"TO GET THEIR LABOR FOR NOTHING"

CRIMINAL COURTS AND JIM CROW IN TARRANT COUNTY, TEXAS: 1887-1908

by

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ABSTRACT

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TARRANT COUNTY, TEXAS: 1887-1908

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The county jail records reveal that Tarrant County Jim Crow was a function of custom and thoroughly institutionalized as a matter of public policy by 1890, before the Texas state legislature required separate railroad coaches for blacks and whites in 1891. Chapter 1 explores Tarrant County's founding as a slave jurisdiction, the county's support of the Confederacy, and the county's post Civil War success in segregating blacks. Chapter 2 describes the machinery of county law enforcement and analyzes the county jail records between 1887 and 1890 using modern statistical methods. The analysis demonstrates that whites used the county court system to incarcerate black citizens because of their race and for their labor, justifying an inference of discrimination using twenty first century federal civil rights legal principles. Chapter 3 analyzes the

Tarrant County jail records between 1906 and 1908, which reveals that disproportionate incarceration of African Americans continued into the early twentieth century.

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INTRODUCTION

African Americans in post Civil War Tarrant County were abused, oppressed, marginalized and murdered because of their race. The existence of such mistreatment is not a surprise, but identifying the contours of that mistreatment requires a closer look at the founding of Tarrant County, its experience during and after the Civil War, and its march toward becoming an industrial urban center. This study explores the timing, methods, and intensity of discrimination against African Americans in Tarrant County with an eye toward placing Tarrant County on the historiographic continuum in the evolution of Jim Crow. The specific focus of this study is a late nineteenth century Tarrant County criminal law enforcement system dominated by white Democrats, ex-Confederates, and ex-slaveholders. Tarrant County whites used the criminal law enforcement system to incarcerate African American citizens because of their race and for their labor. This process was thoroughly institutionalized by 1890, before the 1891 statute that required separate coaches for blacks on Texas railroads. The fervor of white efforts to reestablish post Civil War racial hegemony in this way can be measured using the tools of twenty first century federal anti-discrimination law. This approach—applying modern statistical methods and legal principles to measure the strength of suspected discrimination—reveals that white supremacy in late nineteenth century Tarrant County was backed by the authority of government as police, prosecutors, and

judges acted on behalf of the community and under color of law to subdue the African American population.

The historical discussion over the evolution of Jim Crow changed course in 1955 with C. Vann Woodward's The Strange Career of Jim Crow. Coming on the heals of the United States Supreme Court's rejection of the separate-but-equal doctrine in *Brown v. Board of Education*, Woodward argues that southern race relations after Redemption were an "unstable interlude" between the pre Civil War slave codes and the early twentieth century Jim Crow statutes. Emphasizing the physical separation of the races, Woodward concedes the existence of separation during this interlude, particularly in schools, but argues that the Redeemers "showed no disposition to expand or universalize" separation beyond the educational domain. Since race policies in the South during this interlude were "milder than they became later," Woodward argues that black civil rights could have been protected from conservative attack had the Populist political alliances succeeded. Referring to such alliances as "forgotten alternatives," Woodward concludes that the "fanatical" rigidity of the twentieth century Jim Crow statutes was avoidable.[1]

Woodward's thesis has prompted robust debate, with many scholars taking issue with Woodward's basic premise. Historian Joel Williamson, for example, argues that separation was a creature of custom before it became enshrined in statutes. "Well before the end of Reconstruction," Williamson argues, "separation had crystallized into a comprehensive pattern which, in its essence, remained unaltered until the middle of the

[1] C. Vann Woodward, The Strange Career of Jim Crow, A Commemorative Edition with a new Afterward by William S. McFeely (New York: Oxford University Press, 2002), xi, 7, 31-32, 44-45, 65, 69.

twentieth century." According to Williamson, postwar separation occurred without the need for statutes because separation was a human (white) reaction to slavery's demise, and was intended to replace what was once accomplished by the institution of slavery: maintaining racial purity, reminding blacks of their inferior position, and minimizing the potential for interracial contact. In exploring the evolution of Jim Crow in Reconstruction South Carolina, Williamson discovered that separation occurred on railroad cars *despite* the existence of an anti-discrimination statute. Ultimately, Williamson concludes, the "trenches" of race relations in the postwar South "gave the illusion of basic change…whereas, actually, it merely represented the extension of the old attitudinal conflict onto new ground." According to Williamson, physical separation was only an expression of extant mental separation.[2]

At least one Texas historian has urged a middle ground between Woodward and Williamson. Bruce A. Glasrud argues that Jim Crow's evolution in Texas was a mixture of mutually supporting custom and law. The very nature of the prewar Texas economy, Glasrud observes, created physical separation between the races with blacks isolated on rural plantations. In white minds, according to Glasrud, this prewar rural isolation served as the model for postwar urban separation. This customary rural separation, Glasrud argues, was reinforced by statute, as the growing independence of urban slaves led the legislature to pass a comprehensive set of statutory slave laws in 1858. According to Glasrud, this statute was a major policy shift because it heralded the substitution of

[2] Joel Williamson, "The Separation of the Races," in When Did Southern Segregation Begin?, comp. John David Smith (Boston: Bedford/St. Martin Press, 2002), 61-63, 68-69, 81.

"public control [for] dwindling private supervision of the master over his slave." Ultimately, Glasrud concludes, "legislation was the most important tactic for separation, sometimes setting precedents, but often placing in the statute books customs that were already established."[3]

But not all Texas historians agree with Glasrud. While legislation tips the balance for Glasrud, custom tips the balance for historians Lawrence D. Rice, Barry A. Crouch, and L. J. Schultz. Although Rice agrees that Jim Crow treatment was "deeply rooted in antebellum slavery," and the "economic system [agriculture] relegated most blacks to isolated plantations away from the mainstream of white society," he ultimately concludes that the "*modus vivendi* [that] was reached in racial relationships [by the 1870s]

[3] Bruce A. Glasrud, "Jim Crow's Emergence in Texas," *American Studies* 15-16 (1974): 49-51, 56. Unlike Woodward's emphasis on *physical* separation, Glasrud takes an expansive view of Jim Crow to include the myriad ways that whites prevented the races from coming together at all, such as the miscegenation statute. In this study, the term "Jim Crow" is used as an umbrella concept to describe white *acts* vis-à-vis blacks, regardless of whether such acts occurred during or after slavery. Such "acts," in this study, are referred to variously as "discrimination" or "discriminatory treatment." Under this umbrella, white discriminatory acts can be imposed by laws (also known as statutory, formal or *de jure* discrimination) or by custom (also known as customary, informal, or *de facto* discrimination). Jim Crow acts are based on a set of beliefs that: 1) divide humans into categories based on skin pigmentation, geographical origin, or both; 2) attribute characteristics to those categories; 3) define one or more of those groups as "more" or "less" human; and 4) may or may not result in an act of discrimination. In lieu of the ill-defined term "racism," this study uses the phrase "white supremacy" to describe the ideology justifying white Jim Crow acts against blacks. Also, the term "separation" is generally used in this study rather than the term "segregation," since the latter generally refers to the complex web of Jim Crow statutes that would emerge in the twentieth century. The term "code" is used in this study in a generic sense, and does not refer to a statute or law unless the context indicates otherwise, such as "Black Codes."

portended the legalization of Jim Crow."[4] Crouch and Schultz, like Rice, Glasrud, and Joel Williamson, also take a broad view of the evolution of Jim Crow, concluding that the Civil War was only "an intermission, not an alteration, of a [racial] situation which had existed since the sixteenth century." Citing the formation of black residential areas, black schools, and the discriminatory application of the vagrancy statutes against blacks in the late 1860s, Crouch and Schultz conclude that customary racial separation was a "basic fact of life" in Reconstruction Texas.[5]

Tarrant County Jim Crow was a function of custom, not law. Physical separation itself was firmly in place by the 1870s, and the discriminatory treatment of blacks was thoroughly institutionalized—as a matter of socially accepted public policy—by 1890. One form of this public policy was the use of the county court criminal law enforcement system to incarcerate black citizens because of their race and for their labor. Using the statistical tools of twenty first century federal anti-discrimination law, the intensity of postwar white efforts to establish this policy can be reliably quantified. The analysis reveals that whites *intended* to adopt a public policy of discrimination against blacks. This public policy of discrimination was firmly established before the 1891 Texas state

[4] Lawrence D. Rice, The Negro in Texas: 1874 – 1900 (Baton Rouge: Louisiana State University Press, 1971), 53-54, 140-150.

[5] Barry A. Crouch and L. J. Schultz, "Crisis in Color: Racial Separation in Texas During Reconstruction," *Civil War History* XVI (1970): 37, 49.

statute that required separate coaches on Texas railroads.[6] Woodward's thesis simply does not hold for Tarrant County, Texas.

The first two chapters in this study explore the timing, manner, and strength of Tarrant County Jim Crow before the 1891 separate coach law. Chapter 1 lays the groundwork that explains the speed and fervor with which post Reconstruction whites, when left to their own devices, would again subdue the black population. Despite their claims to a western heritage, Texas was a southern slaveholding state and Tarrant County was a southern slaveholding county. Most prewar white settlers into Tarrant County migrated from other southern states, bringing with them their slaves and their well settled attitudes toward blacks. After the war, neither the Freedman's Bureau nor Reconstruction changed white attitudes toward blacks, but only delayed the institutionalized expression of those attitudes. By the time of political Redemption in the mid 1870s, Tarrant County whites had established firm patterns of informal racial separation across the social spectrum, including residential neighborhoods, churches, businesses, social activities, and cemeteries. Tarrant County blacks did not fare better after political Redemption, either,

[6] The separate coach laws of the 1890s, adopted by many southern states and which required separate railroad cars for whites and blacks, are generally accepted by historians as representing the onset of statutory Jim Crow. See John David Smith, "Segregation and the Age of Jim Crow," in When Did Southern Segregation Begin?, 7. In 1891, the Texas state legislature enacted permanent legislation mandating separate coaches on Texas railroads. While Texas did adopt a separate coach law in 1866 as part of its Black Code, that immediate postwar statute is not a meaningful event for evaluating Jim Crow's statutory birth in Texas, in part because it was repealed in 1871 and replaced with a statute that forbade discrimination on railroad cars. For a full analysis of the various separate coach laws in Texas, see Appendix F (General Statistical and Legal Methodologies and Relevant Population Pools).

as white southerners poured into the county during the population boom in the late 1870s and 1880s, again haling primarily from other southern states. Tarrant County's postwar public policy of black discrimination occurred in this context.

The policy of black discrimination did not happen by accident, either – it was intentional. Chapter 2 describes the machinery of county criminal law enforcement after political Redemption, which was firmly in the hands of white Democrats, ex-Confederates, and ex-slaveholders. Chapter 2 also analyzes the Tarrant County jail records between 1887 and 1890 (referred to as the "early period"), measuring the *outcome* of a white dominated system of "justice." The jail records document personal data on each prisoner, including the prisoner's race and the offense for which he was incarcerated.

This nineteenth century data was analyzed with statistical methods and legal principles that are used to prove discrimination in twenty first century federal courtrooms. The statistical methods compare the ratio of black prisoners to the ratio of the black male population in the county at large, and measure the difference, if any, between those ratios. The difference is measured using a statistical model and quantified by a mathematical expression known as a "standard deviation." The standard deviation is then converted to a percentage probability that the disparity between the ratios—black prisoners as compared to the black male population in the county at large—would have occurred randomly (i.e., fairly, as a result of a fair process). The legal principles permit an inference of discriminatory treatment when the disparity is sufficiently large. The inference can be rebutted if the disparities are adequately explained. Generally speaking,

a standard deviation of more than "3.0" justifies an inference of intentional discriminatory treatment that would require some explanation to rebut. When the standard deviation is sufficiently high, in the double digits for example, successful rebuttal becomes more difficult.[7]

In late nineteenth century Tarrant County, the disparity between the ratio of black prisoners and the ratio of the black male population in the county at large is an astonishing 12.66 standard deviations. The likelihood of a disparity this large occurring randomly (i.e., fairly) is less than 2 in one billion. Based on this statistical evidence alone, it would be extremely difficult to rebut the inference of discrimination permitted by modern federal anti-discrimination law. But this measure of the aggregate population of Tarrant County prisoners is only the first part of the statistical story. African American men also suffered disproportionate incarceration rates for four specific offenses—gambling, assault, theft, and weapons offenses. Moreover, African American men were disproportionately funneled into the Tarrant County convict camp to build the county's road system. Mounting a twenty first century defense to this statistical and other evidence would be even more difficult in light of the prevailing white supremacist ideology discussed in Chapter 1 and other comparative evidence explored in Chapter 2.

[7] The term "random" is a statistical term. The term "fair" is a lay term for the legal principle of non-discrimination. Both refer to an unbiased process. In this study, this process is defined in terms of "selection" – how black men were "selected" for a jail term. The principles governing the "selection" of black men for incarceration are the statutes defining the criminal offense for which a prisoner was incarcerated, and all of the law enforcement processes associated with carrying out that "selection," including arrest by police, charging decisions by prosecutors, and trial, conviction and sentencing in the courtroom. For a full discussion of these principles, see Appendix F (General Statistical and Legal Methodologies and Relevant Population Pools).

Chapter 3 analyzes the Tarrant County jail records between 1906 and 1908 (the "later period") to determine the difference, if any, between Jim Crow treatment before and after the 1891 separate coach law. Using the same statistical methods and legal principles applied in Chapter 2, the disparity between the ratio of black prisoners and the ratio of the black male population in the county at large in the early twentieth century is a staggering 21.71 standard deviations, again justifying an inference of intentional discrimination. Based on this statistical evidence alone, it would be extremely difficult to rebut the inference of discrimination permitted by modern federal anti-discrimination law. African Americans, however, also suffered disproportionate incarceration rates for six specific offenses – gambling, sexual offenses, vagrancy, theft, weapons offenses, and assault. Whites, however, showed an ability and willingness to adjust their law enforcement efforts, as black conviction rates for specific offenses fluctuated based on urban, industrial, and social reform pressures. Contemporary whites refined this particular form of *de facto* Jim Crow, and were in complete command of the law enforcement system.

These fluctuations, when considered in light of Tarrant County's postwar development as an industrial urban center, presents a more plausible reason for the twentieth increase in black incarceration than Woodward's theory of "fanatical" rigidity. The intensity of white animus against the black population did not change at all since 1890, only the public expression of that intensity. In the late 1880s, whites were reluctant to act too boldly because the northern reaction to the earlier Black Codes—Radical Reconstruction—was still fresh in living memory. By the turn of the twentieth century,

however, whites no longer feared another northern backlash, which permitted Tarrant County whites the confidence to cement the use of the county court criminal conviction as a means of racial control.[8]

The linear progression of customary Jim Crow in Tarrant County is clear, and there were no respites, no "forgotten alternatives" in Tarrant County in the twenty-six years between the end of the Civil War and the state's separate coach law in 1891. Tarrant County whites simply did not need a statute. Indeed, Tarrant County's public policy of institutional black discrimination was more pernicious precisely because it was not affirmatively articulated in a statute book, and the effects of this late nineteenth century public policy remain visible in twenty first century jails in Tarrant County.

[8] In this study, "social control" or "racial control" means white attempts, successful or not, to regulate the conditions of black life so as to minimize, and eliminate if possible, any black assertiveness that threatened the power underlying the idea of white supremacy. See John David Smith, "Segregation and the Age of Jim Crow," in When Did Southern Segregation Begin?, 8.

CHAPTER 1

MIGRATION, EXPECTATIONS, AND PATTERNS OF BEHAVIOR: 1840-1880

Antebellum Texas was slavery's frontier and Tarrant County stood on the western edge of that frontier. The Anglos who colonized Tarrant County were largely southerners who recognized the agricultural value of the land and the prospects of expanding slavery. The southern whites who migrated to Tarrant County chose to continue slavery and brought their slaves with them, along with the ideology of white supremacy, to establish plantation agriculture. Slaveholders sat atop antebellum Tarrant County society, and slaveholding interests dominated antebellum Tarrant County politics. Tarrant County, like Texas generally, exhibited all of the characteristics of an advanced slaveholding society.[9]

The dominance of slaveholding interests in Tarrant County is most clearly revealed by the county's overwhelming support of secession and the Confederacy. The county-wide vote to secede was not even close, and slavery was the reason for seceding.

[9] Randolph B. Campbell, An Empire for Slavery: The Peculiar Institution in Texas, 1821–1865 (Baton Rouge: Louisiana State University Press, 1989), 4 (antebellum Texas was slavery's frontier), 209 (antebellum Texas had all the characteristics of an advanced slaveholding society, even though most whites did not own slaves); Randolph B. Campbell, Gone To Texas: A History of the Lone Star State (New York: Oxford University Press, 2003), 211-213 (vast amount of fertile land in Texas resulted in the rapid expansion of the agricultural economy), 227 (referring to the "overwhelmingly southern character of antebellum Texas").

Tarrant County's slaveholding elite led the way into battle, forming their own Confederate units and sending their sons to fight. Since the number of slaves in the county more than doubled during the war years, Tarrant County whites clearly did not contemplate military defeat.

But military defeat did not change white attitudes toward blacks. For Tarrant County whites, reestablishing the political and social orders went hand in hand. In 1865, during Presidential Reconstruction, Tarrant County's ex-slaveholders sought to appoint post war county officers, nominating for office the same prewar slaveholding elites who supported the Confederacy. After Congress stepped in to control reconstruction, Tarrant County whites lost the political order to blacks and Republicans, but resorted to extra-legal means to control the social order. White violence during Congressional Reconstruction was purposeful and designed to control blacks. After the Freedmen's Bureau left Texas in 1870, Tarrant County whites were unrestrained. By the mid 1870s, Tarrant County was completely under Redeemer control and the physical separation of blacks was an "accomplished fact."

1.1 "Old South" Heritage—Slavery Comes to Tarrant County

Tarrant County's antebellum period spans a brief twenty years. When Anglo colonists arrived in the 1840s, they literally carved up the wilderness to establish their communities. The white colonists were southerners who intended to establish plantation agriculture. Black slaves, of course, were essential to that enterprise. White slaveholders brought their black slaves with them, along with the ideology of benevolent paternalism

that justified slavery. While most Tarrant County whites did not own slaves, the planters occupied positions of political power and social influence.[10]

In 1841, anticipating future settlements, General Edward H. Tarrant and a company of Texas Rangers established a military outpost a few miles northeast of present-day Fort Worth. The outpost was occupied on an intermittent basis over the next several years as various military expeditions drove the permanent Indian settlements from the area. The Peters Colony, established under a land grant from the Republic of Texas, sponsored the first wave of Anglo colonizers to north Texas. In the extreme southeastern portion of the Peters Colony lay the 900-square-mile tract of land that would become Tarrant County. Before the county was officially established, however, Texas would join the federal Union in 1845 as the twenty-eighth state. After the defeat of Mexico in 1848, the United States Army established a post known as Fort Worth, at the present-day site of downtown Fort Worth. The next year, the Texas state legislature established Tarrant County, and designated Fort Worth as the county seat in 1856. [11]

The land itself was pristine. When James Cate moved to Grapevine in 1850, he remarked that the area was an "earthly paradise" and "beautiful to look on." What he saw were high, undulating prairies, alternating with fertile bottoms along the Trinity

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[10] Campbell, Empire for Slavery, 195-201 (Texas slaveholders considered themselves benevolent paternalists).

[11] Donald S. Frazier, "JOHNSON, MIDDLETON TATE," *Handbook of Texas Online* (http://www.tshaonline.org/handbook/online/articles/fjo20), accessed March 27, 2012; W. Kellon Hightower, "TARRANT COUNTY," *Handbook of Texas Online* (http://www.tshaonline.org/handbook/online/articles/hct010), accessed March 27, 2012.

River and other watercourses. The natural elevation ranged from 960 feet in the northwest to 420 feet in the southeast. The West Fork of the Trinity ran diagonally from the northwest portion of the county toward Fort Worth, in the geographic center of the square-shaped county; the Clear Fork of the Trinity ran diagonally from the southwest portion of the county northeastward, meeting the West Fork in Fort Worth. The West Fork and the Clear Fork empty into the Trinity River, which ran due east through the middle of the eastern portion of the county toward Dallas. The arable terrain east of Fort Worth was well suited for agriculture, and the terrain west of Fort Worth was rugged and hilly but still fertile. The county was criss-crossed with streams and teeming with antelope, deer, wolves, foxes, black bear, panthers and other wild cats, and droves of wild horses. This "earthly paradise" was awaiting the "expansion of the great white race over Northern and Northwestern Texas."[12]

The "great white race" migrated in Anglo waves from other slaveholding states of the south. As Texas historian Randolph B. Campbell has concluded, the earliest white migrants began making Texas southern, and those who arrived during the Republic years

[12] C. C. Cummings Collection, Special Collections, University of Texas at Arlington Library (hereafter "Cummings-1," "Cummings-2," "Cummings Newspaper Clipping," or "Cummings Miscellaneous Article"), Cummings-1, Chapter I (great white race), Cummings-2, Chapter VI (earthly paradise)); General Directory of the City of Fort Worth for 1878-1879, C. D. Morrison & Co., comp. (Houston: Morrison & Fourmey Publishers, 1878), 9-10 (observing that "the territory now composing the populous counties of Johnson, Parker and Wise, were scarce trodden by the foot of a white man," and referring to the county founders' vision of a westward "succession of cultivated lands"); Thos. H. Williams, Assistant Surgeon, "Medical Topography and Diseases of Fort Worth, 1852," Tarrant County, Texas Collection, Special Collections, University of Texas at Arlington Library (hereafter "Tarrant County Collection at UTA") (physical description of county). The Cummings Collection is described in a note following the bibliography, on page 216.

accelerated the process.[13] Cummings wrote with pride about the southern heritage of Tarrant County whites. Henry L. Newman, an overseer from Jefferson Davis's plantation in Mississippi, came "at an early date," as did the Bowlins from Virginia. Also in the 1840s came the Crowleys (from Missouri), Leonards (from Pennsylvania and Missouri), and the Gibsons (from Illinois). Middleton Tate Johnson, from South Carolina, founded Johnson's Station in the mid 1840s. A contingent of Alabamans also migrated to Johnson's Station in the 1840s, including the Burfords and the Brinsons. Also in the 1840s came a cadre of Missourians who settled in the northeastern portion of the county, including the Allens.[14]

Southern white migration continued apace in the 1850s. Notable whites include James T. Morehead (from Virginia), Nathaniel Terry (from Alabama), Louis Brown (from Maryland), J. C. Terrell (from Tennessee), Paul Isbell (from Kentucky), Steven Terry (from Kentucky), Frank Elliston (from Kentucky), James K. Allen (from Kentucky), and David Wiggins (from Alabama). "Old south" heritage was socially important in pre Civil War Tarrant County. After identifying Terrell's prior home as Sumner County, Tennessee, Cummings goes on to observe that Terrell's "people" were

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[13] Campbell, Empire for Slavery, 51-53 (77 percent of antebellum immigrants to Texas came from the old south states); Campbell, Gone to Texas, 207 (earliest Anglo migrants during the Republic years).

[14] Cummings-2, Chapters VI (Bowlins, Crowleys), VII (Allens), XVIII ("Uncle Billy" Burford, M. J. Brinson, Henry Newman); Cummings Newspaper Clipping (Ellistons); W. Kellon Hightower, "TARRANT COUNTY," *Handbook of Texas Online*; Frazier, "JOHNSON, MIDDLETON TATE," *Handbook of Texas Online*; Aragorn Storm Miller, "LEONARD, ARCHIBALD FRANK," *Handbook of Texas Online* (http://www.tshaonline.org/handbook/online/articles/fleak), accessed March 27, 2012.

"Virginians." Julian Feild (from Virginia) and Ralph Sandiford Mann (from South Carolina) bought thousands of acres in southeast Tarrant County, built a steam-powered mill in 1859, and were among the county's most affluent men. Other families include the Alfords (from Tennessee), the Watsons (from North Carolina), the Quayles (from New York), the Hightowers (from Illinois), the Rowlands (from Kentucky), the Wiggins's (from Alabama), the Elliotts and the Roys (from Missouri). After the war, the Roys would name one of their sons "Robert E. Lee Roy." [15]

These southern whites intended to establish plantation agriculture in Tarrant County and imported the slave practices from their previous locales. Cummings knew well what the migrating southern planters wanted to do, and he reflected nostalgically on those planters. For example, James T. Morehead "brought six negroes to Texas" and was "a Virginian of the old school, and speaks with stately, scholarly precision, using the best English. His manners are polished and he is scrupulous in his observance of the courtesies characteristic of the old-time Virginia gentleman." Middleton Tate Johnson,

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[15] Frazier, "JOHNSON, MIDDLETON TATE," *Handbook of Texas Online*; David Paul Smith, "QUAYLE, WILLIAM," *Handbook of Texas Online* (http://www.tshaonline.org/handbook/online/articles/fqu14f), accessed March 27, 2012; J. C. Terrell, Reminiscences of the Early Days of Fort Worth by Capt. J. C. Terrell (Fort Worth: Texas Printing Co., 1906) (hereafter "J. C. Terrell Reminiscences"), 5 (introduction by C. C. Cummings about J. C. Terrell), 15 (Louis Brown), 39 (Nathaniel Terry), 73 (Louis Brown); Cummings-1, Chapter XXXI (Hightowers, Rowlands); Cummings-2, Chapters VI (Hightowers, Morehead, Quayles), XVII (Wiggins), XVIII (Elliots, Roys, Alfords, Watsons), XXII (Mann); Cummings Newspaper Clipping (Steven Terry); Historic Preservation Council for Tarrant County, Tarrant County Historical Resources Survey (hereafter "TCHRS"), Volume 3 (N.p.: Burch Printing Company, 1984), 6 (James K. Allen); TCHRS, Vol. 7 (N.p.: Self published, 1990), 7 (Mann and Field). J. C. Terrell's Reminiscences is described in a note following the bibliography, on page 218. The TCHRS is also described in a note following the bibliography, on page 221.

perhaps the most well known and influential of the early founders of Tarrant County, established a cotton plantation at Johnson's Station. Joseph Terrell also describes other well known slaveholders, including Nathaniel Terry, a "large slaveowner of the Old South" and an "ardent secessionist." According to Terrell, one of Nathaniel Terry's "assets" was "Uncle Daniel, his body servant." Paul Isbell was "a farmer and slave trader who established a plantation" in Tarrant County. Louis H. Brown, "an elegant, hospitable gentleman of the old school…" came to Tarrant County with "a few negroes."[16]

The Tarrant County tax rolls and other sources confirm that slavery was a major economic and social institution in Tarrant County. In the first half of the 1850s, county tax records identify fifty one different slaveholders in Tarrant County. At any given time, eight (15.7 percent) of these were considered among the "planter" class owning 10 or more slaves, the remainder (84.3 percent) were considered small slaveholders owning from 1 to 9 slaves. Among the more prominent slaveholders were J. L. Pervis (37 slaves in 1854), P. Anderson (29 slaves in 1853), H. Allen (20 slaves in 1852), A. D. Johnson (17 slaves in 1854), W. T. Woods (11 slaves in 1854), William Burford (6 slaves in 1854), Isham Crowley (2 slaves in 1854), and Carroll M. Peak (1 slave in 1854).[17]

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[16] Frazier, "JOHNSON, MIDDLETON TATE," *Handbook of Texas Online*; Cummings-2, Chapters VI (J. T. Morehead), XXII (Paul Isbell); J. C. Terrell Reminiscences, 15-16 (Louis Brown), 39 (Nathaniel Terry), 73 (Louis Brown); TCHRS, Vol. 3, page 6 (Paul Isbell). As a slave trader, Paul Isbell had plenty of business in north Texas, as advertisements for slaves were common in newspapers as far north as Dallas. Campbell, Empire for Slavery, 52.

[17] Table A.1 (Slave Ownership in Tarrant County, by Owner and By Year: 1850 - 1854). According to Texas historian Campbell, small slaveholders owned 1 to 9 slaves, while "planters" owned 10 or more slaves. Small planters owned 10 to 19 slaves, medium planters owned 20 to 49 slaves, large planters owned 50 to 99 slaves, and the

These slaveholders, whether small or among the planter class, were prominent figures in Tarrant County politics before the war. For example, A. F. Leonard, who owned at least 2 slaves, was the County Clerk in 1850 and a Justice of the Peace in 1852. James T. Morehead owned 3 slaves when he was the Chief Justice of the county in 1854. William B. "Boney" Tucker, who owned 1 slave in 1854, became the county sheriff in 1856 and the district clerk in 1858. Jason J. Watson, who owned 2 slaves, was the Chief Justice of the county in 1852 and a Justice of the Peace in 1860. Paul Isbell, the slave trader, was a Justice of the Peace in 1858, and would find the famous "Bailey Letter" two years later during the Texas Troubles of 1860.[18]

Other slaveholders were affluent and trusted members of society even though they might not have served as public officials before the war. The most affluent and influential of Tarrant County slaveholders was probably Middleton Tate Johnson, who owned 25 slaves in 1852. M. T. Johnson would command a Confederate unit formed by Carroll M. Peak. In addition to Peak, other Tarrant County elites were wealthy enough to raise their own Confederate units. William Quayle, for example, a prominent in the county, formed

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planter elite owned 100 or more slaves. Slaveholders with 10 or more slaves usually had specialized slave laborers, as well, such as blacksmiths. Campbell, Empire For Slavery, 68, 74, 118, 122, 194. According to Campbell, even small planters (owning 10 to 19 slaves) in Texas were included in the upper class. In 1850, only 2.3 percent of all slaveholders statewide owned 20 or more slaves. Campbell, Gone to Texas, 214. According to the Tarrant County tax rolls, three of the fifty-one slaveholders (5.9 percent) owned 20 or more slaves at some point during the five-year period between 1850 and 1854. See Table A.1 (Slave Ownership in Tarrant County, by Owner and By Year: 1850 -1854).

[18] Table A.1 (Slave Ownership in Tarrant County, by Owner and By Year: 1850 - 1854); Tarrant County Collection at UTA (various lists of county officials in Call Number GO2 of the collection).

the first confederate unit in the county. Slaveholder Thomas O. Moody formed the Mansfield Guard. Matthew J. Brinson, who owned 10 slaves in 1854, formed a company of mounted volunteers from Johnson's Station and was "elected" captain of the unit.[19]

Tarrant County's slaveholding wealth continued to grow during the latter half of the 1850s and throughout the Civil War years. By 1864, there were 1,772 slaves in Tarrant County, valued at $618 each, for a total value of $1,096,200.[20] As whites continued to bring slaves into the county, the more Tarrant County whites reflected the attitudes and behaviors of the other southern slave states. Texas historian Campbell describes how Texas slaveholders justified slavery with the ideology of benevolent paternalism, often considering slaves as "family," and, for a variety of reasons, included

[19] Table A.1 (Slave Ownership in Tarrant County, by Owner and By Year: 1850 - 1854); "Muster Roll, 20th Brigade, M. J. Brinson, Capt.," "Muster Roll for Carroll M. Peak's Company, First Regiment of Texas, Mounted Volunteers," Tarrant County Collection at UTA; Tarrant County Collection at UTA (various lists of county officials, in Call Number GO2); Frazier, "JOHNSON, MIDDLETON TATE," *Handbook of Texas Online*; Cummings-1, Chapter XXXI (Quayle formed first Confederate unit in the county; A. M. Hightower served in Quayle's unit); Cummings-2, Chapter VI (referring to Brinson "enrolling his confederate company").

[20] Table A.2 (Number and Value of Slaves in Tarrant County, by Year: 1850-1854). As it did elsewhere in the south, however, Tarrant County's plantation agriculture no doubt precluded a diversified economy. According to Campbell, planters were the richest and most enterprising men, and saw no real reason to risk investments in commerce or industry. Campbell, Empire for Slavery, 81, 253 (richest and most enterprising men); Campbell, Gone to Texas, 211-213 (lack of a diversified economy in Texas due to plantation agriculture). With the possible exception of Julian Field and Ralph Sandiford Mann, Tarrant County and its slaveholders appear fit this pattern. See, e.g., Cummings Newspaper Clipping (referring to "Captain Julian Field" as a "pioneer manufacturer").

slaves in white church-going activities.[21] Tarrant County whites also exhibited these paternalistic views. Terrell, for example, recalled that Nathaniel Terry came to Tarrant County with his wife and "two daughters, two sons, with some thirty-six negroes [who] constituted the family."[22]

There is also evidence of Tarrant County slave participation in the Lonesome Dove Baptist Church in the northern portion of Tarrant County. An early church membership list identifies slaves, but only by their first name – "Jane, a colored woman," "Elizabeth, a colored woman," "Mariah, a colored woman," "Caroline, a colored woman," and "Ambrose, a colored man." When masters were admitted to the church, so too were their slaves. In November 1848, the church "Received brother Daniel Barcroft and Sister Barcroft and Brother Ambrose a colored man by letter." In September 1859, various people were "received by experience after baptism," including "James, a colored man belonging [to] Jefferson Estill," the latter an ordained deacon of the church.[23]

Southern whites firmly established plantation agriculture, black slavery, and white supremacy in Tarrant County before the Civil War. According to Texas historian

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[21] Campbell, Empire for Slavery, 169-171 (slaves generally belonged to organized churches), 195-201 (benevolent paternalism, slaves as "family").

[22] J. C. Terrell Reminiscences, 39.

[23] "An Early Church Roll," Minutes for November 1848, and Minutes for September 1859, Lonesome Dove Baptist Church, Minutes for Feb. 1846 – June 1875 & Church History (hereafter "Lonesome Dove Baptist Church Minutes"). The Lonesome Dove Baptist Church met on the third Saturday of every month. There is no evidence that these "colored" men and women were free blacks. The census records for Tarrant County refer only to "slaves." Table C.1 (Male and Female Population of All Ages of Fort Worth and Tarrant County, by Race: 1850-1910).

Campbell, Texas slaveholding "did not differ in any fundamental way from [slavery] as it existed elsewhere in the United States."[24] Similarly, Tarrant County slavery was no different from slavery in the other southern states. Tarrant County slaveholders were human property owners, and their reaction to threats against their property was swift, severe, and predictable.

1.2 "First To Come Forward"—Secession and Tarrant County Confederates

The slavery question reflected deep divisions involving moral issues and political philosophy. According to Campbell, antebellum Texas politics centered around the "southern consensus." Criticism of the institution of slavery was not tolerated, and, when challenged, white Texans vigorously defended their system of slavery. Indeed, Campbell continues, white Texans exhibited the "extreme fear and intolerance that often characterizes a society under siege."[25] Tarrant County whites reflected these same tendencies. Expressing anti-slavery sentiments often led to violence and even death. Moreover, slaveholding interests were sufficiently powerful to ensure that Tarrant County whites voted to secede with the same zeal as did the American founders in declaring independence nearly a century earlier, and they joined the Confederate army in droves.

[24] Campbell, Empire For Slavery, 114 (Texas slave law a product of the other southern states in the United States, not of Hispanic America), 257-258 (did not differ in any fundamental way from other southern states, and "slavery in Texas was simply American Negro slavery").

[25] Campbell, Empire for Slavery, 207 (defense of slavery), 211-212 (defense of slavery), 213 (southern consensus), 219 (under siege), 224 (under siege), 256 (defense of slavery); Campbell, Gone To Texas, 232 (southern consensus).

The "debates" over slavery were visceral on an individual and a group level. In Dallas, two northern ministers were expelled from the county for their public criticism of slavery.[26] But individual rhetoric and violence was merely a microcosm of the larger social milieu. On July 8, 1860, for example, in what would become known as the Texas Troubles, a series of unexplained fires in Dallas, Denton and other parts of north Texas sparked rumors of a slave insurrection abetted by northern abolitionists. A few days after the fire, Fort Worth residents "discovered that fifty six-shooters had been distributed among the negroes. The agent of the distribution was detected, and being treated as the prompter of a servile insurrection, was instantly hung."[27] It is unclear how the "prompter" of the servile insurrection was "detected," or by whom. In any event, another suspected abolitionist was hanged a week later on July 17:

> …the body of a man by the name of Wm. H. Crawford [was found] suspended to a pecan tree, about three-quarters of a mile from town [Fort Worth]. A large number of persons visited the body during the day. At a meeting of the citizens the same evening strong evidence was adduced, proving him to have been an abolitionist. The meeting endorsed the action of the party who hung him.[28]

The next month or so must have been a frantic time in Fort Worth and the surrounding countryside, as Tarrant County whites continued to root out suspected abolitionists and gather "evidence" to support the lynchings. On August 10, Tarrant

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[26] Campbell, Empire For Slavery, 223-224 (ministers expelled from Dallas County).

[27] William H. White, "The Texas Slave Insurrection of 1860," *Southwestern Historical Quarterly*, Vol. LII, No. 3 (January 1949), 259-285.

[28] White, "Texas Slave Insurrection of 1860," 263.

County slave holder Paul Isbell found the "Bailey Letter," which served to justify all white fears and actions. The Bailey Letter was ostensibly a report from a northern abolitionist agent in Texas to his abolitionist headquarters somewhere in the north. Not only was the Bailey Letter a moral manifesto against slavery, it also revealed a plan to overthrow the slave states. The Bailey Letter identified a plan to "free Texas" so that "slavery will then be surrounded by land and water, and soon sting itself to death." In order to "free Texas," it was necessary to "destroy towns, mills &c," to "break Southern merchants and millers, and have their places filled by honest Republicans," with the goal of "control[ling] trade," which would then lead to control of public opinion and the abolition of slavery. A public meeting was held on September 11, 1860, at which the Bailey Letter was read, along with Isbell's affidavit explaining how he found the Bailey Letter. Isbell's affidavit read:

> Personally appeared before me, the undersigned authority, Paul Isbell, a man to me well-known, who by me being duly sworn, according to the law, says that the above and foregoing letter, was found by George Grant and himself, near the residence of said Grant, six miles west of Fort Worth, near where a horse had been fed, stealthily as it seemed, and that said letter had not been out of their possession till now, and has not been altered in an respect whatever. Given under my hand and seal of L. S. the County Court, this 10th day of August, 1860. T. M. Mathews, dep. County cl'k for G. Nance, C.C.T.C. [29]

The authenticity of the Bailey Letter, and thus the authenticity of any purported "insurrection," has been the subject of scholarly debate. William White concludes that a "real plot of insurrection existed in 1860 in Texas." Other Texas historians, however,

[29] White, "Texas Slave Insurrection of 1860," 265-266.

including James M. Smallwood and Randolph B. Campbell, disagree, concluding that a new type of phosphorous match caused the fires.[30] Ultimately, however, the existence of an actual slave rebellion is irrelevant. What matters is what contemporary whites *believed* to be true as they acted as a community "under seige." Paul Isbell was a reputable member of the Tarrant County community, a former Justice of the Peace, and a slave trader – contemporary whites were not about to question his veracity. The objective truth mattered little to the blacks and whites who were hanged or whipped, or indeed, to the whites whose property actually was destroyed. In this climate of anger and fear, secession was no surprise.

Tarrant County whites had no difficulty voting for secession. Of the 589 secession ballots cast, 462 (78.4 percent) favored secession and 127 (21.6 percent) opposed secession.[31] Tarrant County whites also had no trouble defining the philosophical basis of their cause. In an 1876 newspaper article, the *Democrat* quoted from a Tarrant County history written by ex-slaveholder Carroll M. Peak more than fifteen years earlier. According to the 1876 *Democrat*, "The slavery question then agitated the country, and the prevailing sentiments of the little band who laid the corner-

[30] White, "Texas Slave Insurrection of 1860," 285; Campbell, Empire For Slavery, 185, 224-228; James M. Smallwood, Time of Hope, Time of Despair: Black Texans During Reconstruction (Port Washington, New York: Kennicat Press), 21. The lack of an actual slave rebellion in 1860 does not mean there was no master-slave violence. In May 1859, in Smithfield in Tarrant County, one of James Roper's slaves killed Roper and burned his body because Roper would not buy the slave's wife in Alabama. Tarrant County whites captured the slave, forced him to confess, and burned him on the same spot that he burned Roper. Campbell, Empire for Slavery, 105.

[31] Carl H. Moneyhon, Republicanism in Reconstruction Texas (College Station: Texas A&M University Press, 1980), 203 (Tarrant County secession vote).

stone [of the county court house in 1860] may be gathered from the closing paragraph of [Peak's history], which reads: 'God grant that a dissolution of the American Confederacy may never occur.' " Decades later, in the early twentieth century, C. C. Cummings, a Mississippian who fought in the Confederate army and who would become the first Tarrant County judge under the Redeemer Constitution of 1876, nostalgically referred to the American Revolution as the "*first* war of secession from the mother country."[32]

Tarrant County residents signed up in droves to fight in locally-formed Confederate units as well as Confederate units elsewhere in the south, causing severe disruption in the county. Enlistments were so high, in fact, that many of the meetings of the Lonesome Dove Baptist Church were canceled. The meeting in February 1862, for example, was canceled "owing to the excited state of the community upon our National difficulties…." In March 1862, the church postponed further investigation of the cases against the Foster brothers and Abner Hope "untill [sic] the men return from the war where they are now gone." [33]

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[32] *Democrat*, 11/4/1876 ("Now and Then"); Cummings-1, Chapter XXXVII (first war of secession) (emphasis added). Statewide, too, Texas seceded to keep slavery. Campbell, Empire For Slavery, 229; Campbell, Gone To Texas, 242-246. Indeed, secession came easily for Texans because Texas was "essentially southern in economy, society, and politics." Randolph B. Campbell, Grass-Roots Reconstruction in Texas, 1865-1880 (Baton Rouge: Louisiana State University Press, 1997), 7. Carroll M. Peak's history was found in 1876 after the county courthouse burned to the ground. Peak's history, along with several other items, was found the cornerstone of the old (1860) county courthouse. The cornerstone was laid in 1860 and became exposed after the 1876 fire. In a series of articles on November 4, 1876, entitled "Relics," "Echoes from the Past" and "Now and Then," the *Democrat* described some of the items in the cornerstone, among which was Peak's history.

