

ABSTRACT

Improvising Structures of Power and Race: The Sally Miller Story And New Orleans

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In 1844, Sally Miller, a slave in New Orleans, filed a freedom suit against her previous owners. She claimed to be a German immigrant, illegally enslaved for over twenty years. Historians have argued that Miller's case is representative of Southern racial ideology and legal tradition of the antebellum era. This thesis will build upon those conclusions and seek to fit the case into the specific historical narrative of its setting. Through a detailed analysis of New Orleans' past, this thesis will place the Sally Miller case within that particular history. Because New Orleans had such a unique past, it is important to examine the case within that specific context. Its multicultural heritage created nontraditional structures of power and race. Within those structures, there was room for improvisation. Studying Sally's case with a focus on her home city and its character adds a new level of interpretation to the existing historiography.

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IMPROVISING STRUCTURES OF POWER AND RACE:
THE SALLY MILLER STORY AND NEW ORLEANS

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PREFACE

From the very beginning, New Orleans' physical and metaphorical foundations were muddy. The waters of the Mississippi proved an unruly match for the early settlers, serving as an omen of the rowdy reputation the citizens of the colony, and later city, would take on. As the colony passed from one government to another, the lines of race, law, and power were all blurred due to the changes of power, tensions between local and international interests, and the melting pot of people who entered the city by port or by foot. Unlike the formation of any other U.S. state, Louisiana began to build a heritage with unique foundations; French, Spanish, African, and American influences, along with the variety of flavors brought by immigrants, all combined to form a rogue world where definitions of power, identity, and culture were flexible. This was especially true in New Orleans, the area's trademark stronghold of culture and history. Because of its location (which was disputed and negotiated from the beginning), it became a very important port city, one where economic, social, and political structures were all malleable and transformed to meet the needs of the time. A funnel for both slaves and immigration, not to mention both legal and smuggled goods, the New Orleans port culture created a different kind of system of racial identity. The system was one that allowed for greater variation, but the slave trade system also called for detailed "classifications" broken down by alleged scientific facts but ultimately ruled by societal perception. All in all, it was a city where the people were the kings; they found spaces within imposed structures to get what they needed and to do what they wanted.

Learning about the heritage of New Orleans is by no means a mundane task; it reads like a melodramatic tall tale, filled with larger than life characters and scandalous episodes. However, New Orleans' history is more than just an exciting read. It represents the foundation upon which its future was built upon. It affected the culture and structure of the city in profound and irreversible ways. Therefore, understanding the Crescent City's unique heritage is crucial to understanding the events that sprung from it. This thesis will explore that colorful heritage and work to place an individual event within the greater context of that past.

From New Orleans' rich historical tradition come stories that may seem bizarre to a modern reader. These stories find their best fit within the greater historical narrative of the city they took place in. The case of Sally Miller is one of the stories. On January 22, 1844, a petition was filed with the New Orleans District Court by Miller, a slave woman.¹ Miller's claim was a sensational one: she was actually a German woman called Salomé Muller, wrongfully enslaved for over twenty years. The case was directly against her most recent owner, Louis Belmonti, but Belmonti called in her previous owner John Miller as a warrantor.² The case unfolded through five lawsuits, with each new suit bringing forth more colorful characters, different evidence and legal precedents, and ultimately different verdicts.³ Whether or not Sally Miller the slave woman and Salomé Muller the lost German girl were one in the same was lost to the past. Towards its close, the evidence seemed to have continued to build against the slave Sally, but a definitive

¹ Carol Wilson. *The Two Lives of Sally Miller: A Case of Mistaken Racial Identity in Antebellum New Orleans*. (New Brunswick, NJ: Rutgers University Press, 2007), 4.

² Ibid, 5.

³ Ibid., 6.

answer was never really determined. The pages of the archives are silent both to the voice of the woman at the center of the case and to what happened to her after the case ended.

In regards to this particular case, the scholarship is not wide, but there have been a few deep studies. Two notable authors, George Washington Cable, a famous Louisianan writer of the nineteenth century, and John Bailey, a modern day Australian lawyer, have produced partially fictionalized accounts of the story.⁴ Cable's perhaps leans more towards a theatrical, sensationalist style while Bailey hypothesizes scenarios left out of the official records and fills in the blanks with his educated imagination. Carol Wilson, professor of history at Washington College, has done the most in-depth, factual research on Sally Miller's trials. Wilson records the facts of the trial transcripts and the historical context of New Orleans at the time of the trial, ultimately arguing that Sally Miller was an imposter. She examines the culture of the time and proposes that perhaps accepting the idea of a white being mistakenly enslaved was less shocking and "less frightening overall than the alternative—an African slave who had tricked whites."⁵ Ariela J. Gross also examines the case in her article, "Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South." She primarily argues that it was Sally Miller's performance of whiteness that was the most contributing factor in her freedom, and that it represents a general theme present in court rooms across the antebellum South.⁶ She uses the case to bolster her thesis on the importance of law in shaping societal constructs of racial identity, in that "law made the 'performance' of whiteness increasingly important

⁴ John Bailey, *The Lost German Slave Girl: The Extraordinary True Story of Sally Miller and Her Fight for Freedom in Old New Orleans*. Reprint ed. (New York: Grove Press, 2005); George Washington Cable, *Strange True Stories of Louisiana*. (New York City: C. Scribner's Sons, 1889).

⁵ Wilson, 112-113.

⁶ Ariela J. Gross, "Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South." *The Yale Law Journal* 108, no. 1 (October 1, 1998): 112.

to the determination of racial status. Doing the things a white man or woman did became the law's working definition of what it meant to be white.”⁷ Both of these studies primarily focus on immediate context and the ideology of the South at large to examine the Sally Miller case and to draw conclusions. This thesis will build upon Wilson's and Gross's work and seek to add to the scholarship of the case by offering a deeper historical context of the specific setting of New Orleans.

It is true that freedom suits like Sally's were not uncommon in the antebellum United States. Socially accepted interracial sexual relationships, especially between slaves and masters, created individuals who fell into the margins of black versus white and thus had space to make claims for freedom. However, these kinds of cases were especially prevalent in Louisiana. It was in fact “easiest to prove one's whiteness in Louisiana” and was the state with the highest number of freedom suits in the United States.⁸ This phenomenon would have been especially true in New Orleans, Louisiana's paradigm of culture and history. By the time Sally's case would see its day, rogue characters, legal improvisation, and cultural hybridity had ruled New Orleans for over one hundred years. New Orleans was a nontraditional city from its beginning, one that constantly faced issues of control and was a hub of cross-cultural exchanges. Placed within the deeper historical context of the city, the Sally Miller case begins to reveal itself to be most at home on the muddy banks of the Mississippi. It is indeed representative of the antebellum Southern ideology, but it also is representative of the New Orleans' historical narrative. This thesis will add a more detailed level of contextual analysis to the historiography of Sally Miller's case and fit it into the greater story of New Orleans.

⁷ Gross, 112.

⁸ Ibid., 176.

Gross and Wilson have both argued convincingly for the case's relevance for studies on antebellum ideology in the South. This thesis will build upon their conclusions and the general ideological context they set up to fit the case within the historiography of its setting. The case is equally, if not more so, representative of New Orleans' ideas of power, identity, and law as it is of the South's story in general. New Orleans' story is far more complex and nuanced than other Southern states, thus it requires a more detailed analysis. As it became a part of the United States, it adopted American ideas in a particular way, integrating them into its existing social constructs. Incorporating more specific contextual study with general ideology allows for better conclusions to be drawn about the specific case and illustrates how the case fits into the greater New Orleans narrative. Indeed, the study of New Orleans' history adds another level of interpretation that allows modern readers to make more educated conclusions about the case as well as to better place it within the story of the antebellum South and of New Orleans.

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CHAPTER ONE

“The Big Uneasy”¹: Settling in the Swamp

To understand Sally Miller’s case, one must understand the world that the plot took place in. When that world is New Orleans, one must go all the way back to the beginning. After a careful examination of the city’s past, clear connections between the nature of the landscape and the actual society, as well as Sally Miller, begin to show themselves. Whether under the Spanish or French flag, the ruling party of New Orleans always ran into issues with how to govern such an “uncivilized” landscape. The land and location themselves made order difficult even without the people that filled them. When the settlers did arrive, shaping the city as they saw fit and adjusting to a way of life tuned uniquely to the currents of the Mississippi, a story more like a melodrama than a history lesson began to unfold. The roguish nature of Sally Miller’s case is exemplary of the type of improvised, chaotic heritage New Orleans developed from its founding. Examining the historical pattern of power struggle in New Orleans adds a deeper level of context to the case and highlights issues of power and nontraditional methods of law within it.

At the time of discovery, the fate of New Orleans seemed to be quite literally and metaphorically muddy. The Mississippi River and the extremely advantageous location of its mouth seemed almost holy in the minds of early New World explorers. Because it provided access to the Gulf and navigation through the continent, the Mississippi seemed to be the most potentially valuable asset of the time. It would be the colony’s lifeline, a

¹ Louise McKinney, *New Orleans: A Cultural History*. (New York: Oxford University Press, 2006), 159.

part of the colony itself. Indeed, one of the city's most famous nicknames, "the Crescent City," comes from visitor Joseph Holt Ingraham's remarks on New Orleans' relation to the river: "I have termed New-Orleans the crescent city...from its being built around the segment of a circle formed by a graceful curve of the river."² However, the river was not always gentle. Its floods would cruelly plague its first-born sons. Nevertheless, the advantages of the Mississippi were apparently worth more to its settlers than the low degree of manageability and soundness of the land around it.

The very nature of the Mississippi River protested to its objectification. Lawrence N. Powell notes "those currents [of the Mississippi] are as unpredictable as they are powerful. There is never a single current—there are always several, each one moving at variable speeds and on different levels, sometimes in contrary directions."³ The river was a rogue, carving its path as it pleased and rising and falling with its currents. Furthermore, in the preface of a city guide from 1938, Harry L. Hopkins, Federal Administrator of the Works Progress Administration, commented: "The greatest power against which the city of New Orleans has had to pit its strength has been also the source of its life: The Mississippi River."⁴ Mercurial and feral yet strong and persistent, it represented the character the city that would tame it.

The river's disagreeable temperament also rang true in the lands bordering it. Not

² Joseph Holt Ingraham, *The South-West*. (New York: Harper & Brothers, 1835), 1:91, quoted in Richard Campanella, *Bienville's Dilemma: A Historical Geography of New Orleans*. (Lafayette, LA: University of Louisiana Press, 2008), 32.

³ Lawrence N. Powell, *The Accidental City: Improvising New Orleans*. (Cambridge, MA: Harvard University Press, 2012), 6.

⁴ Harry L. Hopkins, forward to *The WPA Guide To New Orleans*, by the Federal Writers Project of the Works Progress Administration from the City of New Orleans (Boston: Houghton Mifflin Company, 1938), i.

surprisingly, the rivers' banks and surrounding swamplands were not conducive to building strong foundations. When engineer Benjamin Henry Latrobe went to work on water systems for the city in 1819, he summed up New Orleans in three words: "mud, mud, mud."⁵ He struck water less than three feet below the surface of the land.⁶ There were even empty bubbles underground where organic material rotted and left pockets of unsupported ground.⁷ The foundations of the city mirrored the future of the colony: externally functioning but internally unstable. This instability defined not only the primary problem at its first stages, but also the whole story of New Orleans and its colonization.

In 1682, René-Robert Cavalier, Sieur de La Salle, a Canadian explorer and fur trader, traveled from French Canada down the Mississippi with a motley band of Europeans and Indians.⁸ Three days after arriving at the river's mouth, La Salle and his men claimed the entire river and its basin area for France, naming it Louisiana, in honor of King Louis XIV.⁹ Father Zenobius Membré, a member of the expedition, wrote on the experience:

[W]e arrived, on the sixth of April, at a point where the river divides into three channels [which] are beautiful and deep. The water is brackish; after advancing two leagues it became perfectly salt, and advancing on, we discovered the open sea, so that on the ninth of April, with all possible solemnity, we performed the

⁵ Ned Sublette, *The World That Made New Orleans: From Spanish Silver to Congo Square*. (Chicago: Lawrence Hill Books, 2009), 8.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid., 8.

⁹ Ibid., 9.

ceremony of planting the cross and raising the arms of France, [taking] possession of that river, of all rivers that enter it and of all the country watered by them.¹⁰

After the ceremony (a loose application of the word at best), the men simply left to make their way back up the river to Canada. La Salle wrote to Louis, praising the new French acquisition for its advantageous position for “[harassing] the Spaniards in those regions from whence they derive all their wealth.”¹¹ Despite La Salle’s hopes for the new colony, in 1683 King Louis declared the claim “quite useless.”¹² Nevertheless, La Salle attempted several unsuccessful voyages to return to the land he claimed, hoping it would one day develop into a strong fort for French power. Eventually, La Salle was killed in an incident during one of those attempts in 1694, the details of which were never resolved decisively.¹³ Unable to locate the land La Salle had claimed, the French crown essentially adopted an attitude of indifference that would carry over in greater or lesser degrees throughout their reign of the colony. French Louisiana would lie dormant for almost fifteen years.¹⁴

However, like the changing currents of the Mississippi, the tide of colonization swept back towards New Orleans in 1698 when the French heard the English were

¹⁰ Father Zenobius Membré, “Narrative of La Salle’s Voyage Down the Mississippi, By Father Zenobius Membré,” in *The Journeys of René-Robert Cavalier Sieur de La Salle*, ed. Isaac Joslin Cox (1905; repr. Austin, TX: The Pemberton Press, 1968), 1:145, quoted in Richard Campanella, *Bienville’s Dilemma: A Historical Geography of New Orleans*. (Lafayette, LA: University of Louisiana Press, 2008), 103.

¹¹ Ibid.

¹² Powell, 20.

¹³ Campanella, 103.

¹⁴ Ibid., 19.

considering claiming the lands La Salle had discovered for their own use.¹⁵ The “chess-like rhythm” of colonization led France to make a move on the New World and reclaim its Mississippi lands.¹⁶ Louis Phélypaux, Comte de Pontchartrain, the minister of the French Navy, ordered Pierre Le Moyne, Sieur d’Iberville, and his brother Jean-Baptiste Le Moyne, Sieur de Bienville, to establish a colony where La Salle had laid claim.¹⁷ The Le Moyne brothers were two of fourteen children of a Norman innkeeper who had transplanted to Montréal.¹⁸ Skilled in Indian dialects and acclimated to the ruggedness of frontier exploration, the Le Moynes were ideal for the expedition.¹⁹ Their orders were to find “the mouth [of the Mississippi River]...select a good site that can be defended with a few men, and block entry to the river by other nations.”²⁰ Iberville and Bienville finally reached the long-lost French lands, establishing a settlement near an area the Indians called “Biloxi,” which they dubbed Bay St. Louis.²¹ Antoine Simon Le Page du Pratz, a Dutch settler who lived in the colony from 1718 to 1734, described the area in his memoir:

I never could guess the reason, why the principal settlement was made at this place, nor why the capital should be build at it; as nothing could be more repugnant to good sense; vessels not being able to come within four leagues of it; but what was worse, nothing could be brought from them, but by changing the boats three different times...But what ought still to have been a greater discouragement...was, that the land is the most barren of any to be found

¹⁵ Powell, 10.

¹⁶ Ibid., 11.

¹⁷ Powell, 11; Sublette, 36.

¹⁸ Powell, 21.

¹⁹ Sublette, 37.

²⁰ Powell, 11.

²¹ Sublette, 38.

thereabouts...extremely incommoded with rats, which swarm there in the sand...the famine being so very great...there was nothing in plenty but fish, with which this place abounds.²²

So began the chaotic battle that would be making the decision on the location of the city itself. The records of the various locations to which Bienville and Iberville moved their expeditions are as confusing as the process of permanent settlement. At some point, Iberville moved the settlement to Mobile Bay.²³ The Indians of the area soon informed Iberville of an alternative route to the Gulf of Mexico through Lake Pontchartrain (named after the minister of the Navy), which, despite the moniker, is not a lake but an estuary.²⁴ From Lake Pontchartrain, they stumbled upon the Bayou St. John in 1708, the first part of future New Orleans to be cleared for settlement.²⁵ Bayou St. John proved no better than any of their other locations, however. Paul du Ru, Iberville's chaplain, wrote: "From the head of [Bayou St. John], we must cross through woods but on a path where there is water up to one's waist and mud to one's knees...there was one occasion when I sank into it up to my waist."²⁶ Iberville and his family, along with their expedition companions, buckled down to face the swamp while the disinterested French government turned their eyes from the colony.

²² Antoine-Simon Le Page du Pratz, *The History of Louisiana: Or of the Western Parts of Virginia and Carolina: Containing a Description of the Countries That Lie on Both Sides of the River Mississippi: With an Account of the Settlements, Inhabitants, Soil, Climate, and Products*. (T. Becket, 1774), 28-29, quoted in Sublette, 38-39.

²³ Sublette, 39.

²⁴ Ibid.

²⁵ Ibid., 40.

²⁶ *Journal of Paul du Ru: February 1 to May 8, 1700*, ed. Ruth Lapham Butler (Chicago: 1934), 16, quoted in Campanella, 107.

The brothers' joint venture in the swamps of the Mississippi would not be long-lived, however. Iberville was killed in 1706 in Havana during the War of Spanish Succession.²⁷ Before he died, he "added one final stunning accomplishment to a distinguished naval record": capturing St. Kitts and Nevis, parts of the British Antilles.²⁸ However, Iberville did not die with a clean reputation. True to what would prove to be a theme in the characters that built New Orleans, Iberville and a majority of his family and compatriots (the Le Moynes were known for their nepotism) were implicated in an illegal trading scheme and misappropriation of goods.²⁹ Bienville was one of the only Le Moyne family members to escape without implication, but he nevertheless experienced a black mark on his reputation. Iberville and the Le Moyne family represent the beginning of a long train of rather rough figures that helped to construct the Crescent City. Shannon Lee Dawdy concludes that the history of New Orleans can be described in terms of a "picaresque," using the phrase according to the *American Heritage Dictionary*'s definition: "1. Of or involving clever rogues or adventurers. 2. Of or relating to a genre of usually satiric prose fiction originating in Spain and depicting in realistic, often humorous detail the adventures of a roguish hero of low social degree living by his or her wits in a corrupt society."³⁰ In many ways this was exactly what the story of New Orleans shaped up as: a collection of motley explorers experimenting in "rogue colonialism," as Dawdy

²⁷ Powell, 22.

²⁸ Ibid.

²⁹ Ibid., 23.

³⁰ *The American Heritage Dictionary of the English Language*, 4th ed. (Boston: Houghton Mifflin, 2000), quoted in Shannon Lee Dawdy, *Building the Devil's Empire: French Colonial New Orleans*. (Chicago, Ill.: University of Chicago Press, 2009), 4.

puts it.³¹ She notes three main archetypes present in the French formation of New Orleans: the engineer, the creole, and the rogue.³² The engineer being one who bought into “Enlightenment rationality and experimentation in engineering the city” a creole being a member of the people who, essentially left behind by the French crown, created their own culture based off of the variety of cultural interactions in the city (African slaves, Frenchmen, other explorers of Canadian or European descent, and Native Americans), and a rogue being the individual who “pushed colonial frontiers in their own self-interest.”³³ Iberville fit all three of these descriptions: a rugged frontiersman who, abandoned by any formal direction from his country, sought to create a newly ordered society that matched his own vision.

With Iberville gone, Bienville was left to fight for the brothers’ goal of French forts on the Mississippi. It was a battle against both royal discontent and the growing local despair. Lack of supplies caused an inverse relationship between the colonists’ hunger and their lack of confidence in the experiment. The crown decided to send Martin di’Artaguette as the Commissary General of Louisiane to replace Bienville as head official.³⁴ However, typical to Bienville’s stubborn resilience, the official charged to take over died on the way to the colony, so the position was given back to Bienville.³⁵

D’Artaguette had been able to convince eight brave Mobile colonists to move to the

³¹ Dawdy, 5.

