

POOR WHITES, BENEVOLENT MASTERS, AND THE IDEOLOGIES OF SLAVERY: A SLAVE ACCUSED OF RAPE IN THE ANTEBELLUM SOUTH

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INTRODUCTION

A. *A Slave Accused of Rape*

On a cold, rainy day in November 1851 in Union County, Arkansas, Sophia Fulmer, a white woman, accused Pleasant, a black man and a slave, of raping her.¹ According to Sophia, the events that unfolded that day were exceedingly brutal. Pleasant, after hitching his horse to a bush outside the house where Sophia and her husband lived, forced himself inside the modest home.² Once there, he looked about the house, helped himself to a drink of liquor, and then demanded that Sophia – present only with her one-year-old son – get him a chew of tobacco.³ Sophia fearfully obliged his request, she later testified, hoping that was all Pleasant wanted and would soon leave.⁴ But as she approached him, her worst fears were realized. Pleasant allegedly grabbed her and threw her several times violently on the floor.⁵ He then threw her on the bed, lifted her clothes above her head, and got on top of her, smothering her with her clothes.⁶ But Sophia resisted mightily. She testified that she drew her legs up such that Pleasant was unable to penetrate her, leaving Pleasant to “satisfy” himself on her clothes and body.⁷ Afterwards, as he got up to leave, Sophia claimed that she ran for a gun.⁸ But Pleasant evidently moved quickly enough that he was out of range before she could take action.⁹

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¹ Transcript of Trial, *State v. Pleasant, a Slave*, at 1 (indictment) (Ark. Cir. Ct. Union County Apr. 1852) (collection of Ark. Supreme Court Records & Briefs), *rev'd*, 13 Ark. 360 (1853), *rev'd after remand*, 15 Ark. 624 (1855) [hereinafter Transcript of Trial, *State v. Pleasant*]. For testimony that it was “cold & raining some,” see *id.* at 9 (testimony of William Landers).

² *Id.* at 8 (testimony of Sophia Fulmer).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

Five months later, Pleasant was hauled into court and put on trial for his life for the attempted rape of a white woman.¹⁰ The mere fact that in 1852 he was given a trial, rather than lynched sometime earlier, may be surprising enough to some. But what stands out more as one delves into the record is not just that he had a trial, but that he had competent representation by a lawyer who – to borrow a phrase from Scout Finch in *To Kill a Mockingbird* – “aimed to defend him.”¹¹ Indeed, through cross-examination and its own proffered witnesses, the defense began to unravel Sophia’s story, raising a question of whether anything happened that morning or, if it did, whether Sophia had instigated if not consented to it. Sophia, it seems, was a woman of lower class means who had disregarded the sexual codes so prevalent in the antebellum South.¹² In fact, she was rumored to have had (or be having) an affair with William Landers – the owner of the home where Sophia and her husband stayed – if not several others.¹³ She also reportedly transgressed traditional boundaries between blacks and whites, having on at least one occasion invited a slave woman to dinner.¹⁴ Her husband, too, said to be a “lazy man,” was known about the community as someone who regularly sold whiskey and other sundry items to slaves and people of color.¹⁵ Witnesses also showed that after the alleged crime Sophia and her husband approached James Milton, Pleasant’s master, and offered to settle the case for some \$200.¹⁶ This point undoubtedly was designed to raise the inference that Sophia and her husband had something to gain from her accusation. In fact, it appears that it was only after the deal fell through that Sophia notified local authorities.¹⁷

Pleasant’s case ultimately wound its way through two trials, two convictions, two appeals, and two reversals, and whether he was tried a third time is not clear. But regardless of the final outcome, the case provides an extraordinary look into a society deeply divided by conflicting interests, ideologies, loyalties, races, and classes. Traditional thought assumes that sex between black men and white women in the slave South was unthinkable, and that an accusation of rape by a white woman against a black man produced swift and definitive action. But the fact that Pleasant was given a trial, ably represented,

¹⁰ Arkansas, like most Southern states, mandated death for any “negro or mulatto” found guilty of rape or attempted rape of a white woman. See A DIGEST OF THE STATUTES OF ARKANSAS, chap. 51, art. IV, § 9 (E.H. English 1848) [hereinafter STATUTES OF ARKANSAS]; see also THOMAS D. MORRIS, SOUTHERN SLAVERY AND THE LAW, 1619-1860, 305 (1996) (noting how rape and attempted rape were capital offenses in every state in the antebellum South except Missouri, where castration was imposed).

¹¹ HARPER LEE, TO KILL A MOCKINGBIRD (Harper Collins ed. 1999) (1960).

¹² For the comment that she was poor, see Transcript of Trial, *State v. Pleasant*, at 11 (testimony of John C. Willingham). For testimony regarding her sexual conduct, see, e.g., *id.* at 15-17 (affidavit of James Milton).

¹³ *Id.* at 15-17 (affidavit of James Milton). James Smith, for example, swore he had “had criminal connection with her himself often.” *Id.* at 15.

¹⁴ *Pleasant*, 15 Ark. at 631.

¹⁵ Transcript of Trial, *State v. Pleasant*, at 18 (affidavit of James Milton). For the comment that Fulmer was lazy, see *id.* at 11 (testimony of John C. Willingham).

¹⁶ *Id.* at 10 (testimony of John C. Willingham).

¹⁷ *Id.*

and obtained not one but two reversals in the Arkansas Supreme Court, suggests that the question is much more complicated than we might think.

B. Unpacking the Myth of the Black Rapist

Historians in general and legal historians in particular have long puzzled over why slaves accused of rape even came to trial, let alone why their convictions were sometimes reversed. With the injustices of Emmett Till and the Scottsboro Boys burned into our collective consciousness, it strikes us as odd to say the least that a black man accused of raping a white woman met with anything other than a rope around his neck or a torch to set him alight. Indeed, the types of sadistic tortures inflicted on people of color at the turn of the twentieth century for real and imagined crimes are almost too gruesome to recount. All told, between 1889 and 1946 (the year generally marked as the end of the era of lynching) whites executed almost 4,000 persons of color through extra-legal violence.¹⁸ The year 1892 was the worst, with 160 lynchings of black men.¹⁹

Not surprisingly, white apologists routinely named the raping of white women as the reason for murdering black men. Working himself into a feverish pitch, Charles Smith in 1893 gave voice to this justification, lashing out at those who “cry out against the lynchings, but . . . make no effort to stop the outrages that provoke them.”²⁰ Furthering his point with disturbing details from an unspecified case involving a black man who allegedly attacked a twelve-year-old girl, Smith’s rage was palpable. “The lynching of such a monster,” he thundered, “is nothing – nothing compared with what he has done.”²¹

It is often assumed, moreover, that the image of the sexually aggressive black male – the sex-crazed “monster” of Mr. Smith’s fantasy – had its origins in the slave experience. The formidable historian Winthrop Jordan provides perhaps the most convincing articulation of this view. Jordan suggested that the notion of the African male’s especially large penis and his concomitantly super-potency existed long before the settling of the colonies.²² Yet it was only after the blending of the races in America, and in particular the sexual exploitation of slave women, that this image dove-tailed into an irrational fear of black male sexuality. Jordan reasoned that white men, guilt-ridden by their treatment of slave women, projected their own passions for the opposite race onto black men, giving birth to the image of the lustful, crazed, and already well-endowed, black rapist.²³ “It is

¹⁸ JOEL WILLIAMSON, *THE CRUCIBLE OF RACE: BLACK-WHITE RELATIONS IN THE AMERICAN SOUTH SINCE EMANCIPATION* 118 (1984).

¹⁹ Ida B. Wells, *A Red Record: Tabulated Statistics and Alleged Causes of Lynchings in the United States, 1892-1893-1894*, reprinted in *SOUTHERN HORRORS AND OTHER WRITINGS: THE ANTI-LYNCHING CAMPAIGN OF IDA B. WELLS, 1892-1900*, 73, 87 (Jacqueline Jones Royster ed. 1997).

²⁰ Chas. H. Smith, *Have American Negroes Too Much Liberty*, XVI *FORUM* 176, 181 (1893-1894).

²¹ *Id.* at 182.

²² WINTHROP JORDAN, *WHITE OVER BLACK: AMERICAN ATTITUDES TOWARD THE NEGRO, 1550-1812*, 158 (1968).

²³ *Id.* at 151-52.

not we, but others, who are guilty. It is not we who lust, but they,” went the rationale.²⁴

With a few notable exceptions, Jordan’s positioning of the development of the myth of the black rapist in slave society has proved tremendously influential.²⁵ One scholar of the antebellum South, for example, has recently stated that an accusation that a black man raped a white woman provoked “profound rage” among white Southerners.²⁶ Another has written about how white men were “convinced that Black men wanted to rape white women,” and that this belief “pervaded the South, emerging with particular virulence in the early nineteenth century.”²⁷ Still another cites the extreme legal ramifications (death or castration) mandated for a guilty verdict as evidence of white anxiety over black male sexuality, and presumes that mobs “broke into jails and courtrooms and lynched slaves alleged to have raped white women.”²⁸

Yet, if all of this is true, if white antebellum Southerners suffered from the same “rape complex” as their postbellum descendants like Mr. Smith, why did Pleasant receive a trial? Why did Pleasant’s attorney delve into the facts surrounding the event, and into the background of his accuser and her husband? Why did other local slaveholders submit an affidavit on Pleasant’s behalf, stating that he was a “humble and obedient servant”?²⁹ Why did the Arkansas Supreme Court reverse the conviction, not once but twice, for errors in the trial court? Indeed, why was Pleasant not the victim of mob violence, so often assumed but rarely documented? Why was he not strung up from a tree, or burned, or castrated by vigilante whites determined to quell their own sexual anxieties?

The central argument developed below is that a slave accused of raping a white woman in the antebellum South did not create the type of social anxiety and mass retaliation that was so often illustrated in the late nineteenth and early

²⁴ *Id.* at 152.

²⁵ Jordan’s thesis has not gone unchallenged. *See, e.g.*, EUGENE GENOVESE, *ROLL, JORDAN, ROLL: THE WORLD THE SLAVES MADE* 33-34 (1972) (suggesting that public opinion in rape cases remained relatively calm during the antebellum period); MARTHA HODES, *WHITE WOMEN, BLACK MEN: ILLICIT SEX IN THE 19TH-CENTURY SOUTH* 1-6 (1997) (rejecting notion that sex between white women and black men provoked violence); Diane Miller Sommerville, *The Rape Myth in the Old South Reconsidered*, 61 J. OF S. HIST. 481, 490 (1995) (stating that “[t]here is no evidence” that “white southerners were apprehensive or anxious about their slaves raping white women”).

²⁶ Peter W. Bardaglio, *Rape and the Law in the Old South: “Calculated to Excite Indignation in Every Heart,”* 60 J. OF S. HIST. 749, 754 (1994).

²⁷ Karen A. Getman, *Sexual Control in the Slaveholding South: The Implementation and Maintenance of a Racial Caste System*, 7 HARV. WOMEN’S L.J. 115, 134 (1984); *see also* Bardaglio, *supra* note 26, at 752 (“White southerners, both inside and outside the legal system, widely shared the belief that black men were obsessed with the desire to rape white women.”).

²⁸ Jennifer Wriggins, *Rape, Racism, and the Law*, 6 HARV. WOMEN’S L.J. 103, 105 (1983); *see also* Getman, *supra* note 27, at 134-35 (noting how black men convicted of rape or attempted rape were sentenced to death and how castration was “a punishment uniquely suited in colonial thought to curbing Blacks’ sexual aggressiveness”).

²⁹ Transcript of Trial, *State v. Pleasant*, at 19 (affidavit of Thomas M. Wright, James Wordlaw, and Joseph Wordlaw); *id.* at 20 (affidavit of George W. Darden, John C. Willingham, and R.W. Durrebb).

twentieth centuries. The principal reason for this, moreover, was because an accusation in slavery times brought into conflict issues not present in the years following the Civil War. More specifically, an accusation that a slave raped a white woman brought into open and ugly argument a contest between white people – a contest between a slaveholder and (more often than not) a non-slaveholder, a contest between a master and his slaveholding neighbors and a woman and her non-slaveholding friends. And as the participants squared off, they brought with them competing views of what slavery meant, of what race signified, and of what proper women did. Viewed this way, as class conflicts between whites expressed and experienced through different ideological constructs, the accusation of rape attains a level of complexity not seen in the postbellum South, where, as one outraged spectator to the Scottsboro case put it, the accuser “might be a fallen woman, but by God she is a white woman.”³⁰

C. *The Power of Story-Telling*

Let me say a few words on my methodology and rationale. This Article reexamines some of the basic assumptions of sex and race in the slave South, particularly as they pertain to black men and white women, through the extant records of one case, *State v. Pleasant*. There are several reasons for taking this approach. First, by focusing primarily on one state, it adds both specificity and complexity to the debate. In the past decade, there has been an explosion of sorts in the amount of attention paid to issues of interracial intimacy. While this has come as a welcome relief, especially considering the scant attention the subject previously received, much of the recent literature has tended to traverse the boundaries between different states and different time periods. Despite the many contributions that these works have made, all would probably agree that, in order to make them, they often give up the nuances and particularities of individual circumstances. As such, this Article digs deeper into one region during one particular time period to explore distinctions and commonalities among those involved in interracial relationships.

Second, not only does this Article primarily focus on one state, but it also concentrates on a state that has not received much attention in the scholarship on slavery. In 1958, Orville Taylor first published *Negro Slavery in Arkansas*; since then, although there have been a number of excellent shorter works, Taylor’s book still remains the only comprehensive study of the subject.³¹ Thus, although the focus of this Article is on interracial sex and an accusation of rape, it also hopes to advance our understanding of the peculiar institution in a state that has been largely ignored. Other legal historians have made the argument for why a

³⁰ DAN T. CARTER, SCOTTSBORO: A TRAGEDY OF THE AMERICAN SOUTH 295 (1979).

³¹ See, e.g., Gary Battershell, *The Socioeconomic Role of Slavery in Arkansas Upcountry*, 58 ARK. HIST. Q. 45 (1999); S. Charles Bolton, *Slavery and the Defining of Arkansas*, 58 ARK. HIST. Q. 1 (1999); S. CHARLES BOLTON, ARKANSAS, 1800-1860: REMOTE AND RESTLESS 125-44 (1998); Carl H. Moneyham, *The Slave Family in Arkansas*, 58 ARK. HIST. Q. 24 (1999); L. Scott Stafford, *Slavery and the Arkansas Supreme Court*, 19 U. ARK. LITTLE ROCK L. REV. 413 (1997).

particular focus on, say, Virginia is merited, because it was one of the first colonies to implement slavery and many of its laws on the subject were imported elsewhere.³² But as this country expanded westward – to unsettled places like Arkansas, Texas, and Oklahoma – the rules and ideologies of the Old South had to be twisted and bent to address the circumstances of the New. Who were the people who migrated westward? Where did they come from, how did they live, what did they think of slavery, and what did they do when confronted with a slave accused of raping a white woman?

Finally, and most importantly, the approach adopted here allows for – indeed encourages – close scrutiny of local records, particularly trial records. Ariela Gross in a recent article has called on legal historians with an interest in culture, and cultural historians with an interest in law, to explore these records because they often shape and reshape both the terms of, and the answers to, the debate.³³ As she writes, trial stories allow us “to view the law from other perspectives – not only that of the judge but those of witnesses, litigants, jurors, and even slaves.”³⁴ Or, to paraphrase Walter Johnson, trial records allow us to tell a story about not just courts but courtrooms, not just law but lawyers, and not just slavery but slaves.³⁵ And it is here – in the daily lives of ordinary people – that the meanings and significance of formal legal doctrines and official ideologies were batted about, questioned, and eventually tortured into shape.

Hence, this Article pays close attention to the trial record of *State v. Pleasant* and the transcript that was made of the trial when the case was first appealed to the Arkansas Supreme Court, along with the surviving local records from Union County and beyond.³⁶ This includes such materials as census records,

³² See A. Leon Higginbotham & Barbara K. Kopytoff, *Racial Purity and Interracial Sex in the Law of Colonial and Antebellum Virginia*, 77 GEO. L.J. 1967, 1967 (1989) (noting how Virginia was “the ‘mother’ of American slavery and a leader in the gradual debasement of blacks through its institution of slavery”).

³³ See Ariela Gross, *Beyond Black and White: Cultural Approaches to Race and Slavery*, 101 COLUM. L. REV. 640, 643 (2001) (noting how “cultural histories taking law into account” have “chang[ed] the terms of older historical debates that had organized the field for decades”). As illustrations, Gross points to “debates over which came first, slavery or racism; whether American slavery was compatible with capitalism or whether it thrived only in a pre-bourgeois socioeconomic system of ‘paternalism’; and how Jim Crow practices originated.” *Id.* at 643-44; see also Arthur F. Howington, “*Not in the Condition of a Horse or an Ox*”: Ford v. Ford, *the Law of Testamentary Manumission, and the Tennessee Court’s Recognition of Slave Humanity*, 34 TENN. HIST. Q. 249, 250 (1975) (arguing that state supreme court decisions resemble “the tip of the iceberg,” and that a more accurate appraisal of slave law comes from trial courts).

³⁴ Gross, *supra* note 33, at 643.

³⁵ See Walter Johnson, *Inconsistency, Contradiction, and Complete Confusion: The Everyday Life of the Law of Slavery*, 22 LAW AND SOCIAL INQUIRY 405, 420 (1997).

³⁶ The actual trial record from Union County consists of brief entries – usually one paragraph – describing the legal proceedings: the name of the case, what was at issue, how the trial court ruled or what the jury found. See, e.g., Union County Circuit Court Records, “Book E” (April 17, 1852). If the case was appealed, the clerk of the court transcribed a detailed record of the case and included within that a copy of the indictment, a description of what each witness said or would have said if allowed to testify, what motions were made, and how the court ruled. Along with the trial transcript, the record also includes the briefs filed to the Arkansas Supreme Court. Unfortunately, the transcript of the record for the second appeal was destroyed by fire.

slave schedules, tax records, deed records, agricultural records, letters, and newspaper accounts. In addition, this Article takes into account the trial records from the other surviving cases in Arkansas in which interracial issues were at the forefront.³⁷ Finally, best efforts have been made to find and read every Arkansas appellate case involving a slave, as well as every appellate decision from every jurisdiction in the South involving an accusation of rape or attempted rape against either a black or white man during the time of slavery. Additional appellate cases from other jurisdictions involving a variety of interracial issues also were consulted, from will contests, to divorce cases, to sexual slander cases, to miscegenation cases. All told, well over a hundred cases were reviewed to help tell the story of just one: *State v. Pleasant*.

Part I of this Article introduces some of the major players in the case and gives a background on Arkansas and the people there. Part II turns to some preliminary questions about the role of the courts in the antebellum South and the role of law in the lives of slaves. From there, the Article moves into a discussion of why a slave master in general, and James Milton in particular, would be so interested in providing a good defense for his slave. Part III turns to the trial itself, first sketching a view of interracial sex which helps explain why Sophia's accusation of rape did not provoke the profound rage so often assumed. It then goes through the testimony in detail, setting up the point that a case like *Pleasant's* ultimately forced a confrontation over the very foundation of the Southern social order. Finally, this Article concludes by emphasizing the role of slavery in people's everyday lives.

I. THE SETTING

A. *James Milton, the Master*

By the time James Milton – *Pleasant's* master – arrived in Arkansas, the vast migration south and west from the older states in the Upper South had long been underway. Born in North Carolina in 1804, the actual reason Milton left his home state is unclear.³⁸ But chances are that Milton, like thousands of other men

³⁷ For rape cases, see Transcript of Trial, *State v. Charles* (Ark. Cir. Ct. Hempstead County May 1850) (collection of Ark. Supreme Court Records & Briefs), *rev'd* 11 Ark. 389 (1850); Transcript of Trial, *State v. Sullivant* (Ark. Cir. Ct. Dallas County Sept. 1847) (collection of Ark. Supreme Court Records & Briefs), *rev'd* 8 Ark. 400 (1848). For will contests, see Transcript of Trial, *Harriet v. Dixon* (Ark. Chancery Ct. Pulaski County Aug. 1855) (collection of Ark. Supreme Court Records & Briefs), *aff'd* 18 Ark. 495 (1857); Transcript of Trial, *Abraham v. Wilkins* (Ark. Cir. Ct. Lafayette County May 1853) (collection of Ark. Supreme Court Records & Briefs), *aff'd* 17 Ark. 292 (1856); Transcript of Trial, *Campbell v. Campbell* (Ark. Chancery Ct. Chicot County May 1850) (collection of Ark. Supreme Court Records & Briefs), *aff'd* 13 Ark. 513 (1853).

³⁸ See POPULATION SCHEDULES OF THE SEVENTH CENSUS OF THE UNITED STATES, roll 30 (1850) (listing James Milton's birth place as North Carolina and his age as forty-six, meaning that he was born in 1804) [hereinafter 1850 CENSUS RECORD]. James Milton is listed as "James Melton" in the 1860 census; but it is clear from the vital statistics, including age, birthplace, and family members, that this is the same person. See POPULATION SCHEDULES OF THE EIGHTH CENSUS OF

and women, departed in search of prosperity and the better life he hoped prosperity would bring. Tobacco, the cash crop of the area, had lost much of its profitability during the Revolutionary period, and as a result established planters as well as young upstarts began fleeing the crowded and overworked lands of Virginia, Maryland, and North Carolina in the late eighteenth and early nineteenth centuries in the hope of finding better fortunes elsewhere.³⁹ Many, including James Milton, headed to the newly created territories of the Southwest where cotton was king. Indeed, cotton – originally popular in the low country slave gardens of South Carolina – emerged as an immensely successful staple crop at the beginning of the nineteenth century after the invention of the cotton gin made the removal of the sticky seeds from the cotton fiber much easier and faster.⁴⁰ Production shot up, and so did the populations of the Southwest, where the climate and soil were ideally suited for growing the new cash crop.⁴¹

Milton's trek westward took him first to Mississippi. When he arrived is difficult to pinpoint, but he had been living in that state since at least 1838 with his wife Nancy, who was from Tennessee.⁴² In that year, the couple had their first child, Emaline (or "Huldy," as she was called).⁴³ But perhaps he was not as successful at farming as he had hoped, or perhaps he had simply gotten wind of better opportunities available further west for someone willing to roll up his sleeves and get the job done. In fact, since the 1830s when it entered the Union, if not before, people had been extolling the virtues of Arkansas, hoping to draw as many settlers as possible with talk of alluvial soil and abundance of opportunity. "[T]he facilities offered a man for making a living and a fortune there, are nowhere equalled [sic]," raved the Boston-born Albert Pike, as he traveled through the state in the 1830s.⁴⁴ Indeed, he said, Arkansas produces "the best cotton in North America," and the stranger who enters the rich bottomlands in the southern half of the state will be "astonished and delighted."⁴⁵ "We are having delightful weather just now, and our planters are again busily preparing for another crop," went an editorial in the *Arkansas Gazette* along the same vein.⁴⁶

THE UNITED STATES, roll 51 (1860) (listing, for example, James Melton's birthplace as North Carolina and his age as fifty-six) [hereinafter 1860 CENSUS RECORD].

³⁹ See IRA BERLIN, *MANY THOUSANDS GONE: THE FIRST TWO CENTURIES OF SLAVERY IN NORTH AMERICA* 262 (1998) (describing wartime disruption on tobacco); *id.* at 265 (discussing migration to West and Southwest).

⁴⁰ See *id.* at 307 (describing rise of cotton as cash crop).

⁴¹ See *id.* at 343 (noting increase in cotton production along lower Mississippi valley at turn of century).

⁴² See 1850 CENSUS RECORD (listing Nancy under Milton's household). The closeness in their ages – James was 46 at the time of the 1850 Census and Nancy was 43 – indicates that they were husband and wife.

⁴³ See *id.* (listing a daughter named Huldy who was from Mississippi and who was 12-years-old at the time of 1850 census, meaning that she was born in that State in 1838). The 1860 census does not list a Huldy under the household of James Milton; however, there is a 23-year-old woman named "Emaline Jones" from Mississippi that is presumably her. See 1860 CENSUS RECORD. "Emaline" Milton married Passhall Jones in 1858.

⁴⁴ Albert Pike, *Letters from Arkansas*, 9 *NEW-ENGLAND MAGAZINE* 263, 265 (1835).

⁴⁵ *Id.* at 264.

⁴⁶ *ARKANSAS GAZETTE*, Feb. 21, 1857, at 2.

“Cotton, niggers, and mules, the great staples of the South, are just now at tall prices. And as to Arkansas river bottom lands, there is no telling where they will reach – they are going up, up, and ere long can only be reached by a ladder.”⁴⁷ A literate man,⁴⁸ perhaps Milton had seen accounts like these, or read glowing letters from former acquaintances who had arrived before him. Before long, talk of Arkansas being the “epitome of the world,”⁴⁹ with soil of the “first quality” and mineral wealth that surpassed “the mines of Peru,”⁵⁰ probably reached him. In 1842, therefore, Milton packed up his small family and their belongings and headed to the proverbial promised land.⁵¹

Milton and his family eventually settled in Union County, a fertile region just above the border of Louisiana known for its ability to sustain a number of crops, including cotton, corn, sweet potatoes, and peas.⁵² To get to their new home, Milton, his wife Nancy, and their young daughter probably traveled by wagon, meandering across the rugged terrain of western Mississippi and eastern Arkansas. Steamboat travel was an option, though probably not an attractive one.⁵³ In addition to the expense and lack of a direct route, river navigation was notoriously problematic in the early years of Arkansas.⁵⁴ Though the Ouachita River formed a partial northern boundary of Union County, it, like the Arkansas River further north, was subject to extreme fluctuations in flow, making river travel sketchy if not downright dangerous.⁵⁵ Safer and more reliable routes could be had along the primitive roads and horse paths.

