

ABSTRACT

Title of Dissertation: THE SPECTER OF BLACK CITIZENS:
RACE, SLAVERY, AND CITIZENSHIP IN
THE EARLY UNITED STATES

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This dissertation examines the complicated relationship between race and slavery and the creation of United States citizenship. Citizenship has traditionally been seen as an outgrowth of the American Revolution, when Americans embraced a more egalitarian, and republican, status compared to the British subjecthood they had previously been under. This status, however, was fraught with contestation, forged through political compromises, and debated in the long shadow of slavery. Rarely seen as only a legacy of American independence by contemporaries, U.S. citizenship was instead a marker of political inclusion within the nation-state; a nation-state which those in power sought to fashion into a white ethno-state. I seek to examine this history by foregrounding the United States' history of race and slavery, illustrating how we must recognize the myriad ways in which citizenship was not only crafted alongside increasingly accepted conception of race and an ever-growing institution of slavery, but was also created to strengthen and protect these two. By consulting court cases, legislative debates, newspapers and pamphlets, and popular culture I seek to show the broad-based acceptance by most white Americans that

citizenship purposefully excluded Black people, and by doing so cut off important routes through which they could appeal to certain legal and societal protections and rights. This history of citizenship, race, and slavery illuminates a critical aspect of early debates on who made up the American citizenry, shows the centrality of anti-Blackness to the nation during this period, while also illustrating how all three topics - race, slavery, and citizenship - were all topics of consistent national debate long before the Antebellum period.

THE SPECTER OF BLACK CITIZENS:
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by

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For my mom

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Introduction

[I]

It had been seventy years, almost to the day, since the Constitution had been created. And as had been the case for the decades since its creation, the meaning of this document was once again up for debate. What it meant, what its crafters intended, and what that entire generation understood the pivotal document to be was of great importance at that present moment.

On May 6, 1857, Roger Taney walked into the courtroom located within the U.S. Capitol, underneath the empty Senate chambers. The Supreme Court usually had few outside visitors during their hearings, but today was different. Spectators and journalists alike crowded the relatively small room as the Chief Justice began to deliver the opinion for the Court. The case of *Dred Scott v. Sandford* had attracted the attention of many in the nation. The question of slavery in the nation, as well as the rights of the country's Black population, were before the Court. As Taney read the opinion for the 7-2 Court, it must have become increasingly clear, for everyone in attendance, what side of the slavery debate the nation's highest court favored.

The *Dred Scott* opinion was a *tour de force* of American racism at the time. It was, in many ways, a fulfilment of his life's goal, as the Chief Justice had spent most of his adult life fighting to curtail any expansion of Black civil and political rights, while bolstering the institution of slavery.¹ The aging justice's voice barely carried throughout the Court's chambers

¹ For a brief treatment of Taney's attacks on Black citizenship, in previous government positions, and how they fit into larger debates during the Antebellum period, see Elizabeth Stordeur Pryor, *Colored Travelers: Mobility and the Fight for Citizenship before the Civil War* (Chapel Hill: University of North Carolina Press, 2016).

and belied the vehemency of Taney's disdain. Where speech failed to convey the severity of his opinion, words left no question. The question before the Court was simple:

Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizens?²

The answer was no.

Taney told those in attendance and future readers Black people were "considered as a subordinate and inferior class of beings who had been subjugated by the dominant race." Whether they were free or enslaved was of little consequence. All Black people "remained subject to [white] authority," and had no rights outside those specifically granted to them. The nation's history, its founding, was enough evidence that Black Americans "had no rights which the white man was bound to respect."³

History grounded Taney's views on both the Constitution and its meaning. At almost eighty years old, he was older than the Constitution itself. Born less than a year after the ink had dried on the Declaration of Independence, Taney no doubt considered himself an expert, a living archive of sorts, on the American Revolution and its aftermath. On what that generation had intended for the country going forward. He used history as an interpretive tool for the Constitution, and as a weapon against Black Americans and their white allies. Yet, history was always open for interpretation.

² 60. *Dred Scott v. Sandford*, U.S. 393 (1857).

³ Ibid.

In his dissenting opinion, Justice Benjamin Robbins Curtis stood in stark contrast to Taney as he presented an alternate view of the nation's founding. As he pointed out, Black Americans were not only considered citizens in some states during the initial years of the nation, but could even vote. Furthermore, it was quite likely at least some Black people participated in the ratification process for the Constitution, voting and electing members of their state's ratification conventions. And, as Curtis pointed out, if Black people's exclusion from citizenship was supposedly so agreed upon, then why did the founder explicitly decide against including racial qualifications in either the Constitution or the Articles of Confederation; the latter of which the defeat of a motion to include language which reserved the privileges and immunities of citizens to white people exclusively. If, then, at the time of the founding at least some Black people enjoyed rights associated with citizenship, and there were repeated efforts to not include racial qualification, then how could Taney possibly conclude Black people were both not citizens nor had rights white Americans were bound to respect?⁴

Curtis's dissent presented a counter history to Taney's, and represented what many abolitionists of the day believed in. By the middle of the 19th Century, many subscribed to the idea that Black people's exclusion being exclusively left out of documents such as the Articles of Confederation and Constitution, even when such matters were brought up, meant the founding generation not only did not wish to cement racial boundaries into the nation, but that they also wished to put the country on a path towards abolition. This antislavery constitutionalism was evident in many aspects of the abolitionists movement, as well as Curtis's dissent and counterargument against Taney.

⁴ Ibid.

Seventy years after the creation of the Constitution, the matter of Black Americans inclusion within the citizenry was still up for debate. Yet, as the document was being drafted, almost no one explicitly discussed the topic. In making an appeal to history, Taney could point to no concrete documents to support his decision. No debates. No letters. No legislative records. Citizenship was rarely debated during the founding period, much less in relation to race. The Constitution made no mention of race or slavery by name. Left no definition for citizenship either. Thus, the place of Black Americans within the citizenry was not something a person could easily point to.

And yet, Taney was confident in his assessment of history. So too was Curtis. The question, then, is what this history actually looks like? Were Black Americans excluded, explicitly or implicitly, from citizenship during the formative years of this country? If so, why and how? What did debates around citizenship look like when the status rarely came up by name? How did white Americans seek to either include or exclude Black Americans from the status, and what were their reasons? And how did Black Americans fight for inclusion within the citizenry, and what effect did their struggle have on the nation?

This work seeks to answer these and other questions. If Taney could confidently claim the founding generation could never have imagined the nation's Black population as citizens, then such a claim must be investigated. Not solely because it was made more than 150 years ago, but because the counterpoints made by Curtis and many abolitionists of the day can still be seen within the history of citizenship to this day. Scholar have often presented Taney as simply putting forth his own interpretation of history in order to protect and bolster the institution of

slavery, while further defining the lines between the races.⁵ This was certainly Taney's intention, but the history behind his reasoning, while not thorough by any means, should not be discounted.

[II]

There have been only a handful of texts that dominate the study of citizenship in the founding era. The most foundational of these is James H. Kettner's *The Development of American Citizenship*, which examines how American colonists used Revolutionary-era ideals to transform themselves from subject into citizens. Kettner has shown how Americans began to throw out older ideas of perpetual obligation and allegiance to a monarch in favor of "volitional allegiance." Volitional allegiance built on the idea of the social contract, and Enlightenment philosophy in general, and held people could choose which society, or nation, they wished to belong to. These same people could also renounce their citizenship, thus breaking their ties to a nation in favor of another; a subject of heated debate throughout United States history.⁶

Kettner focused his study on naturalization debates in the early United States. In the initial decades following independence, and particularly after the creation and ratification of the Constitution, Americans argued amongst themselves who was permitted to enter the country and subsequently gain access to citizenship, providing one of the only areas where the status was explicitly discussed at length. Because citizenship, even as it was ill-defined, was a critical component of immigration and naturalization, it was an unescapable topic of debate. In focusing

⁵ For a detailed overview of different critiques of *Dred Scott*, see Mark A. Graber, *Dred Scott and the Problem of Constitutional Evil* (New York: Cambridge University Press, 2006). Just a couple examples of scholars reiterating the Curtis, and 19th Century abolitionists, interpretation are, Paul Finkelman, "Coming to Terms with *Dred Scott*: A Response to Daniel A. Graber," *Pepperdine Law Review* 39 (2011): 66-68; Nicholas P. Wood, "A 'class of citizens': The Earliest Black Petitioners to Congress and Their Quaker Allies," *The William and Mary Quarterly* 74, No. 1 (January 2017): 130.

⁶ James H. Kettner, *The Development of American Citizenship, 1608-1870* (Chapel Hill: University of North Carolina Press, 1978).

on these debates, Kettner was able to explore one of the few areas of debate and controversy where citizenship was not only explicitly brought up, but also given meaning. Immigration and naturalization, then, was a prime topic of study for a status that proved somewhat elusive during this period.

However, in foregrounding these two areas of debate, Kettner glossed over the inequalities and contradictions which plagued the status. His main concern was demonstrating who could and could not become a citizen, and conversely whether a person could renounce their citizenship status. Whether citizenship lived up to the egalitarian principles it was purported to represent was largely inconsequential to Kettner's work. This is particularly prevalent when dealing with issues of race and slavery. Kettner's last chapter examines the question of Black Americans' citizenship status, though it does so by shifting focus temporarily to the Antebellum period, as opposed to the founding and Early Republic eras which are the main focus of his work. Whether or not Black Americans were included in ideas of volitional citizenship, Kettner's main focus, was not even meaningfully explored, much less larger debates surrounding the status' relationship with that group of Americans.

Next to Kettner's study, *Civic Ideals* by Rogers M. Smith is one of the most well-known works on citizenship in United States history. Smith work is a comprehensive study of citizenship from the nation's beginnings through the Progressive Era of the early-20th Century. His main focus is how citizenship has been an exclusive status, even as it is based on a number of egalitarian ideals. Smith focuses on how Americans' identity has shifted over time between three different intellectual traditions: liberalism, republicanism, and "ascriptivism." Smith uses citizenship to illustrate how various national scripts have been used to include or exclude certain people at different times and for a variety of reason. For this reason, Smith often frames the

exclusion of people from citizenship as an act which goes against the status's true meaning; as moments of reversal.⁷

In shifting back to the earlier years of the United States, Douglas Bradburn's *The Citizenship Revolution* is a more recent study of this status. Bradburn's major contribution was to show just how much citizenship was a symbol of division within the union. He used the term union, instead of nation, to illustrate how citizenship brought together a literal union of states and people, instead of cohesive nation state. The early years of the United States were a time when division ran rampant between people of different states and regions, and citizenship was one way of unifying a population which had traditionally thought of itself as separate and removed from even their closest neighboring states. The idea of national citizenship for a nation of people, the, ebbed and flowed between the War for Independence and the Election of 1800. In Bradburn's mind, the election of Thomas Jefferson in 1800 ushered in an era of state focused citizenship, which lasted until the Civil War, where a person's inclusion within their individual state's citizenry was far more important, culturally, legally, and politically, than the idea of national citizenship.⁸

Like Kettner, Bradburn focused little on aspects of race and slavery, though much more than Kettner did. Like the previous two scholars, Bradburn too presented citizenship as a fundamentally egalitarian status. Thus, in his discussion of race, Black Americans' exclusion from citizenship was seen as a failure, a decision which went against the core principles of the status. Like Smith, Bradburn presented Black Americans' experiences with exclusion as an exception, not the rule, for how citizenship operated and was thought about by most Americans.

⁷ Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven: Yale University, 1997).

⁸ Douglas Bradburn, *The Citizenship Revolution: Politics and the Creation of the American Union, 1774-1804* (Charlottesville: University of Virginia Press, 2009).

These three works represent, by and large, the field of citizenship studies in the early United States. If we expand the time period to include more of the 19th Century, there have been many works dealing with the relationship between Black Americans and citizenship to come out. Martha Jones, for example, explores how Black Americans fought for citizenship in Maryland, and Baltimore specifically. Andrew Diemer uses the border between Maryland and Pennsylvania, between free and slaves state, to study how Black Americans not only claimed citizenship, but protected themselves and their communities from slavery and discrimination. Samantha Seeley looks at debates surrounding removal and colonization to show how Black Americans defended their “right to remain” in the nation. And Elizabeth Stordeur Pryor explores debates around national citizenship and Black Americans’ right to travel in the Antebellum period.⁹

Other works still examine the buildup of the Black civil rights movement, activism, and political activity during the first half of the 19th Century, and how they interacted with debates on citizenship. Christopher James Bonner explores how free African Americans used outlets such as newspapers and conventions to not only make a claim on citizenship, but largely define what the status would become over time. Kate Masur too examines the long civil rights movement during this period, as Black Americans and their white allies responded to the stripping of rights that occurred during the first decades of the century. And Brian Taylor examines how Black military service leading up to and in the Civil War became a key part of claiming citizenship, culminating

⁹ Martha S. Jones, *Birthright Citizens: A History of Race and Rights in Antebellum America* (New York: Cambridge University Press, 2018); Andrew K. Diemer, *The Politics of Black Citizenship: Free African Americans in the Mid-Atlantic Borderland, 1817-1863* (Athens: University of Georgia Press, 2016); Samantha Seeley, *Race, Removal, and the Right to Remain: Migration and the Making of the United States* (Chapel Hill: University of North Carolina Press, 2021); Pryor, *Colored Travelers*.

in leveraging their enlistment in the Union cause to finally guarantee their place within the citizenry.¹⁰

These are just some examples of the scholarship surrounding Black people's relationship to citizenship for the decades after 1820. Examining this later time periods makes centering Black Americans in the story of citizenship much easier. This is because there are simply far more sources in the Antebellum period. Black Americans were much more politically active and vocal during this period, and were able to organize easier, publish their thoughts more, and force certain issues into the spotlight. Furthermore, citizenship became a more common rhetorical tool in politics as the country began to expand political rights to more and more white men, and white women formed a cohesive and boisterous women's rights movement. Thus, from the 1820s onward, citizenship is much easier to study, as a variety of Americans debated it much more explicitly and openly.

Yet, this doesn't mean the earlier period is unimportant or impossible to study. This work seeks to improve on the current historiography in three ways. First, by centering race and slavery in the early history of citizenship, it is possible to go beyond simply presenting exclusion as fundamentally opposed to citizenship's design. While those like Smith and Bradburn look to the experience of Black Americans as contrary to what citizenship was supposed to mean, my study explores the place of this group in the nation and how that influenced citizenship to be, by design, an exclusionary status. Second, while studying Black Americans' relationship to citizenship in this earlier period is difficult, this work pushes the timetable back to the founding

¹⁰ Christopher James Bonner, *Remaking the Republic: Black Politics and the Creation of American Citizenship* (Philadelphia: University of Pennsylvania Press, 2020); Kate Masur, *Until Justice Be Done: America's First Civil Rights Movement, From the Revolution to Reconstruction* (New York: W.W. Norton & Company, 2021); Brian Taylor, *Fighting for Citizenship: Black Northerners and the Debate over Military Service in the Civil War* (Chapel Hill: University of North Carolina Press, 2020).

and the initial decades following. The lack of sources, when compared to the Antebellum period, is palpable. Yet, this earlier period is crucial for understanding how citizenship not only developed initially, but how a larger movement was formed in the 19th Century by Black Americans to gain and secure their rights.

And lastly, this is a nationally focused story. With few exceptions, most works on Black citizenship in the Antebellum period focus on states and localities. During a period when the civil, political, and social rights of Black Americans varied widely across the nation, from region to region, and even city to city, it is admittedly a difficult undertaking to speak about what citizenship looked like in the country as a whole. Furthermore, cities like Baltimore, Philadelphia, and New York, with large Black populations and increased access to resources, left behind more sources that can tell their unique stories. This study, however, is interested in how citizenship was thought of and debated on across the nation, in order to get a broader idea of how Black and white Americans interacted with this status going into the Antebellum period.

The scholarship on Black Americans and citizenship in the Antebellum period has done a great job illustrating how the actors at the proverbial table debated this status. This study is principally interested in exploring how that table was set up in the first place. Doing so provides important context for later events in American history.

[III]

Citizenship, however, is difficult to study. The lack of sources during this earlier period is one challenge. Having a framework which can use those sources is another matter. Because citizenship was explicitly defined so little, and because Americans rarely debated the status

outright, knowing how to see the status in debates can be difficult. It is important, then, to get a few things in order.

First, a definition for citizenship is necessary. While modern day Americans are used to thinking of citizenship as a rights bearing status, that idea is relatively modern. At its inception, citizenship was more analogous to subjecthood. This latter status, in the Anglo-Atlantic world, simply denoted a person's inclusion within the British empire, in a reciprocal relationship between them and the monarch. Subject owed obedience and subservience to their sovereign. In return, the monarch was bound to protect their subjects. Yet, subjecthood was not a status imbued with numerous rights and protections. There were important ones, such as protections against cruel or unusual punishments and excessive bail, the forfeiture of property without trial, or the right to petition. However, even these rights and protections were not necessarily universal or uncontested. Parliament, for example, regularly refused to even accept petitions on the premise that the petitions enjoyed no actual right to seek relief from that body.

The shift to citizenship, as will be shown, did not amount to much of a change. Culturally, citizenship was a revolution in the status of the newly independent Americans. However, legally, citizenship lacked, and still does, any actual definition. Who could be a citizen was never explicitly laid out. What the status entailed, in terms of rights, protections, duties, etc. were never laid out. Some Americans, for sure, had ideas of specific rights and protections citizenship included, such as the right to buy, sell, and own property, make wills, hold office, sign a contract, participate on a jury, or a general freedom of inter and intrastate movement. And while such rights and protections may have been widely agreed upon, at certain times and places, they nonetheless never became explicitly tied to citizenship until well into the 19th Century.

As a result, we should not assume Americans were always debated citizenship with a rights bearing status in mind. Instead, we should see citizenship as simply the inclusion within the political community or body politic. Citizenship had very few actual rights or protections associated with it, though what few it did are important as will be discussed later. Understanding citizenship to be a narrow status, a means of denoting one's inclusion or exclusion in the nation, doesn't mean the status was unimportant. Its importance simply laid in other avenues away from the strictly legal and political.

Culturally speaking, being a citizen in the new nation meant something. Citizenship held, within itself, the potential to give Americans a place within a new nation, a new republic. And so, the denial of citizenship mattered, as it was an effective means of denying a person or group a symbolic place within the nation; which in turn could be used to carry out real, tangible, consequences. The denial of citizenship was certainly not exclusive to Black Americans. It could be deployed for any number of reasons against certain groups as a political weapon. Native Americans, for example, had a similar but unique relationship to U.S. citizenship, as they were also excluded from it. However, in comparison to Black Americans, Native people usually worked to keep their own sovereignty outside of the American nation state, thereby actively working to not be U.S. citizenship, where Black people fought for inclusion within the citizenry. Additionally, there was a long history of dealing with Native people diplomatically, and as legitimate political actors. These and other facts led to their exclusion from the American body politic, and citizenship, much more explicit, such as when the U.S. Constitution specifically references Native people not within the jurisdiction of the nation.

By and large, withholding citizenship from Black Americans was not only widespread during the founding era, but widely agreed up. Studying this, then, provides important insight

into not only how debates surrounding Black people in the nation developed, but how Americans, regardless of race, came to conceptualize both the nation and the very identity of its people. Citizenship may have lacked a meaningful legal definition, but it provided an arena where many fought over the very future of the nation.

[IV]

But where to look to find those consequences? Where and how did Americans debate citizenship? And if they did so without mentioning race and slavery, then how can they actually be seen? In order to examine the evolution of citizenship in relation to both race and slavery, I have used the conception of anti-Blackness. Anti-Blackness here simply means the systemic ways, both formal and informal, the United States was shaped, by both institutions and individuals, to exclude Black people from the body politic unless it was through subjugation. While anti-Blackness doesn't foreclose the possibility of interracial cooperation and collaboration, which certainly did occur during this period, it does illustrate how even those cross-racial unities were made within a system designed to not only diminish their effectiveness, but also discouraged the possibility of forming and sustaining such partnerships.

Additionally, anti-Blackness during this period was not diminished by larger shifts in the institution of slavery that can possibly be seen as more progressive. For example, the abolition of the international slave trade in 1807 was not accompanied by a relaxation in racial boundaries in the nation. Even though the international slave trade was, and had for decades been, loathed by most Americans, enslaver and not, that sentiment did not always extend past simply ending that portion of the slave trade. Furthermore, many people, especially Virginians, had economic motives in opposing the international slave trade. Virginians were among the oldest calls for

ending the international slave trade, yet the general distaste for the trade was also coupled with the reality that the state had an excess population of slaves, and could easily place itself at the center of the new nation's domestic slave trade. This was so known that when Virginian delegates attempted to have the Constitution bar the international slave trade, at the Constitutional Convention, that South Carolina's Charles Cotesworth Pinckney countered their only reason for supporting such a motion was Virginia would "gain by stopping the importation," considering "her slaves will rise in value, & she has more than she wants."¹¹

Thus, it would be a mistake to automatically assume shifts in the institution of slavery, which lessened or abolished certain aspects of it, meant anti-Blackness was not just as, if not more, prevalent. Anti-Blackness was expansive and malleable enough to account for both negative and positive changes in slavery. In much the same way, this framework allows for disagreements among white Americans on the precise nature of Black people's exclusion from legal, political, and social equality. But anti-Blackness allows for viewing such changes in race and slavery, differences of opinion, and general agreement in new ways. More so, anti-Blackness allows for insight into how much agreement there was on the matter of exclusion, and how even in disagreement over the place of Black people in the nation, those disagreements were often still predicated on how Black people would be excluded or made subservient, not whether.

Using anti-Blackness as an interpretive tool is associated much more with later periods in American history, and so it may appear to be an ahistorical lens through which to study early America. It is true Americans, regardless of race, certainly did not use the language of anti-Blackness to describe their nation. However, it is clear many white Americans, particularly those in power, sought to create a white ethno-state, and used citizenship as a way of excluding Black

¹¹ Max Farrand, ed., *The Records of the Federal Convention of 1787, Vol. II* (New Haven: Yale University Press, 1966), 371.

people from that nation. And Black Americans, particularly by the turn of the 18th Century, clearly understood the nation around them to be anti-Black as they fought for a formal place within the country.

As a framework, anti-Blackness allows for new ways to examine citizenship's initial history. For example, as will be discussed further later, the Constitution only mentions citizenship in passing, and certainly does not do so in relation to race or slavery. Yet, studying citizenship through an interpretive lens like anti-Blackness, we can not only see how the status was placed within the Constitution, in part, as a way to exclude Black Americans, but can understand the document itself in new ways. For years, scholarship has described the Constitution as either pro- or anti-slavery. Doing so implicitly limits the documents reach to only enslaved people. Studying the Constitution, then, became an exercise in seeing to what extent it was meant to continue or strengthen the institution of slavery. However, by looking at anti-Blackness' role in creating the Constitution and citizenship, we can push past this interpretation. Doing so pushes past the implicit attention slavery alone has received, and forces scholars to grapple with how this document was meant to affect the lives of all the nation's Black people, free or enslaved.

Moving past such interpretations is possible because anti-Blackness provides an opportunity to look past the divisions slavery often appears to represent for the founding generation, and on the divisions they themselves tended to focus on. With the Constitution in mind, it is easy to point towards a division on the matter of slavery because delegates themselves were quite upfront in their differences of opinion, and left ample records of their vigorous debates. Thus, defining the Constitution as either pro- or anti-slavery is a natural response to the source base. James Madison, for example, observed during debate on representation the real

differences between the states was not their size or population, but between “Northern and Southern States. The institution of slavery & its consequences formed the line of discrimination.”¹² Because slavery has been seen as a point, literal and figurative, of major division in the country at the time, scholars have tended to focus on it and the differences of opinion. But anti-Blackness could, and did, cross the boundaries between freedom and slavery, and represents a place of common agreement among many during this period.

Unlike the conceptions of anti or pro-slavery, anti-Blackness is far more pervasive and insidious than the inclusion of specific provisions within a document. Christiana Sharpe has described anti-Blackness as “pervasive *as* climate,” something she likens to “the weather.” By this, Sharpe points our attention to the ways in which anti-Blackness seeps into all aspects of life and is impossible to escape. Howard Winant describes race as a “‘dark matter,’ the invisible substance that in many ways structures the universe of modernity;” a conceptualization Simone Browne takes up in her own work on the surveillance state, and how Blackness is a “nonamenable matter that matters the racialized disciplinary society.”¹³

Anti-Blackness, then, can sometimes be so massive it is made invisible in its mundanity; so common it renders only certain aspects of itself noteworthy, such as when some of Jefferson’s contemporaries admonished him for his outdated views on Black humanity, while still subscribing to the very ideals such views were used to bolster. Citizenship is one way in which we can pull back and see the Constitution, and the society which birthed it, for what it is. Saidiya Hartman, in describing the aim of her groundbreaking work, *Scenes of Subjection*, said that “by defamiliarizing the familiar, I hope to illuminate the terror of the mundane and quotidian rather

¹² Farrand, *Records of the Federal Convention*, II: 10.

¹³ Christina Sharpe, *In the Wake: On Blackness and Being* (Durham: Duke University Press, 2016), 106; Howard Winant, “The Dark Matter: Race and Racism in the 21st Century,” *Critical Sociology* 41, No. 2 (2015), 322; Simone Browne: *Dark Matters: On the Surveillance of Blackness* (Durham: Duke University Press, 2015), 9.

than exploit the shocking spectacle.”¹⁴ Citizenship provides an avenue through which to do this same thing for the Constitution. If pro-slavery provisions are the “shocking spectacle,” the “mundane and quotidian” anti-Black aspects of the Constitution warranted little mention, debate, or defending. They were, simply taken for granted on so many levels.

It is, nonetheless, much more difficult to point to moments of agreement over anti-Blackness than it is contestation over slavery, for example. This is because anti-Blackness was a product of racism that was, simply, commonplace during this period. It was so commonplace that many rarely felt the need to explicitly mention it, much less debate it. This study, then, largely becomes an exercise in uncovering the unspoken, assumed, matters of life during this period. This can be done, for example, by examining the lack of debate, and simple acceptance, of certain matters by white Americans. But these commonplace assumptions are most visible in those often small, fleeting, moments where they are pushed back against. Whether it be white allies seeking the abolition of slavery. Or Black Americans defending their honor. Or a non-slaveholding politician calling out their slaveholding colleagues in an effort to highlight contradictions and hypocrisy. The moments where the system of anti-Blackness came under scrutiny, whether for the betterment or not of Black Americans themselves, compliment the many times where assumption leaves little to no debates or records.

[V]

The records of citizenship’s history during this period are certainly scant. Especially if one is looking for debates surrounding the relationship between citizenship and race and slavery. Finding sources often involves reading documents which neither mention the status by name or

¹⁴ Saidiya Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (New York: Oxford University Press, 1997), 4.

how it works in relation to the nation's Black population. Even Black Americans did not necessarily explicitly produce documents aimed at explicitly claiming citizenship. Instead, many sources can be seen speaking around citizenship, per se. Petitions against manumission, for example, might not mention citizenship at all, but by speaking to the effects such actions would have on the very fabric of the nation, it becomes clear how such petitioners imagine both their own and Black people's, free or enslaved, places within the country.

Just as important when thinking about sources, is how to extrapolate white Americans' opinions on free Black people, especially in relation to citizenship. Because the status was rarely debated explicitly, documents where white Americans simply speak to the possibility, or ramifications, of Black people's inclusion within the citizenry are few and far between. As Black political activism increases in the last decade of the 18th Century, such sources do begin to pop up and became far more frequent going into the early decades of the 19th Century. While white Americans certainly spoke about free Black people, they often did so in relation to those who were enslaved. More specifically, as they contemplated the prospect of enslaved people becoming free. Reading sources which nominally deal with enslaved people and slavery itself actually sheds light on how free Black people were thought about in the nation.

Furthermore, free Black people's place within society was, quite literally, dependent on the institution of slavery. Even in freedom, slavery vastly affected how free Black people were able to live, and how their place in the nation was viewed. In thinking about anti-Blackness, this is important to remember because blackness and African ancestry became so tied to slavery in America that enslavement became the rule and freedom the exception for Black people in most parts of the union. It is no wonder, then, that fugitive slave ads often carried notices of Black people being jailed and held for potential slaveholders on the mere suspicion that they were

slaves, even if convincing evidence pointed towards freedom. Such acts illustrate not only how slavery affected free Black people, but how race and slavery operated in such a way to influence how white Americans imagined the citizenry itself.

As such, I explore a number of different sources, dealing with free Black people, but often speaking about enslaved people more often. Documents such as pamphlets, legislative records, or personal letters might speak about enslaved people, but through anti-Blackness we can read between the lines to uncover other opinions on the nation's free Black population. And as time progressed, and the free Black population grew in the northern states, in particular, white Americans began to engage much more explicitly with an increasingly vocal and organized segment of society.

This dissertation, then, is a way of examining seemingly invisible threads and supposed silences in the historical records. Anti-Blackness allows for seeing connections between sources that might not be evident otherwise, and exploring how perceived silences in the historical record were likely the exact opposite to contemporaries. Legislative records and political debates, for example, all too often made no mention of citizenship. Yet, this dissertation illustrates how we can, and should, read many aspects of early American politics as contributing to these discussions. Court cases which don't fall on the question of status are shown to be heavily influenced by, and contributing to, debates around the place of Black people in the nation. Newspapers become a battleground for fighting over the future of the nation, and to what extent it will be one organized around anti-Blackness. Personal letters show the inner thoughts of people, as they voiced opinions that were, perhaps, too controversial to say anywhere else explicitly. Pamphlets become a way of tracking changes in how race, slavery, and anti-Blackness manifest themselves in a myriad of national matters. Even the arts, like opera, are shown to not

only inform how people think about and perceive race, but also how they work towards crafting a racially exclusive national status.

At the end of the day, then, this story is one of work. Anti-Black racism may have been widely accepted by white Americans, but that did not mean race was static. Slavery certainly was not a natural institution, which could exist without attention or being actively maintained. Citizenship, then, provides a lens through which see the work of anti-Blackness in the nation, and conversely, the counterwork of creating an inclusive country. This work may appear to have been done without much debate, or without much of an impact on the historical record, but by studying citizenship and the place of Black people in the nation, it becomes clear how those apparent silences in the records are anything but. The founding era becomes a period characterized by an intense effort to create and maintain a white nation, especially as time went on and Black Americans began to mobilize. Such a view of the nation would be commonplace for the 19th Century, where debates around race, slavery, and citizenship raged across the nation in spectacular fashion. The founding era, however, is just as much a part of this history. It set the terms for debates to come.

