

## Shades of Gray: The Life and Times of a Free Family of Color on the Texas Frontier

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*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 legislature, 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 previously imagined. The Ashworths never took a stand against slavery; to the contrary, they amassed a fortune on its back. In doing so, their racial identity 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, along the turbid waters of the Sabine River in southeast Texas, Sam Ashworth blasted a hole in Samuel Deputy with a double-barreled shotgun.<sup>1</sup> Moments later,

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1. *Disturbances in Orange County*, GALVESTON WKLY. NEWS, July 15, 1856, at

as Deputy lay in the bottom of his skiff in a pool of his own blood, Sam Ashworth reportedly reached over and viciously struck him on the head with the butt of his gun, brutally ending the man's life.<sup>2</sup> The reason for the killing apparently stemmed from a simmering feud between Deputy and the Ashworths, a family of some prosperity and local influence. Before this incident, the aptly named Deputy—he was also the deputy sheriff of Orange County—accused Sam's cousin, Clark Ashworth, of butchering one of his hogs.<sup>3</sup> Clark denied it but was bound over to the district court nonetheless, and soon thereafter Sam challenged Deputy on the outskirts of town and was subsequently arrested.<sup>4</sup> 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.<sup>5</sup> He would soon need both. Word of the shooting spread like wildfire, with townsfolk and community members taking sides in a dispute with much larger implications: 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.<sup>6</sup>

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.<sup>7</sup> This was especially true in Texas, where

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2. *Id.*

3. Manuscript Census Returns, Schedule 1.—Free Inhabitants, Jefferson County, Tex., in BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, POPULATION SCHEDULES OF THE SEVENTH CENSUS OF THE UNITED STATES 497, 499 (1850) (on file with author) [hereinafter 1850 CENSUS: Free Inhabitants]; *Disturbances in Orange County*, *supra* note 1, at 2. Aaron and William were brothers. See Will of Abner Ashworth, 1–2 (Mar. 1851) (collection of Jefferson County Courthouse) (on file with author) (listing Abner's siblings, including William and Aaron).

4. *Disturbances in Orange County*, *supra* note 1, at 2.

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

6. See 1850 CENSUS: Free Inhabitants, *supra* note 3, at 483, 487, 497, 499, 506 (listing members of the Ashworth family, including their race, using designation "M" for mulatto); *Disturbances in Orange County*, *supra* note 1, at 2 (describing mayhem following the shooting); *infra* notes 66–94 and accompanying text (examining the Ashworths' 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 beginning in 1851 and thereafter, suggesting he moved to the area at that time and remained until his death in 1856. Jefferson County Tax Rolls, at "A-1" (1851) (collection of Tyrrell Historical Library) (on file with author).

7. Mark D. Groover, *Creolization and the Archaeology of Multiethnic*

lawmakers lashed out at free people of color with particular venom, banishing most from the state and shutting any stragglers to the bottom of the social order.<sup>8</sup> Thus, in committing such a brazen act, Sam Ashworth appeared to be 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.<sup>9</sup> But what is perhaps most surprising is that a number of whites also came to his defense, apparently on the grounds that the Ashworths' standing in the community warranted special considerations.<sup>10</sup> 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.<sup>11</sup>

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 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

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*Households in the American South*, 34 HIST. ARCHAEOLOGY 99, 104 (2000).

8. See *infra* notes 230–233 and accompanying text (describing the legal efforts to deal with free people of color in the Republic).

9. See *State v. Ashworth*, No. 124, Minute Book “A,” at 120 (Orange Cnty. Ct. 1856) (collection of Sam Houston Regional Library & Research Center) (on file with author) (indicting Sam Ashworth for murder); *Disturbances in Orange County*, *supra* note 1, at 2. The grand jury also indicted Henderson Ashworth as an accessory before the fact. *State v. Ashworth*, No. 126, Minute Book “A,” at 120 (Orange Cnty. Ct. 1856) (collection of Sam Houston Regional Library & Research Center) (on file with author) (on file with author).

10. See *Disturbances in Orange County*, *supra* note 1, at 2 (“[Ashworth’s] friends immediately rallied for the purpose of protecting him against any party that might attempt his arrest . . .”).

11. The events surrounding the killing were reported regularly in the newspapers through the summer and fall of 1856. In chronological order, see for example, *Another Murder*, GALVESTON WKLY. NEWS, June 5, 1856, at 1; *Orange County*, GALVESTON WKLY. NEWS, July 8, 1856, at 1; *Disturbances in Orange County*, *supra* note 1, at 2; *The Orange County Disturbance*, GALVESTON WKLY. NEWS, July 15, 1856, at 3; *More of the Orange County Difficulty*, GALVESTON WKLY. NEWS, July 29, 1856, at 1; GALVESTON WKLY. NEWS, Oct. 21, 1856, at 2; GALVESTON WKLY. NEWS, Nov. 1, 1856, at 3; GALVESTON WKLY. NEWS, Nov. 25, 1856, at 1. See also FREDERICK LAW OLMSTED, A JOURNEY THROUGH TEXAS 386–88 (1857).

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. Legal historians of slavery have been surprisingly slow to recognize the value of such stories, choosing instead to focus on statutes and canonical cases.<sup>12</sup> The reasons are understandable: it is generally agreed that laws and appellate decisions provide access into an important segment of the Southern mind—those who, through education, social standing, and political and economic power, were tasked with debating the large issues of the day.<sup>13</sup> Yet, as much as these sources can tell us about general trends and ideological currents, they say very little about life as most people experienced it. For ordinary people, far more important than a debate over the ideological ramifications of slavery (or the role of paternalism, capitalism, humanitarianism, patriarchy, Christianity, or another intellectual movement) were the basic struggles of life: finding sufficient food for their families, building homes strong enough to make it through the winter, and cultivating enough crops or raising enough cattle to survive another year. Put another way, focusing too much on broad theoretical questions and transformations inadvertently omits the realities of everyday life.<sup>14</sup>

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12. See generally Ariela Gross, *Beyond Black and White: Cultural Approaches to Race and Slavery*, 101 COLUM. L. REV. 640, 640–45 (2001) (reviewing the artificial divide between legal historians and social historians and its implications).

13. *Id.* at 641 (“Historians and constitutional scholars were reading the published opinions of Southern high courts, as well as the laws enacted by Southern legislatures, for evidence of Southern Whites’ ideology . . .”).

14. Cf. ARIELA J. GROSS, DOUBLE CHARACTER: SLAVERY AND MASTERY IN THE ANTEBELLUM SOUTHERN COURTROOM 3–9 (2000) [hereinafter GROSS, DOUBLE CHARACTER] (emphasizing the importance of local records in studying disputes over slaves); ARIELA J. GROSS, WHAT BLOOD WON’T TELL: A HISTORY OF RACE ON TRIAL IN AMERICA, 11–12 (2008) [hereinafter GROSS, WHAT BLOOD WON’T TELL] (justifying the method of examining local trials of racial identity to understand race); MARTHA HODES, WHITE WOMEN, BLACK MEN: ILLICIT SEX IN THE NINETEENTH-CENTURY SOUTH, 1–15 (1997) (explaining the author’s method of relying on local records to tell stories about white women and black men); JOSHUA D. ROTHMAN, NOTORIOUS IN THE NEIGHBORHOOD: SEX AND FAMILIES ACROSS THE COLOR LINE IN VIRGINIA, 1787–1861, at 6–10 (2003) (recognizing the “central importance” of local disputes in understanding interracial relationships); 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); Walter Johnson, *The Slave Trader, the White Slave, and the Politics of Racial Determination in the 1850s*, 87 J. AM. HIST. 13, 13–16 (2000) (focusing on testimony from lower court hearings in a case involving a white slave suing for her freedom); 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.

To that end, this Article seeks to capitalize on the best that local studies have to offer, paying attention to the details of individual circumstance while trying to fit these stories into the larger framework of race and race relations under slavery. Such an approach adds significantly to the debate—and this Article suggests that the additive is humanity itself—in the process upending some common assumptions about life during the era of slavery. To be sure, the official position towards free blacks needs little elaboration:

In no part of this country, whether North or South, East or West, does the free negro stand erect and on a platform of equality with the white man . . . . To him there is but little in prospect, but a life of poverty, of depression, of ignorance, and of decay. He lives amongst us without motive and without hope. His fancied freedom is all a delusion.<sup>15</sup>

Yet, notwithstanding such pronouncements and the frequency with which they have been repeated, the story of the Ashworths suggests that the modern understanding of the experiences of free people of color needs to be reevaluated with an eye towards nuance and variety. It may be true that the ability of free blacks to negotiate a living on the South's middle ground became increasingly difficult as the country approached the Civil War. But the story of the Ashworths also reveals a family that, for decades, prospered and thrived, married whites, and acquired land, property, and even slaves, seemingly in defiance of what should have been. For that reason, an undeniable message of this Article is the importance of looking to the exceptions rather than the rules to get a true feel for the significance of race, slavery, and freedom in people's lives. Classed as free people of color, the Ashworths nonetheless accomplished things that the slave regime seemingly should not have allowed.

With this in mind, the Ashworths' story was not chosen by accident; the family's appeal lies in both its commonality and its novelty.<sup>16</sup> As for the first, the Ashworths were a family who, like others, risked much to venture into the Texas wilderness, and as

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Gillmer, *Base Wretches and Black Wenches: A Story of Sex and Race, Violence and Compassion, During Slavery Times*, 59 ALA. L. REV. 1501 (2008).

15. Bryan v. Walton, 14 Ga. 185, 205 (1853).

16. 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. See, e.g., Andrew Forest Muir, *The Free Negro in Jefferson and Orange Counties, Texas*, 35 J. OF NEGRO HIST. 183, 185–204 (1950). These sources have been consulted, sometimes cited, but never relied upon unless the facts could be independently verified or the methodology met with the exacting standards of historical and legal research.

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' story allows us to examine the underdeveloped subject of free people of color along the Texas frontier. Previous studies of free blacks have tended to gloss over the area, if they mention it at all, in favor of the livelier and often much more document-rich areas of Louisiana, the Carolinas, and Virginia.<sup>17</sup> The result is a dearth of knowledge about who these people were, where they lived, what they did, with whom they associated, and what they thought of slavery and the human condition.<sup>18</sup> It may be true that they were never as numerous as free people of color in other places in the South—in the hundreds in Texas compared to thousands or even tens of thousands elsewhere<sup>19</sup>—but this fact belies both their importance and the impact they had on the neighborhoods in which they lived.

Not surprisingly, rebuilding the life and times of the Ashworths has not been easy. Like so many others who did not

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17. An excellent starting point for any analysis of free blacks is IRA BERLIN, *SLAVES WITHOUT MASTERS: THE FREE NEGRO IN THE ANTEBELLUM SOUTH* (1974). Among some of the notable studies that focus on specific states are T.H. BREEN & STEPHEN INNES, "MYNE OWNE GROUND": RACE AND FREEDOM ON VIRGINIA'S EASTERN SHORE, 1640–1676 (1980); JOHN HOPE FRANKLIN, *THE FREE NEGRO IN NORTH CAROLINA, 1790–1860* (1943); GARY B. MILLS, *THE FORGOTTEN PEOPLE: CANE RIVER'S CREOLES OF COLOR* (1977) (recording life and culture in the Cane River of Louisiana); H.E. STERKX, *THE FREE NEGRO IN ANTE-BELLUM LOUISIANA* (1972) (documenting Louisiana's treatment of free blacks from French colonial times to the antebellum era); MARINA WIKRAMANAYAKE, *A WORLD IN SHADOW: THE FREE BLACK IN ANTEBELLUM SOUTH CAROLINA* (1973).

18. The two historians who have arguably contributed the most to our understanding of the subject of free people of color in Texas 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* (pts. 1–6), 39 SW. HIST. Q. 292 (1936), 40 SW. HIST. Q. 26 (1936), 40 SW. HIST. Q. 85 (1936), 40 SW. HIST. Q. 169 (1937), 40 SW. HIST. Q. 267 (1937), 41 SW. HIST. Q. 83 (1937). The second, Andrew Forest Muir, expanded the area of inquiry to include Texas after statehood, and made better use of county archives in the 1940s and 1950s. See Andrew Forest Muir, *The Free Negro in Galveston County, Texas*, 22 J. NEGRO HIST. 68 (1958); Andrew Forest Muir, *The Free Negro in Jefferson and Orange Counties, Texas*, *supra* note 16; Andrew Forest Muir, *The Free Negro in Fort Bend County, Texas*, 33 J. NEGRO HIST. 79 (1948); Andrew Forest Muir, *The Free Negro in Harris County, Texas*, 46 SW. HIST. Q. 214 (1943). For similar projects, see ALWYN BARR, *BLACK TEXANS: A HISTORY OF AFRICAN AMERICANS IN TEXAS, 1528–1995*, 1–12 (2d ed. 1996); 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 eds., 1981).

19. See Statistics of the United States, in BUREAU OF THE CENSUS, U.S. DEPT OF COMMERCE, *COMPENDIUM OF THE SEVENTH CENSUS* 63, tbl.42 (1854) (comparing populations of free people of color in the various states in 1850).

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 collections of letters.<sup>20</sup> Yet the Ashworths, along with others like them, did leave their lasting imprint on history in a variety of ways. Fragments of their lives can be found in a host of legal documents—trial records, 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, traveler's accounts, and newspaper articles. When assembled, it becomes apparent that the Ashworths' experience was inextricably linked to the men and women, blacks as well as whites, who joined together to carve out a community along the banks of the Sabine. The Ashworth family story, then, is a story with much broader implications: it is a story of social, legal, and political life on 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, 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 lives of others in the days before the Republic. Part III situates the Ashworths' story within the larger framework following Texas's independence. This Part contrasts the efforts to make Texas a slave society with the Ashworths' remarkable success as a free family of color. Part IV details the inevitable problems the Ashworths' 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.

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20. A small handful of diaries and accounts by Southern free blacks have been discovered, published, and written about. See, e.g., WILLIS AUGUSTUS HODGES, *FREE MAN OF COLOR: THE AUTOBIOGRAPHY OF WILLIS AUGUSTUS HODGES* (Willard B. Gatewood, Jr. ed., 1982); WILLIAM JOHNSON'S NATCHEZ: *THE ANTE-BELLUM DIARY OF A FREE NEGRO* (William Ransom Hogan & Edwin Adams Davis eds., Kennikat Press 1968) (1951); MICHAEL P. JOHNSON & JAMES L. ROARK, *BLACK MASTERS: A FREE FAMILY OF COLOR IN THE OLD SOUTH* (1984); LUNSFORD LANE, *THE NARRATIVE OF LUNSFORD LANE, FORMERLY OF RALEIGH* (1842).

## I. The Setting

### A. "[O]ne of the handsomest locations imaginable"

Visitors to Orange County, Texas, in the summer of 1856 would have been pleased with what they found. Situated on the border of Louisiana, Orange County had been carved out of the eastern part of Jefferson County four years before.<sup>21</sup> The Sabine River formed its natural boundary on the east and the Neches River established its southern and western boundaries.<sup>22</sup> 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."<sup>23</sup> Understandably, these and other waterways helped establish the area as a desirable location in the decades before the Civil War.<sup>24</sup> 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.<sup>25</sup>

The county also boasted a town, Orange (first named Madison), of several hundred inhabitants.<sup>26</sup> The town was situated in the southeastern part of the county in "one of the handsomest locations imaginable," a few miles above Sabine Lake.<sup>27</sup> Though it never achieved the status of a Galveston or Houston, by 1860 Orange boasted at least one school, a few inns, plenty of homes, and a number of shops.<sup>28</sup> For a time, court was

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21. See generally 4 THE NEW HANDBOOK OF TEXAS 1161-62 (Ron Tyler et al. eds., 1996) (documenting the geography and history of Orange County).

22. *Id.* at 1161.

23. *Orange County*, GALVESTON WKLY. NEWS, Jan. 20, 1857, at 1.

24. See 4 THE NEW HANDBOOK OF TEXAS, *supra* note 21, at 1162.

25. See W.T. BLOCK, A HISTORY OF JEFFERSON COUNTY, TEXAS, FROM WILDERNESS TO RECONSTRUCTION 33-45 (1976) (discussing the reliance on ferries for personal and business use); see also *Orange County*, *supra* note 23 (boasting that "[n]o farmer settling in this county can possibly have to haul his produce exceeding [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").

26. The 1860 census listed 429 inhabitants in the town of Orange. Manuscript Census Returns, Schedule 1.—Free Inhabitants, Orange County, Tex., in BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, POPULATION SCHEDULES OF THE EIGHTH CENSUS OF THE UNITED STATES 1-11 (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 21, at 1162.

27. *Orange County*, *supra* note 23, at 1.

28. HOWARD C. WILLIAMS, GATEWAY TO TEXAS: THE HISTORY OF ORANGE AND ORANGE COUNTY 55 (2d ed. 1988) (referencing *Letter from Hal*, GALVESTON WKLY. NEWS, June 30, 1957); see also 1860 CENSUS: Free Inhabitants, *supra* note 26,



held under shade trees or in private homes.<sup>29</sup> But by the mid-1850s, construction had begun on a more permanent structure.<sup>30</sup> The town did not have its own newspapers but was not unusual in this respect.<sup>31</sup> Much of the local news was probably covered by the Methodist preacher during his regular sermons, also held in the courthouse.<sup>32</sup>

Doctors and lawyers, carpenters and bricklayers, shoe makers and bakers lived in Orange.<sup>33</sup> Because of its proximity to the Gulf, there were also many people who worked in the shipping industry, including steamboat men, ship carpenters, and sea captains.<sup>34</sup> As might be expected, there were also a number of merchants and other tradesmen who lived in town and were eager to profit from the local commerce.<sup>35</sup>

But by far the greatest number of residents of the county drew their livelihood in one way or another from the land.<sup>36</sup> Many were farmers who worked a few hundred acres, growing rice, wheat, rye, tobacco, cotton, corn, peas, beans, and potatoes.<sup>37</sup> Unlike in other counties, few in Orange profited significantly from the crops they grew; most was grown for local consumption.<sup>38</sup>

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Orange County, Tex., at 1–11 (listing inhabitants and occupations, including hotel keepers, merchants, grocers, blacksmiths, shoemakers, etc.).

29. TEX. HISTORICAL RECORDS SURVEY, INVENTORY OF THE COUNTY ARCHIVES OF TEXAS, ORANGE COUNTY 8 (1941) (collection of Sam Houston Regional Library & Research Center).

30. See *id.* (describing the plan to build a two-story courthouse, later changed to one). The courthouse was destroyed in some manner in 1859. *Id.*

31. Orange County's first newspaper was not published until 1875. WILLIAMS, GATEWAY TO TEXAS, *supra* note 28, at 218. In nearby Jefferson County, the first newspaper was published in 1860. F.B. BAILLIO, A HISTORY OF THE TEXAS PRESS ASSOCIATION 338 (1916).

