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FREEDOM IN A SLAVE COUNTRY: A TRUE STORY OF RACE, LAW, SEX, AND POLITICS

Jason A. Gillmer[*]

This Article unpacks the rich and textured story of the Ashworths, an obscure yet prosperous free family of color in the antebellum South who owned land, raised cattle, and bought and sold slaves. It is undoubtedly an unusual story; indeed in the history of the times there are surely more prominent names and more famous events. Yet their story reveals a tantalizing world in which—despite legal rules and conventional thinking—life was not so black and white. Drawing on local records rather than canonical cases, and listening to the voices from the community rather than the legislatures, this Article emphasizes the importance of looking to the margins of society to demonstrate how racial relations and ideological notions in the antebellum South were far more intricate than we had previously imagined. The Ashworths never took a stand against slavery; to the contrary, they amassed a fortune on its back. But their racial identity also created complications and fissures in the social order, and their story ultimately tells us as much about them as it does about the times in which they lived.

INTRODUCTION

During the summer of 1856, within a few short miles of the turbid waters of the Sabine River in southeast Texas, Sam Ashworth silently approached Samuel Deputy and blasted a hole in him with a double barreled shotgun.[1] Moments later, as Deputy lay in a pool of his own blood, Sam Ashworth reportedly came over and coolly struck him on the head with the butt of his gun, brutally ending the man's life.[2] The reason for the killing apparently stemmed from a simmering feud between Deputy and the Ashworths, a family of some prosperity and local influence. It seems that some time before, the aptly named Deputy—he was also the deputy sheriff of Orange County—had accused Sam's cousin, Clark Ashworth, of

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[1] *Disturbances in Orange County*, THE GALVESTON WEEKLY NEWS, July 15, 1856, at 2.

[2] *Id.*

butchering one of his hogs.[3] Clark denied it but was bound over to the district court nonetheless, and soon after Sam was arrested after he challenged Deputy on the outskirts of town.[4] Upon his release, Sam took to the home of another cousin, Henderson Ashworth, where he obtained a revolver and two shotguns, together with some old clothes for a disguise and a skiff for an escape.[5] He would soon need both. Word of the shooting spread like wildfire, with townsfolk and community members taking sides in a dispute with implications much larger: for Sam—like Henderson, Clark, and the rest of the Ashworth clan—was classed as a free man of color and Samuel Deputy had been white.[6]

To some observers, both then and now, perhaps one of the most striking aspects of this encounter is that it happened at all. Free people of color, after all, were generally considered an unwelcome addition to any community in the South, creating a troubling anomaly in a society organized under the principles of racial slavery.[7] This was especially true in Texas, where lawmakers lashed out at free people of color with particular venom, banishing most from the state and shuttling any stragglers to the bottom of the social order. Thus, in committing such a brazen act, Sam Ashworth appeared as either a fool or extremely foolhardy, but either way he seemed to be setting himself up for a certain and unpleasant end. Yet the incident did not play out that way. To be sure, a good number of the white residents of Orange County were outraged at Sam's blatant disregard for the rules of race, and they formed mobs and indicted Sam for murder when the district court met later that fall.[8] But what is perhaps most surprising is that

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[3] *See id.* (noting origins of dispute). Clark was the son of William Ashworth and Sam was the son of Aaron Ashworth. *See* Manuscript Census Returns, Schedule 1.—Free Inhabitants, Jefferson County, Tex., at 497 (family # 107), 499 (family # 119), *in* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, POPULATION SCHEDULES OF THE SEVENTH CENSUS OF THE UNITED STATES (1850) [hereinafter 1850 CENSUS: Free Inhabitants]. Aaron and William were brothers. *See* Will of Abner Ashworth, Cause # 7, at 1-2 (Tex. Cty. Ct. Mar. 1851) (listing Abner's siblings, including William and Aaron).

[4] *Disturbances in Orange County*, *supra* note 1.

[5] *Id.* Henderson was evidently the son of Moses Ashworth, another brother of Aaron and William; *see also* Will of Abner Ashworth, *supra* note 3, at 2 (listing Moses, deceased, as one of the brothers).

[6] *See Disturbances in Orange County*, *supra* note 1 (describing mayhem following shooting). On the Ashworths's race, see, e.g. 1850 CENSUS: Free Inhabitants, *supra* note 3, Jefferson County, Tex., at 483 (family # 3), 487 (family # 36, 37, 38), 497 (family # 107, 110), 499 (family # 119), 506 (family # 166) (listing members of the Ashworth family, using designation "M" for mulatto); *see also infra* notes 56-77 and accompanying text (examining Ashworths's race and its implications). The name "Samuel Deputy" does not appear in the 1850 census records for Jefferson County; however, he does appear in the tax rolls in 1851, suggesting he moved to the area at that time. Jefferson County Tax Rolls for 1851. He appears in the tax rolls for subsequent years until his death in 1856.

[7] For an excellent starting point for any analysis of free blacks, see IRA BERLIN, SLAVES WITHOUT MASTERS: THE FREE NEGRO IN THE ANTEBELLUM SOUTH (1974).

[8] *See Disturbances in Orange County*, *supra* note 1 (describing how citizens formed posses and committees following the murder); *see also* State v. Sam Ashworth, No. 124, Orange County District Court Minute Book "A," at 120 (fall 1856) (indicting Sam Ashworth and Jack Bunch for murder). The grand jury also indicted Henderson Ashworth as an accessory before the fact. State v. Henderson Ashworth, No. 126, Orange County District Court Minute Book "A," at 120 (fall 1856).

a number of whites also came to his defense, apparently on the grounds that the Ashworths's standing in the community warranted special considerations.[9] Indeed, with land, cattle, and decades of good will, the Ashworths had managed to turn a small community upside down, forcing a confrontation between the ideologies of slavery and the practical realities of daily life.[10]

This Article seeks to unpack the rich and textured story of the Ashworths, a remarkable free family of color who lived in Texas beginning in the 1830s. It is undoubtedly an unusual story. To be sure, in the history of the times there are surely more prominent names and more prominent tales—Stephen F. Austin, Sam Houston, Jim Bowie, and the Alamo. Measured against such names and events the Ashworths barely register. Yet, for those interested in the history of race and slavery, their story is fantastically revealing, as it sheds light onto the complex relationships that developed when ordinary people, black and white, built homes, tilled the soil, tended to cattle, and established their communities. Indeed, a major point of this Article is to demonstrate the importance of looking to the margins to understand the significance of race and the role it played in people's lives.[11] Out here, along the banks of the rivers and in the grassy fields, we can see how race suddenly loses its sharp edges and becomes a terribly slippery concept. Classed as free people of color, the Ashworths nonetheless accomplished things that the slave regime should not have allowed. They prospered and they thrived, they married whites, and they acquired land, property, and even slaves.

But the Ashworths's story is not just about the elusive meaning of race; a second point of this Article is to bring into sharp relief the constant tensions—the push and pull—of formal laws and local experience.[12] On the

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[9] *See Disturbances in Orange County*, *supra* note 1 (discussing how Ashworth's "friends immediately rallied for the purpose of protecting him against any party that might attempt his arrest").

[10] The events surrounding the killing were reported regularly in the newspapers through the summer and fall of 1856. In date order, see, e.g. *Another Murder*, THE GALVESTON WEEKLY NEWS, June 5, 1856, at 1; *Orange County*, THE GALVESTON WEEKLY NEWS, July 8, 1856; *Disturbances in Orange County*, *supra* note 1; *The Orange County Disturbance*, July 15, 1856, at 3; *More of the Orange County Difficulty*, THE GALVESTON WEEKLY NEWS, July 29, 1856, at 1; THE GALVESTON WEEKLY NEWS, Oct. 21, 1856, at 2; THE GALVESTON WEEKLY NEWS, Nov. 1, 1856, at 3; THE GALVESTON WEEKLY NEWS, Nov. 25, 1856, at 1. A brief account can also be found in FREDERICK LAW OLMSTED, A JOURNEY THROUGH TEXAS; OR, A SADDLE-TRIP ON THE SOUTHWESTERN FRONTIER: WITH A STATISTICAL APPENDIX 386-88 (1857).

[11] The idea of looking to the margins is a familiar one among critical legal scholars. *See, e.g.,* Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987). For its applications to nineteenth-century legal history, especially as a method of challenging traditional assumptions about race and slavery, see, e.g., ARIELA J. GROSS, WHAT BLOOD WON'T TELL: A HISTORY OF RACE ON TRIAL IN AMERICA, 11-12 (2008) (justifying method of examining local trials of racial identity to understand race); JOSHUA D. ROTHMAN, NOTORIOUS IN THE NEIGHBORHOOD: SEX AND FAMILIES ACROSS THE COLOR LINE IN VIRGINIA, 1787-1861, 6 (2003) (insisting that "understanding the rules of race, sex, gender, and class in the antebellum South requires looking at the exceptions").

[12] Ariela Gross has noted the artificial divide that often exists between legal historians and social historians,

one hand, the Ashworths's story reveals how local matters often played more of a role in people's daily lives than state and national ones. Indeed, for two decades, the Ashworths overcame discriminatory laws and restrictive policies with the help of their white neighbors. But this ability to negotiate a living on the South's middle ground became increasingly perilous as the country approached the Civil War. With the South increasingly concerned with firming up the ambiguities in the social order, even in the backwoods of southeast Texas there developed a new urgency to revoke any semblance of free black citizenship. Local tolerance, in other words, eventually gave way to formal intolerance. The murder of Samuel Deputy may have been the catalyst—but the era of the Ashworths living between black and white, slave and free had already come to an end.

With these two points in mind, the Ashworths's story was not chosen by accident; the family's appeal lies in both its commonality and its novelty.[13] As for the first, the Ashworths were a family who, like others, risked much to venture into the Texas wilderness, and as such their story gives us a chance to learn about the common hopes and desires of those who moved to the area around the same time. As for the second, the Ashworths's story allows us to examine the underdeveloped subject of free people of color along the frontier. Previous studies of free blacks have tended to gloss over the State, if they mention it at all, in favor of the livelier and often much more document-rich areas of Louisiana, the Carolinas, and Virginia.[14] The

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with the former focusing almost exclusively on formal rules and regulations and the latter often dismissing the same as largely irrelevant. Ariela Gross, *Beyond Black and White: Cultural Approaches to Race and Slavery*, 101 COLUM. L. REV. 640, 640-45 (2001). This Article is part of a small area of scholarship emphasizing the importance of local matters in understanding race, law, and slavery. For others, see, e.g., ARIELA J. GROSS, DOUBLE CHARACTER: SLAVERY AND MASTERY IN THE ANTEBELLUM SOUTHERN COURTROOM 3-9 (2000) (emphasizing importance of local records in studying disputes over slaves); MARTHA HODES, WHITE WOMEN, BLACK MEN: ILLICIT SEX IN THE 19TH-CENTURY SOUTH, 1-15 (1997) (explaining her method of relying on local records to tell stories about white women and black men); MELTON A. MCLAURIN, CELIA, A SLAVE: A TRUE STORY OF VIOLENCE AND RETRIBUTION IN ANTEBELLUM MISSOURI, ix-xi (1991) (noting importance of local case studies to help in our understanding of slavery); ROTHMAN, *supra* note 11, at 1-11 (recognizing "central importance" of local disputes in understanding interracial relationships); Walter Johnson, *The Slave Trader, the White Slave, and the Politics of Racial Determination in the 1850s*, 87 J. OF AM. HIST. 13, 13-16 (2000) (focusing on testimony from lower court hearings in case involving a white slave suing for her freedom); Walter Johnson, *Inconsistency, Contradiction, and Complete Confusion: The Everyday Life of the Law of Slavery*, 22 LAW & SOC. INQUIRY 405, 419-30 (1997) (arguing that local matters shaped people's ideas and visions much more than ideological movements); Daniel J. Sharfstein, *The Secret History of Race in the United States*, 112 YALE L.J. 1473, 1476 (2003) (emphasizing local cases and "everyday lives" to understand race and identity). For an example of my own work, see Jason A. Gillmer, *Base Wretches and Black Wenches: A Story of Sex and Race, Violence and Compassion, During Slavery Times*, 59 ALA. L. REV. 1501 (2008).

[13] This is not the first historical effort to reconstruct the Ashworth family, even if it endeavors to be the most comprehensive. Over the years, the antebellum Ashworths have attracted the attention of a small handful of professional historians, a few amateurs, and some modern-day descendants. These sources have been consulted, sometimes cited, but never relied upon unless the facts could be independently verified or the methodology met the exacting standards of historical and legal research.

[14] The two historians who have arguably contributed the most to our understanding of the subject did so several generations ago. The first, Harold Schoen, published a series of articles in the 1930s focusing on free blacks in the republic, relying primarily on congressional materials. *See* Harold Schoen, *The Free Negro in the Republic of Texas* (pt. 1), 39 SW. HIST. Q. 292 (1936), (pt. 2) 40 SW. HIST. Q. 26 (1936), (pt. 3) 40 SW. HIST. Q.

result is a dearth of knowledge about whom these people were, where they lived, what they did, with whom they associated, and what they thought of slavery and the human condition. It may be true that they never had the numerical significance that free people of color had in other places in the South—we measure them in the hundreds rather than the thousands or even tens of thousands—but this fact belies both their importance and the impact they had on the neighborhoods in which they lived.[15]

Not surprisingly, rebuilding the life and times of the Ashworths has not been easy. Like so many others who did not belong to the educated and powerful classes, members of the antebellum Ashworth family died without leaving behind a comprehensive source—there are no diaries, manuscripts, or collection of letters.[16] Yet they, along with others like them, did leave their lasting imprint on our historical memory in a variety of ways. Fragments of their lives can be found in a host of legal documents—trial records, supreme court cases, congressional petitions, tax rolls, marriage licenses, land grants, deeds, wills, and registered cattle brands—as well as non-legal sources such as census returns, agricultural reports, and newspaper articles. When assembled, moreover, it becomes apparent that the Ashworths's experience was inextricably linked to the men and women, blacks as well as whites, who joined together—sometimes reluctantly, sometimes not, but joined together nonetheless—to carve out a community along the banks of the Sabine. Their story, then, is a story with much broader implications: it is a story of social, legal, and political life in the antebellum frontier.

This Article is written in the narrative style to allow the reader to step back and witness the events from the perspective of those involved. Part I sets the stage by providing some background on the Ashworth family,

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85 (1936), (pt. 4) 40 SW. HIST. Q. 169 (1937), (pt. 5) 40 SW. HIST. Q. 267 (1937), (pt. 6) 41 SW. HIST. Q. 83 (1937). The second, Andrew Forest Muir, in the 1940s and 50s expanded the area of inquiry to include Texas after statehood, and made better use of county archives. *See* Andrew Forest Muir, *The Free Negro in Harris County, Texas*, 46 SW. HIST. Q. 214 (1943); Andrew Forest Muir, *The Free Negro in Fort Bend County, Texas,*, 33 J. OF NEGRO HIST. 79 (1948); Andrew Forest Muir, *The Free Negro in Jefferson and Orange Counties, Texas*, 35 J. OF NEGRO HIST. 183 (1950); Andrew Forest Muir, *The Free Negro in Galveston County, Texas*, 22 THE NEGRO HIST. BULLETIN 68 (1958). Other projects of note include ALWYN BARR, BLACK TEXANS: A HISTORY OF NEGROES IN TEXAS, 1528-1971, 1-12 (1982); GEORGE RUBLE WOOLFOLK, THE FREE NEGRO IN TEXAS 1800-1860: A STUDY IN CULTURAL COMPROMISE (1976); Victor H. Treat, *William Goyens: Free Negro Entrepreneur, in* BLACK LEADERS: TEXANS FOR THEIR TIMES 19 (Alwyn Barr & Robert A. Calvert 1981).

[15] For a comparison of populations of free people of color in the various states in 1850, see STATISTICAL VIEW OF THE UNITED STATES, EMBRACING ITS TERRITORY, POPULATION—WHITE, FREE COLORED, AND SLAVE … BEING A COMPENDIUM OF THE SEVENTH CENSUS 63 (1854) [hereinafter 1850 CENSUS: Compendium].

[16] A small handful of diaries and accounts by southern free blacks have been discovered, published, and written about. *See* WILLIAM JOHNSON'S NATCHEZ: THE ANTE-BELLUM DIARY OF A FREE NEGRO (William Ransom Hogan & Edwin Adams Davis eds., 1993); MICHAEL P. JOHNSON & JAMES L. ROARK, BLACK MASTERS: A FREE FAMILY OF COLOR IN THE OLD SOUTH (1984); WILLIS AUGUSTUS HODGES, FREE MAN OF COLOR: THE AUTOBIOGRAPHY OF WILLIS AUGUSTUS HODGES (Willard B. Gatewood, Jr., ed., 1982); LUNSFORD LANE, THE NARRATIVE OF LUNSFORD LANE, FORMERLY OF RALEIGH (1842).

including their family makeup and the impact and influences of their time spent in Louisiana. Part II focuses on one member of the family as he ventures across the Sabine River into Texas, noting some of the events that shaped both his life and the life of others in the days before the Republic. Part III then situates the Ashworths's story within the larger framework following Texas Independence. This Part contrasts the move to make Texas a slave society with the Ashworths's remarkable success as a free family of color. Part IV details the inevitable problems the Ashworths's race created in their local community, culminating with an extended discussion of the murder of Samuel Deputy and its implications. The Article ends with the aftermath of the so-called "disturbances in Orange County," and how it forever changed the family's life and social standing.

I. THE SETTING

A. "one of the handsomest locations imaginable"

A visitor to Orange County, Texas, in the summer of 1856 (when Sam Ashworth shot Samuel Deputy) would have been pleased with what he found. Situated on the border of Louisiana, Orange County had been carved out of the eastern part of Jefferson County four years before.[17] The Sabine River formed its natural boundary on the east and the Neches River established its southern and western boundaries.[18] Two navigable bayous—the Cow Bayou and the Adams Bayou—also wound their way through the county, "forming," according to one resident, "two of the most beautiful natural canals that can well be imagined."[19] Understandably, these and other waterways helped establish the area as a desirable location in the decades before the Civil War. They provided easy access to the Gulf, and by the late 1830s, steamboats could be seen plying the rivers next to sailing vessels, along with a good number of rafts and flatboats hauling their wares in shallower areas.[20]

The county also boasted a town, Orange (first named Madison), of several hundred inhabitants.[21] The town was situated in the southeast part

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[17] For a general background on Orange County, see 4 THE NEW HANDBOOK OF TEXAS 1161-62 (1996) (Orange County).

[18] *Id.*

[19] *Orange County*, THE GALVESTON WEEKLY NEWS, Jan. 20, 1857, at 1.

[20] The first reported steamboat sailed up the Sabine River in 1837. *See generally* W.T. BLOCK, A HISTORY OF JEFFERSON COUNTY, TEXAS, FROM WILDERNESS TO RECONSTRUCTION 33-45 (1976) (discussing various modes of early transportation); *see also Orange County*, *supra* note 19 (boasting that "[n]o farmer settling in this county can possibly have to haul his produce exceding [sic] ten miles, in order to place it where it may be sent to market, either by steam or sail vessels, at all seasons of the year").

[21] The 1860 census listed 429 inhabitants in the town of Orange. Manuscript Census Returns, Schedule 1.—Free Inhabitants, Orange County, Tex., at 1-11, *in* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE,

of the county in "one of the handsomest locations imaginable," a few miles above Sabine Lake.[22] Though it never achieved the status of a Galveston or Houston, by 1860, Orange could count at least one school, a few inns, plenty of homes, and a number of shops.[23] For a time, court was held under shade trees or in private homes.[24] But by the mid-1850s, construction had begun on a more permanent structure.[25] The town did not have its own newspapers but on this score it was not alone.[26] Much of the local news was probably covered by the Methodist preacher during his regular sermons, also held in the courthouse.[27]

In the town itself, there were doctors and lawyers, carpenters and bricklayers, shoe makers and bakers.[28] Because of its proximity to the Gulf, there were also a number of people who worked in the shipping industry—steamboat men, ship carpenters, and sea captains.[29] The town's proximity to the Gulf also helps account for the county's foreign-born element—German, Prussian, Irish, English, Scottish, French, and Swiss—some of whom had started families but many more of whom were young men evidently striking out on their own.[30] As might be expected, there were also a number of merchants and other tradesmen who lived in town and who were eager to profit from the local commerce. Hugh Ochiltree was among them. With $33,000 worth of real and personal property, he was one of the town's wealthiest members.[31]

But by far the greatest number of residents of the county drew their livelihood in one way or another from the land. Many were farmers who worked a few hundred acres rather than the large plantations we so often read about. Growing in their fields were rice, sugar, cotton, corn, peas,

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POPULATION SCHEDULES OF THE EIGHTH CENSUS OF THE UNITED STATES (1860) [hereinafter 1860 CENSUS: Free Inhabitants]. The name of the town was changed from Madison to Orange in 1858 at the time of the town's incorporation. 4 THE NEW HANDBOOK OF TEXAS, *supra* note 17, at 1162 (Orange County).

[22] *Orange County*, *supra* note 19.

[23] [school cite]; *see also* 1860 CENSUS: Free Inhabitants, *supra* note 21, Orange County, Tex., at 1-11 (listing inhabitants and occupations, including hotel keepers, merchants, grocers, blacksmiths, shoe makers, etc.).

[24] *Inventory of the County Archives of Texas, Orange County*, at 8 (Texas Historical Records Survey 1941).

[25] *See id.* (describing plan to build two-story courthouse, later changed to one). Evidently, the courthouse was destroyed in some manner in 1859. *Id.*

[26] Orange County's first newspaper was not published until __. F.B. BAILLIO, A HISTORY OF THE TEXAS PRESS ASSOCIATION __ (1916). In nearby Jefferson County, the first newspaper was published in 1860. *Id.* at 338.

[27] *See* 1860 CENSUS: Free Inhabitants, *supra* note 21, Orange County, Tex., at 9 (family #62) (listing V.C. Canon's occupation as a Methodist preacher); *see also Inventory of the County Archives of Texas, Orange County*, *supra* note 24, at 8 (noting how "[t]he courthouse was frequently used for church services").

[28] *See* 1860 CENSUS: Free Inhabitants, *supra* note 21, Orange County, Tex., at 1-11 (listing occupations).

[29] *See id.* (listing occupations).

[30] A number of the foreign-born residents were living together in a few households outside of town. *See especially id.* at 32-36 (family # 215-225).

