reasons before mentioned.<sup>153</sup>

### G. Self-Preservation

When investigating alleged slave misconduct, a slave owner might have given a slave the choice between dying or providing information about another slave's misconduct.<sup>154</sup> Quite naturally, some chose to live.<sup>155</sup> Along a similar vein, some slaves informed in order to prevent or stop Whites from torturing them.<sup>156</sup> The fallout from Nat Turner's rebellion provides such an instance.<sup>157</sup> After learning of Nat Turner's planned insurrection, Whites in Harriet Jacobs' South Carolina town were in fear for their lives.<sup>158</sup> So, they set about to squelch any such plans in their town by calling in poor, non-slaveholding Whites to search the houses of and torture free Blacks and slaves.<sup>159</sup> Jacobs wrote regarding the impending torture:

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153. *Id.* at 97.

154. *See, e.g.*, HARRIET BEECHER STOWE, *UNCLE TOM'S CABIN, OR, LIFE AMONG THE LOWLY* 514–15 (David S. Reynolds ed., Oxford Univ. Press 2011) (1852). Simon Legree, the owner of Tom, the fictional protagonist in Harriet Beecher Stowe's *Uncle Tom's Cabin*, gave Tom such a choice:

“Well, Tom!” said Legree, . . . “do you know I’ve made up my mind to KILL you?”

“It’s very likely, mas’r,” said Tom, calmly.

“I have,” said Legree, with grim, terrible calmness, “*done—just—that—thing*, Tom, unless you’ll tell me what you know about these yer gals!”

*Id.* Tom refused to tell and was beaten to death. *Id.* Later passages reveal him to be motivated by loyalty to his fellow slaves, religious conviction, and an ethic of resisting his owner. *See id.* at 516.

155. JONES, *supra* note 41, at 127.

156. *See id.* at 168, 179; *see also* Alfred L. Brophy, *The Nat Turner Trials*, 91 N.C. L. REV. 1817, 1864–65 (2013) (describing the torture of a slave named Dave and others alleged to be plotting an insurrection in North Carolina, resulting in disclosures).

157. *See infra* Part VII for a discussion of Nat Turner's rebellion.

158. *See* JACOBS, *supra* note 77, at 161.

159. *See id.* at 161–62.

Poor creatures! They thought it was going to be a holiday. I was informed of the true state of affairs, and imparted it to the few I could trust. Most gladly would I have proclaimed it to every slave; but I dared not. All could not be relied on. Mighty is the power of the torturing lash.<sup>160</sup>

Respecting the choice between withstanding torture and informing, Jacobs further commented:

One black man, who had not fortitude to endure scourging, promised to give information about the conspiracy. But it turned out that he knew nothing at all. He had not even heard the name of Nat Turner. The poor fellow had, however, made up a story, which augmented his own sufferings and those of the colored people.<sup>161</sup>

Self-protection also focused on avoiding responsibility for alleged misconduct. Thus, a slave might inform in order to divert or deflect blame from himself.<sup>162</sup> Lew Cheney, who earlier presented as a striking and unsympathetic exemplar of a slave seeking to curry favor with Whites,<sup>163</sup> also presents here as a slave strongly motivated by his own interests. Cheney, a Louisiana slave, organized a group of slaves to run away to Mexico.<sup>164</sup> However, when he became “convinced of the ultimate failure of his project,”<sup>165</sup> he sought to avoid the negative consequences that would naturally follow if it were learned that he organized the mass escape.<sup>166</sup>

Departing secretly from the encampment, he proclaimed among the planters the number[s] collected in the swamp, and, instead of stating truly the object they had in view, asserted their intention was to emerge from their seclusion the first favorable opportunity, and murder every white person along the bayou.<sup>167</sup>

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160. *Id.* at 161.

161. *Id.* at 165.

162. *See* JONES, *supra* note 41, at 128.

163. *See* NORTHUP, *supra* note 111, at 188–89; *see also* discussion *supra* Part III.A.

164. *See* LESTER, *supra* note 111, at 118 (citing NORTHUP, *supra* note 111, at 188).

165. LESTER, *supra* note 111, at 118 (quoting NORTHUP, *supra* note 111, at 189).

166. LESTER, *supra* note 111, at 118 (citing NORTHUP, *supra* note 111, at 189).

167. LESTER, *supra* note 111, at 118 (alteration in original) (quoting NORTHUP, *supra* note 111, at 189).

Cheney was rewarded while his campmates were captured and executed.<sup>168</sup>

The Negro Plot Trials of 1741 tell the story of northern slaves who informed—sometimes falsely—to deflect criminal attention, as Whites were vigorously investigating and prosecuting slaves for a perceived insurrection.<sup>169</sup> In 1741, a series of fires started throughout New York City.<sup>170</sup> Whites began to believe that slaves—and possibly some Whites—were starting the fires.<sup>171</sup> Hysteria reigned and Whites targeted Blacks to round up and arrest.<sup>172</sup> A grand jury was impaneled to investigate.<sup>173</sup> Trials lacking due process—though granting more process than normally accorded slaves—were quickly held, resulting in many convictions and executions.<sup>174</sup>

In the course of investigating and adjudicating the fires and alleged conspiracy, monetary rewards and pardons were offered to Whites and Blacks for information: a free person could receive £100 for information; a free Black could receive £45 and be pardoned; and a slave could be freed, receive £20, and be pardoned while his master could receive £25.<sup>175</sup> Additionally, slaves who came under suspicion informed to protect themselves from harsh punishment by diverting attention to other slaves.<sup>176</sup> For example, Sandy—the first slave to confess to the grand jury—was able to save his life through informing.<sup>177</sup> Quaco and Cuffee, however, who were both convicted after trial, were still executed after confessing at the last moment.<sup>178</sup> Today, scholars debate whether

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168. LESTER, *supra* note 111, at 118 (citing NORTHUP, *supra* note 111, at 189).

169. *See generally* HOFFER, *supra* note 39.

170. *Id.* at 71–73.

171. *Id.* at 2, 73–74.

172. *Id.*

173. *Id.* at 74–80.

174. *See id.* at 81–129.

175. *Id.* at 75 (citing Minutes of the Common Council of New York, April 11, 1741, in 5 MINUTES OF THE COMMON COUNCIL OF THE CITY OF NEW YORK 1675–1776, at 17 (1905)).

176. HOFFER, *supra* note 39, at 125–28. Whites too were frequent informers. *Id.* at 76–77, 82. Whites, particularly White servants, informed on Blacks and other Whites; some received freedom and compensation (e.g., Mary Burton—a White servant, and the first grand jury witness). *Id.* at 82, 166; MAT JOHNSON, THE GREAT NEGRO PLOT: A TALE OF CONSPIRACY AND MURDER IN EIGHTEENTH-CENTURY NEW YORK 99–100 (2007).

177. HOFFER, *supra* note 39, at 88–89, 91, 116.

178. *Id.* at 102–03. Quaco and Cuffee, convicted and sentenced to death by immolation, confessed at the last hour but were still executed. *Id.* Confessions by slaves were admissible in criminal cases of slaves, though confessions by slaves to law enforcement or corrections officers were given little weight because the slave’s “habit of obedience . . . compels him to

there was an actual concerted plot by slaves, a hoax, or something in between.<sup>179</sup> Nonetheless, the available evidence confirms that slaves were motivated by self-preservation to inform on other slaves.

#### *H. Criminal Leniency*

Slaves who were involved in unlawful conspiracies obtained sentencing leniency, such as the avoidance of execution, by testifying against other slaves.<sup>180</sup> For example, a slave named John was convicted of conspiracy and attempted insurrection after he confessed and pled guilty.<sup>181</sup> Having testified against other slaves, he was sentenced to be sold out of the United States rather than executed, which was the usual punishment for his crime.<sup>182</sup> In another instance, a slave named Paul, also known as Figaro, was involved in an insurrection plot in Charleston.<sup>183</sup> He testified against other slaves who were convicted and executed.<sup>184</sup> Paul's sentence, however, was reduced from execution to sale out of the country.<sup>185</sup> Similarly, Moses, one of the early participants

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answer all questions of the idlest curiosity, while his mendacious disposition will always involve even the most innocent in the most contradictory inconsistencies." The Law of Negro Slavery, ch. 18, § 315, in 1 AN INQUIRY INTO THE LAW OF NEGRO SLAVERY IN THE UNITED STATES OF AMERICA 3, 271 (Thomas R. R. Cobb ed., Phila., T. & J. W. Johnson & Co. 1858) [hereinafter LAW OF NEGRO SLAVERY]. Confessions by slaves to their masters were inadmissible in criminal cases against slaves because "slave[s] [were] always ready to mould . . . answers so as to please the master, and . . . no confidence [could] be placed in the truth of his statements." The Law of Negro Slavery, ch. 18, § 317, in LAW OF NEGRO SLAVERY, *supra*, at 3, 272.