Of course, travel by land had its own hardships. Crossing the swampland of eastern Arkansas, where the Mississippi River regularly overflowed, would have been difficult, to say nothing of the “excessive annoyance from its myriads of musquitos [sic].”⁵⁶ Littered about the roads, moreover, would have been broken boughs and fallen trees, which never seemed to fall, according to one cynical account, “any other way than across a road, if [they] could only reach

⁴⁷ *Id.*

⁴⁸ In the 1850 census there was a box for the census takers to check for “persons over 20 y’rs of age who cannot read & write.” The box next to James Milton’s name is blank. *See* 1850 CENSUS RECORD.

⁴⁹ TIMOTHY FLINT, A CONDENSED GEOGRAPHY AND HISTORY OF THE WESTERN STATES OR THE MISSISSIPPI VALLEY, v. I, 571 (1828).

⁵⁰ *Emigration*, ARKANSAS GAZETTE, Jan. 26, 1842, at 2.

⁵¹ Milton first appears in the Union County Tax Records in 1842. *See* 1842 TAX RECORD.

⁵² *See Southern Arkansas*, OUACHITA HERALD, Dec. 10, 1857, at 2 (stating that Southern Arkansas – which included Union County – “possessed of as good a climate and soil for the production of cotton, corn, wheat, potatoes, peas &c., as can be found in any similar range throughout the old or new States”).

⁵³ Steamboats made their first appearance on the Arkansas River in the 1820s. WILLIAM F. POPE, EARLY DAYS IN ARKANSAS: BEING FOR THE MOST PART THE PERSONAL RECOLLECTIONS OF AN OLD SETTLER 31-32 (1895).

⁵⁴ *See* BOLTON, *supra* note 31, at 20 (“Despite its excellent system of rivers, navigation was a problem in Arkansas.”); *see also* Pike, *supra* note 44, at 264 (noting how the rivers – particularly the Arkansas River – often were not navigable by steamboats because of depth).

⁵⁵ BOLTON, *supra* note 31, at 20.

⁵⁶ FLINT, *supra* note 49, at 582.

it.”⁵⁷ At various points along the route, too, Milton probably found himself cutting his own way through the virgin forest. In fact, in 1857, residents were still complaining that there was no reliable road through the Mississippi river bottoms to the southern counties of Arkansas.⁵⁸ All told, the trip likely took weeks, if not months, and fatigue certainly would have set in. Indeed, one former slave recalled a similar move from Mississippi to Camden, a town in Ouachita County, not far from where James Milton and his family settled. “Lord only knows how long it tuck a-coming,” she told an interviewer many years later.⁵⁹ “The biggest younguns had to walk till theys so tired theys couldn’t hardly drag they feets; them what had been a-riding had to get out of the ox wagon and walk a far piece; so it like this we go on.”⁶⁰

By the time Milton arrived in Union County, he would have found a vast country with great potential. Others had come before him – the county was established in 1829⁶¹ – but the land was largely untamed.⁶² Broadax in hand, Milton would have had to clear the ground of unwanted trees and shrubs before planting his first crops.⁶³ The work would have been hard; Milton likely had to contend with wild animals and poisonous snakes as he dug up the stumps and hauled them away with one of the three horses he owned.⁶⁴ Having enough food on hand also would have been a concern, though other settlers from the same time recalled that with a good rifle and a keen eye some venison or wild turkey was easily had.⁶⁵ In those first few weeks, Milton also had to focus his attention on constructing a home for his family. Huldy was now about four, and Nancy was either pregnant or had just had the couple’s second child, whom they named James after the father.⁶⁶

⁵⁷ FREDERICK GERSTAECKER, *WILD SPORTS IN THE FAR WEST* 235 (1876).

⁵⁸ *Southern Arkansas*, *OUACHITA HERALD*, Dec. 10, 1857, at 2; *see also* Letter from D.H. Bingham to Chester Ashley, Senator, (Dec. 30, 1844) (asking for federal assistance in the construction of a road from Memphis to other parts of the South).

⁵⁹ GEORGE P. RAWICK, *THE AMERICAN SLAVE: A COMPOSITE AUTOBIOGRAPHY* (1972), v. 8, part 2, at 346 (Aunt Mittie Freeman).

⁶⁰ *Id.*

⁶¹ FAY HEMPSTEAD, *A PICTORIAL HISTORY OF ARKANSAS: FROM THE EARLIEST TIMES TO THE YEAR 1890*, 949 (1890).

⁶² *See* SAMUEL CHESTER, *PIONEER DAYS IN ARKANSAS* 10 (1927) (stating that the counties of Union and Columbia, after the government removed the Choctaw Indians, stood in “undisturbed possession of the wolves and bears and panthers and other smaller animals of prey” in the 1830s).

⁶³ *See* Pike, *supra* note 44, at 265 (describing how the newly arrived had to go “resolutely to work, chopping timber, grubbing up cane, and performing the various operations necessary to clearing up land”).

⁶⁴ *See* 1842 TAX RECORD (taxing Milton on three horses).

⁶⁵ *See* CHESTER, *supra* note 62, at 11-12 (noting how “it was possible by an accurate rifle shot to procure fresh venison or bear steak or a wild turkey within a half mile of the settlement at almost any hour of the day”).

⁶⁶ *See* 1850 CENSUS RECORD (listing a son named James who was 8-years-old in 1850, meaning that he was born in 1842). In the 1860 census, there is no James listed under the household of Milton; however, there is a son named Thomas who matches the age and birthplace of James. *See* 1860 CENSUS RECORD (listing a son named Thomas who was 18-years-old and from Arkansas). It is probable that Thomas and James were the same person.

In constructing their home, like most other Arkansans, Milton probably emphasized practicality over comfort, building a simple log cabin rather than a grand plantation home so often depicted in Southern lore. If the cabin was typical, it would have been made of hewn logs, perhaps with floors made of pine and with square holes cut in the walls to serve as windows.⁶⁷ A few of Milton's new neighbors may have journeyed over to help, no doubt advising him to build his cabin in the familiar "dogtrot" style, with two large rooms divided by a large open-air passageway to let the breeze circulate through.⁶⁸ The roof probably consisted of rough planks and split shingles, and there would have been a chimney to warm the house in colder months.⁶⁹ At the back and at the side of his new home, Milton and his neighbors probably built separate detached cabins for his kitchen, pantry, and smoke houses.⁷⁰ The home, if it seemed small at first, was designed in such a way that it could easily be expanded with additional rooms as the family and its needs grew.⁷¹

Milton evidently spent the first few years squatting on his land in the fine tradition of Arkansas settlers, certain that he could buy it sometime in the future and refusing to pay taxes on it until forced to do so.⁷² He built his home in Van Buren Township, in the northwestern part of the county, not too far from the Methodist settlement and the county's first post office at Mount Holly.⁷³ At the time, the overall population of Union County was still relatively small. Over the next several years, however, Milton would have seen the population grow steadily; it stood at 2,889 in 1840 but grew to 10,298 in 1850.⁷⁴ During this time, Milton also likely watched with interest as El Dorado, the county seat, was founded and divided into town lots in 1844, and perhaps even signed the petition for a postal route connecting El Dorado to Monroe in bordering Ouachita

⁶⁷ See CHESTER, *supra* note 62, at 16-17, 20 (describing what homes from Union County looked like during the period).

⁶⁸ See *id.* at 16 (noting how the "building of a house was always a neighborhood affair").

⁶⁹ See GERSTAECKER, *supra* note 57, at 136-37 (describing home of resident where he stayed); CHESTER, *supra* note 62, at 17 (noting the "big open fires" settlers used to have in their homes).

⁷⁰ See CHESTER, *supra* note 62, at 16 (describing typical home).

⁷¹ See *id.* at 17 (noting how settlers would build "dormitories for the children as the families increased, and for visitors when the number was greater than the main building would accommodate").

⁷² See BOLTON, *supra* note 31, at 53 (noting that in 1840 only about one-third of all the state's taxpayers owned their own land, "while the rest squatted on the abundant land owned by the government with the assurance that they could buy it at some time in the future"). In 1842, Milton paid taxes on one slave, three horses, and eight cattle, but no land. See 1842 TAX RECORD. The first time Milton was taxed on real estate was 1848. See 1848 TAX RECORD (taxing Milton on 40 acres of land and estimating its value at \$200).

⁷³ See 1850 CENSUS RECORD (noting township); see also CHESTER, *supra* note 62, at 11 (explaining how the government established a post office at Mount Holly, a name "suggested by the abundance of holly trees whose beautiful dark green leaves and red berries were the most conspicuous feature of the forest landscape").

⁷⁴ 1840 CENSUS RECORD, at 94; 1850 CENSUS RECORD, at 200.

County.⁷⁵ At the very least, having the town close by would have helped assure Milton that he could readily obtain basic necessities – everything from sugar and coffee to Kentucky mustard⁷⁶ – for his growing family, for in the same year that El Dorado was founded, Milton’s wife Nancy gave birth to their third child, Liddy.⁷⁷ But the town also provided a needed political center for the growing county, and among the notable settlers were John Quillin and Shelton Watson – two lawyers/judges who would become involved in Pleasant’s case.⁷⁸

From the beginning, Milton, like most of the others who settled in the area, made his living from the land. Glimpses from the agricultural records from 1850 and 1860 indicate that Milton and his neighbors grew and profited from a number of different crops, including cotton, wheat, oats, peas, sweet potatoes, and Indian corn.⁷⁹ But it was cotton, in particular, where the largest profits were to be had. Union County, together with a handful of other counties along the eastern and southern borders of Arkansas, produced most of the state’s cash crop.⁸⁰ Here, the rich bottom lands, flat terrain, and warm climate allowed cotton to be grown in significant amounts.⁸¹ The county’s location next to the Ouachita River also helped spur agricultural development, providing as it did a ready means for shipping the product to far away markets.⁸² The story was different in the northern and western part of the State – in the so-called highlands – however. There, due in large part to the terrain, Arkansans concerned themselves primarily with subsistence farming, tending a small cornfield and perhaps raising a few pigs.⁸³ But it became clear enough to many leading citizens of Arkansas that cotton was the key to economic success and the prosperity of the state. “Cotton is now the article of commerce which controls the markets of the world,” the *Arkansas Gazette* grandly declared in 1852,⁸⁴ and judging by the increase in cotton production over Milton’s tenure in Arkansas, many farmers took this information to heart. In 1840 Arkansas produced over 6 million pounds of cotton;

⁷⁵ See HEMPSTEAD, *supra* note 61, at 951 (noting year in which El Dorado was founded); see also Letter from William R. Dunn to Chester Ashley (Jan. 26, 1846) (referencing petition). The actual petition was not among the surviving papers of Chester Ashley.

⁷⁶ See EL DORADO UNION, Sept. 15, 1849, at 3 (advertising groceries and items for sale at Rust & Co. store in El Dorado).

⁷⁷ See 1850 CENSUS RECORD (listing a daughter named Liddy who was 6-years-old in 1850, meaning that she was born in 1844). In the 1860 census, “Lydia” is listed as 14-years-old and not 16 as she should have been based on the 1850 census. See 1860 CENSUS RECORD. But this is undoubtedly the same person; slight discrepancies in the ages and spellings of persons listed in the census records were very common.

⁷⁸ See HEMPSTEAD, *supra* note 61, at 951 (discussing prominent early settlers).

⁷⁹ 1850 CENSUS RECORD (Agriculture); 1860 CENSUS RECORD (Agriculture).

⁸⁰ See BOLTON, *supra* note 31, at 53.

⁸¹ See HEMPSTEAD, *supra* note 61, at 951 (“The general face of the county is level and with fertile lands.”); see also BOLTON, *supra* note 31, at 13 (noting climate of southern Arkansas).

⁸² See *Notice to Cotton Planters*, EL DORADO UNION, Sept. 23, 1848, at 3 (highlighting purchase of the “well-known” Beech Hill & Harvey’s Landings and its location on the Ouachita river).

⁸³ See BOLTON, *supra* note 31, at 50-52 (describing terrain and how it affected agriculture).

⁸⁴ ARKANSAS GAZETTE, June 13, 1857, at 2.

in 1850 over twenty-six million; and in 1860 almost one hundred forty-seven million.⁸⁵

As the decade neared a close, Milton assuredly was content with his decision to move his family to Arkansas. Huldy was now twelve, James eight, and Liddy six,⁸⁶ and nothing in the surviving records indicates that they were anything but healthy (none had succumbed, for example, to the “bilious and remittent fevers” known to hit the timbered bottoms in the latter part of the summer and early fall).⁸⁷ He and Nancy had also added a fourth member to their family – a daughter named Elizabeth, who was now three⁸⁸ – and they would have another son in the coming year.⁸⁹ In addition, Milton had become a successful and prosperous farmer, having earned enough to purchase forty acres of land at the end of 1847 for \$275, and one hundred and twenty more in 1849, bringing his total to one hundred and sixty acres for the 1849 taxable year.⁹⁰ In that same year, he was taxed on two horses, one mule, and nine cattle, and he owned some twenty-five pigs.⁹¹

Over the course of the next decade, moreover, Milton’s property holdings would continue to increase. Sometime between 1849 and 1853, he purchased another three hundred and twenty acres of land, bringing his total to four hundred and eighty acres.⁹² By 1856 he had increased that amount to six hundred and forty acres,⁹³ and by 1859 it stood at six hundred and eighty.⁹⁴ The number of horses grazing his pastures remained relatively constant (over the course of the decade he owned between two and four).⁹⁵ But he added more mules (he owned three in 1856 and five in 1860)⁹⁶ and more cows (he had ten in 1853, twelve in 1856, fourteen in 1857, and fifteen in 1860).⁹⁷ He also owned twenty-six sheep

⁸⁵ Though significant, these amounts paled in comparison to places like Louisiana, Alabama, and Mississippi. In Louisiana, planters produced 152,555,368 pounds of cotton in 1840; 71,494,800 in 1850; and 311,095,200 in 1860. In Alabama, farmers produced 117,138,823 pounds of cotton in 1840; 225,771,600 pounds in 1850; and 395,982,000 pounds in 1860. In Mississippi, the numbers were even higher. There, residents produced 193,401,577 in 1840; 193,716,800 pounds in 1850; and 481,002,800 pounds in 1860. Thus, in hindsight, the 1852 pronouncement, “Before five years, Arkansas will be among the foremost of cotton growing states,” so confidently made by the editor of the *Arkansas Gazette*, seems a bit overstated. *Cotton in Arkansas*, ARKANSAS GAZETTE, May 7, 1852, at 2.

⁸⁶ See 1850 CENSUS RECORD (listing ages of James and Nancy’s children).

⁸⁷ See FLINT, *supra* note 49, at 583.

⁸⁸ See 1850 CENSUS RECORD. Elizabeth also appears in the 1860 census. See 1860 CENSUS RECORD.

⁸⁹ See 1860 CENSUS RECORD (listing 10-year-old son, meaning he was born in 1850, named Joseph).

⁹⁰ See 1847 DEED; 1849 TAX RECORD.

⁹¹ 1849 TAX RECORD; 1850 CENSUS RECORD (Agriculture).

⁹² 1853 TAX RECORD.

⁹³ 1856 TAX RECORD.

⁹⁴ 1859 TAX RECORD.

⁹⁵ See 1853 TAX RECORD (two); 1854 TAX RECORD (four); 1856 TAX RECORD (two); 1857 TAX RECORD (three); 1860 TAX RECORD (two).

⁹⁶ See 1856 TAX RECORD; 1860 TAX RECORD.

⁹⁷ See 1853 TAX RECORD; 1856 TAX RECORD; 1857 TAX RECORD; 1860 TAX RECORD.

and seventy-five pigs in 1860, which upped the total value of his livestock holdings to some \$1200.⁹⁸ In that same year, his real property was estimated to be worth \$4000.⁹⁹ At this level, although he was far from the county's richest resident, his combined holdings placed him among the area's elite – in fact, only fifteen percent of all taxpayers in the entire cotton-producing region of Arkansas owned as much land as he did.¹⁰⁰ But perhaps the best indicator of Milton's status among Union County's prominent citizens was not his land or his livestock; instead, it was his growing inventory of black slaves.

B. Pleasant, a Slave

When Milton first arrived in Arkansas, he possessed only one slave over the age of eight and under the age of sixty.¹⁰¹ But even with just one, Milton already could count himself a member of a privileged group. Indeed, contrary to popular legend, the vast majority of antebellum Southerners did not own any slaves; and of those who did, most could lay claim to only a few – half, in fact, owned five or less.¹⁰² But like many men, Milton probably saw the acquisition of slaves as both a necessary component and a telling sign of success. “I should purchase negro fellows,” advised A.C. Morehouse to his brother-in-law, Asa Morgan of Union County, when queried on how to invest money from the family estate.¹⁰³ Morehouse's advice was typical; in Arkansas, as elsewhere, slave property was seen as “a desirable object with every one who had a permanent investment of money,” and prominent Arkansans did what they could to “encourage every citizen to not only become, but remain, a slaveholder.”¹⁰⁴

Thus, it hardly seems surprising that Milton began investing in human chattel from the outset, adding to his stock of slaves even before he paid for his land. In 1843, the year after he arrived in Union County, Milton purchased his second slave.¹⁰⁵ By 1846 he had added a third, and by 1848 he had added five more, all between the taxable ages of eight and sixty.¹⁰⁶ By 1849, Milton counted nine slaves – valued at \$3200 – as part of his household.¹⁰⁷ And these were only the taxable slaves, the ones that were expected to and did turn a profit for their master. By the time of the 1850 census, Milton also owned three young children

⁹⁸ 1860 CENSUS RECORD (Agriculture).

⁹⁹ 1860 CENSUS RECORD. There is a slight discrepancy between the census records and the agriculture records. The latter lists Milton's real property at \$3000. 1860 CENSUS RECORD (Agriculture).

¹⁰⁰ See BOLTON, *supra* note 31, at 62 (noting that only 15 percent of taxpayers in the lowlands owned at least 600 acres).

¹⁰¹ See 1842 TAX RECORD.

¹⁰² See PETER J. PARISH, *SLAVERY: HISTORY AND HISTORIANS* 26-29 (1989) (noting percentages of slaveholders and non-slaveholders in 1860); see also Bolton, *supra* note 31, at 5 (noting that only one-fifth of Arkansans owned slaves).

¹⁰³ Letter from A.C. Morehouse to Asa S. Morgan (Dec. 5th, 1849).

¹⁰⁴ ARKANSAS GAZETTE, Jan. 24, 1857, at 2.

¹⁰⁵ See 1843 TAX RECORD.

¹⁰⁶ See 1846 TAX RECORD; 1848 TAX RECORD.

¹⁰⁷ See 1849 TAX RECORD.

– a seven-year-old boy, a five-year-old girl, and a three-year-old boy – who were not old enough to work (and hence were not taxed) but whom Milton was no doubt counting on to grow into productive hands in the near future.¹⁰⁸ Moreover, as with his land, Milton would continue to increase his stock of slaves over the ensuing decade. By the time the census takers arrived at his farm in 1860, he supervised a labor force of eighteen slaves and was taxed on twelve; six being under the age of eight.¹⁰⁹

As with his other holdings, the number of slaves James Milton owned placed him among the county's elite. There were others who owned more – even a lot more. In 1850, Benjamin White owned eighty-eight slaves, and Hosea George owned eighty-four, two of Union County's largest slaveholders at the time.¹¹⁰ But true to the statistics for the South as a whole, roughly fifty-five percent of all slaveholders in Arkansas owned fewer than five slaves in 1850, and twenty-five percent owned only one.¹¹¹ The size of the slaveholdings in Union County was slightly above the state's average during this year, due to the area's emphasis on large scale agriculture rather than subsistence farming.¹¹² But still, at twelve slaves, James Milton owned more human chattel in 1850 than about seventy percent of his slaveholding neighbors.¹¹³ By 1860, with eighteen slaves, he owned more than roughly eighty percent.¹¹⁴ Milton may never have acquired the elusive status of “planter” – the name modern historians give to slaveholders who owned twenty or more slaves – but he sure was close.¹¹⁵

As for Pleasant, we really know little about him; so little information is left in the records that we can only speculate. We do know, however, that by the time of the trial in 1852 Milton had owned Pleasant for at least five years and that he was considered an “old man” by his attorney.¹¹⁶ This probably means that

¹⁰⁸ See POPULATION SCHEDULES OF THE SEVENTH CENSUS OF THE UNITED STATES, roll 32, Slave Schedules (1850) [hereinafter 1850 SLAVE SCHEDULES].

¹⁰⁹ See POPULATION SCHEDULES OF THE EIGHTH CENSUS OF THE UNITED STATES, roll 54, Slave Schedules (1860) [hereinafter 1860 SLAVE SCHEDULES]; see also 1860 TAX RECORD.

¹¹⁰ Robert B. Walz, *Arkansas Slaveholdings and Slaveholders in 1850*, ARK. HIST. Q. 38, 59, 72 (1953) (Table 2).

¹¹¹ *Id.* at 39-40.

¹¹² For example, while the number of people owning less than five slaves in the state as a whole was 55.5 percent, in Union County it was 41.7 percent. Stated differently, 58.3 percent of slaveholders in Union County held five or more slaves, while only 44.5 percent of slaveholders in the state as a whole held this many. See *id.* at 39-40; *id.* at 47 (Table 1).

¹¹³ Roughly 68 percent of Union County slaveholders owned less than ten. *Id.* at 47 (Table 1).

¹¹⁴ There were 607 slaveholders in Union County in 1860. Of these, 89 (or 14.7%) owned one slave, 237 (or 39%) owned less than five, 374 (or 61.6%) owned less than ten, and 464 (or 76.4 %) owned less than fifteen. Stated differently, only 143 (or 23.6%) owned fifteen or more, and only 92 (or 15.2%) owned more than twenty slaves. See *id.*

¹¹⁵ See, e.g., KENNETH STAMPP, *THE PECULIAR INSTITUTION: SLAVERY IN THE ANTE-BELLUM SOUTH* 30 (1956) (implying that membership in planter class required twenty or more slaves); GENOVESE, *supra* note 25, at 7 (noting how modern historians have defined plantations to include units of twenty slaves or more).

¹¹⁶ See Transcript of Trial, *State v. Pleasant*, at 20 (affidavit of Thomas M. Wright, James Wordlaw, and Joseph Wordlaw) (stating that they had known Pleasant for “five years”); Letter from John Quillin to Judge Elbert H. English (Feb. 22, 1853) (calling Pleasant an “old man”).

Pleasant was the forty-six-year old man listed under James Milton's name in the 1850 slave schedules; the other male slaves were simply too young to be taken seriously as possibilities, at eight, seven, and three.¹¹⁷

Assuming Pleasant was this forty-six-year old man, it is also entirely possible that he was the same slave recorded in the 1842 tax record. If so, he probably traveled with the Milton family as it moved from Mississippi to Arkansas, and was no doubt one of Milton's most valuable investments at the time. He would have worked alongside Milton that first year, grubbing up the land and building the cabins, as Milton, with only one slave, would have been unable to enforce much division of labor.¹¹⁸ But even if Pleasant was not this first slave, Milton likely considered him an important part of his growing stock of human property. Like other slaveholders, Milton probably measured his success and his rank in society by counting his slaves, and a healthy male added an important source of both labor and reproduction. As Milton's slaveholdings increased, moreover, Pleasant may have taken on more of the daily responsibilities of running the farm, allowing Milton to gradually withdraw from the fields to devote more time to managerial functions.¹¹⁹

Regardless of when he acquired him, of course, Pleasant would have found slave life difficult. As an adult male, he probably spent most of his daylight hours in activities somehow related to farming, whether it was plowing, planting, hoeing, picking, or ginning. It would have been backbreaking work with little or no respite. As one son told his father, "[t]here is no lying by, no leisure, no long sleeping season" on a successful farm in the South.¹²⁰ Indeed, even on rainy days and during down time there were many tasks necessary to keep the farm running – fixing broken tools, splitting rails for fences, tending to the livestock, and repairing harnesses for the horses and mules – and Pleasant likely busied himself with all of them.¹²¹

At the end of each day, Pleasant would have retired to the slave quarters, a cluster of cabins just down the road from Milton's place. Pleasant's home, if typical, would have been built out of hewed logs, chinked up with grass and dirt to keep the wind and the rain out during the winter and left open to let the air circulate during the summer.¹²² It likely had one room, perhaps a window or two, a mud chimney, and maybe a plank floor.¹²³ Pleasant may have tried to add to the comfort of the home by building a few pieces of furniture – a few chairs, a table,

¹¹⁷ See 1850 SLAVE SCHEDULES.

