

Chicago-Kent Law Review

Volume 70

Issue 2 *Symposium on the Law of Freedom Part I:*
Freedom: Personal Liberty and Private Law

Article 6

December 1994

African Americans and the Meaning of Freedom: Washington County, Texas as a Case Study, 1865-1886 - Freedom: Politics

Donald G. Nieman

Follow this and additional works at: <https://scholarship.kentlaw.iit.edu/cklawreview>



Part of the [Law Commons](#)

Recommended Citation

Donald G. Nieman, *African Americans and the Meaning of Freedom: Washington County, Texas as a Case Study, 1865-1886 - Freedom: Politics*, 70 Chi.-Kent L. Rev. 541 (1994).

Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol70/iss2/6>

This Article is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact dginsberg@kentlaw.iit.edu.

AFRICAN AMERICANS AND THE MEANING OF FREEDOM: WASHINGTON COUNTY, TEXAS AS A CASE STUDY, 1865-1886

DONALD G. NIEMAN*

INTRODUCTION

Reconstruction witnessed revolutionary changes in public life in America. During the late 1860s and early 1870s, congressional Republicans sounded what Illinois Senator Lyman Trumbull called "the trumpet of freedom,"¹ adopting a sweeping program of constitutional amendments and legislation guaranteeing citizenship, civil equality, and political rights to the freedmen. Yet historians often have discounted Reconstruction's revolutionary nature, arguing that the era's constitutional and legal changes had few actual consequences.² The sweeping phrases of the Fourteenth Amendment guaranteeing equal citizenship and the Fifteenth Amendment's extension of the right to vote did little, they contend, to alter the grim realities of African-American life. Such critics point out that even though black votes temporarily transformed the political landscape of the South, bringing Republicans to power, the vast majority of Republican office-

* Professor of History, Bowling Green State University; B.A., 1970, Drake University; Ph.D., Rice University, 1975; Golieb Fellow in Legal History, New York University School of Law, 1983-84. I thank Linda L. Nieman, who read several versions of this essay and made many valuable suggestions. I also wish to thank Cindy Layton, Kelly Rusinack, Charles Smith, and Roger Wallace, who ably assisted with research. Grants from the American Bar Foundation, the National Endowment for the Humanities, the American Council for Learned Societies, the American Historical Association, the American Association of State and Local History, Kansas State University, Clemson University and Bowling Green State University have supported my research on this topic.

1. CONG. GLOBE, 39th Cong., 1st Sess. 322 (1866).

2. These themes characterize much of the post-revisionist writing on Reconstruction in the 1970s and 1980s. For works on Texas that take this approach, see CARL H. MONEYHON, *REPUBLICANISM IN RECONSTRUCTION TEXAS* (1980); Randolph B. Campbell, *Grass Roots Reconstruction: The Personnel of County Government in Texas, 1865-1876*, 58 J.S. HIST. 99 (1992). For other works reflecting this view, see WILLIAM C. HARRIS, *THE DAY OF THE CARPETBAGGER: REPUBLICAN RECONSTRUCTION IN MISSISSIPPI* (1979); JERRELL H. SHOFNER, *NOR IS IT OVER YET: FLORIDA IN THE ERA OF RECONSTRUCTION, 1863-1877* (1974); MARK W. SUMMERS, *RAILROADS, RECONSTRUCTION, AND THE GOSPEL OF PROSPERITY: AID UNDER THE RADICAL REPUBLICANS, 1865-1877* (1984); JOE G. TAYLOR, *LOUISIANA RECONSTRUCTED, 1863-1877* (1974). An important study of South Carolina, where African Americans exercised considerable political influence, concluded that black politicians were drawn heavily from a literate, property-holding elite whose agenda was out of touch with the needs of the black masses. See THOMAS HOLT, *BLACK OVER WHITE: NEGRO POLITICAL LEADERSHIP IN SOUTH CAROLINA DURING RECONSTRUCTION* (1977).

holders were white men who used their authority to promote programs that marginally benefitted blacks. And even this was short-lived; by 1877, white Democrats had re-established control throughout the South.

Moreover, there is widespread agreement among scholars that the Republican Reconstruction program was fundamentally flawed.³ Rejecting programs that would have afforded African Americans meaningful access to landownership, Republicans sought to guarantee former slaves freedom and opportunity by granting them legal and political rights. Most scholars agree that this approach was inadequate because it failed to afford black southerners the economic basis necessary to achieve substantive freedom and left them vulnerable to domination by white planters. As a result, during the late nineteenth century, black agricultural laborers and sharecroppers existed in a sort of limbo between slavery and freedom. They remained desperately poor and dependent on white landowners, much as their slave forbearers had been. Despite the sound and fury in Congress and the state legislatures, these scholars conclude, the changes in the lives of African Americans were quite meager.

This analysis is certainly not without merit, especially in emphasizing the relationship between property ownership and substantive freedom. Nevertheless, it fails to appreciate the radical consequences of the law of freedom. In a caste-bound society just emerging from slavery, the rule of law and civil and political equality had dramatic effects. In communities across the South, emancipation and congressional Reconstruction policies helped transform public life and private relationships in profound ways, opening opportunities for the creation of autonomous institutions in the African-American community, creating a vibrant bi-racial democracy, transforming the legal system, and nurturing an assertiveness on the part of African Americans that was essential to freedom.

3. See LOUIS S. GERTEIS, *FROM CONTRABAND TO FREEDMAN: FEDERAL POLICY TOWARD SOUTHERN BLACKS, 1861-1865* (1973); LEON F. LITWACK, *BEEN IN THE STORM SO LONG: THE AFTERMATH OF SLAVERY* (1979); JAY R. MANDLE, *THE ROOTS OF BLACK POVERTY: THE SOUTHERN PLANTATION ECONOMY AFTER THE CIVIL WAR* (1978); WILLIAM S. MCFEELY, *YANKEE STEPFATHER: GENERAL O. O. HOWARD AND THE FREEDMEN* (1968); CAROL K. ROTHROCK BLESER, *THE PROMISED LAND: THE HISTORY OF THE SOUTH CAROLINA LAND COMMISSION, 1869-1890* (1969); JONATHAN M. WIENER, *SOCIAL ORIGINS OF THE NEW SOUTH: ALABAMA, 1860-1885* (1978); Pete Daniel, *The Metamorphosis of Slavery, 1865-1900*, 66 J. AM. HIST. 88 (1979); Eric Foner, *Thaddeus Stevens, Confiscation, and Reconstruction*, in *THE HOFSTADTER AEGIS* 154 (Stanley Elkins & Eric McKittrick eds., 1974); Jonathan M. Wiener, *Class Structure and Economic Development in the American South, 1865-1955*, 84 AM. HIST. REV. 970 (1979).

These changes, of course, did not happen simply because Congress mandated them. Rather, they occurred because bold, courageous, and ambitious individuals in hundreds of southern communities took advantage of the opportunities opened by the new order. African Americans played an especially vital role in this process. They eagerly used their rights as free men and women to assert their independence of whites and to build community institutions. They also grasped the rights of citizenship, registering and voting in numbers that shocked and alarmed southern whites. African Americans not only formed the bone and muscle of the Republican coalition; a remarkable group of black political leaders quickly emerged as active players in the political process and shaped the direction of political change in their communities. Moreover, political power gave African Americans a voice in the local criminal justice system, an institution that affected their day-to-day lives in important ways. Thus the activism and assertiveness of black leaders and the black rank and file made Reconstruction at the grass roots something more profound than one set of white elites replacing another.

If we are to understand the force of the winds of change sweeping the South during Reconstruction, we must look to the grass roots—to individual communities—for that is where Radical Reconstruction had its most radical consequences. This article looks at one community, examining the role of African Americans in Washington County, Texas in using the legal and political rights they won during Reconstruction to achieve a greater measure of freedom.

I. THE EARLY POST-WAR YEARS

At the end of the Civil War, Washington County was one of the oldest and wealthiest counties in Texas. Originally settled in the early 1820s by families who came to Texas with Stephen F. Austin,⁴ the county grew steadily in population and by 1860 was the second most populous county in the state.⁵ Located in the Brazos River Valley midway between Houston and Austin, it offered rich lands well suited to

4. Stephen F. Austin (1793-1836) was instrumental in American settlement of Texas in the 1820s. Under authority of a Spanish grant, Austin led a group of about 300 American families into Texas in 1822. After Mexico won its independence from Spain in 1823, Austin recruited an additional 900 American families. A reluctant revolutionary, he nevertheless became involved in the movement for independence from Mexico in 1835. After losing the presidency of the Republic of Texas to Sam Houston in 1836, Austin served as the Lone Star Republic's first secretary of state, a position he held at the time of his death.

5. CHARLES F. SCHMIDT, *HISTORY OF WASHINGTON COUNTY* 1-20 (1949); 1 U.S. CENSUS OFFICE, *COMPENDIUM OF THE TENTH CENSUS* 52-55 (1883).

cotton cultivation. On the eve of the Civil War it was among the half-dozen leading cotton-producing counties in the state, a position it retained in the postbellum decades.⁶ African Americans provided much of the labor for the cotton crop and accounted for approximately fifty-two percent of Washington County's population from 1860 through 1890.⁷ This slight African-American majority, which was concentrated on the rich loamy soils of the eastern half of the county, persisted in the face of heavy German immigration. The German-born population, which settled mainly on prairie lands in the western part of the county, grew from slightly over 1,000 in 1860 to almost 3,500 in 1890, when one in four residents of Washington County was of German extraction.⁸

Although the county was predominantly rural and agricultural, Brenham, the county seat, enjoyed sustained growth during the post-war decades. Shortly after the war, the Houston and Texas Central Railroad entered Brenham, and in 1879 it became an important inland rail center when Gulf, Colorado, and Santa Fe Railroad construction crews reached town.⁹ The town flourished as a cotton entrepot and center for a number of small manufacturers, and its population grew

6. 1 U.S. CENSUS OFFICE, REPORT ON COTTON PRODUCTION IN THE UNITED STATES 101-02 (1884).

7. 1 U.S. CENSUS OFFICE, THE STATISTICS OF THE POPULATION OF THE UNITED STATES 372-73 (1872) (compiled from the original returns of the ninth census) [hereinafter NINTH CENSUS]; 1 U.S. CENSUS OFFICE, COMPENDIUM OF THE ELEVENTH CENSUS, at 511 (1892) [hereinafter COMPENDIUM OF THE ELEVENTH CENSUS]. According to the 1860 census, only three free blacks resided in Washington County in that year. Because the number of free blacks present in the ante-bellum period was so small and there is no evidence that other blacks who had been free before the Civil War migrated to the county after the war, the term freedmen has been applied generally to black men in postwar Washington County. U.S. CENSUS OFFICE, POPULATION OF THE UNITED STATES IN 1860, at 478-79 (1864) (compiled from the original returns of the eighth census).

8. 1 NINTH CENSUS, *supra* note 7, at 322; 1 COMPENDIUM OF THE ELEVENTH CENSUS, *supra* note 7, at 511, 654-55; 2 COMPENDIUM OF THE ELEVENTH CENSUS, *supra* note 7, at 672. The German-born population is calculated by combining those listed in the 1890 census figures as having been born in Germany (3,217) and in Austria (204). Census Office tabulations referring to the 1890 population do not give the combined number of persons who were German-born and the children of German-born parents, but only the combined number of foreign-born and the children of foreign-born (8,615). On the assumption that the percentage of Germans in the categories of foreign-born and children of foreign-born reported in the 1890 census were equal to the percentage of Germans among the total foreign-born population in Washington County (85 percent), 7,323 residents of Washington County were natives of Germany or the children of German-born parents in 1890. This is 25 percent of the county's total population (1890) of 29,157.

9. MRS. R.E. PENNINGTON, THE HISTORY OF BRENHAM AND WASHINGTON COUNTY 36 (1915).

from fewer than 1,000 in 1860 to over 2,200 in 1870 and almost 5,200 twenty years later.¹⁰

Although many of its sons went off to war, Washington County, like most of Texas, did not experience the devastation and dislocation that the Civil War brought to many other southern communities. Indeed, Union troops did not enter the Lone Star state until June 1865, after the Confederacy's collapse.¹¹ Nevertheless, in the war's aftermath, Washington County quickly felt the consequences of the war's most momentous consequence—emancipation. As word of emancipation and Confederate defeat reached the county and U.S. troops and a representative of the Freedmen's Bureau established a federal presence in Brenham in the autumn of 1865,¹² African Americans quickly asserted their freedom and their independence of their former owners. During the fall of 1865, as planters entreated with them to enter labor contracts for the coming year, many blacks remained aloof, explaining that they believed the government would compensate them for their labor during slavery by dividing the plantations among them on January 1.¹³ Although visions of "forty acres and a mule" were quickly dashed and most former slaves entered contracts to work as agricultural laborers, black workers repeatedly challenged restrictive work rules planters attempted to impose.¹⁴

Washington County blacks also asserted their rights as free persons by creating autonomous community institutions such as schools and churches. The law of slavery had clearly prohibited such activities. Fearful that literacy might sew the seeds of insurrection, pre-war legislators had made it illegal for anyone to teach slaves to read or write, in effect banning schools for slaves.¹⁵ They also effectively prohibited autonomous African-American churches by enacting statutes that prohibited more than a handful of slaves or free blacks from

10. 1 NINTH CENSUS, *supra* note 7, at 274; 1 COMPENDIUM OF THE ELEVENTH CENSUS, *supra* note 7, at 401.

11. BARRY A. CROUCH, *THE FREEDMEN'S BUREAU AND BLACK TEXANS* 12-13 (1992).

12. Letter from Lt. B.I. Arnold (Brenham) to General E.M. Gregory (Oct. 20, 1865), *RECORDS OF THE ASSISTANT COMMISSIONER FOR THE STATE OF TEXAS, BUREAU OF REFUGEES, FREEDMEN, AND ABANDONED LANDS, 1865-1869*, *microfilmed on* National Archives Microfilm Publication m821, at reel 17 [hereinafter *TEXAS FREEDMEN'S BUREAU RECORDS*].

13. *GALVESTON DAILY NEWS*, Sept. 14, 1865.