32. See 1860 CENSUS: Free Inhabitants, *supra* note 26, at 9 (listing V.C. Canon's occupation as a Methodist preacher); see also TEX. HISTORICAL RECORDS SURVEY, *supra* note 22, at 8 ("The courthouse was frequently used for church services.").

33. See 1860 CENSUS: Free Inhabitants, *supra* note 26 at 1–11.

34. See *id.*

35. See *id.*

36. Cf. POPULATION OF THE UNITED STATES IN 1860; COMPILED FROM THE ORIGINAL RETURNS OF THE EIGHTH CENSUS 491 (1864) [hereinafter 1860 CENSUS: Population].

37. See AGRICULTURE OF THE UNITED STATES IN 1860; COMPILED FROM THE ORIGINAL RETURNS OF THE EIGHTH CENSUS 145 (1864) [hereinafter 1860 CENSUS: Agriculture] (charting the amount of crops grown in Texas by county).

38. See BLOCK, *supra* note 25, at 67 (describing agricultural practices). Orange produced 600 pounds of rice compared to 20,840 produced in Sabine; 4066 gallons of cane molasses compared to 346,640 produced in Brazoria; 251 bales of cotton compared to 31,342 produced in San Augustine; and 17,292 bushels of corn compared to 660,043 produced in Harrison. 1860 CENSUS: Agriculture, *supra* note 38, at 145.

Other county residents were ranchers. Much of the marshy salt grass terrain along the Gulf was well suited for ranching<sup>39</sup> and a visitor stopping at the home of William Ashworth in 1857 no doubt would have been impressed with the eight hundred cattle roaming about his property.<sup>40</sup> 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 grew in significant numbers.<sup>41</sup> The area's plentiful supply of lumber, combined with its ideal location near the Gulf, inspired a number of entrepreneurs to cut down trees and convert them into a usable product.<sup>42</sup> In fact, by 1860 there were seven saw mills in the county.<sup>43</sup> In that year, they produced almost \$110,000 worth of shingles, fence posts, and other sawed lumber, employing fifty-one residents.<sup>44</sup> Only three Texas counties produced more of these products during that year.<sup>45</sup>

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. Though Southern born, these people were distinctly Texan. Some contemporary observers dismissed them as unsophisticated and uneducated, pointing out that they cared little for newspapers or books.<sup>46</sup> But a more charitable description might be that they valued the simple things of life. The people who came to Texas built simple one-room homes out of logs and mud and subsisted on cornbread and salted pork.<sup>47</sup> "It is not a paradise," an article printed in *De Bow's Review* stated, "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."<sup>48</sup>

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39. See BLOCK, *supra* note 25, at 1; *Orange County*, *supra* note 23, at 1.

40. See 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) (on file with author).

41. See 4 THE NEW HANDBOOK OF TEXAS, *supra* note 24, at 1161.

42. See *id.*

43. 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).

44. *Id.*

45. Those counties were Montgomery (\$157,500), Bastrop (\$135,300), and Harris (\$120,000). *Id.* at 580–91.

46. OLMSTED, A JOURNEY THROUGH TEXAS, *supra* note 11, at 117 ("In the whole journey through Eastern Texas, we did not see one of the inhabitants look into a newspaper or a book . . .").

47. *Id.* at 49, 149.

48. Texas—Character of the Country, Emigrants, Etc., 20 DE BOW'S REV. 241,

B. "[P]eople of mixed blood, though nearly white"

The Ashworths were one of the more conspicuous families in the county. 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.<sup>49</sup> Members of the Ashworth family had been living in the area for years. William was the first to arrive in 1831, when Texas was still part of Mexico.<sup>50</sup> 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 others came, for Texas offered abundant land and precious opportunity to the hardy and adventurous.<sup>51</sup> Indeed, Texas had been open for settlement since 1821, after Moses Austin and later his son Stephen arranged with the Spanish and then Mexican governments to settle three hundred families along the banks of the Brazos and Colorado Rivers.<sup>52</sup> Since that time the population of Texas had grown considerably, as people in the South and East heard the inevitable talk of prosperity and good things to come.<sup>53</sup>

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241 (1856) [hereinafter *Character of the Country*].

49. There were more than five separate Ashworth households in Jefferson County in 1850. 1850 CENSUS: Free Inhabitants, *supra* note 3, at 483, 487, 497, 498, 499. Sarah Ashworth, who married William Burwick and appears under his name in the census, makes for an additional one. *Id.* at 501; *see also infra* notes 422–424 and accompanying text. In nearby Angelina County, there were an additional four Ashworth households with a total of eighteen individuals. 1850 CENSUS: Free Inhabitants, *supra* note 3, Angelina County, Tex., at 74–75. 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.

50. *See* Headright Certificate for William Ashworth, No. 111 (Jefferson County, Mar. 5, 1838) (collection of Sam Houston Regional Library & Research Center) (on file with author) (stating date of arrival). The headright certificates were the first step in obtaining a land grant. *See* Charles E. Gilliland et al., *Texas Title Trail, TIERRA GRANDE* (Jan. 2006), available at <http://recenter.tamu.edu/pdf/1760.pdf>. After receiving a land grant, the grantee would locate available land from the public domain. *Id.* 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. *Id.*

51. *Character of the Country*, *supra* note 48, at 241.

52. For general background on Texas history, including aspects of its settlement, geography, and local policymaking, *see* RANDOLPH B. CAMPBELL, *GONE TO TEXAS: A HISTORY OF THE LONE STAR STATE* 101 (2003).

53. Patricia Kelly Hall & Steven Ruggles, "Restless in the Midst of Their Prosperity": *New Evidence on the Internal Migration of Americans, 1850–2000*, 91 J. AM. HIST. 829, 844–45 (2004). The population of Texas nearly tripled in the span of a decade, expanding from 212,592 to 604,215 residents from 1850 to 1860. *See* 1860 CENSUS: Population, *supra* note 36, at iv; THE SEVENTH CENSUS OF THE UNITED STATES: EMBRACING A STATISTICAL VIEW OF EACH OF THE STATES AND TERRITORIES, ARRANGED BY COUNTIES, TOWNS, ETC., at ix (1853).

William settled on land owned by the former Mexican official, Lorenzo de Zavala.<sup>54</sup> Like Stephen F. Austin, de Zavala obtained a grant to colonize parts of Texas.<sup>55</sup> William Ashworth's family was originally from South Carolina,<sup>56</sup> but his father, James, had moved the family to Louisiana during the early nineteenth century.<sup>57</sup> William was just a boy at the time—maybe ten years old—with both older and younger siblings.<sup>58</sup>

What ultimately brought the family west is impossible to say. At the time, Louisiana was the furthest west they could go as Texas was not yet open, and it is likely that they sought the freedom and openness of a sparsely settled area. But Louisiana may have had an additional draw, for the state was home not only to one of the larger concentrations of free people of color, but was also one of the most unique.<sup>59</sup> Indeed, unlike their counterparts back home, most slaves in this part of the world did not gain their freedom as a result of the ideas and events of the American Revolution; instead, they descended from prior unions between masters and slaves, sometimes generations ago.<sup>60</sup> Some were from the West Indies, others had been born here.<sup>61</sup> Either way, the

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54. Muir, *supra* note 16, at 185.

55. See Mary Henderson, *Minor Empresario Contracts for the Colonization of Texas, 1825–1834*, 31 SW. HIST. Q. 295, 304 (1928) (describing de Zavala's contract to bring five hundred families to Texas).

56. 1850 CENSUS: Free Inhabitants, *supra* note 3, Jefferson County, Tex., at 497.

57. See Manuscript Census Returns, Opelousas, La., in BUREAU OF THE CENSUS, U.S. DEPT OF COMMERCE, HEADS OF FAMILIES AT THE THIRD CENSUS OF THE UNITED STATES 137 (1810) [hereinafter 1810 CENSUS] (listing James as head of household).

58. Assembling William's family tree has been a great puzzle, requiring this researcher to put together several sources to reach simple conclusions. The names of William's 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) (collection of St. Landry Parish Court) (on file with author).

59. See Muir, *supra* note 16, at 183 n.1 (reporting fewer than 400 blacks in a concentrated area).

60. See generally Ira Berlin, *The Structure of the Free Negro Caste in the Antebellum United States*, 9 J. SOC. HIST. 297, 309–314 (1976) (reviewing the differences between free people of color based on region); Laura Foner, *The Free People of Color in Louisiana and St. Domingue: A Comparative Portrait of Two Three-Caste Slave Societies*, 3 J. SOC. HIST. 406, 408 (1970) (noting the origins of free people of color in Louisiana).

61. See Berlin, *supra* note 60, at 310. See generally C.L.R. JAMES, *THE BLACK JACOBINS: TOUSSAINT L'OUVERTURE AND THE SAN DOMINGO REVOLUTION* (2d ed. 1963).

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, “[t]hey 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.”<sup>62</sup> Many of these free persons of color also successfully practiced a trade as barbers, carpenters, and blacksmiths, increasing both their wealth and social status.<sup>63</sup> In no quarters were they considered equal with whites, but Louisianans also looked upon them as distinct from black slaves, occupying their own caste.<sup>64</sup> As the Louisiana Supreme Court would eventually put it, “in the eye of the 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.”<sup>65</sup>

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.”<sup>66</sup> These often large yet distinct groups were made up of people who shared African, American Indian, and European ancestry, and whose histories often dated back to the first free black families of the seventeenth and early eighteenth centuries.<sup>67</sup> Some of the more identifiable names include the Perkinses, Dials, and Bunches, as well as the Chavises, Basses, and Gibsons.<sup>68</sup> Often excluded or distrusted by

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

63. See Berlin, *supra* note 60, at 306, 311.

64. *Id.* at 312.

65. State v. Harrison, 11 La. Ann. 722, 722 (La. 1856).

66. See GROSS, WHAT BLOOD WON'T TELL, *supra* note 14, at 63–70, 78–90, 110–39 (discussing the experiences of individual members of tri-racial families); Virginia Easley DeMarce, “Verry Slitly Mixt”: Tri-racial Isolate Families of the Upper South—A Genealogical Study, 80 NAT'L GENEALOGICAL SOC'Y Q. 5 (1992) (surveying groups identified as tri-racial isolates); Ariela Gross, “Of Portuguese Origin”: Litigating Identity and Citizenship Among the “Little Races” in Nineteenth-Century America, 25 LAW & HIST. REV. 467 (2007) [hereinafter Gross, “Of Portuguese Origin”] (documenting racially ambiguous communities in the South); Gary B. Mills, *Tracing Free People of Color in the Antebellum South: Methods, Sources, and Perspectives*, 78 NAT'L GENEALOGICAL SOC'Y Q. 262 (1990) (exploring tri-racial families); Paul Heinegg, *Free African Americans of Virginia, North Carolina, South Carolina, Maryland and Delaware*, <http://www.freeafricanamericans.com.htm> (last visited Nov. 6, 2010) (detailing families identified as tri-racial isolates).

67. See Gross, “Of Portuguese Origin,” *supra* note 66, at 475–81.

68. Heinegg, *supra* note 66 (providing the most exhaustive list of families with tri-racial roots). For some of the more common names, see DeMarce, *supra* note 66, at app.

the larger white populace, members of these families formed their own communities, living in the same neighborhoods and intermarrying with each other.<sup>69</sup> Over the years, these groups followed similar settlement patterns.<sup>70</sup> Originating in Virginia and North Carolina, they spread significantly into parts of South Carolina, eastern Tennessee, and eventually to other places, including Louisiana.<sup>71</sup> In different locations they were given unique and imaginative names, like "brass ankles" and "turks" in South Carolina, "melungeons" in Tennessee, and "croatans" in North Carolina.<sup>72</sup> In Louisiana, they were given the name "red bones," a label that is still used indiscriminately today to denote someone appearing of mixed ancestry.<sup>73</sup>

The myths surrounding some of these groups have now reached epic proportions, fueled in large part by past efforts of some of their members and sympathizers to deny their African heritage.<sup>74</sup> Some of the origin myths are truly fantastic. One group has been linked to the Portuguese-Spanish captain Juan Pardo's sixteenth-century expedition; another traces their descent to Carthaginian or Phoenician seamen; yet another maintains that they descended from survivors of the "Lost Colony" at Roanoke Island who married American Indian women.<sup>75</sup> One scholar observes that an "obvious explanation" for these myths "is the perpetual wish for non-African ancestry . . ."<sup>76</sup> She sums up the controversy this way:

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,

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69. See GROSS, WHAT BLOOD WON'T TELL, *supra* note 14, at 115 ("[T]hese people formed entire communities of racially ambiguous people . . ."); Mills, *supra* note 66, at 266 (noting how families of color traveled in large numbers for safety reasons).

70. See DeMarce, *supra* note 66, at 5, 9.

71. *Id.*

72. *Id.* at 8. Ariela Gross notes that such names, given to blacks by their neighbors, were "sometimes meant as racial epithets and other times as affectionate monikers." GROSS, WHAT BLOOD WON'T TELL, *supra* note 14, at 115.

73. DeMarce, *supra* note 66, at 8.

74. See *id.* at 6; cf. GROSS, WHAT BLOOD WON'T TELL, *supra* note 14, at 116 (noting that, while many groups sought to deny or downplay their African past, others, like the Narragansett, embraced it).

75. See Virginia Easley DeMarce, *Looking at Legends—Lumbee and Melungeon: Applied Genealogy and the Origins of Tri-racial Isolate Settlements*, 81 NAT'L. GENEALOGICAL SOC'Y. Q. 24 (1993) (reviewing the history of tri-racial isolate settlements in the Upper South).

76. *Id.* at 36.

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.<sup>77</sup>

One modern 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.<sup>78</sup> She cites photographs from an undisclosed period—notably, long after the antebellum era—and insists that they provide positive proof of a non-African background.<sup>79</sup>

As scholars of race well know, however, these claims have little to no objective value. Race has never been a biological or natural fact; it is instead a social construct.<sup>80</sup> And in the Ashworths' case, from the time they were in Louisiana until the Civil War ended in Texas, local authorities and residents identified them regularly and routinely as "free persons of color," "colored persons," and "mulattoes."<sup>81</sup> To be certain, the Ashworths were light in color—they were described by one source as "people of mixed blood, though nearly white"<sup>82</sup>—and this no doubt created occasional confusion among their neighbors and associates.<sup>83</sup> But

77. DeMarce, *supra* note 66, at 6.

78. See Vanda V. Ashworth, *The Ashworth Family* 3–7, 228–41 (unpublished manuscript 1987) (collection of Sam Houston Regional Library & Research Center).

79. *Id.*

80. For discussions of how law, human interactions, and societal factors influence the construction of race, see, for example, GROSS, WHAT BLOOD WON'T TELL, *supra* note 14; 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 14. For some of my own work, 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).

81. See, e.g., 1850 CENSUS: Free Inhabitants, *supra* note 3 (referring to the Ashworths as mulattoes); *Hillebrant v. Ashworth*, 18 Tex. 307 (1857) (collection of Texas State Archives) (calling one of the Ashworths a "person of color").

82. 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 CONG.].

83. In 1800, for example, the federal census in South Carolina listed James Ashworth as white. Manuscript Census Returns, Pendleton Dist., S.C., in BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, HEADS OF FAMILIES AT THE SECOND CENSUS OF THE UNITED STATES 138 (1800). Such discrepancies were not

far from providing helpful proof of their past, their ambiguous racial background serves as a reminder of the complicated nature of race.

Importantly, in sharp and notable contrast to the efforts of a handful of modern descendants, the designation of the Ashworths and others as free persons of color was not always something to be avoided. One notable example occurred when Christian Hillebrant sued William's brother Abner Ashworth in 1853.<sup>84</sup> The dispute started 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.<sup>85</sup> When questioned, Barnes refused to tell Abner who had told him the story, prompting Abner to burst out saying, "if it was a woman [who said it, then] she was a damned whorish liar."<sup>86</sup> 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.<sup>87</sup> 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.<sup>88</sup> Barnes later gave the thousand dollar note to Hillebrant who sued Abner when he refused to pay it.<sup>89</sup> As a defense, Abner took the interesting tack of relying on his African heritage to void the contract. As he stated 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."<sup>90</sup> As the case progressed, Abner also presented evidence "that [he] is a free negro."<sup>91</sup> The defense worked; the jury found in Abner's favor, concluding that the note was obtained by fraud and without consideration.<sup>92</sup>

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uncommon, as census takers were often unfamiliar with residents or their backgrounds, and often went solely on appearance. Cf. Mills, *supra* note 66, at 264 (noting how, even within a few miles of each other, different census takers in Louisiana identified members of the Going, Perkins, and Sweat families as white and "free colored persons").

84. Hillebrant v. Ashworth, No. 206 at 1 (Jefferson Cnty. Dist. Ct. May 1855), *aff'd*, 18 Tex. 307 (1857) (transcript of trial) (collection of Texas State Archives) (on file with author).

85. Hillebrant v. Ashworth, 18 Tex. at 308.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.* at 309.

90. Hillebrant v. Ashworth, No. 206 at 1, 14 (Jefferson Cnty. Dist. Ct. May 1855).

91. *Id.* at 27.

92. *Id.* at 17, 18–19. The jury's finding was upheld on appeal. Hillebrant v.



The Ashworths' story thus is a common one among families of mixed racial background, especially the so-called tri-racial isolates. Undoubtedly free, they were neither purely white nor purely black (nor purely American 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. Perhaps such a position helps account for their desire to reach the frontier, whether into eastern Tennessee or, in the Ashworths' case, into Louisiana and Texas.<sup>93</sup> 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.<sup>94</sup> Even then, however, the impact was difficult to predict.

### C. "*Til death us do part*"

William's parents eventually settled in southwestern Louisiana, in what became Calcasieu Parish but what was then still part of St. Landry's Parish, not far from what would later become Texas.<sup>95</sup> In the earliest census returns, William's father, James Ashworth, is listed as the head of a household of eleven free persons of color.<sup>96</sup> 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.<sup>97</sup> His brothers were James, who was the oldest, followed by Jesse, Moses, Aaron, and Abner, the last having been born in Louisiana in 1809.<sup>98</sup> His sisters were

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Ashworth, 18 Tex. 307 (1857).

93. See DeMarce, *supra* note 66, 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 66, at 266 (noting how many families "were perpetually at the vanguard of 'civilization,' pushing into unpopulated frontiers where they would face less discrimination").

94. See GROSS, WHAT BLOOD WON'T TELL, *supra* note 14, at 70 (noting how identity might become an issue if the person made someone "mad").

95. Calcasieu was created in 1840 from the parish of St. Landry. HISTORICAL RECORDS SURVEY, WORKS PROGRESS ADMIN., INVENTORY OF THE PARISH ARCHIVES OF LOUISIANA, NO. 10 CALCASIEU PARISH (LAKE CHARLES), at 3 (1938) (collection of Dep't of Archives, Louisiana State University).