[33] Minutes for February 1862, Minutes for March 1862, Lonesome Dove Baptist Church Minutes (underscore emphasis in original); Richard F. Selcer, Fort Worth: A

The county itself furnished at least three Confederate military units under the Texas flag. Slaveholder Matthew J. Brinson, who went on to become a county justice of the peace in 1882, formed a company of mounted volunteers from Johnson's Station. Slaveholder Thomas O. Moody formed the Mansfield Guard, and William Quayle formed a company of mounted riflemen from Grapevine. Tarrant County residents served in these locally formed units. Hiram Crowley, whose father owned several slaves, served in the Confederate army, as did several of Middleton Tate Johnson's sons. Jason J. Watson, former Chief Justice of the county in 1852, was "an ardent Confederate soldier" who "seldom miss[ed a post war] reunion."[34]

Other Tarrant County residents enlisted in Confederate units formed elsewhere in the state. Joseph C. Terrell, for example, who would become a county commissioner in 1876, commanded Company F of Waller's Battalion. Joseph M. Henderson, who would become the Tarrant County sheriff in 1876, and under whom Louis H. Brown's son Horatio served under Terrell. Khleber M. VanZandt, who would represent Tarrant,

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Texas Original (Austin: Texas State Historical Association, 2004), 13 (Fort Worth a Confederate recruiting center); Oliver Knight, Fort Worth: Outpost on the Trinity (Fort Worth: Texas Christian University Press, 1990), 45 (describing several Tarrant County Confederate military units).

[34] "Muster Roll, 20th Brigade, M. J. Brinson, Capt.," "Muster Roll for Carroll M. Peak's Company, First Regiment of Texas, Mounted Volunteers," "Muster Roll of Captain Quayle's Company of Mounted Riflemen," and "A List of Officers and members of the Mansfeild Guard, a uniformed military company commanded by Thos. O. Moody, Captain," Tarrant County Collection at UTA; Cummings-1, Chapter XXXI (William Quayle formed the first Confederate unit in the county); Cummings-2, Chapters VI (Hiram Crowley), XXIII (Thomas O. Moody, J. J. Watson); Frazier, "JOHNSON, MIDDLETON TATE," *Handbook of Texas Online.* According to Cummings, M. J. Brinson "served [after the war] as justice of the peace in his precinct for years also mayor of Arlington same length of time." Cummings-2, Chapter XVIII (Brinson as mayor).

Dallas, and Collin Counties in the first Redeemer state legislature in 1872, and then serve as the treasurer for the city of Fort Worth from 1886 to 1890, served in Company D of the 7th Texas Cavalry Regiment.[35]

Still other Tarrant County residents fought for the Confederacy in their birth states. C. C. Cummings, for example, served in the 17th Mississippi Regiment from 1861 until he was wounded at Gettysburg. Henry L. Newman, a former overseer from Jefferson Davis's Brierfield Plantation, served in the 1st Mississippi Rifles. The Bowlin brothers—Ross and Rhea—served as Virginians; Ross would later become the Tarrant County attorney in 1887. J. H. Eastman served in the 3rd Kentucky Cavalry, and John Higgins and W. T. Wilkerson served in Company B of the 6th Georgia Infantry.[36]

While some pre-war Tarrant County whites haled from free states, they would also fight for the Confederacy. The Gibson family, for example, came from Illinois around 1850, four of whom served in Thomas O. Moody's Mansfield Guard. The Quayle brothers haled from New York, and William would form a company of mounted riflemen for the Confederate army. The Hightowers—father A. M. and sons Dan and James—came to Tarrant County from Illinois in 1859. A. M. and James would serve in William Quayle's company during the war. More than three decades after the end of the war, Cummings would speak highly of the Hightowers, and others like them, observing that

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[35] Cummings Newspaper Clipping (Joe Henderson, J. C. Terrell, K. M. Van Zandt "raised a company for the Confederate service"); Cummings-2, Chapter XXIII ("Joe M. Henderson made an efficient Confederate soldier").

[36] Cummings-1, Chapter XXXIV (Higgins, Wilkerson); Cummings-2, Chapters VI (Bowlins, Eastman), XVII (Newman); Cummings Miscellaneous Article entitled "Texas Authors, Prose Writers and Poets" (featuring "Judge C. C. Cummings").

they were the "first to come forward in defense of the South while not southern born but were true as steel to their colors."[37]

Confederate service would become a virtual prerequisite for post war public office in Tarrant County. A contemporary newspaper article nostalgically observed that

> Two of [Joseph C. Terrell's] company—Tom James and Joe Henderson—the people of the county have [been] honored by successive terms as sheriff of the county. Tobe Johnson [son of Middleton Tate Johnson] and Frank Elliston have each been tax collectors, W. M. Cross served a term as county commissioner. Mark Elliston's voice is historic as stentorian in volume at Democratic conventions and reunions. Jacob Samuels leaves a representative on our new city commission in the person of our talented city attorney, Sidney L. Samuels.[38]

This idea of Confederate service as a qualification for office is consistent with the impact of Reconstruction in Texas on a statewide basis. Wealthy Texas planters, according to Campbell, generally did not have to relinquish their positions in society.[39] The same is true for Tarrant County, as ex-slaveholders and ex-Confederates continued to hold positions of power and influence in the county after the war. But getting to this point

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[37] Cummings-1, Chapter XXXI (Quayles, Hightowers, Gibsons); Cummings-2, Chapter VI (Quayles, Hightowers, Gibsons, "first to come forward"); "Muster Roll of Captain Quayle's Company of Mounted Riflemen," Tarrant County Collection at UTA.

[38] Cummings Newspaper Clipping (J. C. Terrell, K. M. Van Zandt, quoted language); Cummings-2, Chapter XXIII ("Joe M. Henderson made an efficient Confederate soldier"). Cummings also referred to Henderson's "deputies former Confederates like himself." Cummings-2, Chapter XXIII. The *Democrat* heaped lavish praise on Sheriff Henderson. *Democrat*, 5/14/1877.

[39] Campbell, Gone To Texas, 289.

would not be easy. Tarrant County whites would, in their view, suffer through the Freedman's Bureau and the Radical Republicans before political Redemption in 1873.

1.3 "Good Old Antebellum Days"—Reconstruction and Redemption

Post war Tarrant County was a political, economic, and social disaster. As Texas historian William L. Richter has observed, the "demise of the Confederacy forced Americans to grapple with one of the greatest social adjustments in their history." [40] The loss of black property, the loss of white soldiers, and, more importantly perhaps, the prospect of black equality, was too much for Tarrant County whites to bear. For Tarrant County whites, reestablishing governmental authority after the war went hand in hand with reestablishing social and economic control of blacks. During the turbulent and uncertain decade between Congressional Reconstruction and Redemption, whites used violence to control blacks. Violence also accompanied Tarrant Count's shift from an agricultural economy to an industrial economy. Tarrant County whites would make this shift as they also worked toward reestablishing control of the black population.

In his memoirs, Joseph C. Terrell painted a bleak picture of postwar Tarrant County. "[We] were without any local form of government whatever," Terrell recalls, and while "we knew that de facto government existed with us, [but] people at large were unsettled as to our exact legal status." Terrell himself tried to create order out of this political chaos, traveling to Austin to petition Governor A. J. Hamilton to appoint county officers. At Terrell's request, the governor appointed Steven Terry as the county judge,

[40] William L. Richter, Overreached on All Sides: The Freedman's Bureau Administrators in Texas, 1865-1868 (College Station: Texas A&M University Press, 1991), 3.

Gideon Nance as the county clerk, and Louis H. Brown as the district clerk. Brown, of course, was a Tarrant County slaveholder in the 1850s, Nance was the county clerk during the Texas Troubles of 1860, and Terry was the county judge during a portion of the Civil War. [41]

These appointments, however, did not last long. Like other southern states Texas enacted a series of statutes known as the Black Codes. The Texas Black Codes were clearly designed to relegate the newly freed slaves to second-class citizenship.[42] Congress, however, would step in before the state Black Codes could provide any meaningful structure for racial control in Tarrant County.

The Freedman's Bureau arrived in Tarrant County amid ubiquitous violence. Outlaws and Confederate deserters teemed in the northwestern frontier counties.[43]

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[41] J. C. Terrell Reminiscences, 15-16 (describing trip to Austin); Cummings Newspaper Clipping (Steven Terry). President Andrew Johnson appointed Andrew Jackson Hamilton as provisional governor of Texas in July 1865. Moneyhon, Republicanism in Reconstruction Texas, 21.

[42] Barry A. Crouch, " 'All the Vile Passions': The Texas Black Code of 1866," *Southwestern Historical Quarterly*, 97 (1993): 14.

[43] Report for the month ending September 30, 1867, Capt. Chas. Steelhammer, Sub Assistant Commissioner for the 56th Sub District of Texas, Weatherford, Records of the Bureau of Refugees, Freedmen and Abandoned Lands, Records of the Assistant Commissioner for the State of Texas, Bureau of Refugees, Freedmen, and Abandoned Lands, 1865 – 1869, Record Group 105 (Microfilm Publication M821, Roll 22) ("NARA RG 105" hereafter, followed by the microfilm publication number and roll number) ("The company at this post is in my opinion unnecessary for the protection of the Freedman than to hold [the] rebels in check, and to ferret out and cause the arrest of numerous criminals who have taken their refuge on this frontier."); Campbell, Gone To Texas, 266 (Confederate deserters in the northwestern frontier counties); Crouch, "To Enslave the Rising Generation," 39 (describing the general violence across the state). Texas historian William Richter documents the violence in the counties in the vicinity of Tarrant County. See Richter, Overreached on All Sides, 14 (Parker), 161 (Parker), 162-

During the summer of 1867, the Bureau's agent in Dallas was W. H. Horton. Horton had a contingent of seven Union troops to cover his two-county 40th Subdistrict of Dallas and Tarrant Counties. Horton's reports to the Bureau Headquarters in Galveston provide a chilling glimpse into racially and politically motivated violence in post Civil War Tarrant County.[44]

"In Tarrant County," Horton reported, "there is a bad disposition displayed by the people towards the government Union man and Freedman in particular they are as far from being reconstructed now as at the close of the war, probably less so." Horton's conclusion was based on factual observations during the course of very difficult duty.[45]

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163 (McClennan and Kaufman), 168 (Sherman), 169 (Kaufman), 175 (Dallas), 191 (Ellis and Hill), 248 (Dallas), 271 (Freestone), 272-273 (McLennan). Evading arrest was relatively easy, even as late as 1889. If perpetrators were not apprehended immediately, they would simply "escape to the brush." *Gazette*, 5/9/1889 (escape to the brush).

[44] In July 1867, the Freedman's Bureau 40th Subdistrict consisted of two counties, Dallas and Tarrant. In February 1868, the 40th Subdistrict consisted of four counties, Dallas, Ellis, Johnson and Tarrant. Richter, Overreached on All Sides, 156, 239. Richter, as well as Texas historian James M. Smallwood, are critical of the Freedmen's Bureau, concluding that the Freemen's Bureau contributed to the discrimination of Texas blacks. Richter, Overreached on All Sides, 288 (Bureau set the example for the black codes); Smallwood, Time of Hope, Time of Despair, 38 (Bureau more concerned with law and order than with welfare of Texas blacks), 161 (Bureau failed to redistribute land to blacks which kept blacks as landless peasants). Barry A. Crouch, however, argues that the Freedmen's Bureau policies were not as discriminatory as critics suggest, and that contemporary white Texans were perfectly capable of establishing discriminatory policies on their own. Barry A. Crouch, "'To Enslave the Rising Generation': The Freedmen's Bureau and the Texas Black Code," in The Freedmen's Bureau and Reconstruction: Reconsiderations," Paul A. Cimbala and Randall M. Miller, eds., (New York: Fordham University Press, 1999), 277.

[45] The difficult, perhaps impossible nature of a Bureau agent's job was articulated by the Assistant Commissioner for the State of Texas upon the resignation of the Bureau agent in Meridian, Bosque County. "Philip Howard, Esq. Sub. Asst. Comm. Bureau R. F. & A. L. at Meridian, Bosque County, Texas is (at his own request) hereby relieved from

Horton's primary duties consisted of "hearing complaints, investigating the same, taking all the evidence white and black bearing upon the case, making settlements for labor and rendering decisions at the time of investigation. If it's a fine imposed for [illegible word] I give the man an hour to pay or go to jail till it is paid. Office hours from 7 AM to 8 PM." Blacks throughout the subdistrict were "positively ignorant of the privileges and rights given them by their emancipation from slavery…" and "the whites will not deal justly and honestly with the blacks unless compelled too [sic], there seems to be an inordinate desire to oppress and defraud them. They dislike to pay men that were once property and there seems to be a general combination to get their labor for nothing or as little as possible."[46]

Tarrant County Unionists did not escape the violence. According to Horton, "Union men [in Tarrant County] are few in numbers and completely terrorized…. They tell me that unless a different regime of things takes effect soon they will be compelled to leave the county." Horton singled out the Tarrant County judge and clerk as particularly

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duty in this Bureau. The Asst. Comm. takes this opportunity of thanking Mr. Howard for the able and earnest manner in which he has performed his duties under circumstances of peculiar difficulty and with no hope of recompense other than that arising from the satisfaction of doing good." Special Orders No. 128, Oct. 27, 1866, paragraph I, Orders Book, Headquarters, Bureau of R., F. & A. L., State of Texas, Galveston, NARA, RG 104, Microfilm Publication M821 (Roll 19).

[46] Report for the month of June 1867, W. H. Horton, Sub Assistant Commissioner for the 40th Sub District of Texas, Dallas, NARA, RG 105 (Microfilm Publication M821, Roll 21) (bad disposition); Report for the month of July 1867, W. H. Horton, Sub Assistant Commissioner for the 40th Sub District of Texas, Dallas, NARA, RG 105 (Microfilm Publication M821, Roll 21) (many blacks ignorant of emancipation); Report for the month ending 30th Sept. 1867, W. H. Horton, Sub Assistant Commissioner for the 40th Sub District of Texas, Dallas, NARA, RG 105 (Microfilm Publication M821, Roll 22) (principal duties and office hours; white desire to oppress blacks).

entrenched Confederates. "Judge Tucker County Judge is one of the vilest rebels living in the county [and the county] clerk is the same." Before the war William B. Tucker was the Tarrant County sheriff in 1856, the district clerk in 1858, and a slaveholder. Years later, the Fort Worth literary club known as the "Bohemians" lamented that Tucker was "compelled to resign [in 1865] by the Federal authorities."[47]

Horton concurred with Terrell on the lack of government in Tarrant County, but for very different reasons. "The civil law [throughout the subdistrict] is dead except in instances when it can be enforced against Union men and Freedmen." Military force was necessary to ensure even a modicum of fair treatment. Just as Horton began investigating criminal offenses, however, he lamented "my cavalry were ordered away leaving me helpless without any troops whatever." Despite the lack of troops, Horton did attempt to catalogue the violent crimes in the 40th subdistrict.[48]

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[47] Report for the month of July 1867, W. H. Horton, Sub Assistant Commissioner for the 40th Sub District of Texas, Dallas, NARA, RG 105 (Microfilm Publication M821, Roll 21) (Union men in Tarrant County few in number; reference to Tarrant County judge and clerk); *The Bohemian*, Volume I, Number 1, Nov. 1899 (Fort Worth: Texas Publishing Company, 1899), 54-66 (article by C. C. Cummings entitled "Past and Present of Fort Worth") (Tucker compelled to resign by federal authorities); *Gazette*, 10/6/1886 (reference to W. B. Tucker); Table A.1 (Slave Ownership in Tarrant County by Owner and by Year: 1850-1854) (identifying W. B. Tucker as a slave owner is 1854).

[48] Report for the month of June 1867, W. H. Horton, Sub Assistant Commissioner for the 40th Sub District of Texas, Dallas, NARA, RG 105 (Microfilm Publication M821, Roll 21) (crimes); Report for the month of July 1867, W. H. Horton, Sub Assistant Commissioner for the 40th Sub District of Texas, Dallas, NARA, RG 105 (Microfilm Publication M821, Roll 21) (crimes; civil law is dead); Report for the month ending 30th Sept. 1867, W. H. Horton, Sub Assistant Commissioner for the 40th Sub District of Texas, Dallas, NARA, RG 105 (Microfilm Publication M821, Roll 22) (crimes; helpless without troops).

The crimes documented by the Freedmen's Bureau reveal that white violence against blacks in Reconstruction Tarrant County was purposeful and intended to reassert white social and political control.[49] Horton documented 19 crimes over a 30-month period, yielding an average of 1 *known* crime every other month in his two-county jurisdiction.[50] Of these nineteen crimes, five (26.3 percent) were perpetrated against blacks and intended as a method of racial control—"assault with intent to kill…Hardin a Freedman…because he was a negro," "assault with intent to kill…for not taking off his hat…since died," "murder of Isam a Freedman," "murder of Henry, a freedman," and "murder of Harriett (Freedwoman)." Two of the crimes (10.5 percent) were politically motivated, and committed by whites on whites because the victims were "Union" men—"murder of Frank Miller (because he was Union)," and "murder…[of a man] for being

[49] Historians differ in their approach to analyzing Reconstruction violence. Compare Gregg Cantrell, "Racial Violence and Reconstruction Politics in Texas, 1867 – 1868," *Southwestern Historical Quarterly*, Vol. XCIII, No. 3 (January, 1990), 337, 349-350, 353-354 (arguing that the general political situation motivated all violence because the prevailing political ideology was white supremacy) with Barry A. Crouch, "A Spirit of Lawlessness: White Violence, Texas Blacks, 1865-1868," *Journal of Social History*, 18 (1984): 219-227 (arguing that individual acts of violence, when analyzing the perpetrators, the situation, and other factors, reveal how whites used violence to control blacks politically, economically, and socially).

[50] Table B.1 (Summary of Crimes Reported by the Freedmen's Bureau, 40th Subdistrict, 1865 – 1867). One wonders how much underreporting actually occurred in the 40th Subdistrict, considering that Horton was removed from office one year later for taking bribes during his tenure in Dallas. Special Orders No. 55, September 19, 1868, paragraph I, Orders Book, Headquarters, Bureau of R., F. & A. L., State of Texas, Galveston, NARA, RG 105 (Microfilm Publication M821, Roll 19) ("Reliable information on file in this office establishing the fact that during the summer of 1867 at Dallas, Texas, money was received by Wm. H. Horton, Sub Assistant Commissioner, Bureau of Refugees Freedmen and Abandoned Lands, as a bribe for the abuse of his official position, the said Wm. H. Horton is hereby dishonorably discharged [from] the service of this Bureau." (underscore emphasis in original)).

one of a party that hung his father, a Union man.[51] The Ku Klux Klan gang was active in Tarrant County, wearing typical Klan garb, confiscating weapons, whipping blacks who were not in their homes, and generally terrorizing freedmen throughout the county.[52] Perhaps historian William Richter best captured contemporary white sentiment when he observed that "Killing a Negro was viewed as a public service" in northeastern Texas.[53]

The violence in Tarrant County was also motivated by general political frustration. "By the reconstruction laws of Congress," Terrell recalled in his memoirs, "nearly all the intelligence of the country [county] was barred from office and disfranchised…." The Tarrant County tax rolls indicate that black voters outnumbered white voters by a two-to-one margin during Congressional Reconstruction. One of the

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[51] Table B.1 (Summary of Crimes Reported by the Freedmen's Bureau, 40th Subdistrict, 1865 – 1867). That same summer, the Bureau agent in Weatherford, Parker County, reported that "Jenny Goodlette returning with her companion E. Boyd, also colored, from a [illegible]ing was assaulted by the defendant ["____ Jones (white)"] who tried forcibly to remove her from under the protection of E. Byrd. The defendant did not succeed in his [illegible word] intentions." Report for the month ending September 30, 1867, Capt. Chas. Steelhammer, Sub Assistant Commissioner for the 56th Sub District of Texas, Weatherford, NARA, RG 105 (Microfilm Publication M821, Roll 22) (blank line in original to denote first name unknown).

[52] James M. Smallwood, "When the Klan Rode: White Terror in Reconstruction Texas," *Journal of the West*, 4-13 (Vol. XXV, No. 4, October 1986), 7 (describing Tarrant County Ku Klux Klan). Democrats decried federal prosecutions of suspected Klansmen, which occurred as late as 1873. "During the week, about twenty five men, citizens of Grapevine, in Tarrant county, have been arrested and dragged to Tyler as prisoners, charged with the killing of Brown and Furgeson. These men, or most of them, are among the oldest and most esteemed citizens of the county. Men who have never been known to violate any law or to disturb the peace have been dragged from their homes by armed men to answer a charge which their accusers know they are innocent of…." *Democrat*, 5/17/1873 ("More Ku Klux Arrests").

[53] Richter, Overreached on All Sides, 15, 47 ("killing a Negro viewed as a public service").

Tarrant County voting registrars was radical B. F. Barkley, and one of Barkley's fellow registrars was black.[54]

In addition to the political and social disruptions in Tarrant County, the economic system was also in chaos. Plantation agriculture died with the Confederacy, and it would be another decade until the first railroad arrived in Fort Worth. In the meantime, the nation's need for meat would sustain the county in the immediate aftermath of the Civil War. Between 1865 and 1873, buffalo hunting and cattle drives were the primary means of economic survival.[55]

But cattle drives and buffalo hunts were not peaceful enterprises either. The violence that accompanied the cattle trade in the latter half of the 1860s, Fort Worth historian Richard Selcer argues, led to a high tolerance of gambling, prostitution and drunkenness. In the postwar fight for survival, Selcer concludes, Fort Worth and Tarrant County put "morality on hold" in order to create and maintain a favorable business climate. Post war Tarrant County was a world away from antebellum Tarrant County. Less than twenty years earlier, in 1858, the Lonesome Dove Baptist Church entertained a complaint that "Bro. H. Browning had been guilty of unchristian conduct by taking spirits, the name of god in vain, and drinking too much." Brown did not respond to

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[54] Table A.3 (Poll Taxes Collected in Tarrant County, by Race: 1866-1870); J. C. Terrell Reminiscences, 15-16 (all the intelligence of the country); Richter, Overreached on All Sides, 206 (voting registrars).

[55] Campbell, Gone To Texas, 211-213 (vast amount of fertile land in Texas resulted in the rapid expansion of the agricultural economy; as a result, the state lacked a diversified economy, and lagged behind in transportation, manufacturing, and urbanization); 299 (post war demand for Texas beef).

ecumenical discipline, however, and he was expelled one year later for "repeated intoxication and profane language."[56]

The cattle trade brought people, both transient and permanent, both black and white, which helped to link, in contemporary white minds, economic development to social and political hegemony. In 1865, according to Selcer, genuine strangers were rare in Fort Worth, but by 1873, the *Democrat* estimated that there were about "two or three hundred strangers in the city" at any given time.[57] Regaining white control of the increasingly visible, and unknown, black population was a priority. Tarrant County whites inched toward this goal since the close of the war, despite Radical Reconstruction. Any restraint on Tarrant County whites evaporated with political Redemption in the mid 1870s.

In the state elections in November 1871, Democrats won a majority in the Texas state house of representatives. Less than two years later, the state senator from the Twenty-First Senatorial District, which encompassed Tarrant, Dallas, and Collin

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[56] Richard F. Selcer, Hell's Half Acre (Fort Worth: Texas Christian University Press, 1991), 30-31 (cowboys tolerated for economic contribution to the area), 34-35 (buffalo), 59 (certain level of "mayhem" was tolerated), 69 ("wide-open town"), 79 (violence was the problem, not the underlying gambling, drinking and prostitution), 91 (morality on hold); Minutes for August 1858, Minutes for September 1858, Lonesome Dove Baptist Church Minutes (Browning was disciplined in August 1858 and excluded in November 1859). The harshness of the northwestern Texas frontier is vividly portrayed in historians' account of the notorious Lee-Peacock feud in the late 1860s and early 1870s. The Lee-Peacock Feud lasted for years and occurred approximately 200 miles northeast of Tarrant County. See James M. Smallwood, Barry A. Crouch, and Larry Peacock, Murder and Mayhem: The War of Reconstruction in Texas (College Station: Texas A&M University Press, 2003).

[57] Selcer, Hell's Half Acre, 52, 61; *Democrat*, 4/5/1873 (strangers in the city).

Counties, addressed an open letter to his constituency. The letter decried the Radical Republicans for seeking "to place us and our property and rights at the mercy of a desperate political faction, composed chiefly of an ignorant negro population, controlled and misled by white adventurers from distant states, and a few recreant natives of the south…." The letter went on to describe the various accomplishments of the Democratic-controlled Thirteenth Legislature, including the repeal of the "pretended so-called free public school law, with its swarm of useless middle men, called supervisors, inspectors, etc., whose duties in most cases consisted in living on the people's money, organizing the poor, deluded negroes into loyal leagues, and fanning the flames of discord between the white and black people."[58]

More locally, white Democrats would retake effective control of Tarrant County politics by the end of 1873. In March 1873, the *Democrat* bragged that only 150 of the 1,700 registered voters were "radical." Eight months later, the *Democrat* would write with pride that the Tarrant County elections were finally "uninfluenced by Radical threats and promises and unintimidated by Radical bayonets, Radical policemen and State guards under orders from evil and designing satraps." [59]

The most revealing evidence of Tarrant County Redemption was the control of the grand jury. In November 1873, the Grand Jury Report for the previous July was published in the *Democrat*. The grand jurors were sufficient in number to ensure the

[58] *Democrat*, 6/28/1873 (desperate political faction).

[59] *Democrat*, 3/8/1873 (reprinted in Shreveport [Louisiana] *Southwestern*) (only 150 radical voters in Tarrant County); *Democrat*, 12/6/1873 (elections uninfluenced by Radicals).

investigation of the affairs and finances of prior Radical county officers, including the sheriff, treasurer, justices of the peace, road commissioners, and inspector of hides and animals. According to the Grand Jury, former county treasurer G. A. Jennings was evading process, and former county treasurer B. F. Barkley was simply a "defaulter." The Grand Jury also noted that the former sheriff was indebted to the county and that the former clerk of the district court had failed to provide an accounting of his finances. The Grand Jury was particularly annoyed with former school board treasurer W. B. Lorance, "to whom has been paid upwards of thirteen thousand dollars of public moneys, [and who] comes before the Grand Jury with the extraordinary report that he has kept no books to show how he has discharged said money…."[60]

In stark contrast was the grand jury report only a year and a half later. In 1875, the grand jury concluded that officers of the law have been prompt and efficient in making arrests, that justices of the peace have required good and safe bonds to assure the defendants' appearance in court, and commended the financial condition of the county based on the efforts of "our worthy [county] Treasurer." "By long and persistent struggles," the *Democrat* observed in late 1876, "the white citizens, with the aid of the patriotic colored voters, have delivered all these [southern] States from the carpet-bag yoke, except Louisiana, Florida, and South Carolina…." That same year the *Democrat*

[60] *Democrat*, 11/22/1873 (the grand jury report was for the July term, 1873, 14th Judicial District, Tarrant County; another article in the same edition, entitled "That Grand Jury Report," observed that "The radical officials are found to be in default, as everyone knew they would be."); *Democrat*, 12/7/1876 (claiming that county indebtedness to Radical officials was $50,000); Kristi Strickland, "BARKLEY, BENJAMIN FRANKLIN," *Handbook of Texas Online* (http://www.tshaonline.org/handbook/online/articles/fba67), accessed April 2, 2012.

nostalgically observed, "Our city was literally thronged with people from all parts of the country [county] yesterday. Our merchants all wore smiling countenances, and the general aspect of affairs reminded us forcibly of the good old *ante-bellum* days in the South."[61]

1.4 "Wanted: A Good White Girl For General Housework"—Repopulation

Despite military defeat, Tarrant County whites had no intention of accepting blacks as political, economic or social equals.[62] Tarrant County whites were soliciting a railroad by the time of their Redemption in 1873, offering the prospect of a more

[61] *Democrat*, 7/24/1875 (grand jury report in 1875); *Democrat*, 9/20/1876 (good old antebellum days) (emphasis in original); *Democrat*, 12/22/1876 (long and persistent struggles).

[62] The war drained Tarrant County of its white population, and, indeed, 20 to 25 percent of all Texas soldiers died while in the Confederate army. Campbell, Gone To Texas, 261 (20 to 25 percent of all Texas Confederate soldiers died). From Tarrant County, Hiram Crowley, son of slaveholder Isham Crowley, was killed during the war. So, too, was one of Middleton Tate Johnson's sons, and "three of elder [Micajah] Goodwin's sons gave their lives to the Southern Confederacy"). Cummings-2, Chapters VI (Hiram Crowley) and XVIII (Goodwin's sons); Frazier, "JOHNSON, MIDDLETON TATE," *Handbook of Texas Online*;" Tim Bell, "FOURTEENTH TEXAS CAVALRY," *Handbook of Texas Online*, http://www.tshaonline.org/handbook/online/articles/qkf14 (accessed March 27, 2012) (Johnson's son). Historians have documented the white anger that accompanied military defeat, the loss of human property, and Reconstruction. David M. Oshinsky, "Worse Than Slavery": Parchman Farm and the Ordeal of Jim Crow Justice (New York: Simon & Schuster Free Press Paperbacks, 1996), 13-15 (discussing white anger in Mississippi), 90 (discussing white fear of social equality in Mississippi); Mary Ellen Curtin, Black Prisoners and Their World, Alabama, 1865 – 1900 (Charlottesville: University Press of Virginia, 2000), 19 (discussing white anger in Alabama); Douglas A. Blackmon, Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II (New York: Anchor Books, 2008), 39 (discussing white anger). There is no reason to think that Tarrant County whites reacted any differently. J. C. Terrell, for example, recalls how slaveholder Nathaniel Terry "had been one of the highest flyers in the Union," but a "pronounced secessionist" who was "utterly ruined by the resulting war." J. C. Terrell Reminiscences, 39-40.

prosperous Fort Worth. After the railroad finally arrived in 1876, Fort Worth became a boomtown, and so did the county, as the railroads replaced the waning cattle industry. In order to repopulate the county after the war, Tarrant County advertised for southern white immigrants, and that is who came, along with the white supremacist attitudes. By reputation, at least, Texas offered some relief from the Radical Reconstruction policies elsewhere in the south. Taking advantage of the more difficult Reconstruction experience in other southern states, Tarrant County advertised itself as a land of milk and honey for white people. The county also encouraged the belief that its limited black population was under control, and discouraged blacks from migrating to Tarrant County.[63]

The main advertising vehicle was the Fort Worth *Democrat*, which sponsored articles clearly intended to reach an audience well beyond Fort Worth readers. One article in late 1874, for example, described the geography, agriculture, and manufacturing potential of the county. The *Democrat* characterized the climate as "salubrious and

[63] As elsewhere in the south, Tarrant County was swept up in the New South creed. Campbell, Gone To Texas, 306-310 (New South creed of railroads, urban growth, and industrialization). Tarrant County touted its industrial capacity and actively solicited northern capital investment. *Democrat*, 10/31/1874 (describing the benefits of North Texas generally, and Tarrant County in particular); *Gazette*, 4/23/1887 ("Northern capital and enterprise has contributed in a large measure to the successful upbuilding of the country [county]", and "Fort Worth has unsurpassed facilities for the successful development of manufacturing establishments"); *Gazette*, 5/25/1887 ("eastern capitalism is beginning to free itself from the prejudices of the past and seek profitable investment in southern manufactures"); *Gazette*, 2/23/1890 ("Strangers in Town. Many Citizens of Other States and Sections Flocking to Fort Worth. Even the most careless observer cannot but be impressed with the large number of strangers seen in Fort Worth these days. The hotels are crowded, and upon the streets are seen hundreds of faces strange to the place. The facts is the fame of Fort Worth is being spread abroad….Anyhow the strangers are here, and their presence is as welcome as flowers in spring."). Southern Democrats were well aware that northerners were watching the south, especially northern capitalists. Moneyhon, Republicanism in Reconstruction Texas, 183.

remarkably healthy," and cautioned readers that "the heat of the summer is greatly exaggerated, and although it is warmer than in more northern States the heat is modified by a delightful gulf breeze, which is always cool and pleasant." But Tarrant County whites misrepresented more than the weather. In early 1873, the *Democrat* described the Tarrant County population as "almost entirely white," and, again in late 1874, as "nearly all white." According to the census figures for 1870, Fort Worth's population was 81.0 percent white, and the white population for the county at large was 87.9 percent.[64] While one can debate the precise contours of what constitutes "almost entirely" or "nearly all" of the population, 81.0 percent and 87.9 percent seem to fall short.

In any event, the intent was to project the image that Tarrant County would "continue a white man's country," and recent immigrants would attest to actual white dominance. As one Alabama immigrant stated in March 1873, "…Daily, we that have recently arrived [in Fort Worth] from the wreck and crash of States across the Mississippi [River], are in receipt of letters asking the means of information about our country [Fort Worth and Tarrant County]. They all say they must go to a land of virgin soil and light taxes, and where the BOTTOM RAIL IS NOT ON TOP…." According to the

[64] *Democrat*, 3/8/1873 (reprinted in Shreveport [Louisiana] *South-Western*) (almost entirely white); *Democrat*, 10/31/1874 (nearly all white, salubrious climate). For the census figures, see Table C.1 (Male and Female Population, All Ages, of Fort Worth and Tarrant County by Race: 1850-1910), Table C.2 (Percentage of Tarrant County Population, Males and Females of All Ages, Residing in the City of Fort Worth, by Race and Overall: 1870-1910), Table C.3 (Race as a Percentage of the Total Fort Worth and Tarrant County Populations, Males and Females of All Ages: 1850-1910), and Table C.4 (Males of All Ages, by Race, as a Percentage of the Total Fort Worth City and Tarrant County Male Population: 1880-1910). Tables C.1, C.2, C.3 and C.4 are all based on United States census materials.

Democratic, there was plenty of work for "good, industrious white men," but not, apparently, for blacks. Some whites even declined to hire blacks. On Christmas day in 1876, Mrs. J. H. Brown took out the following advertisement in the *Democrat*: "Wanted. A good white girl for general house work. Enquire of Mrs. J. H. Brown." [65]

If twenty-first century legal standards applied, nineteenth-century Tarrant County whites would probably be guilty of false advertising. It is hard to imagine how the summer heat could be "greatly" exaggerated, and equally hard to imagine how the population was "nearly all" or "almost entirely" white. Nevertheless, Tarrant County's efforts had the intended effect, and, indeed, the bottom rail was not on top.[66]

Tarrant County encouraged the migration of southern whites and southern whites obliged. In March 1873, the *Democrat* explained why it thought southerners should, and did, migrate to Tarrant County. Even considering the political hyperbole, it is difficult to improve upon the *Democrat's* language:

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[65] *Democrat*, 3/8/1873 (reprinted in Shreveport [Louisiana] *South-Western*) (white man's country, bottom rail not on top) (uppercase emphasis in original); *Democrat*, 10/31/1874 (good industrious white men); *Democrat*, 12/25/1876 (Mrs. J. H. Brown).

[66] Fort Worth and Tarrant County also advertised themselves as crime-free. Like many post Reconstruction southern cities, Fort Worth encouraged migration to Tarrant County by minimizing the negative aspects of a newly emerging frontier city. In 1876, for example, the *Democrat* declared Fort Worth "the most quiet and peaceable city in the Union for the character of its population and its cosmopolitan citizens." While acknowledging Fort Worth's "adventurous" character, the *Democrat* noted that it was "a rare thing [to see] a drunken man…on our streets. There are no shooting or cutting affrays so common to the country. There has been but one burglary since the city has been incorporated [in 1873]. It is, in fact, the most quiet, law-abiding, peaceable and orderly city of five thousand inhabitants on the continent." *Democrat*, 12/1/1876; *Democrat*, 1/13/1877 ("Garroted. The first case of robbery of the person, in the history of Fort Worth, occurred night before last….").

> …[O]ne of the chief, underlying causes consists in the 'political revolution' which the State [of Texas] has undergone, and the speedy, prospective extinction of that semi-military and partisan rule, by which it has been ground down and persecuted for such a weary round of years. It is this circumstance, above all others, that is especially attracting the white men of other Southern states, yet laboring under the ban of despotism, to seek relief in an atmosphere of comparative freedom and build new homes upon a soil that promises to be blest by a wiser and more beneficient government…. The redemption of Texas opens to such as are not already impoverished beyond recovery, a gate-way of escape and furnishes one of the most powerful illustrations of the disastrous consequences of Southern misrule.[67]

The migration statistics support the *Democrat's* claim. Homer Kerr has analyzed the migration patterns to Texas in the two decades between 1860 and 1880. Kerr's analysis shows that 73 percent of Texas immigrants during this time period came from southern states. That number is even higher—77 percent—for the Grand Prairie region, where Tarrant County was located. Table C.5 summarizes the migration patterns from the nine highest states of origin, eight of which are southern states.[68] This white migration, although social in origin, would have political consequences. According to Texas historian Carl H. Moneyhon, the growth of the southern white population in Texas in the late 1860s and early 1870s forced the Radicals to temper their political reliance on

[67] *Democrat*, 3/15/1873 (reprinted in the St. Louis *Times*) ("Going to Texas").

[68] Homer L. Kerr, "Migration into Texas, 1860-1880," 70 *Southwestern Historical Quarterly* (October 1966): 184-216; Table C.5 (Migration to Texas and North Texas, By State of Origin: 1860-1880) (summarizing Kerr's analysis). See also Campbell, Empire For Slavery, 65 (map of Grand Prairie region of north Texas); Campbell, Gone To Texas, 290 (most post war white immigrants came from the old south states).

African Americans in order to attract more whites to the party, thus widening the political gulf between blacks and Radical whites.[69]

But blacks also migrated into the county, as well. Between 1870 and 1880, the black population of Tarrant County tripled, with most African Americans moving to the city of Fort Worth. Between 1880 and 1890, the county's black population doubled, with most African Americans again moving to the city of Fort Worth. According to the 1880 census, 15.8 percent of the county's black population was living in the city.[70] This black migration represented something more than just an increase in the number of African Americans. According to Texas historian Smallwood, the very fact of black migration—movement—upset whites because it represented a challenge to the antebellum economic, and therefore social, order.[71]

This combination of political consequences of white migration and the social challenge presented by black migration intensified white supremacist racial stereotypes. Tarrant County whites harbored, openly expressed, and acted on their white supremacist attitudes. Individually and as a group, blacks were immature and lazy, lacked intelligence, and required leadership. The socially acceptable candor of contemporaries

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[69] Moneyhon, Republicanism in Reconstruction Texas, 155, 168.

[70] Table C.1 (Male and Female Population of All Ages of Fort Worth and Tarrant County, by Race: 1850-1910) and Table C.3 (Percentage of the Tarrant County Population, Males and Females of All Ages, Residing in the City of Fort Worth, by Race and Overall: 1870-1910).

[71] Smallwood, Time of Hope, Time of Despair, 51.

reveals white beliefs about the ability of blacks to commit crimes, and thus the treatment of African Americans within the criminal law enforcement system.[72]

Blacks lacked innate intelligence, the most obvious manifestation of which was inability to speak the English language. In 1877, for example, the *Democrat* reported that "The colored 'peeps' had a '*festible*' Thursday night, in the Soten building on Main street. We learn they 'joyed duselves' muchly." The failure to grasp the English language, of course, precluded any independent thought or action. That same year, the *Democrat* revealed the white belief that blacks were only capable of mimicking behavior, reporting the "probability that the negroes, imitating the example of their white superiors, will open a dance house in the third ward near the depot." Blacks were even incapable of appreciating what "freedom" meant, as the following "joke" in the *Gazette* reveals: "A negro stood on Main Street last night when one of the electric street cars passed. 'Golly,' said Sambo, 'de Yanks come down heah and free da niggahs and now dey come down and gwine ter free de mules.'" [73]

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[72] Other Texas historians have also discussed how white Texans viewed blacks. See, e.g., Smallwood, Time of Hope, Time of Despair, 122 (discussing white rationale for considering blacks as "immutably inferior"); Campbell, Empire for Slavery, 32-33 (discussing how white settlers considered blacks inferior). In a section titled "African Slavery," the 1858 Texas Almanac succinctly captured this rationale: "The negro is incapable of self-government, or self-improvement….He has never advanced one step, excepting as a slave to white men. And when civilized and Christianized in slavery, and then freed, he invariably relapses, more or less rapidly, into ignorance and barbarism. The exception is only where he remains surround by white civilization, as in the United States, and then he becomes a petty thief and idle loafer." Texas Almanac for 1858 (Galveston: Richardson & Co., 1857), 132-133.

[73] *Democrat*, 5/4/1877 (dance houses and imitating white superiors); *Democrat*, 5/5/1877 ("festible"); *Gazette*, 8/4/1889 (electric street cars).