[31] *Id.* at 2 (family #17).

beans, and potatoes.[32] Unlike in other counties, few in Orange profited significantly from the crops they grew—much was grown for local consumption—but the men and women who lived on farms certainly were able to live comfortably if modestly.[33] Others in the county were ranchers. Much of the land along the Gulf was well suited for this purpose, consisting of marshy salt grass terrain,[34] and a visitor stopping at the home of William Smith in 1860 no doubt would have been impressed with the 800 cattle roaming about his property.[35] Still others found wealth in the growing lumber industry. Orange County was situated in the Piney Woods region of east Texas, where cypress, pine, oak, hickory, maple, ash, magnolia, and other trees grow in significant numbers.[36] The area's plentiful supply of lumber, combined with its ideal location near the Gulf, encouraged a number of entrepreneurs to cut down trees and convert them into a usable product. In fact, by 1860 there were seven saw mills in the county.[37] In that year, they produced almost $110,000 worth of shingles, fence posts, and other sawed lumber, employing almost fifty residents.[38] Only three Texas counties during that year produced more.[39]

Yet, regardless of where they lived or how they made their living, the people who came to Orange County no doubt shared a common outlook; these were people who, though generally Southern born, were distinctly Texan. Some contemporary observers dismissed them as unsophisticated and uneducated, pointing out that they cared little for newspapers or books.[40] But a more charitable description might be that they found value in the simple things of life. To be sure, the people who came to Texas in general and Orange County in particular were never interested in the aristocratic foundations of the Old South; instead, they were hard working men and women possessed of a rugged individualism and a frontier spirit.

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[32] *See* AGRICULTURE OF THE UNITED STATES IN 1860; COMPILED FROM THE ORIGINAL RETURNS OF THE EIGHTH CENSUS 140-51 (1864) [hereinafter 1860 CENSUS: Agriculture] (charting amount of crops grown in Texas by county).

[33] The amount of crops produced in Orange County was modest compared to other counties. For example, Orange produced 600 pounds of rice compared to 20,840 produced in Sabine; 4,066 gallons of cane molasses compared to 346,640 produced in Brazoria; 251 bales of cotton compared to 31,342 bales produced in San Augustine; and 17,292 bushels of corn compared to 660,043 produced in Harrison. *Id.*

[34] *See* BLOCK, *supra* note 20, at 1 (describing soil in Jefferson). Residents stated that they thought the land was ideal for cattle raising. *Orange County*, *supra* note 19.

[35] Manuscript Census Returns, Schedule 4.—Production of Agriculture, Orange County, Tex., *in* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, POPULATION SCHEDULES OF THE EIGHTH CENSUS OF THE UNITED STATES (1860).

[36] *See* BLOCK, *supra* note 20, at 1 (describing terrain); *see also* 4 THE NEW HANDBOOK OF TEXAS, *supra* note 17, at 1161 (Orange County).

[37] *See* MANUFACTURES OF THE UNITED STATES IN 1860; COMPILED FROM THE ORIGINAL RETURNS OF THE EIGHTH CENSUS 588 (1865) (listing six lumber mills and one shingle mill in the county).

[38] *Id.*

[39] Those counties were Montgomery ($157,500), Bastrop ($135,300), and Harris ($120,000). *Id.* at 580-91.

[40] *See* OLMSTED, *supra* note 10, at 117 (commenting that, throughout his entire journey through eastern Texas, he never saw "one of the inhabitants look into a newspaper or a book").

This was not the place to find grand plantations and easy living. The people who came to Texas built simple one-room homes out of logs and mud and subsisted on cornbread and salted pork. "It is not a paradise," said an article printed in De Bow's Review, "but it is a country where the poor man can easily obtain land, and when he has it he can always turn it to good account in the support of his family."[41]

B. "people of mixed blood, though nearly white"

One of the more conspicuous families in the county, moreover, was the Ashworths. Headed by three brothers—William, Aaron, and Abner—the entire Ashworth clan in and around the county numbered around sixty in the decade before the Civil War.[42] Members of the Ashworth family had been living in the area for years; in fact, William, as one of the oldest, was the first to arrive. He came to the area in 1831, when Texas was still part of Mexico.[43] The surviving records do not indicate what attracted him to the area, but we can assume that he ventured across the border at least in part for the same reason so many others came, for Texas offered to the hardy and adventurous abundant land and precious opportunity. Indeed, Texas had been open for settlement since late 1821, after Moses Austin and later his son, Stephen, arranged with the Spanish and then Mexican governments to settle three hundred colonists along the banks of the Brazos and Colorado Rivers.[44] Since that time, the population of Texas had grown considerably, as people in the South and back East heard the inevitable talk of prosperity and good things to come.

William settled on land owned by the former Mexican official, Lorenzo De Zavala, who, like Stephen Austin, obtained a grant to colonize parts of Texas.[45] William's family was originally from South Carolina,[46] but his

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[41] *Texas—Character of the Country, Emigrants, Etc.*, 20 DE BOW'S REVIEW 241, 241 (1856).

[42] There were eight separate Ashworth households, with a total of 41 individuals, in Jefferson County in 1850. 1850 CENSUS: Free Inhabitants, *supra* note 3, Jefferson County, Tex., at 483 (family # 3), 487 (family # 36, 37, 38), 497 (family # 107, 110), 499 (family # 119), 505 (family # 166). Sarah Ashworth, who had married William Burwick and appears under his name in the census, makes for an additional one. *Id.* at 501 (family # 145); *see also infra* notes 355-356 and accompanying text (discussing marriage). In nearby Angelina County, there were an additional four Ashworth households with a total of 18 individuals. 1850 CENSUS: Free Inhabitants, *supra* note 3, Angelina County, Tex., at 74-75 (family # 101, 102, 103, 104). James, the eldest, was William's brother. *See* Will of Abner Ashworth, *supra* note 3, at 1-2 (listing siblings). A family from Angelina headed by Andrew Ashworth, listed in the census records as white, is not included. *Id.* at 61 (family # 5).

[43] *See* Headright Certificate for William Ashworth, No. 111 (Jefferson Cty. Mar. 5, 1838) (stating date of arrival). The headright certificates were the first step in obtaining a land grant. After receiving a land certificate, the grantee would locate available land from the public domain. Finally, after fulfilling any conditions of the grant, such as making improvements, and paying any fees, the individual could then apply for a patent from the Texas General Land Office. *See generally Basic Research in the Archives of the Texas General Land Office* (privately printed handout).

[44] *See generally* RANDOLPH B. CAMPBELL, GONE TO TEXAS: A HISTORY OF THE LONE STAR STATE 100-04 (2003) (discussing origins of Austin's colony).

[45] *See generally* Mary Henderson, *Minor Empresario Contracts for the Colonization of Texas, 1825-1834*,

parents, James and Keziah, had moved the family to Louisiana during the first decade of the nineteenth century, at a time when thousands of others were likewise seeking their fortunes in lands further west. William was just a boy at the time—maybe ten years old—with both older and younger siblings.[47] In his formative years, it would have been here that William would have developed much of his outlook on life. Louisiana, it must be remembered, had only been a part of the United States since 1803, but this of course diminishes over a century of history under French, Spanish, and Napoleonic rule.[48] Much of the state—particularly in the west—was still the frontier, but it was also a place that because of its history contained an eclectic mix of peoples, customs, and cultures.

Among the many that lived there, moreover, was a sizeable population of free people of color.[49] To William and his family, these individuals must have struck them as unique both in terms of their color and condition, and probably reminded them much of themselves. Indeed, unlike their counterparts back home, most here did not gain their freedom as a result of the ideas and events of the American Revolution; instead, most descended from prior unions between masters and slaves, sometimes generations ago.[50] Some were from the West Indies;[51] others had been born here.[52] Either

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31 SW. HIST. Q. 295 (1928); *see also Inventory of the County Archives of Texas, Orange County*, *supra* note 24, at 2-3 (providing background on Zavala's contract to settle 500 families into East Texas). Zavala transferred his rights to the Galveston Bay and Texas Land Company, later recognized by the Mexican government as his legal agent. *Id.* at 3.

[46] 1850 CENSUS: Free Inhabitants, *supra* note 3, Jefferson County, Tex., at 497 (family #107).

[47] Assembling William's family tree has been a great puzzle, requiring the researcher to put together several sources to reach simple conclusions. The names of his siblings can be found in the will of his brother, Abner Ashworth. *See* Will of Abner Ashworth, *supra* note 3, at 1-2 (providing for his "brothers and sisters," William, James, Jesse, Aaron, Moses, Elizabeth, Mary, and Sarah). From there, the names of his parents can be learned from the marriage records in Louisiana, where a person's parents were listed along with the bride and groom. *See, e.g.,* Marriage Certificate of James Ashworth and Mary Perkins (Sept. 23, 1811).

[48] The French founded Louisiana as a military outpost in 1699. Thomas N. Ingersoll, *Free Blacks in a Slave Society: New Orleans, 1718-1812*, 48 WM. & MARY Q. 173, 174 (1991). For the next twenty years it remained sparsely populated, until France founded New Orleans in 1718 in an effort to expand the empire's tobacco production. *Id.* at 174-75. In 1762, Louis XV secretly signed Louisiana over to his cousin Carlos III of Spain, who wanted the colony as a buffer against English expansion. *Id.* at 179. Spain held Louisiana until 1800, when Napoleon claimed it as part of his ambitious efforts to expand his rule. *Id.* at 192. Napoleon sold Louisiana to the United States in 1803. *Id.*

[49] There were 17,462 free people of color in Louisiana in 1850. STATISTICAL VIEW OF THE UNITED STATES, EMBRACING ITS TERRITORY, POPULATION—WHITE, FREE COLORED, AND SLAVE … BEING A COMPENDIUM OF THE SEVENTH CENSUS 63 (1854). The most populous slave states were Maryland (74,723) and Virginia (54,333), both in the Upper South. *Id.* For a concise account of the differences between free people of color based on region, see Ira Berlin, *The Structure of the Free Negro Caste in the Antebellum United States*, 9 J. OF S. HIST. 297 (1976).

[50] *See* Berlin, *supra* note 49, at 309-10; *see also* Laura Foner, *The Free People of Color in Louisiana and St. Domingue: A Comparative Portrait of Two Three-Caste Slave Societies*, 3 J. OF S. HIST. 406, 408 (1970) (noting origins).

[51] *See* Berlin, *supra* note 49, at 310. For a path breaking discussion of the San Domingo Revolution in the 1790s, see C.L.R. JAMES, THE BLACK JACOBINS: TOUSSAINT L'OUVERTURE AND THE SAN DOMINGO REVOLUTION (1963).

[52] *See* Foner, *supra* note 50, at 409 (noting both the high ratio of men to women in French Louisiana and the social acceptance of interracial unions).

way, the result was a large "mulatto" class, whose light skin elevated them in eyes of many whites. Said one, when describing a family in New Orleans: "They were intelligent and well informed; their musical taste was especially well cultivated; they were interested in the literature of the day, and their conversation upon it was characterized by good sense and refined discrimination."[53] Many of these free persons of color also successfully practiced a trade—barbers, carpenters, blacksmiths—increasing both their wealth and social status.[54] In no quarters were they considered equal with whites; but Louisianans also looked upon them as distinct from their black slaves, occupying their own caste. As the Louisiana Supreme Court would eventually put it, "in the eyes of Louisiana law there is … all the difference between a free man of color and a slave that there is between a white man and a slave."[55]

As for the Ashworths, their precise racial makeup is difficult if not impossible to discern. The records that do exist, however, strongly suggest that they belonged to a group of what modern anthropologists refer to as "tri-racial isolates."[56] These often large yet distinct groups were made up of people who shared African, Indian, and European ancestry, and whose histories often dated back to the first "free black" families of the seventeenth and early eighteen centuries.[57] Some of the more identifiable names include the Goings, the Perkins, the Dials, and the Bunches, as well as the Chavises, the Basses, and the Gibsons.[58] Often excluded or distrusted by the larger white populace, members of these families formed their own communities, living in the same neighborhoods and intermarrying with each other.[59] Over the years, they also followed similar settlement patterns. Originating in Virginia and North Carolina, they spread significantly into parts of South Carolina, eastern Tennessee, and eventually to other places, including Louisiana.[60] In different locations they were given unique and imaginative names, like "Brass Ankles" and "Turks" in South Carolina,

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[53] FREDERICK LAW OLMSTED, A JOURNEY IN THE SEABOARD SLAVE STATES, WITH REMARKS ON THEIR ECONOMY 597 (1856).

[54] *See* Berlin, *supra* note 49, at 311.

[55] State v. Harrison, a slave, 11 La. Ann. 722, 722 (1856).

[56] *See generally* GROSS, *supra* note 11, at 63-70, 78-90, 111-39; PAUL HEINEGG, FREE AFRICAN AMERICANS OF NORTH CAROLINA AND VIRGINIA (1999) (forward by Ira Berlin), http://www.freeafricanamericans.com; Ariela Gross, *"Of Portuguese Origin": Litigating Identity and Citizenship among the "Little Races" in Nineteenth-Century America*, 25 LAW & HIST. REV. 467 (2007); Virginia Easley DeMarce, *"Verry Slitly Mixt": Tri-racial Isolate Families of the Upper South—A Genealogical Study*, 80 NAT. GENEALOGICAL SOC. Q. 5 (1992); Gary B. Mills, *Tracing Free People of Color in the Antebellum South: Methods, Sources, and Perspectives*, 78 NAT. GENEALOGICAL SOC. Q. 262 (1990).

[57] *See generally* Gross, *supra* note 56, at 475-81 (discussing early origins).

[58] For the most exhaustive list of families who have tri-racial roots, see HEINEGG, *supra* note 56. For some of the more common names, see DeMarce, *supra* note 56, at 33-35 (appendix).

[59] *See* GROSS, *supra* note 11, at 115 (noting how they "formed entire communities of racially ambiguous people"); Mills, *supra* note 56, at 266 (noting how they "commonly traveled in large groups").

[60] DeMarce, *supra* note 56, at 5, 9.

"Melungeons" in Tennessee, and "Croatans" in North Carolina.[61] In Louisiana, they were given the name "Red Bones," a label that is still used indiscriminately today to denote someone appearing of mixed ancestry.[62]

The myths surrounding some of these groups have now reached epic proportions, fueled in large part by (mostly) past efforts of some of their members and sympathizers to deny their African heritage.[63] Yet, as scholars of race well know, there is no merit to these claims. Race has never been a biological or natural fact; it is instead a social construct.[64] And in the Ashworths's case, from the time they were in Louisiana until the Civil War, local authorities and residents identified them regularly and routinely as "free persons of color," "colored persons," and "mulattoes," and treated them accordingly. That said, their mixed-race ancestry—they were described as "people of mixed blood, though nearly white" by one source[65]—no doubt carried with it certain advantages. Some, even, along with families like the Perkinses, managed to "pass" as white for at least

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[61] *Id.* at 8. Gross notes that their names, given to them by their neighbors, were "sometimes meant as racial epithets and other times as affectionate monikers." GROSS, *supra* note 11, at 115.

[62] DeMarce, *supra* note 56, at 8.

[63] *See id.* at 6 (noting efforts to deny African heritage); *cf.* GROSS, *supra* note 11, at 116 (noting that, while many groups sought to deny or downplay their African past, others, like the Narragansett, embraced it). Some of the origin myths are truly fantastic. One has them linked to the Portuguese-Spanish captain Juan Pardo's 16th-century expedition; another traces their descent to Carthaginian or Phoenician seaman; yet another maintains that they descended from survivors of the "Lost Colony" at Roanoke Island who married Indian women. *See generally* Virginia Easley DeMarce, *Looking at Legends—Lumbee and Melungeon: Applied Genealogy and the Origins of Tri-racial Isolate Settlements*, 81 NAT. GENEALOGICAL SOC. Q. 24 (1993). As DeMarce observes, an "obvious explanation" for some of these myths "is the perpetual wish for non-African ancestry." *Id.* at 36. She sums up the controversy nicely elsewhere:

> Traditionally, one of the major contentions of tri-racial Americans (whether living in isolate groups or merged into the general population) has been that they were more likely bi-racial—that is, Indian and white. If African-American ancestry was acknowledged, then it was, at the most, very, very little (and always in some other families of the community, of course). The reason why tri-racial ancestry has been downplayed is clear. Throughout most of American history, the legal, social, educational, and economic disadvantages of being African-American were so great that it was preferable for a person to be considered almost anything else.

DeMarce, *supra* note 56, at 6. At least one member of the Ashworth family has also insisted that the Ashworths have been wrongly linked to an African past, choosing instead to see them as purely white. *See* Vanda V. Ashworth, *The Ashworth Family* 3-7, 228-41 (privately printed manuscript 1987).

[64] For discussions of how law, human interactions, and societal factors influence the construction of race, *see, e.g.,* GROSS, *supra* note 11; Adrienne D. Davis, *Identity Notes Part One: Playing in the Light*, 45 AM. U. L. REV. 695 (1996); Michael A. Elliott, *Telling the Difference: Nineteenth-Century Legal Narratives of Racial Taxonomy*, 24 LAW & SOC. INQUIRY 611 (1999); Ariela Gross, *Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South*, 108 YALE L.J. 109 (1998); Ian F. Haney Lopez, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1 (1994); Daniel J. Sharfstein, *Crossing the Color Line: Racial Migration and the One-Drop Rule, 1600-1860*, 91 MINN. L. REV. 592 (2006); Sharfstein *supra* note 12. For some of my own efforts, see Jason A. Gillmer, *Suing for Freedom: Interracial Sex, Slave Law, and Racial Identity in the Post-Revolutionary and Antebellum South*, 82 N.C. L. REV. 535 (2004).

[65] JOURNALS OF THE HOUSE OF REPRESENTATIVES OF THE SEVENTH CONGRESS OF THE REPUBLIC OF TEXAS, CONVENED AT WASHINGTON ON THE 14TH NOV., 1842, at 63 (1843) [hereinafter HOUSE JOURNAL, SEVENTH CONGRESS].

some of their time in South Carolina.[66] In Louisiana, and later in Texas, although they were not allowed to pass (or did not choose to), their light skin nonetheless helped them distance themselves from their African past, even if they never tried to deny it.

In fact, sometimes the Ashworths even embraced their racial designation. One example occurred when Christian Hillebrant sued William's brother Abner Ashworth in 1853.[67] This case originated when Abner confronted J.P. Barnes about something Barnes had said, namely, that Abner had been drunk and had fallen into a grave while digging it.[68] When questioned, Barnes refused to tell Abner who had told him so, prompting Abner to burst out "if it was a woman she was a damned whorish liar."[69] This proved to be Abner's undoing, for it was Barnes's wife who had made the original comments, and Barnes now threatened Abner with a slander suit.[70] A brief meeting was soon had, after which Barnes agreed to take three notes, one for one thousand and two for five hundred, in consideration for not pursuing the matter in court.[71] Barnes later gave the thousand dollar note to Hillebrant who sued Abner when he refused to pay it.[72] Defending, Abner took the interesting tact of relying on his African heritage to void the contract. As he put it in his answer, the fact that he "was of African descent by common report was used to excite his fears that should a suit be instituted against him by said Barnes a white man he would be stripped of his property."[73] As the case progressed, Abner also presented evidence "that [he] is a free negro."[74] The defense worked; the jury found in Abner's favor, concluding that the note was obtained by fraud and

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[66] *See* Manuscript Census Returns, Pendleton District, S.C., at 138, *in* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, HEADS OF FAMILIES AT THE SECOND CENSUS OF THE UNITED STATES (1800) (listing several people in James Ashworth's household, all white) [hereinafter 1800 CENSUS]. *Cf.* Mills, *supra* note 56, at 264 (noting how, even within a few miles of each other, different census takers in Louisiana identified members of the Goings, Perkins, and Sweat families as white and "free colored persons"). James Ashworth does not appear in the census records for South Carolina in 1790; however, there is either a "Jas." (short for James) or a "Jos." (short for Joseph) Ashworth in Rutherford district of North Carolina. Manuscript Census Returns, Rutherford District, N.C., at 144, *in* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, HEADS OF FAMILIES AT THE FIRST CENSUS OF THE UNITED STATES (1790). The Rutherford District is located in the far southwestern corner of North Carolina, and the Pendleton District is located in the far northwestern corner of South Carolina, making it likely that this was the same person. Indeed, like the Ashworths, members of the Perkins family appear in both districts in separate years. For the Pendleton District in 1790, see *id.* at 8 (William, Solomon, Isaac, Moses, and Joseph Perkins), 10 (John and Stephen Perkins), 13 (Ute [?] Perkins), 14 (John Perkins); for the Rutherford District in 1800, see 1800 CENSUS, *supra*, at 135 (John Perkins), 137 (William Perkins).

[67] Transcript of Trial, Hillebrant v. Ashworth, at 1, No. 206 (Tex. Dist. Ct. Jefferson Cty. May 1855), *aff'd*, 18 Tex. 307 (1857).

[68] *Id.* at 24.

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *Id.* at 2.

[73] *Id.* at 14.

[74] *Id.* at 27.

without consideration.[75]

The Ashworth's story thus is a common one among tri-racial families. Undoubtedly free, they were neither purely white nor purely black (nor purely Indian) in a society increasingly dependent on clear demarcations of race. As a result, they and others like them found themselves on the borderlands of race, often associating with whites but doing so on a precarious ground. To be sure, occupying such a position helps account for their constant push into the frontier, whether into eastern Tennessee or, in the Ashworths's case, into Louisiana or Texas.[76] Out here, they were unknown, or at least tolerated, allowing them to live peaceably and productively. In fact, as the Ashworths would find out, oftentimes their race became an issue only when they provoked a controversy in the community.[77] Even then, however, the impact was difficult to predict.

C. "'til death do us part"

The part of Louisiana where the Ashworths eventually settled was in the southwest, in what became Calcasieu Parish but what was then still part of St. Landry's Parish.[78] In the earliest census returns, William's father, James Ashworth, is listed as the head of a household of eleven free persons of color (no white persons or slaves were listed).[79] We can only speculate—the census records from this time do not list names, ages, or genders for people of color—but these eleven people were probably all members of William's family, including his two parents and their nine children. The will of one of his brothers gives us their names, and from the census records we can learn their approximate birth dates. His brothers were James, who was the oldest, followed by Jesse, Moses, Aaron, and Abner, the latter having been born in Louisiana in 1809.[80] His sisters were Mary (sometimes

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[75] *Id.* at 17, 18-19. The jury's finding was upheld on appeal. Hillebrant v. Ashworth, 18 Tex. 307 (1857).

[76] *See* DeMarce, *supra* note 56, at 9 ("They preferred to settle areas in which they were welcomed, or at least tolerated. Failing this, they tended to head for the frontiers, where their origins would not be well known."); Mills, *supra* note 56, at 266 (noting how many families "were perpetually at the vanguard of 'civilization,' pushing into unpopulated frontiers where they would face less discrimination").

[77] *See* GROSS, *supra* note 11, at 70 (noting how identity might become an issue if the person made someone "mad").

[78] Calcasieu was created in 1840 from the parish of St. Landry. *Inventory of the Parish Archives of Louisiana, No. 10, Calcasieu Parish (Lake Charles)* 3 (1938).

[79] Manuscript Census Returns, Opelousas, La., at 137, *in* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, HEADS OF FAMILIES AT THE THIRD CENSUS OF THE UNITED STATES (1810).