96. 1810 CENSUS, *supra* note 57.

97. Will of Abner Ashworth, *supra* note 3, at 1-2 (indicating that Abner had eight siblings).

98. *Id.* The 1850 census from Angelina County, Texas, lists James as sixty-one, 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. The census

Mary (sometimes called Polly), Elizabeth, and Sarah.<sup>99</sup> By 1820, moreover, James, Jesse, Moses, and Mary had all married and started families of their own,<sup>100</sup> and all appear separately from their father in the census.<sup>101</sup> Nearby were other families of known tri-racial descent, including the Perkinses, the Dials, the Sweats, the Bunches, and the Goings, all of whom were classed as free people of color.<sup>102</sup> The marriage records also indicate that they commonly intermarried.<sup>103</sup> William's mother was Keziah Dial, for example, and his sister Mary and his brothers James and Jesse married members of the Perkins family, while two of his other

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records from Calcasieu Parish in Louisiana during the same year list Jesse as sixty and from South Carolina. *Id.*, Calcasieu Parish, La., at 778. In the Jefferson County census in 1850, William is fifty-seven and Aaron is forty-seven, both from South Carolina. *Id.*, Jefferson County, Tex., at 497, 499. Abner is listed in the 1850 census as forty-one, meaning that he was born in 1809, with his birthplace as Louisiana. *Id.* at 483. Moses died about twelve years before the 1850 census, making his precise age difficult to determine. See Estate of Moses Ashworth, Cause #245, at 1 (inventory of estate) (Apr. 14, 1838) (collection of Jefferson County Courthouse) (on file with author). The 1830 census records indicate that he was between twenty-four and thirty-six years old. Manuscript Census Returns, St. Landry Parish, La., in BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, POPULATION SCHEDULES OF THE FIFTH CENSUS OF THE UNITED STATES 27 (1830) [hereinafter 1830 CENSUS].

99. Will of Abner Ashworth, *supra* note 3, at 2. Because at least two married and changed their names, William's sisters are harder to locate. Abner's will refers to one sister as Mary Perkins, and the marriage records indicate that "Polly" Ashworth married George Perkins in 1810. Marriage Certificate of Polly Ashworth and George Perkins (Dec. 4, 1810) (collection of St. Landry Parish Court) (on file with author). "Mary" Perkins subsequently appears with George Perkins in the 1850 census records from Calcasieu Parish; she is listed as fifty-eight years old and from South Carolina. 1850 CENSUS: Free Inhabitants, *supra* note 3, Calcasieu Parish, La., at 770. 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) (collection of Jefferson County Courthouse) (on file with author). However, Sarah did leave behind three minor children. *Id.*

100. See Marriage Certificate of Moses Ashworth and Anna Bunch (Nov. 23, 1821) (collection of St. Landry Parish Court) (on file with author); Marriage Certificate of James Ashworth and Mary Perkins (Sept. 23, 1811) (collection of St. Landry Parish Court) (on file with author); Marriage Certificate of Polly Ashworth and George Perkins, *supra* note 99; Marriage Certificate of Jesse Ashworth and Sarah Perkins (Oct. 3, 1810) (collection of St. Landry Parish Court) (on file with author).

101. See Manuscript Census Returns, St. Landry Parish, La., in BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, POPULATION SCHEDULES OF THE FOURTH CENSUS OF THE UNITED STATES 101 (1820) [hereinafter 1820 CENSUS].

102. See *id.* at 101, 105, 107, 108.

103. See *supra* note 100; see also Marriage Certificate of Aaron Ashworth and Mary Bunch (Sept. 16, 1829) (collection of St. Landry Parish Court) (on file with author).

brothers, Moses and Aaron, married members of the Bunch family.<sup>104</sup>

Together, these families helped establish the area as a place where free people of color could thrive. By 1850, in fact, 239 free people of color resided in Calcasieu Parish, comprising roughly six percent of the total population.<sup>105</sup> 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 counterparts. Interspersed among the Ashworth, Going, and Perkins households in 1820 were the white Scotts, Reeds, and Wests,<sup>106</sup> and alongside the Dial and Sweat homes were the white Bundicks and Whittingtons.<sup>107</sup> 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.<sup>108</sup> 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 Morrow, James Anderson, Eli Burwick, and Adolphe Derosier all listed in Calcasieu Parish with mulatto wives and as the fathers of mulatto

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104. See *supra* note 106 (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, *supra* note 104.

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

106. 1820 CENSUS, *supra* note 101, St. Landry Parish, La., at 101.

107. *Id.* at 107.

108. See, e.g., *id.* at 101 (listing one white man and nine people of color in Hugh Nelson's household); *id.* (Patrick Wisby's household included one white man and seven people of color); *id.* (listing one white man and two people of color in Jacob Heyes's household); *id.* (listing two white men and five people of color in Simon Bellaire's household). 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 *id.* at 103, 104, 107, 109, 111.

children.<sup>109</sup> And these couples 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.<sup>110</sup> 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 rigidity of the three-caste system into question.<sup>111</sup> 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.<sup>112</sup> Her name was Delaide Gallier, a native Louisianan born around 1804.<sup>113</sup> From the census returns we can safely speculate that she was a 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.<sup>114</sup> At the very least, she must have been impressed with

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109. For interracial relationships in 1850, see, e.g., 1850 CENSUS: Free Inhabitants, *supra* note 3, Calcasieu Parish, La., at 769 (Abraham and Elisa Carter); *id.* at 774 (Bill and Caroline Mather); *id.* at 776 (Bill and Sophia McCormick); *id.* at 785 (Mathey and Dicey Pool); *id.* at 794 (John and Sara Morrow). For similar relationships in 1860, see, e.g., 1860 CENSUS: Free Inhabitants, *supra* note 26, Calcasieu Parish, La., at 43 (James and Sarah Anderson); *id.* at 44 (Eli and Hayes Burwick); *id.* at 95 (Adolphe and Mirtha Derosier).

110. See H.E. STERKX, *supra* note 17, at 97, 240–45 (discussing laws passed to stop the abolitionist movement; describing a “fear” of racial equality and the laws that were imposed to maintain segregation).

111. See *id.* at 240–41, 251 (describing how free persons of color defied the laws that restricted their freedom and the intermarriage of white men and black women).

112. See Jefferson County Marriage Record Book “A–B,” at 11 (Feb. 1838) (collection of Jefferson County Courthouse) (on file with author).

113. See *id.* It is likely that William and Delaide lived as husband and wife for a number of years before they applied for a formal marriage license. See *infra* note 115 and accompanying text. The 1850 census indicates that Delaide was a forty-six-year-old white woman from Louisiana. 1850 CENSUS: Free Inhabitants, *supra* note 3, Jefferson County, Tex., at 497; cf. 1860 CENSUS: Free Inhabitants, *supra* note 26, Orange County, Tex., at 28 (listing “Delila,” [sic] a white woman, as fifty-two). Note that age discrepancies in the census records are common, as are misspellings of names.

114. The 1820 census records from Calcasieu Parish list a white man named Francois Gallier with two daughters between the age of ten and sixteen living next to William’s brother, James. 1820 CENSUS, *supra* note 101, St. Landry’s Parish,

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 crossed the Sabine River from Louisiana to Texas in 1831, she was right there with him, together with their five children.<sup>115</sup>

## II. Gone to Texas

### A. "[C]itizens 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.<sup>116</sup> At that time Stephen F. Austin learned that the colonization grant between the Spanish government and his recently deceased father might not be honored.<sup>117</sup> Austin, 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.<sup>118</sup> There, he ran into both obstinacy and delay, as the Mexican government wrangled over the terms of a new colonization law for over a year.<sup>119</sup>

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La., at 101.

115. See Character Certificate of William Ashworth as Part of His Application for Mexican Land Grant (Nov. 24, 1834) (collection of Texas General Land Office) (on file with author) (noting that he was "a man of family consisting of six," which would include his wife); 5 THE NEW HANDBOOK OF TEXAS, *supra* note 24, at 746–47.

116. For a concise background on the origins of Austin's colony, see CAMPBELL, *supra* note 52, at 100–04.

117. See Letter from Stephen F. Austin to Lucas Alaman (Jan. 20, 1824) in 2 THE AUSTIN PAPERS, pt. 1, 725, 726 (Eugene C. Barker ed., 1924).

118. *Id.*

119. *Id.*

Part of the dispute was over slavery.<sup>120</sup> 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.<sup>121</sup> 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.<sup>122</sup> 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."<sup>123</sup> 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 fourteen.<sup>124</sup>

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 by then seemed inevitable.<sup>125</sup> By 1826, in fact, there were already 443 slaves in Austin's colony, roughly one-quarter of the total population of 1800 residents.<sup>126</sup> Still, Mexico's steady resistance to the institution caused concern among many.<sup>127</sup> One of the more troubling provisions came in 1827. 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."<sup>128</sup> Austin's future colonists scrambled to evade the law, primarily by turning their slaves into "indentured servants" who conveniently owed a lifetime

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

121. *Id.*

122. Letter from Stephen F. Austin to Governor Rafael Gonzales (Apr. 4, 1825), in 2 *THE AUSTIN PAPERS*, *supra* note 117, pt. 2, at 1065, 1067.

123. *Id.*

124. Colonisation Law of 1823, No. 5, art. 30, *reprinted in* 1 *THE LAWS OF TEXAS*, 1822-1897, at 30 (H.P.N. Gammel ed., 1898).

125. PADRON A LA COLONIA DE AUSTIN [CENSUS OF THE AUSTIN COLONY] 9-17 (1826) (collection of Texas State Archives) (on file with author).

126. *Id.*

127. CAMPBELL, *supra* note 52, at 112.

128. COAHUILA AND TEX. CONST. art. XIII, *reprinted in* 1 *THE LAWS OF TEXAS*, *supra* note 124, at 423, 424.

of service.<sup>129</sup> But by 1829, Mexican President Vicente Guerrero put a damper on even these efforts, when he issued a decree ordering immediate emancipation of slaves everywhere in Texas.<sup>130</sup> Though the quick intervention of the slaveholding interests convinced the President to exempt Texas from its general scope,<sup>131</sup> 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 the United States entirely and did not open it up again until 1834.<sup>132</sup>

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.<sup>133</sup> 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.<sup>134</sup> Soon after, members of the Jett family, followed by David and Jacob Garner, and later by John Harmon, set down their roots.<sup>135</sup> Further west, George A. Pattillo arrived with his family in 1830.<sup>136</sup> Pattillo was a wealthy landowner who would come to play an important role in the county as a political leader and judge.<sup>137</sup> Around the same time, Gilbert

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129. See CAMPBELL, *supra* note 120, at 23–24. Contemporary observers noted how, despite the law requiring terms of indenture, blacks were for all practical purposes held as slaves for life. See WILLIAM F. GRAY, FROM VIRGINIA TO TEXAS, 1835, DIARY OF COLONEL WILLIAM F. GRAY 67–68 (A.C. Gray ed., 1965) (1909); A.A. PARKER, TRIP TO THE WEST AND TEXAS 162 (1835). Notwithstanding these observations, there are occasional examples of shorter terms. See, e.g. Memorials and Petitions to Congress, Petition of James Robinson, at 1 (Apr. 26, 1838) (collection of Texas State Archives) (on file with author) [hereinafter Congressional Petitions] (indicating that Robinson came to Texas in 1835 with his master, Robert Eden Handy, to whom he was bound until 1844).

130. See CAMPBELL, *supra* note 120, at 25.

131. *Id.* at 25–26.

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

133. TEX. HISTORICAL RECORDS SURVEY, *supra* note 29, at 1–2.

134. *Id.*

135. *Id.* at 2.

136. *Id.*

137. See 1850 CENSUS: Free Inhabitants, *supra* note 3, Jefferson County, Tex., at 508 (valuing real estate of entire family at close to \$2000); see also 5 THE NEW

Stephenson and his brothers cleared a portion of the land along the Neches.<sup>138</sup> Claiborne West was another influential early settler.<sup>139</sup> Active in local politics, West was one of the signers of the Texas Declaration of Independence; he claimed land across the bayou from Pattillo.<sup>140</sup> Others, like Jesse Dyson, ventured over from the same part of Louisiana as the Ashworths.<sup>141</sup> Jesse was the one-time husband of Abner's future wife and was no doubt familiar with the family.<sup>142</sup> 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.<sup>143</sup>

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

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HANDBOOK OF TEXAS, *supra* note 21, at 93.

138. TEX. HISTORICAL RECORDS SURVEY, *supra* note 29, at 2.

139. *Id.*

140. See 6 THE NEW HANDBOOK OF TEXAS, *supra* note 21, at 886 (describing some of Claiborne West's accomplishments); see also PICTURING ORANGE: A PICTORIAL HISTORY OF ORANGE COUNTY 4 (Dr. Howard C. Williams ed., 2000).

141. The 1830 census lists Jesse Dyson as a resident of the same parish as the Ashworths. 1830 CENSUS, *supra* note 98, St. Landry Parish, La., at 33; TEX. HISTORICAL RECORDS SURVEY, *supra* note 29, at 2.

142. See Jefferson County Deed Book "E," *supra* note 142, at 298 (July 1845) (settling right of inheritance of Lieze, alias Melissa Elliot, who was the "daughter of Rosalie 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 387 and accompanying text (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," *supra* note 112, at 9 (Jan. 1838). Jesse and Hester appear in the 1860 census records for Calcasieu Parish; he is listed as a fifty-five-year-old white man and she as a forty-four-year-old mulatto female. 1860 CENSUS: Free Inhabitants, *supra* note 26, Calcasieu Parish, La., at 44.

143. 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," *supra* note 143, 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," *supra* note 143, 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," *supra* note 143, 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," *supra* note 142, at 125 (Nov. 11, 1843). In 1849, he acquired 200 acres of John Jett's league. Deed from John Williams, dec'd, to William Ashworth, Jefferson County Deed Book "G," *supra* note 143, at 208 (Aug. 1, 1849); see also *supra* note 52 (defining headrights).



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.<sup>144</sup> His brother Jesse was also there for a time, having arrived by 1840,<sup>145</sup> and his oldest brother James and his family came sometime before the end of the decade.<sup>146</sup> 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.<sup>147</sup> This did not include Moses, who had died in 1838, nor did it include any Ashworth women who had married and changed their names.<sup>148</sup>

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<sup>149</sup>—but their stories are as important as they are diverse. Between the Brazos and Colorado rivers, Lewis B. Jones was

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144. Headright Certificate for Aaron Ashworth, No. 109 (Jefferson County, Mar. 5, 1838) (collection of Sam Houston Regional Library & Research Center) (on file with author); Headright Certificate for Abner Ashworth, No. 110 (Jefferson County, Mar. 5, 1838) (collection of Sam Houston Regional Library & Research Center) (on file with author); Headright Certificate for Moses Ashworth, No. 170 (Jefferson County, June 8, 1838) (collection of Sam Houston Regional Library & Research Center) (on file with author).

145. See Jefferson County Tax Rolls, *supra* note 6, at "A" (1840); see also G.A. Patillo [sic], Patillo'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., 1922) (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. He was still living there in 1860. See 1860 CENSUS: Free Inhabitants, *supra* note 26, Calcasieu Parish, La., at 104.

146. 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. He was still living there ten years later. 1860 CENSUS: Free Inhabitants, *supra* note 26, Angelina County, Tex., at 36.

147. See Jefferson County Tax Rolls, *supra* note 6 (1846) (taxing Aaron, Aaron Jr., Abner, David, Henderson, Hetta, Jesse, Joshua, Luke, Louisa, Mary, William, and William Jr.).

148. See Estate of Moses Ashworth, Cause #245, at 1 (inventory of estate) (Apr. 14, 1838) (collection of Jefferson County Courthouse) (on file with author).

149. An unofficial census from 1847 counted 295 free people of color. William R. Hogan, *State Census of 1847*, 50 SW. HIST. Q. 116, 118 (1947). There were 397 free people of color listed in 1850. 1850 CENSUS: Statistical View, *supra* note 105, at 504. By 1860, the number of free people of color dropped to 355. 1860 CENSUS: Population, *supra* note 36, at 486.

welcomed into Austin's colony in 1826.<sup>150</sup> In Nacogdoches, in east Texas, Juan Baptiste Maturin made his home in the early 1820s.<sup>151</sup> Nearby, William "Goyens"—assuredly a member of the well-known Going family—impressed one visitor with his industry and considerable property; an early settler, he was known as a "very respectable coloured man."<sup>152</sup> Greenberry and Caroline Logan also arrived before the Texas Revolution, as did Samuel McCulloch, Jr., Thomas Sevilla, Joseph Tate, Robert Thompson, and Diana Leonard.<sup>153</sup> In Jefferson County, near the Ashworths, there were 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 his white neighbors.<sup>154</sup>

As much as they were like others, it is worth pointing out that these individuals probably were drawn to Texas, for at the time the laws of Texas did not burden free people of color with the disabilities of race.<sup>155</sup> In fact, soon after William and Delaide moved to Texas, the abolitionist Benjamin Lundy was in the region exploring the possibility of setting up a colony specifically for free persons of color.<sup>156</sup> The plan never came to fruition, however; the politics and prejudices of others would eventually

150. Congressional Petitions, *supra* note 129, Petition of Lewis B. Jones, at 1 (Oct. 8, 1837).

151. *See id.*, Petition of Juan Baptiste Maturin, at 1 (Apr. 21, 1838) (suggesting that he came to Texas around 1822, fifteen years before the date of his petition).

152. THE LIFE, TRAVELS AND OPINIONS OF BENJAMIN LUNDY 116 (Arno Press 1969) (1847) [hereinafter LUNDY]; *see also* Congressional Petitions, *supra* note 129, Petition of William Goyens, at 1 (May 4, 1838) (noting he arrived as early as 1820). For a detailed account of Goyens's life, including his economic successes, *see* Treat, *supra* note 18.

153. *See* Congressional Petitions, *supra* note 129, Petition of Greenberry Logan & Wife Caroline, at 1 (March 13, 1837) (noting how they arrived in Texas in 1831); Petition of Samuel McCulloch, Jr., at 1 (no date) (stating that he came to Texas in 1835); Petition of Thomas Sevilla, at 1 (Nov. 7, 1851) (testifying that he lived in Texas since 1836); Petition of Joseph Tate, at 1 (Nov. 1839) (swearing that he lived in Texas "many years before" the Revolution); Petition of Robert Thompson, at 1 (Dec. 13, 1840) (stating that he came to Texas in 1831); Petition of Diana Leonard, at 1 (Dec. 14, 1840) (stating that she came to Texas in 1835).

154. 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 races are 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) (collection of Texas General Land Office) (on file with author). For more on the issue, *see infra* notes 286–302 and accompanying text.

