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The Slave Trader, the White Slave, and the Politics of Racial Determination in the 1850s

Walter Johnson

In January of 1857 Jane Morrison was sold in the slave market in New Orleans. The man who bought her was James White, a longtime New Orleans slave trader, who had recently sold his slave pen and bought land just up the river from New Orleans, in Jefferson Parish, Louisiana.[1] Morrison, apparently, was to be one of his last speculations as a trader or one of his first investments as a planter. Sometime shortly after her sale, however, Morrison ran away. By the time White saw her again, in October 1857, they were in a courtroom in Jefferson Parish where Morrison had filed suit against him. Before it was settled, that suit would be considered by three different juries, be put before the Louisiana Supreme Court twice, and leave a lasting record of the complicated politics of race and slavery in the South of the 1850s. The reason for the stir would have been obvious to anyone who saw Morrison sitting in court that day: the fifteen-year-old girl whom White claimed as his slave had blond hair and blue eyes.

Morrison began her petition to the Third District Court by asking that William Dennison, the Jefferson Parish jailer, be appointed her legal representative and that she be sequestered in the parish prison to keep White from seizing and selling her.

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[1] The first of the many questions of identity raised by the *Morrison* case concerns the slave trader whom she sued. He was originally identified in the case as John Rucker White, a slave trader from Howard County, Missouri. Testimony and documents introduced in the case, however, prove that he was James White from Georgia, who owned a slave pen in New Orleans in the 1850s. I take the original mistake to be evidence both of how Alexina Morrison first identified herself when she escaped and of a general local knowledge of the slave trade: She must have identified herself as having run from "Negro trader White," and when she did, people thought they knew whom she was talking about.

Slave sales—whether public auctions in the rotunda of one of a city's grand hotels, like this one, or exchanges made behind the high walls of the traders' pens, like the sale that transferred Alexina Morrison to James White—were public events, part of the process by which ideas about race and mastery were daily given material shape in the antebellum South.
Courtesy the Historic New Orleans Collection, Acc. No. 1953.149.

In her petition, Morrison asked that she be declared legally free and white and added a request that the court award her ten thousand dollars damages for the wrong that White had done her by holding her as a slave. She based her case on the claim that her real name was Alexina, not Jane, that she was from Arkansas, and that she had "been born free and of white parentage," or, as she put it in a later affidavit, "that she is of white blood and free and entitled to her freedom and that *on view this is manifest.*" Essentially, Alexina Morrison claimed that she was white because she looked that way.[2]

[2] William Dennison later testified that Morrison had been brought to the prison by "the Officer of the Town of Carrollton" to whom she had "given herself up." Meeting Dennison, she had "placed herself under him for protection" and he "took her to be a white person and took her to his house." Testimony of William Dennison, June 19, 1858, *Morrison v. White,* Louisiana Supreme Court case 442, 16 La. Ann. 100 (1861), Supreme Court of Louisiana Collection (Earl K. Long Library, University of New Orleans, New Orleans, La.). To locate the manuscript record of a case in the Supreme Court of Louisiana Collection, one must know how the reported decision is cited. Thus, in this article, in initial citations to cases in that collection, the standard legal citation (such as 16 La. Ann. 100 [1861]) appears just before the collection name. Plaintiff's Petition, Oct. 19, 1857, *ibid.*; Answer, Nov. 22, 1857, *ibid.*; Petitioner's Affidavit, Oct. 19, 1857, *ibid.* Emphasis added.

In his response, White claimed that he had purchased Morrison (he still called her Jane) from a man named J. A. Halliburton, a resident of Arkansas. White exhibited an unnotarized bill of sale for Morrison (which would have been legal proof of title in Arkansas, but was not in Louisiana) and offered an alternative explanation of how the young woman had made her way into the courtroom that day. Morrison, he alleged, was a runaway slave. Indeed, he said, he had it on good authority that Morrison had been "induced" to run away from him by a group of self-styled "philanthropists" who were "in reality acting the part of abolitionists." In particular, White blamed Dennison, whom he accused of having used his position to "incourage" Morrison to run away and of having "afterwards harboured her, well knowing that she was a runaway." White was drawing his terminology from the criminal laws of the state of Louisiana and accusing Dennison and his shadowy "abolitionist" supporters of committing a crime: stealing and harboring his slave.[3]

The record of the contest that followed is largely contained in the transcription that was made of the records from the lower court hearings of the case when the state supreme court considered *Morrison v. White* for the final time in 1862. As codified in the statutes of the state of Louisiana and generally interpreted by the Louisiana Supreme Court, the legal issues posed by the case were simple enough: If Alexina Morrison could prove she was white, she was entitled to freedom and perhaps to damages; if James White could prove that her mother had been a slave at the time of Morrison's birth or that Morrison herself had been a slave (and had not been emancipated), he was entitled to her service; if she was not proved to be either white or enslaved, her fate would be decided by the court on the basis of a legal presumption of "mulattoes'" freedom under Louisiana law. Captured in the neat hand of the legal clerk who prepared the record of the lower court hearings of the case, however, are circumstances that were apparently considerably more complicated than the ones envisioned by those who had made the laws.[4]

Testimony from the lower court hearings of *Morrison v. White* provides a pathway into the complex history of slavery, class, race, and sexuality in the changing South of the 1850s: particularly into slaveholders' fantasies about their light-skinned and female slaves; the role of performance in the racial identities of both slaves and slaveholders; the ways anxieties about class and capitalist transformation in the South were experienced and expressed as questions about racial identity; the babel of confusion surrounding the racial ideal on which the antebellum social structure was supposedly grounded; the relationship of the law of slavery as made by legislators and appellate judges to its everyday life in the district courtrooms of the antebellum South; and the disruptive effects of one woman's effort to make her way to freedom through the tangle of ideology that enslaved her body. In the South of the 1850s,

[3] Answer, Nov. 22, 1857, *ibid.* There is no evidence that Dennison (or any one else in or around New Orleans in 1857) was an abolitionist. There were, however, people stealing slaves and selling them in the New Orleans slave market. By the 1850s, through ideological contortions and outright erasures of evidence, that crime was commonly associated with abolitionism.

[4] See Judith Kelleher Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana* (Baton Rouge, 1994), 90–95.

Alexina Morrison's bid for freedom posed a troubling double question: Could slaves become white? And could white people become slaves?

Whiteness and Slavery

By the time *Morrison v. White* went to trial, Alexina Morrison would claim that her whiteness made her free, but when Morrison and White first met, in the slave market, it might simply have made her more valuable. It is well known that slaveholders favored light-skinned women such as Morrison to serve in their houses and that those light-skinned women sold at a price premium. What is less often realized is that in the slave market apparent differences in skin tone were daily formalized into racial categories—the traders were not only marketing race but also making it. In the slave market, the whiteness that Alexina Morrison would eventually try to turn against her slavery was daily measured, packaged, and sold at a very high price.[5]

The alchemy by which skin tone and slavery were synthesized into race and profit happened so quickly that it has often gone unnoticed. When people such as Morrison were sold, they were generally advertised by the slave traders with a racial category. Ninety percent of the slaves sold in the New Orleans market were described on the Acts of Sale that transferred their ownership with a word describing their lineage in terms of an imagined blood quantum—such as "Negro," "Griffe," "Mulatto," or "Quadroon." Those words described pasts that were not visible in the slave pens by referring to parents and grandparents who had been left behind with old owners. In using them, however, the traders depended upon something that was visible in the pens, skin color. When buyers described their slave market choices they often made the same move from the visible to the biological. When, for example, they described slaves as "a griff colored boy," or "not black, nor Mulatto, but what I believe is usually called a griff color, that is a Brownish Black, or a bright Mulatto," buyers were seeing color, but they were looking for lineage.[6] The words the buyers used—*griffe, mulatto, quadroon*—preserved a constantly shifting tension between the "blackness" favored by those who bought slaves to till their fields, harvest their crops, and renew their labor forces and the "whiteness" desired by those who went to the slave market in search of people to serve their meals, mend their clothes, and embody their fanta-

[5] Laurence Kotlikoff, "The Structure of Slave Prices in New Orleans, 1804–1862," *Economic Inquiry,* 17 (Oct. 1979), 515; Walter Johnson, *Soul by Soul: Life inside the Antebellum Slave Market* (Cambridge, Mass., 1999), 150–56. See also Thomas C. Holt, "Marking Race: Race-Making and the Writing of History," *American Historical Review,* 100 (Feb. 1995), 1–20.

[6] The figure of 90% is drawn from Robert W. Fogel and Stanley L. Engerman, eds., "The New Orleans Slave Sample," database available from the Inter-University Consortium for Political and Social Research, P.O. Box 1248, Ann Arbor, MI 48106. The word "griff" denoted the offspring of someone labeled "Negro" and someone labeled "Mulatto." Alexina Morrison was described as "yellow" on a bill of sale entered as evidence in her case. I use "bill of sale" (which was not the legal term for the record of a slave sale in Louisiana) rather than "Act of Sale" (which was) because the document was never notarized and was entered (by White's attorneys) as evidence two years after the date of sale. I suspect that the document was fabricated at the time of the trial and that its reference to color represents an effort to answer the arguments of Morrison and her lawyers that she looked white. Bill of Sale, *Morrison v. White;* Testimony of Pascal Lebesque, *Landry v. Peterson and Stuart,* case 1025, 4 La. Ann. 96 (1849), Supreme Court of Louisiana Collection; Testimony of Dr. Richard Lee Fern, *Bloodgood v. Wilson,* case 3272, 10 La. Ann. 302 (1855), *ibid.*; Plaintiff's Petition, *Frierson v. Irvin,* case 1050, 4 La. Ann. 277 (1849), *ibid.*

sies. They sectioned the restless hybridity, the infinite variety of skin tone that was visible all over the South, into imagined degrees of black and white that, once measured, could be priced and sold.

