

THE “CHORDS OF LOVE”: LEGALIZING BLACK MARITAL AND FAMILY RIGHTS IN POSTWAR TEXAS

By
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In late 1862, concerned about her husband Norflet, Fannie, a slave woman, wrote to him from “Spring Hill” plantation in Harrison County, Texas. A personal servant to Theophilus Perry, Norflet accompanied his master when the latter joined the Confederate Army. Fannie worried whether they would ever be rejoined. Separated since mid-year, she touchingly wrote: “I haven’t forgot you nor I never will forget you as long as the world stands, even if you forget me.” Her love was now “just as great as it was the first night I married you, and I hope it will be so with you.” Fannie’s “heart and love” was “pinned” to Norflet’s “breast, and I hope yours is to mine.” If she never saw him again she hoped to “meet” him “in Heaven.”

Fannie asserted that “there is no time night or day but what I am studying about you.” It had been several months since she had received a letter from Norflet. Informed by her mistress that her husband had been ill, Fannie was gratified to learn that Norflet had recovered. Fannie missed her husband, particularly during the holiday season. She reminded him of the Christmas tradition (which both had previously shared), when the master gave the slaves three days off. At loose ends, she attended a “candy stew.” Fannie passed on greetings from “Mother, Father, Grand-mama, Brother & Sisters.” All hoped Norflet would “do well.” Fannie, lonely and desirous of seeing her absent husband, wished that it would “not be long before you can come home.”

She poignantly closed by writing, “If you love me like I love you no knife can cut our love into [sic].” Whether Fannie and Norflet ever resumed their marriage at some future date is unknown. He disappeared from around Pine Bluff, Arkansas, in March 1863. Perry was killed at the Battle of Pleasant Hill in 1864. Fannie and Norflet do not appear in the 1870 Harrison County census, but this does not mean they never reunited.¹ Evident in Fannie’s letter is the deep and abiding feeling slaves felt about marriage and family although neither was legally recognized. If Fannie and Norflet had rejoined and lived in postwar Texas, they would have faced incredible obstacles in finding a legal official to sanction their union.

The Civil War resulted in the emancipation of the slaves, but as Reconstruction commenced, the civil rights of the freedpeople remained unclear. Although the former Confederate states would be required to establish basic freedom for blacks once they made constitutional changes to reflect the war’s result, national sovereignty also superimposed itself onto the state legal structure. From county clerks to con-

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gressmen, confusion seemed to reign among everyone concerned with black rights. The legal evolution of their status varied across the South. In Texas, a perplexing situation existed. Through the combined efforts of the Freedmen's Bureau and the Texas black community, marital and parental rights were finally recognized in state law.

A Texas black newspaper, *The Freedmen's Press*, summarized the former slaves' antebellum dilemma in an 1868 editorial. During slavery, the newspaper stated, "lawful wedlock was unknown and relations of husband and wife, parent and child" were not protected by Southern law and but a "slight degree, in fact." Severely treated, slaves were "sold and resold, regardless of kindred ties," and "human affection" was an emotion alien to the "merciless slave dealer." Indeed, when "families were allowed to grow up with some semblance of respect for the decencies of humanity," numerous obstacles loomed on the horizon, not the least of which was the slave auctioneer.² Couples who survived these traumas faced a different situation once the war ended.

Many questions of a marital and parental nature emerged during the early years of Texas Reconstruction among the black community. This legal entanglement had begun during slavery and the Civil War. The disruptive nature of the conflict only exacerbated the problem, further postponing a solution. Texas blacks, in the meantime, would have to wait for official action. The changes which the war wrought in their status became significant for family relations because they now had to be legally incorporated into the body politic. They experienced every kind of marital and child difficulty, and although it was a halting process, these questions all became major issues once the war and Reconstruction impinged on the lives of the former slaves.

To supervise the transition of the Southern black population from slavery to freedom, Congress created the Bureau of Refugees, Freedmen, and Abandoned Lands (Freedmen's Bureau) in March 1865. Blacks' marital, parental, and familial relations came under an agent's purview. Most Bureau personnel believed, as did Northern abolitionists before the war, that slavery had been harmful to the establishment and maintenance of the black family. Agents wrongly assumed that blacks had learned little about morality and a monogamous family life, so they considered it their duty to observe and instruct them in these matters. They "brought to the South their own understandings of free labor and proper family organization." All agreed families should be legalized.³

The original law which established the Bureau gave it "control of all subjects relating to refugees and freedmen." It empowered the Secretary of War to direct such "issues of provisions, clothing, and fuel" for refugees and freedmen and "their wives and children." Congress was more forthright and specific in the Civil Rights Act of 1866. Southern blacks received the right to "make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property." Suits commenced in state courts might be removed to a district court on the defendant's motion.⁴

All this had to be translated onto the state and local level, where blacks were uncertain of their rights and where social relations were still in the process of being

stabilized. It was the Bureau's task to fill this vacuum. Blacks across the South used the Bureau courts to determine the precise status of their legal protection now that they were free citizens. The Lone Star State was slow in recognizing black marital, parental, and child rights, but throughout the early years of Reconstruction black Texans insisted, through the use of Bureau courts, on a clarification of state laws and protection for themselves and their offspring. This demand was not surprising in the light of their past experience.

The Bureau arrived late in Texas and its network did not spread over the Lone Star State until 1867. Initially, Bureau officials, along with the army, made numerous efforts to assist black Texans in legalizing their marriages and sanctioning parental rights. Many former slaveowners repudiated the Bureau's legality, but blacks immediately approached the agency because they understood that its statewide organization and governmental imprimatur gave it a legitimacy that their former masters and state officials did not possess. National sovereignty and institutional directives made Texas blacks aware that a new and significant presence had appeared. They desired that the Bureau legalize marriage and legitimate children.

Texas blacks did not approach only Freedmen's Bureau agents about their marital and parental problems. They utilized a variety of mechanisms to assist in solving family difficulties, including kin, community leaders, and church congregations. These were important avenues of redress, but sustained evidence is difficult to locate. The work of the Bureau, its local agents, and the records which they left behind provide substantial evidence of how agents assisted blacks and the evolution of black marriage in the aftermath of war. As one Texas Reconstruction historian has written, the "legalization of marriages along with the actions of well intentioned bureau agents and preachers and teachers, both black and white, helped stabilize the black family."⁶

The Freedmen's Bureau, particularly through its local agents and the black community, acted together to promote the legalization of marital and parental rights. How the Bureau, black Texans, the law, and the state government interacted was a difficult and protracted process. The first postwar legislature conveniently neglected to enshrine black marriage in the law or legally recognize the legitimacy of black children. So black Texans approached Bureau agents with marital and parental questions because they now had an institution which recognized and sanctioned their unions and their parental rights. Even though the two groups differed in class and race, their desires for legalization and regularization of family life merged.⁶

The relationships between the former slaves and the new rules and bureaucracies as they related to family life also need exploration. Through black reaction to the Freedmen's Bureau, we can begin to assess the impact of the new institutional bureaucracies (federal, state, and local) on the appearance and character of black families. Examining the ambiguity of marriage law and black parental status, we find that the former bondpeople approached the Bureau as an institutional resource which could assist in the resolution of matters outside their control. The state government had largely abdicated any responsibility for promoting their rights. The law required an intermediary; its vagaries required an interpreter.