155. LUNDY, *supra* note 152, at 116.

156. *See id.* at 30; Merton L. Dillon, *Benjamin Lundy in Texas*, 63 SW. HIST. Q. 46 (1960).

force Lundy to abandon his ideas at the outset of the Texas Revolution. But his efforts to settle the area 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.<sup>157</sup> 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.<sup>158</sup>

B. “[A]ll 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,<sup>159</sup> yet they evidently did stake out an area near the Neches River as their own.<sup>160</sup> 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.<sup>161</sup> 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.<sup>162</sup> 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.<sup>163</sup> 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 found easily. Neither William nor Delaide could read so it is highly unlikely

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157. See Congressional Petitions, *supra* note 129, Petition of Henry Bird and John Bird, at 1 (Dec. 1, 1836).

158. *Id.*

159. 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 115.

160. One of the early records references “Ashworth’s old field” along the Neches River near Beaumont. *Hutchinson v. Ashworth*, No. 40, at 1 (Jefferson Cnty. Dist. Ct., Mar. 1845) (collection of Sam Houston Regional Library & Research Center) (on file with author).

161. See OLMSTED, A JOURNEY THROUGH TEXAS, *supra* note 11, at 382 (commenting that the houses near Beaumont “showed a tendency to Louisiana forms”).

162. See *id.*

163. See Schedule of Adelaide Ashworth’s property, Orange County Deed Book “A,” at 197 (May 21, 1860) (collection of Orange County Courthouse) (on file with author) (detailing property owned by Delaide and William).

that any books graced the cabin in these early days.<sup>164</sup> But any visitor would likely have been struck with the brass clock that ticked away the time—a possession which, though it hardly put them among the elite, certainly indicated that they had more than most.<sup>165</sup>

Indeed, throughout the time they lived in Texas, the Ashworths in general and William and Delaide in particular demonstrated a rare level of economic success. 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.<sup>166</sup> 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.<sup>167</sup> 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.<sup>168</sup> 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 were charged \$.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.<sup>169</sup> Persons on horses or with wagons were charged more,

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164. 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; 1860 CENSUS: Free Inhabitants, *supra* note 26, Orange County, Tex., at 28.

165. 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 163, at 197 (indicating that William owned two clocks).

166. See Minute Book "A," at 5-7 (Jefferson Cnty. Comm'r Ct. Jan. 1838) (collection of Jefferson County Courthouse) (on file with author).

167. *Id.* (approving Ashworth's application for a license, "authorizing him to continue his ferry over the two Bayous and the river Neches").

168. See ROBERT E. RUSSELL, A HISTORY OF ORANGE 5 (Loren LeBlanc ed., 1911) ("Before the days of the railroads here, everyone wishing to go to or from Orange had to travel either by water or by horseback."). 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 Minute Book "A," *supra* note 166, at 1-2.

169. Minute Book "A-2," at 3-4 (Jefferson Cnty. Comm'r Ct. Feb. 1838) (collection of Jefferson County Courthouse) (on file with author).

with William authorized to charge as much as \$6.00 for a wagon and a team of horses.<sup>170</sup>

William later 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.<sup>171</sup> 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.<sup>172</sup> The suit was apparently frivolous, however. William had it dismissed, costs were awarded, and Nancy was forced to give the unusual promise that “she will no further prosecute this suit.”<sup>173</sup>

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’ 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.<sup>174</sup> Working themselves into a feverish pitch, the committee wrote to the provisional government of Texas—formed after Texas went to war with Mexico<sup>175</sup>—demanding that the General Council act quickly to protect residents from “repeated acts of wantonness and cruelty too tedious to mention at this time.”<sup>176</sup> Whether the committee also had the Ashworths, the Birds, the Nelsons, the Goings, and the other residents of color in Jefferson County in mind is not known. But one thing is certain:

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170. *Id.*

171. Applications and Petitions for Ferry License, Petition 1 (Jefferson Cnty. Dist. Ct., June 9, 1845) (collection of Sam Houston Regional Library & Research Center) (on file with author).

172. *Hutchinson v. Ashworth*, No. 34, at 1 (Jefferson Cnty. Dist. Ct., Jan. 1845) (collection of Sam Houston Regional Library & Research Center) (on file with author). Related filings appear under case number 40 and 41. See Minute Book “A”, at 28–29, 37–38, 46–47, 49, 58, 73 (Jefferson Cnty. Dist. Ct. 1845) (on file with author).

173. For the promise given by Nancy Hutchinson, see Minute Book “A” (Jefferson Cnty. Dist. Ct. 1845), *supra* note 172, at 58. For costs, see *id.* at 28–29, 46–47, 73.

174. See Letter from Beaumont Committee to Henry Millard (Dec. 2, 1835), in *OFFICIAL CORRESPONDENCE OF THE TEXAS REVOLUTION, 1835–36*, at 160–61 (William C. Binkley ed., 1936).

175. 5 *THE NEW HANDBOOK OF TEXAS*, *supra* note 21, at 364.

176. Letter from Beaumont Committee to Henry Millard, *supra* note 174, at 161.

notwithstanding the lack of evidence, the General Council found the committee's concerns justified.<sup>177</sup> "[T]he 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."<sup>178</sup> 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."<sup>179</sup>

The ordinance, by its terms, was prospective only<sup>180</sup> hence it did not apply to the Ashworths or anyone else who had arrived before its enactment.<sup>181</sup> 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 mused.<sup>182</sup> They "are certainly a most obnoxious and dangerous population."<sup>183</sup> 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;<sup>184</sup> as free, however, "[t]hey relapse into savage barbarity."<sup>185</sup> Indeed, in contrast to slaves, free people of color were a "miserable, starved, degraded race."<sup>186</sup> Left to their own devices, they became "idle and dissipated," with the offspring

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177. See Proceeding of the General Council (1836), reprinted in 1 THE LAWS OF TEXAS, *supra* note 124, at 720–21.

178. *Id.*

179. *Id.* at 721.

180. *Id.*

181. Schoen was not able to find any prosecutions under this law; he points out further that it was "superseded by the constitution of the Republic of Texas" in September 1836. Schoen, *supra* note 18, pt. 4, at 174.

182. *Free Negroes Sent Off*, MARSHALL TEX. REPUBLICAN, Dec. 6, 1856, at 2.

183. *Id.*

184. *Slave Labor*, TEX. STATE GAZETTE, Feb. 23, 1856, at 3.

185. *The Worst Enemies of Slavery*, AUSTIN S. 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*, at 53–55 (1971).

186. *Free Colored Population in the South*, MARSHALL TEX. REPUBLICAN, Mar. 10, 1860, at 1.

generally "more objectionable than the original stock."<sup>187</sup> With such dim prospects and potential for danger, the General Council thus viewed their presence as a threat of the first order.<sup>188</sup> "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."<sup>189</sup>

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 communities. In the towns and cities, free people of color worked successfully if unassumingly as washers, milkmaids, barbers, and on the docks.<sup>190</sup> Others made their living as waggoners and day laborers, cooks and carpenters.<sup>191</sup> James Richardson sold 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."<sup>192</sup> 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 Reynoldses and the McCullochs were both highly successful cattle raisers.<sup>193</sup> 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 the course of fifteen years.<sup>194</sup> Over in Brazoria and later in Fort Bend County, Greenberry Logan was trained as a blacksmith and later owned a boarding house, amassing an estimated \$5500 in real and personal property by 1860.<sup>195</sup> In the

187. *Free Negroes Sent Off*, *supra* note 182, at 2.

188. See Proceeding of the General Council (1836), *reprinted in* 1 THE LAWS OF TEXAS, *supra* note 124, at 721.

189. *Id.*

190. See, e.g., 1860 CENSUS: Free Inhabitants, *supra* note 26, Travis County, Tex., at 83 (Sylvia Green: washerwoman); Cameron County, Tex., at 5 (Sarah Huey: milkmaid); El Paso County, Tex., at 12 (Louis Hudson: barber); Galveston County, Tex., at 118 (Richard: employee of wharf master).

191. See, e.g., 1860 CENSUS: Free Inhabitants, *supra* note 26, Washington County, Tex., at 84 (Henry: waggoner); Nacogdoches County, Tex., at 88 (A.J. Morrow: day laborer); Maverick County, Tex., at 18 (Andrew Cox: cook); Matagorda County, Tex., at 32 (Stephen Taylor: carpenter).

192. Congressional Petitions, *supra* note 129, Petition of James Richardson, at 1 (Oct. 19, 1840).

193. See 1860 Census: Free Inhabitants, *supra* note 26, Jackson County, Tex., at 31–32 (listing considerable wealth in both real and personal property).

194. Congressional Petitions, *supra* note 129, 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).

195. See *id.* Petition of Greenberry Logan & Wife Caroline, at 1–2 (Mar. 13,

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.<sup>196</sup>

But perhaps the strongest indication of the loyalties of free people of color lay in their contributions to the war against Mexico in 1835–1836. 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.”<sup>197</sup> Others, recognizing that wars cannot be won solely through numbers, lent money and supplies. Robert Thompson of Montgomery County, for example, was not drafted in the army but “furnished a valuable mare and rifle gun for the use of the army of Texas.”<sup>198</sup> William Goyens also played a unique role, serving as an interpreter in Sam Houston’s negotiations with the Cherokees in order to prevent Mexico from staging a rear attack.<sup>199</sup> Afterwards, he was “appointed a regular Indian agent,” and freely gave his support to the defense of Texas “by furnishing horses provisions and money.”<sup>200</sup>

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 people of color were likely just as discouraged as white settlers that the 1830 prohibition on immigration prevented them from legally

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1837); *see also* 1860 CENSUS: Free Inhabitants, *supra* note 26, Fort Bend, County, Tex., at 7.

196. 1860 CENSUS: Free Inhabitants, *supra* note 26, Fort Bend, County, Tex., at 32.

197. Congressional Petitions, *supra* note 129, Petition of Samuel McCulloch, Jr., at 1 (no date); Petition of Greenberry Logan & Wife Caroline, at 1 (Mar. 13, 1837) (noting that Logan fought at the battle of Mission Concepción on October 28, 1835, and also marched on the town of San Antonio in December); Petition of James Richardson, at 1 (Oct. 19, 1840) (stating that Richardson volunteered for Captain Thomas Bell’s garrison at Velasco); Petition of Henry and John Bird, at 2 (Dec. 1, 1836).

198. *Id.* Petition of Robert Thompson, at 1 (Dec. 13, 1840).

199. Schoen, *supra* note 18, pt. 2, at 30.

200. Congressional Petitions, *supra* note 129, Petition of William Goyens, at 1 (May 4, 1838).



owning the land they may have occupied for years.<sup>201</sup> 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 the conflict.<sup>202</sup> He was a volunteer soldier under Captain David Garner, serving for roughly three months during the fall of 1835.<sup>203</sup> During that time, he was involved in the so-called “grass fight,” an attack on the Mexican cavalry outside San Antonio on November 26.<sup>204</sup> 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.<sup>205</sup> 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.<sup>206</sup> Soon after, William was honorably discharged.<sup>207</sup> 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,<sup>208</sup> where his brother Aaron either served or also sent a substitute.<sup>209</sup>

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

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201. See Schoen, *supra* note 18, pt. 2, at 26 (suggesting that free people of color “rightly considered the welfare of all Texans to be their own”).

202. Application for Veteran Land Certificate, Delaide Ashworth, widow of William Ashworth, Voucher File No. 1110, at “B” (May 5, 1884) (affidavit of Delaide Ashworth) (collection of Texas General Land Office) (on file with author).

203. *Id.*

204. *Id.*

205. CAMPBELL, *supra* note 52, at 138.

206. *Id.*; see also 3 THE NEW HANDBOOK OF TEXAS, *supra* note 21, at 286–87.

207. Application for Veteran Land Certificate, Delaide Ashworth, *supra* note 202, at “B.”

208. *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) (on file with author).

209. Application for Veteran Land Certificate, Mary Ashworth, *supra* note 208 (on file with author).

power in defense of the Republick [sic] its constitution and laws."<sup>210</sup> Or, as Peter Allen mused, "all his interests sympathies and feelings" were with the South.<sup>211</sup>

### III. Law and Local Experience

#### A. *"We care nothing for the Slavery as an abstraction"*

At the time of the Ashworths' arrival in the 1830s, 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,<sup>212</sup> 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,<sup>213</sup> spoke highly of William Ashworth, insisting in William's character certificate that he was "a man of good moral and industrious habits."<sup>214</sup> Claiborne West, a local political leader and one of the early settlers to the area, said the same about Aaron Ashworth.<sup>215</sup> Abner Ashworth had John Stewart, the commissioner for the precinct at Cow Bayou, provide testimony on his behalf.<sup>216</sup> Their title applications, found in their original Spanish, also indicate that they all were family men, each having between five and six children.<sup>217</sup>

210. Congressional Petitions, *supra* note 129, Petition of Joseph Tate, at 1 (Nov. 1839).

211. *Id.* Petition of Peter Allen, at 1 (Feb. 2, 1863).

212. Eugene C. Barker, *Mexican Colonization Laws, 1821-1830* in 4 THE NEW HANDBOOK OF TEXAS, *supra* note 21, at 684-85.

213. See 3 THE NEW HANDBOOK OF TEXAS, *supra* note 21, at 455-56.

214. Character Certificate of William Ashworth, *supra* note 115.

215. Character Certificate of Aaron Ashworth as part of his Application for Mexican Land Grant (Apr. 25, 1835) (collection of Texas General Land Office) (on file with author).

216. Character Certificate of Abner Ashworth as part of his Application for Mexican Land Grant (Jan. 12, 1835) (collection of Texas General Land Office) (on file with author).

217. Unfinished Title of William Ashworth, at 1 (Jan. 31, 1835) (collection of Texas General Land Office) (on file with author) ("con mi familia constando de seis personas"); Unfinished Title of Aaron Ashworth, at 1 (May 1, 1835) (collection of Texas General Land Office) (on file with author) ("con mi mujer y seis hijos"); Unfinished Title of Abner Ashworth, at 1 (Jan. 31, 1835) (collection of Texas General Land Office) (on file with author) ("con mi familia constando de mi mujer y cinco hijos").

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, it proved to be particularly unfortunate, as the Ashworths' standing in the first years of the Republic became much more precarious. To be sure, no serious historian disputes that race and slavery, though far from being the sole cause of the Texas revolution, played a significant role.<sup>218</sup> 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.<sup>219</sup> "Texas must be a slave country," he resolved in a letter to his sister.<sup>220</sup> "It is no longer a matter of doubt."<sup>221</sup> 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.<sup>222</sup> In the final version, section nine 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."<sup>223</sup> 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

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218. See, e.g., CAMPBELL, *supra* note 120, at 35–49 (discussing the Revolution and the role slavery played in it).

219. CAMPBELL, *supra* note 52, at 112.

220. Letter from Stephen F. Austin to Mrs. Mary Austin Holley (Aug. 21, 1835) in 3 THE AUSTIN PAPERS, *supra* note 117, at 101, 101–02.

221. *Id.*

222. 6 THE NEW HANDBOOK OF TEXAS, *supra* note 21, at 833.

223. REPUBLIC OF TEX. CONST., art. VI, § IX, *reprinted in* 1 THE LAWS OF TEXAS, *supra* note 124, at 1069, 1079 (1898).

in the United States; nor shall congress have power to emancipate slaves."<sup>224</sup>

In the ensuing years, Texans both encouraged and developed the institution with remarkable vigor, turning Texas from a society with slaves into a slave society.<sup>225</sup> After all, most of those who came here were Southerners, and many saw slavery as a defining part of who they were.<sup>226</sup> "We care nothing for the 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."<sup>227</sup> 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 slave population," said one representative contribution, "compare it with the free laborers at the North, and the most rigid investigation will only show . . . that the negro is best off."<sup>228</sup> Studying their history and interpreting the Bible to their liking, most Texans talked about their way of life with confident 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."<sup>229</sup>

For free people of color like the Ashworths, Texan 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 welcomed, but only as slaves. The drafters of the 1836 constitution thus created significant roadblocks to things like manumission. They made it illegal for slaveholders to emancipate slaves without congressional permission, unless the owners sent them to Ohio or New York or some other free state.<sup>230</sup> In a provision that would eventually

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224. *Id.*

225. See IRA BERLIN, *MANY THOUSANDS GONE: THE FIRST TWO CENTURIES OF SLAVERY IN NORTH AMERICA* 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").

226. See CAMPBELL, *supra* note 52, at 110–11 (describing the connections between Texas and the American South, and its effect on Texan attitudes toward slavery).

227. *The Cloud in the Distance; and Considerations Connected Therewith*, CLARKSVILLE STANDARD, Feb. 19, 1859, at 2.

228. *Slave Labor*, *supra* note 184, at 3.

229. *Is the Morality of Slavery a Question for Political Parties to Decide?*, GALVESTON WKLY. NEWS, Oct. 14, 1856, at 2.

230. REPUBLIC OF TEX. CONST. art. VI, § IX, reprinted in 1 THE LAWS OF TEXAS,

replace the January 1836 ordinance of the General Council, the drafters also prohibited future immigration of free people of color and took the draconian measure of forcing those already in Texas to leave.<sup>231</sup> “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.”<sup>232</sup> In the next section, free people of color already in Texas were stripped of their citizenship and all the rights and privileges that accompanied it.<sup>233</sup>

It is difficult to gauge the immediate impact of these provisions on the Ashworths, because while they could have been aware of the provisions, the spring and summer of 1836 were tumultuous ones and it is likely they 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 from the advancing Mexican army in what was known as the Runaway Scrape.<sup>234</sup> Gray sought to cross the river “at Ashworth’s ferry,” but found that, like many others, the “family had left the place.”<sup>235</sup> Even upon the Ashworths’ return, however, without the power to vote, they would have had little say in whether the provisions should be adopted later that September.

Yet the policies behind the provisions surely would have struck them as particularly unjust, for they had long ago aligned themselves with their white neighbors. William Goyens put it explicitly: “[F]rom the date of [my] emigration,” he said, in language that easily could have come from one of the Ashworths, “[I] ha[ve] ever been identified with the feelings and interests of the Anglo American population.”<sup>236</sup> 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.”<sup>237</sup> It is not known precisely whether these petitions caused Congress to

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*supra* note 124, at 1069, 1079 (1898).

231. *Id.*

232. *Id.*

233. *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.”).

