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# The Ballad of Hicks Carmichael: Law, Music, and Popular Justice in Urban Appalachia

William Davenport Mercer<sup>1</sup>

## Abstract

This article examines a rare folk ballad to revisit an 1888 Tennessee trial that newspapers referred to as the fastest in the country in which the death penalty was involved. If we look at this event using court records and newspapers, it tells a regrettably common story of a court under pressure from the populace skirting the protections of law. However, if we consider the trial as a performative endeavor, we can rightly consider other performative events, like folk songs, not as reflective of official events but as equivalents that help provide insight into the larger motives behind the court's actions.

## I. Introduction

On Saturday, May 26, 1888, Knox County, Tennessee Criminal Court Judge Logan announced the sentence: death by hanging. This was notable because less than three hours earlier had the defendant Hicks Carmichael even entered the courtroom. Indeed, the murder for which Carmichael was on trial occurred only six days before. Between 9:00 and 11:30 a.m., the jury was picked and sworn, the evidence submitted, the verdict announced, and the sentence passed. In an approving manner, the *Knoxville Journal* remarked “It was the speediest trial in the history

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of the country where capital punishment was the decree of the court.”<sup>2</sup> Carmichael was executed within two months.<sup>3</sup>

Close to fifty years later, the local university purchased a disc-cutting machine to aid its faculty in the Speech Department.<sup>4</sup> Reflecting the burgeoning academic interest in folk music, English professor Edwin Kirkland and his wife Mary quickly recognized its possibilities and began borrowing the machine when not in use.<sup>5</sup> Part of a new generation who rediscovered American folkways as a national treasure, the Kirklands understood the potential this recording equipment had for the critical task of documenting the region’s songs before the uniformity brought by radio, the record companies, and modernity more generally silenced these voices.<sup>6</sup> On July 29, 1937, they recorded “Hicks Carmichael,” a rare folk retelling of the case.<sup>7</sup> Unlike many folk songs of the Appalachians and its environs, there are only three known recordings.

If we look at the Carmichael case through court documents and newspaper accounts, the incident tracks a tragic yet common event in the American South during this era: a community glancing at due process protections in order to execute an African American man.<sup>8</sup> While the court pronounced the sentence and the sheriff carried out the execution, the speed with which the court tried Carmichael was directly attributable to pressure from the populace. In this sense, the incident helps reinforce the evidence showing that popular enforcement of law maintained a

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<sup>2</sup> *Knoxville Journal*, May 27, 1888, p.1.

<sup>3</sup> *Knoxville Journal*, July 21, 1888, p.1.

<sup>4</sup> Kip Lornell, “The Kirkland Collection,” in *The Kirkland Recordings: Newly Discovered Field Recordings from Tennessee and North Carolina, 1937-39* (LP Record, Tennessee Folklore Society, 1984), p. 2.

<sup>5</sup> Lornell, “The Kirkland Collection,” p. 2; Edward Capers Kirkland and Mary Neal Kirkland, “Popular Ballads Recorded in Knoxville, Tennessee,” reprinted from the *Southern Folklore Quarterly*, Vol. II, No. 2, p. 80.

<sup>6</sup> John Swzed, *Alan Lomax: The Man Who Recorded the World* (New York, Viking, 2010), pp. 106-107.

<sup>7</sup> Charles Wolfe, “Notes on the Songs,” in *The Kirkland Recordings*, p. 11.

<sup>8</sup> See, for example, Rand Dotson, “Race and Violence in Urbanizing Appalachia: The Roanoke Riot of 1893,” in *Blood in the Hills: A History of Violence in Appalachia*, ed. Bruce E. Stewart (Lexington, University Press of Kentucky, 2012), pp. 237-271.

stronger foothold in the south throughout the nineteenth century.<sup>9</sup> However, if we pull back and examine the Carmichael case from the oral tradition handed down to the 1930's, it reveals a different story, and reminds us that this incident is better appreciated by if we evaluate it in the same way we would consider the performing arts. As noted by Jack Balkin and Sanford Levinson, examining law by only considering legal texts can be as insufficient as appreciating music as limited to a written score.<sup>10</sup> We must destabilize the notion that art, literature, music, or culture more generally, simply reflects the workings of the official realm of the law and its institutions. Instead of considering the trial as the authoritative event and the song as a mere recollection, we should consider that the trial and the ballad were both primarily performative events. They shared profoundly performative elements: in trials and folk music legal actors and musicians, respectively, seek to persuade the audience that their interpretation of the law or the musical text is authoritative.<sup>11</sup> Here, despite the recent history, both the court and the populace sought to present an idealized image through these performances; the court wanted to demonstrate that it was the proper authority to punish crime, while the residents that maintained and passed down the ballad to their children hoped to emphasize their restraint.

This article places "Hicks Carmichael" methodologically at the intersection of law and music and law and literature. We must examine the narrative arc of the ballad, as is paramount in the study of law and literature, but we must also consider the larger questions of performance essential to a study of law and music that does not simply consider music as passively reflecting

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<sup>9</sup> Elizabeth Dale, *The Rule of Justice: The People of Chicago v. Zephyr Davis* (Columbus, Ohio State University Press, 2001), 2.

<sup>10</sup> J.M. Balkin and Sanford Levinson, "Interpreting Law and Music: Performance Notes on 'The Banjo Serenader' and 'The Lying Crown of Jews,'" 20 *Cardozo L. Rev.*, 1513, 1518-1519 (1998-1999).

<sup>11</sup> Balkin and Levinson, "Interpreting Law and Music," pp. 1519.

official events.<sup>12</sup> Folk music, like the “Hicks Carmichael” ballad, is particularly suited for this hybrid analysis, as its stripped down musical style emphasizes the centrality of the lyrics, while storytelling and narration are common elements to the art form. At the same time, its non-lyrical characteristics, like communal authorship and generational transformation, make a song broad enough to legitimately capture the consciousness of a wide segment of the population and to claim inclusion as a folk song.<sup>13</sup> It is precisely this consciousness that a folk song is most equipped to measure. If we are seeking to understand not only what transpired in Knoxville in the summer of 1888, but why the community acted in the way it did and the lessons it took from this incident, folk traditions can get us closer to this understanding. We will only get a partial picture of the events if we simply consider the scribbles of the court clerk and the stories of a handful of newspaper reporters.

“Hicks Carmichael” warns of the dangers of fast living and tells of the calming influence of the elite to ensure the proper functioning of law. As such, the ballad functioned as a way for the people of Knoxville to paper over their unsavory reputation as an exceedingly violent and lawless place where justice was just as often determined and carried out by private citizens as by the court. This message was largely aspirational not only because of the city’s woeful history in containing extralegal violence, but also because it obscured the reality of the trial largely taking place in such a way as to head off an extralegal execution, hardly an affirmation of the court’s power. Considering both the trial and the ballad as performative reveals that Carmichael was of much less concern to the city than was using the incident to reassert the power of its legal

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<sup>12</sup> Desmond Manderson, “Making a Point and Making a Noise: A Punk Prayer,” *Law, Culture and the Humanities*, Vol. 12(1) (2016), p. 19.

<sup>13</sup> For a discussion of the importance of the non-lyrical aspects of music, see Manderson, “A Punk Prayer,” p. 19.

institutions, a task made imperative for Knoxville to break out of Appalachia and into the new south.