14. Letter from William H. Sinclair (Galveston) to Lt. J.T. Kirkman (Feb. 26, 1867), *TEXAS FREEDMEN'S BUREAU RECORDS*, *supra* note 12, at reel 8; Letter from Captain Edward Collins (Brenham) to Lt. J.T. Kirkman (Aug. 3, 1867), *id.* at reel 21; Letter from Captain Edward Collins (Brenham) (Feb. 1, 1868), *id.* at reel 24.

15. DONALD G. NIEMAN, *PROMISES TO KEEP: AFRICAN-AMERICANS AND THE CONSTITUTIONAL ORDER, 1776 TO THE PRESENT* 27 (1991).

meeting without white supervision.¹⁶ Despite these regulations, unsupervised black religious meetings often took place surreptitiously, outside the reach of the law.¹⁷ According to oral tradition among Washington County African Americans, their slave ancestors established "brush arbor" churches that met secretly in order to avoid the ever-present slave patrols that had authority to break up such gatherings and beat the slaves who participated in them.¹⁸

Freedom and the principles announced by the occupying Union Army and the Freedmen's Bureau made these restrictions relics of the past. On June 19, 1865—still celebrated as "Juneteenth" Day by Afro-Texans—General Gordon Granger, the commander of Union forces that occupied the state, proclaimed that Texas slaves were free and entitled to "absolute equality of personal rights and rights of property."¹⁹ Washington County African Americans promptly availed themselves of their newly won rights as free men and women to create community institutions. African-American churches—many of which had an underground existence during slavery—blossomed in the months and years following the war.²⁰ Members of these congregations mustered their meager resources to build modest churches or to refurbish dilapidated structures purchased from whites. These buildings not only served the spiritual needs of Washington County blacks, but they were centers of community life. In at least one instance, a church doubled as a schoolhouse.²¹ Indeed, rather than waiting for northern benevolent societies or the Freedmen's Bureau to provide schools, Washington County blacks began to create their own. In early 1867, the Bureau agent at Brenham reported that local blacks would soon "have a small building ready . . . for a school which will accommodate about twenty scholars—also a place provided for the teacher to live in."²² Moreover, bigger plans were in the works: "they

16. *Id.*

17. EUGENE D. GENOVESE, *ROLL, JORDAN, ROLL: THE WORLD THE SLAVES MADE* 236-37 (1974).

18. Interview with Rev. J. Emerson Davis, pastor of the Mt. Rose Baptist Church, Brenham, Texas (Mar. 15, 1986).

19. CROUCH, *supra* note 11, at 13; Nancy Cohen-Lack, *A Struggle for Sovereignty: National Consolidation, Emancipation, and Free Labor in Texas, 1865*, 58 J.S. HIST. 57, 63-64 (1992).

20. 117th Year Observance St. John A.M.E. Church, Chappell Hill, Texas (Nov. 3, 1985) (manuscript on file with the author); REV. J. EMERSON DENNIS, *MT. ROSE MISSIONARY BAPTIST CHURCH, 1868-1983*, at 4 (1983); Letter from F.P. Wood (Brenham) to Captain C.S. Roberts (Dec. 29, 1868), TEXAS FREEDMEN'S BUREAU RECORDS, *supra* note 12, at reel 16 (contract between F.P. Wood and Benjamin Watrous, June 15, 1868).

21. See *supra* note 20.

22. Letter from Captain Edward Collins (Brenham) to Lt. J.T. Kirkman (Mar. 24, 1867), TEXAS FREEDMEN'S BUREAU RECORDS, *supra* note 12, at reel 4; Letter from Captain Edward Collins to Lt. J.P. Richards (Dec. 31, 1867), *id.* at reel 23.

are building a schoolhouse capable of holding a large number of scholars," the agent commented, "but as it is being done by contributions of labor and material it . . . progresses slowly."²³

Alarmed by African American assertiveness, whites were determined to preserve the old ways, all too frequently through violence.²⁴ Despite a strong federal presence in Washington County, Bureau and Army officials reported that twenty blacks were murdered by whites between 1866 and 1869, a figure that one agent admitted was on the low side.²⁵ Violent assaults were simply too common for federal officials to tally. Although most planters told their slaves they were free and contracted with them to work for wages, others clung tenaciously—even violently—to slavery. Irving Randle, the son of a Chappell Hill physician and planter, shot a freedman named Albert who "asking if he was free and being told no said he could not believe it as all of the rest of the blacks were." The freedman's arm was shattered and required amputation.²⁶ Randle's action, while perhaps extreme, was by no means unique. "Threats on the part of planters to shoot their employees and violent and abusive attacks upon them, are an every day occurrence," noted the local Bureau agent in September 1866.²⁷

Nor was violence simply a result of conflict between planters and freedmen over the nature of free labor. Although there were few black veterans in the county, they became lightning rods for white resentment. In early 1867, Harry Haynes, the son of a well-to-do white family, shot and killed Robert Wright, a black veteran who had killed a dog that had attacked him while he was hunting on Haynes's land.²⁸ Whites also directed their wrath at blacks' emerging community institutions. At Independence, an armed band of whites burst into a black Baptist church brandishing pistols and drove worshipers

23. See *supra* note 22.

24. Record of Criminal Offenses Committed in Texas, 1865-1868, TEXAS FREEDMEN'S BUREAU RECORDS, *supra* note 12, at reel 32; Abstracts of Crimes Committed in Counties of Texas, January 1869-March 1870, OFFICE OF CIVIL AFFAIRS, DISTRICT OF TEXAS AND THE FIFTH MILITARY DISTRICT, RECORD GROUP 393, *microfilmed on* National Archives Microfilm Publication m1188 [hereinafter CIVIL AFFAIRS].

25. See *supra* note 24.

26. Record of Criminal Offenses Committed in Texas, 1865-1868, TEXAS FREEDMEN'S BUREAU RECORDS, *supra* note 12, at reel 32.

27. Letter from Lt. Jas. C. Devine (Brenham) to Lt. Lemuel Morton (Sept. 17, 1866), *id.* at reel 32.

28. Letter from Captain Edward Collins to Lt. J.T. Kirkman (Mar. 4, 1867), *id.* at reel 4.

from the building, pistol whipping several members of the congregation.²⁹

Between 1865 and 1867, as the ante-bellum elite took advantage of President Andrew Johnson's Reconstruction policy to regain control of local government, whites also used law to curb black freedom. Justices of the peace routinely apprenticed African-American orphans to whites, bypassing black relatives and providing labor starved planters with a cheap, tractable source of labor.³⁰ In one particularly egregious case, a justice of the peace apprenticed three African Americans who were all over seventeen years old and one of whom was twenty years old and married.³¹ Local officials also sought to assuage whites' concern about the prevalence of guns among the freedmen. In late 1865, as tension between planters and freedmen over terms of labor for the coming year reached its peak and fear of black insurrection swept across the South, local officials organized a "county police" which confiscated freedmen's firearms.³² Moreover, justices of the peace and their constables routinely used prosecution for petty offenses such as vagrancy, disturbing the peace, disorderly conduct, and malicious mischief as means to discipline plantation workers. "The civil law is badly administered," the Bureau agent reported in early 1867. "I am constantly engaged rescuing freedmen from its clutches for petty offenses while serious offenses [perpetrated by whites] are postponed [sic] and the offenders get every advantage by the delay."³³ A Bureau inspector concurred, noting after a tour of the Brazos Valley, "there is no such thing as civil law justly and fairly administered in this State."³⁴

Far from being intimidated by these manifestations of white power, Washington County African Americans continued to assert their rights as free persons and to challenge white authority. They repeatedly lodged protests against the apprenticing of African-American children and demanded that the Bureau agent have black appren-

29. Letter from Captain Edward Collins (Brenham) to Lt. J.T. Kirkman (Apr. 1, 1867), *id.* at reel 32.

30. See Letter from F.P. Wood (Brenham) to Lt. Chas. A. Vernon (Aug. 8, 1868), TEXAS FREEDMEN'S BUREAU RECORDS, *supra* note 12, at reel 16; Letter from Lt. B.J. Arnold (Brenham) to Captain C.C. Morse (Dec. 2, 1865), *id.* at reel 17.

31. Letter from Lt. B.J. Arnold (Brenham) to Captain C.C. Morse (Dec. 2, 1865), *id.* at reel 17.

32. Letter from Captain B.J. Arnold to Captain C.C. Morse (Jan. 16, 1866), *id.* at reel 17.

33. Letter from Captain Edward Collins (Brenham) to Lt. J.T. Kirkman (May 4, 1867), *id.* at reel 20.

34. Letter from William Sinclair (Galveston) to Lt. J.T. Kirkman (Feb. 26, 1867), *id.* at reel 8.

tices released and placed in the homes of relatives.³⁵ They also crowded the Bureau office in Brenham to file complaints against employers who cheated them.³⁶ And in the case of an agent who was unresponsive and too willing to do the planters' bidding, they complained to Bureau headquarters in Galveston.³⁷ The result was an investigation and a strong reprimand for the agent. Washington County African Americans clearly understood the law of freedom and knew how to use it to their advantage.

Nor were African Americans cowed by white violence. Indeed, Washington County blacks often struck back at whites who threatened or attacked them. In July 1868, the Bureau agent reported that Brenham had been in "a high state of excitement" because of an altercation between whites and freedmen. Several whites attempted to break up a meeting held by African Americans, and when they fired into the crowd, the freedmen fired back. Later, a white man went to the premises of a freedwoman and threatened her with a gun when he was ordered to leave. Enraged, a group of freedmen arrested the man and turned him over to the post commander.³⁸ Nor was this an isolated incident. On a number of occasions, African Americans forcefully resisted and even made citizen arrests of whites who menaced them.³⁹

African Americans also frustrated planters' effort to establish work rules and a pace of labor reminiscent of slavery. They did so principally by collectively refusing to obey their employers' directives.⁴⁰ Unable to overcome this resistance, frustrated planters requested help from the despised Freedmen's Bureau. "Men who do not favor the Bureau keeping control at heart [i.e., in principle]," noted an agent from Brenham, "do so from necessity and policy and recognize the fact that their only hope of controlling their labor is

35. See Letter from F.P. Wood (Brenham) to Captain C.S. Roberts (Aug. 25, 1868), TEXAS FREEDMEN'S BUREAU RECORDS, *supra* note 12, at reel 13; Letter from F.P. Wood to Lt. Charles Vinson (Dec. 3, 1868), *id.* at reel 16; Letter from Captain Edward Collins to Lt. J.T. Kirkman (Sept. 29, 1867), *id.* at reel 21; Letter from Captain Edward Miller (Millican) to Lt. J.T. Kirkman (June 26, 1867), *id.* at reel 4; Letter from Captain Edward Collins to Lt. J.T. Kirkman (June 26, 1867), *id.* at reel 4; Letter from General A. Doubleday (Galveston) to Lt. J.T. Kirkman (July 31, 1867), *id.* at reel 5.

36. Letter from F.P. Wood to Lt. Charles Vernon (Aug. 8, 1868), *id.* at reel 16.

37. Letter from Captain Edward Collins (Brenham) to Lt. J.T. Kirkman (Aug. 3, 1867), *id.* at reel 21.

38. Letter from F.P. Wood (Brenham) to Lt. C.E. Moss (July 6, 1868), *id.* at reel 16.

39. See GALVESTON DAILY NEWS, Apr. 4, 1866, Apr. 23, 1868, Aug. 26, 1869.

40. Letter from Captain S.A. Craig (Brenham) to Colonel William H. Sinclair (Aug. 2, 1866), TEXAS FREEDMEN'S BUREAU RECORDS, *supra* note 12, at reel 4; Letter from Captain Edward Miller (Millican) to Lt. J.T. Kirkman (June 26, 1867), *id.* at reel 7.

through the influence of the friend of the freedpeople."⁴¹ African Americans also used the chronic shortage of labor (throughout the late 1860s Bureau agents reported that they could find employment for one or even two thousand additional laborers),⁴² to force planters to accept sharecropping arrangements that gave them greater freedom from white supervision. Thomas Affleck, a Washington County resident and noted agricultural expert, complained that planters had "anxiously striven to have negroes about them on almost any terms." "They find themselves anxiously courted to go to work on some terms or other," Affleck grumbled. "The condition is that they are to do entirely as they please, as to the working of the crops and the disposition of their time being always insisted on."⁴³

II. THE EMERGENCE OF AFRICAN-AMERICAN POLITICAL CULTURE

Their world already badly shaken, Washington County whites found it turned upside down in the spring and summer of 1867. In March, Congress passed the Reconstruction Act, giving adult black males in Texas and the other unrestored states the right to vote.⁴⁴ The act, along with several amendments added in the following months, authorized the Army to register black voters and to conduct elections for delegates to conventions that would draft new state constitutions.⁴⁵ Subsequently, another round of balloting would be held to ratify these constitutions and to elect state and local officials to serve under them.⁴⁶ In the meantime, Army commanders enjoyed broad authority to remove obstructionist state and local officials and appoint more cooperative persons to replace them.⁴⁷ The process outlined by the Reconstruction Act took longer to implement in Texas than anywhere else: voter registration was not completed until early 1868; voters did not elect delegates to the state convention until February 1868; the convention did not produce a constitution until one year later; elections for ratification and new state and local officials were finally

41. Letter from William H. Sinclair (Galveston) to Lt. J.T. Kirkman (Feb. 26, 1867), *id.* at reel 8.

42. Letter from Captain S.A. Craig (Brenham) to Colonel William H. Sinclair (Aug. 2, 1866), *id.* at reel 4.

43. GALVESTON DAILY NEWS, Dec. 18, 1867.

44. Act of Mar. 2, 1867, ch. 153, 14 Stat. 428.

45. Act of Mar. 23, 1867, ch. 6, 15 Stat. 2; Act of July 19, 1867, ch. 30, 15 Stat. 14; Act of Mar. 2, 1867, ch. 153, 14 Stat. 428.

