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ORIGINAL ARTICLE

"Unlawful Intimacy": Mixed-Race Families, Miscegenation Law, and the Legal Culture of Progressive Era Mississippi

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Abstract

This article examines the enforcement of anti-miscegenation law in Progressive Era Mississippi by focusing on a series of unlawful cohabitation prosecutions of interracial couples in Natchez. It situates efforts to police and punish mixed-race families within the broader legal culture of Jim Crow, as politicians, judges, and district attorneys sought stricter enforcement of morals laws, including those barring interracial cohabitation. This article argues that the historic prerogative of white men to choose their sexual and domestic partners undermined the illegality of interracial marriage. Lynching deterred Black men from cohabiting with white women, but prosecutions for "unlawful cohabitation" did not effectively punish white men and Black women who formed lasting partnerships. This article relies on extensive research in local court records that reveal that prosecutions of white men and Black women often resulted in fines and, in many cases, had little effect on these mixed-race families. In Natchez and elsewhere, eugenic ideologies of "white racial purity" were no match for a patriarchal legal culture that gave white men leeway to ignore the law when it suited them, even amid outward denunciations of miscegenation. In Mississippi, many white men did not view relationships between white men and Black women as a clear threat to white supremacy, creating space for some interracial families to survive into the twentieth century.

In April 1908, former Mississippi Governor James K. Vardaman devoted five full pages of his recently established magazine, *Vardaman's Weekly*, to printing the retirement speech of Georgia judge Thomas Norwood. A staunch opponent of Black civil and political rights, Norwood was a former U.S. senator and representative who had worked to overthrow Reconstruction.[1] In his address,

[1] William Harris Bragg, "The Junius of Georgia Redemption: Thomas M. Norwood and the 'Nemesis' Letters," *Georgia Historical Quarterly* 77 (Spring 1993): 86–122.

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Norwood retold the history of slavery and emancipation, castigating abolitionists for teaching the Black man "that his social and political equality entitled him to every right the white man enjoyed even," he added, "the right to marry a white woman." Norwood spent a great deal of the speech dwelling on the topic of interracial sex. This "sin incident to slavery" casts a "stigma on the name of the white men of that day," Norwood explained.[2] But his contemporary worries went beyond the sins of slaveholders. Miscegenation, he argued, continued despite the efforts of virtuous Southerners to outlaw it. Norwood saved some of his invective for those responsible for a pernicious form of law-breaking in the South that threatened civilization: white men.

"The white man alone is responsible" for the neglect of the rule of law, Norwood argued. "He alone makes our laws. He alone enforces our laws. He it is who forbids by law marriage between his race and the negro, though the latter have but one-eighth of negro blood." But the white architects of the law were also inclined to ignore it. As Norwood complained, "He commands the negro not to transgress the law, but he, the lawmaker, steps over the line and wallows with dusky Diana with impunity." The law-breaking that marred Southern communities made anti-miscegenation laws dead letters. And worse, the lawlessness of white men made a mockery of the entire legal system. "We forbid marriage between the two races, and we make it a crime for them to associate." But as Norwood warned, "[T]he law is a grinning corpse." In his view the solution to the "crime of miscegenation" had to be dual: Black men who crossed the color line must be lynched. White men must be imprisoned. "Draw a dead line between the races. Tell the negro, when he crosses it the penalty is death. Tell the white man, when he crosses it the penitentiary is there. Arrest this incipient miscegenation!" he thundered.[3]

Vardaman infamously shared Norwood's fondness for inflammatory racist rhetoric. But were white men across the South flagrantly violating Jim Crow laws, as Norwood argued? Or was this yet another example of overheated race baiting and political bluster? The twin issues of interracial sex and marriage, bundled together as "miscegenation," preoccupied the minds of white supremacists across the nation during the Progressive Era.[4] The 1912 marriage of champion Black boxer Jack Johnson to Lucille Cameron, a white woman, spurred the introduction of a constitutional amendment prohibiting interracial marriage and a slew of new proposed state bans.[5] And yet other Southern politicians also expressed concern about the role of white men in perpetuating the "race problem." (Vardaman, e.g., argued that Mississippi should strip such men of the franchise, as neighboring

[2] Thomas M. Norwood, "Address on the Negro: On Retiring from the Bench," *Vardaman's Weekly*, April 11, 1908.

[3] Norwood, "Address on the Negro."

[4] On the national appeal of laws prohibiting interracial marriage, see Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (New York: Oxford University Press, 2009); Jane Dailey, *White Fright: The Sexual Panic at the Heart of America's Racist History* (New York: Basic Books, 2021).

[5] Pascoe, *What Comes Naturally*, 169.

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Alabama did.)[6] Indeed, newspaper accounts and local court records from Mississippi indicate that Norwood's words were not mere political posturing but instead reflected real conflicts playing out in communities across the state.

This article examines how sex, gender, and race shaped the legal culture of Progressive Era Mississippi. It employs the approach of other legal historians such as Laura Edwards, Hendrik Hartog, and Kimberly Welch who focus on how ordinary people have historically understood the law and encountered it in their everyday lives.[7] Vardaman printed Norwood's exhortations amid a spike in public concern about interracial sex and relationships. Beginning in 1907, white men formed voluntary "anti-miscegenation" organizations dedicated to publicizing the problem of interracial cohabitation. Their efforts sometimes resulted in prosecutions. Records from the Adams County circuit court in Natchez reveal a concerted effort to prosecute alleged offenders that crested in 1909 but quickly subsided. This "dragnet" operation pulled interracial couples into court, where their private lives became the subject of intense public scrutiny. Though many court records have not been preserved, archivists in Natchez rescued some of the records of the Adams County circuit court from the dilapidated warehouse where they have been stored for the past thirty years.[8] These docket and minute books identify at least eighteen couples who were arrested for "unlawful cohabitation" during the spring and autumn terms of court. In each case, the men were white and the women were Black. No intraracial couples were arrested for unlawful cohabitation, nor did any Black men face charges for living with white women. Moreover, newspaper accounts and appellate court decisions indicate that Natchez was not exceptional and that many Mississippians understood the "problem" of white men cohabiting with Black women as a widespread and persistent one.

These records indicate that historians have underestimated the extent to which white men cohabited with Black women even at the height of the Jim Crow era. Neil McMillen, in his history of Jim Crow Mississippi, writes that only in "exceptional cases" did relationships between white men and Black women "approximate marriage," noting that most often "these relations were casual and commercial in character."[9] More recently, Julie Novkov and Peggy Pascoe have taken a more nuanced view, arguing that miscegenation prosecutions of cohabiting couples were most frequent when, in Pascoe's words, "couples might be accused of the 'crime' of coming too close to claiming

[6] "Vardaman on Miscegenation," *Democrat-Star* (Pascagoula, MS), May 28, 1909; Ala. Const. of 1901, art. VIII, §182.

[7] Hendrik Hartog, "Pigs and Positivism," *Wisconsin Law Review* 1985, no. 4 (1985): 899–936; Laura Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2009); Kimberly Welch, *Black Litigants in the Antebellum South* (Chapel Hill: University of North Carolina Press, 2018).

[8] The minute books of the Adams County circuit court are preserved at the Historic Natchez Foundation, owing largely to the efforts of archivist Mimi Miller. Other records, including the sheriff's docket book, remain in the courthouse storage annex. See Welch, *Black Litigants*, 6–8.

[9] Neil McMillen, *Dark Journey: Black Mississippians in the Age of Jim Crow* (Urbana: University of Illinois Press, 1989), 17–18.

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the status of marriage and family life."[10] Both Novkov and Pascoe focus on appellate courts, but such records cannot tell us about individuals who chose not to appeal, or who were declared not guilty by juries, or who were not prosecuted at all. Indeed, many interracial couples in Mississippi simply did not marry—such an action could and did lead to ten-year sentences in the state penitentiary—and instead chose to cohabit, which was a misdemeanor offense when deemed unlawful.[11] How, in this context, do we understand how interracial couples might claim the "status of marriage and family life"?