[80] Will of Abner Ashworth, *supra* note 3, at 1-2. The 1850 census from Angelina County, Texas, lists James as 61, meaning that he was born in 1789, with his birthplace as South Carolina. 1850 CENSUS: Free Inhabitants, *supra* note 3, Angelina County, Tex., at 74(family # 101). The census records from Calcasieu Parish in Louisiana during the same year list Jesse as 60 and from South Carolina. *Id.* Calcasieu Parish, La., at 778 (family # 436). In the Jefferson County census in 1850, William is 57 and Aaron is 47, both from South Carolina. *Id.* Jefferson County, Tex., at 497 (family # 107), 499 (family # 119). Abner is listed in the 1850 census as 41, meaning that he was born in 1809, with his birthplace as Louisiana. *Id.* at 483 (family #3). Moses died around 1838, making his precise age difficult to determine. *See* Estate of Moses Ashworth, Cause #245, at 1 (inventory of estate) (Apr. 14,

called Polly), Elizabeth, and Sarah.[81] By 1820, moreover, James, Jesse, Moses, and Mary had all married and started families of their own, and together with their father all appear separately in the census.[82] Nearby were other families of known tri-racial descent, including the Perkins, the Dials, the Sweats, the Bunches, and the Goings, all of whom were classed as free people of color.[83] Some of these same families had evidently come to Louisiana around the same time, and, in keeping with the distinct patterns of these groups, now appear to have settled near one another. The marriage records also indicate that they commonly intermarried. William's mother was Keziah Dial, for example, and his sister Mary and his brothers James and Jesse married Perkinses, while two of his other brothers, Moses and Aaron, married Bunches.[84]

Together, these families helped establish the area as a place where free people of color were welcome. By 1850, in fact, the number of free people of color in Calcasieu Parish consisted of 239 persons, or roughly ten percent of the total population.[85] Many of these families had long learned to straddle the lines of race and slavery. They understood their place; to venture beyond it meant trouble from local authorities, or perhaps worse. But the records also indicate that the lines of race and caste were not as rigid as often assumed. The census returns themselves provide an important snapshot, revealing that the Ashworths and other families of color often lived near one another but were by no means isolated from their white

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1838). But the 1830 census records indicate that he was between 24 and 36 years old. Manuscript Census Returns, St. Landry Parish, La., at 27, *in* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, POPULATION SCHEDULES OF THE FIFTH CENSUS OF THE UNITED STATES (1830) [hereinafter 1830 CENSUS].

[81] Will of Abner Ashworth, *supra* note 3, at 2. Because at least two married and changed their names, William's sisters are harder to keep track of. Abner's will refers to one sister as Mary Perkins, *id.*, and the marriage records indicate that "Polly" Ashworth married George Perkins in 1810. Marriage Certificate of Polly Ashworth and George Perkins (Dec. 4, 1810). "Mary" Perkins subsequently appears with George Perkins in the 1850 census records from Calcasieu Parish; she is listed as 58 years old and from South Carolina. 1850 CENSUS: Free Inhabitants, *supra* note 3, Calcasieu Parish, La., at 770 (family # 361). Abner's will also references another sister named Elizabeth Nelson. Will of Abner Ashworth, *supra* note 3, at 2. This researcher has not been able to locate either a probable marriage or census record for her. The third sister, Sarah, apparently never lawfully married before she died in 1843. Estate of Sarah Ashworth, Cause # 54, at 1 (petition of Aaron Ashworth) (June 12, 1843). However, Sarah did leave behind three minor children. *Id.*

[82] *See* Marriage Certificate of James Ashworth and Mary Perkins (Sept. 23, 1811); Marriage Certificate of Jesse Ashworth and Sarah Perkins (Oct. 3, 1810); Marriage Certificate of Moses Ashworth and Anna Bunch (Nov. 23, 1821); Marriage Certificate of (Mary) Polly Ashworth and George Perkins (Dec. 4, 1810); *see also* Manuscript Census Returns, St. Landry Parish, La., at 101 (James, James "son," Jesse), 107 (George Perkins, Mary's husband), 108 (Moses), *in* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, POPULATION SCHEDULES OF THE FOURTH CENSUS OF THE UNITED STATES (1820) [hereinafter 1820 CENSUS].

[83] *See* 1820 CENSUS, *supra* note 82, at 101, 105, 107, 108.

[84] *See supra* note 82 (indicating that Mary married George Perkins, James married Mary Perkins, and Jesse married Sarah Perkins, while Moses married Anna Bunch); *see also* Marriage Certificate of Aaron Ashworth and Mary Bunch (Sept. 16, 1829). Keziah's maiden name appears in the marriage records of her children.

[85] THE SEVENTH CENSUS OF THE UNITED STATES: 1850, EMBRACING A STATISTICAL VIEW OF EACH OF THE STATES AND TERRITORIES, at 473 (1853) [hereinafter 1850 CENSUS: Statistical View]. While 239 people might appear small compared to the almost 10,000 free blacks in New Orleans, the percentage of the population was still the same—10%. *Id.*

counterparts. Interspersed among the Ashworth, Going, and Perkins households in 1820 were the white Scotts, Reeds, and Wests,[86] and alongside the Dial and Sweat homes were the white Bundicks and Whittingtons.[87] Other entries from the same year indicate that whites and free people of color not only lived close to one another but occasionally shared the same household.[88] The records are too sparse to say for certain but many of these presumably involved white men or women who had intimate and likely stable relations with persons of color. In 1850 and 1860 these suspicions can be confirmed, with white men like Abraham Carter, Bill Mather, Bill McCormick, Mathey Pool, John Morron, James Anderson, Franklin Brannet, and Adolphe Derosier all listed in Calcasieu Parish with mulatto wives and as the father of mulatto children.[89] And these of course are only the ones in which the family was living openly together. No doubt other, more clandestine, relationships existed as well.

Of course, we must be careful not to overstate the significance of these interracial encounters in a slave society; surely it was true that many white Louisianans sought to maintain an ideological if not physical distance from their free neighbors of color.[90] But the evidence also suggests that, far from the official policies of the State, enough whites and blacks interacted with each other to call the rigidness of the three-caste system into question. Out on the prairies and in the backwoods, whites and blacks found that they shared things in common; they traded, they drank, they played cards, and they fell in love. It therefore hardly seems surprising that, when it came time for William to choose a life-long partner, he eschewed the route of some of his siblings and married a white woman rather than a woman of color. Her name was Delaide Gallier, a native Louisianan born around 1804.[91] From the census returns we can safely speculate that she was a

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[86] 1820 CENSUS, *supra* note 82, St. Landry Parish, La., at 101.

[87] *Id.* at 107.

[88] *See, e.g., id.* at 101 (Hugh Nelson: one white man and nine people of color); *id.* (Patrick Wisby: one white man and seven people of color); *id.* (Jacob Heyes: one white man and two people of color); *id.* (Simon Bellaire: two white men and five people of color). Families like the Fontenots, the Guillorys, and the LeFluirs also appear often in the 1820 census, sometimes as white and sometimes as people of color, reflecting a common past of interracial relationships. For the Fontenots, see *id.* at 101, 102, 103, 104, 108, 109, 115, 117. For the Guillorys, see *id.* at 103, 105. For the LeFluirs, see 103, 104, 107, 109, 111.

[89] For interracial relationships in 1850, see, e.g., 1850 CENSUS: Free Inhabitants, *supra* note 3, Calcasieu Parish, La., at 769 (family # 349) (Abraham and Elisa Carter); *id.* at 774 (family # 394) (Bill and Caroline Mather); *id.* at 776 (family # 419) (Bill and Sophia McCormick); *id.* at 785 (family #494) (Mathey and Dicey Pool); *id.* at 794 (family # 572) (John and Sara Morrow). For similar relationships in 1860, see, e.g., 1860 CENSUS: Free Inhabitants, *supra* note 21, Calcasieu Parish, La., at 43 (family # 313) (James and Sarah Anderson); *id.* at 44 (family # 320) (Eli and Hayes Burwick); *id.* at 40 (family # 435); *id.* at (Franklin and Ellen Brannet); *id.* at 95 (family # 682) (Adolphe and Mirtha Derosier).

[90] *See generally* H.E. STERKX, THE FREE NEGRO IN ANTE-BELLUM LOUISIANA (1972); JOHN HOPE FRANKLIN, THE FREE NEGRO IN NORTH CAROLINA, 1790-1860, 160-99 (1943) (discussing the "quasi-citizenship" of free people of color).

[91] *See* Jefferson County Marriage Record Book "A-B," at 11 (Feb. 1838) (application for license to marry "Delilie Gallier"). It is likely that William and Delaide had acted as husband and wife for a number of years

neighbor who, like William, paid less attention to the official rules of race than to the question of whether she shared something in common with her future husband.[92] At the very least, she must have been impressed with William's ambition and the demonstrated success of his family. And while it is impossible to know for certain, it is likely that she was just as adventurous and bold as her husband, for when William lashed together a raft to get across the Sabine River from Louisiana to Texas in 1831, she was right there with him, with five children in tow.[93]

II. GONE TO TEXAS

A. *"citizens under the Colonization laws of the Mexican United States"*

William and Delaide did not have far to go. The Sabine River formed the western border of Calcasieu Parish; on the other side—across the muddy banks and slow-moving water—was Texas. But the short distance belies the significance of packing up the family's possessions and ferrying them across the river. At the time Texas was still part of Mexico and its future place among the United States was by no means certain. This undoubtedly gave pause to some, as it meant giving up the rights and privileges of one country and swearing allegiance to another. Many also were no doubt aware that Texas's relationship with Mexico had always been uneasy, making the decision to cross the border even more difficult. The trouble had been constant and long-standing, beginning soon after the first settlers began to arrive in the fall of 1821.[94] At that time Stephen F. Austin learned that the colonization grant between the Spanish government and his recently-deceased father might not be honored. Austin, therefore, convinced that he needed to protect his own interests as well as those of the newly arrived, trekked across thousands of miles to Mexico City in the spring of 1822.[95] There, he ran into both obstinacy and delay, as the Mexican government wrangled over the terms of a new colonization law for

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before they applied for a formal marriage license. *See infra* note 93 (citing William's 1834 Character Certificate and noting that he was "a man of family"). The 1850 census indicates that Delaide was a 46-year-old white woman from Louisiana. 1850 CENSUS: Free Inhabitants, *supra* note 3, Jefferson County, Tex., at 497 (family # 107); *cf* 1860 CENSUS: Free Inhabitants, *supra* note 21, Orange County, Tex., at 28 (family #186) (listing "Delila," a white woman, as 52). Again, as noted elsewhere, the age discrepancies in the census records are common, as are the spellings of names.

[92] The 1820 census records from Calcasieu Parish list a white man named Francois Gallier with two daughters between the age of 10 and 16 living next to William's brother, James. 1820 CENSUS, *supra* note 82, St. Landry's Parish, La., at 101. It stands to reason that this was Delaide's home and that the two were neighbors.

[93] *See* Character Certificate of William Ashworth as part of his Application for Mexican Land Grant (Nov. 24, 1834) (noting that he was "a man of family consisting of six," which would include his wife).

[94] For a concise background on the origins of Austin's colony, see CAMPBELL, *supra* note 44, at 100-04.

[95] *See* Letter from Stephen Austin to Lucas Alaman (Jan. 20, 1824), *in* 2 THE AUSTIN PAPERS, pt. 1, 725, 726 (Eugene C. Barker ed., 1924) (explaining reasons behind trip).

over a year.[96]

Part of the dispute was over slavery.[97] Having just won independence from Spain, a number of Mexican leaders voiced strong opposition to the institution, recognizing its inherent inconsistencies with their own struggles for freedom. On the other side were those who cited the need to protect the property rights of the American colonists, and argued, as did Austin, that slavery was both important and necessary for the future success of Texas. Without it, he would later insist, "we cannot expect colonists with large and competent means, nor can we have hands for the cultivation of Cotton or Sugar; and consequently these fertile lands, instead of being occupied by wealthy planters, will remain for many years, in the hands of mere shepherds, or poor people."[98] The resulting compromise, negotiated before Austin left the city, allowed settlers to keep the bondsmen they had but insisted that all children born of slaves be free at age 14.[99]

Of course, not all the settlers who came to Texas were slaveholders; yet enough of them sympathized with the institution that its future place in the history of Texas now seems inevitable. By 1826, in fact, there were already 443 slaves in Austin's colony, roughly one quarter of the total population of 1800 residents.[100] Still, Mexico's steady if uneven resistance to the institution caused concern among many. One of the more troubling provisions came in 1827. In that year, the Mexican government revised its original compromise with Austin and insisted in the Constitution of Coahuila and Texas that "no one shall be born a slave in the state, and after six months the introduction of slaves under any pretext shall not be permitted."[101] Austin's future colonists scrambled to evade the law, primarily by turning their slaves into "indentured servants" who conveniently owed a lifetime of service.[102] But by 1829, President Vicente Guerrero put a damper on even these efforts, when he issued a decree

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[96] *Id.*

[97] *See generally* RANDOLPH B. CAMPBELL, AN EMPIRE FOR SLAVERY: THE PECULIAR INSTITUTION IN TEXAS 15 (1989) (noting internal disputes over the institution).

[98] Letter from Stephen Austin to Governor Rafael Gonzales (Apr. 4, 1825), *in* 2 THE AUSTIN PAPERS, *supra* note 95, pt. 2, at 1065, 1067.

[99] Colonisation Law of 1823, No. 5, Art. 30, *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS, 1822-1897, at 30 (1898).

[100] Padron a la Colonia de Austin 9-17 (1826).

[101] Const. of the State of Coahuila and Texas, art. XII, *reprinted in* GAMMEL, *supra* note 99, at 423, 424.

[102] *See generally* CAMPBELL, *supra* note 97, at 23-24 (describing system of indentured servitude). Contemporary observers noted how, despite the law requiring terms of indenture, blacks were for all practical purposes held as slaves for life. *See* FROM VIRGINIA TO TEXAS, 1835, DIARY OF COLONEL WILLIAM F. GRAY 67-68 (A.C. Gray ed., 1965) (1909); AMOS ANDREW PARKER, TRIP TO THE WEST AND TEXAS 162 (Arno Press ed. 1973) (1835). Notwithstanding these observations, there are occasional examples of shorter terms. *See, e.g.* Memorials and Petitions to Congress, Petition of James Robinson, by Robert Eden Handy, at 1 (Apr. 26, 1838) (indicating that Robinson came to Texas in 1835 with his master, Handy, to whom he was bound until 1844) [hereinafter "Congressional Petitions"].

ordering immediate emancipation of slaves everywhere in the republic. Though the quick intervention of the slaveholding interests convinced the President to exempt Texas from its general scope,[103] the following year the government took a position that discouraged even the most resolute. In April of 1830, growing increasingly concerned that the colonists' views on slavery put them at odds with national interests, the Mexican government decided to close off immigration from North America entirely and did not open it up again until 1834.[104]

Yet, notwithstanding this wavering position on both slavery and immigration, the settlers kept coming. For these industrious men and women, the promises of a better life outweighed the rules and ideologies of a distant government. Land in Texas was cheap and abundant; the streams and rivers flowed deep and cool; and the soil was dependable and fertile. In southeast Texas—in the area known first as Jefferson County before Orange County was created—two of the first settlers were Bob Johnson and his wife. They reportedly crossed over from Louisiana in 1824 and settled a short distance west of the Sabine, near the site of what would become the town of Orange.[105] Soon after, members of the Jett family, followed by David and Jacob Garner, and later by John Harmon, set down their roots.[106] Further west, George A. Pattillo arrived with his family in 1830.[107] Pattillo was a wealthy landowner who would come to play an important role in the county as a political leader and judge.[108] Around the same time, Gilbert Stephenson and his brothers cleared a portion of the land along the Neches.[109] Claiborne West was another influential early settler.[110] Active in local politics, West was one of the signers of the Texas Declaration of Independence; he claimed land across the bayou from Pattillo.[111] Others, like Jesse Dyson, ventured over from the same part of Louisiana as the Ashworths.[112] He was the one-time husband of Abner's future wife and

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[103] *See* CAMPBELL, *supra* note 97, at 25-26 (detailing responses to decree and eventual decision to exempt Texas).

[104] *See id.* at 27 (tying the 1830 decree ending immigration to Mexico's concern about the loyalty of the colonists).

[105] *Inventory of the County Archives of Texas, Orange County*, *supra* note 24, at 1-2.

[106] *Id.* at 2.

[107] *Id.*

[108] *See* 1850 CENSUS: Free Inhabitants, *supra* note 3, Jefferson County, Tex., at 508 (family # 185) (valuing real estate of entire family at close to $2000); *see also* 5 THE NEW HANDBOOK OF TEXAS, *supra* note 17, at 93 (George A. Pattillo).

[109] *Inventory of the County Archives of Texas, Orange County*, *supra* note 24, at 2.

[110] *Id.*

[111] *See* 6 THE NEW HANDBOOK OF TEXAS, *supra* note 17, at 886 (Claiborne West); *see also* Map of Orange County.

[112] *Inventory of the County Archives of Texas, Orange County*, *supra* note 24, at 2. The 1830 census lists Jesse Dyson as a resident of the same parish as the Ashworths. 1830 CENSUS, *supra* note 80, St. Landry Parish, La., at 33.

was no doubt familiar with the family.[113] In fact, William would later buy hundreds of acres from Jesse's brother, along with portions of the headrights of Gilbert Stephenson and John Jett.[114]

It seems reasonable to assume, moreover, that the same interests and desires that brought these early settlers also convinced William and Delaide to cross the Sabine River in 1831. They, like so many others, would have looked across the vast expanses of open country to see the tremendous opportunities that awaited those willing to invest in the land and work hard. Some of William's family members also crossed over into Texas around the same time. His brother Aaron moved with his family in 1833, and his brothers Abner and Moses brought their families in 1834 and 1835, respectively.[115] His brother Jesse was also here for a time, having arrived by 1840,[116] and his oldest brother James and his family came sometime before the end of the decade.[117] Other members of the Ashworth family came as well. In fact, in the 1846 tax records, the first full year of Texas statehood, there were thirteen Ashworth families residing in Jefferson County.[118] This did not include Moses, who had died in 1838.[119] Nor did it

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[113] *See* Jefferson County Deed Book "E," at 298 (July 1845) (settling right of inheritance of Lieze alias Melissa Elliot, who was the "daughter of Rosalle Ashworth by her former husband Jesse Dyson"). The "marriage" of Jesse and Rosalie appears to have been a common-law marriage of unknown duration. It is likely, however, that Abner and Rosalie were living together as husband and wife by the time Abner migrated to Texas in 1834. *See infra* note 323 (discussing marriage of Abner and Rosalie). Indeed, during the same month that Abner and Rosalie filed their marriage application in Jefferson County, Jesse Dyson also applied for a license to marry Hester Perkins. Jefferson County Marriage Record Book "A-B," at 9 (Jan. 1838). Jesse and Hester appear in the 1860 census records for Calcasieu Parish; he is listed as a 55-year-old white man and she is listed as a 44-year-old mulatto female. 1860 CENSUS: Free Inhabitants, *supra* note 21, Calcasieu Parish, La., at 44 (family #322).

[114] In October, 1835, William Ashworth and John Veatch purchased the front half of William Dyson's league along the Cow Bayou for $500. Deed from William and Josephine Dyson to William Ashworth and John Veatch, Jefferson County Deed Book "C," at 345 (Oct. 10, 1835). In March, 1838, Ashworth bought the other half of Dyson's league for $1. Deed from William and Josephine Dyson to William Ashworth, Jefferson County Deed Book "A", at 100 (Mar. 6, 1838). In January, 1840, Ashworth bought the quarter league owned by John Veatch for $500. Deed from John Veatch to William Ashworth, Jefferson County Deed Book "C," at 335 (Jan. 2, 1840). In 1843, William purchased the west half of Gilbert Stephenson's league for $1000. Deed from Gilbert Stephenson to William Ashworth, Jefferson County Deed Book "E," at 125 (Nov. 11, 1843). In 1849, he acquired 200 acres of the John Jett league. Deed from John Williams, dec'd, to William Ashworth, Jefferson County Deed Book "G," at 208 (Aug. 1, 1849).

[115] Headright Certificate for Aaron Ashworth, No. 109 (Jefferson Cty. Mar. 5, 1838); Headright Certificate for Abner Ashworth, No. 110 (Jefferson Cty. Mar. 5, 1838); Headright Certificate for Moses Ashworth, No. 170 (Jefferson Cty. June 8, 1838).

[116] *See* Jefferson County Tax Rolls for 1840; *see also* G.A. Patillo [sic], Pattillo's Postoffice, Jefferson County, Texas, to Mirabeau Buonaparte Lamar, Austin, Texas, Feb. 24, 1840, *in* 3 THE PAPERS OF MIRABEAU BUONAPARTE LAMAR 340 (Charles Adams Gulick, Jr. & Katherine Elliot eds.) (referencing 1840 "petition of Jesse Ashworth to be allowed to stay in the Republic until the next meeting of Congress"). By 1850, however, Jesse evidently had moved back to Calcasieu Parish. *See* 1850 CENSUS: Free Inhabitants, *supra* note 3, Calcasieu Parish, La., at 778 (family #436). He was still living there in 1860. *See* 1860 CENSUS: Free Inhabitants, *supra* note 21, Calcasieu Parish, La., at 104(family #748).

[117] It is not known whether James ever lived in Jefferson County, as he does not appear in any of the surviving tax records. However, by 1850, he was living in Angelina County. 1850 CENSUS: Free Inhabitants, *supra* note 3, Angelina County, Tex., at 74 (family #101). He was still living there ten years later. 1860 CENSUS: Free Inhabitants, *supra* note 21, Angelina County, Tex., at 36 (family # 284).

[118] *See* Jefferson County Tax Rolls for 1846 (taxing Aaron, Aaron Jr., Abner, David, Henderson, Hetta, Jesse, Joshua, Luke, Louisa, Mary, Williams, Jr., and William).

include any Ashworth women who had married and changed their names.

It is important to keep in mind, of course, that the Ashworths were not the only free people of color who came to Texas around this time. Their numbers were never very large—they probably never exceeded about five hundred anytime before the Civil War[120]—but their stories are as important as they are diverse. Between the Brazos and Colorado rivers, Lewis B. Jones was welcomed into Austin's colony in 1826.[121] In Nacogdoches, in east Texas, Juan Baptiste Maturin made his home in the early 1820s.[122] Nearby, William "Goyens"—assuredly a member of the well-known Goings family—impressed one visitor with his industry and considerable property; an early settler, he was known as a "very respectable coloured man."[123] Greenberry and Caroline Logan also arrived before the Texas Revolution, as did Samuel McCulloch, Jr., Thomas Sevolla, Joseph Tate, Robert Thompson, and Diana Leonard.[124] In Jefferson County, near the Ashworths, there was Aaron Nelson, John Willis, Hiram Bunch, John and Henry Bird, Jeremiah Going—a likely relative of William Goyens—and Elijah and Elisha Thomas, each no doubt seeking to prosper by means and methods no different from their white neighbors.[125]

But, for as much as they were like others, it is worth pointing out that Texas probably had a special draw for these individuals, for at the time the laws of Texas did not burden free people of color with the disabilities of race. In fact, soon after William and Delaide moved to Texas, the abolitionist Benjamin Lundy was in the region exploring the possibility of

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[119] *See* Estate of Moses Ashworth, Cause #245, at 1 (inventory of estate) (Apr. 14, 1838) (indicating year of death).