46. Act of Mar. 23, 1867, ch. 6, 15 Stat. 2; Act of Mar. 11, 1868, ch. 25, 15 Stat. 41.

47. Act of July 19, 1867, ch. 30, 15 Stat. 14.

held in November 1869; and newly elected state and federal officials took office in early 1870.⁴⁸

Despite the long road that lay ahead, implementation of the Reconstruction Act began quickly and dramatically in Washington County. In April 1867, General Charles Griffin announced the opening of registration in the state and appointed Peter Diller, Louis Edwards, and Benjamin O. Watrous to serve as registrars in Washington County.⁴⁹ Diller was a deeply committed white Unionist merchant who had opposed secession and had fled the state in 1862 to avoid service in the Confederate Army.⁵⁰ Edwards was a Union Army officer who remained in Brenham after he was discharged in 1866 and held several minor federal positions.⁵¹ Watrous, a freedman, was a leader in Brenham's African-American community.⁵² A thirty-nine year old minister, he was the founder of a flourishing church and the driving force behind the town's first African-American school.

The three began their work in June 1867, opening registration in Brenham and then proceeding to Chappell Hill, Washington, and other communities to enroll voters.⁵³ They met with an enthusiastic response from the freedmen. Indeed, African Americans were so eager to enroll that when registration opened in Brenham, many freedmen from outlying areas refused to await the registrars' arrival in their neighborhoods and trekked to the county seat to enroll.⁵⁴ This enthu-

48. MONEYHON, *supra* note 2, at 61-128.

49. *Id.* at 70; Letter from Louis Edwards to General Charles Griffin (July 15, 1867), CIVIL AFFAIRS, *supra* note 24.

50. Statement of Peter Diller (undated), TEXAS FREEDMEN'S BUREAU RECORDS, *supra* note 12, at reel 11; Letter from Peter Diller to Captain Edward Collins (Apr. 29, 1867), LETTERS RECEIVED AND REGISTERS OF LETTERS RECEIVED, DISTRICT OF TEXAS AND THE FIFTH MILITARY DISTRICT, 1865-1870, RECORD GROUP 393, *microfilmed on* National Archives Microfilm Publication m1193, at reel 5 [hereinafter DISTRICT OF TEXAS].

51. Letter from L.E. Edwards (Brenham) to Governor E.M. Pease (Apr. 30, 1868), TEXAS GOVERNOR'S PAPERS (unpublished records, Texas State Archives (Austin)) [hereinafter TEXAS GOVERNOR'S PAPERS]; Letter from L.E. Edwards (Brenham) to Governor E.M. Pease (June 23, 1868), *id.*

52. U.S. CENSUS OFFICE, U.S. MANUSCRIPT CENSUS OF POPULATION, 1870, at 76, *microfilmed on* National Archives Microfilm Publication m593, at reel 1608; Letter from Captain Edward Collins (Brenham) to Lt. J.T. Kirkman (June 4, 1867), TEXAS FREEDMEN'S BUREAU RECORDS, *supra* note 12, at reel 20; Letter from F.P. Wood (Brenham) to Captain C.S. Roberts (Dec. 29, 1868), *id.* at reel 16 (contract between F.P. Wood and Benjamin Watrous, June 15, 1868); Letter from F.P. Wood (Brenham) to Captain C.S. Roberts (Sept. 22, 1868), *id.* at reel 16; Letter from F.P. Wood (Brenham) to Captain C.S. Roberts (Oct. 9, 1868), *id.* at reel 16.

53. Letter from Louis Edwards to General Charles Griffin (July 15, 1867), CIVIL AFFAIRS, *supra* note 24.

54. Letter from Captain Edward Collins (Brenham) to Lt. J.T. Kirkman (June 26, 1867), TEXAS FREEDMEN'S BUREAU RECORDS, *supra* note 12, at reel 4; Letter from Captain Edward Collins (Brenham) to Lt. J.T. Kirkman (June 30, 1867), *id.* at reel 7; Letter from Captain Edward Miller (Millican) to Lt. J.T. Kirkman (June 26, 1867), *id.* at reel 21.

siasm persisted in the face of whites' efforts to interfere with the registration. Many planters threatened to fire employees who registered, and when registration began in the village of Washington, in the northeastern part of the county, three white men attacked the registrars, shooting and wounding Louis Edwards and Ben Watrous.⁵⁵ Nevertheless, eager to take on the mantle of citizenship and determined to have a voice in how their communities were governed, African Americans continued to enroll.⁵⁶

African Americans not only registered, but they quickly became actively involved in politics. In May 1867, Scipio McKee, an African-American delegate from Washington County, travelled to San Antonio to attend one of the first Republican mass meetings in Texas.⁵⁷ Undoubtedly he returned with information about the Reconstruction Act and the winds of political change that were sweeping the state. By the time the registration process got under way a month later, black leaders in several communities were holding political meetings to explain the registration process and to mobilize their neighbors.⁵⁸

Sometime during the following months, Washington County blacks organized a chapter of the Union League in Brenham. Under the lead of Benjamin Watrous, the organization enjoyed sustained growth.⁵⁹ By early 1868, the League held regular monthly meetings which attracted large numbers of freedmen from the surrounding countryside.⁶⁰ Indeed, in May 1869, a member casually noted that 2,000 League members had attended a recent meeting, a rather astonishing figure given that the county's entire African-American population was 12,000.⁶¹ Moreover, during 1868, League members who lived outside Brenham established several new chapters, including a vital club in the village of Chappell Hill, which was situated in the heavily

55. Letter from Lt. W.H. Crowell (Brenham) to Lt. C.E. Morse (Nov. 28, 1867) and enclosures, CIVIL AFFAIRS, *supra* note 24.

56. Letter from Louis Edwards to General Charles Griffin (July 15, 1867), *id.*; GALVESTON DAILY NEWS, Dec. 5, 1869.

57. MONEYHON, *supra* note 2, at 63.

58. Letter from Captain Edward Collins (Brenham) to Lt. J.T. Kirkman (June 26, 1867), TEXAS FREEDMEN'S BUREAU RECORDS, *supra* note 12, at reel 4.

59. Letter from Benjamin Watrous (Brenham) to My Friend (Feb. 12, 1868), TEXAS GOVERNOR'S PAPERS, *supra* note 51.

60. Letter from Stephen A. Hackworth (Brenham) to Governor E.M. Pease (May 28, 1869), *id.*

61. Letter from Benjamin Watrous (Brenham) to My Friend (Feb. 12, 1868), *id.*; GALVESTON DAILY NEWS, Feb. 8, 1868.

black eastern portion of the county.⁶² The League's expansion and its regular meetings drew former slaves into the political process, taught them about voting and government, and allowed them to debate personalities and issues.⁶³ Although a few whites began to enter in early 1868, it remained a predominantly black organization and spawned a remarkable group of African-American political leaders.⁶⁴

As Union League membership swelled, Washington County African Americans developed a passion for politics and a fierce community political solidarity. In October 1867, when Hale Scott, a black speaker, urged a group of African Americans to support the Democrats, "the audience got obstreperous and threatened to hang the orator" and, according to the *Galveston Daily News* reporter, would have carried out the threat had the sheriff not intervened.⁶⁵ The following fall, when Wiley Haines, an outspoken black Democrat attended a black church in Brenham, he was badgered by members of the Union League. "We'll allow no damned Democratic nigger in this Church," they exclaimed, driving him away and, incidentally, precipitating a fight with a group of whites who came to Haines's defense.⁶⁶

Although African Americans provided a fiercely loyal core for the Washington County Republican Party, they were joined by a small group of whites in a biracial coalition. Several men—like Peter Diller, the registrar—were outspoken Unionists who had suffered for their opposition to the Confederacy.⁶⁷ Their hatred for the local Democratic elite drew them inexorably to the Republican coalition, regardless of their views on black suffrage. A small group of local old-line Whig activists also joined the Republican ranks.⁶⁸ Like John D. McA-

62. Report of F.P. Wood (Brenham) (Aug. 31, 1868), TEXAS FREEDMEN'S BUREAU RECORDS, *supra* note 12, at reel 27; Letter from J.H. Johnson et al. (Chappell Hill) to His Excellency Governor Davis (June 30, 1870), TEXAS GOVERNOR'S PAPERS, *supra* note 51.

63. On the League's activities, see ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863-1877, at 283-85 (1988).

64. Letter from L.E. Edwards (Brenham) to E.M. Pease (Apr. 30, 1868), TEXAS GOVERNOR'S PAPERS, *supra* note 51; Letter from J.D. McAdoo (Brenham) to E.M. Pease (June 13, 1868), *id.*; Letter from J.J. Stockbridge et al. to E.J. Davis (Mar. 5, 1870), *id.*; Letter from Aaron Neely et al. (Brenham) to E.J. Davis (June 29, 1870), *id.*; Letter from Matthew Gaines (Brenham) to E.J. Davis (Mar. 6, 1870), *id.*

65. GALVESTON DAILY NEWS, Oct. 27, 1867.

66. TEXAS COUNTRYMAN (Bellville), Sept. 4, 1868.

67. On Peter Diller, see *supra* note 50. See also Letter from George P. Webber (Brenham) to E.M. Pease (Feb. 1, 1867), TEXAS GOVERNOR'S PAPERS, *supra* note 51; R.G. Dun & Co., Texas, vol. 1, at 280 (unpublished credit records, R.G. Dun & Co. Collection, Baker Library, Harvard University Graduate School of Business Administration) (ledger entries for "Thos Dwyer and M.A. Healy" and "Thos Dwyer").

68. See Letter from Thomas J. Lockett to E.M. Pease (Sept. 18, 1867), TEXAS GOVERNOR'S PAPERS, *supra* note 51; Letter from C.G. Campbell (Vine Grove) to General E.R.S. Canby (Apr.

doo, the highly respected lawyer, they had been Unionists in the late 1850s, but reluctantly served the Confederacy when secession came. (McAdoo had been a brigadier general in the state's frontier defense forces.)⁶⁹ Whatever they thought of black voting rights, these men saw the Republican Party as a vehicle to continue their battle with their long-time Democratic adversaries. Then, too, there were a few northerners—former U.S. Army officers like Louis Edwards—who had chosen to remain in the area after they had been discharged.⁷⁰ Viewed by locals with suspicion and driven by economic need to seek public employment, they were attracted to the party because of its potential to deliver the spoils.

Although Washington County's cast of white Republicans looked quite typical compared to other post-war southern communities, there was one important difference. The party won the allegiance of a significant portion of the county's large and growing German population. Many Germans had strongly supported the Confederacy.⁷¹ Others, however, were Unionists whose hostility to the planter elite had grown as a result of wartime repression of Germans in the area, and many of them joined the Republican Party.⁷² By the 1870s, a significant number of Washington County's Germans voted Republican, contributing several hundred votes to the roughly 2,500 votes the party typically polled.⁷³ Moreover, throughout the post-Civil War years, as German immigration continued, many of the newcomers aligned themselves with the Republicans.⁷⁴

12, 1869), DISTRICT OF TEXAS, *supra* note 50, at reel 24; AUSTIN DAILY ST. J., Feb. 15, 1872; BRENHAM BANNER, May 1, 1880, July 17, 1883.

69. On McAdoo, see BRENHAM BANNER, July 17, 1883.

70. On Edwards, see *supra* note 51. See also Letter from B.J. Arnold (Brenham) to General J.J. Reynolds (Sept. 25, 1868), DISTRICT OF TEXAS, *supra* note 50, at reel 11; Letter from B.J. Arnold to E.J. Davis (June 29, 1870), TEXAS GOVERNOR'S PAPERS, *supra* note 51.

71. See WALTER L. BUENGER, SECESSION AND THE UNION IN TEXAS 133-34 (1984); PENNINGTON, *supra* note 9, at 110-11; Oscar Haas, *The Diary of Julius Giesecke*, 3 TEX. MIL. HIST. 228 (1963); Oscar Haas, *The Diary of Julius Giesecke*, 4 TEX. MIL. HIST. 27 (1964).

72. Letter from General William G. Webb to Major A.G. Dickinson (Jan. 4, 1863), WAR OF THE REBELLION: A COMPILATION OF THE OFFICIAL RECORDS OF THE UNION AND CONFEDERATE ARMIES, ser. I, vol. 15, at 926-28 (1880); Special Order, No. 35, District of Texas, New Mexico and Arizona (Jan. 5, 1863), *id.* at 931; Letter from Lt. Colonel P. Hardeman to Captain Edward Turner (Jan. 26, 1863), *id.* at 960; Letter from Lt. Colonel Henry Webb to Captain Edward Turner (Feb. 18, 1863), *id.* at 982-83; Letter from William Schlottman to E.J. Davis (undated, probably Jan. 1871), TEXAS GOVERNOR'S PAPERS, *supra* note 51; AUSTIN DAILY ST. J., Aug. 8, 1871; BRENHAM BANNER, Aug. 4, 1871.

73. Letter from William Schlottman to E.J. Davis (undated, probably Jan. 1871), TEXAS GOVERNOR'S PAPERS, *supra* note 51.

74. SENATE COMM. ON PRIVILEGES AND ELECTIONS, TESTIMONY ON THE ALLEGED ELECTION OUTRAGES IN TEXAS, S. Misc. Doc. No. 62, 50th Cong., 2d Sess. 156-69, 486-89, 591, 619 (1889) [hereinafter TESTIMONY ON THE ALLEGED ELECTION OUTRAGES].

A diverse group, most of the county's white Republicans were attracted to the party because of their hostility to the Democratic elite.⁷⁵ By and large, it appears that they did not support black suffrage as a matter of principle. They were aware, however, that only by mobilizing African-American voters could they win elections, control local government, and have access to state and federal patronage. During the late 1860s, it was white Republicans who jostled with one another for preference and won appointments to local offices when Army officials used their powers under the Reconstruction Acts to replace Democratic incumbents.⁷⁶ White Republicans not only seemed to believe that they had a monopoly on office; they proved reluctant to make concessions to African Americans on matters of public policy. Thus Frank Wood, a planter-turned-Republican whom Army officials appointed county judge, steadfastly refused to add the names of African Americans to the jury list between 1867 and 1869.⁷⁷

Yet white Republicans quickly learned that their black allies were not clay on the potter's wheel. A remarkable group of African-American leaders became active in the Union Leagues. These men drew their power from their ability to influence African-American voters, an influence that came from involvement in community institutions and close identification with the black masses. Of twelve African-American leaders active in the Union League and the early Republican Party who can be identified in the 1870 census,⁷⁸ many were also leaders in community institutions. Even though only one of the twelve listed his occupation as "preacher" in the census, at least three others headed churches.⁷⁹ Three of the leaders—Benjamin Watrous,

75. See *supra* note 68.

76. List of Civil Officers Elected or Appointed in Texas, CIVIL AFFAIRS, *supra* note 24.

77. Criminal Minutes, Washington County District Court, vol. I, at 712 (District Clerk's Office, Washington County Courthouse, Brenham, Texas); Letter from F.P. Wood (Brenham) to General J.J. Reynolds (Apr. 27, 1868), DISTRICT OF TEXAS, *supra* note 50, at reel 9; AUSTIN DAILY ST. J., Dec. 6, 1870.