179. See HOFFER, *supra* note 39, at 1–9.

180. Unquestionably and uniformly, slaves were incompetent to be witnesses in cases for or against free Whites. The Law of Negro Slavery, ch. 13, §§ 247, 253, in LAW OF NEGRO SLAVERY, *supra* note 178, at 3, 226, 230. Exclusion was justified on the grounds that slaves were "servile" and "mendacious." The Law of Negro Slavery, ch. 13, §§ 247, 256, in LAW OF NEGRO SLAVERY, *supra* note 178, at 3, 226, 233. In cases involving only slaves or free Blacks, slaves were permitted to serve as witnesses. The Law of Negro Slavery, ch. 13, § 253, in LAW OF NEGRO SLAVERY, *supra* note 178, at 3, 230.

181. See LEGISLATIVE PETITION FROM JOSEPH ENSLOW TO THE PRESIDENT AND MEMBERS OF THE SENATE OF SOUTH CAROLINA (1831), *microformed on Race, Slavery, and Free Blacks: Petitions to Southern Legislatures, 1777–1867*, at Series 1, Reel 11, Frame 0007 (Univ. Publ'ns of Am.).

182. See *id.* He died while imprisoned awaiting sale. *Id.* His owner sought compensation from the State. *Id.*

183. See LEGISLATIVE PETITION FROM JAMES DELAIRE TO PRESIDENT JOHN WARD AND THE MEMBERS OF THE SENATE OF SOUTH CAROLINA (1798), *microformed on Race, Slavery, and Free Blacks: Petitions to Southern Legislatures, 1777–1867*, at Series 1, Reel 8, Frame 0482 (Univ. Publ'ns of Am.).

184. *Id.*

185. *Id.* While awaiting sale, his toes on one of his feet rotted and his foot fell off. *Id.*



in the Nat Turner rebellion in Southampton, Virginia, was caught and charged with murder and conspiracy.<sup>186</sup> He, however, provided important testimony against other slaves.<sup>187</sup> Though he was convicted and sentenced to death in spite of his cooperation, the court “recommended that the governor commute his sentence to transportation out[] of the state.”<sup>188</sup> Finally, a Louisiana court expressly held that a jury had the discretion to commute a capital sentence, presumably for informing, if it so desired.<sup>189</sup>

### I. Manumission

The prospect of manumission was a strong motivator for informing.<sup>190</sup> In the early years of slavery, owners could free slaves by will as a private matter.<sup>191</sup> Over time, legislatures began to publicly regulate manumission: freeing slaves became illegal except with government approval, whether executive or legislative.<sup>192</sup>

Only the most helpful of informants were eligible for manumission. In Louisiana as of 1831, with legislative approval, an owner could emancipate a slave “for long, faithful or important services rendered to

His owner, James Delaire, petitioned for compensation due to the reduced sale value of Paul. *Id.*

186. See *infra* Part VII for a description of the Turner rebellion. For more discussion regarding Moses, see Brophy *supra* note 156 at 1825 & n.45 (citing EXTRACT FROM THE COURT RECORDS OF SOUTHAMPTON COUNTY, VIRGINIA (1831), reprinted in HENRY IRVING TRAGLE, THE SOUTHAMPTON SLAVE REVOLT OF 1831: A COMPILATION OF SOURCE MATERIAL 177, 185–86, 200–01, 220–21 (1971)).

187. Brophy, *supra* note 156, at 1825 n.45 (citing EXTRACT FROM THE COURT RECORDS OF SOUTHAMPTON COUNTY, VIRGINIA, *supra* note 186, at 185–86, 200–01, 220–21).

188. Brophy, *supra* note 156 at 1825 n.45 (citing EXTRACT FROM THE COURT RECORDS OF SOUTHAMPTON COUNTY, VIRGINIA *supra* note 186, at 221).

189. See *State v. Slave Jack*, 14 La. Ann. 385, 386 (1859) (holding that a jury has discretion to commute a capital sentence). In this case, the jury commuted the sentence, but did not reveal the grounds for doing so, suggesting that informing could possibly have been the reason. See *id.* at 385.

190. JONES, *supra* note 41, at 127.

191. See LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 219 (2d ed. 1985) (identifying Virginia and Maryland as allowing private manumission).

192. *E.g.*, An Act to Restrain the Emancipation of Slaves, and to Prevent Free Persons of Color from Entering into This State; and for Other Purposes, no. 2236, § I (1820), in 7 STATUTES AT LARGE OF SOUTH CAROLINA, *supra* note 40, at 459 (providing that emancipation may only occur by legislative act); An Act to Determine the Mode of Emancipating Slaves Who Have Not Attained the Age Required by the Civil Code for Their Emancipation (1827), in 2 STATUTES ON SLAVERY, *supra* note 36, at 59–60.

himself or family.”<sup>193</sup> Similarly, the Louisiana Code provided in 1851 that governors could free, as well as pardon or commute the sentences of, slave informants.<sup>194</sup> The Virginia legislature permitted freedom for “meritorious services, to be judged of by the Governor and Council.”<sup>195</sup> Revelation of a slave conspiracy constituted “[m]eritorious services.”<sup>196</sup>

In South Carolina, a slave could be emancipated if the slave, “in actual invasion, kill[s] or take[s] one or more of our enemies, and the same shall prove, by any white person, to be done by him, shall, for his reward, at the charge of the public, have and enjoy his freedom, for such his taking or killing, as aforesaid.”<sup>197</sup> Finally, in North Carolina, emancipation could be sought for informants who revealed the whereabouts of runaways.<sup>198</sup> Toney, a slave owned by Samuel White,

193. An Act to Amend an Act Entitled “An Act to Prevent Free Persons of Colour from Entering into This State and for Other Purposes,” § 2 (1831), in 2 STATUTES ON SLAVERY, *supra* note 36, at 73.

194. See *McDowell v. Couch*, 6 La. Ann. 365, 370 (1851) (citing An Act to Amend an Act Entitled “An Act Supplementary to an Act for the Punishment of Crimes and Misdemeanors,” and Other Supplementary Acts, Passed on the Twentieth March, Eighteen Hundred and Eighteen, Crimes and Misdemeanors, no. 18, § 1 (1823), in 1 A GENERAL DIGEST OF THE ACTS OF THE LEGISLATURE OF LOUISIANA: PASSED FROM THE YEAR 1804, TO 1827, INCLUSIVE, AND IN FORCE AT THIS LAST PERIOD, WITH AN APPENDIX AND GENERAL INDEX 403 (L. Moreau Lislet ed., New Orleans, Benjamin Levy 1828) [hereinafter DIGEST OF LOUISIANA]). Upon petition, the Governor or Senate had authority to commute a slave’s death sentence to life in prison “whenever the circumstances of the case are such as to entitle the offender to such commutation.” *McDowell*, 6 La. Ann. at 370 (quoting An Act to Amend an Act Entitled “An Act Supplementary to an Act for the Punishment of Crimes and Misdemeanors,” and Other Supplementary Acts, Passed on the Twentieth March, Eighteen Hundred and Eighteen, Crimes and Misdemeanors, no. 18, § 1 (1823), in DIGEST OF LOUISIANA, *supra*, at 403). Presumably, such “circumstances” would include informing.

195. An Act Reducing into One, the Several Acts Concerning Slaves, Free Negroes and Mulattoes, no. C.111, § 53 (1819), in 1 THE REVISED CODE OF THE LAWS OF VIRGINIA: BEING A COLLECTION OF ALL SUCH ACTS OF THE GENERAL ASSEMBLY, OF A PUBLIC AND PERMANENT NATURE, AS NOW ARE IN FORCE; WITH A GENERAL INDEX 421, 433–34 & n.\* (Richmond, Thomas Ritchie 1819) [hereinafter CODE OF THE LAWS OF VIRGINIA] (stating that in 1723, the Virginia legislature enacted a statute preventing emancipation by will; the statute continued in force until 1748).

196. An Act Reducing into One, the Several Acts Concerning Slaves, Free Negroes and Mulattoes, no. C.111, § 53 (1819), in CODE OF THE LAWS OF VIRGINIA, *supra* note 195, at 433–34 & n.\*; HIGGINBOTHAM, *supra* note 25, at 48.

197. An Act for Enlisting Such Trusty Slaves as Shall Be Thought Serviceable to This Province in Time of Alarms, no. 278, § V (1708), in 7 STATUTES AT LARGE OF SOUTH CAROLINA, *supra* note 40, at 349, 350.