¹¹⁸ See STAMPP, *supra* note 115, at 35 (noting how small slaveholders "could not afford merely to act as managers; and many of them were obliged to enter the fields with their bondsmen and drive a plow or wield a hoe").

¹¹⁹ See *id.* (stating that masters who owned six or more slaves tended to withdraw from the fields and concentrate on managerial functions).

¹²⁰ *Id.* at 45 (quoting Letter from Henry Watson, Jr., to his father (Feb. 24, 1843)).

¹²¹ See ORVILLE W. TAYLOR, NEGRO SLAVERY IN ARKANSAS 100 (Univ. of Ark. ed. 2000) (1958) (detailing work that slaves performed on Arkansas farms and plantations).

¹²² See RAWICK, *supra* note 59, v. 8, part 1, 317, 319 (William Brown) (describing home).

¹²³ See *id.* v. 8, part I, 246, 246 (Ellen Brass) (describing home); *id.* v. 8, part I, 68, 68 (Campbell Armstrong) (describing home); *id.* v. 8, part II, 50, 50 (Sallie Crane) (describing home).

and a bed – all of which would have been simply constructed, done by “punching four holes in a board and putting sticks in there for legs.”¹²⁴ And while we cannot say for certain, perhaps Pleasant was one of those from the county who was “especially adapted at leaning against the chimney wall” while the others rested from the day’s work.¹²⁵

Pleasant may also have been “married”; in the slave schedules there is a forty-year-old woman who could very well have been his mate.¹²⁶ If so, James Milton would have been following in step with many masters who encouraged their slaves to select a husband or wife, even if the relationship had no legal effect and could be violated or destroyed at any time.¹²⁷ Milton’s reasons for encouraging a monogamous relationship, if he was like other masters, may have involved some combination of the admirable and the self-interested. On the one hand, he may have had strongly held religious beliefs about marriage and sexual morality; but on the other (and more likely) hand, he probably recognized that “married” slaves were less likely to be rebellious or to run away than “single” ones.¹²⁸ But whatever the reason, Pleasant and his mate may have cared deeply for each other. Perhaps on their wedding day they even “jumped the broom,” a light moment in which the couple hopped over a broomstick to determine who would take the place as the unofficial head of the family.¹²⁹

Pleasant and his “wife” (if he had one) may also have had some children. From the slave schedules, we know that nine of the twelve slaves Milton owned in 1850 were under the age of twenty, and any one or combination of them could have been Pleasant’s.¹³⁰ But even if they were not his, their mere presence on the farm suggests a sense of community among James Milton’s slaves. Indeed, others have written about how the slave quarters “provided more than a place to eat and sleep”; it was here that slaves in important if limited ways developed their strength, their independence, and their sense of worth.¹³¹ Ira Berlin is assuredly right when he says that “slaveholders held most of the good cards in this meanest of contests;” but it is equally true, as Berlin notes, that the slaves “held cards of their own.”¹³² And within the quarters, and within their routine, they made a life for themselves.

Yet, in whatever they did, Arkansas slaves were well aware of the brutal nature of the regime. Whippings would have provided the most telling sign. We have no way of knowing for certain what type of master James Milton was, but if

¹²⁴ *Id.* v. 8, part I, 317, 320 (William Brown).

¹²⁵ CHESTER, *supra* note 62, at 17.

¹²⁶ See 1850 SLAVE SCHEDULES.

¹²⁷ See generally JOHN W. BLASSINGAME, *THE SLAVE COMMUNITY: PLANTATION LIFE IN THE ANTEBELLUM SOUTH* 149-91 (1979) (describing slave family).

¹²⁸ See *id.* at 151 (discussing reasons why masters would want their slaves to marry).

¹²⁹ See *id.* at 166-67 (describing ritual and significance of “jumping the broom”).

¹³⁰ The ages of the nine slaves, from youngest to oldest, were: 3, 5, 7, 8, 11, 12, 13, 17, and 17. See 1850 SLAVE SCHEDULES. Also, in addition to the 46-year-old male and the 40-year-old female, there was also a 28-year-old female. See *id.*

¹³¹ See GENOVESE, *supra* note 25, at 528.

¹³² BERLIN, *supra* note 39, at 2.

he was typical he would have viewed the lash as an effective means of slave control and resorted to it at least on occasion.¹³³ Indeed, the whip was the “emblem of the master’s authority,”¹³⁴ and virtually all masters used it at some point to discipline “unruly” slaves and to demand more production out of all of them. The former slave Tom Douglas, for example, recalled how those slaves perceived as acting “like [they] didn’t want to work” were tied to a tree or bush and whipped unmercifully, “until [they] bled.”¹³⁵ Some masters even derived a sadistic pleasure from the pain they inflicted, and more than a few whipped their slaves to death.¹³⁶

Importantly, the law largely backed the masters’ treatment of their slaves. As Judge Ruffin of the North Carolina Supreme Court infamously declared, “[t]he power of the master must be absolute, to render the submission of the slave perfect.”¹³⁷ In the predictable language of the slave codes, the Arkansas legislature gave to every master the right to “possession and control” of his human property,¹³⁸ and expressly supported his efforts to maintain discipline with laws to protect the larger community. The codes made it illegal for slaves to be away from their masters’ premises without a pass, and gave to every white person the right to demand proof of their permission or the slave would be brought before a justice of the peace and whipped.¹³⁹ The legislature also prohibited slaves from possessing guns or other weapons without express written consent of their master, and punished them for “unlawfully assembling” in groups for fear that they might be plotting something.¹⁴⁰ If any slave wandered onto the plantation of another without permission, the law gave to the owner or occupier the right to punish him with “stripes not exceeding twenty-five.”¹⁴¹ And slaves selling liquor, or trading in any commodities with whites or other slaves without consent of the master, faced a series of lashes as well.¹⁴² Further, for those acts considered criminal

¹³³ See GENOVESE, *supra* note 25, at 64 (“The typical master went to his whip often – much more often than he himself would usually have preferred.”). Evidently, there were some slaveholders who did not use the whip at all, or used it rarely. William Baltimore of Pine Bluff, Arkansas, for example, recalled how his master refused to call them “slaves” – he called them “servants” – and “didn’t want none of his niggers whipped ‘ceptin when there wasn’t no other way.” RAWICK, *supra* note 59, v. 8, part 1, 97, 97 (William Baltimore). Eugene Genovese credits accounts like Baltimore’s, but points out that masters like this were “atypical by a good deal.” GENOVESE, *supra* note 25, at 64.

¹³⁴ STAMPP, *supra* note 115, at 174.

¹³⁵ RAWICK, *supra* note 59, v. 8, part 2, 193, 193 (Tom Douglas).

¹³⁶ See, e.g., *Pyeatt v. Spencer*, 4 Ark. 563, 563-65 (1842) (detailing case where master staked his female slave to ground and whipped her, eventually bringing about her death).

¹³⁷ *State v. Mann*, 13 N.C. (2 Dev.) 263, 266 (1829) (refusing to impose criminal liability on a slave hirer for shooting his runaway slave).

¹³⁸ STATUTES OF ARKANSAS, chap. 153, art. V, § 64.

¹³⁹ *Id.* § 50.

¹⁴⁰ *Id.* §§ 52, 53.

¹⁴¹ *Id.* § 51.

¹⁴² *Id.* §§ 44, 62.

when engaged in by whites – murder, maiming, arson, rape, and so forth – the slaves often faced harsher penalties than whites, sometimes even death.¹⁴³

For Pleasant, these laws of slavery, abstract in principle, likely manifested themselves daily in concrete examples. Pleasant may have never heard of Nathan, a slave from nearby Hempstead County, but he likely could recount similar tales of what happened to him.¹⁴⁴ Nathan’s overseer, evidently after a day of drinking, approached Nathan as he was picking cotton and told him that he had “come for his shirt,” an apparent reference to a whipping.¹⁴⁵ Nathan refused to submit to the overseer’s demands, however, saying that “he had pulled off his shirt to the last overseer.”¹⁴⁶ In a show of force, and perhaps encouraged by the alcohol, the undersized overseer pulled out a gun and repeated that he “had come for his shirt, and intended to have it or hurt him.”¹⁴⁷ At that point, Nathan advanced with nothing in his hand other than a few bits of cotton.¹⁴⁸ Refusing to give ground, the overseer subsequently shot Nathan three times and killed him; and then, in a bizarre twist of events that makes sense only in the slave South, he sued the owner for lost wages when he was fired for doing so.¹⁴⁹ The jury found in his favor and the Arkansas Supreme Court affirmed, asserting that white people – masters, overseers, and even strangers – have the “absolute right” to “overcome by proper means” a slave’s rebellion against lawful authority.¹⁵⁰

Tales of this sort undoubtedly figured prominently in the minds of Pleasant and most other slaves. They all understood the power of master and had all felt the sting of the lash. They all knew or had heard of someone whose back was “considerably scarred and marked from being whipped,” like one of the slaves on James Smith’s farm.¹⁵¹ They all witnessed or had heard of slaves who had been mistreated, who were beaten, “knocked ... about,” and then put “on the block and sold.”¹⁵² Yet still they resisted, and still they fought back. They ran away, and talked back, and broke tools, and feigned illness, and even – like one

¹⁴³ Whites convicted of murder suffered either death or imprisonment, depending on whether the conviction was for first degree murder or second degree murder; slaves convicted of murder suffered death. *Cf. id.* chap. 51, part IV, art. I, § 8 *with id.* part XII, § 8. Whites convicted of maiming received a maximum sentence of seven years imprisonment; slaves convicted of maiming received a minimum of seven years. *Cf. id.* chap. 51, part IV, art. III, § 5 *with id.* part XII, § 10. Whites convicted of arson were imprisoned between two and ten years; slaves were to be punished with a minimum of one year, but there was no maximum. *Cf. id.* chap. 51, part V, art. I, § 6 *with id.* part XII, § 12. Both whites and blacks could be put to death for rape, but only blacks could be executed for attempted rape. *Cf. id.* chap. 51, part IV, art. IV, § 2 *with id.* § 9.

¹⁴⁴ *Brunson v. Martin*, 17 Ark. 270 (1856).

¹⁴⁵ *Id.* at 274.

¹⁴⁶ *Id.* at 274-75.

¹⁴⁷ *Id.* at 275. Nathan weighed about 200 pounds, “with bodily strength enough to crush the [overseer] down.” *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* The overseer shot Nathan three times, once in the groin, once in the hip, and once in the abdomen. *Id.* The latter proved fatal. *Id.*

¹⁵⁰ *Id.* at 273; *see also Austin v. State*, 14 Ark. 555, 567 (1854).

¹⁵¹ ARKANSAS GAZETTE, Sept. 10, 1852, at 3.

¹⁵² RAWICK, *supra* note 59, v. 8, part 1, 32, 33 (Lucretia Alexander).

slave from Arkansas County – threw their “left shoulder out of place” to save an hour’s work.¹⁵³

In doing so, moreover, slaves actively took part in shaping the laws that governed them. Whites may have insisted on the slave’s “entire subordination to the lawful authority of his master,”¹⁵⁴ and passed laws to that effect, but everyday on the back roads and the country farms slaves were challenging these assertions of power, and forcing whites to reevaluate and reassess their society. Often times the slaves’ conduct was admirable, other times it was not. But in either case, slaves were daily bringing into conflict the laws that governed them and the society that they lived in. White Southerners may have believed that slavery was the best of all social conditions, but when Mr. Jefferson Walls of Pulaski County and his overseer were both “stabbed and killed by a negro,” presumably Walls’ own slave, antebellum Arkansans had to rethink both slavery and slaves, and the laws and ideologies that ruled them both.¹⁵⁵ Thus, it was here – in the daily interactions of ordinary people – that the laws of slavery came to life. And it is here that we must consider Pleasant’s case.

II. BACKGROUND TO THE TRIAL

A. *Courts and Court Week*

By the time Pleasant came to trial in April 1852, local interest was undoubtedly high. Tried in the courthouse in El Dorado, Pleasant’s case would have brought together men and women from the entire community – rich and poor, slaveholders and non-slaveholders, townsfolk and yeoman farmers – and forced them to confront some of the major issues of the day. Indeed, Ariela Gross calls the county courthouse the “central political, cultural, and economic institution” of the antebellum South.¹⁵⁶ It was here that friends and neighbors from all walks of life gathered on a regular basis to talk about the mundane as well as the serious, to hash out disagreements and come to consensus. Stumbling into “an assemblage fit for a hanging,” the German traveler Frederick Gerstaecker colorfully recounts how even the remote towns of Arkansas “bustle[d]” during court week.¹⁵⁷ “Well it’s not quite a hanging, stranger,” replied the farmer when asked by Gerstaecker’s fictional character what all the fuss was about.¹⁵⁸ “But

¹⁵³ ARKANSAS GAZETTE, July 1, 1853, at 1.

¹⁵⁴ *Austin*, 14 Ark. at 567.

¹⁵⁵ ARKANSAS GAZETTE, Dec. 18, 1858, at 2.

¹⁵⁶ ARIELA J. GROSS, *DOUBLE CHARACTER: SLAVERY AND MASTERY IN THE ANTEBELLUM SOUTHERN COURTROOM* 24 (2000); *see also* BERTRAM WYATT-BROWN, *SOUTHERN HONOR: ETHICS & BEHAVIOR IN THE OLD SOUTH* 366 (1982) (recognizing that the “courthouse, more than the church, was the center for local ethical considerations”).

¹⁵⁷ FRIEDRICH GERSTAECKER, *IN THE ARKANSAS BACKWOODS: TALES AND SKETCHES* 31 (James William Miller ed. and trans. 1991).

¹⁵⁸ *Id.* In this story, Gerstaecker fictionalized his own experience with court week while he was traveling through Arkansas during the late 1830s and early 1840s. *Id.* at 30. The actual account is detailed in GERSTAECKER, *supra* note 57, at 229-31.

you're not far off. Court's in session.”¹⁵⁹ Regularly covered in the local newspapers, even in dull weeks the editors reported on the news of the court – “No cases of particular public interest have been tried”¹⁶⁰ – perhaps to assure those not in attendance that they had not missed anything.

Pleasant was tried in circuit court. Held for one or two weeks in every Southern community, circuit courts more often than not handled the more interesting cases and provided the real excitement.¹⁶¹ There were other courts in Arkansas – county courts, probate courts, and justices of the peace – but these generally dealt with routine county matters and petty disputes.¹⁶² In the circuit courts, however, the bigger cases were resolved, and the more egregious crimes were tried. It was in the circuit court, for example, where one might go to see two merchants haggle over a large deal gone bad, or a slave purchaser complain that the seller duped him into buying a sick or insolent slave.¹⁶³ It was here, too, where one might catch a glimpse of a criminal defendant, charged with something like murder or arson or some other serious crime.¹⁶⁴ Circuit courts also had appellate jurisdiction over judgments and orders of the probate courts and justices of the peace, so in any given week one might be able to listen to disappointed relations complain about being left out of a will or to hear someone protest that he was unjustly assessed a small fine.¹⁶⁵ And it was in the circuit court, also, that slaves charged with felonies received their day in court.¹⁶⁶

This was by no means the case in every Southern state. In Virginia, for example, slaves accused of crimes were tried in special slave courts, with justices of the peace quickly dispensing judgments with little attention to the niceties of courts of law.¹⁶⁷ The same was true in Louisiana and South Carolina throughout the antebellum period.¹⁶⁸ In Arkansas, however, the legislature saw fit to give slaves a number of procedural protections. The same rules of evidence that governed a white person accused of a crime, for example, governed the slave.¹⁶⁹ The one exception to this rule evidently was designed for his benefit: other slaves, while they could not testify for or against a white defendant, could testify when a

¹⁵⁹ GERSTAECKER, *supra* note 157, at 31.

¹⁶⁰ OUACHITA HERALD, April 7, 1859, at 2.

¹⁶¹ See GROSS, *supra* note 156, at 24 (describing circuit courts).

¹⁶² STATUTES OF ARKANSAS, chap. 49, § 11 (county courts); *id.* chap. 48, § 1 (probate courts); *id.* chap. 95, part II, § 2 (justices of the peace).

¹⁶³ See *id.* chap. 47, § 10 (conferring original jurisdiction over matters not subject to jurisdiction of lesser courts, including civil disputes involving \$100 or more).

¹⁶⁴ See *id.* (conferring original jurisdiction over crimes involving more than \$100 penalty).

¹⁶⁵ See *id.*

¹⁶⁶ See *id.* chap. 51, part XII, § 6 (providing, in relevant part, that “[i]n all cases of felony, the slave committing the same shall be tried in the same court ... as in cases of white persons committing the like offence”).

¹⁶⁷ STAMPP, *supra* note 115, at 226; see also *id.* at 224 (noting that slave courts were “usually less concerned about the formalities of traditional English justice than about speedy verdicts and certain punishments”).

¹⁶⁸ *Id.*

¹⁶⁹ STATUTES OF ARKANSAS, chap. 51, part XII, § 6.

slave was on trial.¹⁷⁰ Slaves accused of crimes were also guaranteed a jury trial, and, if they did not have one already, a lawyer would be appointed for their defense.¹⁷¹ And in any case in which he was found guilty, a slave could appeal his conviction to the Arkansas Supreme Court.¹⁷²

Union County fell within the Sixth Judicial Circuit, and court was held there for two weeks in April and two more in October.¹⁷³ The presiding judge at the time of Pleasant's trial was Shelton Watson.¹⁷⁴ Originally from Virginia, Judge Watson was one of the early settlers of El Dorado.¹⁷⁵ A position of immense honor, being a circuit judge was also a difficult job. Judge Watson would have had to "ride circuit," traveling to the various towns that fell within his jurisdiction with only a few law books in his hands and a change of clothes in his saddlebags.¹⁷⁶ At well near sixty years old, this no doubt took a toll on the Judge, and perhaps for this reason he remained on the bench only two years.¹⁷⁷ At the time of Pleasant's trial, Judge Watson was not married and made his home with his brother George and his family.¹⁷⁸ The family farm was a large one – some 2600 acres – on the outskirts of town.¹⁷⁹ As with James Milton, it is impossible to say for certain how Judge Watson felt about slavery. But we do know that his brother was one of the larger slaveholders in the county, supervising a slave labor force of thirty-one slaves in 1850.¹⁸⁰ Thus, we can probably conclude that the Judge, together with his brother, was one of the many men who saw slavery as the best of all conditions. At the very least, Judge Watson evidently had no qualms about the institution, as he appears to have kept a slave for his own personal use – probably a body servant – as he attended to his duties on the court.¹⁸¹

¹⁷⁰ *Id.*

¹⁷¹ *Id.* § 1. The right to a jury and to have counsel appointed for their defense was also guaranteed by the state constitution. ARK. CONST. § 25.

¹⁷² STATUTES OF ARKANSAS, chap. 46, § 2.

¹⁷³ *See Terms of the Circuit Courts*, ARKANSAS GAZETTE, Jan. 9, 1852, at 1 (indicating that the 6th Circuit commenced in Union County in 1852 on the 3d Monday after the 4th Monday in March, and the 3d Monday after the 4th Monday in September).

¹⁷⁴ *See* Transcript of Trial, *State v. Pleasant*, at 1 (identifying Shelton Watson as judge).

¹⁷⁵ *See* 1850 CENSUS RECORD (identifying Watson's birthplace); *see also* HEMPSTEAD, *supra* note 61, at 951 (listing Shelton Watson as one of the original settlers of town).

¹⁷⁶ In addition to Union, the counties of Sevier, Pike, Polk, Montgomery, Clark, Ouachita, Lafayette, and Hempstead fell within the 6th Circuit. *See Terms of the Circuit Courts*, ARKANSAS GAZETTE, Jan. 9, 1852, at 1.

¹⁷⁷ Judge Watson was 58 at the time of the 1850 census, making him about 60 at the time of the trial. *See* 1850 CENSUS RECORD. The names of the circuit court judges are listed at the beginning of each volume of the Arkansas Supreme Court Reports; Watson was the circuit court judge from 1852 until 1854. *See* 13 Ark. iii (1852-53); 14 Ark. iii (1853-54). Judge Watson died sometime in 1857. *See* Union County Will Records, "Book E," at 123 (1857).

¹⁷⁸ *See* 1850 CENSUS RECORD (listing Shelton under household of George Watson).

¹⁷⁹ For the amount of land owned by Shelton and his brother, *see* 1851 TAX RECORD (taxing Shelton on 160 acres and George on 2491 acres). The farm was in El Dorado Township. *See* 1850 CENSUS RECORD.

¹⁸⁰ *See* 1850 SLAVE SCHEDULES.

¹⁸¹ *See* 1851 TAX RECORD (taxing Shelton Watson on one slave).

Circuit court commenced that year on Monday, April 12, 1852.¹⁸² On Thursday, Pleasant made his first appearance in the court and, after listening to the charges against him, entered a plea of not guilty.¹⁸³ The next afternoon, twelve men from the community were sworn in as jurors.¹⁸⁴ Among the more prominent ones were John Beason and Hengust Norsworthy. Beason, at forty-one or forty-two, was one of the oldest members of the jury.¹⁸⁵ Married and a father, he was also the owner of twenty-four slaves and presided over an estate worth \$3000 in 1850.¹⁸⁶ Perhaps it was this combination – age and social standing – that earned him the respect of his fellow jurors, for he was elected foreman.¹⁸⁷ Hengust Norsworthy was another juror of substantial means. In his early-thirties and married, Norsworthy owned thirty-three slaves at the time of the trial, and his land was worth \$3500.¹⁸⁸ And considering Hengust’s three older brothers, Ehud, Woodrough, and Nestor, owned an additional sixty-four slaves between them,¹⁸⁹ the Norsworthys were probably among that select group of individuals who – “by their fine clothes, swift carriages, and sweeping gestures” – set the tone of the local culture.¹⁹⁰

A third member of the jury, William Davis, presents a bit of a puzzle. There is a William Davis from El Dorado Township who seems to match the description offered by Fay Hempstead, an early biographer of Arkansas history, and it is possible that this was the William Davis empanelled to hear Pleasant’s case. This William Davis, known as “Buck” Davis, was a lawyer, farmer, and “well-to-do gentleman,” who, along with Judge Watson, was one of the original settlers of El Dorado.¹⁹¹ A family man, Buck Davis was also a slaveholder, counting ten slaves as part of his household in 1850 and twenty-one in 1860.¹⁹²

¹⁸² See Union County Circuit Court Records, “Book E” (April 12, 1852) (calling court to order).

¹⁸³ *Id.* (April 15, 1852).

¹⁸⁴ See *id.* (April 16, 1852) (listing jurors as George S. Green, John R. Beason, Reason Wooley, William Reynolds, David T. Jones, James Tiffin, William Davis, Jeremiah S. Avera, Barton B. Scroggin, Hengust Norsworthy, Archibald C. Watts, and David S. Hagler); see also Transcript of Trial, *State v. Pleasant*, at 3-4 (same).

¹⁸⁵ See 1850 CENSUS RECORD (listing Beason’s age on October 9, 1850, as 40, meaning that in April 1852 he was either 41 or 42).

¹⁸⁶ See 1850 CENSUS RECORD; 1850 SLAVE SCHEDULES.

¹⁸⁷ See Transcript of Trial, *State v. Pleasant*, at 4.

¹⁸⁸ See 1850 CENSUS RECORD; 1850 SLAVE SCHEDULES.

¹⁸⁹ Ehud owned 24 slaves; Woodrough owned 16; and Nestor owned 24. See 1850 SLAVE SCHEDULES.

¹⁹⁰ BERLIN, *supra* note 39, at 97-98; see also JOEL WILLIAMSON, NEW PEOPLE: MISCEGENATION AND MULATTOES IN THE UNITED STATES xiii (1980) (recognizing importance of slaveholding elite in defining Southern culture).

¹⁹¹ See HEMPSTEAD, *supra* note 61, at 951 (describing William “Buck” Davis in his history of Union County).

¹⁹² See 1850 CENSUS RECORD (listing William Davis as a resident of El Dorado Township and noting names and ages of members of his household); see also 1850 SLAVE SCHEDULES (listing William Davis of El Dorado as the owner of 10 slaves). By 1860, William Davis had moved to Van Buren Township. See 1860 CENSUS RECORD (listing a William Davis and a household in Van Buren Township that matches the William Davis from El Dorado); see also 1860 SLAVE SCHEDULES (listing William Davis of Van Buren Township as the owner of 21 slaves).

But the William Davis who would decide Pleasant's fate may also have been another man, for there was a second William Davis residing in Harrison Township. If this was the William Davis that was summoned for jury duty on Friday, April 16, El Dorado must have been buzzing with excitement. This William Davis was one of the wealthiest men in the area, overseeing a plantation worth \$7000 in 1850 and tended to by seventy-seven slaves, making him the third largest slaveholder in the county.¹⁹³ This William Davis may also have been the man commissioned to build the courthouse square a few years before Pleasant's case, and its elegant yet sturdy design no doubt stood as a testament to his standing in the community.¹⁹⁴

Of the remaining nine jurors, six more were slaveholders at the time of the trial, two were not (though both would become so), and one is not traceable in the records. Among the slaveholders in 1852 were David Jones, Archibald Watts, Jeremiah Avera, George Green, Reason Wooley, and David Hagler. With eleven slaves, Jones was the closest to James Milton in terms of property owned; the remaining five being far more typical of Southern slaveholders in general, owing five or less.¹⁹⁵ Two members of the jury – James Tiffin and Barton Scroggins – did not own any slaves when summoned for duty. Both, however, would later move into the slaveholding ranks; by 1860, Tiffin owned one slave and Scroggins headed a household that counted fifteen slaves as members.¹⁹⁶ Of this group, only Jones, Green, and Tiffin appear to have been married at the time of the trial, though Avera, Hagler, and Scroggins would become so by the end of the decade.¹⁹⁷ Hagler was also the youngest of the group, at twenty-four or twenty-

¹⁹³ See 1850 CENSUS RECORD (listing vital statistics of William Davis from Harrison Township, including value of his estate); see also 1850 SLAVE SCHEDULES (listing number of slaves). Of the slaveholders in Union County, only Benjamin White (88) and Hosea George (84) owned more slaves than Davis. See Walz, *supra* note 110, at 56, 59, 72 (Table 2).