234. GRAY, *supra* note 129, at 168. See also 5 THE NEW HANDBOOK OF TEXAS, *supra* note 21, at 713.

235. GRAY, *supra* note 129, at 168.

236. Congressional Petitions, *supra* note 129, Petition of William Goyens, at 1 (May 4, 1838).

237. *Id.* Petition of Greenberry Logan, at 1 (Mar. 13, 1837).

change its mind. But soon after, in June of 1837, in its first legislative session after the constitution was adopted, Congress 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.<sup>238</sup>

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.<sup>239</sup> 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."<sup>240</sup> But, on the larger 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, the Texas Congress passed an act prohibiting interracial marriages.<sup>241</sup> Soon after, it categorized free people of color along with slaves when it outlined crimes worthy of capital punishment.<sup>242</sup> Other laws furthered this same message of racial division by making it a crime for any person of color, slave or free, to insult a white person.<sup>243</sup> Another law threatened free people of color with slavery if they mingled too much with slave property and planted the seeds of rebellion or escape.<sup>244</sup>

Thus, with memories of the war fading and with the move toward a slave society beckoning, it was not surprising that the June 1837 position would soon give way. Less than three years later, on February 5, 1840, the Texas Congress passed an act recalling the most restrictive aspects of the 1836 General Council ordinance.<sup>245</sup> In it, the Texas Congress reiterated the long-

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238. J. Res., 1st Cong., R.S., 1838 Repub. Tex. Laws 231 (June 5, 1837), reprinted in 1 THE LAWS OF TEXAS, *supra* note 124, at 1291.

239. Congressional Petitions, *supra* note 129, Petition of Samuel McCulloch, Jr., at 3 (no date).

240. *Id.* at 1.

241. Act approved June 5, 1837, 1st Cong., R.S., § 9, 1838 Repub. Tex. Laws 233, 234-35, reprinted in 1 THE LAWS OF TEXAS, *supra* note 124, at 1293, 1294-95.

242. Act approved Dec. 14, 1837, 2nd Cong., R.S., § 1, 1838 Repub. Tex. Laws 43, reprinted in 1 THE LAWS OF TEXAS, *supra* note 124, 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.*

243. *Id.* § 6, at 1386.

244. *Id.* § 2, at 1385. 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.*

245. Act approved Feb. 5, 1840, 4th Cong., R.S., § 1, 1840 Repub. Tex. Laws 151,

standing prohibition on free people of color immigrating into the country.<sup>246</sup> 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 to stay from the legislature.<sup>247</sup> 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.<sup>248</sup> 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.<sup>249</sup>

B. “[P]eaceable 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 who were 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,<sup>250</sup> nor did Diana Leonard, James Richardson, Robert Thompson, or Joseph Tate.<sup>251</sup> In William Goyens’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.”<sup>252</sup> In further support, and with the signatures of fifty-two of his white neighbors, Goyens reminded members of Congress that he was especially deserving of the right to remain,

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reprinted in 2 THE LAWS OF TEXAS, *supra* note 124, at 325.

246. *Id.*

247. *Id.* §§ 8, 10.

248. *Id.* § 8.

249. *Id.* §§ 2–8.

250. See Congressional Petitions, *supra* note 129, Petition of John Bird & Edward Smith (Jan. 3, 1841); Petition of Patsy (no date); Petition of Allen Dimery (Dec. 3, 1840).

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

252. *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 21, at 721–22.

as he "has been of great service to the country in our Indian difficulties."<sup>253</sup> Zylpha Husk emigrated in 1835 and lived in Houston with her daughter, "exercising the industry of a Washerwoman."<sup>254</sup> Her contributions may not have been as glorious, but her neighbors were just as supportive, impressed that she was "a good and industrious woman peaceably earning her own livelihood."<sup>255</sup>

Members of the Ashworths' community in Jefferson County also supported their efforts to remain in Texas.<sup>256</sup> 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."<sup>257</sup> 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.<sup>258</sup> Others may have been of lesser fame but were apparently just as impressed with the Ashworths' 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.<sup>259</sup> 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."<sup>260</sup> 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."<sup>261</sup>

In a telling sign of how much the Ashworths had impacted their community, one of the wealthiest slaveholders in Jefferson County, Representative Joseph Grigsby, introduced the Ashworths' petitions to the House in the next legislative session, on November 5, 1840.<sup>262</sup> The speaker immediately referred the

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253. Congressional Petitions, *supra* note 129, Petition of William Goyens, at 1 (Nov. 25, 1840).

254. *Id.* Petition of Zylpha Husk and Daughter Emily, at 1 (Dec. 1841).

255. *Id.*

256. Congressional Petitions, *supra* note 129, Petition of Jefferson County Citizens for Relief of Free Blacks, at 1 (Sept. 19, 1840).

257. *Id.*

258. *Id.* at 1-2.

259. *Id.* at 1.

260. *Id.* at 3-6.

261. *Id.* at 3.

262. JOURNALS OF THE HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF TEXAS: FIFTH CONG., FIRST SESS., 1840-41, at 27 (1841) [hereinafter HOUSE JOURNAL,



petitions to a select committee made up of Grigsby and two others.<sup>263</sup> The next day the committee reported back, reaffirming that, “as a general rule, it is not the true policy of this country to encourage the introduction of this description of persons among us, nor even to allow them to remain.”<sup>264</sup> Yet Grigsby’s committee thought that the Ashworths “should be, an exception to that rule.”<sup>265</sup> To that end, the committee cited the Ashworths’ long residence in Texas and noted how they had contributed toward the country’s achievement, “both by personal services, and by their substance, generously bestowed without fee or reward.”<sup>266</sup> Joseph Grigsby probably knew the Ashworths, and though he did not sign their petition, a relative named Nathaniel Grigsby did.<sup>267</sup> Joseph, therefore, could testify with personal knowledge about the Ashworths’ 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.”<sup>268</sup> These words carried weight. The following Tuesday, the House passed a bill that specifically exempted members of the Ashworth family, together with another free black resident named Elisha Thomas, from the ban on free people of color.<sup>269</sup> Two weeks later, on November 23, 1840, the bill passed the Senate.<sup>270</sup>

The law became effective on December 12, 1840.<sup>271</sup> Importantly, the law—later dubbed 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:

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FIFTH CONG.]. For background on Joseph Grigsby, see 3 THE NEW HANDBOOK OF TEXAS, *supra* note 21, at 341.

263. HOUSE JOURNAL, FIFTH CONG., *supra* note 262, at 27.

264. *Id.* at 33. For the text of the report, see APPENDIX TO THE JOURNALS OF THE HOUSE OF REPRESENTATIVES: FIFTH CONG. 262 (1841) [hereinafter APPENDIX TO HOUSE JOURNAL, FIFTH CONG.].

265. APPENDIX TO HOUSE JOURNAL, FIFTH CONG., *supra* note 264, at 262.

266. *Id.*

267. Congressional Petitions, *supra* note 129, Petition of Jefferson County Citizens for Relief of Free Blacks, at 1 (Sept. 19, 1840).

268. *Id.*

269. HOUSE JOURNAL, FIFTH CONG., *supra* note 262, at 52. For a copy of the original House bill, see Act of November 10, 1840, Fifth Cong., file # 1610.

270. JOURNALS OF THE SENATE OF THE REPUBLIC OF TEXAS: FIFTH CONG.—FIRST SESS. 37 (1841).

271. Act approved Dec. 12, 1840, 5th Cong., R.S., 1841 Repub. Tex. Laws 85, reprinted in 2 THE LAWS OF TEXAS, *supra* note 124, at 549–50.

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.<sup>272</sup>

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, "anything in the laws of the country to the contrary notwithstanding."<sup>273</sup>

But there was more to the law than that. Succinctly put, the law illustrated a profound disconnect between the official position of the Republic and what was happening on the ground. At the local level, whites and blacks interacted in ways that defied official policies, often forcing the community to rethink and reshape its ideas about 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.<sup>274</sup> 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.<sup>275</sup> John Bird's wife, Charity, was also extremely popular in the town of San Augustine. Charity was in the business of "baking and vending cakes," earning her the "reputation of an honest, virtuous industrious and peaceable woman."<sup>276</sup> Her neighbors had "no hesitancy in recommending her to the public."<sup>277</sup> Others took

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272. *Id.* The Senate's version contained the amendment adding all free people of color to its scope. See Act of Nov. 23, 1840, Fifth Cong., file # 1515. The House evidently substituted the Senate bill and adopted it on November 24, 1840. See *id.* (front cover). For a more detailed account of the legislative proceedings, see Schoen, *supra* note 18, pt. 5, at 269–74.

273. Act approved Dec. 12, 1840, 5th Cong., R.S., 1841 Repub. Tex. Laws 85, reprinted in 2 THE LAWS OF TEXAS, *supra* note 124, at 549–50.

274. Congressional Petitions, *supra* note 129, Petition of the Children of David and Sophia Towns, at 1–3 (Oct. 1840). This petition was found in William Goyens's folder.

275. *Id.* at 2.

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

277. *Id.*

sympathy on Fanny McFarland. Freed by her master in 1835, she had lost all her possessions during the war.<sup>278</sup> She later moved to Houston, and “by her industry prudence and economy . . . has been enabled to gather together a little property.”<sup>279</sup> 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.”<sup>280</sup> Eighty-one of her neighbors supported her efforts to stay, including the Mexican official Lorenzo de Zavala.<sup>281</sup>

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 Ashworth had already demonstrated his commitment to the area; as an early settler he was no doubt instrumental in helping to carve a community out of the Texas wilderness. Not only was he a ferry boat operator, but he was also involved in building a road near Beaumont.<sup>282</sup> His brothers, Aaron, Abner, Moses, James, and Jesse, 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 family members made to the war effort, the Ashworths likely established themselves as one of the more important, if not influential, families in the area.

Perhaps it should come as no surprise then that the community backing their efforts to remain in the county also came to the Ashworths’ defense when the General Land Office refused to issue land patents to anyone in the family. Land—millions of acres of it—brought most settlers to Texas, and land was no doubt a primary reason the Ashworths crossed over the Sabine River in the early 1830s.<sup>283</sup> 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.<sup>284</sup>

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278. *Id.* Petition of Fanny McFarland, at 1 (Oct. 30, 1840).

279. *Id.*

280. *Id.*

281. *Id.* at 2–3.

282. Minute Book “A–2,” (Jefferson Cnty. Comm’r Ct. July 1838), *supra* note 169, at 8–9.

283. See Congressional Petitions, *supra* note 129, 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”).

284. See Headright Certificate for William Ashworth, No. 111, *supra* note 50 (stating date of arrival). See *supra* note 50 for more on the headright definition and procedure.

Following the war, they and thousands of others sought to obtain land 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.<sup>285</sup>

The Ashworths' problem was that the constitution limited land grants to "citizens," a term that did not include free people of color.<sup>286</sup> Nonetheless, William and his brothers, together with a handful of other people of color with familiar names, including Bird, Thomas, Going, Bunch, and Nelson, pressed forward with their claims before the local board of land commissioners for Jefferson County.<sup>287</sup> Undoubtedly 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.<sup>288</sup> 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.<sup>289</sup> 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.<sup>290</sup> Concerned about growing evidence of fraudulent claims, the head of the Land Office in Austin appointed a special traveling board of land commissioners to go to every county in the Republic to investigate each certificate issued.<sup>291</sup> Upon their arrival in Jefferson County, the traveling board rejected the certificates of the Ashworths, the Birds, the

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285. REPUBLIC OF TEX. CONST. of 1838, art. VI, § X, *reprinted in* 1 THE LAWS OF TEXAS, *supra* note 124, at 1069, 1079-80. A league consisted of 4428 acres and a labor 177 acres. 3 THE NEW HANDBOOK OF TEXAS, *supra* note 21, at 1180-81.

286. See REPUBLIC OF TEX. CONST. of 1838, art. VI, § X, *reprinted in* 1 THE LAWS OF TEXAS, *supra* note 124, at 1069, 1079-80 ("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 . . .").

287. See REPORT OF COMMISSIONERS TO DETECT FRAUDULENT CERTIFICATES, *supra* note 154, at 447.

288. See *id.*

289. Headright Certificate for William Ashworth, *supra* note 50 (stating that at the time William received his land certificate, he obtained an Order of Survey dated January 31, 1835).

290. See Act approved Dec. 22, 1836, 1st Cong., R.S., 1838 Repub. Tex. Laws 216, *reprinted in* 1 THE LAWS OF TEXAS, *supra* note 124, at 1276, 1284; REPORT OF COMMISSIONERS TO DETECT FRAUDULENT CERTIFICATES, *supra* note 154, at 447.

291. REPORT OF COMMISSIONERS TO DETECT FRAUDULENT CERTIFICATES, *supra* note 154, at 447.

Nelsons, the Thomases, and the others.<sup>292</sup> The stated reason: they were “coloured person[s].”<sup>293</sup>

Motivated to act, and possibly 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.<sup>294</sup> 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.<sup>295</sup> 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.”<sup>296</sup> Referring to 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.”<sup>297</sup>

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.<sup>298</sup> The Committee reported back several days later, referring to the Ashworths and the other petitioners as “good, orderly, industrious persons.”<sup>299</sup> 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.<sup>300</sup> On January 16, 1843, the bill passed both houses of

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292. *Id.*

293. *Id.*

294. Congressional Petitions, *supra* note 129, 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.

295. 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.

296. *Id.*

297. *Id.*

298. HOUSE JOURNAL, SEVENTH CONG., *supra* note 82, at 45.

299. *Id.* at 63.

300. *Id.*

Congress.<sup>301</sup> The bill directed the Commissioner of the General Land Office in no uncertain terms "to issue patents . . . to William Ashworth, Abner Ashworth, Aaron Ashworth, the heirs of Moses Ashworth, deceased, Henry Bird, John Bird and Aaron Nelson."<sup>302</sup>

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 those neighbors that they not only belonged, but were also worthy and contributing members of the community.<sup>303</sup> 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 demonstrated that the lines of race and slavery were not as rigidly enforced as the laws would suggest.

### C. "[S]old to a free negro"

With their land grants assured and their residence secured, the Ashworths spent over a decade growing both real and personal assets, as well as social status. Between them, the entire Ashworth clan would come to own thousands of acres in Jefferson and later Orange Counties, as they bought, sold, and leveraged 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.<sup>304</sup> In 1850, William owned 3422 acres in then-Jefferson County, Aaron 1476, Abner 320, Luke 64, Henderson 406, and Aaron Jr. held 392 as agent for Jesse Ashworth.<sup>305</sup> At various points during the 1850s, both William and

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301. *Id.* at 80; see also Abstract of Private Acts and Joint Resolutions, 7th Cong., reprinted in 2 THE LAWS OF TEXAS, *supra* note 124, at 875.

302. Abstract of Private Acts and Joint Resolutions, 7th Cong., reprinted in 2 THE LAWS OF TEXAS, *supra* note 124, at 875.

303. Congressional Petitions, *supra* note 129, Petition of William Ashworth, at 1 (Dec. 10, 1842).

304. Compare Jefferson County Tax Rolls, (1837, 1840, 1842, 1846, 1847, 1849, 1850, and 1851), *supra* note 6, and Orange County Tax Rolls (1852–1864) (collection of Sam Houston Regional Library & Research Center) (on file with author) (William, Aaron, Abner, Jesse, Joshua, Luke, David, Henderson, Aaron Jr., and Clarke were taxed on real estate), with Orange County Deed Book "B," "E" (collection of Orange County Courthouse) (on file with author) (William's wife Delaide, Aaron's wife Mary, Abner's wife Rosalie and his children Lydia Ann, Phillippa, Sidney Jane, and Sublett Ashworth also appear as title holders to real property).

305. Jefferson County Tax Rolls, *supra* note 6, at "A" (1850).

Aaron also owned lots in town,<sup>306</sup> while William, Aaron, and Abner also owned land in other counties.<sup>307</sup> This land consisted of the original headrights granted to them by the government. It was located further west, probably because the available—or at least desirable—land in Jefferson was taken by the time Congress approved their patents.<sup>308</sup> 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.<sup>309</sup>

For the most part, the Ashworths put their land to good use raising large herds of cattle. 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.<sup>310</sup> The family's registered brands, captured in the precise hand of the county clerk, suggest that an even larger number kept cattle in the county without paying taxes. Margaret, Alfred, and Keziah for example, registered their brands in 1837 but do not appear in the tax records for that year, presumably because they maintained their residence in Louisiana rather than Texas.<sup>311</sup> Six members of the family—William, Aaron, Abner, Aaron Jr., David, and Joshua—also appear in the agricultural census for 1850.<sup>312</sup> In that year,

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306. See, e.g., Orange County Tax Rolls, *supra* note 304, at "A" (1856) (listing both William and Aaron as the owners of two town lots each).

307. See, e.g., *id.* (listing William and Aaron as owners of land in Bell County and Abner as a landowner in McLennan County).

308. See Field Notes, in Land Grant Application for William Ashworth, File No. 710 (patented Aug. 16, 1848) (collection of Texas General Land Office) (on file with author); Field Notes, in Land Grant Application for Aaron Ashworth, File No. 302 (patented Sept. 18, 1847) (collection of Texas General Land Office) (on file with author); Field Notes, in Land Grant Application for Abner Ashworth, File No. 856 (patented Nov. 12, 1850) (collection of Texas General Land Office) (on file with author); Field Notes, in Land Grant Application for Moses Ashworth, File No. 1522 (patented July 10, 1860) (collection of Texas General Land Office) (on file with author).

309. See Jefferson County Tax Rolls, *supra* note 6, at "A" (1850); Orange County Tax Rolls, *supra* note 304, at "A" (1856).

310. See, e.g., Jefferson County Tax Rolls, *supra* note 6, at "A" (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, *supra* note 304, at "A" (1852).

311. Compare Jefferson County Tax Rolls, *supra* note 6, at "A" (1849), and Orange County Tax Rolls, *supra* note 304, at "A" (1852), with Jefferson County Marks and Brands Book "A," at 1–4 (collection of Jefferson County Courthouse) (on file with author), and Orange County Marks and Brands Book "A," at 1 (index) (collection of Orange County Courthouse) (on file with author).

312. See Manuscript Census Returns, Schedule 4.—Production of Agriculture, Jefferson County Tex., in BUREAU OF THE CENSUS, U.S. DEPT. OF COMMERCE,

Aaron shows up as the largest cattle raiser in the entire county, with 2570 head.<sup>313</sup> Abner was the next largest in the family, with 975; William owned 900, Joshua 550, and David and Aaron Jr. 170 each.<sup>314</sup> The agricultural records also indicate that each Ashworth had cows from which they produced a combined 420 pounds of butter.<sup>315</sup> They also owned pigs, and William and Abner owned sheep to make wool.<sup>316</sup> Most had also cleared enough land to grow a few crops, including corn, beans, peas, and potatoes.<sup>317</sup> Abner appears to be the only one who sought to profit from planting, however. In 1850, he produced 900 pounds of rice.<sup>318</sup>

Thus, judged against their neighbors, it seems that the Ashworths had more than most. Their real and personal property was worth thousands of dollars; Aaron alone estimated his livestock to be worth almost \$14,000 in 1850, and William valued his land at \$7205.<sup>319</sup> 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.<sup>320</sup> Notably, the Ashworths never seemed complacent when it came to their wealth. In many respects, they embodied the burgeoning capitalists James Oakes writes about<sup>321</sup>—records show them regularly buying and selling cattle, for example, to increase profits and their overall financial standing. Occasionally this got them into trouble. Charles Garnot sued William and Luke in the fall of 1852, for example, alleging that they owed him \$992 for 124 head of cattle he sold them the previous summer.<sup>322</sup> The case was settled for an undisclosed amount the following year.<sup>323</sup> Willis Goodman also sued Aaron in 1853 after Aaron borrowed \$200 and

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POPULATION SCHEDULES OF THE SEVENTH CENSUS OF THE UNITED STATES (1850).