[120] An unofficial census from 1847 counted 295 free people of color. William R. Hogan, *State Census of 1847*, 50 S.W. HIST. Q. 116, 118 (1946). There were 397 in 1850. 1850 CENSUS: Statistical View, *supra* note 85, at 504. By 1860, the number of free people of color dropped to 355. POPULATION OF THE UNITED STATES IN 1860; COMPILED FROM THE ORIGINAL RETURNS OF THE EIGHTH CENSUS 486 (1860) [hereinafter 1860 CENSUS: Population].

[121] Congressional Petitions, *supra* note 102, Petition of Lewis B. Jones, at 1 (Oct. 8, 1837).

[122] *See id.* Petition of Juan Baptiste Maturin, at 1 (Apr. 21, 1838) (suggesting that he emigrated around 1822, fifteen years before the date of his petition).

[123] THE LIFE, TRAVELS AND OPINIONS OF BENJAMIN LUNDY 116 (Negro Universities Press 1969) (1847); *see also* Congressional Petitions, *supra* note 102, Petition of William Goyens, at 1 (May 4, 1838) (noting he arrived as early as 1820). For a detailed account of Goyens' life, including his economic successes, see Treat, *supra* note 14.

[124] *See* Congressional Petitions, *supra* note 102, Petition of Greenberry Logan & wife Caroline, at 1 (March 13, 1837) (noting how they arrived in Texas in 1831); *id.* Petition of Samuel McCulloch, Jr., at 1 (no date) (stating that he emigrated in 1835); *id.* Petition of Thomas Sevolla, at 1 (Nov. 7, 1851) (testifying that he had lived in Texas since 1836); *id.* Petition of Joseph Tate, at 1 (Nov. 1839) (swearing that he had been living in Texas "many years before" the Revolution); *id.* Petition of Robert Thompson, at 1 (Dec. 13, 1840) (stating that he came to Texas in 1831); *id.* Petition of Diana Leonard, at 1 (Dec. 14, 1840) (stating that she came to Texas in 1835).

[125] Each name can be found in GIFFORD WHITE, FIRST SETTLERS OF JEFFERSON COUNTY, TEXAS 6-26 (1984) (listing applicants to the board of land commissioners). Their race is listed in later records rejecting their headright claims. Report of Commissioners to Detect Fraudulent Certificates Covering 15 Counties, Jefferson County, Tex., at 447 (May 22, 1841). For more on the issue, see *infra* notes 231-247 and accompanying text.

setting up a colony specifically for free persons of color.[126] The plan would never come to fruition, however; the politics and prejudices of others would eventually force Lundy to abandon his ideas at the outset of the Texas Revolution. But his efforts to settle the area do say something significant about the opportunities available to free people of color. At least under the law—and unlike anywhere else in the South—they had the same rights and privileges as whites. As John and Henry Bird would put it, they were "citizens under the Colonization laws of the Mexican United States," and they expected to be treated as such.[127]

B. "all his interests sympathies and feelings"

Having arrived in 1831, William and Delaide's first few years in the colony no doubt were difficult, as they would have been for most others. Without legal permission to immigrate they did not file for a land patent until much later;[128] yet they evidently did stake out an area near the Neches River as their own.[129] The home they built, if it was like others, would have been crudely constructed, out of rough-hewn logs, chinked up with mud and grass. It was probably built in the Louisiana dog-trot style, with an open passageway between two rooms to let the breeze flow through.[130] Holes were likely cut in the walls to serve as windows, and out of them a visitor may have recognized the aroma of jerked beef, cooked in methods learned from their old Louisiana neighbors.[131] The house was likely comfortably, if sparingly, furnished. There would have been a few beds for the children and one for the parents, together with a few chairs, a table, and a dresser.[132] Among some of their other possessions no doubt were pots for cooking and utensils for eating. William also surely had a rifle leaning against the fireplace, where it could be easily found. Neither William nor Delaide could ever read so it is highly unlikely that any books graced the cabin in these early days.[133] But any visitor would likely have been struck with the

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[126] *See* LUNDY, *supra* note 123. For a helpful synopsis of Lundy's life and his travels in Texas, see Merton L. Dillon, *Benjamin Lundy in Texas*, 63 SW. HIST. Q. 46 (1960).

[127] Congressional Petitions, *supra* note 102, Petition of Henry Bird and John Bird, at 1 (Dec. 1, 1836).

[128] The records indicate that William Ashworth put together his application for a land patent in November 1834, the year the ban on immigration from the United States was lifted. Character Certificate of William Ashworth, *supra* note 93.

[129] One of the early records references "Ashworth's old field" along the Neches River near Beaumont. Hutchinson v. Ashworth, No. 40, at 1 (Tex. Dist. Ct. Jefferson Cty. Mar. 1845).

[130] *See* OLMSTED, *supra* note 10, at 382 (commenting that the houses near Beaumont "showed a tendency to Louisiana forms").

[131] *See id.* (stating that the tables were set in the "French style of serving the jerked beef").

[132] *See* Schedule of Adelaide Ashworth's property, Orange County Deed Book "A," at 197 (May 21, 1860) (detailing property owned by Delaide and William).

[133] The 1850 and 1860 censuses have a box for "persons over 20 years of age who cannot read & write." In both years, William and Delaide are marked as illiterate. 1850 CENSUS: Free Inhabitants, *supra* note 3, Jefferson County, Tex., at 241 (family #107); 1860 CENSUS: Free Inhabitants, *supra* note 21, Orange County, Tex., at 28 (family #186).

brass clock that ticked away the time—a possession that, though it hardly put them among the elite, certainly indicated that they had more than most.[134]

Indeed, throughout the time they lived in Texas, the Ashworths in general and William and Delaide in particular demonstrated a level of business savvy and economic success not seen by many. In fact, some of the earliest records from Jefferson County show William capitalizing on an opportunity to ferry people and their possessions across the bay and up the river near the developing town of Beaumont. The exact year he started this endeavor is not known, but he had evidently been doing it long enough that when the recently formed county court met in Jefferson following independence from Mexico, the decision to reward him with an exclusive license appears to have passed without much discussion.[135] River travel, of course, was the main source of transportation in these early years; anything approaching a road had yet to be built, with overland traffic confined to primitive cattle paths.[136] William's ferry operation was thus as important as it was profitable. Early records from the county commissioner's court indicate a detailed pricing scheme: passengers seeking to cross both bayous $.37½, one bayou $.18¾, the lake and river $.75, from the old field to the sand bar $.25, from the old field to Beaumont $.50.[137] Persons on horses or with wagons were charged more, with William authorized to charge as much as $6.00 for a wagon and a team of horses.[138] A few years later, with settlers continuing to flow in and with saw mills going up along the river, William sought to amend his license to allow a neighbor, William Beard, to help him, offering a strong hint that business was strong if not growing.[139] At least Joseph and Nancy Hutchinson thought so. They sued Ashworth in 1845, alleging that William was operating his ferry in violation of a license granted to Nancy in 1838, damaging them in excess of one thousand dollars.[140] The suit was apparently frivolous, however. William had it dismissed, costs were awarded, and Nancy was forced to give the unusual

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[134] *See* II 1840 CITIZENS OF TEXAS, TAX ROLLS 94 (Gifford White ed. 1984) (listing a brass clock among William Ashworth's possessions); *see also* Schedule of Adelaide Ashworth's property, *supra* note 132, at 197 (indicating that William owned two clocks).

[135] *See* Jefferson County Commissioner's Court Minute Book "A", at 5-7 (Jan. 1838) (approving Ashworth's application for a license, "authorizing him to continue his ferry over the two Bayous and the river Neches").

[136] *See Robert E. Russell, A History of Orange* (Jan. 1911) (Loren LeBlanc ed.) ("Before the days of the railroads here, everyone wishing to go to or from Orange had to travel either by water or by horseback."). Russell came to Orange in 1854 as a boy. *Id.* at __. The first recorded meeting of the Jefferson County Commissioner's Court indicates that building roads and awarding ferry licenses were among the first order of business. *See* Jefferson County Commissioner's Court Minute Book "A," at 1-2 (Jan. 1838).

[137] Jefferson County Commissioner's Court Minute Book "A-2," at 3-4 (Feb. 1838).

[138] *Id.*

[139] Applications and Petitions for Ferry License, Petition 1 (Tex. Cty. Ct. Jefferson Cty. June 9, 1845).

[140] *See* Joseph Hutchinson v. William Ashworth, No. 34, at 1 (Tex. Dist. Ct. Jefferson Cty. Jan. 1845). Related filings appear under case number 40 and 41. *See* Jefferson County District Court Minute Book "A", at 28-29, 37-38, 46-47, 49, 58, 73.

promise that "she will no further prosecute the suit."[141]

William's success in his business operations arguably shows much more, however, as it provides good evidence of the fluid conditions of race. At least along the banks of the Neches River, free people of color and whites coexisted on terms that allowed for their common interests and experience. But this does not mean that race was never an issue. Within a few years of the Ashworths's arrival, concerned citizens in Beaumont formed themselves into a "committee of safety" to protest unspecified plans (perhaps Lundy's) to colonize parts of Texas with free people of color.[142] Working themselves into a feverish pitch, the committee wrote to the provisional government of Texas—formed after Texas went to war with Mexico—demanding that the General Council act quickly to protect residents from "acts of wantonness too tedious to mention at this time."[143] Whether the committee also had the Ashworths, the Birds, the Nelsons, the Goings, and the other residents of Jefferson County in mind is not known. But one thing is certain: notwithstanding the lack of evidence, the General Council found the committee's concerns justified. "The residence of such free negroes and mulattoes among us," it summarily concluded in January of 1836, "would prove an evil difficult to be remedied should it once be tolerated."[144] The resulting ordinance, passed in a clear indication of a growing Southern influence, for the first time made it unlawful "for any free negro or mulatto to come within the limits of Texas."[145]

The ordinance, by its terms, was prospective only; hence it did not apply to the Ashworths or anyone else who had arrived before its enactment.[146] But the committee's actions and the Council's response nonetheless sent the decisive message that, at the same time Texans were shouting for freedom and independence from Mexico, free people of color were not part of the community they hoped to build. The rationale for such a drastic law was clear: it was for the very pragmatic reason of limiting the imagined influence of free people of color on the slave population. "[F]ree negroes in a slave State [are] a great nuisance," one contributor to a local paper would muse.[147] They "are certainly a most obnoxious and dangerous

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[141] For the promise given by Nancy Hutchinson, see Jefferson County District Court Minute Book "A", at 58. For costs, see *id.* at 28-29, 29, 46-47, 73.

[142] *See* Beaumont Committee to Henry Millard, Dec. 2, 1835, in I OFFICIAL CORRESPONDENCE OF THE TEXAS REVOLUTION, 1835-36, 160-61 (William C. Binkley ed. 1936).

[143] *Id.*

[144] Proceeding of the General Council (1836), *reprinted in* 1 GAMMEL, *supra* note 99, at 720-21.

[145] *Id.*

[146] Schoen was not able to find any prosecutions under this law; he points out further that it was suspended by the constitution of the Republic of Texas in September, 1836. Schoen, *supra* note 14, pt. 4, at 174.

[147] *Free Negroes Sent Off*, THE MARSHALL REPUBLICAN, Dec. 6, 1856, at 2.

population."[148] Texans were not especially creative in this regard; they followed the lead of others and regurgitated elaborate myths about the content and character of people of African descent. Blacks under the hand of a strong yet caring master, they argued, were productive and contented creatures; as free, however, they "relapse into savage barbarity."[149] Indeed, in contrast to slaves, free people of color were a "miserable, starved, degraded race."[150] Left to their own devices, they became "idle and dissipated," with the offspring generally "more objectionable than the original stock."[151] With such dim prospects and potential for danger, the General Council thus viewed their presence as a threat of the first order. "The infusion of dissatisfaction, and disobedience, into the brain of the honest and contented slave, by vagabond free negroes," it said, "cannot be too promptly and strongly guarded against."[152]

Yet, notwithstanding these dire warnings, there is of course little to suggest that free people of color in Texas were anything but productive and contributing members of their committees. In the towns and cities, free people of color worked successfully if unassumingly as washers, milkmaids, barbers, and on the docks.[153] Others made their living as waggoners and day laborers, cooks and carpenters.[154] James Richardson sold oysters and refreshments on the road between Velasco and San Luis in Brazoria County; his services were thought valuable because he lived where "a white person equally serviceable could not be expected to reside."[155] A great many free people of color in Texas were also farmers or ranchers, with some even accumulating modest or considerable wealth. In the County of Jackson, for example, the Reynolds and the McCullochs were both highly successful cattle raisers.[156] Juan Baptiste Maturin likewise boasted of the "valuable improvements" he had made to the 4428 acres he owned in Nacogdoches County, which allowed him to support his large family over

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[148] *Id.*

[149] *The Worst Enemies of Slavery*, THE AUSTIN SOUTHERN INTELLIGENCER, Jan. 5, 1859, at 2. For a general discussion of white southerners views of free blacks, see GEORGE M. FREDRICKSON, THE BLACK IMAGE IN THE WHITE MIND: THE DEBATE ON AFRO-AMERICAN CHARACTER AND DESTINY, 1817-1914, 53-55 (1971).

[150] *Free Colored Population in the South*, THE MARSHALL REPUBLICAN, Mar. 10, 1860, at 1.

[151] *Free Negroes Sent Off*, *supra* note 147.

[152] Proceeding of the General Council (1836), *reprinted in* 1 GAMMEL, *supra* note 99, at 720-21.

[153] *See, e.g.,* 1860 CENSUS: Free Inhabitants, *supra* note 21, Travis County, Tex., at 83 (family #613) (Sylvia Green: washerwoman); *id.* Cameron County, Tex., at 5 (family #41) (Sarah Huey: milkmaid); *id.* El Paso County, Tex., at 12 (family #90) (Louis Hudson: barber); *id.* Galveston County, Tex., at 118 (family #912) (Richard: employee of wharf master).

[154] *See, e.g.,* 1860 CENSUS: Free Inhabitants, *supra* note 21, Washington County, Tex., at 84 (family #516) (Henry: waggoner); *id.* Nacogdoches County, Tex., at 88 (family #619) (A.J. Morrow: day laborer); *id.* Maverick County, Tex., at 18 (family #156) (Andrew Cox: cook); *id* Matagorda County, Tex., at 32 (family #239) (Stephen Taylor: carpenter).

[155] Congressional Petitions, *supra* note 102, Petition of James Richardson, at 1 (Oct. 19, 1840).

[156] *See* 1860 CENSUS: Free Inhabitants, *supra* note 21, Jackson County, Tex., at 31-32 (family #230, 231) (listing considerable wealth in both real and personal property).

the course of fifteen years.[157] Over in Brazoria and later in Fort Bend County, Greenberry Logan owned a boarding house and worked as a blacksmith, amassing an estimated $5500 in real and personal property by 1860.[158] In the same year, Peter Martin, the one-time slave of Texas statesman Wylie Martin, listed his employment as a cook and the value of his real estate as $1200.[159]

But perhaps the strongest indication of their loyalties lay in their contributions to the war against Mexico in 1835-36. Samuel McCulloch, Greenberry Logan, James Richardson, and Henry Bird all fought on behalf of Texas; Samuel McCulloch, in fact, was shot in the battle at Goliad in October, 1835, allowing him to later claim the dubious honor of being "the first whose blood was shed in the War of Independence."[160] Others, recognizing that wars cannot be won solely through numbers, lent money and supplies. Robert Thompson of Montgomery County, for example, "stood a draft for a tour in the army and though not drafted he furnished a valuable mare and rifle gun for the use of the army of Texas."[161] William Goyens also played a unique role. He served as an interpreter in Sam Houston's negotiations with the Cherokees in order to prevent Mexico from staging a rear attack.[162] Afterwards, he was "appointed a regular Indian agent," and freely gave his support to the defense of Texas "by furnishing horses, provisions, and money."[163]

In retrospect, such actions hardly seem surprising. Just like their white neighbors, the free men and women of color who ventured into Texas before the Revolution surely looked upon their newly built homes and their developing communities with distinct pride and a shared sense of commitment. They had staked their livelihoods here, and like others no doubt came to view certain actions of the Mexican government as oppressive and intolerable. The high import duties imposed by the Mexican government, for example, did not distinguish between the races, and free

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[157] Congressional Petitions, *supra* note 102, Petition of Juan Baptiste Maturin, at 1 (Apr. 21, 1838) (indicating that he received one sitio—or 4428 acres—of land from the Mexican government).

[158] *See id.* Petition of Greenberry Logan & wife Caroline, at 1 (March 13, 1837) (stating, in 1837, that he was "engaged in keeping a boarding house" in the town of Brazoria); *see also* 1860 CENSUS: Free Inhabitants, *supra* note 21, Fort Bend, County, Tex., at 7 (family #41) (listing value of Greenberry Logan's property).

[159] 1860 CENSUS: Free Inhabitants, *supra* note 21, Fort Bend, County, Tex., at 32 (family #238).

[160] Congressional Petitions, *supra* note 102, Petition of Samuel McCulloch, Jr., at 1 (no date). For Logan, see *id.* Petition of Greenberry Logan & wife Caroline, at 1 (March 13, 1837) (noting that he fought at the battle of Mission Concepción on October 28, 1835, and also marched on the town of San Antonio in December). For Richardson, see *id.* Petition of James Richardson, at 1 (Oct. 19, 1840) (stating that he volunteered for Captain Thomas Bell's garrison at Velasco). For Bird, see *id.* Petition of Henry and John Bird, asking for headright, at 2 (Dec. 1, 1836).

[161] *Id.* Petition of Robert Thompson, at 1 (Dec. 13, 1840).

[162] Schoen, *supra* note 14, pt. 2, at 30.

[163] Congressional Petitions, *supra* note 102, Petition of William Goyens, at 1 (May 4, 1838).

people of color were likely just as discouraged as white settlers that the 1830 prohibition on immigration prevented them from legally owning the land they may have occupied for years.[164] Thus, when the rumors of rebellion began circulating, many of them proved as eager as their white counterparts to pick up arms and fight.

As for the Ashworths, William played the most notable role in the war, joining the military at the outset of conflict. He was a volunteer soldier under Captain David Garner, serving for roughly three months during the fall of 1835.[165] During that time, he was involved in the so-called "grass fight," an attack on the Mexican cavalry outside San Antonio on November 26.[166] The battle earned its name because the soldiers, led by the famous Jim Bowie, thought the cavalry was carrying the payroll for the Mexican army inside the city. As it turns out, after battling back and forth the entire day, the victorious Texans discovered that their captured bounty were simply bags of grass for the Mexican horses rather than the money they hoped to find.[167] Soon after, William was honorably discharged.[168] Later, as the fighting continued into the spring and summer, he would send a substitute to serve in Captain B.J. Harper's company of Beaumont volunteers, where his brother Aaron either served or also sent a substitute.[169]

It thus seems fair to say that when the committee on safety at Beaumont spoke wildly about the dangers posed by free people of color, William and his family must have viewed their actions with a mix of disbelief and frustration. Like many others, both white and black, they had given up much to come to Texas and even more to stand up and defend it. Joseph Tate arguably summed up the sentiment of the Ashworths and others like them as well as anyone. As he put it, "he is and has been at all times both ready and willing to render every aid and assistance in his power in defense of the Republic, its constitution and laws."[170] Or, as Peter Allen mused, "all his interests sympathies and feelings" were with the South.[171]

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[164] *See generally* Schoen, *supra* note 14, pt. 2, at 26 (suggesting why free people of color "rightly considered the welfare of all Texans to be their own").

[165] Application for Veteran Land Certificate, Delaide Ashworth, widow of William Ashworth, Voucher File No. 1110, at B (May 5, 1884) (affidavit of Delaide Ashworth).

[166] *Id.*

[167] *See* CAMPBELL, *supra* note 44, at 138 (providing background on battle); *see also* 3 THE NEW HANDBOOK OF TEXAS, *supra* note 17, at 286-87 (Grass Fight).

[168] Application for Veteran Land Certificate, Delaide Ashworth, *supra* note 165, at B.

[169] *Id.* at D (affidavit of John Turner); *see also* Application for Veteran Land Certificate, Mary Ashworth, widow of Aaron Ashworth, Voucher File No. 912 (May 5, 1884) (Proof to Procure Land Certificate for Widow of Texas Veteran).

[170] Congressional Petitions, *supra* note 102, Petition of Joseph Tate, at 1 (Nov. 1839).

[171] *Id.* Petition of Peter Allen, at 1 (Feb. 2, 1863).

III. LAW AND LOCAL EXPERIENCE

A. "We care nothing for Slavery as an abstraction"

In the 1830s, at the time of the Ashworths's arrival, Texas may have been a country filled with opportunity, but it was an opportunity that depended in large part on owning property and putting it to good use. As such, even before the fighting began, William and his brothers devoted considerable effort to obtaining land. Mexico had removed the ban on immigration in 1834, and soon after the Ashworths starting putting together the necessary paperwork and obtaining the required signatures to file for their patents. William Hardin, a well-known lawyer, politician, and land speculator from Liberty, Texas,[172] spoke highly of William Ashworth, insisting in William's character certificate that he was "a man of good moral and industrious habits."[173] Claiborne West, local political leader and one of the early settlers to the area, said the same about Aaron Ashworth.[174] Abner Ashworth had John Stewart, the commissioner for the precinct at Cow Bayou, provide testimony on his behalf.[175] Their title applications, found in their original Spanish, also indicate that they all were family men, each having between five and six children.[176]

The title applications were never finished, however; the timing suggests that they may have stalled as a result of the impending war. Whatever the reason, though, it proved to be particularly unfortunate, as the Ashworths's standing in the first years of the republic became much more precarious than it was just a short while before. To be sure, no serious historian disputes anymore that race and slavery, though far from being the sole cause of the Texas revolution, played a significant role.[177] Too many whites had staked their future in human property for it not to have weighed heavily in their considerations. Stephen F. Austin, the "Father of Texas," had made as much clear in the summer of 1835—a few months before the fighting began—after listening to the constant grumblings of his constituents. "*Texas must be a slave country*," he resolved in a letter to his

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[172] *See* 3 THE NEW HANDBOOK OF TEXAS, *supra* note 17, at 455-56 (William Hardin).

[173] Character Certificate of William Ashworth, *supra* note 93.

[174] Character Certificate of Aaron Ashworth as part of his Application for Mexican Land Grant (Apr. 25, 1835).

[175] Character Certificate for Abner Ashworth as part of his Application for Mexican Land Grant (Jan. 12, 1835).

[176] *See* Unfinished Title of William Ashworth, at 1 (Jan. 31, 1835) ("con mi familia constando de seis personas"); Unfinished Title of Aaron Ashworth, at 1 (May 1, 1835) ("con mi mujer y seis hijos"); Unfinished Title of Abner Ashworth, at 1 (Jan. 31, 1835) ("con mi familia constando de mi mujer y cinco hijos").

[177] *See generally* CAMPBELL, *supra* note 97, at 35-49 (discussing the Revolution and the role slavery played in it).

sister. "*It is no longer a matter of doubt.*"[178] Mexico's antislavery position, as inconsistently enforced as it was, had convinced many that Mexican rule had become unbearable.