¹⁹⁴ See Union County County Court Records, "Book D," at 31 (Feb. 2, 1852) (mentioning William Davis as building contractor for courthouse).

¹⁹⁵ David Jones, Archibald Watts, Jeremiah Avera, and George Green all appear in the 1850 Slave Schedules as the owner of slaves. See 1850 SLAVE SCHEDULES (indicating that Jones owned 11, "A.C. Watts" owned 5, Avera owned 4, and Green owned 3). All but Avera also show up in the 1851 tax record and were taxed on the appropriate number of slaves. See 1851 TAX RECORD (taxing Jones on 6 slaves between the ages of 8 and 60, Watts on 3, and Green on 3). Reason Wooley does not appear in the 1850 Census for Union County or the 1850 Slave Schedules, but he does appear in the 1851 tax records. See 1851 TAX RECORD (taxing Wooley on 5 slaves). Hence, he evidently moved to Union County sometime in 1851 and brought his slaves with him. David Hagler shows up in the 1850 Census but not in the Slave Schedules. Sometime in 1851, however, he evidently had purchased a slave, because he was taxed on one slave in that year. See 1851 TAX RECORD.

¹⁹⁶ See 1860 SLAVE SCHEDULES (listing James Tiffin as owner of 1 slave and "E.A. Scroggins" as owner of 15). Barton married Emaly A. Falkner in 1855.

¹⁹⁷ This conclusion is based on the ages, order, and sex of the members of each person's household. See 1850 CENSUS RECORD (suggesting that David Jones, 35, was married to Nancy, 25; George Green, 34, was married to Mary, 32; James Tiffin, 29, was married to Martha, 24); see also 1860 CENSUS RECORD (suggesting that, in the interim, Jeremiah Avera, 40, had married Mary, 21). A secondary source, drafted by a member of the Hagler family, also indicates that David married Sallie Dennis on March 21, 1857. John M. Hagler, *Hagler Family, in THE STORY*

five, while the rest ranged in ages from their late twenties to their mid-forties.¹⁹⁸ Only William Reynolds, the twelfth juror, possessed too common a name to say with any certainty who he was.

Thus, the men empanelled on April 16, 1852, to hear the case against Pleasant represented a fair cross section of the community. All but three made their living from the soil – in 1850 Archibald Watts was a steamboatsman, David Hagler was a grocer, and Barton Scroggins was a schoolteacher – and those who did ranged from wealthy planters to small farmers.¹⁹⁹ Nine of the identifiable jurors were slaveholders, though within the decade two more would count themselves members of this privileged group. Half of the jurors were married at the time of the trial, and all had emigrated to Arkansas from one of the older states in the South.²⁰⁰ Though none currently lived in Van Buren Township, the home of James Milton, it is likely that at least some of the twelve jurors were either acquainted with him or had heard of Pleasant's case.

B. *Slaves and the Law*

It often strikes the modern observer as odd to learn that slaves accused of crimes received trials, let alone procedural protections, such as lawyers and juries. In this regard, at least on its face, the legal treatment of slaves stands in marked contrast to protections afforded blacks in the late nineteenth and early twentieth centuries, when it was not uncommon to have blacks summarily executed without a trial or, if a trial was had, without any pretense of fairness. When Frank Moore of Arkansas was tried for the murder of a white man in 1919, for example, the courtroom was “thronged with an adverse crowd that threatened the most dangerous consequences to anyone interfering with the desired result.”²⁰¹ The explosion in the number of lynchings – some 700 between 1889 and 1893 alone –

OF MONTAGUE COUNTY, TEXAS: ITS PAST AND PRESENT 489 (Melvin E. Fenoglio ed. 1989). Barton Scroggins also got married in 1855. *See supra* note 196 (referencing marriage).

¹⁹⁸ In 1850, the known ages of the jurors were as follows: David Hagler was 23; James Tiffin was 29; Jeremiah Avera was 30; Barton Scroggins was 30; Hengust Norsworthy was 31; George Green was 34; David Jones was 35; John Beason was 40; Archibald Watts was 45. *See* 1850 CENSUS RECORD. Reason Wooley is harder to track in the records; but it is likely – based on a listing for an “R.H. Wooley” in the 1860 census – that he was about 32 at the time of the trial. *See* 1860 CENSUS RECORD (listing R.H. Wooley’s age as 39 in 1860). Depending on which William Davis was on the jury, he was either 41 or 45. *See* 1850 CENSUS RECORD (identifying William Davis from El Dorado as 41, and William Davis from Harrison Township as 45).

¹⁹⁹ For the occupations of each member of the jury, *see* 1850 CENSUS RECORD (indicating that, aside from Watts, Hagler, and Scroggins, all were either farmers or planters). There does not appear to be any meaningful distinction between the designation “farmer” versus “planter” in the census. *See* Walz, *supra* note 110, at 49.

²⁰⁰ Four of the jurors were from the Upper South: James Tiffin was from Virginia; Hengust Norsworthy and David Jones were from North Carolina; and John Beason was from Delaware. *See* 1850 CENSUS RECORD. Six were from the Lower South: George Green was from South Carolina; Jeremiah Avera, Barton Scroggins, Archibald Watts, and William Davis (both) were from Georgia; and David Hagler was from Alabama. *See id.* If Reason Wooley was the same “R.H. Wooley” from the 1860 census, then he was from Alabama. *See* 1860 CENSUS RECORD.

²⁰¹ *See Moore v. Dempsey*, 261 U.S. 86, 87-89 (1923).

provides an even more sobering reminder of the contempt that many Southern whites at all levels had for the rule of law in the decades following the Civil War.²⁰²

The South, of course, historically has been a violent society.²⁰³ Long before the first shots were fired on Fort Sumter, Southerners had been resolving conflicts outside the courts. Indeed, Bertram Wyatt-Brown and Edward Ayers are two scholars who have emphasized the tendency of whites throughout the antebellum period to settle slights and assaults with a pistol rather than a court petition.²⁰⁴ Yet, even within this violent society, antebellum Southerners showed a respect for the courts. “We live under a legal government, and are in favor of the supreme reign of the law,” ran one editorial in the *Arkansas Gazette*.²⁰⁵ Fredrick Law Olmsted agreed; in his travels through the South he found it “really wonderful that Law has so much power, and its deliberate movements and provisions for justice to accused parties are so much respected.”²⁰⁶ Even Ayers admits, and as this author can attest, “Anyone who has ever looked into the huge dusty volumes of court records in rural Southern courthouses can only be struck at how much litigation Southerners waged against each other over rights to property. Three or four time-consuming and expensive civil cases are recorded there for every criminal case, which are plentiful enough in themselves.”²⁰⁷

Notably, the courts also played an important role in governing the conduct of slaves. To be sure, many masters handled a number of petty disputes and internal matters involving their slaves with a whip or a brand or some other means of punishment.²⁰⁸ And certainly, some slaves (as well as some whites) were lynched.²⁰⁹ But for many crimes, particularly those taking place off the plantation, slaves during the antebellum period were much more likely to be brought before a judge or a jury and tried according to established rules of law than punished by some extralegal means.²¹⁰ In fact, upstanding members of the

²⁰² See EDWARD L. AYERS, *VENGEANCE AND JUSTICE: CRIME AND PUNISHMENT IN THE 19TH-CENTURY AMERICAN SOUTH* 238 (1984).

²⁰³ See WYATT-BROWN, *supra* note 156, at 366 (“Historians of Southern mores are agreed that violence as an aspect of Southern life clearly distinguished the region from the rest of the county.”); see also AYERS, *supra* note 202, at 9 (noting long history of violence in the South).

²⁰⁴ See AYERS, *supra* note 202, at 9-33; WYATT-BROWN, *supra* note 156, at 350-61.

²⁰⁵ *Mob and Murder in Saline County*, *ARKANSAS GAZETTE*, Oct. 27, 1854, at 2.

²⁰⁶ AYERS, *supra* note 202, at 32 (quoting *THE PAPERS OF FREDERICK LAW OLMSTED*, v.2, 155-56 (Charles E. Beveridge & Charles Capen McLaughlin eds. 1981)).

²⁰⁷ AYERS, *supra* note 202, at 32.

²⁰⁸ See STAMPP, *supra* note 115, at 224 (acknowledging that “probably most minor offenses, such as petit larceny, were disposed of without resort to the courts”).

²⁰⁹ See WILLIAMSON, *supra* note 18, at 183 (“During slavery, Negroes had been lynched, especially after about 1830. But, even then, it was not at all common, and lynching was by no means reserved for blacks.”).

²¹⁰ See AYERS, *supra* note 202, at 134 (discussing trials of slaves, and noting that the state, not the master, was the party prosecuting and punishing slaves who committed crimes off the plantation); Michael S. Hindus, *Black Justice Under White Law: Criminal Prosecutions of Blacks in Antebellum South Carolina*, 63 *J. OF AM. HIST.* 575, 582 (1976) (suggesting that “plantation justice” was limited to settling “thefts on the plantation, fights between slaves of the same owner, and even many (but not all) altercations between an owner and his slave,” while other crimes were

community often spoke out against the latter practices. Some three years after Sophia Fulmer first leveled her accusation against Pleasant, a mob broke into a jail in Saline County, Arkansas, and lynched a slave accused of the murder and attempted murder of two white men.²¹¹ In a blistering editorial, the *Arkansas Gazette* lashed out at those who “hung the unfortunate negro,” and demanded that the grand jury “indict the murderers, and let them be put on their trial for the same.”²¹² To the editors, mob violence threatened the very “laws on which we, at present rely, for the protection of our property, our reputation, and our lives,” and they refused to admit, regardless of the slave’s guilt or innocence, “that might is right.”²¹³ Hence they closed: “The laws have been violated, and public morals outraged, and we have, as we think every good citizen ought to do, arrayed ourself [sic] on the side of the law.”²¹⁴

Not all scholars are convinced that the legal system provided any real sense of justice to slaves accused of crimes.²¹⁵ Kenneth Stampp, for one, forcefully argues that “[w]hen tension was great and the passions of white men were running high, a slave found it ... difficult to get a fair trial before a jury in one of the superior courts”²¹⁶ But we need not belabor the point here; it seems clear enough that, while a slave accused of a crime probably never received the type of justice most whites could expect, the procedural protections and right to appeal afforded to slaves served to check at least some of the hasty judgments and extralegal violence blacks came to expect in the decades following the Civil War. Indeed, just looking at the six appeals by slaves accused of capital offenses in

handled by courts); STAMPP, *supra* note 115, at 224 (noting how, aside from such crimes as petit larceny, many slaves “who violated the law were given public trials”).

²¹¹ See *Mob and Murder in Saline County*, ARKANSAS GAZETTE, Oct. 27, 1854, at 2 (describing events).

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.* This evidently was a position of long-standing. In an editorial written twenty years earlier after a slave was lynched, the editors expressed similar outrage. See ARKANSAS GAZETTE, Nov. 29, 1836, at 2 (calling lynching a “disgraceful and barbarous outrage”). Interestingly, like in the incident in Saline County, the slave’s apparent guilt only made the lynching more egregious. See *id.* (“The circumstances of this criminal outrage are aggravated by the fact, that the evidence against the negro was of such a character, that there was no chance of his escape from a just expiation of his crime by law – his condemnation was next to certain.”).

²¹⁵ A.E. Keir Nash, in a series of articles in the early 1970s, argued that the procedural protections afforded slaves were real, and that antebellum judges attempted to ensure fair trials for slaves. See A.E. Keir Nash, *Fairness and Formalism in the Trials of Blacks in the State Supreme Courts of the Old South*, 56 VA. L. REV. 64 (1970); A.E. Keir Nash, *A More Equitable Past? Southern Supreme Courts and the Protection of the Antebellum Negro*, 48 N.C. L. REV. 197 (1970); A.E. Keir Nash, *The Texas Supreme Court and the Trial Rights of Blacks, 1845-1860*, 58 J. OF AM. HIST. 622 (1971). Others agree, at least to some extent. See, e.g., AYERS, *supra* note 202, at 134-37; Daniel J. Flanigan, *Criminal Procedure in Slave Trials in the Antebellum South*, 40 J. OF SO. HIST. 537, 538 (1974); GENOVESE, *supra* note 25, at 31-37; MORRIS, *supra* note 10, at 209-48; Sommerville, *supra* note 25, at 483. Others do not. See, e.g., Hindus, *supra* note 210, at 580; Judith Kelleher Schafer, *The Long Arm of the Law: Slave Criminals and the Supreme Court in Antebellum Louisiana*, 60 TUL. L. REV. 1247, 1253 (1986); PHILIP J. SCHWARZ, *TWICE CONDEMNED: SLAVES AND THE CRIMINAL LAWS OF VIRGINIA, 1705-1865*, 23 (1988).

²¹⁶ STAMPP, *supra* note 115, at 226.

Arkansas, we find that five were reversed.²¹⁷ Of the three non-capital offenses that reached the high court, moreover, all of them were reversed.²¹⁸ And while we must be careful not to read too much into such a small number of appellate cases, the fact that the court threw out eight of the nine convictions does suggest that slaves received some protections rather than none at all.

It is of course tempting to dismiss these results, as some have done, as self-conscious efforts by the judiciary to protect the master's property interest in his slave.²¹⁹ To be sure, the master's financial interest was wrapped up in the trial of his slave, and judges – most of whom were slaveholders themselves – knew that an adverse judgment could be costly even in those jurisdictions that allowed for some compensation out of the public trust.²²⁰ But to reduce the law of slavery to narrow economic terms seems inadequate in light of the complexities of the Southern mind and the distinctiveness of the Southern way of life. Indeed, as detailed more fully in the next section, the antebellum South was a society governed by more than just the marketplace; it was instead a society in which honor and character ruled paramount, in which a man's reputation in the community provided his self-worth. Regardless of what motivated the judges who served on the state supreme courts, in other words, James Milton had more at stake in Pleasant's trial than just his property interest; at issue was his own reputation as a master and a man.

C. *Honor and Slavery*

1. In General

²¹⁷ The five cases in which the slave's conviction was reversed were *Pleasant v. State*, 15 Ark. 624 (1855) (attempted rape); *Austin v. State*, 14 Ark. 555 (1854) (murder); *Pleasant v. State*, 13 Ark. 360 (1853) (attempted rape); *Charles v. State*, 11 Ark. 389 (1850) (attempted rape); *Sullivant v. State*, 8 Ark. 400 (1848) (attempted rape). The one case in which the slave's conviction was affirmed was *Dennis v. State*, 5 Ark. 230 (1843) (rape).

²¹⁸ See *Mary v. State*, 24 Ark. 44 (1862) (arson); *Bone v. State*, 18 Ark. 109 (1856) (assault and battery); *Sarah v. State*, 18 Ark. 114 (1856) (assault and battery).

²¹⁹ For arguments aligning the increased protections afforded slaves during the antebellum period with the property interests of the master, see especially ANDREW FEDE, *PEOPLE WITHOUT RIGHTS: AN INTERPRETATION OF THE FUNDAMENTALS OF THE LAW OF SLAVERY IN THE U.S.* SOUTH 159-77, 181-97 (1992); A. Leon Higginbotham & Barbara K. Kopytoff, *Property First, Humanity Second: The Recognition of the Slave's Human Nature in Virginia Civil Law* 50 OHIO ST. L.J. 511, 512 (1989).

²²⁰ In Arkansas, masters were not entitled to compensation. One citizen urged a change in the law. See ARKANSAS GAZETTE, July 14, 1854, at 2 ("In order to punish negroes, who are guilty of great crimes, and prevent their masters from running them off before they are convicted, it is necessary to pass a law to pay the master one-half or two thirds of the value of such negroes as are condemned and executed. This is done in most of the States by a tax on slaves, which all slaveholders are ready and willing to pay.").

Historians have long recognized that the slave South was a culture governed by a code or ethic of honor.²²¹ In fact, the code of honor helps explain many of the unique things about the South, from its penchant for duels and nose-pulling to the interest of many of its members in giving gifts and obtaining political office.²²² Under this code, a man had exactly as much worth as others conferred upon him.²²³ Honor, in other words, was based upon reputation, and at its “heart” was “the evaluation of the public.”²²⁴ In this sense, honor stood in marked contrast to the inward-looking and restrained ideals of the Puritans, who, along with Southern outsiders and European travelers, often looked upon the South’s rituals with a mixture of contempt and puzzlement.²²⁵ Southerners are “eternally wrangling,” Hinton Rowan Helper grumbled in 1857, “[a]bout certain silly abstractions that no practical business man ever allows to occupy his time or attention.”²²⁶ Yet it was these “silly abstractions” – hierarchy, entitlement, valor, and family – that mattered most to a Southern man and required his most vigorous response.

Bertram Wyatt-Brown, one of the premier scholars on Southern honor, explains that honor in the antebellum South consisted of more than just an “inner conviction of self-worth;” it required, in addition, the conscious placement of that self-assessment before the public and its confirmation.²²⁷ A man of honor, in other words, valued appearances, and hence one of his “great[est] fears” was to be publicly shamed or dishonored.²²⁸ This is why Taylor Polk of Arkansas responded with such a defiant flourish when some locals accused him of being a thief and a criminal. They had insulted his character, and as an honorable man he could not let the charge go answered. As such, in a response consistent with the code of honor, Polk “came out and told the company that he had lived in their county twenty-five years, and he defied any one of them to say that he had done

²²¹ The starting point for any discussion on Southern honor is Bertram Wyatt-Brown’s book of the same name. As he puts it, “Above all else, white Southerners adhered to a moral code that may be summarized as the rule of honor.” WYATT-BROWN, *supra* note 156, at 3.

²²² On the role of nose-pulling, duels, gift-giving, politics, and many more aspects of Southern honor, see the aptly titled, KENNETH S. GREENBERG, *HONOR & SLAVERY: LIES, DUELS, NOSES, MASKS, DRESSING AS A WOMAN, GIFTS, STRANGERS, HUMANITARIANISM, DEATH, SLAVE REBELLIONS, THE PROSLAVERY ARGUMENT, BASEBALL, HUNTING, AND GAMBLING IN THE OLD SOUTH* (1996).

²²³ See AYERS, *supra* note 202, at 13 (describing “dictates of honor”).

²²⁴ WYATT-BROWN, *supra* note 156, at 14.

²²⁵ Edward Ayers describes the differences between the North and South this way: “Where honor celebrated display, the ideal puritan called for restraint. Where honor demanded wealth as a means to command man’s respect, the ideal Puritan valued wealth only as evidence of God’s grace. Where honor needed the respect of others, the ideal Puritan spurned the opinions of men. Where honor existed in the constant assertion of self, the ideal Puritan gloried in the abnegation of self. Where honor looked outward, the Puritans looked inward.” AYERS, *supra* note 202, at 23.

²²⁶ HINTON ROWAN HELPER, *THE IMPENDING CRISIS: HOW TO MEET IT* (1857), *reprinted in ANTEBELLUM: WRITINGS OF GEORGE FITZHUGH AND HINTON ROWAN HELPER ON SLAVERY* 157, 210 (Harvey Wish ed., 1960).

²²⁷ WYATT-BROWN, *supra* note 156, at 14.

²²⁸ GROSS, *supra* note 156, at 47; *see also* AYERS, *supra* note 202, at 13 (“A coward tolerated insult, a liar attacked honor unfairly. To call a Southern man either one was to invite attack.”).

anything wrong, and, baring his breast to them, he told them if they wished to take his life, to ‘shoot away.’”²²⁹

The code of honor is often cited to explain many of the characteristics of the antebellum South, including the many tavern brawls, the excessive drinking, the love of gambling, and the frequent carousing. But the duel perhaps best represents its essential tenets. Highly ritualized and structured, the duel offered a man the opportunity to prove his honor in a manner that was dignified and dispassionate, to demonstrate that he did not fear death and would calmly face it. With referees to assure the fairness of the fight, “seconds” to stand in if called upon, and witnesses to report back on the solemnity of the occasion, duels were not about killing an enemy.²³⁰ They were instead about proving worth; they allowed a man to demonstrate in dramatic fashion that he would rather be killed than lead a life without honor.²³¹ Judge Andrew Scott of Arkansas was one of many men who challenged his opponent to a duel after a personal slight. Preferring “death itself, to a life in disgrace,” Scott traveled to the dueling grounds and shot his opponent dead.²³² In doing so, Scott avenged his honor in a method accepted by Southern society; a young admirer would later call him “the most chivalrous and purest-minded man I think I ever knew.”²³³

It is of course true that the South was not the only society in which honor had meaning.²³⁴ But the South, with its emphasis on hierarchy and deference, the productive nature of the household, and its highly localized politics, created an atmosphere in which the code of honor was allowed to flourish.²³⁵ Importantly, some of these same factors contributed to the institution of the slavery, and the two – honor and slavery – ultimately became inexorably linked and dependent upon one another.²³⁶ Slavery, like honor, requires the weak to submit to the powerful, the slave to submit to the master. It therefore goes without saying that a slave did not and could not have honor in the white man’s view, and the master constantly reminded him of this fact.²³⁷ Every time the master displayed his power, every time he unleashed the lash, or threatened a sale, or raped an enslaved sister, mother, daughter, or wife, the master reiterated his superiority over his slave and, in the process, dishonored his property.²³⁸

²²⁹ ARKANSAS GAZETTE, Apr. 12, 1850, at 2.

²³⁰ See WYATT-BROWN, *supra* note 156, at 351-52 (describing rituals of the duel).

²³¹ See GREENBERG, *supra* note 222, at 74 (“The central purpose of a duel was not to kill, but to be threatened with death.”).

²³² See BOLTON, *supra* note 31, at 34 (describing events surrounding the duel).

²³³ See *id.*

²³⁴ See AYERS, *supra* note 202, at 26 (noting importance of honor in other cultures and other times).

²³⁵ See *id.* at 26 (explaining that the code of honor “thrives only in certain kinds of societies” – including the antebellum South – “ones that are economically undiversified, localized, explicitly hierarchical”).

²³⁶ See *id.* at 26-27 (noting link between honor and slavery).

²³⁷ See *id.* at 26 (stating that “slavery by its very nature dishonored all members of one class and bestowed honor on another”).

²³⁸ See JAMES OAKES, *SLAVERY AND FREEDOM: AN INTERPRETATION OF THE OLD SOUTH* 14-24 (1990) (discussing rituals of honor and dishonor inherent in master slave relationship); see also

But the master also exercised his honor in ways that did not victimize his slave, at least not directly. Kenneth Greenberg, who has portrayed Southern honor with creativity and skill, has pointed to the giving of gifts as one of the distinguishing marks of an honorable man.²³⁹ Central to Greenberg's argument is that gifts imply generosity; they flow, generally, in one direction, and are marked by the ability (or inability) to give them. And just as an honorable man gave others gifts, a master gave his slave "gifts": he "gave" him food, he "gave" him shelter, he "gave" him clothing, he even "gave" him the gift of freedom on occasion.²⁴⁰ Under the laws of slavery, of course, slaves had no legal entitlement to any of these so-called gifts, beyond those designed to sustain the barest of subsistence.²⁴¹ Thus, masters who "gave" more than their slaves could legally demand could congratulate themselves on their own generosity and bask in their honorable conduct.²⁴² Writing after the War, Samuel Chester of Union County insisted that he had "no apology for the institution of slavery," fondly remembering how the slaves in his father's household were "housed in the same kind of one room log cabin that the boys of the family . . . were housed in," were "clothed in the manner required for their comfort and health," and were "fed abundantly from the same vegetable garden and the same smokehouse and storeroom that supplied the family table."²⁴³ These "excesses" were gifts – neither bargained for nor given as matter of right – and were a distinguishing mark of an honorable master and a man.

2. Honor, Family, and Proslavery Thought

In light of the importance of honor in the antebellum South it is surprising how few legal historians have followed it into the courtroom.²⁴⁴ But the argument here is that this same code of honor that governed men's daily interactions with each other would have played an important role in causing a man like James Milton to defend his slave against a criminal accusation. Honor, of course,

GROSS, *supra* note 156, at 50 ("The rituals of slavery bolstered white men's honor while dishonoring the slave.").

²³⁹ See GREENBERG, *supra* note 222, at 51-86 (discussing role of gift-giving and its relationship to honor).

²⁴⁰ See *id.* at 66-67 (noting link between gift-giving and slavery).

²⁴¹ In Arkansas, the legislature had the power to "oblige the owner of any slave or slaves to treat them with humanity," though the specifics were not spelled out. ARK. CONST. § 25.