The answer is more complicated than it appears at first glance. Mississippi's recognition of common law marriage meant the line between unlawful and lawful cohabitation was left to the judgment of prosecutors, juries, and judges, who were faced with an evidentiary standard that required intimate knowledge of homes, including private sexual conduct and sleeping arrangements. It is true that most interracial couples did not seek the formal recognition of their unions by the state, but they did take on other features of family life, including cohabitation, child-rearing, and the transmission of property among kin. Nancy Cott and Hendrik Hartog have shown how the public nature of marriage law positioned juries as the arbiters in cases of separation and divorce, as the regulation of marriage has long been central to notions of the public order.[12] Alongside other highly intimate matters such as divorce and separation, unlawful cohabitation was a public offense subject to community determination via the courts. At the same time, Ariela Gross coined the term "racial trials" to describe how juries made sense of race in ways that often departed from the letter of the law and relied instead on local consensus and meaning.[13] By shifting the focus from state actors to local people, this article reveals some of the ongoing conflicts regarding community conceptions of race, marriage, and law that carved out space for mixed-race families to avoid prosecution. Indeed, officials struggled to enforce laws prohibiting interracial unions even as many of these relationships resembled common law marriages as they faced resistance from jurors and witnesses. Problems of evidence plagued prosecutors, and the Mississippi Supreme Court voided two unlawful cohabitation prosecutions owing to problems of evidence in *Cade v. State* (1910) and *Dean v. State* (1925).[14]

Such relationships were seldom secret. In this sense, Norwood's fury was ignited by the apparent disinterest in some communities in policing mixed-race families. But it also reflected ongoing political conflicts within the South. Mississippi's Democratic Party was split between the Progressive wing led by Vardaman that embraced mainstream Progressive causes such as

[10] Pascoe, *What Comes Naturally*, 136; Julie Novkov, *Racial Union: Law, Intimacy and the White State in Alabama, 1865–1954* (Ann Arbor: University of Michigan Press, 2008), 5.

[11] Miss. Code §1029 and §3244 (1906).

[12] On the public nature of marriage, see Nancy Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge: Harvard University Press, 2000); and Hendrik Hartog, *Man and Wife in America: A History* (Cambridge: Harvard University Press, 2000).

[13] Ariela Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Cambridge: Harvard University Press, 2008).

[14] *Cade v. State* 96 Miss. 434 (1910); *Dean v. State* 139 Miss. 516 (1925).

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prohibition and higher taxes on the wealthy—wrapped in a shroud of racist demagoguery—and conservatives who preferred a more restrained, paternalistic expression of white supremacy.[15] Factional battles were rooted in long-standing conflicts between the planter elite and poorer whites, many who were disfranchised by the same poll tax and literacy test requirements used to disqualify Black voters.[16] These class divisions would flare with the rise of the Second Ku Klux Klan during and after World War I. But in the decade before the Klan was reborn, this conflict found form in anti-miscegenation organizations that accused powerful and influential white men of brazenly disregarding the law.[17] The Mississippi anti-miscegenation campaigns offered Progressive politicians an opportunity to tar white elites with the "stain" of miscegenation and immorality while promoting state power as the solution to social problems.

The existence of these anti-miscegenation organizations did not, however, produce a dedicated effort among those with authority to incarcerate white men who cohabited with Black women. Nor did they represent the consensus of these communities. Public pronouncements of opposition to interracial sex existed in tension with the patriarchal nature of white supremacy in Mississippi. Prosecutors were only moderately successful in punishing mixed-race couples as juries declined to convict some individuals. Others pled guilty, paid fines, and moved on with their lives. Common law marriage presented an important obstacle for prosecutors, who were saddled with the burden of proving race to show that a couple could not legally wed.[18] Mississippi's marriage law was rooted in judicial decisions from the mid-nineteenth century that were heavily influenced by the legal treatises of Joel Bishop, who advocated for states to recognize the legitimacy of unions regardless of whether couples procured marriage licenses.[19]

The Progressive Era anti-miscegenation campaigns did not last. But this historical moment reveals a broader ambivalence about mixed-race families that suggests that the politics of interracial relationships were more complex than they might seem when local affairs are viewed through the lens of national discourses about "miscegenation." Despite the growing influence of eugenic language, many Mississippians viewed these relationships as a form of vice akin to

[15] Stephen Cresswell, *Rednecks, Redeemers, and Race: Mississippi after Reconstruction, 1877–1917* (Jackson: University Press of Mississippi, 2006).

[16] Albert Dennis Kirwan, *Revolt of the Rednecks: Mississippi Politics, 1876–1925* (Lexington: University of Kentucky Press, 1951). On the relationship between Southern agrarians and the national Progressive movement, see Elizabeth Sanders, *Roots of Reform: Farmers, Workers, and the American State* (Chicago: University of Chicago Press, 1999).

[17] Nancy MacLean, *Behind the Mask of Chivalry: The Making of the Second Ku Klux Klan* (New York: Oxford University Press, 1994).

[18] The Mississippi legislature briefly outlawed common law marriage in the 1890s (possibly to shore up its ban on interracial marriage) but this prohibition was repealed in 1906. Miss. Code §3249 (1906).

[19] *Dickerson v. Brown*, 49 Miss. 357 (1873); *Rundle v. Pegram*, 49 Miss. 751 (1874); Joel Bishop, *Commentaries on the Laws of Marriage and Divorce, and Evidence in Matrimonial Suits*, 3rd ed. (Boston: Little, Brown, 1859). On Bishop's embrace of common law marriage, see Michael Grossberg, *Governing the Hearth: Law and Family in Nineteenth Century America* (Chapel Hill: University of North Carolina Press, 1985), 89–90.

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gambling and bootlegging. Though they might personally disapprove, they were not always willing to employ the full force of the law to punish their neighbors' private behavior. The issue of interracial cohabitation embodied a foundational problem of the Jim Crow era: Laws prohibiting interracial sex and marriage infringed upon the authority of white men to govern their own private lives. As Grace Elizabeth Hale argues in her study of the culture of Jim Crow, "[W]hites made modern racial meanings not just by creating boundaries but by crossing them."[20] The purpose of segregation law, including prohibitions on so-called miscegenation, was not to strictly separate the races, but rather to promote a patriarchal system of white supremacy. It was one thing to threaten Black men with lynching for crossing the color line. But it was another endeavor entirely to tell white men that they could not do the same.

Marriage, Sex, and Miscegenation Law in Mississippi

By the time Norwood gave his speech, Jim Crow had already reached its full form as a violent system of political, economic, and social repression, and laws criminalizing interracial marriage were central to this racist regime. As Peggy Pascoe has demonstrated, the maintenance of the color line was foundational to the project of white supremacy, as these laws proclaimed to protect "white purity" as they subordinated people assigned to other racial classifications.[21] They also sought to legitimate the concept of whiteness by discouraging the births of children with ambiguous racial identities. By the early twentieth century states from Delaware to Oregon banned interracial marriage.[22] These laws typically also defined racial classifications for other purposes, including the segregation of public spaces, even though the language of such laws implied the problematic nature of all racial classifications. The 1890 Mississippi constitution, for example, drew the color line by prohibiting persons with "one-eighth or more" blood quantum of African or "Mongolian" ancestry from marrying white people.[23] The blood quantum at once attempted to make whiteness legally meaningful even as it made it plain that a "one-drop" ideal of "white purity" was not the aim of the law.[24]

These laws served many functions, even as the reliance on the blood quantum created problems of enforcement. They aimed to prevent the formation of legal family ties that crossed the color line, and one consequence was to preserve generational wealth within white families.[25] Julie Novkov argues that

[20] Grace Elizabeth Hale, *Making Whiteness: The Culture of Segregation in the South, 1890–1940* (New York: Pantheon, 1998), 8.

[21] Pascoe, *What Comes Naturally*, 8.

[22] Pascoe, *What Comes Naturally*, 63.

[23] Miss. Const. of 1890, art. XIV, §263. This section was not repealed until 1987, twenty years after it was rendered unenforceable by *Loving v. Virginia*, 388 U.S. 1 (1967).

[24] Mississippi courts adopted a one-drop rule for school attendance in 1917, but in 1926 the state legislature rejected a marriage law modeled on the Virginia Racial Integrity Act. *Moreau v. Grandich*, 114 Miss. 571; "Governor Urges Sanctity of Race," *Clarion-Ledger*, February 5, 1926.