An anomalous situation existed in Texas throughout the early years of Reconstruction. The state legislature, alone among all those of the former Confederacy,

refused to recognize black marriages. Not until 1869, when the Radicals assumed control of the legislative process, did black marital and parental rights receive legal justification. During this hiatus, the Freedmen's Bureau sanctioned black unions and formally promulgated announcements to this effect. Blacks, who appeared before agents, considered themselves bound in matrimony and attempted to integrate their status into the new social order. Black Texans quickly learned that the Bureau was the only institution to which they could turn. The state refused to recognize their humanity.

Although William S. McFeely generally criticized the Freedmen's Bureau for its myopic vision, he believed that the agency's predecessors and the bureau staff "stressed the regularizing of the informal family arrangements" among the recently emancipated "which were all that had been allowed in American slavery." He contended that "it would not be an overstatement to say that the bureau men in the field saw marriage and the formation of stable family groups as the most important thing they should accomplish for the freedmen in their charge." As they belonged "themselves to a culture in which families were of enormous importance, the encouragement of that institution among the freedmen was the natural thing to do."⁷

Partially through the Bureau, what is presented here is a legal, social, and cultural benchmark. The local agents, in listening to complaints and in their decisions, represented a wide spectrum of opinion about the prerogatives of black men and women within marriage. Bureau personnel were emphatically middle class and judgmental on black family concerns. Bureau officials addressed familial problems with a preconceived set of notions about normality and abnormality. New rules and laws regulated and imposed upon this process. Along with black efforts to establish family values after emancipation, the Bureau provided a forum where they could begin to legitimately sort out the readjustments necessary to achieve some harmony in their life.

Formal emancipation for Texas slaves occurred on June 19, 1865 ("Juneteenth"), by order of General Gordon Granger. The Bureau did not appear until September, and it was at least twelve months before it encompassed much of the eastern portion of the Lone Star State. Because it was to the Bureau which black Texans turned for assistance, it is important to provide a brief overview to understand how the agency interpreted and applied laws relating to marriage and family. In Texas, apparently as elsewhere, all blacks living together as man and wife on the date of the passage of the bill establishing the Freedmen's Bureau (March 3, 1865) were considered legally married. Thereafter, the bond could only be dissolved by formal legal procedures.⁸

Joseph B. Kiddoo, the Texas Bureau's second Assistant Commissioner, summarized the agency's attitude about black family and parental relationships. He wrote that slavery "blunted the moral and better instincts of negroes socially and intellectually." Although planters complained that blacks had "no family relation manifesting itself," their domestic unions, he wrote to Commissioner Oliver Otis Howard, "should be more carefully guarded" and their "ties of consanguinity made more affectionate." Education, Kiddoo declared, would influence blacks to attribute more "sacredness to marriage." The Bureau should protect consanguineous ties, reaffirm the sanctity of matrimony, and promote marital harmony.⁹

In Texas, after the agency's focus moved away from labor and toward the private lives of the former slaves, the recognition of marriage became a prime order of business. Along with the original Bureau legislation, the 1866 Civil Rights legislation and the law that extended the Bureau, all simultaneously hinted at the legality of marital and parental arrangements though the lawmakers never specifically clarified what constituted the recognition of marriage. These acts validated black contractual rights, which presumably included marital privileges (one can never be sure). If blacks desired a divorce, the Bureau would advise and assist, but only the civil courts could legally dissolve their unions.¹⁰

Southern blacks registered their marriages in states where the Bureau initially operated or where state legislatures enacted legislation.¹¹ The Texas Bureau did not record marriages, and the state did not officially formalize slave and postwar relationships until 1869. Uniformity did not characterize the South's legal process, regardless of what Congress intended. Black social behavior, American law, and state policy rarely followed a similar pattern and did not reinforce each other. National legislators could declare anyone a citizen and apply all existing laws, but the state reserved powers for itself regarding all aspects of marriage and family regulation. This, quite naturally, included legalizing marital and parental rights.

"Legal provisions for all of these contingencies—as well as the actual solutions to them," contends Peter Kolchin, were "arrived at only over a period of several years." And it was several years in the Lone Star State. For all the Bureau's efforts in behalf of legalizing black marital and parental rights, and establishing an arena where these legal questions could begin to play themselves out, they left the scene because of national dictates before blacks fully realized their marital sanction under the law. But the legacy which they assisted to perpetuate, that of a legally recognizable family life, finally became a reality. But much remained to sort out on the individual, governmental, and national stage.¹²

The Texas Bureau believed that black family life required legalization, but not until March 1866 did state headquarters promulgate any marriage regulations. The agency's announcement conformed to Texas law for whites. Establishing proper marital ages at 21 for males and 18 for females (18 and 15, respectively, with parental consent), Bureau policy required a license and/or a ceremony conducted by a certified religious or civil official. Divorce became possible only through "due process of law." The circular encompassed all previous slave unions by declaring that "persons cohabiting together or associating as man and wife" according to "usage of the country in the past" were "recognized as such" by congressional establishment of the Bureau.¹³

Bureau orders did not guarantee immediate state legal recognition of marital and parental rights, and Texas blacks experienced difficulties in gaining lawful certification. These problems arose when former slaves attempted to sanction their marriages. Though Michael Grossberg has argued that white response to "most black demands for legal rights was negative," they "readily granted the matrimonial requests of their former charges." Texas did not follow this scenario. When freedpeople attempted to record their marriages, authorities rebuffed them. In Rusk County, freedmen quickly applied to the county clerk for issuance of marriage licenses, but the official "declined granting them" as he "did not wish to set the example."¹⁴

The Karnes County clerk requested clarification of the freedpeople's status from the governor. In the absence of any "Statutory Law," should he issue licenses if "called on"? He believed they "should be encouraged to live like civilized people and not like heathens or brutes." Provisional Governor Andrew J. Hamilton supported the Bureau's marriage policy as "wise and necessary to the moral improvement, social happiness and physical well being" of the freedpeople and urged its observance by county clerks, directing them to grant licenses and authorizing the solemnization of black marriages. Little changed. Clerks who recorded black marriages had been "complained of for so doing" by local citizens and ceased granting them.¹⁶

This situation existed throughout Presidential Reconstruction in Texas. In the 1866 Constitution, the conservatives generally ignored black marital and parental rights although they did pass a stringent black code. On the local level, county clerks who supported the Democrats continued to reject applications by blacks for marriage licenses. Thus, although many of the individuals who brought complaints before the Bureau may not have been "legally" married, they certainly considered their unions as such. Moreover, the Bureau's institutional status encouraged black Texans to believe that even if the state ignored their rights to permanently enjoin themselves to another person, the Bureau certainly recognized it.