[VI]

This dissertation is divided into five chapters, spanning a rough time period from the 1770s to the 1810s. I cover court cases, legislative debates, and pamphlet wars. Explore sources from operas to newspaper anecdotes. These five chapters can be broken down into three broad sections. The first two chapter explore individual cases of contested freedom and are used to set the stage for constitutional development in the United States. In the more than a decade before the Constitutional Convention, how slavery would operate, and be protected, in the nation

became a matter of fierce debate. While we are used to thinking of such debates happening during the Constitution's creation and after, the years before it saw similar, if not slightly different, arguments happening. These flashpoints of controversy over slavery would have lasting impacts on the institution's development post-Constitution.

The third section, or rather chapter, can be described as a moment of transition. It is important to have a solid foundation of knowledge on what the Constitution meant for not only slavery, but race as well. Which is why citizenship itself becomes so important. The last section explores the opening decades of the nation, as race and slavery are rapidly changing, and open to far more debate than they had been before. This section looks to the early implications of creating citizenship to foster an anti-Black nation, and how those in the nation, both Black and white, sought to deal with the results.

Chapter One begins by looking at the 1772 English slave case of *Somerset v. Stewart*, in which James Somerset, an enslaved man belonging to Charles Stewart, challenged his enslavement in England after being recaptured by Stewart, and held on a ship bound to Jamaica for sell. I begin my dissertation with *Somerset*, because that legal precedent of this case would go on to have a deep and lasting impact on the entire constitutional order of the emerging United States. Because the arguments in *Somerset* focused so heavily on how subjecthood could extend certain legal protections to enslaved people, depending on their location in the empire, it would go on to pose an issue for enslavers seeking to protect their property in the new nation and those who simply sought to exclude Black Americans from the body politic. Therefore, attention to the case itself, along with the colonial (non)response at the time, set up my dissertation to focus on the entangled issues of status, fugitive slavery, and race. This chapter looks principally to records

of *Somerset's Case*, and pamphlet and newspaper coverage/debate surrounding this case on both sides of the Atlantic.

Chapter Two moves from *Somerset* to Massachusetts and South Carolina in the midst of the War for Independence. This chapter examines a number of *habeas corpus* proceedings in Massachusetts for some enslaved South Carolinians, under the heading of *Affa Hall*, and the accompanying debates surrounding them. Taking place in 1783, the proceedings dealt with some enslaved people who were brought to Boston, Massachusetts after initially being kidnapped, by British privateers, off the coast of South Carolina. In short, after a small number of these enslaved people were left unclaimed for years, their owners suddenly attempted to bring them back to South Carolina, and quickly hit a brick wall when Chief Justice William Cushing of Massachusetts refused to allow state resources to be used in their recapture. The case proves important for my dissertation in two ways: First, it showcases defects inherent in Articles of Confederation when it came to protecting slavery; and two, like *Somerset*, this event touches on how fugitivity affected the legal status of slaves. This chapter relies heavily on legal records for the *Affa Hall* case, as well as cultural sources, such as legislative and newspaper debates.

Chapter Three jumps to the Constitution itself to address about the formation of citizenship against the ever-present specter of fugitive slavery. This chapter diverges from the rest of the dissertation, in that I am concerned less with an event, in this case the Constitutional Convention, but am instead interested in world around it, per se. By this I mean I will spend relatively little time examining the Constitutional Convention itself. Instead, I combine close readings of the Constitution's text and some debates during the Convention with an examination of the broader culture of race and slavery at the time. Pulling together, and adding onto, the events of the previous chapters, I illustrate how citizenship emerged as a mechanism to protect

slavery by excluding Black Americans, both free and enslaved, from its bounds. One of the major interventions of this chapter is to not only examine the questions of Black citizenship, but to use citizenship's relationship to race and slavery to push past the pro/anti-slavery dichotomy used to describe the Constitution, and examine how the document was anti-Black, at its inception. The takeaway of this chapter is that while scholars have long acknowledged that racism was endemic in this period, historians do not consider the ways in which said racism circumscribed Black Americans' access to citizenship, and what this meant for the nation as a whole. This chapter relies heavily on various printed sources, including pamphlets, letters, and newspapers, while employing close readings to tease out the intricacies of anti-Blackness which pervaded American society.

Chapter Four moves to the 1790s. I consider the 1790s a critical period in the institutionalization of a racialized citizenship. At several points during this decade Southern enslavers faced unexpected challenges to the institution of slavery, and struggled to adequately respond. This first decade represented a crucial period in the new government, as various groups sought to institutionalize and breathe life into the various structural elements of the Constitution. On a basic level, the Constitution only provided a rudimentary framework for government; it was incumbent in those early years to not only set up the new government, but use it to set certain constitutional principles in stone. In this vein, the 1790s saw the new government being built in a way to actualize the exclusion of Black American from citizenship. Conversely, it also saw various groups attempting the exact opposite. Black Americans not only fought for inclusion within the citizenry, but they also presented radical ideas of what the new government, and Constitution, could do for them. The debates during these formative years proved crucial to denying citizenship to Black Americans. This chapter relies on a wide range of sources, from

legislative records and debates, letters, pamphlets, newspaper debates, petitions, and legal disputes.

Chapter Five, the final chapter, examines the convergence of the pre-ACS colonization movement and gradual emancipation efforts, leading up to the founding of the American Colonization Society in 1816. From the late 1790s on, there began to be increasing calls for ending slavery and colonizing Black Americans in various areas outside the United States. The debates surrounding these efforts were intimately tied to ideas of citizenship, and Black exclusion, as advocates began to explicitly craft their arguments as a response to the growing free Black population in the United States. As the North began to see the effects of gradual emancipation, and states like Virginia continued to debate personal manumission, the role, status, and place of Black Americans, both free and enslaved, took on a new significance. This is particularly true when it came to idea of Black citizenship, as Black Americans continued their push to be included in the citizenry and gradual emancipation/colonization advocates responded with calls for the creation of white ethno-state. This chapter focuses on pamphlet and letters pertaining to colonization, as well as sources which speak to slavery generally during the early 1800s, as the institution came under increased scrutiny, at certain times, for a variety of reasons.

[VII]

Seventy years after the creation of the Constitution Roger Taney attempted to put the death knell in both Black Americans fight for citizenship, as well as northern resistance to slavery. His reliance on history, not necessarily law, is important. The nation's founding history was seen, at least by those like Taney, to be a moment of white independence and Black subservience. Engaging with Taney might not be the aim of this dissertation. But the history he

deployed, and the history his opponent relied on, has affected the way people have understood this nation's first decades for years. In many ways, the Antebellum debates over slavery's place in the founding generation have left lasting impressions on historical scholarship. All too often scholars present the place of Black Americans in this nation in a similar light as abolitionists would have.

Taney's jurisprudence is criticized for its racist ends, but also for its bad history. On the other side of the coin, Curtis's dissent is presented as a more accurate portrayal of the nation's history and law. Curtis, in stark comparison to Taney, actually relied on evidence he could point to, providing examples of Black people's participation in politics, and the founding generation's reluctance to make the supposedly widespread exclusion of their Black counterparts explicit. However, while Curtis, and those like him, may have had examples to point to in making their points, it does not automatically mean they were more correct than those like Taney. The history surrounding Black people's exclusion from citizenship is complicated not least by the apparent, if not real, silences in the historical record. Antislavery constitutionalism, then, has always had a leg up in the minds of many scholars, for it relies less on assumption and more on concrete evidence.

Yet, if we take a step back, to look at the founding, that history reveals an uncomfortable truth that citizenship was never meant to be inclusive for all people in the nation. It was not meant to bring everyone in the nation together or ensure equality. Instead, it was set in place to help bolster the institution of slavery and further cement racial boundaries. Yet, while this was going on, even as many Americans could agree to this project, an important movement began at the nation's onset. To use this new status, to use the tools available, to not only end slavery but fight for equality.

Understanding the history Taney relied on does not necessarily give him legitimacy. Instead, it provides important context for why he would look to those years for support. But more than that, looking to the actual history provides an opportunity to explore how the nation got to a moment when Taney, in denying Black Americans citizenship, actually embraced their conception of a rights bearing status. A conception they pioneered in the first decades of the new nation. A conception they fought for, because they recognized what the status was supposed to do, but capitalized on anti-Blackness's biggest weakness: the inability or reluctance of those who sought to create a white-ethno-state to make so many aspects of their racial order explicit. Looking to this history shows how Black Americans and their allies began the generations long battle to use the very tools designed to subjugate them for their own freedom.

Chapter One

Subjects, Not Subjected

Somerset's Case and Enslaved Subjecthood in the Anglo-Atlantic

[1]

Printed in the *Morning Chronical and London Advertiser*, the discourse between two men. Just over a month after the conclusion of *Somerset v. Stewart* (1772), newspapers were still covering the case that many presented as having struck down the possibility of slavery existing in England, and having freed a fugitive slave. The two men were delighted over the ruling, which protected them from slavery, and seemingly broke down racial boundaries. Having witnessed the conversation, an anonymous third person contributed the short talk to the newspaper for other to see. It read:

“Yesterday two Blacks, discoursing on the subject of their right to liberty, by the determination of the long depending cause in favor of Somerset, one of their fraternity, one cried out in great extasy, ‘Ah ah, we be no more mungo here, mungo dere, mungo every where, we be made white by de gentleman in de black gown, and we go here, and dere, end every where, dat is if we like it.’”¹

Of course, this never actually happened. Instead, it was an artful commentary on the case, meant to speak against the ruling and mock any Black person who thought they stood in a better position after *Somerset*. The short quote section was actually lifted, in part, from a 1768 comedic

¹ *Morning Chronicle and London Advertiser* (London, England), June 24, 1772.

afterpiece opera by Isaac Bickerstaffe, entitled *The Padlock*. The wildly popular production was, by far, the most successful blackface piece to hit England.²

The star of *The Padlock*, Mungo, was a West Indian slave, with an old master who hid his wife indoors out of fear that she would be unfaithful. Mungo was stereotyped as a typical slave. He was musical, breaking out in song at several points in the opera. He was also a drunkard and obsessed with money. What made Bickerstaffe's blackface production unique, to many onlookers, was how accurately the West Indian slave accent and dialect were portrayed. It was an instant hit and became even more popular in America when the production was taken overseas the following year. *The Padlock* was so popular that "mungo" quickly became synonymous with "slave," and for decades to come would often be used as an insult against Black people.

The line of "mungo here, mungo dere, mungo every where" was a notable part of the piece. Lifting it from *The Padlock* made Black hopes of abolition following *Somerset* a literal joke. However, the next part of the line, about being made white, was an addition that did not appear in the original opera. Instead, the contributor, continuing in the voice of Mungo, took one of the most recognizable lines in *The Padlock* and made them relevant to *Somerset*. To the way Black people were thinking and speaking in its wake. Or at least what they imagined.

Being "made white by de gentleman in de black gown," and having the ability to come and go anywhere as they pleased, the fictive Black people tied freedom and a right of mobility to whiteness.³ To have access to them was to literally be made white before the law. Following

² For more on *The Padlock*, see Dorothy Couchman, "'Mungo Everywhere': How Anglophones Heard Chattel Slavery," *Slavery & Abolition* 36, No. 4 (2015): 704-720; Robert Hornback, "'Extravagant and Wheeling Strangers': Early Blackface Dancing Fools, Racial Impersonation, and the Limits of Identification," *Exemplaria* 20, No. 2 (2008): 197-222; Roxann Wheeler, "Sounding Black-ish: West Indian Pidgin in London Performance and Print," *Eighteenth-Century Studies* 51, No. 1 (Fall 2017): 63-87.

³ *Morning Chronicle and London Advertiser* (London, England), June 24, 1772.

Somerset, the contributor asserted, through racist caricatures, that London's Black population thought themselves equal to white people. That *Somerset* had broken down the racial boundaries set in place throughout the empire. That slavery had ended. Such thinking was not only wrong but deserved to be made a mockery of. *Somerset* had changed nothing. The contributor sought to remind any and all Black people they were still mungo. They still spoke like slaves. They still looked like slaves. They simply were, still, slaves. Printed just over a month after the conclusion of *Somerset's Case*, this piece was a stark reminder little had, or likely would, change.

[II]

The case of *Somerset v. Stewart* has often been presented as having far reaching consequences for the institution of slavery in the British empire, and as a landmark moment for freedom within Britain itself.⁴ However, at its heart, *Somerset* was little more than a conflict-of-laws case, as the British metropole was asked to determine whether colonial law could bind Britain itself. That the question of imperial law was presented through a freedom suit was, in some ways, irrelevant to many British commentators. Well into the imperial crisis that would become known as the American Revolution, metropole forces were quick to decry any attempts to place colonial laws and sovereignty at the same level, much less above, those of Britain itself.

Yet, *Somerset* was still a slave case. It would still decide the fate of one man's freedom, and as some hoped and others feared, many like him. And while the consequences of this case were not as emancipatory as modern commentators may present it, it nonetheless set the stage for

⁴ George William Van Cleve, "'Somerset's Case' and Its Antecedents in Imperial Perspective," *Law and History Review* 24, No. 3 (Fall 2006): 601-645, which was part of a forum, including Daniel J. Hulsebosch, "Nothing but Liberty: 'Somerset's Case' and the British Empire," *Law and History Review* 24, No. 3 (Fall, 2006): 647-657, and Ruth Paley, "Imperial Politics and English Law: The Many Contexts of 'Somerset,'" *Law and History Review* 24, No. 3 (Fall, 2006): 659-664.

dramatic constitutional and cultural changes around race, slavery, and status in the future United States. Even as anti-slavery forces fought to keep slavery out of England, they did little to argue against its continued existence in the colonies. Furthermore, all sides relied on and reaffirmed still developing views of blackness and whiteness. Doing so meant *Somerset's Case* became a stage to debate not only imperial governance, but the future of Black people's place within the empire; which in turn did the same for the not yet created new nation in the Americas.

Furthermore, the case was the most prominent, and successful in some eyes, attempt to create jurisdictions of freedom and slavery in the empire. It is no surprise, then, that *Somerset* would become a rallying cry for American abolitionists who argued for a legal understanding of free territories in the 19th Century, both as a means to keep slavery out of northern and western states, and as a way to shield fugitive slaves. Yet, while the “neo-*Somerset*” movement of the 19th Century relied on a limited, and wishful, reading of the case, the realities of freedom and slavery in its immediate wake were far less favorable.⁵

Nonetheless, the case did hold the potential to become a constitutional headache for American enslavers after independence, as will be explored in the next chapter. *Somerset*, then, begins the story of how many white Americans would attempt to build an anti-Black nation. The case was a moment of contestation over the course of the British empire. But it would come have widespread implications for how slavery operated in the future nation. Yet, as will be shown, the case was subject to little coverage in the colonies, a fact which highlights the true nature of *Somerset* and paradoxically left the case in a position to be troublesome for American enslavers

⁵ For more on the “neo-*Somerset*” movement in the 19th Century, see William M. Wiecek, “Somerset: Lord Mansfield and the Legitimacy of Slavery in the Anglo-American World,” *The University of Chicago Law Review* 42, No. 1 (Autumn 1974): 86-149.

in the future. The waves it made were relatively small following its conclusion, but could nonetheless build with time.

This chapter explores crucial aspects of *Somerset's Case*, in order to better understand why this case was important. Unlike some who view the case as monumental because of its emancipatory potential, as will be shown below, *Somerset* was relatively conservative. It did not massively change the institution of slavery in the British Atlantic, or America specifically. Instead, it went largely as one might have expected it to give its primary nature as a conflict-of-laws case. Furthermore, this chapter asks what we can tell about the place of Black people, free or enslaved, in the face of this case being heard, argued as it was, and decided upon in the manner it was. In the end, the radical nature of this case had less to do with its supposed potential to uproot slavery in any meaningful way. Instead, *Somerset* is important in the United States because a similar principle could pose much more harm for a continental nation than an oceanic empire. As will be shown, most mainland colonists had little to fear from the *Somerset* ruling, because they, unlike their more prosperous absentee planter peers to the south in the Caribbean, simply did not go to England enough to be affected by the ruling. But once independence was declared, the nature of *Somerset* took on a new role, as it was exceedingly possible a similar precedent could happen in the new nation. Thus, understanding this case is crucial to seeing how slavery and race evolved in the burgeoning United States, because while it had little to no effect on the colonies at the time it was decided, it held within it the potential to upset the institution of slavery in America if left unchecked.

[III]

Somerset's Case may be a pivotal case in the history of slavery and freedom in the Anglo-Atlantic, but relatively little is known of the man at its center. Somerset was born in Africa, though where is a mystery. According to trial records, he was sent to the Americas on March 10, 1749, just an eight-years old boy among many other kidnapped and enslaved Africans, forced into the cargo holds of slave ships. Like most ships, his likely made its way to the Caribbean first, where most slaves were sold in the British Atlantic. From there, the ship he was kept on eventually landed in Norfolk, Virginia. Somerset was sold to Charles Stewart on August 1, 1749. Whether he was named "Somerset" by the British enslavers or by Stewart himself is unknown. But from August 1 on, that was the name he was known by.⁶

Charles Stewart was an upstart Scottish immigrant. At twenty-four years old, Stewart had become a successful merchant in Norfolk, selling a variety of products, including slaves. His business and personal connections would only continue to grow over the next decade or so. In 1762, in the midst of the Seven Years' War, he impressed colonial officials after he stopped a mob from continuing to execute Spanish prisoners of war, who had been on an English ship which ran aground near Norfolk. Stewart was subsequently rewarded with a job in colonial customs service, and by the end of the decade had achieved the rank of Paymaster General of the American Customs Board.⁷

After being purchased in 1749, Somerset joined a small group of enslaved people already owned by Stewart. While the exact duties of the other slaves are not as well known, it is clear Somerset quickly became Stewart's personal servant. This is evident, in part, given how much

⁶ M.S. Weiner, "Notes and Document – New Biographical Evidence on Somerset's Case," *Slavery & Abolition* 23, No. 1 (2002): 122.

⁷ Alfred W. Blumrosen and Ruth G. Blumrosen, *Slave Nation: How Slavery United the Colonies and Sparked the American Revolution* (Naperville: Sourcebooks, Inc., 2006): 1-3.

Stewart's account books show purchases for and cash given to Somerset. Furthermore, it is clear from letters that Somerset was allowed a wide range of freedom, both in the colonies and later in England, to move about and carry out his duties independently.⁸ That Somerset became a trusted, and possibly favorite, slave of Stewart is quite likely.

Somerset's relative independence was probably just one reason why he was able to forge enduring bonds with both Black and white colonists across the colonies. In August of 1769, Stewart received a letter from Nathaniel Coffin, one of his customs deputies in Boston. Having recently made a trip, and possibly an extended stay there, Stewart was told "the Children of Sapho & Tambo desire to be mentioned in terms of the highest Friendship to able Sommerset Steuart."⁹ A year later, Coffin would again write Stewart, after the latter's arrival in England, to ask that he and his family be mentioned to "our friend" Somerset.¹⁰ That Somerset could, and did, forged strong bonds across the colonies indicates his likely desire, and limited ability, to live a life outside the strict confines placed on many enslaved people.

Somerset was, after all, not unfamiliar with the realities of slavery. Stewart's early career as a merchant included the trading of enslaved people. And as previously mentioned, Somerset was just one of Stewart's slaves. Furthermore, Somerset likely witnessed other enslaved people attempt to claim their freedom by fleeing. In 1752, Stewart took out multiple ads in the *Virginia Gazette* announcing a reward for the return of "a young Mulatto Fellow, named Joe." We don't know Joe's fate, though Stewart was forced to take out two ads in total, indicating at least some initial difficulty apprehending the fugitive slave.¹¹ Likely only ten or eleven-years old at the

⁸ Weiner, "Notes and Documents," 122-124.

⁹ Nathaniel Coffin to Charles Steuart, August 7, 1769, quoted in Weiner, "Notes and Documents," 123.

¹⁰ Nathaniel Coffin to Charles Steuart, October 12, 1770, quoted in Weiner, "Notes and Documents," 123.

¹¹ Weiner, "Notes and Documents," 122; *Virginia Gazette* (Hunter), January 10, 1752; *Virginia Gazette* (Hunter), January 24, 1752.

time, witnessing Joe's, and possibly others', flight from slavery may very well have had an effect on Somerset.

In 1769 Somerset accompanied Stewart to England. Over the next two years he would continue to enjoy the same degree of freedom he had in the colonies. Furthermore, he likely sought to take his relative independence in new directions. It was during this time Somerset chose his own name, James. Stewart's records and correspondence indicate Somerset was only ever referred to by that name alone. However, in 1771, Somerset was baptized at the Church of St. Andrew, Holborn, possibly without the permission of Stewart. Likely present were, at least, Thomas Walkin, Elizabeth Cade, and John Marlow, whom Somerset may have named as god-parents.¹² All three would later prove vital in saving Somerset from re-enslavement.

Thus, James chose a new name for himself. What his birth name was is unknown. Somerset was almost certainly a name placed upon him by Stewart or the slave traders who forced him across the Atlantic a little more than a decade earlier. But across the Atlantic once again, in yet another new land, Somerset took his relative freedom and began to redefine himself. He continued to make new connections and friendships. While Walkin, Cade, and Marlow are proof of Somerset's relationships with white residents of England, he likely found a new home in London's growing Black community; a mix of free, enslaved, and fugitive peoples which numbered in the thousands by his arrival.¹³ Furthermore, while it is very likely Somerset was exposed to slaves stealing themselves and suing for freedom in the colonies, it is just as likely this continued upon coming to England.

¹² Weiner, "Notes and Documents," 122

¹³ For more on the Black community in London, and England, see F.O. Shyllon, *Black People in Britain, 1555-1833* (London: Oxford University Press, 1977); Gretchen Holbrook Gerzina, *Black London: Life before Emancipation* (New Brunswick: Rutgers University Press, 1995); Gretchen Holbrook Gerzina, ed., *Britain's Black Past* (Liverpool: Liverpool University Press, 2020).

T.K. Hunter proposed a thoughtful question of just what could have influenced Somerset's decision to flee enslavement in late 1771, and whether he did so with knowledge, and forethought, that he could rely on certain white Londoners to fight on his behalf. Four years before Somerset arrived in England, Jonathan Strong was left for dead in the streets of London, after being brutally beaten by his enslaver David Lisle. Strong was brought to Granville and William Sharp for medical care, and was slowly but surely nursed back to health. After four months, Strong was well enough to gain employment, and began living life as a freeman.

In 1767, however, Lisle happened across Strong as he was working. Surprised to find his slave alive, Lisle arranged for his sale to James Kerr, a Jamaican slave trader, and promptly had Strong kidnapped and jailed. Strong was able, however, to get word to Granville Sharp who promptly initiated legal proceedings to secure his freedom. Strong, Sharp, Kerr's lawyer, and David Laird, a ship captain charged with delivering Strong, were all summoned before the Lord Mayor of London to settle the matter. It was quickly decided by the Lord Mayor there was no legal basis to jail a slave who had committed no crime, and he freed Strong. Laird attempted to still physically seize him, prompting another party to tell Sharp he would have him arrested for assault if he continued. Laird backed down, and Strong was left alone.¹⁴

Strong may have been freed, but Sharp had garnered the ire of both Lisle and Kerr. The former challenged him to a duel, which Sharp promptly declined. Kerr, on the other hand, initiated a lawsuit against Sharp, claiming he had unlawfully deprived him of his property by offering refuge to Strong. The case would eventually be dropped, but not before Sharp consulted lawyers and was dismayed to find none shared his opinion that slavery was not sanctioned by the laws of England. Initially told he would lose the case, Sharp threw himself into studying English

¹⁴ Ruth Anna Fisher, "Granville Sharp and Lord Mansfield," *The Journal of Negro History* 28, No. 4 (October 1943): 383-384.

law and slavery, which will be explored shortly. In the end, however, Sharp quickly became a well-known abolitionist in London, and by the time Somerset arrived, he had already attempted several test cases to formally end slavery in England.¹⁵

As Hunter pointed out, it is quite likely Somerset ran from slavery in October of 1771 knowing full well that if his tenuous freedom came to an end, he would have powerful allies to call upon. Given how evident it is Somerset sought to forge connections among those around him, his relative amount of freedom, and how much it appears he pushed the boundaries of his independence in England, Hunter's proposition should be taken seriously.¹⁶

Nonetheless, from October 1st to November 26th, Somerset experienced what must have been an uneasy and shaky freedom in the streets of London. What he did during this time is unknown. Who he stayed with we don't know. It is possible he sought protection with Walkin, Cade, and Marlow. Or maybe with friends he had made in the Black community. Almost two months of anxious freedom, however, came to an end when Stewart, with the help of others, was able to track down and capture Somerset. No doubt feeling betrayed by his favorite slave, Stewart quickly arranged to have Somerset transported and sold in Jamaica, and had him held in irons aboard the *Ann and Mary* in the River Thames.¹⁷

Like other before him, however, Somerset was able to get word to those who could help. Walkin, Cade, and Marlow learned of his imprisonment and procured a writ of *habeas corpus* from Lord Mansfield of the Court of King's Bench on December 3rd. The writ was delivered to Captain John Knowles of the *Ann and Mary*, who returned it and brought Somerset before the

¹⁵ Ibid.

¹⁶ T.K. Hunter, "Transatlantic Negotiations: Lord Mansfield, Liberty and Somerset," *Wesleyan Law Review* 13, No. 2 (Spring 2007), 714n-715n.

¹⁷ T.B. Howell, *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors from the Earliest Period to the Year 1783*, Vol 20 (London: T.C. Hansard, 1816), 21-23.

Court on the 9th. Mansfield ordered Somerset's temporary release while the matter was being decided, and set an initial court date of January 21, 1772. This date was pushed back to February 7 on application of Somerset's counsel, who requested more time to prepare arguments.¹⁸

Somerset was represented by no less than five lawyers: William Davy, John Glynn, James Mansfield, Francis Hargrave, and a Mr. Alleyne. Stewart, on the other hand, only had two lawyers: John Dunning and James Wallace. His defense was being bankrolled by the West Indian lobby, who had a vested interest in the case. Along with not wishing to give up any ground on the slavery question, period, West Indian absentee planters were perhaps the only real enslavers at risk of a losing something if a judgement was made in Somerset's favor. Given how frequently these wealthy planters brought slaves with them to England to act as servants, any ruling which could threaten that practice had the ability to vastly affect their way of living.

Counsel for Somerset presented a motley crew of arguments, asserting slavery was against the laws of nature, religion, and England. Furthermore, slavery was inconsistent with contract theory, and the slave trade itself was abhorrent. Stewart's side, by comparison, relied on ancient laws and practices of villeinage in England to justify slavery in the country, as well as Parliaments own statutes regulating the slavery trade. Additionally, they focused on the detrimental effects to the country if a large population of enslaved people were suddenly freed.

Both sides vigorously fought for their positions, and repeatedly rebuffed attempts by Lord Mansfield to have the matter settled outside of court. By May Mansfield all but said he would have no choice but to rule in Somerset's favor, and once again encouraged each side to find a settlement which freed Somerset. It was that or the West Indian lobby needed to procure a

¹⁸ Howell, *State Trials*, 1-6, 21-23.

law from Parliament explicitly permitting slavery in England.¹⁹ Mansfield's apprehensions, as well as the larger arguments by both sides, will be covered in greater detail below. But his attempts to avoid an official ruling did not mean he felt compelled to issue a sweeping repudiation of slavery in England and the empire writ large. On June 22, Mansfield delivered a relatively short, succinct, and narrow ruling, stating Somerset's detainment was unlawful. After stating slavery was "incapable of being introduced" without "positive law," and the case had to be decided by the laws of England, Mansfield ended his judgment by stating, "the black must be discharged."²⁰

Somerset was said to be in attendance on that day, along with several other Black Britons, all of whom stood up and bowed to Mansfield once he finished reading his judgement. London's Black community had been watching the case closely over the past six months. One group of free and enslaved people supposedly met weekly, on Monday nights near Charing-Cross, "for the more effectual recovering of their freedom."²¹ According to Sharp, Somerset paid him a visit later that day to inform him of the judgement.²² Sharp had quite the antagonistic relationship with Lord Mansfield, from his previous test cases, and had chosen not to attend the day's proceedings, lest his presence upset the Chief Justice.

As will be discussed below, Somerset wasn't exactly free. Mansfield had been sure to craft an opinion which did not explicitly free Britain's enslaved population. But Somerset believed himself to now be a freeman. Just what he did with his newfound freedom is unknown.

¹⁹ Charles Stuart to James Murray, June 15th, 1772, in Green, McKenzie, Quincy, Schouler, Warran, Davis and Ford, "March Meeting. William Everett; Boston Customs Records; Valentine-Vans Currency Pamphlets; Errors in the Harvard Triennial; Stuart-Murray Letters; Count Rumford's Apprenticeship," reprinted in *Proceedings of the Massachusetts Historical Society* 43, No. 3 (Oct. 1909 – June 1910), 451.

²⁰ Howell, *State Trials*, 80-82.

²¹ *London Evening Post* (London, England), February 20, 1772.

²² Prince Hoare, *Memoirs of Granville Sharp, Esq. Composed From His Own Manuscripts, and Other Authentic Documents in the Possession of His Family and of the African Institution* (London, 1820), 91.