[25] Cheryl Harris, "Whiteness as Property," *Harvard Law Review* 106 (June 1993): 1707–91.

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such laws are central to creating a "racial order" that made white families—rather than the individual citizen—the building blocks of the state.[26] Laws prohibiting interracial marriage also excluded interracial couples from assuming the obligations and benefits of marriage. The issue was also rhetorically powerful during Reconstruction, as white supremacists justified their violent efforts to recapture state legislatures and disfranchise Black men by accusing them of desiring "social equality," including the right to marry white women. They loudly argued for the necessity of lynching to control the "Black beast rapist," even though most lynching victims were not accused of rape, as contemporary anti-lynching activist Ida B. Wells regularly reminded readers.[27] The baseless charge of "miscegenation" lit the tinderbox of white supremacist violence that finally accomplished disfranchisement in North Carolina and elsewhere.[28] By 1900, Black voters held virtually no formal political power in the South.[29]

And yet the Jim Crow legal system did not function effectively to discourage interracial sex. Peggy Pascoe argues that laws prohibiting interracial marriage were "engendered" in that "the enforcement, expansion, and entrenchment of miscegenation laws was selectively, and powerfully, linked to very particular race-and-gender pairings."[30] Controlling white women's sexual conduct policed and preserved whiteness, ensuring they birthed white babies. Sexual relationships between white men and Black women did not challenge the color line in the same way. Under the common-sense racial logic of Jim Crow, the children of Black women inherited their mothers' racial identity, regardless of who their fathers were. This ambivalence about interracial sex was reflected in Mississippi's legal code. State law did not assess a harsher penalty for interracial sex as other states did—most famously in Alabama—though such disparate punishments passed constitutional muster in the early twentieth century.[31] In its 1883 ruling, *Pace v. Alabama*, the U.S. Supreme Court sustained the constitutionality of Alabama's fornication law, which elevated the punishment for sex between unmarried persons from a misdemeanor to a felony when the offenders were assigned to different racial classifications.[32] In Mississippi the offenses of adultery and fornication fell under the purview of the unlawful cohabitation law and were punishable by a maximum fine of $500 and a sentence of six months in the county jail.[33]

[26] Novkov, *Racial Union*, 7.

[27] Ida B. Wells, *Southern Horrors: Lynch Law in All Its Phases* (New York: New York Age Print, 1892); Terence Finnegan, "Lynching and Political Power in Mississippi and South Carolina," in *Under Sentence of Death: Lynching in the South*, ed. W. Fitzhugh Brundage (Chapel Hill: University of North Carolina Press, 1997).

[28] Glenda Gilmore, *Gender and Jim Crow: Women and the Politics of White Supremacy, 1896–1920* (Chapel Hill: University of North Carolina Press, 1996).

[29] Steven Hahn, *A Nation Under Our Feet: Black Political Struggles in the Rural South from Slavery to the Great Migration* (Cambridge: Harvard University Press, 2003), 443–51.

[30] Pascoe, *What Comes Naturally*, 30.

[31] Like Alabama, Florida punished fornication and cohabitation more harshly when the perpetrators were of different races, though these offenses remained misdemeanors. Ala. Code §7421 (1907); Gen. Stat. Fla. §3532 (1906).

[32] *Pace v. Alabama*, 106 U.S. 583 (1883).

[33] Miss. Code §1029 (1906).

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Scholars have often drawn a line between casual sexual relationships and marriage, noting broad disinterest in policing illicit sex.[34] But unlawful cohabitation was neither of these things. Mississippi courts had long established that casual sexual relationships did not constitute unlawful cohabitation, which was a public offense—not one based on private sexual conduct.[35] The state must show that "the parties dwell together openly and notoriously … as if the conjugal relation existed between them."[36] The law shored up the sexual double standard, as white men were unlikely to be charged with fornication if they raped or had a casual sexual relationship with a Black woman. Only long-term intimate relationships fell under the purview of cohabitation law. In 1910, the Mississippi Supreme Court affirmed that, to be convicted of the offense, individuals must both "unlawfully cohabit" as well as engage in "habitual sexual intercourse."[37] Unlawful cohabitation was constituted by the public performance of an enduring intimate relationship. To an untrained eye such a relationship might look a lot like marriage.

Mississippi, like the rest of the United States, had a long history of interracial sex and intimacy.[38] For Black women, this was a history of violence and sorrow. The sexual prerogative white men assumed toward Black women was a central feature of slavery, as Black women were often forced to bear the children of the white men who claimed ownership over them and raped them.[39] Black women's struggle for bodily integrity continued long after emancipation. During Reconstruction, some Black politicians supported anti-miscegenation laws as Black men sought to claim the authority to govern their own households, including their wives, and protect Black women from the coercive control of white

[34] Pascoe, *What Comes Naturally*, 135–36.

[35] The Mississippi Supreme Court defined "unlawful cohabitation" in *Carotti et al. v. State*, 42 Miss. 334 (1867). On the use of unlawful cohabitation charges to prosecute interracial sex, see Victoria Bynum, *Unruly Women: The Politics of Social and Sexual Control in the Old South* (Chapel Hill: University of North Carolina Press, 1992), 93. Many states repealed their unlawful cohabitation laws in the 1970s and 1980s. Joanna L. Grossman and Lawrence Friedman, *Inside the Castle: Law and the Family in 20th Century America* (Princeton: Princeton University Press, 2011), 122.

[36] *Carotti v. State*, 42 Miss. 334 (1867). Cohabitation laws in other states also targeted public behavior rather than private sexual conduct. See JoAnne Sweeney, "Undead Statutes: The Rise, Fall, and Continuing Uses of Adultery and Fornication Criminal Laws," *Loyola University Chicago Law Journal* 46 (2014): 139–42.

[37] *Tynes v. Mississippi*, 93 Miss. 122 (1908).

[38] Martha Hodes, *White Women, Black Men: Illicit Sex in the Nineteenth Century South* (New Haven: Yale University Press, 1997); Martha Hodes, ed., *Sex, Love, Race: Crossing Boundaries in North American History* (New York: New York University Press, 1999); Pascoe, *What Comes Naturally*, 24–27; Joshua D. Rothman, *Notorious in the Neighborhood: Sex and Families across the Color Line in Virginia, 1787–1861* (Chapel Hill: University of North Carolina Press, 2003); Annette Gordon-Reed, *The Hemingses of Monticello: An American Family* (New York: W. W. Norton, 2008); Anne Hyde, *Born of Lakes and Plains: Mixed-Descent People and the Making of the American West* (New York: W. W. Norton, 2022).

[39] Deborah Gray White, *Ar'n't I a Woman?: Female Slaves in the Plantation South* (New York: W. W. Norton, 1985); Jennifer Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia: University of Pennsylvania Press, 2004); Alexandra Finley, *An Intimate Economy: Enslaved Women, Work, and America's Domestic Slave Trade* (Chapel Hill: University of North Carolina Press, 2020).

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men.[40] While the threat of lynching deterred Black men from pursuing sexual relationships with white women, lynch mobs rarely targeted white men. As Tera Hunter writes, "Any sexual relations that developed between black women and white men were considered consensual, even coerced by the seductions of black women's lascivious nature."[41] With a few tragic exceptions such as the 1894 murder of Charlotte Morris and her white husband in Louisiana, white supremacists did not torture or kill white men because they had sexual relationships with Black women.[42] The lack of laws targeting interracial sex also allowed white men to rape and sexually abuse Black women without concern that they would be prosecuted for either rape or fornication.[43] White women embodied morality through their sexual and racial purity, but Black women were not recipients of the fervent legal, social, and cultural protections of womanhood.

Mississippi's marriage and unlawful cohabitation laws were thus constitutive of the gendered character of Jim Crow. The state only barred white men from assuming the obligations of marriage with Black women. At the same time, Mississippi recognized common law marriage.[44] Couples often cohabited without obtaining marriage licenses. Marriage was a public institution subject to community regulation, but the Southern political order was also distinctly patriarchal and grounded in the notion that white men governed their own private lives.[45] The Progressive impulse to extend state surveillance into the home would ultimately falter under the weight of Mississippians' commitment to preserving the historic domestic prerogatives of white men.