These racial imaginings, however, were more than skin deep. Those who bought people to serve them as agricultural slaves focused their attention on vital capacity: they sought the size they associated with resilience and the dark skin they imagined into immunity to disease, they squeezed arms to test their strength, and inspected fingers to estimate their dexterity for picking cotton, they probed bellies and hefted breasts to search out histories of childbearing and the promise of reproduction. By contrast buyers' attention accreted to different parts of slaves' bodies when they described the mixed people whom they bought to serve in their households. Besides offering the seemingly obligatory references to skin color, descriptions of household slaves focused on mouths and teeth rather than hands and arms, on bodily proportion rather than bodily capacity, on acquired skill, personal demeanor, and proven loyalty rather than supposed immunity. The values slave buyers attributed to light-skinned bodies, that is, were proximate to those they claimed for themselves: this was whiteness made salable by the presence of blackness, what I will call hybrid whiteness.[7]

As Monique Guillory has suggested in her work on the New Orleans quadroon balls, the gaze of the consumer projected a fantasy of white masculinity onto the bodies of light-skinned women: the fantasy that other people existed to satisfy white men's desires. Though that fantasy was particularly associated with the notorious "fancy trade" to New Orleans, the sale of light-skinned women for sex or companionship occurred all over the South. The word "fancy" has come down to us an adjective modifying the word "girl," a word that refers to appearances perhaps or manners or dress. But the word has another meaning; it designates a desire: he fancies. . . . The slave market usage embarked from this second meaning: "fancy" was a transitive verb made noun, a slaveholder's desire made material in the shape of a woman like the one slave dealer Philip Thomas described seeing in Richmond: "13 years old, Bright Color, nearly a fancy for $1135." An age, a sex, a complexion, and a slaveholder's fantasy. A longer description of Mildred Ann Jackson traced the same lines: "She was about thirty years old. Her color was that of a quadroon; very good figure, she was rather tall and slim. Her general appearance was very good. She wore false teeth and had a mole on her upper lip. Her hair was straight." Jackson's body was admired for its form, for its delicacy, and for its fetishized details. The slave dealer James Blakenly made the density of the traffic between phenotype and fantasy explicit when he described Mary Ellen Brooks: "A very pretty girl, a bright mulatto with long curly hair and fine features . . . Ellen Brooks was a fancy girl: witness means by that a young handsome girl of fourteen or fifteen with long curly hair." Solomon Northup, a free black who had himself been kidnapped and sold in

[7] Johnson, *Soul by Soul,* 150–56. For the idea that race mixture should be treated from both sides of the imagined spectrum between white and black—as a matter of whiteness as well as of blackness—see Werner Sollors, *Neither Black nor White Yet Both: Thematic Explorations of Interracial Literature* (New York, 1997), 3–30.

the New Orleans market, remembered slave dealer Theophilus Freeman's account of the price that light-skinned Emily would bring in New Orleans: "There were heaps and piles of money to be made for such an extra fancy piece as Emily would be. She was a beauty—a picture—a doll—one of your regular bloods—none of your thick-lipped, bullet-headed, cotton [pick]ers."[8]

Freeman made explicit what lay behind the descriptions; according to the ideology of slaveholders' racial economy, which associated blackness and physical bulk with vitality, such bodies were useless for production. Light-skinned and slender, these women were the embodied opposites of those sought as field hands; their whiteness unfitted them for labor. For slave buyers, near-white enslaved women symbolized the luxury of being able to pay for service, often sexual, that had no material utility—they were "fancies," projections of the slaveholders' own imagined identities as white men and slave masters. Indeed, the description that Blakenly gave of Brooks's body was part of a courtroom effort to prove that her death had been caused by "improper intercourse" forced upon her by her buyer: Blakenly used a description of Brooks's body to impute a character to the man who had bought her.[9]

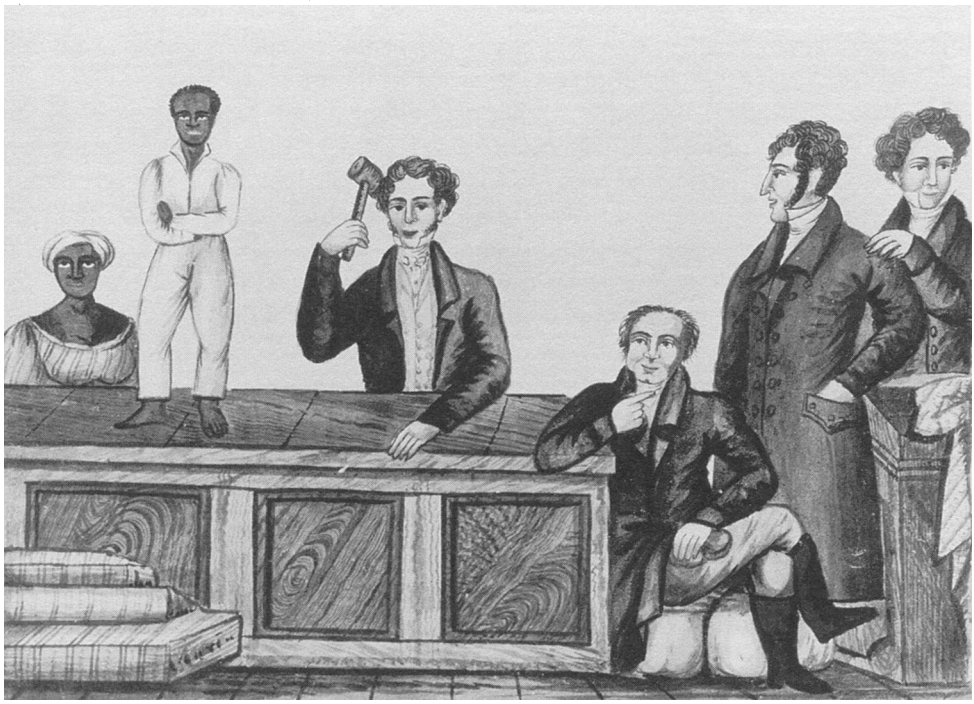
And so, at a very high price, whiteness was doubly sold in the slave market. In the first instance the enslaved women's whiteness was packaged by the traders and imagined into meaning by the buyers—into delicacy and modesty, interiority and intelligence, beauty, bearing, and vulnerability. These descriptions of enslaved light-skinned women, however, were projections of slaveholders' dreamy interpretations of the meaning of their own skin color. Indeed, in the second instance it was the buyers' own whiteness that was being bought. The fantasies they projected onto their slaves' bodies served them as public reflections of their own discernment: they were the arbiters of bearing and beauty; their slaves were the showpieces of their pretensions; their own whiteness was made apparent in the bodies of the people they bought. By buying ever-whiter slaves, the prosperous slaveholders of the antebellum South bought themselves access to ever more luminous fantasies of their own distinction.[10]

But slaveholders' performance of their own slaveholding whiteness depended upon their slaves' ability to perform enslaved whiteness. When I say performance I do not mean to suggest there was anything artificial about the way these women acted, though there might have been. I mean that the ideology that associated hybrid white womanhood with delicacy, gentility, and sexuality could not exist independent of

[8] Monique Guillory, "Some Enchanted Evening on the Auction Block: The Cultural Legacy of the New Orleans Quadroon Balls" (Ph.D. diss., New York University, 1999). On the many locations where light-skinned women were sold, see Frederic Bancroft, *Slave Trading in the Old South* (Baltimore, 1931), 38, 50–51, 57, 102, 131, 251, 280, 328–30. Philip Thomas to William Finney, July 26, 1859, William A. J. Finney Papers, *The Records of Antebellum Southern Plantations on Microfilm,* ed. Kenneth Stampp; Testimony of Charles Goddard, *Fisk v. Bergerot,* case 6814, 21 La. Ann. 111 (1869), Supreme Court of Louisiana Collection; Testimony of James Blakenly, *White v. Slatter,* case 943, 5 La. Ann. 27 (1849), *ibid.*; Solomon Northup, *Twelve Years a Slave,* ed. Joseph Logsdon and Sue Eakin (Baton Rouge, 1968), 58.

[9] Testimony of Blakenly, *White v. Slatter.*

[10] On racial ideology in the slave market (including notions of "blackness," slaveholders' views of light-skinned men, and white women's views of the "fancy trade"), see Johnson, *Soul by Soul,* 78–116, 135–61.