However, he did communicate his change in station to his newfound network of friends in Britain. In July Stewart received a letter from a friend, John Riddle, informing him that his slave, Dublin, had absconded while he was away doing business.²³

Riddle had returned home only to be informed by his other “servants,” likely slaves, that Dublin had received “a letter from his Unkle Sommerset acquainting him that Lord Mansfield had given them their freedoms.” Dublin hadn’t stolen anything on the way out, though he “carried off[f] all his own Cloths which I don’t know whether he had any right so to do.” It is not without a bit of irony that Riddle wasn’t sure if Dublin’s choice to take his cloths amounted to theft when he was stealing himself. Nonetheless, Riddle decided it would be too much trouble to pursue “the ungrateful Villain,” and asked Stewart to relay Dublin’s running away to a Mr. Newton, a mutual friend, less the slave arrive at his door with “some lye in his Mouth.”²⁴

Somerset’s attempt to inform his extended network of his, and their, newfound freedom is perhaps expected. But his letter to Dublin highlights a fact about him that is easy to overlook: Somerset must have had some level of education given his ability to both write a letter. Dublin likely had possessed a similar level of education, and considering Riddle language, may have also been a personal favorite slave. It is unclear when and where Somerset gained an education, or whether it was with the permission, and knowledge, of Stewart. Given multiple letters to Stewart, before their departure for England, have communications going through him, Somerset may have very well gained his education after crossing the Atlantic for a second time. It is possible he began learning to read and write as he contemplated baptism, perhaps hoping to achieve basic literacy to read the Bible for himself; a common justification for education in the early Anglo-Atlantic.

²³ John Riddell to Charles Steuart, July 10, 1772, quoted in Weiner, “Notes and documents,” 125.

²⁴ Ibid.

In any case, Somerset began a new life as, effectively, a freeman, escaping both slavery and the historical record. *Somerset v. Stewart* had a profound impact on his life, and perhaps another individual slaves in Britain. But the case did not deal a death blow to the institution. Furthermore, while anti-slavery advocates put forth multiple arguments that Somerset, and those like him, were entitled to freedom in England because they were subjects of the realm, such arguments did not mean that the case elevated the status of African and African-descended people in the British empire. As will be shown below, arguing against the slavery in England had its limits, which often fell right at the border.

[IV]

That border, between freedom and unfreedom, was ever present throughout the case. As Mr. Alleyne declared, “by the laws of Virginia this man is a slave; but I submit that the laws of Virginia extend to Virginia alone. In this country, how does this man stand as a slave...this man is here.”²⁵ Both Somerset’s and Stewart’s lawyers dealt with this border between colonial and English law. For the former, it became a hard line, demarcating where slavery could, and would, exist in the empire. For the latter, the border between England and her colonies was of little consequence if slavery was already sanctioned within the mother country’s borders. And for Lord Mansfield, presiding judge and staunch imperialists, this case presented an opportunity to strike down the reach of colonial law; something he was more than willing to do if not for the

²⁵ Hoare, *Memoirs of Granville Sharp*, 86; Sally Hadden and Patricia Hagler Minter, “A Legal Tourist Visits Eighteenth-Century Britain: Henry Marchant’s Observations on British Courts, 1771 to 1772,” *Law and History Review* 29, No. 1 (February 2011): 164.

fact that the case dealt with slavery, as Mansfield had long looked with disdain upon colonial disruptions during an era that became known as the American Revolution.²⁶

Somerset, then, was essentially a dispute over *lex loci*, or law of nations, within the British empire. For all intents and purposes, Virginia acted as a separate, though subservient, nation from England itself. The British had a myriad of laws and policies to create relatively coherent systems within the empire, a practice which also extended to slavery and the slave trade. Additionally, individual colonies created their own laws dealing with the institution. The British Empire, then, was a web of various laws, policies, and practices that could look different from one place to another, and could certainly present logistical, and legal, headbutting. This structure, however, was ultimately supposed to create an organized system of slavery and trade in the empire.²⁷

One place where those laws were supposed to be exceedingly clear was Britain itself, where English law was preeminent. Parliament had enacted some laws dealing with the slave trade itself, as a commercial enterprise, but had largely stayed out of the realm of legislating on slavery within any of the colonies themselves. Furthermore, laws dealing with slavery within England itself were even more scarce. And so, when colonial law butted up against the lack of English law, *Somerset* became an issue of whether colonial slavery could, and should, exist within England itself.

Both sides, however, accepted colonial slavery as completely legal. Because of this, Stewart's lawyers had solid ground to argue a distinction between England and the colonies was

²⁶ In fact, for an in-depth discussion of how the American Revolution played a pivotal role in debates over slavery, in general, along with *Somerset*, in particular see, Christopher Leslie Brown, *Moral Capital: Foundations of British Abolitionism* (Chapel Hill: The University of North Carolina Press, 2006).

²⁷ For more on the imperial law of slavery, see Holly Brewer, "Creating a Common Law of Slavery for England and its New World Empire," *Law and History Review* 39, No. 4 (2021): 765-834.

moot, considering all colonial laws had to be accepted as neither repugnant nor divergent of English law itself. Repugnancy and divergence was a legal rule throughout the British Empire that held colonial laws must be within the confines of English law, meaning they could not go against or counteract it, outside of necessary and reasonable local accommodations. Such laws would be, and were throughout the empire, made null and void.²⁸

If, then, colonial slavery was completely legal, within the British Empire, the concept of repugnancy and divergence held it had to also be legal in England itself. As a result, Stewart's lawyers would argue, creating a border between slavery and freedom in the empire made no real, or legal, sense. On the other hand, Somerset's lawyers argued Virginia should be considered a distinctly different place, with "foreign municipal laws" that could not "be obligatory in this country."²⁹ For those involved, save perhaps only Somerset himself, the stakes of the case were whether slavery could exist within England itself, not whether slavery was legal in the British Empire.³⁰

Much of the arguments on behalf of Somerset were taken or influenced by Granville Sharp. As mentioned above, by the time *Somerset's Case* came around, Sharp had already been involved with several attempts to outlaw slavery in England. His 1769 work, *A Representation of the Injustice and Dangerous Tendency of Tolerating Slavery; or of Admitting the Least Claim of Private Property in the Person of men, in England* was the result of his own research slavery and the law. It should come as no surprise, then, that Somerset's lawyers would stress the difference

²⁸ For a discussion of how the repugnancy and divergence principle was contested over in the British Empire, see Mary Sarah Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge: Harvard University Press, 2008) and Daniel J. Hulsebosch, *Constituting Empire: New York and the Transformation of Constitutionalism in the Atlantic World, 1664-1830* (Chapel Hill: University of North Carolina Press, 2006).

²⁹ *Gazetteer and New Daily Advertiser* (London, England), May, 26, 1772.

³⁰ Daniel J. Hulsebosch offers a brief discussion of this in Hulsebosch, "Nothing but Liberty;" and Daniel J. Hulsebosch, "Somerset's Case at the Bar: Securing the 'Pure Air' of English Jurisdiction Within the British Empire," *Texas Wesleyan Law Review* 13, No. 2 (Spring, 2007): 699-710.

between England and her colonies, considering Sharp did himself. Sharp argued the distinction between England and that which laid beyond her borders was important when considering how status operated within the British Empire. Those within and belonging to the British Empire enjoyed the status of subject. Subjecthood held within it very minimal rights or protections. It was not a status often used as the basis for rights claims. Nonetheless, as a subject, a person was afforded certain legal protections, if they abided by the laws of the land and the will of the monarch. Placing oneself in the hands of the monarch meant following the monarch's laws, but also mandated those very laws protect you.

Sharp used subjecthood as a starting point for his arguments against slavery in England. Enslaved people, in Sharp's mind, were just as much subjects as any other (white) person in the empire. They may have a debased place within the hierarchy, and next to no liberties. But because they had to follow the monarch's law, and pledge fealty, they were still subjects. And as such, once they entered England, which, as Sharp and others would argue, did not recognize slavery, the law mandated their freedom. This freedom, however, was due to two claims: First, their status as subject. Second, and more importantly, their person being within the borders of England.³¹

One needs only to look at the title of Sharp's work to see how important geography was to freedom. It is no surprise that title ends with "In England." Sharp certainly did not agree with slavery as an institution. But he largely left colonial slavery alone, because his *Representation* was "built chiefly o the laws of England," specifically leaving out arguments "founded on Scripture." Focusing on whether slavery was legal within England followed a longer tradition of

³¹ Granville Sharp, *A Representation of the Injustice and Dangerous Tendency of Tolerating Slavery; or of Admitting the Least Claim of Private Property in the Person of Men, in England* (Benjamin White and Robert Horsfield, London, 1769).

view the country's "air" as "too pure" for slaves to breathe. Thus, Sharp relegated the "injustice" and "dangerous tendency[ies]" of slavery to the colonies, effectively normalizing slavery there.³²

As he pointed out, what happened to slavery in the colonies was up to each of the individual colonies, or possibly the King and Privy Council. He denounced slavery as a "disgrace," which created a "tyrannical constitution" run by those with "arbitrary, cruel, and inhuman spirit." No surprise, then, that Sharpe wished to keep such an institution out of England, and only where "such *property* is allowed."³³ Francis Hargrave, who made a name for himself defending Somerset, echoed Sharp's points when he stated before the Court the case did not deal with "whether slavery is lawful in the colonies," where it had become "necessary," but rather its legality in England.³⁴

The attention to one's place was an important aspect of Sharp's *Representation*. In describing how enslaved people had access to English law, Sharp remarked any opinion to the contrary had no place in "*our* happy constitution" (emphasis added).³⁵ Sharp, however, was certainly not the only one to think this distinction was important. Newspapers included letters from readers who continually used the same language, speaking of "*out* laws," "*plantation* laws," and the "free constitution of *this* country."³⁶ Like Somerset's lawyers, who asserted slavery could not "subsist by force of those [Virginian] laws out of that country, it is certainly possible a wider public began to rely on Sharp's reasoning.³⁷

Of course, Stewart's lawyers were not so easily swayed by such logic. Outside of the already mentioned argument surrounding repugnancy and divergence, the pro-slavery side

³² Hoare, *Memoirs*, 101.

³³ Sharp, *A Representation*, 48, 27.

³⁴ R. v. Knowles, ex parte Somerset, (1772) Lofft 1, 98 E.R. 499, 20 S.T. 1.

³⁵ Sharp, *A Representation*, 37.

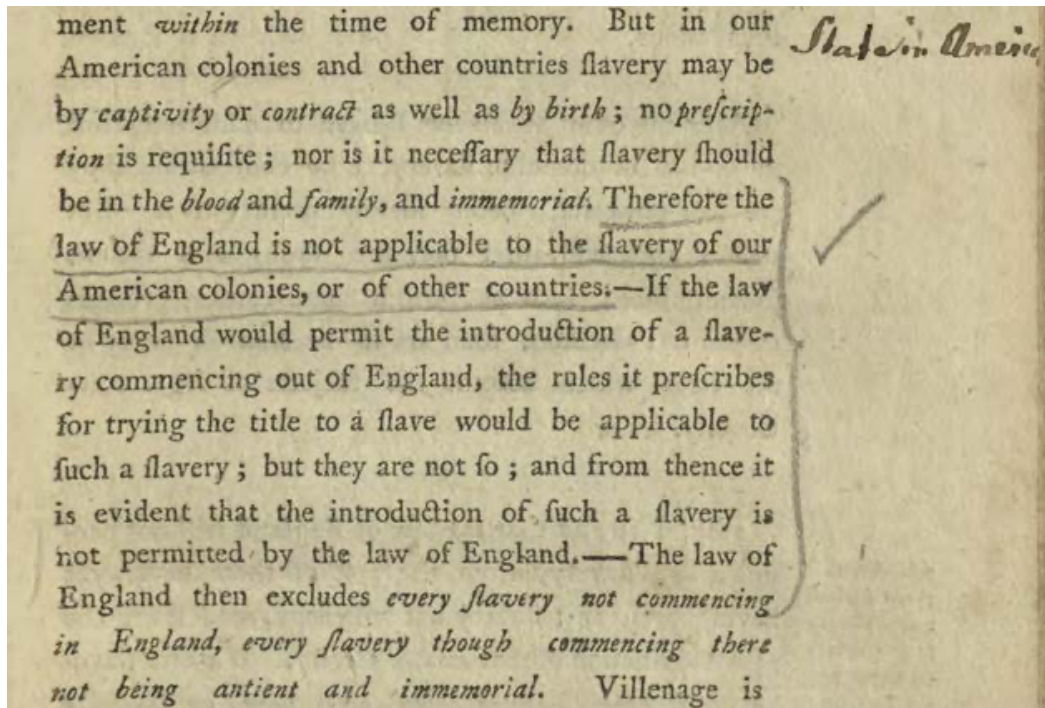
³⁶ *Gazetteer and New Daily Advertiser* (London, England), February 21, 1772; *Morning Chronicle and London Advertiser* (London, England), June 10, 1772

³⁷ *The Scots Magazine*, Vol. 34 (Edinburgh, Scotland, 1772), 297.

pointed to England long history with villeinage, a form of serfdom, as proof that English law sanctioned slavery. That villeinage became effectively extinct long before the *Somerset* was ever heard was not relevant. English law recognized, and still recognized, several forms of unfreedom, with serfdom being closely related to chattel slavery in the minds of Stewart's attorneys. Somerset's side, however, capitalized on this argument. Villeinage may have existed in England, but it did so through English law, which explicitly recognized, sanctioned, and regulated it. By comparison, no law could be found which created or maintained slavery within England itself.

Francis Hargrave was particularly keen on stressing this argument. Both during the trial itself and afterwards in a pamphlet he published he stressed how important it was that villeinage only existed because English law recognized it. His pamphlet, *An Argument in the Case of James Sommersett*," essentially presented all the arguments he had during the case, though it was by no means an exact transcript. Using villeinage to justify slavery was simply bad law. As he pointed out "the law of England is not applicable to the slavery of our American colonies."³⁸ The legal jump from villeinage to slavery could not be done, because one might have a jumping off point, but certainly nowhere to land.

³⁸ Francis Hargrave, *An Argument in the Case of James Sommersett a Negro: Lately Determined by the Court of King's Bench: Wherein it is Attempted to Demonstrate the Present Unlawfulness of Domestic Slavery in England*, British Trials, 3, <http://digitalcommons.law.yale.edu/brittrials/3>.



This copy of Francis Hargrave's *An Argument in the Case of James Somerset*, belonged to and was annotated by Granville Sharp. The above passage, describing the relation between English and colonial law is the most heavily marked passage in the pamphlet. Based on Sharp's own work, and the nature of his other markings throughout this pamphlet, his marks next to passages were because he thought they were important or personally approved.³⁹

Stewart's lawyers, in claiming villeinage supplied a direct link to legislation authorizing slavery in England, also had to address what place colonial law had in the empire. It never hurt, after all, to have multiple arguments in support of a point. Dunning, for example, told the Court the matter before them made it necessary to decide "whether the foreign law [of slavery] is to be adopted; and if it is, if the law of America stands on the same ground as any other country."⁴⁰

³⁹ Ibid.

⁴⁰ Hoare, *Memoirs*, 87.

While repugnancy and divergence provided solid, though not concrete, ground to stand on, Stewart's side must have known trying to make an argument which placed colonial law on the same level, or even higher, than English law would likely fall on deaf ears. Chief Justice Mansfield, after all, was a staunch imperialist, and vocal critic of calls for greater colonial autonomy.

Nonetheless, each side made their arguments on both the conflict-of-laws aspect and the English law side of the case. As a pure matter of law, the case could have been about almost anything. That this matter of law came to the King's Bench draped over the issue of slavery simply made it more difficult to rule on. Mansfield, at several points, wished for the case to be handled out of court. His multiple calls for Somerset's freedom to simply be bought, or for the West Indian lobby to procure passage of a bill by Parliament recognizing slavery in England must have been seen as clear warning signs of how he would eventually rule. The ruling in favor of Somerset, however, has led many to see the case for more than it was; as more an emancipatory action than a conflict-of-laws case. Understanding *Somerset's Case* means understanding how relatively conservative it was, both as a matter of slavery and race.

[V]

There are several matters which have to be covered to properly understand why *Somerset* was not as emancipatory as many have believed. First is how Mansfield's decision is viewed, and more specifically it is intended and unintended effects on the institution of slavery both in England and abroad. Second is how those on Somerset's side argued against slavery. As already mentioned above, colonial slavery was accepted by all, even those who defended slavery. As is clear before, during, and after the trial, arguments against slavery may have been against the

institution, but where the law was concerned, the anti-slavery side did not attempt to affect slavery across the Atlantic. Next is a line of thinking which has been present more implicitly than explicitly. Somerset's ability to bring a freedom suit in England is itself seen as noteworthy to some. Yet, as we will see, a slave being able to take the actions Somerset did was neither new nor extraordinary. And third, though closely connected to the second point, is how race operates in this case. It is not just that a slave was able to bring such a case, but an African slave, subject to chattel slavery. Seeing Somerset's ability to take advantage of the English legal system as monumental, because he was Black, once again looks over how much this was seen as ordinary at the time, and how it arguably led to a racial backlash.

Mansfield's ruling was anything but sweeping. He had no intention of freeing any slaves, even Somerset. And he certainly was not attempting to radically alter how the institution of slavery operated in the empire. At the same time, however, Mansfield found it impossible to keep people from thinking that was exactly what *Somerset* was doing. Thirteen years later, Mansfield sat hearing the case of *Rex v. Inhabitants of Thames Ditton* (1785), a concerning Charlotte Howe, an enslaved woman brought to England by her master, who subsequently died sometime later. Howe sought poor relief, and during arguments *Somerset's Case* was brought up, and incorrectly, in Mansfield's mind, interpreted.

Taking the opportunity to clarify his opinion, Mansfield interjected several times to correct the record. When lawyers claimed King's Bench had never made a judgement on whether a slave was bound to serve their master in England, Mansfield stated *Somerset* only decided "the master cannot by force compel him to go out of the kingdom." When counsel then attempted to make further claims on the master-slave relationship in English law, Mansfield cut them off. As he pointed out, "the case of *Somerset* is the only one on this subject. Where slaves have been

brought here, and have commenced actions for their wages, I have always non-suited the plaintiff.”⁴¹

Considering Mansfield’s reluctance to issue a ruling in *Somerset*, and his own words on what the ruling meant, it would be a mistake to read into the decision an emancipatory meaning. Mansfield certainly did not wish to make England a haven for enslaved people. Counsel for Steward pointed out any general emancipation of slaves in England would result in thousands of enslaved people suddenly gaining their freedom. And while Mansfield had close connections to at least one Black person, (his niece lived with his family, and was born to a slave), it would be a mistake to think Mansfield intended for *Somerset* to do anything except what he himself stated.⁴²

Furthermore, it would be wrong to assume slavery was radically changed because of Mansfield ruling. In declaring slavery required positive, or explicit, law to be legal in England, Mansfield had no intention of subverting colonial slavery. For one, even if *Somerset* was to somehow be seen as binding on the colonies, which it was not, most colonies had extensive slave codes by this point in time. Any argument that slavery could not exist in a specific colony would be hard to make. Furthermore, *Somerset* was seen as an imperial decision in so far as it related to the scope and binding power of colonial law. Mansfield, an opponent of the growing patriot movement in the colonies, would have never decided a case in a way that would have elevated colonial law to the same level, much less above, English law. Thus, *Somerset* was meant to keep the hierarchy of the British constitution in place.

⁴¹ Quoted in Wiecek, “Somerset,” 109; Mansfield went on to rule against Christina Howe in the case, denying her poor relief.

⁴² For more on his niece, Dido Elizabeth Belle, see Gretchen H. Gerzina, “The Georgian Life and Modern Afterlife of Dido Elizabeth Belle,” in Gretchen H. Gerzina, ed., *Britain’s Black Past* (Liverpool: Liverpool University Press, 2020): 161-178.

And more than that, *Somerset* was not meant to give credence to the rhetorical idea that English air was too free for slaves to breath. In practicality *Somerset* made it exceedingly difficult for enslavers to enact complete control over their property, as the ability to control movement to and from was an essential aspect of chattel slavery. In ruling Stewart could not take Somerset out of England, Mansfield essentially attempted to have his cake and eat it too. To Mansfield, Somerset and any other slave still owed service to their master. English law simply forbade masters from removing slaves, presumably without consent, from England once there. This, in practicality, could nullify chattel slavery. But that matter was not something Mansfield wished to speak on. And while this could have spelled the doom for slavery within England, this is not to say it did. The number of slaves in England certainly lowered over the proceeding decades, but it is hard to say how much of this was due to *Somerset*, and not, for example, the increasing social alienation absentee planters, most likely to have slaves with them, faced.

Mansfield's decision, then, becomes a somewhat complicated, yet still conservative, mess. The end result of *Somerset* as a conflict-of-laws case was Mansfield's primary concern. Keeping the integrity and structure of the British Empire intact, while also not altering the system of slavery, fell behind as a close second. To do so, Mansfield attempted to separate, within England itself, the chattel principle of slavery from the labor. This was, in practicality, impossible. But it nonetheless was his intention. And while on the ground this may have played out in favor for some slaves, it did not disrupt slavery as a whole.

Perhaps the best piece of evidence for this comes from the colonies themselves. Or more precisely, doesn't come from the colonies. If *Somerset* actually threatened the institution of slavery, then it would logically follow that colonial enslavers would be livid. Especially during the ongoing imperial crisis, *Somerset* should have been an ever-present specter hanging over

colonists before it was finally concluded, and horrific news once word of the decision reached colonial papers. Yet, on the matter of *Somerset*, there is near silence on the part of colonists.

There has been some discussion of the coverage *Somerset* garnered in the colonies, however it usually focuses on how accurately newspapers reported on the case.⁴³ While the factual nature of *Somerset*'s presence in colonial newspaper is important, it actually illustrates an important point on colonists understanding of the case. Take, for example, the *Virginia Gazette*, which provided a handful of clippings from English newspapers on the case at various points. Unlike a couple of northern newspapers that covered *Somerset* in a similar way, the *Virginia Gazette* made sure to keep the clippings to strictly factual matters about the case. No opinions on potential abolition were included, though even those are few and far between in northern papers. Only twice were any arguments about slavery itself re-printed.⁴⁴ Instead, most coverage focused on the conflict-of-laws side of the case.⁴⁵

One could argue the editors made the deliberate choice to not re-print material on the case that dealt with emancipation. And they likely did make such choices. Yet, they just a likely did that knowing their audience simply needed, and wanted, to know the legal facts of the case, not read denunciations about slavery. And when news of *Somerset*'s decision reached Virginia, there were no pamphlets, letters, or broadsides decrying even the assault on colonial autonomy, much less slavery. Instead, the coverage of *Somerset* in the mainland colonies suggests a general understanding that the case would not, nor could, threaten the institution of slavery there.

⁴³ For a discussion on this, see Jerome Nadelhaft, "The Somersett Case and Slavery: Myth, Reality, and Repercussions," *The Journal of Negro History* 51, No. 3 (July, 1966): 193-208 and Patricia Bradley, *Slavery, Propaganda, and the American Revolution* (Jackson: University Press of Mississippi, 1998).

⁴⁴ *Virginia Gazette* (Purdie and Dixon) July 23, 1772; *Virginia Gazette* (Purdie and Dixon), August 20, 1772.

⁴⁵ *Virginia Gazette* (Purdie and Dixon) June 4, 1772; *Virginia Gazette* (Purdie and Dixon), July 23, 1772.

And colonists, especially enslavers, almost certainly knew of *Somerset*, dispelling any ideas that the colonial silence was due to a dearth of knowledge. As will be shown in Chapter Two, Americans not only knew of *Somerset*, but understood the intricate conflict-of-laws aspects of it as well. As far as a threat to slavery, though, it seems colonial enslavers had little to fear. Two fugitive slave ads in the *Virginia Gazette* give some idea of how well-known *Somerset's Case* was. In September of 1773, John Austin Finnie took an ad out, claiming his runaway would attempt to get to Britain, “where they imagine they will be free (a Notion now too prevalent among the Negroes, greatly to the Vexation and Prejudice of their Masters). In June of the next year, another fugitive slave ad, taken out by Gabriel Jones, told readers a runaway would like “attempt to get on Board some Vessel bound for *Great Britain*, from the Knowledge has of the late Determination of *Somerset's Case*.”⁴⁶

While only two examples, these fugitive slave ads tell us a great deal about colonial understanding of this case. For one, each illustrate a general knowledge among both enslaver and enslaved about *Somerset*. Furthermore, these ads show how each group had different opinions about *Somerset's* outcome. Enslaved people, likely hearing about the case through word of mouth, came to believe England was a refuge for freedom; the very sort of nightmare scenario the pro-slavery faction in *Somerset* painted. Enslavers, on the other hand, present their slaves as having a flawed understanding of the case. Thinking they could gain freedom by making it to Britain was simply “a notion” or idea they had, which lacked any real backing, but nonetheless presented enslavers with the annoyance and financial problem of dealing with runaways.

It is impossible to estimate how many enslaved people gained knowledge of *Somerset*, and decided to act on it by attempting to flee across the ocean. Where there are two examples,

⁴⁶ *Virginia Gazette* (Purdie and Dixon), September 30, 1773; *Virginia Gazette* (Purdie and Dixon), June 30, 1774.

there are likely many. Yet, colonists were virtually silent on the matter of *Somerset*. As evident by the 1773 fugitive ad, it seems colonists were all too aware *Somerset* posed no legal threat to slavery on that side of the Atlantic. Such thinking was only exhibited by the enslaved. And while these ads hint that a general knowledge of *Somerset* was diffused throughout the enslaved population, the lack of more sources decrying or complaining of enslaved people attempting to take their freedom, because of *Somerset*, hints that it did not cause enough of a disruption to the institution to warrant much attention.

The outcry over *Somerset* came not from the mainland, but the Caribbean. West Indian planters, not coincidentally the most likely to be absentee planters, not only bankrolled Stewart's defense, but were also angered by Mansfield's decision. Interestingly, the responses from several West Indian planters puts into relief how unremarkable it seemed to everyone that a slave could not only bring such a suit in England, but might even have access to subjecthood.

[VI]

Somerset's access to legal protections may appear to be a noteworthy, and possibly emancipatory, but it was all but unremarkable to most involved. The case and arguments surrounding it illustrate it was widely accepted enslaved people could have access to certain legal protections through two main statuses: Either by being a subject or an alien. For the purposes of enslaved people making claims on the law, both statuses operated similarly. In the end, while some would have argued *Somerset* was a subject, and others an alien, before the law, it went largely uncontested that he was entitled to some sort of legal protections. If, then, *Somerset*'s access to the law was not noteworthy, how can the case still be seen as more emancipatory than conservative?

Seeing *Somerset* as a much more progressive case than it was usually stems from one of two lines of thinking. If it affected the institution of slavery in the empire negatively, then *Somerset's Case* was a radical break from existing slave law and blew open the doors to potential abolition. But as already discussed, *Somerset* was largely a conflict of laws case masquerading as a freedom suit. Its impact on the institution of slavery across the empire was minimal to none. With that possibility eliminated, the case can only be seen as more than it was if *Somerset's* access to legal protection is considered an innovation in the law. This line of thinking, however, can only be correct if *Somerset's* use of the writ of *habeas corpus* was a radical development in Anglo-Atlantic slavery.

This writ forms the bedrock of any claims that *Somerset's* access to legal protections was noteworthy, because it was the only thing he actually took advantage of. It was the only legal protection at his disposal. While we are accustomed to thinking of *Somerset's Case* as a freedom suit, it, and so many other freedom suits throughout Anglo-Atlantic history, was simply a typical *habeas* case. The ancient writ, which literally translates into “you should have the body,” was a means of determining whether someone imprisonment or detainment was lawful. If it was found to not be, the jailed person would be set free. The writ was a foundation part of the English constitution and English liberty. Yet, assuming *Somerset's* use of the law, being only *habeas*, was emancipatory, would be a mistake, considering many would have agreed regardless of whether he was a subject or not, he would have had access to the writ.⁴⁷

Those arguing enslaved people were subject were relatively few and far between. Granville Sharp built his arguments against slavery largely around the idea that enslaved people

⁴⁷ One of the more recent examples of this is George William Van Cleve, who asserted Mansfield's decision “adopted the ‘rights of man’ principle that English common law provided certain minimum levels of substantive protection to anyone who came to England;” Van Cleve, “‘*Somerset's Case*,’” 636.

were subject, though he did not necessarily spend much time on the topic. Focusing on the concepts of obligation and allegiance, Sharp asserted slaves had “Ties of allegiance” to the monarch, which could not “be dissolved.”⁴⁸ Sharp’s attention to subjecthood was important for his arguments against property in man. As he argued, the bonds of obligation and allegiance made subjects a sort of monarchical property. In tackling the idea that enslavers had a legitimate private property claim on the people they bought, Sharp asserted no property claims could eclipse the monarchs. In any case, subjecthood laid the foundations for many of Sharp’s arguments, but it was not necessarily something which needed an extensive discussion in and of itself.

While not an in-depth discussion, Sharp’s reasoning around subjecthood did convince some people. In a review for his *Representation*, it was noted his argument “that every slave is a subject” was “beyond all contradiction.” And as mentioned before, Sharp’s *Representation* was foundational for Somerset’s lawyers as they crafted their arguments. Though they did not feel the need to defend the idea, Sharp’s ideas were certainly present during the trial when, for example, Sergeant David declared “all the people who come into this country immediately become subject to the laws of this country,” and thus become subject of England.

The importance of Sharp’s arguments in favor of enslaved subjecthood is all the more apparent when considered both with the longer context of debates on slavery and his own reasoning for writing his *Representation*. As mentioned before, Sharp took up the project of researching the history and law of slavery in England after being sued for his role in assisting a fugitive slave win their freedom. When he attempted to hire a lawyer to defend him, he was told he’d lose the case in large part because of an extra-legal, yet influential, 1729 opinion on slavery.⁴⁹ The Yorke-Talbot Opinion was, on face value, meant to tackle the question of

⁴⁸ Sharp, *Representation*, 20.