This lack of intelligence meant that blacks were incapable of long-term thinking or planning. This belief applied in the criminal context, as the following story from the *Gazette* reveals. In 1889, George Walker, Amos Mills, and two other black men attempted to blackmail Colonel William Harrison. Walker delivered a note to Harrison at Harrison's "mansion" demanding $1,000 or Harrison's house would be burned down, but Walker was arrested by the sheriff when he delivered the note. Walker implicated an unnamed "white man with a long black beard and a stove pipe hat," but that man was never found. When Amos Mills was arrested, he was "put to the rack in the calaboose and is said to have told all about the damnable scheme," implicating "a white man, a painter, whose name is said to be Redd, although no such man seems to be known here." "There were some persons connected with the investigation," the article concluded, "who were of the opinion that the whole thing was a clumsy attempt of negroes to extort money, and the plan was so bad that no white man could be back of it."[74]

The white perception of limited black mental capacity also applied to blacks as a group. In early 1887, for example, the *Gazette* reported that "Mrs. General Peers…encountered a strange negro man" in her dining room. Mrs. Peers "did not like his looks and at once ordered him off." After he left, Mrs. Peers discovered that some jewelry was missing and contact the police. Mrs. Peers provided a description of the "crook" who, according to the *Gazette*, "is apt to be taken in sooner or later, unless he is much shrewder than the average of his class."[75]

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[74] *Gazette*, 5/30/1889 (William Harrison).

[75] *Gazette*, 1/26/1887 (Mrs. General Peers).

A lack of intelligence implied the need for leadership, and blacks were viewed as natural followers that required some form of control. In 1876, for example, an editorial in the *Democrat* observed that "It [wa]s not surprising that the negroes of the South are becoming Democrats. Aside from the office holders, and those who live by their pilferings from the State and National treasures, there is no one to interfere with their following their natural inclinations, to go with their former masters, whom they are rapidly finding to be their best, if not their only friends."[76] In opening a dance house in Fort Worth in 1877, blacks were only "imitating the example of their white superiors." In this context, blacks were frequently characterized as animals. In 1887, city police officers "surprised a gang of darkies in an alley near an uptown hotel playing their great national game—craps. At sight of the blue-coats the coons fled like wild deer…" Also in 1887, "[county] Jailer Doc Neely delight[ed] in having a chase with his bloodhounds after a supposed fugitive coon." And, in 1877, "We hear of numerous complaints coming from parties residing in the eastern portion of the city, occasioned by the frequent midnight raids of bands of negroes who succeed in making night hideous with their howls. The houses of several families have recently been visited by these lawless hounds." Again, the "need" to "control" blacks as a group is illustrated by the language of an 1877 newspaper article. "The negroes of this city have for some time been

[76] *Democrat*, 12/23/1876 (former masters). Tarrant County whites would sometimes mask their role as ex-slave masters by using the phrase "former employers," as an editorial in the *Democrat* indicates: "…The truth is, that the negro Democratic vote is growing every year. The negro is finding out that his interests are better guarded by his former and present employers than by [Republican] carpet-bag thieves…." *Democrat*, 12/2/1876 ("The Negro Democratic Vote").

encroaching on the patience of the law-abiding, peace-loving portion of this community by their mid-night debaucheries under the guise of religious worship."[77]

Whites were always surprised when blacks "behaved," particularly when congregating in large groups. In August 1887, for example, "At Silver Springs, on the West Fork, four miles from the city, about 300 colored people had a 'great time' yesterday. A barbecue dinner, well prepared, was followed by dancing on a platform made for the occasion. The festivities were not marred by a single disturbance." Two months later, another crowd of several hundred African Americans impressed whites with "Splendid Behavior":

> "There was not according to the best of my knowledge, a single colored person visiting the late fair here arrested for any misdemeanor," said a police officer to a Gazette man last night. "Only three or four arrests were made during the whole time," he continued "and all these were parties who lived in Fort Worth." It is a fact that the colored visitors behaved themselves with the utmost decorum. Not a single one got drunk or otherwise misbehaved, as far as can be ascertained. That several hundred of these people from every quarter of the state should come to Fort Worth and in the midst of unusual festivities conduct themselves with such perfect propriety, is highly creditable to the race, and additional evidence that the career of the colored man in Texas is in the line of constant progress in the right direction.[78]

Even when conduct could have been construed as "misbehaving," the African American participants were often viewed as boisterous, playing children who provided a

[77] *Democrat*, 12/5/1874 (midnight debaucheries); *Democrat*, 12/23/1876 (natural inclinations); *Democrat*, 1/1/1877 (dance houses); *Democrat*, 5/4/1877 (lawless hounds); *Gazette*, 8/13/1887 (Jailer Doc Neely); *Gazette*, 9/27/1887 (coons and wild deer).

[78] *Gazette*, 8/13/1887 (barbecue); *Gazette*, 10/31/1887 ("Splendid Behavior").

source of amusement for whites. For example, on a hot summer day in 1887 two African American women rented a horse and buggy and drove through Hell's Half Acre. When the two women ended up fighting over the reins, they lost control of the horse and buggy and ran into a "soda wagon," causing the soda wagon's horse to run. As the soda wagon careened down the street, the soda bottles "dropped out thick and fast, to the great delight of a band of youthful Africans, each one of whom gathered up as many as he could and fled…."[79]

Blacks also required leadership because they were fundamentally lazy. In the summer of 1887, the *Gazette* published a story about "an old colored man who farms on Colonel Bob Maddox' place [and who] was in the city with a lot of sorghum cane to sell, which he had no trouble to dispose of." The story continues about how the "old colored man" invested ten cents in sorghum seed, which yielded him 40 bushels of the cash crop (at $1 per bushel), 90 gallons of molasses (at 40 cents per gallon), and a second crop for cattle feed. "The amount earned on the dime investment [was] $76." The article concluded that "That 10 cents was well invested, and goes to show that a very small sum of money if utilized aright will bring back a goodly increase. If more of this old colored farmer's race would follow his example Hell's Half-acre would soon lose many an idler and the state penitentiary many an inmate." [80]

These white perceptions of blacks, imported to Tarrant County by southern white migrants, would shape the evolving post war racial code. Before the Civil War one's

[79] *Gazette*, 8/23/1887 (soda wagon).

[80] *Gazette*, 7/22/1887 ("old colored man who farms on Bob Maddox' place").

status as a slave was sufficient to ensure white control of blacks. But as African Americans poured into the county, the need for a substitute mechanism of racial control became apparent to whites.

1.5 "Well Understood Orbits"—Establishing the Post War Code

By 1878 the Fort Worth City Directory observed that "Social intercourse seems to regulate itself on some basis satisfactory to all, each circle, or its segments, moving in well understood orbits without clash or hindrance and in the utmost harmony."[81] The City Directory's passive voice is disingenuous, to say the least. Indeed, the evidence belies any suggestion that these "well understood orbits" simply just "happened." The behavioral expectations of blacks and whites were deliberately inculcated, as were the black separation patterns, and both were buttressed by the same ideology of white supremacy. After the war ended, it only took Tarrant County whites a decade to institute, informally and before the state's separate coach law in 1891, physical separation across the social spectrum. By the mid 1870s, African Americans lived in their own residential neighborhoods, established and attended their own churches, established and patronized their own businesses, and buried their dead in separate cemeteries. The behavioral expectations and physical separation developed in tandem and solidified in the 1880s.

Social relationships in late nineteenth century Tarrant County were governed by a mix of class-based, sex-based, and race-based considerations. Ultimately, though, race

[81] Table C.1 (Male and Female Population of All Ages of Fort Worth and Tarrant County, by Race: 1850-1910) and Table C.2 (Percentage of the Tarrant County Population, Males and Females of All Ages, Residing in the City of Fort Worth, by Race and Overall: 1870-1910); General Directory for the City of Fort Worth for 1878-1879, C.D. Morrison & Co., comp. (Houston: C.D. Morrison & Fourmey, 1878), 16.

always trumped all other distinctions. The same white supremacist ideology supported behavioral patterns as well as patterns of physical separation.

While whites tolerated a limited amount of black-white relations, there were clear, definable limits. "Low class" white men, for example, were permitted some latitude to patronize black prostitutes. In 1887, "Hattie Johnson, colored Cyprian of Tenth street, was arrested by [city police] Officer Sebe Maddox last night. Her place had got to be frequented by a low class of white men." But, when it came to upper class whites, the ban on inter-racial social interaction was absolute. In April 1875, the *Democrat* decried the recently passed federal Civil Rights Act, which "confer[ed] upon everyone the right to select their company at hotels, theatres, and at places of amusement, without regard to race, color or previous condition of servitude." The *Democrat* went on to describe the "disgraceful conduct" of certain local whites and issue a warning to the transgressors.

> While it might be reasonably expected that the colored race would, in isolated cases, take advantage of the law and endeavor to force themselves upon the whites, we did not think a solitary instance would ever be placed on record when any man, or set of men, with pure caucasion blood coursing in their veins would ever so far forget their self-respect, or that of their race, as to mix, socially with the colored race.—But we were mistaken. A few such have been found, and we blush to say it, they live in Fort Worth. The concert given by members of the colored church, at Huffman's Hall last week was attended by quite a number of our citizens, who were attracted thither by motives of curiosity. But we are informed that several young gentlemen (?) remained after the concert and exhibition was over and were seen promenading around the hall, each with a saddle colored or ebony maiden (?) leaning affectionately on his harm.—We have the names of the parties to this outrage, which so shocked one honest negro that he immediately took his family away, from 'de place whar sich carryin's on were gwine on.' These young men

> cannot plead 'youthful indiscretion' in extenuation of their conduct. They all knew better, and there is no excuse for them. Their cheeks should blush for very shame, when they meet the pure and modest young ladies of our city, with whom they associate. We warn them now that a repetition of this offense, or any of a similar character will cause them to forfeit the esteem in which they are now held, and debar their entrance into respectable company, if printers ink has the power which is claimed for it.[82]

Like upper class white men, white women, of any class, were not permitted to associate with blacks. Conversely, African American men were not permitted to associate with white women, regardless of the woman's "class." For example, one Sunday night in late 1876, the *Democrat* reported "five or six gunshots" in the "eastern portion of the city." The article, entitled "A Negro Insults a Lady," went on to describe how the altercation was

> …the result of an insult on the part of a negro towards the wife of one of the quill drivers connected with the evening papers. The gentleman whose wife had been insulted, we are told, had armed himself with a shot-gun upon learning the particulars from his wife, and started in quest of the scoundrel, whom he met unexpectedly on his way to the house, where he supposed the negro lived. Shots were exchanged, and had it not been for the darkness of the night, we would probably have been called upon this morning to chronicle the death instead of the escape of a black scoundrel, who justly deserves a worse fate than that of being shot to death.[83]

The result was quite different when *white* men insulted white women. In early 1877, for example, "a party of five well-known respectable gentlemen of the city,

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[82] *Democrat*, 4/17/1875 (disgraceful conduct); *Gazette*, 8/22/1887 (Hattie Johnson).

[83] *Democrat*, 12/19/1876 ("Negro Insults a Lady").

alighted from a carriage and entered a house of prostitution kept by Molly Blair…" As these five men were talking with the "girls," three more men came in, and one of the three made a threatening movement toward one of the girls "accompanied with a most insulting remark." One of the five original men punched the insulter twice, and the insulter and the other two left the establishment. The *Democrat* was kind enough to "suppress the names of all the parties concerned, as their publication might injure their present high social standing in the society in which they are prominent members." At times, the woman herself would redress the insult. For example, the day after J. J. Dison "made insulting advances" toward Mrs. Becker, the latter searched for Dison all day long on the streets of Fort Worth. When she found him on Main street, Mrs. Becker "exhibited a remarkable proficiency in the practical use of a switch" and "administered a thorough cowhiding upon the person of Dison."[84]

These informal expectations of behavior carried over into criminal law enforcement, as well. Whites often made a pretense of respecting the formal system and going through the motions, even though the outcome was predictable. At the same time, blacks would acquiesce to white expectations to avoid even harsher retribution. For example,

> On Christmas afternoon an intoxicated negro, whose name is William Sheers, without the slightest provocation struck at and attempted to injure Mr. D. H. Hammer, while walking up Main street, near First. Mr. Hammer, in self-defense, drew his pocket knife, and inflicted two very severe wounds, one in the right breast and another in the

[84] *Democrat*, 2/15/1877 ("Cowhided by a Woman," describing Mrs. Becker and J. J. Dison); *Democrat*, 2/20/1877 ("The Penalty of Insulting a Woman").

> back of the neck. The negro has been in the employ of Pitts & Heard, commission merchants, and has heretofore had the reputation of being a peaceable and law-abiding citizen. He acknowledged that liquor makes a fiend of him and that he justly deserved the punishment inflicted. Drs. Burts and Moore visited him yesterday and think favorably of his recovery. Mr. Hammer gave himself up, and Justice McClung placed his bond at $1,000, which he furnished. He will have a hearing the first of next month, when he will probably be acquitted.[85]

This story illustrates the "well understood orbits" characterized by the 1878 Fort Worth City Directory. Regardless of what Sheers may have done, he blamed it on the liquor, and accepted his knife wounds as "just" punishment. This outcome satisfied everyone's interest - Sheers suffers no further adverse action and respects the informal system by apologizing, and Hammer respects the formal system by turning himself in, knowing he would be acquitted.

Physical separation accompanied these behavioral patterns. In Tarrant County, physical separation occurred in residential neighborhoods, businesses, churches, entertainment, social activities, and cemeteries. Racial separation in Tarrant County was well underway by the time the county was politically Redeemed in the mid 1870s, the practice solidified in the following decade, and was firmly ensconced by the time of the state's separate coach law in 1891.

Residential neighborhoods were most likely the initial target for racial separation. As Texas historian Bruce Glasrud has observed, prewar rural isolation on plantations may

[85] *Democrat*, 12/27/1876 (William Sheers).

have served as a model for post war racial separation patterns.[86] Without identifying specific neighborhoods, Cummings refers to "negro communities" that existed throughout the county by 1876. Mosier Valley is probably the most well-known of such communities, established in 1870 on a forty-acre tract of land in northeast Tarrant County. The land was given to Freedmen Robert and Dilsie Johnson by their former owners.[87] The act of donating land to former slaves served two functions: perpetuating the myth of white benevolence and creating a separate black community. In the 1880s, black neighborhoods continued to grow. An 1887 *Gazette* article describes a knife fight between "Belle Bronson and Fannie Gwinn, two colored women dwelling on Ham branch in the eastern suburbs…Ham branch is earning a reputation for such affairs, and it is said that sanguinary fights among its sable denizens are of almost nightly occurrence."[88]

Blacks also sponsored their own churches and benevolent associations. The Colored Methodist Church was well established by 1877. In January 1877, the United

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[86] Glasrud, "Jim Crow's Emergency in Texas," 50.

[87] Cummings-1, Chap XXXV ("negro communities"); George N. Green, "MOSIER VALLEY, TX," *Handbook of Texas Online*, http://www.tshaonline.org/handbook/online/articles/hrmud), accessed March 29, 2012; Janet L. Smelzer, Where the West Begins: Fort Worth and Tarrant County (Northridge, California: Windsor, 1985), 52 (photograph of an African American family on the front porch of their Mosier Valley house).

[88] *Gazette*, 8/15/1887 ("Fighting Females"). In late 1889, the *Gazette* reported on the progress of the county road from the city (Fort Worth) to Benbrook, which, "as now completed extends from the western city limits to 'Nigger Hill,' about four and a half miles from the city and over the hill to a distance of a half mile farther…." *Gazette*, 3/21/1889.

Brothers of Friendship No. 15—"colored"—was established.[89] In the 1880s, black churches and benevolent associations proliferated. The City Directory for 1886-1887 identifies four "Colored Denominations." Two years later, construction began on a new black church, as "The corner stone of the new Colored M. E. church was laid yesterday with appropriate and resounding ceremonies." Five benevolent associations were established in the 1880s. The Colored Willing Workers Lodge No. 19 was established in 1881, acquiring a membership of 52 by late 1886. Three black associations were established in 1885: the Colored Masonic Lodge No. 20 (acquiring a membership of 54 by late 1886), the Colored Wide Awake Lodge No. 1 (acquiring a membership of 35 by late 1886), and the Colored Youth Lodge No. 1 (acquiring a membership of 18 by late 1886).[90]

African Americans also established their own businesses, particularly within the city of Fort Worth. For example, by mid 1877, there was a "probability that the negroes…will open a dance house in the third ward near the depot." Even before then, "low negro dens," probably drinking and gambling houses, were prevalent "in the

[89] *Democrat*, 1/10/1877 (Colored Methodist Church); General Directory for the City of Fort Worth for 1886-1887, Fort Worth Printing House, comp. (n.p.: Fort Worth Printing House, 1886), 57.

[90] General Directory for the City of Fort Worth for 1886-1887, 50 (churches), 57-58 (benevolent associations); *Gazette*, 10/21/1886 (article entitled "Colored Brethren Unite," reporting that the rift between "the A.M.E. and C.M.E. churches of Fort Worth (colored)" had healed); *Gazette*, 8/26/1889 (churches). Texas historian James M. Smallwood discusses the importance of black churches in post war Texas. Smallwood, Time of Hope, Time of Despair, 97. African Americans also sponsored their own leisure activities, including festivals and state fairs. *Democrat*, 5/5/1877 ("The colored 'peeps' had a '*festible*' Thursday night."); *Gazette*, 6/29/1887 ("Colored Knights"); *Gazette*, 4/15/1887 (state fair); *Gazette*, 8/23/1887 (state fair); *Gazette*, 9/18/1887 (state fair).

southeastern portion of the city."[91] By 1887, a particularly well-known black gambling establishment, the Red Light Saloon, operated in the city. According to the *Gazette*, the Red Light Saloon was situated "in the very heart of 'Hell's Half Acre,' a quarter of notoriously tough repute, inhabited chiefly by colored sports and dusky dames of a character in keeping with the locality." The Red Light Saloon was "presided over by a colored triumvirate composed of Joe Pope, Bill Sandford and George Bates. Pope attends to the liquids, Bates the 'layout,' and Sandford is a sort of general manager." Other African American businesses continued to appear in Fort Worth in the 1880s, which the City Directory conveniently identified as "colored." In 1882, the City Directory lists over one thousand proprietors of various business enterprises, including three "colored" laundries, two "colored" barbers, and one "colored" blacksmith.[92]

Whites even consigned African Americans to their own graveyards. Between 1873 and 1876, the Fort Worth City council utilized a "negro burial committee," presumably to ensure that blacks were buried in separate cemeteries, such as the Mansfield Black Cemetery. Trinity Chapel Cemetery was in use as early as 1877. Trinity Chapel Cemetery contains the graves of several former slaves, including that of the Reverend Greene Fretwell, whose widow raised $30.00 in the mid 1870s to purchase

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[91] *Democrat*, 4/24/1877 ("low negro dens"); *Democrat*, 5/4/1877 (dance houses in the third ward near the depot). Fort Worth historian Richard Selcer also concludes that Fort Worth businesses, as well as vice, were racially segregated by 1877. Selcer, Hell's Half Acre, 42-44, 53-54; 138-141.

[92] *Gazette*, 5/16/1887 (Red Light Saloon); General Directory for the City of Fort Worth for 1882, Gillespie, Work & Walton, comp. (Dallas: Carter & Gibson, 1881), 137-157.

the two acres. The Mosier Valley Cemetery was no doubt reserved for use by blacks after it was given to Freedmen Robert and Dilsie Johnson in 1870.[93] By 1887, the city of Fort Worth health department was issuing burial permits according to race, issuing 396 burial permits in 1887 – 319 white and 77 "colored."[94]

Fort Worth and Tarrant County whites would no doubt have separated their prisoners if the infrastructure allowed for it. In the city of Fort Worth, whites would have to settle for separating the sexes first. In mid 1877, "…the old calaboose [city jail] will be removed to the rear of the [fire] engine house, and used exclusively for female prisoners, and a more substantial and secure one will be erected for those of the male persuasion who have to secure lodgings in the cooler." Like its city counterpart, the county jail only had one cell before 1877, so physical separation was not possible. In 1874, for example, the *Democrat* reported the jail break of Thomas Dalton and William Price, observing that "…A negro named Johnson was in the cage with the other prisoners, but they intimidated him so he dared not inform on them…." By May 1877, however, Tarrant County had a new jail, which the *Democrat* declared was "entirely secure." With the jail's "four large cells on the ground floor and six on the upper," the *Democrat* continued, the new jail would "reduce the expense of keeping the prisoners very considerably, as well as make them far more comfortable." White prisoners would

[93] Selcer, Hell's Half Acre, 41 ("negro burial committees"); TCHRS, Volume 4 (n.p, n.d., 1989), 151-152 (Mosier Valley); TCHRS, Volume 5 (n.p: Burch Printing Company, 1984), 56 (Mansfield Black Cemetery); TCHRS, Volume 9 (n.p: Instant Reproductions, 1986), 21 (Trinity Chapel Cemetery); Green, "MOSIER VALLEY, TX," *Handbook of Texas Online*.

[94] *Gazette*, 3/29/1888 (burial permits).

certainly be more comfortable if they were separated from black prisoners. The physician for the county jail had been keeping jail statistics by race since November 1876.[95]

These segregated aspects of life and death—residential neighborhoods, churches, businesses, social activities and cemeteries—preceded the state's separate coach law in 1891. Contrary to C. Vann Woodward's assertion, Tarrant County whites did indeed show a "disposition to expand" separation beyond the educational domain.

1.6 The "Colored High School" and the Myth of Self-segregation

This black exclusion and marginalization—segregation, in modern parlance—was forced by white pressure and not self-imposed by African Americans. White pressure to maintain racial distance came from a variety of sources. One source was social pressure. Another source was legal pressure as Tarrant County established separate public schools for white and black children pursuant to the 1876 Redeemer Constitution.

Social pressure was often brought to bear on whites. In April 1875, for example, the *Democrat* published the circumstances surrounding the "disgraceful" racial mingling at a dance at Huffman's Hall. Huffman's Hall was an African American church, but the *Democrat's* opprobrium was reserved for the whites who attended the dance. "We warn

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[95] *Democrat*, 5/4/1877 (city jail); *Democrat*, 12/5/1874 (county jail break by Dalton and Price); *Democrat*, 1/16/1875 (old county jail); *Democrat*, 3/22/1877 (old county jail); *Democrat*, 1/13/1877 (new county jail); *Democrat*, 5/15/1877 (new county jail); Commissioner's Court Minutes, Tarrant County, Volume A, April 4, 1876 – August 14, 1878, pages 89-90 (entry for November 4, 1876 directing county jail physician to keep statistics by race). At the state level, too, racial segregation would have to wait until the penal infrastructure would support it. See Revised Civil Statutes of the State of Texas, Passed by the Sixteenth Legislature, February 21, 1879 (Austin: State Printing Office, 1887) (hereafter "RCS 1879"), page 506 (Article 3559, requiring separation of convicts by sex in the state penitentiary, but was also silent on race), and page 510 (Article 3594, requiring separation by sex in county jails, but was silent on race).

them [the whites who attended the dance] that a repetition of this offense, or any of a similar character will cause them to forfeit the esteem in which they are now held…."[96] This social pressure could also take the form of excluding blacks. In late March 1877, for example, Fort Worth whites called a "Citizens Meeting" of all persons who "favor a change in the government of the city." The invited guests were the "citizens of Fort Worth, irrespective of party, class, business or profession," but not, apparently, irrespective of race or color. As a result of this exclusion, blacks would organize politically. In 1890, for example, the "colored citizens" met at S W Woodward's shoe shop on Main Street to discuss "the part they should take in the approaching municipal election…." A *Gazette* reporter was "denied admittance," but was given a set of minutes when the meeting adjourned. The minutes revealed that the meeting resulted in a permanent organization with officers, and the organization appointed a committee on grievances with one committee member from each ward.[97]

Pressure also came from the legal mandate to establish separate schools for white and black children. As the county judge, Cummings was responsible for implementing and supervising the public school system for Tarrant County and the city of Fort Worth. "In negro communities," Cummings recalled three decades later, "I appointed two prominent white citizens and one negro as trustees that the colored man might have instructors to begin with. Anderson Cavill of Fort Worth and Riley Hagood of White

[96] *Democrat*, 4/17/1875 (disgraceful conduct).

[97] *Democrat*, 3/31/1877 (white citizens meeting); *Gazette*, 2/22/1890 ("Colored Citizens Meet").

Settlement are two of these negro trustees." Like the 1878 Fort Worth City Directory, Cummings would shirk responsibility for white action by using third person grammatical form. When referring to his lectures to the "negro communities" about the educational requirements of the 1876 constitution, Cummings casually added "the races being separated."[98]

Tarrant County whites, then, imposed racial separation in all aspects of life (and death) in the county. Blacks *wanted* to participate in society not withdraw from it. As historian Smallwood argues with precision, African Americans "withdrew from Anglo *controls*" not mainstream white society.[99] Indeed, control had been the overriding issue for whites since the 1840s. Within the span of a single generation, whites carved their communities out of the wilderness, established plantation agriculture and black slavery, lost a war to defend the Confederacy, and managed to control African Americans after

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[98] Joe E. Ericson and Ernest Wallace, "CONSTITUTION OF 1876," *Handbook of Texas Online*, (http://www.tshaonline.org/handbook/online/articles/mhc07), accessed April 8, 2012; Cummings-1, Chapter XXXV ("negro communities," "negro trustees," "the races being separated"). Separate schools in Tarrant County were well established by the 1880s. *Gazette*, 10/16/1887 (publishing a chart depicting the weekly attendance at the Fort Worth city public schools, including attendance at the "C.H.S.," or Colored High School); General Directory for the City of Fort Worth for 1888-1889, Morrison & Fourmey, comp. (Galveston: Morrison & Fourmey, 1888), 48 (Building No 6 reserved for "colored" students). Fort Worth historian Tina Nicole Cannon provides an overview of the Fort Worth public school system from its inception to desegregation in the twentieth century. See Tina Nicole Smith, "Cowtown and the Color Line: Desegregating Fort Worth's Public Schools," Ph.D. diss. Texas Christian University, 2009. Cannon argues that education was largely a private affair in Fort Worth, for all races, between Reconstruction and the Constitution of 1876. Cannon, "Cowtown and the Color Line," 27-37. See also Knight, Fort Worth, 150-151 (African American churches operated schools for black children as early as 1875).

[99] Smallwood, Time of Hope, Time of Despair, 161 (Anglo controls) (emphasis added).

the military defeat of slavery. In addition to these social and political changes, Tarrant County whites also experienced profound economic changes. Antebellum Tarrant County was agriculturally based, and, like the rest of slaveholding Texas, adopted the "New South creed" of economic growth, of which railroads were a key component. Railroads, however, had limited value if local farmers could not transport their products to the rail depot in Fort Worth on reliable roads within the county. On this front, Tarrant County was on the leading edge of the "good roads" movement.[100] In order to build these local roads, Tarrant County whites would fill their jail and convict camps with African American laborers.

[100] *Gazette*, 12/30/1887 ("the good road movement is gaining strength daily").

CHAPTER 2

THE SOCIAL FUNCTION OF THE COURTS IN THE LATE 1880s

With the first railroad in 1876 came a population explosion in the county, both black and white, for the next fifteen years. These two factors—the railroad and the population increases that followed—coalesced at a propitious time for Tarrant County whites. On one hand, the county was struggling to establish its transportation infrastructure–roads–with the inefficient and unpredictable use of private labor. On the other hand, Tarrant County whites were still stinging from Radical Reconstruction and the backlash to the Texas Black Codes, and were hesitant to establish mechanisms of racial control that resembled the formality or scope of the Black Codes. Informal physical separation had already been accomplished with relative ease, but anything more would not go unnoticed by northern Radicals or capitalists. The criminal court system, however, provided Tarrant County whites with an opportunity to experiment with a possible method of racial control without having to be too careful about it. The county needed a criminal court system anyway, and the evolution of state statutory convict labor laws in the 1880s facilitated an easy transition from private labor to prison (black) labor to build county roads. Indeed, the criminal court system actually provided options when it came to controlling the African American population. Whites used the district court to banish "unmanageable" blacks to the

state penitentiary and used the county court to control "manageable" blacks for the benefit of the county by retaining their labor locally.

The overwhelming statistical, anecdotal and comparative evidence reveals that whites intended to incarcerate African American citizens because of their race and for their labor. Between 1887 and 1890, a total of 391 different male prisoners were incarcerated in the county jail, of whom 115 were black (29.3 percent) and 268 were white (68.6 percent). At a time when the African American male population comprised only 10.1 percent of the county at large, African American men comprised 29.3 percent of the prisoners in the county jail. The strength of this disparity can be measured using a modern statistical technique known as the binomial process model, which is commonly used in twenty-first century federal civil rights cases. In this model, the difference between the ratio of black prisoners in the county jail and the ratio of the black population in the county at large is calculated and expressed by a mathematical expression known as a binomial standard deviation. In the early period in Tarrant County, the disparity between the actual African American male population in the county jail and the representation of African American men in the county at large is an astonishing 12.66 binomial standard deviations. The likelihood of a disparity this large occurring randomly (i.e., fairly) is less than 2 in one billion. Standing alone, statistical evidence of this magnitude is sufficient to justify an inference of intentional discrimination in a twenty first century federal courtroom. [101]

[101] Table D.1 (Racial Distribution of Individual People in the Tarrant County Jail: 1887-1890); Table F.2 (Males in Tarrant County by Race and Selected Ages: 1890-1910); Appendix G (Statistical and Legal Methodology Applied to the Early Period:

In addition to this statistical evidence, however, an array of anecdotal and comparative evidence rules out any other reasonable explanation that the disproportionate rate of African American incarceration just "happened" as a "well understood orbit," as the 1878 Fort Worth City Directory implied. When measured against the African American male population of 10.1 percent in the county at large, African American men account for a highly disproportionate number of convictions for four specific offenses: 95.5 percent of all gambling convictions, 57.7 percent of all assault convictions, 50.7 percent of all theft convictions, and 34.3 percent of all weapons convictions. The offenses for which African Americans were actually convicted—the proffered reasons for the convictions—reflect the link, in Tarrant County white minds, between blacks and "crime."[102]

Moreover, the circumstances of these black convictions demonstrate how whites used the law enforcement system as a means of racial control from the time of arrest to the time of sentencing. The likelihood of arrest in Tarrant County was based on one's race, masked as one's "reputation." Once arrested, blacks were charged with multiple crimes more often than their white counterparts. If blacks chose to go to trial on their case, they faced a presumption of guilt, effectively lowering the prosecutor's burden of proof to obtain a conviction. Once convicted, "unmanageable" blacks were banished to

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1887-1890). For a full explanation of the general statistical and legal principles applied in this study, see Appendix F.

[102] Table D.2 (Racial Distribution of Total Convictions Represented in the Tarrant County Jail: 1887-1890); Table F.2 (Males in Tarrant County by Race and Selected Ages: 1890-1910).

the state penitentiary, while "manageable" blacks were controlled locally with a county jail sentence.

2.1 "At Least Two Week's Grinding"—The County Legal System

In late nineteenth century Texas, "crimes" were defined in the state penal code. In general, the penal code defined two categories of offenses: a "felony" was any offense that could be punished by death or imprisonment in the state penitentiary; all other offenses were "misdemeanors." The code of criminal procedure conferred statutory authority on certain courts to adjudicate alleged misdemeanor or felony offenses. The State District Court ("District Court") had jurisdiction to adjudicate felonies, the Tarrant County Court ("County Court") had jurisdiction to adjudicate routine misdemeanor offenses, and the nine Justice of the Peace Courts ("JP Courts," which were considered adjuncts to the county court) had jurisdiction to adjudicate misdemeanors punishable by fine only (up to $200).[103]

[103] Penal Code of the State of Texas, Passed by the Sixteenth Legislature, February 21, 1879, Took Effect July 24, 1879 (Austin: State Printing Office, 1887) (hereafter "PC 1879"), Article 54 (defining felonies and misdemeanors); Code of Criminal Procedure of the State of Texas, Passed by the Sixteenth Legislature, February 21, 1879, Took Effect July 24, 1879 (Austin: State Printing Office, 1887) (hereafter "CCP 1879"), Articles 68 (state district court), 73 (county court). In 1888, the nine justice precincts were seated in the following locations, in precinct number order: Sylvania, Arlington, Smithfield, Birdville, Azle, White Settlement, Kennedale, Mansfield, and Grapevine. *Gazette*, 1/17/1888 (justice of the peace precincts); *Gazette*, 1/27/1888 (justice of the peace precincts). Each JP Court had its own constable to serve summonses, warrants, and so forth. Serving summonses and other process was no easy task. As the *Gazette* reported in late 1887, "Deputy Sheriff Witcher has returned from a week's trip in the county serving papers in civil suits and summoning jurors for trials in the county and district courts." *Gazette*, 9/3/1887 (week's trip serving warrants). The Fort Worth City Court ("Recorder's Court" or "Mayor's Court") had jurisdiction to adjudicate all violations of municipal ordinances and, like the JP Courts, state misdemeanors punishable by a fine only (up to $200). PC 1879, Article 54 (1879); CCP

The journey through the criminal law enforcement system began with arrest by the Fort Worth City Marshal or one of his officers, or by the Tarrant County sheriff or one of his deputies. During the early time period, the county sheriffs were, successively, Walter T. Maddox and Democrats B. H. Shipp, and J. C. Richardson. The City Marshals were, successively, W. M. Rea and Samuel M. Farmer. Once arrested, the prisoner would be taken to the city jail or the county jail to await trial. In some cases, a prisoner was able to provide a bond to ensure his appearance at trial. Before the trial, the prosecutors made numerous charging decisions. The prosecutor in the County and JP Courts was the county attorney, and in the District Court it was the district attorney. During this time period, the county attorneys were, successively, Confederate veteran Ross Bowlin and Democrat R. L. Carlock.[104]

1879, Articles 76 (justice courts), 78 (recorder's and mayor's courts), 894-900 (recorder's and mayor's courts). A "petty offense" was any offense that may be tried by a JP, mayor, or recorder's court. PC 1879, Article 54. The Fort Worth municipal court system is described here to round out the overall context of law enforcement in the county, and also because contemporary whites at the county level would eventually pilfer the city jail for prisoners to work the county roads.

[104] General Directory for the City of Fort Worth for 1886-1887, Fort Worth Printing House, comp. (Fort Worth: Fort Worth Printing House, 1886), 44-46 (listing city and county officials, including district judge R. E. Beckham, county judge Sam Furman, precinct number 1 justices of the peace G. Nance and John F. Zinn, precinct number 2 justice of the peace M. J. Brinson, county attorney Ross Bowlin, county sheriff Walter T. Maddox, precinct number 1 county commissioner Steven Terry, city marshal W. M. Rea, city treasurer K. M. Van Zandt); General Directory for the City of Fort Worth for 1888-1889, Morrison & Formey, comp. (Galveston: Morrison & Fourmey, 1888), 42-44 (listing city and county officials, including district judge R. E. Beckham, county judge Sam Furman, justices of the peace for precinct number 1 G. Nance and F. H. Smith, county attorney R. L. Carlock, county sheriff B. H. Shipp, city marshal S. M. Farmer, city treasurer K. M. Van Zandt). For the political affiliations of these officials, see *Gazette*, 10/1/1886 (B. H. Shipp a Democrat, R. L. Carlock a Democrat); *Gazette*, 10/6/1888 (J. C. Richardson a Democrat); *Gazette*, 11/5/1888 (R. L. Carlock a Democrat); *Gazette*,

Once a defendant's case was called for trial, the judge was usually the first judicial officer the defendant would encounter. During this early period, the District Court judge was Democrat R. E. Beckham, and the County Court judges were, successively, Democrats Samuel Furman and W. D. Harris. Determining the political affiliation of JP Court justices is a more difficult task. However, JP Court Precinct No. 1 and Precinct No. 2 stand out as havens of Democratic power. During this period, the JP judges in Precinct No. 1 (Sylvania) were Gideon Nance and Frank H. Smith. Nance was the Tarrant County judge before the Civil War, the notary who took the affidavit of Paul Isbell during the Texas Troubles of 1860, and, of course, a Democrat. Frank Smith, too, was a Democrat. In 1886, the JP judge in Precinct No. 2 in Arlington was M. J. Brinson, ex-slaveholder and Confederate veteran. When a defendant's case was called to trial, the defendant could plead guilty or opt for a trial. If a defendant opted for a jury trial in the County or JP Courts, a jury of six members decided all facts, and conviction required unanimous agreement by all six jurors. Though entitled to a defense by counsel, defendants were often unrepresented and often pleaded guilty.[105]

11/6/1888 (J. C. Richardson a Democrat). In November 1886, the Gazette proudly proclaimed "Democracy on Top" and, as a result, "Fort Worth is the greatest city in the South." *Gazette*, 11/4/1886.

[105] CCP 1879, Articles 72 (county court jurisdiction), 200 (two year statute of limitations for misdemeanor offenses), 594 (facts tried to a jury), 595 (six jurors), 676 (facts tried to the jury), 708 (juror unanimity required to convict), 728 (facts tried to a jury), 805-819 (misdemeanor judgments); *Gazette*, 5/29/1890 ("E.B. Weitzel is again in jail, as his bondsman refused to serve longer. The case will probably come up sometime in June. The jury stood nine to three for conviction."); General Directory of the City of Fort Worth for 1886-1887, 45 (M. J. Brinson the JP judge for Precinct No. 2 in Arlington). For the political affiliations of these officials, see *Gazette*, 10/1/1886 (Samuel Furman a Democrat, Frank H. Smith a Democrat, Gideon Nance a Democrat);

The Tarrant County courts were busy places in the late 1880s, and presided over a healthy mix of civil and criminal cases. The District Court's primary business was civil, but in criminal matters handled the felonies, and adjudication was slow by nineteenth century standards. In 1887, for example, the District Court's criminal docket consisted of 81 felonies—6 murders and 75 other felonies—and it would often take a full year before the defendant was actually tried for the alleged offense.[106] The County Court docket was largely criminal and always heavy, but "justice" was delivered far more quickly than in the District Court. In October 1887, for example, "The criminal docket was taken up yesterday [in the county court]….There are 358 cases on this docket, giving the court material for at least two week's grinding." A *Gazette* report in November 1887 provides a flavor of County Court criminal proceedings: "The county court was busy yesterday with

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Gazette, 10/13/1888 (W. D. Harris a Democrat); *Gazette*, 11/6/1888 (R. E. Beckham a Democrat). The prosecutor in the Recorder's Court was the city attorney.

[106] *Gazette*, 3/29/1887 (District Court criminal docket of 6 murders and 75 other felonies); *Gazette*, 3/30/1887 (grand jury returned 32 indictments, 4 of which were for felonies); *Gazette*, 9/18/1887 (grand jury returned 52 bills of indictment, 41 misdemeanors and 11 felonies); *Gazette*, 1/21/1888 (grand jury adjourned after returning 107 indictments, "chiefly for misdemeanors). The District Court, however, devoted most of its time to civil cases. In September 1889, for example, the District Court's docket consisted of 728 cases, of which 669 (92%) were civil cases and 59 (8%) were criminal cases. *Gazette*, 10/18/1887 ("The court house wore an unusually quiet air yesterday from the fact, no doubt, that it is a difficult matter to run legal tribunals on the same day that the circus comes to town. [County Court] Judge Furman passed on a few motions but tried no cases, while in the District court the suit of Pryor Bros. vs. the Santa Fe Railway Company took up the day and is still on trial…."); *Gazette*, 9/4/1889; *Gazette*, 5/15/1888 (District Court civil jury docket consisted of 71 cases for the 7-day period between May 24 and June 1, 1888); *Gazette*, 1/30/1890 (the District Court's civil jury docket consisted of 19 cases for the 4-day period between January 27 and 31, 1890); *Gazette*, 5/15/1890 (District Court's civil docket consisted of 31 cases for the 2-week period beginning May 19, 1890).

misdemeanor cases, assaults, gaming, pistol toting, etc. There was a perfect cloud of black witnesses and defendants in attendance."[107]

If the defendant was convicted, either by plea or after a trial, he was often sentenced to pay a fine and to serve a jail term of some fixed duration. In the County Court, the jail sentence was a term of days or months in the county jail; in the District Court, the jail sentence was a term of years or decades in the state penitentiary. Jail or prison sentences were served consecutively (successively, or back to back), as opposed to concurrently (overlapping, at the same time). For example, if a defendant was convicted of two offenses and sentenced to a jail term of 20 days for each conviction, the defendant was required to serve a total of 40 days in jail. In misdemeanor cases, a defendant's punishment—both the fine and the jail sentence—was doubled for the second conviction.[108]

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[107] *Gazette*, 10/11/1887 (two weeks grinding); *Gazette*, 11/22/1887 (perfect cloud of black witnesses). The County Court's civil docket was also heavy. In late 1889, there were 60 civil cases on the County Court's jury docket for the twelve-day period between December 9 and December 21, 1889. In early 1890, there were 145 civil cases on the County Court's non-jury docket for the twelve-day period between January 27 and February 8, 1890. *Gazette*, 12/5/1889; *Gazette*, 1/30/1890.