78. The names of sixteen African Americans who were active in the Union League and the Republican Party between 1867 and 1870 were culled from newspapers, correspondence, petitions, and Freedmen's Bureau and Army records. Of these, twelve were located in the 1870 census of population for Washington County. Information on their age, occupation, literacy, and property ownership comes from the census.

79. Only Benjamin Watrous gave his occupation as "minister" to the census taker. Matthew Gaines and John H. Johnson, who were listed as farm laborers, also served as ministers. On Gaines, see MERLINE PITRE, THROUGH MANY DANGERS, TOILS, AND SNARES: BLACK LEADERSHIP OF TEXAS, 1868-1900, at 157-65 (1985). On Johnson, see BRENNAM BANNER, Oct. 23, 1884.

a minister, Charley Childs, a carpenter, and Matthew Parker, a laborer—were leaders in establishing African-American schools.⁸⁰

The county's African-American leaders could also identify with the problems and aspirations of their neighbors. All but one were former slaves. Although two were in their early twenties, most (eight) were over thirty-five and had grown to manhood as slaves. Nor did they represent an economic elite. Although the group included several artisans, a farmer, and a minister, a majority (seven) listed their occupation as "farm laborer," as did the vast majority of the county's freedmen. Several owned small amounts of property, but only one, Theodore Stamps, a farmer who had been free before the war and who owned \$600 of personal property and \$1,300 of real estate in 1870, had achieved yeoman farmer status. Like their neighbors, most of the African-American leaders owned neither personal property (seven) nor real estate (eight).⁸¹ Although able to identify with their neighbors, these men were nevertheless set apart by their ability, force of character, and drive. By 1880, all four of the men who reported themselves as laborers in 1870 and who could be identified in the 1880 census had achieved substantial occupational mobility. Two had become teachers, one a stonemason, and one a lawyer.⁸²

From the beginning, these men played a prominent role in Republican politics. The county's Union Leagues drew officers from their ranks, starting with Benjamin Watrous, who became the first president of the Brenham League in 1867.⁸³ Because the League represented the mass of Republican voters, it came to exercise real power over nominations for elected office as well as gubernatorial appointments. In 1868, with the backing of the League, Benjamin Watrous was nominated and elected to serve as one of the county's two delegates to the state constitutional convention.⁸⁴ In 1869, Matthew Gaines, who had become a leading force in the Brenham Union

80. Letter from F.P. Wood (Brenham) to Captain C.S. Roberts (Dec. 29, 1868), TEXAS FREEDMEN'S BUREAU RECORDS, *supra* note 12, at reel 16 (Agreement with Benjamin Watrous of June 15, 1868 and Agreement with Charles Childs of Oct. 1, 1868); AUSTIN DAILY ST. J., Mar. 12, 1870.

81. For information on how these statistics were compiled, see *supra* note 78.

82. The four are Jerry Hannah (the stonemason), J.C. Cain and J. Mathew Parker (the teachers), and Allen Wilder (the lawyer). Their occupations were taken from the U.S. Census of Population for Washington County for 1870 and 1880.

83. Letter from Benjamin O. Watrous (Brenham) to General J.J. Reynolds (Mar. 21, 1868), DISTRICT OF TEXAS, *supra* note 50, at reel 9; Letter from Benjamin O. Watrous to My Friend (Feb. 12, 1868), TEXAS GOVERNOR'S PAPERS, *supra* note 51.

84. MONEYHON, *supra* note 2, at 236-47.

League, won nomination for the county's seat in the senate and easily won election to a four-year term.⁸⁵

Gaines's election opened the way to a sharp challenge to white primacy in the Republican party. A farm laborer and preacher from the western portion of the county, Matt Gaines was a forceful, charismatic, and militant leader. He resented white Republicans' continued domination of state and county offices and used his position to demand that the party give African Americans a fairer share of the nominations.⁸⁶ In 1871, Gaines challenged the renomination of Congressman William Clark, a white carpetbagger, and pressed, unsuccessfully, for the nomination of Richard Nelson, an African-American justice of the peace from Galveston.⁸⁷ "The time has come for action on our part," he urged in a speech to the Brenham Union League, "we have got men at home who know better what we need in Texas, therefore we must do all we can to send one of our own men to Congress."⁸⁸ Moreover, as the campaign heated up, he became even more outspoken in his denunciation of white control of the party.⁸⁹ "We are entitled to the candidate; we do all the voting and are entitled to the offices," he told an audience of 3,000 at Brenham. "Shall we turn the mill forever and let someone else eat the meal?"⁹⁰ A year later, Gaines demanded that African Americans receive the party's nomination for both of Washington County's seats in the general assembly.⁹¹ Although Gaines fell short of his goal, one of the seats did go to an African American, twenty-seven year old Allen Wilder of Chappell Hill.⁹²

Matt Gaines's influence was intense but short-lived. In 1873, he was convicted of a specious charge of bigamy in Fayette County. The Texas Supreme Court reversed the conviction and Gaines won re-election to the Senate in November 1873. Democrats now controlled the legislature, however, and when Seth Shepard, Gaines's Democratic opponent challenged the outcome, Senate Democrats denied Gaines

85. GALVESTON DAILY NEWS, Oct. 15, 1869.

86. PITRE, *supra* note 79, at 157-65.

87. *Id.* at 161.

88. *Id.*

89. *See id.* at 157-165; AUSTIN DAILY ST. J., Apr. 25, 1871.

90. BRENHAM BANNER, Aug. 11, 1871.

91. Letter from J.R. Burns (Brenham) to J.P. Newcomb (July 14, 1872), JAMES P. NEWCOMB PAPERS (Barker Texas History Center, University of Texas (Austin)); Letter from J.P. Newcomb to J.R. Burns (July 28, 1872), *id.*

92. PITRE, *supra* note 79, at 40.

his seat.⁹³ Gaines remained active in local Republican politics and continued to press for a more prominent role for African Americans.⁹⁴ But he never again was a dominant force among Washington County Republicans.⁹⁵ Nevertheless, Gaines's demand for greater equity within the party left an important legacy. African-American leaders became more assertive and came to play a more forceful role in party affairs. White Republican leaders and officeholders, aware that their power depended on African-American leaders and voters, proved more responsive to black concerns and the claims of black leaders.

Indeed, white Republicans who won the respect of African Americans strengthened their own positions within the party. Consider the case of Stephen Hackworth, a native white Republican of modest means. Hackworth was an early member of the Brenham Union League and a political ally of the freedmen.⁹⁶ As a small scale real estate investor, he helped numerous Washington County blacks obtain land on credit in nearby Fort Bend County.⁹⁷ At a meeting held in Houston in 1879 to discuss black emigration to Kansas, Texas black leaders were so impressed with Hackworth's efforts to encourage black land ownership that they passed a resolution thanking him.⁹⁸ The only other person so honored was William Lloyd Garrison.⁹⁹ A fellow Republican noted that Hackworth had "great influence with the colored people"¹⁰⁰ and "was looked on as the leader of the colored Republicans"¹⁰¹ in Washington County because "he is a man who has always proved to be true and faithful"¹⁰² to them. A political enemy confirmed this. He suggested that Hackworth enjoyed good relations with blacks and noted that his association with them

93. See *Gaines v. State*, 39 Tex. 606 (1873); PITRE, *supra* note 79, at 163-65; AUSTIN DAILY ST. J., Feb. 14, 1872; BRENHAM BANNER, Aug. 2, 1873, June 11, 1874, Apr. 23, 1875, Apr. 30, 1875, Nov. 26, 1875.

94. See PITRE, *supra* note 79, at 163-65; BRENHAM BANNER, July 12, 1878, Aug. 15, 1884, Aug. 17, 1884.

95. PITRE, *supra* note 79, at 163-65.

96. Letter from Stephen Hackworth to E.M. Pease (Sept. 22, 1868), TEXAS GOVERNOR'S PAPERS, *supra* note 51; Letter from Stephen Hackworth to E.M. Pease (May 28, 1869), *id.*

97. Letter from Stephen Hackworth to E.M. Pease (Nov. 11, 1880), NILES-GRAHAM-PEASE PAPERS (Austin-Travis County Collection, Texas Public Library (Austin)); Letter from Stephen Hackworth to Governor John St. John (July 5, 1879), KANSAS GOVERNORS' PAPERS (Kansas Historical Society (Topeka)); Letter from Stephen Hackworth to Governor John St. John (July 8, 1879), *id.*

98. BRENHAM BANNER, July 5, 1879.

99. *Id.*

100. TESTIMONY ON THE ALLEGED ELECTION OUTRAGES, *supra* note 74, at 159.

101. *Id.*

102. *Id.* at 165.

went beyond electioneering: "I very seldom saw him on the street without he spoke to a nigger. I never saw him except in company with a nigger. . . . He has niggers around him the whole year, from the commencement to the end."¹⁰³ Hackworth's popularity in the African-American community paid off. Throughout the 1870s and early 1880s he was the most important Republican leader in the county and achieved substantial influence with state and national Republican leaders.

The African-American leaders who succeeded Gaines lacked his uncompromising militance. They worked with white Republican leaders like Hackworth to hold together a biracial political coalition in which African Americans were the most important element but whites—especially Germans—were crucial to the party's success. Nevertheless, throughout the 1870s and 1880s, black delegates were in the majority at county nominating conventions, and black Republican leaders served as chairmen of the county executive committee.¹⁰⁴ As a result of this growing influence, blacks' share of the nominations for countywide office grew throughout the period. They never received nominations in proportion to their numbers and were never nominated for such prestigious offices as sheriff or county judge. However, they won the bulk of the nominations for state legislature and, increasingly, nominations for such countywide offices as treasurer and clerk of court. After 1876, when a new constitution created a county commission with broad fiscal and administrative authority, African Americans consistently won two of the four seats.¹⁰⁵

During the 1870s and 1880s, black leaders' strength continued to depend on the influence they enjoyed within their communities. The Union League passed from the scene during the early 1870s, but politics continued to play a vital role in African-American communities from Washington and Graball in the northeastern part of the county to Greenvine in the southwest. During election years, African Americans held frequent local political meetings as well as precinct conventions to nominate delegates to the Republican county convention, which selected candidates for county office.¹⁰⁶ These gatherings were

103. *Id.* at 463.

104. See AUSTIN DAILY ST. J., Apr. 16, 1871; BRENHAM BANNER, Feb. 4, 1876, Aug. 16, 1878, Aug. 25, 1878, Aug. 19, 1880, Aug. 6, 1882, Aug. 22, 1884, Sept. 19, 1884, Aug. 13, 1886.

105. The ratio of black Republican nominees to offices elected on a county-wide basis is as follows: 1870 (1:4), 1873 (3:7), 1876 (5:16), 1878 (6:16), 1880 (5:16), 1882 (5:16), 1884 (6:16), 1886 (6:16). ELECTION RETURNS, 1860-1892 (County Clerk's Office, Washington County Courthouse, Brenham, Texas) [hereinafter ELECTION RETURNS].

106. See, e.g., BRENHAM BANNER, July 19, 1878, July 26, 1878, Aug. 5, 1880, July 20, 1882.

derisively labelled "owl meetings" by the Democratic *Brenham Banner* because they often met at night when black workers who formed the party's rank and file could attend. Community leaders took leading roles in these meetings and had to win continued support there if they hoped to retain their clout in the county convention. Moreover, prospective candidates for county office appeared to speak and answer questions, attempting to gain the endorsement of local leaders and the delegates who would be selected to attend the county convention.¹⁰⁷

These meetings were centers of a vibrant African-American political culture that had deep roots in community institutions. Gatherings in Brenham were usually held in Camptown or Watrousville, the black neighborhoods, while in the countryside they generally took place at black schools and churches.¹⁰⁸ Sometimes, politics and religion shared the bill. In July 1884, for example, blacks held a "religious, Sunday School, and political gathering" near the home of George Rucker, a black preacher who lived near Burton. According to the *Brenham Banner* reporter, "In the forenoon there was preaching and praying and in the afternoon political affairs absorbed the attention of voters present."¹⁰⁹ Brass bands, which were an important part of black community life, also regularly participated in political meetings and rallies, especially in Brenham. Prior to a Republican meeting in Watrousville in 1878, the *Banner* reported, "the streets were enlivened by the appearance of the colored brass band, in a wagon, discoursing excellent music."¹¹⁰

Political meetings were often festive occasions, and they brought entire communities—men, women, and children—together. When the nominating convention for the twelfth senatorial district (which included Washington and four other counties) met in Brenham in 1884, "there were almost as many colored people in town as on Saturdays," the *Banner* noted, "and among the crowd there were a good many colored ladies."¹¹¹ Rallies in Brenham frequently attracted crowds of 1,500 to 2,000 persons, and even in isolated rural communities attendance was often impressive.¹¹² In 1878, a Republican barbe-

107. See *supra* note 106.

108. For indications of black community institutions serving as the venues for these meetings, see *BRENHAM BANNER*, Aug. 8, 1878, July 16, 1880, July 20, 1882, Aug. 28, 1886, Sept. 18, 1886.

109. *BRENHAM BANNER*, July 26, 1884.

110. *BRENHAM BANNER*, Aug. 25, 1878.

111. *BRENHAM BANNER*, Aug. 15, 1884.