198. *E.g.*, Petition to the County Court of Quarter Sessions for the County of Pasquotank, North Carolina from J. Banks et al. (1972), *microformed on Race, Slavery, and Free Blacks: Petitions to Southern Legislatures, 1775–1867*, at Series 2, Part D, Reel 1, Frame 0138, PAR 21279202 (Univ. Publ’ns of Am.).

learned of a plan by slaves and the owner of a ship to convey the slaves North.<sup>199</sup> Toney revealed the plan and some of the slaves were thwarted.<sup>200</sup> To reward his revelation, a group of sixteen White community members petitioned the court to free Toney.<sup>201</sup>

### *J. Remaining in State*

A desirable reward closely connected to emancipation was the ability of an ex-slave to remain in state near one's family and home. Thus, legislatures also sanctioned this reward for informing. In Virginia, after May 1, 1806, any slave "emancipated for 'an act, or acts of' extraordinary merit" could apply to remain in state.<sup>202</sup> On the other hand, a slave emancipated by will was required to leave state within twelve months.<sup>203</sup>

Lewis Bolah represents an example in which a slave informant, who had been emancipated for revealing a rebellion, petitioned to remain in state after emancipation. While he could not have independently sought his emancipation, as a free man he could ask to remain in state.<sup>204</sup> In 1812, Bolah revealed an insurrection plot among slaves, free people of color, and "a few abandoned and lawless White persons" in New Orleans.<sup>205</sup> In 1813, the governor of Louisiana granted Bolah, and others, freedom.<sup>206</sup> Fearing for his safety in New Orleans, he sought to leave Louisiana.<sup>207</sup> He petitioned the Virginia House to allow him to reside in Richmond, near where he had lived before he was sold down south to New Orleans.<sup>208</sup>

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199. *Id.*

200. *Id.*

201. *Id.*

202. An Act Reducing into One, the Several Acts Concerning Slaves, Free Negroes and Mulattoes, no. C.111, § 62 (1819), in CODE OF THE LAWS OF VIRGINIA, *supra* note 195, at 436.

203. An Act Reducing into One, the Several Acts Concerning Slaves, Free Negroes and Mulattoes, no. C.111, § 61 (1819), in CODE OF THE LAWS OF VIRGINIA, *supra* note 195, at 436. Slave could be emancipated by will. An Act Reducing into One, the Several Acts Concerning Slaves, Free Negroes and Mulattoes, no. C.111, § 53 (1819), in CODE OF THE LAWS OF VIRGINIA, *supra* note 195, at 433–34.

204. LEWIS BOLAH PETITION, *supra* note 137.

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

Similarly, a former slave emancipated by self-purchase could petition to remain in state. Moses, a slave, purchased his freedom.<sup>209</sup> He petitioned the court to allow him to remain in the state but the petition was denied for lack of “extraordinary merit.”<sup>210</sup> In this petition, he had avowed that he had served his mistress well, was of good character, had saved his mistress from a house fire, and was “always . . . watchful to detect and desirous to suppress those mischiefs and vices in slaves and free Persons of Colour.”<sup>211</sup> Apparently this was an insufficient basis to remain in the state. He successfully re-petitioned, avowing:

In times when there were frequent alarms of insurrections of the Blacks, when in the neighborhood, where [their] number was great being near large estates and extensive coal mines your Petitioner has more than once secretly made known to his Mistress the whispers of such plots being agitated and concerning them [h]e was always distressed and anxious to make discoveries.<sup>212</sup>

#### *K. Monetary Reward*

Surprisingly, monetary rewards to slave informants—either in conjunction with or distinct from emancipation—were available.<sup>213</sup> Blacks as a class were prevented by law from both personal freedom and

209. LEGISLATIVE PETITION FROM MOSES TO THE LEGISLATURE OF VIRGINIA (1822), *microformed on Race, Slavery, and Free Blacks: Petitions to Southern Legislatures, 1777–1867*, at Series 1, Reel 18, Frame 0349, PAR 11682205 (Univ. Publ’ns of Am.) [hereinafter MOSES PETITION].

210. *Id.*

211. *Id.*

212. *Id.*; see also APTHEKER, *supra* note 37, at 273 n.26 (“In times when there were frequent alarms of insurrections of the Blacks, in the neighborhood, where [their] . . . number was great being near large estates and extensive coal mines your Petitioner has more than once secretly made known to his Mistress the whispers of such Plots being agitated and concerning them he was always distressed and anxious to make discoveries.” (alteration in original) (quoting MOSES PETITION, *supra* note 209)).

213. See, e.g., APTHEKER, *supra* note 37, at 143 (citing An Act for Ordering and Governing Slaves within This Province, and for Establishing a Jurisdiction for the Trial of Offences Committed by Such Slaves, and Other Persons Therein Mentioned, and to Prevent the Inveighling, and Carrying Away Slaves from Their Masters, Owners, or Employers, §§ 13–14 (1770), in DIGEST OF THE LAWS OF THE STATE OF GEORGIA, *supra* note 37, at 426, 430–31); HOFFER, *supra* note 39, at 75 (citing Minutes of the Common Council of New York, April 11, 1741, in 5 MINUTES OF THE COMMON COUNCIL OF THE CITY OF NEW YORK 1675–1776, at 17 (1905)). These rewards were not part of the system of rewards available to Whites who acted as “informers” or private prosecutors. See discussion *supra* notes 35–36 and accompanying text.

possession of property, thereby ensuring and fortifying their complete marginalization.<sup>214</sup> The permissibility of a monetary reward for informing thus reveals the lengths to which Whites were willing to go in order to obtain highly valuable information. Monetary rewards could also serve as a strong motivator to slaves.<sup>215</sup>

As with manumission, a slave entitled to a monetary reward had to have performed exceptional acts.<sup>216</sup> Slaves who betrayed insurrections received monetary rewards.<sup>217</sup> In 1822, the South Carolina legislature emancipated Peter Desverneys, a slave who revealed the Denmark Vesey insurrection plot.<sup>218</sup> In addition to his freedom, Desverneys was awarded \$50 per year.<sup>219</sup> In 1857, he petitioned the legislature for an increase in his annuity due to old age and poor health.<sup>220</sup> He was supported by multiple members of the community.<sup>221</sup>

Slaves who assisted slaveholders in capturing runaways received monetary rewards.<sup>222</sup> Recall that Georgia and South Carolina provided monetary rewards to slaves revealing poisonings,<sup>223</sup> and South Carolina also did so for slaves disclosing stolen property.<sup>224</sup>

214. See The Law of Negro Slavery, ch. 14, § 258, in *LAW OF NEGRO SLAVERY*, *supra* note 178, at 3, 235. Slaves were legally prevented from owning property. *Id.* A slave's person and his time were the property of his master; thus, any earnings or property resulting from his labor became the property of his master. The Law of Negro Slavery, ch. 14, §§ 258, 261, in *LAW OF NEGRO SLAVERY*, *supra* note 178, at 3, 235, 237.

215. See JONES, *supra* note 41, at 127.

216. See, e.g., An Act for the Better Ordering and Governing of Negroes and Slaves, no. 314, § XXVI (1712), in 7 *STATUTES AT LARGE OF SOUTH CAROLINA*, *supra* note 40, at 352, 362.

217. See, e.g., JONES, *supra* note 41, at 179.

218. See LEGISLATIVE PETITION FROM PETER DESVERNEYS TO THE STATE OF SOUTH CAROLINA, THE SENATE AND HOUSE OF REPRESENTATIVES SITTING IN GENERAL ASSEMBLY (1857), *microformed on Race, Slavery, and Free Blacks: Petitions to Southern Legislatures, 1777–1867*, at Series 1, Reel 11, Frame 0617 (Univ. Publ'ns of Am.) [hereinafter PETER DESVERNEYS PETITION]; see also discussion *infra* Part V.

219. PETER DESVERNEYS PETITION, *supra* note 218.

220. *Id.*

221. *Id.* (indicating that this request was apparently granted and his annuity was raised to \$150 per year).

222. JONES, *supra* note 41, at 168.

223. An Additional and Explanatory Act to an Act of the General Assembly of This Province, Entitled "An Act for the Better Ordering and Governing Negroes and Other Slaves in This Province;" and for Continuing Such Part of the Said Act as Is Not Altered or Amended by This Present Act, for the Term Therein Mentioned, no. 790, § VIII (1751), in 7 *STATUTES AT LARGE OF SOUTH CAROLINA*, *supra* note 40, at 420, 423; AP THEKER, *supra* note 37, at 143 (citing An Act for Ordering and Governing Slaves within This Province, and for Establishing a Jurisdiction for the Trial of Offences Committed by Such Slaves, and Other

Outside the government-backed system of monetary rewards, slave owners offered money for assistance. For example, recall that Harriet Jacobs' owner offered money to a colored woman living in New York in exchange for information about Harriet's whereabouts.<sup>225</sup> Jacobs' owner suspected Jacobs was living in New York, although she was hiding right under his nose.<sup>226</sup> The offer was apparently unsuccessful—either for the woman's unwillingness to inform or lack of information—as Harriet continued in hiding for many years thereafter.<sup>227</sup> Henry Bibb, however, was not so lucky.<sup>228</sup> In July 1839, Bibb, a fugitive slave, returned to Kentucky, where his mother, wife, and child lived.<sup>229</sup> He intended to free his wife and child.<sup>230</sup> When he arrived, he called on his mother at her house.<sup>231</sup> “[A] little slave girl” was in the house with his mother when he entered.<sup>232</sup> The girl acted as if she were asleep, and listened to the whole conversation, which she then reported.<sup>233</sup> Bibb laid low for a while, hoping that his owner would believe the slave girl was lying.<sup>234</sup> It almost worked, until he was betrayed by a “new” friend, who was a slave, “for the sum of five dollars,” which had been offered by Bibb's owner.<sup>235</sup>

A variety of motivations underlay Blacks' decisions to inform during slavery. Some of the drivers were rooted in loyalty—whether to one's owner, the Black community, self, or another slave. Other considerations constituted rewards such as criminal leniency, money,

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Persons Therein Mentioned, and to Prevent the Inveighling, and Carrying Away Slaves from Their Masters, Owners, or Employers, §§ 13–14 (1770), in *DIGEST OF THE LAWS OF THE STATE OF GEORGIA*, *supra* note 37, at 426, 430–31 (stating that a Georgia informer received twenty shillings per year till death and was excused from work on the day he received the reward).