[108] CCP 1879, Article 800 (sentences served consecutively); PC 1879, Article 818 (penalty doubled for the second conviction). A jury, however, imposed the actual sentence. See PC 1879, Article 180 (disturbing religious worship); PC 1879, Article 497 (aggravated assault); CCP 1879, Article 791(10) (1879) (jury assesses penalty); CCP 1879, Article 912 (defendant may waive jury trial in JP court); CCP 1879, Article 923 (in JP court, jury to assess penalty if defendant pleads guilty); *Gazette*, 10/19/1887 (jury sentenced Tom Hurley to a $25 fine and 20 days in jail for carrying a pistol). If a defendant was sentenced to jail in the Mayor's Court, he served time in the city jail, also known as the "calaboose" or "refrigerator." If sentenced to prison in the District Court, the defendant was transferred to the state penitentiary in Huntsville by a private contractor. Donald R. Walker, Penology for Profit: A History of the Texas Prison System 1867-1912 (College Station: Texas A&M University Press, 1988), 124-125

In addition to the fine and jail term, the defendant was assessed the costs involved in prosecuting the case against him. These costs were fixed by statute, and were simply tacked on to the sentence as a matter of administrative routine. For County Court cases, the costs included fees for the prosecuting attorney ($15.00 for gambling cases, $10.00 for all other misdemeanor offenses), the clerk of court (from ten cents to one dollar, depending on the type of pleading filed), for the arresting officer ($1.00 for each arrest), a trial fee ($5.00, plus an additional fee of $5.00 if the defendant requested a jury trial), and a witness fee ($1.50 per day per witness). For example, if a defendant accused of a exhibiting a gaming table was convicted by a jury, and called two witnesses for his defense, his fees would amount to at least $30.00, which exceeds the minimum fine of $25 for the offense.[109]

At each of these stages – arrest, trial and conviction, and punishment – the deck was stacked against blacks. In Tarrant County, the likelihood of arrest was based on one's "reputation," often a euphemism for "race." Once arrested, blacks were charged with multiple crimes more often than their white counterparts. If blacks chose to go to trial on their case, they faced a presumption of guilt that virtually guaranteed a conviction. Once

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(transportation to penitentiary by private contractor); *Gazette*, 1/25/1887 ("Yesterday, Mr. W. C. Harmon of Waco, a contractor for removing convicts to the state prisons, arrived here in order to take several recruits from the Fort Worth jail.").

[109] CCP 1879, Articles 1090 - 1111 (detailing the costs assessed against the defendant at each court level and for each official function). For the one dollar per day credit, see Chapter 2, pages 78-79, 84.

convicted, whites banished "unmanageable" blacks to the state penitentiary, but controlled "manageable" blacks by retaining their labor locally to build county roads.[110]

2.1.1 "The Wrong Darkey"—Arrest and Charging Decisions

When it came to blacks, whites asked few questions and were generally unconcerned with the niceties of legal process, such as one's actual identity. In 1887, for example, Cal Brinson, a local African American man, was arrested in Tarrant County for assault with intent to murder. Cal was released a few days later, the authorities having "found out that he was innocent of the charge, his arrest being caused by having the same name with the party really guilty of the offense. Officers Tucker and Witcher thereupon took a little jaunt into the country and, in a corn field near Arlington, came upon the real Mr. Brinson wanted."[111]

This tendency to base arresting decisions on reputation, and thus race, is revealed most clearly with weapons offenses. Weapons, particularly firearms, were an affirmation of power that blacks were not free to assert, at least in the presence of whites.[112] In

[110] Urban centers in other southern states reveal this same pattern. For example, in his study of the post Civil War conditions in five southern cities, historian Howard N. Rabinowitz concludes that "at no time during the interval from arrest to punishment was it forgotten that the individual [defendant] was black." Howard N. Rabinowitz, Race Relations in the Urban South, 1865 – 1890 (Chicago: University of Illinois Press, 1980), 43 (studying the cities of Atlanta, Georgia; Montgomery, Alabama; Nashville, Tennessee; Raleigh, North Carolina; and Richmond, Virginia).

[111] *Gazette*, 7/25/1887 ("The Wrong Darkey").

[112] Texas historian Barry Crouch describes how the 1866 Texas Black Codes effectively disarmed African Americans. Intending to keep blacks out of the cities and forcing their return to (or preventing their leaving) the rural plantations, the first post war Texas legislature passed a series of contract labor, vagrancy, and other laws. The state legislature also made it unlawful for anyone to carry guns on the "enclosed premises or

December 1876, for example, "[a] company of seven young men from the neighborhood of Terrell, Texas, passed through here yesterday, heading for the frontier on a buffalo hunt. They were well mounted, armed and equipped, and will be gone several weeks." The characterization of this group as "young men," and the absence of any reference to their race, suggests that they were white. Armed blacks, however, were viewed quite differently. Only two months later in February 1877, "Sheriff Henderson [a Confederate veteran] arrested a negro yesterday who gave his name as Geo. Wills, for carrying a pistol. He also answers to the description of a negro who committed a murder in Falls county some time since." One wonders how many black men were named George Wills.[113]

The decade of the 1880s revealed the same tendency to disarm blacks. In June 1887, for example, eighteen-year-old Louis Kuntz and sixteen-year-old Fred Muehlethaler strolled into Fort Worth with pistols, rifles, bowie knives, and a tomahawk

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plantation" of any citizen without the property owner's consent. Crouch, "All the Vile Passions," 14.

[113] *Democrat*, 12/6/1876 (company of seven young men); *Democrat*, 2/5/1877 (George Wills). Ascertaining race can be tricky without a contemporary reference to race, and involves looking for clues, code words, or other subtle indicia of race. In many instances, the absence of a reference to race suggests that the subjects are not black. Other language can also be instructive in making this determination. For example, historian Howard Rabinowitz suggests that the nineteenth century phrase "ladies and gentlemen" was a thinly-veiled euphemism for "white men and women." Rabinowitz, Race Relations in the Urban South. Fort Worth and Tarrant County whites used the terms "ladies" and "gentlemen" in this way. In April 1875 the *Democrat* expressed hostility at the "disgraceful conduct" of certain white men who had socialized with black women at a dance at an African American church hall. In the *Democrat's* opinion, the white "gentlemen (?)" who had danced with "saddle colored or ebony maidens (?)" should "blush for very shame when they [the white men] meet the pure and modest young ladies of our city." *Democrat*, 4/17/1875.

"with a bright glistening blade that would have made a Comanche's soul sick to own." After Tarrant County Deputy Sheriff Rowan Tucker arrested the two, he called a *Gazette* reporter to the jail to interview the "boys," who, "betwixt smiles and tears told their story." The reporter noted that "It is not probable that the charge of carrying weapons will be pressed against them. The boys, while greener than the prairies, tell a straight story and they have good, honest faces. They will be advised to sell their equipments, and as they both know how to work there is no fear but that they will get along in Texas." Again, the characterization of these two "boys" as "greener than the prairies" with "good, honest faces," combined with the absence of any reference to their race, suggests that they were white. Only three months later, however, in September 1887, an African American man named Henry Morrison was fined $25 for carrying a pistol—"a murderous looking Colt."[114]

In addition to arresting decisions by police officers, prosecutors made critical charging decisions that would adversely affect African American defendants. One of those charging decisions was the place of filing—in the County Court or in the District Court. Table D.2 summarizes the racial distribution of each of the 445 convictions that resulted in a jail sentence in the Tarrant County jail during the earlier period. Of these

[114] *Gazette*, 6/10/1887 ("They Were Heeled," Louis Kuntz and Fred Muehlethaler); *Gazette*, 9/9/1887 (Henry Morrison). While weapons offenses present the clearest case of arrest by reputation, it is by no means the only example. "The officers who arrested a young girl on a charge of vagrancy did not do so of their own volition, but because of frequent complaints made, and as a matter of duty." *Gazette*, 5/14/1887 (arrest of a young girl for vagrancy "as a matter of duty"). The *Gazette's* use of the term "girl," combined with the absence of any reference to her race, suggests that this female was white.

445 convictions, 54 were obtained in the District Court. Of these 54 District Court convictions, 41 (76.0 percent) were against black defendants and 10 (18.5 percent) were against white defendants. This suggests that a decision was made to charge blacks in the District Court, a decision that provided sentencing options—banishment to the state penitentiary or local control. This also suggests that a sentencing decision was made, either following a plea of guilty or jury adjudication of guilt, to control these blacks locally with a sentence to the county jail. [115]

This disproportionate ratio of black charges in District Court is even more revealing in light of the differential treatment of blacks and whites with regard to one particular type of offense: gambling. All 21 gambling convictions against blacks occurred in the District Court, while the sole white gambling defendant was convicted in the County Court. Of these 21 black gambling convictions, 12 were for exhibiting a gaming table. Moreover, when the County Attorney "cracked down" on gambling in late 1887, he cut a "deal" with eleven well known white gaming house proprietors. These whites agreed to close their establishments, pay a $25.00 fine, and plead guilty to the most serious statutory gambling offense at the time—exhibiting a gaming table. The County Attorney, however, permitted these white guilty pleas *in the County Court*, not the District Court.[116]

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[115] Table D.2 (Racial Distribution of Total Convictions Represented in the Tarrant County Jail: 1887-1890). Three of these convictions (5.5 percent) were against defendants of other races.

[116] Table D.2 (Racial Distribution of Total Convictions Represented in the Tarrant County Jail: 1887-1890). For the white pleas in the county court, see Chapter 2, pages 108-109.

In addition to the place of filing, the prosecutor also decided how many charges to file. This was not an insignificant decision because the sentences for each conviction were served consecutively and not concurrently. Of the 391 different prisoners in the county jail, 19 were charged with more than one offense at the same time. Of these, 13 were black (68.4 percent) and 6 were white (31.6 percent). Moreover, all four of the prisoners who were charged with at least three charges were black. Blacks, therefore, were far more likely than whites to face multiple charges, and thus an extended sentence.[117]

2.1.2 "Absolute Certainty"—Trial and Conviction

Once arrested, blacks faced near-certain conviction because the prosecutor's burden of proof to convict an African American defendant was functionally lowered. The difference between black and white burdens of proof is illustrated by the cases of F. W. Scott, a white man, and William Alexander, a black man. In February 1887, Tarrant County Deputy Sheriff Jim Maddox arrested F. W. Scott for cattle theft, based on a warrant issued by the Wise County sheriff. Scott was well known in north Texas, and had lived in Tarrant County for ten years before moving to Wise County. According to the *Gazette*, "[t]he arrest of Mr. Scott came as a great surprise, as he has always borne a good reputation and *it will take only positive evidence* to make his friends both in Fort Worth and the neighborhood in which he lived for so long think he has committed any criminal act." The use of the title "Mr.", together with the absence of any reference to his race suggests that Scott was white. Six months after Scott's arrest, however, a jury

[117] Table D.3 (Racial Distribution of Prisoners Convicted of Multiple Offenses in the Tarrant County Jail: 1887-1890).

convicted William Alexander of murder on far less than "positive evidence." The *Gazette* reported on the outcome of Alexander's trial:

> The jury in the case of William Alexander, the negro, charged with slaying Ben Griffin, another of his race, in the northern outskirts of this city, over a year ago, brought in a verdict against him of murder in the first degree and assessed his punishment at imprisonment for life in the penitentiary. The murder was peculiarly brutal and dastardly, and though *the evidence against him was almost purely circumstantial*, it seemed to convict him of the crime with absolute certainty…. [118]

Even when juries declined to convict a black defendant, or were perceived to have shown any leniency, whites expressed incredulity. In June 1887, for example, the *Gazette* reported on the acquittal of O. S. Bates, a local black man charged with burglary. Bates was acquitted because he was "not positively sworn to by any of the state's witnesses." Still, "the smile that illuminated the defendant's ebony countenance seemed to cover his entire face, whether a smile of triumphant innocence or a grin of glee at outwitting the prosecution, no man can say." Several months later, in October 1887, the *Gazette* reported, with some surprise, that the jury had sentenced William Alexander to life in prison rather than the death penalty. "Alexander was in high spirits over the verdict," reported the *Gazette*, "and came out of the room with a broad smile. He evidently expected to be hung, knowing, no doubt, that he so deserved." Even when the evidence

[118] *Gazette*, 2/22/1887 (F. W. Scott) (emphasis added); *Gazette*, 10/8/1887 (William Alexander); *Gazette*, 10/23/1887 (William Alexander) (emphasis added). Black convictions were virtually guaranteed even in less sensational cases. In January 1887, for example, Bill Bryant, referred to as "darkey" by the *Gazette*, was arrested for stealing several spools of barbed wire. When reporting on Bryant's arrest, the *Gazette* opined that the "evidence against Bryant is said to be *strong enough* to almost insure a conviction." *Gazette*, 1/7/1887 (Bill Bryant) (emphasis added).

was "purely circumstantial," as in William Alexander's case, whites simply could not believe that blacks may actually be innocent of an offense with which they were charged.[119]

In addition to lowering the burden of proof to obtain a conviction, a sample of *Gazette* accounts of District Court criminal cases reveals how whites used the District Court to banish "unmanageable" blacks from the community. Tables 2.1 and 2.2 reflect the criminal cases on two of the District Court's dockets in the late 1880s, as well as the race of the defendant and the sentences imposed.[120]

[119] *Gazette*, 6/25/1887 (O. S. Bates); *Gazette*, 10/8/1887 (William Alexander); *Gazette*, 10/23/1887 (William Alexander).

[120] *Gazette*, 6/21/1887 (source of the information for Table 2.1); *Gazette*, 9/4/1889 (source of the information for Table 2.2). White defendants are indicated with a "W;" black defendants are indicated with a "B."

Table 2.1

Sentences Imposed in the District Court
on June 21, 1887, by Race and Crime

Name	Race	Crime	Sentence
Spencer, William	B	Theft	7 years
Brown, Henry	B	Theft	5 years
Smith, GW	B	Theft	2 ½ years
Harmon, Will	B	Theft	2 years
Thomas, Henry	B	Theft	2 years
Clayton, Dick	B	Burglary	2 years
Maxwell, George	B	Burglary	2 years
Copeland, Bob	B	Assault to murder	3 years
McCulloch, Calvin	B	Assault to murder	2 years
Wilson, Milligan	B	Assault to murder	2 years
Redmond, John	W	Assault to murder	2 years
Johnson, Alonzo	W	Horse theft	5 years
Powell, Jacob	W	Horse theft	5 years

Table 2.2

Number of Defendants on the
District Court's Criminal Docket on
September 4, 1889, by Charge

Charge	Number of defendants	Percentage
Theft	17	28.8%
Forgery	15	25.4%
Assault to murder	8	13.6%
Murder	6	10.2%
Perjury	3	5.1%
Embezzlement	2	3.4%
Bribery	2	3.4%
Robbery	1	1.7%
Incest	1	1.7%
Assault to rob	1	1.7%
Accomplice to arson	1	1.7%
False swearing	1	1.7%
Bigamy	1	1.7%
TOTAL	59	100.1%

If information in Tables 2.1 and 2.2 are accurate reflections of the District Court's criminal docket at any given time, then blacks typically comprised over three quarters of the docket, primarily for theft and violent offenses, at a time when the African American male population of the county was only 10.1 percent. In Table 2.1, blacks comprised 100 percent of the theft convictions and 75.0 percent of the convictions for violent offenses. In Table 2.2, the top four charges of theft, forgery, and violent offenses (assault to murder and murder) represent the bulk of the entire docket (77.9 percent, or 46 of the 59 offenses). Extrapolating from Table 2.1, and assuming that forgery was a predominantly white crime, blacks would have accounted for 27 of the 31 convictions for theft and violent offenses indicated in Table 2.2. The District Court presented whites with ample opportunity to assess whether individual black defendants had any redeeming qualities, and thus whether to use their labor locally.[121]

Several high profile incidents involving African American conduct also illustrate how whites used the District Court to control blacks. In January 1887, for example, "the worst colored crook in Forth Worth…the notorious Frank Washington, whose record as a thief and tough easily made him the chief of all the Third ward hoodlums, was given a twenty-years' term in the penitentiary." Washington was convicted in the district court

[121] Forgery is a species of theft, but it is unclear whether it was a predominantly white or black offense. For purposes of this study, forgery is assumed to be a predominantly white offense. The effect of this assumption is to provide a more conservative estimate of the number of black defendants. Horse stealing was typically a white crime, and was always punished harshly. See PC 1879, Section 746 (horse theft, 5 to 10 year prison sentence); *Gazette*, 3/17/1887 (unnamed white man stole a horse from his employer and left town); *Gazette*, 3/22/1887 (Henry Haas, a "German," arrested for theft of a mule); *Gazette*, 6/21/1887 (Alonzo Johnson, white, sentenced to 5 years in the state penitentiary for horse theft; Jacob Powell, white, sentenced to 5 years in the state penitentiary for horse theft).

for "the robbery of one Beeson, a young white man, who (according to [Beeson's] story) some few weeks ago got Washington to take him home, as he was not feeling very well. On the way the negro knocked him down and robbed him of some money and a watch…. Beeson was so badly beaten that he had to keep his room for several days." Several months later, in April 1887, the *Gazette* reported on another local black man, Will Nichols, who killed a white man, Louis Schmidt. According to the *Gazette*,

> …Will Nichols…is not quite eighteen, and was brought up around Fort Worth. His character is by no means good. His stepfather, Jim Nichols, an employe[e] of the Pacific Express, and one of the best and most highly respected colored men in the city, stated yesterday that the boy couldn't be got to work, and the desperate act related [of throwing a stone at Schmidt and killing him] shows that he was vicious as well as indolent.

In May 1887, the *Gazette* reported that Henry Brown and Henry Thomas, "two colored boys fast developing into professional crooks," pleaded guilty to a "bold piece of rascality" – theft from the person (pick pocketing, in modern parlance). The *Gazette* reported that Brown and Thomas "had begged a dime of a section hand named Anderson, an old gentlemen who was somewhat boozy, and rewarded his kindness by snatching a wallet from him containing about $15."[122]

Henry Brown, Henry Thomas, Frank Washington, and probably Will Nichols were all charged and convicted in the District Court and sentenced to the penitentiary. In

[122] *Gazette*, 5/21/1887 (Henry Brown and Henry Thomas); *Gazette*, 6/8/1887 (Henry Brown and Henry Thomas); *Gazette*, 6/21/1887 (source of information for Table 2.1); *Gazette*, 9/4/1889 (source of information for Table 2.2). The use of the term "gentleman" to describe Anderson, and the lack of any reference to his race, suggests that he was white.

contrast was Milton Petty's County Court conviction for conduct that whites must have believed could be adequately addressed at the local level. In January 1888, according to the *Gazette*, "Milton Petty, a tall negro, must have been bent on clothes stealing." Petty "was in Mrs. Charles Hall's back yard when the lady came out to take the clothes off the line. Being discovered he seized a piece of board and knocked Mrs. Hall down. He was arrested shortly after, and will pay very dear for his crime." Petty was charged and convicted in the County Court, and six days after his arrest he was sentenced to two years in jail and a $1,000 fine. At the rate of one dollar per day, the fine added an additional 2.7 years of jail time. With the additional fees and costs, Petty may very well have served 5 years in the county jail, a "very dear" payment indeed.[123]

The circumstances of these cases reveal how Tarrant County whites defined "manageable" for purposes of racial control. In all five cases described in the *Gazette*—Henry Brown, Henry Thomas, Frank Washington, Will Nichols, and Milton Petty—the offender was black and the victim was white. Of the four offenders sentenced to the penitentiary, the *Gazette* described these African Americans as highly aggressive men—Brown and Thomas were "bold" and "professional crooks," Washington was a "notorious... thief and tough" who was "the chief of all the Third ward hoodlums," and Nichols was "vicious" and "indolent." In white minds, these intemperate "negroes"

[123] *Gazette*, 1/15/1887 (Frank Washington); *Gazette*, 4/2/1887 (Will Nichols); *Gazette*, 1/6/1888 (a Friday) (Milton Petty); *Gazette*, 1/12/1888 (a Thursday) (Milton Petty). For the rate of one dollar per day, see Chapter 2, pages 78-79, 84. Texas historian Campbell has explored slaveholders' views concerning the "troublesome" nature of blacks when they were slaves, as well individual slaveholders' views on how best to "control" black slaves. Campbell, Empire for Slavery, 198-201.

failed to act within the community's "well understood orbits," and a prison term restored the social order. The *Gazette's* report of Milton Petty, however, does not depict an aggressive "negro" who challenged the social order as much as an awkward encounter, albeit violent, that fell in line with white perceptions that blacks were incapable of long term thinking or planning. While Petty's sentence was extremely harsh, he was fortunate that his assault of a white woman did not result in a District Court felony conviction and banishment to the state penitentiary. Local whites must have thought Petty had some redeeming value in the community, at least as a laborer on the county roads.

2.1.3 "The Lost Art of Hanging"—Punishment

In 1883 the *Gazette* observed that "The lost art of hanging has had a profitable revival of late – and it is to be noted that not one of the victims whom it has gathered in has backslidden. Nearly all of these exec[u]tions have been for murder, though a few of them were for rape." In his historical writings, Cummings proudly proclaimed that "There have been but two judicial hangings in the history of Fort Worth—that of Sol Bragg in 1875 for the murder of a man named Green, and Isom Capps in 1881, for rape committed on a white woman. Both of these men were colored. The city's record [has] never been stained by a lynching." While Cummings's nostalgic memory is faulty, the average African American in Tarrant County was indeed more likely to be conscripted for his labor, under the guise of a criminal conviction, than he was to be lynched. In the 1870s, Fort Worth and Tarrant County allowed prisoners in their respective jails to work during the day to earn money to pay off their fines, as long as they returned to the jail at night. This informal work release program appears to have worked well in a small,

frontier jurisdiction where everyone knew each other. As the population increased in the 1880s, however, Tarrant County whites took advantage of a series of state convict labor statutes to incarcerate African Americans and put them to work on the county roads. [124]

The informal work release program was common in both the city and the county jails. The Fort Worth "Mayor's Docket" book reveals that most city prisoners in the 1870s were able to pay their fines. If a prisoner could not pay his fines, he generally had two options. Sometimes the prisoner worked directly for the city. In March 1877, for example, the *Democrat* reported that "The tramps are becoming more numerous, and Marshal Courtright will make another raid on them. They generally make their groundings around the depot, and no doubt the authorities will require 'tie' leavers, or a compensation of either money or work to the city." If the prisoner did not perform work directly for the city, he might be released on his own recognizance to earn money to pay

[124] *Gazette*, 11/2/1883 (lost art of hanging); Cummings Newspaper Clippings (never been stained by a lynching). Cummings' recollection conflicts with the testimony of H. L. Terry, who told researchers from the Federal Writer's Project that he believed Sol Bragg was hanged by "vigilantes"—hardly a "judicial hanging." Texas Federal Writer's Project, Fort Worth and Tarrant County Research Data, Volume 2, pages 535-536. Despite this specific factual disagreement, Fort Worth historian Jay Thomas Pearce has examined the felony murder indictments in Fort Worth between 1876 and 1880, concluding that vigilante justice was unnecessary because the legal system functioned well in the eyes of the local community. "[T]he legal system of the cattle boom era," Pearce concludes, "bears a striking resemblance to that found in present day American courtrooms." Accordingly, Pearce rejects the mythology of "rough-hewn justice eschewing legality." Jay Thomas Pearce, "Crime and Punishment in a Texas Cowtown: Tarrant County, Texas, 1876-80," Ph.D. diss., University of Texas at Arlington (2000). The legal system may have functioned well for whites, but for blacks it was another question. The Federal Writer's Project is described in a note following the bibliography, on page 219.

the fine. Work release was so common, in fact, that city officials even appear to have tolerated jail breaks. In May 1877,

> About eight o'clock Wednesday night seven prisoners, confined in the city calaboose working out fines assessed against them for various charges, concluded that they would have a rest for the night, broke the door down and spent the rest of the night in a more congenial place, and yesterday morning all of them came up, with the cash in hand, and satisfied the difference between themselves and the city.[125]

The county jail also utilized an informal work release program, and allowed prisoners to work directly for the county or to work for others in order to earn money to pay their fines. In the Sheriff's Account Book, for example, the county sheriff notes that fines were sometimes "discharged by labor." The county's work release program, however, does not seem to have been as efficient as the city's program. In June 1878 the County Commissioners expressed their frustration with unpaid fines by ordering the county sheriff to provide a list of all convicts who were released to perform labor but whose fines were not yet been paid.[126]

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[125] Mayor's Docket, City of Fort Worth, Texas, April 1873 – Jan. 1877, Tarrant County Junior College; *Democrat*, 3/17/1877 (tie levers); *Democrat*, 5/4/1877 (prisoner escape from the calaboose). The Mayor's Docket identified certain information about the prisoner, including the date of the judgment, the date the fine was "settled" or "paid," and the amount that was paid, with most entries identifying an amount "paid." If a prisoner worked for the city, the notation "Cr by labor" ("Credit by labor") was often written as the "amount paid." Gaps of up to one month often appear between the date of judgment and the date that the fine was paid, suggesting that the prisoner was permitted to leave the jail and earn money on his own.

[126] Sheriff's Account Book, 1876-1895, Special Collections, University of Texas at Arlington Library; Commissioner's Court Minutes, Tarrant County, Volume A, April 18, 1876 – August 14, 1878, page 413 (entry for June 10, 1878, delinquent bondsmen called to account).

The practice of informal work release, however, faded in the late 1870s as the Texas legislature enacted a series of comprehensive statutes that governed the use of county convicts as laborers. Over the next decade or so the legislature would tinker with this statute until it finally settled on something in the late 1880s. The result was a system highly favorable for the county and highly unfavorable for the prisoner.[127]

The legislature enacted a comprehensive statute in 1879 authorizing and regulating the *en masse* leasing of county convicts. The new statute permitted the county to lease ("hire out") its prisoners to private parties, either individually or as a group, but also permitted the county itself to supervise the prison labor. If the county supervised the system, prisoners were to be credited $1.00 per day, whether at labor or confinement. The law provided for a maximum work day of 8 to 10 hours, and prohibited labor if the sentence was less than one day. There was nothing in the 1879 statute that restricted the type of labor that the county could require of prisoners, the duration of that labor, or how the value of that labor would apply to pay off the fines and defense fees and costs.[128]

In 1882, the legislature amended the statute by *requiring* prisoners to be leased out to private parties. The legislature further provided that the proceeds of hiring applied first to costs, then to fines, and credited the prisoners with 50 cents for every day of labor. The law imposed a two-year maximum time period for which a prisoner could be hired

[127] RCS 1879 Articles 3602 - 3609 ("of hiring county convicts"), Articles 3585-3601 ("of work-houses and county convicts").

[128] RCS 1879 Article 3587 (labor prohibited if sentence is less than 1 day), Article 3591 (setting a work day of 8 to 10 hours), Article 3597 (credit of $1 per day if county runs the system), Article 3601 (convicts may avoid labor by paying $1 per day), Article 3602 (county convicts may be hired out, individually or as a group).

out, but was still silent on the type of labor that could be required of the prisoners. Five years later, however, in 1887, the Texas legislature reverted to permissive private leasing of prisoners. The 1887 amendments also reduced the daily labor credit to 25 cents, but left unchanged the two-year maximum and the application of credit first to costs then fines. The legislature tweaked the statute again two years later in 1889, raising the daily labor credit back to 50 cents, restricted the type of labor to public streets, roads or the poor farm, and limited the duration of labor to one year.[129]

In the final analysis, prisoners got the short end of the stick in all this legislative tinkering, summarized in Table 2.3. Prisoners were only entitled to a credit of 50 cents per day if they worked a ten-hour day, but had to pay $1.00 per day to avoid labor, which effectively increased the monetary portion of the sentence if prisoners were not permitted to refuse to work. In addition, the daily credit—whether 50 cents for working or $1.00 to avoid labor—was applied first to the outstanding costs and then to the fines, an arrangement that virtually guaranteed a prisoner would serve a full year at labor because the fees and costs often exceeded the actual fine. While the legislature was no doubt responding to reported abuses of the system (such as raising the daily credit back to 50

[129] RCS 1879, Article 3602 (as amended in 1882 by "An Act to amend article 3602, Chapter 10, title 71, of the Revised Civil Statutes of the State of Texas, relating to the hiring of county convicts," Laws of Texas, H.P.N. Gammel, comp. (Austin: The Gammel Book Company, 1898) (hereafter "Laws of Texas"), Volume IX, page 276, approved May 4, 1882 (county convicts "shall" be hired out, plus the other provisions mentioned); RCS 1879, Article 3602 (as amended in 1887 by "An Act to amend an act entitled 'An Act to amend article 3602, Chapter 10, title 71, of the Revised Civil Statutes of the State of Texas, relating to the hiring of county convicts,' " Laws of Texas, Vol. IX, page 809, approved March 1, 1887 (county convicts "may" be hired out); RCS 1879, Article 3597 (as amended in 1889 by "An Act to amend Article 3597 of the Revised Civil Statutes of the State of Texas," Vol. IX, page 1042, approved March 7, 1889).

cents in 1889, and restricting the duration of labor to one year), prisoners continued to be abused.

Table 2.3

Summary of Texas Convict Labor Laws
for County Prisoners: 1879-1890

Year	Hiring out	Daily credit	Application of credit	Duration	Daily cost to avoid labor	Work day
1879	"may"	$1.00	(silent)	(silent)	$1.00	8 to 10 hours
1882	"shall"	50 cents	Costs then fines	2 years	(no change)	(no change)
1887	"may"	25 cents	Costs then fines	2 years	(no change)	(no change)
1889	(no change)	50 cents	(no change)	1 year	(no change)	(no change)
Final	"may"	50 cents	Costs then fines	1 year	$1.00	8 to 10 hours

The Tarrant County commissioners' attempts to implement a convict labor system mirrored the legislative roller-coaster pattern. In November 1881, for example, the county commissioners ordered the county sheriff to utilize convict labor if "practicable." The next year, however, the legislature mandated the private lease of county prisoners, so Tarrant County was stuck with private citizen labor to work on the roads. When the 1887 statute allowed counties to again supervise its prison labor, Tarrant County acted with dispatch to assemble a prison labor force. [130]

[130] Commissioner's Court Minutes, Tarrant County, Volume 3, Sept. 15, 1881 – May 12, 1884, page 33 (directing sheriff to use convict labor if practicable); Volume 5, Feb. 14, 1887 – Dec. 14, 1888, page 121 (on February 22, 1887, county commissioners

The County Commissioners constantly did the math, knew the size of the labor force they needed, actively worked toward that end, and expressed annoyance when they could not muster the labor to meet the demand. They were starting from scratch because only 1 prisoner was available when the 1887 law went in to effect. In January 1887, the *Gazette* featured an editorial on the lack of prisoners to perform labor. According to the editorial, "The greatest drawback to the adoption of the system in Tarrant county is the lack of material and of men to work the roads." "If something like a regular force of fifteen or twenty men could be had," the *Gazette* editorial continued, "then there isn't much doubt that to put these convicts on the roads or poor farm would be a wise step."[131]

One way to assemble a county convict force was to pilfer prisoners from the city jail, and this the county did. According to the county sheriff,

> the men who were convicted [in the county court] of misdemeanors, as a rule, had plenty of friends who would become sureties on a convict bond, and thus get them out of prison. The only way anything like a constant force to work the roads could be obtained was to get the city court to turn over to the county all the wandering tramps and vagrants now handled in the former. If this was done a sufficient number might always be depended on. A large

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ordered the use of county convicts); *Gazette*, 1/2/1890 (describing the law requiring all able-bodied men between 18 and 45 years of age residing on any given road must provide 5 days of labor per year to improve that road). The commissioner's court minutes record the reports of road overseers, reports that are replete with references to poor road conditions and the lack of private citizens to repair the roads. See, e.g., Commissioner's Court Minutes, Tarrant County, Volume 4, May 12, 1884 – Jan. 17, 1887, pages 372-373 (the Arlington and Grapevine road was "rather poor," and "there is not hands enough on this road to put it in good order"), page 393 (the Fort Worth and Dallas road was "as good as well can be made by the hands liable to work on it").

[131] *Gazette*, 5/12/1887 (putting convicts to work on the county roads was not implemented because there was only 1 man in the county jail).

> percent of the men fined in the city court were mostly strangers, and couldn't get bondsmen.

Municipal officials objected to this practice, in part, because they would then have to pay contractors to do the work. County officials, however, proceeded to pilfer the city jail. [132]

Yet another way of "assembling" a sufficient convict force was simply to arrest more people and increase the penalties for convictions. In January 1887, the *Gazette* noted with dismay that, "Taking the records of last year it was shown that the sum total of penalties imposed in misdemeanor cases was only 481 days….This would give less than two men for the greater part of the time, and what avail would the labor of two men be?" Recognizing a potential objection, though, the *Gazette* proceeded to address the counter argument in a disingenuous third person: "It is urged on the other hand that when juries and judges realize the fact that they are not sending men to lay out fines in jail at a dead

[132] *Gazette*, 1/13/1887 (questioning the value of the labor of two convicts). The city's objections were expressed by the mayor, B. B. Paddock, in 1896. Paddock advised the city council that "Much of the work of the [Fort Worth city police] force is devoted to apprehending criminals in cases where their trial and punishment is left to the State [District] Courts," and estimated that "ninety percent of the criminals apprehended and arrests made in the County [are] effect by the Police Force of Fort Worth. The fines paid or worked out by these offenders inures to the sole benefit of the County." Report from B. B. Paddock (Mayor) to the City Council, dated and filed April 14, 1896, entitled "A retrospect of the fiscal years [sic] which ended March 21st, 1896" (pages 7-8), Box 1 (Council Proceedings for April 14, 1896), Records of the City of Fort Worth, Series I, Mayor and Council Proceedings, 1895-1905. The mayor's concern was by no means based on the welfare of African Americans. On the contrary, Fort Worth municipal officials had their own system of extorting money from those they arrested. One could argue that the Fort Worth Recorder's Court served a similar function as the County Court – only instead of using the system as a labor pool to conscript African American labor, it used the system as an alternative tax base to confiscate African American money. On city street contracts, see *Gazette*, 1/29/1888 (city contract for street grading); *Gazette*, 5/2/1888 (city road contractor professes that "bank gravel" was an "excellent" road bed, but not as cheap as "river gravel"); *Gazette*, 8/7/1889 (city contract for street grading).

loss to the county, that they will 'stick 'em' for much heavier sentences, and that probably violators of the law would be held to a more rigid accountability." The county, of course, rejected the counter-argument and proceeded to assemble, slowly but surely, its convict labor force. Table 2.4 summarizes the number of Tarrant County prisoners available for labor.[133]

Table 2.4

Number of Available
Tarrant County Prisoners
Available for Labor: 1887-1889

Date	Number of Available Convicts
5/12/1887	1
10/13/1887	20
11/3/1887	12
11/4/1887	26
11/22/1887	12
1/18/1889	30
3/21/1889	40

Tarrant County modeled its "road gang" on the Dallas County system, and prisoners were working on Tarrant County roads by November 1887. Road building itself was back breaking work, and a prisoner's living conditions were squalid. Road

[133] *Gazette*, 1/13/1887 (presenting the counter argument); *Gazette*, 5/12/1887 (1 prisoner in the county jail); *Gazette*, 10/13/1887 (20 prisoners in the county jail); *Gazette*, 11/3/1887 ("The county convicts were started out to work yesterday afternoon, an even dozen of them, *five whites and seven blacks*.") (emphasis added); *Gazette*, 11/4/1887 (26 convicts were available "to be called upon" for work on the roads); *Gazette*, 11/22/1887 ("The county convicts at present twelve in number…"); *Gazette*, 1/18/1889 ("…Bob Rice, in charge of the county convicts, says he has thirty men at work on the Benbrook road…".); *Gazette*, 3/21/1889 ("Mr. Rice, with his entire force of forty county convicts….").

work involved "grading, graveling, guttering and curbing" the road with axes, shovels and a "scraper." The prisoners were no doubt relieved when the county purchased a road grader, "a machine that both plows and throws dirt to where it is needed and does the work in one day that six men and scrapers could do in six days." Still, after each layer of dirt thrown from the grader, prisoners used a "heavy barrow and roller" to pack down the soil for the roadway bed, after which they added a "facing" of stone, gravel, or other material. In most places, the road was made "wide enough for a single team." The prisoners were not returned to the jail at night, but were "comfortably stowed away in two large tents, and have their meals of good, plain, wholesome food prepared on the ground." The "wholesome food" for convicts was "not a very elaborate menu but will abundantly support life: For breakfast, biscuit, bacon and coffee; dinner, corn bread, boiled bacon and beans or grits; supper, biscuit, bacon and molasses."[134]

[134] *Gazette*, 10/13/1887 (Tarrant County commissioners in Dallas to investigate how Dallas County used convict labor; "[we] will need $1,200 for the initial outfit of supplies and equipment: mules, wagons, harnesses, tents, axes, shovels, scrapers. Commissioners anticipated purchasing the equipment and putting convicts to work within 10 days…."); *Gazette*, 10/24/1887 ("The county commissioners meet to-day to arrange for putting the convicts on the roads to-morrow. A superintendent and three guards are to be appointed."); *Gazette*, 11/18/1887 (bill of fare); *Gazette*, 11/22/1887 ("The county convicts at present twelve in number, who are at work building county highways, rise up and bless the Commissioners for giving them an opportunity to do something for the public good"); *Gazette*, 1/4/1888 ("grading, graveling, guttering and curbing"); *Gazette*, 3/21/1889 (road grader); *Gazette*, 1/2/1890 (barrow and roller); *Gazette*, 1/30/1890 (wide enough for a single team; "macadam" was acceptable for the county roads, but a granite or brick base was better for city streets). These decisions and purchases are well documented in the commissioners' court minutes, as well. See Commissioner's Court Minutes, Tarrant County, Volume 5, Feb. 14, 1887 – Dec. 14, 1888 (numerous references), Volume 6, Jan. 14, 1889 – April 16, 1891 (numerous references). For the reference to the "road gang," see *Gazette*, 2/21/1890 ("Justice Reynolds yesterday sent to the road gang Zack Alford, a burly and boisterous Third Ward negro.").

Ultimately, everyone but the prisoners, and perhaps the city officials whose prisoners were pilfered, concluded that convict labor was a success in Tarrant County. In January 1889, the *Gazette* observed that the "short term convict system is generally conceded to be a good and just problem as far as it goes. The district clerk [says] there were eighty-four convicts in the last two years which could do a [vast?] amount of work." Three months later, the Superintendent of County Convicts, Bob Rice, told the *Gazette* that "he is getting good work out of the convicts, and there is no doubt that the system of working the men on the roads is a good thing for Tarrant county."[135]

The perceived success of the convict labor system is not surprising, however, considering the potential for abuse of the system as a whole and the potential for abuse of individual prisoners, both of which occurred in Tarrant County. Indeed, Tarrant County officials attempted to manipulate the system from its very inception. In November 1887, "the commissioners were somewhat put out at the decision of the [county] court that the convicts are to be allowed $1 per day for every day they work in payment of fines and costs, instead of twenty-five cents. While recognizing the decision as correct, they say it will seriously interfere with the good results hoped for from the system, inasmuch as it cuts down the time of the convicts to only one-fourth of the time they had reckoned on each man serving." By December 1890, the "road gang" was rotated among each county

[135] *Gazette*, 1/18/1889 (good and just); *Gazette*, 3/21/1889 (Bob Rice).

precinct for five months at a time, and all local communities clamored for the use of the county convicts. [136]

On an individual level, the abuses take on a compelling poignancy. In 1893, for example, Jim Upshaw, an African American man, was convicted of aggravated assault and fined $25.00. From the county jail he wrote the following letter to Jonathan P. King, the county attorney:

> dear sir I want to say to you about my case in 1893.
>
> Mr. King i was found [fined] in county court on Jan. 11. 1893 and went to the road and stayd till may 22, 1893 witch is 4 months and 11 days. An [sic And] you did not gave me no credit for it I was working under [illegible name]. Judge Night is the man that sent [me] out to the road at that tim [time] and get me and Mr. King you have got me charged with that again when I left the road my tim [time] hadent [hadn't] com out to the road.
>
> So Mr. King i hope you will look an see where you got me charged with 4 months an[d] 11 day rong [wrong]. Mr.

[136] *Gazette*, 11/18/1887 (county commissioners "somewhat put out"); *Gazette*, 9/7/1889 (people on the White Settlement road seeking the work of county convicts to finish grading and graveling the White Settlement road); *Gazette*, 3/21/1889 (the Benbrook Road "is now graded and graveled with the finest pebbles to be found in the county. The road as now completed extends from the western city limits to 'Nigger Hill,' about four and a half miles from the city…); Commissioner's Court Minutes, Tarrant County, Volume 6, Jan. 14, 1889 – April 16, 1891, page 502 (county convicts rotated among the precincts for five months at a time). Tarrant County road building was frought with political in-fighting, illustrated by the community discussion of how to improve the Grapevine road. See *Gazette*, 5/20/1887 (current Grapevine road, which zig zagged and ran adjacent to property lines, was twenty seven miles long; if straightened and went through farmers property it would be nineteen miles long); *Gazette*, 7/21/1887 (farmers in northeast Tarrant County protesting the straightening of the Grapevine road); *Gazette*, 8/11/1887 (Grapevine road the most important thoroughfare in the county); *Gazette*, 8/12/1887 (commissioner's disagreed on extent and location of improvements to Grapevine road).

> Shrapshire a lawyer is the man that had my case at that tim[e].
>
> Your[s] truly, James Upshaw, County Road
>
> #8261, Jim Upshaw, Worked out from 2/19/92 to 7/10/92

In contrast were the cases of Elmer Leach and Lawrence Davis, both white, each convicted of carrying a pistol and fined $25 and $50, respectively. The governor, however, remitted their fines and they were able to avoid road work altogether. Jim Upshaw, on the other hand, was kept on the road gang for an extra "4 months an[d] 11 days."[137] Upshaw was not alone.

2.2 The People in the Tarrant County Jail—A Profile of Prisoners in the Aggregate: 1887-1890

The prisoners in the Tarrant County jail in the early period were disproportionately black, and so were the prisoners who were sent to the Tarrant County convict camp. At a time when the African American male population comprised only 10.1 percent of the county at large, African American men comprised 29.3 percent of the prisoners in the county jail. Using the binomial statistical process model, the disparity is the calculated and expressed as a binomial standard deviation of 12.66. Using twenty first century legal standards, a binomial standard deviation this high permits an inference of intentional discrimination. In addition to this disproportionate rate of black incarceration, black prisoners performed a disproportionate amount of labor on the county roads. In 1890, the federal census taker documented that 78.9 percent of the

[137] Convict Record, Tarrant County, Texas, 1890-1894, page 316 (Jim Upshaw), page 407 (Elmer Leach), page 409 (Lawrence Davis).