313. *Id.*

314. *Id.*

315. Abner produced 30 pounds, Aaron 100, Joshua 20, and William 270. *Id.*

316. *Id.*

317. *Id.*

318. *Id.*

319. 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, at 241.

320. Schedule of Adelaide Ashworth's property, *supra* note 163, at 197.

321. See JAMES OAKES, *THE RULING RACE: A HISTORY OF AMERICAN SLAVEHOLDERS* 57 (1982) ("It was the rare master who ceased his quest for more land and slaves, and it was precisely this grasping materialism which stands out in the collective biographies of middle-class slaveholders.").

322. *Garnot v. Ashworth*, No. 4, at 1 (Orange Cnty. Dist. Ct. 1853) (plaintiff's petition) (collection of Sam Houston Regional Library & Research Center) (on file with author).

323. See *Garnot v. Ashworth*, No. 4, Minute Book "A," at 16 (Orange Cnty. Dist. Ct. 1853).



refused to pay him back.<sup>324</sup> The threat of a trial was enough, however, to induce settlement.<sup>325</sup>

To be sure, the Ashworths' land and other holdings set them apart from 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 engaged in for years. One of the earliest records from Jefferson County, in fact, indicates that William owned at least two slaves in 1838,<sup>326</sup> while Joshua was taxed on a slave the year before.<sup>327</sup> 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 slaves.<sup>328</sup> In 1850, the year of the census, Aaron owned six, William four, Abner three, and Joshua one slave.<sup>329</sup> James, who by this time had made his way to Angelina County further west, owned one slave.<sup>330</sup> Jesse, officially residing in Calcasieu Parish, though he kept cattle in Texas, owned nine slaves.<sup>331</sup> By 1853, William had six and Aaron had five slaves.<sup>332</sup> By 1860, Jesse had twelve slaves.<sup>333</sup>

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324. See *Goodman v. Ashworth*, No. 12, at 1 (Orange Cnty. Dist. Ct. 1853) (plaintiff's petition) (collection of Sam Houston Regional Library & Research Center) (on file with author).

325. See *Goodman v. Ashworth*, No. 12, Minute Book "A," at 16 (Orange Cnty. Dist. Ct. 1853). A similar notation stating that the case was "settled by paying the money" can be found on the case jacket. *Goodman v. Ashworth*, No. 12, at file jacket (plaintiff's petition).

326. Minute Book "A-2," (Jefferson Cnty. Comm'r Ct. July 1838), *supra* note 169, at 9 (referring to "Wm Ashworth & negros" as responsible for building a portion of the road).

327. Jefferson County Tax Rolls, *supra* note 6, at "A" (1837).

328. *Id.* at "A" (1846).

329. *Id.* at "A" (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., in BUREAU OF THE CENSUS, U.S. DEPT OF COMMERCE, POPULATION SCHEDULES FOR THE SEVENTH CENSUS OF THE UNITED STATES 819 (1850) [hereinafter 1850 CENSUS: Slave Inhabitants]. The likely explanation for the discrepancy is that William sold two slaves within the year, for he appears in the 1851 tax records as the owner of just two slaves. Jefferson County Tax Rolls, *supra* note 6, at "A" (1851).

330. 1850 CENSUS: Slave Inhabitants, *supra* note 329, Angelina County, Tex., at 21.

331. *Id.* Calcasieu Parish, La., at 981.

332. Orange County Tax Rolls, *supra* note 304, at "A" (1853).

333. Manuscript Census Returns, Schedule 2.—Slave Inhabitants, Calcasieu Parish, La., in BUREAU OF THE CENSUS, U.S. DEPT OF COMMERCE, POPULATION

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.<sup>334</sup> In 1850, only about one-quarter of the Southern population owned slaves; of these, just a small fraction was non-white.<sup>335</sup> However, a surprising number held slaves to approximate the white ideal, for free people of color were astute observers of culture and recognized that slave ownership not only carried the potential of economic success, but was also a telling marker of just how far they had come.<sup>336</sup> In places like Louisiana, slave ownership among free people of color was more common than elsewhere in the South,<sup>337</sup> perhaps giving the Ashworths the sense that their position entitled them to this form of wealth. For example, 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.<sup>338</sup>

For the Ashworths, it is likely 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.<sup>339</sup> A month later, evidently in need of a strong hand to help clear the fields and tend the cattle, William used the

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SCHEDULES OF THE EIGHTH CENSUS OF THE UNITED STATES 12 (1860) [hereinafter 1860 CENSUS: Slave Inhabitants].

334. It is difficult to determine the precise number of free blacks who owned slaves, for reasons of both under- and over-reporting in the federal census. See LARRY KOGER, *BLACK SLAVEOWNERS: FREE BLACK SLAVE MASTERS IN SOUTH CAROLINA 1790–1860*, at 5–17 (1985) (urging comparisons to local tax records to reach more accurate results). Based on an analysis of the 1830 census, however, R. Halliburton, Jr. puts the number of free black slaveholders in that year at 3775. R. Halliburton, Jr., *Free Black Owners of Slaves: A Reappraisal of the Woodson Thesis*, 76 S.C. HIST. MAG. 129, 135 (1975). Loren Schweninger gives the more conservative estimate of 2128. LOREN SCHWENINGER, *BLACK PROPERTY OWNERS IN THE SOUTH, 1790–1915*, at 111 (1990).

335. 1860 CENSUS: Slave Inhabitants, *supra* note 334, at 486–87.

336. BERLIN, *supra* note 17, at 269–75 (“Many wealthy freemen . . . considered themselves more white than black, no matter what their precise racial heritage. They showed little sympathy for the slave and had few qualms about the morality of slavery.”).

337. 1830 CENSUS, *supra* note 98, St. Landry's Parish, at 11–12.

338. *Id.* See also STERKX, *supra* note 17, at 236–37.

339. See Deed from William Ashworth to Richard Baleu, Jefferson County Deed Book “D,” at 143 (Aug. 8, 1843) (collection of Jefferson County Courthouse) (on file with author).

money to purchase "a certain negro boy slave named Thornton about seventeen or eighteen years old" from John Williams.<sup>340</sup> Later, in 1853, William received the hefty sum of \$1500 for a proven "breeder," a twenty-four-year-old woman and her three children.<sup>341</sup> The following year William's wife, Delaide, sold another woman and her thirteen-month-old child for \$900.<sup>342</sup>

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]."<sup>343</sup> Three years later Abner recorded his purchase of a twenty-two-year-old slave named Moses.<sup>344</sup> A few months later he bought another slave, this one a thirteen-year-old boy.<sup>345</sup> In 1853, Abner purchased a twenty-eight-year-old woman named Devine and her fourteen-month-old daughter, Elouisa, for \$1000.<sup>346</sup> In 1858, interested in ensuring the financial future of his children, Abner gifted this same girl, now about seven, to his daughter Sidney Jane.<sup>347</sup> 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."<sup>348</sup> Abner gave to his son, Phillipe (or Phillipaugh), a six-year-old boy named Jeff.<sup>349</sup> The following year Abner and his wife Rosalie, "for and in consideration of the love and affection" they had for their children, gifted two more slaves in their early twenties, Lewis and Jack, to be held jointly by all three Ashworth children.<sup>350</sup>

The records are too scant to say with any certainty what type of slaveholders the Ashworths were. There are, for example, no

340. Deed from John Williams to William Ashworth, Jefferson County Deed Book "D," *supra* note 339, at 46 (Sept. 30, 1839).

341. Deed from William Ashworth and Delaide Ashworth to Charles Gamut, Orange County Deed Book "A," *supra* note 163, at 32 (May 19, 1853).

342. Deed from Deliad [sic] Ashworth to Susan Barrow, Orange County Deed Book "A," *supra* note 163, at 55 (Sept. 18, 1854).

343. Deed from Abner Ashworth to William Carr, Jefferson County Deed Book "A," *supra* note 143, at 39 (Nov. 8, 1843).

344. Deed from Nathan Bonner to Abner Ashworth, Jefferson County Deed Book "E," *supra* note 142, at 360 (Jan. 17, 1846).

345. Deed from David Garner to Abner Ashworth, Jefferson County Deed Book "A," *supra* note 143, at 1 (Nov. 30, 1846).

346. Deed from Emille Broussard to Abner Ashworth, Jefferson County Deed Book "B," at 5 (Aug. 24, 1853) (collection of Jefferson County Courthouse) (on file with author).

347. Deed from Abner Ashworth to His Children, Orange County Deed Book "A," *supra* note 163, at 123 (May 25, 1858).

348. *Id.*

349. *Id.*

350. Deed from Abner Ashworth & Wife to Their Children, Orange County Deed Book "A," *supra* note 163, at 181 (Nov. 11, 1859).

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 that they were not as inhuman as some but 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.<sup>351</sup>

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."<sup>352</sup> Perhaps the best indication of how the Ashworths viewed slaves and slavery is evidenced simply by their participation as slaveholders. Luke Ashworth, for example, apparently thought nothing of trading one hundred cattle for William, a fourteen-year-old boy.<sup>353</sup>

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. All signs suggest, however, that slaveholding was another method of increasing economic wealth and social standing. The Ashworths had no interest in challenging that system. As upwardly-striving individuals, their principal desire was to acquire property and provide for their families. As a result, they were far more interested in distancing themselves from the 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.<sup>354</sup> But for the Ashworths, who had long ago tied their identities to that of their white patrons and protectors, owning slaves was simply a matter of course.<sup>355</sup>

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351. OLMSTED, A JOURNEY THROUGH TEXAS, *supra* note 11, at 386.

352. HARRIET A. JACOBS, INCIDENTS IN THE LIFE OF A SLAVE GIRL, WRITTEN BY HERSELF 51 (L. Maria Child ed., Harvard Univ. Press 1987) (1861).

353. Deed from Rachel Holden and Samuel Holden to Luke Ashworth, Orange County Deed Book "A," *supra* note 163, 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," *supra* note 163, at 94 (Sept. 25, 1856).

354. See *supra* note 351 and accompanying text.

355. See OLMSTED, A JOURNEY THROUGH TEXAS, *supra* note 11, at 387 (noting

#### IV. The Impending Crisis

##### A. "[S]lavery is the normal condition of the negro"<sup>356</sup>

At the start of the 1850s, William Ashworth and his family likely failed to comprehend that the life 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 white citizenship.<sup>357</sup> 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.<sup>358</sup> But their wealth and prosperity, together with their community ties, nonetheless allowed them to successfully chart a middle course. Their African and possible Indian heritage meant that they were not considered white. However, their light skin and free status also meant that they were not like the black slaves their neighbors, or they themselves, 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 possessed all of them.

As the secessionist tensions began to build, however, the Ashworths found themselves increasingly marginalized. Southerners consistently defended their system.<sup>359</sup> But it took the attack of abolitionists to turn casual defenses into a determined ideology. Accused of being both immoral and unchristian, Southerners responded by extolling the virtues of racial slavery. "The basis of Southern prosperity," thundered one contributor to

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that the Ashworths were "three or four generations removed from black blood").

356. EBENEZER W. WARREN, NELLIE NORTON: OR, SOUTHERN SLAVERY AND THE BIBLE 92 (1864) (emphasis omitted).

357. See Congressional Petitions, *supra* note 129, Petition of William Ashworth, at 1 (Dec. 10, 1842) (conceding that the Ashworths were not "Citizens under the Constitution").

358. 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. Minute Book "A" at 1 (Jefferson Cnty. Comm'r Ct. May 1837) (collection of Jefferson County Courthouse) (on file with author). 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, including jury service, as performance of white manhood, see GROSS, DOUBLE CHARACTER, *supra* note 14, at 48–58.

359. EBENEZER W. WARREN, NELLIE NORTON: OR, SOUTHERN SLAVERY AND THE BIBLE 92 (1864).

the local paper in 1854, "is in African Slave labor."<sup>360</sup> Men insisted that blacks were better off in slavery, especially compared to the free laborers in the North, because of the obligations of their owners to provide for their health and wellness. Compared to "the poor white nigger at the North," one Texan argued, "[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."<sup>361</sup> Free people of color were not just an affront to the natural order of things, but also a menace to society. Many Southerners agreed that it was best to make all blacks slaves and thereby eliminate the free population.<sup>362</sup>

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 Ashworth and his nephew Henderson, for example, were charged with playing cards in the spring of 1854—a crime, but not a very serious one, and not one commonly enforced out on the frontier.<sup>363</sup> Both William and Henderson pled guilty, though, and each was assessed a ten dollar fine.<sup>364</sup> The next year, Sam Ashworth was indicted for assault and battery.<sup>365</sup> The victim is not known, but there was evidently no merit to the accusation, as it soon after disappeared from the records.<sup>366</sup>

A number of the Ashworths were also indicted for stealing cattle. This was an extremely easy accusation to make, with herds roaming freely and 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 charges was frivolous and William successfully quashed the indictment.<sup>367</sup> He

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360. *Texas and Her Destiny*, TEX. STATE GAZETTE, Nov. 4, 1854, at 2.

361. *Slave Labor*, *supra* note 184, at 3.

362. *Free Colored Population in the South*, *supra* note 186, at 1.

363. William and Henderson Ashworth were charged separately and given different case numbers. *State v. Ashworth*, No. 35, Minute Book "A," at 43 (Orange Cnty. Dist. Ct. 1854); *State v. Ashworth*, No. 33, Minute Book "A," at 43 (Orange Cnty. Dist. Ct. 1854).

364. *State v. Ashworth*, No. 35, Minute Book "A," at 43 (Orange Cnty. Dist. Ct. 1854); *State v. Ashworth*, No. 33, Minute Book "A," at 43 (Orange Cnty. Dist. Ct. 1854).

365. *State v. Ashworth*, No. 66, Minute Book "A," at 100 (Orange Cnty. Dist. Ct. 1855).

366. The last entry on the case appeared in the fall of 1856. Minute Book "A," at 124 (Orange Cnty. Dist. Ct. 1856) (collection of Orange County Courthouse) (on file with author).

367. *See State v. Ashworth*, No. 134, Minute Book "A," at 183 (Orange Cnty.

was indicted a second time in 1860, “for theft of beef.”<sup>368</sup> 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.<sup>369</sup> William’s son Clark was also charged in 1852 with stealing some of Larkin Thomas’s cattle.<sup>370</sup> He too conveniently 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.<sup>371</sup> In 1867, the charge was finally dismissed.<sup>372</sup> Henderson was also indicted for larceny in the fall term of 1854,<sup>373</sup> as was Moses in the spring term of 1857.<sup>374</sup> Like their family members, neither one showed up to respond to the charges.<sup>375</sup>

It may be that the Ashworths were of the type Olmsted would characteristically have dismissed, as he did others populating the area; individuals who “incline decidedly to barbarism” and who thought little of violating society’s rules.<sup>376</sup> But their wealth and history suggests a different picture, making it also likely that jealous neighbors and zealous prosecutors had begun to resent the Ashworths’ position and success. In addition to owning the largest cattle ranch in the entire county, Aaron’s decision to employ a private schoolteacher for his children could have provided further

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Dist. Ct. 1857) (fining William for failure to appear). The indictment was handed down the previous term. *Id.* at 155. It was quashed in the fall of 1858. *Id.* at 207.

368. *State v. Ashworth*, No. 179, Minute Book “A,” at 313 (Orange Cnty. Dist. Ct. 1860) (collection of Sam Houston Regional Library & Research Center) (on file with author).

369. For additional entries, see *id.* at 343, 362, 393, 409, 423. The case was dismissed in 1866 after William died. *State v. Ashworth*, No. 179, Minute Book “A ½,” at 133 (Orange Cnty. Dist. Ct. 1866) (collection of Sam Houston Regional Library & Research Center) (on file with author).

370. *State v. Ashworth*, No. 2, Minute Book “A,” at 6 (Orange Cnty. Dist. Ct. 1852) (collection of Sam Houston Regional Library & Research Center) (on file with author). For the entry detailing the specifics of the charge, see *id.* at 36–37.

371. *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. Ashworth*, No. 2, Minute Book “A ½,” at 132 (Orange Cnty. Dist. Ct. 1852) (collection of Orange County Courthouse) (on file with author).

372. *State v. Ashworth*, No. 2, at 140 (Orange Cnty. Dist. Ct. 1867) (collection of Sam Houston Regional Library & Research Center) (on file with author) (indicating that the case was dismissed).

373. *State v. Ashworth*, No. 39, Minute Book “A,” at 60 (Orange Cnty. Dist. Ct. 1854).

374. *State v. Ashworth*, No. 130, Minute Book “A,” at 147 (Orange Cnty. Dist. Ct. 1857).

375. 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.

376. OLMSTED, A JOURNEY THROUGH TEXAS, *supra* note 11, at 382.

reason to resent the family. There were six schools in Jefferson at this time, but because of their race, Aaron's children could not attend.<sup>377</sup> Instead, Aaron had John Woods, a fifty-two-year-old schoolteacher from Kentucky, stay in his home, where Woods privately tutored Samuel, Nancy, Sublett, and William.<sup>378</sup> To some of Aaron's 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, 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;<sup>379</sup> 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.<sup>380</sup> Joseph Dark 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.<sup>381</sup> Dark alleged he took the cattle as payment on a note, and further filed suit against William for money outstanding.<sup>382</sup> There does not appear to have been much merit to the case—William countersued, and though he lost at the trial court, he successfully appealed the judgment to the Texas Supreme Court<sup>383</sup>—but like the charges the Ashworths 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' increasingly precarious position can be found in the number of

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377. See 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.

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

379. See *supra* notes 84–92 and accompanying text.

380. *Hillebrant v. Ashworth*, No. 206, at 1 (Jefferson Cnty. Dist. Ct. May 1855), *aff'd*, 18 Tex. 307 (1857) (transcript of trial) (collection of Texas State Archives) (on file with author).

381. *Dark v. Ashworth*, No. 51, at 8–9 (Orange Cnty. Dist. Ct. 1856) *rev'd*, 20 Tex. 826 (1858) (transcript of trial) (collection of Texas State Archives) (on file with author).

382. For Dark's petition, with exhibits, see *id.* at 1–6.

383. 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 were worth \$10,000. *Id.* at 15; see also *Ashworth v. Dark*, 20 Tex. 825, 828 (1858).