Slaves in the market were subjected to detailed physical examinations as buyers assigned meaning to their bodies based upon antebellum ideas about blackness and whiteness.
Courtesy the Historic New Orleans Collection, Acc. No. 1941.3.

the immediate appearance and daily behavior of the people it described.[11] Slaves had to be made, sometimes violently, to enact the meaning slaveholders assigned to their bodies. Hence the traders' attention to decorating the mixed women they sold for sex and the practice of sending them to sale in gloves or shawls. Hence the careful instructions they gave slaves about how to act in the market. The buyers had to be even more painstaking: more than simply getting slaves to look the part, the buyers had to make sure they would play it. Stubbornness, recalcitrance, or simple inability on the part of their slaves could make a mockery of slaveholders' projected pretensions by revealing how much their own identities depended upon the behavior of

[11] In the nineteenth century Frederick Law Olmsted invoked what I call "performance" as he described how he identified the race of people in the public market in Washington, D.C.: "All the Negro characteristics were more clearly marked in each than they often are in the North. In their dress, language, manner, motions—all were distinguishable almost as much as by their color from the white people who were distributed among them." Frederick Law Olmsted, *Journey in the Seaboard Slave States, with Remarks on Their Economy* (1856; New York, 1968), 12. On the embodiment and performance of socially scripted roles, see Norbert Elias, *The Civilizing Process,* vol. I: *The History of Manners,* trans. Edmund Jephcott (New York, 1978); Paul Connerton, *How Societies Remember* (Cambridge, Eng., 1989); Candace West and Don H. Zimmerman, "Doing Gender," in *The Social Construction of Gender,* ed. Judith Lorber and Susan Farrell (London, 1991), 13–37; and Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (London, 1990), 79–149.

their slaves. And so slaveholders were willing to pay a lot of money for the right kind of performance. The better the slaves' performance, the greater the value produced out of the synergetic whiteness of slave and slaveholder.[12]

Ironically, these slave market syntheses of whiteness and slavery, these costly flirtations with hybridity, were underwritten by slaveholders' ideology of absolute racial difference. The saving abstraction "black blood" held the power to distinguish nearly white women from really white ones, to distinguish what was essentially performance from what was the performance of essence—slaveholders generally believed that "black blood," if present, would be apparent in the countenance, conversation, or carriage of the one who bore its taint.[13] When a performance of enslaved whiteness was too good, however, the combination of "white" appearance and behavior could overwhelm the intended distinction; a slave could become "too white to keep," likely to slip aboard a ship or hop onto a train and escape to freedom. A virtuoso performance of whiteness could breach the categories designed to contain and commodify hybridity; a slave could step over the color line and onto the other side. Perhaps the slave trader who sold Morrison to White was thinking of that type of performance when he remembered that she was "too white." And perhaps that is why James White had apparently curled the young woman's hair and dyed it black after he brought her home from the slave market.[14]

Morrison versus White

According to most versions of the southern social order, Alexina Morrison—whether as enslaved white or passing slave—was not supposed to exist at all. But the color-coding, black slaves and white supremacy, that characterized most of the political debate over slavery was unreliable as a description of the institution's everyday life. First, there was racial mixture and sexual predation: throughout the history of American slavery it was not always easy to tell who was "black."[15] Second, there was manumission: just as racial mixture made it harder to tell who was "black," manumission made it harder to tell who was a slave. The ultimate expression of slaveholders' property right—the right to alienate their property however they pleased—increasingly undermined the ability of slaveholders as a class to keep race and slavery coextensive.[16] Finally, there were the slave trade and interregional migration: the

[12] On slaveholders' dependence on their slaves' performances, see Johnson, *Soul by Soul,* 197–207.

[13] See Guillory, "Some Enchanted Evening on the Auction Block," 149–81; and Sollors, *Neither Black nor White Yet Both,* 142–61, 220–45.

[14] Olmsted, *Journey in the Seaboard Slave States,* 639–41. On worries about slaves who were "too white to keep," see Martha Hodes, *White Women, Black Men: Illicit Sex in the Nineteenth-Century South* (New Haven, 1997), 118–20. Testimony of W. J. Martin, June 19, 1858, *Morrison v. White;* Testimony of Dennison, June 19, 1858, *ibid.*

[15] Ira Berlin, *Slaves without Masters: The Free Negro in the Antebellum South* (New York, 1974), 365–70; Thomas D. Morris, *Southern Slavery and the Law, 1619–1860* (Chapel Hill, 1996), 35–36; Ariela J. Gross, "Litigating Whiteness: Trials of Racial Determination in the Nineteenth Century South," *Yale Law Journal,* 108 (Oct. 1998), 109–88.

[16] For evidence that at the time of *Morrison v. White,* manumission was being curtailed all over the South as slaveholders' absolute property rights were subordinated to the perceived public interest in having fewer free black people in the South, see Morris, *Southern Slavery and the Law,* 371–423.

antebellum South was a rootless society. The broad transition from an upper South tobacco economy to a lower South cotton economy and the domestic slave trade, through which as many as two-thirds of a million people may have passed in the antebellum period, had removed hundreds of thousands of people such as Alexina Morrison from the communities in which their identities were rooted. Through acts as small as lying about their past in the slave market or as audacious as running away and claiming to be white, many of the enslaved people forcibly transported by the trade worked their deracination against their slavery.[17]

By 1857, when Alexina Morrison ran away and sued the slave trader, southern lawmakers already had at least two centuries' experience with the ambiguities of a social order in which not all slaves were black and not all nonwhite people were slaves. Throughout the nineteenth century, southern states passed ever-more-detailed laws defining the acceptable limits of drinking, gambling, and lovemaking along the lines of race and slavery. Those laws attempted to control sites where black and white, slave and free, bargained and socialized freely with one another, places where the white supremacist ideology upon which the defense of slavery increasingly relied was daily undermined in practice. The capstone of the effort to make the categories of race and slavery once again coextensive was the self-enslavement laws passed by many states in the 1850s. Based on the racist premise that enslaved people were better off than free people of color because they had white people (read *owners*) to take care of them, and flirting with the point at which the edifice of proslavery ideology would collapse beneath the weight of its own absurdity, the laws offered free blacks a chance to choose a master and enslave themselves.[18]

The most explicit legislative consideration of race, however, came in the framing of presumptions assigning legal status as slave or free to an otherwise unknown person. Taken together, the presumption laws outlined two ways of thinking about race: South Carolina, Georgia, and Delaware assigned status on the basis of observation and reputation; other slaveholding states, including Louisiana, attempted to establish presumptions of freedom based upon fractions of "black blood": halves, fourths, eighths, sixteenths, and so on down to one drop, which was the standard only in Arkansas during the antebellum period. The first standard emphasized appearance and performance; the second, more popular standard relied on a supposedly scientific estimation of an imagined blood quantum. The presumptions did not mean that the in-between people who came before the courts were free: Other evidence could overcome the legal presumption, most notably historical

[17] On the domestic slave trade, see Bancroft, *Slave Trading in the Old South;* Michael Tadman, *Speculators and Slaves: Masters, Traders, and Slaves in the Old South* (Madison, 1989); Steven H. Deyle, "The Domestic Slave Trade in America" (Ph.D. diss., Columbia University, 1995); and Johnson, *Soul by Soul.*

[18] Olmsted, *Journey in the Seaboard Slave States,* 639–41; Morris, *Southern Slavery and the Law,* 31–36; Richard C. Wade, *Slavery in Cities: The South, 1820–1860* (New York, 1964), 80–110; Barbara Jeanne Fields, *Slavery and Freedom on the Middle Ground: Maryland during the Nineteenth Century* (New Haven, 1985), 40–89; Victoria E. Bynum, *Unruly Women: The Politics of Social and Sexual Control in the Old South* (Chapel Hill, 1996), 88–110; Hodes, *White Women, Black Men,* 116–22; Morris, *Southern Slavery and the Law,* 17–36; Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana,* 179.

This group of Louisiana slaves was exhibited during the Civil War in an effort to raise support among white northerners. By the late antebellum period, southern legislatures and judges—recognizing complexities suggested in this photograph—were increasingly concerned with the erosion of the boundaries between black and white and slave and free. *Courtesy the Library Company of Philadelphia.*

evidence that the person before the court had been held as a slave or born to an enslaved woman.[19]

Faced with a person of indeterminate identity, then, antebellum legislators and litigators had three conceptually distinct (though often practically interrelated) ways of locating them in the grid of acceptable social identities: personal history, race science based on discerning "black blood," and performance—the amalgam of appearance and reputation, of body, behavior, and scripted social role. And over the course

[19] For the broader legal context of *Morrison v. White,* see Morris, *Southern Slavery and the Law,* 17–36; Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana,* 220–88; Hodes, *White Women, Black Men,* 96–122; Peter Bardaglio, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth-Century South* (Chapel Hill, 1995); Adrienne D. Davis, "Identity Notes Part One: Playing in the Light," *American University Law Review,* 45 (Feb. 1996), 695–720; and Gross, "Litigating Whiteness," 109–88. For racial definition and law generally, see Virginia R. Dominguez, *White by Definition: Social Classification in Creole Louisiana* (New Brunswick, 1986); and Ian Haney-Lopez, *White by Law: The Legal Construction of Race* (New York, 1996).

of the nineteenth century, in cases that resulted from the presumption laws, in cases that arose out of disputes over inheritance and other property claims, and in cases where enslaved people such as Morrison claimed they were white, judges throughout the slaveholding South (not just in Louisiana) were asked hundreds of times to stabilize the visible confusion of a hybrid reality into the stable degrees of difference demanded by a ruling class that wanted to see the world in black and white. Thus, when Alexina Morrison sued the slave trader for possession of her whiteness, she was entering a much broader ongoing contest over the tools used to determine the race of indeterminate bodies.[20]

Like many of the other people who came before the courts in cases of disputed racial identity, Alexina Morrison emerged from a shadowy world in which legal and historical categories may have had only episodic relevance to everyday experience. It was not unheard of in the antebellum South for people who were legally enslaved to live as free for many years before being dragged into court as slaves. Nor was it impossible for someone to appear as "black" or, more likely, "mulatto" on one tabulation of the United States census and "white" on another. It sometimes took a long-dormant claim of ownership or an intruding census taker to make people make sense of themselves in the categories that supposedly ordered southern society—black and white, slave and free.[21]

There are only hints of how Alexina Morrison might have made sense of herself before she sued James White. In 1850, when the census takers passed through Matagorda County, Texas, the household of Moses Morrison included himself, three other white men, and, listed separately on the slave schedule, a woman aged thirty and labeled mulatto, five children aged between one and thirteen, also labeled mulatto, and an enslaved man, listed beneath this apparent slave family, aged thirty-eight and labeled black.[22] Of the children, one was a seven-year-old girl, most likely Alexina Morrison. That the children were listed as mulatto like their mother and that the only enslaved man in the household was not suggests that their father was white—perhaps Moses Morrison or one of the men who boarded with him.