112. *BRENHAM BANNER*, Nov. 5, 1876, Aug. 9, 1878, Aug. 15, 1884.

cue sponsored by blacks in the isolated Coles' Creek community drew three or four hundred persons.¹¹³

Although these meetings were often devoted to eating, drinking, and political hoopla, they also had a substantive side. Rival candidates often addressed these gatherings and took questions from those attending, attempting to win support for their candidacies.¹¹⁴ Occasionally, the questions were pointed, and the criticisms of white and black leaders were sharp. Thus at one meeting at Harris Spring, a disgruntled voter told a black politician from Brenham that "the rural roosters knew who they wanted to support" and the "city chaps" were wasting their time. According to the *Banner*, the critic complained that the speaker and his friends only "came among them when they wanted their votes . . . and then not in the interest of the colored people but only in the interest of white office seekers and he regard[ed] them more as enemies than friends."¹¹⁵ Such hostility appears to have been rare, but it does suggest that owl meetings were not cakewalks for Republican leaders.

Politics was, then, an important part of community life. Blacks not only turned out for meetings, but they demonstrated a passion for political discussion, especially in election years. "At the present time nine out of every ten colored men are active politicians," noted a reporter in October 1886. "Wherever two colored men are gathered together they are talking politics."¹¹⁶ Ordinary black men also demonstrated their commitment to the political process by putting their lives on the line to preserve it. Washington County whites chafed under the new order and, on several occasions, resorted to violence to bring it down. Because the law proved ineffective in stopping political terrorism, African Americans resorted to extralegal means to protect the democratic process. In 1875, for example, a group of whites attacked a Republican meeting near Independence, pistol whipping several white leaders and threatening black women and children in attendance.¹¹⁷ Two black men—David Graves, "a colored Baptist preacher" and "an esteemed and outspoken Republican," and

113. BRENHAM BANNER, July 12, 1878.

114. BRENHAM BANNER, Aug. 5, 1880, Aug. 18, 1880, Aug. 13, 1882, Aug. 29, 1884.

115. BRENHAM BANNER, Aug. 12, 1880.

116. BRENHAM BANNER, Oct. 26, 1886.

117. Letter from Edmund J. Davis to Edwards Pierrepont (July 20, 1875), SOURCE-CHRONOLOGICAL FILE, U.S. DEP'T OF JUSTICE, RECORD GROUP 60, at box 67 (National Archives and Records Service, Washington, D.C.) (Affadavit of R.A. Harvin (July 15, 1875), Affadavit of W.S. Decker (July 14, 1875), Affadavit of Stephen Hackworth (July 18, 1875), Affadavit of Daniel Hunt (July 15, 1875), Affadavit of John W. Gee (July 20, 1875), Affadavit of Phillip Baker (July 13, 1875)).

William Wares—were shot to death when they attempted to drive the whites away with shotguns.¹¹⁸ In 1886, black men in the Graball community, fearing foul play by the Democrats, posted an armed guard around the house where the precinct's votes were tallied. When a group of disguised whites broke into the house shortly after midnight to steal the ballots of the predominantly black precinct, Polk Hill, a local sharecropper, opened fire with his shotgun, instantly killing one of the bandits, Dewees Bolton, the son of the Democratic candidate for county commission.¹¹⁹

III. THE CONSEQUENCES OF AFRICAN-AMERICAN POLITICAL POWER

How do we explain this vibrant political culture, this passion for politics and public life among blacks? On one level, of course, political participation was of enormous symbolic importance to African Americans. It was an affirmation that, although they had been chattels who had possessed "no rights that a white man was bound to respect,"¹²⁰ they were now free men and citizens. To participate in political discussion, question candidates, influence nominations, and cast votes that determined who would become sheriff, or county judge, or justice of the peace was to assert that you and those like you counted. To see men from your own community—perhaps your church or school community—serve as delegates to the county or state Republican convention or as members of the legislature or county commission or to wear the badge of a deputy sheriff reaffirmed this.

But political participation was more than a symbolic act; it had tangible consequences. For African Americans, political influence translated into opportunities for public sector employment, a source of income that had been reserved for whites. In Washington County, Republican officials appointed blacks to a range of positions, including cattle and hide inspector, deputy sheriff, jailer, bailiff, deputy assessor, and notary public.¹²¹ Republicans also opened public works

118. *Id.* (Affidavit of Adolph Secrets (July 13, 1875)).

119. TESTIMONY ON THE ALLEGED ELECTION OUTRAGES, *supra* note 74, at 14-20, 31-38, 47-48.

120. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856).

121. Letter from J.C. Cain to Edmund J. Davis (Mar. 9, 1871), TEXAS GOVERNOR'S PAPERS, *supra* note 51; BRENHAM BANNER, Apr. 27, 1883, Sept. 2, 1884, Sept. 7, 1884, Jan. 8, 1885. Of the 135 persons appointed deputy sheriff between 1870 and 1884 whose race can be determined, 31 (23 percent) were black. RECORD OF OFFICIAL BONDS, 1868-1875 (County Clerk's Office, Washington County Courthouse, Brenham, Texas); RECORD OF OFFICIAL BONDS, 1879-1883 (County Clerk's Office, Washington County Courthouse, Brenham, Texas); RECORD OF OFFICIAL BONDS, 1884-1885 (County Clerk's Office, Washington County Courthouse, Brenham, Texas).

jobs to black artisans, hiring them to construct bridges and work on major public works projects like the jail that was constructed in 1871 and the county courthouse which was completed in 1884.¹²²

Republicans also improved delivery of social services for blacks. They opened pauper relief programs to blacks as well as whites, reversing the practice that had prevailed in the years immediately following the war when white elites had controlled local government and had provided relief only to white paupers.¹²³ Republican officials also adopted policies that were sensitive to the needs of the elderly, the handicapped, and widows and orphans who were unable to support themselves. Instead of insisting that paupers live at a county poor farm, Republican members of the county commission provided monthly payments that allowed them to remain in the community.¹²⁴ Democrats complained that Republican policy was too liberal, suggesting that elderly blacks could get "comfortable homes with whites" if they would perform "light work" in return for their board (in the process, of course, providing whites with a cheap and dependent source of labor).¹²⁵ Four years after Democrats had regained control of the county, the *Brenham Banner* crowed that by requiring paupers to live on the county farm, the cost of poor relief had declined from \$2,700 to \$700 per year.¹²⁶

African Americans also benefitted from Republican law enforcement policies. Even though planters continued to complain of a labor shortage, vagrancy prosecutions were no longer used as a means to compel blacks to go to work on terms set by planters. In 1878 a planter living near Independence grumbled that there were "a great many colored gentlemen and ladies in the neighborhood, . . . [but] with few exceptions they evince no disposition to go to work." They were holding off, he explained, hoping "to catch planters in a straight and then [work] for a limited time by the day. They then expect to wait until next cotton picking time, when all the negroes make an 'African fortune' and become independent."¹²⁷ Republican officials rebuffed calls for enforcement of the vagrancy law in these situations,

CIAL BONDS, 1876-1881 (Washington County Records, Texas A & M Archives (College Station)).

122. See County Commissioner's Minutes (County Clerk's Office, Washington County Courthouse, Brenham, Texas)

123. See, e.g., *id.*

124. BRENHAM BANNER, Feb. 1, 1877.

125. BRENHAM BANNER, July 17, 1877.

126. See BRENHAM BANNER, Jan. 9, 1878, Aug. 15, 1878, Nov. 4, 1888.

127. BRENHAM BANNER, Jan. 11, 1878.

allowing black workers to use their leverage against planters to gain the most favorable terms possible.¹²⁸ That, of course, was not the case where Democrats were in control.¹²⁹ Republicans also ended the practice of apprenticing black orphans to white planters, instead allowing relatives to raise and care for them.¹³⁰

Black political power also had a striking effect on the administration of criminal justice. In most parts of the South, the criminal justice system became an engine of oppression, best characterized by the bluesman's barbed comment:

White folks and nigger in great Co't house
Like a Cat down cellar wit' no-hole mouse.¹³¹

In Washington County, however, Republican rule—which lasted from 1870 until 1884, eleven years after Democrats reclaimed control of state government—brought dramatic changes to criminal justice. During these years, the judges who presided over the county's district court, which had jurisdiction over felonies, were all Republicans. Prior to 1876, these men were appointees of the Republican governor, but with implementation of the 1876 constitution, they were nominated by Republican conventions and popularly elected.¹³² Between 1870 and 1884, all four of the county's sheriffs and all but one of its prosecuting attorneys were popularly elected Republicans.¹³³ Although all were white, approximately one-fourth of the deputies appointed by Republican sheriffs were African Americans.¹³⁴ Finally, most of the county's justices of the peace, who had authority to hold preliminary examinations of felonies and to try petty cases, were Republicans.¹³⁵

Perhaps the most noticeable change in the criminal justice system effected by Republicans was opening the jury box to African Ameri-

128. The BRENHAM BANNER frequently demanded enforcement of the vagrancy law against "idle" blacks. See, e.g., BRENHAM BANNER, Feb. 22, 1873, Oct. 4, 1873, Feb. 12, 1875, July 13, 1880. The records of the district court, county court, and justice of the peace courts, however, show no vagrancy prosecutions, indicating that Republican officials rebuffed these persistent demands.

129. See William Cohen, *Negro Involuntary Servitude in the South, 1865-1940: A Preliminary Analysis*, 42 J.S. HIST. 31 (1976).

130. During the immediate post-war years, local officials frequently apprenticed black children to white employers. See sources cited *supra* notes 30-31 and accompanying text. There is no record of black children being apprenticed to whites after elected Republican officials took control of local government in 1870.

131. LAWRENCE W. LEVINE, *BLACK CULTURE AND BLACK CONSCIOUSNESS: AFRO-AMERICAN FOLK THOUGHT FROM SLAVERY TO FREEDOM* 251 (1977).

132. TEX. CONST. of 1868, art. V, § 6; TEX. CONST. of 1876, art. V, § 7.

133. ELECTION RETURNS, *supra* note 105.

134. See *supra* note 121.

135. ELECTION RETURNS, *supra* note 105.

cans. Between 1870 and 1876, the Republican county court and sheriff selected jurors from among registered voters.¹³⁶ At most terms of the district court during these years, blacks constituted between forty and fifty percent of the grand jurors,¹³⁷ and whites never possessed enough votes to return a true bill without black support.¹³⁸ Freedmen were also highly visible on petit juries. Among the 1284 petit jurors on 107 juries impanelled between 1870 and 1876, over one-third of the jurors who can be identified by race were freedmen.¹³⁹ If this percentage accurately reflects the racial balance on juries, an average of four blacks sat on each petit jury. In actual practice, of course, the number varied. For those juries on which at least nine members can be identified by race, over 40% had black majorities, another 30% had between three and five black jurors, and only 6% were lily-white.¹⁴⁰ Thus African Americans served in more than token numbers, and this tended to reduce their isolation and to make them less vulnerable to the blandishments of their white colleagues.

136. For the statutory provisions governing selection of grand and petit juries during these years, see 7 THE LAWS OF TEXAS, 1822-1897, at 62, 533 (Austin, the Gammel Book Co. 1898) [hereinafter LAWS OF TEXAS]; GEORGE W. PASCHAL, A DIGEST OF THE LAWS OF TEXAS arts. 2806, 2854 (2d ed. 1870).

137. Determining the racial composition of juries—as well as identifying the race of defendants and other parties involved in the district court's proceedings—proved a difficult and imperfect process. The names of grand jurors are listed in the district court minutes. For most cases tried by the district court, the minutes also list the jurors who were impanelled to try the case. Unfortunately, the court records fail to identify persons—whether jurors, defendants, victims, or complainants—by race. Therefore, I was forced to find the names of jurors and other parties whom I wished to identify by race in the federal manuscript censuses of population for 1870 and 1880. Persons are listed in the census in the order the census taker came to their residences and not in alphabetical order. In order to make retrieval of names feasible, I created data bases with the name, race, sex, occupation, etc. of residents listed in the 1870, 1880, and 1900 censuses. The census, of course, is an imperfect tool. Many jurors with common names like William Smith cannot be positively identified because there were a number of persons with the same name, some white and some black. The names of some jurors did not appear in the census. Fortunately, the local newspaper, the BRENHAM BANNER, usually listed the names of grand jurors and identified them by race. Although the newspaper is not extant for several years in the 1870s, it aided identification of grand jurors. Of the 440 grand jurors listed in the court records and the BANNER as sitting on grand juries between 1870 and 1884, I was able to identify the race of 411, or 93%. Of these, 144, or 34% were blacks. The names of grand jurors are unavailable for four terms of the court—July 1878, July 1879, January 1880, and September 1880.

138. See Table 1 in the Appendix. Prior to 1877, grand juries had between 15 and 20 members, and 12 votes were necessary to return a true bill. PASCHAL, *supra* note 136, at arts. 2806, 2854. Between 1870 and 1876, the largest number of whites on any grand jury was 11. On half of the grand juries impanelled during these years, the support of at least three black jurors was necessary to return true bills.

139. The district court minutes provide the names of jurors who sat on 107 of the petit juries impanelled between 1870 and 1876. Of the 1,284 jurors on these panels, 574 were white and 322 were black. I was unable to identify the race of 388 jurors.

140. See Table 2 in the Appendix.

In 1876, the Texas legislature, now firmly under Democratic control, revised the state's jury law in an attempt to purge African Americans from juries. It gave authority to prepare county jury lists—from which potential jurors were chosen—to three jury commissioners appointed by the district judge. It also stipulated that jurors must be literate.¹⁴¹ Because Republicans continued to win election to the district bench in Washington County until 1884, at least one black and one white Republican were typically appointed to the jury commission.¹⁴² Despite the high rate of illiteracy among the county's adult freedmen (three of four black grand jurors who served between 1870 and 1876 were illiterate),¹⁴³ the jury commissioners saw to it that African Americans continued to play a significant role on the county's juries. Between 1877 and 1884, the twelve-member grand juries usually included three or four freedmen,¹⁴⁴ enough to give them real influence.¹⁴⁵ Of the petit jurors impanelled during these years, almost 25% of those whose race can be identified were African Americans—an average of three African Americans per jury.¹⁴⁶ Among those petit juries on which nine or more jurors can be identified by race, at least two or three African Americans sat on half and at least four sat on a quarter of the juries impanelled after 1877.¹⁴⁷

Participation on juries gave common folks a role in public life. Service on the grand jury carried substantial responsibility and prestige in rural America in the nineteenth century. Grand jurors not only decided whether there was probable cause for persons accused of

141. 8 LAWS OF TEXAS, *supra* note 136, at 914.

