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## The Question of the Purpose of Anti-Miscegenation Laws

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## The Question of the Purpose of Anti-Miscegenation Laws

### Cover Page Footnote

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# The Question of the Purpose of Anti-Miscegenation Laws

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In June of 1958, Richard and Mildred Loving, a married couple living in Virginia, were arrested for the crime of miscegenation: marriage between individuals hailing from different races or ethnicities, especially white and African American. Richard Loving, a man of white descent, had fallen in love with Mildred Jeter, an African American woman, and they married in the District of Columbia, despite being residents of Virginia, because the District of Columbia allowed inter-racial marriage and Virginia did not. However, upon returning to Virginia, they were arrested and convicted of inter-marriage. They were sentenced to one year in prison each, which would be waived if they agreed to leave the state of Virginia for twenty-five years. The couple initially agreed to depart Virginia but appealed the judgment. The ensuing legal battle would lead to the Supreme Court's 1967 decision that declared anti-miscegenation laws unconstitutional nationwide.

<sup>1</sup> The results of *Loving v. Virginia* forced the state to repeal its anti-miscegenation laws in response; however, Mississippi refrained from doing so until 1986, almost 20 years later. Mississippi was not alone, as two other Southern states ignored the Supreme Court's decision for an even greater length of time. (South Carolina kept the laws until 1998; and Alabama did not repeal the law until 2000.) No state could trump federal law, but refusal to recognize the decision sent a message to the African American community and to those that wished to intermarry with them: equality had still not arrived. This Supreme Court decision came very late into the United States' history, and its necessity served to remind African Americans that they were lesser even long after the Emancipation Proclamation. In the same way that free people of color were still lesser than white people during slavery, black people were still lesser long after.

For much of the twentieth century, Mississippi forbade white individuals from marrying African American and Asian individuals, and Mississippi's interest in interracial unions and miscegenation was extensive and predated the Civil War. Much like slavery was rooted in control, anti-miscegenation was as well. One aspect of this control was the sexual control and dominance of the enslaved by their white masters and mistresses. It extended beyond just sex to the denial of romance and marriage. But beyond this, it cemented the inferiority of African Americans as it prevented them from acquiring generational wealth, improved social status, and even security.

Laws separating the races and outlawing interracial marriage were some of the first laws established in the development of racial slavery. After all, by dividing people into separate groups, it becomes much easier to dehumanize the manufactured "other." A practice that resurfaced against the Chinese in the 1920's, confining them to their own districts and ascribing inherent flaws to them that made them "unamerican"<sup>2</sup>.

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<sup>1</sup> LII / Legal Information Institute. "Richard Perry LOVING et Ux., Appellants, v. COMMONWEALTH OF VIRGINIA." Accessed September 21, 2021. <https://www.law.cornell.edu/supremecourt/text/388/1>.

<sup>2</sup> Echenberg, M. J. (2010). *Plague Under the Stars and Stripes*. In *Plague ports: The global urban impact of bubonic plague, 1894-1901* (pp. 183-184). essay, New York University Press.

Racial slavery in the United States was predicated on the inferiority of African Americans. Africans were primitive, barbaric heathens according to so-called missionaries that traveled there.<sup>3</sup> As such, in bringing them to America, baptizing them and introducing them to Christianity slaveowners were doing them a favor! And could there be a better payment for saving a person's immortal soul than their lifelong servitude? In the American race-based slave system, slaves were held in life-long bondage and their status was passed to their children. A black American could be born into slavery, and the presumed inferiority or sub humanity of black people was the justification for such treatment and status.

As slaves were considered property, they possessed few rights. There were laws against abusing slaves, but they were significantly more concerned with an abused slave's decrease in property value. Overseers and other white individuals who might be justified in whipping or beating a slave could face legal action from the slave's master in the event of death or maiming. Historian Andrew Fede argues that "certain white slave abusers were required to pay fines, or to directly reimburse an abused slave's master for damages the owner may have suffered as a result of the slave mistreatment, and the courts were opened to slave owners who sued whites whose brutality caused a slave to die, reduced the slave's property value, or occasioned the master to lose free labor."<sup>4</sup> These laws were completely disinterested in a slave's welfare, and focused primarily on the monetary value that the person provided to their master. An overseer could face punishment in the excessive abuse of a slave, but a slave owner had complete control and could do whatever they wished.

Similarly, the law failed to afford any protections to slaves. There was no redress for the rape of a slave. In fact, a slave attempting to defend themselves from this offense would be prosecuted by the law. Celia, a slave owned by Robert Newsom, faced years of rape and other abuse by her master.<sup>5</sup> Even in her pregnancy, when she begged and pleaded for him to stop, Newsom continued his advances and attempted to rape her again. Celia, however, fought back this time, striking him with a large stick multiple times until he died. She burnt his body and did her best to hide the evidence, but she was found out.

The jury for her trial was made up entirely of white males, specifically farmers and slave owners. The jurors found her guilty, and she was sentenced to hang. Celia's sentence was carried out in December of 1855, just two months after her sentencing in October of 1855. It is possible that a jury composed of more than white planters might have taken her years of enduring Newsom's abuse and the resulting unwanted pregnancy into account; however, as a slave in the pre-war American South, the judge exhibited some prejudice against her. A white woman may have benefitted from anti-rape statutes in Missouri, but the judge in Celia's case specifically declined to notify the jury of the potential justification for Newsom's killing.

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<sup>3</sup> The Gilder Lehrman Center for the Study of Slavery, Resistance, and Abolition. "Slavery in the Pulpit of the Evangelical Alliance," April 7, 2015. <https://glc.yale.edu/slavery-pulpit-evangelical-alliance>.

<sup>4</sup> Fede, Andrew. "Legitimized Violent Slave Abuse in the American South, 1619-1865: A Case Study of Law and Social Change in Six Southern States." *The American Journal of Legal History* 29, no. 2 (1985): 93–150. <https://doi.org/10.2307/844931>. Pg. 4 of the 58-page excerpt.