224. An Additional Act to an Act Entitled “An Act for the Better Ordering and Governing Negroes and All Other Slaves,” no. 344, § VIII (1714), in *7 STATUTES AT LARGE OF SOUTH CAROLINA*, *supra* note 40, at 365, 367.

225. JACOBS, *supra* note 77, at 222.

226. *Id.*

227. *See generally* JACOBS, *supra* note 77.

228. *Compare id.* at 222, with HENRY BIBB, *NARRATIVE OF THE LIFE AND ADVENTURES OF HENRY BIBB: AN AMERICAN SLAVE* 85–86 (Charles J. Hegler ed., Univ. of Wis. Press 2001) (1849).

229. BIBB, *supra* note 228, at 84–86.

230. *Id.* at 86–87.

231. *Id.* at 84.

232. *Id.*

233. *Id.* at 84–85.

234. *See id.* at 86.

235. *Id.*

freedom, and continued in-state residency. Finally, avoidance of community intimidation, religious belief, and indigenous communal regulation might be factors.

#### IV. A CODE OF SILENCE

Conclusively determining whether Blacks—individually or collectively—adhered to a code of silence is problematic for it is generally difficult to prove a negative. Nonetheless, comparison of information from sources with different interests affords the opportunity to consider the possibility.<sup>236</sup> Additionally, data may be gleaned from evidence of coping mechanisms adopted by Blacks in response to slavery.<sup>237</sup>

Both slaveholders and slaves provide proof that Blacks kept their tongues silent regarding the misdeeds of other Blacks. Historian Eugene Genovese noted that owners of slaves perceived slaves to be unwilling to betray each other.<sup>238</sup> For example, Reverend C.C. Jones opined:

[T]he Negroes are scrupulous on one point[,] they make common cause, as servants, in *concealing* their faults from their owners. Inquiry elicits no information; no one feels at liberty to disclose the transgressor; all are profoundly ignorant; the matter assumes the sacredness of a “professional secret.”<sup>239</sup>

C.W. Gooch suggested that “no greater crime existed for the slaves than that of betraying one another to the whites.”<sup>240</sup> Similarly, Whitemarsh B. Seabrook stated: “Between slaves on the same plantation there is a deep sympathy of feeling which binds them so closely together that a crime committed by one of their number is seldom discovered through their instrumentality.”<sup>241</sup>

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236. See DOUGLASS, *supra* note 19, at 92; GENOVESE, *supra* note 38, at 622; Josiah Henson, *The Life of Josiah Henson, Formerly a Slave, Now an Inhabitant of Canada* (1849), in *I I WAS BORN A SLAVE: AN ANTHOLOGY OF CLASSIC SLAVE NARRATIVES* 719, 746 (Yuval Taylor ed., 1999); JONES, *supra* note 41, at 167–70.

237. See GENOVESE, *supra* note 38, at 437.

238. *Id.* at 622.

239. *Id.* (alteration in original) (quoting CHARLES C. JONES, *THE RELIGIOUS INSTRUCTION OF THE NEGROES IN THE UNITED STATES* 130 (Savannah, Thomas Purse 1842)).

240. See GENOVESE, *supra* note 38, at 622 (citing C.W. Gooch, *Prize Essay on Agriculture in Virginia*, 1 *FARMERS’ REG.* 121, 124 (1833)).

241. GENOVESE, *supra* note 38, at 622 (quoting WHITEMARSH B. SEABROOK, *AN*

More narrowly, with respect to the troubling and costly problem of runaways, slaveholders were acutely aware that runaways could not have been successful without the help of other slaves on the plantation and elsewhere.<sup>242</sup> Help consisted not simply of refusing to reveal the existence of a runaway, but seemingly also of killing and burying tracking dogs, and providing food, shelter, and weapons.<sup>243</sup>

The individual stories of runaway slaves confirm the ethic of silence that troubled slaveholders. In his narrative, Josiah Henson, an escaped slave, recalled receiving the assistance of a slave who expected that Henson would never reveal the assistance:

It was a dark, moonless night, and we got into the little skiff in which I had induced a fellow-slave to take us across the river. It was an agitating and solemn moment. The good fellow who was rowing us over, said this affair might end in his death; “but,” said he, “you will not be brought back alive, will you?” “Not if I can help it,” I answered. “And if you are overpowered and return,” he asked, “will you conceal my part of the business?” “That I will, so help me God,” I replied. “Then I am easy,” he answered, “and wish you success.”<sup>244</sup>

Similarly, Frederick Douglass, when writing his narrative, revealed an unwillingness to disclose the names of those who helped him as he escaped to the North.<sup>245</sup>

I now come to that part of my life during which I planned, and finally succeeded in making, my escape from slavery. But before narrating any of the peculiar circumstances, I deem it proper to make known my intention not to state all the facts connected with the transaction. My reasons for pursuing this course may be understood from the following: First, were I to give a minute statement of all the facts, it is not only possible, but quite probable, that others would thereby be involved in the most embarrassing difficulties. Secondly, such a statement would most undoubtedly induce greater vigilance on the part of slaveholders than has existed heretofore among them; which would, of course,

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ESSAY ON THE MANAGEMENT OF SLAVES, AND ESPECIALLY, ON THEIR RELIGIOUS INSTRUCTION 12 (Charleston, A.E. Miller 1834)).

242. JONES, *supra* note 41, at 167, 170.

243. *Id.* at 167–68.

244. Henson, *supra* note 236, at 746.

245. DOUGLASS, *supra* note 19, at 92.



be the means of guarding a door whereby some dear brother bondman might escape his galling chains.<sup>246</sup>

He further wrote regarding his escape story:

But I remained firm, and, according to my resolution, on the third day of September, 1838, I left my chains, and succeeded in reaching New York without the slightest interruption of any kind. How I did so,—what means I adopted,—what direction I travelled, and by what mode of conveyance,—I must leave unexplained, for the reasons before mentioned.<sup>247</sup>

Additionally, the Underground Railroad stands as unquestionable proof of an ability and a willingness of slaves to maintain silence regarding runaways.<sup>248</sup> The number of slaves successfully escaping via the Underground Railroad is unknown; however, the number of successful escapees is undoubtedly small in proportion to the number of slaves.<sup>249</sup> Nevertheless, the fact of its existence—which is unquestionable—as well as its efficacy and lasting nature presents strong evidence of a slave code of silence. Without Blacks keeping the secrets of those attempting escape, success would have been highly unlikely for any escapee.

Evidence suggests that not only did Blacks withhold information regarding runaway slaves, they also were unwilling to disclose more mundane forms of misconduct. Douglass wrote: “The slaveholders have been known to send in spies among their slaves, to ascertain their views and feelings in regard to their condition. The frequency of this has had the effect to establish among the slaves the maxim, that a still tongue makes a wise head.”<sup>250</sup>

Finally, while refusal to divulge information to Whites was apparently desirable behavior among some slaves, sometimes it was necessary to surreptitiously communicate about impermissible subjects in front of Whites and potential informants. Thus, slaves developed a system of coded language to prevent outsiders and informants from

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246. *Id.*

247. *Id.* at 97.

248. See James A. Delle & Jason Shellenhamer, *Archaeology at the Parvin Homestead: Searching for the Material Legacy of the Underground Railroad*, HIST. ARCHAEOLOGY, no. 2, 2008 at 38, 39–40.

249. See *id.*

250. DOUGLASS, *supra* note 19, at 30.

understanding their conversations.<sup>251</sup> As explained by Professor Eugene Genovese, slaves—in particular field slaves—developed a language and style of speaking all their own.<sup>252</sup> Not only did their language allow slaves from different African cultures to communicate, but it prevented outsiders from understanding what was being said. Thus, slaves, particularly field slaves, were able “to communicate with each other in the presence of whites with some measure of safety,” which “helped immeasurably to prevent informers from having too much to convey to the masters beyond impressions and suspicions.”<sup>253</sup>

Available evidence makes clear that some Blacks held a personal ethic against providing incriminating information about other Blacks to Whites. Additionally, there is support for the proposition that Blacks on the whole adhered to a code of silence. Nonetheless, without more information, drawing a definite conclusion as to the existence of a communal ethic of silence is premature.