The first official Texas state government after the war did not begin functioning until fall 1866, or as the governor, James W. Throckmorton, expressed it, the "people of Texas have once more a regular government of their own choosing." He realized that legal marriage for the former slaves needed to be instituted. Throckmorton suggested to the legislature that it establish "by law proper domestic relations among persons of color." The state assemblymen should recognize those unions in which blacks have lived "together and are so reputed as married, and future marriages should be in accordance with existing laws." Moreover, the adultery statutes that applied to whites should be the same for blacks.¹⁶ The legislature ignored Throckmorton.

In order to overcome the obstinacy of county clerks and the legislature in issuing the freedpeople marriage licenses, the Huntsville Bureau agent in January 1867 gave a written permit to 88 persons to present to the county clerk, who would then supposedly provide them with the necessary legal document. "In no case," the agent wrote, "has the authority been given where any doubts existed as to the parties [*sic*] former relations, proof was always called for that the applicant had no wife or husband under the old regime." In February the same agent gave out 14 more marriage permits. He was the only Bureau agent in the Lone Star State to perform this function. His actions, however, had little impact on local or state policy.¹⁷

Once Congress assumed control of Reconstruction and delegated to the military all the duties which state and local officials would perform, chaos or, at least, consternation continued to reign at the local level. And what were former slaves to do when they approached a seemingly proper county official and he could report that the couple had "covenanted together in marriage, and being desirous to consummate their covenant," there was no officer present in the county to issue a marriage license? The politics of military Reconstruction, which included the appointment of

county clerks, further delayed legalization when black couples who desired to obtain a marriage license could locate no official empowered to issue it.¹⁸

Even when local officials could be found, their outlook upon accepting the legality of black marriage varied. In Nueces County, clerks did record and sanction black marriages, but others refused. With the advent of military Reconstruction, a shifting of personnel on the local level began to occur, and Republicans slowly gained some control of local offices. Between 1867 and 1869, clerks began to grant marriage licenses to blacks but not on any standard or regular basis. Jesse McElroy wrote his South Carolina sister in 1869 from Henderson, Texas, in Rusk County (the scene of the black's initial rejection in attempting to legalize their unions), that he and his new bride had just been issued the "first license" in the area to "colored people."¹⁹

Although emphasizing legal marriage, many Texas agents lamented that the "sacredness of the marriage ties and relations are so little understood and observed" by the freedpeople. In Columbia, James Hutchison's duties encompassed "instructing the freedpeople in the sacredness of the marriage contract, and in trying to induce those who are living together as man and wife to obtain marriage licenses in accordance with the existing laws." Another agent stressed the "sanctity of the marriage relation," pressured those who had procrastinated to become legally married, and urged blacks "to live together in harmony and tell those who are legally married that if they cannot live together then they must seek a divorce in the manner prescribed by law."²⁰

When describing freedpeople's domestic patterns in the postwar era, Texas agents often commented negatively. They declared that blacks did not "comprehend the solemnity and binding force of the marriage ceremony or understand the duties they owe to each other in marital relations." James P. Butler of Huntsville believed that one "great vice" existed among the freedpeople which only time could remedy: "They do not realize the solemnity of their marriage relations." On one plantation, a husband left his wife, obtained a marriage license under a false name, and married another woman. Part of this consisted of sorting out the tangled and unstable relationships which occurred during the antebellum years.²¹

The eminent Southern historian Willie Lee Rose wrote over a decade ago that the freedpeople "often had to determine which of several marriages contracted under slavery [they] ought to honor." Texas agents encountered such cases. William H. Rock wrote that the problem of men leaving their wives to live with other women became rather alarming. Women complained that husbands often had another mate on the side. An agent remarked that freedmen could not "divest themselves of the belief that a wife can be taken up and laid aside at will" for such "trivial reasons" as "family jars and altercations." One agent complained that few freedmen live "with their lawful wives" and even fewer "have but one wife."²²

From Victoria, agent William J. Neely may have had the best perspective on dealing with conflicts between black spouses: "I have settled disputes between husbands and wives by advising to forbearance," he wrote headquarters. Agents had to learn to cultivate patience when hearing marital cases brought by black complainants.²³ Somewhat appalled by the behavior of the former slaves in the first years of freedom, they attempted to assess why these difficulties arose, compared them

against their values and those of the black community, and then compromised beliefs and feelings into a workable solution. Whatever success they may have achieved (and assessment is difficult), agents served as an institutional base for mediating conflicts.

Bureau agents observed the transition of the slave family from bondage to freedom, but underlying their occasional negative comments about black Texans' lack of respect for the institution of marriage, there existed a concern for the legalities surrounding family life. Far into the future, Lone Star State freedpeople remembered what the recognition of marital and parental rights meant to them, even as their memories began to dim. Legal marriage assumed an importance in their lives that cannot be denied. A simple piece of paper, even considering the physical and monetary sacrifices it took to obtain it, engendered an individual pride. The fact that marriage was recognizable under the law (no matter whose) elicited various responses.

Black Texans later recalled the significance of legalized marriage. When Charlotte Beverly's grandmother suggested to her husband that they become legally married like the whites, he said he did not see any sense in doing it over again as "dey done been marry." Because of his refusal to properly certify the union the grandmother "done up 'n' quit him." Once freed, Jack White, who lived near Jasper, served as a nurse to his former master. After working for one year, for what he thought would be six dollars a week, White received but forty-nine dollars. He spent some of the money on himself, gave a few dollars to his mother, brothers, and sisters, but saved ten dollars so he could "git my license an' git marry on dat ten dollar'."²⁴

Calvin Moyer stated that his master had a preacher marry the slaves on "his" plantation, but with the arrival of freedom "de law makes dem all gits married like people ought to." Obviously Mr. Moyer understood the necessity of the legal sanctification for marriage. That simple ceremony connected a person to society. Chris Franklin, a former slave who later lived in Beaumont, expressed a similar sentiment but demonstrated his belief in his new status when he proudly announced to an interviewer that he "didn't get marry like dey did in slavery time." He boldly proclaimed that "I's got a great big marriage certificate hanging on de wall of my room at home." Written certification through the acceptance of a legal official made marriage "proper."²⁵

A related issue concerned black ministers who performed marriage ceremonies but did not have ordination papers. To officiate at a legally sanctioned marriage, the preacher had to be part of a regular ordination. Even though Bureau agents apprised these "earnest and sound" individuals that this requirement was expressly spelled out (for whites) in state law and made efforts to assist black preachers to obtain the proper papers, the state continued to postpone any action on black marital rights and the status of black ministers. The freedpeople "disliked very much" being married by a white person, so Bureau personnel encouraged those ministers capable of being ordained to do so. But all remained in legal limbo until 1869.²⁶

Even though the ordination status of black ministers remained in doubt, they encouraged county clerks to issue marriage licenses to the freedpeople and officiated at matrimonial ceremonies. The advent of congressional Reconstruction in early 1867

validated their efforts, and they proceeded to perform official functions. For example, a marriage license was issued in Brazos County on June 19, 1867, and filed on July 16, 1867, by Stephen and Adaline Curtis, whom the black minister, George E. Brooks, married on July 8. Brooks, a prominent leader of the Millican black community (Brazos County), may have been attempting to force the state's hand in regard to legal marriage and ministers' rights.²⁷