## II. Serving the Warrant

Six days before the trial, deputy D.A. Shipe awoke determined to serve the warrant he had carried around with him for the last few days. Hicks Carmichael was wanted for robbery in a nearby county.<sup>14</sup> Shipe had finally located his man just north of Knoxville, working as a laborer building the railroad.<sup>15</sup> Shipe stopped off first to persuade fellow deputy W.A. Corum to accompany him to the job site. Not only had Shipe only been on the force for less than two years, he was in his mid-thirties and had suffered significant health issues that limited his physical activity. Since serving warrants was probably the most dangerous part of his job, a physically fit laborer ten years his junior might pose a problem. Instead of following a passion for law enforcement, Shipe likely sought the deputy position in order to obtain a steadier paycheck than what the farm would provide.<sup>16</sup>

At 11:00 a.m. that Sunday morning, Shipe and Corum arrived at the camp. Given the Sabbath, the men were not on the job but likely milled around the site enjoying their day off. Shipe and Corum found Carmichael's tent. Opening the flap, they discovered Carmichael on his bed sewing some clothes that ripped during the strenuous week before. When the deputies asked if he were Carmichael, he responded in the affirmative and inquired about the charge, coolly remaining seated on the bed. Shipe replied that he was wanted for robbery and, adhering to legal

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<sup>14</sup> The *Knoxville Journal* reported that the robbery took place in Morgan County, while the *Knoxville Tribune* quoted Carmichael as admitting to the robbery that took place in Anderson County. *Knoxville Journal*, May 22, 1888, p. 1; *Knoxville Tribune*, May 25, 1888, p. 1.

<sup>15</sup> *Knoxville Journal*, May 22, 1888, p. 1. The line was designed to link Knoxville, Tennessee to the Cumberland Gap at the intersection of Tennessee, Virginia, and Kentucky. Fairfax Harrison, *A History of the Legal Development of the Railroad System of the Southern Railway Company* (Washington, D.C., 1901), pp. 1112-1113.

<sup>16</sup> *Knoxville Journal*, May 22, 1888, p. 1.

form, Shipe pulled out the warrant and began to read the legalese that spelled out the charge. A man who had spent almost his entire life on the farm, Shipe struggled with some of the text. When he could not pronounce a certain word, Corum took his eyes off of Carmichael and leaned over Shipe's shoulder to help translate the warrant.<sup>17</sup>

In an instant Carmichael recognized his very fleeting opportunity. Carmichael dropped his sewing and picked up two pistols he kept hidden from view. With his left hand, Carmichael aimed at Shipe and pulled the trigger. The bullet lodged in his chest, just right of his heart. As Shipe fell backward, Carmichael allegedly let loose with the pistol in his right hand, this time aimed at Corum. The gun fired and hit the deputy. In the melee, Carmichael, still shirtless, fled past the deputies and out of the tent. Corum pulled his gun and attempted to shoot, but it jammed. Corum was lucky as the bullet passed through his coat. Shipe was not; he died almost immediately.<sup>18</sup>

During the chaos of the scuffle, Carmichael escaped into the woods. By 8:00 that evening, close to 100 men were in armed pursuit. Carmichael was quickly characterized in the local papers as inherently evil, with the *Knoxville Tribune* reporting that “the character of the negro is uncommonly bad, even for a desperado such as he is.” In addition to attributing these traits to Carmichael, he was also described as physically dangerous, as he was a “strapper” weighing 200 pounds and standing six feet tall. Finally, the *Tribune* reported a rumor that he was a fugitive from the law in Alabama, as he fled a “murder scrape” before coming to east Tennessee.<sup>19</sup> Firmly established as a public threat, the unknown whereabouts of Carmichael led many to many false rumors and wild conclusions. On that Thursday, the *Knoxville Journal*

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<sup>17</sup> *Knoxville Journal*, May 22, 1888, p. 1.

<sup>18</sup> *Knoxville Journal*, May 22, 1888, p. 1; *Knoxville Journal*, July 21, 1888, p. 1

<sup>19</sup> *Knoxville Tribune*, May 22, 1888, p. 1.

reported a tip they received from a “slick-tongued lawyer who wears a shiny hat and is known for his capacity for speaking the truth” that had Carmichael on a cross-state killing spree, having murdered the sheriffs of two nearby counties.<sup>20</sup>

Instead, Carmichael headed home. His family lived east of Knoxville in Cocke County, a mountainous region that helps form the eastern border of Tennessee. Apparently, Carmichael hoped for a bit of help from his family and friends in scaling the Appalachians into the Carolinas. This plan would not only require provisions, but also someone who could guide him through the mountains. Carmichael was aided by a man who agreed to do so, though his identity is unknown. What is known is that whatever connection drew him to help Carmichael was not strong enough to resist the allure of the reward for his capture. Acting on his tip, a county constable and five armed men caught up with Carmichael and his companion late Wednesday night, May 23, 1888. Again able to elude capture, despite a hail of bullets, his luck ran out later that same day on the banks of the French Broad River, when a local man blasted Carmichael with a load of duck shot. Wounded and bleeding, Carmichael nonetheless managed to escape his captors and swam across the river. The pursuers gave chase and discovered their target hiding under the hay in a nearby barn. Exhausted and injured, Carmichael surrendered.<sup>21</sup>

### **III. The Trial**

Dragged from the barn at 3:00 a.m., Thursday morning, May 24, 1888, Carmichael was placed on a train back to Knoxville. Word of Carmichael’s capture and impending return hit the city by 9:00 a.m. When the train ostensibly carrying the prisoner arrived close to four hours later, over 3,000 had gathered at the station. At this point, some of the more prominent residents of Knoxville sprang into action. Leading citizens, like General R.N. Hood, exhorted the crowd to

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<sup>20</sup> *Knoxville Journal*, May 24, 1888, p. 4

<sup>21</sup> *Knoxville Journal*, July 21, 1888, p. 1; *Daily American* (Nashville, TN), May 25, 1888.



disperse, assuring them that Judge Logan had agreed to try the case quickly.<sup>22</sup> While this may have placated the crowd, Hood and his allies knew that this would not be the end. They had armed guards placed around the jail in the event it was rushed. More importantly, the train carrying Carmichael back to Knoxville stopped before it reached downtown, allowing them to whisk Carmichael to jail under heavy security and avoiding the crowd at the main station.<sup>23</sup>

Meanwhile, Hood, Judge Logan, and attorney general T. A. R. Nelson quickly set about making sure the trial could happen as soon as possible. The tension was not between the state and the defendant, as any concern regarding whether they could obtain a conviction was completely absent. Indeed, after his capture, Carmichael became almost of secondary importance, as Knoxville instead raced against the fury of the residents who wanted to exact their own revenge. The legal and political elite of Knoxville understood that their control over the machinery of criminal justice was precarious when the community was particularly aroused. Comprised of the descendants of the original town founders, pre-Civil War arrivals, and new men from outside the region, they strove to take part in the new economic opportunities presented by the end of the War.<sup>24</sup> They had the location, capital, manufacturing base, labor, and transportation infrastructure to qualify as a modern city of the new south. By the 1880's, the city could boast that its lavish opera house, public library, newspapers, and streetcar lines made Knoxville much more than utilitarian.<sup>25</sup> Despite these aspirations, their hold on the city was tenuous, as revealed by a particularly gruesome lynching from just three years earlier.

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<sup>22</sup> *Daily American*, May 25, 1888. In addition to serving as president of the Third National Bank, Hood was also the president of the Knoxville and Augusta Railroad and the Knoxville Water Company. *New York Tribune*, February 2, 1892, p. 7.

<sup>23</sup> *Knoxville Tribune*, May 25, 1888, p. 1.

<sup>24</sup> William Bruce Wheeler, *Knoxville, Tennessee: A Mountain City in the New South*, Second Ed. (Knoxville, University of Tennessee Press, 2005), pp. 8, 17.

<sup>25</sup> *Heart of the Valley: A History of Knoxville, Tennessee*, ed. Lucile Deaderick (Knoxville, East Tennessee Historical Society, 1976), pp. 216-217, 273-297, 440, 463.