There is no way of knowing the internal life hidden behind the census taker's rendering of the Morrison household in Matagorda, of knowing who was treated as a slave in that household and who, perhaps, as a daughter—as one of the witnesses who testified to having later known Morrison in Arkansas put it about her early days in Texas, "I do not know of my own knowledge as to whether the girl was raised, treated, and bred from her birth as a slave or otherwise." Nor is there any way of knowing whether Alexina Morrison was treated as property or company as she subsequently passed through the households of various members of the Morrison fam-

[20] For other states, see Morris, *Southern Slavery and the Law,* 17–36; and Gross, "Litigating Whiteness," 109–88.

[21] *Eulalie v. Long and Mabry,* case 3979, 11 La. Ann. 463 (1856), Supreme Court of Louisiana Collection; *Euphemie v. Juilet and Jourdan,* case 6740, unreported Louisiana Supreme Court case (1860), *ibid.* See also Brenda Stevenson, *Life in Black and White: Family and Community in the Slave South* (New York, 1996), 305–6; and Hodes, *White Women, Black Men,* 96–122, 137–38.

[22] Manuscript Population Schedules, Matagorda County, Texas, Seventh Census of the United States, 1850, household 93. Slave Schedules, *ibid.* For Alexina Morrison's family as a mother and five children ("three older and one younger" than Alexina), see Deposition of Benjamin F. Giles, March 1, 1858, *Morrison v. White.*

ily, whether she thought she was being sold or just moving on. Nor is there any way of knowing if Andre Hutt was telling the truth when he testified at the trial that Alexina Morrison had tried to convince his wife to buy her as a slave in Little Rock, Arkansas, before she appeared in the market in New Orleans; nor, finally, of knowing how Morrison was treated in the New Orleans slave pen where she was sold to White, if her performance of hybrid whiteness was enforced by intimidation or simply enhanced by instruction.[23] But two things are as clear as day: By the time she ended up in White's possession Alexina Morrison was a slave, and by the time she escaped she was white.

When Alexina Morrison escaped from James White, her jailer/protector remembered, the first thing she said was that she was white. And when she brought suit against White, she did so by building this assertion into a story: that she was born of white parents and taken away from her home in Arkansas by "gross fraud," that she had been held by force and falsely claimed as a slave. By the time the case came to trial, however, the pieces of that story had been folded back into the initial assertion of whiteness. Morrison's letters to those whom her lawyers termed "her friends and supposed family" in Arkansas and Texas had gone unanswered (intercepted, the lawyers suggested). As fifteen-year-old Alexina Morrison sat in court while her case was tried, she embodied her lawyer's entire case: her whiteness was "on view . . . manifest."[24]

Morrison's claim of whiteness drew its power from three sources: her appearance, her behavior, and the idea that "black blood," if present at all, would necessarily be visible. Most simply, her case took the form of outright description. "From his opinion," one witness testified, "the girl is white. Says he judges she is white from her complexion." Or: "Has seen plaintiff and been intimately acquainted with her. From witness' judgment of plaintiff arising from his intimacy she has not the features of the African Race." Other witnesses placed a greater emphasis on behavior when they described what it meant to be white: "Had witness been introduced to the girl without knowing her, he would have taken her for a white girl . . . Has had opportunity of Judging her, and she conducted herself as a white girl. She is so in her conduct and actions. She has none of the features of an African." If there had been any of "the African race" in Alexina Morrison, they argued, it would have been outwardly and objectively visible in the way she looked and acted, but from the moment she had made her initial claim of whiteness, there had been no outward sign that she was anything but white all the way through. As one witness put it, on the night when Morrison escaped from the trader, "she seemed to be in trouble . . . from her air and her manners." In other words, she seemed like a white woman in distress. Trying to make Alexina Morrison make sense to the court, Morrison's lawyers and witnesses drew on a set of images of feminine whiteness—modest carriage, unimposing gentility, emotional transparency. Indeed, it was Morrison's performance of her womanhood as much as of her whiteness that seems to have transfixed the white men who supported her cause: Alexina Morrison, they were arguing, was

[23] Deposition of James C. Anthony, March 1, 1858, *Morrison v. White;* Deposition of Giles, March 1, 1858, *ibid.*; Deposition of Moses Morrison, July 26, 1858, *ibid.*; Deposition of Andre Hutt, May 10, 1858, *ibid.*

[24] Plaintiff's Petition, Oct. 19, 1857, *Morrison v. White;* Petitioner's Affidavit, Oct. 19, 1857, *ibid.*

white because white womanhood was always as it seemed. By centering their case in the "flaxen haired, blue eyed," and presumably well-behaved young woman in the courtroom, Morrison and her lawyers had drawn on one of the sacred premises of the antebellum social order—the visible, unquestionable, objective character of race—as it was embodied in the most precious fetish of white supremacy, a white woman.[25]

The slave trader's case began with simple negation. Where Morrison's witnesses looked at the young woman and saw white, White's witnesses looked at her and saw black. Immediately after stating that he would not himself have bought Morrison because she was "too white," W. J. Martin, the dealer who brokered the sale of Morrison to White, testified that "from the appearance of the girl" he nevertheless judged "that she has African Blood." Martin's opinion was seconded by J. A. Breaux, who located Morrison's "African Blood" in "the shape of her cheek Bones and the conformation of the lower part of her mouth." The case by negation, however, was itself vulnerable to negation. In cross-examining Breaux, Morrison's lawyers posed alternative interpretations of the shape of the young woman's face: Had Breaux ever traveled among Indians or been to Mexico, the Antilles, or the West Indies? Had he noticed how straight Alexina Morrison's hair was? Had he looked at the color of her skin, at her hands or her feet? Would he describe Mr. Hall, a spectator in the courtroom, as having high cheekbones?[26] By providing alternative explanations for the supposedly nonwhite characteristics that seemed to show through Morrison's white skin, Morrison's lawyers hinted for the first time at the high stakes they were willing to bring to bear in the case. If Alexina Morrison could be judged black, was there any certainty that others might not be so judged: racial others like Indians, extranational others like Mexicans and West Indians, and indeed other white people like Mr. Hall, sitting right there in the courtroom? If Alexina Morrison was black, they hinted, there was no telling who else might be.

The indeterminacy of the visual evidence and the threat that all kinds of difference might be blackened by the slave trader's claim pushed White's lawyers into the awkward posture of trying to convince a jury of southern white men that they could not believe their eyes (an unaccustomed role for a slave trader, who presumably spent most of his time trying to convince people *to* believe their eyes). They did so by drawing on history, by which they hoped to prove that Alexina Morrison was a slave; race science, by which they hoped to undermine the idea that she was white; and, finally, a different set of images of race and gender performance—images that located the young woman's race in allusion to her sexuality rather than her demeanor.

The slave trader's history came from depositions taken in Texas and Arkansas where people remembered the young woman as a slave. Moses Morrison could not remember in whose house she was born, but he remembered buying Alexina, her

[25] Testimony of J. B. Clawson, June 19, 1858, *Morrison v. White;* Testimony of S. N. Cannon, June 19, 1858, *ibid.*; Testimony of Kemper, June 19, 1858, *ibid.*

[26] Testimony of Martin, June 19, 1858, *Morrison v. White;* Testimony of J. A. Breaux, June 19, 1858, *ibid.* Throughout this article, I have reconstructed the questions asked on cross-examination from the answers recorded by the courtroom clerk. For example, if the recorded answer reads "Witness would not describe Mr. Hall sitting in the courtroom now as having high cheekbones," I have assumed the question was "Would witness describe Mr. Hall sitting in the courtroom now as having high cheekbones?" or something close to that.

siblings, and her mother in 1848; he remembered keeping her for four or five years and then taking her to his nephew's house in Little Rock, where she was to learn to sew and do housework. That was the last he had seen of her. She would have, he added, to highlight the importance of personal history and reputation in regulating hybridity, "passed for a white child anywhere if not known." From Arkansas, Morrison's nephew remembered Moses Morrison bringing Alexina out from Texas in 1850 and trying to give her to his (Moses') niece, Ellen. Ellen's father had said that "he did not want so white a Negro about him" and advised Moses Morrison to sell Alexina. Morrison, instead, gave her to his nephew, who remembered entrusting her to a slave trader, who took her to New Orleans at the beginning of 1857 and sold her to James White. From Morrison to his nephew to the trader to White: James White's lawyers tried to locate Alexina Morrison's apparent whiteness in a traceable history of slavery. Step by step, they outlined a story rooted in the moment in 1848 when she was sold with her mother as a slave to Moses Morrison; according to the standards of historical and legal record, that sale made Alexina Morrison a slave.[27]

And yet in a society as rootless as the antebellum South, the seemingly stable category of "slave" was a less certain legal tool than it might seem to a historian bent on figuring out whether or not Alexina Morrison "really" was what she said she was.[28] The history provided by the slave trader, after all, occurred at a distance of time and space that made it untrustworthy; indeed, one of the judges who heard the case as it passed through the court system threw it out on the grounds that the depositions had been improperly taken and could not be relied upon as authentic.[29] The textual rendering of testimony given in Texas and Arkansas was apparently not history enough to convince him that the fate of the blond-haired and blue-eyed young woman who stood before him in the court should be decided by the depositions of distant witnesses testifying about a shadowy past as a slave.