During the war, therefore, Texans moved quickly and decisively to shore up any ambiguities along the race-slavery nexus. In March 1836, over a month before the decisive battle at San Jacinto, delegates to the convention at Washington-on-the-Brazos met to draft a declaration of independence and a constitution. In the final version, section 9 of the constitution's General Provisions resolved any lingering doubts over the future of the institution: "All persons of color who were slaves for life previous to their emigration to Texas, and who are now held in bondage, shall remain in the like state of servitude."[179] The provision made clear, in other words, that slaveholders no longer needed to worry about prior limitations placed on the institution by the Mexican government, nor did they need to maintain the ruse of holding their slaves as indentured servants. But the drafters had also learned from their experience with Mexico, and made sure that no elective body would change the laws and subsequently deprive them of their human property. "Congress," they wrote, "shall pass no laws to prohibit emigrants from bringing their slaves into the republic with them, and holding them by the same tenure by which such slaves were held in the United States; nor shall congress have power to emancipate slaves."[180]

In the ensuing years, Texans both encouraged and developed the institution with remarkable vigor, turning Texas from a society with slaves to a slave society.[181] After all, most of those who came here were Southerners, and many had come to see slavery as a defining part of who they were. "We care nothing for Slavery as an abstraction," insisted the editor of one local paper, "but we desire the practicality; the increase of our productions; the increase of the comforts and wealth of the population; and if slavery, or slave labor, or Negro Apprentice labor ministers to this, why that is what we want."[182] But Texans, like most others, were not mere apologists; they took their arguments to the extreme, convincing themselves that slavery was not only good for whites but for blacks as well. "Take our

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[178] Letter from Stephen Austin to Mrs. Mary Austin Holley (Aug. 21, 1835), *in* 3 THE AUSTIN PAPERS, *supra* note 95, at 101, 101-02.

[179] Repub. Tex. Const. of 1838, art. VI General Provisions, § IX, *reprinted in* 1 GAMMEL, *supra* note 99, at 1069, 1079 (1898).

[180] *Id.*

[181] *See* IRA BERLIN, MANY THOUSANDS GONE 8 (1998) (pointing out that in slave societies, unlike societies with slaves, "slavery stood at the center of economic production, and the master-slave relationship provided the model for all social relations").

[182] *The Cloud in the Distance; and considerations connected therewith*, CLARKSVILLE STANDARD, Feb. 19, 1859, at 2.

slave population," said one representative contribution, "compare it with the free labors at the North, and the most rigid investigation will only show … that the negro is best off."[183] Studying up on their history and interpreting the Bible to their liking, by the time of the Civil War most Texans talked about their way of life with enthusiasm: slavery, they insisted, was "in accordance with every page of the revealed will of God, and in perfect harmony with natural laws and universal experience."[184]

For free people of color like the Ashworths, Texans's insistence on turning the new republic into a slave country meant that the position adopted by the committee of safety at Beaumont was now official policy—blacks were wanted, but only as slaves. The drafters of the constitution in March 1836 thus threw up significant roadblocks to such things as manumission, making it illegal for any slaveholder to emancipate his or her slave without the permission of Congress, unless the owner sent the slave to Ohio or New York or some other free state.[185] In a provision that would eventually replace the January 1836 ordinance of the General Council, the drafters also prohibited future emigration of free people of color and took the draconian measure of forcing those already here to leave. "No free person of African descent, either in whole or in part," the drafters wrote, "shall be permitted to reside permanently in the republic, without the consent of congress."[186] To drive the point home, in the next section, free people of color already here were stripped of their citizenship and all the rights and privileges that went with it.[187]

It is difficult to gauge the immediate impact of these sections on the Ashworths. Surely they were aware of them; but the spring and summer of 1836 were still unsure enough that they likely had more pressing concerns. Indeed, Colonel William F. Gray recalled how hundreds of Texans had converged on the Beaumont area in April of 1836, as they fled the advancing Mexican army in what was known as the Runaway Scrape. Gray sought to cross the river "at Ashworth's ferry," but found that, like many others, the "family had left the place."[188] Even upon their return, however, without the power to vote, they would have had little say in whether the provisions should be adopted later that September.

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[183] *Slave Labor*, TEXAS STATE GAZETTE, Feb. 23, 1856, at 3.

[184] *Is the Morality of Slavery a Question for Political Parties to Decide?*, GALVESTON WEEKLY NEWS, Oct. 14, 1856, at 2.

[185] Repub. Tex. Const. of 1838, art. VI General Provisions, § IX, *reprinted in* 1 GAMMEL, *supra* note 99, at 1069, 1079 (1898).

[186] *Id.*

[187] *See id.* § X ("All persons (Africans, the descendants of Africans, and Indians excepted,) who were residing in Texas on the day of the declaration of independence, shall be considered citizens of the republic, and entitled to all the privileges of such.").

[188] GRAY, *supra* note 102, at 168.

Yet the policies behind the provisions surely would have struck them as particularly unjust, for they, like most, had long ago aligned themselves with their white neighbors. William Goyens put it explicitly. "[F]rom the date of his emigration," he said, in language that easily could have come from one of the Ashworths, "he has ever been identified with the feelings and interests of the Anglo American population."[189] Men like Greenberry Logan made similar pleas. A war veteran, he argued that his efforts and allegiances entitled him, at the very least, to "the privilege of spending the remainder of [his] days in quiet and peace."[190] It is not known precisely whether these petitions caused Congress to change its mind. But soon after, in June of 1837, in its first legislative session after the constitution was adopted, it reversed course and decided to allow free people of color "who were residing within the republic of Texas at the date of the declaration of Independence" to stay in the country.[191]

This would not end the matter, however. In a period marked as much by hope as uncertainty, for the next several years Texans wavered between their commitment to fairness and their support of slavery. Members of Samuel McCulloch's neighborhood, for example, joined him in his efforts to remain in Texas and acquire land. They attached affidavits attesting to his war service, concerned that he was being "deprived of the privileges of citizenship by reason of an unfortunate admixture of African blood."[192] But, on the national scale, things were breaking against them. Following the lead of other Southern states, Texans had begun to draw bright lines separating the races in their laws. In June 1837, Congress passed an act prohibiting interracial marriages.[193] Soon after, it categorized free people of color along with slaves when it outlined crimes worthy of capital punishment.[194] Other laws furthered this same message of racial division by making it a crime, for example, for any person of color, slave or free, to insult a white person.[195] Another law threatened free people of color with forced slavery if they mingled too much with slave property and planted the seeds of rebellion or escape.[196]

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[189] Congressional Petitions, *supra* note 102, Petition of William Goyens, at 1 (May 4, 1838).

[190] *Id.* Petition of Greenberry Logan, at 1 (March 13, 1837).

[191] Joint Resolution approved June 5, 1837, 1st Cong., R.S., 1838 Repub. Tex. Laws 232, *reprinted in* 1 GAMMEL, *supra* note 99, at 1292.

[192] Congressional Petitions, *supra* note 102, Petition of Samuel McCulloch, Jr., at 1 (no date).

[193] Act approved June 5, 1837, 1st Cong., R.S., § 9, 1838 Repub. Tex. Laws 233, 234-35, *reprinted in* 1 GAMMEL, *supra* note 99, at 1293, 1294-95.

[194] Act approved Dec. 14, 1837, 2nd Cong., R.S., § 1, 1838 Repub. Tex. Laws 43, *reprinted in* 1 GAMMEL, *supra* note 99, at 1385. Among the list were crimes particular to race and slavery: insurrection, rape and attempted rape of a white woman, assault of a white person with intent to kill, and maiming a white person. *Id.*

[195] *Id.* § 6, at 44.

[196] *Id.* § 2, at 43. The provision imposed a fine in a sum equal to the value of the slave; if the person was unable to pay it, he or she was sold into slavery. *Id.*

Thus, with memories of the war fading and with the move toward a slave society increasing, it should not be surprising to learn that the June 1837 position would soon give way. Less than three years later, on February 5, 1840, Congress passed an act recalling the most restrictive aspects of the 1836 ordinance of the General Council. In it, Congress reiterated the long-standing prohibition on free people of color immigrating into the state.[197] But it also added a new provision ordering all free people "who are now in this Republic" to leave by the first of January 1842, unless they obtained express permission of the legislature.[198] Thus, the law went as far as any had gone before, ordering every free person of color out of the Republic within two years, regardless of when they arrived, unless they petitioned Congress and received special permission to remain. The penalty for disobedience, moreover, was severe. The person, formerly free, would be subjected to fines and, if unable to pay, sold to the highest bidder as a slave for life.[199]

B. "peaceable and respectable citizens"

This basic solution to the perceived problem of free people of color was thus as simple as it was complete. But life outside the Capitol proved to be far more complex. For as much as free people of color in theory disrupted the natural order of things, at the local level many whites found that their ideologies did not match their common experiences. Many of the free people of color so easily dismissed in the laws were their neighbors; some had been here for years, contributing to their communities and often to the war effort. Thus, men and women like John and Charity Bird, Patsy, and Allen Dimery, had no trouble finding members of their communities to support their petitions to Congress,[200] nor did Diana Leonard, James Richardson, Robert Thompson, or Joseph Tate.[201] In William Goyen's petition—drafted by the famous Thomas J. Rusk, a lawyer, soldier, statesman, and judge—he insisted that he "has resided in the County of Nacogdoches for a number of years past and has conducted himself as an honest industrious citizen."[202] In further support, and with the signatures of fifty-two of his white neighbors, Goyens reminded members of Congress

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[197] Act approved Feb. 5, 1840, 4th Cong., R.S., § 1, 1840 Repub. Tex. Laws, 151, *reprinted in* 2 GAMMEL, *supra* note 99, at 325.

[198] *Id.* §§ 8, 10.

[199] *Id.* §§ 2-8 (describing procedures and penalties for disobedience).

[200] *See* Congressional Petitions, *supra* note 102, Petition of John Bird & Edward Smith (Jan. 3, 1841); *id.* Petition of Patsy (no date); *id.* Petition of Allen Dimery (Dec. 3, 1840).

[201] *See id.* Petition of Diana Leonard (Dec. 14, 1840); *id.* Petition of James Richardson (Oct. 19, 1840); *id.* Petition of Robert Thompson (Dec. 13, 1840); *id.* Petition of Joseph Tate (Nov. 1839).

[202] *Id.* Petition of William Goyens, at 1 (Nov. 25, 1840). For background on Thomas J. Rusk, see 5 THE NEW HANDBOOK OF TEXAS, *supra* note 17, at 721-22 (Thomas Jefferson Rusk).

that he was especially deserving of the right to remain, as he "has been of great service to the country in our Indian affairs."[203] Zylpha Husk's contributions may not have been as glorious. After she emigrated in 1835, she lived in Houston with her daughter, "exercising the industry of a washerwoman."[204] Yet her neighbors were just as supportive, impressed that she was "a good and industrious woman, peaceably earning her own livelihood."[205]

Members of the Ashworths's community in Jefferson County also supported their efforts to remain in Texas. In one petition from September, 1840, forty-seven citizens talked about how they "knew the Ashworths for many years" and swore that they were "peaceable and respectable citizens."[206] Among the signers were some of the early and prominent settlers mentioned previously, including John Harmon, William and Gilbert Stephenson, David Garner, John and Solomon Cole, William McFaddin, and Peyton Bland.[207] Others may have been of lesser fame but were just as impressed with the Ashworths's contributions. In fact, all agreed that the act of February 1840, would "operate oppressively upon the said Ashworths," and they therefore asked Congress to exempt them from its general scope.[208] In an attached petition on behalf of just William and his brother Abner, seventy-two citizens from Jefferson noted how the two, despite being "free persons of color," had "contributed generously to the advancement of the Revolution."[209] These signers were adamant that it was both unfair and unjust to "force[] them from the County whose battles they have fought and whose independence they assisted in achieving."[210]

In a telling sign of how much the Ashworths had turned their community upside down, one of the wealthiest slaveholders in Jefferson County, Representative Joseph Grigsby, introduced their petitions to the House in the next legislative session, on November 5, 1840.[211] The speaker immediately referred the petitions to a select committee made up Grigsby and two others.[212] The next day the committee reported back, reaffirming that, "as a general rule, it is not the true policy of this country to encourage

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[203] Congressional Petitions, *supra* note 102, Petition of William Goyens, at 1 (Nov. 25, 1840).
[204] *Id.* Petition of Zylpha Husk and daughter Emily, at 1 (Dec. 1841).
[205] *Id.*
[206] *Id.* Petition of Jefferson County Citizens for relief of free blacks, at 1 (Sept. 19, 1840).
[207] *Id.* at 1-2.
[208] *Id.* at 1.
[209] *Id.* at 3-6
[210] *Id.* at 3.
[211] *See* JOURNALS OF THE HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF TEXAS: FIFTH CONGRESS, FIRST SESSION, 1840-41, at 27 (1841) [hereinafter HOUSE JOURNAL, FIFTH CONGRESS]. For background on Joseph Grigsby, see 3 THE NEW HANDBOOK OF TEXAS, *supra* note 17, at 341 (Joseph Grigsby).
[212] HOUSE JOURNAL, FIFTH CONGRESS, *supra* note 211, at 27.

the introduction of this description of persons among us, nor even to allow them to remain."[213] Yet Grigsby's committee thought that the Ashworths "should be an exception to that rule."[214] To that end, the committee cited the Ashworths's long residence in Texas and noted how they had contributed toward the county's achievement, "both by personal services, and by their substance, generously bestowed without fee or reward."[215] Grigsby probably knew the Ashworths; though he did not sign their petition Nathanial Grigsby did.[216] As such, he likely could testify with personal knowledge about Ashworths's reputation among their neighbors; as the committee summed up, "they have at all times conducted themselves well, and are men of good credit wherever they are known, having been at all times punctual to their engagements, upright in their dealings, and peaceable in their dispositions."[217] Their words carried weight. The following Tuesday, on November 10, a bill specifically exempting members of the Ashworth family, together with another free black resident named Elisha Thomas, from the ban on free people of color passed the House.[218] Two weeks later the bill passed the Senate.[219]

The law became effective on December 12, 1840.[220] Importantly, the law—later dubbed, of all things, the "Ashworth Act"—would come to have a lasting impact, as the final version extended its scope to include not just the Ashworths but all free people of color who arrived prior to the declaration of independence:

> Be it enacted … That William Ashworth, Abner Ashworth, David Ashworth, Aaron Ashworth, Elisha Thomas, and all free persons of color, together with their families, who were residing in Texas on the day of the declaration of independence, are, and shall be exempt from the operation and provisions of an act of Congress, entitled "An Act concerning Free Persons of Color," … and that the above named persons, with their families, are hereby granted permission to remain in this republic.[221]

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[213] *See id.* at 33 (noting Grigsby reported back from committee). For the text of the report, see APPENDIX TO THE JOURNALS OF THE HOUSE OF REPRESENTATIVES: FIFTH CONGRESS 262 (1841) [hereinafter APPENDIX TO HOUSE JOURNAL, FIFTH CONGRESS].

[214] APPENDIX TO HOUSE JOURNAL, FIFTH CONGRESS, *supra* note 213, at 262.

[215] *Id.*

[216] Congressional Petitions, *supra* note 102, Petition of Jefferson County Citizens for relief of free blacks, at 2 (Sept. 19, 1840).

[217] *Id.*

[218] HOUSE JOURNAL, FIFTH CONGRESS, *supra* note 211, at 52. For a copy of the original House bill, see An Act for the relief of certain free person of color therein named, Fifth Congress, file # 1610.

[219] JOURNALS OF THE SENATE OF THE REPUBLIC OF TEXAS: FIFTH CONGRESS—FIRST SESSION 37 (1841) The bill passed on November 23, 1840. *Id.*

[220] Act approved Dec. 12, 1840, 5th Cong., R.S. 1841 Repub. Tex. Laws 85, *reprinted in* 2 GAMMEL, *supra* note 99, at 549.

[221] *Id.* The Senate's version contained the amendment adding all free people of color to its scope. *See* An Act to allow certain colored persons therein named to remain in Texas, Fifth Congress, file # 1515. The House evidently substituted the Senate bill and adopted it on November 24, 1840. *See id.* (front cover). For a more

The law, in other words, gave to the Ashworths and all free people of color who had come to Texas before March 2, 1836, the absolute right to remain here, "anything in the laws of the country to the contrary notwithstanding."[222]

But more than that. The law, which remained in effect through the end of slavery, illustrates a profound disconnect between the official position of the Republic and what was happening on the ground. At the local level, whites and blacks were forced to interact in ways that defied official policies, often forcing them to rethink and reshape their ideas about the relations between the races. It needs little elaboration, for example, to note how most whites frowned upon interracial marriages. Yet the neighbors who knew David and Sophia Towns—he was white and she was black—and their nine biracial children in Nacogdoches evidently had come to accept them as members of their community. The sixteen whites who signed the children's petition—drafted again by Thomas J. Rusk—agreed that they had always conducted themselves "in a proper and becoming manner," and stood by their claims to "cheerfully comply" with any duties and obligations imposed upon them.[223] John Bird's wife, Charity, was also extremely popular in the town of San Augustine. She was in the business of "baking and vending cakes," earning her the "reputation of an honest, virtuous, industrious, and peaceable woman."[224] Her neighbors had "no hesitancy in recommending her to the public."[225] Others took sympathy on Fanny McFarland. Freed by her master in 1835, she had lost all her possessions during the war. She later moved to Houston, and "by her industry prudence and economy … has been enabled to gather together a little property."[226] In her petition, she also noted that her four children were still held as slaves in the Republic, "so that all her hopes and prospects in this life are here."[227] Eighty-one of her neighbors, including Lorenzo de Zavala, supported her efforts to stay.[228]

In light of such realities, it only makes sense that those who lived near the Ashworths and knew of their worth supported them in their efforts to remain. William had already demonstrated his commitment to the area; as

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detailed account of the legislative proceedings, see Schoen, *supra* note 14, pt. 5, at 269-74.

[222] Act approved Dec. 12, 1840, 5th Cong., R.S. 1841 Repub. Tex. Laws 85, *reprinted in* 2 GAMMEL, *supra* note 99, at 549.

[223] Congressional Petitions, *supra* note 102, Petition of the children of David and Sophia Towns, at 1-2 (Oct. 1840). This petition was found in William Goyen's folder.

[224] *Id.* Petition of John Bird & Edward Smith, at 5 (Jan. 3, 1841).

[225] *Id.*

[226] *Id.* Petition of Fanny McFarland, at 1-2 (Oct. 30, 1840).

[227] *Id.*

[228] *Id.* at 2.

an early settler he was no doubt instrumental in helping to carve a community out of the Texas wilderness. In addition to his role operating his ferry, early records from the county also indicate that he was involved in the ever-important activity of building a road near Beaumont.[229] He and his family members also purchased land from others, furthering their standing in the community. Indeed, through a series of purchases, by 1840 William appears to have acquired all of William Dyson's league—a total of 4428 acres—along the west bank of the Cow Bayou.[230] His brothers, too, Aaron, Abner, Moses, James, and Jesse, together with their families, no doubt helped contribute in various ways to the overall development of the county. By this time, all were probably involved in both cattle raising and farming, and with sufficient wealth they had likely earned the respect of their neighbors. Combined with the contributions some of them made to the war effort, the family had likely established itself as one of the more important if not influential families in the area.

As a result, perhaps it should come as no surprise to learn that, after the community backed their efforts to remain in the county, they also came to their defense when the General Land Office refused to issue land patents to anyone in the family. Land—millions of acres of it—was what brought most settlers to Texas, and land was no doubt a primary reason the Ashworths crossed over the Sabine River in the early 1830s.[231] Yet, having failed to secure their headrights from the Mexican government before the war, the Ashworths could not legally claim any of the land on which they originally settled. Following the war, therefore, they along with thousands of others sought to obtain what they believed rightfully belonged to them and what the constitution of 1836 promised to all heads of family then living in Texas: one league and labor of land, or 4605 acres.[232]

The problem for the Ashworths was that the constitution limited grants of land to "citizens," a term that did not include free people of color.[233] Nonetheless, William and his brothers, together with a handful of other people of color with familiar names, including Bird, Thomas, Going, Bunch, Nelson, and Willis, pressed forward with their claims before the local board of land commissioners for Jefferson County.[234] Undoubtedly

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[229] Jefferson County Commissioner's Court Minute Book "A2," at 8-9 (July 1838).

[230] *See supra* note 114 (outlining deeds).

[231] *See* Congressional Petitions, *supra* note 102, Petition of William Ashworth, at 1 (Dec. 10, 1842) (stating that petitioners "emigrated originally to the State of Coahuila and Texas" for the sake of "attaining the ownership in law of the homesteads and headrights").

[232] Repub. Tex. Const. of 1838, art. VI General Provisions, § X, *reprinted in* 1 GAMMEL, *supra* note 99, at 1069, 1079-80. A league consisted of 4428 acres and a labor 177 acres. *Id.*

[233] *See id.* ("All persons (Africans, the descendants of Africans, and Indians excepted,) who were residing in Texas on the day of the declaration of independence, shall be considered citizens of the republic.").

[234] I am deeply indebted to John Molleston, Information Specialist for Archives and Records at the General

sympathetic to their situation, the local board awarded each a land certificate in 1838 and 1839, entitling each of them to a specified amount of land.[235] Some may have gone ahead with the next step, having their desired land surveyed; William, however, had already done so back in 1835, presumably as part of his application to the Mexican government.[236] Yet the General Land Office, which had been created "to superintend, execute and perform all acts and things touching or respecting the public lands of the republic of Texas," refused to award him the land.[237] Concerned about growing evidence of fraudulent claims, the head of the Land Office in Austin had appointed a special traveling board of land commissioners to go to every county in the republic to investigate each certificate issued. Upon their arrival in Jefferson County, the traveling board rejected the certificates of the Ashworths, the Birds, the Nelsons, the Thomases, and the others. The stated reason: they were "coloured persons."[238]

Motivated to act, and undoubtedly struck by the injustices of the traveling land board's actions, the Ashworths once again turned to their neighbors. This time, they marshaled the support of over seventy leading residents, who insisted in a petition for relief that the Ashworths and the others were "good and worthy members of the community," who, "had there been no taint of blood in their veins," would have been entitled to land.[239] Adding strength to their petition, all three members of the local board of land commissioners in Jefferson County signed off on their plea, and so too—in a strange yet fantastically revealing statement—did the members of the traveling land board who had denied their certificates in the first place.[240] The consensus seemed to be that the law prevented the Ashworths from obtaining headrights—they were not, as the petition conceded, "Citizens under the Constitution"—yet all "view[ed] with strong feelings of sympathy the situation of these worthy families."[241] Referring to

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Land Office, for helping to explain the dizzying land grant process for this period.

[235] *See* Report of Commissioners to Detect Fraudulent Certificates, *supra* note 125, at 447. Notably, the land commissioners denied on at least one occasion a land grant to a person of color, Joseph Tate. *See* Headright Certificate for Joseph Tate (Jefferson Cty. Dec. 6, 1839) (objecting to granting Tate a certificate "on account of his coulor [sic]").