On Tuesday morning, September 1, 1885, traveling salesman Edmond Maines was found dead a mile east of the city, shot through the back of the head. Maines had just returned to his home base of Knoxville and made the fatal mistake of befriending Lee Sellers at a seedy bar in the early hours of that morning. Very quickly, the sheriff picked up Sellers for the murder.<sup>26</sup> By that Wednesday, city officials were in trouble. Word from Maines' hometown of Athens, Tennessee was that his people were headed to Knoxville after they waited to bury Maines. Not intending to monitor the legal proceedings, fifty men were reportedly taking the train north to lynch his murderer.<sup>27</sup> Newspapers reported the community's impatience with formal legal process, as one paper noted that "if there is any delay in enforcing the law they will hang all the parties implicated in the affair."<sup>28</sup>

As a result, the trial was quickly set to take place first thing Monday morning, less than one week after the murder; however, the calls for vengeance would not wait that long.<sup>29</sup> On Friday evening, September 4 around 10:30, a group of men in masks marched down Gay Street, the main downtown thoroughfare, toward the jail. Far from exhibiting stealth, close to 200 unmasked residents followed closely behind. Yelling and firing pistols into the air, the crowd quickly convinced the jailer to allow the mob to enter the jail. While the jailer gave them the keys to Sellers' cell, they proved unwanted as they broke down the door and rushed the prisoner. When Sellers slashed one of his attackers with a knife, the understood violence of the mob transformed into actualized fury. Smearing with blood, the mob fixed a rope around Sellers' neck, dragged him from his cell, and marched him to the middle of the Gay Street Bridge, a wooden truss bridge with ample overhead cross beams. The other end of the rope was thrown over one of

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<sup>26</sup> *Chicago Daily Tribune*, September 5, 1885, p. 1.

<sup>27</sup> *New York Times*, September 3, 1885, p. 5.

<sup>28</sup> *New York Times*, September 4, 1885, p. 3.

<sup>29</sup> *New York Times*, September 3, 1885, p. 5.

the beams and the mob began to pull him up. In their haste, they either forgot to tie Sellers' hands or at least secure them properly, allowing him to desperately climb up the rope and reach the beams. Many in the crowd opened fire on Sellers. Fatally wounded but not yet dead, he pleaded for help while others ran into town to fetch ladders to finish the job. As he pitifully proclaimed his innocence and continued to blame others for the murder, several men tried to reach Sellers for another attempt at a hanging. Losing their grip, Sellers plunged from the bridge into the river below.<sup>30</sup>

This case could easily be explained as a matter of mob law embarrassing the city. In many cases, when the fever of the mob has broken and the light of day shines upon their handiwork – the broken doors, spent shell casings, smashed windows – the process of restoring order and punishing those responsible can begin. Those involved deny their participation, those who stood by justify their inaction, and those in power seek to reclaim their authority by using the courts to punish those who circumvented the formal institutions of law.<sup>31</sup> However, this process presumes a shared assumption that the machinery of justice rests exclusively with these formal institutions. In Knoxville, a very different process occurred, one that reflected the idea that the people maintained reserved powers notwithstanding the form of government.<sup>32</sup> While this sentiment harkens to the writings of John Locke and is most famously seen in the American Declaration of Independence, it also provided a theoretical basis for horrific acts of violence inflicted by private citizens on one another. As such, many participants justified his gruesome execution by blaming the court for failing to enforce the criminal laws over the last decade as the

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<sup>30</sup> *New York Times*, September 5, 1885, p. 2; *Daily American*, September 5, 1885, p.1; *Chicago Daily Tribune*, September 7, 1885, p. 1; Martha Carter, *Tennessee's Survey Report for Historic Highway Bridges* (Nashville, Ambrose Printing Company, 2008), pp. 262, 385.

<sup>31</sup> See, for example, Robert Shalhope, *The Baltimore Bank Riot* (Champaign, University of Illinois Press, 2009).

<sup>32</sup> Lisa Arellano, *Vigilantes and Lynch Mobs* (Philadelphia: Temple University Press, 2012), 44.

reason the people had to act.<sup>33</sup> That these men chose to act so publicly stressed how important the performance was to the entire endeavor. From the staging of a ghoulish procession to the hanging on the downtown bridge, the Sellers incident imparted the message that the people could punish crime when they deemed it necessary.

Indeed, blaming the inefficiency of formal law was a common trope in the positive treatment of many vigilante movements of the era. As noted by Lisa Arellano, whether an act of extra-legal violence was considered an appropriate use of the people's reserved power – a vigilance committee – or a violent usurpation of the law – a lynch mob – was determined by the extent to which the group adhered to a set of idealized characteristics. While it very often differed in practice, mobs went to great lengths to justify their actions by stressing that the state failed to provide order, thus justifying a citizen response.<sup>34</sup> In Knoxville, this narrative was much too easy for a mob to seize upon: from the Sellers case in 1885 to the Carmichael trial three years later, not a single murder was successfully prosecuted in Knox County.<sup>35</sup> For many, this proved untenable given the violence occurring in Knoxville.

Indeed, since the close of the Civil War, Knoxville had been the site of countless spectacular incidents of public violence, leading one resident to ponder the question of the

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<sup>33</sup> *Chicago Daily Tribune*, September 7, 1885, p. 1; *New York Times*, September 7, 1885, p. 1.

<sup>34</sup> Arellano, *Vigilantes and Lynch Mobs*, p. 20.

<sup>35</sup> Knox County Archives (“KCA”), Criminal Court Minutes, I-108-MR, Vol. 15, pp. 545, 567, 734, 660, 693, I-108-MR, Vol. 16, pp. 116, 297, 326, 754, 690 and I-109-MR, Vol. 17, pp. 208, 219, 339, 283. Even after Judge Hall and attorney general Anderson stepped down in September 1886 and were replaced by judge Samuel T. Logan and attorney general T.A.R. Nelson, the inability to obtain murder convictions continued. Unlike his predecessor, the Democrat Anderson, Nelson was the chairman of the local Republican Party. Nonetheless, the political change was largely semantic, as Nelson and Judge Logan likewise proved incapable of bringing crime under control through formal legal methods. *Knoxville City Directory, 1888* (Atlanta, R.L. Polk & Co., 1888), p. 245, *Knoxville Daily Chronicle*, September 1, 1885, p. 5. The closest Anderson got to a successful prosecution occurred when a jury found that James Evans committed murder; nonetheless, he was found not guilty by reason of insanity and was committed. KCA, Criminal Court Minutes, I-108-MR, Vol. 15, p. 567.

character of the Knoxvilleians, “a people so peaceful in general, yet, so bloody on occasions.”<sup>36</sup> In the immediate aftermath of the Sellers execution, one resident’s letter to the editor sought to explain the city’s painful image as lawless. The writer desperately tried to explain the sixteen murders that had taken place in public over the last twenty years. Nonetheless, the list of incidents reads like anything but an explanation. One man charged with shooting another following an assault was dragged from jail and hung by a mob in the jail compound, while a man who shot another on a major downtown intersection was acquitted by the jury. Making these incidents especially embarrassing was that these killings could not simply be chalked up as the work of a few uneducated ruffians. Violence cut across class lines and did not ebb or flow based on the political party in control. Grudges held over from split loyalties during the Civil War often turned into vendettas that claimed the lives of many of the city’s most prominent citizens.<sup>37</sup> Mark Twain even included one downtown shootout in his 1883 *Life on the Mississippi* to poke fun at a boast about the supposed superiority of the southern way of life.<sup>38</sup> Despite all of this, while many blamed the spectacle of the Sellers execution on the courts, the writer sought to defuse the allegation as politically driven. The writer was confident that the attorney general would punish those who led the mob, especially in light of his active prosecution of two other outstanding murder cases, not yet knowing that all three prosecutions would be unsuccessful.<sup>39</sup>

If we return to Thursday, May 24, 1888, the day Carmichael was taken by train back to Knoxville, the Sellers execution still cast a long shadow. The sheriff organized a posse to protect Carmichael, while the local militia guarded the jail. The Nashville *Daily American* boasted that

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<sup>36</sup> *Daily American*, September 9, 1885, p. 3.