African American prisoners in the Tarrant County jail were sent to the convict camp while only 37.4 percent of white prisoners were sent to the convict camp.[138]

In this study the primary measure of discrimination is the statistical binomial process model, a model that is accepted in twenty first century federal civil rights cases. The binomial model compares the ratio of black prisoners (the "actual" ratio) to the ratio of black males in the county at large (the "expected" ratio), and measures the difference between those ratios. The difference is calculated and quantified by a mathematical expression known as a "binomial standard deviation." Distilled to its essence, the binomial process model measures the disparity of human "selection" decisions – at some point, some person (or group of persons) decided to "select" each prisoner for incarceration. The binomial standard deviation measures the "spread" of all selection decisions based on the "average" (or "mean") selection decision.[139]

If selection decisions are made randomly (i.e., fairly), then the actual selections will tend to follow the binomial distribution. With the large numbers in this study, the binomial distribution approximates the normal distribution – the standard bell curve. In a normal distribution, 68 percent of all selection decisions are expected to be within +/- 1

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[138] Table D.1 (Racial Distribution of Individual People in the Tarrant County Jail: 1887-1890); Table F.2 (Males in Tarrant County by Race and Selected Ages: 1890-1910); Appendix G (Statistical and Legal Methodology Applied to the Early Period: 1887-1890). Report on Crime, Pauperism, and Benevolence in the United States at the Eleventh Census: 1890 (Washington, D.C.: Government Printing Office, 1897), Part II (pages 53, 83, 97, 105, 109, 111, 122-124, 691, 730, 763), http://www.census.gov/prod/www/abs/decennial/1890.html (accessed January 13, 2012).

[139] Appendix F (General Statistical and Legal Methodologies and Relevant Population Pools).

standard deviation from the mean, 95 percent of all selection decisions are expected to be within +/- 2 standard deviations from the mean, and 99.7 percent of all selection decisions are expected to be within +/- 3 standard deviations from the mean. Standard deviations beyond +/- 3 are rare. Once calculated, the binomial standard deviation is converted to a percentage probability that the disparity between the ratios—black prisoners as compared to the black male population at large—would have occurred randomly (i.e., fairly).[140]

The racial composition of the Tarrant County jail during the early period is determined by counting the prisoners, identifying their race, and eliminating recidivist prisoners (i.e., those who were incarcerated on more than one occasion). Table 2.5 summarizes the selection rates for blacks and whites in the county jail between 1887 and 1890. The *county-wide* selection rate represents the likelihood that any given male in Tarrant County would be incarcerated. The *actual* selection rate represents the proportion of prisoners, by race, in the county jail during the early period. The *expected* selection rate represents the number of prisoners of any given race that one would expect to be jailed based on their proportionate representation in the county at large. The expected selection rate also indicates the number of African Americans who were jailed but should *not* have been, as well as the number of whites who were *not* jailed but who should have

[140] Appendix F (General Statistical and Legal Methodologies and Relevant Population Pools).

been, had the laws been applied fairly. The binomial standard deviation is indicated at the bottom of the table.[141]

[141] Appendix G (Statistical and Legal Methodology Applied to the Early Period: 1887-1890). There were 391 different prisoners in the county jail during the early period, of which 115 were black and 268 were white. Of the remaining 8 prisoners not identified as either black or white, 1 was identified as Asian, 4 were identified as some other race, and the race of 3 prisoners could not be ascertained. These 8 prisoners represent 2.1 percent of the total jail population during the early period. Table D.2 (Racial Distribution of Total Convictions Represented in the Tarrant County Jail: 1887-1890).

Table 2.5

Selection Rates of Prisoners in the
Tarrant County Jail by Race,
Males 5 Years Old and Older:
1887-1890

County-wide selection rate (likelihood of any given male being incarcerated in Tarrant County)	Black	5.5%
	White	1.5%
	Overall	1.9%
Actual selection/representation rate in the county jail (percentage of the actual jail population, and the number of prisoners)	Black	29.4% (115 black prisoners)
	White	68.5% (268 white prisoners)
Expected selection/representation rate for incarceration in the county jail (percentage of county population at large, and number of prisoners that should have been in jail based on that percentage)	Black	10.1% (should only have been 39 black prisoners, and thus 76 too many blacks)
	White	89.7% (should have been 350 white prisoners, and thus 82 too few whites)
Standard Deviation		12.66

Standing alone, a binomial standard deviation of 12.66 is high enough to support an inference of intentional discrimination in a twenty-first century federal courtroom. A

standard deviation this high falls on the extreme end of the bell curve, and means that the selections decisions were well outside the realm of the expected average. Indeed, the particular selection decisions that led to disproportionate black incarceration in Tarrant County are well beyond the standard deviations that would be accepted as discriminatory in the twenty first century. The likelihood of a disparity this large occurring randomly—i.e., fairly—is less than 2 in one billion.[142]

In addition, the selection rates in Table 2.1 reveal the concrete risk of being black in late nineteenth century Tarrant County. The *expected* selection rate, for example, indicates the number of African American men who were jailed but should *not* have been, as well as the number of white men who were *not* jailed but should have been, had the laws been applied fairly. Between 1887 and 1890, at least 76 African American men were incarcerated on bases other than their conduct. Moreover, the *county-wide* selection rates illustrate that 5 of every 100 black males were at risk of incarceration at any given time, while only 2 of every 100 white males shared that same risk.

Once jailed, African American men were also at disproportionately high risk of being sent to the Tarrant County convict camp. In 1897, the Superintendent of the Census Office issued his Report on Crime, Pauperism, and Benevolence in the United States. The federal census takers in 1890 visited the Tarrant County jail, the Tarrant County convict camp, the Tarrant County almshouse, and the Fort Worth city jail. The census report documents 87 male prisoners in the county jail system, of whom 38 were black (43.7 percent) and 49 were white (56.3 percent). This snapshot in time is consistent

[142] Appendix F (General Statistical and Legal Methodologies and Relevant Population Pools).

with the racial composition of the county jail throughout the early period of this study, which spans three years. The census report, however, is far more revealing for its report on the racial composition of the prisoners in the convict camp versus the racial composition of the prisoners who remained in the jail facility itself. Table 2.6 summarizes the information in the census report.[143]

Table 2.6

Racial Composition of
Jails and Almshouses in
Tarrant County: 1890

		Black	White	Indian	Total
Fort Worth City Jail	Male		5	1	6
	Female		1		1
	Total		6	1	7
Tarrant County Jail	Male	8	31		39
	Female	4	1		5
	Total	12	32		44
Tarrant County Convict Camp	Male	30	18		48
	Female				
	Total	30	18		48
Tarrant County Almshouse	Male		6		6
	Female		3		3
	Total		9		9

These startling figures demonstrate the discriminatory treatment of Tarrant County African Americans on several levels. The benevolent assistance of the almshouse

[143] Report on Crime, Pauperism, and Benevolence in the United States at the Eleventh Census: 1890 (Washington, D.C.: Government Printing Office, 1897), Part II (pages 53, 83, 97, 105, 109, 111, 122-124, 691, 730, 763), http://www.census.gov/prod/www/abs/decennial/1890.html (accessed January 13, 2012).

was apparently reserved for whites, while blacks were funneled into the jail and then to the convict camp for road work. Moreover, the all-white population of the Fort Worth jail confirms that Tarrant County officials pilfered prisoners—black prisoners—from the city jail in order to assemble the county convict labor force. Finally, blacks endured the arduous conditions of a convict camp while whites enjoyed the relative comfort of a jail cell. Of the 38 African American male prisoners, 30 (78.9 percent) were housed in the convict camp, yet only 18 of 49 white prisoners (37.4 percent) were sent to the convict camp. Stated differently, black prisoners comprised 62.5 percent (30 of 48) of the Tarrant County convict camp that year. This meant, of course, that blacks performed the bulk of the labor on the county's roads.[144]

As revealing as this story is, however, even more revealing is contemporary white recognition of these gross racial disparities. Speaking of the entire U. S. population, the Superintendent of the Census made the following observation in his report:

> Of the white population included in these classes [prisoners, juvenile offenders, paupers in almshouses, and inmates of benevolent institutions], the largest percentage is cared for in benevolent institutions and the smallest percentage is in prison….Of the colored population the reverse is true: the largest percentage is in prison and the smallest in benevolent institutions. [[145]]

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[144] Penal historian Alex Lichtenstein has concluded that the chain gangs of the 1920s, 1930s and 1940s "had their origins in th[e] southern archipelago of misdemeanor convict camps." Alex Lichtenstein, "Good Roads and Chain Gangs in the Progressive South: The Negro Convict as a Slave," *Journal of Southern History*, Vol. 59, No. 1 (Feb., 1993), 94 (focusing on Georgia and North Carolina).

[145] Report on Crime, Pauperism, and Benevolence in the United States at the Eleventh Census: 1890 (Washington, D.C.: Government Printing Office, 1896), Part I (page 8), http://www.census.gov/prod/www/abs/decennial/1890.html (accessed January 13, 2012). Apparently there was little need to continue pointing out the obvious, since

The racial composition of the Tarrant County jail population, as well as the Tarrant County convict camp, cannot have escaped contemporary Tarrant County whites, either. Indeed, the census for 1880 does not even show Fort Worth or Tarrant County as even having a jail, much less any prisoners, demonstrating that Tarrant County whites incarcerated African American citizens with incredible speed when the opportunity presented itself. This reflected the contemporary view that African Americans were supposed to be laborers.

The binomial statistical model discussed above quantifies the disparities in the Tarrant County jail population in the aggregate. In rounding up African American men, Tarrant County whites also offered reasons for that decision. The reason for each decision is the charge for which the prisoner was convicted – the statutory criminal code provision that the prisoner is alleged to have violated. These reasons provide insight about how Tarrant County whites linked African Americans with "crime." [146]

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there was no "report on crime, pauperism and benevolence" in the 1900 or 1910 censuses.

[146] Scholars have documented post Civil War white legislative attempts to criminalize black behavior, and thus codify the link between blacks and "crime," a link that whites had already internalized. See Crouch, "All the Vile Passions," 27-28 (vagrancy in Texas); Curtin, Black Prisoners and Their World, Alabama, 2, 6, 42 (larceny); Oshinsky, "Worse Than Slavery", 32 (stealing), 82 (general link between race and crime), 87 (quoting one Mississippi white describing blacks as "lazy, lying, lustful animal[s]"), 94 (blacks perceived to have "intense sexual passions"), 122-125 (blacks perceived with predisposition to sex and prostitution), 125 (theft), 130 (general link between race and crime); Edward L. Ayers, Vengeance & Justice, Crime and Punishment in the 19th-Century American South (New York: Oxford University Press, 1984), 151 (vagrancy, rape, arson, burglary); Blackmon, Slavery by Another Name, 53 (general link between race and crime), 67 (general link between race and crime), 108 (vagrancy and weapons statutes among the laws "essentially intended to criminalize black life").

2.3 The Proffered Reasons for Incarceration—Convictions Analyzed on an Offense-by-Offense Basis: 1887-1890

Between 1887 and 1890, Tarrant County prisoners were convicted of 445 different offenses. Of these, 245 convictions (55.1 percent) fell into one of the following five categories – gambling, assault, theft, weapons, and vagrancy. Tarrant County whites incarcerated African American men disproportionately for gambling, assault, theft and weapons offenses. In doing so, whites used a variety of prosecutorial means to maximize punishment options for black defendants and generally punished blacks more harshly than whites for similar conduct. With the exception of vagrancy, each of these categories of offenses—gambling, assault, theft, and weapons—reveals its own unique pattern of use as a means of racial control in Tarrant County. These categories of offenses also reveal how contemporary whites linked blacks with "crime." Each category is discussed below in the order of disproportionate incarceration rate. [147]

2.3.1 "The Great African Game of Craps"—Gambling

Whites targeted black gambling in two ways. First, only blacks were prosecuted for engaging in gambling activities as participants – i.e., for the offenses of betting at a

[147] Table D.2 (Racial Distribution of Total Convictions Represented in the Tarrant County Jail: 1887-1890). Of the remaining 200 convictions, 183 (41.1 percent) were for unknown offenses, and 17 (3.8 percent) were for the following offenses, with the number of convictions in parentheses: sending threatening letters (4), disturbing the peace (4), Sunday laws (3), burglary (2), aid a prisoner escape (1), resisting an officer (1), drunkenness (1), and malicious mischief (1). The binomial statistical model produces reliable standard deviations when the number of selection decisions is large (i.e., the aggregate population of the county jail – 391 in 1887 and 424 in 1906) and the selection pool itself is large (i.e., a county male population in the thousands). The numbers of convictions for each offense, however, are between 22 and 87, which generally do not permit reliable binomial statistical modeling. See Table D.2 and Appendix F (General Statistical and Legal Methodologies and Relevant Population Pools).

game, or of playing dice (craps) or cards in public. Second, for the most serious gambling offense—exhibiting a gaming table—blacks were prosecuted in the District Court while whites were allowed to plead guilty in the County Court. The District Court provided whites the opportunity to impress upon blacks their vulnerability in the community. Overall, 95.5 percent of all gambling convictions leading to incarceration were obtained against blacks, even though the African American male population in the county was only 10.1 percent.

During the early period of this study, at least five different provisions of the penal code governed gambling, and all offenses were misdemeanors. The strictest statute addressed those persons who sponsored gaming establishments, and, if found guilty of keeping or exhibiting a "gaming-table or bank," required a fine of $25 to $100 and a county jail sentence of 10 to 90 days. The individual act of betting at a gaming table, or playing cards, dice (craps), or dominos in a public place, required a fine from $10 to $25, but no jail time.[148]

Twenty-two gambling convictions in the early period led to incarceration, of which 21 were black (95.5 percent). Of the 21 black gambling convictions, 9 were for

[148] PC 1879, Section 355 (playing cards in a public place, probably dating back to 1860); PC 1879, Section 358 (as amended in 1887 by "An Act to amend Article 358, of Chapter 3, Title 11, of the Penal Code of the State of Texas," Laws of Texas, Vol. IX, page 854, approved March 26, 1887 (keeping or exhibiting a gaming table); PC 1879, Section 364 (as amended in 1881 by "An Act to amend Articles 364 and 365 of an act entitled 'An Act to adopt and establish a Penal Code and a Code of Criminal Procedure for the State of Texas,'" Laws of Texas, Vol. IX, page 109, approved March 5, 1881) (betting at a gaming table). Other than reflecting general social reform pressure, the gaming table amendments in March 1887 do not affect the analysis of the gambling offenses.

engaging in gambling as participants – 1 for "betting," 2 for playing cards in public, and 6 for playing dice (craps) in public. Black gambling featured prominently in the pages of the *Gazette*. In late 1887, for example, "Deputies Witcher and Shipp ran in a couple of darkeys yesterday for indulging in the great African game of craps."[149] The remaining 12 black gambling convictions were for exhibiting a gaming table, and so was the sole white conviction for gambling.

All African Americans who exhibited a gaming table were prosecuted in the District Court, while whites were allowed to plead guilty in county court and pay a fine. In December 1887, County Attorney R. L. Carlock proclaimed that "the days of open-house gambling [are] gone," and vowed to "rigidly prosecute each and every violation under the new law governing gambling." For whites, the "crack down" resembled a business transaction more than a criminal prosecution, as the *Gazette* explained:

> County Attorney had an *understanding* yesterday with Luke Short and Charles Wright, proprietors of the gambling house over the White Elephant, and Charles Dixon, proprietor of the house over the Cabinet, in which

[149] *Gazette*, 9/27/1887 ("Officers Davenport and Taylor surprised a gang of darkies in an alley near an uptown hotel playing their great national game—craps."); *Gazette*, 11/3/1887 (Witcher and Shipp). In contrast to the evils of back-alley craps, the *Gazette* also featured editorials on socially acceptable card games in white parlors. See *Gazette*, 4/16/1887 (whist); *Gazette*, 4/15/1887 (euchre) ("The handsome parlors of Mrs. W. A. Huffman were well filled last night with guests, who had come to participate in the pleasures of progressive euchre. The north side defeated the south side in one series of games. Colonel Richard Wynne and Miss Irma Fosdick won the *booby prize*, and Mrs. Brewster the *chief prize*. Mrs Ragsdale Rogers and Mrs. J. B. Poston rendered some delightful music….") (emphases added). While whites would argue that the "handsome parlors" were private residences, so too, apparently, were some of places where African Americans played craps. *Gazette*, 9/2/1889 ("The policemen say they are determined to stop crap shooting by boys and negroes. Back alleys *and houses* up town are used for the purpose of throwing dice in this game.") (emphasis added).

> the three agree to close their houses. In conversation with Luke Short last night he said that he and Wright had *signed an agreement* to close the gambling house with the *understanding* that they were in no way to be held responsible for the acts of any one to whom the rooms might be leased, their connection with the games to cease entirely. In consideration of this, some of the cases against men in the house to be *pigeonholed*, and pleas of guilty to be entered in a number of cases….

Eleven whites were allowed to plead guilty to 22 different offenses, and pay a fine of $25 for each offense. In two cases, two white defendants asked for a jury trial, were convicted, and sentenced to 10 days in jail in addition to a $25 fine. The convict records, however, do not identify these two whites as actually having served their jail sentences. Moreover, despite its notoriety as a black gaming establishment in Hell's Half Acre, there was no mention in the *Gazette* of an "understanding" with the proprietors of the Red Light Saloon – the "colored triumvirate composed of Joe Pope, Bill Sandford and George Bates."[150]

Less than a year later, the County Attorney cracked down on the black gaming establishments, but there were no "understandings," no "agreements," no "pigeon-holed"

[150] *Gazette*, 5/16/1887 (Red Light Saloon); *Gazette*, 12/1/1887 (signed an agreement, cases to be pigeonholed, describing cases) (emphases added); *Gazette*, 12/2/1887 (quote from County Attorney). The white gaming proprietors were: 1) John Blythe, three cases of exhibiting keno; 2) George Andrews, two cases of exhibiting keno; 3) George Canary, two cases of exhibiting faro; 4) Charles Wright, six cases of exhibiting faro; 5) "California Kid," two cases of exhibiting faro; 6) Charles Hadley, three cases of exhibiting faro – pleaded guilty in two cases and convicted by a jury in the third case, and fined $25 and 10 days in jail in the third case; 7) Budd Fagg, one case of exhibiting faro; 8) Charles Bulluck, two cases of exhibiting faro; 9) Charles Dixon, one case of exhibiting faro; 10) G. C. Torbett, one case of exhibiting a gaming table, convicted by jury, fined $25 and sentenced to 10 days in jail; 11) Thomas Mitchell, one case of exhibiting faro (with a fine of only $20). The number of "cases" probably reflects the number of gaming tables exhibited.

cases. While white gaming proprietors were allowed to plead guilty in the County Court one year earlier, black gaming proprietors were prosecuted in the District Court. Even though exhibiting a gaming table was a misdemeanor, the County Attorney was statutorily authorized to prosecute the case in the District Court. Eight prisoners were convicted of exhibiting a gaming table, 7 of whom were black. The black prisoners account for 12 of the 13 gaming convictions. The sole white conviction occurred in the County Court.[151]

A gambling charge, then, was a specific method of tempering black behavior in the community. In prosecuting blacks, but not whites, for participatory offenses, whites let African Americans know that their behavior was constantly monitored. The District Court, too, played a critical function in racial control, especially when it came to gaming tables and gaming banks. The District Court impressed upon blacks their vulnerability and their precarious position in the community, and made plain that their very presence in Tarrant County was at the pleasure of white tolerance.[152]

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[151] Convict Record, Tarrant County, Texas, 1887-1890, page 97 (Henderson Cadwell, convicted of one case in September 1888), page 99 (Charlie Carter, convicted of one case in September 1888); page 20 (Archie Drew, convicted of one case in November 1887); page 101 (Henry Gaiter, convicted of one case in September 1888); page 53 (Sol Granbury, convicted of two cases in January 1888); page 57 (James Hutchins, convicted of one case in February 1888); page 29 (J. P. Roades, white, convicted of one case in the county court in December 1887); page 56 (Charles Schwartz, convicted of five cases in February 1888); CCP 1879, Article 72 (misdemeanor charges could be filed in District Court if the county had a District Court).

[152] The other types of cases tried in the District Court show the seriousness with which blacks had to take a District Court charge. These other cases include murder, arson, rape, and train robbery. See *Gazette*, 5/1/1887 (arson by Malum Hurst, one of the "hardest men in the county," for burning a barn near Bedford); *Gazette*, 6/17/1887 (murder by Henry O. Henry, who killed a peace officer during an altercation during the

2.3.2 "Salt and Battery"—Assault and Aggravated Assault

Like gambling, assault charges also served as a method of racial control. Well over half of all assault convictions were against black defendants, even though the African American male population of the county was only 10.1 percent. Three patterns emerge from the evidence to explain this disparity. First, the average age of blacks convicted of assault was nearly 7 years younger than the average age of whites convicted of assault. Second, the fines and the jail terms were harsher for blacks than for whites convicted of the same conduct. Moreover, black on white assault was punished harsher than white on black assault, and harsher than black on black assault. Third, in lieu of prosecution in the District Court, whites used the concept of the "lesser included offense" to inform blacks about severe breaches of the social order.

"Assault and battery" was the use of violence with intent to injure. For purposes of this study, there were two levels of potential assault charges—simple assault and aggravated assault—which provided prosecutors with wide charging latitude and juries with wide decision-making latitude. Simple assaults in Fort Worth and Tarrant County took a variety of forms. For example, W. R. Wolfenbarger was fined $10 for "striking a woman with a pitcher." In another case, "Walter King was fined $20 in the County court

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Gould railroad strike); *Gazette*, 6/24/1887 (murder in the Unique Saloon); *Gazette*, 7/22/1887 (rape of a six-year-old child); *Gazette*, 9/26/1889 (train robbery in Crowley in southern Tarrant County).

yesterday for assault. The parties to the row live in the country." "Simple assault" was punishable by a fine of $5 to $25, but no jail time.[153]

Aggravated assault, on the other hand, was a simple assault committed under specified conditions. An assault was aggravated, for example, if committed by a person of "robust health or strength upon one who is aged or decrepit," by a man against a woman, or by an adult against a child. An assault was also aggravated if a deadly weapon was involved, if serious bodily injury resulted, or if the "instrument or means used is such as inflicts disgrace upon the person assaulted, as an assault or battery with a whip or cowhide." Perry Brown, for example, was arrested and charged with aggravated assault "out near Birdville," where the victim was "set upon and badly beaten by three negroes, of whom Brown is said to be one." Aggravated assault was punishable by a fine of $25 to $1,000, a county jail term of one month to two years, or both.[154]

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[153] PC 1879, Sections 484 (definitions), 495 (simple assault); *Democrat*, 9/30/1876 (referring to the offense colloquially as "salt and battery"); *Gazette*, 8/13/1887, (W. R. Wolfenbarger); *Gazette* 10/22/1887 (Walter King). There was often a fine line between "assaults" and "affrays" (fighting in public), the latter considered disturbing the peace, and subjecting the offenders to a fine of up to $100. PC 1879, Section 313. For example, Belle Bronson and Fannie Guinn, two African American women, were arrested in August 1887 for an "affray," even though one of them was using a dirk, which could easily have qualified as an assault. *Gazette*, 8/15/1887 (affray between Belle Bronson and Fannie Guinn). Two other African American women, Mollie West and Annie Michel, were arrested, in all likelihood for disturbing the peace, after the two "got into a wrangle" that "greatly disturbed the people" in the neighborhood. *Gazette*, 9/18/1887 ("wrangle" between Mollie West and Annie Michel).

[154] PC 1879, Sections 484 (definitions), 498 (aggravated assault); *Gazette*, 8/22/1889 (Perry Brown). Robbery was one step beyond aggravated assault, as in the case of Frank Washington. See Chapter 2, pages 71-72.

In deciding how to charge a defendant with assault, a prosecutor had considerable flexibility using the doctrine of "lesser included offenses," which means that similar criminal prohibitions can be viewed in "degrees," or on a sliding scale of severity. Juries exercised this same flexibility when arriving at their conviction decision. Simple assault, for example, was a lesser included offense of aggravated assault. The prosecutor could charge a defendant with aggravated assault, and accept a guilty plea to simple assault in lieu of going to trial. If the defendant chose to go to trial on the aggravated assault charge, the jury would be permitted to convict the defendant of simple assault.[155]

The average age of an African American incarcerated for assault was 24.8 years, while the average white prisoner incarcerated for assault was 31.6 years. The average black prisoner convicted of assault, then, would have been born in 1862, and may or may not have been aware of being a slave before the Civil War ended. Historian Howard Rabinowitz discusses how the post war generation of African Americans often refused to "abide by the old standards of behavior" as did their parents. In expressing their dismay over younger blacks, whites often compared those younger blacks with older blacks.[156] For example, Will Nichols, discussed previously, was born in 1870 and raised in Fort Worth. After murdering a white man, Nichols was convicted and probably sent to the

[155] CCP 1879, Articles 713 ("Where a prosecution is for an offense consisting of different degrees, the jury may find the defendant not guilty of the higher degree (naming it), but guilty of any degree inferior to that charged in the indictment or information."), 714 (defining the degrees of various offenses), 714(1) (defining the degrees of murder), 714(2) (defining the degrees of assault).

[156] Rabinowitz, Race Relations in the Urban South, 334-336; see also Smith, "Segregation and the Age of Jim Crow," in When Did Southern Segregation Begin?, 8.

state penitentiary. The *Gazette* characterized Nichols as "vicious" and "indolent," but described his stepfather as "one of the best and most highly respected colored men in the city."[157] This age variation probably accounts for much of the disparity in conviction rates for assault. Of the 26 assault convictions, 15 were black (57.7 percent) and 9 were white (34.6 percent).[158]

Once arrested and convicted, these young black defendants were punished more harshly than their white counterparts. The average fine for an African American convicted of assault was $21.93, while the fine for a white defendant was $13.67. The difference of $8.26 was not insignificant—at $1.00 per day, it meant an additional 8 days in the convict camp. The jail sentences were also harsher for blacks convicted of assault. For African Americans, the average jail sentence was 17.3 days, while the average jail sentence for whites was 12.9 days, for a difference of 4.4 days. Between the additional fine and jail time, black prisoners convicted of assault were spending an additional 10 days on the road gang.

Newspaper reports of "crime" shed light on these disparities in formal sentencing. Blacks, for example, were punished more harshly when the victim was white, but whites were punished less severely if their victim was black. Moreover, punishment was comparatively mild when both the offender and the victim were black. When William Drew, an African American man, struck another African American man on the head with a stone, he was only fined $25. When Charles Schwartz, an African American man,

[157] *Gazette*, 5/21/1887 (Will Nichols).

[158] Table D.2 (Racial Distribution of Total Convictions Represented in the Tarrant County Jail: 1887-1890). The race was unknown for one of the convictions.

"kicked a woman with such brutality as to nearly kill her," he was only fined $25. When Bob Bohanan, the "ebony colored boot black," shot his step-father in the shoulder, he was only fined $5 (five dollars). These intentional acts created the same potential for death as did Will Nichols's act of throwing a stone at a white man and killing him. Nichols, however, was sentenced to state prison, while Drew, Schwartz, and Bohanan remained in the community. Billie Oliver also remained in the community. Oliver, a white man, was charged with murder in the District Court after he killed George Howard, a "colored" man. The jury returned a verdict of negligent homicide and sentenced Oliver to 60 days in the county jail. [159] This differential value of life was certainly not lost on African Americans.

If you were black, and your victim was white, the charge of aggravated assault must have been an extremely powerful tool of racial control. In the hands of prosecutors and juries, the ability to charge or convict of a lesser-included offense was real power over a defendant, especially a black defendant. So effective was this power that the prosecutor did not need to invoke the jurisdiction of the District Court too often for assault offenses. Only on five occasions did the prosecutor do so, and none of those defendants were white—four were black and one was an unknown race.[160] These four

[159] *Gazette*, 2/18/1887 (Bob Bohanan); *Gazette*, 4/2/1887 (Will Nichols); *Gazette*, 6/29/1887 (Billie Oliver); *Gazette*, 9/9/1887 (William Drew and Charles Schwartz); Chapter 2, page 84 (Will Nichols). Rabinowitz has similarly found that milder punishment of black on black crime "reflected a belief in the unimportance of Negro wrongdoing [as long as] it was confined to the black community." Rabinowitz, Race Relations in the Urban South, 43.

[160] Table D.3 (Racial Distribution of Prisoners Convicted of Multiple Offenses in the Tarrant County Jail: 1887-1890).

occasions, over the thirty six months of the early period of this study, were probably sufficient to bolster the use of the lesser included offense and keep black violence to a minimum, at least with respect to potential white victims.

2.3.4 "A Bold Piece of Rascality"—Theft

Like assault, African Americans were disproportionately convicted of theft offenses and their sentences for theft were significantly harsher than their white counterparts. However, instead of using the concept of lesser-included offenses, whites stretched the value of the stolen property in order to charge a felony, and thus obtain a harsher sentence. During the early period in this study, black prisoners accounted for nearly one half of all theft convictions. Moreover, African American men convicted of theft were 8 years younger than whites, and black jail sentences were nearly 34 days longer than white jail sentences. Black theft from the person, especially a white person, probably accounts for much of this sentencing disparity. In addition, whites often stretched the value of the stolen property in order to charge a felony, and thus put blacks at risk of banishment to the state penitentiary. Tarrant County whites appear to have shared the prevailing belief that blacks had a propensity for stealing. [161]

The penal code prohibited a wide range of conduct falling under the general term "theft." In the situations relevant to this study, the evidence reveals that most conduct fell under the general theft statute (including pick pocketing), the swindling statute, and the embezzlement statute. Generally, "theft" was the "fraudulent taking of the personal

[161] Curtin, Black Prisoners and Their World, Alabama, 42 (larceny); Oshinsky, "Worse Than Slavery", 32 (stealing); Ayers, Vengeance & Justice, 151 (burglary).

corporeal property of another," pick pocketing was "private" stealing without the knowledge of the victim, swindling was theft by "deceitful" means, and embezzlement was theft from one's employer.[162]

The punishment for general theft, swindling and embezzlement depended on the value of the property that was stolen. If the value of the property was under $20, the punishment was a county jail term "not exceeding one year, during which time the prisoner may be put to hard work," plus an optional fine not exceeding $500. Theft under $20 often involved stealing clothes, jewelry, tools, or small amounts of money from one's employer.[163] If the value was $20 or more, the offense was a felony punishable by a mandatory prison term of two to ten years in the state penitentiary. Theft of large

[162] PC 1879, Sections 735 (general theft of $20 or more is a felony), 736 (general theft under $20 is a misdemeanor), 744 (pick pocketing is a felony), 786 (all forms of embezzlement), 790 (swindling under $20), 796 (swindling over $20). As with the assault offenses, the prosecutor and the jury had wide latitude in prosecuting and convicting a defendant. Swindling, embezzlement, and pick pocketing were lesser included offenses of theft. CCP 1879, Article 714(6) (lesser included offenses). One example of a prosecutor's use of a lesser included offense to a white defendant's advantage was the case of Charles Yates. The *Gazette* noted that Yates was a "young man about eighteen years old," who was arrested and indicted for burglary in September 1887. Yates was working for a Grapevine family, and when the family was "gone from the home," Yates "rifled through the house taking several articles of value." Yates pleaded guilty to petty larceny and was sentenced to 10 days in jail. *Gazette*, 9/17/1887 (Charles Yates); *Gazette*, 9/27/1887 (Charles Yates). Had Yates been black, he no doubt would have sent to the state penitentiary.

[163] For theft under $20, see *Gazette*, 1/7/1887 (theft of several spools of barbed wire, suspected offender was black); *Gazette*, 2/9/1887 (theft of jewelry, suspected offender was Fannie Ross, an African American woman); *Gazette*, 3/11/1887 (a "colored sneak thief" name Walker was arrested for theft after he was "caught in the act of tapping the till"); *Gazette*, 3/30/1887 (theft of a vest from a Chinese laundry, alleged offender was black); *Gazette*, 7/2/1887 (theft of gold watch, both suspected offender and alleged victim were black); *Gazette*, 10/19/1887 (embezzlement of property under $20); *Gazette*, 2/5/1890 (theft of an overcoat, dress coat, bridle and halter from a business office).

amounts of clothes or guns probably reached the felony level.[164] Swindling by "confidence men" was common in Fort Worth at this time, and was usually charged as a felony.[165] Pick pocketing was always a felony requiring a prison sentence of two to seven years. Henry Brown and Henry Thomas, discussed previously, were convicted of pick pocketing from "a section hand named Anderson" and sentenced to the state penitentiary.[166]

As in the case with assault convictions, the average black prisoner convicted of theft would have been born in 1862 and might not have been aware of being a slave before the Civil War ended. The average age of a black prisoner incarcerated for theft was 24.5 years, while the average age for whites was 32.5 years. As with assault, Tarrant County whites targeted a younger generation of African Americans for theft offenses. This age variation probably accounts for much of the disparity in conviction rates. Of the 73 theft convictions, 36 were black (49.3 percent) and 35 were white (47.9 percent).[167]

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[164] For theft likely to exceed $20, see *Gazette*, 4/30/1887 (burglary of W. F. Lake's hardware store, William Coleman arrested for stealing a hatchet, monkey wrench, and various livery articles); *Gazette*, 11/5/1888 (theft of several boxes of boots and shoes from a railroad car; theft of 4 shotguns and 14 pistols from A. J. Anderson's store).

[165] For swindling, see *Gazette*, 10/15/1886 (Frank Washington, black, arrested for swindling several "gentlemen" our of several dollars each by a story about fictitious cotton); *Gazette*, 6/10/1887 (J. B. Henderson, a "confidence crook," was sentenced to three years in state prison); *Gazette*, 7/22/1887 (swindling by a con man in the amount of $250); *Gazette*, 12/17/1887 (two men, last names Hughes and George, swindled A. M. Tong, a visitor to Fort Worth from Parker County).

[166] For Henry Brown and Henry Thomas, see Chapter 2, pages 70-72.

[167] Table D.1 (Racial Distribution of Individual People in the Tarrant County Jail: 1887-1890). Of the 73 theft convictions, 1 was for a different race and 1 was of unknown race.

The more significant pattern for theft convictions, perhaps, is that jail sentences for blacks were far longer than for whites. The average jail sentence for an African American convicted of theft was 36.4 days, compared to 2.5 days for whites. This huge difference meant an extra month (33.9 days, the difference between the average black sentence and the average white sentence) in the convict camp. Newspaper reports of "crime" reveal that blacks were punished more harshly when the theft occurred from the person, or when the victim was white. In one extreme case, an African American man was arrested for stealing a dress from a white victim, and the *Gazette* noted that "the evidence is dead against him and he is good for the pen." This must have been an expensive dress to reach the $20 threshold for a felony. Whites, however, did not need to resort to the District Court for blacks. Of the 12 theft convictions that occurred in District Court, 5 were black and 6 were white.[168]

2.3.4 "Pistol Toting"—Weapons Offenses

Scholars have documented post war white attempts to disarm African Americans,[169] and Tarrant County whites incarcerated blacks disproportionately for weapons offenses. Of the 35 convictions for unlawfully carrying a weapon, 12 (34.3 percent) were against African Americans at a time when the black male population in the

[168] *Gazette*, 2/9/1887 (good for the pen). The race is not known for the remaining defendant convicted in the District Court.

[169] Crouch, "All the Vile Passions," 28-29 (weapons); Blackmon, Slavery by Another Name, 108 (weapons). Crouch explains that the first post war Texas legislature passed a series of contract labor and vagrancy laws intended to keep blacks out of the urban areas and on the rural plantations. Crouch goes on to explain that the state legislature also made it unlawful for anyone to carry guns on the "enclosed premises or plantation" of any citizen without the property owner's consent.

county was only 10.1 percent. The evidence reveals that blacks and whites were disarmed for different reasons. Frontier conditions appear to have accounted for more white disarmament, while African Americans were disarmed because of the threat they posed to the white social order.

The statutory prohibition against carrying weapons was enacted by the Reconstruction legislature in 1871 amid great anxiety across the state. The anxiety surrounding the initial passage of the weapons statute was due to fears of disarmament by a Radical state legislature despite a state constitutional provision protecting the right to keep and bear arms. The legislature's primary purpose, however, was curbing the pervasive violence throughout the state, especially on the western frontier. While Texas historian Barry A. Crouch has documented white attempts to disarm Texas blacks with the Black Codes, there is no evidence that the 1871 legislature intended to reach African Americans to the exclusion of whites. The statutory language prohibited anyone from carrying "on or about his person, saddle, or in his saddle bags, any pistol, dirk, dagger, slung-shot, sword-cane, spear, or [brass] knuckles made of any metal or any hard substance, bowie knife, or any other kind of knife [except a pocket knife]." When first enacted, the penalty was a mandatory fine of $25 to $100 and forfeiture of the weapon. [170]

The fine, however, did not have the effect intended by the legislature. In 1887, a Redeemer legislature amended the statute by removing the forfeiture provision, but

[170] PC 1879, Section 318. In 1878, a Texas Appeals Court held that the forfeiture provision violated Section 23 of the state constitution, which provided that "Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power by law to regulate the wearing of arms." See Jennings v. State, 5 Tex. App. 298 (1878).

mandating a fine of $25 to $200 *and* a county jail sentence of 20 to 60 days. Whites vigorously protested the mandatory jail sentence because they knew it would apply to them. In 1887, the *Gazette* reported on Tarrant County sentiments when J. F. Fogg was sentenced to a jail term:

> Complaints against the new pistol law on account of the imprisonment clause have not been unfrequent [sic]. So long as only hard characters were convicted of violating the law nothing was said, but the minute a man of any standing and influence should be found guilty of "packing a gun" the law was certain to come in for a liberal share of abuse. Yesterday J. F. Fogg, a well known livery stable keeper, was tried in the County court and found guilty of carrying a pistol. The jury gave the lowest penalty, $25 fine and twenty days in jail. Fogg cared not a fig for the fine, and would gladly have paid double to get rid of the jail feature. This couldn't be done, however, if he paid 100 times the fine since the double punishment is imperative.

There was such opposition to the mandatory jail term that the legislature, in its very next session two years later, amended the statute to provide for a fine *or* a jail term, or both, and even reduced the potential jail term to 10 to 30 days.[171]

Despite the law, weapons remained a fact of life in Fort Worth and Tarrant County in the late 1880s, and most people were armed. Pistols were the favored weapon, but brass knuckles and knives of all kinds were popular as well. A certain amount of

[171] *Gazette*, 10/14/1887 (J. F. Fogg); PC 1879, Section 318 (as amended in 1887 by "An Act to amend Article 318, Chapter 4, Title 9, of the Penal Code of the State of Texas," Laws of Texas, Vol. IX, pages 804-805, approved February 24, 1887, and as amended in 1889 by "An Act to amend an act entitled 'An Act to amend Article 318, Chapter 4, Title 9, of the Penal Code of the State of Texas,'" Laws of Texas, Vol. IX, page 1061, approved January 30, 1889). The 1887 and 1889 amendments regarding the jail sentence both went into effect during the early period of this study. These penalty vacillations, however, did not affect arrest rates for this particular offense.

bellicose bravado was expected, even tolerated, in a morbidly curious way. In the summer of 1887, for example, the *Gazette* reported that "Bill Cureton, an engineer, and one Jakes, a brakeman on the Denver road, had a fight in which Jakes completely used up his enemy." The next day, Cureton went in search of Jakes with a "notorious character" named McGinnis, "riding about the Third Ward in a buggy." When the police heard that Cureton and McGinnis were searching for Jakes, they arrested Cureton and confiscated Cureton's pistol, which was "loaded all around." The *Gazette* noted that the "new law" required a jail term for carrying a pistol, but wondered whether the new law "will be carried out in this instance." The response was different, however, when the stakes were high and someone was killed. In January 1887, for example, George Bates, an African American, was arrested for assaulting Sam Hunter, "a young mulatto," with a dirk. Bates was released but then rearrested when Hunter died of his wounds. In August 1889, Will White, an African American, shot Gilbert Gill, also black. White fled, professing his intent to turn himself in if Gill lived.[172]

[172] *Gazette*, 10/10/1886 ("A couple of lads from Denton County were arrested last night for carrying brass knuckles."); *Gazette*, 10/10/1886 ("A man named William Anderson was arrested in the Third Ward last night for carrying a six-shooter. He was drunk, and got into a row with some negro gamblers."); *Gazette*, 1/27/1887 (George Bates and Sam Hunter); *Gazette*, 4/19/1887 ("Henry Loyd, colored, was arrested yesterday on a charge of aggravated assault, also for carrying brass knucks."); *Gazette*, 7/21/1887 (Bill Cureton); *Gazette*, 8/15/1887 (article called "Fighting Females" describes a fight between "Belle Bronson and Fannie Gwinn, two colored women dwelling on Ham branch in the eastern suburbs," where Gwinn used a dirk to stab Bronson in the back, Bronson used her teeth to bit Gwinn's ear); *Gazette*, 10/29/1887 (W. F. Whitlow arrested for assault with a pistol when he shot Charles Dixon after "some misunderstanding arose over a faro game in Dixon's [gaming] house"); *Gazette*, 11/22/1887 ("The county court was busy yesterday with misdemeanor cases, assaults, gaming, pistol toting, etc."); *Gazette*, 8/26/1889 (Will White and Gilbert Gill).