[236] Headright Certificate for William Ashworth, *supra* note 43 (stating, at the time Williams received his land certificate, that "the above William Ashworth has in his possession an Order of Survey bearing date of Nacogdoches Jany. 31st 1835 and granted by Jorge Ariba [?] Nixon."); *see also* 4 THE NEW HANDBOOK OF TEXAS, *supra* note 17, at 1021 (George Antonio Nixon) (describing Nixon's role as land commissioner who sold land on the empressario grants of, among others, Lorenzo de Zavala).

[237] *See* Act approved Dec. 22, 1836, 1st Cong., R.S., 1838 Repub. Tex. Laws 216, *reprinted in* 1 GAMMEL, *supra* note 99, at 1276.

[238] Report of Commissioners to Detect Fraudulent Certificates, *supra* note 125, at 447.

[239] Congressional Petitions, *supra* note 102, Petition of William Ashworth, at 1 (Dec. 10, 1842). A portion of the final page of signatures has been destroyed, leaving the precise number of signers unknown.

[240] The local board consisted of Joseph Grigsby, H. Littlefield, and Joseph [illegible], and the traveling land board consisted of Nathan Halbert, Robert W. Smith, and H. L. Williams. All signed the document. *Id.* at 2.

[241] *Id.*

them as "industrious and orderly," the seventy-odd neighbors and supporters urged Congress to pass a special law for their benefit, or at the very least allow them to hold land either as "aliens or by lease for a long term of years."[242]

The petition was introduced to the House on December 10, 1842, where it was immediately referred to the Committee on the State of the Republic.[243] The Committee reported back several days later, referring to the Ashworths and the others as "good, orderly, industrious persons."[244] After confirming the facts in the petition, and careful not to avow "any partiality for this description of population," the Committee nonetheless recommended the passage of a bill requiring the Land Office to issue patents on the certificates issued by the Jefferson County board.[245] The bill passed the House on a vote of 18 to 9, and then went to the Senate where it passed without recorded opposition.[246] The president subsequently signed the bill in January, 1843, directing in no uncertain terms "the Commissioner of the General Land Office to issue patents … to William Ashworth, Abner Ashworth, Aaron Ashworth, the heirs of Moses Ashworth, deceased, Henry Bird, John Bird and Aaron Nelson."[247]

Thus, once again, the Ashworths and a handful of other free persons of color in Jefferson County accomplished an extraordinary feat. Singled out from their neighbors because of their race, they nonetheless convinced enough of them that they not only belonged but were also worthy and contributing members of the community. Perhaps it is too much to suggest that their impact was as great as the famous names of Texas history. But in their community, among the pines and grassy fields of southeast Texas, they certainly demonstrate that the lines of race and slavery were not as rigidly enforced as the laws would suggest.

C. "sold to a free negro"

With their land grants assured and their residence secured, the Ashworths spent the next decade and more growing both their real and personal assets, together with their social status. Between them, the entire Ashworth clan would come to own thousands of acres in Jefferson and later

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[242] *Id.*

[243] HOUSE JOURNAL, SEVENTH CONGRESS, *supra* note 65, at 45.

[244] *Id.* at 63.

[245] *Id.*

[246] *Id.* at 80; *see also* JOURNALS OF THE SENATE OF THE SEVENTH CONGRESS OF THE REPUBLIC OF TEXAS, CONVENED AT WASHINGTON ON THE 14TH NOV., 1842, 29, 84 (1843).

[247] Act approved Jan. 16, 1843, 7th Cong., 1843 Repub. Tex. Laws 1, *reprinted in* 2 GAMMEL, *supra* note 99, at 875 (abstract).

Orange Counties, as they bought, sold, and leveraged their land to their advantage. This included not just William and his brothers; the deed records and surviving tax records show at least seventeen different Ashworths as real property owners between the years 1837 and 1864.[248] In 1850, William owned 3422 acres in then-Jefferson County, Aaron 1476, Abner 320, Luke 64, Henderson 406, and Aaron Jr. 392, as agent for Jesse Ashworth.[249] At various points during the 1850s, both William and Aaron also owned lots in town,[250] while William, Aaron, and Abner owned land in other counties.[251] This land consisted of the original headrights granted to them by the government; it was located further west in the Milam district probably because the available—or at least desirable—land in Jefferson was taken by the time Congress approved their patents.[252] The 1850 tax records list William as the owner of 4428 acres in Williamson County and Aaron as the owner of 4428 acres in Bell County, while Abner appears a few years later as the owner of several thousand acres in McLennan County.[253]

For the most part, the Ashworths put their land to good use raising large herds of cattle. Again, from the surviving tax records, we learn that over a dozen members of the family were separately taxed on cattle in the years before the Civil War.[254] The family's registered brands, captured in the precise hand of the county clerk, suggest that an even larger number kept cattle here without paying taxes. Margaret, Alfred, and Keziah for example, registered their brands in 1837 but do not appear in the tax records, presumably because they maintained their residence in Louisiana rather than Texas.[255] Six members of the family—William, Aaron, Abner, Aaron Jr., David, and Joshua—also appear in the agricultural census for 1850.[256]

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[248] This researcher was able to locate and review the Jefferson County tax records for 1837, 1840, 1842 (near illegible), 1846, 1847, 1849, 1850, and 1851. This researcher also reviewed the Orange County tax records from its start in 1852 through 1864. In at least one year, often more, William, Aaron, Abner, Jesse, Joshua, Luke, David, Henderson, Aaron Jr., and Clarke are taxed on real estate. From the Orange County deed records, William's wife Delaide, Aaron's wife Mary, Abner's wife Rosalie and his children Lydia Ann, Phillippa, and Sidney Jane, and Sublett Ashworth also appear as title holders to real property.

[249] Jefferson County Tax Rolls for 1850.

[250] *See, e.g.* Orange County Tax Rolls for 1856 (listing both William and Aaron as the owners of two town lots a piece).

[251] *See, e.g. id.* (listing William and Aaron as owners of land in Bell County and Abner in McLennan).

[252] *See* Field Notes, *in* Land Grant Application for William Ashworth, File No. 710 (patented Aug. 16, 1848); Field Notes, *in* Land Grant Application for Aaron Ashworth, File No. 302 (patented Sept. 18, 1847); Field Notes, *in* Land Grant Application for Abner Ashworth, File No. 856 (patented Nov. 12, 1850); Field Notes, in Land Grant Application for Moses Ashworth, File No. 1522 (patented July 10, 1860).

[253] *See* Jefferson County Tax Rolls for 1850; Orange County Tax Rolls for 1856. William's headright later appears in Bell County. *See, e.g.* Orange County Tax Rolls for 1856.

[254] *See, e.g.,* Jefferson County Tax Rolls for 1849 (taxing thirteen different members of the family). Others, like Clark Ashworth, appear later in the tax records. *See, e.g.,* Orange County Tax Rolls for 1852.

[255] Jefferson County Marks and Brands Book "A," at 1-4; *see also* Orange County Marks and Brands Book "A," at 1 (index).

[256] *See* Manuscript Census Returns, Schedule 4.—Production of Agriculture, Jefferson County, Tex., *in* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, POPULATION SCHEDULES OF THE SEVENTH CENSUS OF THE UNITED STATES (1850).

In that year, Aaron shows up as the largest cattle raiser in the entire county, with 2570 head.[257] Abner was the next largest in the family, with 975; William owned 900, Joshua 550, and David and Aaron Jr. 170 each.[258] The agricultural records also indicate that each Ashworth had milch cows, from which they produced a combined 420 pounds of butter.[259] They also owned pigs, and William and Abner owned sheep to make wool.[260] Most had also cleared enough land to grow a few crops, including corn, beans, peas, and potatoes.[261] Abner appears to be the only one who sought to profit from farming, however. In 1850, he produced 900 pounds of rice.[262]

Thus, judged against their neighbors, it seems clear enough that the Ashworths had more than most. The value of their real and personal property was in the thousands; Aaron alone estimated his livestock to be worth almost $14,000 in 1850, and William valued his land at $7205.[263] As might be expected, members of the family also had other valuables. By 1860, William and Delaide owned household furniture, two clocks, a clothes press, and a safe.[264] Notably, the Ashworths never seemed complacent when it came to their wealth. In many respects, they embodied the burgeoning capitalists James Oakes talks about—records show them regularly buying and selling cattle, for example, no doubt to increase profits and their overall standing. Occasionally this got them into trouble. Charles Garnot sued William and Luke in 1852, for example, alleging that they owed him $992 for 124 head of cattle he sold to them during the past summer.[265] The case was settled for an undisclosed amount the following year.[266] Willis Goodman also sued Aaron in 1853 after Aaron borrowed $200 and then refused to pay it back.[267] The threat of a trial was enough, however; Aaron settled the debt soon after.[268]

To be sure, the Ashworths's land and other holdings set them apart from

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[257] *Id.*
[258] *Id.*
[259] Abner produced 30 pounds, Aaron 100, Joshua 20, and William 270. *Id.*
[260] *Id.*
[261] *Id.*
[262] *Id.*
[263] For the value of Aaron's livestock, see *id.* For the value of William's real estate, see 1850 CENSUS: Free Inhabitants, *supra* note 3, Jefferson County, Tex., at 241 (family #107).
[264] *See* Schedule of Adelaide Ashworth's property, *supra* note 132, at 197 (May 21, 1860).
[265] *See* Garnot v. Ashworth, No. 4, at 1 (Tex. Dist. Ct. Orange Cty. Nov. 1852) (plaintiff's petition) (explaining he sold the cattle for eight dollars per head in June and July of 1852).
[266] *See* Garnot v. Ashworth, No. 4, Orange County District Court Minute Book "A," at 16 (spring 1853) (indicating that the case "was settled by the parties and costs paid by defendants").
[267] *See* Goodman v. Ashworth, No. 12, at 1 (Tex. Dist Ct. Orange Cty. Apr. 1853) (plaintiff's petition) (stating that he loaned Ashworth money in 1852).
[268] *See* Goodman v. Ashworth, No. 12, Orange County District Court Minute Book "A," at 16 (spring 1853) (indicating case was settled). A similar notation stating that the case was "settled by paying the money" can be found on the case jacket. Goodman v. Ashworth, *supra* note 267, at 3 (file jacket).

many in their community. But perhaps the best indicator of both their position in society and where they wanted to be was their ownership of slaves. Indeed, slaveholding was something that the Ashworths had engaged in for years. One of the earliest records from Jefferson County, in fact, indicates that William owned at least two in 1838,[269] while Joshua was taxed on one the year before.[270] A review of the tax and census records also demonstrates that slaveholding was not limited to a select few; in the years before the Civil War several members of the family owned at least one slave, often more. In 1846, the year after Texas joined the Union, Aaron owned six, Abner five, and William two.[271] In 1850, the year of the census, Aaron owned six, William four, Abner three, and Joshua one.[272] James, who by this time had made his way to Angelina County further west, owned one slave.[273] Jesse, officially residing in Calcasieu Parish, though he kept cattle in Texas, owned nine.[274] By 1853, William had six and Aaron had five.[275] By 1860, Jesse had twelve.[276]

It often strikes the modern reader as odd to learn that free people of color owned slaves. To be sure, slaveholding in general was not common, let alone by free people of color. In 1850, only about one-quarter of the Southern population owned slaves; of these, just a small fraction—about __ percent—was non-white.[277] Sometimes these free persons of color held members of their own family in bondage, often in name only to prevent forcible deportation or because restrictive rules of manumission placed too many roadblocks on emancipation. But a surprising number also held slaves to approximate the white ideal, for free people of color were astute observers of culture and recognized just as much as their white neighbors that slave ownership not only carried the potential of economic success but it also was a sure and telling marker of just how far they had come.[278] In places like Louisiana, slave ownership among free people of color was

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[269] *See* Jefferson County Commissioner's Court Minute Book "A2," at 9 (July 1838) (referring to "Wm Ashworth & negros" [sic] as responsible for building portion of road).

[270] Jefferson County Tax Rolls for 1837.

[271] Jefferson County Tax Rolls for 1846.

[272] Jefferson County Tax Rolls for 1850. The 1850 slave schedules are consistent with the tax records, except William is listed as the owner of just two slaves not four. Manuscript Census Returns, Schedule 2.—Slave Inhabitants, Jefferson County, Tex., at 819, *in* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, POPULATION SCHEDULES OF THE SEVENTH CENSUS OF THE UNITED STATES (1850) [hereinafter 1850 CENSUS: Slave Inhabitants]. The likely explanation for the discrepancy is that he sold two within the year, as he appears in the 1851 tax records as the owner of just two. Jefferson County Tax Rolls for 1851.

[273] 1850 CENSUS: Slave Inhabitants, *supra* note 272, Angelina County, Tex., at 21.

[274] *Id.* Calcasieu Parish, La., at 981.

[275] Orange County Tax Rolls for 1853.

[276] Manuscript Census Returns, Schedule 2.—Slave Inhabitants, Calcasieu Parish, La., at 12, *in* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, POPULATION SCHEDULES OF THE EIGHTH CENSUS OF THE UNITED STATES (1860) [hereinafter 1860 CENSUS: Slave Inhabitants].

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[278] *See generally* BERLIN, *supra* note 7, at 269-75.

more common than it was elsewhere in the South, perhaps giving the Ashworths the sense that their position entitled them to this form of wealth. Martin Donatto of St. Landry's Parish—where the Ashworths previously lived—was one of the largest slaveowners in the state; in 1830 he owned seventy-five slaves to help keep his plantation running.[279]

For the Ashworths, it is undoubtedly the case that they hoped to better themselves through slave ownership rather than, as with some free black slaveholders, to improve the condition of their fellow man. Indeed, there are several entries in the local deed records in which the Ashworths bought, sold, and devised their slave property just like their white neighbors. In August of 1839, William sold a woman named Lucy and her two-year-old child to Richard Baleu.[280] A month later, evidently in need of a strong hand to help clear the fields and tend the cattle, William used the money to purchase "a certain negro boy slave named Thornton about seventeen or eighteen years old" from John Williams.[281] Later, in 1853, William received the hefty sum of $1500 for a proven "breeder," a twenty-four-year old woman and her three children.[282] The following year William's wife Delaide sold another woman and her thirteen-month-old child for $900.[283]

Abner was also very active in buying and selling slaves. In 1843, he affixed his mark to a sale involving a twenty-eight-year-old man named Socalo, warranting him to be in "sound mind and in good helth [sic]."[284] Three years later he recorded his purchase of a twenty-two-year-old slave named Moses.[285] A few months later he bought another one; this one was a thirteen-year-old boy.[286] In 1853, he purchased a twenty-eight-year-old woman named Devine and her fourteen-month old daughter named Elouisa for $1000.[287] In 1858, interested in ensuring the financial health of his children, he gifted this same girl, now about seven, to his daughter Sidney Jane.[288] To his other daughter, Lydia Ann, he gifted a nine-year-old girl named Clementeen, "together with the increase of said negroes to each of them generally."[289] Abner gave to his son, Phillipe (or Phillipaugh), a six-

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[279] 1830 CENSUS, *supra* note 80, St. Landry's Parish, at 11-12; *see also* STERKX, *supra* note 90, at 236-37 (discussing Donatto).

[280] Deed from William Ashworth to Richard Baleu, Jefferson County Deed Book "D," at 143 (Aug. 8, 1843).

[281] Deed from John Williams to William Ashworth, Jefferson County Deed Book "D," at 46 (Sept. 30, 1839).

[282] Deed from William Ashworth and Delaide Ashworth to Charles Gamut, Orange County Deed Book "A," at 32 (May 19, 1853).

[283] Deed from Deliad Ashworth to Susan Barrow, Orange County Deed Book "A," at 55 (Sept. 18, 1854).

[284] Deed from Abner Ashworth to William Carr, Jefferson County Deed Book "A," at 39 (Nov. 8, 1843).

[285] Deed from Nathan Bonner to Abner Ashworth, Jefferson County Deed Book "E," at 360 (Jan. 17, 1846).

[286] Deed from David Garner to Abner Ashworth, Jefferson County Deed Book "A," at 1 (Nov. 30, 1846).

[287] Deed from Emille Broussard to Abner Ashworth, Jefferson County Deed Book "B," at 5 (Aug. 24, 1853).

[288] Deed from Abner Ashworth to his Children, Orange County Deed Book "A," at 123 (May 25, 1858).

[289] *Id.*

year-old boy named Jeff.[290] The following year Abner and his wife Rosella, "for and in consideration of the love and affection" that they had for their children, gifted two more slaves, Lewis and Jack, both in their early twenties, to be held jointly by all three.[291]

The records are too scant to say with any certainty what type of slaveholders the Ashworths were; there are, for example, no court records involving the Ashworths or their slaves from which to glean contemporary observations. Frederick Law Olmsted, however, encountered a family in his travels through southeast Texas who evidently knew the Ashworths, and his recollections suggest both that they were not as inhuman as some but also that their slaves thought it especially degrading to be owned by them:

> At another house where we stopped … we heard some conversation upon a negro of the neighborhood, who had been sold to a free negro, and who refused to live with him, saying he wouldn't be a servant to a nigger. All agreed that he was right, although the man was well known to be kind to his negroes, and would always sell any of them who wished it. The slave had been sold because he wouldn't mind.[292]

Of course, being "kind" to one's slaves meant different things to the enslavers and the enslaved. All it might have meant, as Harriet Jacobs once detailed, was that "he fed and clothed his slaves better than most masters, and the lash was not heard on his plantation so frequently as on many others."[293] At any rate, perhaps the best indication of how the Ashworths viewed slaves and slavery is evidenced simply by their participation in the system. Luke Ashworth, for one, apparently thought nothing of trading one hundred cattle for William, a fourteen-year-old boy.[294]

In the end, it is difficult to know for certain how the Ashworths rationalized owning others based on their race when they themselves shared a similar background. But all signs suggest that slaveholding was simply another method of increasing their economic wealth and their social standing. It is clear by now that the Ashworths had no interest in challenging the system; as upwardly-striving individuals their principal desire was to acquire property and provide for their families. As a result,

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[290] *Id.*

[291] Deed from Abner Ashworth & wife to their Children, Orange County Deed Book "A," at 181 (Nov. 11, 1859).

[292] OLMSTED, *supra* note 10, at 386.

[293] HARRIET A. JACOBS, INCIDENTS IN THE LIFE OF A SLAVE GIRL, WRITTEN BY HERSELF 51 (Jean Fagan Yellin ed., Harvard University Press 2000) (1861).

[294] Deed from Rachel Holden and Samuel Holden to Luke Ashworth, Orange County Deed Book "A," at 90 (June 24, 1856). Luke sold William a few months later for $900. Deed from Luke Ashworth to Daniel Coll, Orange County Deed Book "A," at 94 (Sept. 25, 1856).

they were far more interested in distancing themselves from the mass of slaves who were now living in Texas than in finding common ground. As Olmsted's recollections suggest, this may have struck both their neighbors and their slaves as tragically ironic. But for the Ashworths, who had long ago tied their identities to that of their white patrons and protectors, it was simply a matter of course.

IV. THE IMPENDING CRISIS

A. "slavery is the normal condition of the negro"

At the start of the 1850s, William and his family likely failed to comprehend that the position they had carved out for themselves along the banks of the Neches would not last the decade. To be sure, their race had always been an issue. Even in the early days, when their neighbors came to their aid to petition for their relief, they still denied them certain aspects of white citizenship. They refused to allow them to serve as jurors when they first created the county, for example, and this tradition continued over the course of the next several decades.[295] But their wealth and prosperity, together with their community ties, had nonetheless allowed them to successfully chart a middle course. Their African and possible Indian heritage may have meant that they were not white. But their light skin and free status meant also that they were not like the black slaves their neighbors purchased at the steps of the county courthouse and put to work under the grueling Texas sun. Loyalty, hard work, industry—these were the virtues celebrated out on the frontier, and the Ashworths were possessed of all of them.

As the sectional tensions began to build, however, the Ashworths found themselves increasingly marginalized. Southerners, of course, had always stood up for their system. But it took the attack of the abolitionists to turn casual defenses into a determined ideology. Accused of being both immoral and unchristian, they responded by extolling the virtues of racial slavery. "The basis of Southern prosperity," thundered one contributor to the local paper in 1854, "is in African Slave labor."[296] Men like James Henry Hammond insisted that blacks were better off in slavery, especially compared to the free laborers in the North, because of the obligations placed

[295] In the first meeting of the newly created Jefferson County Court in May of 1837, the clerk entered the names of all the freeholders entitled to serve as jurors; the Ashworths, living there at the time, were not included. Jefferson County Commissioner's Court Minute Book "A," at 1 (May 1837). A diligent review of the minute books from Orange County from the time of its creation in 1852 through 1864 also reveals that the Ashworths never served as jurors in any session. For a discussion of civic participation as performance of white manhood, including jury service, see GROSS, *supra* note 11, at 48-58.

[296] *Texas and Her Destiny*, TEXAS STATE GAZETTE, Nov. 4, 1854, at 2.

upon their owners to provide for their health and wellness. Compared to "the poor white nigger at the North," one Texan agreed, "[o]ur negro is a slack, fat sided fellow. He loves to eat and to laugh, and give him his belly full, and he is as happy as a prince."[297] It was a small step, then, to see why free people of color were not just an affront to the natural order of things but also a menace to society. Most white Texans agreed that the best way to solve the problem was simply to make all blacks slaves and thereby eliminate the free population.[298]

For the Ashworths, this growing antagonism towards free people of color manifested itself in many ways, including a notable uptick in the number of criminal accusations and prosecutions in the decade before the Civil War. William and his nephew Henderson, for example, were charged with playing cards in the spring of 1854—a crime, doubtless, but not a very serious one and not one commonly enforced out on the frontier.[299] Both William and Henderson pled guilty, though, and were assessed a $10 fine.[300] Sam Ashworth was indicted for assault and battery in 1855.[301] On whom it is not known, but there was evidently no merit to the accusation; soon after it disappears from the records.[302] A number of the Ashworths were also indicted for stealing cattle. This was an extremely easy accusation to make, with herds roaming freely and with ownership rights secured by a small brand easily altered or faked. But it is curious that the Ashworths were accused so often, especially in light of their substantial holdings. William was charged twice. At least one of these times was frivolous—William successfully quashed the indictment.[303] But he was later indicted a second time in 1860, "for theft of beef."[304] In a recurring theme, William never showed up for trial—perhaps he snuck over to Louisiana while court was in session—and the case sat on the docket until 1866.[305] William's son Clark was also charged in the fall of 1852 with stealing some of Larkin Thomas's cattle.[306] But he also conveniently

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[297] *Slave Labor*, TEXAS STATE GAZETTE, Feb. 23, 1856, at 3.

[298] *Free Colored Population in the South*, MARSHALL TEXAS REPUBLICAN, Mar. 10, 1860, at 1.

[299] State v. Henderson Ashworth, No. 33, and State v. William Ashworth, No. 35, Orange County District Court Minute Book "A," at 43 (spring 1854).

[300] State v. Henderson Ashworth, No. 33, and State v. William Ashworth, No. 35, Orange County District Court Minute Book "A," at 58-59 (fall 1854).