#### V. THE ULTIMATE BETRAYAL

Black informers during slavery revealed all manner of Black misconduct,<sup>254</sup> including assaults, rivalries, sexual infidelities, and theft.<sup>255</sup> As the discussion in Part III evidences, such revelations might spur ostracism if not actual retaliation. However, a Black person’s willingness to disclose a plan of rebellion or the location of a runaway might be characterized as the ultimate form of betrayal whether viewed from the perspective of the enslaved or their owners.

Given the complete legal and social oppression of the enslaved, it is reasonable to hypothesize that freedom and liberty—or the possibilities thereof—were extremely valued by slaves. Two potential means of successfully achieving these states were rebellion and escape. Consequently, it stands to reason that a Black person who revealed a slave insurrection or the whereabouts of a runaway might become greatly reviled, unless arguably the revelation was made with good cause, such as because of torture.

Slave owners and Whites too placed high value on the willingness of Blacks to inform on rebels and, to a slightly smaller extent, runaways.

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251. GENOVESE, *supra* note 38, at 437.

252. *Id.* at 431–41.

253. *See id.* at 437.

254. JONES, *supra* note 41, at 127.

255. *See id.* at 145, 189.

Evidence of such high value can be found in the granting of freedom to some slaves who revealed insurrections.<sup>256</sup> A slave who demonstrated loyalty to Whites and protected their interests garnered the greatest reward.

Notwithstanding that divulgements of the plans of rebels or runaways might merit extreme contempt from Blacks, such betrayals are well-documented. Researchers have substantiated numerous instances in which planned rebellions were betrayed beforehand by slaves.<sup>257</sup> Indeed, Professor Norrece Jones notes that many slaves believed rebellions were always betrayed beforehand.<sup>258</sup> Two well-known rebellions that were betrayed before they got underway include the Gabriel Prosser rebellion in Richmond, Virginia, in 1800 and the Denmark Vesey rebellion in Charleston, South Carolina, in 1822.<sup>259</sup>

During the spring and summer of 1800, Prosser planned his rebellion.<sup>260</sup> By August, several thousand slaves had been enlisted.<sup>261</sup> On the day it was to begin, August 30, two slaves, Tom and Pharaoh,<sup>262</sup> betrayed the plot to their master who in turn told authorities.<sup>263</sup> The governor called out the militia.<sup>264</sup> Prosser did not know of the betrayal and that night approximately 1,000 slaves gathered.<sup>265</sup> A thunderstorm prevented them from attacking when the storm washed out points of entry into the city.<sup>266</sup> So, Prosser postponed the attack.<sup>267</sup> He fled by boat but was located in Norfolk, Virginia, on September 25, 1800, by “two Negroes” who ultimately betrayed him.<sup>268</sup> Prosser and many co-conspirators were arrested before they could re-assemble to carry out the insurrection.<sup>269</sup>

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256. See discussion *supra* Part III.I.

257. See, e.g., AP THEKER, *supra* note 37, at 170, 173–74, 189, 222; JONES, *supra* note 41, at 179.

258. JONES, *supra* note 41, at 191 (citing THOMAS WENTWORTH HIGGINSON, *ARMY LIFE IN A BLACK REGIMENT* 248 (Boston, Fields, Osgood, & Co. 1870)).

259. BENNETT, *supra* note 81, at 125–31.

260. *Id.* at 125.

261. *Id.* at 126.

262. AP THEKER, *supra* note 37, at 221.

263. *Id.*; BENNETT, *supra* note 81, at 126.

264. BENNETT, *supra* note 81, at 126.

265. *Id.*

266. *Id.*

267. *Id.*

268. AP THEKER, *supra* note 37, at 222.

269. BENNETT, *supra* note 81, at 126.

Denmark Vesey sought to strike Charleston, South Carolina, in 1822.<sup>270</sup> Peter Poyas was Vesey's second-in-command.<sup>271</sup> Poyas identified house slaves as the most likely of betrayers.<sup>272</sup> "He told one of his recruiting agents to 'take care and don't mention it to those waiting men who receive presents of old coats, etc., from their masters, or they'll betray us: *I will speak to them.*'"<sup>273</sup> Notwithstanding Poyas' command, some slaves ignored his instruction because they knew of house slaves "willing to poison their masters' wells."<sup>274</sup> The attack was planned for July 16, 1822.<sup>275</sup> An estimated 9,000 slaves had been enlisted.<sup>276</sup>

Authorities detected the plan in the last week of May when a slave named William Paul tried to recruit Peter Devaney, a house slave.<sup>277</sup> Devaney betrayed the group by consulting a free Black named William Pencil who advised Devaney to tell his master, which he did.<sup>278</sup> However, Devaney was only able to give authorities a barebones plan.<sup>279</sup> Recruits knew only the name of their assigned leader and general plans.<sup>280</sup> Only leaders of the plot knew details, in order to prevent the arrest or betrayal of one person from resulting in the collapse of the entire plan.<sup>281</sup>

For two weeks, Vesey continued to plan and the government authorities investigated.<sup>282</sup> Vesey moved up the date of attack.<sup>283</sup> On the Friday before the new scheduled day, the group was betrayed again, this time by a slave who knew plans and some names.<sup>284</sup> George Wilson, another slave and leader in the African Church, also provided information.<sup>285</sup>

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270. *Id.* at 127–31.

271. *Id.* at 128.

272. *Id.* at 129.

273. *Id.*; see also APTHEKER, *supra* note 37, at 270–71.

274. JONES, *supra* note 41, at 178; see also APTHEKER, *supra* note 37, at 270–71.

275. BENNETT, *supra* note 81, at 130.

276. See *id.* at 129.

277. *Id.* at 130; JONES, *supra* note 41, at 179.

278. JONES, *supra* note 41, at 179; see also APTHEKER, *supra* note 37, at 271 (spelling the free Black's name as "Pencell").

279. BENNETT, *supra* note 81, at 130.

280. *Id.* at 129.

281. *Id.*

282. *Id.* at 130.

283. *Id.* at 131.

284. *Id.*

285. JONES, *supra* note 41, at 179.

Vesey and five leaders were tried, convicted, and executed on July 2, 1822.<sup>286</sup> “Only one leader confessed,” all others “remained silent.”<sup>287</sup> Devaney and Wilson were emancipated by the legislature and given lifetime pensions.<sup>288</sup> Pencil received \$1,000 and a tax exemption.<sup>289</sup>

Both before and after the planned Prosser and Vesey rebellions, slaves betrayed in advance many lesser-known insurrections. An early instance is the betrayal by Will of a conspiracy by slaves in Surrey and James City Counties, Virginia, in 1710.<sup>290</sup> A few years later, in 1713 in Goose Creek, South Carolina, a slave named Job revealed a conspiracy.<sup>291</sup> In Charles Town, South Carolina in 1740, a slave named Peter revealed a conspiracy twenty-four hours before it was to be initiated, allowing slaveholders to capture the rebels and execute them.<sup>292</sup>

In 1835 in South Carolina, Georgia, and Louisiana, domestic slaves revealed slave plots against Whites.<sup>293</sup> In October 1837, in Rapides Parish, Louisiana, Lewis, a slave, revealed a conspiracy of slaves and free Blacks that was set to begin in Alexandria, Louisiana.<sup>294</sup> His revelation led the conspiracy to be squelched.<sup>295</sup> The state freed Lewis

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286. BENNETT, *supra* note 81, at 131.

287. *Id.*

288. JONES, *supra* note 41, at 179.

289. APTHEKER, *supra* note 37, at 271 n.21 (citing An Act for the Remuneration of Peter, of George Pencil, and of — Scott, no. 2299, § V, in 6 STATUTES AT LARGE OF SOUTH CAROLINA, *supra* note 140, at 194, 195) (calling him “Pencell” and mentioning only \$1,000); JONES, *supra* note 41, at 179.

290. APTHEKER, *supra* note 37, at 170. Will was rewarded by the legislature purchasing his freedom for £40. *Id.*

291. *See id.* at 173–74. An entry in the Journals of the Commons House of the Assembly, Columbia, South Carolina indicates that the Assembly agreed to pay a slave named Job £5 for revealing in 1713 a slave conspiracy. *Id.* at 174 (quoting MS JOURNALS OF THE COMMONS HOUSE OF THE ASSEMBLY OF SOUTH CAROLINA (May 11, 1715), *microformed on* Collection of Early State Records, A.1b, Reel 1, Unit 4 (Lib. of Congress)).

292. *See* APTHEKER, *supra* note 37, at 189 & n.77. Peter was awarded a suit, hat, shoes, stockings, and £20. *Id.* at 189 n.77.

293. *See id.* at 328 (recounting how, in October 1835, in South Carolina and Georgia, “[a]n old domestic slave revealed . . . a plan for rebellion”); *id.* at 329 (“In December [1835,] . . . a ‘confidential servant’ . . . in East Feliciana, Louisiana” revealed a serious plot by two Whites and “a great many of the most favorite confidential servants,” making “it all the more disturbing.” (quoting *Letter to a Member of Congress, Dated December 29, 1835, from New Orleans*, 49 NILES’ WEEKLY REGISTER 331 (1836))).