Progressive Politics and Anti-Miscegenation Campaigns

When Norwood complained of white men's transgressions, he joined a growing chorus of anti-miscegenation sentiment in the early twentieth century. In

[40] Leslie K. Dunlap, "The Reform of Rape Law and the Problem of White Men," in *Sex, Love, Race*, ed. Martha Hodes (New York: New York University Press, 1999), 355; Pascoe, *What Comes Naturally*, 32. On the debates over freedom and marriage that followed emancipation, see Laura Edwards, *Gendered Strife and Confusion: The Political Culture of Reconstruction* (Urbana: University of Illinois Press, 1997); Tera Hunter, *Bound in Wedlock: Slave and Free Black Marriage in the Nineteenth Century* (Cambridge: Harvard University Press, 2017); and Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (New York: Cambridge University Press, 1998).

[41] Tera Hunter, *To 'Joy My Freedom: Southern Black Women's Lives and Labors after the Civil War* (Cambridge: Harvard University Press, 1997), 34.

[42] Crystal Feimster, *Southern Horrors: Women and the Politics of Rape and Lynching* (Cambridge: Harvard University Press, 2009); Terence Finnegan, *A Deed So Accursed: Lynching in Mississippi and South Carolina, 1881–1940* (Charlottesville: University of Virginia Press, 2013); Julius Thompson, *Lynchings in Mississippi: A History, 1865–1965* (Jefferson, NC: McFarland & Company, 2007). On the lynching of Charlotte Morris, see Feimster, *Southern Horrors*, 165.

[43] Hunter, *To 'Joy My Freedom*; Deborah Gray White, *Too Heavy a Load: Black Women in Defense of Themselves, 1894–1994* (New York: W. W. Norton, 1999); Danielle McGuire, *At the Dark End of the Street: Black Women, Rape, and Resistance—A New History of the Civil Rights Movement from Rosa Parks to the Rise of Black Power* (New York: Vintage Books, 2010).

[44] *Hargroves v. Thompson*, 31 Miss. 211 (1858).

[45] On the continued influence of patriarchal ideas in Southern politics during the Progressive Era, see Gwendoline Alphonso, *Polarized Families, Polarized Parties: Contesting Values and Economics in American Politics* (Philadelphia: University of Pennsylvania Press, 2018), chapter 2.

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Mississippi, a new social movement emerged among self-described "racist purists" who linked their mission to the increasingly influential national eugenics movement. Eugenic concerns about the "progress" of white civilization cast interracial sex as a crime against the entire white race. Progressive bureaucrats embraced the eugenic zeal for scientific racism, which would be most evident in the 1924 Virginia Racial Integrity Act.[46] But the enforcement of laws governing race, marriage, and sex was always subject to the interpretation of local communities. As Ariela Gross has demonstrated, when states adopted more stringent definitions of whiteness, they did not make parsing the color line easier for juries. Instead, a gap persisted between legal racial classifications and the "common sense" notions of race that prevailed among ordinary people.[47] Social norms powerfully shaped the administration of justice in small cities. Juries, made up of men drawn from Mississippi's voter rolls, decided who was guilty and who was not. Prosecutors held the discretion to determine what cases to bring before the juries, and which instances of law-breaking they would look past—a position that held outsized power in small communities.[48] Although women sometimes appeared as witnesses, courtrooms were distinctly masculine spaces. In Progressive Era Mississippi, such community determinations about law and punishment as expressed in local criminal courts remained in the domain of white men.

In Mississippi, the white men of Vicksburg led the crusade. Some of the city's elites, including the local sheriff, chief of police, and various lawyers, judges, and businessmen, gathered in July 1907 to declare their intention to form an Anti-Miscegenation League. Organizers boasted that several hundred white men turned out for their first meeting, and the local newspaper noted approvingly that the meeting attracted "a number of negro men who pledged the white men their cooperation in their efforts."[49] Reporting on the league's work, the editor of the *Vicksburg American* agreed that such an organization was necessary. He opined, "It is folly to talk and write of 'white supremacy,' 'race purity' and the like while a condition is winked at, the very existence of which makes our high-flown declarations the very spirit of farce."[50]

But although the Vicksburg Anti-Miscegenation League made a public spectacle of opposition to interracial sex and cohabitation, their efforts did not translate to successful prosecutions—a pattern that would be replicated elsewhere in southwest Mississippi. Judge Theodore Birchett began the term of circuit court in Vicksburg the same month that the league formed. Birchett instructed the

[46] Pascoe, *What Comes Naturally*, 138–150; Elizabeth Gillespie McRae, *Mothers of Massive Resistance: White Women and the Politics of White Supremacy* (New York: Oxford University Press, 2018), chapter 2. Edward Larson argues that "Southern eugenicists were also preoccupied with race, but at least initially they worried more about the deterioration of the Caucasian race than about any threat from the African race." Edward Larson, *Sex, Race, and Science: Eugenics in the Deep South* (Baltimore: Johns Hopkins University Press, 1995).

[47] Gross, *What Blood Won't Tell*, 106.

[48] Emily Prifogle, "Winks, Whispers, and Prosecutorial Discretion in Rural Iowa, 1925–1928," *Annals of Iowa* 79 (Summer 2020): 247–83.

[49] "Earnest Meeting: Anti-Miscegenation League is Formed," *Vicksburg Herald*, July 11, 1907.

[50] "Dr. Warner on Vice," *Vicksburg American*, December 3, 1907.

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grand jury to bring forth charges on three pressing crimes: gambling, the carrying of concealed weapons, and "miscegenation." The latter was the "root of the race trouble," Judge Birchett explained, indulging in an opportunity to lecture the jury on the perils of miscegenation. "White men in this community were living with negro women," he declared. "This was a crime and the whole community was scandalized." These couples had children together, and, as Birchett saw it, the "mulatto" was a particular "source of trouble."[51] But the grand jury did nothing to address the problem, reporting at the end of the circuit court term that it was "unable to secure evidence sufficient to bring an indictment against any one." Locals were unwilling to testify against their neighbors, friends, and family. Perhaps the law could not be relied upon to regulate this sensitive part of life. Instead, as the *Vicksburg American* declared, private citizens must ostracize those engaged in interracial relationships. "It is possible to make it impossible for a man to live in a community without a resort to the power of the courts to eject him," the editor explained. "The crime of miscegenation must be made so odious that no man will dare to insult his fellows by committing it."[52] Neighbors should use scorn and shame to push white men to end their relationships with Black women. The following spring, the grand jury again investigated accusations of interracial cohabitation. Again, they issued no indictments.[53]

Although organizations like the Anti-Miscegenation League employed the language of eugenics, white officials frequently framed the nature of the offense in moral terms. The *Vicksburg Herald* editor's plea to make the crime "so odious" that it would jeopardize a person's reputation implied that, at present, many residents—including members of the jury—did not view the offense as particularly serious. In Port Gibson, a postage-stamp sized town thirty miles south of Vicksburg, members of the Law and Order League "pledged themselves to a vigorous crusade for the protection of race purity" and suggested a law that would allow public officials to conduct house-by-house searches to identify and prosecute those living "immoral lives."[54] Port Gibson, they claimed, had an undeserved poor reputation. Specifically, the crusaders sought to correct the impression that, when it came to the problem of miscegenation, "Port Gibson is the worst town in the state."[55] The *Monroe Star* lauded the league's efforts, even as it ruefully noted the widespread nature of the issue. The editor cast blame on elite white men, lamenting, "Unfortunately, there are a few men in almost every community, who stand high in business and political circles, guilty of this crime against women and God. Such men should be avoided as moral lepers, tainted and condemned."[56] White supremacists had disfranchised Black voters and threatened Black men with lynching, but they struggled to control the behavior of other white men, and newspapers implied that elites used their power and influence to avoid arrests and convictions.

[51] "Miscegenation is touched on as charge," *Vicksburg Evening Post*, July 1, 1907.

[52] "An Individual Duty," *Vicksburg American*, July 18, 1907.

[53] "That Miscegenation Pardon," *Vicksburg Herald*, May 31, 1908.

[54] "The Fight on Miscegenation," *Vicksburg Evening Post*, December 16, 1907.