Even as late as the fall of 1868, just shortly before the demise of the Texas Bureau, blacks in remote areas still actively sought the Bureau's legal expertise. The questions involved the twin facets of marriage and children. The agent from Cotton Gin had to query headquarters regarding a freedman and a freedwoman living together for over a decade. "Were they considered to be married?" the official asked. He had over thirty applications from his vicinity on record in his office. Later, he needed to be instructed about blacks living together as man and wife in slavery, had children, but then agreed to part to marry other individuals. To whom, he wondered, "should the children look for support?"²⁸

The evidence suggests that even if a man and a woman had never legally married, Texas black women considered themselves as common law wives with all attendant rights. They turned, at times, to the Bureau because they had no idea about what to do and faced a quandary about their status. Through that agency, they filed complaints for breach of promise for intent to marry and/or paternity suits. Cases of this nature generally concerned a woman who had been induced to live with a man, become pregnant, and then the man decided to abandon the woman. Mary, an Owensville black woman, claimed that Frank agreed to marry her and to live in Millican. Mary also contended that she was pregnant. To all this Frank pleaded not guilty.

Because the evidence was not "sufficient" (nor "were appearances") to warrant a belief that Mary was with child, it was decided that Frank would have to support the baby in the event it was born by the time Mary asserted it was due. Although the case was dismissed for no specific reason, Jane Morris, a Galveston freedwoman, stated that she had "cohabited" with Cornelius Campbell and become pregnant, and now he wished to leave. The evidence suggests that the case was amicably settled. When Reese Horn refused to provide assistance for the child whom Celia Horn claimed was his, she slapped him with a paternity suit. Reese was ordered to pay twelve dollars down and two dollars per month for two years in child support.²⁹

Cohabitation similarly implied a promise of marriage. Mary Ann Smith complained that after Armstead Clark lived with her as a husband, she became pregnant and that now he desired to leave. The Bureau ordered Clark to support Smith. Clark indicated that he was going to take Smith to Houston and legally marry her. If a woman charged a man with "simple" cohabitation, he was generally assessed a fine. Henry Goaldsby was fined \$150 in specie for breach of promise to Amanda Moore. When a man named Simmons promised to marry Ann Marshall, she gave him money and clothes and lived with him. Marshall had accumulated three or four hundred dollars, all of which she turned over to Simmons, who then refused to legally consummate the living arrangement. He was heavily fined.³⁰

Lottie Banks, a Galveston black woman, had a slightly different story. A man by the name of George Jones, according to her, had been "paying her attention" for

some time and promised marriage. Banks gave Jones twenty-four dollars to pay for the rent of a house where they would live immediately after marrying. She also loaned him a ring and a set of store buttons (total value five dollars), which he took and boarded the steamship "Matagorda" for New Orleans. Banks wished him caught and she described him as being "very light complected" for a freedman, rather small, with a scar under his right eye. The Bureau told Banks that because Jones was beyond the reach of the Galveston Bureau office, no action would be taken.³¹

In a classic case of cohabitation/pregnancy, Emma Hartsfield demonstrated that legal rights under the new order could be effectively used if the Bureau were engaged. Hartsfield stated to an agent that she had been induced to live with Lacy McKenzie, a white man, as he had promised her a house and a lot. She became pregnant and was about to deliver. McKenzie proposed an abortion; Hartsfield refused. He decided to sell the house and leave. Through the Bureau, Hartsfield secured a lawyer and attached the land and house. Later, the two individuals appeared before the Bureau and McKenzie executed a deed to Hartsfield giving her lot no. 8 in Austin upon which stood two houses. In turn, she signed an agreement releasing him from all claims.³²

Women who believed that they had been wronged presented their cases in a straightforward manner with only the essentials. They may not have been sure of their precise rights, but they understood that something was seriously amiss, especially when they found themselves in an undesirable predicament. They may have been somewhat hesitant about approaching an agent with such a personal and private problem (there is no evidence of this in the records), but it is not surprising that when the Freedmen's Bureau did exist in Texas, one of the agents could remark that blacks "have not yet the confidence in the Southern white people that would prompt them to apply to them, for redress for grievances," even if it involved intimate legal rights.³³

Complaints about a spouse's behavior, and thus the revealing of intimate difficulties, was the substance of the matters recorded in the Bureau's files. Evidence that spouses did not perform satisfactorily abounds. But the fact that those blacks who appeared before the Bureau were concerned and responsible demonstrates that enough blacks cared about their community to promote and maintain certain standards for others. A discovery to the contrary would be a surprise. Two facts are significant. First, those blacks who understood how the Bureau could assist them began to implement legal and institutional groundings for family life. Second, all aspects of family readjustment problems were brought to the Bureau.

Legalizing marriage and dealing with broken relationships formed a major concern of Southern blacks, especially women, in the aftermath of war. In addition, the legal status of parenthood and children, along with how the latter would be supported if a relationship were sundered, was another vacuum which needed to be filled. The state legislature would have to specifically mend the law relating to children because in its eyes all offspring of the former slaves would technically be considered "bastards" if previous unions were not recognized. Blacks, in the final analysis, made certain that they were legally covered in both areas and that their legal foundations became ensconced in the American system.

How children fared in this equation is also important because marital and parental recognition legally reinforced each other. In 1868, before a law governing "bastardy" had been instituted, Eliza Morgan filed a "bastardy" suit with the Bureau. Morgan, described as a woman of "indif[f]erent character," had several children, all by different fathers. Since 1866 she had lived with a white man, who attended billiard tables in a local saloon, and she had become pregnant again. She constantly fought with her lover in public and confessed to a Bureau official that she became intoxicated just so she could goad him into "rows." Engaged to marry another, he had cohabited with Morgan until two weeks before the commencement of the suit.³⁴

Texas had no bastardy law, but a Bureau official believed that if the precedent of other states were followed in the Morgan case, there could be no legal claim on the father until the birth of the baby. Giving anything to Morgan at this early juncture, according to a Bureau individual, would be of "no service to the child as the mother won't work and is very extravagant." The Bureau wavered on how to resolve this delicate situation because they were afraid of its ramifications and what it would mean for families and local institutions in general. In the Austin and Anderson subdistrict there were "hundreds of bastard children," and if a policy were established in this case, "many of the mothers would bring actions against fathers. . . ."³⁵

The Bureau had neither the technical resources nor the manpower to resolve the intricate and intimate problems that the concept of "bastardy" implied, especially when applied to a group that had only recently been emancipated and had as yet to be brought under the umbrella of marital and parental law. Agents could not rely upon guidance from the state in sorting out these complicated situations, and Bureau policy could only set a precedent if accepted by the Texas black community. Children of "regular" unions also had to be legitimized, or they could be legally labelled as "bastards." By assisting the freedpeople in their pursuit of legalizing their marital and parental rights, the Freedmen's Bureau performed a significant obligation.