⁴⁹ Hoare, *Memoirs*, 36.

enslaved baptisms. Written by Attorney General Philip Yorke and Solicitor General Charles Talbot, the opinion came after decades of debate over whether a baptism conferred freedom onto African slaves. At the behest of both the West Indian slave interests, keen on protecting their property and the slave trade, and Christian missionaries, who sought to convert as many African slaves as possible to Christianity, the two men issued a statement on the matter.⁵⁰ It read:

We are of Opinion, that a Slave, by coming from the *West-Indies* to *Great Britain* or *Ireland*, either with or without his Master, doth not become free, and that his Master's Property, or Right in him, is not thereby determined or varied. And that Baptism doth not bestow Freedom on him, nor make any alteration in his temporal Condition in these Kingdoms. We are also of Opinion, that his Master may legally compel him to return again to the Plantations.⁵¹

Even more than forty years later, the Yorke-Talbot Opinion held enough power over matters relating to slavery that Sharp not only found himself unable to find a lawyer, but it was also mentioned by name in Mansfield in his decision. Even as the Yorke-Talbot Opinion was meant to end debate on the relationship between baptism and freedom for enslaved people, the issue still made many appearances in newspaper debates surrounding *Somerset's Case*. In one submission, a writer responded to a query meant to mirror many of the details of *Somerset* by first stating the questioner "must specify...whether [the slave] had been baptized." In another article, a contributor went into an extended discussion on the relationship between baptism and

⁵⁰ For more on the history of the Yorke-Talbot Opinion, see Travis Glasson, "'Baptism doth not bestow Freedom': Missionary Anglicanism, Slavery, and the Yorke-Talbot Opinion, 1701–30," *The William and Mary Quarterly* 67, No. 2 (April 2010): 279–318.

⁵¹ Quoted in Glasson, "'Baptism doth not bestow Freedom,'" 279.

freedom if the master's consent was not acquired by a slave. Another person commented that while influential, "whether it be law or not, is the present question."⁵²

While the Opinion might not mention subjecthood, religious debates in the early modern period held great sway over how the secular status operated. In fact, while traditionally presented as being procured for chiefly financial reasons by those involved in colonial slavery and the slave trade, English monarchs throughout the 17th Century had a vested interest in extending subjecthood as much as possible to increase their own power. High ranking members of the imperial government pushed throughout the 17th Century, for example, for all colonial residents, including slaves, to be baptized and catechized, thereby bringing them under the umbrella of subjecthood, and increasing the reach of the monarch even further.⁵³

It is no wonder, then, as Sharp set out to combat the Yorke-Talbot Opinion that subjecthood would form a critical part of his arguments. The Opinion was just one piece in a somewhat murky puzzle of enslaved people's status within the empire. Some people within the empire certainly saw subjecthood as a way further entrench slavery and their own power, particularly before the latter half of the 18th Century. But by the time Sharp became involved in abolitionism, the matter of baptism and freedom was still up for debate, to say nothing of status. Thus, in a work which largely stayed away from religious justifications for abolition, Sharp looked to the law and subjecthood to combat the impactful, if not legally ambivalent Opinion.

Sharp wasn't alone, either, in considering enslaved people subject, though the idea was by no means widespread. Even on the other side of the Atlantic, some colonists took the position

⁵² *Gazetteer and New Daily Advertiser* (London, England) January, 31, 1772; *Gazetteer and New Daily Advertiser* (London, England) February 14, 1772; *Gazetteer and New Daily Advertiser* (London, England), June 11, 1772.

⁵³ Holly Brewer, "Subjects by Allegiance to the King?: Debating Status and Power for Subject – and Slaves – through the Religious Debates of the Early British Atlantic," in Peter Thompson and Peter Onuf, eds. *State and Citizen: British American and the Early United States* (Charlottesville: University of Virginia Press, 2013): 25-51.

that enslaved people were subjects of the realm. On April 3rd, 1772, the same day news of *Somerset's Case* first made its way into Massachusetts, the *Boston News-Letter* reprinted a piece from the *Care Fear Mercury*, a North Carolina newspaper. Originally appearing on February 12, 1772, the piece was a response to a recent grand jury decision to not hold a white man responsible for killing a slave. While the author could not “pretend to know their true reason,” he speculated the grand jury simply did not think it illegal to kill a slave. The main thrust of the piece was unpunished murder would make slavery even more dangerous, as it would push enslaved people toward rebellion. During his arguments, though, he touched on the subject of slaves’ legal status, asserting “a slave retains all the rights of a subject under civil government that are *naturally unalienable*; of this kind of self-defense and personal safety from violence.” The notable exception to this was the labor they owed to their enslaver.⁵⁴

Another Massachusetts colonists, James Swan, hinted at enslaved subjecthood in his anti-slavery tract published the next year. An immigrant from Scotland, Swan’s pamphlet wasn’t especially notable compared to other works on the same matter. However, he did attempt to convince his fellow Massachusetts colonists that the state’s charter did confer freedom to enslaved people. As he pointed out, the charter was written to protect the rights and liberties of “all and every of the Subjects, the Inhabitants of New-England.” Those who migrated to the Bay State fell under the jurisdiction of that charter, and thus any enslaved person who emigrated there was freed.⁵⁵ Swan’s argument certainly seemed eerily similar to those presented by Sharp and Somerset’s lawyers, hinting at the possibility that some American abolitionists saw the possibility of an American *Somerset* principle.

⁵⁴ *Boston News-Letter* (Boston, Massachusetts), April 3rd, 1772, 1.

⁵⁵ James Swan, *A Dissuasion to Great-Britain and the Colonies, From the Slave Trade to Africa* (Boston: E. Russell, 1773), 42-43.

Subjecthood, however, wasn't necessary for Somerset to fight for freedom according to some people. The rights of aliens in the empire add another layer to this matter, and are important when thinking about Somerset's access to *habeas corpus*. This is because, as those on Somerset's side argued, his ability to take advantage of English legal protection came from him physically being in England. As some argued, enslaved people could be considered aliens under the law, and still have access to the same legal protections.

It is possible the argument around alien status was made by those who did not want to go as far as those like Sharp in recognizing enslaved people as subject. Because there wasn't a detailed argument for or against this conception of status, it is hard to know. However, considering it was a legitimate route towards making claims on the law in England, and some did put the idea forward, it is important to recognize how this argument operated alongside claims of enslaved subjecthood.

Discussion of alien legal protections occurred mostly in newspaper debates surrounding *Somerset*. In most cases, contributors arguing in support of Somerset simply used the argument to make their point, and did not take the time to defend it. One contributor, for example, asserted every person in England, and every civilized state, has a claim to the protection of its laws, as he is subject to them," regardless of where they were born or their race. Another remarked enslaved people were "neither natives, naturalized, or denizens, but only tolerated in common with other aliens," yet "have a right to the protection of our laws only from temporary allegiance."⁵⁶

Unlike subjecthood, the alien legal protection argument was more grounded in a slave physically being in England. It wasn't as expansive as subjecthood. However, the two arguments operated almost simultaneously throughout the case, considering it was Somerset being in

⁵⁶ *Gazetteer and New Daily Advertiser* (London, England), February 14, 1772; *Morning Chronicle and London Advertiser* (London, England), June 2, 1772.

England that made the matter a conflict-of-laws case, and granted him legal protections. Because Somerset's lawyers did not explicitly make subjecthood a central feature of the case, the backdrop of existing alien legal protections acted as a somewhat implicit, yet important, aspect of arguments. This is especially true when considering whether Somerset's access to *habeas corpus* should be considered a radical innovation in the law.

The reality of the matter was English law had already been moving towards recognizing an alien's right to make use of *habeas* before Somerset even landed in England. This was in part because of an ongoing process where the Queen/King's Bench began to expand its use of the writ to expand its own powers. While we are used to thinking of the remedial writ as a cornerstone of liberty, it was first and foremost a prerogative writ, meaning it drew its power from the monarch's complete control over the bodies of their subjects. *Habeas*, then, was a way of utilizing the monarch's claim on people to combat their imprisonment by another. Over the course of the 18th Century, however, the Court began to utilize the writ to hear more and more cases, essentially expanding its jurisdiction. By the time Lord Mansfield issued a writ for Somerset, the Court had already been using *habeas* to hear cases dealing with aliens in England and the British Empire writ large. While the use of *habeas*, in England, was somewhat new at this point in time, it was not exceedingly radical. Instead, the use of *habeas*, regardless of whether enslaved people were considered subjects or aliens, was a natural outgrowth of an existing movement.⁵⁷

It is important to note while Somerset's lawyers did not spend time defending the idea of enslaved subjecthood or alien rights, Stewart's side in turn did not challenge it. Furthermore, Somerset's access to the writ of *habeas corpus* was not up for debate during the case either.

⁵⁷ Paul D. Halliday, *Habeas Corpus: From England to Empire* (Cambridge: Harvard University Press, 2010), 174-176.

Instead, arguments against both did not arise until *after* the case had concluded, and Somerset had achieved his freedom. Furthermore, those who argued against enslaved subjecthood and access to the writ were West Indian planters and their allies; not coincidentally the one group that stood most likely to be inconvenienced by the ruling in *Somerset*.

Samuel Estwick, a Barbados planter, provided perhaps the most outright, though certainly not thorough, argument against Somerset's access to *habeas* in his pamphlet, *Considerations on the Negroe Cause* (1772). In a forty-six page pamphlet, originally meant to be printed before Mansfield's decision came down, Estwick spent about three-fourths of one page, an amount of space equivalent to a short paragraph, attacking enslaved people's ability to make use of *habeas*. For Estwick, Somerset's rights were "foreclosed" considering "the law has already fixed the *fiat* of property on him." Because Somerset was "the legal property of Stewart," he simply was not "legally...entitled to the writ." Estwick, however, left his arguments on this point to this alone, and did not expound on the particulars at all.⁵⁸

John Peter Demarin, using the name African Merchant, wrote a pamphlet chiefly aimed at securing legislation which would allow planters to temporarily bring their slaves to England in the wake of *Somerset's Case*. In one of his many appendixes, however, he reprinted a number of newspaper articles written by a person using the pseudonym Mercator. One such article, printed on July 1, 1772, quoted Mansfield's judgement at length and went on to question various aspect, wondering what the potential ramification might be. Demarin, in answer some of those questions, pointed out the Habeas Corpus Act of 1679 only allowed for a person to be discharged, and argued slaves would not be freed under it. This was, however, "if we allow that to include foreign slaves, as its object." While certainly not an explicit rebuke of Somerset's

⁵⁸ Samuel Estwick, *Consideration on the Negroe Cause Commonly So Called, Addressed to the Right Honourable Lord Mansfield, Lord Chief Justice of the Court of King's Bench, &c.* (London, J. Dodsley, 1772), 39.

access to *habeas*, Demarin certainly seemed to be suggesting slaves might not have that legal protection.⁵⁹

Where Estwick and Demarin offered tepid arguments, Edward Long, another absentee planter, published a response to the case that lambasted Somerset's access to *habeas* and the idea enslaved people could be subjects. Long, best known for his three-part history of Jamaica published in 1774, was an absentee planter from the colony and, even by the standard of the day, incredibly racist. His *History of Jamaica* (1774) was not only filled with racist depictions of Black people, but he was a firm believer African were a separate race, a belief in decline by this point and time.⁶⁰

Long's response to the *Somerset* decision was the only published piece which took issue with the concept of enslaved subjecthood. In the beginning of his pamphlet, Long made sure to point out enslaved people were excluded from law, charters, and documents like the Magna Carta, that guaranteed rights and liberties to subjects. Being that such things only made guarantees to freemen, it follows slaves could never take part in their protections. Not one to let the subtleties of the status debate slip by, Long also made sure to argue against the idea that being considered an alien would give Somerset to the same level of legal protections. As he asserted, aliens were "not properly under the King's protection...so as to have the full benefit of the laws of *England*." If they wished to enjoy those benefits, an alien needed to either be pronounced a subject by Parliament or made a denizen by the monarch. Slaves, "born out of the

⁵⁹ John Peter Demarin, *A Treatise upon the Trade from Great-Britain to Africa; Humbly Recommended to the Attention of Government* (London: R. Baldwin, 1772), Appendix B, 20.

⁶⁰ For more on Edward Long and his *History of Jamaica*, see Suman Seth, "Materialism, Slavery, and *The History of Jamaica*," *Isis: A Journal of the History of Science Society* 105, No. 4 (December 2014): 764-772.

realm, and who were neither born nor made natural subject of it” could not hope to enjoy the same level of legal protections as someone like himself.⁶¹

Making sure to address alien rights, after subjecthood, was just one aspect of Long’s argument against enslaved people having access to *habeas corpus*. Long used the villeinage argument put forth by Stewart’s lawyers and others to bolster his own points on *habeas*. Not only did villeinage create a precedent for slavery in England, Long also pointed to how villeins could, and could not, take advantage of *habeas*. As he pointed out, if the return on a writ for a villein state “the cause of imprisonment appeared...to be a *refusal to obey and do service to his master*,” then there was no further action to be taken. Villeins would simply return to their detention. Since the villein’s “refusal to serve” was the “*legal cause* of caption and detention” there could be “no further remedy, by *law*.”⁶²

In a roundabout way, Long linked the status of villeins to that of enslaved people. Brining attention to the Habeas Corpus Act, Long pointed out at the time the law passed villeinage simply did not exist anymore, even though laws dealing with the labor system remained on the books. Thus, because villeinage had naturally died out the act did not need to “apply itself expressly to the *freemen* of the kingdom...for at the time when it passed, there were no Englishmen within the realm in a state of Villenage.” But slaves in the colonies were certainly not considered subjects at that time either, “so it does by no means clearly appear, that they were within its purview.”⁶³

Long was directly responding to Granville Sharp, who specifically stated the language of the Habeas Corpus Act included enslaved people, because it did not specifically bar them. By

⁶¹ Edward Long, *Candid Reflections Upon the Judgement lately awarded by The Court Of King’s Bench, In Westminster-Hall, On what is commonly called The Negroe-Cause* (London: L. Lowndes, 1772), 5-10, 34-35.

⁶² *Ibid*, 3, 11.

⁶³ *Ibid*, 12-13.

claiming slaves were not considered subjects at the time this act was passed, and pointing out villeinage laws still existed, Long tied the two together, while also making sure to argue even villeins had limits on their legal protections under *habeas*. It was a much more sophisticated argument than others like Estwick had presented. In short order, Long had made sure to present an argument which disproved the idea slaves had legal protections from being subjects or aliens. In pointing to the legal limits of protections for villeins, he also patched up a hole in the arguments presented by Stewart's attorneys on this matter. Because villeins did have access to legal protections, including *habeas* in some regard, tying villeinage to slavery did not foreclose the slaves making use of the law. Long's goal was to do away with enslaved people's legal rights or protections entirely, to better protect the institution in England.

There may have been some instances, chiefly after *Somerset's Case* ended, where enslaved people's access to *habeas* was challenged, but they were largely few and far between. If, as stated before, Somerset's ability to make use of *habeas* forms the bedrock of arguments that the case was a radical departure in law, and emancipatory, then the sheer lack of attention to this action would seemingly bely its importance. The truth of the matter was most people involved, even on Stewart's side, had no issue with it. Even Mansfield, who desperately did not want to make a ruling on the case, lest his words have unintended consequences or being taken out of context, still granted the writ with no issue. Instead, Somerset's use of *habeas* was simply assumed to be unusual and allowed by most everyone at the time.

[VII]

Somerset v. Stewart would not radically alter the nature of slavery in the British Empire. While some enslaved people in Britain may have been able to take advantage of the *Somerset* ruling, by and large, most slaves were unaffected by it. The institution of slavery across the empire would only continue to grow. And in the American colonies, no one seemed to have batted an eye at the ruling.

However, just because *Somerset* did not prove to be an emancipatory moment for the British Empire doesn't mean it had no effect. As will be shown in the next chapter, the case would actually have a great deal of influence on the constitutional development of the soon-to-be independent United States. As seen with James Swan of Massachusetts, at least some colonists had begun to think about the relationship between slavery and the law in a way that could create an American *Somerset*. And while the case certainly does not make explicit appearances during debates over the future of slavery in the country, it is clear many people involved with the development of America's constitutional order had the case in the back of their minds.

Somerset's legacy, then, was not to lay the seeds for slavery's end, but to encourage many enslavers to more adequately protect the institution and make sure enslaved people could not take advantage of the law in a similar way as *Somerset*. As Americans came together to craft their first forms of government, making sure an American *Somerset* could not happen led to innovations in the status of all people in the nation, and government frameworks meant to make slavery an integral, and lasting, part of the nation.

Chapter Two

The Ends of Slavery The Failure of the Articles of Confederation to Create the Enslaver's Nation

[I]

By all appearances, the Pawley brothers were, to say the least, down on their luck by 1784. Anthony and Percival Pawley were South Carolinian brothers whose lands bordered the Georgetown area, near the Waccamaw River, on the coast of the state. Both appear to have been small scale planters, and likely only owned a handful of slaves each. Just years after the end of the Revolutionary War, as South Carolina and the country itself was attempting to recover from the long struggle towards independence, the Pawley brother's personal trials took a new turn.

For Percival Pawley, his primary issues were financial in nature. In May of 1784, he was fined five pounds for failing to appear as a juror, for the Court of Common Pleas, the previous month. Why Percival failed to appear is unknown. But throughout the rest of the 1780s Percival's personal life and finances continued to worsen. By 1790 part of his lands were up for sale on public auction. Over the next three years more of his land was advertised for sale, as his name appeared along long lists of other people in debt default.¹

For his part, Anthony Pawley was worse off. In August of 1784 he died suddenly after "a flash of lightning struck" his house "as he was lying on his bed." The specifics of how Anthony died aren't presented. Perhaps the bolt hit his home, traveled through the structure, and made its way to Anthony as he laid in his bed, where it entered and promptly overwhelmed his body. The

¹ *South-Carolina Gazette and General Advertiser* (Charleston, South Carolina), May 8, 1784, 3; *City Gazette* (Charleston, South Carolina), October 8, 1790, 3; *City Gazette* (Charleston, South Carolina), March 21, 1792, 3; *City Gazette* (Charleston, South Carolina), March 12, 1793, 2.

other possibility is he was quite literally struck by lightning in his own bed. In any case, out of the two brothers, Anthony's luck was far more awful.²

Just under a year after his death, Jehu Postell posted an advertisement in the *State Gazette of South-Carolina* for the public auction Anthony's property. It is not clear how Postell, a former Revolutionary-era militia captain in the Georgetown area, knew Anthony, and possibly Percival. Nonetheless, he was in charge of overseeing the sale of property at Anthony's plantation. The advertisement mentioned that part of his personal estate was up for sale, including cattle, oxen, horses, hogs, and some furniture. Not on the list: slaves.³

The exact number of enslaved people Anthony and Percival Pawley collectively owned is unclear. But the lack of any slaves in the auction of Anthony's property can easily be attributed to the troubles both brothers had in the years before Anthony's death and Percival's financial troubles. In 1783, the South Carolinian brother would unsuccessfully attempt to recover a number of slaves from Massachusetts. Their inability to do so set off a short, but intense, diplomatic firestorm between both states, which highlighted structural problems with the institution of slavery under the Articles of Confederation. And, from our own vantage point, the conflict between these two states, and the efforts made by these two brothers to reclaim what they believed to be their rightful and protected property, draw attention to larger debates over race, slavery, and the very place of Black people in the new nation.

Their inability to properly claim slaves provides valuable insight into three interrelated areas. First, is the relationship between the Articles of Confederation and the institution of slavery. Few historians have examined how America's first form of government was intertwined

² *South-Carolina Gazette and General Advertiser* (Charleston, South Carolina), August 10, 1784.

³ Ibid; William Dosite Postell, "Notes on the Postell Family," *The South Carolina Historical Magazine* 54, No. 1 (January 1953), 52.

with slavery.⁴ But the Articles were not only crafted through debates which sometimes touched on slavery, but clearly with slavery on the minds of some representatives. As will become clear, there is evidence to suggest that some southern enslavers had the recent English slave case of *Somerset v. Stewart* (1772) on their minds when debating the Articles. Furthermore, while we are much more accustomed to recognizing pro-slavery aspects of the Constitution, those very features were often simply improved versions of what was present in the Articles. This situation illustrates how (in)effectively slavery operated under the Articles.

Second, the Pawley's attempt to recapture their slaves highlights the complicated relationship between slavery, race, and emancipation in the newly, and nominally, "free state" of Massachusetts. The *habeas corpus* proceedings of *Affa Hall et al. v. Commonwealth* (1783), and their fallout illustrate how freedom was not applied universally following the supposed end of slavery by judicial fiat in the state. These hearing came after the Pawley's attempted to recover their slaves, as writs of *habeas corpus* were procured for the recaptured people. In deciding against holding the slaves, Chief Justice William Cushing created a pseudo-*Somerset* ruling in the eyes of South Carolinians. Though as will be shown, this was anything but the case.

Affa Hall came literally months after the last of the *Quock Walker Cases* (1781-1783), which challenged slavery in the state. Cushing, in the conclusion to that set of cases, seemed to have ended slavery in the state completely. A set of cases revolving around the supposed assault of a slave and illegal withholding of services, the *Quock Walker Cases* became test cases for whether slavery could exist in Massachusetts, and seemingly ended the institution. What makes

⁴ Important exceptions to this are an article by Michael Meranze and some parts of George William Van Cleve's work on slavery and the Constitution. See, Michael Meranze, "Hargrave's Nightmare and Taney's Dream," *University of California-Irvine Law Review* 4, No. 1 (2014): 219-238; George William Van Cleve, *A Slaveholder's Union: Slavery, Politics, and the Constitution in the Early American Republic* (Chicago: University of Chicago Press, 2010).

Affa Hall so important, is that the cases provide a powerful correction to this general understanding of how, or truly whether, slavery ended in Massachusetts.

Finally, re-examining the “end” of slavery in Massachusetts provides insight into the evolving racial dynamics within the state. This, in turn, sets up further discussion in Chapter Three about the status of both free and enslaved Black people in the nation, and how excluding these people from citizenship was nearly universally agreed upon by white Americans. Thus, while *Affa Hall* and the larger Pawley affair was a mere blip on the very long line of failures in the Articles, they nonetheless provide critical insight into how we should understand the evolving relationship between race, slavery, and citizenship in the United States going forward.

The *Affa Hall* affair has been a largely unknown episode in the history of both Massachusetts and American slavery. Only one historian, Emily Blanck, has written extensively about it, once in a journal article and second as the subject of her first book. While Blanck’s has done a great job unearthing and detailing this controversy, the questions she asks about this case are different than my own. While we are both interested in the relationship between the *Quock Walker Cases* and the *Affa Hall* affair, and how the latter puts the former in perspective, Blanck’s study is mostly meant to illustrate the different and divergent histories of slavery in Massachusetts and South Carolina. Furthermore, when speaking about the larger significance of the *Affa Hall* affair, Blanck largely pays deference to the immediate limits of archive around this event.⁵

Yet, as will be shown below, the *Affa Hall* affair can be used to highlight more than a two-state disagreement over slavery. In reality, *Affa Hall* not only did an immense amount of

⁵ Emily Blanck, *Tyrannicide: Forging an American Law of Slavery in Revolutionary South Carolina and Massachusetts* (Athens: University of Georgia Press, 2014); Emily Blanck, “Seventeen Eighty-Three: The Turning Point in the Law of Slavery and Freedom in Massachusetts,” *The New England Quarterly* 75, No. 1 (March 2002): 24-51.

work limiting the emancipatory potential of the *Quock Walker Cases*, but also assisted with reifying and solidifying hard race lines in the state, as Massachusetts shifted towards being a nominally free state. The story of this case, then, is intimately bound to the story of Black Americans' status in Massachusetts. More than that, however, *Affa Hall* had the potential to have truly national consequences for the development and management of slavery in the new nation.

Thus, my work looks at *Affa Hall* as not just a qualifier on the *Quock Walker Cases*, or as an example of the increasing differences between Massachusetts and South Carolina. Instead, the case begs us to reconsider what slavery looked like immediately following American independence, as the new nation no longer had the structures in place to adequately foster and encourage the institution of slavery. Without an imperial metropole and power above them, and with a weak form of government in the Articles of Confederation, *Affa Hall* represents a critical flashpoint in America's attempt to govern slavery itself. *Affa Hall*, then, held the power to have truly national consequences, even as it registered as little more than a blip in the long line of failures in the 1780s.

The chapter is divided into three sections. The first examines the Articles of Confederation itself, and covers how America's first founding government dealt with matters of race and slavery. From there, the next topic is emancipation in Massachusetts, with a particular focus on the *Quock Walker Cases*. The *Affa Hall* affair, including the entire situation itself and the larger implications for histories of race, slavery, and citizenship, is the subject of the next section.

[II]

Histories of the Articles of Confederation have not typically examined the relationship between America's first form of government and the institution of slavery. By comparison, the Constitution, America's next governing structure, has seen a wealth of scholarship produced on how it was intimately tied to slavery. But before the most ardent nationalists contemplated a document even approaching the Constitution, the nation lived with the Articles, a framework meant to epitomize the Revolutionary-era principles of governance the country had gone to war over.

In upholding those principles, the Articles were an extraordinarily weak form of government. In reality, referring to them as a form of government is more of a compliment than they really deserve. It had no enforcement mechanism to compel states to do anything the Confederation Congress passed. The Congress itself was tied down by the relative lack of powers it had, as state only gave a limited, and expressly enumerated, list of powers to it. Any changes to the Article's structure demanded unanimous consent of the states, a virtually impossibly high threshold to overcome. As such, under the Articles, the nation was less the "United" States of America than, quite literally, the Confederated States of America.⁶

Of the many flaws in the Articles, the confusing, contradictory, and vague language used to describe specific powers and the very structure of the union were arguably chief among them. The deficiencies in language can be seen very clearly in how the Articles attempts to regulate both the status of Black people and slavery in the nation. Both areas of confusion were

⁶ For discussion of the Articles of Confederation, their powers, and limits, see Merrill Jensen, *The New Nation: A History of the United States During the Confederation, 1781-1789* (New York: Knopf, 1950); Merrill Jensen, *The Articles of Confederation: An Interpretation of the Social-Constitution History of the America Revolution, 1774-1781* (Madison: University of Wisconsin Press, 1970); Keith L. Dougherty, *Collective Action under the Articles of Confederation* (New York: Cambridge University Press, 2001); George William Van Cleve, *We Have Not A Government: The Articles of Confederation and the Road to the Constitution* (Chicago: University of Chicago Press, 2017).

intertwined in the Articles themselves, specifically the Privileges and Immunities Clause in Article IV.

As will be shown in the next chapter, the Constitution's Privileges and Immunities Clause was intimately related to both slavery and Black Americans' place within the nation. That relationship between these three elements was first conceived in the Articles however, albeit in less than ideal terms. In both documents, the Privileges and Immunities Clause most essential purpose was to facilitate and protect interstate commerce. In a burgeoning nation, eager to both protect and expand its own interest, facilitating trade across independent states was necessary to build power and wealth over time. Thus, both versions of the Privileges and Immunities Clause essentially acted to protect individual Americans as they traveled or did business in other states, by ensuring they would have access to the same privileges and immunities anywhere in the union.

In the Constitution, as will be shown, this was much more streamlined, efficient, and clearer, as were several other holdovers from the Articles. However, the Articles put forth a number of rhetorical and linguistic slippages in a complicated and paradoxical Privileges and Immunities Clause. In doing so, the Articles not only made it exceedingly confusing as to how status, and specifically the new status of citizenship, would operate in the nation. It also made slavery harder to regulate, as we'll see in the *Affa Hall* affair. But as to citizenship, the Articles left open what one representative described as a potentially "embarrassing" possibility of citizenship being extended to non-citizens. Maybe even Black people.

How the Articles' Privileges and Immunities Clause came into being is somewhat confusing, and hidden behind the unknown reaches of history. The first version was proposed in July of 1776, in what is commonly referred to as the "Dickinson Draft," after John Dickinson, at

the time a delegate to the Second Continental Congress from Pennsylvania. The Dickinson Draft's Privileges and Immunities Clause was split between two separate Articles:

Article VI: The Inhabitants of each Colony, shall henceforth always have the same Rights, Liberties, Privileges, Immunities and Advantages, in the other Colonies, which the said Inhabitants now have, in all Cases whatever, except in those provided for by the next following Article.

Article VII: The Inhabitants of each Colony shall enjoy all the Rights, Liberties, Privileges, Immunities, and Advantages, in Trade, Navigation, and Commerce, in any other Colony, and in going to and from the same from and to any part of the World, which the Natives of such Colony enjoy.⁷

As George William Van Cleve has aptly pointed out, the initial version of the Articles' Privileges and Immunities Clause was extremely expansive, heavily tied the hands of states to enact future laws, and essentially acted a freeze of current law in the new nation. Doing so would protect property rights across the states, which included slaves, by making it more difficult to pass laws generally. As Van Cleve showed, under this framework, Dickinson, who was Delaware's largest slaveholder, would have made it all but impossible for a *Somerset* principle to take effect in the new nation.⁸ Dickinson, however, would free his slaves the next year, making it

⁷ Washington C. Ford, ed. *Journals of the Continental Congress, 1774-1789*, Vol. 5 (Washington D.C.: Government Printing Office, 1906), 546-554, quoted in Van Cleve, *A Slaveholder's Union*, 51. *Journals of the Continental Congress* will be referred to as *JCC* from this point on.

⁸ Van Cleve, *A Slaveholder's Union*, 51-52. Van Cleve has arguably paid the best attention to how the Articles' Privileges and Immunities Clause was created, and his work here informs my own understanding of both the Privileges and Immunities Clause and the Articles writ large. While I rely heavily on the thorough work he has already done on this topic, I do ask new questions regarding slavery, in particular its connection to citizenship, and

unclear whether he really wished to protect slavery itself as vigorously as the initial framework suggests.

In any case, Dickinson's version of the Privileges and Immunities Clause was wildly unpopular, likely because of how much it circumscribed the power of individual states, who were explicitly attempted to safeguard as much of their sovereignty as possible. So controversial was Dickinson's version that the next draft of the Articles did not even include a Privileges and Immunities Clause. Instead, no public debate happened over the course of the next year, and a Privileges and Immunities Clause wouldn't be added until just days before the final version of the Articles was formally adopted, in November of 1777.⁹

The next version of the Privileges and Immunities Clause would be crafted by a three-man committee, chaired by Richard Henry Lee of Virginia, and was proposed on November 13, after three days of work. The Lee committee's proposal for a Privileges and Immunities Clause was housed in a single article, broken up into several sections, which importantly included a proto-Fugitive Slave Clause. The Lee committee's version of the Privileges and Immunities Clause read:

“...the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several states; the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively,

also diverge in some important respects. Nonetheless, Van Cleve's work on the history of this creation process deserves praise.