<sup>5</sup> McLaurin, Melton A. *Celia, a Slave*. University of Georgia Press, 2011.

While the specific case may not have been well known, it had an outcome that was easy to predict. Any enslaved woman that fought back or tried to refuse her master would face death, or worse. A common threat to keep female slaves in line was separation from their children, a fate that many women considered worse than death. It was this threat of being separated from her children that forced Celia to confess to her crime in the first place, though she knew that a conviction likely greater harmed her chances of being able to see her children. But by confessing, she felt that she ensured they at least would not be punished for her sake.

Male slaveowners, married or otherwise, frequently had sexual relations with their slaves. In an interview conducted for the Federal Writers' Project: Slave Narrative Project conducted in September of 1937, W.L. Bost, a former slave stated: "Plenty of the colored women have children by the white men. She know better than to not do what he say."<sup>6</sup> The primary form of evidence of these relations is the existence of half-white children born to enslaved women, married or otherwise. In the same interview Bost continues: "If the Missus find out she raise revolution." These slaveowners would often cheat on their wives to have carnal relationships with their slaves, who may have been romantically involved with other slaves. The Federal Writers Project: Slave Narrative Project includes several other examples related to the sexual abuse of slave women, implying that this was a rather common practice.<sup>7</sup> Acknowledging the children born from these assaults was incredibly rare in contrast. Even rarer was the acknowledgment of the enslaved woman as a romantic partner, or for the master to treat her as a wife.

The closest thing to marriage that a master and slave might experience was what historians consider "concubinage," the keeping of a female slave for the purpose of sexual relations.<sup>8</sup> However, in the event of an unmarried slaveowner taking a slave as his so-called wife, it was considered fornication and cohabitation. Fornication was unlawful sexual relations, while cohabiting was the unlawful sharing of a domicile between non-related males and females.

The Hairston family, the focus of both the book *The Hairstons: An American Family in Black and White* and this paper, raises important questions regarding the nature of relationships between the enslaved and enslavers, as well as how families born of these unions understand them.<sup>9</sup> The Hairstons make up a family that extended far back beyond slavery, with Peter "The Immigrant" Wilson moving to the United States in the early 18<sup>th</sup> century and planting the seeds for an empire. Each new generation of

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<sup>6</sup> Library of Congress, Washington, D.C. 20540 USA. "Image 146 of Federal Writers' Project: Slave Narrative Project, Vol. 11, North Carolina, Part 1, Adams-Hunter." Image. Accessed November 25, 2021. <https://www.loc.gov/resource/mesn.111/?sp=146>.

<sup>7</sup> National Humanities Center. (n.d.). For many enslaved African on slaveholders' sexual abuse of ... On Slaveholders' Sexual Abuse of Slaves, Selections For 19th and 20th Century Slave Narratives. Retrieved November 25, 2021, from <http://nationalhumanitiescenter.org/pds/maai/enslavement/text6/masterslavesexualabuse.pdf>.

<sup>8</sup> Croucher, Sarah K. "'A Concubine Is Still a Slave': Sexual Relations and Omani Colonial Identities in Nineteenth-Century East Africa." In *The Archaeology of Colonialism: Intimate Encounters and Sexual Effects*, edited by Barbara L. Voss and Eleanor Conlin Casella, 67–84. Cambridge: Cambridge University Press, 2011. <https://doi.org/10.1017/CBO9780511920011.006>. The book refers to Nineteenth-Century East Africa specifically, but the information is also relevant to the Antebellum American South.

<sup>9</sup> Wienczek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin's Press, 2020.

plantation and slave owners would grow the family's wealth and influence, making them the wealthiest family in Virginia.

Henry Wiencek initially began studying and interviewing what he referred to as "old family homes and the people who lived in them" before he became intrigued with the Hairston family specifically. He had visited many manors that were built in the heyday of slavery and once bore all the riches afforded to a wealthy slaveowners, but by the late twentieth century had become shadows of their former selves. With wealth acquired because of slavery as the common thread in these expansive shells of a home, Wiencek sought out the descendants of slaves as well and found them in the Hairston family, along with the descendants of these slaves' owners.

The three most influential interviewees were Peter "the Judge" Hairston, a direct descendant of Peter Wilson Hairston; Squire Hairston, a prominent African American member of the Hairston family who found great success and fame; and Aldia Hairston Adams, who was the biracial daughter of Chrillis Hairston. In his study of the family, Henry Wiencek argues that "Samuel Hairston of Oak Hill was probably the richest man in Virginia, and perhaps in the United States, the possessor of land and slaves worth \$5 million. He was reputedly the largest slaveholder in the South."<sup>10</sup> Over time, certain Hairstons would sire children with their slaves, creating children that were half white/half black, half slave/half slaver. It is unclear whether the relations that resulted in these children were consensual, as it is difficult to provide consent when one is not given a choice. It is a rather simple matter to acquire an affirmative answer when the individual cannot provide a negative one, after all.

But by examining this family and their stories, we see the ways that slavery deeply impacted daily society, life, and history, but especially families. Slavery was the economic engine of America in the first half of the 1800s, but it was also something incredibly personal and the way enslavers' power manifested in the lives of the enslaved were often closely felt. Slavers were often fathers and husbands, people with relationships. And in the case of the Hairston family, sometimes the slaver and the relative were the same person. Some of the white Hairstons took pity on, or even possibly loved their enslaved children and half-siblings. Even the slaves that were not related to the family by blood were reportedly treated rather well. Wiencek mentions that it was a point of pride that the Hairstons were not involved in the sale of slaves. He notes:

The family was not in the business of selling slaves, he insisted. Whenever possible, his grandfather and the rest of the family kept the black families together. They recognized marriages. When one of their slaves married someone from another plantation, they would sometimes purchase the spouse so the family could be together.<sup>11</sup>

Compared to the treatment of slaves by other plantation owners, they seemed better than most. But even so, these individuals refused to manumit their slaves, to give them their freedom. Whatever their reasons or beliefs, the Hairstons continued to enslave African Americans, including those that shared their blood.