142. The names of jury commissioners who served at every term of court from September 1881 to September 1884 are listed in the district court's minutes. I have used the 1880 manuscript census of population to determine the race of commissioners. I have been able to determine political affiliation by cross-checking the names of commissioners with lists of party activists I have compiled from newspaper and manuscript sources.

143. Only 82 African-American grand jurors who sat between 1870 and 1876 could be located in the 1870 manuscript census of population. Of these, 61 (74%) were illiterate according to the census.

144. See Table 1 in the Appendix for the racial composition of the grand juries. Names of grand jurors for four terms of court between 1877 and 1884—July 1878, July 1879, March 1880, and September 1880—are not extant.

145. See Table 1 in the Appendix. After 1876, nine votes were necessary for an indictment. THE CODE OF CRIMINAL PROCEDURE OF THE STATE OF TEXAS arts. 712, 723 (1879) [hereinafter CODE OF CRIMINAL PROCEDURE]. On half of the grand juries impanelled between 1877 and 1884, there were at least nine whites, giving whites sufficient strength to return an indictment without black support. However, some of the white grand jurors were Republicans and were, therefore, not deaf to the arguments of their African-American colleagues.

146. The district court minutes give the names of jurors on 52 juries impanelled during these years. Of the 416 jurors on these panels, 312 were white and 104 were black. The race of the remaining 208 jurors could not be determined.

147. See Table 2 in the Appendix.

crime to be indicted. They also investigated county finance, the operations of county government, road maintenance, and the like.¹⁴⁸ Petit jurors tried individual cases and, under Texas law, determined the sentences of those whom they found guilty.¹⁴⁹ Moreover, because criminal trials were often of vital interest to the public and therefore generally well attended, petit jurors' role was a highly public one.¹⁵⁰

Careful analysis of the data suggests that although the presence of African-American jurors did not end all inequities, it had a salutary effect on the administration of justice. Despite the presence of blacks on grand juries, there was a significant disparity between the number of blacks and whites indicted for property crimes. While there were only slightly more blacks than whites in the county, grand juries indicted about three times as many blacks as whites for property crimes.¹⁵¹ This did not result from white control of the grand jury. Even if they were united, whites rarely had sufficient strength to win indictments without black support, and some white jurors were political allies of the freedmen. Moreover, the disparity was the greatest in 1874-1875 (eight times more African Americans than whites were indicted) when African Americans were especially well represented on the grand jury.¹⁵² Nor was it the result of the decline in the number of African-American jurors after 1876: neither the number nor the ratio of blacks to whites indicted for property offenses increased during those years.¹⁵³

148. In the ante-bellum period grand jurors were men of above-average wealth who met not only to decide whether to indict persons accused of crimes but to investigate and report on the performance of state and county officials. See EDWARD L. AYERS, *VENGEANCE AND JUSTICE: CRIME AND PUNISHMENT IN THE 19TH-CENTURY AMERICAN SOUTH* 112-13 (1984); JACK K. WILLIAMS, *VOGUES IN VILLAINY: CRIME AND RETRIBUTION IN ANTE-BELLUM SOUTH CAROLINA* 31, 56-57, 69-70, 80, 113-14, 127-28 (1959); RICHARD D. YOUNGER, *THE PEOPLE'S PANEL: THE GRAND JURY IN THE UNITED STATES, 1634-1941*, at 79-84 (1963). Washington County grand juries continued to supervise county affairs during the postwar years, investigating such things as county finances, the county jail, and maintenance of county roads. See *Criminal Minutes*, Washington County District Court, vol. L, at 68 (Feb. 23, 1874); *BRENNHAM BANNER*, Sept. 30, 1880, Mar. 7, 1882.

149. *CODE OF CRIMINAL PROCEDURE*, *supra* note 145, art. 712.

150. *BRENNHAM BANNER*, Feb. 2, 1878, Aug. 2, 1878, Mar. 27, 1883, Apr. 9, 1884.

151. The names of parties indicted were taken from the *Criminal Minutes*. See *supra* note 77. As Table 3 in the Appendix shows, I was unable to determine the race of 287 (41%) of the 696 persons indicted for offenses against property. My analysis of the fate of defendants is limited to those whom I have identified by race. In determining the race of defendants, I relied on the 1870 and 1880 manuscript censuses of population and the *BRENNHAM BANNER*.

152. See Table 1 in the Appendix. Six grand juries sat during these two years. One had a black majority, and four others were at least 40% black. These grand juries indicted 84 freedmen for property crimes, eight times the number of whites indicted for such offenses during these two years and 27% of all blacks indicted for such offenses between 1870 and 1884.

153. The district court minutes and dockets indicate that between 1870 and 1876, 178 blacks and 55 whites were indicted for offenses against property, 3.2 times as many blacks as whites.

The most likely reason for the disparity between the number of blacks and whites indicted is that blacks actually committed more property crimes than whites. Most white farmers in Washington County, including German immigrants, were landowners.¹⁵⁴ As studies of crime in rural areas of the ante-bellum North and South suggest, landowners committed few property crimes.¹⁵⁵ Most freedmen, however, were hard-pressed agricultural laborers whose poverty encouraged theft. Black sharecroppers and farm laborers lived hard lives during the best of times, and the temptation to steal a pig or a steer or to break into a storehouse to steal food or clothing must have been powerful. During years in which too much or too little rain ravaged their crops and slashed their incomes, it could become overpowering. Indeed, if the three years in which Washington County sharecroppers and agricultural laborers suffered most are excluded, African Americans were indicted only about twice as often as whites for offenses against property.¹⁵⁶

During the 1877-1884 period, 135 blacks and 41 whites were charged with these crimes, 3.2 times as many blacks as whites. See Table 3 in the Appendix.

154. Census reports do not contain information on land tenure by race in Washington County during the 1870s. According to the 1900 census, however, a majority of white farmers in Washington County owned land (of 2,294 white farmers, 1,164, or 51%, owned land). U.S. CENSUS OFFICE, AGRICULTURE, PART I: FARMS, LIVESTOCK, AND ANIMAL PRODUCTS 131 (1902). This is especially striking given that most areas in the South experienced a significant increase in tenancy among white farmers during the 1880s and 1890s. WILLIAM J. COOPER & THOMAS E. TERRILL, *THE AMERICAN SOUTH: A HISTORY* 429-30 (1991). This suggests that a more substantial majority of white farmers in Washington County were landowners during the 1870s. Data from the 1880 census support this hypothesis. In 1880, 1,210 of Washington County's 3,413 farmers (36%) owned the land they cultivated. The remainder were tenants. U.S. CENSUS OFFICE, *REPORT ON THE PRODUCTIONS OF AGRICULTURE* 92 (1883). Very few African Americans owned land. Indeed, among 82 African Americans who served as grand jurors in the early 1870s and who could be located in the 1870 manuscript census of population, only 11 (13%) owned land. Because prominent African Americans were especially likely to be chosen as grand jurors, this probably exaggerates the proportion of African-American landowners. Nevertheless, if 13 percent of Washington County blacks owned land and half (the rough percentage of African Americans in the county's population) of the county's farmers were African American, there were 1707 black farmers in the county in 1880 and 221 of them were landowners. By process of elimination, 1706 farmers would have been whites, 989 (58%) of whom were landowners.

155. On the paucity of property crime indictments in the ante-bellum South, where landownership was widespread among free persons, see AYERS, *supra* note 148, at 111, 311 n.28; MICHAEL S. HINDUS, *PRISON AND PLANTATION: CRIME, JUSTICE, AND AUTHORITY IN MASSACHUSETTS AND SOUTH CAROLINA, 1767-1878*, at 59-84 (1980); David J. Bodenhamer, *Law and Disorder on the Early Frontier: Marion County, Indiana, 1823-1850*, 10 W. HIST. Q. 323 (1979).

156. The years excluded for purposes of this calculation are 1874, 1875, and 1881, years which followed poor local harvests and saw severe hardship among sharecroppers and laborers. See BRENNAM BANNER, Mar. 19, 1874, Mar. 24, 1876, Dec. 7, 1881. With these three years excluded, 199 blacks and 82 whites were indicted for property crimes. On the relationship between poverty and black crime, see Albert C. Smith, *Down Freedom's Road: Race, Class, and Crime in Blackbelt Georgia, 1866-1910*, at 165-200 (1982) (unpublished Ph.D. dissertation, University of Georgia).

African-American grand jurors simply did their duty under the law and supported indictments when there was sufficient evidence against criminally accused blacks. Selection as a grand juror—a position that carried substantial responsibility and prestige in rural America in the nineteenth century¹⁵⁷—probably led African-American grand jurors to take seriously their obligations, as prescribed by law and the district judge. Moreover, African Americans were frequently complainants in larceny prosecutions against freedpeople. The victim's race is known in 20% of the property crime prosecutions against blacks, and in 35% of these the victims were freedpeople. Thus African-American grand jurors probably viewed theft as a threat to their community and did not hesitate to indict African Americans against whom there was sufficient evidence of theft.¹⁵⁸

This is not to suggest, however, that the presence of African Americans on grand juries served only to protect property rights. Consider the situation in Greene County, Georgia, where black political power was short-lived and African Americans did not enjoy a voice on juries. There almost seventeen times as many blacks as whites were indicted for property offenses between 1866 and 1879, a far larger disparity than in Washington County.¹⁵⁹ This suggests that black grand jurors were unwilling to deal leniently with black theft, but did use their influence to prevent the indictment of those against

157. See *supra* note 148.

158. Of the 313 cases in which blacks were charged with property crimes, I have identified the victims in 67 cases. Of these, 44 victims were white and 23 freedpeople. I have found the names of victims in reports of crime in the *BRENNHAM BANNER* and in indictments returned by grand jurors. Unfortunately, the *BANNER* fails to mention victims in most property crime cases. Indictments frequently mention the name of the victim, but they have survived for few cases prior to 1885.

159. For Greene County, see *AYERS, supra* note 148 at 175-82, 325 n.77. Greene County had a somewhat greater percentage of African Americans in its population than Washington County. However, this is not sufficient to account for the much higher rate of indictments against blacks there. Data from Richmond, Virginia, where blacks were excluded from grand and petit juries during the years under study, also supports my contention that black participation on grand juries resulted in greater fairness for accused blacks and reduced the disparity between the number of blacks and whites indicted. In the Richmond Hustings Court, 5.6 times as many blacks as whites (167 to 30) were charged with felonious property crimes. If misdemeanor and felony property crimes before the Hustings court are taken into account, 7.9 times as many blacks as whites were indicted. This disparity is far larger than that in the Washington County District Court. Moreover, other things being equal, we would expect the disparity in Richmond to be smaller because the percentage of blacks there was significantly smaller and propertyless whites made up a far larger proportion of the white population than in Washington County. The most likely explanation is that the absence of black jurors made Richmond grand juries more likely to indict African Americans accused of crime, even when the evidence against them was weak. See Mark Reed, *Thieving Times: Criminals, Victims, and the Criminal Justice System in Richmond, Virginia 1868-1872*, at 210, tbl. 4.6 (1985) (unpublished M.A. thesis, University of Virginia).

whom the evidence was weak. Consequently, the presence of African-American grand jurors limited the capricious impulse of whites to indict freedpeople whom they simply suspected of theft.

Although the disparity was not as great as for property crimes, 1.3 times as many blacks as whites were indicted for crimes against the person between 1870 and 1884. This disparity developed after 1876: between 1870 and 1876 significantly more whites than blacks were charged with violent crime, while after 1876 the opposite occurred. This reversal was due, for the most part, to a dramatic decrease in the number of whites indicted for crimes against the person after 1876.¹⁶⁰

This is only partially accounted for by growing white strength on the grand jury. Whites may have used their increased strength on the grand jury to block indictments against whites who committed acts of violence against the freedpeople. Given southern whites' acceptance of violence as an acceptable way to defend personal honor, they may also have used their growing strength on grand juries to block indictments against whites accused of assaulting or murdering other whites.¹⁶¹ However, it is unlikely that growing white strength was responsible for the increase in the number of African Americans charged with violent crimes. African Americans continued to be well enough represented after 1876 to be able to stop indictments.¹⁶² Moreover, almost 80% of the African Americans charged with crimes against the person after 1876 had allegedly attacked members of their

160. See Table 3 in the Appendix. Between 1870 and 1876, 1.3 times as many whites as blacks were charged with violent crimes (83 blacks and 105 whites), while after 1876, 2.2 as many blacks as whites were indicted for these offenses (131 blacks and 59 whites). As noted in the text, a dramatic decline in indictments against whites for crimes against the person was more responsible for this than the rise in indictments against freedpeople. While the average number of indictments against freedmen for crimes against the person rose from 11.9 per year (1870-1876) to 16.3 per year (1877-1884), the average number of indictments for such offenses against whites dropped from 16.2 per year (1870-1876) to 6.4 per year (1877-1884).

161. On honor and southerners' tolerance of violence, see AYERS, *supra* note 148; BERTRAM WYATT-BROWN, *SOUTHERN HONOR: ETHICS AND BEHAVIOR IN THE OLD SOUTH* (1982). The editor of the *BRENNHAM BANNER* frequently noted the prevalence of these beliefs in articles criticizing Texas juries for being too lenient in dealing with killers. See, e.g., *BRENNHAM BANNER*, Mar. 23, 1878, July 2, 1879, Oct. 5, 1879, June 16, 1880. He himself also unwittingly demonstrated how widespread these beliefs were by frequently justifying the resort to violence to defend honor, avenge a family member, or settle a personal disagreement. See, e.g., *BRENNHAM BANNER*, Sept. 20, 1873, May 6, 1879, Feb. 7, 1880, Apr. 13, 1880, Aug. 30, 1883.