³² Ibid., 11.

³³ Ibid.

³⁴ Edna B. Freiberg, *Bayou St. John In Colonial Louisiana, 1699-1803*, (New Orleans: Harvey Press, 1980), 29.

³⁵ Ibid.

Bayou St. John (the area around which Bienville would stake for New Orleans) and attempt grain cultivation.³⁶ Despite their efforts, the swampy soil proved fruitless. A majority of the eight did not stay in the bayou for an extended amount of time, but a few did, including Louis Juchereau de St. Denis. St. Denis was notable not only for his accomplishments (founding the Natchitoches post, a well established underground trading point between the Spanish and the French), but also for his landmark marriage.³⁷ By marrying a Spanish aristocrat from Mexico, Emanuela Sanchez y Navarro, St. Denis' marriage represented one of the first Creole families of the bayou.³⁸ The marriage served as a forerunner for a long tradition of cultural hybridity as a way of life. The environment of the colony was outside of traditional societal bounds, making a space where both culture and ideas of power and control overlapped, all molding into a new system. This played out not only in how the settlers would rule their city, but also in how they would interact with one another. Later in the city's history, intermarriages and bicultural sexual relationships became extremely pervasive as New Orleans developed as a port city, creating a highly stratified yet complex and subjective social system.

Still frustrated with their seemingly unproductive and disappointing settlement, the French government turned to Antoine Crozat, a financier who misguidedly believed Louisiana could become a hot spot of gold and silver mines and tobacco production.³⁹ During this era, the governor given royal control of the territory, Antoine de La Mothe

³⁶ Ibid.

³⁷ Ibid., 33.

³⁸ Ibid.

³⁹ Campanella, 20.

Cadillac, simply described Louisiana as “bad country, bad people.”⁴⁰ In one interesting interpretation that lends itself to the tradition of sensationalism present in the city, Edna B. Freiberg suggests Cadillac’s comment could have been spurred on by Bienville’s rejection of Cadillac’s offer of his daughter’s hand in marriage.⁴¹ Whatever the cause of this denouncement, by Cadillac’s time it was starting to seem that perhaps King Louis’s XIV’s dismissal of La Salle’s discovery had been more prophetic than he had known. Crozat’s experiment had cost him an estimated 1.2 million livres, and the future of the colony seemed quite grim.⁴² Faced with Crozat’s failure, the economic depression from the War of Spanish Succession, and the uncertainty from Louis XIV’s death, France was passed to Louis’ five-year-old great-grandson Louis XV, with Phillippe, Duc d’Orléans as regent.⁴³ The Duc d’Orléans found the deliverance for the problem in a savior who perfectly characterized the haphazard Louisianan colony: John Law.

Soon to become Duke of Arkansas, John Law was a Scotsman, one part mathematician and one part gambler. Famous for killing a man in a duel but mysteriously escaping his death sentence, Law fit right in with the rugged Louisianan renegades.⁴⁴ Not only did he have a reputation perfect for the rogue colony, he had also claimed to have a perfect plan to bring their economy to glory. France had become addicted to English tobacco, therefore fueling their rival’s colonial ventures in the Chesapeake. Law’s

⁴⁰ Dunbar Rowland, ed., and A.G. Sanders, trans., *Mississippi Provincial Archives: French Dominion, 1701-1729*. (Jackson, MS: 1929) 2:167. Quoted in Susan Gibbs Lemann, “The Problems of Founding a Viable Colony: The Military in Early French Louisiana.” *Proceedings of the Meeting of the French Colonial Historical Society* 6/7 (1982), 27, quoted in Campanella, 108.

⁴¹ Freiberg, 34.

⁴² Sublette, 49-50.

⁴³ Powell, 26.

⁴⁴ *Ibid.*, 25; Sublette, 53.

“system” was what Lawrence N. Powell simplifies as a “debt-for-equity swap;” Law would “convert France’s national debt into stock of a publicly traded company, and then redirect the interest income that the crown now owed the company, as the new holder of its debt, back into productive ventures so as to stimulate the economy.”⁴⁵ For Law’s plan to work, there had to be a centralized city to conduct the kind of economic activity he was foreseeing; the question of the hour was where.

In 1718, Bienville was appointed commandant-général of the colony.⁴⁶ Without asking permission or really having the authority needed, he and his crew began clearing land in an area Bienville decided was apt for becoming the capital of Law’s future tobacco empire (and favorable for his own vision for the colony).⁴⁷ He then boldly wrote to the Naval Council in France, “we are working at present on the establishment of New Orleans thirty leagues above the entrance to the Mississippi.”⁴⁸ So began a long-running battle for authority between the actual French rulers and the local frontiersman on the ground in the colony. This would be a tension between rule from above and practice on the ground level that would characterize New Orleans’ legal practices in the future; improvised convenience and practical necessity sometimes trumped theory.

Late that same year, the Company of the West (a joint stock trading company and the economic linchpin of Law’s financial plan) informed Bienville that they would be moving New Orleans to the Bayou Manchac, which was closer to Natchez, known to be

⁴⁵ Powell, 28.

⁴⁶ Ibid., 43.

⁴⁷ Ibid., 43.

⁴⁸ Ibid.

prime land for growing tobacco.⁴⁹ The crown sent Bienville and his brother Châteaugu   to investigate the deepness of the water in the Bayou Machac, but the brothers responded negatively.⁵⁰ Bienville still held on tight to his original pick for the location of the capital near the Bayou St. John. His tenacity was tested when the Mississippi flooded the site, but Bienville threw up the area’s first levees and vowed to dig a canal to help drain the river into the bayou, a promise he never fulfilled.⁵¹ Lawrence N. Powell comments on the situation as an exemplar for the future organization of New Orleans:

But this was how things went in New Orleans before New Orleans officially became New Orleans, and long afterward, too: solutions to foreseeable problems usually surfaced as afterthoughts. The improvisational style was characteristic of many frontier communities. Early New Orleans raised it to an organizational principle.⁵²

Finally, after more flooding problems in 1719 and the added distraction pulled by the war with Spain in Spanish Pensacola in 1720, the French Comagnie des Indes directores (Company of the Indies) voted to place the capital in Bienville’s beloved New Orleans location in 1721.⁵³ Bienville had clear reasoning for his persistence. Richard Campanella argues it was not necessarily the site, but the situation that pulled Bienville there, arguing “ ‘site’ refers to the city’s actual physical footing; ‘situation’ means its regional context and how it connects with the world.”⁵⁴ Bienville’s choice would set up the French colony

⁴⁹ Ibid., 24, 44-45

⁵⁰ Ibid., 47-48.

⁵¹ Ibid., 49.

⁵² Ibid., 49-50.

⁵³ Charles Edwards O’Neill, “The French Regency and the Colonial Engineers: Street Names of Early New Orleans.” *Louisiana History: The Journal of the Louisiana Historical Association* 39, no. 2 (April 1, 1998): 207.

⁵⁴ Campanella, 113.

on prime real estate, at the head of the Gulf of Mexico, which he somewhat prophetically saw to be the pinnacle of intersection between Spanish, French, Caribbean, and English trade. All of this strategic planning cannot be considered, however, without the note that Bienville personally held large amounts of land in his Bayou St. John selection and therefore was up to profit if his site was chosen.⁵⁵ Bienville's ability to shape the policy choices of his superiors prefaces the ability to manipulate official structures for personal profit many New Orleans citizens seemed to possess. Whether it was for guiding the royal hand towards a location or for convincing a judge to grant a woman her freedom, New Orleans seemed to naturally allow for space to improvise within existing order. This became increasingly important when a new type of import landed in New Orleans in 1719.

While Bienville and the royal committees bickered over building sites, the first substantial group of African slaves had arrived in New Orleans in 1719.⁵⁶ This began an importation of over 5000 people between the years of 1719 and 1731.⁵⁷ African cultures and chattel slavery "profoundly [influenced] New Orleans' social and urban geography. Compared to Anglo-America, racial identities and relationships [became] more complex and fluid" in the port city.⁵⁸ John Law added to the fluidity and heterogeneity of the settlement by recruiting thousands of mostly lower-class Frenchmen (including many rogues and criminals) along with immigrants from Germany and Switzerland to settle his

⁵⁵ Ibid.

⁵⁶ Campanella, 21.

⁵⁷ Ibid.

⁵⁸ Ibid.

new tobacco empire.⁵⁹ Law was effectively releasing the pressure valve on France's social problem of what to do with their massive and inconvenient lower class. In one way, this could be considered one of Law's crucial strategic missteps, because it brought in people incompatible with the type of community he envisioned. Ned Sublette noted this dissonance, writing "the crooks and whores were unsuited by experience and temperament for artisanship or agriculture, but were well prepared to establish a culture of criminality and poverty."⁶⁰ On the other hand, this immigration left a permanent imprint on the culture of Louisiana, laying the foundations for a legacy of disorder, unconventionality, and a social spectrum more colorful than most.

As plans for developing Law's vision grew, his company descended into chaos. The Company of the West had by this point merged with other banks to become the Company of the Indies. Scrambling to keep up Law's scheme, they printed a ridiculous surplus of paper money and Law forbade the use of hard coin money.⁶¹ The bank began to crash, and in 1720, the proverbial "Mississippi Bubble" popped.⁶² The Company still theoretically held the colony as a private enterprise and would continue to until 1731, but Law's reign was officially over.⁶³ As Ned Sublette commented, "a less generous way of looking at [Law's venture] would be that New Orleans was founded as a gambler's bluff."⁶⁴ The Duc de Saint-Simon reported on the failure as follows:

⁵⁹ Ibid.

⁶⁰ Sublette, 56.

⁶¹ Ibid., 54.

⁶² Campanella, 21.

⁶³ Ibid., 22.

⁶⁴ Sublette, 55.

[Law's] bank...would have been excellent in a republic or in a country such as England, where the people control the finances. Regarding the Mississippi, he was deceived, for he truly believed that there were rich possibilities in America. He argued like an Englishman, failing to understand how little suited our fickle nation was to great commercial enterprises. Lack of experience, the greed of those eager to make vast fortunes without delay, the difficulty of working under an authoritarian government without firm principles, in which one minister's work might be totally destroyed by his successor, were all against him.⁶⁵

Law's plan was gone, but some glimmer of hopeful redirection for the colony apparently remained. If New Orleans could not be tamed into a tobacco plantation, perhaps it could be at least formed into an orderly town. Royal engineers Adrien de Pauger and Pierre Le Blond de La Tour traveled to evaluate the present state of Bienville's helter-skelter, thrown-together mess of a settlement in 1721.⁶⁶ Pauger and La Tour may have expected a relatively clear-cut job, but traveling Jesuit Father Charlevoix revealed the reality of the site when he arrived in 1722:

[O]f the present conditions of New Orleans. The most correct idea that you could form of it is to imagine two hundred people sent to build a town and who are camped on the banks of a great river, where they have only dared to put themselves in shelter from the weather, while waiting to have a plan drawn for them so they might have some houses built. M. De Pauger, whom I still have the honor to accompany, just showed me a plan he has drawn. It is quite fine and quite regular but it will not be as easy to execute as it was to draw it on paper.⁶⁷

Mother Nature, more specifically, the Mother Mississippi, would not allow as orderly a vision as Pauger and La Tour would have wanted. Before Le Blond de La Tour and Pauger arrived, the city had been a "helter-skelter" conglomeration of huts and

⁶⁵ *Historical Memoirs of the Duc de Saint-Simon, Volume III: 1715-1723*, ed. and trans Lucy Norton, (London: Hamish Hamilton, 1972), 3:299, quoted in Sublette, 54-55.

⁶⁶ Ibid.

⁶⁷ Pierre-François-Xavier de Charlevoix, letter of 10 January 1722, in *Journal d'un voyage fait par ordre du roi dans l'Amérique septentrionale*, 3 vols. (Paris: Rollin, 1744) 3:429-30, quoted in Dawdy, 64.

settlements.⁶⁸ The population at this point was just as disorganized. It consisted of around 519 people: 326 whites, 192 slaves (171 African, twenty-one Indian), and one free black person.⁶⁹ However, when a hurricane flattened the “city” (if it could be called that), Le Blond de La Tour and Pauger had their chance to organize the city their way. While other American cities were designed in geometric patterns, New Orleans’ street orientation was based around the Mississippi River, the ultimate blessing and burden for the city’s people. Streets thus ran either parallel or perpendicular to the river, pointing towards the fact that the river controlled the city down to its very skeleton.

When La Tour died in 1723, Pauger was left with the task of further surveying the land, designing street layouts, and assigning street names. Shannon Lee Dawdy’s analysis of Pauger’s first attempt to survey the land as an urban engineer in New Orleans reveals the fiery spirit of the colony that would permeate its character through its entire development and into its present day reputation. Pauger, who Dawdy calls “one part idealist engineer and one part hot-tempered rogue,” frequently had to fight locals who did not wish to move or allow an outsider to analyze their home site.⁷⁰ His violent encounters “illustrate the contested nature of the city’s genesis and the emerging conflict between ‘ancient régime’ ideals and local interests.”⁷¹ Dawdy claims New Orleans’ design was an experiment in urban planning, an attempt by the French to reconcile their traditional ideal cities with the new idea of a colonial metropolis fit for the kind of economic ventures

⁶⁸ O’Neill, 208.

⁶⁹ Campanella, 21.

⁷⁰ Dawdy, 65.

⁷¹ Ibid., 63.

France imagined.⁷² New Orleans, once forgotten by King Louis XIV, experienced a kind of rebirth as a panacea for all of France's problems. They could, with one swing of the royal scepter, eliminate financial problems from the Spanish War, provide an escape valve for rebels and criminals looking for a new start, and at the same time experiment with colonialism through the lens of Enlightenment rationalism combined with absolutism.⁷³ Lawrence N. Powell notes that the city planning was

probably a composite of various 'ideal' cities constructed during the reign of Louis XIV; it would be a monumental town incarnating the king's absolutist sway over a new land; an orderly port that promoted the aims of mercantilism; even a garden city of sylvan delights; and last but hardly least, a well-fortified *bastide*, as the walled towns in southwestern France were called.⁷⁴

Thus, the land became a think tank for "les grands," the royal engineers and elite Frenchmen, to explore what a city could and should be. However, Dawdy notes that "les grands" did not expect that "les petits-engagés," the "ex-convicts, sailors, slaves, and Indian traders [who were also flocking to the new land] might also view this new urban landscape as a stage for reinvention outside the grid of absolutism."⁷⁵ The conflict between these two groups, one royal and one local, permeated the colonial era in all aspects of life.

This tension between local and royal ideals was also reflected in the way Pauger went about naming the streets in the city. This process was apparently disputed, as some sketches from as late as 1723 show New Orleans as a town without street names.⁷⁶

⁷² Ibid., 67.

⁷³ Ibid.

⁷⁴ Powell, 62.

⁷⁵ Ibid., 98.

⁷⁶ O'Neill, 208.

Charles O'Neill uses early accounts of French colonial New Orleans to reconstruct how the Cresecent City was given its infamous street names. O'Neill sees within the street names a telling medley of odes to royalty and patron saints to tips-of-the-hat to the local leaders and founding frontiersmen of the city. O'Neill notes the main street was named Orleans after the Prince Regent Philippe, scion of the House of Orleans.⁷⁷ The two central streets parallel to Orleans were St. Anne and St. Peter, perhaps named after patron saints or after Marie-Anne Le Sueur, wife of La Tour, and Pierre, La Tour's given name.⁷⁸ It is even possible Anne was given in honor of one of the leading ladies in the French court.⁷⁹

One of New Orleans' most famous streets is Bourbon Street. The patron of this moniker is debated. Bourbon was the reigning house of France at the time, but Charles O'Neill notes that it was more traditional for street names to honor individuals rather than families.⁸⁰ It is possible that Bourbon refers to Louis-Henri, prince de Conde, duc de Bouron, who was a member of the Regency Council at the time and also served as Prime Minister for a time; however, although it was short-lived, Pauger named a portion of another street Conde after Louis-Henri.⁸¹ O'Neill points out there are also at least two other royal possibilities for the true honoree.⁸² Within the choices for street names, a scholar can see a struggle to self-identify. Girded with dreams of mercantilist glory to match their imperial plans, French royal interests sought to establish itself in the colony

⁷⁷ Ibid., 209.

⁷⁸ Ibid., 210.

⁷⁹ Ibid.

⁸⁰ Ibid 213.

⁸¹ Ibid.

⁸² Ibid.

even at the skeletal level. Would the colony be the homogenously French economic treasure chest the royal authorities and La Salle initially thought it could be upon its founding, or would the rougher, more eclectic local flavor prevail? Modern times reveal a messier story and declare the deviance the city took from the strictly gridded design the crown had anticipated.

In modern times, the street names speak to diversity and originality. While most of these were named after Pauger's time, the bones of the city, the street names and architecture, reflects its soul. There are Lasalle, Iberville, and Bienville, original Pauger tributes to the Canadian founding fathers of the city.⁸³ Names like Orleans, Chartres, Pydras, Uloa, Galvez, Miro, Carondelet, Caliborne, Lafitte, St. Louis, St. Charles, St. Claude reflect the various authorities who at one time or another, under French or later, Spanish, flags attempted to control the rambunctious cultural melting pot. Notably, there is no John Law Street.⁸⁴ While other historical figures did earn homage, Law's actions, although not dissimilar to other illegal economic activities that flourished in the Crescent City, seems to have been too damaging to even give a historical nod to.

The streets also reflect the slaveholding tradition in the port city. There are very few streets named after African Americans in New Orleans. Streets named after Martin Luther King and Oretha Castle Haley (a civil rights activist), for example, do exist but are more modern re-namings of streets formerly honoring Greek muses.⁸⁵ But, there are several that boast the names of famous slaveholders. Washington, Jefferson, and Jackson are streets uptown, which honor the three most well known slave-holding presidents, as

⁸³ Sublette, 5.

⁸⁴ Ibid., 54.

⁸⁵ Ibid.

well as General Taylor, Louisianan cotton planter and the last president to own slaves while in office.⁸⁶ Not surprisingly, there is no Lincoln Street. However, in a twist of fate seemingly appropriate to the fiery New Orleans spirit, there is a Lincoln Avenue in an adjacent unincorporated town; it is a double dead end and is only three blocks long.⁸⁷

Pauger's attempt to impose order did succeed somewhat, but the natural landscape seemed to resist domestication almost as much as the rugged colonists would in their future struggles with the French government. Father Charlevoix's aforementioned visit to the city also produced this description of the city, which expressed both the country's wildness but also the great hope with which it was regarded: "Here I am, in this famous town they call New Orleans...[T]his wild and deserted place that canes and trees still cover almost entirely, will be one day, and perhaps that day is not far off, an opulent city and the metropolis of a great and rich colony."⁸⁸

The colony certainly began to develop, although not as quickly as Charlevoix supposed. With Bienville as Commandant-General, the community began to erect more structures, including a crucial 500-toise levee to fight against the mighty Mississippi.⁸⁹ Bienville and his resilient band of settlers fought epidemics and food shortages yet still lost many to disease or hunger, one source reporting death tolls of eight to nine people per day.⁹⁰ This would be significant losses considering the city's population was still only

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Pierre-François-Xavier de Charlevoix, letter of 10 January 1722, in *Journal d'un voyage fait par ordre du roi dans l'Amérique septentrionale* (Paris: Rollin, 1744) 3:429-30, quoted in Dawdy, 66.

⁸⁹ Freiberg, 61.

⁹⁰ Ibid.

519 in 1721 and would not reach even 900 until 1726.⁹¹ Even so, disease and lack of supplies would not be the end of the new fledgling colony's worries. Bienville himself would be the source of the next storms they would face.