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<sup>10</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin's Press, 2020. Pg. 27

<sup>11</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin's Press, 2020. Pg. 165

It is possible that to the majority of the Hairston family, and to most Americans in the Antebellum period, that one's property and reputation mattered significantly more than their blood relations. This seemed especially true when it came to people or relatives of color. Anti-miscegenation laws served to maintain white supremacy through the denial of property, status, and even love to African Americans and this will be illustrated through the exploration of three primary narratives within the Hairston family.

The research focused primarily on three specific members of the Hairston family. Samuel H Hairston was prosecuted and fined for the crimes of cohabitation and fornication with a slave woman. Robert Hairston was shunned by his contemporary Mississippi slave owners for filling his home with slaves. And Elizabeth "Chrilliss" Hairston was denied her freedom and her father's fortune for her mixed-race heritage. These three individuals all suffered from the laws of their time that prevented marriage between people that loved one another for a reason wildly out of their control: the color of their skin.

Cohabiting and fornication was referred to as "living in sin" by court documents related to a criminal case involving one Samuel H Hairston.<sup>12</sup> Samuel H Hairston was romantically involved with a slave by the name of Julia. The documents, perhaps intentionally, omitted the identity of Julia's owner, describing her as the slave of "\_\_\_\_\_ Hairston." This might have been because the Hairston family often had complicated webs of ownership among slaves, and as such the court simply knew she belonged to a Hairston but not which Hairston. Or another more sinister reason might have been that the court specifically wished to obfuscate whether Samuel was within his rights by using his own slave as he pleased. Cohabitation with Julia was illegal because she was a slave, but there is a possibility that if Samuel had been married to a white woman, the crime may have gone unpunished. Concubinage was common, and while other slaveowners may have raised an eyebrow at his living in sin with a slave, not much else would have come from the situation. However, Samuel was listed as an unmarried man, and therein lied the issue. He had no wife, and therefore his living with a slave raised suspicion and accusations.

In 1860, Samuel H Hairston faced a 500 dollar fine for fornication and cohabitation.<sup>13</sup> While it is not likely that Samuel H Hairston's case was unique, it is clear that cohabitation and fornication were either not very common crimes, or not very commonly *enforced* crimes<sup>14</sup>. Perhaps it was a crime that was only enforced in the case of interracial couples. Or perhaps anyone that could marry simply would marry, so the only time that cohabitation would come into play would be in situations where the individuals could not legally marry. However, because concubinage saw no social, much less legal, repercussions, it was clear that he was prosecuted for reasons related to the race of the woman he chose to call his wife. In either case, the crimes of fornication and cohabitation were de facto enforcements of anti-miscegenation laws and beliefs.

One possible reason that Samuel Hairston faced prosecution when his married contemporaries did not might be an issue of inheritance. A slave master that took a slave

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<sup>12</sup> Court documents of Samuel H Hairston's conviction for Fornication and Cohabitation, obtained from the Columbus-Lowndes Public Library. The State vs Samuel H Hairston, File # 1862

<sup>13</sup> 500 dollars in 1860 would be equivalent to \$16,500 according to the Bureau of Labor's CPI

<sup>14</sup> A search of the Columbus-Lowndes County Archives' legal records from 1830-1860 found very few prosecutions for fornication or cohabitation.

woman as his wife: living with her, eating with her, and raising children with her, raised the problem of the enslaved children and wife becoming heirs to his estate instead of his white relatives. A sister, an uncle, and a nephew might all find their inheritance stripped away or at the very least reduced somewhat in the event of a new heir being created via the birth of a child or addition of a slave wife.<sup>15</sup> This option is supported by the extensive inbreeding that went on in wealthy slave owning families, especially the Hairstons.

Henry Wiencek specifically mentions several instances of this, with one of the most prevalent being when sixteen-year-old Agnes Wilson wed Samuel Hairston<sup>16</sup>, her cousin who was twenty-nine at the time. Agnes Wilson, at the age of twelve, had become the primary heir to the fortunes of Ruth Hairston-Wilson and Peter Wilson, another wealthy slaveowner. Samuel Hairston had to be coerced into this marriage, as the grandfather of Agnes, Peter Hairston commonly known as “Saura Town” Peter, had sent several ignored letters requesting for Samuel to marry Agnes. In the letters, Saura Town Peter declared how much wealth Samuel would come into by marrying Agnes, and when this wasn’t enough, even threatened him, making it clear that it was ill-advised to “disregard the request of a rich uncle.”<sup>17</sup> Though Samuel had agreed to marry Agnes when she was still twelve years old, the wedding did not take place until she was sixteen years old, a more palatable age of marriage.

Another interesting wealth-consolidating marriage occurred at around the same time. Ruth, Agnes’ mother, married Robert Hairston, Samuel’s brother. With this marriage, the brothers also became father and son in law, and a child of Robert and Ruth would be Agnes’ sibling and cousin simultaneously; all in the name of consolidating wealth. This second marriage ensured that the Wilson and Hairston fortunes would remain with the Hairstons for at least another generation.

In addition to the intermarriage going on, there was a good bit of attempting to marry into other wealthy families to increase and consolidate property. Inheritance was a crucial aspect of life for this family, and likely for other property owners as well. Property owners, specifically white male property owners, were the only individuals considered “electors” by the 1817 Constitution of Mississippi.<sup>18</sup> As such, these men wrote laws to retain wealth and power; they refused to share it, hence the prevention of allowing African Americans to own property (and pay a tax) and potentially become electors.

Perhaps another reason that Samuel H Hairston’s cohabiting with a slave woman turned heads was that if she were to be treated as his wife, she would need to be shown the same amount of respect as him. The Hairston family was fabulously wealthy. Wiencek describes George Hairston as “the largest land and slave owner in the State [of

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<sup>15</sup> Pearce, C.d. “Jones, Bernie D. Fathers of Conscience: Mixed-Race Inheritance in the Antebellum South.” CHOICE: Current Reviews for Academic Libraries. American Library Association CHOICE, January 1, 2010.