While White's lawyers concentrated on tracing the young woman's history in their own effort to prove that she was a slave (for if they could prove that, it did not legally matter what color she was), the bulk of their cross-examination concentrated on undermining her lawyers' claim that she was white, a claim they clearly feared would influence the jury. In questioning Morrison's witnesses, the slave trader's lawyers asked repeatedly about hybridity, trying to work their way back to essential blackness from apparent whiteness. What were, they asked each of Morrison's witnesses, the distinctive features of the African race when removed to the fourth or fifth degree? Had not the witness seen people removed to the fourth degree with blue eyes before? Did the witness believe in the unity of the races? That slaves as well as slaveholders were descended from Adam and Eve? Was the witness in favor of amalgamation? Did the witness know the differences between the races at all?[30]

[27] Deposition of Morrison, July 26, 1858, *Morrison v. White;* Deposition of Giles, March 1, 1858, *ibid.*

[28] Or even, as I have been asked many times—and this seems to me evidence of the lingering imaginative hold of the quadroon ball fantasy—if she was really beautiful.

[29] Defendant's Bill of Exceptions in the Fifth District Court hearing of the case, 1858, *Morrison v. White.*

[30] Cross-examination of G. H. Lyons, June 19, 1858, *Morrison v. White;* Cross-examination of Clawson, June 19, 1858, *ibid.*; Cross-examination of Cannon, June 19, 1858, *ibid.*

Faced with the unquestionably blue-eyed and blond Alexina Morrison, the defendant's lawyers tried to resolve the mystery of hybridity back into the constancy of blackness by making the argument that "black blood" could disappear without a trace into apparent whiteness but still be present. Even if Morrison's witnesses were right and White's were wrong, even if the young woman standing in court was free of any visible trace of "the African," they were arguing, she could still be black. This line of questioning revealed how far White's lawyers were willing to go in contesting Morrison's claim to whiteness: To believe that Alexina Morrison was white, they implied, was to ignore one of the major foundations of much white supremacist and proslavery thought, polygenesis—the idea that blacks and whites were created separately and so should ever remain. Indeed, to try to slip an apparently white black slave like Alexina Morrison across the color line was to lend support to the most toxic of abolitionism's many heresies, the claim that the hold of slavery on the southern states might be attenuated through gradual racial "amalgamation."[31]

The plaintiff's witnesses, however, refused to yield the point. G. H. Lyons told the court that he "knew the difference between the Caucasian and African races" and was "opposed to amalgamation," but he still thought that Morrison was white. J. B. Clawson was familiar with all of the difficulties of crosses of the fourth and fifth degrees and conceded that "at the fifth degree a woman cannot tell" white from black, but he was himself certain about Morrison. And S. N. Cannon assured the court that "colored blood will stick out" even in crosses of the fourth or fifth degree. It was in "the shape of the hairs being curled, the white of the eyes . . . in the shape of the nose and lips." But it was, they all agreed, nowhere in Alexina Morrison.[32]

In the end, the slave trader's effort to summon Morrison's evanescent "black blood" to the surface of her skin through a science lesson about crosses of the fourth and fifth degree was sidetracked at every turn by countersciences and slaveholding common sense. As they attempted to make the invisible visible, White's lawyers remained vulnerable to the impervious confidence of men such as P. C. Perret, a self-identified "Creole" who walked into the court and declared that he could tell Alexina Morrison was white because "it is an impulse with him and with the creoles generally" to be able to tell the race of a person. He explained: "it is the same instinct in the same measure as the alligator, he can tell it the same with the alligator, who knows three days in advance that a storm is brewing. In December the weather may be ever so fair but the alligator will be seen to sink and the next day or the day after the storm will be seen to shew itself."[33] No matter the seeming simplicity of the legal

[31] On polygenesis (and its opposite, monogenesis), the nineteenth-century debate about them, and the religious and scientific context of the arguments, see William Stanton, *The Leopard's Spots: Scientific Attitudes toward Race in America, 1815–1859* (Chicago, 1960); Thomas Gossett, *Race: The History of an Idea in America* (Dallas, 1963); George M. Fredrickson, *The Black Image in the White Mind: The Debate over Afro-American Character and Destiny, 1817–1914* (New York, 1971); and Reginald Horsman, *Josiah Nott of Mobile: Southerner, Physician, and Racial Theorist* (Baton Rouge, 1987).

[32] Cross-examination of Lyons, June 19, 1858, *Morrison v. White;* Cross-examination of Clawson, June 19, 1858, *ibid.*; Cross-examination of Cannon, June 19, 1858, *ibid.*

[33] Testimony of P. C. Perret, May 18, 1859, *Morrison v. White.*

presumption that portions of "black blood" could be made manifest and measured, race science in practice was broadly contested.

White's lawyers apparently adjudged a distant history of slavery and a contested lesson about race science too uncertain to prove their case, and so it was with social practice and sexual performance that they concluded their effort. Where did you meet Alexina Morrison, they asked S. N. Cannon, was it at a ball? The witness responded that he had never seen her at a ball, and for the moment the matter ended there. But by the end of the third hearing of the case in the lower courts, the defense was asking the man: "Are you the father of the child of plaintiff?" And when the plaintiff's lawyers objected to that: "Is not the plaintiff in the family way for you now?" Shortly after, the witness was recalled and testified, under cross-examination, that he had been Morrison's jailer for five years, that she had spent nineteen months of those years out of jail, and that she had a child while in jail.[34]

This line of questioning aimed to establish Alexina Morrison's evanescent blackness by slotting her into one of the prefabricated categories that antebellum slaveholders used to mediate between the confusing hybridity they saw all around them and the imagined racial essences on which they grounded their society. By alluding to her public appearance at local balls and her extramarital sexuality, they drew on the racialized and sexualized image of the quadroon mistress to locate Alexina Morrison's origins. As White's lawyers put it about her supporters in a later petition to the court: "they have dressed her up and taken her to public and private balls." Her sexuality, they implied, was proof of an essential blackness that no elegant dress could conceal. The final story they told about Alexina Morrison contested the imagery of transparent white womanhood used by Morrison's own witnesses. If race was evident in gendered versions of deportment, they were arguing, Alexina Morrison was playing a different part outside the courtroom than inside.[35]

There, the defense rested; the judge gave oral instructions (which the court reporter did not record), and the jury retired. When they returned, they reported to the court that there was "no possibility of any agreement upon a verdict." Faced with Alexina Morrison, the twelve white men who made a jury in Jefferson Parish could not decide whether to believe their eyes or the ways of seeing provided by legal practice, medical science, and white supremacist sexual ideology. Through the repeated and contradictory application of the fixed terms of the antebellum conversation about race to the body of the young woman in the courtroom, the witnesses in the Third District courtroom had called into question something that they all professed

[34] In questioning another of Morrison's jailers, William Dennison, in the second hearing of the case, the young woman's attorneys apparently attempted to head off the implication that the man had an extramarital affair with her with questions about his marriage. After describing, on cross-examination, the proximity of his own house to the jail where Morrison was being held, he testified on reexamination by Morrison's lawyers that he was "a married man at that time and when the plaintiff was with him." Testimony of Cannon, June 19, 1858, June 30, 1862, *Morrison v. White;* Testimony of Dennison, May 18, 1859, *ibid.*

[35] Petition for Change of Venue, July 1, 1858, *Morrison v. White.* On the image of the quadroon and octoroon mistresses, see Guillory, "Some Enchanted Evening on the Auction Block"; and Joseph Roach, *Cities of the Dead: Circum-Atlantic Performance* (New York, 1996), 211–24.

to believe was common sense: the idea that there were black people and white people. They left the case to be decided upon retrial.

Whiteness versus Slavery

The year 1857, when Alexina Morrison ran away and sued the slave trader, was a banner year in the history of American proslavery. For in 1857 the efforts of southern politicians to shore up the positive-good defense of slavery by erasing any evidence that black people could thrive (or even survive) outside slavery and to circumscribe the freedom of the potential free Negro enemy within seemed to take on new importance throughout the South. In 1857 Chief Justice Roger Taney's famous *obiter dictum* in *Dred Scott v. Sandford* abolished the rights of black Americans—not just slaves—to seek redress in the nation's courts. In 1857 there were continued calls for the reopening of the African slave trade to insure that the growing class of nonslaveholding white southerners would have the opportunity to cement their loyalty to slavery by becoming slaveholders themselves. And in 1857 the first rumblings were heard of the "enslavement crisis," a series of calls for the forcible enslavement of free people of color in states from Maryland to Louisiana. In the heat of the ongoing conflict over slavery, southern judges and legislators were, to all appearances, attempting to eliminate the ambiguities of the southern social order in favor of a fixed equivalence of race and status—of blackness with slavery and whiteness with slaveholding.[36]