²⁴² See GREENBERG, *supra* note 222, at 66 (stating that, "[s]ince all this giving resulted from no explicit demands or bargaining, most masters could think of themselves as men of great generosity").

²⁴³ CHESTER, *supra* note 62, at 37-38.

²⁴⁴ There are, of course, exceptions, and they have proved influential in my own thinking. See, e.g., William W. Fisher III, *Ideology and Imagery in the Law of Slavery*, in *SLAVERY & THE LAW* 43, 59-66 (Paul Finkelman ed., 1997) (looking at how the code of honor influenced judicial decision-making); GROSS, *supra* note 156, at 47-71 (emphasizing the role of honor in local disputes); Johnson, *supra* note 35, at 428 (suggesting that honor and reputation played a role in slaveholder's decisions in courtroom).

figured prominently in a Southern man's view of his family.²⁴⁵ The quintessential patriarch, the Southern man lorded over his family as both protector and provider. Thus, if an outsider insulted a member of his household – disgraced his wife, mother, or sister, for example – his response was as swift and decisive as it would have been if the insult had been directed at his own person.²⁴⁶

By the time of Pleasant's trial, moreover, slaveholding Southerners viewed themselves as the head of a household that included more than just their wives and their children; it included their slaves as well.²⁴⁷ In fact, long before the Civil War, the expression, "our family, white and black," had become a ubiquitous part of the Southern lexicon.²⁴⁸ "Tell all the servants howdie," a young Annie Smith from Dallas County, Arkansas, wrote to her parents in 1855, in typical language from the time.²⁴⁹ Samuel Chester of Union County likewise talked affectionately about his family's "servants." Noting how his family, like most others, liked to bestow the familial title of "Uncle" and "Aunt" on their some of their favorites, Chester seemed to have a special place in his heart for their old house servant.²⁵⁰ Willis, he said, "never ceased to regard himself as a member of the family," even after the War ended.²⁵¹

Though it had existed earlier, the view that the master's family extended to his slaves received a strong ideological push beginning in the mid-1830s. At that time, the abolitionists began in earnest their attack on the Southern way of life, denouncing the institution of slavery as inconsistent with Christianity and irreconcilable with the Declaration of Independence.²⁵² Refusing to back down, Southern ideologues shot back that blacks were better off in slavery, both because of their innate inferiority and because slavery was more humane than the free labor system of the North.²⁵³ This new "positive good" outlook on slavery received the backing of some of the South's most respected intellectuals, if not the most vocal. Henry Hughes insisted that slavery in the United States – or, as he preferred to call the system, "warranteeism" – consisted of mutual obligations

²⁴⁵ See WYATT-BROWN, *supra* note 156, at 55 ("Fealty to family was the first law of honor.").

²⁴⁶ See *id.* at 53 (stating that "nothing could arouse such fury in traditional societies as an insult hurled against a woman of a man's household," and to "attack his wife, mother, or sister was to assault the man himself").

²⁴⁷ See Eugene Genovese, "Our Family, White and Black": Family and Household in the Southern Slaveholders' World View, in *IN JOY AND IN SORROW: WOMEN, FAMILY, AND MARRIAGE IN THE VICTORIAN SOUTH* 69, 72 (Carol Bleser ed. 1991) ("For the slaveholders, 'family' meant 'household,' and household implied slaves, or 'servants,' as they preferred to call them.").

²⁴⁸ *Id.* at 69.

²⁴⁹ Letter from Annie Maurice Smith to Maurice and Clarissa Smith (Sept. 13, 1855).

²⁵⁰ See CHESTER, *supra* note 62, at 38 (discussing how they referred to some of the older slaves as "Uncle" and "Aunt").

²⁵¹ *Id.* at 45.

²⁵² See, e.g., William Lloyd Garrison, Address to the American Colonization Society (1829), reprinted in *WILLIAM LLOYD GARRISON AND THE FIGHT AGAINST SLAVERY*, at 61 (William E. Cain ed. 1995) (articulating, in early form, the many objections to slavery that would come to form the foundation for the abolitionists' cause).

²⁵³ For an insightful discussion of proslavery thought, see GEORGE M. FREDRICKSON, *THE BLACK IMAGE IN THE WHITE MIND: THE DEBATE ON AFRO-AMERICAN CHARACTER AND DESTINY, 1817-1914*, 43-70 (1971).

between superiors and inferiors.²⁵⁴ The master owed to the slave support and protection, and the slave owed to the master obedience and fidelity. This “reciprocity,” moreover, was “absolute,” requiring a master to act as “an honest father of a family acts for the good of his household.”²⁵⁵ George Fitzhugh carried this argument to its logical extreme, maintaining that the patriarchal plantation was the ideal social arrangement.²⁵⁶ He therefore refused to defend and justify “mere negro slavery,” going so far as to suggest that some whites be enslaved as well.²⁵⁷ “Domestic slavery,” he insisted, was “a normal, natural, and, *in general* necessitous element of civilized society, without regard to race or color.”²⁵⁸

Though Fitzhugh’s ultimate position probably received little support in Arkansas (or anywhere else for that matter), the basic point did, and the editors of the local papers seized on stories of slavery’s alleged benevolence and eagerly reported them to their consuming public. One involved some escaped slaves who had grown “tired of freedom.”²⁵⁹ Showing up somewhere in the Northeast, this group of seven reportedly said that “they much preferred living with Mr. Calvert as his slaves than to lead the life they did . . . , and desired to be sent home.”²⁶⁰ The mayor of the town obliged their request, “lodging” them in the local jail until their owner could come for them.²⁶¹ Another detailed how one slave, who was allowed by his master to remain in California to try his luck in the gold rush, “voluntarily” returned to Arkansas, indicating after he was picked up in New Orleans “his preference for his old home, with its many endearing associations.”²⁶² To the same effect was the story of one of Col. Riley’s slaves. Humbly offered as a commentary on the “blubbery sympathy” of the Northern agitators, this article told of a slave “who was allowed to go to California some time ago, returned home to his master a few days since, gave a full detail of his operations, and presented a big item of gold dust as an aggregate of profits over expenses!”²⁶³ But the *pièce de résistance* arguably involved the story of a free black named Hardy, who reportedly “came voluntarily into court, and prayed that he be permitted to choose a master and enslave himself to him for life.”²⁶⁴ After

²⁵⁴ Hughes wrote: “Warranteeism in the United States South, is not an obligation to labor for the benefit of the master, without the contract or consent of the servant. That is slavery. Warranteeism is a public obligation of warrantor and warrantee to labor for the benefit of, (1), the State, (2), the Warrantee, and (3), the Warrantor. This obligation is not unilateral; it is bilateral: it is mutual.” HENRY HUGHES, *TREATISE ON SOCIOLOGY* (1854), reprinted in *THE IDEOLOGY OF SLAVERY: PROSLAVERY THOUGHT IN THE ANTEBELLUM SOUTH, 1830-1860*, 241, 242 (Drew Gilpin Faust ed., 1981).

²⁵⁵ *Id.* at 242, 246.

²⁵⁶ See George Fitzhugh, *Southern Thought* (1857), reprinted in *THE IDEOLOGY OF SLAVERY*, *supra* note 254, at 274, 276 (“She [the South] is by far, very far, the most prosperous and happy country in the world.”).

²⁵⁷ *Id.* at 285.

²⁵⁸ *Id.*

²⁵⁹ *Slaves Running Home Again*, WASHINGTON TELEGRAPH, Oct. 2, 1850, at 2.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *The Attachment and Fidelity of a Slave*, ARKANSAS GAZETTE, Nov. 26, 1852, at 2.

²⁶³ *More “Uncle Tom” Material*, ARKANSAS TRUE DEMOCRAT, Jan. 18, 1853, at 1.

²⁶⁴ OUACHITA HERALD, Aug. 19, 1858, at 2.

all, if slavery was the best of all conditions, then free blacks should *want* to return to slavery. It was this rationale, in fact, that led Arkansas to pass a statute in 1859, clearing the way for just such a decision.²⁶⁵

Nor will it do to dismiss these commentaries as self-serving cant to rebuff the critics of slavery. Slaveholders, like most individuals, viewed themselves as moral beings, and were stung by the accusations that they were immoral and unchristian. They needed, for their own well being, to convince themselves that their institution was just and right.²⁶⁶ “As a believer in, and supporter of the Christian religion, if we sincerely believed slavery, as it exists among us, a moral evil – inconsistent with, or repugnant to revelation,” one contributor to the *Arkansas Gazette* mused, “we would abandon it, and become an abolitionist.”²⁶⁷ “I go farther,” added another; “we cannot at present discharge our christian duties without retaining them [blacks] in bondage.”²⁶⁸ The editors of the *Gazette* agreed. The “institution of African slavery is right,” they insisted on more than one occasion.²⁶⁹ “The institution of slavery has the sanction of the Bible from the days of the Patriarchs of the old Testament, to that of the Saviour and the Apostles in the new Testament.”²⁷⁰ Parroting the language of the proslavery theorists, these same editors insisted that slavery in the hands of “enlightened and humane masters” was “best for the negro and the white man,” and chastised the “crack-brained fanatics” from the North who failed to see so.²⁷¹ Compared to the free labor system, “which crushes, and grinds, into the dust” the men and women of the North, slavery actually “elevates and betters the condition of the negro.”²⁷² Indeed, the editors queried, in light of the mild form of slavery practiced in all parts of the South, who could doubt but that “the condition of the slave, in the United States, is the best one in which the African has ever been placed.”²⁷³

Importantly, James Milton, as a master and a man, would have internalized these arguments as soon as they were made, likely convincing himself that slavery was consistent with kindness and benevolence, and that it created an extended, biracial, household with himself at the head. In truth, of

²⁶⁵ ACTS OF ARKANSAS, 1858-59, No. 151 § 8, at 177-78.

²⁶⁶ See Genovese, *supra* note 247, at 69 (arguing that slaveholders “assimilated that special sense of family to their self-esteem, their sense of who they were as individuals and as a people, their sense of moral worth, their sense of honor”).

²⁶⁷ Chicot Planter, *Who Are the Friends of Union*, ARKANSAS GAZETTE, Aug. 1, 1851, at 2.

²⁶⁸ *The Southern Pulpit on Slavery*, ARKANSAS TRUE DEMOCRAT, Feb. 8, 1853, at 8.

²⁶⁹ See ARKANSAS GAZETTE, Sept. 19, 1857, at 2 (“But the institution of African slavery is right.”); ARKANSAS GAZETTE, Jan. 17, 1858, at 2 (“African slavery ... is right in morals as well as in law.”); ARKANSAS GAZETTE, Oct. 2, 1858, at 2 (“We hold, as we have ever held ... that slavery is right.”).

²⁷⁰ ARKANSAS GAZETTE, Sept. 19, 1857, at 2.

²⁷¹ ARKANSAS GAZETTE, Oct. 2, 1858, at 2.

²⁷² ARKANSAS GAZETTE, Sept. 19, 1857, at 2. Cf. ARKANSAS GAZETTE, Oct. 9, 1858, at 2 (“We believe that the African amid the snowy cotton blooms of the plantations of Arkansas is less a slave than the wan representative of woman amid the looms and spindles of Massachusetts and New York.”).

²⁷³ *African Slavery*, ARKANSAS GAZETTE, Oct. 6, 1854, at 3. The irony of advertising for seven runaways in the same edition as the above claim was evidently lost on the editors. See *id.* at 3 (listing five advertisements, the last of which listed three runaways).

course, slavery was not kind and benevolent – it was, as Harriet Beecher Stowe said, an “absolute despotism, of the most unmitigated form,”²⁷⁴ – and the slaveholder who portrayed himself as the benevolent paternalist was the same one who whipped his slaves unmercifully and sold them when money was tight. But the point is nevertheless a valid one: that James Milton, as an honorable man and a master, likely saw himself as Pleasant’s protector and provider, just as he saw himself as the protector of and provider for his wife and his children. As such, he would have been as much obligated to defend his slave against a criminal accusation as he would have been if his own son had been accused. Henry Hughes was adamant in this regard. “It is [the masters’] duty to represent in court,” he proclaimed, “[slaves] prosecuted or prosecuting.”²⁷⁵ Judge Brockenbaugh of the Virginia Court of Appeals agreed; the master, he said, is charged with the defense of his slave “as much as a father is with the defense of his child.”²⁷⁶ Judge Starnes of the Georgia Supreme Court felt the same way; the “duty of procuring counsel for his slave ... is as binding on the master, as the obligation to procure for that slave, medical attention for his sickness, or food and clothing at all times.”²⁷⁷

To be sure, money mattered as much to James Milton as it did to anyone of his station. Like all slaveholders, he understood the importance of slaves to the overall production of his farm, and that the loss of Pleasant would have been an important loss of labor, to say nothing of his reproductive value. But to suggest that economics was the sole – or even most significant – reason for defending a slave against a criminal accusation ignores the importance of honor, family, and proslavery thought in the minds of many of these men. Simply put, to a man like James Milton – a man of the local elite – honor and reputation likely weighed more heavily on his mind than dollars and cents.

3. John Quillin, Attorney

To that end, in hiring a man to represent Pleasant, Milton settled on someone whom he undoubtedly thought shared his outlook on honor and slavery. His name was John Quillin, and he, like James Milton, was a man of considerable prestige.²⁷⁸ Like so many others, Quillin arrived in Arkansas sometime in the early 1840s from one of the older states in the South.²⁷⁹ Listed among “the most

²⁷⁴ HARRIET BEECHER STOWE, *THE KEY TO UNCLE TOM’S CABIN* 233 (1968) (1853).

²⁷⁵ HUGHES, *supra* note 254, at 246.

²⁷⁶ Genovese, *supra* note 247, 81 (citing Letter from William Brockenbaugh to Thomas Ruffin (Feb. 7, 1831)).

²⁷⁷ *Jim, a slave v. State*, 15 Ga. 535, 540 (1854).

²⁷⁸ See Transcript of Trial, *State v. Pleasant*, at 5 (listing Pleasant’s attorneys as the firm of Quillin and Lyon). Additional records indicate that John Quillin, rather than Richard Lyon, was the one who actually represented Pleasant.

²⁷⁹ See BIOGRAPHICAL AND HISTORICAL MEMOIRS OF SOUTHERN ARKANSAS 822 (1890) (identifying Quillin among select group of settlers that arrived in the 1840s). Quillin was born in Virginia. See 1850 CENSUS RECORD.

influential and substantial citizens” of the county,²⁸⁰ Quillin became the Circuit Court Judge for the Sixth Judicial Circuit in 1849, where he earned the reputation of being someone who “urged, in the most cogent, impressive, solemn and masterly manner, obedience to the laws of the country.”²⁸¹ He remained on the bench until January 1852 – four months before Pleasant’s case – when he voluntarily stepped down to pursue private practice.²⁸² Why he stepped down is not clear, though it could have been as simple as a desire for a more lucrative living (government servants being notoriously underpaid).²⁸³ But it also may have been because the responsibilities of judging had interfered with the raising of his young son, for Quillin’s wife had evidently died during childbirth three-and-a-half-years earlier, and he had been left to care for the baby on his own.²⁸⁴ But whatever the reason, Quillin does not appear to have given up on his passion for the law; six years later, “Honest John Quillin” was running for circuit court judge again, though ultimately he was unsuccessful.²⁸⁵

It is not known how James Milton came to hire John Quillin. It certainly was possible that he was a family friend, or perhaps he had represented Milton or someone he knew in a previous case and had done well. But much more likely, it was Quillin’s reputation that attracted an honorable man like James Milton, who needed someone devoted to the law and who would not be swayed by passion. Milton – or perhaps more accurately Pleasant – would also come to benefit from Quillin’s connections with the Arkansas legal community. Among Quillin’s friends and colleagues was Samuel Hempstead, a legal heavyweight from Little Rock who was active in state politics and later served as the United States District Attorney for Arkansas, official Reporter of the Arkansas Supreme Court, and State Solicitor-General.²⁸⁶ Hempstead would bring his considerable prestige to Pleasant’s case, appearing as an attorney of record on both appeals.²⁸⁷ Quillin

²⁸⁰ BIOGRAPHICAL AND HISTORICAL MEMOIRS, *supra* note 279, at 822.

²⁸¹ *See id.* at 71 (stating that John Quillin became Circuit Court Judge on March 2, 1849); *see also* 1850 CENSUS RECORD (listing Quillin’s occupation as judge). For the quotation describing Judge Quillin’s abilities, *see More of the Montgomery Affair*, ARKANSAS GAZETTE, May 31, 1850.

²⁸² *See* ARKANSAS GAZETTE, Jan. 16, 1852, at 2 (stating that, as of January 1852, Quillin had “resigned the office of Judge of the 6th Judicial Circuit of this State”).

²⁸³ *See* ARKANSAS GAZETTE, Nov. 12, 1852, at 2 (noting how George Watkins, when he became Chief Justice of the Arkansas Supreme Court the same year in which Quillin resigned as Circuit Court Judge, relinquished “a lucrative practice, worth, probably, double the salary attached to the office to which he has been elected”).

²⁸⁴ Quillin married Susan Lock in 1847. *See* ARKANSAS MARRIAGES: EARLY TO 1850, 180 (Jordan R. Dodd ed. 1990). Susan died the following year, in 1848. *See* I ARKANSAS FAMILY HISTORIAN 1, 18 (Apr. 1963). In 1850, two years after Susan’s death, John Quillin is listed as the father of a two-year-old son, suggesting that Susan died in childbirth and the son survived. *See* 1850 CENSUS RECORD.

²⁸⁵ *See* ARKANSAS GAZETTE, July 3, 1858, at 2 (noting that John T. Beardon, whom the editors liked best, had joined the race for judge of the Sixth Judicial Circuit with “Honest John Quillin” and Len B. Green). Len Green won. *See* BIOGRAPHICAL AND HISTORICAL MEMOIRS, *supra* note 279, at 71 (listing judges and year in which they were elected).

²⁸⁶ *See* HEMPSTEAD, *supra* note 61, at 781-83 (providing brief synopsis of Samuel Hempstead).

²⁸⁷ *See Pleasant*, 13 Ark. at 368 (listing Hempstead as Pleasant’s attorney); *Pleasant*, 15 Ark. at 625 (listing Hempstead and Quillin as Pleasant’s attorneys).

also was acquainted with Elbert H. English, also of Little Rock. Like Hempstead, English was a prominent member of the Arkansas bar. In 1845, at the age of twenty-nine, he was appointed Reporter of the Arkansas Supreme Court, a position he held until 1854 when Hempstead succeeded him;²⁸⁸ in 1846, he was chosen to make a digest of the laws of the state, which he published in 1848;²⁸⁹ and in 1854, he was elected Chief Justice of the Arkansas Supreme Court, where he was regarded as “one of the best judges we ever had.”²⁹⁰ While English was still a practicing attorney, Quillin would write to him about Pleasant, asking him to bring his considerable influence to the case and help see that Pleasant’s first appeal did not “go off on a quibble.”²⁹¹ Not only did he apparently do so, but he wrote the opinion on the second appeal, granting yet another reversal.

In light of the rigor with which Quillin would come to litigate Pleasant’s case, it is tempting to cast him as a social reformer, an enlightened lawyer striving to improve the conditions of slaves and perhaps even sympathetic to the abolitionists’ cause. In fact, the opposite is a more accurate description. Much like James Milton, John Quillin appears to have been a staunch defender of the South and all it stood for. Not only was he a slaveholder, but several years after Pleasant’s trial he found himself on the losing end of a lawsuit in which he unabashedly sought to deny nineteen blacks their freedom.²⁹² Quillin, along with another man, evidently had purchased the slaves from William Averett after Averett’s uncle had tried to free the slaves *in futuro* in his will.²⁹³ With Hempstead arguing on his behalf, Quillin took the drastic position that, after the passage of an 1858 law, no slaves – including those who had been promised the gift of freedom in a will – could be emancipated in the state.²⁹⁴ Failing that, he argued that all *future* gifts of freedom were invalid and contrary to public policy.²⁹⁵ The Arkansas Supreme Court rejected both arguments, and held that the slaves were entitled to their freedom under the terms of the will.²⁹⁶

It thus seems safe to conclude that James Milton, when he hired John Quillin to represent Pleasant, settled on a man well versed in both the law and the

²⁸⁸ See ARKANSAS GAZETTE, Jan. 20, 1845, at 2 (noting English had been appointed Reporter of Supreme Court); see also James H. Rice & Kathryn Donham Rice, *Elbert Hartwell English: Lawyer, Chief Justice, Educator, Grand Master*, PULASKI COUNTY HIST. REV. 26, 27 (noting dates he held position). English was born in March, 1816. *Id.* at 26.

²⁸⁹ See *Elections by the General Assembly*, ARKANSAS GAZETTE, Dec. 19, 1846, at 2 (stating that English had been elected Digester).

²⁹⁰ See *Election of Supreme Judge*, ARKANSAS GAZETTE, Dec. 22, 1854, at 2 (noting election of English to Court). For the quote regarding his abilities, see Rice & Rice, *supra* note 288, at 27.

²⁹¹ Letter from John Quillin to Elbert H. English (Feb. 1853).

²⁹² See *Phebe v. Quillin*, 21 Ark. 490, 495 (1860) (noting that Quillin, along with Thomas Sledge, was “charged to be holding them [the nineteen slaves] in a state of slavery with intent to make that condition permanent”). The 1860 Census lists John “Quillian” as the owner of one male slave and two female slaves. See 1860 SLAVE SCHEDULES.

²⁹³ See *Phebe*, 21 Ark. at 495 (detailing terms of will and noting that Quillin and Sledge had bought the slaves from William Averett, nephew of deceased).

²⁹⁴ See *id.* at 494-95.

²⁹⁵ See *id.* at 494.

²⁹⁶ See *id.* at 499 (dismissing case as prematurely brought, but noting that the slaves would be entitled to their freedom after seven years in accordance with the wishes of testator).

Southern way of life. John Quillin was no anti-slavery advocate; he assuredly viewed blacks as genetically inferior and bound to respect white men in every respect. But, as a Southern man and a slaveholder, he also understood the importance of honor, family, and the rights and obligations of a master and man. Perhaps the members of the jury and the courtroom observers also understood the stakes at issue: a prominent member of the community had one of his slaves accused of a serious crime, and a respectable attorney was here to represent him.

III. THE TRIAL

A. *Sex and Race*

The men and women who had journeyed to court during the week of Pleasant's trial likely had plans to make the most of their experience. El Dorado itself was now a bustling commercial and political center, with doctors and lawyers, grocers and bakers, hoteliers and tavern keepers, and no doubt many of Union County's residents were looking forward to the opportunity to drink and gossip and argue with their friends and neighbors.²⁹⁷ Flushed with alcohol and the spirit of the occasion, "shouts and cheers of wild merriment" may have even greeted some of the on-lookers as they made their way to the courthouse square.²⁹⁸ Built by William Davis, a potential juror in Pleasant's case, the square stood as a shining example of the years of hard work and steely resolve of the original settlers, who had carved a community out of the Arkansas backwoods in a decade or less.²⁹⁹ It consisted of a fence with "good heart white oak posts," dressed "perfectly smooth," and four gates made of pine.³⁰⁰ There was also a walkway made of "good well burned brick" passing in front of the courthouse.³⁰¹

On the docket during the week of Pleasant's trial were a variety of cases. On Tuesday, April 13th, Cyrius Sargent appeared before Judge Watson to plead guilty to the charge of Sabbath breaking.³⁰² Later that afternoon, Stephen Smith was tried and found not guilty of illegal gambling, despite the prosecution's allegation that he had bet on a card game that included, among others, another of the jurors in Pleasant's case: Hengust Norsworthy.³⁰³ But it was Pleasant's case that undoubtedly piqued the interests of the residents of Union County. After all, while Smith's card game and its attendees may have added grist to the rumor mill,

²⁹⁷ See 1850 CENSUS RECORD (listing occupations of residents of El Dorado: Robert Buron (doctor); L. Cronkwright (dentist); Richard Lyon (lawyer); A.J. Hagler (grocer); R. Cornish (baker); James Capers (hotelier and tavern keeper)).

²⁹⁸ See GERSTAECKER, *supra* note 157, at 31 (describing scene upon arriving at a frontier town in Arkansas during court week).

²⁹⁹ See Union County County Court Records, "Book D," at 31 (Feb. 2, 1852) (setting forth description of court house and noting William Davis' role in its construction).

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² Union County Circuit Court Records, "Book E," at 96 (Apr. 13, 1852).