<sup>16</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin’s Press, 2020.

<sup>17</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin’s Press, 2020. Pg. 132

<sup>18</sup> As displayed in Article 3, Section 1 of the 1817 Mississippi Constitution. Accessed at “The Mississippi Constitution of 1817 -.” <https://www.mshistorynow.mdah.ms.gov/issue/mississippi-constitution-of-1817>.

Virginia]”<sup>19</sup> and he had owned 238,000 acres of land, not including his holdings outside of Henry County. Another anecdote that Wiencek shares of the Hairston family’s wealth was Watt Hairston who in 1876 paid a 5-dollar speeding fine with 10 dollars, because he planned on speeding on his way out of town as well. The speeding fines were implemented specifically for Watt Hairston. The point was their level of wealth commanded a certain level of respect and a belief that they were above the law. Another individual repeatedly speeding would have likely been thrown in jail, but Watt Hairston’s wealth protected him from that.

Samuel H Hairston was not the only member of his family to take a slave woman as his unlawful wife. A relative of his by the name of Robert Hairston had also made it a point to treat his slaves like family and lived with Elizabeth, his slave, as his wife. In addition to giving his slaves so much autonomy that they were considered “free in everything but name,” Robert even set black Hairstons in charge of plantations. These Hairstons were unfortunately harassed and beaten by their white neighbors, another testament to the unfairness that even free coloreds may have faced in Mississippi.<sup>20</sup>

Robert was also described by contemporaries as living far beneath his means. Wiencek states, “With evident disgust, people took note of how he lived and saw where his affections lay ‘The house was not suitable for a family of his wealth but would do for such an one as he had with him—composed entirely of servants.’”<sup>21</sup> Of note is that this is the same Robert Hairston that had married Ruth, the mother of Agnes and one of the two heirs to the combined Hairston and Wilson fortunes. Robert and Ruth had had a falling out in an unknown year, and Robert fled from Virginia to Mississippi with his slaves. He never legally divorced Ruth, but he did consider one of his slaves, a woman by the name of Elizabeth, as his true wife, even going so far as to purchase a ring for her as evidence of his feelings toward her.<sup>22</sup> It is possible that Robert Hairston also married Ruth due to Saura Town Peter’s machinations rather than for his own desire to do so. What is clear is that Robert had no children with Ruth; his first child Chrillis was born by Elizabeth when Robert was in his sixties.<sup>23</sup>

Chrillis was born between 1845 and 1847. The birth of this child brought complications with it, which Robert chose to procrastinate in handling. However, as his death approached, Robert Hairston hastened to put together his last will and testament. In it, he attempted to manumit his daughter Chrillis, and name her as his sole heir. Wiencek argues the white family was “Stunned by this amazing document, which dashed their expectations of instant wealth and dynastic consolidation, they burst into Robert’s room and raged at him as he lay on his deathbed...”<sup>24</sup> The white family was furious and could

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<sup>19</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin’s Press, 2020. Pg. 89

<sup>20</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin’s Press, 2020. Pg. 159

<sup>21</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin’s Press, 2020. Pg. 159

<sup>22</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin’s Press, 2020. Pg. 159

<sup>23</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin’s Press, 2020. Pg. 159

<sup>35</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin’s Press, 2020. Pg. 160

hardly fathom such a decision. Chrillis would be free, and she would own all of the property, slaves including, that her father controlled. This would have put Chrillis in an odd situation, as she would have been considered the owner of her own mother as well.

Or at least she would have been if the law had allowed for that. The Hairston family felt cheated of the inheritance that they believed they deserved, took legal action, and the courts took their side.<sup>25</sup> Indeed, the legal battle for Chrillis was steep. First, Robert had never divorced Ruth, so she was still the primary heir at the time of his death. As his wife, Ruth was entitled to half of the property of the deceased. Robert's marital status was indeed debatable, as he had fled Virginia and considered Mississippi his domicile.<sup>26</sup> To ensure that the property stayed within the family, the relatives argued against this point. It is likely that they would have argued his departure and taking up residence in Mississippi as his new domicile qualified as a divorce if not for the risk of losing their inheritance entirely. However, they were willing to sacrifice a portion of their inheritances if it meant that they at least got one.

Of interest is the reason behind why Robert Hairston did not attempt to manumit any of his slaves until his death. Of special note is that only his daughter would have been freed and would have become their new owner. The slaves were treated as his family, and there was evidence that he cared for them, and perhaps even loved them. He erected a hospital for his slaves, granted them autonomy, and even lived as married with one of his slaves.<sup>27</sup> So why might he have refused to free them?

One potential reason is that manumission was an extensive, and expensive, process. In Mississippi specifically, manumission required the free colored person to be removed from the state.<sup>28</sup> Legislators claimed this was because free people of color encouraged slave revolts and laziness. In addition to losing the value of the slave by releasing them, the former slave owner would also need to finance the removal of the slave, including rations and transportation costs. The slaveowner was also responsible for the former slave being able to support themselves for a time before being able to acquire work. Benjamin Joseph Klebaner argued that this was to prevent vagrancy and the public needing to finance the former slave. Another argument for this law was that it prevented a slaveowner from surrendering the cost of maintaining the slave "under the guise of humanitarianism."<sup>29</sup> Slaves, while significantly cheaper than actually paying one's workers, still incurred a cost. A slaveowner needed to own enough land to house the slaves and have enough money and/or crops to feed their slaves. And based on the wording of the legislation, it was possible that slaveowners had begun to free their slaves

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<sup>25</sup> "Hairston v. Hairston, 27 Miss. 704 (1854) | Caselaw Access Project." Accessed November 20, 2021. <https://cite.case.law/miss/27/704/>. The Appellate Decision by the Supreme Court of Mississippi in *George Hairston v Ruth Hairston* that declared Ruth the primary heir of Robert Hairston's estate as his widow.