⁹ Ibid, 52.

provided that such restriction shall not extend so far as to prevent the removal of property imported into any State, to any other State of which the owner is an inhabitant...”¹⁰

The new version of the Privileges and Immunities Clause was a far cry from the Dickinson version. Instead of curtailing individual states’ ability to craft laws on a wide array of matters, it left state sovereignty alone except in specific areas of commerce. That commerce undoubtedly extended to and included the institution of slavery. Whereas the agreement on October 26, without any specific restrictions, opened the nation to dealing with a *Somerset* principle, this new version attempted to cut off that possibility by explicitly protecting the rights of property holders to not only freely move between states, but to do so with their property, including slaves. Thus, a state could not, in theory, extend freedom to a fugitive slave or the slave of someone visiting a free territory, thus robbing an enslaver of their property. Furthermore, as was the case in *Somerset*, a state could not simply bar an enslaver from removing their slaves to another place simply because said enslaver had freely and willingly brought their slaves there.¹¹

This was done in two ways. First, the Articles added exclusionary language for “paupers, vagabonds, and fugitives from justice,” which would have included fugitive slaves, and by specifically mentioning only “free inhabitants.” As Van Cleve shows, this was actually a late addition to the new Privileges and Immunities Clause by Lee himself, and points to a shift in the committee’s opinion as to who would have access to privileges and immunities in the new nation. Furthermore, the original version also only protected imported property from

¹⁰ Washington C. Ford, ed. *Journals of the Continental Congress, 1774-1789*, Vol. 9 (Washington D.C.: Government Printing Office, 1907), 907, quoted in Van Cleve, *A Slaveholder’s Union*, 54.

¹¹ Van Cleve, *A Slaveholder’s Union*, 54-55.

discriminatory taxation, but said nothing of protecting a right to remove property. Thus, this new Privileges and Immunities Clause, which was essentially what ended up in the final Articles, created clear distinctions between enslaved people and free people, and protected enslavers with rights to do what they wished with their property.¹²

The attempt to foreclose the possibility of an American *Somerset* is given even more credence by the fact that the case itself seems to have been common knowledge among congressional delegates, and likely most American elites, by this time. In February of that year, Thomas Burke, a delegate from North Carolina, was in the midst of making an argument against extending power to the Continental Congress to set rules for the seizure of army deserters. Up to that point, in keeping with the general principles of America's decentralized governance of the time, Congress had simply recommended individual states empower certain people, such as ferry operators, to seize suspected deserters and bring them before local justices of the peace. Now the matter was before Congress again, but this time with the suggestion "that the Power should go Immediately from Congress without the Intervention of the States."¹³

Burke, in attempting to guard the sovereignty of the states, argued against such a move. According to Burke's notes, members of Congress seemed to be "inattentive" when the matter was brought before them, nearly making its way towards law without any resistance. Seeing what was happening, Burke forced a short debate on that matter. Outside of taking rights away from the state, Congress itself was "assuming Power to give authority from itself." Such power would "endanger the personal Liberty of every man in America." The subsequent debate over whether Congress, and not the states, should have the sole authority to punish deserters, was

¹² Ibid.

¹³ Thomas Burke's Notes of Debates, February 25, 1777, *Letters of Delegates to Congress: 1774-1789*, Vol. 6, Paul H. Smith, ed. (Washington: Library of Congress, 1980), 357.

principally between Burke and Pennsylvania's James Wilson, during which the former brought up legal precedents and principles to support his arguments, including *Somerset's Case*.¹⁴

The reference to *Somerset* could initially seem wholly out of place, considering the present debate centered on desertion and Congress's larger authority to create law which superseded and bound the individual states. Yet, as shown in the previous chapter, *Somerset* was principally a case dealing with imperial laws and federalism. Lord Mansfield, in his decision, was carefully trying to craft an opinion which would affect slavery, as an institution, as little as possible, while also proclaiming imperial supremacy over colonies and colonial law. Thus, in referencing *Somerset*, Burke was accurately making a point about law, federalism, and his vision of the relationship between the individual states and the Continental Congress.

However, it is less that Burke referenced *Somerset* than how he did so that is important. For one, it was in a matter wholly separate from the institution of slavery. Not even the rhetoric of slavery, a common Revolutionary-era strategy, was used. Burke was relying wholly on the specific finer points of law which *Somerset* represented. Furthermore, it seems Burke quite literally only referenced the case. The debate over desertion and congressional power are covered in Burke's own journal, which is very detailed on most matters. It is certainly possible Burke did not feel the need to specify why and how he was referencing *Somerset*, because he was documenting the debates in his own notes. But it is more likely, considering Burke went into great detail when recounting debates, that when he wrote he made a point by simply "quoting the case of the Negro Somerset," that is exactly what happened. Thus, Burke assumed, most likely correctly, that those around him had the same level of knowledge about the case as he did, therefore making any detailed discussion of the case unneeded.¹⁵

¹⁴ Ibid, 357-360.

¹⁵ Ibid, 357.

All of this is to say the knowledge of *Somerset* seems to have been widespread enough to have surely been on the minds of delegates minds when they are crafting the Privileges and Immunities Clause, along with the institution of slavery writ large. However, if the history, debates, and language surrounding the Articles' Privileges and Immunities Clause illustrate how it was meant to both protect and regulate slavery, in conjunction with a proto-Fugitive Slave Clause, then how exactly did it also speak to the status of Black people in the union? While the Privileges and Immunities Clause makes clear distinctions between enslaved and free people, the category of race is absent in anything approaching explicit terms. Yet, some members of the Continental Congress looked to the Privileges and Immunities Clause as potentially problematic when it came to the status of Black people in the nation. Thus, while Article IV, as a whole, was meant to protect slavery, the language used in the Privileges and Immunities Clause left open, what James Madison would later call, "embarrassing" possibilities.¹⁶

For all the good the Articles' Privileges and Immunities Clause did to try and protect the institution of slavery, it did an absolutely poor job in regulating citizenship in the new nation. The larger implications for citizenship, in the changes from the Articles to the Constitution, will be explored in the next chapter. However, for the current conversation, it is important to recognize the language used by the Lee committee may have been a godsend for those hoping to both protect property rights and state sovereignty, but it did next to nothing to make sure Black people did not have access to citizenship in the nation. This is because of how the Privileges and Immunities Clause invoked both "inhabitants" and "citizens" in its description of the privileges and immunities of Americans.

¹⁶ Publius, "Federalists 42," *The Federalists Papers* (New York: Signet Classic, 2003).

It is important to recognize that even during a time when citizenship was a newly made status for the nation, devoid of any real legal definition, to hold the status of “citizen” was nonetheless very different from being a mere “inhabitant.” While the former was usually used to speak of rights bearing agents in society, the latter could encompass any number of people in a community, many of whom would have not had access to most, if not all, legal rights and protections. Thus, in stating that “the free inhabitants of each of these States...shall be entitled to all the privileges and immunities of free citizens in the several states,” the delegates in Congress mixed and matched highly different and competing statuses. Doing so, then, presenting the new nation with the possibility that those excluded from citizenship in one state, such a Black Americans, could claim all the privileges and immunities of that state’s citizens.

This is not merely an academic observation, possible by looking back several centuries removed. Thomas Burke, for one, threatened that North Carolina would never ratify the Articles if the Privileges and Immunities Clause kept its present form. As he pointed out:

Our Commons are voted for by all free Citizens, and if the Inhabitants of our Neighboring States have the privileges of Citizens in ours they might insist upon the right of voting for Members of Our Legislature which would be a political absurdity. It seems therefore proper that this article should be Amended by adding after the clause refer’d to – *not inconsistent with their respective Constitutions*.¹⁷

Burke’s apprehensions illustrate an understanding of the linguistic slippages present in the Privileges and Immunities Clause in its final form. And while Burke doesn’t mention race

¹⁷ Edmund C. Burnett, ed., *Letters of the Members of the Continental Congress*, Vol. 2 (Washington D.C.: Carnegie Institution of Washington, 1923), 552.

specifically, he likely did not need to for everyone to understand that it nonetheless played an integral role in his objections. Especially because, as we have seen, the institution of slavery and race was certainly on the minds of delegates as they crafted and debated the Privileges and Immunities Clause to begin with. It is hard to believe, then, that Burke's complaints about the contradictory language of the Privileges and Immunities Clause wouldn't have been made with slavery and race also in mind.

His fears aside, the Continental Congress ignored his suggestions for an amendment to the form of the Articles of Confederation. This had less to do with Burke being the lone voice to recognize, or care, about the contradictions inherent in the Privileges and Immunities Clause, but with the fact that Congress simply disregarded every amendment suggested to it for the Articles. The Privileges and Immunities Clause, then, would attempt to protect slavery while leaving the door open to some form of citizenship that included Black Americans.

Whether or not that would become a problem for the new nation, however, was something no delegate to the Continental Congress could know. Burke's hypothetical was just that: hypothetical. The language of the Privileges and Immunities Clause certainly presented the possibility Burke recognized, and when thought of in the context of race and slavery, made it possible for free Black Americans to, at least, claim the rights associated with the status of citizenship. What those rights could be was equally murky and irrelevant. The simple possibility of Black Americans having access to the rights of citizenship, and essentially being citizens themselves, was surely a nightmare in the minds of many white Americans like Burke.

Yet, Burke's fears were only of possibilities, possibilities the Continental Congress obviously did not think relevant or likely enough to address in those early days of the war. This was just one or many flaws in the Articles observed by contemporary Americans. The Articles,

then, represented a mixed bag for enslavers of the nation. The Privileges and Immunities Clause and the fugitive slave clause would, in theory, offer some protections for their property by foreclosing the possibility of a *Somerset* principle in America. However, the Privileges and Immunities Clause itself did little to regulate the emerging status of citizenship. In reality, it only made citizenship a confusing mess, much like the rest of the Articles.

Along with this, as would become clear, time and time again, the Articles simply lacked anyway to actually enforce what it put forth. So even as the Privileges and Immunities Clause attempted to protect the institution of slavery, as we will see shortly, those protections were, quite literally, only words on paper. And while the nation would see just how ineffective the Articles were in creating any sense of unified nation on many matters, the *Affa Hall* affair would highlight how these institutional failures could affect slavery.

[III]

How the Articles of Confederation interacted with the institution of slavery is just one aspect of what makes the *Affa Hall* affair important. As will be shown, *Affa Hall* was a real life example of the very fears Burke presented to the Continental Congress, and the likely concerns many enslavers had as they sought to create a form of government that would not threaten the institution of slavery, but also protect it. But to understand the larger implications of *Affa Hall* in the nation, it is important to see the relationship it had with a set of cases that preceded it. The supposed end of slavery in Massachusetts came just months earlier as the *Quock Walker Cases* finally came to their conclusion. The local dispute over slavery would seemingly hold, through *Affa Hall*, the potential to affect slavery in the nation.¹⁸

¹⁸ For more on the *Quock Walker Cases*, and an idea of the current, and dated, historiography, see John D. Cushing, “The Cushing Court and the Abolition of Slavery in Massachusetts: More Notes on ‘Quock Walker Case,’” *The*

Composed of three separate cases, the *Quock Walker Cases* were a series of cases which dealt with a variety of different matters relating to slavery, abolition, property rights, assault, etc. The three cases were *Walker v. Jennison* (1781), *Caldwell v. Jennison* (1781), and *Commonwealth v. Jennison* (1783), and originated when Quock Walker left his enslaver, Nathaniel Jennison in 1781. His actions, and the actions of those around him, would lead to ultimate downfall of slavery in the state, but certainly not in the way that is commonly told.

The whole affair of Walker's attempt to gain his freedom was really a family affair. When Walker left Jennison, he went to work on the farm of John and Seth Caldwell, who were related to Jennison by marriage, and whom he had previously been in close contact with growing up. James Caldwell, John and Seth's father, had previously owned Walker, and agreed to free him after he reached the age of twenty-five. However, before that, Walker's ownership transferred to Jennison, after he married one of James Caldwell's daughters, who reaffirmed her father's promise. However, after she died, Jennison refused to honor that agreement.¹⁹

When he learned of where Walker was, Jennison gathered a group of close friends and went to the Caldwell farm to recapture Walker. At this point, Jennison and these men apparently violently kidnapped Walker, having to physically assault him in order to coerce compliance. After removing Walker from the Caldwell's farm, Jennison locked him on his own farm.²⁰ Historians have speculated Walker and the Cadwells planned his escape together, with the latter also assisting the former in taking legal actions. Just a few days later, Walker brought charges

American Journal of Legal History 5, No. 2 (April 1961): 118-144; Arthur Zilversmit, "Quok Walker, Mumbet, and the Abolition of Slavery in Massachusetts," *The William and Mary Quarterly* 25, No. 4 (October 1968): 614-624; Robert M. Spector, "The Quock Walker Cases (1781-83): Slavery, its Abolition, and Negro Citizenship in Early Massachusetts," *The Journal of Negro History* 53, No. 1 (January 1968): 12-32; William O'Brien, "Did the Jennison Case Outlaw Slavery in Massachusetts," *The William and Mary Quarterly* 17, No. 2 (April 1960): 219-241.

¹⁹ Blanck, "Seventeen Eighty-Three," 25.

²⁰ Cushing, "The Cushing Court," 119.

against Jennison for assault and battery, charges which sat on a presumption, and claim, of freedom on Walker's end.

In June of 1781 the cases of *Walker v. Jennison* and *Jennison v. Caldwell* came before the Worcester County Court of Common Pleas. As Emily Blanck has pointed out, it is clear both cases were heard all but simultaneously.²¹ While Walker was suing Jennison for damages resulting from assault and battery, the case of *Walker v. Jennison* was essentially a freedom suit. It was quite common for freedom suit cases to take the form of either assault or unlawful imprisonment cases. Of course, one suspects that Walker would have never brought forth a formal freedom suit had Jennison simply let the matter of his freedom lie, and accept the wishes of both his former father-in-law and deceased wife. In any case, Walker's suit for damages could only be found in his favor if a jury accepted the fact that he was free, and thus not subject to Jennison's authority. This was recognized by all, especially Jennison, who simply provided a bill of sale for Walker as his main form of defense.²²

Jennison v. Caldwell, by comparison, was a suit brought by Jennison seeking restitutions of 1,000 pounds for the loss of Walker's labor. Further, Jennison claimed the Caldwells had enticed Walker to leave and work for them. In deciding both cases, the jury, presumably the same jury in each case, came to seemingly opposite decisions; a move that has always perplexed historians. In *Walker v. Jennison*, the jury found Walker was, in fact, free at the time of his escape and subsequent assault and kidnapping. The jury awarded Walker fifty pounds in damages, less than the three hundred requested. Yet, in *Jennison v. Caldwell*, the jury awarded

²¹ Black, "Seventeen Eighty-Three," 26.

²² Cushing, "The Cushing Court," 120.

Jennison twenty-five pounds, contradicting their previous ruling in favor of Walker. Both cases were promptly appealed to the Superior Court of Judicature.²³

The next session of the Superior Court met in Worcester three months later, in September. While the trial records do not survive, it appears that both sides agreed to drop one case on the grounds that Jennison's lawyers failed to file the proper court paperwork. Furthermore, while the previous cases had employed some broader arguments over slavery, the appeal of *Caldwell v. Jennison* saw a large expansion in those arguments, as each side sought to not only win on the narrow facts of the case itself, but also on the place of slavery in Massachusetts.

The lawyers for the Caldwells, Levi Lincoln and Caleb Strong, were particularly keen on attacking the institution of slavery itself. Lincoln's notes illustrate along with appealing to the facts of the case, that the lawyers for the side of freedom sought to use the situation to upend the institution itself in Massachusetts. Covering topics such as religion, natural law, the state constitution, and public policy, Lincoln outlined several arguments he would use against the very idea of slavery.²⁴

Much of Lincoln's arguments against slavery rested on tried and true on natural law, which had been a basis for making a case against slavery for decades. Slavery went against reason, and slaves did not, nor could not, give their consent to being enslaved. Furthermore, Walker, all slaves, and all Black people were the brothers and sisters of Lincoln, Jennison, the Caldwells, and every other white person. More so, Lincoln spoke about how the "air in America is too pure for a slave to breathe in," a line used often both in the lead-up and during *Somerset's*

²³ Ibid, 120-121.

²⁴ "Brief of Levi Lincoln in the Slave Case Tried 1781," *Collections of the Massachusetts Historical Society*, Vol. 3, 5th Series (Boston 1877), 438-442.

Case. Whether he was taking cues from that case are unknown, and the phrase certainly existed before 1772. Yet, the possibility Lincoln's invocations of natural law were influenced by *Somerset* should not be counted out either.²⁵ Lincoln, however, did not limit his arguments to pure abstract natural law.

Massachusetts's newly ratified constitution also formed the basis for some of Lincoln's arguments against slavery. The state's constitution was crafted in an admittedly backwards and lengthy process for the day. Whereas most states which chose to craft a constitution following independence called for delegates to be elected to a separate convention, whose sole tasks it was to craft a constitution, Massachusetts's legislature instead opted to simply write one itself. Stemming from many perceived defects in process and form, that constitution was soundly rejected by Massachusetts towns and votes, before the legislature eventually caved and called for a separate convention in 1779. The constitution, which came out of that convention, was eventually ratified in 1780. While the route to the 1780 constitution was both irregular and long, it nonetheless created an atmosphere where the constitution was known by many and held in high regards.²⁶

As a result, invocations of the state's constitution would be a mainstay in the *Quock Walker Cases*, because of both its place in society and the incorporation of Revolutionary-era language into the document; a common sight in constitutions of the day. Such language, that all men were created equal, had made for powerful arguments against slavery, and that would be no

²⁵ Ibid.

²⁶ For more on the 1780 state constitution, see S. B. Benjamin, "The Significance of the Massachusetts Constitution of 1780," *Temple Law Review* 70, No. 3 (Fall 1997): 883-906; Alexander J. Cella, "The People of Massachusetts, A New Republic, and the Constitution of 1780: The Evolution of Principles of Popular Control of Political Authority, 1774-1780," *Suffolk University Law Review* 14, No. 4 (Summer 1980): 975-1006; Edward F. Hennessey, "The Extraordinary Massachusetts Constitution of 1780," *Suffolk University Law Review* 14, No. 4 (Summer 1980): 873-886; John Phillip Reid, "In the Taught Tradition: The Meaning of Law in Massachusetts-Bay Two Hundred Years Ago," *Suffolk University Law Review* 14, No. 4 (Summer 1980): 931-974.

different with the 1780 constitution. In combating a point made by William Stearns, one of Jennison's lawyers, that all men were not created equal, since children were born subservient to their parents, Lincoln countered that such a statement was true, but children were nonetheless not slaves.²⁷

Lincoln's responses to both Judge Sprague and William Stearns give us hints about their arguments in defense of Jennison and the institution of slavery. Along with comparing enslaved people to children, in order to claim that Black people were not included in pronouncements of universal equality, Stearns asserted that slavery was simply a custom in both Massachusetts and the United States. Thus, because slavery existed and had been practiced for such a long time, it enjoyed the status of de facto law. Furthermore, Stearns argued if the state's new constitution were to actually be taken literally, then only those born after its ratification could be "equal and free."²⁸

Sprague's arguments are less prevalent in Lincoln's notes, but the ones which are present focus on the law of slavery in Massachusetts, and how the state's law was influenced by English common law. In England, for example, Sprague pointed out that people could be transported to other areas, and separated from their families, because of crimes they committed. Sprague was likely attempting to use the common defense that African slaves were made slaves in Africa, for offenses there or through conquest, and Americans simply bought existing slaves. Thus, as Sprague commented, the law of slavery meant that these slaves were the exclusive property of their enslavers.²⁹

²⁷ "Brief of Levi Lincoln in the Slave Case Tried 1781," 440.

²⁸ Ibid, 440-441.

²⁹ Ibid.

Both Sprague and Stearns arguments had several purposes. First, they were meant to establish that slavery was an integral part of Massachusetts, from its beginnings, and thus should continue unabated. Enslaved people were not party to the language and outcomes of the state's social contract, in the form of its 1780 constitution. Statements of universal equality did not, nor were not meant to, include enslaved people, and by extension any Black people. However, even if the court disagreed, Quock Walker was nonetheless still not free, because he was enslaved before the creation and ratification of the new constitution. In this way, while most of the arguments presented by Jennison's lawyers were meant to defend his rights to Walker by way of defending the institution of slavery itself, they also made sure to create a route through which their client could still maintain possession of his slave if slavery was ultimately threatened by these cases.

With arguments from both sides concluded, Justice Sargent gave his instructions to the jury. It appears from a later petition that Justice Sargent may have taken the side of Lincoln in instructing the jury that the Massachusetts constitution did, in fact, extend universal equality to even Black people, and thus did not sanction slavery. The jury returned a decision in favor of the *Caldwells*, though apparently did not make a pronouncement on the broad principles of slavery in the state.³⁰

Slavery in the state seems to have been largely intact after the decision in *Caldwell v. Jennison*. And Jennison himself was far from happy with the decision. The following year, he submitted a petition to the legislature asking to re-enter his appeal against Walker in *Walker v. Jennison*. Blaming his lawyers for not filing the proper paperwork, Jennison told the legislature that it was to "his great disappointment they did not bring his Papers at the Time his Cause was

³⁰ Cushing, "The Cushing Court," 125-127.

called on for Trial,” and thus made it impossible for him to plead his case. A copy of Jennison’s petition was sent to Walker and his lawyers, who likewise petitioned the legislature to not grant Jennison relief. Walker was “very poor” and still dealing with the cost of the three trials which had occurred before, Walker was thus, in some fashion, involved in even the Caldwell’s cases.³¹

Jennison would also submit a much lengthier petition in June, asking the legislature to also investigate the appeal of *Caldwell v. Jennison*. This petition shows evidence the jury was instructed the new Massachusetts constitution did not allow slavery because of its pronouncement of universal equality. Jennison’s petition began by stating the meaning behind the beginning of the constitution’s bill of rights was “the Subject of much altercation & dispute.” His case was surely just one part of that larger contestation, as the judges overseeing his appeal declared the bill of rights was “to operate to the total discharge & manumission of all Negro Servants whatsoever.” While Jennison wouldn’t dare to tell the legislature what the true meaning of the bill of rights and the constitution were, he could not image the people themselves would have thought they were agreeing to something which counteracted scripture and could “offend the Southern States in so capital a point...[and] endanger the union.”³²

Jennison invocation of national unity should not be taken for granted. As the *Affa Hall* affair will show, southerners were watching Massachusetts with a keen eye during this time to see what the state was doing regarding the institution of slavery. Nonetheless, if the bill of rights and constitution did end slavery in the state, Jennison thought it only fair for the legislature to repeal the current law which mandated enslavers to use their own funds to provide support for

³¹ Petition of Nathaniel Jennison, March 5, 1782, Massachusetts Anti-Slavery and Anti-Segregation Petitions, House Unpassed Legislation 1782, Docket 1008, SC1/series 230, Widener Library, Harvard University; Petition of Quock Walker, April 9, 1782, Massachusetts Anti-Slavery and Anti-Segregation Petitions, House Unpassed Legislation 1782, Docket 1008, SC1/series 230, Widener Library, Harvard University.

³² Nathaniel Jennison Petition, June 18, 1782, Massachusetts Anti-Slavery and Anti-Segregation Petitions, House Unpassed Legislation 1782, Docket 1008, SC1/series 230, Widener Library, Harvard University.

emancipated slaves. Such a law, in the face of general abolition, would simply reverse the chains of slavery in the state. As Jennison said, if he was bound to support his ten slaves in freedom, “while they run about living in pleasure & idleness,” then he was a slave himself. Slavery certainly could not be allowed given “the foregoing reasoning is contrary to the Constitution.”³³

Why Jennison decided to seek redress on these cases, months later, is unknown. Instead of reinstating either of the cases, the state itself launched a new case, *Commonwealth v. Jennison*, which was heard in April of the next year. Neither *Walker v. Jennison* nor *Caldwell v. Jennison*, both civil suits, were argued again. Instead, this new case, a criminal case, was heard before the Supreme Judicial Court.

Commonwealth v. Jennison appears nowhere on court dockets during the time the two civil cases were heard, or the appeal of *Caldwell v. Jennison*. It is possible, however, that the case was actually initiated in 1781, but not actually prosecuted. In the same way both parties seemingly agreed to have *Caldwell v. Jennison* be the sole case to be appealed, it is possible everyone wanted to avoid a criminal trial, which could come end in a contradictory ruling, the same way the previous two cases had. And so, an agreement was made to not prosecute Jennison if, and only if, he accepted the outcome of the appealed *Caldwell v. Jennison* case. Considering the expansion of arguments against slavery itself, and the seeming instructions given to the jury, it seems Massachusetts officials sought to use the appeal of *Caldwell v. Jennison* to decide the fate of slavery in the state. However, when Jennison decided to petition the legislature, and break the agreement, officials decided to bring the criminal case instead, in order to bring the slavery question to a close.³⁴

³³ Ibid.

³⁴ Cushing, “The Cushing Court,” 127-130.

No official records survive as to why this series of events happened, nor as to why Jennison decided to reinstitute his fight against Walker and the Caldwells. Furthermore, we don't know why the legislature simply did not respond to Jennison's petitions by expressing what the state's constitution and bill of rights meant. It is possible such an action was seen as too contentious or time consuming. Perhaps there was not enough support to express an interpretation of the constitution which would have ended slavery, and so the matter was left to the courts. If, as Jennison's petition stated, the interpretational matter was "the Subject of much altercation & dispute," then this could be possible.

Nonetheless, the case of *Commonwealth v. Jennison* largely acted as a rehashing of previous arguments. Nothing new was introduced, and most arguments seemed to be limited to the facts of the individual case itself. The fact that neither side really sought to make as extensive arguments as had been done in the appeal of *Caldwell v. Jennison* gives some credence to the argument that the current case was little more than a staged final verdict on slavery. This interpretation can be given even more weight when one considers the gap in legal reasoning and arguments present between the lawyers and the instructions given to the jury.

Presiding over the case was Chief Justice William Cushing, along with Justices Nathaniel Peaslee Sargent, who had presided over the appeal of *Caldwell v. Jennison*, David Sewall, and Increase Sumner. Cushing would instruct the jury, providing their charge in deciding the case and interpretations of the law which they should follow. In reading over Cushing's instructions to the jury, it is obvious that he found agreement with Levi Lincoln and Justice Sargent. Cushing's instruction essentially made it impossible for the jury to side with Jennison. Do so would have required them to not just accept the institution of slavery in Massachusetts, but also

disregard the promises of manumission Walker received. Those very promises were all but immaterial to the case in Cushing's estimation though.

As he told the jury, slavery existed in Massachusetts through custom, once which began in the state's colonial period. And while Massachusetts law may have recognized slaves were "existing among us," it could not be "nowhere...[to be] expressly established" by law.³⁵ Cushing, of course, was offering a highly selective, and inaccurate, reading of the history of slavery. Slavery was not only expressly authorized by Massachusetts law, but the former colony's *Body of Liberties*, passed in 1641, actually sanctioned slavery, though not necessarily chattel slavery. Passage 91 of the *Body of Liberties* held "there shall never be any bond slaverie, villinage or Captivity amongst us," unless such slaves were "lawfull Captives taken in just warres," or those who willingly sold themselves into bondage. While chattel slavery was not necessarily sanctioned under this, the colony had a long history of using "just war" to take Native Americans captive and force them into slavery.³⁶ Furthermore, the *Body of Liberties* predated more well-known slave law in the southern mainland colonies, such as Virginia. And when combined with subsequent laws regulating slavery and the Black population represent the earliest efforts to regulate slavery, by law, in mainland British America.³⁷

³⁵ William Cushing, *Notes of Cases Decided in the Superior and Supreme Judicial Courts of Massachusetts from 1772 to 1789*, Harvard Law School MS 4083, 74.

³⁶ For more on Native Enslavement in Massachusetts and New England broadly, see Margaret Ellen Newell, *Brethren By Nature: New England Indians, colonies, and the origins of American slavery* (Ithaca: Cornell University Press, 2015); Jared Ross Hardesty, *Black Lives, Native Lands, White Worlds: A History of Slavery in New England* (Boston: Bright Leaf, 2019).

³⁷ Wendy Warren, *New England Bound: Slavery and Colonization in Early America* (New York: W. W. Norton & Company, 2016); Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonization English America, 1580-1865* (New York: Cambridge University Press, 2010), 424-425. For more on slave law in Massachusetts, see Dominik Nagl, "The Governmentality of Slavery in Colonial Boston, 1690-1760," *American Studies* 58, No. 1 (2013): 5-26; William M. Wiecek, "The Statutory Law of Slavery and Race in the Thirteen Mainland Colonies of British America," *The William and Mary Quarterly* 34, No. 2 (April 1977): 258-280.

Chattel slavery may not have been legalized and legitimized in the *Body of Liberties*, but the state certainly had a long history with enslavement. This selective reading of Massachusetts's history of slavery by those like Cushing, Lincoln, and others is perhaps the most enduring legacy of the *Quock Walker Cases*. Claiming slavery was never established in Massachusetts by anything other than custom, antislavery advocates could take a page from *Somerset* by asserting anything less than positive law provided a shaky, unstable, and ultimately doomed foundation for something as unnatural as slavery. Thus, when attitudes towards enslaving other people changed, and the nation embraced "the natural rights of mankind," which extended to everyone "without regard to complexion or shape," slavery could not exist. By asserting that slavery was never a formal, legal, part of the state, those who looked at slavery with disdain, for any number of reasons, could effectively rewrite Massachusetts history; something which heavily influence the development of the abolitionist movement going forward.³⁸ This revisionist history was a particularly powerful argument when combined with an antislavery interpretation of the state's new constitution.

Cushing would go on to state a commitment to universal equality "led the framers of our constitution" to declare "*that all men are born and free equal; and that every subject is entitled to liberty.*" Thus, in Cushing's estimation, slavery was "as effectively abolished as it can be." Such statements would have made it difficult, if not impossible for the jury to actually decide in Jennison's favor. But Cushing's next statements all but cemented Jennison's defeat.³⁹

With the court agreeing that slavery could "no longer be tolerated" in Massachusetts, Cushing's instructions to the jury ended by arriving at the logical end of such arguments. If the

³⁸ For more on history and slavery in Massachusetts, see Margot Minardi, *Making Slavery History: Abolitionism and the Politics of Memory in Massachusetts* (New York: Oxford University Press, 2010).