[55] "Where Only Man is Vile," *Vicksburg American*, January 4, 1908.

[56] "Crime of Miscegenation to be Vigorously Opposed in Many Circles in the South," *Democrat-Times*, July 6, 1907.

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One challenge to policing interracial cohabitation was the structure of Mississippi's legal system. Largely rural at the turn of the century, the state had thirteen circuit court districts in which traveling judges presided over brief sessions twice a year.[57] The judge was usually an outsider. To secure convictions, circuit court judges had to persuade members of these communities to indict one another and, eventually, declare them guilty at trial. With jury pools drawn from local white men, this set the judge and jury at odds if locals resisted bringing charges against their neighbors, friends, or family. Judges worked within a constrained system that was typically more concerned with process, precedent, and tradition than with high-flown principles of race purity. "Judges were rarely the producers of a coherent system of normative values or beliefs," Hendrik Hartog writes in his study of separation and divorce law. "They were the managers of the legal process: of laws, customs, and inherited practices that incorporated incoherent and contradictory values and histories."[58] One of the "contradictory values" of Jim Crow Mississippi was the prerogative white men held to choose their sexual, romantic, and domestic partners despite the state's prohibition on interracial marriage. Even judges who sought to use their position to make public policy worked within a system that constrained their ability to pursue reform independently, as even the most dedicated would discover.

Prosecuting Unlawful Cohabitation in Natchez

Although the efforts to convict white men in Vicksburg were fruitless, the *Vicksburg American* eagerly reported on successful unlawful cohabitation trials in other places. The editor was particularly fond of the crusading judge who presided over the Sixth Circuit, which included the southwestern counties of the state. In June 1909, the newspaper explained that "wherever he holds court" Judge Moise H. Wilkinson "is making life a burden for white men who are guilty of unlawful cohabitation."[59]

Wilkinson had been reappointed to the bench by Vardaman in 1907.[60] He was born to a planter family, but as a judge he adhered to Progressive principles. Wilkinson was raised in Amite County, which was a hotbed of Whitecap violence and intimidation in the 1890s. The "Whitecappers" were white vigilante tenant farmers or smallholders who blamed Black landowners, Jewish merchants, and wealthy plantation owners for their economic woes.[61] In 1904, Wilkinson presided over trials in which three Whitecappers were convicted of the murders of two Black men—incidents that led to the establishment of a local Law and Order League.[62] Progressives like Wilkinson sought to curb extralegal violence and channel conflicts into the purview of state

[57] Miss. Code, §673 (1906).

[58] Hartog, *Man and Wife*, 4.

[59] "Sheriff Tried for Miscegenation," *Vicksburg Evening Post*, June 9, 1909.

[60] "Judge Wilkinson Is Reappointed," *Semi-Weekly Leader* (Brookhaven, MS), August 24, 1907.

[61] William F. Holmes, "Whitecapping: Anti-Semitism in the Populist Era," *American Jewish Historical Quarterly* 63 (March 1974): 244–61.

[62] "Whitecappers Sentenced," *DeSoto Times* (Hernando, MS), December 23, 1904.

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control. Wilkinson's embrace of law and order politics also led him to be particularly concerned with prosecuting forms of vice, including gambling, drinking, and interracial sex. But like Judge Birchett, Wilkinson found his efforts stymied by his own juries. During the spring 1909 session of court, Wilkinson called members of the petit jury "fools" and "idiots" when they could not agree on the guilt of alleged bootlegger George Hastings.[63] Their indecision gave the impression that "the people of Natchez are in favor of violations of the Prohibition laws of the state."[64] The jury was apparently less enthusiastic than Judge Wilkinson in ferreting out every instance of law-breaking in town.

But Wilkinson did find support for his anti-miscegenation agenda. When the spring term of court began on Monday, April 12, 1909, he declared that "he had heard of complaints from the respectable colored citizens that the law against 'illegal cohabitation' was being violated in their neighborhood."[65] On Saturday, April 17, the grand jury issued indictments of several alleged interracial couples, including William Paul and Emmaline Miller.[66] Paul, a white man, was fifty-five years old and a thirty-year veteran of the city's police force. Miller, a Black woman, was ten years his junior and worked as a cook. The following Wednesday, the pair pled not guilty, and the case went to trial. Following a day and a night of deliberations, the jury found Paul and Miller guilty.[67] The court sentenced William Paul to serve ninety days in the county jail and pay a $200 fine. Emmaline Miller received a lesser fine of $75 and a suspended six-month sentence, pending good behavior.[68]

Over the course of the spring and autumn terms of court, thirty-seven people were charged with unlawful cohabitation, some as couples and some individually. The Adams County sheriff's docket book and the circuit court minutes indicate that arrests for "unlawful cohabitation" were few and far between prior to April 1909.[69] Most of these cases were resolved within a year, and there were few subsequent arrests for at least another decade. The arrests of Miller, Paul, and the others reflected a burst of enthusiasm for prosecuting unlawful cohabitation, but this did not necessarily make legal action an effective deterrent. In fact, out of the dozens charged with unlawful cohabitation in 1909, William Paul was the only person who served any time in jail.

This was not for lack of evidence. Some accused individuals were, like Miller and Paul, advanced in age and had been together for years. Others were the parents of very young children. The newspaper in Port Gibson eagerly reported that the league caught "in its dragnet some of the most prominent and influential citizens of Natchez."[70] But not all of those accused of unlawful

[63] "Wilkinson a Roaster," *Natchez Democrat*, April 18, 1909.
[64] "Judge Wilkinson's Charges," *Natchez Democrat*, April 18, 1909.
[65] "With the Circuit Court," *Natchez Democrat*, April 13, 1909.
[66] Circuit Court Minutes, Adams County, book H, p. 20–21, Historic Natchez Foundation, Natchez, MS (hereafter HNF).
[67] Circuit Court Minutes, Adams County, book H, pp. 32–33, HNF.
[68] Circuit Court Minutes, Adams County, book H, p. 50, HNF.
[69] The circuit court records did not always identify the partners of individuals charged with unlawful cohabitation.
[70] *Vicksburg American*, May 11, 1909.

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cohabitation were wealthy or prominent members of the community. Some of the men worked as laborers. Many of the women worked as cooks or seamstresses; others claimed no employment. But in every case brought before the court, the women were Black and the men were white.

One of the first men arrested was also one of the city's most prominent businessmen. Charles Zerkowsky was a member of a prominent Jewish family that had lived in Natchez since before the Civil War. Like many Jewish Southerners, the Zerkowsky family was largely assimilated into white society.[71] After Charles's parents immigrated from Poland sometime before his birth in 1859, his father worked as a peddler.[72] The sons followed their father into the retail trade, operating as the Zerkowsky Brothers. They owned several local businesses, and Charles had extensive real estate holdings. According to official records, Zerkowsky was a lifelong bachelor. But the district attorney argued that, in fact, he unlawfully cohabited with a Black woman, Ella Carter.[73]

Christine Williams and Napthalia Lisso were also caught in the dragnet. A "prominent traveling man of Natchez," Lisso was a salesman who represented local firms and, like Zerkowsky, was Jewish.[74] He likely worked with the Zerkowskys, connecting local producers to grocery wholesalers in Chicago. In 1899 Lisso married a Jewish woman from New Orleans, but he was widowed just two years later.[75] He eventually began a relationship with Christine Williams, a Black woman, and they were both charged in the spring of 1909. Mary Dent, a Black woman in her late sixties, was arrested in May.[76] Her longtime partner, seventy-year-old Lawrence Clapp, had been indicted in April.[77] Henry Hunter was charged alongside Carrie Rowan. Hunter was described as Rowan's "boarder" in the 1900 census, suggesting that the relationship was probably long-standing.[78] James Reale, Jr. and Lee Richardson were charged the same day as Clapp. Reale, a grocer and the son of an Italian immigrant, was a thirty-eight-year-old white man who allegedly cohabited with Runie Ratcliff.[79]

Natchez was a small city. Many of these couples knew one another and likely socialized. Reale, Zerkowsky, and Lisso were all connected to the grocery trade. Carrie Rowan's next-door neighbor, Ella Stanton, was also arrested for unlawful

[71] Eric Goldstein, *The Price of Whiteness: Jews, Race, and American Identity* (Princeton: Princeton University Press, 2006).