<sup>37</sup> See *Daily American*, September 9, 1885, p. 3; *The Heart of the Valley*, pp. 34-35, 565; Jerome G. Taylor, Jr., “The Extraordinary Life and Death of Joseph A. Mabry,” *The East Tennessee Historical Society’s Publication*, No. 44 (1972), pp. 41-70.

<sup>38</sup> Mark Twain, *Life on the Mississippi* (Boston, 1883), pp. 418-419.

<sup>39</sup> *Daily American*, September 9, 1885, p. 3.

those who thought the city would see a repeat of the actions on the Gay Street Bridge three years ago would be disappointed.<sup>40</sup> Despite the reporter's confidence, Knoxville residents opposed to mob law were not so sure. By 10:20 p.m. that evening, Carmichael arrived by train in Chattanooga, as experience told the sheriff that he could not stop those who were intent on getting at Carmichael themselves and quickly spirited him out of town.<sup>41</sup> He was right to do so; around 8:00 that same evening, approximately 100 "rough characters" openly marched to the jail, a seeming replay of the Sellers slaughter from three years earlier. The mob threatened to tear down the jail as well as the sheriff's house next door. The crowd then descended on Judge Logan's house before heading to and searching a deputy sheriff's residence for any trace of Carmichael. Meanwhile, others searched the courthouse and unsuccessfully tried to force railroad employees to send a special train to catch the prisoner, before a storm convinced the crowd to finally relent.<sup>42</sup> The rain only brought a brief respite. While Friday's *Daily American* reported that many leading citizens had volunteered to protect Carmichael from the mob upon his anticipated return on Saturday morning, it also predicted that he would be tried and "sentence to hang" before nightfall, placing tremendous pressure on the judge and attorney general to deliver.<sup>43</sup> The court wasted no time, as it scheduled the trial to take place on Saturday, less than one week from the murder and only two days after Carmichael's capture. Indeed, it is likely that Carmichael would have been tried even earlier had he not been shipped out of town to escape certain lynching.

With Carmichael in tenuous custody, the court needed to reinforce public confidence in its ability to punish crime. However, it wasn't a trial, as an act of assessing evidence and

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<sup>40</sup> *Daily American*, May 25, 1888, p. 1.

<sup>41</sup> *Daily American*, May 25, 1888, p. 1.

<sup>42</sup> *Daily American*, May 25, 1888, p. 1, *Daily American*, May 26, 1888, p. 2, *Knoxville Tribune*, May 25, 1888, p. 1.

<sup>43</sup> *Daily American*, May 26, 1888, p. 2.

determining guilt that was needed, but the performance of a trial, as a public ritual where a defendant was accused, the narrative recounted, the guilty party sentenced, and justice swiftly delivered. Like a theatrical play, the outcome was predetermined; the villain would die in the end. Nonetheless, it was critically important to perform this ritual. While they exist to punish offenders or settle disputes, an essential element in every trial is a reminder that the court possesses the exclusive power to take these actions, that it is the sole legitimate forum to determine questions of guilt. This preeminence does not take place in the dark: the marble, the black robes, the shiny belts of the bailiffs, the silence enforced on the public, the “all rise” admonition all remind us that courts promote their legitimacy by relying on qualities that would be considered profoundly theatrical in non-legal settings. Especially in this era before mass entertainment technologies, “court day” functioned in similar ways to attending theater. Court was a centrally located institution that allowed spectators to dress up and be entertained by performances that reinforced communal norms. However, as “theater that denies it theatricality,” the Knoxville authorities needed to public punish Carmichael, but to do so in a way that left the impression that the legal elite and their institutions were handling the matter solely on their own initiative, and not at the behest of mobs or out of fear of a repeat of the Sellers debacle.<sup>44</sup>

Trying to satisfy both impulses, the court found itself on the horns of a dilemma reminiscent of Michael Pfeifer’s description of the tension in this era between those who supported “rough justice” versus those who pushed for formal due process protections for criminal defendants.<sup>45</sup> The court needed to display that it was the proper institution to punish

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<sup>44</sup> Catherine L. Fisk and Robert W. Gordon, “Foreward,” 1 *U.C. Irvine L. Rev.* 519, 532, citing Peter Goodrich, “Specters of Law: Why the History of the Legal Spectacle Has Not Been Written,” 1 *U.C. Irvine L. Rev.* 773, 773 (2001).

<sup>45</sup> Michael J. Pfeifer, *Rough Justice: Lynching and American Society, 1874-1947* (Urbana, University of Illinois Press, 2004), 2-3.

Carmichael, but was so clearly constrained in its ability to function outside of the wishes of most residents that Carmichael be executed, and quickly. Pfeifer argues that this tension was ultimately resolved in the early twentieth century by the acceptance of an effective, and exceedingly racialized, death penalty regime, or what David Garland refers to as a type of “antilynching,” a process that consciously distinguishes itself from popular passions not in its lack of violence, but in its overwhelming attention to procedural due process to highlight its difference and lawfulness.<sup>46</sup> In the Carmichael case, as we will see, the court likewise sought to highlight its attendance to procedural forms to emphasize the lawful nature of the trial, albeit in as cursory a manner as credulity would permit. At the same time, the speed with which the case proceeded not only undercut this message, but also emphasized the underlying social pressures that would have demanded an extralegal lynching had any of these procedures resulted in any mitigation of a sentence against Carmichael. The court was staking out its authority by quickly deploying the death penalty against Carmichael in ways that presaged the transformations described by Garland.

Pfeifer argues that, with some exceptions, most of those who pushed for extralegal violence were working class or minor tradesmen, while the middle classes – lawyers, businessmen, religious leaders – supported formal law.<sup>47</sup> While violence of a highly personal nature, like the settling of individual scores or the often-related vendettas, reached the highest levels of Knoxville society, the more impersonal mass violence threatened in the Carmichael incident seems to have followed a pattern similar to that described by Pfeifer. For example, after the conclusion of the Carmichael trial, the court continued to assert its authority as a grand jury

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<sup>46</sup> David Garland, *Peculiar Institution* (Cambridge, Harvard University Press, 2010), p. 34; Pfeifer, *Rough Justice*, 5. Of course, Garland rightly notes that many of the underlying social pressures that historically resulted in extralegal lynching now operate to perpetuate killing through the state. Garland, *Peculiar Institution*, p. 35.

<sup>47</sup> Pfeifer, *Rough Justice*, 4.



returned indictments against many of the men involved in the attempted lynching of the prisoner from the week before. The composition of this group allows us to better appreciate not only the intended audience for the trial, but also highlights the distinctions between those who sought to strengthen the power of the court versus those who felt the community retained the right to punish crime in certain circumstances. Many charged for their participation in the mob were men that most in Knoxville would have felt were lower class, such as a city lamp lighter. Another man, Tom Cotton, became notorious mostly for his activities in the city's saloons which landed him in court for drunkenness, profanity, and fighting with women. His son kept up the family tradition by shooting the grand jury foreman seven years later in a bar during a night of drinking, a grievous example of the tensions between popular and formal control of the law playing out in the Knoxville streets.<sup>48</sup>

However, as the mob also included a civil engineer and a former U.S. deputy Marshall, their participation evidences that it was not simply comprised of the lowest classes of society.<sup>49</sup> Furthermore, as evidence of the pull of popular justice, they did not exhibit any of the remorse or embarrassment that the light of day would normally draw out of someone caught performing an act outside of communal norms. Instead, these men were indignant that they were accused of any wrongdoing, implicitly asserting a customary claim to popular justice. We can also see a consistency in membership between the Carmichael and Sellers mobs as one of the men argued that if the indictment was pursued, he would seek indictments against members of the mob that lynched Lee Sellers three years earlier.<sup>50</sup> The performance exhibited by the court through its

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<sup>48</sup> *Knoxville Daily Chronicle*, January 5, 1882, p. 4; *Daily American*, May 31, 1888, p. 2; *Knoxville Journal*, January 19, 1889, p. 4; May 10, 1889 *Knoxville Journal*, p. 3; *Knoxville Journal*, September 9, 1891, p. 8; *Nashville American*, September 29, 1895, p. 1; *Knoxville Journal*, September 29, 1895, p. 1.