<sup>26</sup> "The Mississippi Married Women's Property Act Of 1839 - Vignettes - Hancock County Historical Society." Accessed November 27, 2021. [https://www.hancockcountyhistoricalsociety.com/vignettes/the-mississippi-married-womens-property-act-of-1839/..](https://www.hancockcountyhistoricalsociety.com/vignettes/the-mississippi-married-womens-property-act-of-1839/)

<sup>27</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin's Press, 2020. Pg. 157

<sup>28</sup> Klebaner, Benjamin Joseph. "American Manumission Laws and the Responsibility for Supporting Slaves." *The Virginia Magazine of History and Biography* 63, no. 4 (1955): 443–53.

<sup>29</sup> Klebaner, Benjamin Joseph. "American Manumission Laws and the Responsibility for Supporting Slaves." *The Virginia Magazine of History and Biography* 63, no. 4 (1955): 443–53.

claiming reasons relating to their personhood. It was more likely that it was a money saving tactic in the wake of crop prices dropping, or other financial woes. As such, laws were enacted to prevent this practice, as the cost of feeding a free, unemployed colored person fell to the community's tax dollars.

Manumission would have also split up the family. Robert Hairston would have needed to either move with his former slaves to a new home in a more tolerant state or be separated from the people he cared for. The family could potentially be happier as freed coloreds, but that would have likely cost Robert's happiness in the process. It is impossible to know for sure how Robert Hairston felt about his slaves. But his fleeing to Virginia (where he had a white wife, his family's large manor and much of his property) suggested that he valued the slaves he took with him and his new slave wife Elizabeth more than what he had left behind.

Additionally, Hairston did not bother to emulate much of what he had left behind, claiming that old men that build large houses often died right after, and that he was content.<sup>30</sup> Despite possessing the wealth necessary to do so, Robert Hairston refused to live a life of opulence. Perhaps his home, made of plain wood, and inhabited by his family of slaves, made him happy.

Unfortunately, freeing his slaves did not guarantee them security from slavery. The Antebellum North and South were dangerous places for even freed people of color, especially after the Fugitive Slave Act of 1850. There would be very little to stop a freed slave from being captured and sold back into slavery, as Mississippi assumed any colored person was a slave, and any individual that failed to provide proof of their freedom could be sold at auction. The Fugitive Slave Act ensured that even escape to a free state did not predicate continued freedom.<sup>31</sup> Even possessing freedom papers was not always adequate protection against unscrupulous slave catchers. If sold back into slavery, the slaves' lives could have become drastically worse with how other Mississippian slave masters treated their slaves. According to Wiencek, "Life on the Mississippi frontier in the 1830s wrought changes in some white people. It was a far harsher place for slaves than Virginia."<sup>32</sup> Even living with Robert Hairston, a slave with too much autonomy was captured and thrown in jail, only to be released once Robert claimed the man as his own.<sup>33</sup> This event resulted in Robert being warned about keeping his slaves equipped with paperwork that would help maintain their freedom.

It was also possible that Robert Hairston did not even legally own the slaves that lived with him in Mississippi. The inbreeding and inheritance of the Hairston family meant that if Robert surrendered his stake, a less lenient relative might claim theirs. Peter Wilson Hairston was quoted by Wiencek as saying "And he didn't own the slaves

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<sup>30</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin's Press, 2020. Pg. 157

<sup>31</sup> Vaughn, Vanessa E. "Volume 1: ANTEBELLUM LAW AND POLITICS: Fugitive Slave Act..: Defining Documents: Manifest Destiny & the New Nation (1803-1859)." *Defining Documents: Manifest Destiny & the New Nation (1803-1859)*, 8/1/2013 2013, 70–80.

<sup>32</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin's Press, 2020. Pg. 157

<sup>33</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin's Press, 2020 Pg. 158

outright—his title was all mixed up with his grandmother and the rest of the family.”<sup>34</sup> This answer was in response to a question of if Peter “The Judge” Hairston would have freed the slaves if he was in his grandfather’s shoes. The Hairston family tree was rather complicated as there was constant incest and intermarriages. According to Weincek, “The ownership of the Hairston slaves was particularly muddled—it was virtually a collective ownership.”<sup>35</sup> Even if Robert Hairston wanted to, he likely could not free his slaves, aside from Chrillis, whom he likely had sole ownership of.

A less charitable explanation for Robert’s refusal to manumit his slaves was that perhaps he enjoyed the authority and power that came from owning his family. A similar situation occurred with Thomas Jefferson and Sally Hemmings. Sally Hemmings was the half-sister and slave of Martha Jefferson, Thomas Jefferson’s wife. Before the marriage of Thomas and Martha, Sally Hemmings was the property of her half-sister. And she reportedly bore a strong resemblance. But the blood relation, and the family resemblance were not sufficient to warrant her freedom.

Martha Jefferson passed away, leaving Sally Hemmings and the rest of Martha’s slaves to Thomas. And in time, Thomas Jefferson took her as a concubine or mistress. Jefferson travelled to Paris and took Hemmings with him. Slavery was illegal in France and Jefferson had to pay Hemmings for her services. Hemmings’ monthly wage was 12 livres, which was equivalent to 2 US dollars.<sup>36</sup> Additionally, while in Paris, Hemmings enjoyed a greater deal of freedom and autonomy. She used this freedom to pick up skills such as bartering and made herself essential to Jefferson. However, Jefferson wished to return to Virginia, which Hemmings disagreed with. Virginia held an unfavorable situation for Hemmings, as she was significantly freer and was actually paid while in France. Hemmings begrudgingly agreed to return to Virginia on a few conditions: she would be treated well, and her children would be freed from slavery upon their 21<sup>st</sup> birthdays.<sup>37</sup> In returning to Virginia, Hemmings faced an interesting set of relationships. As the children of Thomas and Martha Jefferson, Hemmings’ nieces and nephews held authority over her.