294. *See* APTHEKER, *supra* note 37, at 330.

295. *Id.* at 330.

and rewarded him with \$500 to “establish himself in some distant community where he would be safe.”<sup>296</sup>

In June 1853, in New Orleans, Louisiana, Albert, a slave, asked George Wright, a free Black, to join a rebellion in the planning.<sup>297</sup> Wright expressed interest and Albert took Wright to meet Dyson, a White teacher from Jamaica.<sup>298</sup> Dyson, trusting Wright, urged Wright to join.<sup>299</sup> Wright seemed committed, but immediately revealed the plot, leading police to Albert.<sup>300</sup> In July 1859, in Clarksburg, Virginia (now West Virginia), a female slave revealed a plot.<sup>301</sup>

As with rebellions, research also establishes examples of instances in which slaves betrayed escapees. Disclosing their whereabouts could be serious betrayal. Henry Bibb, a runaway slave, was betrayed not once but twice.<sup>302</sup> In 1840, Lew Cheney, a slave, had organized “a mass flight” of slaves from Rapides and Avoyelles Parishes, Louisiana, to Mexico, but Cheney himself revealed the plot to his owner “to curry favor.”<sup>303</sup> More extreme than mere information disclosure, some slaves went so far as to assist slaveholders in capturing runaways.<sup>304</sup> For example, George and Jim, two slaves, were accused of killing Isaac, another slave.<sup>305</sup> Their alleged motive for the killing was that Isaac “had combined with the white folks to betray George to the sheriff, and it was thought he was also engaged to apprehend Jim.”<sup>306</sup>

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296. See *id.* at 330 n.17 (citing ULRICH BONNELL PHILLIPS, *AMERICAN NEGRO SLAVERY: A SURVEY OF THE SUPPLY, EMPLOYMENT AND CONTROL OF NEGRO LABOR AS DETERMINED BY THE PLANTATION RÉGIME* 486 (1918)).

297. APTHEKER, *supra* note 37, at 343.

298. *Id.* at 343.

299. *Id.* at 343–44.

300. See *id.* at 343–44.

301. *Id.* at 351.

302. See discussion *supra* notes 229–35 and accompanying text.

303. APTHEKER, *supra* note 37, at 334 & n.33 (quoting NORTHUP, *supra* note 111, at 189). Cheney survived Whites’ mass executions and was rewarded. NORTHUP, *supra* note 111, at 189 & n.2. “[H]is name is despised and execrated by all his race throughout the parishes of Rapides and Avoyelles.” *Id.* at 189.

304. JONES, *supra* note 41, at 168.

305. *Jim v. State*, 24 Tenn. (5 Hum.) 145, 145 (1844).

306. *Id.* at 151.

## VI. A BRIEF DEFENSE OF DOMESTIC SLAVES

Slaves who worked in the owner's household or performed in domestic roles were known as house slaves.<sup>307</sup> During slavery, house slaves were known or reputed to have been willing to do the bidding of White owners, including informing, to the detriment of other slaves.<sup>308</sup> Today, house slaves are still vilified in the Black community and being called a house slave is a serious insult.<sup>309</sup> Quite possibly, house slaves may be the subject of unfair criticism.

Historian Herbert Aptheker opined that spies and traitors primarily came from the domestic class.<sup>310</sup> He contended that owners encouraged domestics to maintain distance from field workers.<sup>311</sup> Presumably, the lack of connection to other slaves promoted owner loyalty over allegiance to other slaves, and thus a willingness to protect a master's interests.<sup>312</sup> Aptheker's position finds support in both the reporting of unsuccessful slave rebellions and first-person slave accounts.<sup>313</sup>

Some house slaves did reveal rebellion plots beforehand, allowing the plans to be quashed before getting underway. In South Carolina and Georgia in October 1835, "[a]n old domestic slave revealed . . . a plan for rebellion."<sup>314</sup> In East Feliciana, Louisiana in December 1835, a "confidential servant" revealed a "serious" plot by two Whites and "a great many of the most favorite confidential servants," making "it all the more disturbing."<sup>315</sup> Denmark Vesey's plot on Charleston, South Carolina, was undone in whole or part by a house slave.<sup>316</sup> Beck, a young slave girl who considered herself a house slave, testified against alleged members of Nat Turner's rebellion in Virginia, although she did not betray the rebellion beforehand.<sup>317</sup>

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307. See JONES, *supra* note 41, at 113.

308. See APTHEKER, *supra* note 37, at 61–63.

309. See, e.g., Steven Zeitchik, *The Contenders: Slavery, Comedy and Guns*, L.A. TIMES, Dec. 27, 2012, at S24 (describing Samuel L. Jackson's character in *Django Unchained*, a domestic slave who snitches, as "one of the most despised Negroes in cinematic history").

310. APTHEKER, *supra* note 37, at 61.

311. See *id.* at 62.

312. See *id.* at 62–63.

313. See *id.* at 62, 328 (citing BIBB, *supra* note 228, at 136).

314. See APTHEKER, *supra* note 37, at 328.

315. See *id.* at 329 (quoting *Letter to a Member of Congress, Dated December 29, 1835, from New Orleans*, 49 NILES' WEEKLY REGISTER 331 (1836)) (internal quotation marks omitted).

316. See discussion *supra* Part V.

317. SCOT FRENCH, THE REBELLIOUS SLAVE: NAT TURNER IN AMERICAN MEMORY

Likewise, some house slaves betrayed runaway slaves. Harriet Jacobs, who was secreted from her master in the house of her grandmother, was twice almost betrayed by a domestic servant.<sup>318</sup>

In stepped Jenny, the mischievous housemaid, who had tried to enter my room, when I was concealed in the house of my white benefactress. . . . I had slunk down behind a barrel, which entirely screened me, but I imagined that Jenny was looking directly at the spot . . . .

Uncle Phillip was sent for, and he agreed with his mother in thinking that Jenny would inform Dr. Flint in less than twenty-four hours.<sup>319</sup>

. . . .

Of course, the day was an anxious one for us all. But we concluded that if Jenny had seen me, she would be too wise to let her mistress know of it; and that she probably would not get a chance to see Dr. Flint's family till evening, for I knew very well what were the rules in that household. I afterwards believe that she did not see me; for nothing ever came of it, and she was one of those base characters that would have jumped to betray a suffering fellow being for the sake of thirty pieces of silver.<sup>320</sup>

Henry Bibb after escaping to freedom and writing his story claimed:

[T]he domestic slaves are often found to be traitors to their own people, for the purpose of gaining favor with their masters; and they are encouraged and trained up by them to report every plot they know of being formed about stealing [anything], or running away, or [anything] of the kind; and for which they are paid.<sup>321</sup>

Similarly, ex-slave Austin Steward offered much criticism regarding house slaves.<sup>322</sup> He claimed:

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37–40 (2004). Beck was a young slave girl, approximately twelve to fifteen years of age. *Id.* at 38. She considered herself a house slave and spent the vast majority of her time with her mistress, rather than other slaves. *Id.* Thus, she may have been motivated to testify against the slaves by loyalty to her master and mistress. *See id.* at 37–38. Beck's testimony was heavily challenged for its lack of credibility. *Id.* at 40–41, 61–63.

318. JACOBS, *supra* note 77, at 216, 254–56.

319. *Id.* at 254.

320. *Id.* at 255–56.

321. BIBB, *supra* note 228, at 136.

322. *See* LESTER, *supra* note 111, at 90–91 (citing CHARLES H. NICHOLS, *MANY THOUSAND GONE: THE EX-SLAVES' ACCOUNT OF THEIR BONDAGE AND FREEDOM* 74–75 (1963)) (revealing the beliefs of slave Austin Steward).



[M]any of them are the most despicable tale-bearers and mischief-makers, who will, for the sake of the favor of his master or mistress, frequently betray his fellow slave, and by tattling, get him severely whipped; and for these acts . . . he is often rewarded by his master, who knows it is for his interest to keep such ones about him; though he is sometimes obliged, in addition to a reward, to send him away, for fear of the vengeance of the betrayed slaves.<sup>323</sup>

The quotes from Bibb and Steward indicate that they, and likely other slaves, believed Whites purposely cultivated informant behavior among domestic slaves, owners rewarded betrayals by house slaves, and owners believed what their trusted servants told them. A domestic slave confirmed their beliefs:

They taught us [domestics] to be against one another and no matter where you would go you would always find one that would be tattling and would have the white folks pecking on you. They would be trying to make it soft for themselves.<sup>324</sup>

On the other hand, Historian Norrece T. Jones has observed that concluding domestic slaves would “betray a fellow slave for little more than a hand-me-down garment or a flattering remark” is overblown.<sup>325</sup> The story of William Hayden, a domestic slave, supports Jones’ proposition.<sup>326</sup> Hayden acknowledged informing on his brethren.<sup>327</sup> His motivation, though, was more significant than the mere receipt of prized

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323. AUSTIN STEWARD, TWENTY-TWO YEARS A SLAVE, AND FORTY YEARS A FREEMAN; EMBRACING A CORRESPONDENCE OF SEVERAL YEARS, WHILE PRESIDENT OF WILBERFORCE COLONY, LONDON, CANADA WEST 32 (Rochester, William Alling 1857) (detailing the beliefs of slave Austin Steward). For an alternative version of the quote, see APTHEKER, *supra* note 37, at 62–63 (“[A] domestic slave will for the sake of his master and mistress, frequently betray his fellow-slave . . . he is often rewarded by his master who knows it is for his interest to keep such ones about him . . . hence it is that insurrections and stampedes are so generally detected. Such slaves are always treated with more affability than others, for the slaveholder is well aware that he stands over a volcano.”).