Although national laws such as the one which created the Bureau and, by extension, encompassed black marital and parental rights attempted a stopgap solution, state law ultimately resolved this situation. Southern blacks understood this and agitated for a state enactment which would remove their marital and parental rights from what could only be described as being in limbo. And Texas' only black newspaper during this era entered the fray. Concerned about the concept of "bastardy," the paper wrote, "We claim that a provision putting all children born in the State, on an equal footing in the eye of the law, will not only be an act of justice, but put an end to a great wrong, to society and humanity."³⁶

The paper's argument is worth noting as it asserted that all men had certain inherent and "indefeasible" rights such as life, liberty, and "acquiring, possessing and protecting property, and *reputation*, and yet you will refuse to legitimize the unfortunate people for whom this Constitution [1869] is made, to allow them to properly inherit property, and you keep up the stain of bastardy on their reputation." Moreover, it was "imperatively right and necessary that these people be declared in the eye of the law at least, legitimate, and capable of inheriting the prop-

erty of their parents, and enforcing the obligations of parent to child." Without this legal protection children would have no rights whatsoever.³⁷

The Freedmen's Press continued to hammer this point home. The legitimization of parental and child rights should be extended to all citizens. "All men were born free and equal," the newspaper contended, "and yet you will let a whole race of people whom the Constitution would govern, labor under the shame and outrage and inequality of what is known in law as bastardy—it is one of the enormous sins of slavery which it is the duty of a Republican Convention to rectify as far as it can be done." The very idea of "excluding children born, without their fault, out of wedlock, from the right of support from their parents, and the right to inherit property," the editor reasoned, "is one of the oldest and worst wrongs of society."³⁸

Bondage stripped the slaves of any rights, and its legacy persisted. Since the "universal rule of slavery" was "illegitimacy," and until freed, blacks "had no choice in this matter," there were "thousands of children who are to-day the legal heirs of men who enforced concubinage as their right as masters, and who should be compelled by law to acknowledge their progeny." The newspaper doubted this would happen as any law of this nature would exclude the white population from its provisions. They believed it was the "most important measure which has been introduced into the Convention." It affected the "most vital and social interests of the freed people, who number at least two hundred and fifty thousand souls in this State."³⁹

Throughout the first half-decade after the end of the Civil War, black Texans continually advocated the legitimization of their marital and parental prerogatives. Through their own efforts and by marshalling institutional resources, including those of the Freedmen's Bureau, the black community finally obtained legislative resolution of the marital and parental issues which had been so troubling and ambiguous since 1865. The 1869 state constitution, enacted by a Republican-dominated convention, established for blacks what the *Freedman's Press* had repeatedly supported in the editorials, the legal sanctification of black marital and family life. The law integrated marriage, parental rights, and child rights into a single section.

In the 1869 Constitution, the "chords of love, parental, conjugal, and filial," in the eyes of *The Freedman's Press*, became law. The statute declared that "all persons who, at any time heretofore, lived together as husband and wife, and both of whom, by the law of bondage, were precluded from the rites of matrimony, and continued to live together until the death of one of the parties," would be "considered as having been legally married; and the issue of such cohabitation shall be deemed legitimate." Those now living together "shall be considered as" legally married; "and the children, heretofore or hereafter, born of such cohabitations shall be deemed legitimate."⁴⁰ A long and significant legal battle had ended successfully.

The Texas black community through the Bureau, their newspaper, and community effort finally resolved the legitimization issue. The twelfth article, section twenty-seven, of the 1869 Texas Constitution, stated that "all persons who, at any time heretofore, lived together as husband and wife, and both of whom, by the law of bondage, were precluded from the rights of matrimony and continued to live together until the death of one of the parties, shall be considered as having been legally married, and the issue . . . shall be deemed legitimate." This legal encom-

passment of two vitally interconnected rights, those of parent and of the child, assured future generations a legal family foundation.

The article linked marital and parental rights. It recognized slave marriages as binding if the partners lived together at the time of emancipation. The familial rights of the freedpeople received protection after a hiatus of four years. They could now legitimately practice marital and parental rights with legal status accorded to previous or newly established relationships, as these unions had finally been sanctioned by an essential act of the state legislature, as Congress had no authority in the realm. This statute thus assured black Texans that if whites honored the law in the future, later generations would have their legal family foundation secured upon a permanent basis, and their children need not worry about legitimacy.⁴¹

Neither Bureau recognition nor the legalization of marriage by the state legislature automatically conferred stability or permanence upon marriages between black Texans. It did, however, through the Bureau and the state and local bureaucracies, connect blacks in a significant way to the larger society and the body politic. It recognized their sovereignty as individuals and certified their unions in ways that had never before been possible. This sanction also meant that black marital behavior had to follow societal rules with all the burdens which that imposed. Marital recognition was the first step in a cultural resonance of freedom that came through the interaction of the Bureau, blacks, the Republican Party, and the state bureaucracy.

The evidence, particularly that of the Freedmen's Bureau, suggests that although the Texas black community was not devastated by upheaval in the aftermath of war, it was also not as peaceful in black domestic affairs as some of the recent literature seems to suggest. Herbert G. Gutman writes that in the interregnum between the Civil War and the advent of Radical Reconstruction, the "Union Army and later the Freedmen's Bureau constrained [blacks] in severe ways, as did southern state legislatures in the laws commonly called 'Black Codes.'"⁴² But the Bureau also provided a bureaucratic entry into society for black Texans to integrate themselves into the body politic. It unquestionably aided them in family matters.

In the early years of Texas Reconstruction, blacks faced a quandary in their marital and parental affairs. The state did not legalize marriage or divorce until 1869 for its black citizens, although various national laws and the Freedmen's Bureau did sanction marital unions. In order to begin to institutionalize their legal rights and their complaints, Texas blacks frequently called upon a Bureau agent to assist them in sorting out particularly difficult marital and family legal rights. It was through these individuals stationed within local communities that blacks were introduced to the bureaucratic network that would have to become part of their lives. They were instrumental in the transition of blacks from slaves to citizens.

The struggle for family regularization was an evolutionary process. Statistically, the evidence suggests that by 1870 the Texas black family had begun to normalize, but, in the five years immediately following the war, confusion and some disorganization existed.⁴³ Through the Bureau's bureaucratic and institutional status, black Texans discovered an agency that would assist them in solving some of their family problems and marital discord. For the former slaves, the Freedmen's Bureau served as a vital link—whether in Texas or elsewhere in the South—to the dictates of a free society and the laws that applied to its citizens. With the Bureau's aid, Texas

blacks reinforced the family values and attitudes that they brought with them from slavery.

NOTES

¹ Fannie to Norflet [Perry], 28 December 1862, Pressly Carter Person Papers, Manuscript Department, William R. Perkins Library, Duke University, Durham. The letter was probably dictated to and written by a Perry daughter; see Randolph B. Campbell and Donald K. Pickens, eds., "'My Dear Husband': A Texas Slave's Love Letter, 1862," *Journal of Negro History*, 65 (Fall 1980), 361-64; Campbell, *A Southern Community in Crisis: Harrison County, Texas, 1850-1880* (Austin, 1983), 233.