[72] *1860 U.S. Federal Census*; Amite, Mississippi. Via Ancestry.com.

[73] *Sheriff's Docket Book* (1909), Adams County Courthouse Storage Annex, Natchez, MS.

[74] "With Circuit Court," *Natchez Democrat*, April 25, 1909.

[75] *Times-Democrat* (New Orleans), February 12, 1899; *Commercial Appeal*, August 22, 1901.

[76] *Natchez Democrat*, May 14, 1909.

[77] "Three More," *Natchez Democrat*, May 13, 1909.

[78] *1900 Federal Census*; Natchez Ward 3; Adams, Mississippi; enumeration district 9. Via Ancestry.com.

[79] *1910 Federal Census*; Natchez Ward 2; Adams, Mississippi; enumeration district 7. Via Ancestry.com.

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cohabitation.[80] The women were also the respective heads of their households, and neither claimed a profession to the census-taker. By 1930, Stanton owned a home on Woodlawn Avenue, where she lived for decades, evidently alone.[81]

While some of the couples did not appear to have children, others had large, growing families. William Sanders, a white butcher, was fifteen years older than his partner, Mamie Godbolt. Godbolt worked as a washerwoman, and she also owned her own home—a home that was, in fact, probably Sanders's as well. (He is conspicuously absent in the census.) The pair had been together since the 1890s. In 1910, the census recorded that Godbolt lived with the couple's eight children, who ranged in age from sixteen years to two months old. Their baby, John, was born in February and would have been conceived sometime in the spring or early summer of 1909, just after his mother's arrest.[82] Another couple charged with unlawful cohabitation also had an expanding family. Ralphine Burns was the granddaughter of a Black woman, Rachel Burns, and a white slaveholder, William Burns, who had emancipated Rachel and the children she bore him.[83] Ralphine Burns and George Dean were parents to three children: Hazel, Edmund, and Ethel. Like Mamie Godbolt, Burns was pregnant that spring. She gave birth to a baby girl, Olga, before the year's end.[84]

The Dean and Sanders households constituted, by any measure of their era, families. The children bore their fathers' last names. There is no evidence to suggest that these men denied their relationships to their sons and daughters. By the standards of Mississippi law, they would have been legal families as well—if it were not for the fact that the women were Black and the men were white. These families were denied legal status solely on account of race.

What happened to these couples once the grand jury charged them? Only two other couples received jury trials, and both were declared not guilty.[85] All of the individuals who pled guilty received suspended sentences, including Godbolt and Sanders. Henry Hunter pled guilty and received a suspended sentence and a $150 fine.[86] Nap Lisso and Christine Williams were fined $150 and $25, respectively.[87] R. Lee Parker's fine was $100.[88] The district attorney

[80] *1910 Federal Census*; Natchez Ward 2; Adams, Mississippi; enumeration district 6. Via Ancestry.com.

[81] *1940 Federal Census*; Natchez, Adams, Mississippi; enumeration districts 1–5. Via Ancestry.com.

[82] *1910 Federal Census*; Natchez Ward 4; enumeration district 10; Adams, Mississippi. Via Ancestry.com.

[83] The details of Ralphine's family history are laid out in a lawsuit over a contested property that once belonged to her white grandfather, William Burns. *William Burns et al. v. Randolph Burns et al.*, case no. 1350, Chancery Court files, Adams County Courthouse, Natchez, MS.

[84] *1910 Federal Census*; Natchez Ward 1; Adams, Mississippi; enumeration district 5. Via Ancestry.com.

[85] Circuit Court Minutes, Adams County, book H, pp. 33–34, 60, HNF.

[86] "Natchez—Two Plead Guilty to Illegal Cohabitation—Simms Case Up," *Times-Democrat*, April 24, 1909.

[87] Circuit Court Minutes, Adams County, book H, pp. 47 and 59, HNF.

[88] Circuit Court Minutes, Adams County, book H, p. 38, HNF.

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eventually declined to pursue many of the other cases. When the circuit court began its autumn session in October, he dropped the charges against Charles Zerkowsky and Ella Carter. By the following year, even Judge Wilkinson seemed to have lost his zeal for pursuing unlawful cohabitation cases. In April 1910, the district attorney chose not to pursue the cases against eight couples, including Ralphine Burns and George Dean.[89]

Given the number of light sentences, it seems that policeman William Paul was singled out as having violated the standards set by the community. Perhaps his disregard of the unlawful cohabitation law was considered unbecoming of a member of the city's police force. Paul nevertheless continued to have the sympathy of some local residents who circulated a petition imploring the state's governor to pardon him.[90]

Charles Zerkowsky continued to do business in Natchez. Indeed, Zerkowsky seems to have become more prominent as a local business and civic leader after his much-publicized arrest in 1909. Perhaps it was his consistent dedication to improving the welfare of Adams County farmers that allowed him to retain his status. As the boll weevil ravaged cotton fields across Adams County, Zerkowsky encouraged farmers to diversify their crops and plant vegetables like corn, tomatoes, and sweet potatoes.[91] He criticized the city's chicken ordinance, which he said placed an unfair burden on poorer residents who depended on backyard birds to feed their families.[92] He purchased thousands of young fruit trees and sold them at cost, and growers could conveniently sell their peaches back to the Zerkowsky cannery after the harvest.[93] By 1917, the peach tree operation was so successful that the *Natchez Democrat* crowned Zerkowsky the "Peach Tree King of Adams County."[94] R. Lee Parker also retained his position in the city's business community, serving alongside Zerkowsky on the Chamber of Commerce.[95]

The records in the archive do not—and cannot—tell the whole story of interracial families in Natchez. The extant records reveal more about the lives of the white men charged with unlawful cohabitation than they do of their Black partners. Businessmen like Zerkowsky and Parker had their words and actions printed in the local newspaper. They left a slew of other records, including land deeds and wills. The records reveal considerably less about the women involved, who could never have the same status in white society that their partners held. Of the nature of their relationships and their interior lives, of course, we can know even less.

[89] Circuit Court Minutes, Adams County, book H, pp. 93–94, HNF.

[90] "Breeland Sentenced," *Daily Democrat*, May 1, 1909; *Natchez Democrat*, November 1, 1909. It seems they did not send the petition to the governor for approval as there is no record of it among the governor's files at the Mississippi Department of Archives and History.

[91] "Chamber of Commerce," *Natchez Democrat*, March 11, 1914.

[92] "Chicken Ordinance Opponents to Memorialize City Council," *Natchez Democrat*, February 23, 1921.

[93] "Zerkowsky Ordered 2,000 Elberta Peach Trees," *Natchez Democrat*, September 25, 1913.

[94] "Peach Tree King is Now Taking Orders," *Natchez Democrat*, September 23, 1917.

[95] "Chamber of Commerce," *Natchez Democrat*, January 18, 1911.

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Unlawful Cohabitation and the Problem of Evidence

Was Natchez unusual in its tolerance for interracial relationships? The Natchez District had an exceptionally large and significant free Black population prior to emancipation, and many of these people were, like Ralphine Burns, the descendants of Black women and white slaveholders.[96] At the same time, anecdotal evidence suggests that such families existed in other communities. The descendants of Newton and Rachel Knight, dubbed the "White Negroes" of Jones County, received national attention when Davis Knight was arrested and tried for marrying a white woman in 1948.[97] There were also contemporaneous unlawful cohabitation convictions elsewhere in the state. In May 1908, Governor Edmond Noel earned the scorn of the Vicksburg Anti-Miscegenation League when he issued a pardon for R. F. Wilson, a white man who had been convicted of unlawful cohabitation in Leflore County.[98] Wilson and his Black partner, Katie Jones, had been driven from Greenville before being arrested and charged.[99]

The most widely publicized unlawful cohabitation trial in Progressive Era Mississippi involved another law enforcement officer. In Lincoln County, just weeks after encouraging the Natchez grand jury to indict interracial couples, Judge Wilkinson presided over the opening of the spring circuit court term, where the local newspaper reported "that five or six true bills were returned against white men for alleged unlawful co-habitation or living in adultery with negro women."[100] But one trial gained more attention than any of the others. The Brookhaven courtroom was "packed almost to suffocation" by the crowd that gathered to see the white county sheriff, James Frank Greer, tried for unlawful cohabitation with Emma Johnson, a Black woman. Greer had previously run for office on a law and order "reform platform" in which he dedicated himself to purging the county "of white and negro vagrants, blind tigers and negro prostitutes who impudently disported themselves in luxuriant idleness."[101] Lincoln County had a close-knit farming population, and jury selection was belabored by the fact that so many members of the pool were related to the sheriff by blood or marriage. The state presented thirteen witnesses, and the defense had four, including Greer and his deputy, Charles Hardy. The case ended in a mistrial, with ten jurors in favor of conviction and two opposed.[102] A few weeks later, the court retried Greer. Although the

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[96] On free Black people in the Natchez District, see Nik Ribianszky, *Generations of Freedom: Gender, Movement, and Violence in Natchez, 1779–1865* (Athens: University of Georgia Press, 2021); Kimberly Welch, "Black Litigiousness and White Accountability: Free Blacks and the Rhetoric of Reputation in the Antebellum Natchez District," *Journal of the Civil War Era* 5 (September 2015): 372–98.