324. *Unwritten History*, in THE BOOK OF NEGRO FOLKLORE 45, 47 (Langston Hughes & Arna Bontemps eds., 1958); see also LESTER, *supra* note 111, at 90 (quoting *Unwritten History*, *supra*).

325. JONES, *supra* note 41, at 114, 118.

326. WILLIAM HAYDEN, NARRATIVE OF WILLIAM HAYDEN, CONTAINING A FAITHFUL ACCOUNT OF HIS TRAVELS FOR A NUMBER OF YEARS, WHILST A SLAVE, IN THE SOUTH 77–78 (photo. reprint 1969) (1846); LESTER, *supra* note 111, at 91 (citing NICHOLS, *supra* note 322, at 85).

327. HAYDEN, *supra* note 326, at 77–78.

clothing or owner favor: the rebellious slaves on whom he informed planned to kill him along with all present Whites.<sup>328</sup>

Sleeping in a room adjacent to the slaves, who were ironed, I discerned enough from their conversation to enable me to know that a mutiny was abroad, and that it was the intention of the slaves, in order to effect their freedom, to put to death all the whites on board,—and that I, too, was included,—owing to the attention that was paid me,—with the doomed. By jests and cheerfulness with them, however, I gathered from their detached hints, their every movement. That they had even then provided themselves with a file from the lot of Blacksmith tools on board, and that many were at that moment, free from their chains. This information I immediately carried to my master; and after ascertaining the truth of my statement, he had them again bound more firmly than ever.<sup>329</sup>

Notwithstanding the firsthand accounts of slaves, without more data, arguably it is either speculative or erroneous to conclude that most Black informants were domestic slaves or that overwhelmingly domestic slaves were informants. Undoubtedly, domestic slaves may have had special or greater incentives to inform than other slaves (e.g., owner loyalty, preservation of status). They might have also had more opportunity and faced great pressure to betray their fellow slaves because of proximity to owners who sought to use them as informants.

As a class, however, it is unclear that they were actually more likely to inform or more likely to be informants than other Blacks. All slaves—including domestics—had to be cognizant of the repercussions from other slaves if they informed.<sup>330</sup> At a minimum, they faced ostracism and at worst, death, and their master may have been unwilling or unable to protect them from either. Further, at some point all slaves probably needed the benefit of a slave code of silence for much conduct could be deemed misconduct by owners. And while some domestic slaves might have had few close relations with other slaves, others probably had relationships worth prioritizing. Thus, many domestics who could have informed on another slave would have had strong incentive not to do so.

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328. *Id.*

329. *Id.* (relaying the account of slave William Hayden).

330. See discussion *supra* Part III.D.

## VII. THE NEGATIVE INFLUENCES OF INFORMANTS

By now it is clear that Whites undertook efforts to promote informing by Blacks, and that some Blacks did in fact inform while others refused to do so. However, ascertaining the extent of informing and refusals and other discerning elements such as who might be more or less likely to inform and under what circumstances is nearly impossible. What can also be preliminarily gleaned from the data, although more nuanced definitive conclusions cannot be drawn, is that White efforts to promote informing and Black informants themselves contributed to division and distrust within, and inaction by, the Black community during slavery.

Some slaves distrusted their brethren due to their knowledge or suspicion. Whites intentionally sought to divide slaves and develop a cadre of informants by, among other means, favoring some slaves over others, rewarding the provision of information, and using Black religious leaders to detect slave misconduct.<sup>331</sup> By way of example, escaped slave Frederick Douglass emphatically proclaimed: “The motto which I adopted when I started from slavery was this—‘Trust no man!’ I saw in every white man an enemy, and in almost every colored man cause for distrust.”<sup>332</sup> Douglass probably was not alone in his perspective, although he may have been the most public voice on the topic.

If slaves distrusted each other, then Professor Norrece Jones’ claim that the potential for betrayals did more to deter rebellions than the lack of weapons, information, or organization is not surprising.<sup>333</sup> According to Jones, as far as slaves were concerned, and as far as appeared true, rebellions were always betrayed beforehand.<sup>334</sup> The many infamous and less well-known rebellions that were squelched due to Black informants support this contention.<sup>335</sup> Consequently, it is understandable if many slaves completely avoided rebellious efforts because they reasonably expected their efforts to be unsuccessful.

Even for those slaves willing to contemplate organized resistance, the few rebellions that were successful, in whole or part, reveal how difficult it was to keep a rebellion-in-waiting from being betrayed and

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331. See discussion *supra* Part III.

332. See DOUGLASS, *supra* note 19, at 98.

333. See JONES, *supra* note 41, at 182, 191.

334. *Id.* at 191 (citing HIGGINSON, *supra* note 258, at 248).

335. See *supra* Part V.

forestalled. Such difficulty could serve as a strong disincentive to act. The Nat Turner Rebellion in 1831 Southampton, Virginia, is the most well-known, successful slave-led rebellion.<sup>336</sup> Ultimately, Turner was captured alive, and before his execution, he recounted the events to Thomas Gray, who officially recorded Turner's confession.<sup>337</sup> Assuming the credibility of Turner's confession to Gray, Turner's version of events reveals the great lengths he went to in order to keep his plans secret and how luck was sometimes necessary to avoid other slaves preemptively revealing information to Whites.<sup>338</sup>

Turner believed God had commanded him to rebel and that he was to not tell anyone until he received a sign.<sup>339</sup> When he received the sign, he told "four in whom [he] had the greatest confidence, (Henry, Hark, Nelson, and Sam)."<sup>340</sup> They worked together to come up with plans but rejected them all.<sup>341</sup> Turner then received another sign that told him they could wait no longer.<sup>342</sup> So, the group agreed on August 20, 1831, to meet the next evening over dinner to finalize a plan.<sup>343</sup> When the five met, they were joined by Will and Jack.<sup>344</sup> Turner provided no explanation as to how Will and Jack came to be invited, except that Jack "was only a tool in the hands of Hark."<sup>345</sup> They all agreed to start the insurrection that night—Sunday—at the house of Turner's master and in fact did so.<sup>346</sup> Their killing spree began and spread.<sup>347</sup> Other slaves

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336. Jennifer L. Larson, *A Rebellion to Remember: The Legacy of Nat Turner*, DOCUMENTING THE AMERICAN SOUTH, <http://docsouth.unc.edu/highlights/turner.html> (last visited Oct. 21, 2013); U.S. Dep't of Interior, *Slave Rebellions*, NATIONAL PARK SERVICE, [http://www.nps.gov/subjects/ugrr/discover\\_history/slave-rebellions.htm](http://www.nps.gov/subjects/ugrr/discover_history/slave-rebellions.htm) (last updated Sept. 6, 2011).

337. NAT TURNER & THOMAS R. GRAY, THE CONFESSIONS OF NAT TURNER, THE LEADER OF THE LATE INSURRECTION IN SOUTHAMPTON, VA. AS FULLY AND VOLUNTARILY MADE TO THOMAS R. GRAY 3–4 (Richmond, Thomas R. Gray 1832).

338. *Id.* at 10–11. Gray's credibility in recording Turner's confession is debated. See Brophy, *supra* note 156, at 1860 n.300 (identifying various positions regarding the credibility of Gray's taking of Turner's confession).

339. TURNER & GRAY, *supra* note 337, at 9–10.

340. *Id.* at 10.

341. *Id.*

342. *Id.*

343. *Id.*

344. *Id.* (describing the meeting and preparation on the night of August 20th); Larson, *supra* note 336 (stating that the rebellion began on August 21, 1831).