The debates over the enslavement proposal, however, reveal that the solidifying South was shot through with a tension between the demands of race and those of slavery, or, put another way, between the privileges of whiteness and those of slaveholding. On the side favoring enslavement, the argument often ran along the line proposed by an overheated Maryland lawmaker and quoted by Ira Berlin: "all Negroes [must] be slaves in order that all whites may be free." On the side opposed to enslaving free people of color, the argument could take the shape proposed by the *Charleston Courier* and quoted by Michael P. Johnson and James L. Roark: "The true policy of the state is to foster slave labor. . . . [The free Negro's] right to hold slaves gives him a stake in the institution of slavery, and makes it his interest as well as his duty to uphold it." On one side was a fundamentalist vision of the political economy of whiteness in which any free black was a potential threat to all whites; on the other was a straight-out adherence to the political economy of slavery in which any slaveholder, even a black slaveholder, was a potential ally in the fight against abolition. The poles of the discussion only begin to outline the shifting political terrain, complicated social underpinnings, and rhetorical jockeying for control of the favored terms of proslavery and white supremacy that defined the enslavement crisis. What they do, however, is starkly outline the existence of two—sometimes con-

[36] See Don E. Ferenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York, 1978). For the African slave trade, see John Ashworth, *Slavery, Capitalism, and Politics in the Antebellum Republic,* vol. I: *Commerce and Compromise* (Cambridge, Eng., 1995), 268–69. On the "enslavement crisis," see Berlin, *Slaves without Masters,* 369–80; Michael P. Johnson and James L. Roark, *Black Masters: A Free Family of Color in the Old South* (New York, 1984), 233–88; and Fields, *Slavery and Freedom on the Middle Ground,* 63–89.

tending, sometimes overlapping—versions of the southern social order. In the late 1850s sectional tension was giving new urgency to a very old question: Was the southern social order based on race or on slavery?[37]

Like other southern states in the years leading up to 1857, Louisiana had taken legislative and judicial action to clarify the relationship of race and slavery. In the 1850s the legislature and courts of Louisiana tried to curb manumission, eliminate such states of "quasi-slavery" as *in futuro* emancipation, enforce a stricter segregation of social relations between black and white (especially drinking, gambling, and dancing), and regulate the public behavior of free people of color and slaves more vigilantly. By 1859 Louisiana would pass its own self-enslavement law and offer free people of color the chance to choose a master and enslave themselves. Alexina Morrison's case, then, went to the jury at a time when Louisiana was rebalancing the categories of southern social life by gradually abolishing the very liminal spaces from which she seems to have emerged. But Morrison did not claim to be liminal, she claimed to be white, and in Jefferson Parish in the 1850s that seems to have made all the difference in the world.[38]

The jury that heard *Morrison v. White* was chosen the way most antebellum juries were, from among the voters who lived in the court's ambit.[39] What is striking about the Jefferson Parish jurors who heard Alexina Morrison's case is how hard they are to track down. Of the twelve men on the jury, only two appear in the censuses of Jefferson or Orleans Parish for both 1850 and 1860. Three others appear in one or the other of the surveys. They were a steamboat captain from Alabama; a butcher from Germany; a railroad worker from Ireland; and a forty-seven-year-old clerk, New York–born and living with his family in the household of his employer. A Louisiana-born cotton sampler living in the household of an Irish shoemaker was the jury's foreman. Only the steamboat captain and the butcher owned any real estate; only the butcher and the boarding clerk from New York claimed any personal estate. To judge by the census record, the other jurors arrived in Jefferson Parish sometime after the tabulation for 1850 and left before that for 1860.[40] Taken together, however, the known jurors reflect the character of the community they represented: they were men in motion in a town dominated by steamboat and railroad, immigrants and transients in a newly populated parish, agents of change in a state that, even in the nineteenth century, celebrated aristocratic stasis.

[37] Berlin, *Slaves without Masters,* 369–70; Johnson and Roark, *Black Masters,* 169; Fields, *Slavery and Freedom on the Middle Ground,* 67–89.

[38] Morris, *Southern Slavery and the Law,* 29–36, 371–423; Berlin, *Slaves without Masters,* 318–40; Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana,* 179.

[39] Ariela Gross, "Pandora's Box: Slavery, Character, and Southern Culture in the Courtroom, 1800–1860" (Ph.D. diss., Stanford University, 1996), 217–21. For a description of the Jefferson Parish jury pool as between "nine and twelve hundred voters," see Judgment on Prayer for Change of Venue, July 24, 1858, *Morrison v. White.*

[40] The jurors whom I have been able to trace, followed by the sources in which they appear, are: B. N. Fortier, Manuscript Population Schedules, Jefferson Parish, Louisiana, Eighth Census of the United States, 1860, p. 659. P. Mulligan, Manuscript Population Schedules, Jefferson Parish, Seventh Census, 1850, p. 225; Manuscript Population Schedules, Jefferson Parish, Eighth Census, 1860, p. 522. Louis Gabb, *ibid.*, 493. J. Sutton, Manuscript Population Schedules, Jefferson Parish, Seventh Census, 1850, p. 88. W. W. Thompson, *ibid.*, 192; Manuscript Population Schedules, Jefferson Parish, Eighth Census, 1860, p. 585. Those whom I have not been able to track are: C. Maderre, J. Kilborg, M. Evendt, F. Commo, E. I. Bufford, and P. Flouring.

And, with the exception of one juror who owned a sixty-year-old man and a fifty-three-year-old woman in 1860, the known jurors were nonslaveholders in a society based on slavery. They were the type of men for whom "the wages of whiteness" held the promise of a daily psychological supplement to the portion they gained from their work, the type of men for whom slavery posed its own double question: Did they share in the society of slaveholders? Or were they in danger of being themselves enslaved?[41]

It is by now a threadbare truth that whiteness gave nonslaveholders a stake in slavery.[42] Nonslaveholding white men were potential slaveholders. More than that, they were shareholders in a society based on racial caste, entitled to public deference from people of color and involved in the daily discipline of slavery through slave catching and patrols. Finally, they were a constituency for the broad proslavery argument that identified the interests of all white people with those of slaveholders: in a slaveholding society, only black people were treated as slaves. Often, as in the famous poem "The Hireling and the Slave," this strain of proslavery took the form of a critical contrast between the living conditions of the white working class and southern slaves, always to the advantage of the latter. Indeed, "Beauties of White Slavery," which sympathetically portrayed the plight of German journeymen tailors in Cincinnati, "The Female Slaves of London," which analyzed the scandalous living conditions of white working people in the metropolis of antislavery, and "Northern White Slavery," which unfavorably contrasted the plight of northern wage workers to that of southern slaves, were articles that appeared in the *New Orleans Daily Crescent* in the week when Alexina Morrison's case was decided by the Jefferson Parish jury. Slave trader White's lawyers appealed to the jury in the reassuring logic of racial resentment. Sitting in court, Morrison may have looked white and acted white—perhaps more so than the jurors themselves. But her essential blackness insured that she would remain forever a slave, just as their whiteness insured that they might one day be slaveholders. This was whiteness in its familiar guise as the ideological underwriter of slavery.[43]

[41] The slaveholder on the jury was J. J. Guttierez, who appears on the Jefferson slave schedule for 1860, but not on the census. Thus, although I can tell that he was a slaveholder, I have no other information about his origins, household, occupation, or property. J. J. Guttierez also appears in the Jefferson Parish Police Jury minutes as the tax collector for the police jury on the left bank of the Mississippi River. Manuscript Population Schedules, Jefferson Parish, Eighth Census, 1860: Slave Schedule, p. 553; Jefferson Parish Police Jury, Minutes, Oct. 4, 1858, transcription, vol. 3 (1858–1864) (New Orleans Public Library, New Orleans, La.). On the class tensions expressed in southern jury trials, see Bertram Wyatt-Brown, "Community, Class, and Snopesian Crime: Local Justice in the Old South," in *Class, Conflict, and Consensus: Antebellum Southern Community Studies,* ed. Orville Vernon Burton and Robert C. McMath Jr. (Westport, 1982), 173–206. Wyatt-Brown shows that jury trials were an occasion for nonslaveholding white men to exert political power over their social betters, and that southern courts were a place where the values of "the community" could be negotiated between classes. He does not, to my mind, note how class differences between white people in the antebellum South were experienced and expressed in terms of race and slavery. David R. Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (London, 1991).

[42] Edmund Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York, 1976). I draw on an account of race and slavery in colonial Virginia that emphasizes sexual access to nonwhite women as a hallmark of the privileges of cross-class white masculinity: Kathleen M. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill, 1996), 137–86, 247–82.