Tarrant County whites disarmed blacks more than whites. Of the 35 convictions for unlawfully carrying a weapon, 12 (34.3 percent) were against African Americans. Moreover, blacks were prosecuted under circumstances where whites would not have been prosecuted. Louis Kuntz, Fred Muehlethaler, and Henry Morrison illustrate this situation. Kuntz and Muehlethaler, both white, strolled into Fort Worth with pistols, rifles bowie knives and a tomahawk "with a bright glistening blade that would have made a Comanche's soul sick to own," but they were advised to "sell their equipments" and told to find a job. Morrison, an African American, received no such advice. For a single Colt pistol, albeit "murderous looking," Morrison was arrested and fined $25. Nearly everyone, however, was eventually disarmed, even if reluctantly. Even District Court Judge R. E. Beckham in Tarrant County was doing his part to curb the potential for violence. In September 1887 he "requested all peace officers to lay aside their pistols when they come into the courtroom [because] he thinks they appear to better advantage minus their guns."[173]

But the reasons for white and black disarmament were different. Frontier conditions appear to have accounted for more white disarmament, while African Americans were disarmed because of the threat they posed to the white social order. Once the frontier conditions passed, the black conviction rate for weapons offenses would skyrocket in the twentieth century.

[173] *Gazette*, 9/13/1887 (Judge Beckham). For Louis Kuntz, Fred Muehlethaler, and Henry Morrison, see Chapter 2, pages 64-65.

2.3.5 "The Vags"—Vagrancy

In a surprising anomaly, whites account for the lion's share of vagrancy convictions in Tarrant County in the early period. Despite the clear statutory intent to sweep African Americans into the vagrancy net, blacks only comprised 11.5 percent of all vagrancy convictions in Tarrant County, at a time when African American men comprised only 10.1 percent of the county at large. The most reasonable explanation for this is the massive white population increases that accompanied westward expansion.

The Texas vagrancy statute was originally passed with other Black Code provisions in 1866, and is one of those offenses clearly directed at the newly freed slaves. In 1866, vagrants included those people "without visible means of support," who were subject to arrest and fine in "any sum not exceeding ten dollars." While this sounds innocuous enough, other provisions in the statute clearly reveal that blacks were targeted. For example, the statute authorized private citizens to arrest vagrants if peace officers were not available. The statute further provided that the defendant "shall not be released from custody until the fine and costs are paid," and if the fine and costs were not paid within a "reasonable time," the defendant "shall" be put to labor at a rate of one dollar per day. [174]

By the time of the 1879 Penal Code, however, the overtly racist provisions of the 1866 statute were removed. Nevertheless, the Texas penal code continued to define a

[174] "An Act to define the offence of Vagrancy, and to provide for the punishment of Vagrants," Laws of Texas, Vol. 5, page 102. See also Crouch, "All the Vile Passions," 27-28 (vagrancy in Texas); Ayers, Vengeance & Justice, 151 (vagrancy); Blackmon, Slavery by Another Name, 108 (vagrancy);

"vagrant" as an "idle person who lives without any means of support, and makes no exertions to obtain a livelihood by honest employment," any person who "strolls idly about the streets of towns or cities, having no local habitation and no honest business or employment," any person who "strolls about to tell fortunes or to exhibit tricks" without a license, and an "habitual drunkard who abandons, neglects or refuses to aid in the support of his family." A "vagrant" expressly included a "common prostitute," a "professional gambler," and any person who "goes about to beg alms who is not afflicted or disabled by a physical malady or misfortune." The statute provided for a maximum fine of ten dollars.[175]

In 1887 white vagrancy was a problem of epidemic proportions in Tarrant County. Indeed, the "tramp" population was so large that it was always discussed using military terminology. Every year Tarrant County officials would prepare themselves for the "arrest of a class of men who pour in from other cities and hang about Fort Worth with no visible means of support, and who never intend striking a lick or doing work of any kind." This "class of men," sometimes referred to as a "brigade," generally congregated "around the [railroad] depot" or near the "bottoms of the Trinity and Sycamore Creek." County officials would first notice a trickle of vagrants—the "advanced guard"—until the river bottoms "harbored hundreds of these strollers." The strollers "would lie up in the day time and at night sally forth to plunder." At some point,

[175] PC 1879, Sections 384 and 385 (renumbered to Sections 412 and 413, respectively, in 1897).

the city marshal would "make another raid on them," or the county sheriff would disperse them using "some way…not put down in the Revised Statutes." [176]

The hundreds of "tramps" appeared to have been white men, based on the lack of any reference to their race, who preyed on citizens in the city and surrounding countryside. Even when police officials arrested the "tramps," they often preferred a diet of bread and water to work.[177] This was the more traditional vagrancy that would otherwise have ensnared Tarrant County blacks.

The vagrancy statute also reached a wide range of other conduct, as well, beggars, prostitutes, and professional gamblers. In Tarrant County in 1887, however, whites engaged in much of that conduct. Prostitutes were commonly prosecuted under the vagrancy statute, and such prosecutions spanned the color line.[178] Professional gamblers

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[176] *Democrat*, 3/17/1877 (marshal will make another raid on them); *Gazette*, 8/6/1887 (class of men who pour in from other cities); *Gazette*, 8/11/1887 (brigade); *Gazette*, 11/19/1887 (advanced guard has arrived; hundreds of strollers; sally forth to plunder; old calaboose running over with them; sheriff dispersing by means not authorized by statute—in 1885, each "representative of the order" given 49 strokes with a "long keen switch").

[177] *Democrat*, 3/23/1877 (under the headline "The Vags": "We are informed that quite a number of men, who have no visible means of support, are living under the trees that line the bluff on the banks of the river. They are camped by the side of logs and have no property of any kind. They must live by begging or depredations on the good people of the town."); *Gazette*, 8/1/1887 (editorial lamenting the increase in beggars in Fort Worth, who "mace" for a drink or a meal); *Gazette*, 8/11/1887 ("We let Jim Dillon out this morning after keeping him in for nine days on a bread and water diet," said calaboose officer Jim Rushing to a Gazette man. "What was he in for?" asked the reporter. "Chronic vagrancy. You see Jim belongs to the brigade that would almost starve sooner than work.").

[178] *Gazette*, 4/1/1887 ("Eleven of the worst females of the soiled dove variety, residents of the Half-Acre, *six colored and five white*, were jailed yesterday. They were indicted by the grand jury for vagrancy.") (emphasis added); *Gazette*, 8/22/1887 (African

were also commonly prosecuted under the vagrancy statute.[179] Tarrant County officials simply could not afford to focus limited resources solely on blacks as they also sought to curry northern capital investment. As with weapons, however, once the problems of a frontier community passed, the black conviction rate for vagrancy would skyrocket in the twentieth century.

2.4 Pretext and The Chimera of Criminal "Justice"

The *prima facie* case of white discrimination against blacks in nineteenth century Tarrant County is rock-solid. The statistical evidence is overwhelming, whether the jail population is considered in the aggregate or by specific offense, and modern civil rights law permits an inference of intentional discrimination based on the statistical evidence alone. The legal inference, though, is hardly necessary. Tarrant County's history as a southern slave jurisdiction, its decision to secede and join the Confederacy, and its successful efforts to restore white racial hegemony after Congressional Reconstruction reveal the society that whites created for whites. Tarrant County whites would not, and did not, yield their social or political power despite Congressional Reconstruction. After political Redemption, Tarrant County whites subdued the African American population

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American prostitute Hattie Johnson arrested for vagrancy); *Gazette*, 11/4/1887 ("The deputy sheriffs were kept busy yesterday serving warrants on parties indicted by the grand jury. A number of female vagrants, mostly colored, were put in jail."). "Keeping" a disorderly house, however, could result only in a fine of $100 to $500. See PC 1879, Section 341; *Gazette*, 10/19/1887 ("The keepers of three disreputable houses were fined each $100 in the county court yesterday.").

[179] *Gazette*, 9/29/1887 (professional gambler arrested for vagrancy); *Gazette*, 2/17/1887 ("A number of local sporting men went to Dallas yesterday to stand trial for gaming…").

using the local law enforcement system, incarcerating African American men because they were black, and exploiting their labor as if they were still slaves.[180]

Contemporary whites, however, would no doubt argue that they were simply applying race-neutral laws to "civilize" the frontier, suppress "crime," and create a business climate conducive to attracting northern capital. The disproportionate incarceration of blacks, the argument goes, was not purposeful but an unfortunate and unintentional byproduct of prewar beliefs about blacks. As proof, contemporary whites would point out that white criminals were incarcerated as well as black criminals, for all offenses, and white convicts labored on the county roads alongside black convicts. The coercive effect of the law was applied to whites as well as blacks, particularly the "tramps" and the heavily armed and dangerous "hard" men of the county. Local prosecution of crime, after all, merely reflects the social and other issues facing the community, and law enforcement and court officials only responded to the circumstances presented to them. Phrased in this manner, the argument has some superficial appeal, especially since it has worked for over a century.[181]

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[180] Texas historian Barry A. Crouch considers Texans to have been a particularly recalcitrant Confederate population. According to Crouch, since Texans were "relatively untouched by the ravages of war and unscarred by the psychology of defeat," they moved into the post war era with the idea that they had "never been subdued." Barry A. Crouch, The Freedmen's Bureau and Black Texans (Austin: University of Texas Press, 1992), 4-14.

[181] As to whites working on the county roads, see *Gazette*, 11/3/1887 ("The county convicts were started out to work yesterday afternoon, an even dozen of them, *five whites and seven blacks*.") (emphasis added). As for "equal" prosecution of the laws, see *Gazette*, 4/1/1887 ("Eleven of the worst females of the soiled dove variety, residents of the Half-Acre, *six colored and five white*, were jailed yesterday. They were indicted by the grand jury for vagrancy.") (emphasis added). As to "civilizing" the frontier, see

But nineteenth-century Tarrant County whites cannot absolve themselves so easily. The argument simply ignores the reality of human behavior. Tarrant County whites did not, *en masse* and literally over night, jettison their white supremacist ideology that had buttressed slavery for centuries. Neither did Tarrant County whites passively accept their post war circumstances. They were, in fact, the affirmative agents of change so proudly touted in their contemporary writings. Whites *acted*, they were not acted *upon*, and the sheer magnitude of the disproportionate black incarceration, in the aggregate, demonstrates that they were conscious of what they were doing. Moreover, that whites were also subjected to the criminal law does not mean that those same laws were applied fairly to blacks. Indeed, the disproportionate harshness of black punishment for gambling, assault, theft, and weapons offenses belies any credible claim to an equitable legal system. Even a quick glance at a photograph of a contemporary Tarrant County convict camp reveals a legal system gone awry for African Americans. But for whites, Tarrant County's "successful" experiment with racial control, under the guise of a county court criminal conviction, paved the way for whites to refine their use of the

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Cummings-1, Chapters III ("…the [Indian] savages outnumbering the white so overwhelmingly that but for [Sam Houston's treaty with the Indians in 1843] civilization in North Texas would have been indefinitely delayed.") and XXXVII ("we are, after all a composite race from the Aryan type"). As to "civilizing" African Americans, see Texas Almanac for 1858, 132-133 ("The negro is incapable of self-government, or self-improvement….He has never advanced one step, excepting as a slave to white men. And when civilized and Christianized in slavery, and then freed, he invariably relapses, more or less rapidly, into ignorance and barbarism."). As to creating a conducive business climate for northern capital investment, see Chapter 1, footnote 63. For white convictions generally, see Table D.2.

county court criminal conviction as a *de facto* means of racial control in the early twentieth century.[182]

[182] For the photographs, see Illustrations I.1 and I.2.

CHAPTER 3

THE EARLY TWENTIETH CENTURY

The Tarrant County public policy of incarcerating African American men because of their race continued into the twentieth century. Indeed, early twentieth century whites incarcerated blacks at an even more disproportionate rate than in the late nineteenth century, reinforcing a self-fulfilling link between blacks and "crime." Between 1906 and 1908, a total of 424 different prisoners were incarcerated in the Tarrant County jail, of whom 214 were black (50.5 percent) and 171 were white (40.3 percent). At a time when African American males comprised only 14.0 percent of the county at large, African American men comprised over 50.0 percent of the prisoners in the county jail. This disparity between the actual African American male population in jail and the representation of African American men in the county at large is a staggering 21.71 binomial standard deviations. As in the earlier period, the likelihood of a disparity this large occurring randomly (i.e., fairly) is less than 2 in one billion. Standing alone, statistical evidence of this magnitude is sufficient to justify an inference of intentional discrimination in a twenty first century federal courtroom.[183]

[183] Table E.1 (Racial Distribution of Individual People in the Tarrant County Jail: 1906-1908); Table F.2 (Males in Tarrant County by Race and Selected Ages: 1890-1910); Appendix H (Statistical and Legal Methodology Applied to the Later Period: 1906-1908). For a full explanation of the general statistical and legal principles applied in this study, see Appendix F.

In addition to this statistical evidence, other evidence rules out any reasonable explanation that the disproportionate rate of black incarceration continued to be anything other than intentional. When measured against the African American male population of 14.0 percent in the county at large, blacks account for a highly disproportionate number of convictions for six specific offenses: 65.4 percent of all gambling convictions, 60.0 percent of all convictions for sexual offenses, 54.2 percent of all theft convictions, 50.0 percent of all vagrancy convictions, 47.8 percent of all weapons convictions, and 42.0 percent of all assault convictions.[184] These are the same offenses (except vagrancy) for which blacks were disproportionately incarcerated in 1887, plus the additional category of sexual offenses. The specific offenses for which African Americans were convicted reflect how whites linked blacks with "crime."

White intent to incarcerate blacks is also revealed by the fluctuations in black conviction rates for these various categories of offenses. The most striking example is vagrancy, which had a black incarceration rate of 11.5 percent in 1887 but a 50.0 percent rate in 1906. The black incarceration rate for weapons offenses also skyrocketed in the early twentieth century (from 34.3 percent in 1887 to 47.8 percent in 1906), as did theft convictions (from 50.7 percent in 1887 to 54.2 percent in 1906). Black conviction rates for two offenses, however, actually went down, even though they remained disproportionate to the white conviction rate for the same offense. The black conviction rate for gambling offenses went from 95.5 percent in 1887 to 65.4 percent in 1906, and

[184] Table E.2 (Racial Distribution of Total Convictions Represented in the Tarrant County Jail: 1906-1908).

the black conviction rate for assault offenses went from 57.7 percent in 1887 to 42.0 percent in 1906.[185] These modulations demonstrate that contemporary whites were in complete command of the criminal "justice" system, and could turn black convictions "on" or "off" like a spigot depending on where whites thought the "problem" was.

These modulations also dispel any theory that Tarrant County Jim Crow became more "fanatical" in the twentieth century. The fluctuating black incarceration rates demonstrate that the use of the county court criminal conviction as a *de facto* means of racial control was working. Contemporary Tarrant County whites were consciously responding to circumstances—heavy black migration to the cities, rapid industrialization, and social reform pressures—in a way that allowed them to maintain racial hegemony.

3.1 The People in the Tarrant County Jail—A Profile of Prisoners in the Aggregate: 1906-1908

Whites incarcerated more prisoners, and more black prisoners, in the county jail between 1906 and 1908 than they did twenty years earlier. At a time when the African American male population comprised only 14.0 percent of the county at large, African American men comprised 50.0 percent of the county jail population. Applying the same statistical model used in the early period, the disparity between the ratio of black prisoners and the ratio of black men in the county at large is calculated and expressed as a binomial standard deviation of 21.71, far more pronounced than two decades earlier. Applying twenty first century legal standards, a binomial standard deviation this high

[185] Compare Table D.2 (Racial Distribution of Total Convictions Represented in the Tarrant County Jail: 1887-1890) with Table E.2 (Racial Distribution of Total Convictions Represented in the Tarrant County Jail: 1906-1908).

permits an inference of intentional discrimination. Tarrant County whites continued to use the county court criminal conviction as a means of racial control.[186]

The binomial standard deviation, again, measures the disparity of human "selection" decisions. As in the earlier period, some person (or group of persons) decided to "select" each prisoner for incarceration in the early twentieth century. The racial composition of the county jail is determined by counting the prisoners, identifying their race, and eliminating recidivist prisoners. Table 3.1 summarizes the selection rates for blacks and whites in the county jail between 1906 and 1908. The *county-wide* selection rate represents the likelihood that any given male in Tarrant County would be incarcerated. The *actual* selection rate represents the proportion of prisoners in the county jail, by race, during the later time period. The *expected* selection rate represents the number of prisoners of any given race that one would expect to be jailed based on their proportionate representation in the county at large. The expected selection rate also indicates the number of African Americans who were jailed but should *not* have been, as well as the number of whites who were *not* jailed but should have been, had the laws been applied fairly. The binomial standard deviation is indicated at the bottom of the table.[187]

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[186] Table E.1 (Racial Distribution of Individual People in the Tarrant County Jail: 1906-1908); Table F.2 (Males in Tarrant County by Race and Selected Ages: 1890-1910); Appendix H (Statistical and Legal Methodology Applied to the Later Period: 1906-1908).

[187] Appendix H (Statistical and Legal Methodology Applied to the Later Period: 1906-1908). There were 424 different prisoners in the county jail during the later time period, of whom 214 were black (50.5 percent) and 171 were white (40.3 percent). The

Table 3.1

Selection Rates of Prisoners in the Tarrant County Jail,
by Race, Males Age 5 Years Old and Older: 1906-1908

Description	Race	Rate
County-wide selection rate (likelihood of any given male being incarcerated in Tarrant County)	Black	2.9%
	White	.4%
	Overall	.8%
Actual selection/representation rate in the county jail (percentage of the actual jail population, and the number of prisoners)	Black	50.5% (214 black prisoners)
	White	40.3% (171 white prisoners)
Expected selection/representation rate for incarceration in the county jail (percentage of county population at large, and number of prisoners that should have been in jail based on that percentage)	Black	13.9% (should only have been 59 black prisoners, and thus had 155 too many blacks)
	White	85.9% (should have been 364 white prisoners, and thus had 193 too few whites)
Standard Deviation		21.71

jailer did not record race for the remaining 39 prisoners (9.2 percent). Table E.1 (Racial Distribution of Individual People in the Tarrant County Jail: 1906-1908).

The information in Table 3.1 reveals the continuing risk of being black in early twentieth century Tarrant County. The *expected* selection rate indicates the number of African American men who were jailed but should *not* have been, as well as the number of white men who were *not* jailed but should have been, had the criminal law enforcement process been applied fairly. Between 1906 and 1908, at least 155 African Americans were incarcerated on bases other than their conduct. Moreover, the *county-wide* selection rates illustrate that nearly 3 of every 100 black males were at risk of incarceration at any given time, compared to a .4 percent risk for white males.

African Americans continued to work on the county roads in the early twentieth century. By 1906 Tarrant County had four convict camps, and the jail records are peppered with references to how prisoners discharged their fines. Prisoners "worked out" their fines by service on the "road," the "county road," or sometimes just by "work" or "labor," or, most of the time, simply by the date that a prisoner was "put to work." One particularly poignant entry in the jail records reveals the power of incarceration as a method of racial control. On July 30, 1906, Jonathan Davis, a 26-year old African American man, was arrested for aggravated assault. Davis was fined $25 for the offense, and assessed court and other fees of $36.05, for a total of $61.05. This was apparently Davis's second offense because the fine and fees were doubled to $122.10. Davis never actually received a jail term as part of his sentence. At a rate of $1.00 per day, though, Davis had to serve 122 days in jail, roughly four months. He was "put to work" on

August 22, 1906, with an expected release date of December 18, 1906. Davis, however, was released on September 21, 1906, after only one month, "for being a good negro."[188]

Whites continued to incarcerate African American men disproportionately in the early twentieth century, so much so that, based on the statistical evidence alone, modern federal civil rights law permits an inference of intentional discrimination. But there is another aspect to the statistical story. Just as in the earlier period, whites continued to incarcerate blacks disproportionately for specific offenses, revealing, once again, how Tarrant County whites perceived of, and perpetuated, the link between blacks and "crime."

3.2 The Proffered Reasons for Incarceration—Convictions Analyzed on an Offense-by-Offense Basis: 1906-1907

Tarrant County whites incarcerated blacks at disproportionate rates for six categories of specific offenses during the later period. Between 1906 and 1908, Tarrant County prisoners were convicted of 488 different offenses. Of these, 349 (71.5 percent) fell into one of the following six categories, in order of disproportionate black incarceration – gambling, sexual offenses, theft, vagrancy, weapons offenses, and assault.[189] For each category, blacks were incarcerated disproportionately to their white

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[188] Register of Road and Bridge Expenditures of Tarrant County, Dec. 1905 – Sept. 1906, Special Collections, University of Texas at Arlington Library (detailing the costs associated with each of the four convict camps); Convict Record, Tarrant County, Texas, 1906-1908, Special Collections, University of Texas at Arlington Library, page 146 (Jonathan Davis).

[189] Table E.2 (Racial Distribution of Total Convictions Represented in the Tarrant County Jail: 1906-1908). Of the remaining 139 offenses, 19 (3.9 percent) were for nine different miscellaneous offenses with six or fewer convictions, and 120 (24.6 percent) cases did not indicate an offense of conviction. See Table E.2. The binomial statistical

counterparts convicted of the same offense, when measured against the ideal African American male representation rate in the county at large—14.0 percent.[190]

Comparing the incarceration rates for these offenses over time reveals that whites were in complete control of the criminal law enforcement system. The conviction rates for these categories of offenses differ in the two times periods in this study, and a new offense appears – sexual offenses. The black incarceration rates for vagrancy, theft, and weapons offenses, for example, increase in the later time period, while the black incarceration rates for gambling and assault offenses decrease in the later time period. The reasons for these variations requires a consideration of the evolving urban, industrial, and social pressures in Fort Worth and Tarrant County between 1880 and 1910. The six specific categories of offenses are discussed below. Discussed first are the offenses where black incarceration rates increased over time, followed by the offenses where black incarceration rates decreased over time.

3.2.1 Sexual Offenses: Adultery and Fornication

There is no nineteenth century counterpart in the jail records for adultery and fornication convictions, making this category the largest increase of all offenses. Overall, African Americans account for 15 of the 25 convictions for adultery and fornication (60.0

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model produces reliable standard deviations when the number of selection decisions is large (such as the aggregate population of the county jail – 391 in 1887 and 424 in 1906) and the selection pool itself is large (such as a county male population in the thousands). The numbers of convictions for each category of offense, however, are between 16 and 190, which generally do not permit reliable binomial statistical modeling. See Table E.2 and Appendix F (General Statistical and Legal Methodologies and Relevant Population Pools).

[190] Table F.2 (Males in Tarrant County by Race and Selected Ages: 1890-1910).

percent). The convictions are equally distributed between adultery and fornication – 12 for the former and 13 for the latter.

The penal code defined adultery and fornication in race-neutral terms. Adultery was defined as "living together and carnal intercourse," or "habitual carnal intercourse," with one person while being married to another, and provided for a fine of $100 to $1,000. Fornication was defined in the same way, minus the reference to marriage, and provided for a fine of $50 to $500. There was no provision in either statute for a jail term. Fornication was a lesser included offense of adultery.[191]

The lack of convictions for adultery and fornication in 1887 is somewhat puzzling since contemporary whites closely monitored the sexual behavior of black men.[192] The absence of Tarrant County convictions for adultery and fornication in the early period is an anomaly. In the 1880s, Fort Worth and Tarrant County remained on the edge of the geographic frontier, where vice prevailed as a means of economic survival. There was no perceived need, at that time, to focus on sexual liaisons between blacks unless the

[191] Penal Code of the State of Texas, Adopted at the Regular Session of the Twenty-Fourth Legislature, 1895 (Austin: Eugene Von Boeckmann, 1895) ("PC 1895" hereafter), Sections 353 (adultery), 357 (fornication); Code of Criminal Procedure of the State of Texas, Adopted at the Regular Session of the Twenty-Fourth Legislature, 1895 (Austin: Eugene Von Boeckmann, 1895) ("CCP 1895" hereafter), Article 714(9) (lesser included offense). Adultery and fornication were also criminal violations in the 1879 Penal Code, in effect during the early period of this study.

[192] See Oshinsky, "Worse Than Slavery", 87 (quoting one Mississippi white describing blacks as "lazy, lying, lustful animal[s]"), 94 (blacks perceived to have "intense sexual passions"), 122-125 (perceived black penchant for sex and prostitution); Ayers, Vengeance & Justice, 151 (perceived black propensity for rape). Texas historian William Richter has commented on the post Civil War prosecution of blacks for adultery as a means of racial control, a particularly disingenuous prosecution since antebellum slave marriages were not legally recognized. Richter, Overreached on All Sides, 70.

conduct was tied to some form of violence. By the early twentieth century, however, vice was under control, allowing whites to focus on keeping African American sexual conduct in check. The result is a highly disproportionate incarceration rate of black men for sexual offenses. At a time when African American males comprised only 14.0 percent of the county population at large, African American men account for 60.0 percent of the convictions for adultery and fornication.

3.2.2 Vagrancy

In a stark reversal in only twenty years, early twentieth century whites targeted blacks under the vagrancy statute.[193] Between 1906 and 1908, African Americans account for 50.0 percent of the vagrancy convictions (8 of 16), far greater than the 11.5 percent in 1887. Continued urbanization necessitated, in white minds, the need to resort to one of the more traditional tools of controlling black activity: the vagrancy statute.[194]

The 1887 black incarceration rate of 11.5 percent for vagrancy was an anomaly. In the decade of the 1880s, even white migration had its drawbacks, and Tarrant County

[193] The definition of vagrancy did not change since the early period. A "vagrant" was an "idle person who lives without any means of support, and makes no exertions to obtain a livelihood by honest employment," any person who "strolls idly about the streets of towns or cities, having no local habitation and no honest business or employment," any person who "strolls about to tell fortunes or to exhibit tricks" without a license, a "common prostitute," a "professional gambler," any person who "goes about to beg alms who is not afflicted or disabled by a physical malady or misfortune," and an "habitual drunkard who abandons, neglects or refuses to aid in the support of his family." The statute provided for a maximum fine of ten dollars. PC 1895, Sections 412 and 413.

[194] On vagrancy as a tool of racial control, see Crouch, "All the Vile Passions," 27-28 (vagrancy); Ayers, Vengeance & Justice, 151 (vagrancy); Blackmon, Slavery by Another Name, 108 (vagrancy among the laws "essentially intended to criminalize black life").

officials had their hands full with white "tramps." As frontier conditions receded, however, so did the problem of white vagrancy. Blacks, however, continued to migrate into Fort Worth and Tarrant County. In the thirty years between 1880 and 1910 the overall Tarrant County population quadrupled. The African American population of Tarrant County increased at an even higher rate, more than seven-fold in the same time period. In the decade of 1900 alone the county population more than doubled, and the Fort Worth city population almost tripled. During this same decade the percentage of Tarrant County residents living in the city went from 51.0 percent to 67.5 percent. Also between 1900 and 1910, the black population of Fort Worth went from 15.9 percent to 18.1 percent, and the black population of the county at large increased even moreso, from 11.0 percent to 14.2 percent.[195] Tarrant County whites continued to view this black migration as a challenge to the "old" order, and reacted by using the vagrancy statute to control black activity.[196]

Social reform efforts may also have played a role in the increase in black incarceration for vagrancy in the early twentieth century. In the 1880s, vice prevailed in Tarrant County as a means of economic survival. The vagrancy statute was used in the

[195] Table C.1 (Male and Female Population, All Ages, of Fort Worth City and County by Race: 1850-1910), Table C.2 (Percentage of Tarrant County Population, Males and Females of All Ages, Residing in the City of Fort Worth, by Race and Overall: 1870-1910), Table C.3 (Race as a Percentage of the Total Fort Worth City and Tarrant County Populations, Males and Females of All Ages: 1850-1910), and Table C.4 (Males of All Ages, by Race, as a Percentage of the Total Fort Worth City and Tarrant County Male Population: 1880-1890).

[196] On black migration as a challenge to white superiority, see Smallwood, Time of Hope, Time of Despair, 51.

1880s against gamblers, including white "sporting" men. However, as frontier conditions receded and the gambling laws were strengthened at the turn of the twentieth century, gambling became less public and fewer gamblers were prosecuted under the vagrancy statute.

Black migration and diminished public gambling, then, help to explain the increase in African American incarceration for vagrancy in the early twentieth century. Moreover, the black incarceration rate for vagrancy is highly disproportionate. At a time when African American males comprised only 14.0 percent of the county population at large, African American men account for 50.0 percent of the vagrancy convictions.

3.2.3 Weapons

As with vagrancy and sexual offenses, black incarceration for weapons offenses skyrocketed in the early twentieth century.[197] Between 1906 and 1908, African Americans account for 47.8 percent of weapons convictions (11 of 23), far greater than the 34.3 percent in 1887. The industrial changes in Fort Worth and Tarrant County between 1880 and 1910 help to explain this change. In the early period whites and blacks

[197] The substantive provision of the weapons statute did not change since the early period, although the sentences did. The offense of "unlawfully carrying arms" prohibited any person from carrying "on or about his person, saddle, or in his saddle-bags, any pistol, dirk, dagger, slung-shot, sword-cane, spear, or knuckles made of any metal or any hard substance, bowie-knife, or any other knife manufactured or sold for purposes of offense or defense…". Except for the penalty provisions, this statute remained unchanged from the earlier period. In 1897, the penalty reverted to a mandatory fine of $25 to $200 with no provision for a jail sentence; in 1905 the legislature added a possible jail sentence, and provided for a mandatory fine of $100 to $200, a jail term of 30 days to 1 year, or both. PC 1895, Section 318 (as amended in 1897 by "An Act to amend Article 338 of the Penal Code of the State of Texas adopted A. D. 1895," Laws of Texas, Vol. X, page 1078, and as amended in 1905 by "An Act to amend Article 338, Title IX, Chapter 4 of the Penal Code of the State of Texas," Laws of Texas, Vol. XII, page 56).

were disarmed for different reasons. The reason for disarming whites—frontier violence—had receded, but the reason for black incarceration—social control—remained.[198]

It can be difficult today to fully appreciate the magnitude of the changes in Tarrant County in the three decades between 1880 and 1910. In the decade of the 1880s, Tarrant County whites were literally facing the end of the geographic frontier. They had lived a way of life in the twenty years since the end of the Civil War—cattle drives and buffalo hunts, Indian raids, and extreme tolerance of vice and violence—that they did not readily relinquish. With the coming of the railroads, the first in 1876, Tarrant County whites had committed themselves to the New South creed, and Fort Worth and Tarrant County started to become more urban and industrialized.[199]

The industrial and technological changes in the first decade of the twentieth century constituted a frontier of a different nature. By the turn of the century, for example, Fort Worth had converted its street cars and street lamps to electricity. By 1903, Fort Worth boasted two meat packing plants. More significantly, perhaps, were clear indications that the literal "frontier" days were truly gone – the motion picture arrived in Fort Worth in 1903 and the automobile by 1904. North Texas whites recognized the difficulties associated with such monumental change. J. O. Davis,

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[198] See Blackmon, Slavery by Another Name, 108 (weapons statutes among the laws "essentially intended to criminalize black life").

[199] Selcer, Fort Worth, 24-26, 28, 59 (general transition from frontier to urban); Selcer, Hell's Half Acre, 185, 198, 209 (general transition from frontier to urban); Knight, Outpost on the Trinity, 114-115 (railroads), 123 (first packing plant arrives in Fort Worth in 1890), 167 (railroads).

formerly of north Texas, expressed awe as he described "The marvelous progress…in the last hundred years, widening the gulf between the prehistoric times of the Cave Dwellers and the man of today." Davis opined that "the application of steam, of dynamos and of electricity [have] almost annihilated time and distance," but that such "comforts" were not attained "without travail." [200]

The ubiquitous white violence of only two decades earlier had receded, but the need for social control of blacks remained unchanged. Armed blacks were still seen as a threat to the white social order because weapons were an affirmation of power, and the result was a highly disproportionate black incarceration rate for weapons offenses. Such power was particularly dangerous in the hands of young black men. At a time when African American males comprised only 14.0 percent of the county population at large, African American men account for 47.8 percent of the weapons convictions. Moreover, the average age of an African American convicted of a weapons offense was 25.7 years, whereas the average white convicted of a weapons offense was 29.9 years, a difference of four years.[201] Tarrant County whites continued to incarcerate young black men for asserting power in this way.

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[200] Selcer, Fort Worth, 33 (city conversion to electricity), 56 (second packing plant arrives in Fort Worth in 1903); Knight, Outpost on the Trinity, 123 (first packing plant arrives in Fort Worth in 1890), 157 (motion pictures), 160-163 (automobiles); J. O. Davis, "Reconstruction in Texas," *The Bohemian*, World's Fair Edition 1904 (no publishing data), 96.

[201] Table E.1 (Racial Distribution of Individual People in the Tarrant County Jail: 1906-1908).

3.2.4 Theft

Whites continued to incarcerate black disproportionately for theft offenses.[202] Between 1906 and 1908, African American men account for 54.2 percent of all theft convictions (103 of 190), at a time when African American males comprised only 14.0% of the county population at large. The disproportionate rate of black incarceration is also higher in the later period than it was in the earlier period (50.7 percent in 1887), which probably reflects the continuing belief about black propensity to steal.[203]

3.2.5 Gambling

Whites continued to view black gambling as a problem in the early twentieth century. Between 1906 and 1908, African Americans account for 65.4 percent of the gambling convictions (17 of 26), at a time when African American males comprised only 14.0 percent of the county population at large. The pattern of law enforcement remained

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[202] The substantive penal code provisions related to theft did not change in the intervening years, but the threshold for charging a felony was raised to $50. Generally, "theft" was the "fraudulent taking of the corporeal property of another, pick pocketing was "private" stealing without the knowledge of the victim, swindling was "deceitful" theft, and embezzlement was theft from one's employer. The punishment for general theft, swindling and embezzlement depended on the value of the property that was stolen. In 1887, if the value of the property was under $20, the punishment was "up to one year in the county jail with the possibility of hard work," plus an optional fine of up to $500; if the value was $20 or more, the punishment was a prison sentence of two to ten years in the state penitentiary. By 1907, this dollar amount was raised to $50 (fifty dollars). PC 1895, Section 870 (general theft). All relevant provisions of the penal code were renumbered. The theft statutes were renumbered to Section 870, the swindling provision was renumbered to Section 943, the embezzlement provision was renumbered to Section 938, and the pick pocketing provision was renumbered to Section 879.

[203] See Curtin, Black Prisoners and Their World, Alabama, 2, 6, 42 (larceny); Oshinsky, "Worse Than Slavery", 32 (stealing), 125 (theft); Ayers, Vengeance & Justice, 151 (burglary).

unchanged as whites continued to target black *participants* in gambling. Gambling is one of two categories of offenses where black incarceration rates decreased over time, down from 95.5 percent in the early period. This variation, however, does not reflect white altruism. Rather, the social reform movements of the 1880s, as well as at the turn of the twentieth century, help to explain the fluctuation rates over time.

Fort Worth historian Richard F. Selcer explores the post war conflict between moral reform and a local economy based on vice. Selcer examines an area of Fort Worth known as Hell's Half Acre, an area of pervasive gambling, saloons, prostitution, violence, liquor, and, as each year passed, a growing black population. By the mid 1880s there were two "failed" attempts, one in the late 1870s as the first two railroads arrived, and the second in 1884, as another railroad and several banks arrived in Fort Worth.[204] Most of the property in Hell's Half Acre was owned by whites, who had an economic interest in the activities carried out in Hell's Half Acre. These early "reform" efforts effectively ended when white property interests were adversely affected.[205]

In 1887, however, a series of particularly notorious white crimes in Fort Worth sparked whites' insipient receptivity to reform. On February 8, 1887, gambler Luke Short shot and killed city marshal Timothy Courtwright. Several days after Short killed

[204] Selcer, Hell's Half Acre, 111-112, 125, 158 (reform movement in 1878-1879 led at the city level by R. E. Beckham, and coinciding with the first two railroads in 1876 and 1880), 160-161 (reform movement in 1884, led by J. W. Swayne at the city level and R. E. Beckham at the county level, and coinciding with the arrival of two banks and another railroad in Fort Worth); Selcer, Forth Worth, 95-96 (reform movement in 1884); Knight, Outpost on the Trinity, 114-115 (railroads arriving in Fort Worth), 167 (railroads arriving in Fort Worth).

[205] Selcer, Hell's Half Acre, 108-110, 138-145, 157-158, 207, 218-222.

Courtwright, a prostitute named Sally was found nailed to a barn door in Hell's Half Acre, literally crucified during the night. The next month, on March 15, 1887, in Hell's Half Acre, gambling sport Harry Williams shot and killed a rival sport name Robert Hayward, reportedly over "money matters." This was too much for Tarrant County residents, and the local elections of 1887 produced a full slate of city and county reform officials. H. S. Broiles was elected mayor in April 1887, Democrat R. L. Carlock was elected county attorney, and Democrat R. E. Beckham was elected to the district court. The reform efforts over the next several years focused on gambling and liquor laws.[206]

Focusing here on gambling, the legislature by the turn of the twentieth century had strengthened the penalties for various gambling offenses. The individual acts of betting or playing cards in public remained misdemeanors. However, the potential penalty for betting at a game, whether a gaming table, dice, or dominoes, increased by requiring a fine from $10 to $50 (previously $10 to $20) and adding an optional county jail term of 10 to 30 days. The penalty for playing cards in a public place remained a mandatory fine of $10 to $25 with no jail term.[207]

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[206] Selcer, Hell's Half Acre, 138-139, 142, 200-210. Prohibition was a major focus of social reformers. Even though the statewide referendum on prohibition failed, Tarrant County supported prohibition. *Gazette*, 7/14/1887 ("The colored prohibitionists met at the courthouse last night in public mass meeting….Quite a number of white men were present and all enjoyed the speeches…."); *Gazette*, 7/21/1887 ("Messrs. Dotson and Terrell, colored Prohibitionists, spoke at the courthouse last night to a large audience, mostly of colored people."); *Gazette*, 8/5/1887 ("Pros are proud because they carried Fort Worth and Tarrant County for Prohibition by a good majority"); *Gazette*, 8/8/1887 ("That the Third Ward, which included in its limits the chaste and moral denizens of Hell's Half Acre, should give a pro majority [for prohibition] was simply astounding.").

[207] PC 1895, Sections 355 (playing cards in a public place), 388c (betting, renumbered from Section 364). The legislature also made illegal the individual act of

These reform efforts continued into the twentieth century. According to historian Randolph B. Campbell, early twentieth century social reformers maintained their quest to remedy the "accumulated evils of industrialization and urbanization." By 1906, prohibition had returned to the fore as a major issue. Against this backdrop, Tarrant County whites also saw Hell's Half Acre becoming increasingly populated by African Americans as each year passed, and the area was at least fifty percent black by 1900. Just as in 1887, reform pressure resurfaced with another violent crime. On March 21, 1907, Tarrant County Attorney J. D. ("Jefferson Davis") McLean was assassinated during a raid on a gambling establishment in Fort Worth. Eight days later, on March 28, 1907, the state legislature amended the gambling laws by making it a felony to keep or exhibit a gaming table or rent a room for gaming purposes. [208]

The African American gambling convictions in 1906 reveal the same pattern as in 1887. First, the rate of black incarceration for gambling was highly disproportionate. At

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entering a gaming house, a misdemeanor punishable by a mandatory fine of $25 to $50, but no jail term. PC 1895, Section 388f.

[208] Campbell, Gone To Texas, 341-345; Selcer, Hell's Half Acre, 139 (Hell's Half Acre more than fifty percent black by the turn of the twentieth century), 272 (assassination of J. D. McLean). On the statutory changes, see PC 1895, as amended in 1907 by "An Act to amend Article 388 of the Penal Code of the State of Texas," Laws of Texas, Vol. 13, page 107 (Section 388a providing for a penalty of two to four years in the state penitentiary for keeping or exhibiting a gaming table, and renumbered from Section 358; Section 388b providing for a prison term of two to years, and renumbered from Section 366). In addition, the legislature added the offense of running a gaming house but only made it a misdemeanor. See Section 388f (providing for a fine of $25 to $500 and a county jail term of 20 to 90 days). These gambling revisions to the penal code took effect on March 28, 1907, midway through the later period in this study, which is 1906 to 1908. Other than general pressure for social reform, however, the statutory gambling changes do not appear to have affected gambling convictions in Tarrant County.

a time when African American males comprised only 14.0 percent of the county population at large, African American men account for 65.4 percent of the gambling convictions (17 of 26). Of the 26 gambling convictions, 17 were black (65.4 percent) while only 5 were white (19.2 percent).[209] Second, African Americans were again singled out for prosecution as *participants* in gambling activities. Of the 5 white convictions, only 1 was for playing craps, and 4 were for "petty" gambling of an unspecified nature. Of the 17 black convictions, on the other hand, only 1 was for unspecified "petty" gambling, while 3 were for betting, 5 were for playing cards, and 8 were for playing craps. All of these convictions were misdemeanors, which meant that the cases were probably prosecuted in the county court with the expectation of a local jail sentence as punishment, a jail sentence that would be served on the county roads.[210]

3.2.6 Assault

Like the other five categories of offenses, whites continued to incarcerate blacks at highly disproportionate rates for assault offenses. Between 1906 and 1908, African American men account for 42.0 percent of the assault convictions (29 of 69) at a time when African American males comprised only 14.0 percent of the county population at

[209] Table E.2 (Racial Distribution of Total Convictions Represented in the Tarrant County Jail: 1906-1908). The race is not known for the other 5 prisoners incarcerated for gambling offenses.

[210] Table E.2 (Racial Distribution of Total Convictions Represented in the Tarrant County Jail: 1906-1908). Only one prisoner was incarcerated for exhibiting a gaming table, and his race is not known.

large.[211] This is one of two categories of offenses where the black incarceration rate decreased over time, from 57.7 percent in 1887. This variation in black incarceration for assault offenses may be due, at least in part, to its effectiveness as a tool of racial control.