³⁹ Cushing, *Notes of Cases*, 77-78.

constitution barred slavery, then the case of *Commonwealth v. Jennison* should have been decided not on the particulars of Walker's enslavement and Jennison's ownership. Instead, the only thing the jury needed to consider was whether they agreed with the court's understanding of the law. If so, they would have to decide against Jennison. If not, they could move onto the facts of the case, and come to a conclusion by that route. The jury, then, could decide whether the criminal charges against Jennison for assault were warranted because Walker had been promised freedom, or inconsequential because Jennison was free to beat his slave. This would have been the end point of the arguments put forth by Walker and the Caldwell's attorneys in *Caldwell v. Jennison*, and that of the statements made by Cushing. And that is exactly what Cushing told the jury.

The jury's instruction ended with Cushing telling them it was "unnecessary to consider whether the promises of freedom...amounted to a manumission or not." Whether Walker was, in fact, promised manumission at the age of twenty-one was irrelevant. Whether Jennison's deceased wife renewed that promise upon her marriage was irrelevant. The only thing that mattered was whether slavery would persist in Massachusetts. Cushing's final sentence summed this up succinctly: "The Def[endant] must be found guilty as the facts charged are not controverted." No one had denied the beating Walker faced from Jennison, a beating predicated on slavery. The only question was whether Walker, and so many other people, were slaves at all.⁴⁰

Cushing, then, solidified what the case of *Commonwealth v. Jennison* would be about. His instructions lend more support to the idea that everyone involved decided that another judicial opinion was needed to not just put an end to the cases arising out of Jennison's

⁴⁰ Ibid, 78.

enslavement of Walker, but to finally end slavery. All signs point towards an understanding of these events where actors on both sides of the slavery question wished to use the *Quock Walker Cases* as an opportunity to decide slavery's future in the state. And so, when the jury returned its verdict against Jennison, slavery seemed to have been ended in the state. First by the ratification of a constitution. And again, by the upholding of those constitutional principles.

Yet, the story of slavery's end in Massachusetts is much more complex, and spans events which happened outside of the *Quock Walker Cases*. While the *Quock Walker Cases* are traditionally presented as the final death nail in the institution of slavery in Massachusetts, we should perhaps be cautious that slavery was dealt as major a blow as previously thought considering how many cases it took just to get to that finality. In reality, the *Quock Walker Cases* were just one part of slavery's continuing story in Massachusetts. And the decisions in those cases would quickly go on to influence how slavery operated in the nation itself. Just months after their conclusion, the main controversies in the *Affa Hall* affair would occur, highlighting how slavery, race, emancipation, and the status of Black people all operated in a newly "free" state

If the *Quock Walker Cases* are essential for understanding the meanings, implications, and fallout of the *Affa Hall* affair, the same could be said for the reverse. The "end" of slavery by judicial fiat in Massachusetts lacks critical context when told without the story of the Pawley slaves. More so, it is through their story that we can not only properly understand the *Quock Walker Cases*, but the larger role Massachusetts's distinctly local struggles with slavery would have in affecting the nation itself.

[IV]

If Cushing and others placed the origins of the *Quock Walker Cases* in the American Revolution, and the turn towards universal equality, the beginnings of the *Affa Hall* affair similarly shared a place within the independence struggle. The origins of the *Affa Hall* affair begin in 1779, as the British took a renewed interests in the southern United States as they continued to their attempts to subdue the rebellious colonies. During the proceeding years of the War for Independence, the theater of war had been mostly relegated to the New England and Mid-Atlantic regions. However, after failing to retake the Hudson River Valley area in a long campaign, from 1777 to 1778, the British reprioritized their efforts, and shifted their gaze southward. With their attention now on the southern region, British forces would begin yet another long, but more successful, campaign. And as part of that effort, as had been the case from the beginning, British privateers raided the southern coast.

A strip of land nestled between the Waccamaw River and the Atlantic Ocean, just north of Georgetown, South Carolina, was home to several different plantations owned by various men and families. And in May of 1779, one unnamed British privateer visited the coastal plantations on this peninsula owned William Vereen, James Todd, Henry Lewis, and Anthony and Percival Pawley. As he made his way across the plantations which dotted that area, thirty-four enslaved people and one free Black man ended up on his ship. It is unclear whether this privateer kidnapped these people, or simply offered them freedom to run from their enslavers. It was certainly a common sight for enslaved people to flee during the war, and likely tens of thousands of people made such attempts throughout the entirety of the war.⁴¹

⁴¹ Blanck, *Tyrannicide*, 75-80.

Whether they chose to take their chances on an unknown British privateer or were kidnapped to be sold somewhere else for a profit, a total of thirty-five people ended up on board a foreign ship. In either case, these people likely did not expect their time at sea to be as dangerous as it was. For their privateer quickly came upon another ship, and engaged it with the hopes of increasing its lucrative haul. The *Victoria*, a Spanish vessel, was captained by Don Francisco Ignatio Urezberoeta, and seems to have made quick work of the unknown privateer. The *Victoria* sailed off with some of the ship's goods, including all the Black South Carolinians. From there, the *Victoria* quickly encountered two other British privateers, and Captain Urezberoeta suffered his own defeat by the captain of the *Bryon*, Lewis Bowen.⁴²

Instead of simply taking the *Victoria*'s goods, and letting it sail free, as Captain Urezberoeta to the ship he had defeated, these two British privateers forced the captain to sail along with them for British occupied New York. Enroute, however, the three ships were attacked by two Massachusetts brigs, the *Hazard* and the *Tyrannicide*. After firing several times, the Massachusetts ships quickly took possession of the *Victoria*, and the people on it, with the British ships abandoning the Spanish vessel to the Americans. From there, all three ships made the quick trip to Boston.⁴³

Having spent over a month at sea, and exchanged hands, and ships, on multiple occasions, these people were surely exhausted. Upon arriving in Boston's port, they were quarantined on a small island, known as Castle Island, until the legislature decided what to do with them. They were promptly interviewed by state officials, who reported they were in desperate need for clothes and food. As the legislature would later claim, these enslaved people readily informed state officials who their enslavers were in South Carolina, as they were

⁴² Ibid, 81.

⁴³ Ibid, 81-82.

“desirous of being returned to their former Masters.” Considering the slaves own wishes, and the situation, the legislature resolved to have the Massachusetts Board of War contact representatives at the Continental Congress to begin the process of returning the slaves. Though the committee report on the matter made sure to state it was their opinion “that the said Negroes should by no means be considered by this Court as transferable Property.”⁴⁴

The last line could appear, at first glance, to be an attempt by Massachusetts officials to make clear they did not actually consider these people to still be slaves, but were returning them purely because it was their “desire.” Or it could be taken as way of absolving Massachusetts of any ownership, even temporary of the slaves. The state was simply an unintentional possessor of these people, and was acting quickly to rid itself of the stain of slavery and do right by what those people wished for. Either view would present Massachusetts in relatively positive light in regard to the state’s relationship to slavery, and make it seem as if, at least at a state level, antislavery sentiments ruled.⁴⁵

However, an equally plausible reading was the committee was simply making a statement on whether these enslaved people should be counted as “transferable Property” for the purposes of deciding what to do with the rest of the captured goods aboard the prize-ship *Victoria*. In fact, when Captain Urezberoeta initiated legal proceedings later that year to recover his loot, the slaves were never included as possible goods. Urezberoeta had to sue because his ship, and specifically the goods he took from the first, unknown, British privateer had changed hands so many times that it became a tangled knot of legalities over who had rights to the goods; Urezberoeta, or the captains of the *Hazard* and *Tyrannicide*, who had possession of everything

⁴⁴ Ibid, 83; Committee Report and Resolves, *Revolutionary Resolves*, Massachusetts Archives Collection, Vol. 233, Massachusetts Archives, Boston, 307.

⁴⁵ Such is the opinion of Blanck on the committee report, Blanck, *Tyrannicide*, 85.

last. In the end, everything was split evenly between Urezberoeta and the Massachusetts captains, as a unit. Nonetheless, the slaves were never considered as objects to be negotiated over in those proceedings.⁴⁶

Thus, taking the view that Massachusetts was attempting to take some sort of antislavery stand in their report is, while certainly possible, equally unlikely. In any case, on June 24th, the Massachusetts legislature passed several resolves dealing with the return of these enslaved people, as well as what should be done with them in the meantime. First the state's Board of War was ordered to send word to Massachusetts delegates at the Continental Congress, so that they could pass on the information on the enslaved people to their South Carolina colleagues. The legislature further instructed these people were to be kept on Castle Island, provided food, clothing, and other provision. Able-bodied men were to be put to work tending to the fortification on the island, and elsewhere in the Boston harbor. Women were to be used for cooking, washing, and other domestic jobs. All the while, the Board of War was to keep a record of expenditures needed to support them.⁴⁷

Sending word to Elbridge Gerry, the Board of War gave a brief explanation of how the Black South Carolinians came to be in Massachusetts, and, like the legislature, made sure to point out it was their own desire to return to "those who call themselves their owners." The phrasing here was certainly an odd way of saying "master" or "slaveholder." More than the committee report on the enslaved people, the Board of War's letters more directly points towards a reluctance, by Massachusetts officials, to actually reaffirm the enslaved status of all but the

⁴⁶ Ibid, 84.

⁴⁷ *The Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay*, Vol. 21 (Boston: Wright & Potter Printing Co., 1922), 90.

self-proclaimed freeman. Without directly mentioning this language, it seems the letter only added to the suspicions to South Carolina's Henry Laurens towards Massachusetts.⁴⁸

Laurens took the lead in writing to South Carolina governor, John Rutledge, on the matter. Gerry seems to have given Rutledge the letter from the Board of War, or at least a copy of it. Briefly explaining the current situation to Rutledge, Laurens warned the governor to take prompt action and quickly begin the process of informing all parties, so that they could take possession of their slaves. The tone and wording of the Board of War's letter left Laurens suspicious of the state's motives, given they did "not intimate that the Negroes [were] property." Urgency was all the more warranted given slavery was "intirely abolished" in the state.⁴⁹

The apprehension over the Board of War's letter is quite easy to follow. Less so, however, is Laurens's assertion that slavery had been abolished in Massachusetts. The institution of slavery in Massachusetts was certainly not as entrenched as it was in South Carolina, and the state had far more critics of slavery than those states further south. Yet, it would be several more years before the institution came under a concerted threat, as shown above. In 1779, then, slavery was very much still alive in Massachusetts, if not relatively small by South Carolina standards. Where Laurens was getting his information about slavery's presence, or lack thereof, in Massachusetts is somewhat of a mystery.

In any case, Laurens's recommended South Carolina and the affected planters employ John Codman in their efforts to secure the slaves. Codman was a merchant in Massachusetts, and part of the merchant house, Codman, Codman, and Smith. Laurens knew of Codman and apparently trusted him enough to recommend him, saying that the owners of these slaves could

⁴⁸ Massachusetts Board of War to Elbridge Gerry, June 29, 1779, *Board of War Letters*, Massachusetts Archives Collection, Vol. 233, Massachusetts Archives, Boston, 293-294.

⁴⁹ Henry Laurens to John Rutledge, July 17, 1779, Records of the General Assembly, #55, South Carolina Department of Archives and History, Columbia, South Carolina.

expect “Justice and accuracy” in their efforts with the assistance of the Massachusetts businessman.⁵⁰

Laurens wrote to Rutledge in July, and it must have taken some time to get the ball rolling on the retrieval. No doubt the current war slowed down the process, and any number of personal matters for the individual planters no doubt interfered, especially considering their plantation had just been ransacked months before. It wouldn’t be until November that Codman and his merchant house petitioned the legislature to claim the slaves of William Vereen, Thomas Todd, and Henry Lewis. The legislature subsequently passed a resolve relinquishing the slaves on the condition the owners pay for any costs which arose from supporting them in the preceding months. Presumably these fees were promptly paid, and the slaves were transported back to South Carolina.⁵¹

Curiously, however, the petition by Codman, Isaac Smith, and William Smith only sought to claim the slaves of three out of the five enslavers. Anthony and Percival Pawley were not represented in the petition or by the men sent to Massachusetts to chaperone the slaves back. Instead, the Pawleys went a different route, and procured the services of local Massachusetts lawyer John Winthrop to claim and look after their slaves. Winthrop did do some trading in South Carolina, so it is possible the Pawley’s made a connection with him sometime in the past. In any case, Winthrop petitioned the legislature at about the same time Codman and Isaac and William Smith did, and was granted guardianship of the Pawley slaves.⁵²

⁵⁰ Ibid; Blanck, *Tyrannicide*, 87.

⁵¹ Petition of Isaac Smith, John Codman, and William Smith, November 1779, *Revolutionary Petitions*, Massachusetts Archives Collection, Vol. 185, Massachusetts Archives, Boston, 407; *The Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay*, Vol. 21 (Boston: Wright & Potter Printing Co., 1922), 241.

⁵² Petition of John Winthrop, November 17, 1779, *Revolutionary Resolves*, Massachusetts Archives Collection, Vol. 185, Massachusetts Archives, Boston, 409; Blanck, *Tyrannicide*, 88.

Unlike Vereen, Todd, and Lewis, however, the Pawleys did not have their slaves transported back to South Carolina. Instead, the Pawley slaves simply remained in Massachusetts under the watchful eye of Winthrop for four years. It wouldn't be until 1783 that the Pawleys, quite suddenly, decided to exercise their claim on the fourteen remaining slaves, and attempt to have them brought back to South Carolina.

In the intervening years, we know little about these enslaved people's experiences in Boston. Presumably they integrated themselves into Boston's emerging free Black community. Affa, the namesake of the eventual *habeas corpus* case involving the Pawley slaves, married a man by the name of Prince Hall at some point. This Prince Hall was not the well-known founder of the African Masonic Lodge, but simply someone who shared the same name. Two people, Robert and Hannah, were able to slip past Winthrop's gaze and made their way to neighboring Medford together.⁵³

While the Pawley slaves remained under the guardianship of Winthrop, we don't know whether they continued to think of themselves as actually enslaved. While most of the contemporary accounts of the entire incident make it seem as if the slaves were kidnapped from the coast of South Carolina, we cannot know for sure that any or all of them did not, in fact, take their chances on an unknown British privateer and the hope for freedom. And while Massachusetts presented them as wanting to return to South Carolina, such attitudes could have changed for the Pawley slaves over time, after they watched the other twenty slaves promptly claimed and returned.

The fact that Robert and Hannah chose to make a life for themselves in Medford and Affa married into the Boston Black community point towards a decision, by at least some of the

⁵³ Blanck, *Tyrannicide*, 89.

Pawley slaves, to make a new home for themselves. It is quite likely these people no longer thought of themselves as enslaved, especially as they remained in the state for longer and longer.

Furthermore, the Pawley slaves began new lives in Massachusetts just as the institution of slavery seemingly came under a new, concerted, and seemingly successful attack. Just two years after their arrival, almost to the day, the first of the *Quock Walker Cases* was heard. By September of 1781, with the conclusion of the *Caldwell v. Jennison* appeal, some surely thought slavery ended in the state. And by April of 1783, with the case of *Commonwealth v. Jennison* decided, any doubts that slavery could exist in the state, whose constitution explicitly declared all men equal, were laid to rest. News of the *Quock Walker Cases* surely made their way through the Black community in Massachusetts to the Pawley slaves. By April of 1783, it is quite likely any thoughts of their continued enslavement had vanished, and they thoroughly thought of themselves as free people.

That understanding of freedom, however, would quickly come undone just months after the conclusion of the *Quock Walker Cases*. If the initial phase of the *Affa Hall* affair was a straightforward, if not uneasy, rendition of kidnapped slaves, the second and main phase would present a controversy that was anything but uncomplicated. The sudden attempt by the Pawleys to reclaim their slaves would bring about a situation which not only highlighted the innate flaws in the new nation's very structure, but would also show the limits of emancipation in Massachusetts. The borders of freedom affixed to the state through this event would no doubt influence the development of race in the state. And the debates over the role of the Articles of Confederation in relation to slavery pointed towards a future upheaval of both the nation's structures and governance.

[V]

The second act of the *Affa Hall* affair began in the late summer of 1783, when Samuel Hasford boarded a ship for Boston. Hasford was a local South Carolinian lawyer and Percival Pawley's son-in-law. The Pawley brothers procured Hasford's services to travel to Boston on their behalf, exercise their claim on the remaining slaves, and bring them back to South Carolina.⁵⁴ The Pawleys and Hasford, no doubt, thought the entire process would be a simple affair, as it had for the three other enslavers four years before. They were wrong.

Just as we do not know why the Pawleys waited four years to bring their slaves back, we also do not know why they suddenly decided to do so in 1783. It is possible with abolition seemingly taking hold in Massachusetts, the Pawleys decided they could no longer wait to claim their slaves. This possibility is lent some credence by the fact that John Winthrop wrote to them at the beginning of May advising them to request the service of South Carolina's governor if they wished to retrieve their slaves.⁵⁵ Writing just after *Commonwealth v. Jennison* was decided, Winthrop likely knew slavery was done in the state, and was perhaps attempting to advise his clients that the matter of their slaves required urgent attention.

In any case, Samuel Hasford arrived in Boston ready to claim his family's slaves. However, he hit an immediate roadblock. His initial efforts involved going to a local magistrate, Joseph Henderson, who promptly told him he was unable to assist in the recapture of the slaves. According to a petition Hasford sent to Governor John Hancock, on August 25th, the magistrate told him the "Constitution of this Commonwealth...unimpowered [him] to apprehend and secure this kind of property."⁵⁶ Henderson's reference to the state's 1780 constitution was no doubt a

⁵⁴ Ibid, 94.

⁵⁵ Ibid, 105.

⁵⁶ Petition of Samuel Hasford to John Hancock, August 25, 1783, Records of the General Assembly, #55, SCDAH, Columbia, South Carolina.

consequence of the *Quock Walker Cases*. Many people in Massachusetts believed, by the conclusion of *Commonwealth v. Jennison*, that slavery simply could not exist in the state anymore. Thus, the actions Henderson could take in Hasford's favor were legally constricted from what they may have been months earlier. If nothing else, Hasford's initial interaction with the state of Massachusetts illustrates just how widely accepted the idea of slavery's demise were.

Hasford's petition to Governor Hancock not only documents why he was in the state, and the issues he initially faced, but subtly shifted the nature, and stakes, of the current situation. In speaking about his current inability to capture the Pawleys' slaves, Hasford said it would be wrong for Massachusetts to give slaves freedom "by the single Act of deserting the service of their Owners."⁵⁷ Up to this point, everyone had presented the South Carolinian slaves as having been essentially kidnapped from the coastal plantations. This, in combination with their supposed desire to return, left the impression that they were not fugitive slaves, in the traditional sense. They had not, after all, willingly run away from their enslavers, but were taken against their will by a foreign enemy. Yet, here, Hasford now presented the remaining men and women as fugitive slaves.

The move to paint the Pawley slaves as fugitives was necessary, however, for Hasford to make his next claim. Even if Massachusetts had gotten rid of slavery within its borders, "no laws of this kindred State will counteract the ordinances or subvert the Barriers of a Society which forms Part of the great several Governments of the United States."⁵⁸ In just two sentences, Hasford had tied the *Quock Walker Cases*, and abolition in Massachusetts, to the Articles of

⁵⁷ Ibid; Blanck reading of Hasford's petition seems flawed at this point, as she points out that Hasford refuses to even let the remaining Pawley slaves purchase their freedom. But Hasford says nothing of this. His petition simply states that slaves should not "be admitted to purchase their freedom, by the single Act of deserting the service of their Owners...", Blanck, *Tyrannicide*, 105.

⁵⁸ Ibid.

Confederation's protections of slavery in the new nation. Making the Pawley slaves into fugitives provided Hasford with a powerful argument against the actions and potential roadblocks put forth by Massachusetts.

Hasford's logic was this: The Articles of Confederation protected property rights, specific to this case slaves, across state lines. Just because someone's slaves were in another state did not mean they forfeited the rights to them. Furthermore, the Articles also included a fugitive slave clause, to make the protections allocated towards slavery even more explicit. Thus, fugitive slaves in Massachusetts could not simply be given freedom by their very presence in the state, and regardless of whether or the state's constitution "unimpowered" officials to recapture Massachusetts slaves, that did not apply to fugitives from South Carolina.

In a single petition, then, Hasford had made the matter of a handful of slaves a national issue. Just as Hasford's initial trouble with retrieving the Pawley slaves showed how much Massachusetts officials were abiding by the new interpretation of the 1780 constitution, it also illustrates how much southern enslavers, at least, understood the Articles of Confederation to be a proslavery instrument. Hasford did not pluck the idea of fugitive slaves, local sovereignty, and interstate comity out of nowhere. All were present in the Articles, and demonstrate a contemporary understanding of how some Americans thought that form of government protected the institution of slavery.

Hancock apparently took the initial matter seriously, and referred it to the Supreme Judicial Court for judgement. Seemingly at the same time he was submitting his petition, though, Hasford was able to gain the cooperation of a Boston sheriff, and had most of the remaining people placed in jail to be held. The first person at the Supreme Judicial Court to look over the matter was Charles Cushing, the court's clerk and younger brother to William Cushing. Charles

Cushing issued a writ of *habeas corpus* for Jack Phillips, specifically, though his writ makes it clear other slaves were already being held. He subsequently assigned the case to Thomas Craft, a local justice of the peace. On August 29th, Craft determined the imprisonment of the Pawley slaves was justified, considering “their own confession of leaving the service” of the Pawleys. He then ordered the jail keeper to take in the remaining Pawley slaves until they could be returned.⁵⁹

Craft’s ruling on the case must have been purposefully narrow considering the remaining Pawley slaves did not “leave” their enslavers so much as they were taken and never properly claimed for four years. The decision by Craft, however, was quickly challenged. It is likely the connections these people made in Boston saved them from being quickly, and quietly, taken out of the state. Given the fact that it is Affa Hall’s name which represents the collective case for these enslaved people, it may well have been her marriage into the Boston Black community which saved them.

Nonetheless, another set of writs of *habeas corpus* were issued by Charles Cushing on August 30th, requiring the Pawley slaves to be brought before the Supreme Judicial Court the next day. On September 1st, it was determined the warrant for each of the slaves’ arrest, was “insufficient,” and all the Pawley slaves who had been captured and jailed were discharged after each of their hearings. It should be noted, that of the original fourteen slaves owned by the Pawleys, only ten had been initially subject to these proceedings. No move seems to have been made to capture Robert and Hannah in Medford; it is quite possible Hasford and Winthrop

⁵⁹ Writ of Habeas Corpus, August 26, 1783, Records of the General Assembly, #55, SCDAH, Columbia, South Carolina; Thomas Craft to Jail Keeper, August 29, 1783, Records of the General Assembly, #55, SCDAH, Columbia, South Carolina; Thomas Craft to Jail Keeper, August 29, 1783, Governor’s Messages, 1783-1877, SCDAH, Series S165009, Message 0264, Page 00000, Record 21 of 25.

simply did not know where they were. Furthermore, two other people, Kate and George, apparently escaped capture before being jailed with the rest of the Pawley slaves.⁶⁰

The confusing back and forth aside, Hasford found himself in a similar situation he was in when originally petitioning Governor Hancock. At this point, however, things were much worse, as his right to take custody of the Pawley slaves, and return them to South Carolina, had been adjudicated on by the highest court in Massachusetts. In just over a week Hasford had arrived in Boston, been unable to take custody of the Pawley slaves, only to have his luck flipped around twice more. Hasford left Massachusetts empty handed, having made the trip to Boston essentially for nothing, and likely angered that the state had “emancipated” his family’s slaves.

Two days after Hasford’s failure, John Winthrop, who had presumably been assisting him during his stay in Boston, wrote to the Pawleys to express his own frustration with the situation. However, Winthrop was keen to point out the entire situation could have been avoided had the Pawleys either taken their slaves immediately, in 1779, when they were “quite willing to return,” or hadn’t only sent Hasford alone. Instead of following his advice to involve their state government from the start, Winthrop told them their only recourse was to do so now, with the hope that “a Spirited Remonstrance and Demand” might force the Massachusetts legislature to acquiesce in sending the slaves back, or at least paying their value.⁶¹

One suspects the latter comment, that the legislature would simply pay the value of the slaves to the Pawleys, wasn’t a serious possibility in Winthrop’s mind. After all, he had cautioned the Pawley brothers the attitude towards slavery had changed in Massachusetts, and he surely knew the legislature would never consider such a thing. In reality, while Winthrop was

⁶⁰ Habeas Corpus Hearing, September 1, 1783, Records of the General Assembly, #55, SCDAH, Columbia, South Carolina; Blanck, *Tyrannicide*, 107.

⁶¹ John Winthrop to Pawley Brothers, September 3, 1783, Records of the General Assembly, #55, SCDAH, Columbia, South Carolina.

likely sympathetic towards the Pawleys, he cared more about getting paid himself. The Pawleys had made the mistake to keep their slaves in Massachusetts for four years under his care. He told them he would have gladly assisted with their return in 1779 free of charge. Alas, he had “done all in my Power” to help. Now the Pawleys owed him over one hundred pounds.⁶²

Hasford and the Pawleys, however, did not give up. Upon his return to South Carolina, Hasford submitted a petition to the South Carolina legislature asking for their assistance. Here he laid out the case that Massachusetts had violated the Articles of Confederation. The slaves, “by laws of that State were Entitled to their Freedom,” resulting in the Pawleys being robbed of their property. The petition clearly indicates southerners not only thought the Articles protected slavery, but also bound the actions of the states. Such actions by Massachusetts were “contrary to the Spirit and subversive of the Intention and meaning of the Articles of the Confederation solemnly agreed to and adopted by the United States.” Furthermore, emancipating southerners’ slave would “inevitably tend to the certain ruin and Annihilation of the planting Interest, by holding out a Temptation to the Slaves to take refuge in the State of Massachusetts Bay.” The stakes were clear. Massachusetts would, by offering emancipation against the design of the nation’s government, become a haven for southern slaves.⁶³

The South Carolina legislature, adopting the same language as Hasford, instructed Governor Benjamin Guerard to immediately “remonstrate the government of Massachusetts on the illegal detention of the said Negroes contrary to the Articles of Confederation, and as a gross violation of the sovereignty and independence of this State.” Massachusetts was to restore the

⁶² Ibid.

⁶³ Petition of Samuel Hasford to the South Carolina Legislature, September 1783, Records of the General Assembly, #55, SCDAH, Columbia, South Carolina.

slaves, at their expense this time.⁶⁴ The legislature, in also seeing the actions of Massachusetts as a violation of the Articles, also added another layer, by claiming the state's "detention" of the slaves infringed on South Carolina's "sovereignty and independence."

State sovereignty was key to the Articles, as shown above. Any mention of the Article was made with the idea of the individual sovereignty of states at least implicitly in mind. But the South Carolina legislature made such ideas explicit. In doing so, they put forward what would become a common argument by southern states going forward: the protection of slavery necessitated a sacrifice of state sovereignty, but conversely any perceived attack on the institution was an infringement on the total sovereignty of the southern states.

Governor Guerard's letter to Governor Hancock would likewise lean heavily into the idea that Massachusetts's action on this matter would bound by the Articles of Confederation. Massachusetts, as Guerard pointed out, would "take high displeasure at such an attack on her spirit, freedom, dignity, independence & sovereignty." The present matter only worked towards "furnishing cause for mistrust & jealousies" between states which were "equally free, independent & sovereign." Repeating the language Hasford used in his own petition to Hancock nearly verbatim, Guerard went on to say that the southern states would face "the most fatal consequences," if slaves were emancipated simply for deserting their masters.⁶⁵

Going further, however, Guerard pointed out "that no one here entertained the most distant idea of an adoption of the kind from any State in the Federal union." Such actions were unbecoming of American states, and seemed more aligned with the "British Tyranny" of

⁶⁴ Adel Stanton Edwards, ed., *Journals of the Privy Council, 1783-1789* (Columbia: University of South Carolina Press, 1971), 82-83.

⁶⁵ Benjamin Guerard to John Hancock, October 6, 1783, Preston Davie Collection, #3406, Series 1, Folder 194, Manuscripts, 1560-1903 and undated, Southern Historical Collection, The Wilson Library, University of North Carolina – Chapel Hill,

encouraging slaves to abandon their masters. Of course, Guerard's comparison of Massachusetts to the British enticement to slaves held with it the simultaneously silent, but all too glaring, reminder that the British had also encouraged slaves to openly revolt against Americans. The comparison to insurrection supporting British tyrants would have been insulting enough without Guerard following up by saying these actions shows "a specimen of Puritanism" he wouldn't have expected from people of like status in Massachusetts.⁶⁶

His letter to Hancock ended with Guerard stating he was sure both states could come to a satisfactory conclusion. Guerard was sure Hancock would take the matter seriously, and show the Massachusetts legislature "the singularity, injustice, imprudence, impolicy & cruelty of the case," given this situation was "*toto calo* repugnant as well to the letter & spirit of all the Ordinances of Congress as the Federal Union."⁶⁷ Alliteration aside, Guerard's final statements here are interesting for what hints they give about his understanding of the Articles and their hold on the states.

The Confederation Congress, the only branch of government, was far from being powerful enough to actually compel states to do anything, a design flaw purposefully placed within the Articles. Unlike the government which would come after, the Articles government, and the Confederation Congress, were far from being above the states. At most, the Confederation Congress enjoyed a position adjacent to the states, in certain circumstances. Thus, making any sort of claim the Confederation Congress's actions bound the states was flimsy at best. This explains, for example, why Guerard, the South Carolina legislature, and Hasford relied almost exclusively on the idea of a federal compact between states, on the question of slavery.

⁶⁶ Ibid.

⁶⁷ Ibid.

But more than that, Guerard's wording illustrates his own understanding of this point. The use of the word "ordinances" is a small, but crucial clue. During this time period, an ordinance often referred to an "authoritative directive, decree, or command."⁶⁸ And while such a definition could also be attached to the word "law," the latter has characteristics that go beyond this. Law comes from a source of authority, whether that be something like a legislature or long held customs. Laws are seen and recognized as binding on all parties, in a way an ordinance is not.