For Jefferson’s part, Hemmings greatly resembled his late wife whom he loved. Perhaps this helps to explain his choice in concubine. Additionally, taking her to France had bettered Hemmings’ status as she had picked up homemaking skills such as sewing and other household or wifely duties. What seemed to be even more important, however, was the power that Jefferson held over Hemmings as her owner. One could disobey a father or husband in ways that did not extend to a slave master. This power imbalance was very favorable for Thomas Jefferson and could be why even when she initially refused to return to Virginia, Jefferson insisted on it instead of either leaving her in France or remaining there with her. This relationship may have served as an example for Robert Hairston, as he was a wealthy and educated slave owner raised during Jefferson’s presidency. Jefferson’s presidency began in 1801, and Hairston was born in 1785.

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<sup>34</sup> Weincek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin’s Press, 2020. Pg. 36

<sup>35</sup> Weincek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin’s Press, 2020. Pg. 133

<sup>36</sup> “Sally Hemmings | Life of Sally Hemmings.” Accessed November 21, 2021. <https://www.monticello.org/sallyhemings/>.

<sup>37</sup> “Sally Hemmings | Life of Sally Hemmings.” Accessed November 21, 2021. <https://www.monticello.org/sallyhemings/>.

Whatever Robert Hairston's reasons were, he chose not to manumit his slaves in life. He seemed to enjoy his life in Mississippi somewhat as he remained there instead of returning to Virginia where his legal wife lived and where a larger portion of his fortune lay. In his last will and testament, Robert excluded his legal wife Ruth but bequeathed five slaves to George Hairston (a like-minded relative and the executor of his will).<sup>38</sup> Despite the failure to properly manumit Chrillis, it was clear that he wished for her to be his sole heir.

Perhaps it was a combination of reasons that led to Robert making this decision. Perhaps he could only manumit Chrillis, or perhaps he wished for her to have the same wealth and security that a white child of his would have been entitled to. No matter his intentions, Robert was unsuccessful. And Chrillis virtually vanished.<sup>39</sup> Wiencek initially feared the worst, that she had been killed, but instead she was sold. He had difficulty tracking down the story of Chrillis as records related to her were difficult to corroborate or even find. Chrillis' name showed up in the archives with different spellings: "Chrimbell, Chrimbill, Chrimbiel, Chimchild, Chemiel, Chrischil and several unintelligible variants." If the girl's name couldn't even be agreed upon by the various records, could anything be trusted? In fact, one archivist had transcribed manumitted as maintained instead. It was unclear whether this was done maliciously, or even intentionally.<sup>40</sup> As such, when Wiencek found a record claiming that Chrillis had died, he was incredulous and continued his search.

That record was wrong. The Hairstons had absconded with Chrillis, taking her to a different plantation while she was still too young to recall her father, and hid her identity from her. Chrillis' new name was Elizabeth (but she shall be referred to as Chrillis throughout).<sup>41</sup> Chrillis was approximately 20 years old at the point of Emancipation, and she chose to move to George Hairston's plantation, where her mother Elizabeth still lived and worked. Major George Hairston was the same man who wrote Robert Hairston's will which attempted to manumit Chrillis, and in the battle over Robert's property/inheritance he had purchased Elizabeth. It is unclear why he did so, but it is possible that he did so as a way of protecting Elizabeth and Chrillis, who the rest of the family had reason to dislike and distrust.<sup>42</sup>

When Chrillis lived and worked with Major George, they fell in love and were married. They had six children together and "Major George put all their children in his name."<sup>43</sup> This was incredibly important because Emancipation did not immediately remove the stigma of inter-racial marriage or mixed-race inheritance. Additionally, other contemporary mixed couples gave the children the mother's last name as an attempt to

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<sup>38</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin's Press, 2020. Pg. 160

<sup>39</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin's Press, 2020. Pg. 187

<sup>40</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin's Press, 2020. Pg. 186

<sup>41</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin's Press, 2020. Pg. 202

<sup>42</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin's Press, 2020. Pg. 202

<sup>43</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin's Press, 2020. Pg. 203

hide the truth of the matter.<sup>44</sup> Major George also made sure that all of his children were given land. Unfortunately for Chrillis, Major George seemed to have neglected to leave a will that ensured her inheritance.

As such, upon the death of Major George, “his relatives led by his younger brother James Thomas Watt Hairston, known as J.T.W., promptly evicted Elizabeth from the property”<sup>45</sup> Even 20 years after Emancipation, Major George and Chrillis’ marriage was not recognized, and she was not considered his primary heir. They married during Reconstruction when anti-miscegenation, and other racist laws were temporarily repealed. In the aftermath of the Civil War, many Southern individuals who fought for the Confederacy were forbidden from seeking public office, and for a time African Americans were able to influence policy and prosper.

However, this did not sit right with the white Americans that were no longer in control. According to Weincek, “The Klan, groups of Confederate veterans, and other well-organized white groups conspired to steal the state and local elections of 1875 and install white-supremacist governments across Mississippi.”<sup>46</sup> They were successful in doing so, and though Mississippi’s population largely consisted of people of color, legislation lay in the hands of the white minority. And unfortunately for the African Americans, as Weincek describes, “The attitude of most white Mississippians was embodied not by men such as Major George Hairston, but by men such as his brother, J.T.W. Hairston, who complained bitterly about conditions in Mississippi after the war.”<sup>47</sup> White Mississippians blamed African Americans for everything that went wrong and went out of their way to make life miserable for them. This included things like extreme physical violence such as whippings, but also refusal to recognize legal marriages.

In the absence of a will, Chrillis was left high and dry. Perhaps one reason Major George did not write a will was that he had seen how futile a will was in the case of Robert Hairston earlier. Perhaps he had hoped that Chrillis’ status as his wife, and the mother of his six children would be enough to ensure her security. However, the same family that argued that a last will and testament did not supersede a widow’s right of inheritance less than 40 years earlier, completely ignored a widow’s rights in regard to the property of Major George.<sup>48</sup> The courts unfortunately did not see her as his legal widow, even though their marriage was legal when it occurred. This was the second time that Chrillis had found herself cheated of her inheritance by her own flesh and blood; the first time in spite of a will, and the second time for the lack of one.