[97] Victoria Bynum, "'White Negroes' in Segregated Mississippi: Miscegenation, Racial Identity, and the Law," *The Journal of Southern History* 64 (May 1998): 247–76.

[98] Jere Nash, "Edmund Favor Noel (1908–1912) and the Rise of James K. Vardaman and Theodore G. Bilbo," *Journal of Mississippi History* 81 (Spring/Summer 2019): 3–22.

[99] "Did Noel Blunder?" *Newton Record*, June 11, 1908.

[100] "The Circuit Court," *Semi-Weekly Leader*, May 26, 1909.

[101] "The Greer Case," *Semi-Weekly Leader*, June 26, 1909.

[102] "The Circuit Court: The Greer Trial the Chief Feature Thursday and Friday," *Semi-Weekly Leader*, May 29, 1909.

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state introduced two witnesses who "testified to having personally witnessed" acts of "unlawful intimacy" between Greer and Johnson, this time the jury acquitted him.[103]

The Greer and Paul cases likely drew public ire because they laid bare the problem of the white male prerogative in the age of Jim Crow. If sheriffs and police officers disregarded the law, who could be expected to take prohibitions on interracial cohabitation seriously? As the editor of the local paper mused, "[T]he conclusion is irresistible that either Sheriff Greer has been the innocent victim of a most extraordinary combination of circumstances, or he is the greatest hypocrite and moral reprobate in the confines of Lincoln county."[104] Newspapers around the state reported on the trials and lamented the inability of the Lincoln County jury to convict Greer. "If the Lincoln sheriff was guilty it is a pity he was not convicted and sent to the penitentiary. This is a species of lawlessness that is entirely too common in Mississippi and doubtless all over the South," complained the *Carrollton Conservative.* "We talk about the race problem with great stress on Caucasian superiority, and yet we are helping to make this very problem more intricate, more serious and harder to settle."[105]

But it was not only the actions of law enforcement that foiled the efforts of anti-miscegenationists. The Port Gibson *Reveille* recorded two cases of unlawful cohabitation brought in the county's court in 1909, calling it a "most damaging and far-reaching crime." The editor argued that "[s]entiment is crystallizing throughout the south against this disgusting practice, and it is only a matter of time when there will be radical reforms."[106] In late June, a Port Gibson jury found Charles Cade guilty of unlawful cohabitation. Cade, a divorced forty-year-old white butcher, was rumored to have taken up with Ella Killian, a Black woman in her early twenties.[107] But there was a hitch: Killian was in Memphis, allegedly seeking medical treatment. (The state's lawyers implied that she feigned illness.) Despite her absence, the jury found Cade guilty of unlawful cohabitation. The judge sentenced him to serve six months in jail and assessed him a $500 fine, the maximum penalty allowed by law.[108] Cade appealed his conviction, and the state supreme court reversed the jury's ruling, noting that the district attorney had not given the defendant enough time to find and call the most important witness: his alleged lover, Ella Killian. Even if they were indicted together, Cade had the right to call witnesses for his defense.[109] In *Cade v. Mississippi*, the state supreme court pointed to serious problems with the evidence being used to convict couples of unlawful cohabitation. But these issues were fundamentally bound up with any prosecution given the intimate nature of the offense. The reversal also demonstrates how difficult it could be for prosecutors to get locals to testify against one

[103] "The Greer Case," *Semi-Weekly Leader*, June 26, 1909.
[104] "The Greer Case," *Semi-Weekly Leader*, June 26, 1909.
[105] "A Crying Evil," reprinted in the *Yazoo Herald*, June 25, 1909.
[106] "Circuit Court," *Port Gibson Reveille*, June 24, 1909.
[107] "Circuit Court," *Port Gibson Reveille*, July 1, 1909.
[108] "Judge Bush Returns from Claiborne County Court," *Vicksburg American*, July 2, 1909.
[109] *Cade v. State of Mississippi*, 96 Miss. 434 (1910).

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another. Knowledge of the offense required familiarity with a person's regular living arrangements. The people best suited to give this kind of testimony were those who were closest to the people charged with crimes—such as Ella Killian, or Sheriff Greer's alleged partner, Emma Johnson. Their voices are absent from the official record.

Only white men who cohabited with Black women could expect such kid-glove treatment from the courts. A few months after Governor Noel pardoned Wilson, the McComb mayor signed a petition sent to Noel on behalf of a white woman, Susie Perkins, who was serving a ten-year term in the state penitentiary following her 1905 marriage to a man who allegedly had African ancestry.[110] Perkins, the petition said, was an "ignorant" woman who had been fooled by a light-skinned Black schoolteacher, Charles Martin, who "was reported to be white and visited in the homes of white people in the community." He allegedly enticed Perkins to travel to Louisiana, where the couple married. Upon their return, someone cast doubt on Martin's whiteness. Prosecutors claimed that Martin "deserted" Perkins, leaving her alone to face miscegenation charges.[111] The truth is almost certainly more complicated. Perkins claimed naïveté as her defense, but Martin could make no such claim to ignorance of Mississippi law and custom.[112] Black men knew the penalty they faced for the offense of having a sexual relationship with a white woman: death by lynch mob. Fearing for his life, Martin fled the county. He was recaptured in early 1908 but again escaped before trial.[113] Perkins alone faced punishment for their joint transgression of the law. When the McComb mayor petitioned for a pardon, he cast her as the sympathetic pawn of a scheming man. The penitentiary was no place for Susie Perkins.

Many others in McComb joined the mayor in asking the governor to grant Perkins clemency. Jesse B. Webb, the former district attorney who prosecuted the case, was a signatory, and he also wrote separately in favor of clemency. In a letter to Governor Noel, Webb argued that Perkins should have never been convicted, writing, "It was impossible for me to prove that Martin had more than 1/8 negro in him." He elaborated, "My best information was that he was either 1/16 or 1/32 negro. Whether he ever goes to trial or not makes no difference; he cannot be convicted, because of this fact."[114] Webb explained that he had long advocated "to let Susie go free." The women's warden and chaplain at the penitentiary also wrote in support of the petition. Judge Wilkinson wrote against clemency, labeling Perkins "a common prostitute."[115] Noel did not pardon Perkins.

[110] Clemency Petition, Suspensions and Pardons Correspondence, 1908–1912, series 863, box 1234, folder 41, Mississippi Department of Archives and History, Jackson, MS (hereafter MDAH).

[111] "Ask Pardon for Woman," *Jackson Daily News*, November 21, 1908.

[112] "Mississippi Matters," *Times-Democrat*, April 26, 1911.

[113] "Has Skipped Again: Negro School Teacher Whose Wife is in the Pen," *Weekly Clarion-Ledger*, April 2, 1908.

[114] Jesse B. Webb to Gov. Edmond F. Noel, June 5, 1909, Suspensions and Pardons Correspondence, 1908–1912, series 863, box 1234, folder 41, MDAH.

[115] Moise H. Wilkinson to Gov. Edmond F. Noel, July 2, 1909, Suspensions and Pardons Correspondence, 1908–1912, series 863, box 1234, folder 41, MDAH.