3.3 Summary

As in the earlier period, Tarrant County whites in 1906 did not need a Jim Crow statute. Freed from the prospect of a northern backlash, Tarrant County whites in the early twentieth century refined their use of the county court criminal conviction as a means of racial control. In the aggregate, the disproportionate rate of African American incarceration rose sharply. At a time when African American males comprised only 14.0 percent of the county at large, African American men comprised over 50.0 percent of the prisoners in the county jail. This disparity between the actual African American male population in jail and the representation of African American men in the county at large is a staggering 21.71 binomial standard deviations. The likelihood of a disparity this large occurring randomly (i.e., fairly) is less than 2 in one billion. Standing alone, statistical evidence of this magnitude is sufficient to justify an inference of intentional discrimination in a twenty first century federal courtroom.

Moreover, African American men account for a disproportionate number of convictions for six different offenses. Black incarceration rates for sexual offenses and

[211] There were no changes to the substantive provisions or penalties for assault offenses. "Assault and battery" was still defined as the "use of violence with intent to injure." Aggravated assault meant the use of violence under certain conditions, and permitted a fine of $25 to $1,000, a county jail term of 30 days to two years, or both. PC 1895, Sections 587 et seq. and 601 et seq. The Penal Code sections, however, were renumbered. The general definition section was renumbered to Section 587, the simple assault provision to Section 598, the aggravated assault provision to Section 603.

vagrancy, both anomalies in 1887, skyrocketed in the early twentieth century as Tarrant County's violent frontier receded and as blacks migrated into Tarrant County. Black incarceration rates for weapons offenses also skyrocketed in the early twentieth century. While the need for white disarmament had receded with the frontier, the need for black disarmament remained. The receding frontier also affected gambling convictions even though black incarceration rates for gambling remained highly disproportionate. As tolerance for public gambling diminished, so too did the visibility of white "sporting men." Tarrant County whites, however, continued to prosecute blacks who participated in gambling activities. Black incarceration rates for theft and assault offenses also remained highly disproportionate in the later period.

The fluctuating black incarceration rates for gambling and assault offenses demonstrate that whites were in complete command of the criminal law enforcement system. White conduct was intentional but not fanatical as they responded to the rapidly changing social conditions in the three decades between 1880 and 1910. Urbanization, industrialization, and social reform pressures, in various combinations, influenced the fluctuating black incarceration rates. The fluctuations, however, were not based on considerations of black welfare. On the contrary, the fluctuations were a function of white needs to maintain control of African Americans.

CHAPTER 4

CONCLUSION

Tarrant County Jim Crow was a creature of custom that predated the state's separate coach law in 1891. Post Civil War white discrimination of blacks derived directly from Tarrant County's founding as a slave jurisdiction and the idea of white supremacy that served as the underlying justification for slavery. Ideas, however, do not surrender as readily as armies. With remarkable speed after the Civil War, indeed by the 1870s, Tarrant County whites physically separated blacks from the white community. White pressure forced African Americans to establish and live in their own residential neighborhoods, establish and patronize their own businesses and churches, and bury their dead in separate cemeteries.

But physical separation was not enough. Tarrant County whites used the criminal law enforcement system to arrest and incarcerate African American men because of their race and for their labor. Tarrant County whites—ex-slaveholders and ex-Confederates—discovered a way to use African American citizens as contemporary whites believed that blacks should be used–as laborers. In order to accomplish this, nineteenth century Tarrant County whites incarcerated African Americans at rates far disproportionate to their representation in the county at large. This disparity can be measured using modern statistical analyses and is expressed as a binomial standard deviation.

Between 1887 and 1890, the disparity between the ratio of African American male prisoners and the ratio of African American men in the county at large is an astonishing 12.66 binomial standard deviations. The likelihood of a disparity this large occurring randomly (i.e., fairly) is less than 2 in one billion. Applying twenty first century federal civil rights law, a disparity of this magnitude permits an inference of intentional discrimination against blacks. This *de facto* use of a county court criminal conviction as a means of racial control was firmly in place before the Texas separate coach law in 1891. Moreover, this disproportionate incarceration of blacks continued into the early twentieth century. Between 1906 and 1908, the disparity between the ratio of African American prisoners and the ratio of African American men in the county at large is a staggering 21.71 binomial standard deviations, again permitting an inference of intentional discrimination under modern federal civil rights legal principles. The legal inference, however, is hardly necessary, considering Tarrant County's history of slavery and white supremacy.

In addition to this disproportionate incarceration of African Americans in the aggregate, the reasons for black incarceration reveal how contemporary Tarrant County whites linked "blacks" with "crime." During the early period, between 1887 and 1890, African Americans were disproportionately incarcerated for four specific offenses—gambling, theft, weapons, and assault. During the later period, between 1906 and 1908, African Americans were disproportionately incarcerated for these same four offenses—gambling, theft, weapons, and assault—*plus* vagrancy and sexual offenses. As Fort

Worth and Tarrant County whites pursued the New South creed, they sent black men to the county convict camp to build county roads and white prosperity.

The differences between the incarceration rates for these specific offenses fluctuated over time and reveal how whites responded to changing social conditions in a way that maintained white racial hegemony. As the geographical frontier receded into the past, and as Fort Worth and Tarrant County became more urban and industrial after the turn of the century, the black incarceration rate for sexual offenses, weapons offenses, and vagrancy skyrocketed. As public gambling and public violence receded into the county's past, black incarceration rates for assault and gambling offenses went down. This decrease was not based on any white epiphany about racial equality. What it does mean, though, is that Tarrant County whites were not "fanatical" in their Jim Crow, they were just confident in their command of the criminal law enforcement system. Tarrant County whites did not need a Jim Crow statute, either in 1887 or in 1906.

EPILOGUE

Disproportionate black incarceration is not a mere historical phenomenon, nor is it a curiosity to be studied in the abstract. Tarrant County African Americans are still incarcerated at rates far in excess of their representation in the county population at large. Indeed, applying modern statistical analyses for all jails in Tarrant County in 2000, the racial disparity in incarceration rates is a sobering 55.91 binomial standard deviations. Twenty-first century Tarrant County officials acknowledge some racial disparity, at least with respect to juveniles. In 2011, the Tarrant County Criminal Justice Planning Group concluded that black youths are arrested and jailed at disproportionate rates than white youths, and further concluded that black youths are disproportionately jailed while white youths are offered "treatment" alternatives.[212]

But Tarrant County is not alone in its twenty first century disproportionate incarceration of African Americans or in its recognition of the problem. In 2003, the Texas Department of Criminal Justice conceded that "Minorities are overrepresented at

[212] Table J.1 (Actual Treatment/Selection Rates of Male Prisoners, Age 18 Years Old and Older, in All Jails in Tarrant County: 2000); Tarrant County Criminal Justice Community Planning Group, Tarrant County Criminal Justice Community Plan, FY 2011 (available at http://www.tarrantcounty.com/egov/lib/egov/2011_Tarrant_CountyCJPlan_12-16-10.pdf, accessed March 25, 2012).

all stages of the criminal justice system. This phenomenon is evident both in Texas and nationally. [213] The disproportionate incarceration of African Americans, however, has become much more bureaucratic, covert, and impersonal since the late nineteenth century. At the federal level, for example, the harsher sentences for selling crack cocaine, as opposed to powder cocaine, have drawn considerable criticism since the mandatory sentencing guidelines were enacted in 1986. According to critics, African Americans were more likely to be incarcerated for selling crack cocaine while whites were more likely to be incarcerated for powder cocaine. With refreshing candor, former President Bill Clinton characterized this sentencing imbalance as a "cancer."[214] The United States Congress recently acknowledged the effect of the disparate cocaine sentences when it passed the Fair Sentencing Act of 2010, reducing the sentencing disparity between crack and powder cocaine offenses.[215]

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[213] Texas Department of Criminal Justice, Community Assistance Division, Community Supervision in Texas: Summary Statistics, January 2003 (available at http://deferredadjudication.org/79th/images/pdf/reportjan2003.pdf, accessed March 25, 2012.

[214] DeWayne Wickham, "Bill Clinton admits 'regret' on crack cocaine sentencing," *U.S.A. Today*, March 4, 2008, page 11A.

[215] Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stats. 2372; Jorge Rivas, "Crack Cocaine Sentencing Reforms Go Into Effect," *ColorLines*, November 2, 2011 (available at http://colorlines.com/archives/2011/11/more_just_crack_cocaine_sentencing_laws_go_in_to_effect_reduce_racial_disparity.html, accessed November 2, 2011); Jessica Gresko, "Change in crack cocaine sentencing frees inmates," *The Washington Times*, November 1, 2011 (available at http://www.washingtontimes.com/news/2011/nov/1/change-in-crack-cocaine-sentencing-frees-inmates/print/, accessed November 2, 2011).

The FSA is a good start to a full and candid discussion of the real problem. The real problem is not "crime," or "blacks," or "them," it is a personal problem for whites. In early 2012, for example, a white federal judge in Montana sent a racist e-mail to friends. When discovered, the judge admitted that the content of the e-mail was racist, but denied that he himself was a racist.[216] Civil rights litigator Michelle Alexander, in her 2010 book The New Jim Crow: Mass Incarceration in the Age of Colorblindness, has documented the psychological basis of such self-denial by federal law enforcement agents in the drug enforcement context.[217] This is precisely the "mental separation" that historian Joel Williamson spoke of, and which ultimately leads to what Alexander characterizes as "the new caste system [that] lurks invisibly within the maze of rationalizations we have developed for persistent racial inequality."[218]

Cancers are treated head on with a full appreciation of the vulnerability that accompanies the treatment. The same prescription applies to correcting our own racial biases. Daily self-examination and eternal vigilance are required to cure the disease and

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[216] Korva Coleman, "Federal Judge Emails Racist Joke About Obama, Then Apologizes," *The Two-Way – NPR's News Blog*, March 1, 2012 (available at http://www.npr.org/blogs/thetwo-way/2012/03/01/147720865/federal-judge-emails-racist-joke-about-obama-then-apologizes, accessed March 24, 2012); John S. Adams, "Chief U.S. District Judge sends racially charged email about president," *Great Falls Tribune*, February 29, 2012 (available at http://www.greatfallstribune.com/article/2012/20120229/NEWS01/120229014/Chief-U-S-District-Judge-sends-racially-charged-email-about-president, accessed March 24, 2012.

[217] Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness (New York: The New Press, 2010), 103-105 (cognitive bias studies).

[218] Alexander, The New Jim Crow, 12 (the old racial caste systems in America, according to Alexander, were slavery and Jim Crow).

prevent its recurrence. Until whites acknowledge that this is a personal problem, one former Texas slave's prescient observation will continue to prove true—"penitentiaries was made for the white folks, but the young niggers is keepin' 'em full." [219]

[219] George P. Rawick, ed., The American Slave: A Composite Biography (Westport: Greenwood Publishing Company, n.d.), Vol. 5, Part 4, page 231.

APPENDIX A

SLAVEHOLDING IN

TARRANT COUNTY: 1850-1864

Table A.1

Slave Ownership in Tarrant County
by Owner and by Year: 1850-1854

	Number of Slaves by Year				
Name	1850	1851	1852	1853	1854
Allen, H			20		
Allen, Parmelia	2	2	2	2	2
Allen, R B				1	
Anderson, P				29	
Barnes, Wm (or King, J P)				7	
Bratton, Wm				6	
Brinson, M J	4	4	5		10
Burford, William	6	6	6		6
Calloway, J W			3	3	3
Chivers, H				6	
Chivers, K M					6
Cross, A H					1
Crowley, Isaac/Isham	2	2	2	2	2
Derrell, Solomon					5
Edwards, J L [also L P]				1	1
Eliot, John				1	1
Ester, James					10
Foster, Susan	2	2	2	2	2
Gray, Andrew			2		
Harris, A F					2
Horton, Prosser				7	6
Johnson, M T	16	22	25		
Johnson, J R					1
Johnson, A D					17
Joyce, James				4	4
Kerby, Joseph					2
Leonard, A F		2	2		3
Maxamillian, A				2	2
Moore, Elisha					3
Moorehead, J T					3
Peak, C M					1
Pervis, J L					37
Simmons, Beverly					2

Table A.1 – *Continued*

	Number of Slaves by Year				
Name	1850	1851	1852	1853	1854
Smith, John					2
[S]tandeford, J M		4			
Subblet, Ann				2	2
Tucker, W B					1
Tucker, Joseph					1
Turner, Charles					4
Ventioner, James Sr.		1	1	1	1
Waldings, J P					
Waldrip, J P			6		
Watson, Jason		1	2	2	2
West, Ebenezer				3	2
Wilburn, Edward					6
Wilburn, F C					1
Willis, J T					1
Wilson, Joseph				5	
Wilson, [E A Y?]				1	2
Woods, M T					11
[unintelligible]old, RA		4			
TOTAL	32	50	78	87	168

Source: Tarrant County Tax Rolls, Fort Worth Public Library.

Notes:

The tax rolls identify the names of the slaveholders, the number of “negroes” owned by individual slaveholders, the value of those slaves, and the aggregate value of all slaves in the county. After 1854, the individual entries are illegible, but the aggregate value for each year is legible. The record keeper’s math for individual entries does not always match his math for the aggregate entries.

Table A.2

Number and Value of Slaves in
Tarrant County, by Year: 1850-1864

Year	Number of Slaves	Value of Slaves	Average Price Per Slave*
1850	32	$ 13,600	$ 425
1851	47	$ 21,400	$ 455
1852	78	$ 28,039	$ 359
1853	84	$ 32,350	$ 385
1854	141	$ 70,360	$ 499
1855	280	$ 165,740	$ 592
1856	463	$ 269,560	$ 582
1857	507	$ 308,000	$ 607
1858	529	$ 323,200	$ 611
1859	589	$ 378,200	$ 642
1860	730	$ 496,600	$ 680
1861	756	$ 337,352	$ 446
1862	960	$ 417,130	$ 435
1863	illegible	illegible	unknown
1864	1,772	$ 1,096,200	$ 618

Source: Tarrant County Tax Rolls, Fort Worth Public Library.

Note: The average price per slave is rounded to the nearest dollar.

Table A.3

Poll Taxes Collected in
Tarrant County, by Race: 1866-1870

Year	White Polls	Black Polls	Total
1866	Unknown	Unknown	95
1867	66	165	231
1868	77	161	238
1869	54	178	232
1870	75	126	201

Source: Tarrant County Tax Rolls, Fort Worth Public Library.

Note: Poll tax was $1.00 per voter.

APPENDIX B

RECORD OF CRIMES REPORTED IN 1867

BY THE FREEDMEN'S BUREAU

AGENT IN THE 40th SUBDISTRICT:

DALLAS AND TARRANT COUNTIES

Table B.1

Summary of Crimes Reported by the
Freedman's Bureau, 40th Subdistrict: 1865-1867

Date	Number and Race of Assailant and Victim (one each, unless otherwise indicated)	Crime	Action by local officials (county unknown unless otherwise indicated)
May 20, 1865	4 unk – 1 unk	"murder of Frank Miller (because he was Union)"	unk
Aug 20, 1865	Unk – unk	"murder of Joe May for his money"	unk
Sept 10, 1865	Unk – unk	murder	unk
Oct 2, 1865	Unk – black	"murder of Henry, a Freedman"	unk
June 25, 1866	Unk – Unk	"murder (in Lancaster)"	Unk [Dallas County]
Oct 22, 1866	Unk – unk	"assault with intent to kill"	unk
Oct 31, 1866	Unk	"aiding in prisoner escape"	unk
Nov 13, 1866	Unk – unk	"murder"	unk
Dec 13, 1866	2 unk – 1 black	"murder of Harriett (Freedwoman)"	unk
Jan 31, 1867	White – Black	"Assault with intent to kill"	indicted
Apr 6, 1867	White – White	Aggravated Assault and Battery on a child	No action
May 1, 1867	White – White	"Assault with intent to kill"	Indicted (same affray)
May 1, 1867	White – White	"Assault with intent to kill"	Indicted (same affray)
May 15, 1867	White – White	Aggravated assault and battery	No action

Table B.1 – *Continued*

Date	Number and Race of Assailant and Victim (one each, unless otherwise indicated)	Crime	Action by local officials (county unknown unless otherwise indicated)
July 1, 1867	Unk – black	"assault with intent to kill. Was met on the high way and shot….Man name unknown shot Hardin a Freedman on the edge of Dallas and Tarrant because he was a negro."	No action (but "Officer of the Bureau tried to discover the perpetrator without success")
July 5, 1867	White – White	"murder"	indicted
July 10, 1867	White – White	"murder…for being one of a party that hung his father, a Union man." (assailant's last name was "Record", first name unknown, and victim was one of the party who hung Record's father)	No action (but "search was made by Officer of the Bureau for said Record but he had left the county.")
Aug 25, 1867	White – Black	"assault with intent to kill since died. Shot for not taking off his hat to him on the street."	No action ("notwithstanding [the black victim] called in the civil authorities. County Judge and Attorney boasting of what [white assailant] had done. Bureau is now in search of [white assailant].")
Oct 21, 1867	White – Black	"murder of Isam a Freedman"	Unknown

Table B.1 - *Continued*

Sources:

Record Group 105, Records of the Bureau of Refugees, Freedmen and Abandoned Lands, Records of the Assistant Commissioner for the State of Texas, Bureau of Refugees, Freedmen, and Abandoned Lands, 1865 - 1869 (Microfilm Publication M821). Washington D.C.: General Services Administration.

Record Group 105, Records of the Bureau of Refugees, Freedmen and Abandoned Lands, Records of the Field Offices for the State of Texas, Bureau of Refugees, Freedmen, and Abandoned Lands, 1865 – 1870 (Microfilm Publication M1912). Washington, D.C.: General Services Administration.

APPENDIX C

FORT WORTH AND TARRANT COUNTY

POPULATIONS: 1850-1910

Sources

U.S. Bureau of the Census, Ninth Census of the United States, Vol. I (pages 63-67), http://www.census.gov/prod/www/abs/decennial/1870.html (accessed January 14, 2012).

U.S. Bureau of the Census, Tenth Census of the United States, Vol. I (pages 81, 348, 411, 424, 530), http://www.census.gov/prod/www/abs/decennial/1880.html (accessed January 14, 2012).

U.S. Bureau of the Census, Report on the Population of the United States at the Eleventh Census: 1890, http://www.census.gov/prod/www/abs/decennial/1890.html (accessed January 13, 2012).

U.S. Bureau of the Census, Report on the Population of the United States at the Eleventh Census: 1890, http://www.census.gov/prod/www/abs/decennial/1890.html (accessed January 13, 2012).

U.S. Bureau of the Census, Twelfth Census of the United States, Vol. I (pages 42, 388, 604, 681), http://www.census.gov/prod/www/abs/decennial/1900.html (accessed January 14, 2012).

U.S. Bureau of the Census, Thirteenth Census of the United States, Vol. I (pages 223, 226, 244, 287, 792, 802-803, 844-845, 852-853), http://www.census.gov/prod/www/abs/decennial/1910.html (accessed January 15, 2012).

U.S. Bureau of the Census, Thirteenth Census of the United States, Supplement for Texas (pages 600-601, 642-643, 650-651), http://www.census.gov/prod/www/abs/decennial/1910.html (accessed January 15, 2012).

Table C.1

Male and Female Population (All Ages) of
Fort Worth City and Tarrant County by Race: 1850-1910

		Fort Worth				Tarrant County			
		Race				Race			
Year	Sex	White	Black	Other	Total	White	Black	Other	Total
1850	Unk	N/A	N/A	N/A	N/A	599	65 (Slaves)	None indicated	664
1860	Unk	N/A	N/A	N/A	N/A	5,170	850 (Slaves)	None indicated	6,020
1870	Unk	1,303	305	None indicated	1,608	5,083	705	None indicated	5,788
1880	Unk	5,606	1,054	3	6,663	22,488	2,160	23	24,671
1890	Male	11,478	1,706	46*	13,230	20,795	2,319	46*	23,111
	Fem	8,315	1,531	None indicated	9,846	15,982	2,000	None indicated	17,982
	Total	19,793	3,237	46	23,076	36,777	4,319	46	41,142
1900	Male	11,595	2,009	22	23,076	24,310	2,854	23	
	Fem	10,822	2,240	None indicated	13,062	22,287	2,902	None indicated	
	Total	22,417	4,249	22	26,688	46,597	5,756	23	52,376
1910	Male	32,162	6,781	64	38,943	49,389	7,899	At least 62	57,288
	Fem	27,798	6,499	Unk	34,297	43,692	7,519	Unk	51,211
	Total	59,960	13,280	72	73,312	93,081	15,418	73	108,572

Notes:

1) All blacks were identified as slaves, none were identified as “free blacks.”
2) * Includes 40 Chinese, 1 Japanese, and 5 “civilized Indians.”

Table C.2

Percentage of Tarrant County Population
(Males and Females of All Ages)
Residing in the City of Fort Worth,
By Race and Overall: 1870-1910

Year	White	Black	Other	Overall
1870	25.6%	43.3%	N/A	27.8%
1880	24.9%	48.8%	13.0%	27.0%
1890	53.8%	75.0%	93.9%	56.1%
1900	48.1%	73.8%	95.7%	51.0%
1910	64.5%	86.1%	98.6%	67.5%

Table C.3

Race as a Percentage of the Total
Fort Worth City and Tarrant County Populations,
Males and Females of All Ages: 1850-1910

	Fort Worth			Tarrant County		
	Race			Race		
Year	White	Black	Other	White	Black	Other
1850	N/A	N/A	N/A	90.2%	9.8%	N/A
1860	N/A	N/A	N/A	85.9%	14.1%	N/A
1870	81.0%	19.0%	N/A	87.8%	12.2%	N/A
1880	84.1%	15.8%	.05%	91.2%	8.8%	.09%
1890	85.8%	14.0%	.2%	89.4%	10.5%	.12%
1900	84.0%	15.9%	.08%	89.0%	11.0%	.04%
1910	81.8%	18.1%	.1%	85.7%	14.2%	.07%

Table C.4

Males of All Ages, by Race, as a
Percentage of the Total Fort Worth City
and Tarrant County Male Population: 1880-1910

	Fort Worth			Tarrant County		
	Race			Race		
Year	White	Black	Other	White	Black	Other
1880	Not available	Not available	Not available	Not available	Not available	Not available
1890	87.1%	12.9%	Unknown	90.0%	10.0%	Unknown
1900	85.1%	14.7%	.2%	89.4%	10.5%	.1%
1910	82.6%	17.4%	Unknown	86.2%	13.4%	Unknown

Note: The censuses for 1890 and 1910 do not attribute the “other” racial category to either sex.

Table C.5

Migration to Texas and North Texas,
By State of Origin: 1860-1880

State of origin	Texas-wide	Grand Prairie
Arkansas	14.0%	13.2%
Alabama	11.9%	7.9%
Mississippi	10.4%	8.8%
Tennessee	9.9%	14.7%
Missouri	9.4%	17.4%
Louisiana	8.8%	4.3%
Georgia	5.9%	5.2%
Illinois	3.7%	6.7%
Kentucky	3.4%	6.3%
Total of the nine highest states of origin	77.4%	85.4%
Total of the eight southern states	73.7%	77.8%

Source:

Homer L. Kerr, "Migration into Texas, 1860-1880," 70 *Southwestern Historical Quarterly* (October 1966): 184-216.

APPENDIX D

PROFILE OF PRISONERS IN THE TARRANT COUNTY JAIL AND SUMMARY OF CONVICTIONS: 1887-1890

Primary Source

Convict Record, Tarrant County, 1887-1890, Special Collections, The University of Texas at Arlington Library, Arlington, Texas.

Description

The primary source material for the analyses in Chapter 2 is the first volume of the Tarrant County convict records, covering prisoners who were confined in jail during the thirty-six month period between January 1887 and December 1889. A description of the universe of potential records, and the rationale for selecting the records used in this study, is in Appendix F.

Table D.1

Racial Distribution of Individual People
in the Tarrant County Jail: 1887-1890

Race	Number of Prisoners	Percentage of the Total
Asian	1	.3%
Unknown	3	.8%
Other	4	1.0%
Black	115	29.3%
White	268	68.6%
TOTAL	391	100.00%

Determining the total number of different human beings in the jail:

A total of 391 different human beings served time in the Tarrant County jail during this period, a rather difficult figure to calculate. The record book identifies 445 different convictions, of which 54 represent more than one conviction for the same prisoner, resulting in the same number of duplicate entries for the same prisoner. The jailer's notes were evaluated to determine whether prisoners with the same or similar names were actually the same individual. These 54 multiple convictions are comprised of the following, in order of reliability: 1) on 28 occasions (representing nineteen different prisoners) a prisoner's multiple convictions were recorded on the same page of the record book (see Table D.3); 2) on 16 occasions (representing fourteen different prisoners) a prisoner's multiple convictions were recorded on different pages of the record book, but the jailer recorded each page next to the prisoner's name in the index to the record book; and 3) on 10 occasions (representing ten different prisoners) a subjective assessment of the personal characteristics of the prisoner (and other data recorded by the jailer) revealed they were probably duplicate entries. An additional twelve prisoner entries were evaluated to determine whether they were the same person, but those prisoners probably represented twelve different human beings.

Identifying the race:

The jailer identified race for all but 8 of the prisoners, using "chinaman" for the Asian, "negro" for African prisoners, and "white" for Caucasian prisoners. The category of "other" consists of four individuals racially identified by the jailer as "american," "white irish," "english," or "german."

Of the 8 prisoners for whom race was not identified, there was sufficient information to infer race with respect to 5 (63%) of them. Of these five, two were categorized as white and three were categorized as black.

Table D.1 – *Continued*

The two prisoners categorized as white were so categorized because the jailer identified their complexion as "white," there were 25 other "whites" whose complexion was also identified as "white," and there were no African prisoners with a "white" complexion. Of the three prisoners categorized as black, two were so categorized because the jailer identified their complexion as "black," there were 93 other "negroes" whose complexion was also identified as "black," and there were no white prisoners with a "black" complexion. The remaining black prisoner was so categorized because he was identified in a newspaper article as a "mulatto cowboy." *Gazette*, 10/2/1887 (identifying Levi Lee as a "mulatto cowboy"). The average age of an African American incarcerated for assault was 24.8 years, while the average white prisoner incarcerated for assault was 31.6 years old. The average age of an African American prisoner incarcerated for theft was 24.5 years, while the average age for whites was 32.5 years.

Table D.2

Racial Distribution of Total Convictions
Represented in the Tarrant County Jail: 1887-1890

	Race					
Crime	Black	White	Asian	Other	Unknown	Total
VIOLENCE GROUP:						
Assault	1 (DC)	1		1 (DC)		3
Aggravated Assault	15 (DC – 3)	8				23
SUBTOTAL	16	9		1		26
GAMBLING GROUP:						
Betting	1 (DC)					1
Cards	2 (DC – both)					2
Craps	6 (DC – all)					6
Exhibiting Gaming Bank	11 (DC – all)	1				12
Monte Table	1 (DC)					1
SUBTOTAL	21	1				22
THEFT GROUP:						
Robbery	1					1
Embezzlement	1					1
Theft	36 (DC – 4)	35 (DC – 6)		1 (DC)	1 (DC)	73
SUBTOTAL	38	35		1	1	75
Vagrancy	10	77				87
Weapons	12	23 (DC – 1)				35

Table D.2 – *Continued*

	Race					
Crime	Black	White	Asian	Other	Unknown	Total
MISCELLANEOUS OFFENSES:						
Aiding prisoner escape	1					1
Blue law		3				3
Burglary	2 (DC – both)					2
Disturbing Peace	2	2				4
Drunk		1				1
Maliscious Mischief	1					1
Resisting officer	1					1
Send threatening letters	4					4
NO CHARGE INDICATED	45 (DC – 6)	133 (DC – 3)	1	2	2	183
TOTAL	153	284	1	4	3	445

District court convictions are indicated by the abbreviation "DC" in parentheses followed by the number of convictions that occurred in district court. In the Tarrant County Convict Record book itself, the jailer noted district court convictions in several ways, including a specific reference to "district court" and the use of a five-digit cause number. In these cases, the district court appears to have sentenced the prisoner to the county jail instead of the state penitentiary.

With respect to the "other" racial category, the "american" was convicted of assault, the "english[man]" was convicted of theft, and no charge was indicated for the "german" or the "white irish[man]."

Table D.3

Racial Distribution of Prisoners
Convicted of Multiple Offenses in the
Tarrant County Jail: 1887-1890

		Number of Charges/Convictions by Offense											
Name	Race	Theft	Gaming	Cards	Craps	AA	Weapons	DP	Resist	Letters	Blue law	Unknown	Total
Bob Berry	B					1		1					2
Robt Booker	B	2											2
John Bruno	B	2											2
Charley Carter	B		1	1									2
Charles Chase	B	2											2
Lon Gains	B								1			1	2
Sol Granbury	B		2										2
Nath. Harvey	B					1		1					2
James Hutchins	B			1	2								3
Green Howard	B									4			4
Miles Rector	B	4											4
Chas Schwartz	B		5									1	6
Ely White	B						1					1	2
M Cunningham	W	2											2
John Ferrill	W	2											2
Abe Hunt	W											2	2
Jim Lythe	W											2	2
Frank Miller	W	2											2
John Watley	W										2		2
TOTAL		16	8	2	2	2	1	2	1	4	2	7	47

Table D.3 – *Continued*

Nineteen different prisoners were charged with/convicted of multiple offenses, indicated by the charges/counts being listed on the same page of the record book. Of these nineteen, 13 (68.4%) were black and 6 (31.6%) were white.

Legend:

Gaming = Exhibit a Gaming Bank
AA = aggravated assault
DP = disturbing the peace
Resist = resisting an officer
Letters = sending threatening letters

APPENDIX E

PROFILE OF PRISONERS IN THE TARRANT COUNTY JAIL AND SUMMARY OF CONVICTIONS: 1906-1908

Primary Source

Convict Record, Tarrant County, 1906-1908, Special Collections, The University of Texas at Arlington Library, Arlington, Texas.

Description

The primary source material for the analyses in Chapter 3 is the tenth volume of the Tarrant County convict records, covering prisoners confined in the county jail during the thirty-four month period between January 1906 and October 1908. A description of the universe of potential records, and the rationale for selecting the records used in this study, is in Appendix F.

Table E.1

Racial Distribution of Individual People
in the Tarrant County Jail: 1906-1908

Race	Number	Percentage
Other	5	1.2%
Mexican	11	2.6%
Unknown	23	5.4%
White	171	40.3%
Black	214	50.5%
TOTAL	424	100.00%

Determining the total number of different human beings in the jail:

A total of 424 different human beings served time in the Tarrant County jail during this period, a rather difficult figure to calculate. The record book identifies 488 different convictions, of which 64 represent more than one conviction for the same prisoner, resulting in the same number of duplicate entries for the same prisoner. The jailer's notes were evaluated to determine whether prisoners with the same or similar names were actually the same individual. These 64 multiple convictions are comprised of the following, in order of reliability: 1) on 41 occasions (representing thirty four different prisoners) the jailer recorded the prisoner's multiple convictions on the same page of the record book (see Table E.3); 2) on 3 occasions (representing three different prisoners) a prisoner's multiple convictions were recorded on different pages of the record book, but the jailer recorded each page next to the prisoner's name in the index to the record book; and 3) on 20 occasions (representing eighteen different prisoners) a subjective assessment of the personal characteristics of the prisoner (and other data recorded by the jailer) revealed they were probably duplicate entries. An additional seventeen prisoner entries were evaluated to determine whether they were the same person, but those prisoners probably represented seventeen different human beings.

Identifying the race:

The jailer identified race for all but 39 of the prisoners, using various terms or abbreviations to charaterize race. The jailer invariably used "white" for white prisoners, and either "Mex" or "Mexican" for Mexican prisoners. For black prisoners, the jailer used "negro," "black," "BK," "colored," or "col." The jailer identified one prisoner as "brown," two as "gray," and three as "Polander." The "gray" and "Polander" prisoners comprise the "other" category in this study; the "brown" prisoner, as explained below, was categorized as "black" for this study.

Table E.1 – *Continued*

Of the 39 prisoners for whom race was not identified, there was sufficient information to infer race with respect to 17 (44%) of them. Of these 17, ten were categorized as white and seven were categorized as black. Of the ten prisoners categorized as white, six were so categorized because the jailer recorded their eye color as “blue,” and the 48 other people with eye colors "blue" (one was "pale blue") were all racially identified by the jailer as "white.” Four prisoners were categorized as “white” based on a subjective comparison of the physical characteristics (as well as other data) recorded by the jailer for each prisoner. Of the seven prisoners characterized as black, four were so categorized based on a subjective comparison of the physical characteristics (as well as other data) recorded by the jailer for each prisoner. One prisoner was categorized as black because his complexion was identified by the jailer as “black,” and the 65 other prisoners with complexions that were "black", "blk", or "BK", were all racially identified by the jailer as "negro", "black", "Col", or "col,” and no whites had a “black” complexion. Another prisoner was categorized as “black” because the jailer identified his complexion as “mulatto,” there were 8 other prisoners with a "mulatto" complexion whose race was identified by the jailer as "negro," and no whites had a “mulatto” complexion. The prisoner whose race was identified as “brown” by the jailer was re-categorized as “black” because his name was “Coon” Jennings—whites often referred to blacks as animals, specifically “coons.” *Gazette*, 9/27/1887, page 8 (“Yesterday afternoon Officers Davenport and Taylor surprised a gang of darkies in an alley near an uptown hotel playing their great national game—craps. At sight of the blue-coats the coons fled like wild deer…”). The average age of an African American convicted of a weapons offense was 25.7 years, whereas the average white convicted of a weapons offense was 29.9 years old.

Table E.2

Racial Distribution of Total Convictions
Represented in the Tarrant County Jail: 1906-1908

	Race					
Crime	Black	White	Mexican	Other	Unk	Total
VIOLENCE GROUP:						
Assault	3	7			2	12
Aggravated Assault	26	25	3	1	2	57
SUBTOTAL	29	32	3	1	4	69
GAMBLING GROUP:						
Betting	3					3
Cards	5					5
Craps	8	1			1	10
Gaming house					1	1
Petty gambling	1	4			2	7
SUBTOTAL	17	5			4	26
THEFT GROUP:						
Swindling		2				2
Embezzlement	1	4				5
Theft	102	70		2	9	183
SUBTOTAL	103	76		2	9	190
SEX GROUP:						
Adultery	7	4			1	12
Fornication	7	3			3	13
SUBTOTAL	14	7			4	25
Vagrancy	8	8				16
Weapons	11	10	2			23
MISCELLANEOUS OFFENSES:						
Disturbing Peace	2	1				3
Drunk	1	3	2			6
Malicious Mischief	1	3				4

Table E.2 – *Continued*

	Race					
Crime	Black	White	Mexican	Other	Unk	Total
Aiding prisoner escape		1				1
Resisting an officer		1				1
Receiving stolen property					1	1
Delinquent child	1					1
SS	1					1
Killing quail	1					1
NO CHARGE INDICATED	47	59	4	3	7	120
TOTAL	236	206	11	6	29	488

With respect to the "other" racial category, two different prisoners were identified as "gray," and each was convicted of theft. Three different prisoners were identified as "Polander," one of whom was convicted of aggravated assault plus an additional unknown charge, while the other two did not have a charge indicated in the record book.

"Coon" Jennings, recorded by the jailer as "brown" and considered at "black" for this study, was convicted of a weapons offense.

Legend:

"SS" = unknown.

APPENDIX F

GENERAL STATISTICAL AND LEGAL METHODOLOGIES AND RELEVANT POPULATION POOLS

Primary Sources

Convict Record, Tarrant County, 1887-1890, Special Collections, The University of Texas at Arlington Library, Arlington, Texas.

Convict Record, Tarrant County, 1906-1908, Special Collections, The University of Texas at Arlington Library, Arlington, Texas.

U.S. Bureau of the Census, Report on the Population of the United States at the Eleventh Census: 1890, http://www.census.gov/prod/www/abs/decennial/1890.html (accessed January 13, 2012).

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U.S. Bureau of the Census, Thirteenth Census of the United States, Supplement for Texas, http://www.census.gov/prod/www/abs/decennial/1910.html (accessed January 15, 2012).

Description

The Convict Records for Tarrant County for the late nineteenth and early twentieth centuries are a series of oversized books that document the people committed to, or residing in, the county jail. The universe of available convict records spans the years 1887 through 1916, and consists of sixteen volumes of oversized record books, each containing information spanning two to three years. The first volume covers the

thirty-six month period between January 1887 and December 1889; the tenth volume covers the thirty-four month between January 1906 and October 1908.

The first and tenth volumes were used for this study for two reasons. First, they record data that brackets the generally accepted time frame for the onset of statutory Jim Crow in the 1890s. The separate coach laws of the 1890s, adopted by many southern states and which required separate railroad cars for whites and blacks, are generally accepted by historians as representing the onset of statutory Jim Crow. [220]

In Texas, statutory Jim Crow began in 1891 when the Texas state legislature enacted permanent legislation mandating separate coaches on Texas railroads. While Texas did adopt a separate coach law in 1866 as part of its Black Code, that immediate postwar statute is not a meaningful event for evaluating Jim Crow's statutory birth in Texas.[221] The 1866 statute was passed by the Eleventh Legislature, the first postwar state legislature convened before Congressional Reconstruction, consisting largely of the same individuals who served in the Texas Confederate legislature, and consisting largely of the same individuals who passed the other Black Code provisions. Moreover, the subsequent history of the 1866 statute makes it a poor indicator of consistent state-wide public sentiment, or at least public priorities. In 1871, for example, after several years in power,

[220] See John David Smith, "Segregation and the Age of Jim Crow," in When Did Southern Segregation Begin?, 7.

[221] "An Act requiring Railroad Companies to provide convenient accommodations for Freedmen," Laws of Texas, Volume 5, page 1015, approved November 6, 1866 (each railroad company required to "attach to each passenger train…one car for the special accommodation of Freedmen").

the Republican Twelfth Legislature repealed the 1866 law and replaced it with a statute that forbade discrimination on railroad cars.[222]

Although the Redeemers assumed control of the Thirteenth Legislature in 1872 (and the governorship in 1874), seventeen years would pass before the state legislature again addressed the issue of separate coaches, and even that was somewhat tentative. In 1889, the legislature *permitted* railroads to provide separate cars for blacks and whites.[223] The 1871 law prohibiting discrimination on railroad cars remained in place, then, until 1889. Two years later the legislature *required* separate cars.[224]

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[222] "An Act to enforce Section XXI, Article I, of the Constitution," Laws of Texas, Volume 7, page 18, approved October 28, 1871 (all public carriers "prohibited…from making any distinctions in the carrying of passengers" "on account of race, color or previous condition").

[223] "An Act to authorize railroad companies in this state to provide separate coaches of white and colored passengers," Laws of Texas, Vol. IX, pages 1160-1161, approved April 6, 1889 (permissive separate coach law).

[224] "An act to require railroad companies in this State to provide separate coaches for white and negro passengers, and to prohibit passengers from riding in coaches other than those set apart for their race, and to confer certain powers upon conductors and to provide penalties for the violation of this act," Laws of Texas, Vol. X, pages 46-47, approved March 19, 1891 (mandatory separate coach law), as amended by "An Act to amend Section 6 of an act entitled '[name of mandatory act quoted above],' " Laws of Texas, Vol. X, page 167 (making exceptions for calabooses, street and suburban railway cars, and for "nurses" and other blacks performing duties for whites as employees while traveling with white employers, as well as clarifying that sleeping cars must be "used exclusively by either white or negro passengers, separately, but not jointly"), Laws of Texas, Vol. X, page 167, approved April 11, 1891. Eighteen years later, in 1907, the state legislature would spell out in greater detail the requirements for compliance with the separate coach law. See "An Act amending Title XVIII, Chapter 13, Article 1010 of the Penal Code related to offenses by railway officials or against railway companies," General Laws of the State of Texas, Passed at the Regular Session of the Thirtieth Legislature, Convened at the City of Austin, January 8, 1907 (Austin: Von Boeckmann-Jones Co., Printers, 1907), pages 58-60, approved March 22, 1907.

The second reason for choosing the first and tenth volumes of the Tarrant County convict records is that they consistently record the race of the prisoner and the offense for which he was incarcerated. The information includes personal information about the prisoner, including his name (in these particular records, all were male), age, race, complexion, eye and hair color, and other physical attributes such as scars. The information also includes official information about the judicial process, including the offense charged, the docket number of the case, the court of conviction (County, Justice, or District Court), and the sentence (jail term, fines, fees and costs). The Convict Records also include information about whether the prisoner paid any fines, fees or costs, whether the prisoner made bond, whether the prisoner served his jail time in the jail or through labor, and the dates of these events.

Legal and Statistical References

United States Supreme Court Cases

Castaneda v. Partida, 430 U.S. 482 (1977).

Hazelwood School District v. United States, 433 U.S. 299 (1977).

International Broth. of Teamsters v. United States, 431 U.S. 324 (1977).

Yick Wo v. Hopkins, 118 U.S. 220 (1886).

Federal Judicial Center, Reference Manual on Scientific Evidence, Second Edition (St. Paul: West Group, 2000).

Ramona L. Paetzold and Steven L. Willborn, The Statistics of Discrimination: Using Statistical Evidence in Discrimination Cases (n.p.: West Group, 1999).

United States Department of Labor, Employment Standards Administration, Office of Federal Contract Compliance Programs, Federal Contract Compliance Manual, Chapter III Onsite Review Procedures (May 1993), available at http://www.dol.gov/ofccp/regs/compliance/fccm/fccmanul.htm (Chapter 3 - On Site Review, PDF Version) (accessed April 2, 2012).