<sup>49</sup> *Daily American*, May 31, 1888, p. 2.

<sup>50</sup> *Daily American*, May 31, 1888, p. 2.

cursory conviction seems to have been targeted to convince the middling and lower classes to throw their lot in with the city's legal and political elite when it came to matters of criminal justice. This legal and political elite that were seeking a strong performance of the power of formal law were largely associated with the court or were invested with promoting Knoxville as an emerging center of commerce. General R.N. Hood, who talked down the mob upon Carmichael's return, is a good example of this elite. In addition to serving as president of the Third National Bank, Hood was also the president of the Knoxville and Augusta Railroad and the Knoxville Water Company.<sup>51</sup>

The curtain rose, so to speak, that Saturday morning at 9:00 a.m., when Carmichael was led into the packed courtroom. Passing the militia who stood guard out front with fixed bayonets, past the spectators that crowded the courthouse grounds and those who lined the hallways leading to the courtroom, Carmichael was all alone. However, an essential element of the performance had been overlooked in the rushed staging: Carmichael had no attorney. The performance of formal, impartial law needed this imprimatur of due process. In a way, the audience had been seated, but not all the actors were in place. After Judge Logan called the court to order and quickly ascertained that Carmichael was not represented, he remedied this problem by appointing General Hood to act as his counsel.<sup>52</sup> While Hood had worked as an attorney for the railroads, he was most notable as a local business leader nearing the end of his career.<sup>53</sup> As there was not even a brief continuance to allow Hood to confer with his client to piece together even the most rudimentary defense, Hood's appointment was merely ornamental, as one would

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<sup>51</sup> *New York Tribune*, February 2, 1892, p. 7.

<sup>52</sup> *Knoxville Tribune*, May 27, 1888, p. 1.

<sup>53</sup> Kathleen A. Johnston, "The City of Tomorrow with the Spirit of the Past: Bankrolling the Industrial Development of Knoxville, Tennessee, 1875-1907," (M.A. Thesis, University of Tennessee, Knoxville, 1994), 11, 31, 47, 52-53. [http://trace.tennessee.edu/utk\\_gradthes/2496](http://trace.tennessee.edu/utk_gradthes/2496)

expect when a former railroad attorney is appointed to try a capital murder case on the spot. Certainly, the furor of the community presented challenges for even the most seasoned attorney. However, there were legal defenses that might have saved his client's life. Had he been given a chance to confer with Carmichael to prepare a defense, Hood would have learned more about his client that could have proven useful, as a reporter took the time to do a few days before the trial.<sup>54</sup> There, Carmichael admitted to shooting Deputy Shipe, but only to wound him in order to escape. More importantly, he flatly denied shooting a second time at Deputy Coram and could prove this through witnesses.<sup>55</sup> These facts, if proven, could have possibly drained the state's case of the premeditation necessary to convict Carmichael of the capital murder charge. However, any discussion of strategy presumes that the court was conducting a trial instead of performing a community ritual.

Once this oversight was corrected, the performance could proceed. The court empaneled a jury of twelve men and allowed attorney general Nelson to begin. Nelson called five witnesses, including the sheriff's deputy who accompanied Shipe to serve the Carmichael warrant. There is no evidence that Hood cross-examined any of the witnesses. Even if he did, that the entire trial lasted only two hours, including appointing counsel, picking jurors, and jury deliberations, meant that he would not have had time to ask but the briefest of questions. Hood did not call any witnesses for the defense. By 11:30 a.m., two and one half hours after he was led into court, Carmichael stood and was read the jury's verdict: death by hanging. In a nod to the court's message of the lawfulness of the trial, and perhaps to accentuate its difference from a killing by a

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<sup>54</sup> *Knoxville Tribune*, May 25, 1888, p. 1. For the challenges faced by African Americans building the railroads in this era, see Cicero Fain, "Into the Crucible: The Chesapeake and Ohio Railroad and the Black Industrial Worker in Southern West Virginia, 1870-1900," *Journal of Appalachian Studies*, Vol. 17, No. 1/2 (Spring/Fall 2011), pp. 42-65.

<sup>55</sup> *Knoxville Tribune*, May 25, 1888, p. 1.

mob, the court announced that the execution would not take place summarily, but would occur in two months.<sup>56</sup>

An essential part of the performance, the local newspapers likewise promoted and conformed to the public sentiment for an orderly display of guilt and punishment. Not only did the press help form the initial public opinion of Carmichael as a brutal murderer, it also created a sense of panic in the days before his capture by reporting false accounts of his murder spree against law enforcement across east Tennessee. Even in the end, newspapers helped facilitate the preferred remedy against Carmichael, as the *Knoxville Journal* confirmed that the court had performed its duty in accord with what the public demanded.<sup>57</sup> As the audience for the performance, their outraged sensibilities were satisfied with what the *Journal* described as Judge Logan's dispensing of "justice with a vengeance" without any of the acquittals, mistrials, or embarrassments of the past. The papers approved of the swiftness and precision of the trial, and considered that the "verdict will be regarded as just and right by all law abiding citizens, and every man of principle..."<sup>58</sup> The brevity of the trial was dictated by the anger of the crowd, but the decorum with which it was performed satisfied the sensibilities of the elite. While the courtroom was overflowing, only one person raised the call for mob action, and the sheriff quickly removed him from court.<sup>59</sup>

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<sup>56</sup> In fairness to Hood, he requested a second-degree murder jury instruction, asked to poll each juror individually following the verdict, moved for a new trial, and was able to convince the court to delay the execution. *Knoxville Journal*, May 27, 1888, p. 1; *Knoxville Journal*, July 21, 1888, p. 1; *The Comet* (Johnson City, TN), May 31, 1888, p. 1; and *Knoxville Tribune*, May 27, 1888, p. 1, 5.

<sup>57</sup> A good discussion of the significance and influence of the print media in this era with respect to lynching can be found in Jacqueline Goldsby, *A Spectacular Secret* (Chicago, University of Chicago Press, 2006), pp. 44-48.

<sup>58</sup> *Knoxville Journal*, May 27, 1888, p. 1.

<sup>59</sup> *Knoxville Journal*, May 27, 1888, p. 1.

On July 21, 1888, two months following the verdict, Carmichael was executed in the courtyard of the jail.<sup>60</sup>

#### IV. The Kirkland Recording

Eventually, the memories of the Carmichael incident faded. The newspapers were thrown out, the few remaining court documents stacked in the basement, and the trial largely forgotten as Knoxville moved into the new century. As most of the official records were destroyed or lost, the preferred memories of the community's actions were handed down primarily through oral musical traditions. What did the song mean to the audience that passed it down to their children? It was not commercialized; it was never printed up as sheet music that could then make its way out of the region. As part of a local folk tradition, the song is less subject to the twentieth century critiques of popular music as mimicking authenticity while in reality reflecting the tastes of a "culture industry" that caters to the market.<sup>61</sup> Rather, the song was maintained by the community through roughly two generations before Kirkland recorded it in the late 1930's. If the song had no cultural value, it is unlikely it would have lasted as a part of Knoxville's oral traditions for fifty years.<sup>62</sup>

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<sup>60</sup> *Knoxville Journal*, July 21, p. 1, 3.