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Conclusion

Judge Moise Wilkinson's anti-miscegenation crusade ended unceremoniously a few years after it began, having resulted in just a few successful prosecutions. Wilkinson's bouts of kidney disease led to his death in 1911 at the age of forty-five.[116] There is little evidence that the spate of unlawful cohabitation prosecutions in Natchez was effective in breaking up interracial families. Census records demonstrate that some couples remained together. In 1910, just one year after the pair pled guilty, Mary Dent still lived with Lawrence Clapp, though the census identified her as his "companion."[117] Charles Zerkowsky and Ella Carter's relationship also endured. Zerkowsky died in 1930, and he bequeathed a building on O'Brien Street to Carter—the same woman with whom he faced unlawful cohabitation charges more than twenty years earlier. The building was Carter's home. She also received $1500 in cash. (Zerkowsky left just a fifth of that sum to the Congregation of B'Nai Israel.) To ensure that Carter's inheritance would be protected, Zerkowsky's will instructed the executors to pay Carter's share of the estate first.[118] The will created a hierarchy of those Zerkowsky sought to protect most after his death, with Ella Carter placed first in line.

Ralphine Burns's private life again became a matter of public interest when she was charged with unlawful cohabitation in 1924, fifteen years after her first arrest. That year, the Adams County district attorney charged seventeen individuals with unlawful cohabitation—and, once again, all the women were Black and the men were white.[119] This time, a jury convicted Burns and her partner. The couple appealed, and the Mississippi Supreme Court reversed their convictions in 1925.[120] In the opinion, the justices acknowledged the weakness of the state's case. Their ruling reflected the problem that common law marriage posed for unlawful cohabitation prosecutions in Mississippi: couples who lived together were presumed to be married. The state had the burden of showing that their union was not legal, and the only way to do this was to prove that Ralphine Burns was Black. But witnesses refused to testify to such a fact. When asked about the race of Burns's children, her Black neighbor Susanna House retorted "that the children in the home of appellants were as white as the district attorney."[121] The Mississippi Supreme Court concluded that the state was unable "to prove that the woman was of other than the white race."[122]

[116] "Death of a Good Man," *Clarion-Ledger*, November 23, 1911.

[117] *1910 Federal Census*; Natchez Ward 4; Adams, Mississippi, enumeration district 10. Via Ancestry.com.

[118] Last will and testament of Charles Zerkowsky, filed October 18, 1930, *Mississippi, U.S., Wills and Probate Records, 1780–1982*. Via Ancestry.com.

[119] Circuit Court Minutes, Adams County, book I, p. 234, HNF.

[120] *Dean v. State*, 139 Miss. 516. Dean's surname is given as "Willie." George Dean was Ralphine Burns's co-defendant in 1909. Willie and George may be the same person, as Willie is said to be the father of all of Ralphine's children in *Dean v. State*.

[121] *1920 Federal Census*, enumeration district 6; Natchez City, ward 2, beat 4. Via Ancestry.com.

[122] *Dean v. State*, 139 Miss. 518. There appeared to be little doubt within the community that Ralphine was a Black woman, but the complexions of her children offered enough ambiguity to the court to throw out her unlawful cohabitation conviction.

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By drawing the line between whiteness and Blackness at the measure one-eighth blood quantum of African ancestry, the law required knowledge of racial categorizations three generations back to the era before emancipation—a time when Mississippi drew the line of whiteness at a blood quantum of one-quarter African ancestry.[123] In the case of Ralphine Burns's children, the supreme court accepted the claims that they were white enough to cast doubt on the Blackness of their mother.

Some couples left Natchez. Following his unlawful cohabitation charge, Nap Lisso moved to Chicago. In 1917, he formally wed Christine Williams, less than a decade after they had been charged with unlawful cohabitation in Natchez.[124] Perhaps the couple moved to Chicago so that they could marry without interference. Either way, the couple remained together until Christine's death in 1929.[125] Other families remained in Adams County. In his history of the Black Freedom Struggle in Natchez, Jack Davis conducted interviews with residents who recalled the existence of interracial families as late as the 1930s, including the enduring bond between Charles Moritz, a Jewish man, and Dorcas Walker, his Black common law wife. The couple lived together, though they were not prosecuted for unlawful cohabitation in either 1909 or 1924.[126]

Perhaps no couple defied the sanctimonious "race purists" more than William Sanders and Mamie Godbolt, whose relationship spanned many decades. The couple grew old together and raised a large family. Although Sanders and Godbolt were recorded as living separately in 1910, the 1920 census recorded the family reunited under the same roof along with their six children.[127] Perhaps to keep up the appearance of propriety with the census-taker, Godbolt is identified as a "housekeeper" rather than Sanders's wife. But their family had grown: their youngest child, Laura, was not yet two. By 1930, the family lived in rural Warren County.[128] In that census, Godbolt and Sanders are described as siblings—albeit ones with different racial classifications. ("Sister" is written over some other illegible term to describe Godbolt's relationship to Sanders.) The children, like their mother, were identified as Black, but they are also described as Sanders's sons and daughters. They share his surname, as do the couple's four grandchildren. Evidently, it was less problematic to identify William as having Black children than a Black wife. By 1940, the family had returned to Natchez, where Sanders and Godbolt lived with two of their adult children, Philomena and Anthony. But

[123] Prior to the Civil War, Mississippi law defined a "mulatto" as a person having one-fourth or more blood quantum of African ancestry. It used the same one-fourth blood quantum rule for whiteness again in its 1880 law prohibiting interracial marriage. Rev. Code Miss. chapter XXXIII, §1, art. 2 (1857); An Act in Relation to Marriage and Divorce, Miss. Rev. Stat. chapter 42, §1147 (1880).

[124] Napthalia Lisso, *Cook County, Illinois, U.S. Marriages Index, 1871–1920* [database online]. Via Ancestry.com.

[125] Cook County, *Illinois Death Index, 1908–1988* [database online]. Via Ancestry.com.

[126] Jack E. Davis, *Race against Time: Culture and Separation in Natchez since 1930* (Baton Rouge: Louisiana State University Press, 2001), 94.

[127] *1920 Federal Census*; Palestine, Adams, Mississippi; enumeration district 13. Via Ancestry.com.

[128] *1930 Federal Census*; beat 5, Warren, Mississippi; enumeration district 22. Via Ancestry.com.

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there is one notable change in the way the census-taker identified the family in 1940. Unlike the previous censuses, everyone in the household was now identified racially as "white."[129] It is likely that this classification did not reflect the consensus of the community, as Philomena is identified as "colored" in the 1941 city directory.[130] Perhaps the census-taker labeled the family as racially homogeneous to preserve the fiction of strict racial separation under Jim Crow. Or perhaps they chose a shared racial identity to make it all less complicated to the census-taker at their door.

The example of Mamie Godbolt and William Sanders is extraordinary, even as the existence of mixed-race families in Natchez was not. The couple kept their family together even as Jim Crow reached its violent full form in the early twentieth century. In the 1940s, they lived in a multi-generational household full of children. We do not know what the neighbors thought or whether they cared. And while we cannot know what brought Godbolt and Sanders together—whether convenience, affection, or something else—their union endured even in the face of prosecution. The law refused to acknowledge their bond, but the challenges of enforcement allowed them to build a life and a family in the shadow of Jim Crow.

The unintended consequence of the Progressive Era efforts to prosecute interracial couples was to reveal a widespread disinterest in punishing these kinds of legal and cultural infractions through the courts. These prosecutions briefly illuminated clashes between those identified as occupying a class above the law—including law enforcement officials like William Paul and J. F. Greer—and other white Mississippians. At stake was a more fundamental question about the extent of the authority of white men to govern their private lives, including whether they could choose to form families with Black women. This history reveals the contradictions of Jim Crow law, which protected white men's prerogative to choose their partners as they saw fit even as some formed interracial families that made a mockery of the spirit of segregation.

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[129] *1940 Federal Census*; Natchez, Adams, Mississippi; enumeration districts 1–5. Via Ancestry.com.
[130] R.L. Polk & Co., *Natchez, Mississippi, City Directory* (Richmond: R. L. Polk, 1941), 356.

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