[301] State v. Samuel Ashworth, No. 66, Orange County District Court Minute Book "A," at 100 (fall 1855).

[302] The last entry on the case appears in the fall of 1856. State v. Samuel Ashworth, No. 66, Orange County District Court Minute Book "A," at 124 (fall 1856).

[303] *See* State v. William Ashworth, No. 134, Orange County District Court Minute Book "A," at 183 (fall 1857) (fining William for failing to appear). The indictment was handed down the previous term. *Id.* at 155. It was quashed in the fall of 1858. *Id.* at 207.

[304] State v. William Ashworth, No. 179, Orange County District Court Minute Book "A," at 313 (fall 1860).

[305] For additional entries, see *id.* at 343, 362, 393, 409, 423. The case was dismissed in 1866 after William died. State v. William Ashworth, No. 179, Orange County District Court Minute Book "A ½," at 133 (spring 1866).

[306] State v. Clark Ashworth, No. 2, Orange County District Court Minute Book "A," at 6 (fall 1852). For the

disappeared when court came to town. He was fined $200, which he never paid, and at the end of the Civil War the case was still on the docket.[307] In 1867 it was finally dismissed.[308] Henderson was also indicted for larceny in the fall term of 1854,[309] and so was Moses in the spring term of 1857.[310] Like the others, neither one showed up to respond to the charges.[311]

Of course, it may be that the Ashworths were of the type Olmsted characteristically dismissed as populating the area, those who "incline decidedly to barbarism" and who thought little of violating society's rules.[312] But their wealth and history suggests a different picture, making it much more likely that jealous neighbors and zealous prosecutors had begun to resent all they stood for. In addition to being the largest cattle raiser in the entire county, Aaron's decision to employ a private schoolteacher would have provided another reason. There were six schools in Jefferson at this time, but, assuredly because of their race, Aaron's children did not attend.[313] Instead, Aaron had John Woods, a fifty-two-year-old schoolteacher from Kentucky, stay at his house, where he privately tutored Samuel, Nancy, Sublett and William.[314] To some of his neighbors, especially those coming to the conclusion that the Ashworths were an affront to the racial order, Aaron's actions must have seemed particularly egregious, and a sure sign that he had forgotten his place.

Civil court records also indicate that the Ashworths were increasingly singled out because of their race. J.P. Barnes's threat to sue Abner for slander unless he promised to pay him $2000 has already been mentioned;[315] Barnes reportedly played on Abner's fears that, as "a free man of colour" and "of African descent," he would be "stripped of property" if he did not agree to settle the matter quietly.[316] Joseph Dark

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entry detailing the specifics of the charge, see *id.* at 36-37.

[307] *Id.* at 17. For entries in the case, not already cited, see *id.* at 33, 55, 74, 90, 121, 148, 180, 205, 226, 253, 278, 309, 331, 359, 387, 408, 421; *see also* State v. Clark Ashworth, No. 2, Orange County District Court Minute Book "A ½," at 132.

[308] State v. Clark Ashworth, No. 2, Orange County District Court Docket Book, at 140 (spring 1867) (indicating that the case was dismissed).

[309] State v. Henderson Ashworth, No. 39, Orange County District Court Minute Book "A," at 60 (fall 1854)

[310] State v. Moses Ashworth, No. 130, Orange County District Court Minute Book "A," at 147 (spring 1857).

[311] For entries on Henderson's case, see *id.* at 76, 98. For entries on Moses's case, see *id.* at 182, 206, 227, 234, 279, 309, 341, 360, 388, 422, 469. Each was continued for lack of service.

[312] OLMSTED, *supra* note 10, at 382.

[313] Table VII—Colleges, Academies, Schools, &c., *in* THE SEVENTH CENSUS OF THE UNITED STATES: EMBRACING A STATISTICAL VIEW OF EACH OF THE STATES AND TERRITORIES, at 509 (1850). No free people of color were listed among the 177 students. *Id.* at 511.

[314] *See* 1850 CENSUS: Free Inhabitants, *supra* note 3, Jefferson County, Tex., at 499 (family #119) (indicating that four of Aaron's children had attended school during the previous year and also listing John Woods, a schoolteacher, as part of his household).

[315] *See supra* notes 67-75 and accompany text.

[316] Transcript of Trial, Hillebrant v. Ashworth, *supra* note 67, at 14.

likely had similar motives when he drove one thousand head of cattle belonging to William onto his own property, removing William's brand and branding them with his own.[317] Dark alleged he took the cattle as payment on a note, and further filed suit against William for money outstanding.[318] There does not appear to have been much merit to the case—William countersued, and though he lost, he successfully appealed the judgment to the Texas Supreme Court[319]—but like the charges they faced for stealing cattle it provides good evidence that many whites, including those who sat on the jury, had turned against them.

But perhaps the most glaring indication of the Ashworths's increasingly precarious position can be found in the number of times they were prosecuted for marrying—technically, "having sex with"—whites. For many in Jefferson and Orange counties, it was bothersome enough that the Ashworths were successful in their business affairs, outpacing most in the amount of land and number of cattle and slaves they owned. But marrying whites—and not just any whites, but *local* whites, which meant that through kinship ties their social position would become even more secure—proved to be a threat of the first order. Of course, Texas's official position against interracial marriage was typical and unsurprising. After initially declaring them invalid in the first act of Congress, the legislature reaffirmed the ban in 1854 and again in 1858.[320] But in Texas, like elsewhere, there appears to have been a certain level of tolerance for interracial couples, at least until the immediate years before the Civil War.[321] William's wife Delaide Gallier, it should be recalled, was white, and there is little to suggest that they suffered any particular harassment either in Louisiana or when they came to Texas—they even registered their union in the Jefferson County marriage books in 1838.[322] And William's brother, Abner, did the same when he married Delaide's younger sister, Rosalie.[323]

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[317] Transcript of Trial, Dark v. Ashworth, No. 51, at 8-9 (Tex. Dist. Ct. Orange Cty. 1856) (answer), *rev'd* 20 Tex. 826 (1858).

[318] For Dark's petition, with exhibits, see *id.* at 1-6.

[319] Ashworth countersued claiming Dark owed him $6000 for the value of the cattle. *Id.* at 8. He later amended his answer to allege the cattle was worth $10,000. *Id.* at 15; *see also* Ashworth v. Dark, 20 Tex. 825, 828 (1828).

[320] An act approved Feb. 9, 1854, 5th Leg., R.S., ch. 40, § 38 at 66, 1854 Tex. Gen. Law, *reprinted in* 3 GAMMEL, *supra* note 99, at 1502, 1510; [cite] *reprinted in* 4 GAMMEL, *supra* note 99, at 1036, 1036-37.

[321] For a more complete discussion of the subject, see Jason A. Gillmer, *Base Wretches and Black Wenches: A Story of Sex and Race, Violence and Compassion, During Slavery Times*, 59 ALA. L. REV. 1501 (2008).

[322] Jefferson County Marriage Record Book "A-B," at 11 (Feb. 1838) (application for license to marry "Delilie Gallier").

[323] Jefferson County Marriage Record Book "A-B," at 9-10 (Jan. 1838) (application for license to marry "Rosale Collier"). *Cf.* Will of Abner Ashworth, *supra* note 3, at 2 (identifying "Rosalie Gallier" as his wife). Like with William and Delaide, Abner and Rosalie lived together as husband and wife before formalizing the marriage with Jefferson County. *See* Character Certificate for Abner Ashworth, *supra* note 175 (indicating that Abner was "a man of family consisting of his wife and five children"). In the 1850 census records, Rosalie is listed as a 36-year-old white woman from Louisiana. 1850 CENSUS: Free Inhabitants, *supra* note 3, Jefferson County, Tex., at 483 (family #3). She is listed again in the 1860 records as 45, white, and the head of the

But a different story emerges when the next generation of Ashworths started intermarrying with whites. The closer we get to the Civil War, the more they and their white spouses were singled out by local residents and eager prosecutors determined to enforce a clear boundary between the races. They were all "good-for-nothing people," insisted one observer to Olmsted who was familiar with the interracial marriages in the family, and claimed, in partial truth, that "they couldn't live in Texas after it; all went over into Louisiana."[324] Indeed, two months after Margarette Ashworth married Sillasta Gallier (a relative of Delaide and Rosalie), the grand jury in Jefferson County indicted Sillasta "for marrying [a] colored woman."[325] Two years later, after being forced to continue the case because the defendant refused to appear, the prosecutor agreed to dismiss the charges but only if the couple "go hence without [delay]" from the county.[326] They evidently did. In 1860—they cannot be found in 1850—Sillasta and Margarette appear in the census records for Calcasieu Parish, Louisiana, as husband and wife; he white and she mulatto, with six children.[327]

Yet not all left. William's nephew Henderson Ashworth and his white wife, Letitia Stewart, tried to stay and keep what was theirs, and they suffered for it. They were first indicted by the Jefferson County grand jury in spring 1847 for adultery.[328] They got the charge dismissed the following term, however, presumably because adultery wrongly implied that the two were living together while married to someone else.[329] But the local district attorney, Samuel D. Hay, did not give up; he quickly rectified the situation, bringing the more fitting charge of fornication the same term.[330] This time the grand jury was persuaded. It issued the following bill, worded in the typical legalese of the time:

> That Henderson Ashworth, being a free person of color, of African descent, laborer, and Letitia Stewart, late of said county, *spinstress*, on the first day of April, and on divers other days and times thereafter, and before the finding

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household, after Abner died. 1860 CENSUS: Free Inhabitants, *supra* note 21, Orange County, Tex., at 22 (family # 145); *see also* Orange County, Tex., Cemeteries, pt. 2, at 37 (1981) (recording Abner's death on Nov. 17, 1859).

[324] OLMSTED, *supra* note 10, at 386.

[325] State v. Silistia Gallier, No. 4, Jefferson County District Court Minute Book "A," at 23 (spring 1845). Margarette and Sillasta were married in January 1845. Jefferson County Marriage Record Book "A-B," at 55 (Jan. 1845).

[326] State v. Sellestia Gallier, No. 4, Jefferson County District Court Minute Book "A," at 95 (fall 1847). For an additional entry continuing the case for failure to appear, see *id.* at 40.

[327] 1860 CENSUS: Free Inhabitants, *supra* note 21, Calcasieu Parish, La., at 45 (family #338).

[328] State v. Henderson Ashworth & Letitia Stewart, No. 34, Jefferson County District Court Minute Book "A," at 78 (spring 1847). A list of indictments indicates that the charge was adultery. *Id.* at 76.

[329] *Id.* at 97 (fall 1847).

[330] State v. Henderson Ashworth, No. 40, and State v. Letitia Stewart, No. 41, Jefferson County District Court Minute Book "A," at 101 (fall 1847). Again, the crime charged is indicated in a list of indictments. *Id.* at 98. The name of the district attorney can be found in the entry dismissing the adultery charge. *Id.* at 97.

> this bill, to wit, in the county aforesaid, did then and there live together in fornication, contrary to the statute.[331]

In the fall term of 1848, Henderson's case went to trial and he smartly defended on the ground that Letitia and he were married, making the charge of fornication as equally inappropriate as adultery.[332] The jury rejected the argument, however, and we can safely assume it was because it refused to legally recognize a marriage between a white person and a person of color, regardless of whether they identified themselves as husband and wife or even if, as in Sillasta and Margarette's case, they held a marriage certificate. Henderson was found guilty by a jury of twelve men and assessed a fine of $100.[333]

To Henderson and his family, no doubt the prosecution and subsequent conviction seemed exceedingly unfair, and yet another attempt to single them out for unnecessary and disparaging treatment solely because of their race. David Garner, one of the first residents of the county whose ties to the family surely reached back to William, apparently thought the prosecution was unjustified as well; he personally put up $500 as security to allow Henderson to appeal to the Texas Supreme Court.[334] Henderson fared no better there, however. Shoddy legal work meant that the court had no statement of facts or bill of exceptions to consider, and from the verdict and the judgment the court could discern no error.[335] The marriage was against the law, and thus living together under such circumstances fully justified the verdict. It affirmed the judgment.[336]

While the case was pending before the Supreme Court, Henderson and Letitia stayed in Jefferson County.[337] Thus in 1850 they appear together in the census, along with their new daughter, Mary, whom the census takers listed as mulatto like her father.[338] Following the Court's opinion in 1853, however, and in a theme to be repeated often, Henderson and Letitia apparently paid further efforts to enforce the judgment little mind. After both failed to appear in either 1853 or 1854, the sheriff of Orange County

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[331] Ashworth v. State, 9 Tex. 490, 490 (1853).

[332] For the term of court in which the case was tried, see Henderson Ashworth, No. 40, *supra* note 330, at 130 (fall 1848). For his defense, see Ashworth, 9 Tex. at 490.

[333] Henderson Ashworth, No. 40, *supra* note 330, at 130.

[334] *Id.* at 146.

[335] Ashworth, 9 Tex. at 490.

[336] *Id.*

[337] The case against both Henderson and Letitia was continued upon payment of a bond. For notations in the minute books, see Henderson Ashworth, No. 40, and Letitia Stewart, No. 41, *supra* note 330, at 163, 166, 183, 187, 201, 221; *see also id.* Jefferson County District Court Minute Book "B," at 10, 41, 68, 107.

[338] 1850 CENSUS: Free Inhabitants, *supra* note 3, Jefferson County, Tex., at 506 (family #166). Also residing in the household were members of Letitia's family. *See id.* (listing several persons with the last name Stewart).

found and arrested Letitia and brought her to the Beaumont jail in Jefferson in February 1855.[339] She paid a bond of $150 and promised to appear in court the next month, but she was nowhere to be found when her case was called.[340] It is impossible to know for certain, but it is likely that she and Henderson simply crossed over the river into Louisiana for the two weeks court was in session. Meanwhile, the district attorney filed another indictment against Henderson and Letitia in Orange County, but these efforts met with no better success.[341]

The same prosecutor also made life difficult for Willis Goodman, a white man, and Keziah Ashworth, Aaron's daughter.[342] He charged them first with adultery in 1847,[343] and when that proved to be unsustainable for the same reasons as above, he later charged them with fornication, identifying Keziah in the bill of indictment as "a free woman of color."[344] He brought Willis to trial on this latter charge and the jury found him guilty, assessing a $100 fine and 24 hours imprisonment.[345] Soon after, Willis escaped from the sheriff's custody, and the case was thus left to wallow on the docket for the next several years.[346] Meanwhile, another case was filed against both Keziah and Willis in Orange County district court in 1855.[347] They never showed up to answer these charges either, perhaps because they had gone back to Calcasieu by this time, finding that to be a more welcoming location.[348]

In 1853, the district attorney for Orange County, William Palmer, appears to have taken particular offense at the number of Ashworths involved in interracial relationships. In that year, though he left William and Delaide alone, he secured indictments against three of their children,

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[339] For the first notations for 1853 indicating that judgment was entered against Henderson and that Letitia failed to appear, see State v. Henderson Ashworth, No. 40, and State v. Letitia Stewart, No. 41, Jefferson County District Court Minute Book "B," at 149, 150 (spring 1853). For subsequent entries indicating a failure to appear, see *id.* at 174, 179, 204. For Letitia's arrest, see *id.* at 235-36 (spring 1855).

[340] *Id.* at 235-36.

[341] State v. Henderson Ashworth and Letitia Stewart, No. 72, Orange County District Court Minute Book "A," at 10 (fall 1855). The case was continued the following year. *Id.* at 125 (fall 1856).

[342] *See* Estate of Aaron Ashworth, Orange County Probate Records, at 1 (Tex. Cty. Ct. Orange Cty. 1862) (amended petition) (identifying Keziah Goodman among Aaron's heirs).

[343] State v. Willis Goodman and Keziah, No. 28, Jefferson County District Court Minute Book "A," at 74 (spring 1847).

[344] The adultery case was dismissed in October 1847. State v. Willis Goodman, No. 28, *supra* note 342, at 76. That same term the grand jury indicted Willis and Keziah for fornication. *Id.* at 98. For Keziah's racial designation, see *id.* at 74.

[345] State v. Willis Goodman, No. 39, Jefferson County District Court Minute Book "A," at 99.

[346] *Id.* at 100. For additional entries on the case, see *id.* at 128, 163, 201, 221; Jefferson County District Court Minute Book "B," at 10, 41, 68.

[347] State v. Willis Goodman and Keziah Ashworth, No. 68, Orange County District Court Minute Book "A," at 100 (fall 1855); *see also id.* at 124.

[348] The census records for Calcasieu in 1850 list Willis Goodman, a 35-year-old white man, married to Mary, a 30-year-old mulatto woman born in Louisiana. It is possible, though not certain, that this was Keziah. *See* 1850 CENSUS: Free Inhabitants, *supra* note 3, Calcasieu Parish, La., at 775 (family #408).

Emily, Clark, and Nancy. Emily was about seventeen at the time; her partner and apparent spouse was a man named Joseph Young.[349] Both were charged with fornication.[350] Clark was about twenty-one.[351] He was cohabitating with a white woman named Sarah Arthur and both were indicted.[352] Nancy was about sixteen,[353] and her apparent husband was Jackson Stewart, who was probably a relative of her cousin Henderson's wife, Letitia Stewart.[354] During the same term, Palmer also charged Sarah Ashworth with fornication with William Burwick.[355] These two had evidently been living as husband and wife since at least 1850. In that year, they appear together in the census records; he is listed as twenty-one and white and she is listed as sixteen and mulatto.[356] Palmer also renewed a charge against another of Aaron's daughters, Martha, in 1853.[357] Martha had been indicted a few years before in Jefferson County for having sexual relations with Peter Pinder.[358] The prosecutor at that time apparently indicted the wrong person, however, for the charge now indicated that her partner was Jacob Pender.[359] The confusion as to whom Martha's spouse was might explain why, in 1854 in Jefferson, the jury found Peter not guilty of having relations with Martha,[360] while the case in Orange remained on the docket.[361]

In the fall of 1855, there was a new district attorney for Orange County

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[349] *See* 1850 CENSUS: Free Inhabitants, *supra* note 3, Jefferson County, Tex., at 497 (family #107) (listing Emily as 14).

[350] State v. Joseph Young, No. 17, and State v. Emily Ashworth, No. 20, Orange County District Court Minute Book "A," at 22, 23 (spring 1853); *see also id.* at 33, 34, 38.

[351] *See* 1850 CENSUS: Free Inhabitants, *supra* note 3, Jefferson County, Tex., at 497 (family #107) (listing Clark as 18).

[352] State v. Sarah Arthur, No. 14, and State v. Clark Ashworth, No. 16, Orange County District Court Minute Book "A," at 22 (spring 1853); *see also id.* 38.

[353] *See* 1850 CENSUS: Free Inhabitants, *supra* note 3, Jefferson County, Tex., at 497 (family #107) (listing Nancy as 13).

[354] State v. Nancy Ashworth, No. 10, and State v. Jackson Stewart, No. 15, Orange County District Court Minute Book "A," at 21, 22 (spring 1853); *see also id.* at 37, 38

[355] State v. Sarah Ashworth, No. 13, and State v. William Burwick, No. 19, Orange County District Court Minute Book "A," at 22, 23 (spring 1853); *see also id.* at 38 Another one of Aaron's daughters was named Lydia Ann Burwick, indicating that she also married a relative of William's. Estate of Aaron Ashworth, *supra* note 342, at 1. She cannot be found in the census records, however.

[356] 1850 CENSUS: Free Inhabitants, *supra* note 3, Jefferson County, Tex., at 502 (family #145).

[357] State v. Martha Ashworth, No. 23, Orange County District Court Minute Book "A," at 23 (spring 1853); *see also* Estate of Aaron Ashworth, *supra* note 342, at 1 (identifying Martha Ann Penders as one of Aaron's heirs).

[358] State v. Peter Pinder and Martha Ashworth, No. 108, Jefferson County District Court Minute Book "A," at 44 (fall 1851).

[359] *See* State v. Martha Ashworth, No. 23, *supra* note 357, at 23 (charging her with fornication with Jacob Pender); *see also* State v. Jacob Pender, No. 22, Orange County District Court Minute Book "A," at 23 (spring 1853).

[360] State v. Peter Pinder and Martha Ashworth, No. 108, *supra* note 358, at 180. The case against Martha was subsequently dismissed. *Id.* For earlier entries on the case, see *id.* at 67-68, 84, 105-08, 132-33, 144, 146, 151-52, 179-80.

[361] State v. Martha Ashworth, No. 23, *supra* note 357, at 39. The prosecutor agreed to dismiss the cases against all the Ashworth defendants and their spouses in the spring of 1854. *Id.*

and he filed additional charges against members of the Ashworth family. This time, J.G. McDonald singled out Henderson, Clark, and Nancy and recharged them with the same crime as before.[362] But he also added a new charge against Sam Ashworth, the eighteen-year-old son of Aaron, for living with Melissa Ann Ashworth.[363] Within a month, Sam and Melissa Ann had filed their marriage license, but it was not enough to halt the prosecution.[364] Like with many of the others, however, it does not appear that the defendants responded to the charges—perhaps because they knew it was fruitless—or that any of them ever went to trial.[365]

It thus seems fairly clear that, while the Ashworths had the support of a number of their neighbors, especially those whom they had known since the time of the Republic, the impending crisis caused a growing number of them to view the Ashworths as dissolute and untrustworthy. After all, their presence confounded the social order, interfering with the simple formula that equated blackness with slavery and whiteness with freedom. Notably, even for the non-slaveholders in the backwoods of Orange and Jefferson counties, slavery was more than just a labor system; it embodied the democratic ideal. "We wish to popularize black labor," wrote one contributor to the newspaper, "not for political popularity or power, but for the domestic convenience and mental improvement of the many—the great mass of free white laborers, whom we are not willing to see reduced to the rank of dependent Northern laborers."[366] Poor whites—whites who would never own slaves—could thus rally behind the institution because it ensured their own freedom. It was a small step, then, to see why free people of color like the Ashworths were seen as a threat to many. "[S]lavery," not freedom, "is the normal condition of the negro."[367]

B. Disturbances in Orange County

Thus, when Sam Ashworth shot Samuel Deputy in the summer of 1856 the Ashworths's fate was probably already decided. The disturbance had its origins when William's son Clark reportedly butchered one of Samuel

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[362] State v. Clark Ashworth and Sarah Arthur, No. 71, State v. Henderson Ashworth and Letitia Stewart, No. 72, and State v. Jackson Stewart and Nancy Ashworth, No. 73, Orange County District Court Minute Book "A," at 101 (fall 1855).

[363] State v. Samuel Ashworth and Melissa Ann Ashworth, No. 67, Orange County District Court Minute Book "A," at 100 (fall 1855); *see also* 1850 CENSUS: Free Inhabitants, *supra* note 3, Jefferson County, Tex., at 499 (family # 119) (listing Samuel as 13)

[364] Orange County Marriage Record Book "A," at __ (Dec. 1855).

[365] State v. Clark Ashworth and Sarah Arthur, No. 71, State v. Henderson Ashworth and Letitia Stewart, No. 72, and State v. Jackson Stewart and Nancy Ashworth, No. 73, *supra* note 362, at 124-25. The cases were not called after fall 1856.