Ben Ikuta, *Why Binomial Distributions Do Not Work as Proof of Employment Discrimination*, Hastings Law Journal, Volume 59, Number 5, May 2008: 1235-1256.

Methodology

The statistical analyses used in this study are directly adapted from those analyses that the United States Congress, and the United States Supreme Court, have accepted and applied to evaluate the legal sufficiency of federal civil rights discrimination claims in the twenty first century. These cases often arise in the employment context. For example, a group of individuals (a "class") might allege that a particular employer impermissibly discriminated against that class by failing to hire individual members of that class for a particular kind of job, based on some characteristic of the class members, such as race. The class would challenge the employer's hiring process, and in doing so, determine how many individuals in that class applied for a particular kind of job, how many of the class were interviewed for that particular kind of job, how many of the class were offered jobs, how many of the class were not offered jobs, and so forth.

In the courtroom, the class must prove by a preponderance of the evidence that that racial discrimination was the employer's standard operating procedure, its regular (rather than unusual) practice. The class must prove more than the mere occurrence of

isolated, accidental or sporadic acts of discrimination.[225] Courts operate from several assumptions in discrimination cases, particularly when using statistics. First, since the class has the burden of proof, the starting premise is that the employer did not discriminate. Second, the analysis assumes that some disparity will always occur between the actual and ideal treatment of any class simply due to random fluctuations in human behavior and the varied circumstances in which human beings act and make decisions. Finally, the non-discriminatory application of the governing principles of selection—i.e., the reasons why a particular selection decision was made—will result over time in a selected population that is more or less representative of the racial composition of the community from which the selected persons were chosen.[226]

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[225] *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 416, 418 n. 20 (1977) (case involving the failure to hire black truck drivers in Nashville, among other places). The Supreme Court addressed class-wide racial discrimination more than a century before *International Brotherhood of Teamsters*. In 1886, the Supreme Court decided the case of *Yick Wo v. Hopkins*, where the issue was the discriminatory application of the city of San Francisco's ordinance that required all laundry businesses to operate in buildings made of brick. The ordinance allowed for an exception for wooden buildings that were already in existence at the time the ordinance was passed. Of the 320 laundries in the city, all were operated out of wooden buildings. Of the 320 laundries, 240 were owned by Chinese proprietors and 80 were owned by white proprietors. All the proprietors, both Chinese and white, applied for an exception as provided for in the ordinance. The city granted the exception for all of the whites but denied the exception for all of the Chinese. The Supreme Court concluded that "The fact of this discrimination is admitted. No reason for it is shown, and the conclusion cannot be resisted, that no reason for it exists except hostility to the race and nationality to which the [Chinese proprietors] belong, and which in the eye of the law is not justified. The discrimination is therefore illegal, and the public administration which enforces it is a denial of the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution. The imprisonment of the [Chinese laundry proprietors] is therefore illegal, and they must be discharged." *Yick Wo v. Hopkins*, 118 U.S. 220, 228 (1886).

[226] *Castaneda v. Partida*, 430 U.S. 482, 497 n. 17 (1977) (failure to select Hispanic jurors in Hidalgo County, Texas); *Teamsters*, 431 U.S. at 418 n. 20; *Hazelwood*

There are three analytical steps when using statistical evidence in discrimination cases. After identifying the class that one suspects is being treated differently, the first step is to determine the actual treatment of that class—how many were actually selected. The second step is to determine the "ideal" treatment of the class, considering the appropriate selection pool, time frame and any other relevant factors. In other words, this step ascertains the number of selections from the larger pool that would be expected in the absence of discrimination. The third step is to measure the difference, if any, between the actual treatment and the ideal treatment, and determine whether that difference is meaningful, or "statistically significant."[227]

Measuring the difference between the actual treatment and the ideal treatment of the class involves two tasks. The first task is to ascertain how far the selection decisions vary from the average (also known as the "mean") selection decision—that is, variance from the average selection decision that was made without discrimination. This measurement of "spread" is known as the "standard deviation." The statistical model generally accepted in federal civil rights cases is the binomial process model. If selection decisions are made using appropriate governing criteria, then those selections will tend to follow the binomial distribution. With large numbers, like those in this study, the binomial distribution approximates the normal distribution—i.e., the standard bell curve. In a normal distribution, 68 percent of all selection decisions are expected to be within +/- 1 standard deviation from the mean, 95 percent of all selection decisions are expected to

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School District v. United States, 433 U.S. 299, 310 n. 16 (1977) (failure to hire black high school teachers in St. Louis).

[227] Paetzold and Willborn, The Statistics of Discrimination, Chapter 4.

be within +/- 2 standard deviations from the mean, and 99.7 percent of all selection decisions are expected to be within +/- 3 standard deviations from the mean. Standard deviations above 3 are rare unless discrimination is involved. Distilled to its essence, the binomial process model measures the disparity of human "selection" decisions—at some point, some person (or group of persons) decided to "select" each prisoner for incarceration. The binomial standard deviation measures the "spread" of all selection decisions based on the "average" (or "mean") selection decision.[228]

The second task when measuring the difference between the actual and ideal treatment of a class is to measure the significance of the spread by converting the binomial standard deviation to a P-value, or probability value. The P-value expresses the

[228] Federal Judicial Center, Reference Manual on Scientific Evidence, 83-178; Paetzold and Willborn, The Statistics of Discrimination, 28-35. While generally accepted, the binomial distribution has been challenged by employers who defend against class-wide claims of discrimination. However, even critics concede that the binomial distribution can be an appropriate measurement when there are a large number of people in the selection pool, compared with a relatively small number of selection decisions, as in *Castandea*, *Teamsters*, and *Hazelwood*. See Ikuta, *Why Binomial Distributions Do Not Work as Proof of Employment Discrimination*, 1251-1252. In *Castaneda*, the decision makers made 870 relevant selection decisions, over an eleven-year period, from a pool of over one hundred thousand in Hidalgo County at large. In *Teamsters*, the decision makers made hundreds of relevant selection decisions, over a four-year period, in the Nashville area (presumably from a pool of thousands or tens of thousands). In *Hazelwood*, the decision makers made 405 relevant selection decisions, over a two-year period, from the St. Louis metro area (presumably from a pool of thousands or tens of thousands). *Castaneda*, 430 U.S. at 486 n. 6, 496 n. 17; *Teamsters*, 431 U.S. at 419 n. 21; *Hazelwood*, 433 U.S. at 310. The selection decisions in this study, and the pool from which those selection decisions were made, are consistent with number of selection decisions and sizes of pools in *Castaneda*, *Teamsters*, and *Hazelwood*. In 1887, Tarrant County officials made 391 selection decisions from a selection pool of 20,659 black and white males aged five years old and over. See Tables G.1 and G.2. In 1906, Tarrant County officials made 424 selection decisions from a selection pool of 52,173 black and white males aged five years old and over. See Tables H.1 and H.2.

likelihood that the observed disparity in the actual and expected treatment of the group if the selection decisions were made randomly (i.e., fairly, as a result of a fair process). Since P-values represent likelihoods—i.e., percentages—all P-values are between 0 and 1. As the standard deviation (disparity) goes up, the P-value (likelihood) goes down. For example, a standard deviation of 1.96 converts to a P-value of .05, and is interpreted to mean that, if the decision-maker were selecting at random (i.e., fairly), there is a 5 percent likelihood that the selection decisions would have produced a disparity as large as 1.96 standard deviations. A standard deviation of 4.40 converts to a P-value of .00002. Properly interpreted, this means that, if the decision-maker were selecting at random (i.e., fairly), there is a .002 percent chance that the selection decisions would have produced a disparity as large as 4.40 standard deviations. Standard deviations of 5 or more have P-values of virtually zero. Phrased differently, the likelihood of a disparity as large as 5 standard deviations occurring randomly (i.e., fairly) is less than one in a million.[229]

Statistically speaking, P-values smaller than .05 (5 percent, or +/- 1.96 standard deviations) are considered by many to be "statistically significant;" P-values less than .01 (1 percent, or +/- 2.58 standard deviations) are "highly significant." A positive standard

[229] Federal Judicial Center, Reference Manual on Scientific Evidence, 117-125; Paetzold and Willborn, The Statistics of Discrimination, Chapter 4, pages 35-39, and Appendix (the P-value table in Paetzold's appendix identifies 5 standards deviations as having a P-value of "0.00000"); United States Department of Labor, Federal Contract Compliance Manual, 337-339 (less than one in a million at 5 standard deviations). The likelihood drops precipitously when the disparity is measured at 6 standard deviations—less than 1 in 100 million, or 2 in one billion. United States Department of Labor, Federal Contract Compliance Manual, 337-339 (less than 1 in 100 million, or 2 in one billion, at 6 standard deviations).

deviation means that the group is over-represented; a negative standard deviation means that the group is under-represented. [230]

In American federal discrimination law, a sufficiently large disparity—more than 2 or 3 standard deviations—undercuts the initial assumption that selection decisions do not involve discrimination, or are otherwise due to random fluctuations. But neither statistics in general, nor the standard deviation in particular, proves discrimination. What they allow for, however, is a legal inference that discrimination caused the disparity between groups as that disparity becomes less and less likely to have occurred randomly (i.e. fairly).[231] Anecdotal and comparative evidence is often used to supplement statistical evidence. Anecdotal evidence is direct evidence of intent to make selection decisions on a particular basis, such as race. Comparative evidence is evidence that similarly situated individuals are treated differently on a particular basis, such as race. When the statistical evidence is on the lower end of the spectrum, such as 2 or 3 standard deviations, more anecdotal or comparative evidence is required to infer discrimination in a legal sense.

[230] Federal Judicial Center, Reference Manual on Scientific Evidence, 117-125; Paetzold and Willborn, The Statistics of Discrimination, Chapter 4, pages 35-39, and Appendix. In some cases, statisticians perform, and particular cases may benefit from, an additional statistical analysis known as a multiple regression analysis. Multiple regression is sometimes used to analyze data when several possible variables could explain, in whole or in part, the disparities. Federal Judicial Center, Reference Manual on Scientific Evidence, 181-185. In this study, there are no reasonably competing theories to explain the disproportionate rates of African American incarceration, either in 1887 or in 1906. The abundant anecdotal and comparative evidence establishing white intent rules out any other reasonably plausible causal explanation. The use of a county criminal court conviction as a *de facto* method of racial control in Tarrant County before the Texas separate coach law is fairly clear. It is also fairly clear that this method of racial control continued into the early twentieth century.

[231] *Castaneda v. Partida*, 430 U.S. at 495 n. 14; *Teamsters*, 431 U.S. at 335 n. 15.

When the statistical evidence is at the higher end of the spectrum, such as 12 standard deviations, the disparity alone can support a legal finding of discrimination even in the absence of any anecdotal or comparative evidence.[232]

The person alleged to have engaged in discrimination may always attempt to rebut the inference of discrimination. An employer, for example, may concede the existence of discriminatory treatment but argue that such discrimination is necessary for some reason. More often, however, an employer defends a class-wide discrimination charge by offering non-discriminatory reasons that explain the disparities. For example, an employer may challenge the proffered statistical evidence – the propriety of the class's proposed selection pool or the size of that selection pool. An employer may also argue that the selection process has been unfairly characterized, or is sufficiently objective that no human bias could have crept into the selection process.

The foregoing principles apply to this study in the following way. African Americans are suspected of being disproportionately selected for incarceration during the two periods in this study – the early period from 1887 to 1889 and the later period from 1906 to 1908. Tarrant County law enforcement officials—the police, prosecutors and judge—are assumed to have applied the criminal laws equally, fairly, and neutrally to the

[232] *Castaneda v. Partida*, 430 U.S. at 496 n. 17 (standing alone, a standard deviation of 12 justified an inference that Hispanics were not selected for jury duty because of their race or ethnicity); *Hazelwood*, 433 U.S. at 308 n. 14 (intimating that standard deviation of 5, along with anecdotal and comparative evidence, may support an inference that blacks were not selected for teaching positions because of their race); *Teamsters*, 431 U.S. at 337-338 (wide disparities between actual black teachers hired and black representation in the selection pool, coupled with anecdotal and comparative evidence, was sufficient to sustain a finding of discrimination).

male population during these time periods. The principles governing the "selection" of males for incarceration are the statutes defining the offense for which a prisoner was incarcerated, and all of the law enforcement processes associated with carrying out that "selection," including arrest by police, charging decisions by prosecutors, and trial, conviction and sentencing in the courtroom. This process, while it appears different than the hiring process described above, is fundamentally the same because the focus is on the "selection" decisions themselves, although the specific context may differ.

The number of actual selection decisions, as well as the race of persons selected for incarceration, is relatively easy to determine by counting the prisoners in the county jail. See Appendices D and E. The pool from which the selection decisions are made is also relatively easy to determine, and constitutes all males five years old and older in Tarrant County at a specific point in time. In 1887, that point in time is the population in 1890, as recorded in the United States Census. In 1906, that point in time is the population in 1910, as recorded in the United States Census. These age parameters are reasonable because they provide the narrowest possible selection pool without being under-inclusive. In other words, if males of all age were used, that would *decrease* the disparity, whereas if the selection pool comprised males 15 years old and older, that would *increase* the disparity. In both time periods, there were males as young as ten years old in the county jail.[233] Since there were prisoners as young as ten years old in the

[233] Between 1887 and 1890, there were 18 males between 11 and 14 years of age in the county jail, of whom 10 were black (55.6 percent) and 8 were white (44.4 percent). By 1906, the number of black children in the Tarrant County jail *increased*, and their ages *decreased*. Between 1906 and 1908, there were 45 males between 10 and 14 years

jail, using the age bracket of 5 years old and older presents a conservative scenario for contemporary white decision makers. Similarly, using the census data for the census following the actual time period—i.e., using the 1890 census for the period between 1887 and 1890, and the 1910 census for the period between 1906 and 1908—also presents a conservative scenario for contemporary whites. In all likelihood, there were more people in Tarrant County at the time of the census than there were in the specific years for which county jail data is available, which *increases* the selection pool and *decreases* the disparity. The mathematical computations for both periods are at Appendices G and H. The anecdotal and comparative evidence is in Chapters 1 and 2 of this study.

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of age in the county jail, of whom 29 were black (64.4 percent) and 14 were white (31.1 percent). In 1906, the race of two of the young males is unknown.

Table F.1

Males by Age and Race in Fort Worth and Tarrant County,
With Estimates of the Tarrant County Population of
Males Aged 5 Years Old and Older and
Males Aged 15 years Old and Older: 1910

	Race			
Age Category	Black	White	Other	Total
Fort Worth Total	6,781	32,162	?	39,007
Fort Worth 21 years old and up (voting age)	4,513 (66.6%)	20,618 (64.1%)	62 (.25%)	25,193 (64.6%)
Fort Worth 15 years old and up (marital age)	5,204 (76.7%)	23,914 (74.4%)	?	29,182 (74.8%)
Fort Worth 5 years old and up	6,249 (92.2%)	29,170 (90.7%)	64 (.2%)	35,483 (91.0%)
Tarrant county 5 years old and up (ESTIMATED)	7,283 (7,899 x .922)		?	52,173 (57,352 x .91)
Tarrant County 15 years old and up (marital age) (ESTIMATED)	6,059 (7,899 x .767)	36,745 (49,389 x .744)	?	42,899 (57,352 x .748)
Tarrant County 21 years old and up (voting age)	5,116 (64.8%)	29,258 (59.2%)	62 (.2%)	34,436 (60.0%)
Tarrant County Total	7,899	49,389	at least 62	57,352

The 1910 census does not have a five-year old age bracket for the county at large. Accordingly, that age bracket is estimated based on the actual percentage in the city of Fort Worth.

The information in this table is used for Table F.2.

Table F.2

Males in Tarrant County by
Race and Selected Ages: 1890 - 1910

	Race			
Year and Age Group	Black	White	Other	Total
1890 – 5 years old and up	2,091 (10.1%)	18,522 (89.7%)	46 (.002%)	20,659
1910 – 5 years old and up (estimated from Table F.1)	7,283 (14.0%)	44,796 (85.9%)		52,173 (91.0%)
1910 – 15 years old and up (estimated from Table F.1)	6,059 (76.7%)	36,745 (74.4%)	?	42,899 (74.8%)
These percentages are used to calculating the standard deviations in Appendices G (earlier period) and H (later period).				

APPENDIX G

STATISTICAL AND LEGAL METHODOLOGY

APPLIED TO THE EARLY PERIOD: 1887-1890

Applying twenty first century statistical and legal principles to the early period of this study, the starting premise is the assumption that contemporary law enforcement officials—police, prosecutors and judges—applied the criminal laws equally, fairly, and neutrally to the male population of Tarrant County between 1887 and 1889. However, African Americans may have been treated differently. In order to determine whether there was differential treatment of the races, and if so, how different, the process described in Appendix F will be followed.

The first step in the statistical analysis is to determine the actual treatment of African Americans during this time period—the actual selection rates. During this period, 391 different prisoners passed through the Tarrant County jail, 115 of whom were black and 268 of whom were white.[234] The actual selection rates are summarized in Table G.1. African Americans represented 29.4 percent of the Tarrant County prisoners and whites represented 68.5 percent of Tarrant County prisoners. Any given African American male had a 5.5 percent chance of being incarcerated and any given white male had a 1.5 percent chance of being incarcerated.

Table G.1

Actual Treatment/Selection Rates of
Male Prisoners in the Tarrant County Jail,
by Race: 1887-1890

	Race		
Measurement	Black	White	All prisoners, all races, county wide
Selection rate by race - jail population	29.4% (115/391 = .2941)	68.5% (268/391 = .6854)	N/A
Selection rate from the county population – number of black prisoners divided by the county population of males 5 years old and older for that race	5.5% (115/2,091 = .0549)	1.5% (268/18,522 = .0145)	1.9% (391/20,659 = .0189)

[234] Table D.1 (Racial Distribution of Individual People in the Tarrant County Jail: 1887-1890).

The second step in the statistical analysis is to determine the ideal treatment of African Americans during this time period—the representation rates. The representation rates are summarized in Table G.2. The county wide ideal ratio is the percentage of males aged five years old or older, by race, in the county at large. The ideal ratio in jail is the number of prisoners, by race, one would expect in the jail if the racial composition of the jail represented the county wide ideal ratio.

Table G.2

Ideal Treatment/Representation Rates of
Males Age 5 Years Old and Older in
Tarrant County, by Race: 1887-1890

	Race	
Selection Pool/Race	Black	White
County wide ideal ratio	10.1% (2,091/20,659 = .1012)	89.7% (18,522/20,659 = .8966)
Ideal ratio in jail (number of expected prisoners of each race based on county wide ratio)	39.6 ((391)(.1012) = 39.57)	350.5 ((391)(.8965) = 350.53)

The third step in the statistical analysis is to measure the disparity between the actual and ideal treatment of African Americans. The first task in measuring this disparity is to calculate the standard deviation ("SD"), which is the square root of the following: the number of total actual selections ("n" or 391), multiplied by the ideal representation rate for African Americans ("b" or .1012), multiplied by the ideal representation rate for whites ("w" or .8965). Written mathematically, this equation is:

$SD = [(n)(b)(w)]^{1/2}$

$SD = [(391)\ (.1012)\ (.8966)]^{1/2}$

$SD = [35.48]^{1/2}$

$SD = 5.9563$

The binomial standard deviation is calculated by subtracting the expected number of African American selections from the actual number of African American selections, and dividing the remainder by the SD. Written mathematically, this equation is:

Binomial SD = (actual black selections – expected black selections)/SD

Binomial SD = (115 – 39.6)/5.9563

Binomial SD = (75.4)/5.9563

Binomial SD = 12.66

Since the binomial standard deviation is positive, African Americans were over-represented in the county jail during the early period between 1887 and 1889.

The second task in measuring the disparity is to assess the significance of the binomial standard deviation by converting it to a P-value. With a binomial standard deviation of 12.66, the P-value is at or near zero. If the decision-maker were selecting at random (i.e. fairly), there is a near-zero percent likelihood that the selection decisions would have produced a disparity as large as 12.66 binomial standard deviations.[235]

[235] Paetzold and Willborn, The Statistics of Discrimination, Appendix (P-value of "0.00000" at 5 standard deviations); United States Department of Labor, Federal Contract Compliance Manual, 337-339 (likelihood less than one in a million at 5 standard deviations; likelihood 2 in one billion at 6 standard deviations).

APPENDIX H

STATISTICAL AND LEGAL METHODOLOGY

APPLIED TO THE LATER PERIOD: 1906-1908

Applying twenty first century statistical and legal principles to the later period of this study, the starting premise is the assumption that contemporary law enforcement officials—police, prosecutors and judges—applied the criminal laws equally, fairly, and neutrally to the male population of Tarrant County between 1906 and 1908. However, African Americans may have been treated differently. In order to determine whether there was differential treatment of the races, and if so, how different, the process described in Appendix F will be followed.

The first step in the statistical analysis is to determine the actual treatment of African Americans during this time period—the actual selection rates. During this period, 424 different prisoners passed through the Tarrant County jail, 214 of whom were black and 171 of whom were white.[236] The actual selection rates are summarized in Table H.1. African Americans represented 50.5 percent of the Tarrant County prisoners and whites represented 40.3 percent of Tarrant County prisoners. Any given African American male had a 2.9 percent chance of being incarcerated and any given white male had a .4 percent chance of being incarcerated.

Table H.1

Actual Treatment/Selection Rates of
Male Prisoners, Age 5 Years Old and Older,
in the Tarrant County Jail: 1906-1908

	Race		
Measurement	Black	White	All prisoners, all races, county wide
Selection rate by race - jail population	50.5% (214/424 = .5047)	40.3% (171/424 = .4033)	N/A
Selection rate from the county population – number of black prisoners divided by the county population of males 5 years old and older for that race	2.9% (214/7,283 = .0294)	.4% (171/44,796 = .0038)	.8% (424/52,173 = .0081)

[236] Table E.1 (Racial Distribution of Individual People in the Tarrant County Jail: 1906-1908).

The second step in the statistical analysis is to determine the ideal treatment of African Americans during this time period—the representation rates. The representation rates are summarized in Table H.2. The county wide ideal ratio is the percentage of males aged five years old or older, by race, in the county at large. The ideal ratio in jail is the number of prisoners, by race, one would expect in the jail if the racial composition of the jail represented the county wide ideal ratio.

Table H.2

Ideal Treatment/Representation Rates of
Males Age 5 Years Old and Older in
Tarrant County, by Race: 1906-1908

	Race	
Selection Pool	Black	White
County wide ideal ratio (males 5 years old and older)	14.0% (7,283/52,173 = .1396)	85.9% (44,796/52,173 = .8586)
Ideal ratio in jail (number of expected prisoners of each race based on county wide ratio)	59.2 ((424)(.1396) = 59.19)	364.0 ((424)(.8586) = 364.04)

The third step in the statistical analysis is to measure the disparity between the actual and ideal treatment of African Americans. The first task is to calculate the standard deviation ("SD"), which is the square root of the following: the number of total actual selections ("n" or 424), multiplied by the ideal representation rate for African Americans ("b" or .1396), multiplied by the ideal representation rate for whites ("w" or .8586). Written mathematically, this equation is:

$SD = [(n)(b)(w)]^{1/2}$

$SD = [(424)\ (.1396)\ (.8586)]^{1/2}$

$SD = [50.82]^{1/2}$

$SD = 7.1289$

The binomial standard deviation is calculated by subtracting the expected number of African American selections from the actual number of African American selections, and dividing the remainder by the SD. Written mathematically, this equation is:

Binomial SD = (actual black selections – expected black selections)/SD

Binomial SD = (214 – 59.2)/7.1289

Binomial SD = (154.8)/7.1289

Binomial SD = 21.71

Since this binomial standard deviation is positive, African Americans were over-represented in the county jail during the period 1906 - 1908.

The second task in measuring the disparity is to assess the significance of the binomial standard deviation by converting it to a P-value. With a binomial standard deviation of 21.71, the P-value is at or near zero. If the decision-maker were selecting at random (i.e., fairly), there is a near-zero percent likelihood that the selection decisions would have produced a disparity as large as 21.71 binomial standard deviations. [237]

[237] Paetzold and Willborn, The Statistics of Discrimination, Appendix (P-value of "0.00000" at 5 standard deviations); United States Department of Labor, Federal Contract Compliance Manual, 337-339 (likelihood less than one in a million at 5 standard deviations; likelihood 2 in one billion at 6 standard deviations).

APPENDIX I

PHOTOGRAPHS OF PRISONERS IN A TARRANT COUNTY CONVICT CAMP: 1900

Illustration I.1

In this photograph of a turn-of-the-twentieth-century Tarrant County Convict Camp, most of the whites are wearing firearms or handling dogs. The white seated on the horse in Illustration I.1 is also seated on a horse—and clearly armed—in Illustration I.2. All of the blacks, presumably prisoners, are standing in the center of the photograph. The two whites on the far left of the photograph (near the tent) and the white standing on the wagon may be prisoners—if so, note their position away from the black prisoners.

Illustration I.1 Photograph of Tarrant County Convict Camp: 1900

Courtesy, J. W. Dunlop Photograph Collection, Special Collections, The University of Texas at Arlington Library, Arlington, Texas.

Illustration I.2

This is clearly the same convict camp as Illustration I.1, with the trees in the background providing a reference point. As in Illustration I.1, most whites are armed or handling dogs. The white standing on the wagon at the far left is armed. There are two whites in Illustration I.2 who are holding horses—the one on the left is also seen in Illustration I.1, third from the right and handling two dogs.

Illustration I.2 Photograph of Tarrant County Convict Camp: 1900

Courtesy, J. W. Dunlop Photograph Collection, Special Collections, The University of Texas at Arlington Library, Arlington, Texas.

APPENDIX J

TARRANT COUNTY POPULATION AND

STATISTICAL PROFILE OF PRISONERS

IN ALL JAILS IN TARRANT COUNTY: 2000

The Tarrant County jail system is far different today than it was in 1887. The Tarrant County Jail currently has a capacity of 4,000 prisoners in four different jail facilities. A correctional staff of 1,000 people process 32,000 prisoners every year.[238] Prisoners are incarcerated in various other jails throughout Tarrant County. The United States Bureau of Prisons, for example, currently operates the Federal Correctional Institution in Fort Worth.[239] In addition to the county and federal prisons, various municipalities operate their own jails, including Arlington, Mansfield, and other jurisdictions.[240]

A comparison with the twenty first century Tarrant County jail will provide some long-term context to this study. The 2000 United States census provides sufficient information for a rough comparison.[241] The 2000 census provides an estimate of the Tarrant County population. According to the 2000 census, there were 508,151 adult males in Tarrant County, of which 56,036 (11.0 percent) were black (only) and 373,646

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[238] Tarrant County, Texas, http://www.tarrantcounty.com/esheriff/cwp/view.asp?a=792&q=437447&esheriffNav= (accessed January 15, 2012).

[239] U.S. Bureau of Prisons, http://www.bop.gov/locations/institutions/ftw/index.jsp. (accessed January 15, 2012).

[240] See, e.g., http://www.mansfield-tx-gov/ps/police/departments/jail.php (accessed April 6, 2012); http://www.arlingtonpd.org/jail/FAQs.htm (accessed April 6, 2012).

[241] U.S. Census Bureau, United States Census 2000. http://www.census.gov/main/www/cen2000.html (accessed January 14, 2012).

(74.5 percent) were white (only).[242] The remaining 78,469 (15.4 percent) fall into various other racial categories, including Hispanic (only), Asian (only), American Indian (only), Hawaiian (only), more than one race, or "some other" race.

The 2000 census does not differentiate the Tarrant County jail from other jail facilities in Tarrant County, but combines them together into one category of "correctional institutions." It is unclear whether "correctional institutions" includes the county, municipal and federal facilities, so "total" census figures are unreliable for this study. However, the actual total can be reliably derived by adding the number of persons identified as incarcerated in the summary files for each race. On this basis, the total adult (18 years old and older) male population confined in "correctional institutions" in 2000 was 5,813, of whom 1,855 (31.9 percent) were black (only) and 2,307 (39.7 percent) were white (only).[243]

In order to determine whether there was differential treatment of the races, and if so, how different, the process described in Appendix F will be followed. Applying twenty first century statistical and legal principles to the 2000 census data, the starting

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[242] Census 2000 Summary File 1 (SF 1), P12, P12A, P12B, http://www.census.gov/census2000/sumfile1.html (accessed January 15, 2012). An "adult" for purposes of analyzing the 2000 data is anyone eighteen years old or older.

[243] Census 2000 Summary File 1 (SF 1), PCT17B, PCT17I, http://www.census.gov/census2000/sumfile1.html (accessed January 14, 2012). There were 1,337 Hispanics (only) in correctional institutions in Tarrant County in 2000, comprising 23.0 percent of the jail population. The remaining races represented—"some other" race, Asian (along), two or more races, American Indian, and Hawaiian—comprise less than 2 percent each of the jail population. Census 2000 Summary File 1 (SF 1), PCT17C, PCT17D, 17E, 17F, 17G, 17H, http://www.census.gov/census2000/sumfile1.html (accessed January 14, 2012).

premise is the assumption that contemporary law enforcement officials—police, prosecutors and judges—applied the criminal laws equally, fairly, and neutrally to the adult male population (18 years old and older) of Tarrant County in 2000. However, African Americans may have been treated differently.

The first step in the statistical analysis is to determine the actual treatment of African Americans in 2000—the actual selection rates. In 2000, there were 5,813 male prisoners in all jails in Tarrant County, 1,855 of whom were black (only) and 2,307 of whom were white (only). The actual selection rates are summarized in Table J.1. African Americans represented 31.9 percent of prisoners in all jails in Tarrant County, and whites represented 39.7 percent of Tarrant County prisoners. Any given African American male had a 3.3 percent likelihood of being incarcerated and any given white male had a .62 percent likelihood of being incarcerated. [244]

Table J.1

Actual Treatment/Selection Rates of
Male Prisoners in All Jails in Tarrant County,
Age 18 Years Old and Older: 2000

	Race		
Measurement	Black	White	All prisoners/county wide (all races)
Selection rate by race - jail population	31.9% (1,855/5,813 = .3191)	39.7% (2,307/5,813 = .3969)	N/A
Selection rate – county population of males 18 years old and older (by race, and combined)	3.3% (1,855/56,036 = .0331)	.62% (2,307/373,646 = .0062)	1.1% (5,813/508,151 = .0114)

[244] Census 2000 Summary File 1 (SF 1), PCT17B, PCT17I, http://www.census.gov/census2000/sumfile1.html (accessed January 14, 2012).

The second step in the statistical analysis is to determine the ideal treatment of African Americans in 2000—the representation rates. The representation rates are summarized in Table J.2. The county wide ideal ratio is the percentage of males aged 18 years old or older, by race, in the county at large. The ideal ratio in jail is the number of prisoners, by race, one would expect in the jail if the racial composition of the jail represented the county wide ideal ratio.

Table J.2

Ideal Treatment/Representation Rates of
Male Prisoners, Age 18 Years Old and Older,
in All Jails in Tarrant County: 2000

	Race	
Selection Pool	Black	White
County wide ideal ratio (males 18 years old and older)	11.0% (56,036/508,151 = .1103)	73.5% (373,646/508,151 = .7353)
Ideal ratio in jail (number of expected prisoners of each race based on county wide ratio)	641.2 ((5,813)(.1103) = 641.2)	4,274.3 ((5,813)(.7353) = 4,274.3)

The third step in the statistical analysis is to measure the disparity between the actual and ideal treatment of African Americans. The first task in measuring the disparity is to calculate the standard deviation ("SD"), which is the square root of the following: the number of total actual selections ("n" or 5,813), multiplied by the ideal representation rate for African Americans ("b" or .1103), multiplied by the ideal representation rate for whites ("w" or .7353). Written mathematically, this equation is:

$SD = [(n)(b)(w)]^{1/2}$

$SD = [(5{,}813)\ (.1103)\ (.7353)]^{1/2}$

$SD = [471.4552]^{1/2}$

$SD = 21.71$

The binomial standard deviation is calculated by subtracting the expected number of African American selections from the actual number of African American selections, and dividing the remainder by the SD. Written mathematically, this equation is:

Binomial SD = (actual black selections – expected black selections)/SD

Binomial SD = (1,855 – 641.2)/21.71

Binomial SD = (1,213.8)/21.71

Binomial SD = 55.91

Since this binomial standard deviation is positive, African Americans were over-represented in all jails in Tarrant County in 2000.

The second task in measuring the disparity is to assess the significance of the binomial standard deviation by converting it to a P-value. With a binomial standard deviation of 55.91, the P-value is at or near zero. If the decision-maker were selecting at

random (i.e., fairly), there is a near-zero percent likelihood that the selection decisions would have produced a disparity as large as 55.91 binomial standard deviations. [245]

[245] Paetzold and Willborn, The Statistics of Discrimination, Appendix (P-value of "0.00000" at 5 standard deviations); United States Department of Labor, Federal Contract Compliance Manual, 337-339 (likelihood less than one in a million at 5 standard deviations; likelihood 2 in one billion at 6 standard deviations). Unlike the early period (1887-1890) or later period (1906-1908) in this study, the twenty-first century data may indeed benefit from a more refined analysis using multiple regression statistical techniques. For a description of multiple regression, see footnote 230 on page 188.

APPENDIX K

NOTES ON PRIMARY AND SECONDARY SOURCES

A NOTE ON PRIMARY SOURCES

The C. C. Cummings Collection, the Reminiscences of the Early Days of Fort Worth by J. C. Terrell, and the Texas Federal Writers Project all provided valuable information and context for this study. Each of these sources, however, must be used with some caution.

C. C. Cummings Collection

C. C. Cummings was a Mississippian by birth and Confederate soldier arriving in Fort Worth in 1873. He quickly established himself as a well-respected lawyer and was elected Tarrant County judge in 1876. The year 1876 was significant, in part, because Texans ratified the 1876 Redeemer Constitution, signaling the end of Radical Republicanism. In the late nineteenth and early twentieth centuries, Cummings was also a member of the *Bohemian* literary society, and was the historian of the Texas State Division of Confederate Veterans. Cummings had a penchant for facts, and was frequently asked to write historical vignettes for newspapers, *Bohemian* articles, Confederate associations, and other organizations.

Early in the twentieth century, Cummings began a narrative history of Tarrant County, organized topically by chapters. There are two known drafts of each chapter, and it seems clear that one draft is a refinement of an earlier draft. The dates of the earlier drafts, referred to as "Cummings-1" in this study, are unknown. The later drafts, referred to as "Cummings-2" in this study, appear to have been written in or around 1908. There are editorial interlineations in both the earlier and later drafts, and in the earlier

drafts the edits may be from Cummings himself, but the interlineations in the later draft appear to be from a different writer.

Several other items in the Cummings Collection are referred to in this study. The first item is a series of newspaper clippings that are short articles, perhaps one inch by two inches in dimension, cut from various newspapers and then affixed to a blank sheet of paper in scrapbook-like fashion. The second item is the newspaper clipping referred to in footnote 38, which is an article featuring J. C. Terrell and Terrell's Confederate military unit. The date of the Terrell article is not clear, but it probably dates to the turn of the twentieth century because it states that only two Tarrant County Civil War veterans were still alive. C. C. Cummings was clearly a major contributor, if not the author, of the Terrell article. The third item of the Cummings Collection used in this study is an article referred to as the Cummings Miscellaneous Article. The Cummings Miscellaneous Article appears to be an excerpt from an edition of the *Bohemian*, and is entitled "Texas Authors, Prose Writers and Poets" featuring "Judge C. C. Cummings."

The factual assertions in Cummings' narratives are generally taken at face value. Cummings was a lawyer and a county judge with significant record keeping responsibilities that he appeared to take quite seriously. For example, he took office as the Tarrant County judge just after the county court house burned down in March 1876, and expressed concern about accurately recapturing the status of land surveys that had been destroyed. Nevertheless, there are inconsistencies in both narrative drafts that cannot always be reconciled or explained. In this study, such inconsistencies are not cited, even if they could be explained. Another complication with the Cummings

narratives is the authenticity of the interlineations on each draft. In this study, the interlineations are not cited, only the original manuscript narrative is cited, whether an earlier or later draft.

While the factual assertions in the Cummings narratives are valuable, even more valuable is the perspective from which Cummings writes. He was a southerner who experienced the antebellum era, as well as Congressional Reconstruction, in a southern state other than Texas. His narratives, therefore, reflect a distance from the Tarrant County people, places and events that he describes. Despite this distance, Cummings arrived early enough in Tarrant County—1873—that he must have personally known many of the "first folks," as he characterized the early white colonizers, or at least known their families. This personal acquaintance, combined with a common southern heritage and his status as a trusted lawyer in the community, must have afforded him access to "interview" the "first folks" where others might have been rebuffed. Ultimately, Cummings's narratives are most valuable for the *feelings* that he relates, feelings that he expresses for others or his own feelings that his historical persona could not hide. Most of these feelings centered on southern pride.

Reminiscences of J. C. Terrell

J. C. Terrell came to Tarrant County from Tennessee in 1857 and quickly established himself as a well-respected lawyer in the community. At the outbreak of the Civil War, Terrell was appointed as the Confederate government's receiver of property for the county. Rather than remain in civilian service, though, Terrell decided to raise his own Confederate military unit and went on to spend several years in the field. In the

introduction to his reminiscences, Cummings wrote that Terrell returned to Fort Worth after the war "with the remnant of his war-warn veterans, and began life anew at the bottom rung of the ladder." Terrell experienced Congressional Reconstruction in Tarrant County.

Terrell published his reminiscences (memoirs) in 1906, at about the same time as Cummings was drafting his narratives. The factual assertions in Terrell's memoirs are generally taken at face value. As a lawyer Terrell had the same penchant for documenting facts as Cummings. Also like Cummings, Terrell was prominent in Fort Worth and Tarrant County and certainly had access to people and families who would share thoughts and experiences that they might not share with others. Nevertheless, there are inconsistencies that cannot always be reconciled or explained. In this study, such inconsistencies are not cited, even if they could be explained. Ultimately, though, Terrell's memoirs are most valuable for the *personal feelings* that he relates, most of which center on southern pride.

Federal Writer's Project

The Federal Writer's Project Research Data for Fort Worth and Tarrant County were consulted for this study, but they were of limited evidentiary value. The Research Data interviews are difficult to sift through, and often yielded little reliable information. Unlike Cummings's narratives and Terrell's memoirs, written in the first few years after the turn of the twentieth century by people with personal knowledge of the events they described, the Research Data interviews occurred three decades later.

After hours of sifting through the Research Data, only one usable piece of evidence stood out for purposes of this study, and ironically challenges Cummings's narratives. In his narratives, Cummings writes that Sol Bragg was hanged after judicial process, and that Fort Worth had never been "stained" by a lynching. H. L. Terry, however, told Federal Writer's Project researchers that Sol Bragg was hanged by "vigilantes." There is thus a conflict in the historical record. Fort Worth historian Jay Thomas Pearce rejects Terry's testimony, primarily because Terry was only five years old at the time of the alleged lynching.[246] Terry's testimony, however, is valuable not because Sol Bragg might actually have been lynched by vigilantes, but because he grew up *believing* that Sol Bragg was lynched by vigilantes. As a five-year old boy, Terry may not have personal knowledge about Sol Bragg, but he does have personal knowledge about what his father did from time to time, which was have an early supper, leave home with a bundle of white cloth, and return late in the night without telling anyone where he was.

Terry's testimony is also valuable because it reveals the bias in the perspectives from which Cummings and Terrell tell their stories. In claiming that Sol Bragg was hanged by judicial process, Cummings is clearly minimizing the existence of, and therefore meaning of, white violence against blacks as a means of racial control. Similarly, Terrell relates that secession "only carried in [Tarrant] county by [a] twenty-seven majority," clearly minimizing the extent of Tarrant County's role in the rebellion.

[246] Jay Thomas Pearce, "Crime and Punishment in a Texas Cowtown: Tarrant County, Texas, 1876-80," Ph.D. diss., University of Texas at Arlington (2000).

Tarrant County approved secession by a margin of 335 votes,[247] and there is little question that Sol Bragg was hanged by vigilantes despite Cummings's protestations to the contrary. Cummings refers to Sol Bragg and Isom Capps as the only two judicial hangings in Fort Worth. Moreover, he refers to both of these hangings in the same sentence, one of which he acknowledges was for the rape of a white woman. Cummings's assertion strains credulity by suggesting that the *only* two "judicially" sanctioned hangings in Fort Worth were of *black* men in the violent years between 1875 and 1881, one of which Cummings candidly admits was for the rape of a white woman. There is an emotional element to Cummings's denial, as well as Terrell's denial of the true public sentiment supporting secession, which would make very interesting subjects for another study.

A NOTE ON SECONDARY SOURCES

The Tarrant County Historical Resources Survey, sponsored by the Historical Preservation Council for Tarrant County, is an architectural history of Tarrant County. The survey consists of several volumes written over a period of time, with each volume consisting primarily of photographs and focusing on a particular geographic area of Tarrant County. In addition to the photographs, each volume contains short historical narratives about the location that is the subject of that volume.

The survey photographs provided a valuable visual context for this study. The survey can be relied upon for basic facts, such as names of people and places. The

[247] Moneyhon, Republicanism in Reconstruction Texas, 203 (Tarrant County vote was 462 to 127 for secession).

survey is used in this study for that purpose, especially in identifying the black cemeteries in Tarrant County. The survey, however, cannot be relied upon for any in depth historical analysis. The survey, for example, attributes the shooting death of John J. Courtney to a "disagreement [with Albert G. Walker] concerning the elections and states' rights over slavery."[248] Cummings, however, attributes this same shooting to the county seat war.[249]

[248] TCHRS, Vol. 9 (n.p: Instant Reproductions, 1986), 6.

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