Bienville was the archetype for the rugged, resilient frontiersman and thus the ideal, if imperfect, candidate to lead the French colony out of the swamp and into success. However, one of the characteristics that came along with his personality was his rash and rough persistence. One was either for him or in the way of his plans. Lawrence N. Powell characterizes him this way: "Over the years, Bienville had accumulated enemies the way some people collect coins...many found him haughty and imperious, sensitive about his Canadian origins, and awfully quick to take offense."⁹² Bienville had pushed his way through local rivals and royal authorities to secure his own selection as the site for the new colony, leaving many with a negative taste in their mouths.⁹³ His rough personality combined with the faltering state of the colony's finances made for a perfect storm. The French government ordered an audit of the colony and asked Jacques de La Chaise to investigate the finances.⁹⁴ When La Chaise finally published his report in 1723, the charges against Bienville were stacked high: profiteering, illicit commercial transactions, favoritism towards Canadians, and a general rejection of the validity of all of Bienville's endeavors were included in the report.⁹⁵ The crown ordered Bienville back to France and removed him from his office, and ultimately a total cleaning of house of all

⁹¹ Campanella, 21-22.

⁹² Powell, 77.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid., 78.

Bienville's family and associates.⁹⁶ Delaying his departure probably in order to secure his own land holdings—he had failed to have them officially surveyed and recorded—Bienville finally left Louisiana in 1725.⁹⁷ He did not leave, however, before evicting Pauger from his land without true explanation or reason in order to reassess his land holdings for the alleged good of the Company of the Indies in 1724.⁹⁸ Pauger responded to the situation by writing to his brother, explaining “Everything is here ablaze, each man yells and behaves according to his own wont...My mind is made up. I have been twice driven to extremity, and now I am going back to France by the first boat.”⁹⁹ Tragically, Pauger was never able to return to France as he died of a fever in 1726.¹⁰⁰

The blaze Pauger spoke of would only grow larger due to an unfortunate appointment of Etienne Boucher de Périer as Bienville's successor. The source of the trouble was at Natchez, a hub of Indian-European interaction and trade.¹⁰¹ After French traders discovered the soil around the fort was ideal for tobacco, a French community sprung up around the Indian town.¹⁰² Bienville had been highly astute at relating with the surrounding Indians, a quality that Périer did not have.¹⁰³ Périer's first misstep was reassigning Sieur de Chopart to his post at Natchez, a man who had been previously

⁹⁶ Ibid., 78-79.

⁹⁷ Ibid., 79, 81.

⁹⁸ Ibid., 81.

⁹⁹ Marc de Villiers, “A History of the Foundation of New Orleans, (1717-1722)” *Louisiana Historical Quarterly* 3 no. 2 (April 1920), 246, quoted in Powell, 81.

¹⁰⁰ Powell, 81.

¹⁰¹ Dawdy, 79.

¹⁰² Ibid.

¹⁰³ Freiberg, 72.

released from his office because of Indian complaints of tyrannical behavior.¹⁰⁴ Chopart's cruel and oppressive limitations on Indian trading rights led to an uprising against the European settlers at Natchez. Faced with the deaths of 250 colonists, New Orleans suddenly felt much more insecure about their safety in the surrounding wilderness.¹⁰⁵ The colonists responded by attempting to build a rampart and moat around the city for protection, but the moat never was deeper than a single foot.¹⁰⁶

Despite the disease, supply shortage, loss of Bienville, and Natchez attack, there still seemed to be some hope for the colony. In 1727, a sisterhood of Ursuline Nuns arrived in the city, who "endeavored to dedicate [their] mission to [their] country's notoriously problematic Louisiana colony."¹⁰⁷ One nun, Marie Madeleine Hachard de St. Stanislaus, reflected on her first impressions in a letter to her father:

Our city is very beautiful, well constructed and regularly built [,] as I saw of it on the day of our arrival; for since that day we have always remained in our cloister. Before our arrival, we were given a very bad idea of [New Orleans]; but...people have labored [since then] for its improvement...It suffices to tell you that here is sung publicly a song, in which it is said that this city has a fine an appearance as the City of Paris; thus, this tells you all.¹⁰⁸

At once, Hachard echoes the French disappointment in the Louisianan colony and the dissonance between reality and perception. It seems that at least to Hachard, New Orleans was not nearly the pit of despair her fellow Frenchmen back home believed it to be, although her allusion to Paris is absolutely hyperbolic. Despite Hachard's approval of

¹⁰⁴ Freiberg, 72.

¹⁰⁵ Campanella, 22.

¹⁰⁶ Ibid; Dawdy, 95.

¹⁰⁷ Campanella, 114.

¹⁰⁸ Hachard to her father. April 24, 1728, in *The Ursulines in New Orleans 1727-1925*, ed. Henry Churchill Semple (New York: P.J. Kennedy & Sons, 1925), 224-25, quoted in Campanella, 115.

the city and the population's growth to seven thousand, the Company of the Indies released the colony back to complete royal control in 1731, disappointed and exasperated.¹⁰⁹ Campanella records the general feeling of the era towards Louisiana as "disappointment at best and burdensome failure at worst, unworthy of renewed commitment."¹¹⁰

For the next twenty-three years, Louisiana would continue to lie in French hands officially, but the city developed according to its own rules. The Louisiana of this era was largely comprised of illicit transactions, including prostitution and smuggling, not to mention the dark business of slave trade.¹¹¹ This is somewhat not surprising considering the kind of legacy of Law's early forced immigration of vagrants and criminals.¹¹² One anonymous officer's reflections on the state of New Orleans circulated throughout England in 1744, giving less-than-superb reviews:

The French live sociably enough, but the officers are too free with the town's people; and the town's people that are rich are too proud and lofty. Their inferiors hardly dare to speak to them...the poor labor for a week and squander in one day all they have earned in six[;] the rich spend their time in seeing their slaves work to improve their lands, and get money which they spend in plays, balls, and feasts...[and of the 500 women he guessed were present] I don't believe without exaggeration that there are ten of them of a blameless character...this country was at first settled by lewd, good-for-nothing people sent from France.¹¹³

¹⁰⁹ Campanella, 22.

¹¹⁰ Ibid.

¹¹¹ Ibid., 100-102.

¹¹² Powell, 100.

¹¹³ "The Present State of the Country...of Louisiana...by an Officer at New Orleans to his Friend at Paris," in *Narratives of Colonial America 1704-1765*, ed. Howard H. Pekcham (Chicago: Lakeside Press Donnelly, 1971), 61-62; 68-69, quoted in Campanella, 253.

Scholar Campanella warns that although this description is similar to the stereotypes of modern New Orleans, “his letter circulated in London on the eve of an English war with France [which] may explain its caustic tone (and perhaps compromise its objectivity).”¹¹⁴ Governor P rier tried to remedy the prostitution issue by requiring all women involved to be brought to New Orleans for public flogging; however, Lawrence N. Powell argues this perhaps only enhanced the problem by consolidating it in New Orleans.¹¹⁵ It would have been extremely hard to get a handle on prostitution considering many officials and soldiers made up the industry’s clientele. A sufficiently high frequency of venereal diseases caused the founding of a medical clinic solely for sailors and Navy members who were infected with such a disease.¹¹⁶ Shannon L. Dawdy reports that of the crimes reported to the Superior Council between 1720 and 1753, at least twenty-one percent of criminal offenses were committed by French soldiers against one another.¹¹⁷ It would have been difficult to expect order when the order enforcers were a large part of the issue. The message sent by unfaithful law application only fed the growing tradition of living outside of the law.

How could such a society, permeated with smuggling, slavery, and prostitution, persist? The answer was in its initial design. The organization of the city lacked controllability. In the original planning of the city, engineers placed the military garrison in the center of the city, making its outskirts totally unguarded and vulnerable for rogue

¹¹⁴ Campanella, 252

¹¹⁵ Powell, 100.

¹¹⁶ Ibid., 100-101.

¹¹⁷ Dawdy, 212.

self-rule.¹¹⁸ In addition, lawyers had been outlawed from the city in an ironic effort to streamline government and eliminate the so-called “trouble-makers”.¹¹⁹ Colonists had to turn to the governing body, the Superior Council, with any disputes; however many turned to self-litigation in a brand of “unlicensed legal practice.”¹²⁰ Made up of an intendant, the king’s attorney, registrar of the province, and six prominent citizens, “the Superior Council became a virtually independent government,” free of any kind of accountability to Louisiana or to the royal crown.¹²¹ Official law thus became somewhat arbitrary as local actors took more control. However, in true Louisianan fashion, conflict and under-the-table dealings would soon change the fate and the flag over New Orleans.

Until finally ceded to America in 1803, New Orleans found itself being treated as a pawn in a game of imperialistic chess. Faced with international pressures and a crumbling empire, France suddenly seemed to find new value in their little rogue colony. This renewed interest wrecked the laissez-faire lifestyle New Orleans had been enjoying for the past two decades. Tensions over control had always plagued New Orleans: tensions with the Mississippi, tensions between Native Americans and Europeans, tensions between New Orleans citizens themselves, and certainly between local and royal powers. However, beginning with the Seven Years’ War, New Orleans could not even be sure which royal power they were dealing with. Transfer of possession of the city was

¹¹⁸ Ibid., 98.

¹¹⁹ Ibid., 67; 145.

¹²⁰ Powell, 108.

¹²¹ Federal Writers Project, *The WPA Guide To New Orleans*. 1st Pantheon ed. (New York: Pantheon, 1983), 11; Jerry A. Micelle, “From Law Court to Local Government: Metamorphosis of the Superior Council in Louisiana,” in *The French Experience in Louisiana*, ed. Glenn R. Conrad (Lafayette, LA.: Center for Louisiana Studies, University of Southwestern Louisiana, 1995), 419, quoted in Powell, 121.

largely handled through secret treaties, without the colonists' knowledge. The same uncertainty, instability, and mercurial character of New Orleans' founding era permeated this period as well. In 1754, France and England became completely at odds over which of them owned the Ohio Valley, an irreconcilable difference that created a war ultimately involving several European powers.¹²² Until 1761, Spain had remained outside of the conflict. However, Carlos III, the Bourbon king of Spain, agreed to honor family loyalty and help his cousin, Louis VX, Bourbon king of France, effective May 1, 1762, if the war was still being fought.¹²³ Scholars call Carlos' reluctant involvement a crucial diplomatic error because the chances of France losing the war were, by that point, increasingly high.¹²⁴ Unfortunately for Spain, England swiftly responded with a declaration of war on January 4, 1762, and only three months later invaded the vital Spanish port of Havana.¹²⁵ France responded by offering New Orleans to England in exchange for the return of Havana to Spain, to no avail.¹²⁶ Miserably aware of his debt to Spain, Louis XV had to at least attempt to make up for Spain's loss. In October 1762, Louis wrote to Carlos offering up New Orleans as compensation: "if New Orleans and Louisiane can be of any use to your Majesty..., to help compensate for any Surrender Spain might make to the enemy, I offer the possession of both."¹²⁷ Carlos responded negatively, but eventually "reluctantly

¹²² Campanella, 23.

¹²³ Sublette, 85.

¹²⁴ Ibid; Freiberg, 130.

¹²⁵ Sublette, 85.

¹²⁶ Freiberg, 130.

¹²⁷ Marc de Villiers Du Terrage, *Last Years of French Louisiana*, trans. Henri Delville de Sinclair, (Survey of Federal Archives in Louisiana, Works Progress Administration Division of Women's and Professional Projects: 1938), 232, quoted in Freiberg, 130.

accepted responsibility for the unruly waif nobody wanted.”¹²⁸ The deal was finalized in the covert Treaty of Fontainebleau in 1762.¹²⁹ Civilians of New Orleans were officially a part of the Spanish empire. When the Seven Years’ War ended in 1763, England came out the definitive victor. As a result, they gained all of France’s American territory with the exception of that which had been secretly traded to Spain.¹³⁰ The citizens of the city were not even aware of their abandonment and subsequent adoption until after the war ended.

New Orleans passed fully into Spanish hands in stages: “secretly in 1762, publicly in 1764, politically in 1766, and militarily in 1769.”¹³¹ First focused on re-establishing their presence in Havana (returned to them as part of the Seven Years’ War peace treaty), Spain waited four years to begin attempts to control the wily colony.¹³² Due to England gaining control of Spanish Mobile and Pensacola, Spain was also in the process of resettling colonists to other parts of their empire.¹³³ However, this is where Ned Sublette points out a crucial cornerstone in the future development of New Orleans: France did not resettle their colonists, creating an “unending source of vexation for the incoming Spanish governor.”¹³⁴ The first Spanish administration serves to represent the difficulties of reconciling orderly Spanish imperialism with fiercely independent New Orleans.

¹²⁸ Ibid.

¹²⁹ Campanella, 23.

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Sublette, 88.

¹³³ Ibid., 89.

¹³⁴ Ibid.

Antonio de Ulloa y de la Torre Guiral was the man chosen to first take on conquering the unruly colony. Ulloa was a scientist, naval officer, and subscriber to the Spanish Enlightenment.¹³⁵ In March of 1766, he arrived in New Orleans with only ninety soldiers to back up his new administration.¹³⁶ Lack of proper support made attempting to construct a Spanish government in a francophone, rogue colony even more difficult than it already was. Ulloa interestingly elected to not take formal possession of the colony and instead co-rule with the interim French governor, Phillippe Aubry.¹³⁷ The French flag actually continued to proudly wave over the city.¹³⁸ This duplicity is representative of the general cloudiness that surrounded control in New Orleans. Who was in control officially, much less on the ground level, was continually in flux and contested. There was often room to move independently, even within imposed structures of control.

As Spain attempted to employ more orderly provisions, tensions began to quickly mount, especially after they introduced economic restrictions, limiting trade to the bounds of the empire.¹³⁹ To the colonists, this was the equivalent of a “commercial straitjacket...the ultimate insult was a royal decree that forbade, among other things, the importation of French wines...nothing was more likely to set a Frenchman’s blood boiling than being forced to drink Spanish wine.”¹⁴⁰ After conflict with the city’s Superior Council became too great of a headache to bear, Ulloa moved outside of the city

¹³⁵ Ibid.

¹³⁶ Powell, 134-135.

¹³⁷ Ibid., 135.

¹³⁸ Ibid.

¹³⁹ Sublette, 91.

¹⁴⁰ Ibid.

to La Balize in September 1766.¹⁴¹ In January 1767, Ulloa finally declared to Governor Aubry he wanted to finally take formal possession and raise the Spanish flag; however, the very next day he changed his mind and decided to delay the transfer.¹⁴² This was not well received, as the French were “a ceremonial people...[they] were offended by his cavalier disregard for the pomp and circumstance they believed proper to a change in sovereignty.”¹⁴³ By this point, the Spanish flag flew over La Balize, with Ulloa, and the French flag remained over the city’s Place d’Armes.¹⁴⁴ The duplicity seen here is characteristic of the Spanish inability to fully enforce psychological and cultural control over their adopted colony. New Orleans was not going to be Spanish, at least, not in those senses.

In 1768, the forced fusion of French local interest and Spanish presence reached its boiling point: the Superior Council, made up of colonists, pressed various charges against Ulloa for tyranny, demanded free trade outside of the Spanish empire, and commanded Ulloa to flee within three days “to go render an account of his conduct to his Catholic Majesty,” a declaration Powell terms as “though he were an errant student being sent to the headmaster’s office.”¹⁴⁵ They recorded their ideas in *Memorial of the Planters and Merchants of Louisiana on the Revolt of October 29, 1768*.¹⁴⁶ This document was essentially the manifesto of what had become a citywide revolt against Spanish rule.

¹⁴¹ Powell, 139.

¹⁴² Ibid., 140.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Charles Gayarré, *The French Domination* vo. 2 of *History of Louisiana*, 4th ed. (New Orleans: F.F. Hansell and Bro., 1903), 192-205, quoted in Powell, 148; Powell, 148.

¹⁴⁶ Powell, 149.

Ulloa departed for Cuba three days later, never to return.¹⁴⁷ Why did the native French colonists leading the revolt not push towards independence in the aftermath of the coup? Powell argues “in truth, the leading insurgents wanted nothing so much as a restoration of the adlibbed autonomy afforded by French neglect.”¹⁴⁸ At the end of the day, their flag was the fleur-de-lis. They may have been rogues, but they were Frenchmen nonetheless. They wanted laissez-faire rule, leaving them enough space to manipulate their environment the way they wanted to in their unique bayou way.

Even if the colonists had desired taking a stab at independence, the Spanish were not eager to give up control over the colony. They turned to Alejandro O'Reilly, an inspector general of the Spanish Army.¹⁴⁹ If the colonists “wouldn't cooperate with the scientist [Ulloa], they would feel the discipline of the warrior.”¹⁵⁰ O'Reilly moved swiftly, succinctly, and definitively. He arrived in July of 1769 with a fleet of military reinforcement of 2,056 men, as opposed to New Orleans' estimated white population of 1,800.¹⁵¹ O'Reilly performed a formal changing of the flags, renamed the Place d'Armes as the Plaza de Armas, and ordered Aubry to give him the names of those involved in initiating the revolt, which Aubry turned in the following day.¹⁵² Five leaders of the revolt were soon executed by firing squad within a week of O'Reilly's arrival.¹⁵³ Perhaps most influential in establishing absolute Spanish order in the still shell-shocked colony

¹⁴⁷ Sublette, 93.

¹⁴⁸ Powell, 151.

¹⁴⁹ Sublette, 93.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Powell, 156-57.

¹⁵³ Sublette, 93.

was the abolishment of the Superior Council in exchange for the foundation of the *Cabildo*, meaning town council.¹⁵⁴ Not only did O'Reilly eliminate French political remnants, but also any sway the English might have had. The Treaty of Paris at the end of the Seven Years' War allotted England free navigation of the Mississippi, but to O'Reilly, that did not mean that foreign entities could usurp a Spanish economic port.¹⁵⁵ Upon arriving, he commented "I found the English entirely in possession of the commerce of this colony," and even estimated "nine-tenths of the money spent here" went to the English.¹⁵⁶ He consequently drove out all English and foreign traders, and moved the port to a location outside of the area granted to the British.¹⁵⁷ The Spanish were effectively in political control of the colony. The next step was cultural.

Bienville's leadership showed the effects of royal and local tensions but Ulloa's showed the effects of cultural tensions. O'Reilly had to establish some kind of cultural grip on the colony to have any hope of taming the French rogues. Beginning in 1777 and continuing through 1783, the Spanish started a settlement recruitment plan aimed at the regions of Granada, Malaga, and the Canary Islands.¹⁵⁸ The move also had a militant purpose in mind, as the Spanish continued to fear invasion from the English and thus needed civilians to make up a Louisianan militia.¹⁵⁹ The Spanish take-over of New Orleans also ushered in a new emphasis on establishing strict order. O'Reilly "brought

¹⁵⁴ Ibid., 94.

¹⁵⁵ Powell, 170.

¹⁵⁶ John G. Clark, *New Orleans, 1718-1812: An Economic History* (Baton Rouge: Louisiana State University Press, 1970), 182, quoted in Powell, 170.

¹⁵⁷ Powell, 170.

¹⁵⁸ Campanella, 24.