In describing the actions of Congress, Guerard could have easily said Massachusetts violated the "letter & spirit of all the *laws* of Congress." But he did not. Such a statement would have placed the Congress and the Articles at a higher station than they occupied in the current nation; and higher place than southern enslavers would have conversely wanted. Guerard likely added this line on "ordinances" as a way to ground arguments of abstracts compacts and agreements between states. That it was a one-off statement, and not a major aspect of his argument, supports this. Even Guerard recognized that Congress, and by extension the Articles, had limited power in the nation, with little ability to bind the states. Congress and the Articles may have been the only entities Guerard could have called upon in his arguments, but that did not make either a particularly forceful threat to Massachusetts. If the late War for Independence had taught the states anything it was that forcing compliance with any part of the Articles, or the actions of Congress, was all but impossible for that body.

Governor Hancock received Guerard's letter and forwarded it to Chief Justice William Cushing, requesting an explanation for his decision. Responding to Hancock in December, Cushing's letter may have been addressed to the governor of Massachusetts, but it is clear he

⁶⁸ Oxford English Diction, "Ordinance, n."

knew it would make its way into Guerard's hands. His letter is noteworthy for several reasons. Perhaps most noteworthy, Cushing explicitly denied that the Pawley slaves had been emancipated. The question before the courts was not whether the slaves were free, but whether there was a "legal ground for their detention." The matter of "whether any person had a right to the service of those negroes, and might take them up," as Cushing pointed out, "was clearly a question the Court had nothing to do with."⁶⁹

At first it may appear that Cushing was sidestepping the entire issue of emancipation, and addressing the narrow legal grounds of whether Massachusetts law allowed, or required, the use and assistance of state resources for the capture of the Pawley slaves. And to a certain extent, this is certainly what Cushing was doing. But in focusing in on the legal question of detention itself, Cushing left in place the enslaved status of these people. He even subtly insulted the South Carolinians for not knowing how to properly recover their own slaves. As he pointed out, those who are obliged service need not involve a magistrate in recovering someone. Cushing did not know "why they were not carried off without the trouble of imprisoning" them.⁷⁰

Tacitly leaving intact the status of these slaves led logically to Cushing's next point: Massachusetts had not violated any "resolve or ordinance of Congress of the Confederation of the United States." As Cushing pointed out, Guerard could not even "point out any particular Ordinance, Article or clause" that Massachusetts had gone against.⁷¹ Knowing Guerard could not point to a single aspect of the Articles or acts of Congress that his state had violated, Cushing simply brushed off the governor's complaints.

⁶⁹ William Cushing to John Hancock, December 20, 1783, William Cushing Papers 1664-1814, Massachusetts Historical Society.

⁷⁰ Ibid.

⁷¹ Ibid.

Had Massachusetts actually emancipated the Pawley slaves, Guerard could no doubt have pointed to Article IV, and the fugitive slave clause, as being violated. For all the talk on the part of the South Carolinians, as Cushing pointed out their arguments were without any weight or substance. As he told Hancock, Guerard had “not been pleased to point out any particular Ordinance, Article or clause, that is counteracted,” by the state’s actions.⁷² While Massachusetts’s laws did not free these fugitive slaves, they also did not obligate the state to allocated resources towards the rendition of fugitive slaves. South Carolina may have argued the actions of Massachusetts went against their own sovereignty, but Cushing was keen to recognize in demanding certain actions of his state, southern enslavers would infringed on Massachusetts’s own sovereignty.

In much the same way Lord Mansfield saw, and decided, *Somerset’s Case* as a matter of sovereignty and local law, so too did Cushing with the *Affa Hall* affair. Cushing explicitly tied the enslaved status of these people with questions of how the Articles of Confederation operated in the nation. As he said, how a determination on the lawfulness of their detention was “an Attack on the spirit, freedom, dignity, independence, and sovereignty” of South Carolina was something he was “unable to conceive.”⁷³ Cushing then put the burden on Guerard to point out how him deciding to release the fugitive-made slaves from their detention ran counter to the Articles. Given he could not, Cushing had successfully tied their status, and Massachusetts’ ability to make judgment on their status, to the larger framework of American governance at the time. He had made, in a sense, a pseudo-*Somerset* opinion by stating the Articles could not bind Massachusetts actions in every regard; in this case forcing the state to expend resources in aid of fugitive slave rendition.

⁷² Ibid.

⁷³ Ibid.

Unlike *Somerset*, though, Cushing did not have to balance a conflict-of-laws decision with leaving slavery unaffected. Cushing explicitly stated the Pawley slaves were still slaves, and thus limited the very sort of interpretations Guerard said could come about; i.e. Massachusetts would become a free territory enslaved people could escape to in order to claim freedom. Cushing's chief concern, as was Mansfield's in *Somerset*, was protecting the supremacy of local law against distant, foreign, law.

Cushing, however, was not attempting to dismantle the Union, or the Articles. Using the same words as Guerard, and underlining them no less, was certainly yet another effort by Cushing to prod the South Carolinian. And as if unable to help himself, Cushing finished his letter to Hancock by reiterating the importance of the "Union of the States." But only after he made sure to take notice of Guerard's comment on puritanism. In Cushing mind, "any connection with, or relation to Puritanism" was, in his humble opinion, "above [Hancock's] Comprehension, as it certainly is above Ours."⁷⁴

Schoolyard insults aside, Cushing's arguments had important implication for the legacy of the *Quock Walker Cases* in both his own state and the nation itself. Cushing's judicial reasoning for Massachusetts's actions essentially limited the scope of the *Quock Walker Cases* and abolition in the state. While he may have been relying on the same antislavery principles of those cases to justify the state's decision, he nonetheless stopped short; whereas the constitution had, in Cushing's own words, barred slavery in the state, he nonetheless recognized the enslaved status of these people. Thus, the Pawley slaves found themselves outside the bounds of the state's antislavery commitments. The question begs then: How could Cushing come to two decisions seemingly so diametrically opposed just months apart?

⁷⁴ Ibid.

Cushing's letter to Hancock is short of any real details behind his thinking. As a result, we are left to speculate about why Cushing sought the course he did. Possibly the simplest explanation is that formally freeing the Pawley slaves was simply too much trouble. After all, doing so could have left the state open to actual violations of Article IV and the fugitive slave clause of the Articles. Such violations wouldn't have caused any real consequences for Massachusetts, but it would have made the current interstate controversy even more of a diplomatic annoyance.

Yet, there is another answer, far more subtle, and less visible, which could explain Cushing's reasoning. Samuel Hasford, in his petition to the South Carolina legislature, warned the actions of Massachusetts were equal to "holding out a Temptation to the Slaves to take refuge" there. John Winthrop said the same thing in his letter to the Pawleys. In the current decision, seemingly freeing the Pawley slaves, stood, he was "afraid that all the Negroes from the Southern States will pour in upon us like a Torrent."⁷⁵ The entire situation presented the possibility that southern slaves would attempt to escape to Massachusetts in search of their freedom. Such a fate was unattractive to both South Carolinians and the people of Massachusetts; this likely included Cushing himself as well.

If the United States was to be a land of freedom, without slavery, what then was the nation to make of its former slaves? All too often, calls for the end of slavery were not followed by extending the principles of equality to free(d) Black people. But more than that, as the north gradually started to end slavery, white Americans in the region became increasingly hostile towards the free(d) Black population. As will be discussed in further detail in the next chapter, this process was instrumental in denying Black Americans citizenship in the nation, even as

⁷⁵ Petition of Samuel Hasford, September 1783, SCDAH; John Winthrop to the Pawley Brothers, September 3, 1783, SCDAH.

more and more Americans came to support ending slavery. Increasingly ending slavery was also predicated on excluding Black Americans from the body politic and community.

In Massachusetts, this process began in earnest following the “end” of slavery with the *Quock Walker Cases*. As Kunal M. Parker has shown, the abolition of slavery in Massachusetts was followed by a sustained and systemic effort by towns and cities to reshape the state’s poor laws to “make blacks foreigners.” Poor laws were a form of financial assistance, essentially a pre-modern form of welfare, that had long roots in Anglo-American law and culture. To take advantage of poor laws, however, a person had to be considered a “resident” of a town or city, which was done through meeting any number of various qualifications. Residency was a way of policing outsiders, or “strangers,” so that wandering vagrants and vagabonds could not simply come into a town or city and make use of their poor laws. Well into the 19th Century, New England towns and cities continually “warned” strangers, which involved notifying non-residents with no legitimate reason for being there to leave. It was not uncommon at all for town and cities to literally escort strangers out of their borders, or even to the place of their actual or supposed residence.⁷⁶

In the case of free(d) Black people in Massachusetts, following the *Quock Walker Cases*, towns and cities began to assign a foreign residency to the Black poor, designating their place of residency as “Africa.” This would be done without regard to the actual place of birth for Black people, or where they actually lived. By doing this, Massachusetts town and cities were able to

⁷⁶ Kunal M. Parker, “Making Blacks Foreigners: The Legal Construction of Former Slaves in Post-Revolutionary Massachusetts,” *Utah Law Review* no. 75, (2001): 75-124; For more on poor laws, residency, strangers, and warning, see Cornelia H. Dayton and Sharon V. Salinger, *Robert Love’s Warning: Searching for Strangers in Colonial Boston* (Philadelphia: University of Pennsylvania Press, 2014); Kristin O’Brassill-Kulfan, *Vagrants and Vagabonds: Poverty and Mobility in the Early American Republic* (New York: New York University Press, 2019); Hidetaka Hirota, *Expelling the Poor: Atlantic Seaboard States and the Nineteenth-Century Origins of American Immigration Policy* (New York: Oxford University Press, 2017).

systemically exclude Black people from access to local resources.⁷⁷ Yet, the financial implications of this practice were largely a byproduct of the underlying reasons for doing this. As will be explored in more detail in the next chapter, this was done as a way of excluding the states newly freed, and existing free, Black population from the community. Painting Massachusetts Black people as literally “foreign” acted to limit the societal impact of emancipation.

This broader impulse in Massachusetts must be considered when trying to explain Cushing’s judicial reasoning. Cushing’s acceptance of the Pawley’s slave’s enslavement, then, was consistent with the larger impulse by white Massachusetts residents to exclude free(d) Black people from their society. Massachusetts slave may have needed to be emancipated, but that did not mean they had to be incorporated into the body politic. And in this case, slaves from outside the state need not be emancipated at all. They could be excluded from the community and still be technically slaves. If the Pawley slaves were not granted their freedom, then perhaps Massachusetts could avoid the fate Hasford, Winthrop, and others feared: a wave of slaves crashing over the maritime state.

It should also be noted that Cushing, like many white residents of Massachusetts, likely did not oppose slavery purely for humanitarian reasons. Instead, many did not like the presence of Black people in the state, and for lower class people, the possible economic competition slaves, or low paid Black worker, presented. Cushing had been an enslaver himself, and even found himself in an eerily similar situation to Jennison. Sometime before 1779, Cushing had promised to free his slave, Peter Warden, but outright refused to honor the agreement when the time came. Warden wasn’t freed until August of 1779, and it took an intervention by the Massachusetts Attorney General, Robert Treat Paine, to force Cushing’s hand. Warning Cushing

⁷⁷ Parker, “Making Blacks Foreigners,” 75-124.

that he had to free Warden within a week, Paine notified him if he did not a case would be called during the next session to determine Warden's status.⁷⁸ Cushing seems to have finally acquiesced, but the small affair illustrates that the Chief Justice almost certainly fell in with white Massachusetts residents who abhorred slavery while disliking the presence of free(d) Black people.

It might be asked, then, why not simply return the Pawley slaves, in much the same way the state had willingly done so with the rest of the people brought to Boston years earlier. Because Cushing provides scant details on his own legal reasoning, there are several plausible reasons that can be drawn looking back. First, even as white Massachusetts residents didn't want to fully incorporate free Black people into the body politic, there nonetheless was a palpable change towards the slavery in the intervening years. It is possible lending state support towards fugitive slave rendition would have been seen as inconsistent with the state's new stance on slavery.

More likely, however, is that Cushing was simply forced into this decision once an application for a writ of *habeas corpus* was made. In much the same way Mansfield was all but destined to rule in favor of Somerset for legal and constitutional reasons once the matter was brought to him, so too was Cushing. The difference being, however, that Cushing did not have to tailor an opinion to keep slavery unaffected in the state or country, in the same way Mansfield did for the empire. Because slavery was inconsistent with Massachusetts' constitution, Cushing may well have reasoned the use of state resources in fugitive slave rendition was equally inapplicable. Thus, Cushing not only withheld those resources, but also made sure to point out the remaining Pawley slaves were still enslaved; the Pawley's would simply have to recapture

⁷⁸ A. Leon Higginbotham, Jr., *In the Matter of Color: Race and the American Legal Press, The Colonial Period* (New York: Oxford University Press, 1978), 95.

them themselves, thus leaving Cushing, and the state of Massachusetts, out of the affair and slavery. This would explain how Cushing could come to a decision to discharge these people from being confined, while also explicitly stating they were still enslaved and subject to recapture.

If Cushing's actions solidified the continuing enslavement of the Pawley slaves, just what did this mean for them? We know nothing of what they thought of the entire situation. But it is likely they attempted to return to their former lives, and continue living as nominally free people. Though from that day on they essentially occupied a gray area. Without access to state resources, it was unlikely the Pawleys would be able to recapture all the slaves themselves. Recapturing just one slave, states away, could prove difficult for many enslavers. Being able to capture the eight who remained in Boston, along with Hannah and Robert in Medford, would have proved exceedingly difficult.

Thus, the Pawley slaves could live their lives with some level of confidence that they would be safe. But they likely never completely free of the fear of capture. And even if they lived essentially free lives, the very racial attitudes which undergirded Cushing's reasoning meant that they, like other Black people in the state, would deal with constant discrimination, unequal opportunities, and outright racism in their lives. Other Black people in the Massachusetts were calling out the state's white residents for just these things during this same general time period.

In 1777, Prince Hall, the abolitionists not Affa Hall's husband, submitted a petition to the Massachusetts legislature asking that body to uphold the very revolutionary ideals they espoused. Doing so required the legislature to pass a law instituting a gradual abolition of slavery in the state. Yet, even as slavery seemed to come to an end in 1783, little changed for most Black

people in the state. By 1787, Prince Hall joined another petition asking for the legislature to allocate funds for the emigration of the state's Black population to Africa. The petitioners had thought their condition would have improved after the adoption of the 1780 constitution, but it was clear their "very disagreeable and disadvantageous circumstances" would never cease "so long as we and our children live in America."⁷⁹

In ten years, nothing had gotten better, and the prospect of future improvements for Black Americans looked bleak. These petitioners are just one example of how Black Americans saw emancipation in Boston. While certainly an improvement over the presence of slavery, abolition in the state did not bring equality. And if anything, racism and discrimination would continue to grow in the state, and region, as slavery was done away with. The petitioners make it clear they expected the end of slavery in Massachusetts would be accompanied by progress, not a backslide or continuation of the status quo, when it came to race relations. Yet, as they saw it, free Black people stood no better than they had a decade earlier.

While Cushing's final say on the matter might have solidified the roadblocks to their enslavement, but it did not eliminate the possibility. Thus, their enslavement continued, and the threat of recapture loomed over the heads. In much the same way Hasford turned the Pawley slaves into *fugitive* slaves, Cushing too made fugitives out of them. His reasoning, then, excluded these people from the emancipatory possibilities he, himself, was set on introducing into the state.

Furthermore, it should be remembered that the Pawley slaves were present in the state both before and after the state's new constitution was adopted. Thus, in making fugitive slaves of

⁷⁹ 1777 Petition, Massachusetts Anti-Slavery and Anti-Segregation Petitions, MAC, Vol. .212, Revolution Resolves, SC1/Series 45X, Boston, Massachusetts; 1787 Petition, Massachusetts Anti-Slavery and Anti-Segregation Petitions, House Unpassed Legislation, Docket 2358, SC1/Series 230, Boston, Massachusetts.

them, Cushing explicitly excluded them from the constitution he saw as barring slavery. It might be said that Cushing, in explaining away the *Affa Hall* affair, was simply sticking to the narrow facts of the case, and wished to not go beyond the confines of the law. Yet, in the *Quock Walker Cases* he refused to do just this. He instructed the jury the facts of that case literally did not matter. Only the antislavery interpretation of the new constitution did.

The only thing which could have possibly stopped Cushing from including these slaves within the state's constitution was the Articles of Confederation itself. The Articles' Privileges and Immunities Clause and fugitive slave clause could have, in theory, bound Cushing towards recognizing their slave status. Yet, Cushing did not base his tacit recognition of these slaves' status on the Articles. In reality, just as South Carolinians sought to protect their states sovereignty, so did Cushing. He explicitly denied Guerard's assertions that the Articles bound the state. Protecting his state's sovereignty was far more important than protecting these slaves from the possibility of recapture. Thus, Cushing based his understanding of their status not on any binding effects of the Articles, but on his own state's decision to simply not legally free them.

The *Affa Hall* affair was the exact sort of scenario Thomas Burke feared in 1777. When he denounced the Article's Privileges and Immunities Clause, he feared the inhabitants of one state found their way into another state would have had access to the rights of citizens of that state. And had that happened, the fuller implication of *Somerset* would apply in the United States. Yet, no such thing would happen in Massachusetts. Cushing's decision could not be interpreted, as *Somerset* would be by some, to have ended slavery. In part because slavery had already ended in the state, Cushing's only job in *Affa Hall* was to protect Massachusetts

sovereignty, which he did at the expense of the remaining Pawley slaves. True, they were not taken back to South Carolina. But they were still, explicitly, slaves.

What mattered, and would increasingly matter for enslavers, was how Massachusetts had refused to lend support towards these people's recapture. This would become a national issue in the 19th Century, but at the time, it illustrated how the Articles, despite the best efforts of some, would not and could not adequately protect slavery. Massachusetts would certainly not become a haven for enslaved people in the way Guerard and other South Carolinians feared. Cushing and other white residents certainly were not attempted to create a free state where the enslaved masses could seek refuge. But what he had accomplished was protecting Massachusetts' ability to police and legislate for itself, and not follow the whims of other states.

[VII]

Nonetheless, the entire *Affa Hall* affair illustrated several salient facts. First, even if a *Somerset* principle could not necessarily be established, in this case and at this time, the Articles of Confederation were nonetheless incapable of adequately protecting slavery. Second, as much as some white people in Massachusetts might have wanted to end slavery, that movement had its limits. Both facts would influence the nation, even if the *Affa Hall* affair remains a little-known incident in Massachusetts history. The creation of the Constitution was, in large measure, crafted because of the numerous failures of the Articles. And the development of U.S. citizenship under the Constitution would also be influenced by the Articles' own confusion over this status as well. Both developments will be explored in the next chapter.

But drawing a line from the *Affa Hall* affair to the U.S. Constitution itself would admittedly seem difficult at first glance. After all, while slavery was a topic of extensive debate

during the crafting of the Constitution, much more than it was during the Articles, the *Affa Hall* situation was seemingly never brought up by name. However, there is a strong connection between the case and the Constitution in the form of a single man: John Rutledge.

John Rutledge was governor of South Carolina during the initial episode of the *Affa Hall* affair, and presumably assisted in setting up the initial retrieval. Yet, he was also involved in latter half of this event, when it became an interstate controversy. When Governor Guerard received a letter from Governor Hancock, with Cushing's response enclosed, he was likely displeased, to say the least. The legislature was certainly unhappy with the response, and charged a committee with recommending possible solutions on February 20th, 1784. Days later, Governor Guerard submitted to the committee all relevant communications he had on the topic. On that committee was none other than John Rutledge himself.⁸⁰

Rutledge had recently been re-elected to the House of Representatives, after serving a brief tenure in the Confederation Congress. One suspects his inclusion within the committee on the Pawley slaves was not happenstance. After all, Rutledge had been South Carolina's first stateside point of contact. While he was not, as far as we know, involved in the latter half of the *Affa Hall* affair, he would have presumably been quite familiar with the beginnings of the entire situation. Thus, Rutledge would have been a natural choice. Not only did he have prior knowledge of the incident, but he had also been the state's governor. Thus, for a committee charged with coming up with possible solutions, having someone with his knowledge would have been very useful, and his experience as governor would likely help considering Governor Guerard would likely need to continue representing the state in this contest.

⁸⁰ Theodora J. Thompson, ed., *Journal of the House of Representatives, 1783-1784* (Columbia: University of South Carolina Press, 1977), 474, 498.

Seven days later February 27th their recommendations were submitted to the legislature. The only recourse suggested was to have the state's representatives in the Confederation Congress bring the matter before that body, and ask for an intervention on behalf of Hasford, the Pawleys, and "other persons alluded to in the petition." What other persons were "alluded to" is not clear. It is possible, since the petition on the matter was done by Hasford, that those people were the Pawley brothers themselves.⁸¹

While this was the only route available to South Carolina, it was nonetheless far from ideal. Article IX of the Articles of Confederation set up a the sole, and clunky, process for resolving disputes between the states. Under Article IX, a state could present a petition to Congress asking for relief on a dispute with one or more other states. At that point, Congress would issue notice to the other states' legislature or executive, and a day would be given where representatives for all parties would come together and appoint "commissioners or judges to constitute a court" to hear the matter. If they couldn't agree, Congress would appoint three representatives from each state of the Union, with each state alternating between the other in striking off candidates until only thirteen remained. At that point lots would be drawn for seven-to-nine of those people, at which point at least five would be needed to be judges. After arguments were heard this panel of judges would issue a final ruling.⁸²

The process was extremely cumbersome, and during the entire time of the Confederation it was only utilized once; in a land dispute between Pennsylvania and Connecticut, which was finally decided in 1782.⁸³ Outside of the process being a last resort, by definition, most states simply did not feel the need to take advantage of Article IX. In a nation where Congress lacked

⁸¹ Ibid, 507.

⁸² Articles of Confederation, Article IX.

⁸³ For more on this matter, see Robert J. Taylor, "The Trial at Trenton," *William and Mary Quarterly* 26, No. 4 (October 1969): 521-547.

real authority over the states, disputes between any number of states was often settled between those parties. Or, in more cases than not, simply not settled. In any case, while the committee may have recommended the state take this course, they surely knew it would be anything but ideal.

It is not clear, however, whether the state of South Carolina even pursued this route fully. It seems Governor Guerard sent another letter to Governor Hancock after their initial correspondence. On March 25th, 1784, the committee reported again to the House, stating that it seemed inclement weather may have been to blame for the lack of a reply from Hancock. Given that, it was best to delay any further investigations on the subject. That being said, the committee went on to state the “matter [was] of so much Consequence to the Interest of this and the Southern States” that it should not be ignored, and should be brought before the House again.⁸⁴

Between March of 1784 and January of 1785, Governor Guerard finally received a reply from his counterpart in Massachusetts. The letter itself is not detailed in his report to the House of Representatives. However, according to Guerard, Massachusetts simply was not interested in the “solid Harmony which should Subsist between the States of the Union.” Massachusetts seemed equally unwilling to assist South Carolina with the return of the Pawley slaves, even though the South Carolina legislature surely “would instantly have Ordered a restitution of the Negroes to their Owners.” Guerard ended his letter to the House by stating “the footing upon which this business rest, may materially injure individuals of Our Country, and the Country herself eventually.”⁸⁵

⁸⁴ Ibid, 616.

⁸⁵ Lark Emerson Adams, ed., *Journals of the House of Representatives, 1785-1786* (Columbia: University of South Carolina Press, 1977), 15.

The final words of Guerard on the matter summarize South Carolina and the South's general attitudes towards slavery during the Constitutional Convention in 1787. And while the *Affa Hall* affair did not apparently come up by name during debates, John Rutledge's very presence there links the event to the very creation of the Constitution. Throughout the Convention, Rutledge, his South Carolina colleagues, and other delegates from the South would vigorously fight to protect and expand the institution of slavery.

The Constitution would do much more than that. Just as the Articles of Confederation tied race and slavery to citizenship in the nation, so too would the Constitution. The difference was, however, that the Constitution did this much more efficiently. In protecting fugitive slavery and making the Privileges and Immunities Clause much more succinct and clearer, slavery and citizenship would be on a much steadier foundation under the new form of government. This would have been impossible had the Articles not proved to be utterly inept at structuring, securing, and holding together a nation. And while the *Affa Hall* affair was but a blip in the long line of failures by the Articles, the threats to slavery nonetheless led to the creation of the Constitution.

Chapter Three
“But not citizens”
The Racial Boundaries of Citizenship Under the Constitution

[1]

In 1789, David Ramsay was in the midst of not so quietly sulking over his loss to William Loughton Smith. The South Carolinian historian and politician had hoped to win a seat in the new United States House of Representatives. In an attempt to disqualify Smith, Ramsay petitioned the House in May, and asked the body to reject Smith’s election as invalid. His reasoning was quite simple: Smith, who had been born in South Carolina, had not been a citizen for the requisite seven years, as laid out by the new Constitution, because he has left the nation during the Revolutionary War. In support of this position, Ramsay wrote and disseminated a short pamphlet, entitled *A Dissertation on the Manner of Acquiring the Character and Privileges of a Citizen of the United States*, the first work to tackle just what a citizen was and who could claim the status in the still young nation. His short pamphlet dealt almost exclusively with qualification for citizenship, and didn’t touch on the rights or privileges of citizens. Though, on the first page, he made an important, though passing, claim. One that many of his white contemporaries would have likely agreed on: “Negroes are inhabitants, but not citizens.”¹

Ramsay’s pamphlet was not focused on Black American’s citizenship claims. He never mentioned Black people in it. Their place within the nation was quite literally simply an example to illustrate what citizenship actually was and who could claim it. That Ramsay felt no need to defend, or even explain, the statement illustrates how much he thought it inconsequential;

¹ David Ramsay, *A Dissertation on the Manners of Acquiring the Character and Privileges of a Citizens of the United States* (1789), 3.

common knowledge. The short sentence represents one of the few times anyone, during this period, actually came out and said what most knew, because stating what many thought obvious was not needed. The question begs though: Why might have many white American simply assume Black Americans were not citizenship?

Answering this question requires exploring several topics. Its first important to understand the evolution of citizenship from its creation in the midst of the American Revolution to its transformation under the Constitution. The shift in what citizenship was from the Articles of Confederation to the Constitution illustrates not just larger changes in the nation, but also in the relationship between status, race, and slavery. Thus, examining racial attitudes during this period is also important. If many white Americans were tying race and slavery to citizenship, but not making these connections explicit, then it becomes incumbent to get an idea of what someone might generally think about Black people. In this way, commonly held ideas and assumptions, that need not be restated constantly, or tied to newer ideas, like citizenship, have to be understood.

Getting at these ideas help tie the concrete changes in citizenship to the more abstract notions of race during this time period to illustrate how citizenship was seen as an exclusionary status in reference to Black people. By restricting U.S. citizenship to themselves, most white Americans attempted to carve out a uniquely national status for the time, while also working towards maintaining and further reifying racial boundaries.

[II]

The Constitution did little that the Articles had not attempted to do before it in relation to slavery. As shown in the previous chapter, the Articles attempted to protect slavery, but did so in

the clunkiest way possible; a route which also muddled the distinctions between various statuses in the nation. Unlike its predecessor, however, the Constitution wasn't shackled by a federal system almost completely tilted in the favor of individual states. Instead, the Constitution's and new government's federal structure was more evenly split between the states and a new, centralized, national government. As a result, even though many aspects of the Articles were incorporated into the Constitution, the way citizenship operated was radically changed as it went from a decentralized status revolving around individual states to a national one which incorporated, and at times subsumed, state citizenship.

Crafting the Constitution, or at least what became the Constitution, was a project more than a decade in the making. Before the ink was dry with the Articles of Confederation many, Americans understood the nation would never properly operate and could never thrive with thirteen individual states at the reins. This was particularly true of anyone involved in the war effort who had to deal with each state all but ignoring the pleas of the Continental-turned-Confederation Congress for supplies, money, etc. Alexander Hamilton, writing under the pseudonym of "The Continentalist," implored his fellow Americans to support amending the Articles almost as soon as they were officially ratified. Hamilton called for strengthening the government, investing actual powers in it, such as the ability to meaningfully tax and regulate trade.

Throughout the early-to-mid 1780s, many Americans became increasingly frustrated with how the Articles worked, or didn't work, in practice. As the war came to its conclusion, the faulty foundations of the Articles became clearer, as the *Affa Hall* Affair illustrates with slavery. More than slavery, however, the Articles government simply was not robust enough to adequately manage a nation. The nation's economy was in shambles, and without a strong

national government to represent the country on the world stage, thirteen states now began to fight amongst themselves for the best economic position. The Confederation Congress was essentially powerless to enforce what meager powers it did process, as there was no system built into the Articles to coerce state action. And to make matters worse, it was virtually impossible to fix any structural problems because the Articles required unanimous agreement among the states to amend the document; a virtually impossible threshold to meet.

As problems mounted for the young nation, a movement among some politicians began to take hold to amend the Articles in an effort to strengthen them and the nation. After repeated failures to call and hold a meeting of state representatives for this task, in September of 1786, delegates in the Confederation Congress were able to have the body pass an endorsement for a national convention to amend the Articles. The meeting would begin in May of the next year, in Philadelphia, and would become known as the Constitutional Convention.

Very quickly, the Convention scrapped the mandate, from both the Confederation Congress and many states, to simply propose amendments to the Articles. Instead, the delegates would spend the entire summer in Philadelphia debating, creating, and finalizing plans for a new form of government under the Constitution. The Constitution put forth the framework for a new national government that was far more centralized, possessed a robust set of powers, and was, in design, “the supreme Law of the Land.”

While it had better enforcement mechanisms and greater clarity, many parts of the Constitution were holdovers from the Articles of Confederation. In particular, citizenship was presented in a similar fashion in the Constitution, however what differences existed fundamentally altered the status. While citizenship was mentioned just once in the Articles, it was present eleven times in the Constitution; though mostly as a qualifying status for certain

actions or offices. It was in the Privileges and Immunities Clause of Article IV where, like the Articles, citizenship's meaning was located.

As with other aspects of the Constitution, the Privileges and Immunities Clause was not just borrowed language from the Articles, but a simplified and streamlined version. Unlike the Articles, the Constitution did not mix and match various statuses, like citizen, inhabitant, and resident. Instead, it used one status, and read: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."² This straightforward version, combined with the overall structure and purpose of both the Constitution and this specific clause, meant citizenship would take on a new, truly national, identity.