<sup>61</sup> Robert W. Witkin, *Adorno on Popular Culture* (New York, Routledge, 2003), 2; Neil Nehring, *Popular Music, Gender, and Postmodernism* (California, Sage, 1997), xi.

<sup>62</sup> This article considers "Hicks Carmichael" as a folk song, despite its relatively young age. Though scholars disagree on the precise definition of a folk song – indeed, Kirkland included this ballad in his category of "folk song possibilities" – a commonality is that the song is recreated by a community over time, a definition that includes "Hicks Carmichael." Further, this article agrees with John Greenway's admonition against adhering to overly formal definitions. Instead of deferring to the requirement that a song be part of a long-standing oral tradition and have been varied over time in order to be allowed into the academy, strictures laid down by Francis Child in the nineteenth century, Greenway believed that folk ballads must merely be significant for admission. John Greenway, "Folk Songs as Socio-Historical Documents," *Western Folklore*, Vol. 19, No. 1 (Jan., 1960), pp. 1-9; Edwin Capers Kirkland, "TVA, Roosevelt, Scopes Trial in Mountain Songs," *Tennessee Folklore Society Bulletin*, Vol. 1, Number 3 (Fall 1984), p. 107; Jan Harold Brunvand, *The Study of American Folklore: An Introduction*, Third Edition (New York: W.W. Norton & Co., 1986), pp. 221-222; Shelly Romalis, *Pistol Packin' Mama: Aunt Molly Jackson and the Politics of Folksong* (Urbana, University of Illinois Press, 1999), p. 13.

As a tradition that transmits music across generations, the folk ballad “Hicks Carmichael” served as a way for succeeding generations to reinforce the preferred memory of the incident. Parents taught the song to their children, and the ballad was sung both in communal gatherings and, with the advent of radio, over the air. Indeed, Kirkland first heard “Hicks Carmichael” in 1936 after he heard it sung by a local resident on the popular “Strolling in East Tennessee” program on Knoxville radio station WNOX. A station that routinely featured local, and often amateur talent, it served as a vehicle to maintain the presence of community music, and its messages.<sup>63</sup> Investigating the origins of “Hicks Carmichael,” Kirkland interviewed a man who claimed to have worked on the train that brought Carmichael back to Knoxville for trial. According to this source, the song was written shortly after the execution by Charley Oaks, a Knoxville musician who had experienced a degree of success by the 1920’s.<sup>64</sup> Kirkland arranged for Sam Hatcher, a local musician who learned the song from his mother, to record the song for Kirkland’s collection in 1937.<sup>65</sup> While Kirkland only recorded the Hatcher version, he transcribed written copies of two other versions of the song.<sup>66</sup> All three Knoxville versions of “Hicks Carmichael” transcribed by Kirkland are largely identical with the exception of a few transposed words. In addition to the 1937 Kirkland recording, there are two other versions recorded in 1937 and 1941, respectively, and performed by Grant Faulkner, a Kentuckian who

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<sup>63</sup> “‘Hicks Carmichael’ Ballad May Be Sung as Record by Columbus Popejoy,” *Knoxville News Sentinel*, December 5, 1936, reprinted in *The Kirkland Recordings*, 20; *The Heart of the Valley*, pp. 298-299; Paul Conkin, “Evangelicals, Fugitives, and Hillbillies: Tennessee’s Impact on American National Culture,” *Tennessee Historical Quarterly*, Vol. 54, No. 3 (Fall 1995), p. 264.

<sup>64</sup> Kirkland Notes (St. James Hotel Stationery), *Edwin Kirkland Papers*, Folder 2(d)(5), in possession of the author; Jack Neely, *Knoxville: This Obscure Prismatic City* (Charleston, S.C., The History Press, 2009), p. 65; Charles Wolfe, “The Bristol Syndrome: Field Recordings of Early Country Music,” in *Country Music Annual 2002*, eds. Charles K. Wolfe and James E. Akenson (Lexington, University Press of Kentucky, 2002), p. 214.

<sup>65</sup> *Knoxville News Sentinel*, December 5, 1936, reprinted in *The Kirkland Recordings*, 20; Wolfe, “Notes on the Songs,” p. 11.

<sup>66</sup> *Edwin Kirkland Papers*, Folder 2(d)(5).

moved to Wisconsin and brought his knowledge of regional music with him.<sup>67</sup> Stylistically, both recordings of the Faulkner version are a cappella while the Hatcher performance is accompanied by a single acoustic guitar lazily strumming the same two chords throughout the entire song. By collecting folk music, Kirkland was continuing a tradition that traced its American roots to Harvard in the late nineteenth century, where scholars like Francis James Child began cataloging the folk ballads of the British Isles. In England, musician Cecil Sharp began his own collection of English folk music, later following the path of these songs to America where he cataloged music in Kentucky in the late 1910's.<sup>68</sup> Unlike the folk songs cataloged by Child or Sharp, "Hicks Carmichael" was unique. While they both looked to England and Scotland for the origins of American folk music, "Hicks Carmichael" was one of the few songs that Kirkland noted was new, and not a transformed version of a Child ballad, for example.<sup>69</sup> Indeed, Kirkland discovered that it was one of only four local Knoxville ballads exclusive to his quite voluminous collection.<sup>70</sup>

As noted earlier, scholars have emphasized the importance of the subsequent narrative to vigilante actions; the way extralegal violence was recounted often determined whether others considered it vigilantism and just, or a lynching and unjust. Vigilante groups relied on justifications to demonstrate that they exercised a legal, though extraordinary, power instead of committing murder.<sup>71</sup> Often these justifications took the form of lynching narratives that were

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<sup>67</sup> See Helene Stratman-Thomas Collection, University of Wisconsin, Mills Music Library, Call No. MML 001, Box 21, Folder 43, see

<http://digital.library.wisc.edu/1711.dl/SSRecIDSearch?repl1=WiscFolkSong&repl2=WiscFolkSong.000231.bib> and <http://digital.library.wisc.edu/1711.dl/SSRecIDSearch?repl1=WiscFolkSong&repl2=WiscFolkSong.084201.bib> (last accessed July 26, 2017).

<sup>68</sup> Swzed, *Alan Lomax*, 12; Brunvand, *Study of American Folklore*, p. 227.

<sup>69</sup> Kirkland, "TVA, Roosevelt, Scopes Trial in Mountain Songs," p. 108.

<sup>70</sup> Wolfe, "Notes on the Songs," p. 11.

<sup>71</sup> Arellano, *Vigilantes and Lynch Mobs*, p. 23.

usually published by persons either involved with the act, or at least sympathetic to its ends.<sup>72</sup>

The ballad serves a strikingly similar function, if we consider that both the trial and the song were designed to perform a certain preferred narrative for large segments of the community.

Consider the song's textual account of the Carmichael incident. The ballad begins with the common refrain where the singer invites the listener to take a moment to hear the song, along with an almost immediate identification of the racial differences between the deceased and the accused.<sup>73</sup> From there, it quickly proceeds to identify Carmichael as inherently evil and thus absolutely capable of the crime, emphasizing the excess criminality of the situation so often a part of vigilante narratives,

*Oh listen, come and listen, I'll tell you if I can  
I'll tell you of a murder done by a colored man.  
His name was Hicks Carmichael, his character it was bad  
Such men have caused great trouble, made many a poor heart sad.*

The second stanza describes the ill-fated attempt to serve the warrant on Carmichael,

*The sheriff came to arrest him all on one Sabbath day.  
"I have a warrant for you," to Carmichael he did say.  
"Then read the warrant to me," Carmichael to him said.  
When he proceeds to read the warrant, Carmichael shot him dead.*

The third stanza outlines how Carmichael fled and the fear his escape garnered in the community while he was still a fugitive,

*The officer in death sank down his days on earth were done  
The guilty wretch broke out of doors and fast away he run  
He went up in Blount County, where they say his mother lived  
Great many were excited and a hot pursuit was give*

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<sup>72</sup> Arellano, *Vigilantes and Lynch Mobs*, p. 75.