¹⁵⁹ Ibid.

the might of Spanish military power and the traditions of Spanish law and custom to the province.”¹⁶⁰ The Spanish were notorious for their intensely ordered strategy at establishing colonies. Whereas England and France took a more laissez-faire approach, Spain moved quickly and efficiently to manage their colonial conquests.¹⁶¹ Ned Sublette actually argues that Spanish rule was ultimately what caused New Orleans to become a true city; the tighter regulations (even down to their requirement of sidewalks on every property) was in some ways exactly what New Orleans needed to one day develop into the largest city in the Southern Confederacy.¹⁶² By the time O’Reilly left Louisiana in 1770, the Spanish had definitely established themselves as officially in charge.¹⁶³

Since New Orleans’ founding, outside powers had seen the crucial trade value of its strategic location. As New Orleans developed more and more into an urban, flourishing port under the Spanish, the United States became more and more interested in the Crescent City. As the eighteenth century began to draw to its close, New Orleans became extremely crucial economically and politically. Its slave market and cotton and sugar plantations were booming, and U. S. President Thomas Jefferson had come to believe in its possible role in American territory expansion.¹⁶⁴ Spain had a monopoly on New Orleans goods, but evidence of Spanish consuls, specie, and goods in Philadelphia

¹⁶⁰ Jack D. L. Holmes, “Vidal and Zoning in Spanish New Orleans, 1797.” *Louisiana History: The Journal of the Louisiana Historical Association* 14, no. 3 (July 1, 1973), 271.

¹⁶¹ Sublette, 95.

¹⁶² Ibid., 94-95.

¹⁶³ Ibid., 98.

¹⁶⁴ Campanella, 25-26.

show trade with American merchants along the Mississippi was occurring.¹⁶⁵ New Orleans traders always seemed to find a way to get what they needed. That was one tradition the Spanish could not domesticate. The Treaty of San Lorenzo in 1795 officially gave American traders the right to travel down the Mississippi to New Orleans for a period of three years.¹⁶⁶ Even with the agreement, Americans wanted more. Tight Spanish control continuously impeded America from establishing a consul in New Orleans, thus leaving their merchants up to their own devices in order to receive fair trades. Many complained, citing “such difficulties as bad legal representation—partly due to the language barrier— inadequate medical attention to stricken seamen, and alleged abuses of American "rights" in general to trade in Louisiana.”¹⁶⁷

America was hungry for New Orleans trade, and the Spanish empire—at this point struggling to retain their power but facing imminent decline—decided it was time to safeguard themselves against American invasion. In 1800, Spain and France performed an inversion of their original deal and secretly transferred Louisiana back to France.¹⁶⁸ Tensions heightened after Spain negated the right of American traders to travel the Mississippi in 1802, and President Jefferson began a campaign to purchase the Louisianan territory.¹⁶⁹ Suddenly, New Orleans was the most enviable commodity; “once perceived as a beleaguered backwater destined for failure, New Orleans [was then]

¹⁶⁵ C. Richard Arena. “Philadelphia-Spanish New Orleans Trade in the 1790’s.” *Louisiana History: The Journal of the Louisiana Historical Association* 2, no. 4 (October 1, 1961): 439.

¹⁶⁶ Campanella, 25.

¹⁶⁷ Arena, 442.

¹⁶⁸ Campanella, 26.

¹⁶⁹ Ibid.

coveted by three nations”: Spain, France, and the United States all were vying for a claim.¹⁷⁰ Lawrence N. Powell notes the dramatic transformation from hopeless, muddy French colony to coveted port city: “For a city that was never supposed to exist—at least not on the sodden ridge where Bienville’s inveigling succeeded in planting it—New Orleans by the end of the eighteenth century had developed an almost talismanic power to sway empires, call forth new economies, and stir up intrigue.”¹⁷¹ By the turn of the nineteenth century, Napoleon and his French empire were beginning to falter and could not feasibly handle a battle over the colony, much less fight a war for it.¹⁷² Appeasing American hunger for expansion past the Mississippi, Napoleon handed over the entire Louisiana colony to the United States in 1803.¹⁷³ True to New Orleans’ nature, the official train of inheritance was more complex: on December 20th in the Cabildo of New Orleans, Louisiana officially passed from Spain to France and then to the United States.¹⁷⁴ In 1805, it was officially “incorporated as a municipal entity, legally establishing city government, mission, duties, privileges, and boundaries.”¹⁷⁵ The Crescent City was officially a part of the rapidly growing American empire.

From there, New Orleans became absorbed into the antebellum South, bringing with it a messy heritage of mixed foundations. It was a city accustomed to having imposed official structures but finding ways to maneuver within them. Unofficial

¹⁷⁰ Ibid.

¹⁷¹ Powell, 314.

¹⁷² Campanella, 26.

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid., 27.

transactions, cultural hybridity, and legal inconsistency made improvisation a way of life. This would be the world Sally Miller and her family would enter into a little over a decade later. In Matthew 7, Jesus teaches on the foolishness of the man who built his house on the sand rather than the rock: "The rain fell, the flood came, and the winds beat against that house, and it collapsed; it was utterly destroyed!"¹⁷⁶ Contrary to Jesus' warning, New Orleans built their house literally and metaphorically on an improvised mud bank—lacking true structure and integrity of consistent authority. Geography, continuity, and order all seemed at odds, and reconciliation of the elements against them would contribute to the unique flavor New Orleans would develop into the nineteenth century. Perhaps the only true constant was change. Organized chaos was king, ruling from the city's birth to its adulthood. With instability rocking beneath them like the currents of the Mississippi, Sally Miller and her family would enter into a world where there was no black and white, a world where indeed a little white girl might plausibly live her life as a black slave. A clear understanding of the foundations New Orleans was built upon gives a modern historian a better picture of the events that occurred as the city progressed through the nineteenth century, including the Sally Miller case. The lack of consistent uncompromised order created a culture of improvisation, space for manipulation outside of structure, and a tradition of rebellion against authority. This was the culture Sally Miller made her case in. This was the rock upon which she built her house.

¹⁷⁶ Matthew 7:27 [NET]

CHAPTER TWO

Racial Assignment In The Port City

The idea that a brunette German girl like Sally could grow up a slave without detection might seem suspect to modern readers, but a proper understanding of the racial climate and system of racial assignment in antebellum New Orleans illustrates how such could have been accepted as plausible. The same general mood towards race was consistent throughout the South, but it developed in New Orleans in nuanced ways. The unique tradition of racial identity and cultural relations is crucial to understanding Sally's case, as well as seeing how her case fits into the greater New Orleans narrative. The previous chapter illustrated the melting-pot colonial legacy New Orleans inherited; the same kind of blurred-line quality that permeated power and control in colonial New Orleans also flooded into racial relations of the early nineteenth century. In fact, the disorder that characterized New Orleans ultimately laid the foundations for the kind of haphazard social community that would develop out of the bayou. Sally's case fits well on a narrative built from the system of racial identity present in the American South, but it comes into even clearer focus when the specific story of her hometown is added in.

In the antebellum South, sexual relationships between female slaves and their owners were accepted as a part of life.¹ Because slaves were not perceived as human, the sexual act was not really rape or adultery but merely a proper outlet of sexual energy, or so the logic claimed. This indulgence created "the particular and inevitable problem of

¹ Jason A. Gillmer, "Suing for Freedom: Interracial Sex, Slave Law, and Racial Identity in the Post-Revolutionary and Antebellum South." *North Carolina Law Review* 82, no. 2 (January 1, 2004), 588.

slaves who looked white. These fair-skinned slaves exposed a troubling fissure in the Southern social order.”² Biracial children complicated the very pillars of slavery as an institution because they fit neither of the racial categories it relied on. They defied the very skeleton of the South, blurring the lines between the carefully constructed class distinctions. John Dollard defines caste and class as “ways of dividing people according to the behavior expected of them in society. Caste and class [showed] the relations in which people stand to one another...they [organized] local life securely and [made] social behavior expected of them in society. Caste and class [showed] the relations in which people stand to one another...they [organized] local life securely and [made] social cooperation possible.”³ Maintaining societal stability became a great concern for many Southerners, and by the antebellum era, “Southern lawmakers...had become obsessed with shoring up any ambiguities in the socio-legal order created by people occupying that vague and unsettled ground between black and white, slave and free.”⁴ However, because racial slavery itself was based on the premise that the different races had extremely different “essences” about them, legally proving and determining race in the courtroom proved almost impossible.⁵ Southerners believed race was inherent, but

there was no agreement about how to discover it. Legal determinations of race could not simply reflect community consensus, because there was no consensus to reflect. Despite the efforts of legislatures to reduce racial identities to a binary system, and of judges to insist that determining race was a matter of common sense, Southern communities harbored disagreement, suspicion, and conflict—

² Ibid., 588.

³ John Dollard, *Caste and Class in a Southern Town*. 3d ed. (Garden City, N.Y: Doubleday Anchor Books, 1957), 62.

⁴ Ibid., 539.

⁵ Ariela J. Gross, “Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South.” *The Yale Law Journal* 108, no. 1 (October 1, 1998), 111.

not only over who was black and who was white, but over how to make such determinations at all.⁶

Most biracial people lived their lives as slaves, as the ideology of the time was that even one proverbial drop of African blood made one fully black.⁷ However, if a person of mixed ancestry wished to capitalize on the ambiguity of their color, they could sue for their freedom. Proving one's race became increasingly dependent not on the color of one's skin, but on how well one fit into the qualities considered to be characteristic of "whiteness," or what Ariela J. Gross deems as "performance" of whiteness.⁸ This "performance" aspect was what partially what allowed for Sally Miller to gain her freedom.

There was an inherent tension between the desire to maintain order by regulating race legally and the reality of establishing racial identity in a culture of unofficially sanctioned mixed-race sexual unions. The antebellum South was not limited to black and white, but was composed of everything in between the two poles. This phenomenon was only heightened in port cities like New Orleans, where people of many nations and ethnic group came to enter into America. Specifically, New Orleans' French and Spanish heritage only broadened the racial spectrum. Its southern location also made it a booming center for the slave trade. This environment created the racially ambiguous society that welcomed young Sally Miller and ultimately changed the course of her life.

A dichotomy between racism and interracial relations (especially those between dominant white males and minority women) existed in New Orleans even before its

⁶ Ibid., 111-112.

⁷ Gillmer, 593.

⁸ Gross, 112.

official founding. While exploring the Louisianan territory in 1700, Iberville and his expedition encountered a Bayougoulas Indian group native to the region.⁹ According to their hospitality tradition, the Bayougoulas offered some of their women to the explorers, but Iberville refused.¹⁰ His rejection, as André Pénicaut, an expedition member, explained, was to help “them understand that their skin—red and tanned—should not come close to that of the French, which was white.”¹¹ However, Iberville came to see that establishing interracial marriages with the Indian women would be beneficial diplomatically as the Europeans moved into the area, and gained blessing from the French king to establish the practice as official policy.¹² Jennifer M. Spear argues that this encounter is exemplary of the “tensions between ideology and practice...and the justificatory role that racial ideologies played in everything,” trends that would carry into the nineteenth century in New Orleans. Those ideologies would directly affect how Sally and her legal team would persuade the judges, and the local community, presiding over her case.

The theme of a helter-skelter reconciliation of racism and sexual intermingling was not the only structure New Orleans inherited from its predecessors. The port city’s status as a profitable slave trade center began as far back as 1719.¹³ That year, the first substantial group of African slaves arrived “in chains, commencing fourteen decades of

⁹ Jennifer M. Spear, *Race, Sex, and Social Order in Early New Orleans*. (Baltimore: The Johns Hopkins University Press, 2009), 3.

¹⁰ Ibid.

¹¹ Spear, 3; André Pénicaut, *Fleur de Lys and Calumet: Being the Pénicaut Narrative of French Adventure in Louisiana*, trans. Richebourg Gaillard McWilliams (Tuscaloosa, Alabama, 1988), 23-24, quoted in Spear, 3.

¹² Spear, 3.

¹³ Campanella, 21.

slavery in Louisiana.”¹⁴ Over the next twelve years, five thousand more slaves would arrive to do the massive amount of labor required to conquer the unruly landscape.¹⁵ With the influx of African slaves, the colonists had to devise a way to fit them into their new society legally and socially. The precedents they set would ultimately play into the way Sally Miller’s case was handled a century later.

In 1724, Bienville passed the *Code Noir*, Louisiana’s first slave code, “intended to ensure social and political stability by assimilating slaves and free blacks into the Christian community.”¹⁶ This was largely an effort to impose order on the fledgling colony, and an opportunity for the Catholic Church to show its strength.¹⁷ First, the Code sought to expel any “enemies of Christianity” and to subjugate all colonists, slaves and free, to Catholic precepts.¹⁸ In the introduction, it was stated that Versailles had “judged that it was a matter of our authority and our justice, for the conservation of this colony, to establish there a law and certain rules to maintain there the discipline of the Roman Catholic Apostolic Church and to arrange that which concerns the state and quality of slaves in the said Isles.”¹⁹ The first parts of the Code were concerned with Catholicism: it prohibited work on Sundays, required all masters to baptize and instruct their slaves in

¹⁴ Ibid.

¹⁵ Ibid.; Ibid, 125.

¹⁶ Caryn Cossé Bell. *Revolution, Romanticism, and the Afro-Creole Protest Tradition in Louisiana, 1718-1868*. (Baton Rouge, LA: Louisiana State University Press, 1997), 12.

¹⁷ Ibid., 12; Powell, 71.

¹⁸ Sublette, 32.

¹⁹ France, “Code Noir of Louisiana: A Royal Edict Touching on the State and Discipline of the Black Slaves of Louisiana,” (Versailles, 1724), in Junius P. Rodriguez, ed. *Slavery in the United States: A Social, Political, and Historical Encyclopedia*, (Santa Barbara, CA: ABC-CLIO, 2007), 1:541.

the tenants of Catholicism, and required that all slaveholders be Catholic.²⁰ The rest of the code prohibited interracial marriage, declared that children born of a female slave would follow the condition of the mother, and attempted to regulate the legal rights of slaves.²¹ Articles XXVII and XXVIII declared a death penalty for any “slave who [struck] his master, his mistress, the husband of his mistress, or their children, either in the face or resulting in a bruise or the outpouring of blood...[or] against free persons.”²² Slaves also were prohibited from participating in market sales, unless they had explicit permission from their masters.²³ The Code also limited the legal rights for self-representation and defense in a court of law and prohibited slaves from being witnesses in court, unless it was “a matter of necessity.”²⁴ It is crucial to recognize, as Jerah Johnson points out, that the inclusion of “official recognition and encouragement of such things as slave baptisms, godparenting, marriages, family units, protections for slave women against rape, and respect for slave holidays,” prove that the code was “designed to define the social rights of slaves as a group.”²⁵ Furthermore, James T. McGowan argues “employing the Catholic Church, the Court system of the Superior Council, and the military administrators in distant posts, the [Bienville] regime forged a social consciousness premised upon assimilation of the African population as members of the

²⁰ France, “Code Noir of Louisiana: A Royal Edict Touching on the State and Discipline of the Black Slaves of Louisiana,” (Versailles, 1724.) <http://www.blackpast.org/primary/louisianas-code-noir-1724>.

²¹ Ibid., Art. VI, IX, X.

²² Ibid., XXVII, XXVIII.

²³ Ibid., XV.

²⁴ Ibid., Art. XXIV.

²⁵ Jerah Johnson, “Colonial New Orleans: A Fragment of the Eighteenth-Century French Ethos,” in *Creole New Orleans: Race and Americanization*, eds. Arnold R. Hirsch and Joseph Logsdon (Baton Rouge: Louisiana State University Press, 1992), 40-41.

community with social rights and defined limits to their subjugation to their masters.”²⁶

Despite these regulations, “in practice, the Code Noir was widely disregarded as soon as it was promulgated, and slave owners did what they wanted.”²⁷ This was true to the New Orleans dissonance between theory and practice. The people on the streets determined the practice and application of the law in many ways. Individual judgment and community perception were powerful forces. The Code actually did allow for the slaves to own and sell property with their master’s permission. Although the Code prohibited work on Sundays, that was the day slaves “marketed their crops, game, and livestock, sharing the surplus with their owners, while squirreling away the remainder. The ban on Sunday labor was a stricture that slave owners quietly ignored; in this way, their slaves could increase earnings and pick up more odd jobs.”²⁸ This fuzziness cultivated a culture of working around laws, a “regime of customary rights, which Louisiana slaves learned to defend with guile and tenacity.”²⁹ In fact, Sunday markets became an accepted tradition, held weekly on the outskirts of town on Orleans Street.³⁰ The area remained a place for slaves to congregate for weekend enterprises through the Spanish and American eras, famously known as Congo Square.³¹

Another point of compromise was with the Code’s ban on intermarriage. In 1722, there were 514 black slaves, and a white population of 588; of those 588, 293 were free

²⁶ James T. McGowan, “The Creation of a Slave Society: Louisiana Plantations in the Eighteenth Century,” Ph.D diss., University of Rochester, 1976, 120, quoted in Johnson, “Colonial New Orleans,” 40.

²⁷ Sublette, 32.

²⁸ Powell, 95.

²⁹ Ibid.

³⁰ Johnson, 42.

³¹ Powell, 95.

men, 155 were French laborers, and 140 were women.³² As interracial illicit unions were becoming more and more prevalent, the local churches were forced to begin baptizing mulatto children and accepting them as legitimate.³³ In April 1729, Etienne Boucher de Périer, the governor of Louisiana, and his slave woman Françoise, had a son, Jacques.³⁴ Jacques was baptized, and became “the first recorded instance in which church transcribers publicly noted the absence of a known father. During the 1740s, the term *d’un père inconnu* (father unknown) appeared frequently in the baptismal records.”³⁵ With the advent of church approval (or at least, begrudging compromise and acceptance), New Orleans experienced the development of a whole new sector of people: the mulatto. The French period’s attempt to regulate while allowing space for deviation and improvisation laid the foundations for the blurred lines philosophy that came to figuratively encompass racial assignment and experience in New Orleans.

As far as manumission went, the Code clearly discouraged it.³⁶ The Code did have provisions for the process, but they were very limited; while some owners did manumit their slaves, “the numbers of manumissions and of free persons of African descent remained small.”³⁷ Jennifer M. Spear argues a close examination of those who were manumitted “suggests intimate and familial relationships between manumitters and

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Spear, 85.

³⁷ Ibid.

the slaves they sought to manumit.”³⁸ Spear comments that only a little over sixty owners recorded their intentions for seeking to free a total 146 slaves during the French period.³⁹ However, over half of those 146 were women or children, and while not all of those were the concubines or illegitimate children of white men, the numbers seem to point to such a conclusion.⁴⁰ When men were released, they often had previously done some form of service to the government.⁴¹ While quantitatively, more mulatto women stayed in slavery than were freed, “being female and/or identified as mulâtre [mulatto] significantly enhanced an individual’s chances of enjoying freedom: women were more likely to be free than men, mulâtres more likely than négres [blacks], and mulâtresses [female mulattos] most of all.”⁴²

When the Spanish took over, the regime agreed to maintain the Code Noir—essentially, the flags over the city would change, but the slave owners could continue to do as they pleased as if nothing had occurred. From 1766 to 1785, the slave population tripled from 5,600 to 15,000 because Spain officially encouraged the African slave trade.⁴³ However, Antonio de Ulloa, who already had a falling approval status (as explained in the previous chapter), only exasperated his grip on the colony when he “banned the whipping of slaves within three miles of [New Orleans], ostensibly to spare

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid, 87.

⁴² Ibid, 91-92.

⁴³ Douglas Chambers, “Slave Trade Merchants of Spanish New Orleans, 1763-1803: Clarifying the Colonial Slave Trade to Louisiana in Atlantic Perspective,” in *New Orleans in the Atlantic World: Between Land and Sea*, ed. William Boelhower (New York: Routledge, 2010), 181.

the sensibilities of his wife.”⁴⁴ This invasion on the previous laissez-faire practice was actually cited as one of the insurrectionists’ complaints against Ulloa in the indictment they filed against him in the Revolt of 1768.⁴⁵ After Ulloa was forced out of the colony, the Spanish sent General Alexander O’Reilly to discipline the little town.⁴⁶ O’Reilly fully swept out any remnants of French presence in the government in order to send a loud and clear message to the colonists: Spain was in charge now. He replaced the legal parameters in place with purely Spanish law, *Las Siete Partidas* (the Law of Seven Parts).⁴⁷ This included the termination of the Code Noir. In fact, no other slave code would emerge to replace the Code Noir while the Spanish were in control.⁴⁸ There were slavery-specific provisions in the law, and those provisions were shockingly liberal to Creole slave owners.⁴⁹ Manumission became much easier, because “when an owner wanted to unconditionally free a slave, he merely had to appear before a priest or a notary and two witnesses.”⁵⁰ Most of these manumission cases involved “coartación,” or compensation, where a slave would purchase their freedom.⁵¹ This was unique, in that slaves had their own voices in court. Additionally, many of these compensation transactions involved “relations of intimacy, especially sexual partnerships and

⁴⁴ Powell, 225.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid, 226.