162. See *supra* note 144. Moreover, freedmen were particularly well represented on the three grand juries that returned the largest number of indictments against blacks for violent crimes. These were the juries impanelled at the September 1881 term (12 indictments), the March 1882 term (17 indictments), and the September 1882 term (20 indictments). On two of these juries there were at least four blacks, and on the other there were at least three.

own race.¹⁶³ Given southern whites' lack of concern about crime within the black community, white grand jurors were probably not eager to use county revenues to prosecute these cases—especially at a time when influential whites often complained that the expense of criminal prosecutions was bankrupting the county.¹⁶⁴ Rather, African-American grand jurors probably demanded that black victims have redress and pressed for these indictments.

Other aspects of the criminal justice system became more equitable for African Americans. For persons charged with crime, the ability to post bond was of vital importance: the district court held only two or three brief terms in the county each year, and if defendants could not post bond, they might spend months in jail awaiting trial, much to the detriment of their economic prospects and the well-being of their families.¹⁶⁵ Republican judges and justices of the peace, taking into account African Americans' poverty, set bond at modest levels for freedpersons. In fact, they set bond at substantially lower levels for blacks than for whites accused of comparable crimes.¹⁶⁶ Moreover, they readily allowed African-American property owners to sign surety bonds for black defendants, enabling them to win release without turning to white landowners who often exacted onerous terms from those whom they bailed out of jail.¹⁶⁷ As a result, African-American defendants were released on bond at about the same rate as whites.¹⁶⁸

The actions of county prosecutors had an especially important bearing on the fate of defendants. Prosecutors had broad authority to dismiss cases when they believed there was inadequate evidence to

163. The district court minutes and dockets show that there were 131 indictments against freedmen for violent crimes between 1877 and 1884; in 64 (49%) of these, I have determined the race of the victim. In 52 of the 64 cases (81%) the victim was black.

164. On concern about the heavy cost of criminal prosecutions, see BRENHAM BANNER, Jan. 22, 1875, July 12, 1877, Jan. 29, 1879, Mar. 5, 1879. For white southerners' indifference to violence within the black community, see AYERS, *supra* note 148, at 231; JOHN DOLLARD, CASTE AND CLASS IN A SOUTHERN TOWN 279-86 (1957).

165. According to the district court minutes, the court met three times per year (in February, June, and October) until 1876 and only twice per year (in March and September) after 1876.

166. See Table 4 in the Appendix.

167. There are 28 cases with black defendants in which the names and races of sureties can be determined known. In 13 the sureties were all black, in 10 they were all white, and in five the sureties included blacks and whites. The names of sureties were taken from district court minutes and dockets. The race of the sureties was determined by finding them in the 1870 and 1880 manuscript censuses of population. The law required that sureties have property, over and above the amount secured against seizure by the homestead exemption, equal to the amount of the bond. See THE REVISED STATUTES OF TEXAS art. 292 (1879). For indications that Republican officials accepted many black sureties who lacked sufficient property to back the bonds they made, see BRENHAM BANNER, Jan. 1, 1875, Mar. 10, 1876, Nov. 25, 1879.

168. See Table 5 in the Appendix.

convict.¹⁶⁹ Republican prosecutors used this authority equitably, dismissing prosecutions against African-American defendants at virtually the same rate as those against whites.¹⁷⁰

Conviction rates and sentencing—both of which were in the hands of petit juries—also became more equitable. Between 1870 and 1884—when Republicans controlled the criminal justice system in Washington County—African Americans tried for offenses against property were convicted at only a slightly higher rate than whites (61% to 51%). African Americans charged with crimes against the person were convicted at about the same rate as whites (57% to 54%).¹⁷¹ Given that whites were, on the whole, better able than African Americans to hire counsel, these data suggest that juries were remarkably even-handed in deciding cases.¹⁷² Moreover, in each of the major categories of property crime, the average sentence imposed on African Americans was slightly lower than the average sentence white convicts received.¹⁷³

Although the data on conviction rates and sentencing suggest that petit juries behaved equitably, a deeper analysis of prosecutions of violent crime might suggest the need to qualify this conclusion. In murder cases African Americans were convicted at a significantly higher rate than whites (59% to 35%), and they typically received much harsher sentences. While the most common sentence imposed upon persons charged with murder was five years in prison, half of the

169. 2 REVISED PENAL CODE AND CODE OF CRIMINAL PROCEDURE OF THE STATE OF TEXAS § 1491 (1888).

170. District court minutes and dockets show that in cases involving offenses against person and property the court disposed of 505 indictments against freedmen and 254 indictments against whites between 1870 and 1884. In 164 cases (33 percent) involving black defendants and 91 cases (36 percent) involving white defendants, the district attorney dismissed the charges. In tabulating dismissals, only those cases were included in which all charges against the defendants were dropped and they were no longer in jeopardy. This contrasts very favorably with the situation in the Richmond, Virginia, Hustings Court during the late 1860s and the early 1870s. There officials were not popularly elected Republicans and 35 percent of the white defendants but only 20 percent of the black defendants had their cases dismissed. Reed, *supra* note 159, at 62.

171. See Table 6 in the Appendix.

172. I do not mean to suggest that all black defendants were unable to hire counsel. For two terms of the district court—September 1879 and March 1880—the docket entries specify the names of defense counsel and indicate which were appointed by the court. In fourteen cases with black defendants, six were argued by court-appointed counsel and eight by privately retained attorneys. This small sample, of course, does not prove that most black defendants hired attorneys, but it suggests that many did so. Defendants who could not afford to retain a lawyer usually had an attorney appointed to defend them. Sometimes these lawyers presented a spirited defense on behalf of their clients. See BRENHAM BANNER, Oct. 1, 1881, Oct. 2, 1881, Oct. 12, 1881, Oct. 13, 1881, Apr. 15, 1882, Oct. 17, 1883. However, court-appointed attorneys were not paid for their services and in many cases probably gave their clients no more than token representation.

173. See Table 7 in the Appendix.

African-American convicts, but fewer than one-fifth of the whites, received more severe sentences.¹⁷⁴ In prosecutions for assault with intent to kill, whites were actually convicted at a slightly higher rate than blacks. However, they were much more likely to be convicted of a reduced offense (81% to 56%) and be fined rather than incarcerated. Even when they were convicted on the original charge, whites typically received less severe sentences than African Americans.¹⁷⁵

Looking beneath the surface of these data produces some predictable and some rather surprising results. One reason that murder conviction rates were lower for whites than for blacks was the difficulty of winning convictions when whites were charged with murdering freedmen. Although local officials did prosecute whites who killed African Americans, no white person was convicted of murder or manslaughter for killing an African American between 1868 and 1885.¹⁷⁶ When whites were charged with assault with intent to kill and African Americans were the victims, prosecutors won convictions in 60% of the cases that went to trial. However, in every case the jury found the defendant guilty only of aggravated or simple assault and imposed a fine.¹⁷⁷

White mores and the nature of the jury system explain the failure to deal firmly with whites who committed acts of violence against blacks. Whites believed that they needed a great deal of freedom to discipline blacks, that disrespect or lack of sufficient deference on the part of blacks justified violence, and that the authorities must be cir-

174. Thirty-three African Americans were convicted of murder; of these, eight (24%) were sentenced to five years, seven (21%) were sentenced to less than five years, and 18 (55%) were sentenced to more than five years. Of the seven whites convicted of murder, five (72%) received sentences of five years, while one (14%) received a lesser sentence and one (14%) received a more severe sentence.

175. According to district court minutes and dockets, of 77 blacks indicted for murder, 56 were tried and 33 were found guilty of first or second degree murder or manslaughter. Of 33 whites indicted for murder, 20 were tried and 7 convicted. Ninety freedmen were indicted for assault with intent to kill, 65 went to trial, and 36 were convicted; 16 for assault with intent to murder and 20 for aggravated assault or simple assault. Sixty-four whites were indicted for this offense, 35 were tried, and 24 were found guilty; 4 for assault with intent to kill and 20 for aggravated or simple assault.

176. Four whites indicted for murder were charged with killing blacks. Because I was able to determine the race of the victim in only 19 of the 33 cases in which whites were charged with murder, it is possible that other whites were indicted for the murder of blacks. In only four of the six cases in which whites were convicted of murder do I know the race of the victim. Consequently, it is at least possible that in the other two cases one or both of the victims was black.

177. Nine whites were indicted for assault with intent to kill blacks, five were tried, and three were convicted, all for aggravated assault. Again, this does not mean that only nine indictments for assault with intent to kill were found against whites who attacked blacks. I was able to identify the race of the victim in only 26 of 64 indictments against whites for assault with intent to kill. Undoubtedly, there are other indictments and probably convictions for attacks on blacks among the 38 cases in which the victim's race is not known.

cumspect in punishing whites for acts of violence against blacks lest they threaten white dominance.¹⁷⁸ Juries hearing these cases always included some whites, and, since verdicts required unanimity, they could block conviction or refuse to vote for conviction unless other jurors agreed to reduce the grade of the offense.

There is yet another reason for the disparity in conviction rates and sentences in murder cases. Blacks charged with the murder of blacks were convicted at a significantly higher rate than whites indicted for murdering whites (67% to 40%).¹⁷⁹ Sentencing followed a similar pattern. While only one of the four whites convicted of killing white persons received more than a five year sentence, fifteen of the twenty-two blacks convicted of slaying blacks received more than five years. And of these fifteen, juries imposed life terms on five and sentenced two to hang. A similar pattern occurred in assault with attempt to murder cases.¹⁸⁰

These data are revealing. Freedmen were particularly well represented on juries that tried black-against-black murder and assault cases, while whites generally predominated on juries that tried cases involving white intraracial violence. Apparently African-American jurors were more likely than white jurors to be intolerant of violence, to believe that the grounds for justifying homicide were narrow, and to deal firmly with those guilty of murder or assault. This suggests that African-American jurors did not accept white norms that sanctioned the use of violence to avenge personal insults and defend one's honor. Instead, they used their authority to deter intraracial violence and preserve order and stability within the African-American community. Thus the harsher treatment of blacks charged with crimes of violence against blacks was not a manifestation of racism but an indication of the responsiveness of the Republican criminal justice sys-

178. See DONALD G. NIEMAN, *TO SET THE LAW IN MOTION: THE FREEDMEN'S BUREAU AND THE LEGAL RIGHTS OF BLACKS, 1865-1868* (1979); ALLEN TRELEASE, *WHITE TERROR: THE KU KLUX KLAN CONSPIRACY AND SOUTHERN RECONSTRUCTION* (1973).

179. Of the 77 murder indictments against blacks, I know the race of the victim in 62 cases; in 52 of these the victim was black and in 10 the victim was white. In the 52 black-against-black cases, 33 went to trial and 22 ended in convictions. There were 33 murder indictments against whites, but I have determined the race of the victim in only 19 cases; in 15 the victim was white and in 4 the victim was black. Of the 15 white-against-white prosecutions, 10 went to trial and 4 resulted in convictions.

180. The following are the data on prosecutions for assault with intent to kill, taken from district court minutes and dockets. Of 90 indictments against blacks, I know the race of the victim in 31 cases; 9 were whites and 22 victims were blacks. Of the 22 cases with black victims, 16 went to trial, and 12 of these ended in convictions. Of the 64 indictments against whites, I have determined the race of 26 victims, 9 blacks and 17 whites. Of the 17 cases with white victims, only 6 went to trial and 4 resulted in guilty verdicts.

tem to African American demands for justice and respect. As John Dollard pointed out many years ago, it was contempt for blacks that led white officials to ignore black-against-black violence. ("If a nigger kills a nigger, that's one less nigger," was a saying common among early twentieth century southern police.)¹⁸¹ This malign neglect, as Dollard and others have pointed out, played an important role in fostering the widespread black-against-black violence that threatened the African-American community.¹⁸²

Cases in which African Americans were indicted for acts of violence against whites are also suggestive. Consider that of Alexander Mason, a black drayman who, in December 1880 killed Ferdinand Bohnenstengel, a German bar and grocery keeper who had lived in Brenham for eight years.¹⁸³ When Mason entered Bohnenstengel's shop, Bohnenstengel demanded that Mason retract statements he had made about him. Mason refused, left the store cursing, and remained outside the shop, daring Bohnenstengel to come after him. When the enraged merchant approached Mason with a buggywhip, the black man first warned him to stop, then picked up "a . . . board about six feet long and weighing eight or ten pounds," and struck Bohnenstengel.¹⁸⁴ The next day the shopkeeper died. Because whites were outraged by the killing—the local newspaper carried a lengthy story on the altercation under the headline, "A WHITE MAN KILLED BY A NEGRO"—Mason promptly fled.¹⁸⁵ Two months later, however, he sent a messenger to local officials, explaining that he was ready to surrender.¹⁸⁶ Mason was then taken into custody by a black deputy sheriff and brought before Republican justice of the peace Stephen Hackworth for a preliminary examination. The county attorney agreed that it was not a case of first degree murder, and the justice set bail at \$1,250, which Mason promptly posted.¹⁸⁷ One month later, a jury of seven blacks and five whites acquitted Mason.¹⁸⁸ Bohnenstengel was not a prominent citizen, but he was a white man, and, as

181. AYERS, *supra* note 148, at 231.

182. DOLLARD, *supra* note 164, at 279-86. The experience of Richmond, Virginia between 1868 and 1872 also suggests whites' lack of concern about crime in the black community. The grand jury, which contained no blacks during these years, refused to return true bills in only 8% of the cases before it involving white victims. It refused true bills in 15% of the cases with black victims. It did so even though the alleged perpetrators in the overwhelming majority of these cases were blacks. REED, *supra* note 159, at 158.

183. BRENHAM BANNER, Dec. 19, 1880, Feb. 3, 1881, Mar. 12, 1881, Apr. 3, 1881.

184. BRENHAM BANNER, Dec. 19, 1880.

185. *Id.*

186. BRENHAM BANNER, Feb. 3, 1881.

187. BRENHAM BANNER, Mar. 3, 1881.

188. BRENHAM BANNER, Apr. 3, 1881.

the newspaper headline suggested, the white community viewed Mason's action as an outrage. Nevertheless, the system afforded the black drayman justice.