<sup>73</sup> Similar introductions appear in many Appalachian folk songs. See Romalis, *Pistol Packin' Mama*, pp. 37, 61.



The next stanza recounts the chase and Carmichael's capture, and again stresses his inherent criminality,

*The authorities of that county, they soon took up the chase  
And a thousand dollars bribed the man that could show the hiding place  
They brought him to Knoxville and locked him in a cell  
Such a mean and brutal murderer no human tongue could tell*

The following stanza captures the main question regarding criminal law in Knoxville in the 1880's; namely, who would punish this act? The song has already discussed that a heinous crime occurred, the killing of a police officer. Further, the person who pulled the trigger was black, while the officer was white, which aided in the repetition of Carmichael as a remorseless monster. Given this set up, how would Knoxville react?

*The jailhouse yard was crowded, the people raging wild  
The citizens talked of mobbing him, but he soon was give a trial  
The judge he gave the sentence and said that he must die  
Then they agreed to prolong his time until the twentieth of July.*

Here this stanza recognizes the very real problem of mobbing in Knoxville, especially when a crime is committed that particularly enrages the community, such as the Sellers execution in 1885. There is no inquiry into why Carmichael shot Shipe; of course, given his description as a remorseless murderer, the song does not require one. Nonetheless, the ballad reminds the listener that Carmichael was given a trial, that there was no failure of the institutions of formal law to fully punish Carmichael. To help show the fairness of the proceedings, the judge did not order him executed on the spot, but gave him two months before the sentence was carried out. Finally, the song ends with the moral.

*Oh you may gain plenty of money, lay a many man beneath the sod  
But money won't bribe your jury when you stand before your God  
In the bottom of a whiskey glass the lurking devil dwells  
And burns the breast of men who drink it, and sends their souls to Hell.*

Here, the ballad ultimately passes along the lesson that drinking whiskey somehow led to this crime, an explanation that Kirkland rightly felt was “rather banal.”<sup>74</sup> Without this line, the lyrics chalk this incident up to a sense that Carmichael led a life in pursuit of money alone, thus making his execution possible. In many ways, this is the ultimate justification of the community’s actions. This ending compressed the complexity of the entire incident into a simple tale of a right and wrong choice in life. If the wrong road is taken, God’s judgment awaits. This, of course, is notably inconsistent with the message of the rest of the song as Carmichael was not divinely punished, but was hung in the courtyard of the Knoxville jail following a two and one-half hour trial; a haste dictated by the demands of the populace who wanted to kill him personally.

While the ballad generally tracks the story factually, the value of the song lies in its underlying messages. Like trials, folk songs often seek to convey a lesson or moral and, here, the ballad emphasizes a few key conclusions: Carmichael was evil; this character manifested itself in murder; and, finally, pursuing a life of alcoholic debauchery will invariably lead to this end. This in of itself is not the dispositive message. For example, blaming whiskey is a familiar cliché in folk music; indeed, the final two sentences of the song that did so are identical to another regional song, “Rowan County Trouble,” indicating that either the original composer or someone down the line lifted the words.<sup>75</sup> Rather, the preferred narrative here is that, despite the efforts of some to mob the prisoner, the legal institutions intervened and gave Carmichael a trial that quickly affirmed the community’s verdict and carried out the subsequent execution.

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<sup>74</sup> Wolfe, “Notes on the Songs,” p. 12.

<sup>75</sup> Robert S. Thomson, *Knoxville Sings: Folksongs Collected and Recorded by Edwin C. Kirkland* (Unpublished Manuscript), *Edwin Kirkland Papers*, Box 5; See also, handwritten notations on lyrics to Hicks Carmichael (Sam Hatcher version), *Edwin Kirkland Papers*, Folder 2(d)(5); Mellinger E. Henry, “More Songs from the Southern Highlands,” *The Journal of American Folklore*, Vol. 44, No. 171 (1931), p. 110.

This ultimate moral conveyed by “Hicks Carmichael” helps us better understand the consciousness of the people who preserved this message through performances of the ballad over the succeeding generations. While, ostensibly, it was created for and maintained by the larger Knoxville populace, and appealed to the desires of the upper and merchant classes of the city, we must use care when making blanket claims as to the consciousness of an entire city. For example, the town’s African American community, also Knoxvillians, comprised over thirty percent of the population by 1880; they likely had a different view of the events of the summer of 1888. It seems that the lessons this community took were to largely try to lie low, following a path taken by African Americans across the country as the Hicks Carmichael saga was largely unreported in African American newspapers, despite that his story was national news from North Carolina to Montana, even appearing in German language periodicals. The African American newspaper, the *Huntsville Gazette* (Alabama) reported two brief stories, the first on the killing of Deputy Shipe and the second describing Carmichael’s escape. In both, the *Gazette* referred to him as “Hicks Martin.” Neither story contained any larger commentary on the events.<sup>76</sup> Rather, the group that passed down this ballad was largely the white residents of Knoxville. While the sentiment that undergirded the execution of Sellers and ultimately of Carmichael was that “the people” of Knoxville retained the right to punish extraordinary crime, one of the implicit assumptions was that membership into this category was racialized. Historians have shown that what constituted a crime significant enough to allow “the people” to invoke this extraordinary remedy was often determined by the race, class, and gendered dimensions of each situation. Carmichael ran afoul

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<sup>76</sup> It should be noted however that the *Weekly Negro World*, the African American newspaper in Knoxville, discontinued publication in 1888. Copies of 1888 editions of the *Weekly Negro World* do not appear to have survived. Wheeler, *Knoxville*, p. 22; *Huntsville Gazette*, May 26, 1888, p. 1; *Huntsville Gazette*, June 2, 1888, p. 1; *Fisherman and Farmer* (Edenton, North Carolina), August 3, 1888; *Philipsburg Mail* (Philipsburg, Deer Lodge County, Montana), July 26, 1888, p. 1; *Die Deutsche Correspondent* (Baltimore), May 25, 1888, p. 1.

of two such situations that were especially punished: blacks murdering whites and the killing of police officers.<sup>77</sup>

Contrast the Carmichael killing with the execution of Lee Sellers, a white man.<sup>78</sup> The Sellers incident shows that the lynching impulse in Knoxville was not simply racialized, following a nationwide pattern that predated the country's founding.<sup>79</sup> However, the timing of these executions in Knoxville occurred during a critical shift in the use of lynching in America. Scholars have noted that by the 1890's, the national conversation regarding the practice began to shift. In the 1890's, extra-legal popular violence, especially lynching, spiked in the South. Overwhelmingly racialized, lynching became less identified with romanticized stories of valorous western vigilance committees and more associated with southern violence.<sup>80</sup> With the Sellers and Carmichael executions in Knoxville in the 1880's, in a way we can see this transformation unfold. Scholars have cast off older interpretations that, for example, saw lynching as a particularly southern phenomenon and rightly attributed this transformation to larger destabilizing factors like industrialization that upended the social order.<sup>81</sup> Likewise, these

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<sup>77</sup> Pfeifer, *Rough Justice*, pp. 3-4.