⁵⁰ Spear, 113.

⁵¹ Ibid, 115.

paternity.”⁵²

With these new laws came new slaves, as the “1777 *cedula* [reopened] trade with French colonies; and in 1782 the government allowed slaves to be imported duty-free.”⁵³ There was a three-tiered division of slave merchants: first, the importers, “who sold 100 or more slaves and probably dominated the import market;” second, the wholesalers, who “were major merchants who invested significantly in the trade...selling between 40 and 99 slaves...but who also bought slaves to sell;” and third, minor sellers, “who sold 15-39 slaves, and for who slave trading was probably a secondary business activity.”⁵⁴ Each tier made up about a third of the total slaves sold.⁵⁵ Those directly involved in the top tier were “the Who’s Who of the town’s economic elite.”⁵⁶ The largest players were Anglo-American traders, including big names like “Oliver Pollock, Evan Jones, and the two Daniel Clarks, uncle and nephew.”⁵⁷ These men had huge networks “stretching from Philadelphia to Liverpool and into Jamaica.”⁵⁸ The French and Creole traders in this tier capitalized on their “inside track with suppliers in Saint-Domingue, Martinique, and Guadeloupe.”⁵⁹ The slave trade network included even those at the top of the Spanish regime, including Cabildo members and brothers Louis Toutant and Juan Butler

⁵² Ibid.

⁵³ Chambers, 182.

⁵⁴ Ibid., 185.

⁵⁵ Ibid.

⁵⁶ Powell, 229.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid., 230.

Beauregard (who were also ancestors of Civil War general P.G.T. Beauregard).⁶⁰ Louis held second-highest office in the Cabildo from 1783-1792, the *alcalde mayor provincial*.⁶¹ Spanish handling of slave laws resulted in “far more people of African ancestry [finding] themselves enslaved in Louisiana as the reopened slave trade fueled the growth of a plantation economy, which, in turn, created rapidly deteriorating conditions for the enslaved.”⁶² However, the rejection of the Code Noir in exchange for new provisions (like *coartación*) created more space for manumission, giving “greater legal opportunities to pursue freedom and greater judicial protection of free status once achieved.”⁶³

In 1803, New Orleans switched nationalities for the final time. Under the American flag, the town’s elite hoped to reassert their power over their slaves and push out the hated Spanish laws. In 1806, there were around one hundred manumissions being approved each year, and the agitation from slaveholders was only growing.⁶⁴ When the Territorial Legislature convened in 1806 to address slave crimes in the territory, “the assembled delegates pounced on the opportunity with a haste almost indecent.”⁶⁵ The members created a new slave code that accumulated all their favorite portions of previously enacted legislation, including pieces from the 1724 Code Noir and South Carolina’s infamous Negro Act of 1740 (one of the most oppressive because it was

⁶⁰ Ibid.

⁶¹ Chambers, 184.

⁶² Spear, 128.

⁶³ Ibid.

⁶⁴ Powell, 332.

⁶⁵ Ibid.

created after a slave rebellion).⁶⁶ This action was pivotal because it was “the first slave code that the inhabitants of Louisiana created and enacted themselves, rather than having imposed on them by France or Spain.”⁶⁷ Much like the culture of its city, the document was a hybrid, bringing bits and pieces from across a range of influences. American, Spanish, and French ideas all intermingled to create a uniquely Louisianan law.

The inclusion of the South Carolinian code is exemplary of a larger trend that took place soon after Louisiana became a part of the United States. The liberalization of Spanish immigration codes in the late eighteenth century had allowed more Anglo-Saxon settlers to transfer their families to Louisiana, “bringing their slaves and cotton cultivation with them.”⁶⁸ As even more Americans moved into the area after 1803, they sought to “politically and economically incorporate New Orleans into the United States...[as well as] to integrate the city into an Anglo-American racial hierarchy.”⁶⁹ However, application of the American way would be more difficult and require more nuanced practices in New Orleans.

Colonial New Orleans had been a cornucopia of nationalities, backgrounds, and economic statuses, known for its murky social and racial distinctions. Especially under the Spanish flag, manumission had become more accessible for slaves, creating a larger class of free blacks. The free black population “constituted an intimate part of the general community,” representing a very visible and disorienting rupture in the race-based social

⁶⁶ Ibid.

⁶⁷ Vernon V. Palmer, “The Customs of Slavery: The War without Arms,” *American Journal of Legal History* 48 (April 2006), 191.

⁶⁸ Spear, 179.

⁶⁹ Ibid.

order.⁷⁰ Blackness was not necessarily equated with slavery. Furthermore, Louisiana showed lenience towards free blacks in the court system, endowing them with more rights than their Southern peers were comfortable with. Louisiana was one of two states (the other being Delaware) to allow free blacks to testify against whites into the nineteenth century.⁷¹ The Louisianan state legislature struck down an attempt to take away this right even as late as 1852, although it did temper its conclusion with an admission to a “clear understanding that the social status of the witness diminished his credibility.”⁷² Perhaps because of the large population of free blacks and biracial individuals, an attitude of tolerant concession had to be accepted. Race-based slavery called for clear boundaries; the New Orleans reality demanded less stringent procedures.

The Anglo-Saxon social order, on the other hand, was founded on a binary race system: black meant slave and white meant free.⁷³ However, the incompatibility of the binary structure and the New Orleans social spectrum became increasingly evident. New Orleans’ unique heritage had created a social makeup quite different from what many Anglo-Saxons were used to. Indeed, “amazement at this racial, ethnic, and linguistic diversity appears in almost every description of the city from [the nineteenth century].”⁷⁴ Benjamin Latrobe and his family arrived in New Orleans in 1819, upon which he recorded his amazement at the many characters he found all together in the city: “white

⁷⁰ Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made*. (New York: Vintage Books, 1976), 413.

⁷¹ Genovese, 402.

⁷² Ibid.

⁷³ Spear, 179.

⁷⁴ Ibid., 180-181.

men and women, and of all hues of brown, and of all classes of faces, from round Yankees, to grisly and lean Spaniards, black negroes and negresses, filthy Indians half naked, mulattoes, curly and straight-haired, quarterons of all shades, long haired and frizzled, the women dressed in the most flaring yellow and scarlet gowns, the men capped and hatted. Their wares consisted of as many as their faces.”⁷⁵ Frederick Law Olmsted, another Anglo-Saxon visitor in the 1850s, sought to produce his own genealogy chart for his peers to help them navigate the dark waters of social groups in New Orleans.⁷⁶ His chart appeared as follows:

| | |
|-----------|-----------------------------------|
| Scatra | griffe and negress |
| Griffe | negro and mulatto |
| Marabon | mulatto and griffe |
| Quarteron | white and mulatto |
| Metif | white and quarteron |
| Meamelouc | white and metif |
| Quateron | white and meamelouc |
| Sang-mêlé | white and quarteron ⁷⁷ |

Olmsted’s attempt to classify race in New Orleans reflected the complexities that manumission and biracial sexual relations created. Walter Johnson articulates these factors as “first...[a] racial mixture and sexual predation: throughout the history of American slavery it was not always easy to tell who was ‘black.’ Second...manumission: just as racial mixture made it harder to tell who was ‘black,’ manumission made it harder to tell who was a slave.”⁷⁸ The consequences of these factors “increasingly undermined

⁷⁵ Benjamin Henry Latrobe, *Impressions Respecting New Orleans: Diary and Sketches, 1818-1820*, ed. Samuel Wilson Jr. (New York: Columbia University Press, 1951), 18-22, quoted in Spear, 180.

⁷⁶ Spear, 182.

⁷⁷ Frederick Law Olmsted, *A Journey in the Seaboard Slave States, with Remarks on their Economy* (New York: Dix and Edwards, 1856), 594, quoted in Spear, 182.

⁷⁸ Walter Johnson, “The Slave Trader, the White Slave, and the Politics of Racial Determination in the 1850s.” *The Journal of American History* 87, no. 1 (June 1, 2000): 20.

the ability of slaveholders as a class to keep race and slavery coextensive.”⁷⁹

In the multiracial and multicultural world of New Orleans, this was especially true. The repeated shifts of power experienced during the colonial period only furthered the chaos as local colonial rogues, the French, and the Spanish all brought competing ideas of social stratification. By the dawn of the antebellum period, the social scheme and sense of order in New Orleans was entirely muddled. Biracial individuals and free blacks complicated the social alliances that seemed to hold the world together: if one had black skin, one was a slave and had no legal rights. If one had white skin, one was free and an entitled citizen. As Eugene D. Genovese points out, this tension between ideology and reality was extremely disruptive to the perceived sense of social order, especially in the extreme case of New Orleans, where “conditions hit bottom from the white point of view.”⁸⁰ The dissonance between racial theory and practice was an extremely troubling predicament for white Southerners: how should those who look white, or nearly so, be classified and treated? Furthermore, how should those who were free and black be treated? These were questions threatening the Southern conception of race and its meaning, the institution of race-based slavery, not to mention the very basis for Sally Miller’s case.

In the antebellum South, there were two primary schools of thought for dealing with these questions and determining racial identity in a legal sense. Louisiana’s choice only further muddled the process of legal racial classification:

[While] South Carolina, Georgia, and Delaware assigned status on the basis of observation and reputation...other slaveholding states, including Louisiana,

⁷⁹ Ibid.

⁸⁰ Genovese, 412.

attempted to establish presumptions of freedom based upon fractions of ‘black blood’: halves, fourths, eighths, sixteenths, and so on down to one drop... The first standard emphasized appearance and performance; the second, more popular standard relied on a supposedly scientific estimation of an imagined blood quantum.⁸¹

Louisianans’ belief in “black blood,” unperceivable to the human eye, made racial identity completely subjective and dependent on the person determining it. Legally, there was only black and white, but in the slave trade market, color was much more complicated. In a trade network as booming as New Orleans’ was, classifying skin color became a pillar of the business. Because the pervading belief was that ethnicity had a direct connection to one’s character, once skin color was determined for an individual, a description of his or her interior qualities, and thus their marketability, would thus become immediately determined also. This made skin color very important to slave buyers. Slave traders had a custom of creating identities based on “the invisibility of slaves’ origins and the obscurity of their histories;” this custom, combined with their “reputation for dishonesty limited buyers’ options as they tried to see through to slaves’ pasts and prospects. In the absence of reliable information the buyers began with the physical coordinates of the people who stood before them in the pens.”⁸² Faced with a sea of faces all over the spectrum from onyx to close to ivory, traders “sectioned the restless hybridity, the infinite variety of skin tone that was visible all over the South, into imagined degrees of black and white that, once measured, could be priced and sold.”⁸³

Much like Olmstead, slave traders attempted to create a scale of color, and

⁸¹ Johnson, 21.

⁸² Ibid. *Soul by Soul*. (Cambridge, MA: Harvard University Press, 1999), 138.

⁸³ Ibid., “The Slave Trader,” 17.

subsequent character, that “produced the antebellum South’s most detailed racial taxonomy. Whereas the categories of the United States census were limited to ‘black,’ and ‘mulatto,’ the traders’ detailed categories—‘Griffe,’ ‘Mulatto,’ ‘Quadroon,’ and so on— attempted much more precise measurements of imagined portions of ‘black’ and ‘white’ blood.”⁸⁴ Slave buyers were purchasing not just bodies, but what they presumed to be a set of selected characteristics. John Dollard comments that American social classification was “pinned not to cultural but to biological features—to color, features, hair form, and the like. This badge is categorical regardless of the social value of the individual. It is in this sense that caste is ‘undemocratic’ since it accepts an arbitrary token as a means of barring Negroes from equal opportunity and equal recognition of social merit.”⁸⁵ Antebellum Americans sought to sort individuals into groups based on biology, firmly believing that physical markers could be read as a direct description of internal values.

On the slave market, certain physical qualities made slaves more or less expensive, and those qualities had different values on males and females. The whiter a slave was, the more intelligent they were thought to be.⁸⁶ This reflected white slaveholders’ own perceptions of their own race’s apparently inherent superiority. When slave owners purchased slaves they believed to have a greater proportion of white blood, “it was the buyers’ own whiteness that was being bought. The fantasies they projected onto their slaves’ bodies served them as public reflections of their own discernment: they were the arbiters of bearing and beauty; their slaves were the showpieces of their

⁸⁴ Ibid., *Soul by Soul*, 150.

⁸⁵ Dollard, 64.

⁸⁶ Ibid., 151.

pretension.”⁸⁷

The presumed belief that whiter slaves would behave more like whites was a double-edged sword. It was often considered a negative trait for males and a positive one for females. Jason A. Gillmer notes “fair-skinned slaves...although desirable in some quarters... were difficult to sell in many others.”⁸⁸ If whiteness equated more intelligence, then whiter slaves might have the presence of mind to run away and pass as white in mainstream society: “that there were instances of blond-haired, blue-eyed slaves is not in doubt, as the many advertisements for runaways can attest.”⁸⁹ Historians support this concept with descriptions of runaways. Gillmer chronicles some of these instances:

One advertisement for a fugitive slave declared that he had a ‘complexion so nearly white that a stranger would suppose there was no negro blood in him.’ Another runaway was said to be ‘a very bright mulatto, would be taken for a white boy if not closely examined; his hair is black and straight.’ Still another is described as having ‘light sandy hair, blue eyes, ruddy complexion; he is so white as to easily pass for a white man.’⁹⁰

If able to escape their masters, slaves with lighter skin had a better chance of blending into the already motley society. This was especially true in New Orleans, where people from all ethnicities called home. Lighter skinned males were especially risky purchases. Though they were supposedly more civilized and more intelligent (inherited traits from their white ancestor), those qualities, however, were also thought to enable them to cunningly plan an escape and to live incognito. Whiteness was a handicap for traders

⁸⁷ Ibid., “The Slave Trader,” 18.

⁸⁸ Gillmer, 588.

⁸⁹ Ibid., 598.

⁹⁰ Charles Elliot, *Sinfulness of Slavery in the United States*, (Cincinnati, OH: L. Swormstedt & J. H. Power, 1850) 2:65, quoted in James Hugo Johnston, *Race Relations in Virginia and Miscegenation in the South, 1776-1860*, (Cambridge, MA: University of Massachusetts Press, 1970), 192, quoted in Gillmer, 588.

seeking to sell a male: “the association of masculinity with resistance and of whiteness with intelligence made light-skinned men...as threatening to some slaveholders as their skills made them valuable to others. This worry tended to reduce their value overall.”⁹¹

On the flip side, whiteness in females was a positive trait. Because females were generally involved in domestic duties, a job inside the home and in closer contact with the family, a more “white” behaving woman would prove more compatible for the job. In fact, “over three quarters of the people advertised for sale as domestic servants were female, and a disproportionate number of light-skinned women were chosen for these roles.”⁹² Slave buyers were willing to pay higher amounts for lighter skinned girls (often called “fancy girls”) than darker skinned women or any male.⁹³ New Orleans (along with a few other cities) particularly had a booming “‘fancy girl market,’ which aroused the special ire of the northern abolitionists.”⁹⁴ A “fancy girl” could go for “\$5,000 in the market, twice as much as a skilled blacksmith and almost three times as much as a prime field hand,” with blacksmiths usually sold for around \$2,500 and field hands for \$1,800.⁹⁵

Darker skin was associated with physical strength, and thus considered prime for handling the toughness of fieldwork.⁹⁶ Thus, darker men, who already had greater physical strength than females, were most sought after for this type of work. For women, however, the highest price would go for the lightest skin. Traders frequently described

⁹¹ Johnson, *Soul by Soul*, 151.

⁹² Ibid., 150.

⁹³ Gilmer, 595.

⁹⁴ Genovese, 416.

⁹⁵ Gillmer, 595; Genovese, 416.

⁹⁶ Johnson, *Soul by Soul*, 150.

these women as “delicate.”⁹⁷ Johnson argues this diction, chosen over “sickly,” or “puny,” shows that it was meant not as a marker of physical prowess but as a sign of a character trait: “all of their racial science and all of their superstitions made slaveholders suspect that the whiteness in their female slaves made them ill-suited of the daily rigors they demanded of dark-skinned women.”⁹⁸ Because white Southern women were expected to be “delicate,” the lighter skinned women were treated in a way that more closely mimicked the treatment of white women. This trend followed the “one-drop” logic, in that there was a corresponding relationship between “white” blood and quality of treatment. The more white a person looked, the more likely they were to be associated with domestic work, with the white household, and with a more refined lifestyle. However, the uneasiness with lighter slaves’ ability to sneak into mainstream society highlighted the fact that even though one drop of black blood made one a slave, one drop of white blood did not make one free. Although

ironically, these expensive flirtations with racial proximity, these commodifications of projected and imagined whiteness, were underwritten by the slaveholders’ ideology of absolute racial difference. The saving abstraction ‘black blood’ –later codified in law as the ‘one-drop rule’—held the power to distinguish nearly white people from really white people.⁹⁹

This fancied “one drop” science of race assignment conflicted with the multilayered taxonomy slave traders generated. The fluidity, the blurred lines, the subjective method of assignment, allowed the space for cases like Sally Miller’s. Because blood drops could not be quantified scientifically, they were qualified arbitrarily. There was dissonance and

⁹⁷ Ibid., 152.

⁹⁸ Ibid.

⁹⁹ Ibid, 155.

thus room between the two ideologies that allowed for movement within the alleged range of classes. The wide spectrum of classifications was characteristic of motley port cities like New Orleans, and the spectrum was only widened due to the Crescent City's unique history.

White slave owners only compounded the complexities of race assignment by attributing characteristics to each distinct grade of hybrid. Racial identity was not just about discernable color, but also about discernable behavioral traits. This premise set the stage for those of ambiguous origin to play a racial performance, allowing them, at times, to gain their freedom. This was especially true in New Orleans, where a greater variety of ethnicities and less established legal tradition allowed for greater fluidity in spite of the taxonomy. The precedent of imposed structure above with more free movement on the ground level additionally allowed for this. In fact, "court records suggest that lawyers in New Orleans may have been more willing to take on a freedom case than lawyers elsewhere in the United States South."¹⁰⁰ Harry Oxendine, George Lewis, and William Jones were all black men who unsuccessfully sought legal help to gain their freedom in South Carolina and Mississippi but later successfully gained their freedom in New Orleans.¹⁰¹ Combined with a history of legal and social flexibility, the demographic make-up of the Crescent City made it ideal for these kinds of cases. By 1810, there were 17,224 people packed into New Orleans; of those, 5,961 were black slaves and 4,950 were free people "of color."¹⁰² This continually climbing "number of free persons of

¹⁰⁰ Kenneth Randolph Aslakson. "Making Race: The Role of Free Blacks in the Development of New Orleans' Three-Caste Society, 1791-1812," PhD diss., University of Texas at Austin, 2007, 75.

¹⁰¹ Ibid.

¹⁰² Campanella, 28.

color challenged the equation between blackness and slavery, whiteness and freedom. Indeed, with so many free blacks roaming the towns and countryside, color no longer served as a marker of slavery.”¹⁰³ The culture would have made escape into anonymity easier because of the firmly rooted black majority as well as a history of legal inconsistency of application. Thus the stage was cleared for “white enough” mixed-race individuals to begin to bargain for their identity.