³⁰³ *Id.* at 100. Evidently, the case against Smith fell apart when both of the state's witnesses – including Hengust Norsworthy – refused to testify for fear of incriminating themselves. *Id.* at 101.

and Sargent's crime of Sabbath breaking may have irked some of the more religious types, they both paled in comparison to the real-life drama of a slave accused of raping a white woman. Perhaps for this reason it was no coincidence that Pleasant's trial was held on a Saturday – April 17, 1852 – when most of the community could have attended.³⁰⁴

Of those who had come to see his trial, moreover, undoubtedly all would have been conscious of the social taboos involved with interracial sex. Indeed, sex and marriage between whites and blacks, whether slave or free, was against the law in virtually every Southern state.³⁰⁵ Typically, as it did with many of the laws governing slaves and slavery, Virginia led the way on this issue. In 1662, as slavery was just beginning to take hold in the colony, the legislature passed a law doubling the usual fine for fornication when one of the partners was black and the other white, sending a clear message to the early settlers that sex between the races was particularly distasteful.³⁰⁶ By 1691, the legislature's disdain for men and women crossing the color line had become even more pronounced. In a law outlawing interracial marriages, the legislature spoke out against "that abominable mixture and spurious issue" as grounds for its prohibition.³⁰⁷ Other states quickly followed suit, and Arkansas was no exception. In its statutory code, "[a]ll marriages of white persons with negroes or mulattoes" were declared "illegal and void."³⁰⁸

Yet, despite these legal prohibitions, no one living in the antebellum South – Arkansas included – could fail to notice that blacks and whites were sexually intimate. Even for those with no personal involvement, the sheer number of people with light brown skin and soft, wavy hair, would have provided the most obvious indicator. In fact, one could hardly open the pages of a newspaper, including the *Arkansas Gazette*, without finding some reference to a runaway with blond hair and blue eyes. Henry was just such a person. A "very bright *Mulatto*," his owner offered \$100 for anyone who could find the "sandy" haired fugitive, warning his would-be captors that Henry was probably "passing himself for a *White*" man.³⁰⁹ The same was true of Sally, a wife who had run off with her husband, a "bright mulatto."³¹⁰ Sally was described as "nearly white," with "straight hair and large eyes," that was "doubtless" passing herself "for a white woman and as the mistress of the man."³¹¹

³⁰⁴ Union County Circuit Court Records, "Book E," (Apr. 17, 1852).

³⁰⁵ See Emily Field Van Tassel, "Only the Law Would Rule Between Us": *Antimiscegenation, the Moral Economy of Dependency and the Debate Over Rights After the Civil War*, 70 CHI.-KENT L. REV. 873, 900 & n.116 (1995) (identifying Mississippi, Alabama, South Carolina, and Georgia as the four states that did not ban interracial marriages before the Civil War).

³⁰⁶ See II HENING'S STATUTES AT LARGE 170 (declaring, in relevant part, that "if any christian shall commit fornication with a negro man or woman, hee or shee soe offending shall pay double the usual fine").

³⁰⁷ III HENING'S STATUTES AT LARGE 86.

³⁰⁸ STATUTES OF ARKANSAS, chap. 102, § 4.

³⁰⁹ ARKANSAS GAZETTE, Dec. 13, 1850, at 3.

³¹⁰ ARKANSAS GAZETTE, March 9, 1855, at 3.

³¹¹ *Id.*

By 1860, “mulattoes” (the indiscriminate term used for those possessing some mixture of white and black ancestry)³¹² officially numbered just over a half million in the slave states, or, stated differently, they represented approximately one in seven persons of color.³¹³ But there are so many reasons to distrust this number that, at best, it can serve as only a rough – indeed vastly conservative – estimate. Simply put, the number was based entirely on appearance, and thus it does not take into account the untold many who were passing as white or the countless others who looked “black.”³¹⁴ The percentage of mixed-race persons was higher in the Upper South than in the Lower South, with Arkansas falling about in the middle.³¹⁵ But, regardless of the actual number, it seems clear enough that the attempts of some of slavery’s most ardent defenders to dismiss or downplay the amount of sexual contact between blacks and Southern whites need not be believed.³¹⁶ Their more honest contemporaries knew better. As one put it, the practice was not “occasional or general,” but “universal.”³¹⁷

Unsurprisingly, white men were the primary instigators in many of these encounters. Indeed, travelers passing through the South were often struck with the frequency with which white men took advantage of their slave women. Fanny Kemble, for example, found in her stay on a Georgia plantation in the late 1830s that “almost every Southern planter has a family . . . of illegitimate colored children.”³¹⁸ Frederick Olmsted, too, encountered one planter in Louisiana who insisted that there was not “a likely-looking black girl in this State that is not the

³¹² See Jason A. Gillmer, *Suing for Freedom: Interracial Sex, Slave Law, and Racial Identity in the Post-Revolutionary and Antebellum South*, 82 N.C. L. REV. 535, 559-60 (2004) (discussing meanings and significance of terms used to describe people of mixed-race descent).

³¹³ The total population of people of color in the slaveholding states and Washington D.C. in 1860 was 4,215,614. 1860 CENSUS RECORD, Negro Population, 1790-1915, at 220. Of those, 3,697,265 were listed as black, and 518,349 were listed as mulatto. *Id.*

³¹⁴ See STAMPP, *supra* note 115, at 351 (stating that the number of people classified as “mulattoes” was “certainly an underestimate” because it was based on appearance); see also Gillmer, *supra* note 312, at 595-619 (discussing freedom suits involving contested racial identity).

³¹⁵ All told, of the 111,259 people of color in Arkansas in 1860, 97,123 were listed as black and 14,136 as mulatto, or 12.7%. 1860 CENSUS RECORD, Negro Population, 1790-1915, at 220. This was slightly above the percentage for the slaveholding states as a whole, which stood at 12.3%. See *supra* note 313 (breaking down populations for slave states). At close to 38%, Washington, D.C., had the highest concentration of mulattoes, followed by Kentucky (20.1%), Missouri (19.9%), Virginia (17.0%), Tennessee (14.8%), and Maryland (14.6%). 1860 CENSUS RECORD, Negro Population, 1790-1915, at 220. South Carolina had the smallest concentration, with 6.9%, followed in increasing order by Alabama (8.32%), Georgia (8.35%), Mississippi (8.5%), and Florida (9.4%). *Id.* The remaining slave states, like Arkansas, stood at or slightly above the average: Delaware (13.8%), Texas (13.8%), Louisiana (13.6%), and North Carolina (12.4%). *Id.*

³¹⁶ James Henry Hammond, for example, dismissed the accusations of licentiousness as “grossly and atrociously exaggerated,” temporarily forgetting that he had fathered several children with his slaves. James Henry Hammond, *Letter to an English Abolitionist* (1845) reprinted in THE IDEOLOGY OF SLAVERY, *supra* note 254, at 170, 182.

³¹⁷ FREDERICK LAW OLMSTED, THE COTTON KINGDOM: A TRAVELLER’S OBSERVATIONS ON COTTON AND SLAVERY IN THE AMERICAN SLAVE STATES 240 (Arthur M. Schlesinger ed., 1953).

³¹⁸ FRANCES ANNE KEMBLE, JOURNAL OF A RESIDENCE ON A GEORGIA PLANTATION IN 1838-1839, 15 (Afro-Am Press 1969) (1863).

concubine of a white man.”³¹⁹ Men of every social and cultural level engaged in the practice, from the poorest white to the wealthiest grandee.³²⁰ Simple seduction in some cases, force and violence in most, it appears that sexual relations with slave women were an accepted part of Southern life. “I don’t know nothin’ bout my father,” one ex-slave from Union County reported, doubtless expressing a fate that many other slaves shared.³²¹ “They said he was a white man.”³²²

A number of white women from the time evidently saw themselves as the principal victims of these relationships. As one Virginia woman confided in a letter: “The white mothers and daughters of the South have suffered under it for years – have seen their dearest affections trampled upon – their hopes of domestic happiness destroyed and their future lives embittered, even to agony, by those who should be all in all to them, as husbands, sons, and brothers.”³²³ Yet no one would doubt now that it was anyone but black women that suffered the most. Whether it was a young man out on a lark, an overseer prowling about in the quarters, or an older master satisfying an immediate sexual urge, black women rarely had a choice in the matter and often had little they could do to resist.³²⁴ As one former slave from Arkansas recalled, slave women had “no chance to run off or ever get off, you had to stay and take what come.”³²⁵ Alice Bratton of Wheatley, Arkansas, echoed these words when she explained how her mother was “overcome” by her father, a white man.³²⁶ “I don’t remember the man,” she said, “but mama told me how she got tripped up and nearly died and for me never to let nobody trip me up that way.”³²⁷ Harriet Jacobs, the escaped slave who had fought off the advances of her master for years, would come to offer one of the most poignant commentaries on the matter. “No matter whether the slave girl be as black as ebony or as fair as her mistress,” she wrote, “there is no shadow of law to protect her from insult, from violence, or even from death.”³²⁸

³¹⁹ OLMSTED, *supra* note 317, at 240.

³²⁰ See GENOVESE, *supra* note 25, 419-21 (noting how, despite efforts to lay blame on lower-class whites, many slaveholders and their growing sons fathered children with slaves).

³²¹ RAWICK, *supra* note 59, v.8, part 1, 146, 147 (Bob Benford).

³²² *Id.*

³²³ OLMSTED, *supra* note 317, at 240.

³²⁴ It is commonly understood that rape of a slave woman, at least by a white person, was not a crime; indeed, there is not a single appellate case from the slave South involving an accusation of rape or attempted rape of a black woman, slave or free, by a white man. *But see George, (a slave) v. State*, 37 Miss. (8 George) 316 (1859) (involving alleged rape of a slave by another slave). In his influential treatise on slavery, Thomas R.R. Cobb insisted, disingenuously, that “[t]he occurrence of such an offence [rape of a slave woman by a white man] is almost unheard of; and the known lasciviousness of the negro renders the possibility of its occurrence very remote.” THOMAS R.R. COBB, AN INQUIRY INTO THE LAW OF NEGRO SLAVERY IN THE UNITED STATES OF AMERICA, § 107 (Paul Finkelman & Kermit L. Hall eds. 1999) (1858).

³²⁵ RAWICK, *supra* note 59, v.8, part 1, 49, 51 (Nancy Anderson).

³²⁶ *Id.* at 249, 250 (Alice Bratton).

³²⁷ *Id.*

³²⁸ HARRIET JACOBS, INCIDENTS IN THE LIFE OF A SLAVE GIRL: WRITTEN BY HERSELF 27 (Jean Fagan Yellin ed., 1987).

Yet, within this oppressive and brutal regime, relationships of a more substantial sort did emerge. Francis Hall lived for a number of years with Marcelette Marceau, a free woman of color, and she reportedly acted as the “mistress” of the house and had “great influence over him.”³²⁹ David Issacs and Nancy West, a free mulatto woman, likewise developed a long-lasting relationship; they “occupied the same chamber, ate at the same board, and discharged towards each other the numerous common offices of husband and wife.”³³⁰ Former slaves also recalled similar instances of affectionate ties between the races. One ex-slave from Arkansas, for example, described how his white father was “a fool” about his mother.³³¹ Another recalled how a white overseer and a slave woman had five children together, and how the overseer “built dem a good house” and took care of them until “de chillum done grown an’ de woman she dead.”³³²

Nor would the men and women who journeyed to watch Pleasant’s trial have been immune from such cases. Perhaps some had heard of the escalating dispute over the will of Allen Wilkins in nearby Ouachita County, in which he freed his “negroe [sic] woman, Sarah Jane, and her child, John,” and asked that they be “provided for in a proper and suitable manner.”³³³ Whether it was love or something short of it, the “general report in the neighborhood” was that Wilkins kept Sarah Jane “as his concubine . . . and had a child by her.”³³⁴ Others may have known or heard of someone like Gilbert Barden of Pulaski County or James Dunn of Hempstead County. When Barden died, he attempted to free and provide for “Harriet, a woman of black complexion,” and her two children, both of “yellow complexion.”³³⁵ While the appellate record is devoid of any direct references to Barden’s relationship with Harriet, those familiar with the case no doubt understood full well the situation. Dunn was not so discreet; he had hired the slave woman Mourning from a man named Moss, and in time she gave birth to a daughter named Eliza.³³⁶ At “divers times, and to divers persons” Dunn publicly acknowledged Eliza as his child, and at one point, perhaps at the insistence of Mourning, tried to purchase Eliza from her owner.³³⁷ And even the strangely obtuse could read into John Thornton’s ad for his runaway slave, Dilcey Ann, published in the *Arkansas Gazette* the week before Pleasant’s trial. The twenty-two-year-old slave was “taken” by a twenty-five-year-old white man – undoubtedly her lover – named John Woods.³³⁸ This couple proved particularly

³²⁹ *Heirn v. Bridault*, 37 Miss. (8 George) 209, 215-16 (1859).

³³⁰ *Commonwealth v. Isaacs*, 26 Va. (5 Rand.) 634, 635 (1826).

³³¹ RAWICK, *supra* note 59, v. 10, part 6, 97, 97 (Thomas Ruffin).

³³² *Id.* v.8, part 2, 117, 119 (Jeff Davis).

³³³ See Transcript of Trial, *Abraham v. Wilkins*, at 4-5. The case was first brought in Circuit Court during the same term as Pleasant’s case – April 1852 – with Judge Watson presiding. *Id.* at 7. The case was postponed until the next term of the court because of a procedural error. *Id.* at 9.

³³⁴ *Id.* at 55.

³³⁵ *Harriet v. Swan & Dixon*, 18 Ark. 495, 499 (1857).

³³⁶ *Moss v. Sandefur*, 15 Ark. 381, 382-33 (1854).

³³⁷ *Id.*

³³⁸ ARKANSAS GAZETTE, Apr. 9, 1852, at 3.

resourceful; before making good their escape, he commandeered one of Thornton's horses and she outfitted herself with "one checked silk, one red-flowered barege, and several gingham, calico, and blue-striped Northern homespun frocks."³³⁹

Of course, black-white relationships of the type described above never would win social approval in the slave South, as Charles Leadbetter from Ouachita County would come to find out. Leadbetter, a teacher with apparent liberal leanings, was run out of town after he was caught writing "a piece of sentimental poetry for a negro woman."³⁴⁰ Local authorities would also step in when they found a man named Jones "cohabiting with and keeping a female slave named Eveline," whom he did not own;³⁴¹ and they would do the same when they discovered Noah Smitherman and Tempe Manerd, a free mulatto woman, "living together" in an apparently stable relationship.³⁴² But the point is that relationships of a more substantial sort did happen; and they happened with enough frequency that one judge refused to declare insane a Kentucky man who "evinced an inclination to marry the slave, Grace, whom he liberated."³⁴³ Such sentiments, the court reasoned, were simply "too common, as we all know."³⁴⁴

In light of the range of human emotions expressed by the white men and black women who engaged in interracial relationships, it should come as little surprise that white women and black men could and did desire each other as well. In fact, as early as 1681, the Maryland legislature was fretting over white women who, "to the satisfaction of their lascivious and lustful desires," married black men.³⁴⁵ But the penalty in this and other statutes would never stop the two groups from becoming intimate with each other. Judicial records left behind, for example, indicate that a number of white men tried to divorce their wives after learning that they had engaged in sexual relations with black men. In one such case, the distraught husband discovered the infidelity after his wife, five months into the marriage, gave birth to a "mulatto" child.³⁴⁶ In another, the wife "went away and lived in adultery with a certain negro slave," announcing that "she loved him better than any body in the world."³⁴⁷ In Virginia, where divorces were granted by the legislature and not the courts, one man sought to end his marriage after his wife gave birth to a mixed-race child with apparently no regrets; as he put it, she was "so bold as to say it was begotten by a negro man slave in the

³³⁹ *Id.*

³⁴⁰ *Tampering with Slaves*, ARKANSAS GAZETTE, Oct. 11, 1850, at 2.

³⁴¹ *Commonwealth v. Jones*, 43 Va. (2 Gratt.) 555, 556 (1845).

³⁴² *Smitherman v. State*, 27 Ala. 23, 23 (1855).

³⁴³ *Patton's Heirs v. Patton's Ex'rs*, 28 Ky. (5 J.J. Marsh) 389, 389 (1831).

³⁴⁴ *Id.*

³⁴⁵ See An Act Concerning Negroes and Slaves (1681).

³⁴⁶ *Scroggins v. Scroggins*, 14 N.C. (3 Dev.) 535, 535 (1832); see also *Barden v. Barden*, 14 N.C. (3 Dev.) 548, 548-49 (1832) (same); *Whittington v. Whittington*, 19 N.C. (2 Dev. & Bat.) 64, 71 (1836) (same).

³⁴⁷ *Walters v. Jordan*, 35 N.C. (13 Ired.) 361, 361, 362 (1852).

neighborhood.”³⁴⁸ Yet another sought a divorce after he returned home one night to find his wife “undressed, and in bed with a certain Aldrige Evans, a man of color.”³⁴⁹ Others, like Ms. Suttles and a free man of color named Alfred Hooper, by-passed social conventions altogether, and lived together for ten years “as man and wife.”³⁵⁰

As with the more open and substantial relationships between white men and black women, intimate relations between white women and black men were never socially acceptable in the slave South.³⁵¹ But what seems remarkable in light of the violent reactions of their postbellum counterparts, is the measured response with which antebellum Southerners greeted these couplings. Many women were assuredly brushed to the fringes of acceptable society, and a few may have been prosecuted for violations of the anti-miscegenation laws, but an untold number probably continued on with their lives without much interruption from outside sources.³⁵² Gary Mills has documented over forty “open and stable” interracial unions involving white women in Alabama from the early 1800s until the Civil War, and an even larger number of clandestine ones.³⁵³ His research also revealed that the total number of mulatto births to white mothers peaked between 1840 and 1850, doing much to refute the notion that these relationships would have tapered off as the country approached the Civil War.³⁵⁴ Some, like Girard Hansford, a free man of color, even voluntarily brought their relationships with white women into the public eye during the period, with evidently no fear of reprisal. In a strange but perfectly consistent twist on the divorce cases, Hansford filed suit in a court of law in an attempt to end his marriage after his white wife gave birth to a white child, clearly not his own.³⁵⁵

To the extent that antebellum Southerners did comment on relationships between white women and black men, the dominant theme seems to be one of disgust rather than violence. “[T]here is something so revolting in the idea of this mixture of races,” the editors of the Arkansas *True Democrat* opined, “that the contemplation of it would sicken any female of delicacy.”³⁵⁶ One male judge from Arkansas agreed; only those women who had “sunk to the lowest degree of

³⁴⁸ JAMES HUGO JOHNSTON, *RACE RELATIONS IN VIRGINIA AND MISCEGENATION IN THE SOUTH, 1776-1860*, 250-51 (1970) (citing Archives of Virginia, Legislative Papers, Petition 4472, Fluvanna County (Dec. 13, 1802)).

³⁴⁹ *Id.* at 254 (citing Archives of Virginia, Legislative Papers, Petition 5370, Amherst, (Dec. 6, 1809)).

³⁵⁰ *State v. Hooper*, 27 N.C. (5 Ired.) 201, 201 (1844).

³⁵¹ *Cf.* HODES, *supra* note 25, at 3 (using word “toleration” to describe how Southerners greeted relationships between white women and black men).

³⁵² For prosecutions under state anti-miscegenation laws, see *State v. Fore and Chesnut*, 23 N.C. (1 Ired.) 378 (1841); *State v. Watters*, 25 N.C. (3 Ired.) 455 (1843); *State v. Hooper*, 27 N.C. (5 Ired.) 201 (1844); *State v. Melton & Byrd*, 44 N.C. (Busb.) 49 (1852); *State v. Brady*, 28 Tenn. (9 Hum.) 74 (1848).

³⁵³ See Gary B. Mills, *Miscegenation and the Free Negro in Antebellum “Anglo” Alabama: A Reexamination of Southern Race Relations*, 68 J. OF AM. HIST. 16, 22 (1981).

³⁵⁴ *See id.* at 26.

³⁵⁵ *Hansford v. Hansford*, 10 Ala. 561, 561 (1846).

³⁵⁶ *Uncle Tom’s Cabin*, ARKANSAS TRUE DEMOCRAT, May 24, 1853, at 2.

prostitution,” he was certain, would engage in the practice.³⁵⁷ Yet the simple truth is that white women from all walks of life developed relationships with black men. In Tennessee, Louisa Scott and Jesse Brady, “a mulatto man,” lived together as “man and wife.”³⁵⁸ In North Carolina, Susan Chesnut and Joel Fore, a free person of color, did the same.³⁵⁹ And in Arkansas, locals read about “a good looking white woman” who tried to obtain the release of her black “husband” from jail.³⁶⁰ “[S]he was an English woman, and didn’t care for color.”³⁶¹

Of course, white women who had children with black men did more to disrupt the Southern social order than white men who fathered children with black women. This was because in every Southern state, Arkansas included, the child’s status as slave or free was determined by the mother.³⁶² Thus, while slave women could give birth only to slave children, white women gave birth to free children of African ancestry, disrupting the equation between color and slavery upon which the Southern order so much depended. Such was enough for one man to erupt with rage, “As long as there are Negro slaves in Virginia, and bad white women, we shall have a mulatto population free.”³⁶³ But the outspoken critics of the practice were not enough to stop the local theater in the nearby town of Camden, Arkansas, from putting on a production in which an actor dressed in blackface crawled into bed just as a white woman was leaving it, and later embraced “very closely” another white woman.³⁶⁴ While the editors of the *Ouachita Herald* may have thought the play indiscrete – especially considering that “Negroes were in attendance” – the thunderous laughter that no doubt ensued indicates quite plainly that such alliances occurred much more frequently than the guardians of the social order would have liked to admit.³⁶⁵

Even the accusation of rape did not provoke the extreme hysteria of later years. Here, it will not do simply to cite legislative enactments providing the death penalty for slaves accused of raping white woman as proof of white attitudes.³⁶⁶ Slaves suffered harsh penalties, including death, for too many crimes

³⁵⁷ *Pleasant*, 15 Ark. at 644.

³⁵⁸ *State v. Brady*, 28 Tenn. (9 Hum.) 74, 74 (1848).

³⁵⁹ *State v. Fore and Chesnut*, 23 N.C. (1 Ired.) 378, 378 (1841) (finding that defendants had “bedded and cohabited together as man and wife, and had one child without parting”).

³⁶⁰ *Didn’t Care for Color*, ARKANSAS BANNER, Dec. 2, 1851, at 2.

³⁶¹ *Id.*

³⁶² Virginia first enacted this rule, known as *partus sequitur ventrem*, in 1662. The law provided: “Whereas some doubts have arisen whether children got by any Englishman upon a negro woman should be slave or free, *Be it therefore enacted and declared by this present grand assembly*, that all children borne in this country shall be held bond or free only according to the condition of the mother.” II HENING’S STATUTES AT LARGE 170.

³⁶³ JOHNSTON, *supra* note 348, at 264 n.61 (citing *A Friend to Humanity*, RICHMOND ENQUIRER, Feb. 24, 1859).

³⁶⁴ *The Theatre*, OUACHITA HERALD, Apr. 7, 1859, at 2.

³⁶⁵ *Id.*

³⁶⁶ Cf. Diane Miller Sommerville, *Rape, Race, and Castration in Slave Law in the Colonial and Early South*, in *THE DEVIL’S LANE: SEX AND RACE IN THE EARLY SOUTH* 75, 76 (Catherine Clinton & Michele Gillespie eds. 1997) (pointing out the “infallibility and inadequacy of relying solely on statutory law to draw conclusions about the extent to which the white male population was animated by deep-seated fears of black male sexuality”).

to rely on the “law as written” as an accurate reflection of contemporary white attitudes on the subject.³⁶⁷ A better indicator comes from the courts, where community members, as judges, juries, and witnesses, were called upon to resolve the accusations when they did arise. Within this framework, two generalizations seem inescapable. First, compared to other crimes, prosecutions for rape and attempted rape of white women by black men did not occur often.³⁶⁸ Second, compared to the outrages of the late nineteenth and early twentieth centuries, antebellum Southerners appear to have approached these accusations with relative calm.³⁶⁹ To be sure, some court records indicate that the defendant was convicted on flimsy evidence and uncertain testimony. There was the case from North Carolina, in which the court upheld the slave’s conviction despite considerable evidence of a consensual relationship.³⁷⁰ There was also the case from Alabama, where the court held that the defendant could be convicted of attempted rape even though he never got closer than “ten steps” to the alleged victim.³⁷¹

But in other cases, the courts without hesitancy overturned convictions on grounds both substantive and technical. Courts threw out cases because of problems in the indictments,³⁷² because of faulty jury instructions,³⁷³ because of

³⁶⁷ In Arkansas, slaves could be put to death for a number of offenses, from murder, to treason, to stealing for a second time “negroes,” horses, mares, or mules. STATUTES OF ARKANSAS, chap. 51, part III, § 2; *id.* part XII, §§ 8, 16. There was also evidently nothing to prevent a court from imposing death (or at least severe punishment) on slaves convicted of a number of offenses which specified no maximum penalty. *See, e.g., id.* part XII, §§ 10 (maiming), 11 (kidnapping), 12 (arson), 13 (burglary), 14 (robbery), 15 (larceny). In other states, slaves could be executed for such things as poisoning, robbery, arson, and battery. *See* STAMPP, *supra* note 115, at 210-11 (noting capital offenses for slaves).

³⁶⁸ *Cf.* GENOVESE, *supra* note 25, at 33 (concluding that “[r]ape and attempted rape of white women by black men did not occur frequently”); MORRIS, *supra* note 10, at 304 (recognizing that, while there is disagreement as to why, “the number of actual rapes or attempted rapes brought before the courts was small”). Michael Hindus’ exhaustive study of the trial records of 1,076 cases involving slaves and free blacks for two upcountry South Carolina districts for the period 1818-1860 provides one example. His study reveals that only 11 – or 1.1% – of the trials were for sexual offenses. By far, the most commonly prosecuted offenses were property crimes (43%). These were followed by crimes against persons, including murder and assault (12.3%), crimes of “slave status,” like harboring a runaway (11.7%), and crimes against morals, including gambling and drinking (10%). Hindus, *supra* note 210, at 582, 583.