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, leading to strengthened kinship ties and social positions in the community—proved to be a threat of the first order. Of course, Texas’s official position against interracial marriages was typical and unsurprising. After initially declaring them banned in the first act of Congress, the legislature reaffirmed the ban in 1854 and again in 1858.<sup>384</sup> But in Texas, like elsewhere, there appears to have been a certain level of tolerance for interracial couples, at least until the years immediately before the Civil War.<sup>385</sup> 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 Texas—they even registered their union in the Jefferson County marriage books in 1838.<sup>386</sup> And William’s brother, Abner, did the same when he married Delaide’s younger sister, Rosalie.<sup>387</sup>

But a different story emerges when the next generation of Ashworths started intermarrying with whites. The closer one gets to the Civil War, the more the Ashworths and their white spouses were singled out by local residents and eager prosecutors determined to enforce a clear boundary between the races.<sup>388</sup> They

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384. An act approved Feb. 9, 1854, 5th Leg., R.S., ch. 40, § 38 at 66, 1854 Tex. Gen. Law, reprinted in 3 THE LAWS OF TEXAS, *supra* note 124, at 1502, 1510; Unlawful Marriage, 7th Leg., R.S., tit. 12, ch. 1, § 386 at 164, 1858 Tex. Gen. Law, reprinted in 4 THE LAWS OF TEXAS, *supra* note 124, at 1036, 1036–37.

385. For a more complete discussion of the subject, see Gillmer, *supra* note 14.

386. Jefferson County Marriage Record Book “A–B,” *supra* note 112, at 11 (Feb. 1838) (application for license to marry “Delilie [sic] Gallier”).

387. Jefferson County Marriage Record Book “A–B,” *supra* note 112, at 9–10 (Jan. 1838) (application for license to marry “Rosale Collier [sic]”). See Will of Abner Ashworth, *supra* note 3, at 2 (identifying “Rosalie Gallier” as his wife). Like 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 216 (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 thirty-six-year-old white woman from Louisiana. 1850 CENSUS: Free Inhabitants, *supra* note 3, Jefferson County, Tex., at 483. She is listed again in the 1860 records as forty-five, white, and the head of the household, after Abner died. 1860 CENSUS: Free Inhabitants, *supra* note 26, Orange County, Tex., at 22; see also ORANGE COUNTY, TEXAS, CEMETERIES, pt. 2, at 37 (1981) (recording Abner’s death on Nov. 17, 1859).

388. See *Ashworth v. State*, 9 Tex. 490, 490 (1853) (convicting Henderson of fornication where court refused to recognize interracial marriage); *State v. Goodman*, No. 39, Minute Book “A,” at 99 (Jefferson Cnty. Dist. Ct. 1855) (charging and convicting defendant of fornication); *State v. Arthur*, No. 14, Minute Book “A,”

were all "good-for-nothing people," insisted one observer to Olmsted when talking about the whites who married the Ashworths, and claimed, in partial truth, that "they couldn't live in Texas after it; all went over into Louisiana."<sup>389</sup> Indeed, in 1845, two months after Margarette Ashworth married Sillistia Gallier (a relative of Delaide and Rosalie), the grand jury in Jefferson County indicted Sillistia "for marrying a colored woman."<sup>390</sup> 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.<sup>391</sup> They evidently did. In 1860—they cannot be found in 1850—Sillistia and Margarette appear in the census records for Calcasieu Parish, Louisiana, as husband and wife; he white and she mulatto, with six children.<sup>392</sup>

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.<sup>393</sup> The charge was dismissed the following term, however, presumably because adultery wrongly implied that the two were living together while married to others.<sup>394</sup> But the local district attorney, Samuel D. Hay, did not give up; the same term he brought the

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at 22 (Orange Cnty. Dist. Ct. 1853) (charging defendant for fornication with Clark Ashworth); State v. Ashworth, No. 16, Minute Book "A," at 22 (Orange Cnty. Dist. Ct. 1853) (charging Clark with fornication); State v. Ashworth, No. 20, Minute Book "A," at 23 (Orange Cnty. Dist. Ct. 1853) (charging Emily with fornication); State v. Ashworth, No. 10, Minute Book "A," at 21, 22 (Orange Cnty. Dist. Ct. 1853) (charging Nancy with fornication); State v. Burwick, No. 19, Minute Book "A," at 22, 23 (Orange Cnty. Dist. Ct. 1853) (charging defendant with fornication with Sarah Ashworth); State v. Stewart, No. 15, Minute Book "A," at 22 (Orange Cnty. Dist. Ct. 1853) (charging defendant with fornication with Nancy Ashworth); State v. Young, No. 17, Minute Book "A," at 22 (Orange Cnty. Dist. Ct. 1853) (charging defendant with fornication with Emily Ashworth); State v. Ashworth and Stewart, No. 34, Minute Book "A," at 78 (Jefferson Cnty. Dist. Ct. 1847) (indicting Henderson and Letitia for adultery); State v. Willis Goodman and Keziah, No. 28, Minute Book "A," at 74 (Jefferson Cnty. Dist. Ct. 1847) (charging defendants with adultery); State v. Gallier, No. 4, Minute Book "A," at 23 (Jefferson Cnty. Dist. Ct. 1845) (indicting defendant for marrying Margarette Ashworth).

389. OLMSTED, A JOURNEY THROUGH TEXAS, *supra* note 11, at 386.

390. State v. Gallier, No. 4, Minute Book "A," at 23 (Jefferson Cnty. Dist. Ct. 1845). Margarette and Sillistia were married in January 1845. Jefferson County Marriage Record Book "A-B," *supra* note 112, at 55 (Jan. 1845).

391. State v. Gallier, No. 4, Minute Book "A," at 95 (Jefferson Cnty. Dist. Ct. 1847). For an additional entry continuing the case for failure to appear, see *id.* at 40.

392. 1860 CENSUS: Free Inhabitants, *supra* note 26, at 45.

393. State v. Ashworth and Stewart, No. 34, Minute Book "A," at 76, 78 (Jefferson Cnty. Dist. Ct. 1847).

394. *Id.* at 97.

more fitting charge of fornication.<sup>395</sup> This time the 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 [sic] Stewart, late of said county, *spinstress*, on the first day of April, and on divers other days and times thereafter, and before the finding this bill, to wit, in the county aforesaid, did then and there live together in fornication, contrary to the statute.<sup>396</sup>

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 inappropriate as adultery.<sup>397</sup> 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 Sillistia and Margarette's case, they held a marriage certificate.<sup>398</sup> Henderson was found guilty by a jury of twelve men and assessed a fine of \$100.<sup>399</sup>

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.<sup>400</sup> Henderson fared no better there, however.<sup>401</sup> 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

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395. *State v. Ashworth*, No. 40, Minute Book "A," at 101 (Jefferson Cnty. Dist. Ct. 1847); *State v. Stewart*, No. 41, Minute Book "A," at 101 (Jefferson Cnty. Dist. Ct. 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.

396. *Ashworth v. State*, 9 Tex. 490 (1853) (upholding jury's verdict that Henderson and Letitia had violated the statute prohibiting fornication).

397. *See State v. Ashworth*, No. 40, Minute Book "A," at 130 (Jefferson Cnty. Dist. Ct. 1847). For his defense, see *Ashworth*, 9 Tex. at 490.

398. *State v. Ashworth*, No. 40, Minute Book "A," at 130 (Jefferson Cnty. Dist. Ct. 1847); Jefferson County Marriage Record Book "A-B," *supra* note 112, at 55 (Jan. 1845).

399. *State v. Ashworth*, No. 40, Minute Book "A," at 130 (Jefferson Cnty. Dist. Ct. 1847).

400. *Id.* at 146.

401. *Ashworth*, 9 Tex. at 490.

error.<sup>402</sup> The marriage was against the law, and thus living together under such circumstances fully justified the verdict.<sup>403</sup> The court affirmed the judgment.<sup>404</sup>

While the case was pending before the Texas Supreme Court, Henderson and Letitia stayed in Jefferson County.<sup>405</sup> 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.<sup>406</sup> 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 found and arrested Letitia and brought her to the Beaumont jail in Jefferson in February 1855.<sup>407</sup> 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.<sup>408</sup> 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.<sup>409</sup>

The same prosecutor also made life difficult for Willis Goodman, a white man, and Keziah Ashworth, Aaron's daughter.<sup>410</sup> He charged them first with adultery in 1847,<sup>411</sup> and

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402. *Id.*

403. *Id.*

404. *Id.*

405. The case against both Henderson and Letitia was continued upon payment of a bond. For notations in the minute books, see *State v. Ashworth*, No. 40, Minute Book "A," at 130 (Jefferson Cnty. Dist. Ct. 1847); *State v. Stewart*, No. 41, Minute Book "A," at 163, 166, 183, 187, 201, 221 (Jefferson Cnty. Dist. Ct. 1847). See also Jefferson County District Court Minute Book "B," at 41, 68 (collection Jefferson County Courthouse) (on file with author).

406. Also residing in the household were members of Letitia's family. 1850 CENSUS: Free Inhabitants, *supra* note 3, at 506.

407. For the first notations for 1853 indicating that judgment was entered against Henderson and that Letitia failed to appear, see *State v. Ashworth*, No. 40, Minute Book "A," at 149, 150 (Jefferson Cnty. Dist. Ct. 1853); *State v. Stewart*, No. 41, at 149, 150 (Jefferson Cnty. Dist. Ct. 1853). For subsequent entries indicating a failure to appear, see *State v. Stewart*, No. 41, at 174, 179, 204 (Jefferson Cnty. Dist. Ct. 1853). For Letitia's arrest, see *id.* at 235-36.

408. *State v. Stewart*, No. 41, at 235-36 (Jefferson Cnty. Dist. Ct. 1853).

409. *State v. Ashworth and Stewart*, No. 72, Minute Book "A," at 10 (Orange Cnty. Dist. Ct. 1855). The case was continued the following year. *Id.* at 125 (1856).

410. See Estate of Aaron Ashworth, Orange County Probate Records, at 1 (Tex. Cnty. Ct. Orange Cnty. 1862) (collection of Orange County Courthouse) (on file with author) (identifying Keziah Goodman among Aaron's heirs).

411. *State v. Willis Goodman and Keziah*, No. 28, Minute Book "A," at 74 (Jefferson Cnty. Dist. Ct. 1847).

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.”<sup>412</sup> He brought Willis to trial on this latter charge and the jury found him guilty, assessing a \$100 fine and twenty-four hours imprisonment.<sup>413</sup> 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.<sup>414</sup> Meanwhile, another case was filed against both Keziah and Willis in Orange County district court in 1855.<sup>415</sup> They never showed up to answer these charges either, perhaps because they had gone back to Calcasieu by this time, finding it to be a more welcoming location.<sup>416</sup>

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: Emily, Clark, and Nancy. Emily was about seventeen at the time; her partner and apparent spouse was a man named Joseph Young.<sup>417</sup> Both were charged with fornication.<sup>418</sup> Emily’s brother, Clark, was about twenty-one.<sup>419</sup> He was cohabitating with a white woman named Sarah Arthur and both were indicted.<sup>420</sup> Nancy was about sixteen, and her apparent

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412. The adultery case was dismissed in October 1847. *State v. Goodman*, No. 28, Minute Book “A,” at 76 (Jefferson Cnty. Dist. Ct. 1847). That same term the grand jury indicted Willis and Keziah for fornication. *State v. Goodman*, No. 39, Minute Book “B,” at 10 (Jefferson Cnty. Dist. Ct. 1851). For Keziah’s racial designation, see *id.* at 74.

413. *State v. Goodman*, No. 39, Minute Book “A,” at 99 (Jefferson Cnty. Dist. Ct. 1845).

414. *Id.* at 100. For additional entries on the case, see *id.* at 128, 163, 201, 221; Minute Book “B,” at 10, 41, 68 (Jefferson Cnty. Dist. Ct. 1845) (collection of Jefferson County Courthouse) (on file with author).

415. *State v. Goodman and Ashworth*, No. 68, Minute Book “A,” at 100 (Orange Cnty. Dist. Ct. 1855); see also *id.* at 124.

416. The census records for Calcasieu in 1850 list Willis Goodman, a thirty-five-year-old white man, married to Mary, a thirty-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, at 775.

417. See 1850 CENSUS: Free Inhabitants, *supra* note 3, at 497 (listing Emily as age fourteen); see also *State v. Ashworth*, No. 20, Minute Book “A,” at 23 (Orange Cnty. Dist. Ct. 1853).

418. *State v. Ashworth*, No. 20, Minute Book “A,” at 23 (Orange Cnty. Dist. Ct. 1853); *State v. Young*, No. 17, Minute Book “A,” at 22 (Orange Cnty. Dist. Ct. 1853).

419. See 1850 CENSUS: Free Inhabitants, *supra* note 3, at 497 (listing Clark as age eighteen).

420. *State v. Arthur*, No. 14, Minute Book “A,” at 22 (Orange Cnty. Dist. Ct. 1853); *State v. Ashworth*, No. 16, Minute Book “A,” at 22 (Orange Cnty. Dist. Ct.

husband was Jackson Stewart, who was probably a relative of her cousin Henderson's wife, Letitia Stewart.<sup>421</sup> During the same term, Palmer also charged Sarah Ashworth with fornication with William Burwick.<sup>422</sup> These two had evidently been living as husband and wife since at least 1850.<sup>423</sup> 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.<sup>424</sup> Palmer also renewed a charge against another of Aaron's daughters, Martha, in 1853.<sup>425</sup> Martha had been indicted a few years before in Jefferson County for having sexual relations with Peter Pinder.<sup>426</sup> The prosecutor at that time apparently indicted the wrong person, however, for the charge now indicated that her partner was Jacob Pender.<sup>427</sup> The confusion as to who Martha's spouse was might explain why, in 1854, a jury in Jefferson County found Peter not guilty of having relations with Martha,<sup>428</sup> while the case in Orange County remained on the docket.<sup>429</sup>

In the fall of 1855, there was a new district attorney for Orange County and he filed additional charges against members of the Ashworth family. J.G. McDonald singled out Henderson, Clark, and Nancy and charged them again with the same crime as

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1853).

421. *State v. Ashworth*, No. 10, Minute Book "A," at 21, 22 (Orange Cnty. Dist. Ct. 1853); *State v. Stewart*, No. 15, Minute Book "A," at 22, 37, 38 (Orange Cnty. Dist. Ct. 1853); 1850 CENSUS: Free Inhabitants, *supra* note 3, at 497 (listing Nancy as age thirteen).

422. *State v. Ashworth*, No. 13, Minute Book "A," at 22 (Orange Cnty. Dist. Ct. 1853); *State v. Burwick*, No. 19, Minute Book "A," at 22, 23 (Orange Cnty. Dist. Ct. 1853). Another one of Aaron's daughters was named Lydia Ann Burwick, indicating that she also married a relative of William. Estate of Aaron Ashworth, *supra* note 410, at 1.

423. 1850 CENSUS: Free Inhabitants, *supra* note 3, at 502.

424. *Id.*

425. *State v. Ashworth*, No. 23, Minute Book "A," at 23, (Orange Cnty. Dist. Ct. 1853); *see also* Estate of Aaron Ashworth, *supra* note 410, at 1 (identifying Martha Ann Penders as one of Aaron's heirs).

426. *State v. Pinder and Ashworth*, No. 108, Minute Book "A," at 44 (Jefferson Cnty. Dist. Ct. 1851).

427. *See State v. Ashworth*, No. 23, Book "A," at 23 (Orange Cnty. Dist. Ct. 1853) (charging her with fornication with Jacob Pender); *see also State v. Pender*, No. 22, Minute Book "A," at 23 (Orange Cnty. Dist. Ct. 1853).

428. *State v. Pinder and Ashworth*, No. 108, Minute Book "B," at 180 (Jefferson Cnty. Dist. Ct. 1854). 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.

429. *State v. Ashworth*, No. 23, Minute Book "A," at 39 (Orange Cnty. Dist. Ct. 1853). The prosecutor agreed to dismiss the cases against all the Ashworth defendants and their spouses in the spring of 1854. *Id.*

before.<sup>430</sup> But he also added a new charge against Sam Ashworth, the eighteen-year-old son of Aaron, for living with Melissa Ann Ashworth.<sup>431</sup> Within a month, Sam and Melissa Ann had filed their marriage license,<sup>432</sup> but it was not enough to halt the prosecution. 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.<sup>433</sup>

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 other neighbors to view the Ashworths as dissolute and untrustworthy.<sup>434</sup> 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.”<sup>435</sup> 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.”<sup>436</sup>

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430. *State v. Ashworth and Arthur*, No. 71, Minute Book “A,” at 101 (Orange Cnty. Dist. Ct. 1855); *State v. Ashworth and Stewart*, No. 72, Minute Book “A,” at 101 (Orange Cnty. Dist. Ct. 1855); *State v. Stewart and Ashworth*, No. 73, Minute Book “A,” at 101 (Orange Cnty. Dist. Ct. 1855).

431. *State v. Ashworth and Ashworth*, No. 67, Minute Book “A,” at 100 (Orange Cnty. Dist. Ct. 1855); see also 1850 CENSUS: Free Inhabitants, *supra* note 3, at 499 (listing Samuel as age thirteen).

432. Orange County Marriage Record Book “A,” (1855) (collection of Orange County Courthouse) (on file with author).

433. *State v. Ashworth and Arthur*, No. 71, Minute Book “A,” at 124–25 (Orange Cnty. Dist. Ct. 1855); *State v. Ashworth and Stewart*, No. 72, Minute Book “A,” at 124–25 (Orange Cnty. Dist. Ct. 1855); *State v. Stewart and Ashworth*, No. 73, Minute Book “A,” at 124–25 (Orange Cnty. Dist. Ct. 1855) (collection of Sam Houston Regional Library & Research Center) (on file with author). The cases were not called after fall 1856.

434. OLMSTED, *A JOURNEY THROUGH TEXAS*, *supra* note 11, at 387.

435. *The Cloud in the Distance*, *supra* note 227, at 2.

436. WARREN, *supra* note 356, at 92; *A Slave Code for the Territories*, TEX. STATE

B. "[T]he awful and murderous deed"

Thus, when Sam Ashworth shot Samuel Deputy in the summer of 1856 the Ashworths' fate was probably already decided. The disturbance had its origins when William's son Clark reportedly butchered one of Samuel Deputy's hogs.<sup>437</sup> 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.<sup>438</sup> 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.<sup>439</sup> But Deputy's decision to accuse an Ashworth is hardly surprising, and not without precedent.<sup>440</sup> 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."<sup>441</sup>

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.<sup>442</sup> Soon after, Sam secured his release by providing security on a bond.<sup>443</sup> 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.<sup>444</sup> Deputy refused, however, and instead arrested Sam under a statute "providing against abusive language from negroes."<sup>445</sup> Sam was surely in a rage. In a culture steeped in notions of honor, Deputy had insulted his family's reputation by accusing them

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GAZETTE, Jan. 8, 1859, at 1.

437. *Id.*

438. Orange County Tax Rolls, *supra* note 304 (1855).

439. See *Disturbances in Orange County*, *supra* note 1, at 2 (remarking, in describing the state of affairs in the county, that "[t]he stock-keepers were never certain of collecting half the cattle they branded").