Racial performance was especially crucial in legal suits. Operating under a complex web of biracial relationships, the “one drop” science, and societal expectations for keeping the status quo, Southern courts found themselves in a quandary: “antebellum legislators and litigators had three conceptually distinct (though often practically interrelated) ways of locating them in the grid of acceptable social identities: personal history, race science...and performance—the amalgam of appearance and reputation, of body, behavior, and scripted social role.”¹⁰⁴ As the quotation emphasizes, the issue of legally establishing racial identity was extremely complex. New Orleans’ history of improvising legal functions was especially primed for this sort of courtroom theatrics and roguish defenses. The right for slaves to petition for themselves in freedom suits, going back to the Spanish precedent of *coartación*, was especially important. Kenneth Randolph Aslakson argues for New Orleans’ uniqueness, especially right after their absorption into the United States and into the antebellum period. Aslakson points out the flexibility during the time of transition when the city was still acclimating itself to its American identity and courts across the South were readjusting procedures for racial

¹⁰³ Gillmer, 579.

¹⁰⁴ Johnson, “The Slave Trader,” 22.

identity, “during a crucial period of racialization, when slaveholders were increasingly turning to race to justify the enslavement of human beings...[and] when the legal system was malleable.”¹⁰⁵

In the courtroom, some slaves capitalized on biology, hoping to discover a relative who could help boost their “white blood” to “black blood” ratio. Many began “[rummaging] through their own family histories to find proof of free ancestry.”¹⁰⁶ While some did win their freedom by proving white ancestry, when the alleged science of racial identity failed to be conclusive, “doing the things a white man or woman did became the law’s working definition of what it meant to be white.”¹⁰⁷ Slave traders created the taxonomy that allowed for ambiguity, but that ambiguity sometimes required the law to step in and take a clear stance. Ariela J. Gross notes “the most dramatic suits involving racial determination were suits for freedom, most of them brought by women, and nearly all of these brought successfully.”¹⁰⁸ People who claimed to be wrongfully enslaved capitalized not only on their nearly white skin color, but also on their nearly white behavior. It was very important to not only look the part, but to play it well. However, because of the deep belief that race came with inherent differences (whiteness equating intelligence, civility, and culture, and blackness equating dullness, physical prowess, and animalistic qualities), it was believed that light skin could not hide an intrinsically “black” morality. Whereas biological race could perhaps be disguised behind lighter looking skin, it was believed that in the end, their supposed inferior “moral qualities

¹⁰⁵ Aslakson, 81.

¹⁰⁶ Gillmer, 579.

¹⁰⁷ Gross, 112.

¹⁰⁸ Ibid., 165.

would shine through.”¹⁰⁹

This very idea was what ultimately pushed Sally Miller’s case in her favor. Her behavior and temperament were so identical with that of a virtuous white woman that they alone seemed to be enough to cover a dubious past. To deny her claim would be to deny the idea that those qualities only existed in white women, a dangerous thought indeed. Similar to Sally’s appeal to white character, in the freedom suit *Vaughn v. Phebe*, multiple witnesses testified that the individual in question was “white in her conduct and her actions.”¹¹⁰ Besides the inherent peculiarity of putting someone’s race on trial, this kind of subjective testimony in itself seems entirely unorthodox to a modern reader. The antebellum mindset behind racial determination trials found subjective evidence at least tolerable, if not acceptable. Whereas hearsay evidence was not usually accepted in an official trial, in a racial identity trial it was “admissible...because that often was the only evidence available.”¹¹¹ In one case of racial identity, Judge Henry Crabb of Tennessee even argued that if hearsay was not admissible, how could “an individual in this country, who is unfortunate enough to have a woolly head and a colored skin ... prove that he is free?”¹¹² The unorthodox, flexible approach to evidence matched the subjective nature of racial identity.

The importance of behavior was especially crucial when the individual in question had been living as free and found that freedom threatened. If their behavior was not what the court deemed appropriate for a free person, they could lose their life to the

¹⁰⁹ Ibid., 168.

¹¹⁰ Johnson, *Soul by Soul*, 156.

¹¹¹ Gillmer, 574.

¹¹² *Vaughn v. Phebe*, 8 Martin & Yerger, 5, 20 (TN. Ct. App. 1827), quoted in Gillmer, 574-575.

chains of slavery. Two cases from early New Orleans exemplify this. Pauline Berton was a slave woman from St. Domingue who seemingly escaped from her owner during the slave insurrection of 1792 and moved to New Orleans in 1809.¹¹³ She thus lived sixteen years as a free person, during which she learned to read and write in three different languages, took an official last name, and was able to purchase some property in an outer area of the city.¹¹⁴ In 1809, the executor of her former owner's state petitioned for her return, but was denied.¹¹⁵ The qualities Pauline had taken on during her years of freedom arguably helped her defense, and she maintained her freedom. On the other hand, another black woman, Caroline, failed to maintain her freedom in her suit.¹¹⁶ She had also been a slave in St. Domingue, but had been freed by her master in 1802.¹¹⁷ Leaving the island 1803 with a "free man of color," the two later traveled to Cuba and then to New Orleans in 1809; once there, however, he allegedly began treating her as his slave.¹¹⁸ Caroline sued for her freedom but lost, most likely because she "had not distinguished herself from the African slaves. She did not have a last name, was illiterate and had never lived independently. While the skin color of these two women may have been similar, therefore, their lifestyles set them apart from one another."¹¹⁹ Caroline had not portrayed herself to have the intrinsic quality of a free woman and thus had not been as convincing as her peer, Pauline. Although biologically comparable in the racial taxonomy of New

¹¹³ Aslakson, 78.

¹¹⁴ Ibid., 82-83.

¹¹⁵ *Saloman v. Berton*, 1878, (LA Ct. App. 1809), in Aslakson, 79.

¹¹⁶ *Jesse v. David*, 3483, (LA Ct. App. 1812), in Aslakson, 76.

¹¹⁷ Ibid., 76.

¹¹⁸ Ibid.

¹¹⁹ Ibid., 83.

Orleans, their behaviors caused a shift in their classification.

By participating in biracial sexual unions, white southerners perpetuated one of their deepest fears: blacks being able to live as free, and whites living as slaves. In a society continually trying to maintain race-based slavery, the mixed race individual was an unwelcome but inevitable exception to the rule. However, this trend took on a different tone in New Orleans than it did in other Southern states. In Louisiana, and especially New Orleans, multicultural interactions (sexual, political, and cultural) were not just an inconvenient necessity; they were a way of life. In New Orleans, racial multiplicity was the norm. Sally Miller's German family would have been easily absorbed into the array of ethnicities and culture. New Orleans' tripartite heritage, as well as their long history of accepting roguish characters from all walks of life, made them a hot spot for absorbing mixed race individuals. This factor was extremely important for Sally when she made her stand in court. She was building upon a history of hybridity and subsequent gray areas, where the lines could not simply be drawn between black and white. The following photograph depicts emancipated Louisianan slaves, illustrating the variety within the "black" slave population.



Figure 1: Picture of emancipated slaves in Louisiana used as propaganda by Northerners during the Civil War.¹²⁰

Sally was not alone in her mismatched social class and appearance. As a port city in the South, New Orleans was a funnel for slaves from the Caribbean and Africa. This steady stream of population intake, combined with the already diverse range of skin tones in the city, made it overwhelmingly difficult to not only determine who was black and who was white, but who was a slave and who was free. Slave traders, and civilians at large, established a detailed racial taxonomy to try and reconcile this kind of disorder. The classification system not only included skin tone, but also personality traits. Racial identity thus became a kind of subjective improvisation under the guise of official delineation. Because “drops” of black blood could not literally be determined, a physical evaluation was the next best option; because of the vast variety in the community of New Orleans, one’s physicality could be successfully manipulated as long as one’s character

¹²⁰ Johnson, “The Slave Trader,” 22.

matched. There was definite space for creating one's own identity, and if one was a slave, escape was often the only step in the way of blending seamlessly into the rainbow Crescent City. Once a part of free society, it became a matter of behaving in such a way that was compatible with societal expectations. Thus, in both Sally's courtroom and the market place, playing the right part could mean the difference between freedom and chains.

Sally's case is not only at home in the story of racial identity in the American South. Her case also fits in nicely with the themes of the historical narrative of New Orleans. Her case exemplifies the dissonance between the racial and social constructs and their applied practice built in the city gradually through its existence. New Orleans had been mixing cultures, legal systems, and social theories into its own unique way of life from colonial times. Within those structures, there was room to navigate for personal advantage. Theorized order and reality often did not match up. The same improvised way of life continued into the antebellum period, especially with establishing racial identity. It was perhaps the only thing to do considering the environment. Strict lines of black and white, order and disorder, law and independence simply did not work in New Orleans. While Sally's case does represent the general mood towards race of the antebellum South, there are also key themes that were particular to New Orleans, especially in regards to determining racial identity.

CHAPTER THREE

“A Strange True Story”: *Miller v. Belmonti* And The Antebellum World ¹

Considering the depths of New Orleans’ muddled systems of power and race, a student of history can only expect to find unconventional tales of everyday life in the pages of the city records. The *Miller v. Belmonti* trial is one of those tales, exemplary of the city’s tradition of colorful creativity and improvisation. Indeed, the “trial held all the elements of a great courtroom drama: a case of mistaken identity, illegal enslavement, the epic journey of an impoverished immigrant family, and the inscrutable past of a young woman whose appearance made her racial categorization difficult.”² In the case, Sally Miller would claim she was a German immigrant named Salomé Muller, tragically separated from her family as a child and illegally enslaved. The details of the court proceedings are as colorful as the Crescent City itself, but its depth does not stop at the facts. The case represents the product of the intermingling of the many currents pulsing through the city: veins of racial identity and performance, cultural overlap, and legal improvisation all fed into the case at large. When the effects of these currents are closely examined, it seems that despite the trial’s inconclusive decisions, it is more than likely that Miller was not the real Salomé. The intrigue of the case does not stop at its verdict, however. When the historical narrative of New Orleans is taken into consideration, the

¹ George Washington Cable, *Strange True Stories of Louisiana*. (New York City: C. Scribner’s Sons, 1889).

² Carol Wilson, *The Two Lives of Sally Miller: A Case of Mistaken Racial Identity in Antebellum New Orleans*, (New Brunswick, NJ: Rutgers University Press, 2007), 6.

Sally Miller story becomes a rich case study on the effects of the city's unique past. Adding a contextual study of the city adds another layer of analysis onto the historiography of her story, showing the merits of her case not only in studies of race, but also of her hometown.

The year was 1843. Antebellum New Orleans was deep in the heat of the slave trade, serving as a gateway to prosperity for many slave traders. On a day like most others, Sally Miller, a slave woman, was working in her master's café. A German woman, Madame Karl Rouff, entered.³ Madame Karl's mind shot back to several decades before, when she and friends and family had first traveled to New Orleans in 1818. Among the group was Salomé Muller, called Sally by close friends and family, only a little girl at the time.⁴ Sally had become separated from her family and friends after they arrived in New Orleans, never to be heard from again. To Madame Karl, it was overwhelmingly evident that the very woman standing before her was the long lost Sally.

Perhaps the tumultuous nature of their voyage to America forecasted the confusion and extraordinary nature of Sally's life once she arrived. After a terrible famine and economic depression devastated their community in 1817, over sixteen thousand people fled the Wurtemberg region of Germany over the course of one year.⁵ The Mullers and their friends and family were part of this migration. The group paid for passage to Philadelphia, where a community of other German farmers living outside the

³ Ibid., 3.

⁴ Ibid.

⁵ Ibid., "Sally Muller, the White Slave," *Louisiana History: The Journal of the Louisiana Historical Association* 40, no. 2 (April 1, 1999): 135.

city was known to exist.⁶ In August 1817, the Mullers boarded the Russian ship the *Rudolph* with nine hundred others, and departed.⁷

However, time proved the Mullers and their compatriots were not headed for Philadelphia. Rather, their ship docked in Den Helder, a North Sea port, and stayed there for several months.⁸ Finally, it was revealed that they had been swindled and their passage agent had run off with their payments, which for some, consisted of most of their life savings.⁹ Holland's government ordered three ships to take them to America, and in December of 1817, they finally left the port. However, when they landed in March of 1818, the ships landed in New Orleans, not Philadelphia.¹⁰ It had been a difficult voyage. Only three hundred of the nine hundred original passengers survived the voyage. Sally's mother and youngest brother were among the deceased.¹¹

Upon arrival, Sally's troubles were far from over. In fact, her American fate proved to be antipodal to that her family had imagined when they left Europe in search of economic improvement. When they docked, the captain of their ship claimed the immigrants still needed to pay their passage even though both the immigrants themselves and the Dutch government had paid their wages in full. The captain posted advertisements in the local newspapers for the German "redemptioners," the name for immigrants seeking to pay off their passage by working for a limited period, much like

⁶ Ibid.

⁷ Ibid., *The Two Lives*, 17.

⁸ Ibid., "Sally Muller." 135.

⁹ Ibid.

¹⁰ Ibid., *The Two Lives*, 22.

¹¹ Ibid, 135-136.

indentured servants.¹² Advertisements for redemptioners seeking work were not an abnormality, especially in a port city like New Orleans. One such article read:

One hundred German Redemptioners passengers on board the ship Lady Johanna, from Amsterdam, consisting of Farmers & Artisans single persons and families, principally from the Upper Circles of Germany, and among them a number of the sect of Alennonites distinguished for their morals and orderly habits. Their passage is eighty three dollars, which they redeem by a service of two years for adults and proportionally for children.¹³

Muller and the surviving members of her family (her brother, sister, and father) were sent to work on a farm outside of the city in the Attakapas region, never to be seen or heard from again. Mr. Muller and Sally's brother both died on the trip, Mr. Muller for unknown reasons and the young son from drowning.¹⁴ What had happened to the two girls remained a mystery. Their friends and relatives, like Madame Karl, wondered if the girls had ever been released from their service. Twenty years would pass before any of them would hear the name Salomé Muller again.

After Madame Karl's alleged discovery of Sally, she brought the girl to the home of Eve and Francis Schuber, Sally's cousin and godmother and her husband, also immigrants from the same voyage as the Mullers.¹⁵ Both immediately identified the woman as Sally, Eve even later testifying in court "I needed nothing more to convince me...I could recognize her among a hundred thousand persons."¹⁶ The Schubers, along with other relatives, remembered that Sally had "natural marks, or moles, on the inside of

¹² Ibid., 137.

¹³ "German Redemptioners," *The Louisianian*, September 11, 1819.

¹⁴ Wilson, "Sally Muller," 138.

¹⁵ Ibid., *The Two Lives*, 3.

¹⁶ Cable, 165.

her thighs,” which the woman also had.¹⁷ Others who had known Sally’s family also attested to the woman’s certain resemblance to her mother and her extended family. George Washington Cable, who transcribed a partly fictionalized account of the case in his book *Strange True Stories of Louisiana*, described Eva’s own perception of Sally quite lyrically: “It was as if her Aunt Dorothea who had died on the ship twenty-five years before, stood face to face with her alive and well. There were her black hair and eyes, her olive skin, and the old, familiar expression of countenance that belonged so distinctly to all the Hillsler family.”¹⁸ Armed with the affirmation of her at least alleged long-lost family and friends, Sally decided to take legal action based on her newly discovered white ancestry. On January 24, 1844, Sally Miller (her Anglicized name) filed an official petition in the District Court against her current owner, Louis Belmonti, and previous owner, John F. Miller (as warrantor).¹⁹

Sally came to court with a notorious and yet respected legal team, headed up by Christian Roselius, “considered one of the most brilliant attorneys in Louisiana’s history,” and the former state attorney general.²⁰ He was the type of lawyer who was thought to give “his best services free in the cause of the weak against the strong. As an adversary he was decorous and amiable, but thunderous, heavy-handed, derisive if need be, and inexorable.”²¹ This was exactly the kind of figure Sally would need should she

¹⁷ *Miller v. Belmonti*, 11 Rob. 339 (La. 1845), 342, quoted in Jason A. Gillmer, “Suing for Freedom: Interracial Sex, Slave Law, and Racial Identity in the Post-Revolutionary and Antebellum South.” *North Carolina Law Review* 82, no. 2 (January 1, 2004): 602.

¹⁸ Cable, 164.

¹⁹ Wilson, *The Two Lives*, 4; *Ibid.*, “Sally Muller,” 140.

²⁰ *Ibid.*, “Sally Muller,” 140.

²¹ Cable, 163.

have a true shot at victory. Before presiding Judge Alexander M. Buchanan, Roselius and Sally brought an army of relatives and other witnesses who knew Sally as a child and could testify to her resemblance to the Mullers if not affirm her as the actual Salomé.²² Furthermore, two trusted doctors examined Sally's body and confirmed the existence of the two marks on the insides of her thighs and that they were indeed birthmarks, not burns or other man-made wounds.²³ Other witnesses, including one Madame Poigneau, a Creole neighbor of John Miller, remembered that the young Sally had spoken with a German accent.²⁴

John R. Grymes, who had served as a state legislator, led the defense team.²⁵ Interestingly, Grymes had actually served on behalf of the 1818 German redemptioners against the conniving Captain Grandsteever, but was unsuccessful in helping them win their suit.²⁶ No one doubted Belmonti had purchased Sally (in the bill of sale, called Mary) from John Miller on July 9, 1838 for a price of seven hundred dollars.²⁷ But what had happened before that? The past would hold the proof for whether or not Sally was indeed who she said she was.

John F. Miller, Sally's original owner, "became, in effect, the principal defendant since the plaintiff charged that it was he who had enslaved her initially, after purchasing

²² Wilson, *The Two Lives*, 69.

²³ Ibid., "Sally Muller," 141.

²⁴ Miller v. Belmonti 23, 041 (1st D.C. La. 1844), Supreme Court of Louisiana Collection, Earl K. Long Library, University of New Orleans, in Wilson, *The Two Lives*, 62.

²⁵ Miller v. Belmonti 1844, in Wilson, *The Two Lives*, 140.

²⁶ Wilson, "Sally Muller," 140.

²⁷ Ibid., *The Two Lives*, 5.

her time as a redemptioner.”²⁸ Thus, Grymes’ strategy centered around proving John Miller to be an honest man and discrediting Roselius’ witnesses. John Miller claimed the alleged “Sally Miller,” was actually a mulatto woman known as Mary and Mary Bridget. Sally’s witnesses had placed her at Miller’s home by 1818, but he provided an official record of sale from 1822, when Mobile slave trader Anthony Williams left her with Miller to be sold in exchange for a one hundred dollar advance.²⁹ The records indicated she was around twelve at the time.³⁰ Furthermore, Miller also produced two other bills of sale for Sally, transferring her to his mother Sarah Canby in 1823, and another for 1835 when he bought her (along with her three children) back from Canby.³¹

Grymes then went about dismantling the credibility of Roselius’ witnesses. The fatal flaw in their testimonies was that they were based on memories of a child, not experience with the present woman. Madame Poigneau, the witness who testified to Sally’s German accent, could not even recall her own current age or the name of the street where she had lived when she had met Sally.³² Furthermore, all of Sally’s witnesses had claimed she was three or four at the time of their arrival in New Orleans in 1818. However, the slave Sally had given birth to her first child, a son named Lafayette, around 1825.³³ Using the witnesses’ timeline, Sally would have been about ten years old at the

²⁸ Ibid.

²⁹ Miller v. Belmonti 1844, in Wilson, “Sally Muller,” 142.

³⁰ Miller v. Belmonti 1844, in Wilson, *The Two Lives*, 63.

³¹ Wilson, *The Two Lives*, 5.

³² Ibid, 62.