³⁶⁹ Other scholars, including Eugene Genovese, Martha Hodes, and Diane Miller Sommerville, have reached similar conclusions. *See supra* note 25 & accompanying text (noting these scholars disagreement with some of the more traditional assumptions).

³⁷⁰ *See State v. Jefferson*, 28 N.C. (6 Ired.) 305, 305-06 (1846) (noting how victim admitted that she had allowed defendant in the past “to put his hands on her in a free and familiar manner”).

³⁷¹ *See Lewis v. State*, 35 Ala. 380, 384 (1860) (remanding for jury to consider how far along in the attempt defendant actually went).

³⁷² *See, e.g. State v. Dick*, 6 N.C. (2 Mur.) 388, 388-89 (1818); *State v. Jim*, 12 N.C. (1 Dev.) 142, 143-45 (1826); *State v. Martin*, 14 N.C. (3 Dev.) 329, 329-30 (1832); *State v. Jesse*, 19 N.C. (2 Dev. & Bat.) 297, 300-01 (1837); *State v. Sam*, 60 N.C. (1 Win.) 300, 301 (1864); *Grandison v. State*, 21 Tenn. (2 Hum.) 451, 452 (1841); *Sydney v. State*, 22 Tenn. (3 Hum.) 478, 478-80 (1842); *State v. Cherry*, 31 Tenn. (1 Swan) 160, 164 (1851); *Commonwealth v. Jerry Mann*, 4 Va. 210, 210 (1820).

³⁷³ *See, e.g. Cato v. State*, 9 Fla. 163, 184-85 (1860); *Dick v. State*, 30 Miss. 631, 633-34 (1856); *State v. Jim*, 12 N.C. (1 Dev.) 508, 510-13 (1828); *State v. Henry*, 50 N.C. (5 Jones) 65, 66-67

impermissible delays in the trial,³⁷⁴ because of evidentiary errors,³⁷⁵ because of coerced confessions,³⁷⁶ and because the prosecutors simply failed to prove their case.³⁷⁷ In fact, of the fifty published cases for rape or attempted rape of a white woman by a slave consulted for this Article, over half – thirty in total – either affirmed a judgment for the defendant or reversed his conviction.³⁷⁸ In one case from Arkansas, the court held that, in addition to procuring a faulty indictment, the prosecution failed to prove that the slave Joe Sullivant was the one who had attempted to rape Emeranda Clemens. Whether it was because Emeranda first identified another (white) man as the perpetrator, whether it was because Joe’s confession was obtained only after Emeranda’s husband administered a severe whipping, or whether it was because the only evidence linking Joe to the scene of the crime was a footprint in the dirt that supposedly matched his own, the same court that would twice overturn Pleasant’s convictions found that Emeranda’s “loose and unsatisfactory” testimony was wholly insufficient to sustain a guilty verdict.³⁷⁹ In another Arkansas case, the court overturned the conviction of the slave Charles on the grounds that he never intended to use force.³⁸⁰ The court accepted as true that Charles entered a bedroom in which fourteen-year-old Almyra Combs slept alongside four other girls, and that Charles “took hold of her by the shoulders and tried to turn her over.”³⁸¹ But it nevertheless concluded that the idea of force never entered into Charles’ “original design.”³⁸² Indeed, as soon as Almyra raised the alarm, Charles alighted from the home.³⁸³

(1857); *State v. Oscar*, 52 N.C. (7 Jones) 305, 307-09 (1859); *Wyatt v. State*, 32 Tenn. (2 Swan) 394, 397-400 (1852).

³⁷⁴ See *State v. Phil*, 1 Stew. 31, 32-33 (Ala. 1827).

³⁷⁵ See, e.g. *Lewis v. State*, 35 Ala. 380, 382-84 (1860); *State v. Peter*, 14 La. Ann. 521, 523 (1859); *Dick v. State*, 30 Miss. 631, 632-33 (1856); *State v. Jim*, 48 N.C. (3 Jones) 348, 349-54 (1856).

³⁷⁶ See *State v. Gilbert*, 2 La. Ann. 244, 246 (1847).

³⁷⁷ See, e.g. *Lewis v. State*, 30 Ala. 54 (1857) (finding no force where defendant impersonated woman’s husband); *Green v. State*, 23 Miss. 509, 513 (1852) (reversing conviction where prosecution failed to prove offense took place within county alleged in indictment); *Henry v. State*, 23 Tenn. (4 Hum.) 270, 272 (1842) (finding no evidence that alleged victim was white); *Peter v. State*, 24 Tenn. (5 Hum.) 436, 440 (1844) (reversing conviction for “assault” on white woman where record did not satisfy court “as to the character of the acts committed or intended by the prisoner”); *Major v. State*, 36 Tenn. (4 Sneed) 597, 608-13 (1857) (reversing conviction where alleged victim’s testimony contained a number of inconsistencies and half-truths); *Major v. State*, 34 Tenn. (2 Sneed) 11, 17 (1854) (previous appeal) (finding that the “identity of the prisoner with the person who committed the assault is a point on which, as it seems to us, more full and satisfactory proof may be adduced”).

³⁷⁸ This number does not include three other appeals involving slaves accused of rape because they involved jurisdictional questions unrelated to the merits. See *State v. Charles*, 1 Fla. 298 (1847); *State v. Washington*, 6 N.C. (2 Mur.) 100 (1812); *State v. Lewis*, 35 S.C.L. (4 Strob.) 47 (1849). This number also does not include an additional nine appeals, mostly from Virginia, involving free blacks.

³⁷⁹ *Sullivant v. State*, 8 Ark. 400, 408 (1848).

³⁸⁰ *Charles v. State*, 11 Ark. 389, 408-410 (1850).

³⁸¹ *Id.* at 409.

³⁸² *Id.* at 410.

³⁸³ *Id.*

But what is perhaps most remarkable about these cases is that they even made it into the courts at all. Indeed, in 1892, on facts far less egregious, Lee Walker was mutilated, hanged, and burned in Memphis after he approached two white women and demanded something to eat.³⁸⁴ In Paris, Texas, in 1893, Henry Smith, “a weak-minded fellow,” was burned while yet alive by a surging mob of ten thousand persons based on the mere accusation of an assault on a police officer’s daughter.³⁸⁵ Yet, in 1850, when the evidence was undisputed that Charles, a black man, was in the bedroom of five teenage girls in the middle of the night, allegedly to have sex with one of them, community members remained calm enough to allow his guilt or innocence to be determined dispassionately in a court of law. No lynching or rush to judgment took place before or after his trial; and, in fact, following his conviction, the jury recommended him to the “mercy” of the court, sending an implicit challenge to the contemporary argument that antebellum Southerners were obsessed with black men raping white women.³⁸⁶ Other cases reach a similar result.

In short, without attempting to downplay the seriousness of a rape allegation, or even to deny that in some instances, depending on the facts or the victim, the accusation may have provoked outrage in the minds of some, the evidence simply does not support the traditional assumption that antebellum whites, as a general matter, were blinded by the same rape complex as their postbellum counterparts. To the contrary, when a woman like Sophia accused Pleasant of raping her, it probably generated more interest and excitement than violence and hysteria. After all, when the twelve jurors sat down to hear Pleasant’s case, and the members of the community packed the courtroom to listen, they could not have asked for a more exciting trial. It had scandal, intrigue, and all the sordid details of everyday life.

B. *Fallen Women and Dishonorable Men*

It is difficult to say for certain what the atmosphere inside the courtroom would have been like on the day of Pleasant’s trial. But chances are, notwithstanding the intrigue surrounding the case, Judge Watson would have kept the courthouse dignified and subdued. Admittedly, there was a time when an outsider might come into a county court in Arkansas “and behold things going on in beautiful disorder,” as the clerk pleaded with the “*drunken loafers*” to give him room to write, and the judge, “half sitting and half reclining, engaged in stiff argument with some looker-on.”³⁸⁷ But such was the scene of “days gone by.”³⁸⁸ Now, men of distinction praised judges capable of “despatching [sic] business rapidly,”³⁸⁹ who could recite a “clear and forcible” charge to the jury and

³⁸⁴ See Wells, *supra* note 19, at 112-17 (describing lynching).

³⁸⁵ See *id.* at 91-98 (describing hysteria).

³⁸⁶ Brief for Prisoner, *Charles v. State*, at 24.

³⁸⁷ ARKANSAS GAZETTE, Feb. 20, 1852, at 3.

³⁸⁸ *Id.*

³⁸⁹ OUACHITA HERALD, Apr. 7, 1859, at 2.

command respect from the attendees and their court personnel.³⁹⁰ Decorum was the watchword, and Judge Watson, with his years of experience at the bar, likely demanded much of it.

The attorney charged with prosecuting Pleasant that morning was Edward A. Warren, the chief prosecutor for the Sixth Judicial Circuit.³⁹¹ In his mid-thirties, Warren had been practicing law on-and-off for close to ten years, though he had been prosecuting cases on behalf of the district for only one.³⁹² The residents of Union County may or may not have known him, for Warren lived in the city of Camden, in bordering Ouachita County.³⁹³ But then again, the talk around town had probably alerted them to his reputation, for Warren, like many Southern men of means and desire, was a man of clear political aspirations. Warren, in fact, had served as a member of both the Mississippi and Arkansas House of Representatives in the 1840s, and he would later represent the citizens of Arkansas in the United States Congress.³⁹⁴ Warren was also a family man and, like many men of his station, a slaveholder, owning one slave in 1850 and a few more in 1860.³⁹⁵

The first one called to the stand on that morning was Sophia Fulmer, Pleasant's accuser.³⁹⁶ Sophia was a young woman – twenty-one-years-old at the time of the alleged rape – who had been married to her husband, Jacob Fulmer, for three years.³⁹⁷ Jacob was not much older than Sophia – about twenty-five – but already had earned a reputation as a very poor and lazy man.³⁹⁸ According to the 1850 census records and 1851 tax records, Jacob owned no land, no livestock,

³⁹⁰ ARKANSAS GAZETTE, Mar. 3, 1841, at 2; *see also* OUACHITA HERALD, Oct. 2, 1856, at 2 (praising Judge S__ for his charge to grand jury); ARKANSAS GAZETTE, Feb. 20, at 1852, at 3 (emphasizing “stillness” of courtroom and judge’s ability to demand respect from others).

³⁹¹ Transcript of Trial, *State v. Pleasant*, at 2 (indictment); *see also* ARKANSAS GAZETTE, Jan. 9, 1852 (listing officers of court, including Edward Warren).

³⁹² Warren was born in 1818 and was 33 at the time of the 1850 census. *See* BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS 2010 (1989) (listing Warren’s birth date as May 2, 1818); *see also* 1850 CENSUS RECORD (listing Warren’s age as 33). Warren’s official congressional biography erroneously lists him as a judge of the Sixth Judicial Circuit rather than chief prosecutor. *See* BIOGRAPHICAL DIRECTORY, at 2010. Warren became chief prosecutor in March 1851. *See* HEMPSTEAD, *supra* note 61, at 1194.

³⁹³ *See* 1850 CENSUS RECORD (listing place of residence).

³⁹⁴ *See* BIOGRAPHICAL DIRECTORY, *supra* note 392, at 2010.

³⁹⁵ *See* 1850 CENSUS RECORD (indicating that Warren was married and had two children). It also appears that a sister and another couple lived with him. *Id.* The 1850 slave schedules indicate that Warren owned one slave. *See* 1850 SLAVE SCHEDULES. The 1860 slave schedules list him as the owner of four slaves. *See* 1860 SLAVE SCHEDULES.

³⁹⁶ Transcript of Trial, *State v. Pleasant*, at 8 (testimony of Sophia Fulmer).

³⁹⁷ Sophia was 18 when she married Jacob on November 18th, 1848, most likely making her 21 on Nov. 29, 1851, the date of the alleged rape. Union County Marriage Records, “Book A,” at 66. She is also listed as 20-years-old in the 1850 census, recorded on October 6th, 1850. 1850 CENSUS RECORD.

³⁹⁸ For testimony about Jacob’s character, *see* Transcript of Trial, *State v. Pleasant*, at 11 (testimony of John Willingham). Jacob was 22 when he married Sophia on November 18th, 1848, and was 24 at the time of the 1850 census, thus making him about 25 at the time of the trial. *See* Union County Marriage Records, “Book A,” at 66; 1850 CENSUS RECORD.

no home, and no slaves.³⁹⁹ In fact, he evidently did not even make a respectable living, getting by as he did by selling liquor and other sundry items to “negroes in the neighborhood.”⁴⁰⁰ Born in Germany, it is not clear why Jacob came to Arkansas or how he met Sophia.⁴⁰¹ But it is seems clear enough that he represented the undesirables in the community; he was the type of dishonorable man that contrasted so sharply with the likes of James Milton, and inevitably felt his disdain. “[I]n no single instance,” Frederick Olmsted said of his discussions with landowners in the slave South, did an inquiry “about the poor whites of its vicinity fail to elicit an expression indicating habitual irritation with them.”⁴⁰² In the minds of respectable classes, the dissolute constituted a plague on the social fabric of the South, and “no slave country, new or old,” Olmsted learned, was “free from this exasperating pest of poor whites.”⁴⁰³

Without a home of their own, Sophia and Jacob lived with a man named William Landers in El Dorado Township, which bordered Van Buren Township – where Pleasant lived – to the south and east.⁴⁰⁴ Landers himself was a man of but modest means, especially compared to someone like James Milton, but he evidently did well enough to own a small farm worth \$450 in 1850, one horse, several cattle, and sixty pigs.⁴⁰⁵ At the time of the alleged rape, he also appears to have been working at a nearby mill, about a half mile from his house.⁴⁰⁶ The exact arrangements between Landers and the Fulmers is not known; but it is likely that Landers allowed the Fulmers to stay with him in exchange for some help on the farm or a share of whatever profits Jacob could make selling his wares. Jacob evidently did not keep up his end of the bargain, however; at the time of the alleged rape, he was in debt to Landers for an undisclosed amount of money.⁴⁰⁷

On the stand, Sophia testified about how Pleasant came into her home and tried to rape her. Guided in her testimony by Warren, Sophia’s narrative suggested a brutal attempt – one which, she said, left her “much bruised and injured” – and which easily met the requirements of nineteenth century rape

³⁹⁹ In the 1850 census record, Jacob and Sophia are listed as members of William Landers’ household. 1850 CENSUS RECORD. In the 1851 Tax Record, Jacob was not taxed on any property. 1851 TAX RECORD.

⁴⁰⁰ Transcript of Trial, *State v. Pleasant*, at 18 (affidavit of James Milton).

⁴⁰¹ 1850 CENSUS RECORD (indicating where Jacob was born).

⁴⁰² OLMSTED, *supra* note 317, at 578.

⁴⁰³ *Id.* at 290.

⁴⁰⁴ See 1850 CENSUS RECORD (listing Landers as head of a household that included Jacob and Sophia Fulmer).

⁴⁰⁵ See 1850 CENSUS RECORD (Agriculture) (listing Landers as owner of 45 acres of improved land and 145 acres of unimproved land, for a total cash value of \$450, as well as one horse and 60 pigs); see also 1849 TAX RECORD (listing Landers as owner of 160 acres of land, worth \$480, one horse, and eight cattle); cf. 1851 TAX RECORD (taxing Landers on one horse and eight cattle, but no land).

⁴⁰⁶ Transcript of Trial, *State v. Pleasant*, at 10 (testimony of William Landers) (stating that he “keeps the mill”); see also *id.* at 8 (testimony of Sophia Fulmer) (stating that the mill was half a mile from the house).

⁴⁰⁷ See Transcript of Trial, *State v. Pleasant*, at 10 (testimony of John C. Willingham) (indicating that part of the money the Fulmers received from James Milton to not prosecute the case “was to got to the said Landers in payment of a Debt due him by Mr. Fulmer”).

law.⁴⁰⁸ To demonstrate force and non-consent, Sophia detailed how Pleasant came into her house and demanded some whiskey and tobacco; how he “caught her by the bosom” when she approached him; how he threw her violently to the floor and on her bed; how he “pulled her clothes over head, and smothered her with them;” how she “drew up her legs, and offered such resistance as to prevent him from penetrating her body;” how she “made as much noise” as she could; how, after Pleasant finished, she “got hold of a gun,” though never used it; and how, immediately afterwards, she ran to the mill and told William Landers and her brother what had happened.⁴⁰⁹ It was the type of testimony that, had it been alleged several decades later, would have meant certain death for a black man like Pleasant.

But much like the accusation against Charles, who two years earlier was tried without much fanfare for the attempted rape of a teenage girl, there is nothing in the record to suggest that Sophia’s accusation provoked any violence or rush to judgment among the members of Union County. In fact, to the contrary, some residents, including James Milton and some of his slaveholding neighbors, apparently greeted Sophia’s testimony with suspicion if not downright hostility. Much of this assuredly had to do with Sophia’s standing in the community. In addition to being poor, Sophia was rumored to have flouted the sexual mores that dominated the antebellum South. Several members of the community, in fact, were convinced that Sophia was having an affair with William Landers, if not others. One of them, Dr. Courtney, was certain that he “saw the said Sophia and the witness Landers in such position to each other that they must have been in criminal connection.”⁴¹⁰ Another, Mrs. Burns, claimed to have seen “the said Landers and the said Sophia in the actual connection of adultery.”⁴¹¹

John Quillin – Pleasant’s lawyer – sought to exploit testimony like this, presumably to imply that, if anything did happen that cold November morning, it was a consensual encounter. Indeed, one of the first questions he asked Sophia was whether she had ever had “illicit intercourse with one William Landers or any other person.”⁴¹² She denied it, as did Landers.⁴¹³ But others came forward, both at the trial and afterwards, to suggest otherwise.⁴¹⁴ William Yarborough, for example, swore that, when he went over to the house one day, he saw Landers “sliding” off of the bed where Sophia “was lying ... all covered but her head.”⁴¹⁵ Though he allowed that he did not see Landers on the bed, and “saw nothing about his clothes indicating that he had been in the bed or in connection with Mrs.

⁴⁰⁸ Transcript of Trial, *State v. Pleasant*, at 9 (testimony of Sophia Fulmer). In Arkansas, as elsewhere, rape was “defined to be the carnal knowledge of a female forcibly and against her will.” *Charles v. State*, 11 Ark. 389, 409 (1850).

⁴⁰⁹ Transcript of Trial, *State v. Pleasant*, at 8-9 (testimony of Sophia Fulmer).

⁴¹⁰ *Id.* at 16 (affidavit of James Milton).

⁴¹¹ *Id.* at 17.

⁴¹² *Id.* at 9 (testimony of Sophia Fulmer).

⁴¹³ *See id.*; *see also id.* at 10 (testimony of William Landers).

⁴¹⁴ *See id.* at 15-18 (affidavit of James Milton) (detailing testimony).

⁴¹⁵ *Id.* at 11 (testimony of William Yarborough).

Fulmer,” Yarborough did add that no one else, including Jacob, was there.⁴¹⁶ Others, including Merrick Harrell and a man named Bailey supported Pleasant’s motion for a new trial with testimony of Sophia’s general reputation for virtue and chastity: Harrell thought it “not good,” and Bailey said “he would not believe her on her oath.”⁴¹⁷ John Burns further added that he thought Sophia a “trollop,” and James Smith was prepared to go on record with the unusually frank admission that he had “had criminal connection with her himself often.”⁴¹⁸

Whether Sophia had been involved sexually with William Landers, James Smith, or anyone else may never be known. But the specter of impropriety – as John Quillin well knew – both undermined her credibility and supported the defense of a consensual encounter. Indeed, throughout the antebellum South, white women were taught that one of their most sacred virtues was their sexual purity. Put upon a pedestal, husbands and fathers exalted the “modest maiden,” insistent that, should an impure thought ever enter her head, it would “crimson her cheek with a burning blush, though alone in the solitude of her chamber.”⁴¹⁹ Though it seems clear now that the image of the pure white woman was more a fantasy of Southern moralists than an accurate reflection of everyday life, this fact does not diminish the power this myth would have had in the lives of ordinary men and women. Simply put, Sophia’s rumored sexual improprieties left her a fallen woman in the minds of at least some in her community; she was the type of “vicious” woman that caused one upright contributor to the local paper to “shudder.”⁴²⁰ And while courts of law reminded us that “no matter how abandoned the female may be, she is still entitled to the protection of the law;”⁴²¹ it was also true that in the minds of many the woman’s reputation mattered. “By the rules of the common law,” Justice English would state in Pleasant’s second appeal, “the character of the prosecutrix, or injured female, for chastity, may be impeached, not for the purpose of furnishing a justification or excuse for the offence, but for the purpose of raising the presumption that she yielded her assent, and was not forced in point of fact.”⁴²²

Lending further support to Quillin’s unspoken suggestion that, if something did happen that morning, it was indeed consensual was evidence that Sophia and her husband had a familiar relationship with their black neighbors. As noted previously, Jacob evidently made his living by selling whiskey to the local slaves, which meant that Jacob and probably Sophia were known quite well among the black community. Indeed, Sophia herself was rumored to have once invited a female slave “to sit down at [her] table” for dinner.⁴²³ Sophia also knew

⁴¹⁶ *Id.* Landers was recalled by the State to rebut Yarborough’s testimony, and offered the plausible explanation that Sophia had been sick and he was “at her bed side for the purpose of giving her some medicine.” *Id.* (testimony of William Landers).

⁴¹⁷ *Id.* at 16, 17 (affidavit of James Milton).

⁴¹⁸ *Id.* at 15, 18.

⁴¹⁹ *Beggarly v. Craft*, 31 Ga. 309, 315 (1860).

⁴²⁰ *A Good Woman*, EL DORADO BULLETIN, May 9, 1861, at 1.

⁴²¹ *Pleasant*, 13 Ark. at 377.

⁴²² *Pleasant*, 15 Ark. at 644.

⁴²³ *Id.* at 631. The trial court excluded the testimony. *Id.*

Pleasant; at the trial, upon questioning by Quillin, she admitted that she “had seen said Defendant several times,” and that he had come to her house before (though she insisted that he always stayed in the yard).⁴²⁴ Perhaps her claim that Pleasant had asked for whiskey that morning therefore had some truth in it; such a request was certainly consistent with what we know about the Fulmers and their relationship with their black neighbors.

But again, to the extent these social interactions and ones like them were known, they further undermined Sophia’s story in the minds of at least some residents if only because they made the possibility of a consensual relationship all the more likely. After all, most of the women who engaged in sex across the color line during slavery times were not the delicate belles of Southern lore.⁴²⁵ Instead, they were women of lower class means who associated through one means or another with people of color and with slaves. Victoria Bynum has written about the so-called “unruly women” of antebellum North Carolina, whose position as a socially and economically marginalized group allowed for a free and familiar exchange with members of the slave community.⁴²⁶ Yet this was nothing new or unique to North Carolina. From the time of the first settlers, it was not uncommon for blacks and poor whites “to run away together, steal hogs together, get drunk together.”⁴²⁷ Nor was it uncommon, Edmund Morgan writes in his exceptional work on colonial Virginia, “for them to make love together.”⁴²⁸ And it was surely this point that John Quillin was attempting to make when he asked Sophia about Pleasant. Her response – that she had seen him “several times, that he had come to the fence for peaches” – showed a familiarity with a member of another race that made a sexual relationship all the more possible.⁴²⁹ In the minds of some, Sophia belonged to that “lower class of whites, so poor that their favors can be purchased by the slaves.”⁴³⁰

But even if the relationship was not consensual, Quillin suggested an alternative reason for the jury to reject Sophia’s story: she simply made it up to extort money from James Milton. According to John Willingham, a friend and neighbor of Milton’s, he “went down to the Fulmers to see what was the matter” soon after hearing about the alleged rape.⁴³¹ Upon his arrival, and evidently before Milton even had a chance to inquire, Jacob informed Willingham that he would take two hundred dollars to “not have had it [the rape] ... happened.”⁴³²

⁴²⁴ Transcript of Trial, *State v. Pleasant*, at 9 (testimony of Sophia Fulmer).

⁴²⁵ See CATHERINE CLINTON, *THE PLANTATION MISTRESS: WOMAN’S WORLD IN THE OLD SOUTH* 72-73 (1982) (suggesting that infidelity with black or white men would have been rare among plantation women).

⁴²⁶ See VICTORIA E. BYNUM, *UNRULY WOMEN: THE POLITICS OF SOCIAL & SEXUAL CONTROL IN THE OLD SOUTH* 1-14, 88-110 (1992).

⁴²⁷ EDMUND S. MORGAN, *AMERICAN SLAVERY, AMERICAN FREEDOM: THE ORDEAL OF COLONIAL VIRGINIA* 327 (1975).

⁴²⁸ *Id.*

⁴²⁹ Transcript of Trial, *State v. Pleasant*, at 9 (testimony of Sophia Fulmer).

⁴³⁰ FREDERICK LAW OLMSTED, *A JOURNEY IN THE SEABOARD SLAVE STATES, WITH THE REMARKS ON THEIR ECONOMY* 509 (1856).