[43] On whiteness as entitlement, see Cheryl I. Harris, "Whiteness as Property," *Harvard Law Review,* 106 (June 1993), 1709–91. On nonslaveholders' expressing their property in whiteness through slave patrols and harassment of slaves, see Walter Johnson, "Inconsistency, Contradiction, and Complete Confusion: The Everyday Life of the Law of Slavery," *Law and Social Inquiry,* 22 (Spring 1997), 425–30. On "white slavery" in southern pro-

But the imagery of white slavery was dangerously unstable in an economy that was changing as fast as that of the urban South in the 1850s. It was in 1857, after all, that George Fitzhugh finalized his own famous solution to the anomalous presence of a white working class in a society based upon black slavery: Enslave them all. And, indeed, even as prosperous slaveholders were spending thousands of dollars at a time to buy near-white slaves to work in their households, they were employing increasing numbers of whites (and those, like the Irish, who were in the process of becoming white) as wage laborers, tenant farmers, and domestic servants. New Orleans in the 1850s, as the Louisiana physician and racial theorist Samuel Cartwright described it, daily offered more concrete examples of "white slavery" than did distant strikes or living conditions. "Here in New Orleans," Cartwright wrote in *DeBow's Review,* "the larger part of the drudgery-work requiring exposure to the sun, as rail-road making, street-paving, dray-driving, ditching, building, etc. is performed by white people . . . a class of persons who make Negroes of themselves in this hot climate." As Barbara Jeanne Fields has put it, class relations between white people in such southern cities as New Orleans were being "drawn into [racial] terms of reference, as a ray of light is deflected when it passes through a gravitational field." According to Cartwright, the Irish were not becoming white, they were, like the white workingmen with whom they shared their days, turning black.[44]

In the image of a resentful white laborer put out to do the dirty work of capitalist transformation beneath the summer sun—draining swamps and building levees, digging canals and filling railbeds, work regarded as too dangerous for any (valuable) slave to do—we see a less familiar version of the southern political economy. In the urban South of the 1850s, class differences between slaveholder and nonslaveholder were sometimes experienced and expressed in terms of race, and the *Herrenvolk* strain within the ideology of whiteness and daily practice in the slaveholders' economy were increasingly at odds. Doubts about the commitment of the Irish workingmen of New Orleans to slavery, though they often reiterated it, plagued local nativists and slaveholders throughout the 1850s. Indeed, in 1856 both local and

slavery thought, see Noel Ignatiev, *How the Irish Became White* (London, 1995), 69; and Eugene D. Genovese, *The World the Slaveholders Made: Two Essays in Interpretation* (Middletown, 1969), 208–11. On northern labor, see Roediger, *Wages of Whiteness,* 65–92. Roediger argues that "white slavery" as a metaphor for the condition of white northern workers ultimately collapsed beneath the weight of those workers' desire to distinguish themselves from black slaves. William J. Grayson, *The Hireling and the Slave, Chicora, and Other Poems* (Charleston, 1856); *New Orleans Daily Crescent,* June 22, 25, and 28, 1858.

[44] George Fitzhugh, *Cannibals All! Or, Slaves Without Masters,* ed. C. Vann Woodward (1857; Cambridge, Mass., 1960). On George Fitzhugh and the white working class, see Genovese, *World the Slaveholders Made,* 208–11; and Ashworth, *Slavery, Capitalism, and Politics in the Antebellum Republic,* I, 228–46. Historians, picking up a forgotten thread of early historical writing on the South, have recently emphasized the issues dividing white people who were neither slaveholders nor farmers from those who were. See, for example, Roger W. Shugg, *Origins of Class Struggle in Louisiana: A Social History of White Farmers and Laborers during Slavery and After, 1840–1875* (Baton Rouge, 1939), 88–94; Wade, *Slavery in Cities,* 274; and Burton and McMath, eds., *Class, Conflict, and Consensus.* Samuel Cartwright, "How to Save the Republic, and the Position of the South in the Union," *DeBow's Review,* 11 (no. 1, 1851), 195–96. See also Olmsted, *Journey in the Seaboard Slave States,* 91. Barbara Jeanne Fields, "Ideology and Race in American History," in *Region, Race, and Reconstruction: Essays in Honor of C. Vann Woodward,* ed. James M. McPherson and J. Morgan Kousser (New York, 1982), 162.

national elections in the city had been marked by nativist violence against Irish and German immigrants who tried to vote. As they told the story of a vulnerable white servant sold as a slave, Morrison's lawyers were drawing rhetorical force from the daily experience of the white men who sat on the jury: in the slaveholders' economy, nonslaveholding white people were increasingly being treated like slaves.[45]

Or, even more pointedly, nonslaveholding white women were. One thing that differentiated nonslaveholding white men from slaves in the antebellum South, one dimension of their whiteness, was that they were legally able to protect their dependents from sexual violation, state attachment, and sale. Indeed, as Stephanie M. McCurry has shown, it was by asserting control over their own households that these men could claim, like their slaveholding neighbors, to be "masters"—an equal partnership in patriarchy that underwrote their supposedly equal participation in politics. And yet, as their wives and daughters daily went to work in the homes of their prosperous slaveholding neighbors, the domestic authority of nonslaveholding white men in urban areas such as New Orleans was being eroded in favor of the class privilege of their slaveholding neighbors.[46] It was on the embattled line between the slaveholders' economy and the inner circle of nonslaveholding white patriarchy that Alexina Morrison staked her claim to freedom when she ran away from James White. Morrison's first legal action, remember, was to ask that her jailer be appointed her legal guardian: she gave the jail in which she was being held the legal shape of a household and took for herself the role of white dependent within that household. And in the months between her escape and her trial, she passed through the households of a number of nonslaveholding white men. First the house of her jailer, William Dennison, where she was placed by leave of the district attorney and from which she was seen walking with the jailer's wife, and later the house of J. B. Clawson, a clerk in whose home she was living at the time of the trial.[47]

But Morrison was not just living in Clawson's household, she was working there as a housekeeper.[48] In return for a place within the protective perimeter of this white

[45] On the *Herrenvolk* outlook, see Fredrickson, *Black Image in the White Mind.* For a suggestion that this strain of whiteness ideology was at odds with the needs of the political and economic leadership of the South, see Roediger, *Wages of Whiteness,* 84. Frederick Law Olmsted, *The Cotton Kingdom, A Traveler's Observations on Cotton and Slavery in the American Slave States,* ed. Arthur M. Schlesinger (1861; New York, 1962), 232; Ignatiev, *How the Irish Became White,* 19–23; Shugg, *Origins of Class Struggle in Louisiana,* 146–47; Mary Niall Mitchell, "Raising Freedom's Child: Race, Politics, and the Lives of Black Children in Nineteenth-Century Louisiana," draft Ph.D. diss., New York University, 2000 (in Walter Johnson's possession), chap. 1.

[46] Stephanie M. McCurry, *Masters of Small Worlds: Yeoman Households, Gender Relations, and the Political Culture of the Antebellum South Carolina Lowcountry* (New York, 1995), viii, 5–35; Shugg, *Origins of Class Struggle in Louisiana,* 88–94; Burton and McMath, eds., *Class, Conflict, and Consensus;* Wade, *Slavery in Cities,* 274–75. See also Hasia Diner, *Erin's Daughters in America: Irish Women in the Nineteenth Century* (Baltimore, 1983).

[47] As paradoxical as it seems, Morrison's position in the Jefferson Parish jail might have supported the idea that she was free and white. As Nicole Hahn Rafter has argued, black women in the antebellum South were by and large slaves and were disciplined by their owners; white women were punished in prisons. See Nicole Hahn Rafter, *Partial Justice: Women in State Prisons, 1800–1935* (Boston, 1985). Testimony of Dennison, June 19, 1858, *Morrison v. White;* Testimony of Clawson, June 19, 1858, *ibid.*; Testimony of Cannon, June 19, 1858, *ibid.* Dennison, it appears from documents introduced as evidence, was illiterate. At the time of the 1860 census he had quit his job at the jail and was listed as a laborer. Cannon, who was questioned so closely by White's lawyers about whether he was the father of Morrison's daughter, was a nonslaveholder.

[48] Testimony of Clawson, June 19, 1858, *Morrison v. White.*

household, Morrison was providing its members with access to an unfamiliar region of the world of whiteness and distinction. She was, after all, a young woman who had probably been trained in the slave market to embody the gentility and patriarchy of the slaveholding households to which nonslaveholders such as Clawson would have been admitted only as (occasional and awkward) interlopers. By playing the same role for those who protected her as she would have for those who purchased her, she was giving them an experience of whiteness usually reserved for those who owned slaves.

The service she was rendering Clawson suggests that we should not, despite the urging of Morrison's lawyers that her case was being supported by "philanthropists" and the charge of White's lawyers that the young woman's supporters were "abolitionists," misconstrue the relationship between her protectors and Morrison as being merely benign or even wholly centered on her emancipation. Indeed, Alexina Morrison, in her effort to get free, had been forced to accept attention from white men—many of them nonslaveholders—that went well beyond their identification with her plight. "Saw her naked to the waist"—spoken by Morrison's supporters, those words circulate through the trial record like a *leitmotiv.* Indeed, in the weeks after the mistrial, Morrison's half-naked body seems to have been the center of a festival of whiteness in Jefferson Parish. P. C. Perret remembered seeing her "frequently" exhibited at the hotel in Carrollton after the first trial. And listen to L. Castera, testifying on her behalf and under direct examination in the retrial: "Witness saw the girl at the Hotel and someone asked him if he thought the girl has African blood, at first witness answered no, and then made an examination of her nose, eyes, under her arms, between her shoulders, examined her hair and the conformation of her face, her fingers, nails." Or Seaman Hopkins: "examined plaintiff's back in fact he saw her naked to her waist. Examined her closely and found no traces of the African." These witnesses, part of an apparently leering and possibly threatening group of white men, did things to Alexina Morrison that they would never have done to a white woman in public—not to a maid, not to a dancing girl, not to a prostitute.[49]

Publicly exhibited, stripped to the waist, and examined: Alexina Morrison was paying for her freedom with a performance straight out of the slave market. For the men at the hotel in Carrollton, Morrison's liminal body—now protected, now violated; now free, now enslaved; now white, now black; now Mexican, now Indian, now Caribbean—was a symbol of everything whiteness promised them: that they would never themselves be slaves, but that they were entitled to benefit from race as slaveholders did from slavery—through control and sexual access. Alexina Morrison had passed from the property regime of slavery into that of whiteness, from being subject to the prerogatives that defined mastery in the antebellum South to being subjected to those that defined white patriarchy.[50]

[49] Testimony of Seaman Hopkins, May 18, 1859, *Morrison v. White;* Testimony of Perret, May 18, 1859, *ibid.*; Testimony of L. Castera, May 18, 1859, *ibid.*

[50] On the social practice of bodily examination in the slave market, see Johnson, *Soul by Soul,* 135–61. Harris, "Whiteness as Property."