Chrillis, however, refused to take this without a fight, much like she did with every other hardship she had come to face. And there were many throughout her marriage. Major George seemed to be somewhat worn down by the events he had seen in

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<sup>44</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin’s Press, 2020. Pg. 203

<sup>45</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin’s Press, 2020. Pg. 204

<sup>46</sup> “Hairston v. Hairston, 27 Miss. 704 (1854) | Caselaw Access Project.” Accessed November 20, 2021. <https://cite.case.law/miss/27/704/>. Pg. 207

<sup>47</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin’s Press, 2020. Pg. 208

<sup>48</sup> “Hairston v. Hairston, 27 Miss. 704 (1854) | Caselaw Access Project.” Accessed November 20, 2021. <https://cite.case.law/miss/27/704/>.

his years of life. According to Weincek, “Discouraged by debts, by failed real-estate investments, and by the machinations of his own family members who tried to ‘break him up,’ George simply gave up.”<sup>49</sup> But Chrillis refused to do so.

The 1870s might have been a terrible time for African Americans in Mississippi, but Chrillis made the most of it. When George faltered, Chrillis ensured that they succeeded. Chrillis had taken over her husband’s farms almost entirely and ran her own farms as well. When George thought that land was useless or not profitable, she made it profitable. When George’s creditors came knocking, she sold her own crops to pay off his debts.

She took this same tenacity and fire to court against her brother-in-law. In the 1885 case, a witness “testified that George had acknowledged his debt to Elizabeth and had meant to pay her back: ‘I heard him say that he intended to leave her a home.’”<sup>50</sup> Unfortunately for Chrillis, even this testimony was not enough, and she lost this case, and the second. However, in her third attempt, she took a different approach. “She asked for repayment of loans and for ‘wages,’ which she substantiated with detailed accounts of the time she had spent working on her husband’s behalf.”<sup>51</sup> It was embarrassing, but it was her last hope. Again, the courts, colored by the racism prevalent in the state rebuffed Chrillis. J.T.W. had argued that Chrillis was merely Major George’s mistress and that she did not deserve any settlement. Where J.T.W. was rather open about his distaste for Chrillis, it is possible that other members of the family were not so hateful and might have been willing to pay the back wages as it would not have harmed the family’s image as much as Chrillis being a mistress or wife of Major George.

Chrillis lost this case as well, but she still refused to give up and went on to purchase more land and build another plantation to leave to her children.<sup>52</sup> Despite everything that was stacked against her, Chrillis worked to ensure that her children would be better off than she was, a task that was extremely difficult for people of color in the antebellum and Jim Crow South. But through decades of hard work both physical and mental, she was eventually able to leave her children a home, though her husband had failed to do so for her. Though the Post Civil War racist laws were laxer, this was still a monumental victory for a woman of color in the time period.

There were a variety of laws prohibiting freed African Americans from gaining large amounts of property. Legally, in Georgia, African Americans were prohibited from purchasing any real estate or real property whatsoever. “No free person of color within the state, [Indians in amity with this state excepted,] shall be permitted to purchase or acquire any real estate, or any slave or slaves...” Florida had even stricter rules according to Roy W. Copeland: “it was forbidden to buy anything from or sell anything to a free

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<sup>49</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin’s Press, 2020. Pg. 208

<sup>50</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin’s Press, 2020. Pg. 209

<sup>51</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin’s Press, 2020. Pg. 209

<sup>52</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin’s Press, 2020. Pg. 215

negro without the consent of his guardian under a penalty of \$100 to \$500.”<sup>53</sup> Many other states in the South had similar laws, not that they were necessary, as most white individuals refused to do business with black people anyway, and would often enact violence against people of color that successfully purchased property.<sup>54</sup>

Mississippi handled its free black population a bit differently, though Mississippi enacted laws to limit the number of free people of color allowed in the state.<sup>55</sup> These laws were incredibly effective. The 1850 Census recorded 295,718 white Americans, 309,878 enslaved African Americans, and only 930 free African Americans in the state of Mississippi.<sup>56</sup> Mississippi managed to keep such a low population of free black individuals by being wildly inhospitable to prevent moving to the state in the first place. And by enacting new laws that were specific to free African Americans. Mississippi also restricted slaveowners’ ability to manumit their slaves.<sup>57</sup> Mississippi was ultimately not a very hospitable state for African Americans, and it led to a low influx of new people of color, as well as a larger exodus of people of color.

Most of these laws were enacted under the pretense that the existence of free black people, much like the aforementioned pampering of slaves, encouraged laziness and rebellion. As such, leaving one’s freedom papers at home exposed an African American to the risk of becoming enslaved.<sup>58</sup> Mississippi assumed any person of color was a slave and required certification and testimony to the contrary. African Americans faced the opposite of “innocent until proven guilty,” another aspect of their dehumanization and disenfranchisement. This assumption perhaps also contributed to the lower numbers of free people of color in the state. It is impossible to tell from surviving records whether some individuals that once were free had become slaves.

Freedom papers also cost \$3 to renew every three years.<sup>59</sup> Coupled with the various wealth-limiting practices that African Americans had to face, remaining free was a rather expensive process. None of this was necessary for free whites, which proves that free blacks in Mississippi were hardly free and the little freedom they had required constant diligence to keep.

White Americans were able to claim superiority over virtually any African American for a few reasons. Not the least of which was that an African American faced

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<sup>53</sup> Copeland, Roy W. “In the Beginning: Origins of African American Real Property Ownership in the United States.” *Journal of Black Studies* 44, no. 6 (2013): 646–64.

<sup>54</sup> Copeland, Roy W. “In the Beginning: Origins of African American Real Property Ownership in the United States.” *Journal of Black Studies* 44, no. 6 (2013): 646–64.

<sup>55</sup> “A Contested Presence: Free Black People in Antebellum Mississippi, 1820–1860 - 2000-05.” Accessed November 9, 2021. <https://www.mshistorynow.mdah.ms.gov/issue/a-contested-presence-free-blacks-in-antebellum-mississippi-18201860>.