345. TURNER & GRAY, *supra* note 337, at 10–11.

346. *Id.*

347. *Id.* at 11–14.

joined as they went along; the group numbered fifteen men, then about forty, then fifty or sixty members.<sup>348</sup>

Eventually the group encountered White resistance that forced the group to separate.<sup>349</sup> Turner sent two men (Jacob and Nat) to find Henry, Sam, Nelson, and Hark and tell them to meet him where they had dinner the Sunday before.<sup>350</sup> By Wednesday, when no one had joined him and he saw White men riding around looking like they were searching for someone, Turner “concluded Jacob and Nat had been taken, and compelled to betray” him.<sup>351</sup> He hid in the woods for six weeks and was only discovered due to a dog that came across his cave where Turner had a piece of meat.<sup>352</sup> When the dog passed by the cave again, this time accompanied by two slaves, the dog alerted to the cave.<sup>353</sup> Turner thought he was discovered and so made himself known.<sup>354</sup> The two slaves ran off and Turner knew “they would betray” him.<sup>355</sup> So he left that hiding place and was free for two more weeks before being discovered.<sup>356</sup>

A number of factors arguably explain the relative success of Turner and his band. First, Turner did not initially reveal his intentions to anyone, and when eventually he did, he only did so to a close-knit, small group who kept his silence.<sup>357</sup> Second, the group was successful for quite some time because it endeavored to kill every White person it came across and because other slaves did not seem to be running to warn White folks, either because they had joined the rebellion or feared the rebels.<sup>358</sup> Thus, it took some time for the White community to be put on notice and gather itself to respond. Even then, though, the response did not come because any slave betrayed the group.<sup>359</sup> Finally, Turner’s success might have been primarily based on luck. While Turner and his co-conspirators were tight-lipped about their plan, there does not

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348. *See id.* at 12–14.

349. *Id.* at 14–15.

350. *Id.* at 16–17.

351. *Id.* at 17.

352. *Id.*

353. *Id.*

354. *Id.*

355. *Id.*

356. *Id.*

357. *Id.* at 10–11.

358. *See id.* at 11–12.

359. *Id.* at 14–15.

appear to have been a strong effort to maintain silence, which stands in stark contrast to the controlled, large-scale planning effort of Denmark Vesey and his second-in-command.<sup>360</sup> Vesey and his group of accomplices took great pains to control information flow to prevent a betrayal; yet, betrayed they were.<sup>361</sup> Turner, contrastingly, did not take such significant measures, and happenstance was likely the reason he was not betrayed beforehand.<sup>362</sup>

### VIII. CONCLUSION

With limited exception, scholars of any discipline have yet to robustly explore Blacks' experience with informing, much less during slavery. Documenting and studying the socio-legal historical experience of Black Americans with informing affords scholars the opportunity to consider what these past findings may mean for the present. This Article offers the beginnings of an historical description, drawing on a number of sources to broadly describe the experience of Black slaves, and occasionally free Blacks, as informants. Undoubtedly, as this is not an exhaustive account, there is more historical work to be done. Continuing generally to search for information wherever it may be found and wherever it leads might be one approach. Alternatively, research might focus specifically. For instance, in-depth examination on informing in particular Southern colonies or states or during particular time periods would be fruitful. Work might closely examine the use of informants for particular types of misconduct. Finally, an interesting comparison would be that of slave informants in the South as compared to the North, or on plantations in contrast to more urban or populated areas.

How might the information herein inform our thinking today? Admittedly, there are patently significant differences between the Black community's position today and during slave times that may undermine analysis of the present implications of history today. The most apparent

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360. See discussion *supra* Part VI.

361. See BENNETT, *supra* note 81, at 129–31.

362. Compare *id.*, with TURNER & GRAY, *supra* note 337, at 10. Though Turner's planned rebellion was not revealed before it began, it is worth noting that slaves did testify against other slaves charged with crimes. See, e.g., Brophy, *supra* note 156, at 1825 & n.45, 1850, 1879. For example, a participant named Moses and an uninvolved house slave named Beck both testified. See FRENCH, *supra* note 317, at 37–41, 61–63 (discussing Beck's testimony); Brophy, *supra* note 156, at 1825 n.45 (describing Moses' role). He may have been motivated by criminal leniency and she by loyalty to her mistress. See FRENCH, *supra* note 317, at 37–41, 61–63; Brophy, *supra* note 156, at 1825 n.45.

distinction is that Blacks are no longer enslaved and so are not focused on the fundamental recognition of their individual and collective humanity. Rather, they benefit from significantly more social and legal protections than during slavery, even if still marginalized. Additionally, informing on fellow slave subjects poses greater moral dilemma than informing on neighbors who prey on the community. Indeed, during slavery, informing on seriously troublesome Blacks was sanctioned.

Notwithstanding the distinctions, the historical snapshot developed herein reveals many similarities between the Black experience with informing then and today. For example, societal justification for informants then and now—necessity—remains the same, and government-offered incentives to inform existed during slavery and continue at present.<sup>363</sup> Moreover, individual and communal response among Blacks was ambivalent in both eras. Finally, the negative impacts of informants on the Black community then and today remain quite similar.

These resemblances lend support to referencing Black historical experience when considering modern informant law and policy. A few suggestions follow. First, we could recognize that a formal criminal justice system less reliant on informants is not unprecedented. During slavery, the government endorsement of informants in the Black community was limited to the most necessary of circumstances that benefited (White) society.<sup>364</sup> In contrast, the use of informants today is widespread, reaching all manner of conduct and having widespread collateral impacts.<sup>365</sup> This expansion of the government's reliance on informants might be partially explainable by the move away from private prosecution and the growth in the number of crimes since slavery,<sup>366</sup> but the narrow use of informants during slavery at least presents one model for government.

Second, rather than demonizing members of the Black community for holding an anti-cooperative ethic, we might understand that Black contestation is legitimately rooted and not abnormal. As during slavery, Black folks today, individually and on a communal level, do not speak

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363. See HARNEY & CROSS, *supra* note 3, at 12, 14 (discussing former law enforcement officers' recognition of the necessity of informants); Natapoff, *Communal Consequences*, *supra* note 2, at 652, 660–61; Hampson, *supra* note 3 (quoting Pittsburgh police commander: "Informers are a necessary evil"); see also *supra* Part II.A; see, e.g., *supra* Part III.K.

364. See *supra* Part II.A.

365. See NATAPOFF, CRIMINAL INFORMANTS, *supra* note 2, at 3, 35.

366. See BLOOM, *supra* note 24, at 6–7.

with one voice on the topic. Viewpoints on snitching and informing are highly contested and deeply entrenched. On one hand, some argue that informing and government promotion of informing is necessary to prevent and solve crime, particularly Black-on-Black crime; and that the penalties for not informing make the decision to inform appropriate.<sup>367</sup> On the other hand, it is argued that informing leads to unnecessary and disproportionate incarceration of Blacks, particularly Black men,<sup>368</sup> invites and contributes to government abuses, such as police brutality and unreliable convictions;<sup>369</sup> fractionates the Black community by pitting community members, friends, and family members against each other;<sup>370</sup> and exposes Blacks to retaliation that the government is unwilling or unable to prevent, thus making the stakes too high for the individual and community.<sup>371</sup> It is apparent, then, that the slave perspective and modern Black viewpoint are quite similar if not identical. The community ambivalence is old and longstanding.

What might explain this longstanding schizophrenia? Laws and the experience of law influence social behaviors and perspectives. Norms are transmitted from generation to generation. History tells us that American society has long been quite willing to police and foment disunity in the Black community by actively promoting informing. Consequently, rebutting Black folks' entrenched conceptions regarding informing may prove more difficult than expected. Understanding history helps to depolarize the debate surrounding informants and allows for meaningful, honest conversation on whether the Black community as a whole should endorse informing; whether Blacks should engage in the practice; and how the government should respond to the Black perspective—whether well-founded or not.

Relatedly, a final potential application of the history revealed herein is to the development of responses to the Stop Snitching motto and broad-based code of silence adhered to by some in the Black community. Government responses have been varied, including

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367. See BUTLER, *supra* note 6, at 79–100 (summarizing the debate surrounding informing); WILLIAMS, *supra* note 14 at 111–18 (decrying the growth of the Stop Snitching movement for its increase in Black crime).

368. See Natapoff, *Communal Consequences*, *supra* note 2, at 683–85.

369. See NATAPOFF, CRIMINAL INFORMANTS, *supra* note 2, at 69, 126–28; Natapoff, *Communal Consequences*, *supra* note 2, at 663–64.

370. Natapoff, *Communal Consequences*, *supra* note 2, at 690–92.

371. See NATAPOFF, CRIMINAL INFORMANTS, *supra* note 2, at 129–30; Natapoff, *Communal Consequences*, *supra* note 2, at 689–90.



increased protection of witnesses and the enactment of public relations campaigns that encourage the reporting of crime and cooperation with police.<sup>372</sup> Yet none of these solutions adequately account for the potential legitimacy of anti-cooperation and robust social and moral ambivalence Blacks hold toward informing. Government officials recognize that deep mistrust of law enforcement discourages informing.<sup>373</sup> Nonetheless, the solutions tend toward a utilitarian cost-benefit rationale, emphasizing decreased penalties for informants, physical safety of informants, and community benefit. Understanding the complexity of viewpoints and genuinely reflecting such in solution-generating, however, might generate different responses.

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372. See OFFICE OF CMTY. ORIENTED POLICING SERVS., *supra* note 10, at 31–33, 38–39 (describing the creation of an anonymous tip program in Washington, D.C. and the “Keep Talking” campaign instituted by the Baltimore Police Department in response to Stop Snitching).

373. See *id.*