³³ Miller v. Belmonti 1844, in Wilson, “Sally Muller,” 143.

time of the birth.³⁴ Additionally, a neighbor who claimed to have been present when Sally gave birth to Lafayette, Rosalie Labarre, (also a neighbor of John Miller), said Sally had no birthmarks on her thighs at the time of the delivery.³⁵ The birth of that child was one of the most contradicted points of the various testimonies on both sides. His birth was reported as 1823, 1824, and 1825, with one witness even claiming 1815 or 1816.³⁶

Despite all of the disagreements between the defense and the plaintiff, one thing everyone seemed to agree on was that Sally did indeed appear to be white. W. Johnson, a witness for Grymes and Miller, commented that Sally undoubtedly had a very light complexion but he could not determine completely if she was a quadroon (one-quarter black and three-quarters white) or completely white.³⁷ However, her appearance was not enough to prove her ancestry. Racial intermingling and boundaries of hierarchy were too deeply ingrained to allow phenotype to attest to genotype. Simply looking white was not enough to earn the stamp of approval from either the presiding judge or the community at large. Ultimately, Judge Buchanan ruled in favor of Belmonti and John Miller. His decision was primarily based upon the lack of credibility of Sally's witnesses and the inconsistency in the details. The ages of the slave woman Sally Miller, who bore a child around 1825, and the real Salomé Muller, born in 1813, were incompatible. Furthermore, there was no proof of John Miller coming into possession of the Mullers. Rather, "all the evidence pointed to her not coming into his possession until 1822."³⁸ Judge Buchanan did

³⁴ Miller v. Belmonti 1844, in Wilson, *The Two Lives*, 62-63.

³⁵ Miller v. Belmonti 1844, in Wilson, "Sally Muller," 142.

³⁶ Ibid., 143.

³⁷ Miller v. Belmonti 1844 in Wilson, *The Two Lives*, 66.

³⁸ Wilson, "Sally Muller," 143.

express at least hints of doubt after the trial, when he suggested that if Sally's supporters believed in her case so strongly they could purchase her themselves, for "they would doubtless find [Belmonti] well disposed to part on reasonable terms, with a slave from whom he can scarcely expect any service, after what has passed."³⁹ This comment also hinted at the tradition of disconnected official law and practical, behind-the-scenes application of policy. If an official decision was not what best served her, she could figure out a way to maneuver within the existing structures to get what she needed. Perhaps she could have arranged an informal service relationship with Belmonti, or perhaps her "family" could have purchased her.

Regardless, the trial did not stop there; the whole ordeal was really only beginning. Wheelock Upton, one of the lawyers on Sally's team, appealed to the Louisiana Supreme Court soon after the verdict was released, and the case was tried in June 1845.⁴⁰ Upton had an arsenal of new evidence to support their appeal. Eve Schuber had already testified in the first trial that Louis Belmonti had confessed he knew Sally was a white woman. But, in the second trial, Upton also produced a corroborator for the fact: Peter Curren, a confidante of Belmonti.⁴¹ Curren testified that Belmonti had tried to return Sally to John Miller a few weeks after purchasing her because he had found her unpleasant. When he approached Miller, Miller told him she was actually white and "was only to be held as a slave by kindness and coaxing."⁴² This angered Belmonti, leading

³⁹ Ibid; Miller v. Belmonti 1844 in Wilson, "Sally Muller," 143.

⁴⁰ Wilson, *The Two Lives*, 70; 73.

⁴¹ Ibid.

⁴² Sally Miller v. Louis Belmonti and John F. Miller (called in warranty), 5,623, (S.C. La.. 1845), Supreme Court of Louisiana Collection, Earl K. Long Library, University of New Orleans, quoted in Wilson, *The Two Lives of Sally Miller*, 70.

him to confide in Curren.

Additionally, one of the most damning pieces of evidence from the first trial was the 1822 bill of sale Miller had produced. However, in the second trial, Miller's brother-in-law Nathan Wheeler testified that a young, three to four year old slave girl "very considerably darker in complexion" than Sally, had come into Miller's service around 1822.⁴³ He believed her name was Bridget and that she was a mulatto; that testimony followed the logic that it was her, and not Sally, who was accounted for on the bill of sale.⁴⁴

Another key point in John Miller's defense was the birth date of Lafayette. In the first trial, many had remembered Sally being three or four in 1818, while others testified her first-born child was born in 1825. This was impossible for Judge Buchanan to believe. In this second trial, Upton produced Madame Bertrand, a woman who had served as a midwife for the birth of Lafayette. Madame Bertrand testified that he had been born around 1827 or 1828, not 1825.⁴⁵ However, the 1835 bill of sale Miller had produced in the first trial had listed the ages of her three children as Lafayette, age five, Madison, age three, and Adeline fifteen months.⁴⁶ If Lafayette had been around age five at the time, Madame Bertrand's estimation would have been much closer to reality. Meanwhile, a friend of Upton's had located Salomé's birth certificate and had confirmed her birthdate as July 1813.⁴⁷ There was a sea of contradicting details reflected on both sides of the case,

⁴³ Miller v. Belmonti 1845, quoted in Wilson, *The Two Lives*, 71.

⁴⁴ Wilson, *The Two Lives*, 71.

⁴⁵ Miller v. Belmonti 1845, in Wilson, *The Two Lives*, 71.

⁴⁶ Miller v. Belmonti 1844, in Wilson, *The Two Lives*, 63.

⁴⁷ Miller v. Belmonti 1845, in Wilson, *The Two Lives*, 71.

each seeming to have evidence refuting the other.

Perhaps Upton's two most convincing points relied on the perception of the public and common sense. He asked, "has not this petition been the subject of conversation and newspaper comment in every Parish in the State?"⁴⁸ If that was indeed true, why had the real Salomé Muller not stepped forward? Finally, Upton pointed to Sally's physical and temperamental whiteness: "The perseverance, the uniform good conduct, the quiet and constant industry, which are found in those she claims as relatives, have always been found in her, and however polluted and degraded her person may have been, these traits have yet left her worthy of the relatives who ask at your hands—and these traits prove her white nature."⁴⁹ The connection between personality and biological race was common sense in the Southern psyche; a black person could not successfully masquerade, at least theoretically, as a white person because their black "traits" would shine through. In New Orleans especially, behaving correctly would have been the deciding factor, considering the great degree of racial hybridity present in the city. Perhaps this final point was what caused the Supreme Court to overrule the District Court's verdict and give the victory to Upton and Sally. Judge Henry Adams Bullard's articulation of the decision expressed the curious nature of the case: "if there be in truth two persons, about the same age, bearing a strong resemblance to the Millers [Mullers] and the plaintiff is not the real lost child...it is certainly one of the most extraordinary things in history."⁵⁰

The saga continued. On June 25, 1845, Sally filed a petition (this time under the name Salomé Muller) to the U.S. Circuit Court in New Orleans against John Miller and

⁴⁸ Miller v. Belmonti 1845, quoted in Wilson, *The Two Lives*, 72.

⁴⁹ Wilson, *The Two Lives*, 73; Miller v. Belmonti 1845, quoted in Wilson, *The Two Lives*, 73.

⁵⁰ Miller v. Belmonti 1845, quoted in Wilson, *The Two Lives*, 76.

Sarah Canby, Miller's mother and Sally's previous owner.⁵¹ The Circuit Court would hold trial by jury, while her first trial in the District Court had not (a unique feature of Louisianan law did not always require its presence).⁵² Sally asked for seventy-five thousand dollars from Miller to cover her labor and compensate for her time lost to enslavement and for the burden of suffering both she and her children had endured.⁵³ Furthermore, she wanted her two middle children, Madison and Adeline, released from Miller's ownership. She already had her youngest son Charles with her, and Lafayette had already died.⁵⁴ Because Sally had been determined white and illegally enslaved, it followed that her children would be released from slavery also as Louisiana law allowed the status of the children to follow that of the mother.⁵⁵ Sexual abuse and compliant relationships between female slaves of color and white masters were so prevalent that status based upon the mother was the only arrangement that could keep a flood of mixed race free children from invading and overthrowing the delicately teetering race-based social system.

Meanwhile, while they waited for the case to be tried, John Miller published a pamphlet with a firestorm of moral accusations and testimony from a host of witnesses from northern Louisiana who claimed to have known the real Salomé Muller.⁵⁶ He also filed another suit with the District Court (who had first ruled in his favor) on December

⁵¹ Muller v. Miller and Canby, 1,403 (C.C. La. 1846), Supreme Court of Louisiana Collection, Earl K. Long Library, University of New Orleans, in Wilson, *The Two Lives*, 85.

⁵² Wilson, *The Two Lives*, 85.

⁵³ Muller v. Miller and Canby 1846, in Wilson, *The Two Lives*, 86.

⁵⁴ Muller v. Miller and Canby 1846, in Wilson *The Two Lives*, 84.

⁵⁵ Wilson, *The Two Lives*, 86.

⁵⁶ Ibid.

17, 1845, suing Sally for fraud.⁵⁷ He was gathering his ammunition to take down Sally as an imposter and to salvage his reputation.

In his pamphlet, Miller accused Sally's witnesses of having unreliable memories and of having monetary motives; "presumably he [suggested] that some witnesses expected to share in the funds gained in the suit for damages."⁵⁸ He also accused his brother-in-law, Nathan Wheeler, of purposefully providing false testimony against him in order to punish Miller for no longer supporting Wheeler and his family financially.⁵⁹ Sarah Canby (John Miller's mother and one of Sally's previous owners), on the other hand, called attention to Sally's sexual behavior as evidence for Sally's "blackness." Sally had her first child, Lafayette, with another slave called Yellow Jim. Despite Sarah Canby's refusal to allow them to marry, Sally considered him her husband.⁶⁰ A white worker of Miller's fathered her next child, Madison.⁶¹ After Yellow Jim died, Sally had Adeline with another slave, Jim Bigger, who Sally referred to as her husband.⁶² Finally came Charles, who Sally said was fathered by a French shopkeeper. Many believed that shopkeeper was Louis Belmonti because he had agreed to pay for all of the child's expenses until he was to return to Miller's service at the age of ten.⁶³ If she really were

⁵⁷ Miller v. Miller, 24,454 (5th D.C. La. 1848), Supreme Court of Louisiana Collection, Earl K. Long Library, University of New Orleans, in Wilson, *The Two Lives*, 89.

⁵⁸ Wilson, *The Two Lives*, 87.

⁵⁹ John F. Miller, "A Refutation of the Slander and Falsehood Contained in a Pamphlet, Entitled, Sally Miller," (New Orleans: 1845), in *Free Blacks and Slaveowners in Civil and Criminal Courts: The Pamphlet Literature*, ed. Paul Finkelman, (New York: Garland, 1988), in Wilson, *The Two Lives*, 88.

⁶⁰ Miller, "A Refutation," in Wilson, *The Two Lives*, 89.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Wilson, *The Two Lives*, 61.

white, Canby concluded, she would not have had children by a black man nor would have had multiple partners.⁶⁴ Her sexual past was indeed contrary to “the familiar stereotyping of Southern ladyhood—the glorification of motherhood, the sanctity of virginity, and the noble self-sacrifice of the matron.”⁶⁵ Curiously, Canby’s point against Sally’s allegedly “white” character was never examined in-depth in the trial. Perhaps her performance of white womanhood in the present trumped the alleged shadows of a dubious past. Nevertheless, Miller closed his pamphlet with a fiery message to his opponents: “I am now ready. I court further investigation; I dare my enemies to another trial; I pity, and despise them.”⁶⁶

Miller then turned his focus on filling in the details of both the slave Bridget’s and the German girl Salomé’s lives before 1838, when “Sally” had been discovered in Belmonti’s shop. During the months leading up to the Circuit Court trial (concerning the compensation), Commissioner Copeland Hunt had gone to the northern part of Louisiana (in the Boeuf Prairie area) to collect testimonies from several witnesses who recalled knowing two young “Dutch girls” who had come to the area in 1818.⁶⁷ The most important witnesses were the four adult children of Thomas Grayson, all four of whom reported their father had brought two orphaned German girls, around ages six and eight, named Sally and Dorothy to their home.⁶⁸ They also provided intimate details of the

⁶⁴ Ibid., 88-89.

⁶⁵ Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South*, (New York: Oxford University Press, 1982), 234.

⁶⁶ Miller, “A Refutation,” 141, quoted in Wilson, *The Two Lives*, 89.

⁶⁷ Miller v. Miller 1848, quoted in Wilson, *The Two Lives*, 90.

⁶⁸ Ibid.

voyage, including Mr. Muller's former occupation and unexpected death and the oldest son's accidental drowning.⁶⁹ The two girls were then reportedly moved to the home of John Thomasson, where Mrs. Thomasson severely abused them, much to the concern of the public.⁷⁰ The community expressed concern to the parish judge and the girls were taken in by the Gleason family.⁷¹ The Gleasons corroborated the story, stating they had shortened the girls' names to Polly and Sally upon arrival. Both girls left the Gleasons' home within a year and a half.⁷² Polly's own statement was the cornerstone for John Miller's case: Claiming to be Salomé, Polly confirmed the Graysons' and Gleasons' testimonies and reported that she knew her parents had been named Daniel and Dorothea Muller.⁷³ The Graysons accidentally reversed their names and started calling her Dorothy and her younger sister Salomé, but soon shortened them to the Anglicized names Polly and Sally.⁷⁴ Furthermore, Dorothy Brown, one of Salomé's cousins, testified that Eve Schuber had never taken care of Salomé or her sister and that neither girls had birthmarks on the insides of their thighs.⁷⁵ Polly also had denied that she or her sister had ever had birthmarks there.⁷⁶ In total, fourteen witnesses collaborated to support the fact that Salomé and Dorothea Muller had lived in northern Louisiana the entire time John

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Miller v. Miller 1848, in Wilson, *The Two Lives*, 91.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

Miller had been in possession of his slave, Sally.⁷⁷

On the other hand, Miller also had traced his mulatto slave's history and had found witnesses to support it. Mrs. Mary Ann Coward of Jackson County, Mississippi was the most important witness. Mrs. Coward recalled moving to Alabama in 1810 with her family and their slaves Rachael (a black woman), her daughter Candice, (a mulatto), and Candice's one-year-old daughter, Bridget, a quadroon.⁷⁸ Bridget had been fathered by a white man, and her mother was a mulatto, and thus would have had relatively light skin. When Bridget was around thirteen, the Cowards sold her in order to pay off a family debt.⁷⁹ Jonathon Thomas had purchased her and then sold her to Anthony Williams, his son-in-law, who then brought her to New Orleans, where she was then purchased by John Miller.⁸⁰ Most curiously, Mrs. Coward claimed she had seen Bridget so regularly that she could identify her extremely easily; she even mentioned, without any prompting, that she knew Bridget had two birthmarks inside her thighs as well as a scar on her arm that she could use to identify her.⁸¹

Mrs. Coward also provided details of an incident that cast Eve Schuber in an even more suspicious light than Dorothy Brown's. Mrs. Coward had tried to visit Sally three different nights at the Schuber residence and each time was told Sally was out; however, the previous night she had been allowed in.⁸² She and her nephews were led

⁷⁷ Wilson, *The Two Lives*, 92.

⁷⁸ Miller v. Miller 1848, in Wilson, *The Two Lives*, 92.

⁷⁹ Miller v. Miller 1848, in Wilson, *The Two Lives*, 93.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

into a dark room where three women were. Schuber pointed to the woman with the fairest complexion and told Mrs. Coward that the woman was Sally. Mrs. Coward reported saying “If that is Sally Muller, then it must be so, but if that is you, Bridget, then you should be ashamed of yourself.”⁸³ The women all laughed and then Schuber pointed to a different woman turned away from Mrs. Coward and said that she was actually Sally. The woman had her hands over her face and would not answer any of Mrs. Coward’s questions. Mrs. Coward said she could never clearly see if it was Bridget or not.⁸⁴

Although the District Court case (John Miller’s fraud accusations) continued, the Circuit Court case concerning monetary compensation for Sally was never completed. Although the records of the suit end, it is assumed that Upton “decided to abandon [the case]. Assuming he had genuinely believed his client’s story before, he was now forced to seriously question the trust he had placed in her.”⁸⁵ Nevertheless, the fraud case still went to trial under Judge Buchanan, the same man who had presided over the original case and had ruled in favor of John Miller. Miller produced the witness statements he had collected as well as the indenture agreement Grayson made with the Mullers in 1818, and all of the bills of sale that had moved Bridget the slave girl from Mrs. Coward’s family to Jonathon Thomas, from Thomas to Anthony Williams, and from Williams to Miller himself.⁸⁶ Miller’s case seemed airtight, but the jury who had been allowed to sit on the trial could not agree. Perhaps this was due to the conflicting images of white womanhood

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid., 94.

⁸⁶ Ibid., 94-95.

Sally displayed and evidence John F. Miller presented, as Ariela J. Gross might propose. Or, perhaps the inconsistency of evidence, witness reliability, and dueling Southern ideologies of race and identity were at fault. The details of the case were without a doubt overwhelming in quantity and quality. The truth may have seemed simply too difficult to extract. Nevertheless, Judge Buchanan overrode the jury's indecisiveness with his own judgment. Despite his original ruling, this time he ruled in favor of Sally.⁸⁷

But Miller was not finished. He appealed to the Louisiana State Supreme Court, armed with his documents and thirty typed pages of his collected research on both Salomé's and Bridget the slave's pasts.⁸⁸ Upton and Sally, the reigning victors, claimed Miller's fraud suit had been illegal in the first place because the Supreme Court had already ruled in Sally's favor.⁸⁹ In May 1849, the Court dismissed the suit, giving two main reasons for their decision. First, they believed Upton to be correct in that "no suit to annul a judgment of the Supreme Court...could be maintained by a lower court."⁹⁰ Because the Supreme Court had already ruled Sally free, no lower court could hold a case attempting to overturn it. Second, they believed that since Belmonti, who was the "real party in interest," was not the central figure of the appeal, they saw no real reason for John Miller to be involved.⁹¹ They did seem to recognize that Miller would have a stake in the case because his honor was in question.⁹² Holding a woman he knew to be white in

⁸⁷ Ibid., 96.

⁸⁸ Miller v. Miller, 1114 (S.C. La. 1849), Supreme Court of Louisiana Collection, Earl K. Long Library, University of New Orleans, in Wilson, *The Two Lives*, 96.

⁸⁹ Miller v. Miller 1849, in Wilson, *The Two Lives*, 97.

⁹⁰ Wilson, *The Two Lives*, 98.

⁹¹ Ibid.

⁹² Ibid., 99.

slavery was a serious offense, an insult to the very structure of Southern morality. The presiding judges wrote in conclusion:

To the observation of counsel that the only object of the plaintiff in bringing the suit was to vindicate his character...we have carefully perused the new evidence discovered by him; that it stands in the record unimpeached, and is in direct conflict with that adduced by the defendant in the former suit to prove her birth and condition. If it can be true that the defendant is of German extraction, we consider the plaintiff as exonerated of all knowledge of that fact.⁹³

What happened to Sally after the trial is unknown. There were many rumored accounts of her whereabouts, but nothing conclusive.⁹⁴ Carol Wilson notes the marked absence of Sally's own voice from the very beginning of the drama to the very end.⁹⁵ Scholars have written on the importance of secrecy for survival as a slave, especially for slave women.⁹⁶ Perhaps "for Sally Miller, this may have been doubly true. Silence was part of the coping strategy she had learned as a slave, and it became the price of her freedom."⁹⁷ If she was an imposter, her silence would have been her final form of protection.

The Sally Miller case was definitely a curious case. The likelihood of mistaken identity and coincidence versus that of true white slavery are difficult to weigh. Salomé Muller and Sally (or Bridget, or Mary) the slave girl both had winding pasts. While the evidence collected in the fraud case strongly suggests that Sally the slave was not Salomé Muller, the case as a whole demonstrates how the foundations laid by New Orleans' past translated into its future. The importance of racial identity performance and the

⁹³ Miller v. Miller 1849, quoted in Wilson, *The Two Lives*, 99.

⁹⁴ Wilson, *The Two Lives*, 114.

⁹⁵ Ibid.