² *The Freedman's Press* (Austin), 18 July 1868, p. 2; Margaret A. Burnham, "An Impossible Marriage: Slave Law and Family Law," *Law and Equality*, 5 (July 1987), 187-225. Slaves, according to Sally G. McMillen, "probably had little opportunity to forge an ideal union." Exhausted and powerless, partners "must have taken out some of their frustration on a spouse or child." McMillen contends that they could "dissolve their marriages easily" and that slave communities "condoned marital dissolution." Easy disbandment empowered black women, "for they did not have to endure a difficult relationship." Legal nonexistence, the possibility of sale, and the "emasculating authority of the owner," all additionally threatened familial destruction (*Southern Women: Black and White in the Old South* [Arlington Heights, Ill., 1992], 34; John B. Boles, *Black Southerners, 1619-1869* [Lexington, Ky., 1983], 90). For confirmation see Deborah Gray White, *Ar'n't I A Woman?: Female Slaves in the Plantation South* (New York, 1985), 142-60; Thelma Jennings, "'Us Colored Women Had to Go Through a Plenty': Sexual Exploitation of African-American Slave Women," *Journal of Women's History*, 1 (Winter 1990), 45-74.

³ Ira Berlin, Steven F. Miller, and Leslie S. Rowland, "Afro-American Families in the Transition from Slavery to Freedom," *Radical History Review*, 42 (Fall 1988), 91-92. The Bureau's status in Reconstruction historiography and its role in the postwar South need not detain us here. Suffice it to say that controversy surrounds almost every aspect of its mandate and functions. For background on the type of material the Texas Bureau records contain, see Barry A. Crouch, "Hidden Sources of Black History: The Texas Freedmen's Bureau Records as a Case Study," *Southwestern Historical Quarterly*, 83 (January 1980), 211-26; "Freedmen's Bureau Records: Texas, a Case Study," *Afro-American History: Sources for Research*, ed. Robert L. Clarke (Washington, D. C., 1981), 74-94. The status of blacks and the Bureau in Texas Reconstruction historiography is discussed in Crouch, "'Unmanacled' Texas Reconstruction: A Twenty-Year Perspective," *Southwestern Historical Quarterly*, 93 (January 1990), 277-82, 293-96, and Alwyn Barr, "African Americans in Texas: From Stereotypes to Diverse Roles," *Texas Through Time: Evolving Interpretations*, ed. Walter L. Buenger and Robert A. Calvert (College Station, 1991), 50-80. For a detailed analysis of the Texas Bureau from two divergent perspectives, see Crouch, *The Freedmen's Bureau and Black Texans* (Austin, 1992); William L. Richter, *Overreached on All Sides: The Freedmen's Bureau Administrators in Texas, 1865-1868* (College Station, 1991).

⁴ *Statutes at Large* (Boston, 1866, 1868), 13:507-09; 14:27-30.

⁵ James M. Smallwood, "Emancipation and the Black Family: A Case Study in Texas," *Social Science Quarterly*, 57 (March 1977), 856. See also Crouch and Larry Madaras, "Reconstructing Black Families: Perspectives from the Texas Freedmen's Bureau Records," *Prologue*, 18 (Summer 1986), 109-22; Randolph B. Campbell, "The Slave Family in Antebellum Texas," Victoria College Social Sciences Symposium, 1988, "The American Family" (Victoria, Tex., 1988), 20; *An Empire for Slavery: The Peculiar Institution in Texas* (Baton Rouge, 1989), 168, 246.

⁶ Other types of evidence that can be used in the study of the black family are court records, wills, inventories, indentures, labor records, especially contracts, church papers, correspondence, and the census. For the first two or three years after emancipation, the Bureau records are an indispensable starting point.

⁷ William S. McFeely, *Yankee Stepfather: General O. O. Howard and the Freedmen* (New Haven, 1968), 131. See also Harry August Volz, III, "The Administration of Justice by the Freedmen's Bureau in Kentucky, South Carolina, and Virginia" (Master's thesis, University of Virginia, 1975), 40-41; James Oakes, "A Failure of Vision: The Collapse of the Freedmen's Bureau Courts," *Civil War History*, 25 (March 1979), 66-76.

* The legalities surrounding emancipation are discussed in Campbell, "The End of Slavery in Texas: A Research Note," *Southwestern Historical Quarterly*, 88 (July 1984), 71-80; Nancy Cohen-Lack, "A Struggle for Sovereignty: National Consolidation, Emancipation, and Free Labor in Texas, 1865," *Journal of Southern History*, 58 (February 1992), 57-98; Seal v. State, 28, Tex. 491 (December 1866); Williams v. Arnis, 30 Tex. 37 (April 1867); Hall v. Keese and Doughterty v. Cartwright, 31 Tex. 504 (October 1868); Dowell v. Russell, 39 Tex. 400 (1873); Garrett v. Brooks, 41 Tex. 479 (1874), all in Helen Honor (Tunicliff) Catterall, ed., *Judicial Cases Concerning American Slavery and the Negro*, 5 vols. (Washington, D. C., 1926-1937), 5:313, 315, 317-18, 323.

* Joseph B. Kiddoo (Assistant Commissioner [AC], Texas) to Oliver Otis Howard (Commissioner), 23 July 1866, AC, Letters Sent (LS), Vol. 4, p. 294, Texas, Records of the Bureau of Refugees, Freedmen, and Abandoned Lands, Record Group 105 (National Archives). Unless otherwise indicated all references are to the Texas Freedmen's Bureau records in RG 105.

¹⁰ *Statutes at Large*, XIII, 507-09; XIV, 27-30, 173-77. For the Texas Bureau and state law see W. G. Kirkman (Agent, Boston) to J. P. Richardson (Acting Assistant Adjutant General [AAAG]), 31 January 1868, Vol. 68, pp. 20-24; L. H. Warren (Agent, Houston) to Henry Norton (Sub-agent, Galveston), 16 June 1867, Vol. 102, p. 30; Donald G. Nieman, "Andrew Johnson, the Freedmen's Bureau, and the Problem of Equal Rights, 1865-1866," *Journal of Southern History*, 44 (August 1978), 399-420; *To Set the Law in Motion: The Freedmen's Bureau and the Legal Rights of Blacks, 1865-1868* (Millwood, N. Y., 1979). My perceptions were influenced by Michael Grossberg, "Crossing the Boundaries: Nineteenth-Century Domestic Relations Law and the Merger of Family and Legal History," *American Bar Foundation Research Journal*, No. 4 (Fall 1985), 799-847; Norma Basch, "The Emerging Legal History of Women in the United States: Property, Divorce, and the Constitution," *Signs*, 12 (Autumn 1986), 97-117, both of whom rely mostly on white examples.