<sup>78</sup> The February 3, 1896 *Greencastle Democrat* (Indiana), reported Lee Sellers as "colored" when recounting the story of his possible innocence eleven years later; however, I believe this report was erroneous. Every contemporaneous account of the event failed to note his race, thus implicitly denoting his racial status as white. This was very different from the way that every newspaper article reported the Carmichael incident, as all very quickly pointed out that he was "colored." More importantly, the 1880 census for John R.L. (Robert Lee) Sellers noted his status as white. See 1880 Census, Census Place: *District 14, Union, Tennessee*; Roll: *1283*; Family History Film: *1255283*; Page: *152C*; Enumeration District: *112*, Ancestry.com, accessed May 8, 2016, and Lee Sellers Death Certificate, at "Tennessee Deaths and Burials, 1874-1955," database, Family Search (<https://familysearch.org/ark:/61903/1:1:F65P-9MS>; accessed 8 May 2016), Lee Sellers, 05 Sep 1885; citing reference p 85; FHL microfilm 1,276,602.

<sup>79</sup> Goldsby, *A Spectacular Secret*, p. 16; Arellano, *Vigilantes and Lynch Mobs*, p. 21.

<sup>80</sup> Arellano, *Vigilantes and Lynch Mobs*, p. 109.

<sup>81</sup> Goldsby, *A Spectacular Secret*, pp. 20-21; Pfeifer, *Rough Justice*, pp. 10-11.

same forces also caused many to work harder to strengthen the legal institutions as a bulwark against lynching, increasing seen as an obstacle to order and economic progress.<sup>82</sup>

As such, the story of justice in “Hicks Carmichael” done by the city’s official legal institutions reflected the gap that existed between the aspirations and the realities that middle and upper class white Knoxvilleians faced when they envisioned the future of their town. This is the message that likely helped give the song a home in the folk traditions of Knoxville. While striving to emulate other new south cities like Atlanta, Chattanooga, or Birmingham, Knoxville nonetheless found itself caught in a difficult position.<sup>83</sup> The Post-War boom brought many to Knoxville that were less concerned with taking part in the economic good times than they were with simple survival. In many cases, Knoxville served as a default destination for those seeking to escape the crushing poverty and short life expectancy that characterized life in many of the surrounding mountain counties.<sup>84</sup> While downtown’s Gay Street boasted a grand court building and opera house, one block east, Central Avenue sported a litany of gambling and pool halls, saloons, and brothels that catered to many of these newcomers, precisely the types of places Lee Sellers led Edmond Maines through on his last night alive.<sup>85</sup> Incidentally, Sellers had also come to Knoxville from rural Union County, roughly forty miles to the north.<sup>86</sup> As noted by Bruce Wheeler, this migration helped turn Knoxville less into a southern city than an urban enclave within Appalachia.<sup>87</sup> While very much a part of Appalachia, Knoxville is a city with metropolitan issues. “Hicks Carmichael” reflects these concerns.

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<sup>82</sup> Pfeifer, *Rough Justice*, pp. 10-11.

<sup>83</sup> Edward L. Ayers, *The Promise of the New South* (New York, Oxford University Press, 1992), 55.

<sup>84</sup> Wheeler, *Knoxville*, pp. 25-27.

<sup>85</sup> Wheeler, *Knoxville*, p. 27.

<sup>86</sup> Lee Sellers Death Certificate, at "Tennessee Deaths and Burials, 1874-1955," Family Search and Find-A-Grave.com, Memorial No.: 8451686.

<sup>87</sup> Wheeler, *Knoxville*, p. 27.

It is reasonable to believe that the men and women of these rural counties maintained a vision of law that emphasized the role of the local community in punishing crime.<sup>88</sup> The ballad's emphasis on the court punishing Carmichael seems to indicate that the song was trying to reinforce a contested point. Indeed, much of Appalachia in the late nineteenth century was actively pushing back on images of the region as lawless, images particularly spread through popular literature. By the late 1870's, the image of Appalachia as synonymous with violence gained traction in the minds of many outside the region, and was especially prevalent among city dwellers across the country.<sup>89</sup> This sentiment was also internalized by many in Knoxville. For instance, at the conclusion of the Carmichael case, a grand jury was empaneled to seek indictments against members of the mob that sought to decide the matter on their own terms. In his directions to the grand jury, Judge Logan noted that the news of the Sellers execution from three years earlier had made it all the way to Japan, and newspapers there urged its readers to come to Knoxville on missionary trips to help them change their uncivilized ways.<sup>90</sup>

Despite the efforts of the court and the oral traditions that celebrated its power, for the next several decades, Knoxville continued to experience problems with extra-legal violence. In the decades following the Carmichael trial, the city was on regular alert for threatened attacks on the jail to extract prisoners.<sup>91</sup> Knoxville pointed with a sense of civic pride that its jail had held and its sheriffs protected prisoners in ways that many other cities in the region had not, and the early decades of the new century seemed to bring a degree of peace. This *détente* was broken

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<sup>88</sup> See Laura Edwards, *The People and Their Peace* (Chapel Hill, UNC Press, 2009).

<sup>89</sup> Bruce E. Stewart, "'These Big-Boned, Semi-Barbarian People': Moonshining and the Myth of Violent Appalachia, 1870-1900," in *Blood in the Hills*, pp. 180-181, 184; Anthony Harkins, *Hillbilly: A Cultural History of an American Icon*, ed. Bruce E. Stewart (New York, Oxford University Press, 2004), pp. 29-30, 34.

<sup>90</sup> *Knoxville Tribune*, May 27, 1888, p. 5.

<sup>91</sup> "*The News and Observer* (Raleigh, N.C.), May 29, 1891, p. 1; *Atlanta Constitution*, May 8, 1893, p. 2; *The Nashville American*, April 25, 1896, p. 2; *Nashville American*, April 22, 1909, p. 12.

most spectacularly against the back drop of the post-World War I violence that engulfed the country, as the jail was attacked in 1919 and again in 1921 in attempts to lynch African American men, necessitating the arrival of the National Guard.<sup>92</sup> While the city had pressed for decades to become a prosperous member of the new south, these incidents more formally bookmarked the end these ambitions for Knoxville.<sup>93</sup>

## V. Coda

During these tumultuous decades, “Hicks Carmichael” found its way into the repertoire of the city’s oral traditions. Its message of the sturdiness the town’s legal institutions and the devotion to law over mob rule likely resonated with those who envisioned their town as ascribing to these values, often in the face of a very different reality. Because the ballad reinforced this preferred and candidly aspirational image, many residents kept the ballad alive by singing it to their children. Knoxvillians thus recalled the lessons of the Carmichael incident through performances of the ballad, as it could more easily be turned into a story that mirrored their hopes for the ways their community would operate when it came to punishing heinous crime. This message likely continued to find resonance through performances of “Hicks Carmichael” as mobbing continued into the new century.

Examining the Carmichael case from sources like court records or newspapers reveals a frequent pattern for the era as it only unearths a partial narrative of events. By including folk traditions, and considering them equally as performative events, we can move past a view of this music as simply reflective of official events. Rather, we can try to uncover voices that would

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<sup>92</sup> *Lexington Herald* (Kentucky), September 1, 1919, p. 1; Glenda Elizabeth Gilmore, *Defying Dixie: The Radical Roots of Civil Rights* (New York, W.W. Norton, 2008), p. 18; *New York Times*, August 31, 1919, p. 2; *Nashville Tennessean*, September 1, 1919, p. 1; *St. Louis Post-Dispatch*, August 20, 1921, p. 1; *New York Times*, August 22, 1921, p. 10.

<sup>93</sup> Wheeler, *Knoxville*, p. 36.

remain submerged otherwise. Including the ballad helps to expose the trial's larger performative functions, necessitated by a city that sought to counter its worst excesses.