<sup>56</sup> Data collected using Census.gov, <https://www2.census.gov/library/publications/decennial/1850/1850a/1850a-34.pdf>

<sup>57</sup> Klebaner, Benjamin Joseph. “American Manumission Laws and the Responsibility for Supporting Slaves.” *The Virginia Magazine of History and Biography* 63, no. 4 (1955): 443–53

<sup>58</sup> “A Contested Presence: Free Black People in Antebellum Mississippi, 1820–1860 - 2000-05.” Accessed November 9, 2021. <https://www.mshistorynow.mdah.ms.gov/issue/a-contested-presence-free-blacks-in-antebellum-mississippi-18201860>.

<sup>59</sup> \$3 in 1831, when the fee was adjusted, would be equivalent to approximately \$94 in 2021, which is quadruple the cost of a Mississippi driver’s license in 2021 (\$24 for 4 years)

major impediments to accumulating wealth.<sup>60</sup> Where a white woman that failed to acquire property could lean on their father or husband's status, anti-miscegenation laws removed that option from women of color. "Marrying up," as it is colloquially known, is even a practice in the modern world; and while the desire to maintain and consolidate wealth between families made it uncommon, it was still a possibility for some individuals. After all, if a wealthy plantation owner could fall in love with one of his slaves despite the stigma associated with African Americans, surely falling in love with a poorer individual was also possible.

Virtually any individual that married into the Hairston family would see an increase in wealth and status. Even a white woman from the middle class would see great improvements. But for an African American woman to do so would be an absolute paradigm shift. That level of status and wealth was simply incomprehensible for many. And to attach it to an African American could threaten and enrage those in power with a vested interest in not sharing that power. If one African American could become that wealthy and important, so could the rest of them.

As such, several justifications for slavery, including the forms of slavery enacted upon those that were called free, were necessary. Indeed, slavery was sometimes considered the right thing to do. By keeping a slave, one "protected African bondsmen from the specter of want and extermination that would otherwise haunt such an inferior race."<sup>61</sup> In many cases, it was believed that free people of color simply could not survive on their own and would themselves have to resort to vagrancy or theft. An ironic assumption considering that slaves were the individuals performing the majority of the manual labor. Jeremy Tewell argues that Southerners were simply following a precedent set by previous slave-using civilizations, such as the Egyptians or most notably the democratic Greeks.

Slavery was also justified using Christianity. Pro-slavery authors mentioned by J. Albert Harrill referred to the Bible's constant mention of "servants" used by the heroes of the stories as a form of God sanctioning slavery.<sup>62</sup> Servant and slave were interchangeable and meant the same thing according to "common sense." In fact, trying to interpret the term as servant instead of as slave was considered anti-Christian. Harrill continued that another argument made by pro-slavery Christians was that there were slaves specifically included in stories that were considered model Christians, upholding the values of honor and duty.<sup>63</sup> Whether one believes these arguments, they were made in order to attempt to not only justify slavery but to claim that a slaveholder was a more faithful Christian than a man that did not own slaves.

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<sup>60</sup> Copeland, Roy W. "In the Beginning: Origins of African American Real Property Ownership in the United States." *Journal of Black Studies* 44, no. 6 (2013): 646–64.

<sup>61</sup> Tewell, Jeremy J. *A Self-Evident Lie: Southern Slavery and the Threat to American Freedom*. Kent State University Press, 2011.

<sup>62</sup> Harrill, J. Albert. "The Use of the New Testament in the American Slave Controversy: A Case History in the Hermeneutical Tension between Biblical Criticism and Christian Moral Debate." *Religion and American Culture: A Journal of Interpretation* 10, no. 2 (2000): 149–86. <https://doi.org/10.2307/1123945>.

<sup>63</sup> Harrill, J. Albert. "The Use of the New Testament in the American Slave Controversy: A Case History in the Hermeneutical Tension between Biblical Criticism and Christian Moral Debate." *Religion and American Culture: A Journal of Interpretation* 10, no. 2 (2000): 149–86. <https://doi.org/10.2307/1123945>.

Additionally, by appealing to the innate inferiority of Africans, it was stated that a slaveowner converting his slaves to Christianity removed them from the Devil's influence and joined them to God's flock. There were also selective appeals to God's immense power used to justify slavery. Wiencek noted the same tendency in the Hairston family, saying "Peter Wilson Hairston believed that God Himself had imposed the existing order on the world, and it was not for man to tamper with His design."<sup>64</sup>

The Hairston family included several stories highly relevant to the question of anti-miscegenation laws and provided a vehicle for the exploration of the purposes of such laws as engines of maintaining slavery. Samuel H Hairston faced criminal prosecution and a hefty fine for simply living with his slave Julia. Robert Hairston faced social ostracism for treating his slaves like family and even gifting his slave concubine a ring. And Chrillis' story included two prime examples of anti-miscegenation laws being used to control and restrict African Americans' access to wealth.

Three separate relationships that could not lead to legal marriage for much the same reasons. Marriage was something that brought with it status, security, and wealth. And these were things that the white Southerners in power refused to share with the African Americans that they considered lesser. And even in the event of obeying the anti-miscegenation laws, such as in the case of Samuel H Hairston, one faced the risk of legal prosecution for fornication and cohabitation. The existence of interracial marriages in the Antebellum South threatened to upend the very system of slavery, and all that profited from it; and as such needed to be prohibited. It would disprove the very basis of slavery, the inferiority of black people, by showing they were human and by elevating them to the same status and wealth as their white peers, forcing people to face the oppression of their fellow man. Slavery was eventually abolished in the year 1865, but white and black Americans were only able to marry one another legally nationwide in 1967—over one hundred years later. Anti-miscegenation proved to simply be an additional part of slavery and, after Emancipation, another form of it.

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<sup>64</sup> Wiencek, Henry. *The Hairstons: An American Family in Black and White*. St. Martin's Press, 2020. Pg. 35

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