Verdict and Conclusion

In the aftermath of the mistrial, James White claimed that "a few days before the last trial" when he had ridden out to Carrollton with one of his witnesses to look at Alexina Morrison, he was "surrounded by a lawless mob" that threatened him with "personal violence because he dared to assert his property in his own slave, who said mob declared to be a white person." Faced with the claim of a man who had once made his living selling slaves who might have been as white as themselves, some citizens of Jefferson Parish were apparently willing to risk their lives in defense of Alexina Morrison's claim. The local papers dignified the event with the silence usually reserved for slave rebellions, but the judge in the Third District Court thought it one of the most extraordinary things he had ever heard. Noting that he had never before transferred a case, that Morrison had been "taken in the Society of white persons" and "was even seen dancing at a ball in Carrollton," that he had it on good authority that someone claiming her as his slave was risking his life, and that it would be several sessions of the court before an unprejudiced jury could be impaneled in Jefferson Parish, he sent the case to the Fifth District Court in New Orleans to be retried.[51]

There, in May 1859, both sides called new witnesses and elaborated arguments made in the first trial (most notably the argument by Morrison's lawyers that the strands of the young woman's hair, when cut transversely, revealed themselves to be the "moderate" ovals of a white person rather than "longer" ovals of a black one). The judge in the Fifth District Court excluded both the unnotarized "private act of sale" presented by White's lawyers and the testimony of the slave trader's witnesses from Texas and Arkansas as "not legally authenticated," and he further instructed the jury to decide only the question of whether or not Alexina Morrison was a slave. Without the evidence of sale and the depositions from Texas and Arkansas, there was no proof whatsoever that Morrison was a slave, and so, apparently following the presumption of freedom in favor of mulattoes under Louisiana law, the New Orleans jury declared unanimously for her freedom.[52]

The lawyers for the slave trader appealed to the state supreme court, which declared that the evidence of the sale and the depositions from Texas and Arkansas had been improperly excluded, voided the verdict of the jury, and remanded the case to the Fifth District with the advice that the Supreme Court found "full proof" that Morrison had been born a slave and the order that "the presumption of freedom arising from her color . . . must yield to a proof of her servile origin." Going beyond questions of both fact and procedure in the lower court, however, the Supreme Court considered the case as a matter of public policy: "The Legislature has not seen fit to declare that any number of crosses between the Negro and the white shall emancipate the offspring of the slave, and it does not fall within the province of the judiciary to establish any such rule of property." Perhaps picking up on

[51] Prayer for Change of Venue, July 1, 1858, *Morrison v. White;* Judgment on Prayer for Change of Venue, July 24, 1858, *ibid.*

[52] Reasons for Refusing New Trial, May 30, 1859, *Morrison v. White;* Decree of the Supreme Court, Feb. 4, 1861, *ibid.*

the defense's dark insinuations about "abolitionists" and "amalgamation," the court reframed the case as part of the broader ongoing effort to achieve a more perfect equivalence of blackness and slavery and implied that history in Jefferson Parish was moving the wrong way: As the legislature in Louisiana, like those all over the South, was establishing firmer racial boundaries around slavery, in Jefferson Parish those boundaries seemed to be daily falling away.[53]

The case was heard in the lower courts for the third time in New Orleans, where, on January 30, 1862, Alexina Morrison was herself "exhibited to the Jury in evidence." Following the instructions of the Supreme Court, the judge admitted the depositions from Arkansas and gave oral instructions to the jury, which were not included in the trial record. After retiring for "some time," the jury sent word that its members were unable to agree upon a verdict and requested that they be allowed to decide by majority. Present in the courtroom, Morrison consented, and the jury returned to announce that it had voted 10 to 2 in her favor. White's lawyers again appealed to the Supreme Court, where the case was delayed during the Civil War occupation of New Orleans, redocketed five days after the assassination of Abraham Lincoln, and continued a few times until 1870, when it was placed on the delay docket where it sits today, apparently awaiting action on Morrison's request for damages.[54]

It is tougher to track Alexina Morrison. On the Jefferson Parish census of 1860 she is listed as a free white woman, living with her little girl in a house next door to that of William Dennison, the man whom she had first met as her jailer. Morrison's daughter, like the little girl who lived in Dennison's house, was called Mary.[55] Perhaps one-year-old Mary represented Morrison's shadowed claim to a place within Dennison's household, perhaps, more simply, her daughter was Morrison's best hope for a legacy of freedom. For, by the third hearing of the case (in 1862), Alexina Morrison was apparently back in jail, coughing blood, and fearful for her life. And there the trail ends: Neither Alexina nor Mary Morrison appears in the 1870 census of Jefferson or Orleans parishes.

Alexina Morrison was a woman who left her fellow slaves behind to make her bid for freedom alone, framed her case in the grammar of white supremacist patriarchy by presenting herself as a white woman in need, ceded the power over her situation to a legal system that supported slavery, delivered her body from the hands of the slaver to that of the jailer and from the property regime of slavery to that of whiteness. The Louisiana Supreme Court remained ever ready to ensure that the local chaos in Jefferson Parish did not interfere with the state's progress toward a more perfect equivalence of blackness and slavery. Morrison herself may have died of the illness she had contracted in prison. In the eyes of many, hers would be a story of hegemony: of agency without autonomy, opposition without effect, resistance with-

[53] Decree of the Supreme Court, Feb. 4, 1861, *Morrison v. White.*

[54] Verdict, Jan. 30, 1862, *Morrison v. White;* Bond of Appeal, Feb. 11, 1862, *ibid.*; Supreme Court of Louisiana Docket Record, Supreme Court of Louisiana Collection. For post–Civil War action on cases involving slavery, see Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana,* 289–304.

[55] Manuscript Population Schedules, Jefferson Parish, Eighth Census, 1860, dwellings 1470 and 1471.

out revolution; of a woman becoming ever more entangled in the logic of slavery as she tried to get free.[56] Judged by the history recorded in law books and legislative records and according to the Louisiana Supreme Court that had ultimate jurisdiction over her fate, Morrison was swimming against the current of history, finally unable, in spite of her extraordinary effort, to escape the inexorable consolidation of slaveholding power in the years before the Civil War.

But if we pay attention to the local as well as the legal importance of the case and the everyday as well as the systemic impact of individual acts of resistance, if we think about what it must have been like to wake up in Jefferson Parish on the morning after the district court had decided Morrison's case and moved on to other business, historical time has a different scale and Alexina Morrison's story offers a different moral. The covering rhetoric of white supremacy may have remained unquestioned and the power of the Supreme Court to dampen subversive appropriations of that rhetoric by refusing the verdicts coming from the lower courts intact. But Alexina Morrison had raised troubling possibilities in a society based on racial slavery: that a slave might perform whiteness so effectively as to become white; that behavior thought to indicate natural difference might, instead, be revealed as the product of education, construction, and, even, commodification; that one could seem white without really being that way; that the whiteness by which the slaveholding social order was justified might one day be turned against it. The problems Morrison posed were particularly acute when addressed to the white workingmen who increasingly inhabited the antebellum South: How could they continue to claim to be their own masters if they or their wives and daughters worked for someone else? Did race really give them a stake in slavery? Would their whiteness really protect them from enslavement? No longer could a Jefferson Parish jury be trusted to try the case of the slave trader and the white slave; no longer could slaveholders be sure that the property claims of slavery would be supported by the logic of whiteness. Indeed, the notions of a supposedly commonsense differentiation between black and white that were broached in the Third District Court were so various and so contradictory that by the end of 1857 it would have been hard for anyone in Jefferson Parish to say for sure what people there meant when they talked about "race." Whether they realized it or not, as they tugged Alexina Morrison back and forth across a color line that they all thought they could plainly see, the white participants in *Morrison v. White* revealed that line as an effect of social convention and power, not nature.

Indeed, the local history of *Morrison v. White* seems to stand in direct contradiction to its legal history; the relation of race and law over time—the legal history of race—was running in one direction if you were sitting in the Third District Court in Jefferson Parish and another if you were sitting a few miles away in the Supreme Court in New Orleans. Beneath the gathering tide of proslavery in the 1850s,

[56] This is the argument made in Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York, 1974), 25–49, 587–98. See also Mindie Lazarus-Black and Susan F. Hirsch, *Contested States: Law, Hegemony, and Resistance* (New York, 1994).

beneath the proslavery crackdown on interracial socializing and the curtailment of manumission laws, beneath *Dred Scott* and the self-enslavement laws, beneath the prognostications of Samuel Cartwright and the pronouncements of George Fitzhugh, beneath legal definitions of race and textbook versions of proper legal practice, ran an undercurrent of discontented whiteness. As if through the upside-down pinhole of a camera obscura, *Morrison v. White,* a suit in which the slave sued the slave trader, illuminates the complexity of the relation between the economic system of slavery and the ideology of white supremacy by which it was increasingly justified. Though they remained wedded in the official rhetoric of the antebellum South—in the courtrooms and congresses—in the changing political economy of the 1850s, white supremacy and slavery were not coextensive paradigms of social order. Standing before the Third District Court, Alexina Morrison embodied the conflicting property claims of whiteness and slavery, claims that by running away and suing the slave trader she had brought into apparently irreconcilable conflict. In Jefferson Parish at least, the historic bargain at the heart of the southern social order—black slavery for white freedom—was less an accomplished fact than an open argument.