[366] *The Cloud in the Distance; and considerations connected therewith*, CLARKSVILLE STANDARD, Feb. 19, 1859, at 2.

[367] *A Slave Code for the Territories*, TEXAS STATE GAZETTE, Jan. 8, 1859, at 1.

Deputy's hogs.[368] There is no telling whether he did so, though the large number of hogs owned by the family—Henderson alone was taxed on $600 worth in 1855—casts some doubt on the accusation.[369] This is not to say that no one had taken Deputy's property; reports from the time indicate that hogs and other livestock roaming the countryside commonly found their way into a new owner's hands.[370] But Deputy's decision to accuse an Ashworth is hardly surprising, and not without precedent. As a successful family of color they made for easy targets. Said one contemporary, who obviously thought little of the Ashworths and their sympathizers: "None of them were ever known to labor, as honest men do, for a living, yet always managed so as to have a full share of the good things of this life."[371]

More troubling for Sam, however, was the humiliation he suffered in the streets of Orange. Deputy had previously arrested Clark and had him brought up on charges of hog stealing.[372] Soon after, Sam secured his release by providing security on a bond.[373] Afterwards, Sam, who was Clark's cousin and Aaron's son, armed himself with a double barreled gun and, with his friend William Blake, challenged Deputy to a fight in the outskirts of town.[374] Deputy refused, however, and instead arrested Sam under a statute "providing against abusive language from negroes."[375] Sam was surely in a rage. In a culture steeped in notions of honor, Deputy had insulted his family's reputation by accusing them publically of being thieves.[376] But even worse: his refusal to fight Sam sent the decisive message that Deputy—who had once served as a witness against his uncle William in a suit over money[377]—viewed the Ashworths as his inferiors. Duels, it must be remembered, were fought between gentlemen, not between individuals of different classes.[378] Arresting Sam and charging him with insulting a white person made this point as clear as it could be. It meant that, no matter how much land and cattle the Ashworths owned, they

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[368] *Disturbances in Orange County*, *supra* note 1.

[369] Orange County Tax Rolls for 1855.

[370] *See Disturbances in Orange County*, *supra* note 1 (remarking, in describing state of affairs in county, that "[t]he stock-keepers were never certain of collecting half the cattle they branded").

[371] *Id.* The author was "a citizen of Orange county." *Id.*

[372] *Id.*

[373] *Id.*

[374] *Id.*

[375] *Id.*

[376] *See* BETRAM WYATT-BROWN, SOUTHERN HONOR: ETHICS AND BEHAVIOR IN THE OLD SOUTH 3 (1982) ("Above all else, white Southerners adhered to a moral code that may be summarized as the rule of honor."); *see also* EDWARD AYERS, VENGEANCE AND JUSTICE: CRIME AND PUNISHMENT IN THE 19TH-CENTURY AMERICAN SOUTH 13 (1984) (writing, in describing the code of honor, "A coward tolerated insult, a liar attacked honor unfairly. To call a Southern man either one was to invite attack").

[377] *See* Garnot v. Ashworth, *supra* note 265 (file jacket) (listing witnesses).

[378] *See* KENNETH S. GREENBERG, HONOR & SLAVERY: LIES, DUELS, NOSES, MASKS DRESSING AS A WOMAN, GIFTS, STRANGERS, HUMANITARIANISM, DEATH, SLAVE REBELLIONS, THE PROSLAVERY ARGUMENT, BASEBALL, HUNTING, AND GAMBLING IN THE OLD SOUTH 58 (1996) (noting, in describing the rituals of duels, that "the code of honor demanded that all participants … had to regard each other as equals").

were still beneath every white. In the ensuing trial, Billy Smith summed up the issue well, providing testimony that apparently most understood, "that he considered the said Sam Ashworth to be of mixed blood or a mulatto."[379] The justice of the peace agreed; he sentenced Sam to thirty lashes on his bare back.[380]

Following the conviction, Sam was committed to the custody of the sheriff, E.C. Glover, in order to carry out the punishment.[381] What followed, however, remained in dispute. Some said he escaped; others insisted Glover, sympathetic to the Ashworths, let him go.[382] Regardless, he soon made his way to Henderson's house, where he obtained guns, clothes, and a skiff.[383] It is not known whether Henderson encouraged Sam to commit the crime or counseled him against it. But, after providing him with the necessary materials, it is certain that he knew what Sam was going to do. Jack Bunch, a member of the familiar tri-racial family and possible cousin, accompanied Sam as they quietly maneuvered the skiff along the Cow Bayou to Deputy Shell Bank, seven or eight miles below Orange on the Sabine River.[384] When Deputy showed in his own boat, together with A.C. Merriman, Sam "commenced shooting, and continued his fire until he had discharged both double-barrel guns, and three loads from his revolver."[385] As Deputy lay clinging to the boat, Sam finished the crime with the butt of his shotgun, smashing his skull.[386] Merriman was unharmed, presumably because he was not involved in the accusations of stealing or the insults to Sam's honor.[387]

The events following the killing, however, show how much this small community, tucked in among pines and rivers, had become divided over the ideology of race and everyday life. Residents quickly fell into two groups, reviving the old names of the Moderators and Regulators of east Texas fame.[388] The Moderators accused the sheriff of failing to take the necessary action to apprehend Sam and the others. The eight-man posse he formed, they said, consisted "mostly of his own sort, special friends and associates

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[379] *Disturbances in Orange County*, *supra* note 1.

[380] *Id.*

[381] *Id.* Glover had not been the sheriff for long. In the minute books, Samuel Fairchild was listed as the sheriff in the fall term of 1854 and throughout 1855. Orange County District Court Minute Book "A," at 49, 65, 83. Glover's first term was in 1856. *Id.* at 111.

[382] *Cf.* OLMSTED, *supra* note 10, at 387, *with Disturbances in Orange County*, *supra* note 1.

[383] *Disturbances in Orange County*, *supra* note 1.

[384] *Id.*; *see also* Russell, *supra* note 136, at 5-6 (providing more background on where Deputy lived and the location of the shooting).

[385] *Disturbances in Orange County*, *supra* note 1.

[386] *Id.*

[387] *Id.*

[388] OLMSTED, *supra* note 10, at 387. For background on the Regulator-Moderator War, see 5 THE NEW HANDBOOK OF TEXAS, *supra* note 17, at 517 (Regulator-Moderator War).

of the murderer," who delayed their efforts in order to give the Ashworths "ample time to carry their threats into execution and make good their escape."[389] Whether there is any truth to this claim it is not known; but when Glover returned the warrants to the court the next day, marked "not found," the Moderators took measures into their own hands.[390] A new posse was formed, this one headed by Joshua Harmon after Glover refused to participate.[391] They spent several days and nights scouring the countryside, looking for Clark, Sam, Henderson, and Jack Bunch.[392] They failed to find them, however, and one resident insisted it was because some "of our depraved citizens were acting as spies for the parties sought," singling out Glover, Thaddius Pate, Dr. Mairs, and Bazil Sapp.[393]

Upon their return to Orange, therefore, the "friends of law and order" formed a vigilante committee some sixty strong, taking the old name "committee of safety."[394] Like their predecessor in 1835, this one similarly came to believe that the problem was not with any one individual but with the entire free community of color; they therefore "resolved that all the free persons of color should leave the county" immediately, and backed up their threat with force of arms.[395] It is not known exactly how many to whom this edict applied; but a few years earlier there had been upwards of sixty-three free people of color in the county, most of who were Ashworths or their relatives.[396] As an added measure, the committee also ordered all the Ashworth supporters, including the sheriff, to leave as well.[397]

Olmsted learned about the "disturbances in Orange County" as he made his way through the area a couple of years later. His recollections, combined with current newspaper articles, indicate that the county descended into a minor civil war—"a guerrilla of skirmishes and murders"—throughout the summer of 1856.[398] The Moderators were heavily armed, with double-barred shotguns and a "general assortment of 'Colt's jewelry.'"[399] But the Ashworths and their friends apparently did not go quietly. Olmsted reported that they "formed an organized band, and

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[389] *Disturbances in Orange County*, *supra* note 1.
[390] *Id.*
[391] *Id.*
[392] *Id.*
[393] *Id.*
[394] *Id.*
[395] *Id.*; *see also* OLMSTED, *supra* note 10, at 387 (noting how "all the Ashworth family with their relatives and supporters [were] summoned to leave the county on pain of death").
[396] 1850 CENSUS: Statistical View, *supra* note 85, at 503.
[397] *Disturbances in Orange County*, *supra* note 1.
[398] OLMSTED, *supra* note 10, at 387; *see also* Russell, *supra* note 136, at 5 (noting that the disturbance lasted for two or three months).
[399] *Disturbances in Orange County*, *supra* note 1.

defied the Committee."[400] At first, they reportedly tried to take the offensive, planning an attack on the committee in the town of Orange on June 15.[401] A mail rider from Louisiana tipped the committee off, however, and that afternoon Jack Cross of the Moderators got into an argument with Burwell Alexander and shot him in the neck.[402] Dr. Mairs, who was on the side of the Ashworths, started to attend to his wounded friend; in so doing, he "so enraged Cross that he shot him dead in the street."[403]

Soon after, according to Olmsted, there "ensued a series of assassinations, burnings of houses and saw-mills, and open fights."[404] One former resident remembered that things had gotten so bad that "people were afraid to sleep in their beds or light their candles at night."[405] Following the murders of Alexander and Mairs, the Moderators took to the countryside and demanded "that every man, capable of bearing arms, should join them, or quit the county on pain of death."[406] One event of note occurred when twenty-eight committee members, "well armed and mounted," led a surprise attack on the house of Joel Brandon.[407] There they found the sheriff concealed under a bed and arrested him.[408] Nearby, in another house, they found Jack Moore, with an assortment of counterfeit bills and fake land certificates.[409] Defending himself, Moore was shot instantly.[410] Sheriff Glover was taken a few miles into the open prairies, where he allegedly asserted he would neither leave the county nor be taken back to town as a prisoner.[411] The committee, "all of one mind, discharged their duty" and shot him.[412]

By the end of the summer, and with the death of the sheriff and some of their supporters, a number of the Ashworths had evidently conceded the fight and moved back to Calcasieu Parish for their own safety. An account from the *Galveston Weekly* reported as much with apparent satisfaction. "The chief portion of the disreputable residents have left the county," it noted, while "others are in prison and a few have suffered the extreme

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[400] OLMSTED, *supra* note 10, at 387.

[401] *Disturbances in Orange County*, *supra* note 1.

[402] *Id.*; *see also* Russell, *supra* note 136, at 5 (providing further details on the killings).

[403] *Disturbances in Orange County*, *supra* note 1; *see also Orange County*, *supra* note 10 (noting that Dr. Mairs "was shot while dressing the wounds of a patient").

[404] OLMSTED, *supra* note 10, at 387.

[405] Russell, *supra* note 136, at 5.

[406] OLMSTED, *supra* note 10, at 387.

[407] *Disturbances in Orange County*, *supra* note 1.

[408] *Id.*

[409] *Id.*; *see also* OLMSTED, *supra* note 10, at 388 (referencing the counterfeiting business); Russell, *supra* note 136, at 5-6 (same).

[410] *Disturbances in Orange County*, *supra* note 1.

[411] *Id.*

[412] *Id.*; *see also* OLMSTED, *supra* note 10, at 388 (noting that the sheriff was killed); Russell, *supra* note 136, at 5-6 (same).

penalty of the lynch code."[413] Abner Ashworth, perhaps wondering if he could ever come back to Texas, began selling off some of his land on Adams Bayou soon after. As he noted in one deed to Charlton Midkiff in August, he was "being compeled [sic] by the disturbances in [the] County in the month of June and July A.D. 1856 to remove myself & said children beyond the limits of said County."[414]

Later that fall, Sam Ashworth and Jack Bunch were indicted for murder, and Henderson was indicted as an accessory before the fact.[415] In all likelihood the hearings were a mere formality; on the grand jury was John Merriman, a relative of A.C. Merriman who had been on the boat when Deputy was shot.[416] Throughout the ensuing months, however, Sam was never found; reports are that he made his way to the Indian Nation in west Texas.[417] Two years later, sheriff William Poff of Hopkins County claimed to have captured the notorious criminal four hundred and fifty miles away, but no contemporary records exist to confirm whether this was the case.[418] Most likely, Sam lived cautiously until the start of the Civil War, when—in a startlingly testament to where his sentiments still lay—he reportedly joined the Confederate Army and was killed at the Battle of Shiloh.[419] Jack Bunch met a different fate. He was caught a few months after the shooting heading west in the town of Columbus and transported back to Orange.[420] After the case was transferred to Jefferson County on the motion of the defendant, he was convicted and, on November 21, 1856, he was hanged.[421] Early reports indicate that Henderson was caught in Jasper County, along with Mart Stewart and William Blake, the man who confronted Samuel Deputy on the streets of Orange with Sam.[422] But the criminal minute books indicate that he had either escaped or the reports were wrong. Every term of the court his case was called the court continued it.[423] It was

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[413] *The Orange County Disturbance*, GALVESTON WEEKLY, July 15, 1856, at 3.

[414] Deed from Abner Ashworth to Midkiff, Orange County Deed Book "B," at 188 (Aug. 11, 1856).

[415] State v. Sam Ashworth and Jack Bunch, No. 124, and State v. Henderson Ashworth, No. 126, Orange County District Court Minute Book "A," at 120 (fall 1856). The first day of court was November 3, 1856. *Id.* at 113.

[416] *See id.* at 115 (listing grand jurors for fall term).

[417] Russell, *supra* note 136, at 6.

[418] Congressional Petitions, *supra* note 102, Petition of William Poff, at 1 (858). The petition also claimed to have caught Henderson Ashworth. *Id.*

[419] Russell, *supra* note 136, at 6. The case against Sam was dismissed after he died. Orange County District Court Docket Book, at 118-19. For additional notations, see Orange County District Court Minute Book "A," at 150, 181, 206, 226, 234, 279, 309, 341, 360, 388, 408, 422; Orange County District Court Minute Book "A½," at 133.

[420] THE GALVESTON WEEKLY NEWS, Oct. 21, 1856, at 2; THE GALVESTON WEEKLY NEWS, Nov. 1, 1856, at 3.

[421] State v. Jack Bunch, No. 124, Orange County District Court Minute Book "A," at 138-39. Augustus C. Merriman, the man who witnessed the crime, apparently testified against him. *See id.* at 139 (ordering Merriman to appear as a witness). For the report of Jack's death, see THE GALVESTON WEEKLY NEWS, Nov. 25, 1856, at 1.

[422] *Disturbances in Orange County*, *supra* note 1.

[423] State v. Henderson Ashworth, No. 126, Orange County District Court Minute Book "A," at 151, 182,

eventually dismissed in the spring term of 1867. The notation in the docket is simple and representative of a much larger theme: "Abated by death of deft."[424]

V. AFTERMATH AND CONCLUSION

It is always difficult to know how to end a narrative of this sort, for it has no natural end. Following the events of 1856, a few of the Ashworths started trickling back in to join the one or two who might have remained. But the tax records reveal that it was only those families of the older generations, those who had proved their worth and earned enough respect from the early settlers to continue to live in a county now openly hostile to free people of color. In 1857 and 1858, William was there, as were Aaron and Luke.[425] In 1859, Abner came back, but he would die within the year.[426] More importantly, the records suggest that all would struggle to retain their former positions of wealth and prominence. At the end of the decade, Aaron still owned land and slaves, but a more telling sign of his position can be found in his dwindling cattle supply.[427] Once the largest stock raiser in the county, he had only twenty cattle left in 1860.[428] The only land remaining in Abner's estate during this same year was in Palo Pinto County, though his wife and children endeavored to maintain their standard of living in Orange.[429] The four slaves they owned in 1860—the only real wealth they had left—were gone by the end of the Civil War.[430]

William followed a similar path. He, along with Luke and a man named William Smith, was forced to borrow $1365 in October of 1856.[431] A year later he still had not paid all of it back, and was subsequently sued by the holders of the note and found liable.[432] During that same year, perhaps to pay off his debt, he began selling his land. In May of 1857, he sold two town lots to the wealthy merchant Hugh Ochiltree.[433] Four months later, he sold 900 acres of his vast estate on Cow Bayou to Moise LaBlue, including

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206, 227, 279, 309, 341, 360, 388, 409, 422.

[424] Orange County District Court Docket Book, at 140-41 (spring 1867).

[425] Orange County Tax Rolls for 1857; Orange County Tax Rolls for 1858.

[426] Orange County Tax Rolls for 1859; *see also* Orange County, Tex., Cemeteries, pt. 2, at 37 (1981) (recording Abner's death on Nov. 17, 1859).

[427] In 1860, Aaron owed 1900 acres in Orange County and 2000 in Bell County. Orange County Tax Rolls for 1860. He also owned four slaves. *Id.*

[428] *Id.*

[429] *See id.* (listing Aaron Ashworth as the agent for the heirs of Abner).

[430] *Id.*

[431] Jackson v. Ashworth, No. 84, at 1 (Tex. Dist. Ct. Orange Cty. fall 1857) (plaintiff's petition).

[432] *See* Jackson v. Ashworth, No. 84, Orange County District Court Minute Book "A," at 189 (fall 1857) (recording jury verdict in favor of plaintiffs).

[433] Deed from William Ashworth to Hugh Ochiltree, Orange County Deed Book "B," at 297 (May 6, 1857).

the homestead on which he and Delaide had lived.[434] This same deed reserved only 211 acres "known as the Luke Ashworth place," where Luke, who owned no more property of his own, undoubtedly resided.[435] By December, however, William had transferred sole ownership of this land to Delaide, keeping only 200 acres of a different plot of land as his own.[436] We can only speculate about the reasons, but it may have been an attempt to thwart William's creditors. Indeed, earlier in the year, the sheriff had seized all of his cattle of a particular brand and auctioned them off to highest bidder.[437] By 1860, Delaide had affixed her mark to a document filed in the clerk's office detailing her separate property. Among her possessions were one hundred head of cattle, twenty hogs, a mule, a horse, a mare and colt, most of the household furniture, and the family's four slaves.[438] William was left with little more than the two clocks he once proudly displayed.[439] In yet another indication of his fall from grace, in that same year, William, who had previously described himself as a farmer, now was working as a laborer, probably in the saw mills.[440] He died in 1864, two years after Aaron, as the last of the Ashworth patriarchs.[441]

In the end, it seems clear that, although the events of 1856 may have provided the ultimate spark, the era of the Ashworths's ability to live between freedom and slavery, black and white, had come to an end. Remembered by Olmsted as a family with "a reputation for great hospitality, keeping open house for all who call," they nonetheless upset the dynamics of a slave society.[442] For years, they had successfully straddled the lines of race and slavery, allowed to remain and even supported by some because of their contributions and their good name. After Sam killed

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[434] *See* Deed from Ashworth to Moise LaBleu, Orange County Deed Book "B," at 324, 336 (Sept. 10, 1857) (indicating that the amount sold contained "nine hundred acres more or less," including "the homestead on which we now reside").

[435] *Id.* The tax records indicate that Luke Ashworth had sold all of his property by 1857. *See* Orange County Tax Rolls for 1857; Orange County Tax Rolls for 1858; Orange County Tax Rolls for 1859. He purchased 160 acres in 1860. *See* Orange County Tax Rolls for 1860.

[436] Deed from William Ashworth to Delaide Ashworth, Orange County Deed Book "B," at 373 (Dec. 11, 1857). In the 1860 tax records, William is listed as the owner of 200 acres of the John Jett headright and "Mrs. D. Ashworth" is listed as the owner of 211. Orange County Tax Rolls for 1860. William had purchased these 200 acres in 1840. Deed from Joseph Dugat and Margaretta Williams, admrs., to William Ashworth, Jefferson County Deed Book "E," at 42 (June 26, 1840).

[437] Deed from William Ashworth to Joseph Dark, Jefferson County Deed Book "B," at 169 (Feb. 21, 1857).

[438] Schedule of Adelaide Ashworth's Property, *supra* note 132, at 197 (May 21, 1860). The slave schedules for 1860 also list Delaide, not William, as the owner of the family's slaves. 1860 CENSUS: Slave Inhabitants, *supra* note 276, Orange County, at 3-4.

[439] Schedule of Adelaide Ashworth's Property, *supra* note 132, at 197.

[440] *Cf.* 1850 CENSUS: Free Inhabitants, *supra* note 3, Jefferson County, Tex., at 497 (family #107) (listing occupation as farmer), *with* 1860 CENSUS: Free Inhabitants, *supra* note 21, Orange County, Tex., at 28 (family #186) (listing occupation as laborer).

[441] *See* Application for Veteran Land Certificate, Delaide Ashworth, *supra* note 165, at B (stating that William died in 1864). Aaron died in 1862. Estate of Aaron Ashworth, *supra* note 342 (affidavit of Mary Ashworth, attached to amended petition).

[442] OLMSTED, *supra* note 10, at 387.

Deputy, however, and the county split into warring factions, their good name suffered and appears to have never fully recovered. By 1860, the number of free people of color living in both Jefferson and Orange had dwindled to twenty-nine, down from their former prominence of sixty-three. In Calcasieu Parish, Louisiana, an area with a much larger contingent of free people of color and a history to go along with it, a good number appear to have found a more welcoming home.[443]

In the ensuing decades of the nineteenth century, the Ashworth name continues to show up in local records. In the early 1880s, Delaide was attempting to secure a veteran donation land certificate for William's service in the War for Independence. She confessed to having no land and to be living off William's war pension of $150 a year. Twenty years later, the massive Spindletop oilfield was discovered in Jefferson and Orange, bringing unbelievable wealth to many.[444] No longer significant landowners, however, the Ashworths were not among them. During this time, though, in an interesting but perhaps unsurprising twist, the Ashworths achieved a different goal, gradually slipping under the color line and becoming white.[445] In the Jim Crow South, with the bright lines of race at their most pronounced, there was no more room for people in the middle. The Ashworths, forced to choose one or the other, chose white.

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[443] *See* 1860 CENSUS: Population, *supra* note 120, at 190-91 (listing 355 free people of color in Calcasieu, almost the same amount as in the entire state of Texas).

[444] *See* 6 THE NEW HANDBOOK OF TEXAS, *supra* note 17, at 29-30 (Spindletop Oilfield) (providing background).

[445] In the 1870 census records, the Ashworths still living in Orange County were classified as white, some of whom had previously been labeled mulatto. For example, Aaron's son, Sublett, and Abner's daughter, Sidney, were both listed in the 1860 census as mulattos. 1860 CENSUS: Free Inhabitants, *supra* note 21, at 21 (family # 144), at 22 (family # 145). The two married and appear in the 1870 census as white. Manuscript Census Returns, Schedule 1.—Inhabitants, Orange County, Tex., at 25 (family # 180), *in* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, POPULATION SCHEDULES OF THE NINTH CENSUS OF THE UNITED STATES (1870). In the records for Calcasieu Parish in same year, members of the Ashworth family, including William's brother Jesse, still appeared as mulattoes. *Id.* at 158 (family # 975). Before long, the Ashworths of Louisiana would also turn white.