⁴³¹ Transcript of Trial, *State v. Pleasant*, at 10 (testimony of John C. Willingham).

⁴³² *Id.*

Willingham, the Fulmers, and William Landers then discussed the offer to settle further, and it was agreed that, if Milton would pay the sum, “part of the money was to go to the said Landers in payment of a Debt due him by Mr. Fulmer and the balance to be given to Mrs. Fulmer to be laid out in the store.”⁴³³

There may have been a plausible reason behind this settlement offer that had nothing to do with extortion. After all, in Arkansas, as elsewhere, it was not uncommon for persons injured by slaves to seek civil redress from the owner rather than resorting to the courts. In fact, the Arkansas legislature specifically authorized owners to lawfully “compound” certain minor offenses without court intervention.⁴³⁴ But the offer nonetheless complicated the matter; not only was rape a serious offense not covered by the statute, but the offer quite simply *did* raise a legitimate question about whether Sophia’s story “may have been in whole, or in part, a fabrication.”⁴³⁵ John Quillin would later confide that he thought this was the case. “I think,” he wrote to Justice English in a private letter, “it is a malicious prosecution to injure an old man from whom the prosecutor could not extort money.”⁴³⁶ Ultimately, the deal never went through, though it is not clear why. Milton met with the Fulmers the next day and, after first explaining that he could not afford two hundred dollars, agreed to pay them one hundred and twenty-five.⁴³⁷ Whether Sophia could have explained why the sum was never paid is not known. But Judge Watson – in a ruling that the Arkansas Supreme Court would later determine was reversible error – refused to allow Quillin to ask her about it.⁴³⁸

C. *Slavery and the Limits of White Supremacy*

By the time the jury retired to deliberate, and the men and women attending the trial escaped the courtroom for a break in the cool April air, it seems clear enough that more was being debated in Pleasant’s trial than the competing narratives over what happened that November day in 1851; at issue were competing narratives about slavery and the foundation of the Southern social order. To Sophia, like so many whites, slavery was based upon a racist assumption that all blacks were genetically inferior to whites in every respect. Slavery of course is not dependent on a racist ideology; slavery has existed in other societies and in other periods in which race played little if any role. But a

⁴³³ *Id.*

⁴³⁴ See STATUTES OF ARKANSAS, chap. 51, part. XII, §§ 4-5. The Arkansas court explained the rationale for the law this way: “[I]t is a reasonable provision of law, that the master should first be applied to, and have an opportunity of punishing his slave, and compensating the injured party for the trespass, before he is subjected to the inconvenience, loss of labor and costs of having the slave arrested, and taken off to Court to go through the forms of a legal prosecution.” *Bone v. State*, 18 Ark. 109, 111 (1856).

⁴³⁵ See *Pleasant*, 13 Ark. at 378 (explaining why it was prejudicial error to exclude testimony).

⁴³⁶ Letter from John Quillin to Elbert H. English (Feb. 1853).

⁴³⁷ Transcript of Trial, *State v. Pleasant*, at 10-11 (testimony of John C. Willingham).

⁴³⁸ See Transcript of Trial, *State v. Pleasant*, at 9 (testimony of Sophia Fulmer) (sustaining objection to question); see also *Pleasant*, 13 Ark. at 377-79 (reversing trial court).

racist ideology justified the uniquely American system that treated only persons of African descent as a thing, a possession, an extension of the master's will. Men like Dr. Josiah Nott left it squarely on the doorstep of science. "There is," he said in a lecture designed to shore up any doubts about Southern slavery, "a marked difference between the heads of the Caucasian and the Negro, and there is a corresponding difference no less marked in their intellectual and moral qualities."⁴³⁹ Others grounded their rationale on the Bible.⁴⁴⁰ But from wherever the evidence came, many whites comforted themselves in denying blacks their basic humanity based on pure, unadulterated, racism. The Arkansas court summed it up this way: "There is a striking difference between the *black* and *white* man in intellect, feelings and principles. In the order of providence, the former was made inferior to the latter; and hence the bondage of the one to the other."⁴⁴¹

Importantly, this view of slavery gave all whites, whether they owned slaves or not, a stake in the system. "It matters not that he is no slaveholder; he is not of the inferior race; he is a freeborn citizen," the proslavery theorist Thomas R. R. Cobb explained in sketching the social position of lower class whites.⁴⁴² Cobb's description of the South reflected what sociologists have dubbed a "*Herrenvolk* democracy": regimes "that are democratic for the master race but tyrannical for the subordinate groups."⁴⁴³ Or, as an article printed in the *Arkansas Gazette* explained it, "Democracy is not the 'equality of races' but the equality of the individuals of the superior race. Democracy is based on the assumption that all white men are equal and that every member of the Caucasian race is entitled to equality with any other member."⁴⁴⁴ Blacks were not included within this egalitarian system of government because they were not part of the same human community. Thus, even as "free" persons they had no rights, Chief Justice Taney of the United States Supreme Court would declare in an opinion consistent with this ideology, "which the white man is bound to respect."⁴⁴⁵

The racism that developed from this view of slavery, moreover, helps explain many of the daily interactions between whites and blacks in the slave South. The overseer, who shot and killed a slave in Hempstead County when he refused to take off his shirt and be whipped,⁴⁴⁶ the slave trader, who raped an enslaved woman from Arkansas as he carried her down the Mississippi,⁴⁴⁷ and the

⁴³⁹ Josiah C. Nott, *Two Lectures on the Natural History of the Caucasian and Negro Races* (1844), reprinted in *THE IDEOLOGY OF SLAVERY*, *supra* note 254, at 208, 232.

⁴⁴⁰ See, e.g., Thorton Stringfellow, *A Brief Examination of Scripture Testimony on the Institution of Slavery* (1841), reprinted in *THE IDEOLOGY OF SLAVERY*, *supra* note 254, at 136.

⁴⁴¹ *Ewell v. Tidwell*, 20 Ark. 136, 143 (1859).

⁴⁴² COBB, *supra* note 324, at ccxiii.

⁴⁴³ FREDRICKSON, *supra* note 253, at 61 (quoting PIERRE L. VAN DEN BERGHE, *RACE AND RACISM: A COMPARATIVE PERSPECTIVE* 17-18 (1967)).

⁴⁴⁴ *The Philosophy of Negro Slavery – An Important Work – The Duty of the South*, *ARKANSAS GAZETTE*, Nov. 10, 1854, at 3.

⁴⁴⁵ *Scott v. Sandford*, 60 U.S. 393, 407 (1856).

⁴⁴⁶ See *Brunson v. Martin*, 17 Ark. 270, 274-75 (1856); see also *supra* notes 144-150 and accompanying text (discussing case).

⁴⁴⁷ See JOHN ROLES, *SLAVERY ON SOUTHERN PLANTATIONS* 30 (1864).

local ruffians, who formed a patrol in Ouachita County and beat several slaves whom they found “strolling about,”⁴⁴⁸ were all giving voice to a view of slavery that said that all whites – even poor, nonslaveholding whites – were superior to all blacks, and could do what they wanted with them. This same ideology, moreover, helps explain why Caroline Brown of Lafayette County rushed to court when the slave Bone was “rude and insolent” to her.⁴⁴⁹ Bone had dared to challenge the strictures of white supremacy, and Mrs. Brown thought (as did the court) that “he no doubt deserved to be flogged for it.”⁴⁵⁰ Likewise, in charging Pleasant with rape, Sophia Fulmer asserted a view of slavery that assumed that all blacks were brutes, that assumed that they belonged to a permanently inferior species, and that assumed that, as a member of the white race, the community would side with her and not him, despite her questionable background and her uncertain testimony. In her view, her white skin entitled her to certain privileges, the least of which was that others would join with her in reaffirming the supremacy of the white race.

But when Sophia came into court and demanded vindication for her view of slavery (white superiority), she found herself up against James Milton’s version (honor and reputation).⁴⁵¹ To James Milton, this case was not about reaffirming dominance over an inferior race; but about character and the paternalist spirit. Like other honorable men, Milton probably took Sophia’s accusation personally, for it affected not just his slave – a member of his extended household – but it also reflected poorly on his role as the head. The testimony that he later secured – that Pleasant was a “humble and obedient servant,” and that he had never been guilty of “any improper or disobedient conduct whatever”⁴⁵² – was thus offered as much to defend himself as it was to clear Pleasant.

Nor should we be surprised at James Milton’s response. It is certainly true that the slaveholding elites had for centuries sought to forge a common bond between themselves and the lower and middling ranks; the more astute among them recognized the danger of allowing the natural sympathies to spring up between slaves and poor whites.⁴⁵³ But the alliance that was established between these two groups was always an uneasy one and was daily undermined in practice. The reason for the elites’ discontent is clear enough; it stemmed from the perception that poor whites interfered with their slaves and with slave discipline.

⁴⁴⁸ See *Hervy v. Armstrong*, 15 Ark. 162, 163 (1854).

⁴⁴⁹ See *Bone v. State*, 18 Ark. 109, 114 (1856).

⁴⁵⁰ *Id.*

⁴⁵¹ Others before me have emphasized the ideological conflicts that took place in courtrooms in the slave South. Three scholars that have influenced my own thinking are: Terry Fisher, Ariela Gross, and Walter Johnson. See *supra* note 244 (referencing their articles). But perhaps Barbara Fields said it best: “Of course in any society more complex than the primal horde, there cannot be a single ideology through which everyone apprehends the social world.” Barbara Fields, *Ideology and Race in American History*, in REGION, RACE, AND RECONSTRUCTION: ESSAYS IN HONOR OF C. VANN WOODWARD 143, 155 (1982).

⁴⁵² Transcript of Trial, *State v. Pleasant*, at 19 (affidavit of Thomas M. Wright, James Wordlaw, and Joseph Wordlaw); see also *id.* at 20 (affidavit of George W. Darden, John C. Willingham, and R.W. Durrebb) (same).

⁴⁵³ See MORGAN, *supra* note 427, at 328 (emphasizing decision to use racism to break up alliances between white indentured servants and black slaves in colonial Virginia).

“I wish the Governor, or the members [of the legislature] ... would try and have an act passed making it a penal offence for white persons to be seen engaged in conversations with negroes in their cabins, or in the field without permission of the owner or overseers,” one Arkansan mused in clear reference to people like the Fulmers.⁴⁵⁴ “Low bred persons going into the farm, in the absence of any white person and engaging in conversation with negroes causes them to neglect their work, and has a tendency to put mischief in the negro’s head.”⁴⁵⁵ The doctrine of white supremacy had always had limits; if you interfered with a respectable man’s slaves, you would have to pay for it.⁴⁵⁶

And of course John Quillin knew this; he knew, or at least he hoped, that the slaveholders on the jury and in the community were tired of that “low bred” class of persons often thought “worse sores on the body politic than the free negroes.”⁴⁵⁷ He therefore sought to turn a trial of rape into a trial of character, to somehow demonstrate that Sophia had lost her privileges of whiteness. Whether Sophia could or even wanted to emulate the myth of the ideal Southern woman is debatable; but by drawing out her alleged infidelities and questionable associations Quillin certainly tried to show that this was a woman who was not worth protecting. Dressed in the everyday language of sexual indiscretions and racial transgressions, in other words, Quillin was forcing a confrontation over how Southerners viewed themselves and how they viewed their society. The essential question being posed: how far would the doctrine of white supremacy go when it interfered with an honorable man’s slave?

CONCLUSION

In the end, the jury returned a verdict finding Pleasant guilty of attempted rape.⁴⁵⁸ It is hard to know what led the jury to reach this conclusion. Whether it considered Sophia’s reputation or wondered about her motivations, whether it discussed Pleasant’s character or brought up Milton’s standing in the community, can never be known. But the guilty verdict in a way says less about what actually happened than about whose worldview prevailed. The point was made before that the vast majority of antebellum Southerners – including those who lived in Arkansas and over half of the jurors in Pleasant’s trial – either did not own slaves or held just a few. Certainly some of them, especially those farmers who had

⁴⁵⁴ ARKANSAS GAZETTE, Dec. 25, 1858, at 2.

⁴⁵⁵ *Id.* While few lawmakers seem to have gone this far, the legislature in Arkansas did make it illegal for whites to entertain slaves, to drink or gamble with them, or to “buy, sell, or receive of, to, or from a slave any commodity whatever, without the consent of the master.” See STATUTES OF ARKANSAS, chap. 153, art. V, §§ 56, 63. For prosecutions under these laws, see *State v. Cadle*, 19 Ark. 613 (1858) (harboring and entertaining slaves); *Edwards v. State*, 21 Ark. 512 (1860) (selling ardent spirits to slaves); *Omey v. State*, 23 Ark. 281 (1861) (selling ardent spirits to slaves).

⁴⁵⁶ See *Hervy*, 15 Ark. at 166 (holding that master could recover monetary damages from slave patrol if he could demonstrate actual harm; “the unprovoked battery of a slave” the court reasoned, “is not only ... an injury to the slave, but an insult to the master”).

⁴⁵⁷ ARKANSAS GAZETTE, Nov. 15, 1856, at 2.

⁴⁵⁸ Transcript of Trial, *State v. Pleasant*, at 4.

achieved some moderate success, aspired to become the aristocratic grandees that they had heard from and seen about town, with their emphasis on the patriarchal plantation and the extended, biracial household. But many more of them, small-time slaveholders included, were undoubtedly “fiercely democratic in their political and social thinking,” and were much more likely to view white superiority and black inferiority – not a pre-bourgeoisie, aristocratic social philosophy – as the organizing principle upon which their society was based.⁴⁵⁹ To the majority of these yeoman farmers and backwoodsmen, what mattered most were the local interactions between themselves and their black residents, in which racial ideologies were expressed and reinforced on a daily basis.

George Fredrickson makes a similar point when he notes how even the most ardent defenders of the paternalist worldview nonetheless conceded some justification for slavery based on innate racial difference.⁴⁶⁰ Proslavery theorists like Henry Hughes and George Fitzhugh understood full well the appeal of *Herrenvolk* democracy for a large majority of whites; and no astute Southerner could ignore the emotional pull of its underlying theory of the supremacy of the white race.⁴⁶¹ Indeed, in the backwoods of Arkansas democracy came to depend on slavery, and it was often said that one could not exist without the other.⁴⁶² “Negro slavery places an inferior race in this its natural relation,” an article printed in the *Arkansas Gazette* insisted. “By so doing, the negro is not only benefited by occupying the sphere assigned him by nature, but the white man is elevated and the white race saved from menial degradation.”⁴⁶³ Perhaps the role of this “egalitarian racism” is best captured in the decision to rename the *Arkansas Gazette* the *Arkansas State Gazette and Democrat* in 1850. As the editorial put it, the name reflected the paper’s “original position as a democratic journal,” not the Whig paper it had become.⁴⁶⁴

Despite a guilty verdict, the ultimate resolution of this case may never be known. Following Pleasant’s conviction, James Milton – with John Quillin and his powerful colleague Samuel Hempstead arguing on Pleasant’s behalf – appealed the decision to the Arkansas Supreme Court.⁴⁶⁵ There, Milton found an audience much more receptive to his view of slavery. The men who made up the Arkansas court, it must be remembered, were wealthy, educated, and slaveholders

⁴⁵⁹ See FREDRICKSON, *supra* note 253, at 67 (making similar arguments).

⁴⁶⁰ See generally *id.* at 64-70.

⁴⁶¹ See *id.* at 68 (“No successful Southern politician, whatever his ties to the ‘aristocracy,’ was able to talk like Fitzhugh and give theoretical sanction to the enslavement or subordination of whites. When politicians justified slavery, they almost invariably did so largely in terms of race[.]”).

⁴⁶² See *The Philosophy of Negro Slavery – An Important Work – The Duty of the South*, ARKANSAS GAZETTE, Nov. 10, 1854, at 3 (“Negro slavery is the basis and foundation of Democracy, without which it cannot exist.”).

⁴⁶³ *Id.*

⁴⁶⁴ *Union of the Gazette and Democrat*, ARKANSAS GAZETTE, Feb. 8, 1850, at 2.

⁴⁶⁵ For a brief discussion of Samuel Hempstead and John Quillin’s relationship to him, see *supra* note 286 and accompanying text.

all.⁴⁶⁶ Like James Milton, they may have held deep convictions of superiority over the black population. But this does not mean that they would have been sympathetic to Sophia's claim. To the contrary, as members of the ruling elite, they probably saw Sophia in the same way that James Milton did: as a poor woman who, through her sexual indiscretions and racial transgressions, was not worth sacrificing a valuable slave. In fact, with an irony that speaks volumes, the court eventually reversed Pleasant's conviction in part because the prosecution failed to put on evidence that Sophia – a woman who asserted a view of slavery that depended on white racial privilege – was in fact white.⁴⁶⁷

In the early fall of 1854, over two years after his first trial and almost three years since the alleged incident, Pleasant was retried, this time in bordering Ouachita County, after Judge Watson granted Quillin's motion for a change of venue on the grounds that the members of Union County had their minds made up.⁴⁶⁸ Unfortunately, we will never know anything about the jurors in this second trial, or about the full extent of the evidence, because the local records were destroyed by fire sometime in the late nineteenth century. From the appellate record, however, we do know that John Quillin's strategy in the second trial was the same as the first, emphasizing Sophia's sexual indiscretions and her questionable motivations.⁴⁶⁹ This time, however, even more witnesses paraded in front of the court to testify about Sophia's reputation for chastity, including James Tiffin, one of the jurors in Pleasant's first trial.⁴⁷⁰ In what is surely an odd twist, Tiffin testified that he knew Sophia's "general character for chastity and virtue, and it was bad," and was asked about (but not allowed to answer) an encounter he had with Sophia one evening before the alleged rape in which Sophia "insist[ed]" that he spend the night with her so that she could "tangle legs with him on a cold night."⁴⁷¹ Notwithstanding this testimony and more like it, however, Pleasant was found guilty; but again, this conviction was reversed on appeal. This time, in an opinion authored by Justice English, it was because the trial court refused to allow James Milton to testify on Pleasant's behalf.⁴⁷²

⁴⁶⁶ George Watkins, who decided Pleasant's first appeal, presided over an estate worth ___ in 1860. Elbert English, who decided Pleasant's second appeal, valued his land at \$20,000 in 1860 and his personal estate at \$5000. See 1860 CENSUS RECORD. Both were slaveholders. See 1860 SLAVE SCHEDULES (identifying Watkins as the owner of 11 slaves, and English as the owner of 3).

⁴⁶⁷ See *Pleasant*, 13 Ark. at 376 ("Some testimony of her being a white woman was necessary."). The other ground for reversal, mentioned above, was based on the trial court's refusal to let John Quillin ask Sophia about the efforts to settle the case. See *id.* at 377-79.

⁴⁶⁸ The trial was held during the September term, 1854, of the Circuit Court. *Pleasant*, 15 Ark. 627. The motion for a change of venue, filed in the Union County Circuit Court in June, 1854, asserted that "that the minds of the inhabitants of said county of Union are so prejudiced against him (the defendant), that he cannot have a fair and impartial trial." Union County Circuit Court Records, "Book E" (June 1854). No details are provided about the alleged prejudice. The motion was granted. *Id.*

⁴⁶⁹ See generally, *Pleasant*, 15 Ark. at 628-40 (detailing evidence at trial).

⁴⁷⁰ See *id.* at 636-37 (detailing James Tiffin's testimony). James Tiffin is discussed *supra* notes 195-200 and accompanying text.

⁴⁷¹ *Pleasant*, 15 Ark. at 636.

⁴⁷² *Id.* at 654. Presumably, the trial court refused to allow Milton to testify based on Milton's alleged bias in the outcome.

Because of the fire, we also will never know whether Pleasant was tried a third time. If he was, the assumption here was that he was found not guilty. The reason is because of the rigor with which the first two convictions were appealed; presumably, if there had been a third conviction, Milton would have appealed that one as aggressively as he appealed the first two. Other primary sources provide little help. There are, for example, no newspaper accounts of the case or any records detailing Pleasant's death. The 1860 slave schedules hint that Pleasant may still have been alive; they list Milton as the owner of a fifty-year-old male slave.⁴⁷³ And while this does not match the age Pleasant would have been if his age in the 1850 slave schedules was accurate – recall that in 1850 he was listed as forty-six, which would make him fifty-six in 1860 – it is certainly possible that this was him, as neither the census takers nor slave owners were known for their preciseness or concern when it came to the exact age of slaves.⁴⁷⁴ Adding further support to the possibility that this fifty-year-old slave was Pleasant is the unlikely (though certainly not impossible) scenario that James Milton would have purchased an elderly slave to replace Pleasant if indeed he had been executed for the crime.

As far as the other participants in the trial are concerned, they are easier to follow. By 1860, Jacob Fulmer had finally moved into the propertied class, tending a small farm worth a few hundred dollars.⁴⁷⁵ Despite the past rumors of infidelity, Sophia and Jacob were still married, and they had added three more children to their family.⁴⁷⁶ Interestingly, Sophia was now going by “Ann,” and whether the name change had anything to do with the past events is possible but pure speculation.⁴⁷⁷ James Milton was still presiding over a large and prosperous farm with his wife and five children, together with his eighteen slaves, in Van Buren Township.⁴⁷⁸ John Quillin, meanwhile, had remarried and moved to Camden in Ouachita County.⁴⁷⁹ He was still practicing law.⁴⁸⁰ A few years later,

⁴⁷³ See 1860 SLAVE SCHEDULES.

⁴⁷⁴ Even within James Milton's white family the ages do not always correspond. In 1850, his daughter Lydia was listed as six; in 1860, she was listed as fourteen. Cf. 1850 CENSUS RECORD with 1860 CENSUS RECORD.

⁴⁷⁵ See 1860 CENSUS RECORD (listing place of resident). Jacob may have been exaggerating his net worth to the census takers; he listed the value of his real estate at \$744 and the value of his personal estate at \$345. *Id.* The county, however, assessed the value of his land at \$369 and his livestock holdings at \$173 during the same year. See 1860 TAX RECORD.

⁴⁷⁶ See 1860 CENSUS RECORD (listing “Ann S.” and four children under the household of Jacob Fulmer). “Ann S.” is apparently Sophia: her age (31) and her place of birth (Georgia) in the 1860 Census match up with her age (20) and her place of birth (Georgia) in the 1850 Census. In addition, another member of the household was Alfred Foil, an 18 year old male, who was presumably Sophia's brother. See *id.* Foil was Sophia's maiden name. See Union County Marriage Records, “Book A”, at 66 (recording marriage of Jacob Fulmer and “Ms. Sofirah Foil”).

⁴⁷⁷ See *supra* note 476 (demonstrating probable link between “Ann S.” and Sophia).

⁴⁷⁸ See 1860 CENSUS RECORD; 1860 SLAVE SCHEDULES.

⁴⁷⁹ See 1860 CENSUS RECORD.

⁴⁸⁰ See *id.*

both Milton and Quillin would go on to fight on behalf of their beloved South in the Civil War, with Milton evidently being captured by Union forces in 1863.⁴⁸¹

In the final analysis, perhaps the lesson to be learned from a close study of a case like Pleasant's is the role of slavery in the everyday lives of antebellum Southerners. A major premise here is that slavery was never just a labor system; it was instead a way of life, affecting Southerners – black and white, slaveholders and nonslaveholders – in most everything they did. Indeed, slavery affected the mundane as well as the grand: it influenced one's friends as well as one's view of democracy; it influenced where one could go and with whom as well as what one thought of the human condition. Slavery, in short, in a myriad of different and conflicting ways affected how Southerners viewed themselves and the society in which they lived. It thus hardly seems surprising that slavery would have found its way into a courtroom when a poor white woman accused a slave of a wealthy landowner of raping her. If to Sophia and her non-slaveholding friends, this was a case about reaffirming the superiority of the white race, to Milton and his slaveholding neighbors, this was a case about honor and the paternalist spirit. And it was here, in a local courtroom in the backwoods of Arkansas, that these two worldviews collided, making for a long, drawn-out, affair with the outcome far from certain.

And while it seems improvident here to draw any firm conclusions about the post-Civil War era in which an accusation that a black man raped a white woman produced almost certain death, it assuredly has something to do with how the South reorganized itself following the end of slavery. With blacks enjoying their first taste of freedom, whites of all classes began to rally around race, assuring that even the poorest white would be aligned with the wealthiest.⁴⁸² Viewed that way, as a difference between slavery and race, it becomes apparent why Scout Finch's perceptive observation in *To Kill a Mockingbird* – “Tom was a dead man the minute Mayella Ewell opened her mouth and screamed” – applies to the decades following the Civil War, but not to those preceding it.⁴⁸³

⁴⁸¹ See INDEX TO ARKANSAS CONFEDERATE SOLDIERS, v. III, at 30 (Desmond Walls Allen compiler 1990) (listing John Quillin as sergeant in 1st infantry division); COMPILED SERVICE RECORDS OF CONFEDERATE SOLDIERS WHO SERVED IN ORGANIZATIONS FROM THE STATE OF ARKANSAS, roll 146 (1960) (identifying James Milton as private in army, and noting his capture).

⁴⁸² See C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* 67-109 (2002) (emphasizing South's “capitulation to racism” at end of nineteenth century); see also Johnson, *supra* note 35, at 428 (emphasizing race/slavery dichotomy).

⁴⁸³ LEE, *supra* note 11, at 276.