¹¹ The states included Maryland, Florida, Georgia, Virginia, Tennessee, Mississippi, Louisiana, and the two Carolinas; Grossberg, *Governing the Hearth: Law and Family in Nineteenth-Century America* (Chapel Hill, 1985), 133; *Senate Executive Documents*, 39th Cong., 2nd Sess., 1866-67 [Serial 1276], 2 vols. (Washington, D. C., 1867), I, No. 6; John W. Blassingame, *The Slave Community: Plantation Life in the Antebellum South*, 2nd ed. (New York, 1979 [1972]), 175-77; Herbert G. Gutman, *The Black Family in Slavery and Freedom, 1750-1925* (New York, 1976), 145-51. It seems to me that if the Bureau records can be used for the purpose of demonstrating the marriage record of the freedpeople, they can certainly be cited to represent the marital and parental difficulties of the former slaves.

¹² Peter Kolchin, *First Freedom: The Responses of Alabama's Blacks to Emancipation and Reconstruction* (Westport, Conn., 1972), 59.

¹³ AC, Texas, Circular No. 9, March 23, 1866, Vol. 9, p. 313. An older useful summary of Texas marital law is George Elliott Howard, *A History of Matrimonial Institutions*, 3 vols. (Chicago, 1904), 2:421-23, 429; 3:71. For Texas marriage laws see *Laws of the Republic of Texas*, 2 vols. (Houston, 1841), 2:176; H. P. N. Gammel (comp. and arr.), *The Laws of Texas, 1822-1897* (Austin, 1898), 2:640; Bennett Smith, *Marriage By Bond In Colonial Texas* (Fort Worth, 1972), 1-7. For background on the Texas slave family, see Ocie Speer, *A Treatise on the Law of Married Women in Texas* (Rochester, N. Y., 1901); Campbell, "The Slave Family in Antebellum Texas," 1-28; *An Empire for Slavery*, 153-69.

¹⁴ Grossberg, *Governing the Hearth*, 133; "Guarding the Altar: Physiological Restrictions and the Rise of State Intervention in Matrimony," *American Journal of Legal History*, 26 (July 1982), 197-226; B. F. McFarland (County Clerk, Rusk County) to A. J. Hamilton, 1 December 1865, Governor's Papers (Hamilton), Texas State Library [TSL], Austin.

¹⁵ James D. Campbell (County Clerk, Karnes County) to Hamilton, 5 February 1866, Governor's Papers (Hamilton), TSL; Hamilton to E. M. Gregory (AC, Texas), 29 March 1866, Vol. 9, p. 314.

¹⁶ James W. Throckmorton to Gentlemen of the House of Representatives, 14 August 1866; "Throckmorton Recommendations to the Legislature, 1866," both in James W. Throckmorton Papers, Eugene C. Barker for Texas History Center (now the Center for American History), University of Texas, Austin.

¹⁷ James C. Devine (Agent, Huntsville) to William H. Sinclair (Agent, Galveston), 12 January 1867, D-151, Operations Reports (OR); Devine to J. T. Kirkman (AAAG), 1 March 1867, D-154, OR.

¹⁸ David Ford (Minister, M. E. C., South, Burkeville) to Commanding General, 13 June 1869, Fifth Military District, District of Texas, Office of Civil Affairs, Letters Received, Box 9, RG 393, National Archives.

¹⁹ George P. Rawick, ed., *The American Slave: A Composite Biography*, Supplement, Series 2, 10 Vols. (Westport, Conn., 1979), Vol. 9, Pt. 8, 3858 (Thompson); Jesse McElroy to "Dear Sister," 29 March 1869, Bonds Conway Correspondence (South Caroliniana Library, University of South Carolina, Columbia); Kirkman (Agent, Boston) to Kirkman (AAAG), 17 August 1867, Vol. 67, p. 28. See also, *Laws of the Republic of Texas*, 2 vols. (Houston, 1838), 1:233-35; Gammel, comp. and arr., *The Laws of Texas*, 1:1293-95; 5:990; *General Laws of the State of Texas Passed By the Eleventh Legislature* (Austin, 1866), 72. Required to "record all licenses so issued by him, in a well bound book" with confirmation from the minister "solemnizing" the union, a county clerk had to check the legal status of the union.

²⁰ James Hutchison (Agent, Columbia) to J. T. Kirkman (AAAG), 1 April 1867, H-202, OR; Ira H. Evans (Agent, Wharton) to Kirkman (AAAG), 31 July 1867, E-70, OR.

²¹ James P. Butler (Agent, Huntsville) to AAAG, 31 May 1867, B-191, OR; David S. Beath (Agent, Cotton Gin) to Charles A. Vernou (AAAG), 26 September 1868, Vol. 86, p. 90; William H. Rock (Agent, Richmond) to J. T. Kirkman (AAAG), 6 March 1867, R-114, OR.

²² Willie Lee Rose, "Blacks without Masters: Protagonists and Issue," *Slavery and Freedom*, ed. William W. Freehling (New York, 1982), 101; William H. Rock (Agent, Richmond) to J. T. Kirkman (AAAG), 6 March 1867, OR, R-114; James Hutchison (Agent, Columbia) to Kirkman (AAAG), 1 April 1867, OR, H-202; W. H. Horton (Agent, Wharton) to Kirkman (AAAG), 3 April 1867, OR, H-201; Edward Miller (Agent, Millican) to Kirkman (AAAG), 31 May 1867, OR, M-423; Rawick, ed., *The American Slave*, Supplement, Ser. 2, Vol. 8, Pt. 7, 3214 (Quarls).

²³ William J. Neely (Agent, Victoria) to C. S. Roberts (AAAG), 31 October 1868, AC, OR, N-22.

²⁴ Rawick, ed., *The American Slave*, Supplement, Series 2, Vol. 2, Pt. 1, 285-86 (Beverly); Vol. 10, Pt. 9, 4034 (White).

²⁵ Rawick, ed., *The American Slave*, Supplement, Series 2, Vol. 7, Pt. 6, 2849 (Moye); Vol. 4, Pt. 3, 1413 (Franklin).

²⁶ W. G. Kirkman (Agent, Boston) to Anthony M. Bryant (Agent, Sherman), 3 August 1867, Vol. 67, pp. 22-23; Kirkman to J. P. Richardson (AAAG), 23 March 1868, p. 68; March 31, 1868, pp. 62-68; Kirkman to Joseph Welch (Superintendent of Education), 30 June 1868, p. 97; Kirkman to (Agent, Sherman), 18 January 1868, p. 17; Kirkman to Charles A. Vernou (AAAG), 30 May 1868, pp. 92-93, all in Vol. 68; Kirkman to Judge A. G. Haskins, 3 March 1868, Vol. 69, p. 36; *Squire Belle v. Crecy Belle and Others*, 26 July 1867, Vol. 70, p. 5.

²⁷ On Brooks and Curtis, see Crouch, "Self-Determination and Local Black Leaders in Texas," *Phylon*, 39 (December 1978), 349-52; *The Freedmen's Bureau and Black Texans*, 118-19, 121; "Hesitant Recognition: Texas Black Politicians, 1865-1900," *East Texas Historical Journal*, 31 (Spring 1993), 54. Stephen Curtis was later elected as a delegate to the 1868 Texas constitutional convention. Brooks was killed in July 1868 in the events surrounding the Millican riot.