⁹⁶ Deborah Gray White. *Arn't I A Woman? Female Slaves in the Plantation South*. (New York: Norton, 1985), 24, quoted in Wilson, 114.

⁹⁷ Wilson, *The Two Lives*, 114.

improvised attitude towards legal control in particular are evident in the case. These issues were present somewhat all over the antebellum South. However, these issues were intensified and nuanced in New Orleans. Indeed, Sally's case serves as exemplar of New Orleans' social, cultural, and legal atmosphere of the era and the intersections of its various inherited traditions.

Legally speaking, Sally's trials were representative of New Orleans' mixed legal history. In fact, that Sally herself could sue for her freedom was unique to Louisiana; it was the only state in which a slave could directly file a petition for their freedom as a civil suit.⁹⁸ In all other states, slaves who believed themselves to be free had to use the help of a free guardian, known as a "near friend" or "next friend," who would file for them.⁹⁹ In other states, the process was more complicated. Judith Kelleher Schafer explains that a freedom suit could never be filed, but rather had to take an indirect route: first, the slave's guardian or the slave himself would "begin an action of trespass for an assault" against the master.¹⁰⁰ The master would then reject the claim on the basis that slaves did not have the right to sue, to which the slave would respond with a claim for their freedom.¹⁰¹ The court would then simply "ignore the assault issue and agree to rule on the issue of freedom."¹⁰² Louisiana law had this strange nuance because of their Spanish heritage. Although the French Code Noir did not allow for it, the Spanish rule of

⁹⁸ Judith Kelleher Schafer. *Slavery, the Civil Law, and the Supreme Court of Louisiana*. (Baton Rouge, LA: Louisiana State University Press, 1997), 220.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

coartación allowed slaves to purchase themselves and thus the right to place petitions in the civil courts for those purchases.¹⁰³ When the Louisianans formed their first American slave code in 1806, they brought together pieces from each era of their legal heritage: the Code Noir, the Spanish provisions, and other slave codes from their new American compatriots (in particular, South Carolina).¹⁰⁴ This mixed heritage created more flexibility for the courts and the citizens to create a legal system that worked for their unique needs.

The Spanish tradition of *coartación* survived Louisiana's Americanization, but not every trace of Spanish or French law did. For example, John Miller had argued that in a freedom suit the burden of proof was on the plaintiff if the master had the title for the slave, as he did.¹⁰⁵ This had been the precedent under the Spanish legal code. Nevertheless, Sally had gone free. When the Louisiana Supreme Court produced the ruling for Sally's freedom, they had cited a case from 1810, *Adelle v. Beauregard*.¹⁰⁶ In the case (notably from the post-American annexation period), the court had ruled that in freedom suits, "persons of color were presumed free, the burden of proof thus falling on the person who claimed someone as a slave."¹⁰⁷ Indeed, up until 1857 (when emancipation became prohibited in the state), the Supreme Court usually ruled in favor of freedom in freedom suits "as long as the slave could prove that he or she was legally

¹⁰³ Ibid., 220-221.

¹⁰⁴ Lawrence N. Powell, *The Accidental City: Improvising New Orleans*. (Cambridge, MA: Harvard University Press, 2012), 332.

¹⁰⁵ Wilson, *The Two Lives of Sally Miller*, 75.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

entitled to it.”¹⁰⁸

Antebellum law had obvious marks of its ancestry, but Louisianan “judges and lawyers used [their heritage] only when it served them.”¹⁰⁹ It could thus be argued that the most potent trait passed on was improvisation: in a world with so many blurred lines, how could they draw a line between black and white? The culture of the city was anything but clear-cut, and it seems that law practitioners tried their best to find the precedents that worked best with what they were dealing with. While characteristics of post-Americanization documents, like the slave code of 1806, did show an effort to bring the legal system closer to that of other American states, the Louisianans still were not ready to completely break from their unique ancestry. Indeed, in 1819 there had been an impeachment attempt made against François-Xavier Martin, the senior judge of the Supreme Court at the time of the Sally Miller case.¹¹⁰ One of the members of the opposition had been none other than John Grymes, John Miller’s lawyer.¹¹¹ Part of their accusations against Martin was that he “[upheld] the language of the Constitution; and [would] not tolerate the French language in Judicial proceedings.”¹¹² It seemed that for some, Martin was becoming too American too quickly.

The mixed messages about which precedents to follow, what portions of their old legal traditions to enforce and which to ignore, and the inconsistency of slave

¹⁰⁸ Schafer, 221.

¹⁰⁹ Ibid.

¹¹⁰ Ibid., 73-74.

¹¹¹ Ibid.

¹¹² Bullard to Josiah Stoddard Johnston, February 2, 1822. Historical Society of Pennsylvania, Philadelphia, quoted in Wilson, *The Two Lives*, 74.

representation were all characteristic of the authority question of the colonial era. In the days of New Orleans' beginnings, there was constant tension about who had the final word: the royal court, thousands of miles away, or the local rogues? Whose flag would fly over the main square, the French or the Spanish? There had always been a lack of consistent authority from the beginning, leaving space for the local citizens to carve their own paths through the swamp of the Mississippi. This mindset permeated the systems of order impressed upon the city. The Sally Miller case reflects overlapping realms of power and intersecting cultural and legal heritages that met in New Orleans. In spite of mounting evidence, Sally and her legal team found the cracks in the existing confines of the law to carve out a space for her and her children. Manipulating imposed order was a theme the settlers of the Mississippi faced even with the mighty river itself. They faced it again as royal powers attempted to create an economic stronghold out of their more rogue-style settlement, and again when foreign rule invaded their way of life. In New Orleans, official statements of power were not always the last word. There was room to work within the confines of order.

Socially speaking, Sally's case also speaks to the racial diversity and identity issues present in the city. In the decades after their absorption into America, visitors to New Orleans still "[marveled] at [the] booming port's social and physical distinctiveness, particularly its ethnic diversity. National perceptions about New Orleans as a unique and exotic city, or alternately as a wicked 'Sodom and Gomorrah,' [began] to form."¹¹³ The Crescent City was unique to the American union in that by the time Louisiana became a state in 1812, the area had been a part of three different empires in its formation and thus

¹¹³ Richard Campanella, *Bienville's Dilemma: A Historical Geography of New Orleans*. (Lafayette, LA: University of Louisiana Press, 2008), 29.

bore the marks of three different cultures.¹¹⁴ Even after it permanently adopted the American flag, its population continued to diversify and multiply. As a port city, it had an energetic slave trade as well as a stream of immigrants flooding through its gates. Its genetic makeup was always heterogeneous, never completely united by religion or ethnicity. In 1840, around the time of Sally's trial, the New Orleans population was the third largest in the United States, made up of 102,193: 59,519 whites, 23,448 black slaves, and 19,226 free people of color.¹¹⁵ There had also been a marked increase in immigration from Ireland and Germany beginning in the 1830s, thus increasing the white population and contributing to the ethnic diversity of the city.¹¹⁶ Sally's family had been on the beginning of that wave. New Orleans became an even more complex conglomeration of peoples, covering every skin tone.

Because of the great diversity, it would have been extremely difficult to classify individuals to a race, but nevertheless such divisions were necessary in order to maintain the institution of racial slavery. Inevitable interracial relationships, historically tolerated in the city, only further complicated the issue by creating subdivisions of what it meant to be a person of color. Titles like "'Griffe,' 'Mulatto,' 'Quadroon,' and so on— attempted much more precise measurements of imagined portions of 'black' and 'white' blood."¹¹⁷ White Southerners instilled deep meaning into those measurements; they believed there was a direct correlation between biology and character. Because those measurements were intangible, however, it was one's behavior that was the deciding factor in

¹¹⁴ Ibid., 28-29.

¹¹⁵ Ibid., 32.

¹¹⁶ Ibid., 30.

¹¹⁷ Walter Johnson, *Soul by Soul*. (Cambridge, MA: Harvard University Press, 1999), 150.

determining racial identity. Racial performance was crucial, and could make or break an individual's chance for freedom.¹¹⁸ If a woman was pale skinned *and* behaved in such a way that was consistent with white womanhood, she was considered undoubtedly white.

Sally's ability to play the role of a white woman was perhaps her greatest strength. It is first important to note that slaves of her complexion were not unheard of; pictures of emancipated slaves from the antebellum South provides evidence of the phenomenon. However, appearance was not enough; an individual had to act appropriately in order for the identity to be complete. Sally gave an expert performance of white womanhood that seriously supported her European appearance and her claims for freedom: "whiteness meant virtue and honor-good conduct, industry, and so forth. Sally Miller's virtues revealed themselves through her conduct, her performance."¹¹⁹ Her performance, whether it was genuine or an act, was convincing enough to eventually win her freedom back in the State Supreme Court. Sally had been identified as mulatto (of white and black ancestry), quadroon or quartronne (of mulatto and white parentage), or white throughout her life. However, Sally's legal team defended her behavior's inconsistency with that of any black blood:

I contend that the moral traits of the Quartronne, the moral features of the African are far more difficult to be erased, and are far more easily traced, than are the distinctions and differences of physical conformation. The Quartronne is idle, reckless and extravagant, this woman is industrious, careful and prudent-the Quartronne is fond of dress, of finery and display-this woman is neat in her person, simple in her array, and with no ornament upon her, not even a ring on her fingers.¹²⁰

¹¹⁸ Ariela J. Gross, "Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South." *The Yale Law Journal* 108, no. 1 (October 1, 1998): 112.

¹¹⁹ *Ibid.*, 167.

¹²⁰ *Miller v. Belmonti* 1845, quoted in Gross, 168.

Sally's legal team thus argued that the possibility of fraud was ridiculous, because "only a white woman could exercise the moral power to convince others of her virtue through her performance."¹²¹ New Orleans' complicated racial taxonomy actually enabled fairer individuals the opportunity to elevate their social status, if they could play the part convincingly enough. The population was so diversified it would have been easier to slip unnoticed into the crowd. This could also be negative, as Sally's alleged family claimed. At least in their version of the story, their precious European relative had been passed over by the general public, who apparently had not given the fair slave even a second glance. This would only have been possible in a multiracial, hybridity-driven society. Sally Miller was able to use the system in place for her advantage. She in fact had white men defending her white womanhood, a remarkable feat considering there is a strong possibility she was an imposter. The deeply engrained ideology of racial character, combined with a hyper-diversified population, created an environment with lines blurry enough for Sally to blend into the slave population but yet also rise again.

The Sally Miller case presents an interesting question: how could a German slave go undetected in the American South, where the line between white and black was the theoretical stronghold of the institution of slavery? Would someone not have noticed? It would have been a violation of the very foundation of race-based slavery. However, the evidence collected by John Miller in the final act of the court room drama, combined with the backdrop of the case leads a modern reader to question the final verdict. It is possible that Sally Miller was the real Salomé, however it is also probable she was not. The historical context also seems to lend itself to a conclusion unfavorable to Sally. More than likely, Sally was a slave woman taking advantage of a flexible legal system, a

¹²¹ Ibid.

biracial heritage, and a society that relied on practical racial performance over exact genealogy. The history of New Orleans provided for those factors and for the results of their interaction. The inconsistent uses of legal precedents as well as the ability to directly sue for freedom were distinctly characteristic of New Orleans, creating the stage Sally would have needed to even make a victory feasible. The high prevalence of biracial individuals and the culture of racial performance gave her the tools she needed to present herself as a white woman. She already had the fair skin and appearance of a white woman; all she needed was the right costume, the right opportunity, and the proper setting. While scholars have focused on how well Sally performed, where her case took place deserves just as much attention. The sensational story of Sally Miller is just as intriguing, if not more, as part of the New Orleans' historical narrative as it is as a part of the picture of the American South. Indeed, adding that layer of analysis only heightens the drama in a way that pays appropriate homage to the colorful past of her world.

CONCLUSION

It is irrefutable that Sally's case fits into the greater Southern historical narrative. Freedom cases like Sally's did occur across the antebellum South. This was due to the interactions between two dueling ideologies: first, that race affected one's character, and second, that interracial relationships were to be accepted as a part of life. The intermingling of these two themes created a tension, however. Widespread interracial relationships created a class of people who represented a "troubling fissure in the Southern social order," one that challenged the foundations of race-based slavery and made room for freedom suits like Sally's.¹ Some of these individuals in the margins between white and black were able to pursue their own freedom based on claims of white or free ancestry.

Ariela J. Gross argues that many of the victorious freedom suits were built upon correct performance of racial identity. Southerners believed in a deep connection between character and biological race; one's behavior reflected one's genotype. In a world where genotype was destiny, displaying the signs of the correct identity was the difference between chains and freedom. This ideological stronghold was held almost in spite of itself; indeed, by the logic of the time, the innate features of whiteness would be present in the half-white illegitimate slave children. While the idea of white slavery was utterly repulsive to white Southerners, nevertheless half-white children were indeed enslaved.

¹ Jason A. Gillmer, "Suing for Freedom: Interracial Sex, Slave Law, and Racial Identity in the Post-Revolutionary and Antebellum South." *North Carolina Law Review* 82, no. 2 (January 1, 2004): 588.

Despite the paradox, these supposed innate qualities of race sometimes worked in favor of slaves claiming to be of white or free ancestry, especially for women. Gross argues, “the most dramatic suits involving racial determination were suits for freedom, most of them brought by women, and nearly all of these brought successfully...they dazzled their neighbors and jurors with feminine evidence of whiteness: beauty and goodness.”² Although men did engage in freedom suits, Gross stresses the importance of the South’s obsession with white womanhood as an ideal, making female freedom suits more prominent and dramatic.³ The white “essence,” was meant to be preserved and upheld, and “many [whites] pulled back in horror at the thought of whites being in slavery,” especially a white woman.⁴ In fact, “Southerners also were quick to hold up successful suits for freedom involving near-white slaves as evidence that the system was humane and just.”⁵ The logic followed that slavery was for the inferior, sub-human black race, and efforts to remove whites from such a situation was a rescue mission for justice rather than a correctional effort.

Gross supports her argument not only with Sally Miller’s case, but with those of women like her, including Alexina Morrison’s case in 1858 in Jefferson Parish, Louisiana (the parish east of Orleans, where New Orleans was located).⁶ Morrison and Miller had similar cases in that both women appeared white (Morrison even more so, having blonde

² Ariela J. Gross, “Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South.” *The Yale Law Journal* 108, no. 1 (October 1, 1998): 166.

³ Ibid.

⁴ Gillmer, 588.

⁵ Ibid.

⁶ Gross, 172.

hair and blue eyes) and were accepted by a local group of white free people. However, both were accused of sexual immorality (and therefore of possessing the black “essence”) and both women’s former masters were able to produce document evidence of their slave status.⁷ Morrison’s fate is unrecorded, although Gross hypothesizes she went free because of her convincing self-portrayal of a white woman. Similarly, in Arkansas, Abby Guy sued for her own freedom and that of her children in 1855, with witnesses testifying to “her [white] appearance, her reception in society, her conduct, her self-presentation, and her inherited status.”⁸ Guy claimed her mother had been sold into slavery in Alabama to her current owner’s father. He had allowed for their freedom in his will, but his son had kept them in a state of slavery.⁹ Guy’s case had similarities to Morrison’s and Miller’s in that her master also claimed to be able to prove her black heritage and subjected her to “medical” examinations to prove her race like Sally. She also had the appearance of a white woman and was accepted by a white community.¹⁰ After a series of appeals, Guy and her children eventually went free.¹¹ Southerners used cases like these to bolster the legitimacy of race-based slavery: “after all, allowing a white or near-white person to go free showed the world that black slavery was just that-black slavery.”¹²

Sally’s place in the history of racial identity in the South has been well-established, but a study of the deeper context of the case’s setting can also offer a

⁷ Ibid., 173-176.

⁸ Ibid., 111.

⁹ Ibid., 127.

¹⁰ Ibid., 134; 137.

¹¹ Ibid., 137.

¹² Gillmer, 600.

different perspective on the case's conclusions and provide a place for Sally within the specific New Orleans historical narrative. Carol Wilson does discuss the importance of context in her monograph on the case, but this thesis provides a more thorough examination of the city's history and seeks to show the case to be exemplary of that particular past as much as it is of Southern ideology at large.

New Orleans history is unlike any other Southern city. Founded by rogue characters and based on the untamable yet life-giving Mississippi, New Orleans was left largely on its own for a good period of time, cultivating a spirit of independence and local control. French, Spanish, and the American flags would wave over the city at one time or another, each bringing their own laws and customs and attempting to impose them on the unruly, motley band of citizens. This unique heritage created conflicting legal precedents as well as cultural tensions. Laws were applied inconsistently and often times, with selfish profit or convenience as key. This tradition of hybrid legality continued into the American antebellum period (as shown by the application of the Spanish *coartación* but negation of burden of proof on the slave in the Louisianan courts). Besides national tensions, local tensions between governors, administrators, and other officers of the law only augmented the tradition of organized chaos. No matter what imposed structures of control rulers placed on the city, the citizens still were able to find the advantageous gray areas within them. A spirit of rebellion, hybridity and flexibility subsequently took root in the psyche of the New Orleans people, creating a world where power was malleable and there was space for improvisation.

That same flexibility was applied to cultural and racial divisions. As aforementioned, New Orleans had a unique multicultural heritage, bringing with it

citizens of all colors of the spectrum. Its port location made it a hub for both the slave trade and immigration, including the ancestors of the slave Sally Miller and the family of Salomé Muller. The colonial concession of the Catholic Church to baptize the illegitimate mixed-race children of its white members (the first of which occurring in 1729) laid the foundation for a steady acceptance of interracial unions.¹³ The intermingling of races, at times forced by slaveholders and at other times voluntarily, further complicated the social construct. Slave traders tried to classify the slaves with names that not only described their appearance, but also supposedly their character traits. The slave trade culture augmented the permutations of identity within an already extremely complex and ambiguous society. The classifications they assigned, although allegedly scientific, were somewhat arbitrary. The vast variety of ethnic groups present in the city made it easy to slip into the crowd, to fade into the landscape of freedom. Correct performance and self-presentation could allow an individual to adopt a new identity and possibly free himself from slavery. Combined with blurry lines of power and control, the fuzzy racial distinctions made New Orleans the ideal place to make a case for freedom.

To make a definitive decision on the identity of any of the individuals who sued for their freedom would have been somewhat impossible. Documents could have been forged, appearances could be deceitful, and witnesses could be tampered with, not to mention the unique padding Louisianan courts had for freedom suits. Hearsay as evidence brought obvious complications and suspicions. For some, like Sally Miller, these factors were for her advantage. New Orleans was the perfect stage for a case such as hers. Lines of power and race were as muddled as the swamplands the city was built

¹³ Lawrence N. Powell, *The Accidental City: Improvising New Orleans*. Cambridge, MA: Harvard University Press, 2012, 95.

upon. New Orleans' heritage of rogue character and improvised power under imposed structures was too strong a force to be overtaken no matter how many times its national identity changed. Its culture, its politics, and even its very landscape were shaped by its past, tremors of which were still violently felt through the antebellum era and even in some ways, today. When that past is taken into consideration, the Sally Miller case begins to serve as an exemplar of the culture created by New Orleans' unique story. Furthermore, in a case with as many bizarre twists and turns as Sally's, a deep understanding of the story's context allows for more logical conclusions and observations to be made. New Orleans in some ways speaks for itself on the verdict: Sally was more than likely an imposter, the idea of which in some ways does not surprise a reader who knows the tradition of shady figures throughout New Orleans' history.

As one of the most notorious cities on the American map, New Orleans carries one of the nation's most unique and vibrant pasts, one with a character strong enough to rival the mighty Mississippi itself. This thesis has sought to show how the Miller story represents that character more specifically than that of the antebellum South. While trends of the general era are indeed present, in the case they are nuanced in ways particular to the Crescent City. There is room within New Orleans' history for Sally's case, a special niche for her dramatic tale more specific to the matter than her place in the Southern narrative at large.

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