440. See, e.g., *State v. Ashworth*, No. 16, Minute Book "A," at 22, 38 (Orange Cnty. Dist. Ct. 1853); *State v. Ashworth*, No. 10, Minute Book "A," at 21, 22 (Orange Cnty. Dist. Ct. 1853); *State v. Stewart*, No. 15, Minute Book "A," at 22 (Orange Cnty. Dist. Ct. 1853); *Disturbances in Orange County*, *supra* note 1, at 2.

441. *Disturbances in Orange County*, *supra* note 1, at 2. The author was "a citizen of Orange county." *Id.*

442. *Id.*

443. *Id.*

444. *Id.*

445. *Id.*



publicly of being thieves.<sup>446</sup> But even worse: his refusal to fight Sam sent the decisive message that Deputy—who had once served as a witness against Sam's uncle William in a suit over money<sup>447</sup>—viewed the Ashworths as his inferiors. Duels, it must be remembered, were fought between gentlemen, not between individuals of different classes.<sup>448</sup> 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 were still beneath every white. In the ensuing trial, Billy Smith summed up the issue well, providing testimony, "that he considered the said Sam Ashworth to be of mixed blood or, a mulatto."<sup>449</sup> Apparently, most understood the underlying meaning, and the justice of the peace agreed; he sentenced Sam to thirty lashes on his bare back.<sup>450</sup>

Following the conviction, Sam was committed to the custody of the sheriff, E.C. Glover, in order to carry out the punishment.<sup>451</sup> What followed, however, remained in dispute. Some said he escaped; others insisted Glover, sympathetic to the Ashworths, let him go.<sup>452</sup> Regardless, Sam soon made his way to Henderson's house, where he obtained guns, clothes, and a skiff.<sup>453</sup> 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

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446. See BERTRAM 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 L. AYERS, *VENGEANCE AND JUSTICE: CRIME AND PUNISHMENT IN THE 19TH-CENTURY AMERICAN SOUTH* 13 (1984) ("A coward tolerated insult, a liar attacked honor unfairly. To call a Southern man either one was to invite attack.").

447. See *Garnot v. Ashworth*, No. 4, Minute Book "A," at 16 (Orange Cnty. Dist. Ct. 1852).

448. 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 a duel, that "the code of honor demanded that all participants . . . had to regard each other as equals").

449. *Disturbances in Orange County*, *supra* note 1, at 2.

450. *Id.*

451. *Id.* Glover had not been the sheriff for long. In Minute Book "A," Samuel Fairchild was listed as the sheriff in the fall term of 1854 and throughout 1855. Minute Book "A" (Orange Cnty. Ct. 1856) (collection of Sam Houston Regional Library & Research Center) (on file with author). Glover's first term was in 1856. *Id.* at 111.

452. Compare OLMSTED, *A JOURNEY THROUGH TEXAS*, *supra* note 11, at 387, with *Disturbances in Orange County*, *supra* note 1, at 2.

453. *Disturbances in Orange County*, *supra* note 1, at 2 (noting that Henderson had provided Sam with "the outfit for the committal of the awful and murderous deed").

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 Shell Bank, seven or eight miles below Orange on the Sabine River.<sup>454</sup> 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."<sup>455</sup> As Deputy lay clinging to the boat, Sam finished the crime with the butt of his shotgun by smashing his skull.<sup>456</sup> Merriman was unharmed, presumably because he was not involved in the accusations of stealing or the insults to Sam's honor.<sup>457</sup>

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.<sup>458</sup> The Moderators accused the sheriff of failing to take the necessary action to apprehend Sam and the others.<sup>459</sup> The eight-man posse he formed, they said, consisted "mostly of his own sort, special friends and associates of the murder," who delayed their efforts in order to give the Ashworths "ample time to carry their threats into execution and make good their escape."<sup>460</sup> Sheriff Glover, unwilling to accompany the posse, appointed Joshua Harmon as his deputy.<sup>461</sup> Mr. Harmon and his posse spent several days and nights scouring the countryside, looking for Clark, Sam, Henderson, and Jack Bunch.<sup>462</sup> 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 Sheriff Glover, among others.<sup>463</sup>

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."<sup>464</sup> Like their predecessor in

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454. *Id.*; see also RUSSELL, *supra* note 168, at 5-6.

455. *Disturbances in Orange County*, *supra* note 1, at 2.

456. *Id.*

457. *Id.*

458. OLMSTED, A JOURNEY THROUGH TEXAS, *supra* note 11, at 387. For background on the Regulator-Moderator War, a feud in east Texas marked by ambushes and killings, see 5 THE NEW HANDBOOK OF TEXAS, *supra* note 21, at 517.

459. OLMSTED, A JOURNEY THROUGH TEXAS, *supra* note 11, at 387.

460. *Disturbances in Orange County*, *supra* note 1, at 2.

461. *Id.*

462. *Id.*

463. *Id.*

464. *Id.*

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.<sup>465</sup> It is not known exactly to how many this edict applied; but a few years earlier there had been upwards of sixty-three free people of color in the county, most of whom were Ashworths or their relatives.<sup>466</sup> As an added measure, the committee also ordered all the Ashworth supporters, including the sheriff, to leave as well.<sup>467</sup>

Olmsted learned about the “[d]isturbances in Orange County” as he made his way through the area a couple of years later.<sup>468</sup> 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.<sup>469</sup> The Moderators were heavily armed, with double-barreled shotguns and a “general assortment of ‘Colt’s jewelry.’”<sup>470</sup> But the Ashworths and their friends apparently did not go quietly. Olmsted reported that they “formed an organized band, and defied the Committee.”<sup>471</sup> At first, they reportedly tried to take the offensive, planning an attack on the Committee in the town of Orange on June 15, 1856.<sup>472</sup> 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.<sup>473</sup> 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 [Dr. Mairs] dead in the street.”<sup>474</sup>

Soon after, according to Olmsted, there “ensued a series of assassinations, burnings of houses and saw-mills, and open fights.”<sup>475</sup> One former resident remembered that things had gotten

465. *Id.*; see also OLMSTED, A JOURNEY THROUGH TEXAS, *supra* note 11, at 387 (“[A]ll the Ashworth family with their relatives and supporters, [were] summoned to leave the county on pain of death.”).

466. 1850 CENSUS: Statistical View, *supra* note 105, at 503.

467. *Disturbances in Orange County*, *supra* note 1, at 2.

468. OLMSTED, A JOURNEY THROUGH TEXAS, *supra* note 11, at 386.

469. *Id.* at 387; see also RUSSELL, *supra* note 168, at 5 (noting that the disturbance lasted for two or three months).

470. *Disturbances in Orange County*, *supra* note 1, at 2.

471. OLMSTED, A JOURNEY THROUGH TEXAS, *supra* note 11, at 387.

472. *Disturbances in Orange County*, *supra* note 1, at 2.

473. *Id.*; see also RUSSELL, *supra* note 168, at 5.

474. *Disturbances in Orange County*, *supra* note 1, at 2; see also *Orange County*, *supra* note 11.

475. OLMSTED, A JOURNEY THROUGH TEXAS, *supra* note 11, at 387.

so bad that "people were afraid to sleep in their beds or light their candles at night."<sup>476</sup> 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."<sup>477</sup> One event of note occurred when twenty-eight Committee members, "well armed and mounted," led a surprise attack on the house of Joel Brandon.<sup>478</sup> There they found the sheriff concealed under a bed and arrested him.<sup>479</sup> Nearby, in another house, they found Jack Moore, with an assortment of counterfeit bills and fake land certificates.<sup>480</sup> Defending himself, Moore was shot instantly.<sup>481</sup> 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.<sup>482</sup> The Committee, "all of one mind, discharged their duty" and shot him.<sup>483</sup>

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.<sup>484</sup> An account from the *Galveston Weekly News* reported as much with apparent satisfaction.<sup>485</sup> "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 penalty of the lynch code."<sup>486</sup> Abner Ashworth, perhaps wondering if he could ever come back to Texas, began selling off some of his land on Adams Bayou soon after.<sup>487</sup> 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

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476. RUSSELL, *supra* note 168, at 5.

477. OLMSTED, A JOURNEY THROUGH TEXAS, *supra* note 11, at 387.

478. *Disturbances in Orange County*, *supra* note 1, at 2.

479. *Id.*

480. *Id.*; see also OLMSTED, A JOURNEY THROUGH TEXAS, *supra* note 11, at 388 (referencing the counterfeiting business); RUSSELL, *supra* note 168, at 5-6 (mentioning the sheriff's involvement in the counterfeiting gang).

481. *Disturbances in Orange County*, *supra* note 1, at 2.

482. *Id.*

483. *Id.*; see also OLMSTED, A JOURNEY THROUGH TEXAS, *supra* note 11, at 388; RUSSELL, *supra* note 168, at 5-6.

484. *The Orange County Disturbance*, *supra* note 11, at 3.

485. *Id.*

486. *Id.*

487. Deed from Abner Ashworth to Charlton Midkiff, Orange County Deed Book "B," *supra* note 304, at 190 (Sept. 6, 1856).

A.D. 1856 to remove myself & said children beyond the limits of said County.”<sup>488</sup>

Later that fall, Sam Ashworth and Jack Bunch were indicted for murder, and Henderson was indicted as an accessory before the fact.<sup>489</sup> 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.<sup>490</sup> Throughout the ensuing months, however, Sam was never found; reports are that he made his way to the Indian Nation in west Texas.<sup>491</sup> 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.<sup>492</sup> Most likely, Sam lived cautiously until the start of the Civil War, when—in a startling testament to where his sentiments still lay—he reportedly joined the Confederate Army and was killed at the Battle of Shiloh.<sup>493</sup> 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.<sup>494</sup> 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.<sup>495</sup> 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

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488. Deed from Abner Ashworth to Charlton Midkiff, Orange County Deed Book “B,” *supra* note 304, at 188 (Aug. 11, 1856).

489. State v. Ashworth, No. 126, Minute Book “A,” at 120 (Orange Cnty. Dist. Ct. 1856); State v. Ashworth and Bunch, No. 124, Minute Book “A,” at 120 (Orange Cnty. Dist. Ct. 1856). The first day of court was November 3, 1856. State v. Ashworth, No. 126, Minute Book “A,” at 113 (Orange Cnty. Dist. Ct. 1856); State v. Ashworth and Bunch, No. 124, Minute Book “A,” at 113 (Orange Cnty. Dist. Ct. 1856).

490. State v. Ashworth, No. 126, Minute Book “A,” at 115 (Orange Cnty. Dist. Ct. 1856); State v. Ashworth and Bunch, No. 124, Minute Book “A,” at 115 (Orange Cnty Dist. Ct. 1856) (listing grand jurors for fall term).

491. RUSSELL, *supra* note 168, at 6.

492. Congressional Petitions, *supra* note 129, Petition of William Poff, at 1 (1858). In his petition, Poff also claimed to have caught Henderson Ashworth. *Id.*

493. RUSSELL, *supra* note 168, at 6. For additional notations on the case, see State v. Ashworth and Bunch, No. 124, Minute Book “A,” at 150, 181, 206, 226, 234, 279, 309, 341, 360, 388, 408, 422 (Orange Cnty. Dist. Ct. 1856); State v. Ashworth, No. 124, Minute Book “A½,” at 133 (Orange Cnty Dist. Ct. 1856).

494. GALVESTON WKLY. NEWS, Oct. 21, 1856, at 2; GALVESTON WKLY. NEWS, Nov. 1, 1856, at 3.

495. State v. Bunch, No. 124, Minute Book “A,” at 138–39 (Orange Cnty. Dist. Ct. 1856). 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 GALVESTON WKLY. NEWS, Nov. 25, 1856, at 1.

Sam.<sup>496</sup> But the criminal minute books indicate that he had either escaped or the reports were wrong.<sup>497</sup> In every term of the court in which his case was called, the court continued it.<sup>498</sup> The case was 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 [defendant]."<sup>499</sup>

### 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 into Orange County to join the one or two who might have remained.<sup>500</sup> 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.<sup>501</sup> In 1857 and 1858, William was there, as were Aaron and Luke.<sup>502</sup> In 1859, Abner came back, but he would die within the year.<sup>503</sup> More importantly, the Ashworth family members would struggle to retain their former positions of wealth and prominence.<sup>504</sup> At the end of the decade, Aaron still owned land and slaves,<sup>505</sup> but a more telling sign of his position can be found in his dwindling cattle supply. Once the largest stock raiser in the county, he had only twenty cattle left in 1860.<sup>506</sup> 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.<sup>507</sup> The four slaves

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496. *Disturbances in Orange County*, *supra* note 1, at 2.

497. Orange County District Court Docket Book, at 140–41 (1857) (collection Sam Houston Regional Library & Research Center) (on file with author).

498. *State v. Ashworth*, No. 126, Minute Book "A," at 151, 182, 206, 227, 279, 309, 341, 360, 388, 409, 422 (Orange Cnty. Dist. Ct. 1856).

499. Orange County District Court Docket Book, *supra* note 497, at 140–41.

500. Orange County Tax Rolls, *supra* note 304 (1857–59) (verifying that several more Ashworths were once again in Orange County).

501. *Id.*

502. Orange County Tax Rolls, *supra* note 304 (1857–58).

503. *Id.* (1859); *see also* ORANGE COUNTY, TEXAS, CEMETERIES, pt. 2, at 37 (1981) (recording Abner's death on Nov. 17, 1859).

504. *See, e.g.*, Orange County Tax Rolls, *supra* note 304, (1857–59) (depicting diminishing property interests).

505. In 1860, Aaron owned 1900 acres in Orange County and 2000 in Bell County. Orange County Tax Rolls, *supra* note 304 (1860). He also owned four slaves. *Id.*

506. *Id.*

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

they owned in 1860—the only real wealth they had left—were gone by the end of the Civil War.<sup>508</sup>

William followed a similar path. He, along with Luke and a man named William Smith, was forced to borrow \$1365 in October of 1856.<sup>509</sup> 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.<sup>510</sup> 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.<sup>511</sup> Four months later, he sold nine hundred acres of his vast estate on Cow Bayou to Moise LaBlue, including the homestead on which he and Delaide lived.<sup>512</sup> 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.<sup>513</sup> By December, however, William had transferred sole ownership of this land to Delaide, keeping only two hundred acres of a different plot of land as his own.<sup>514</sup> 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 the highest bidder.<sup>515</sup> By 1860, Delaide had affixed her mark to a document filed in the clerk’s office detailing her separate property.<sup>516</sup> 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

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508. *Id.*

509. *Jackson v. Ashworth*, No. 84, Minute Book “A,” at 1 (Orange Cnty. Dist. Ct. 1857) (plaintiff’s petition).

510. *See id.* at 189 (recording jury verdict in favor of plaintiffs).

511. Deed from William Ashworth to Hugh Ochiltree, Orange County Deed Book “B,” *supra* note 304, at 297 (May 6, 1857). With \$33,000 worth of real and personal property, Ochiltree was one of the town’s wealthiest members. *See* 1860 CENSUS: Free Inhabitants, *supra* note 26, at 2.

512. *See* Deed from William Ashworth to Moise LaBleu, Orange County Deed Book “B,” *supra* note 304, at 324, 336 (Sept. 10, 1857).

513. *Id.* The tax records indicate that Luke Ashworth had sold all of his property by 1857. *See* Orange County Tax Rolls, *supra* note 304 (1857–59). He purchased 160 acres in 1860. *See id.* (1860).

514. Deed from William Ashworth to Delaide Ashworth, Orange County Deed Book “B,” *supra* note 304, at 373 (Dec. 11, 1857). In the 1860 tax records, William is listed as the owner of two hundred acres of the John Jett headright and “Mrs. D. Ashworth” is listed as the owner of 211 acres. Orange County Tax Rolls, *supra* note 304 (1860). William had purchased these two hundred acres in 1840. Deed from Joseph Dugat and Margaretta Williams, admrs., to William Ashworth, Jefferson County Deed Book “E,” *supra* note 142, at 42 (June 26, 1840).

515. Deed from William Ashworth to Joseph Dark, Jefferson County Deed Book “B,” *supra* note 346, at 169 (Feb. 21, 1857).

516. Schedule of Adelaide Ashworth’s Property, *supra* note 163, at 197

slaves.<sup>517</sup> William was left with little more than the two clocks he had previously possessed.<sup>518</sup> 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.<sup>519</sup> He died in 1864, two years after Aaron, as the last of the Ashworth patriarchs.<sup>520</sup>

In the end, it seems clear that, although the events of 1856 may have provided the ultimate spark, the era of the Ashworths' 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.<sup>521</sup> 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 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.<sup>522</sup> 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.<sup>523</sup>

In the ensuing decades of the nineteenth century, the Ashworth name continues to show up in local records. In the early 1880s, Delaide attempted to secure a veteran donation land certificate for William's service in the War for Independence.<sup>524</sup> She confessed to having no land and living off William's war pension of \$150 a year.<sup>525</sup> Twenty years later, the massive

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517. *Id.* The slave schedules for 1860 also list Delaide, not William, as the owner of the family's slaves. 1860 CENSUS: Slave Inhabitants, *supra* note 329, at 3-4.

518. Schedule of Adelaide Ashworth's Property, *supra* note 163, at 197.

519. Compare 1850 CENSUS: Free Inhabitants, *supra* note 3, at 497 (listing his occupation as farmer), with 1860 CENSUS: Free Inhabitants, *supra* note 26, at 28 (listing his occupation as laborer).

520. See Application for Veteran Land Certificate, Delaide Ashworth, *supra* note 202, at "B." Aaron died in 1862. Estate of Aaron Ashworth, *supra* note 410.

521. OLMSTED, A JOURNEY THROUGH TEXAS, *supra* note 11, at 387.

522. See 1860 CENSUS: Free Inhabitants, *supra* note 26.

523. See 1860 CENSUS: Population, *supra* note 36, at 190-91 (listing 355 free people of color in Calcasieu, almost the same number as in the entire state of Texas).

524. See Application for Veteran Land Certificate, Delaide Ashworth, *supra* note 202, at "B."

525. *Id.*



Spindletop oilfield was discovered in eastern Jefferson County, bringing unbelievable wealth to many.<sup>526</sup> 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.<sup>527</sup> 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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526. See 6 THE NEW HANDBOOK OF TEXAS, *supra* note 21, at 29–30.

527. 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 mulattoes. 1860 CENSUS: Free Inhabitants, *supra* note 26, at 21, 22. The two married and appear in the 1870 census as white. Manuscript Census Returns, Schedule 1.—Inhabitants, (Orange County, Tex.), in BUREAU OF THE CENSUS, U.S. DEPT OF COMMERCE, POPULATION SCHEDULES OF THE NINTH CENSUS OF THE UNITED STATES 25 (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. Before long, the Ashworths of Louisiana would also turn white.