²⁸ Davis S. Beath (Agent, Cotton Gin) to Charles A. Vernou (AAAG), 28 August 1868, p. 80; 5 September 1868, p. 87, both in Vol. 86.

²⁹ *Mary v. Frank*, 28 June 1867, Vol. 58, pp. 24-25; *Jane Morris v. Cornelius Campbell*, 19 August 1867, Vol. 96, n. p.; *Celia Horn v. Reese Horn*, 13-17 December 1867, Vol. 169, pp. 51-52.

³⁰ *Mary Ann Smith v. Armstead Clark*, 13 July 1867, Vol. 96, n. p.; *Amanda Moore v. Henry Goadsby* [October 1867], Vol. 138, pp. 88-89; *Ann Marshall v. Mr. Simmons*, 10 February 1867, Vol. 96, n. p..

³¹ *Amelia Turner v. Bob White*, 28 April 18[67], Vol. 131, n. p.; *Lottie Banks v. George Jones*, 9 March 1867, Vol. 96, n. p..

³² Complaints and Memo of Business, 4 June 1867, Vol. 52, p. 5. The agent, who kept the book, had one final comment, writing that it was "pretty dear pay for one years _____" (Crouch, "Black Dreams and White Justice," *Prologue*, 6 [Winter 1974], 263). Whatever may be said about Hartsfield's foresight in obtaining the Austin property, she certainly did not conduct herself well publicly. In April 1873, she was arrested because of a complaint filed by Annie Seel, another freedwoman, for using abusive language. After a jury trial, Hartsfield was found guilty and fined \$3.00. The next day, the two women again confronted each other; this time Bell was fined \$3.00 and costs. Hartsfield and Bell had

been "quareling about *one man* for some time," wrote Austin Mayor T. B. Wheeler to Governor E. J. Davis, April 22, 1873, Governor's Papers (Davis), Record Group 301, Box 84, Folder 294, TSL.

³³ Kirkman to J. T. Kirkman, 17 August 1867, Vol. 67, p. 28. Recently, Catherine Clinton declared that "most freedwomen resisted bringing [Freedmen's Bureau] agents into domestic matters." They "recognized the limited role the Bureau could play in their lives and the temporary nature of federal force—indeed, perhaps former slaves more than Union troops knew how short-lived this experiment of northern intervention might be." Bureau agents, "allied in color with their former masters," could not be relied upon. Women faced danger "in the short term" that "might result in retaliation over the long haul." Paternalism's "long arm," she emphasizes, "clothed in blue uniform or tattered grey—was grasped only under duress" ("Reconstruction Freedwomen," in *Divided Houses: Gender and the Civil War*, ed. Clinton and Nina Silber [New York, 1992], 309). This piece was adapted from her "Bloody Terrain: Freedwomen, Sexuality and Violence During Reconstruction," *Georgia Historical Quarterly*, 76 (Summer 1992), 313-32, where she extensively used Bureau manuscripts which conclusively refute her statement about black women approaching the Bureau.

³⁴ Henry Young (clerk, Austin) to C. S. Roberts (AAAG), 11 September 1868, Vol. 49, pp. 210-11.

³⁵ *Ibid.* The question of bastardy and bastardy suits concerned the black community and the Bureau. Although part of the legalization controversy, it is a separate issue. See, in particular, *The Freedman's Press*, 18 July 1868, p. 2; 1 August 1868, p. 2.

³⁶ *The Freedman's Press*, 18 July 1868, p. 2.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Constitution of the State of Texas, Adopted by the Constitutional Convention [1869]* (Austin, 1871), Article 12; Sec. 27, p. 40; *The Freedman's Press*, 18 July 1868, p. 2.

⁴¹ Later, the state supreme court determined to whom the law specifically applied. The justices noted that the 1869 law referred only to "those persons who were both precluded, not from intermarriage with each other merely, but from marriage with any one else." The object was clearly to "legitimate the offspring of those whose bondage had disabled them from legal marriage, but who had lived together recognizing each other as husband and wife, until the death of one or the other partner" or the adoption of the 1869 Constitution. Apparently, what it did not do was to legalize the status of children born to a mixed union. This loophole in the marital and parental legalization process had to be addressed in later years; *Honey, Treasurer v. Clark et. al.*, 37 Tex. 686, 1872-73; *Clements v. Crawford*, 42 Tex. 601, 1875, in Catterall, ed., *Judicial Cases Concerning American Slavery*, V, 321-22, 324, 269 notes 5 and 6.

⁴² Gutman, *The Black Family*, 365. A similar view is Jacqueline Jones, *Labor of Love, Labor of Sorrow: Black Women, Work, and the Family from Slavery to the Present* (New York, 1985), 44-78. Nathan I. Huggins, in "Herbert Gutman and Afro-American History," *Labor History*, 29 (Summer 1988), discusses Gutman's use of the Bureau records to "show both how these family and kinship linkages extended over time and lengthy separations of slave families. At the end of the Civil War, slaves were insisting on being married properly and legally. They were traveling hundreds of miles to rediscover their families, which they had been separated from by sale. Husbands sought wives and children; wives and children sought husbands and fathers. Here was no picture of a people reduced to primitive values of sex and family," 334. On the Texas codes see Crouch, "'All the Vile Passions': The Texas Black Code of 1866," *Southwestern Historical Quarterly*, 97 (July 1993), 13-34.

⁴³ Smallwood, "Emancipation and the Black Family," 852-53, 855-56; "From Slavery to Freedom: Smith County's Black Community in 1870; a Statistical Overview," *Chronicles of Smith County, Texas*, 18 (Summer 1979), 58-61; *A Century of Achievement: Blacks in Cooke County, Texas* (Gainesville, Tex., 1975), 42-48; *Time of Hope, Time of Despair: Black Texans During Reconstruction* (Port Washington, N. Y., 1981), 111-17. Smallwood's three county sample of Smith, Matagorda, and Grayson included 1,194 black and white households, comprising a population of 6,306. (He does not indicate what percentage of the black or white population this included). Although the 1870 census does not separate households into families, it is possible to determine family arrangements to some extent, but the resulting figures are imprecise. In precinct 2 of Galveston, Smallwood found that white males headed 96.95 percent of households whereas black men accounted for only 80 percent (Smallwood, *Time of Hope, Time of Despair*, 115). The Cooke County black family had "achieved a degree of stability by 1870" and blacks "continued to escape white control by establishing their own households." In 1870, according to

Smallwood, 222 blacks lived in white homes, but this had dropped to 86 by 1880 (*A Century of Achievement*, 46-47). Possibly postwar rural black families were more stable than those living in urban areas. A major difference was that more black women and children worked than did their white counterparts. For a brief comparison of whites and blacks in Harrison County for 1870 see Campbell, *A Southern Community in Crisis*, 300-03.