Mason's case was not an isolated example. African Americans were convicted in only three of six black-against-white murder cases that went to trial (four other cases were not prosecuted), a lower conviction rate than in black-against-black murder cases. And African Americans were convicted in only two of the four black-against-white assault with intent to murder cases which went to trial, again a lower conviction rate than in black-against-black cases. Thus with African Americans present in the jury box, blacks used force to resist white attacks and escaped retribution. While this might seem insignificant in light of the small number of cases involved, it was undoubtedly important to the African-American community. Large numbers of black men and women attended court and word of what went on there spread quickly in the black community. Cases like Mason's unquestionably attracted attention and suggested that whites' assumption that a Negro was never justified in raising his hand against a white no longer had the force of law. This encouraged blacks to be more assertive in defending their rights and, in the process, further eroded the foundations of white dominance.¹⁸⁹

IV. THE DESTRUCTION OF BI-RACIAL DEMOCRACY

The open, competitive political process that flourished in Washington County in the 1870s and 1880s and that transformed public life in ways unimagined a few years before did not last forever. Democrats "redeemed" the county through a combination of shrewd political strategy and violence. They assiduously wooed Germans and sought to exploit their hostility to blacks during the 1870s and early 1880s, winning increased German support.¹⁹⁰ In 1884 they dramati-

189. In ten cases in which blacks were charged with murdering whites, six went to trial and three ended in convictions. For the presence of large numbers of freedpeople in the courtroom, see *BRENNHAM BANNER*, Feb. 2, 1878, Aug. 2, 1878, Mar. 27, 1883, Apr. 9, 1884. It is not possible in an essay of this nature and length to explore and demonstrate such a subtle phenomenon as the growth of black assertiveness. Examples of this are legion and include local blacks' repeated willingness to arm themselves to protect accused black criminals who were reputedly the targets of lynch mobs, a sustained campaign by blacks challenging segregation in local railroad waiting rooms and on trains departing from Brenham, black Republicans' arming themselves to protect polling stations from white depredations, Brenham blacks' successful political campaign against a redeemer city administration whose police systematically harassed blacks, and frequent use of force by blacks against whites who threatened or insulted them. I will deal with this phenomenon in detail in a book-length examination of the politics of justice in Washington County, 1865-1900, currently in preparation.

190. See *BRENNHAM BANNER*, Dec. 11, 1873, Feb. 25, 1876, Mar. 3, 1876, Aug. 22, 1882.

cally reduced German support for local Republican candidates.¹⁹¹ Democrats intensified charges of Republican corruption when the county treasurer (ironically, a German) defaulted. And they spearheaded the formation of a People's party (not to be confused with the Populist party of the 1890s) that claimed to unite public-spirited men in restoring honesty and intelligence to local government. In the 1884 elections all but one of the People's party candidates won narrow victories.¹⁹² Two years later, in 1886, Democrats retained their grip on power in another extremely close election by stealing ballot boxes in three heavily Republican precincts.¹⁹³ Moreover, in the aftermath of the election, they permanently crippled the party by lynching three black Republicans and running three prominent white Republican leaders out of the county.¹⁹⁴ Republicans suffered a final blow in 1888, when Joe Hoffman, the county assessor and only Republican to survive the People's Party onslaught in 1884 and 1886, was assassinated two months before the election.¹⁹⁵

Republicans did not easily crumble. After defeat in 1884, they launched a powerful challenge to the Democrats in 1886 and probably would have won had the ballots cast in the three precincts where ballot boxes were stolen been counted.¹⁹⁶ No relief could be expected from the state legislature or state courts, which were firmly in the hands of Democrats. Consequently, Washington County Republicans prevailed on their allies in the U.S. Senate to conduct a major investigation of the 1886 election. Several dozen Washington County residents went to Washington, D.C. in 1887 to testify, and their testimony ran to almost 700 pages of fine print.¹⁹⁷ Yet with Democrats in con-

191. See BRENHAM BANNER, Aug. 31, 1884, Sept. 4, 1884, Oct. 26, 1884, Oct. 29, 1884, Nov. 4, 1884, Nov. 8, 1884, Nov. 11, 1884; TESTIMONY ON THE ALLEGED ELECTION OUTRAGES, *supra* note 74, at 6, 13, 169, 216, 242, 380-91, 401-05, 455, 468.

192. BRENHAM BANNER, Nov. 4, 1884, Nov. 12, 1884. The large scale defection of Germans was critical. Because the black majority was slim and the black population very young, the number of black and white males of voting age was roughly equal. Indeed, the 1890 census would show that among males over 21 years old, whites exceeded blacks by 250. 1 COMPENDIUM OF THE ELEVENTH CENSUS, *supra* note 7, at 805. With diminishing German support, Republicans, who had few other white supporters, found their hold on power tenuous.

193. See TESTIMONY ON THE ALLEGED ELECTION OUTRAGES, *supra* note 74; Letter from Rudolph Kleberg to A. H. Garland (Mar. 4, 1887), File 87-1293, CENTRAL FILES, DEP'T OF JUSTICE, RECORD GROUP 60, at box 305 (National Archives and Records Service, Washington, D.C.) [hereinafter CENTRAL FILES]; Letter from Rudolph Kleberg to A. H. Garland (Dec. 21, 1887), *id.*; Letter from Anonymous (Brenham) to the Attorney General of the United States (Sept. 3, 1889), *id.*; BRENHAM BANNER, Nov. 6, 1884, Nov. 4, 1886, Nov. 5, 1886, Nov. 6, 1886, Nov. 7, 1886, Nov. 9, 1886, Nov. 14, 1886.

194. BRENHAM BANNER, Dec. 3, 1886, Dec. 7, 1886, Dec. 8, 1886, Dec. 19, 1886.

195. 19 CONG. REC. 8523-34 (1888); BRENHAM BANNER, Sept. 8, 1888.

196. TESTIMONY ON THE ALLEGED ELECTION OUTRAGES, *supra* note 74, at 222-24.

197. *Id.* at 1-4, 222-24.

trol of the House of Representatives and the presidency, congressional Republicans were unable to pass new legislation to guarantee fair elections.¹⁹⁸ The United States attorney in the Western District of Texas did bring charges under existing federal civil rights laws against Democratic County Judge Lafayette Kirk and other prominent Washington County Democrats. Whites sat on the juries that tried these men in the federal court in Austin, however, and the prosecution resulted, first, in a mistrial and, after a second trial, in an acquittal.¹⁹⁹ With Republicans in disarray and reeling from terror and Democrats in control of the electoral process and insulated from effective external control, the political democracy that had nourished a more equitable legal order died in Washington County. Ultimately, the law of freedom was defeated by violence and the national government's failure to protect the political process.

CONCLUSION

Yet the democracy that African Americans and their white allies forged, if transitory, was both remarkable and important. The Washington County experience testified to the power of ordinary people to affect the political and legal processes and to use politics and law to gain a larger measure of control over their lives. It also clearly demonstrates that something more than a kind of political musical chairs was going on in the Reconstruction South. Viewed from this vantage point, Reconstruction was something far more profound than one group of white elites replacing another. Across the South, African-American communities that had taken root during slavery produced institutions and leaders that were powerful forces for democratic change. Using the legal and political rights opened to them by Reconstruction, they brought to a caste-ridden society vibrant democratic politics that made public life more open, public policy more equitable, and the ideal of equal justice under law more approachable. This was a truly remarkable accomplishment. That it did not survive was tragic for the South as well as for African Americans. That it occurred, however, left its mark on African-American culture, creating an impulse

198. JAMES M. MCPHERSON, *ORDEAL BY FIRE: THE CIVIL WAR AND RECONSTRUCTION* 605-06, 615-16 (1982).

199. Letter from Rudolph Kleburg to A.H. Garland (Mar. 4, 1887), *CENTRAL FILES*, *supra* note 193; Letter from Rudolph Kleburg to A.H. Garland (Dec. 21, 1887), *id.*; Letter from Anonymous (Brenham) to the Attorney General of the United States (Sept. 3, 1889), *id.*

that would be felt in the civil rights struggles of the twentieth century.²⁰⁰

200. See Donald G. Nieman, *The Language of Liberation: African-Americans and Equalitarian Constitutionalism, 1830-1950*, in *THE CONSTITUTION, LAW, AND AMERICAN LIFE: CRITICAL ASPECTS OF THE NINETEENTH CENTURY EXPERIENCE* 67-90 (Donald G. Nieman ed., 1992).

APPENDIX

TABLE 1
RACE OF GRAND JURORS, 1870-1884

1870-1876					1877-1884				
TERM (MO.-YR.)		BLACK	WHITE	UNKNOWN	TERM (MO.-YR.)		BLACK	WHITE	UNKNOWN
Oct. '70		2	11	2	Feb. '77		4	8	0
Feb. '71		4	10	1	July '77		3	9	0
June '71		5	6	4	Jan. '78		2	9	1
Oct. '71		6	8	1	Jan. '79		5	7	0
Feb. '72		6	9	4	Mar. '81		3	9	0
June '72		10	10	0	Sept. '81		3	8	1
Oct. '72		6	11	0	Mar. '82		4	8	0
Feb. '73		4	11	1	Sept. '82		2	9	1
June '73		5	10	2	Mar. '83		3	9	0
Sept. '73		8	9	1	Sept. '83		4	8	0
Feb. '74		6	9	0	Mar. '84		1	9	2
June '74		4	10	1	Sept. '84		3	7	2
Sept. '74		7	11	0					
Feb. '75		6	8	2					
June '75		9	8	1					
Oct. '75		7	10	1					
Feb. '76		7	9	1					
July '76		5	7	0					

SOURCES: Minutes, Washington County District Court; BRENHAM BANNER; U.S. Census of Population, Washington County, 1870, 1880.

TABLE 2
PERCENTAGE OF BLACKS ON SELECTED PETIT JURIES,
1870-1884*

	0	1-24%	25-49%	50-74%	75-100%	Total
Juries						
1870-76	3 (5%)	13 (25%)	16 (31%)	14 (27%)	6 (12%)	52 (100%)
Juries						
1877-84	3 (15%)	8 (40%)	7 (35%)	2 (10%)	0	20 (100%)

* This is the percentage of those jurors whose race is known who are black. On all of these juries the race of at least nine jurors is known.

SOURCES: Minutes, Washington County District Court; U.S. Census of Population, Washington County, 1870, 1880; Washington County Voter Registration List, 1868; BRENHAM BANNER.

TABLE 3
INDICTMENTS, 1870-1884

YEAR	PROPERTY CRIMES			CRIMES VS. PERSON		
	BLACK	WHITE	UNKNOWN	BLACK	WHITE	UNKNOWN
1870	18	7	30	12	7	22
1871	17	9	32	9	15	17
1872	15	11	38	9	17	28
1873	24	9	17	12	7	14
1874	49	7	30	13	29	26
1875	35	3	29	21	23	17
1876	20	9	25	7	7	8
1877	21	7	17	10	8	21
1878	20	5	15	20	7	4
1879	14	1	13	14	8	4
1880	9	5	15	4	8	4
1881	30	4	11	16	11	4
1882	20	3	4	23	5	11
1883	9	2	6	22	11	4
1884	12	14	5	22	1	7
TOTALS	313	96	287	214	164	191

Property crimes include the following: theft, receiving stolen property, burglary, swindling, forgery, embezzlement, malicious mischief, and arson. Crimes against the person include: first- and second-degree murder, manslaughter, assault with intent to kill, aggravated assault, assault, threatening the life of another, rape, and robbery.

SOURCE: Minutes and Dockets, Washington County District Court.

TABLE 4
AVERAGE AMOUNT OF BOND SET FOR SELECTED
OFFENSES, 1870-1884

	BLACK DEFENDANTS	WHITE DEFENDANTS
Theft	\$ 201 (N=61)	\$ 294 (N=18)
Horse Theft	\$ 268 (N=79)	\$ 329 (N=16)
Cattle Theft	\$ 207 (N=30)	\$ 320 (N=11)
Theft of Other Livestock	\$ 138 (N=51)	\$ 167 (N=5)
Burglary	\$ 289 (N=42)	\$ 200 (N=2)
Theft from House	\$ 206 (N=43)	\$ 220 (N=8)
Swindling	\$ 233 (N=25)	\$ 815 (N=27)
Murder	\$ 675 (N=84)	\$1846 (N=36)
Assault with Intent to Kill	\$ 293 (N=107)	\$ 423 (N=73)

SOURCES: Minutes and Dockets, Washington County District Court; U.S. Census of Population, Washington County, 1870, 1880; BRENNAM BANNER.

TABLE 5
SUCCESS IN POSTING BOND

	BLACK	WHITE
Number of Cases*	225	128
Number and % of Defendants Posting Bond	159 (71%)	98 (77%)

* These cases are those for which the race of the defendant is known and information concerning bond is available. They are derived from a total of 527 cases involving black defendants and 260 involving whites charged with offenses against both persons and property.

SOURCES: Minutes and Dockets, Washington County District Court; U.S. Census of Population, Washington County, Texas, 1870, 1880; BRENHAM BANNER.

TABLE 6
CONVICTION RATES, 1870-1884

	BLACK	WHITE
OFFENSES AGAINST PROPERTY		
Cases Tried	191	74
Guilty	116 (61%)	38 (51%)
Not Guilty	75 (39%)	36 (49%)
OFFENSES AGAINST THE PERSON		
Cases Tried	121	63
Guilty	69 (57%)	34 (54%)
Not Guilty	53 (43%)	29 (46%)
OFFENSES AGAINST PERSONS AND PROPERTY		
Cases Tried	312	137
Guilty	185 (59%)	72 (52%)
Not Guilty	127 (41%)	65 (48%)

SOURCES: Minutes and Dockets, Washington County District Court; U.S. Census of Population, Washington County, Texas, 1870, 1880; BRENHAM BANNER.

TABLE 7
SENTENCING IN PROPERTY OFFENSES, 1870-1884

	MEAN SENTENCE BLACKS	MEAN SENTENCE WHITES
Theft	1.8 years (N=11)	2.0 years (N=7)
Horse Theft	6.3 years (N=32)	6.7 years (N=3)
Burglary	3.1 years (N=14)	
Theft from the House	2.7 years (N=20)	3.7 years (N=4)
Swindling	2.0 years (N=5)	2.0 years (N=1)

SOURCES: Minutes and Dockets, Washington County District Court; U.S. Census of Population, Washington County, Texas, 1870, 1880; BRENHAM BANNER.