There was little debate during the Convention about this clause. As was the case before, the status seems to have been used without much thought. However, this does not mean the crafters of the Constitution did not recognize the shift the status would take under the new form of government. Rufus King of Massachusetts pointed out, "every man will possess a double character, that of a citizen of the U.S. and of a citizen of an individual state." James Madison, in speaking about the possible opinion of the people on the new national government, asked his fellow delegates if "a citizen of *Delaware* [would] be degraded by becoming a citizen of the *United States*?" Days later, while still speaking on the nature of a truly national government, Madison stated "a citizen of Delaware was not more free than a citizen of Virginia; nor would either be more free than a citizen of America."³

Such comments illustrate the understanding among delegates that creating a centralized national government would fundamentally alter how citizenship operated in the country.

² Constitution, Article IV, Section, Section 2.

³ Max Farrand, ed., *The Records of the Federal Convention of 1787*, Vol. 1 (New Haven: Yale University Press, 1911), 416, 253, 357-358.

Madison further elaborated on these changes to citizenship in Federalist 42, when covering rules of naturalization currently in place across the country. While describing the current state of citizenship under the Articles, Madison essentially repeated Thomas Burke's initial criticism of the Privileges and Immunities Clause's wording. Drawing his readers attention to the wording of that clause, Madison stated it was "mere casualty, that very serious embarrassments on this subject have been hitherto escaped." As he described essentially the exact scenario Burke had put forth a decade earlier, Madison went on to say "whatever the legal consequences might have been, other consequences would probably have resulted, of too serious a nature not to be provided against."⁴

What consequences was Madison alluding to? To answer this question, we must first consider one of the core functions of the Privileges and Immunities Clause, in both the Articles and Constitution: To facilitate and grow a national economy by protecting economic liberty. The Articles were incapable of doing this because it could not stop individual states from taking certain actions which ran counter to this goal, such as imposing tariffs on their neighbors. Furthermore, they could not properly protect, or even adequately state, a necessary right needed by people in an economy: a right to movement or travel.⁵

Movement is essential to any economy. After all, people must move from place to place, and move their products from one location to another, to properly facilitate a large scale, nation sized, economy. The Articles provided "the people of each state shall have free ingress and regress to and from any other state." However, without the backing of a proper government, this

⁴ Publius, "Federalists 42," *The Federalists Papers* (New York: Signet Classic, 2003).

⁵ The Articles attempted to facilitate the creation of a national economy by safeguarding the rights of states' to pass laws dealing with trade, imports, exports, etc. However, states simply began passing laws that placed their own local economy above their neighbors. The Constitution, however, abandoned this approach, by focusing on individual's rights to move, and conduct commerce, across the nation, and protecting that right.

was, as with most things in the Articles, more of a suggestion than a right. Furthermore, by mixing and matching various statuses, the Articles Privileges and Immunities Clause made it exceedingly confusing to know who had a right to movement and what their rights were outside their state of residence. The Constitution simplified this by simply stating citizens had a right to movement, and their rights would be the same in any state. Though it failed to mention, implicitly or explicitly, what those other privileges and immunities would be. And in doing so, it made national citizenship into a status which would exist alongside, and supersede at times, state citizenship. This newly national version of citizenship had no real drawbacks, in theory, and only worked to protect unspecified rights across borders.

Madison's comments about Delaware and Virginia illustrate how much this change was evident to the crafters of the Constitution, once the future existence of a new national government was accepted. His reasons for comparing the relative freedom of neighboring states would have been all but mute under the Articles of Confederation, where the freedom of state citizens simply depended on the state in which they were located. Under the Constitution, however, Madison made the point that not only would the citizens of smaller states like Delaware enjoy the same freedom as the citizens of larger states like Virginia, because each state would still retain some of their sovereignty, but these people would also have their liberties protected on account of their newly found U.S. citizenship; a status which would ensure their ability to enjoy the same level of freedom no matter where they traveled.

If this right to free travel implicit in citizenship is considered along with race and slavery, then it is possible to understand just what consequences Madison was referring to in Federalist 42. The Articles attempted to create a nation where people could freely move, but its language left open the possibility that such a right could be claimed by, as Madison pointed out, three

different classes of people: free inhabitants, free citizens, and people generally. What would happen, then, if a Black Philadelphian traveled across the border to Virginia, and claimed the rights of a Virginia citizen? If this person was considered a citizen in Pennsylvania they could claim the rights of Virginia citizens.⁶ Furthermore, while the Articles version the Privileges and Immunities Clause included a version of a fugitive slave clause, just what would happen if a runaway made their way from South Carolina to Massachusetts, given freedom, and access to citizenship in the latter state. If this fugitive slave returned to South Carolina, would they still be enslaved, or would have they access to the same rights as free white South Carolinians on account of their citizenship status in Massachusetts. The hypothetical might seem far-fetched, it is not far off from what South Carolinians believed was happening in the *Affa Hall* Affair, and Madison was certainly hinting at this exact type of scenario. With state's retaining so much of their sovereignty, would slave states be able to effectively thwart the *Somerset* principle, analyzed in the first chapter, from happening in America between the states?

Additionally, Madison's attempt to use national citizenship to dispel the fears of smaller states must be considered in light of his overall strategic shift during the Convention. As Mary Sarah Bilder has shown, when Madison could not quash smaller states' campaign for equal representation, he switched his strategies and attempted to convince others that the principal difference between states was not size or population, but the existence of slavery.⁷ At that point Madison declared the true line of demarcation between "Northern and Southern States. The institution of slavery & its consequences formed the line of discrimination."⁸ In his initial

⁶ It is important to understand in this example, a person crossing state lines wouldn't be claiming to be a citizen of the second state, but simply claiming the rights of that state's citizens. The distinction here being that they would keep the citizenship status of their home state only, but that would still give them access to rights in another state.

⁷ Mary Sarah Bilder, *Madison's Hand: Revising the Constitutional Convention* (Cambridge: Harvard University Press, 2015), 108-115.

⁸ Max Farrand, ed., *The Records of the Federal Convention of 1787*, Vol. II (New Haven: Yale University Press, 1911), 10.

strategy, then, Madison tried assuring smaller states their citizens would be fine with proportional representation, even if it meant their states had less power, because they would, *as individuals*, still enjoy their freedom and liberties as U.S. citizens.

Citizenship, then, was an olive branch from Madison. Small states had nothing to fear under the new model of citizenship because their citizens would enjoy the same rights everywhere. However, smaller states still refused to drop their resistance, at which point Madison shifted to stoking fears over slavery among all slaveholding state representatives, to form a new coalition at the Convention. With his initial strategy failing, Madison fell back on reminding his southern colleagues how the Articles of Confederation could not protect slavery; the Articles which left open the “embarrassing” possibility of Black Americans, free or enslaved, claiming the same rights of citizens.

[III]

If freedom of movement was an essential aspect of citizenship in the new country, then movement also haunted the thoughts of many white Americans. They worried about Black bodies on the move, especially fugitive slaves. Unsupervised. Uncontrollable. Dangerous. Such were the fears of many white Virginians in the fall of 1785. The state’s legislature was inundated with a wave of petitions. Following a near universal script, they warned the General Assembly of “the Horrors of all the Rapes, Murders, and Outrages, [of] a vast Multitude of unprincipled, unpropertied, revengeful, and remorseless Banditti.” The state would soon face an “inevitable Bankruptcy” and a “Breach of the public Faith, and Loss of Credit with Foreign Nations.”

Without quick action, there would be a “sure and final Ruin to this flourishing free and happy Country.”⁹

Many white Virginians were simply panicking over the mere thought of abolition, after Methodists had petitioned the government to consider gradual emancipation. The petitions may have been soundly defeated, but their simple existence was enough to scare many in the state.¹⁰ The response to the very idea of abolition in the state, and an even larger free Black population is just one example of racial attitudes important to understanding why Black Americans were thought of as outside citizenship.

This section examines how and why petitions like these, and a host of other material, are pertinent to understanding citizenship. It looks at three separate, but deeply interrelated, anti-Black ideas during this period: Black foreignness, Black Americans as internal enemies, and white superiority. These widely prevalent, though at times not explicit, ideas were instrumental for white Americans as they put a symbolic, and eventual legal and constitutional, value on citizenship. Seeing how white Americans used and spoke of these topics is crucial for understanding citizenship, because for Black Americans to be counted as citizens, they first had to be seen as members of the nation. In short, as a part of the body politic, as opposed to subject to it.

On a basic level, however, white Americans found it exceedingly difficult to fully incorporate both free and enslaved Black Americans into the body politic at any level besides subjugation. This is not to say there were not those who opposed slavery. Or even those who did

⁹ Mecklenberg County Petition, November 8, 1785, Amelia County Petition, November 10, 1785, and Pittsylvania County Petition, November 10, 1785 in Fredrika Teute Schmidt and Barbara Ripel Wilhelm, “Early Proslavery Petitions in Virginia,” *The William and Mary Quarterly* 30, No. 1 (January 1973), 139-140.

¹⁰ For more on these petitions, see Schmidt and Wilhelm, “Early Proslavery Petitions in Virginia;” and Eva Sheppard Wolf, *Race and Liberty in the New Nation: Emancipation in Virginia from the Revolution to Nat Turner’s Rebellion* (Baton Rouge: Louisiana State University Press, 2009).

call for extending civil, political, and social rights to Black Americans. The former enjoyed a larger, though still relatively small, presence in the nation. The latter group, by contrast, was even smaller.

What many white Americans could agree on, though, was that Black people fell outside the confines of citizenship; they were not members of the political community. Those on both sides of the slavery question could, and often did, find agreement on this exclusion. In fact, such exclusions were explicit in the Virginia Declaration of Rights.

As Virginians crafted and debated what would become the nation's first constitution, they purposefully excluded Black people from the body politic. The Virginia Declaration of Rights began by stating "that all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society" cannot be taken from them.¹¹ Of particular importance was the latter part of this line, which was inserted to keep any inherent rights solely under the possession of white Virginians. Thomas Ludwell Lee, writing to his younger brother Richard Henry Lee, complained "a certain set of Aristocrats, for we have such monsters here, finding" slavery would be threatened by the pronouncement of universal rights, "have to this time kept us at bay on the first line" of the Declaration of Rights.¹² Both Lees held lukewarm anti-slavery sentiments. The younger Lee had made a name for himself in 1759 by introducing a bill to ban the international slave trade and vocally decrying its existence. The elder brother, by his comments, was certainly displeased with the inclusion of such language in the Declaration of Rights.¹³

¹¹ Virginia Declaration of Rights.

¹² Robert A. Rutland, ed., *The Papers of George Mason, 1725-1792*, Vol. 1 (Chapel Hill: University of North Carolina Press, 1970), 289.

¹³ It should be noted he, like his brother, was an enslaver, and had even begun speculating in slaves two years earlier when his finances took an unexpected turn.

The debate on this issue was intense. Robert Carter Nicholas worried such egalitarian language could cause “civil convulsion.” Edmund Randolph recalled other delegates attempted to assuage Nicholas by pointing out slaves were not “constituent members of our society [and] could never pretend to any benefit from such a maxim.” But such claims were not obvious, thus Edmund Pendleton eventually suggested adding the qualifier to the bill of rights’ first line.¹⁴

It may appear that such language was still vague on the issue of Black exclusion, however this was anything but the case for contemporaries. While they did not include a racial qualifier such as “white,” the inclusion of the language on society was just as much of a qualifier to them. In other words, putting “white” in the document was not necessary, because they could rely on egalitarian and Enlightenment language to make their point. Hence, the younger Lee complaining about the inclusion in the first place. It was obvious to all what the language was doing. That it could, and certainly would, become a loophole is a separate matter. In the 19th Century, abolitionists would seize on the lack of explicit mentions of race in documents to claim the egalitarian language should stand for what it means. But such loopholes are not the same as vagueness for contemporaries. Instead, they are simply indicative of a larger trend among white Americans to shy away from outright racist and exclusionary language in documents purported to represent Enlightenment ideals of equality, democracy, and republicanism.

The Virginia Declaration of Right inserted language to restrict universal rights to white Americans without explicitly referencing race and slavery. But it was very common for any discussion of race and slavery to quickly tackle whether Black people were, or could be, part of American society. This was often done by referencing the effects ending or continuing slavery would have on (white) society. The 1785 Virginia petitions are just one example of this. When

¹⁴ Ibid.

the question of slavery and abolition came before readers of the *New-Jersey Gazette* three years earlier, multiple writers reminded their readers that former slaves, and likely any free Black people, could never be incorporated into society. Using the pseudonym “A Lover of True Justice,” one person told readers the question of manumission had to be considered in tandem with “the preservation and interest of civil society,” which could be overrun by “slow, sluggish, and stupid” freedmen. Another writer, under the name of “Impartial,” made similar claims, saying “great numbers [of freed people] would become pest to society” by committed horrible crimes against white people. Eventually, white Americans would be forced to “deprive some of them not only of liberty but also of life.”¹⁵

When discussing whether Black people could ever be a part of the body politic in America, most newspaper contributors engaged with one or more of the topics mentioned above: foreignness, internal enemies, and white superiority. Debating race and slavery and speaking to these themes was one important way white Americans sculpted an American identity. It was how they could speak about what it meant to be a citizen without actually using the word. And it was how Black Americans could be excluded from the status, from the nation, in the minds of so many of their white counterparts.

The notion of Black foreignness was a powerful tool against calls for abolition. As will be seen in Chapter Five, it would also be a central aspect of the anti-slavery movement to relocate free(d) people. While foreignness was a reliable argument, it was a subtle one which could be deployed in several ways. One of the best examples of Black foreignness can be seen in the Massachusetts poor laws mentioned in the previous chapter. In that state, as Kunal M. Parker has observed, localities systemically attempted to exclude formerly enslaved people from the

¹⁵ *New-Jersey Gazette* (Trenton, New Jersey), February 14, 1781, January 10, 1781.

benefits of poor laws by assigning them a foreign origin. In most cases, this was done by creating a legal fiction for the newly freed population, and having their place of origin listed as “Africa.”

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The designation of foreign birth and residence was a response to both a rapidly expanding free Black population, and a need among many former slaves for financial assistance. By “making blacks foreigners” Massachusetts’ white residents could not only avoid providing any sort of poor relief, but also dodge a collective responsibility for the enslavement of these people. Parker is quick to point out legal settlement, needed for access to poor relief, is not the same as citizenship. Though this movement is certainly pertinent when considering whether Massachusetts’ white population could have imagined Black people in the state as American citizens. If, after all, towns were continually defining Black Americans as a foreign people, as the state’s white population refused to take responsibility for slavery, then how can it be expected these same people would have considered Black “foreigners” to be citizens?

This rhetorical tool could be used in a variety of matters, though. In 1787, a writer under the name of “Phileleutheros” used foreignness to support abolition. Using a fictional conversation as their medium, they ended their piece by claiming the county would be better off promoting the importation of free (white) men. Phileleutheros stated it was “not the number of slaves that increase the happiness, and peoples a new country, but the number of freemen.”¹⁷ Such an argument was common among many who disapproved, to any extent, of slavery. Writing two years earlier, George Mason made the same point to George Washington while speaking favorably about banning the international slave trade in Virginia. In its place, the state

¹⁶ Kunal M. Parker, “Making Blacks Foreigners: The Legal Construction of Former Slaves in Post-Revolutionary Massachusetts,” *Utah Law Review* no. 75, (2001): 75-124.

¹⁷ *Connecticut Journal* (New Haven, Connecticut), December 18, 1787.

could set up a “Policy of encouraging the Importation of free People.” Mason, the second largest enslaver in Fairfax County, behind Washington himself, went on to state that “perhaps the primary Cause of the Destruction of the most flourishing Government that ever existed was the Introduction of great Numbers of Slaves – an Evil very pathetically described by the Roman Historians.”¹⁸

Advocating for the replacement of slave labor with free white labor was a very common point in any criticism of slavery, and appeared in many 18th Century denunciations of the institution. On face value, it wouldn’t appear related to Black foreignness. But in the eyes of many white Americans, enslaver and abolitionists alike, Black Americans were simply incapable of being freemen. In her analysis of the emancipation during and after the Civil War, Katherine Franke points to a distinction between the idea of freemen and freedmen. White Americans used subtly, but profoundly meaningful, different language to describe the status of newly freed Black Americans in comparison to themselves. In short, by attaching the “d” to “free,” white Americans forever branded Black Americans as descendent from slavery, naturally inferior, and enslavable.¹⁹ This phenomenon, however, can be seen much earlier, and was an important aspect of white Americans visions of race and freedom.

White Americans, after all, latched onto the language of freedom and freemen in describing themselves and their struggle during the American Revolution. Casting off the chains of political slavery, Americans were, by birth and nature, freemen. As such, they were entitled to any number of rights, privileges, and protections under the British constitution and natural law.

¹⁸ Peter Wallentstein, “Flawed Keepers of the Flame: The Interpreters of George Mason,” *The Virginia Magazine of History and Biography* 102, No. 2 (April 1994): 234; George Mason to George Washington, December 23, 1765, *The Papers of George Washington*, Colonial Series, Vol. 7, ed. Theodore J. Crackel (Charlottesville: University of Virginia Press, 2008), 424-425.

¹⁹ Katherine Franke, *Repair: Redeeming the Promise of Abolition* (Chicago: Haymarket Books, 2019).

This thinking naturally fit into the framework of citizenship, and it is no wonder the ideas espoused by Revolutionary-era thinkers became central to an American identity. Black people, however, categorically fell outside the status of freemen.

Speaking to representatives in the Continental Congress, James Wilson noted enslaved people simply “occupy the places of freemen and eat their food.” If people were to “dismiss” their slaves, freemen would “take their places.”²⁰ In saying enslaved people simply took up space, depriving (white) freemen from their rightful place in the nation, Wilson illustrated how white Americans conceived the impossibility of a Black freemen, as opposed to freedmen, population. If, after all, Wilson simply wished to see freedom reign in the nation, would it not have been completely acceptable to simply emancipate the nation’s slaves?

Wilson rhetorical move was subtle, and certainly not the rule. George Mason certainly did not shy away from being explicit in who he thought were proper freemen. People like Wilson and Mason simply could not imagine a country where freed slaves represented the values to freemen; of citizenship. Instead, they looked to foreign transplants, as they were far more capable of finding common ground with English, Irish, or German immigrants, the most common immigrant populations, than they were with the domestic Black population. White immigrants’ work ethic, moral values, and social worth amounted to much more than a freed Black Americans ever could. In this way, freemen became a synonym for white, and demonstrated the strength of white solidarity, even as whiteness and blackness were still in the process of being cemented. While white immigrants were, quite literally, foreign, their whiteness eased their foreignness into familiarity. Conversely, blackness and Black people were, by definition, other.

²⁰ “Thomas Jefferson’s Notes of the Proceedings in Congress, July 12 – August 1, 1776,” *Letters of Delegates to Congress, 1774-1789*, Vol. 4, ed., Paul H. Smith (Washington D.C.: Library of Congress, 1979), 440.

As Wilson showed, Black foreignness was a tool used to criticize the institution of slavery. In 1785, a writer using the name of “Juvenis” employed this tactic in speaking to southerners about the impropriety of slavery. Juvenis framed their anti-slavery pamphlet around the idea of warring nations. In appealing to natural law, they told their readers if Black people were, in fact, men, then “you, consequently *nor no other nation in the word*, can rightfully deprive them of” their liberty. In distinguishing U.S. citizens from Black people, Juvenis went on to implore their readers to “let our conduct be always uniformly just as well towards our *own* citizens, as towards those of other nations.” Juvenis is a good example of an anti-slavery advocate who nonetheless based their ideals around the idea that Black people had no place within the nation. The pamphlet was brought to a close by advocating for emancipation, as it contained “the abolition of a practice which involves in its consequences of so important a nature to the inhabitants of this Continent.”²¹

The ending lines Juvenis wrote contrast sharply with their previous words. Within a couple of pages, he went from speaking about the citizens of the nation to the “inhabitant of this Continent;” a subtle change in language. Put simply, Juvenis’s switch from citizens to inhabitant illustrates how he sought to include and exclude Black people from certain statements about the nation, while making it clear they fell outside the confines of citizenship.

Ending their appeal by speaking about the “inhabitant of the Continent” allowed Juvenis to include everyone involved in and affected by the institution of slavery. Juvenis could not do this, however, by continuing to speak of the nation or its citizens specifically. Instead, they had to use a broader term, inhabitant, which could apply to anyone residing in the nation, but not

²¹ Juvenis, *Observations on the Slavery of the Negroes, in the Southern States, Particularly Intended for the Citizens of Virginia* (New York: W. Ross, 1785), 8, 21, 23; italicized words appeared in the pamphlet itself, and are the author’s own emphasis.

necessarily afforded a claim on it. Thus, their switch in language was meant to include Black people, both free and enslaved, but with a recognition that they fell outside the bounds of the body politic.

One of the best examples of Black foreignness can be seen in the Declaration of Independence; more specifically, Thomas Jefferson's initial draft. This first draft included a more robust final grievance. The finished document railed against King George III for inciting "domestic insurrections amongst us," a clear nod to the 1774 Dunmore's Proclamation, which promised freedom to slaves who deserted patriot enslavers, and subsequently raised fears of slave rebellions. Yet, in his draft, Jefferson also accused the king of forcing African slavery on the colonies and expanding the slave trade. King George II had:

...waged cruel war against human nature itself, violating it is most sacred rights of life & liberty of a distant people who never offended him, captivating & carrying them into slavery in another hemisphere... he is now exciting those very people to rise in arms among us, and to purchase that liberty of which he has deprived them, & murdering the people upon whom he also obtruded them; thus paying off former crimes committed against the *liberties* of one people, with crimes which he urges them to commit against the *lives* of another.²²

Here, Jefferson employed language which casted white Americans as inherently different from Black people. More importantly, both groups were in a state of war with each other. As Peter S. Onuf has pointed out, Jefferson's language here, and elsewhere, grouped all Black

²² Jefferson's "original Rough draught" of the Declaration of Independence, *The Papers of Thomas Jefferson*, Vol. 1, ed., Julian P. Boyd (Princeton: Princeton University Press, 1950), 243-247.

people in America together, through the shared trauma of slavery. In doing so, Jefferson could rely on language and imagery used to describe warring nation and peoples, fundamentally at odds with each other. Jefferson presented America as a land forced into conflict, as a “distant ...one people” were encouraged to inflict harm against “the *lives* of another” distinct people.²³

The idea of warring nations or people is why Jefferson could include Black people in his use of “Men” in the Declaration, but still see them as fundamentally un-American. Black people were entitled, in some sense, to the same inherent rights as white Americans. But not in America. They were a foreign people in that country, and could only enjoy the rights they should have if they were, quite literally, back in Africa. While in American, however, they’re foreignness made it impossible for them to enjoy such rights.

While this expanded version of the clause was rejected by the Continental Congress, at the behest of southern delegates outraged at the condemnation of slavery, Jefferson’s attempt to include it is quite telling. If citizenship was a way of creating a distinctly “American” identity, then the Declaration was, quite literally, one of the founding documents to do this. Its entire purpose was to not only break from Great Britain, but to fashion the former North American colonies into a “united States of America.” It did this not just by espousing the values Americans held dear, and were willing to go to war over, but by specifically contrasting them against the very nation of people they used to be a part of. Therefore, even as he was condemning the King for his role in the slave trade, (and also ignoring Americans’ and his own roles in the enslavement of a “distant people”), his attempts to separate Americans from all Black people seemed necessary to adequately craft not just a single grievance, but a people.

²³ Peter S. Onuf, *Jefferson’s Empire: The Language of American Nationhood* (Charlottesville: University of Virginia Press, 2000), 155-158.

[IV]

As he asserted Black foreignness, Jefferson also put forth an idea many white Americans agreed on: Black people were an internal enemy. This latter idea flowed logically from the former. If Black people were a foreign people then it stood to reason their presence within the nation was a threat. Thus, white Americans were often obsessed and paranoid about Black violence, and could find a threat in even the slightest action. Coverage of suspected and attempted slave rebellions often took on a voyeuristic role, as white onlookers all too often used the events to imagine themselves as the would be victims of Black terror. Doing so was one way Black people, and Blackness generally, were imagined as foreign dangers to a white national identity. The idea of a nation at war with a foreign people wasn't helped by the fact that many white Americans also understood many African slaves were considered warriors in their own native lands.²⁴

The potential for of Black violence, then, was a central component in crafting the image of an enemy. Here, Jeremy Engels concept of “enemyship” is helpful for understanding how this influenced the conception of a national identity. He defines enemyship as “the many ways that political actors name the enemy in order to achieve desirable rhetorical effects, which...include unity, hierarchy, and deference. Unlike friendship, whose bonds are forged by mutual affection, enemyship is a bond of mutual antagonism for an enemy, resulting in a solidarity of fear, a community of spite, a kinship in arms, and a brotherhood of hatred.”²⁵ While Engels does not

²⁴ Andy Doolen, *Fugitive Empire: Locating Early American Imperialism* (Minneapolis: University of Minnesota Press, 2005), 1-38; John Wood Sweet, *Bodies Politic: Negotiating Race in the American North, 1730-1830* (Baltimore: Johns Hopkins University Press, 2003), 72-73; Kay Wright Lewis, *A Curse upon the Nation: Race, Freedom, and Extermination in America and the Atlantic World* (Athens: University of Georgia Press, 2017), 34-58.

²⁵ Jeremy Engels, *Enemyship: Democracy and Counter-Revolution in the Early Republic* (East Lansing: Michigan State University Press, 2010).

apply race or slavery to enemyship, it nonetheless captures the behavior of white Americans who forged citizenship in the shadow of threatening Black violence.

Enemyship can be seen in Juvenis's essay, when he abruptly interrupted a discussion of slavery to speak about how "the Negroe will always in time of war, prove injurious to the country wherein they live," as they will always seek to "liberate themselves from their oppression." As a result, any country with a sizable enslaved population, like America, was wholly unable to adequately protect itself from a foreign invasion, as too many resources would need to be used to keep the peace among just the slaves.²⁶ Such an argument may have been deployed primarily against the continuation of slavery in the nation, but they nonetheless contributed to a general feeling amongst many white Americans that Black people, free or enslaved, were an internal enemy.

Writing in the wake of the War for Independence, Juvenis, like many white Americans, would have been all too familiar with insurrection scares in times of war. Writing to Richard Henry Lee shortly after the announcement of Lord Dunmore's Proclamation, Archibald Cary said the announcement was great for the Patriot cause, as "Men of all ranks resent the pointing a dagger to their Throats, through the hands of their Slaves." Edward Rutledge would have agreed, saying Dunmore's actions were "more effectually to work an external separation between Great Britain and the Colonies, than any other expedient, which could possibly have been thought of." And the *Pennsylvania Evening Post* reported, around the same time, that a Black man had refused to show respect to a white woman, telling her to wait until Dunmore's Black Regiment came; certainly inspiring fear in a state which would soon begin debating the end of slavery. Fears of insurrection continued throughout the war. In South Carolina, for example, Thomas

²⁶ Juvenis, *Observations on the Slavery of the Negroes*, 20.

Burke reported “the great proportion of Citizens [are] Necessary to remain home to prevent Insurrections among Negroes, and to prevent the desertion of them to the Enemy.”²⁷

Conversely, with the end of hostilities, such fears were actually amplified in some areas. Throughout the war, enslaved people used the conflict to make their escape from captivity. Jefferson, for example, estimated tens of thousands of slaves had done so. As a result, many white southerners looked at the free Black population around them with suspicion in the wake of the war, fearing many were actually slaves in disguise. Combine this with cases of Black Americans claiming and using Revolutionary-era ideals and language for themselves, (the same ideas that justified a rebellion no less), and the post-war period saw an increase in both extra-legal and state violence against Black people. The increase in slave executions, for example, was so notable that some southern states, already in debt due to the war, became more stringent or altogether stopped their compensation of enslavers for their executed slaves.²⁸

Similar concerns about the threat of Black people can be seen in 1787, when Georgia Governor James Jackson complained about maroon communities residing just outside the state. They were, in his regard, “as daring as any & dangerous in their independent state.”²⁹ Georgia was unable to exert enough control over the state’s own enslaved population to stop them from fleeing to these communities, as well as disband the maroons. Jackson, likely representing the

²⁷ Archibald Cary to Richard Henry Lee, December 24, 1775; Edward Rutledge to Ralph Izard, *Correspondence of Mr. Ralph Izard of South Carolina, From the Year 1774-1804; With a Short Memoir*, Vol. 1 (New York: Charles S. Francis & Co., 1844), 165; *Pennsylvania Evening Post* (Philadelphia, Pennsylvania), December 14, 1775; Thomas Burke’s Draft Committee Report, March 25, 1779, *Letters of Delegates to Congress, 1774-1789*, Vol. 12, ed., Paul H. Smith (Washington D.C.: Library of Congress, 1985), 243.

²⁸ For more on southern fears following the war, see Matthew P. Spooner, *Origins of the Old South: Revolution, Slavery, and Changes in Southern Society, 1776-1800* (New York: Columbia University, 2015).

²⁹ James Jackson to Governor Mathews, May 3, 1787, in *Joseph Vallence Bevan Papers*, Georgia Historical Society, found in, Spooner, *Origins of the Old South*, 165; For more on maroonage in America, see Sylviane A. Diouf, *Slavery’s Exiles: The Story of the American Maroons* (New York: New York University Press, 2014).

fears of many Georgians, saw the maroon settlements as a legitimately dangerous force right on their border.

Jackson's words combined the ideas of Black foreignness and dangerousness into one. At first glance, it would seem the phrase "independent state" was used to simply denote the maroons as independent of Georgia's authority. However, Jackson may have very well seen these communities as actual "independent" states of sort. He certainly wouldn't have thought of them in this sense as a way of legitimizing their sovereignty, but as a recognition the groups represented a foreign threat. This is particularly true when considering how much white Americans feared the influence of fugitive and free Black people could exert on enslaved populations in inciting violence.

Seeing free and fugitive Black people as a potentially radicalizing element was quite common. James Madison, writing in 1783 to his father, complained about his time in Philadelphia as a representative in Congress, and what his stay had done to his slave, Billey. The time in the city had seemingly changed Billey, who attempted to run away multiple times, and openly opposed accompanying Madison back to his home at Montpelier. As Madison said, Billey's "mind is too thoroughly tainted to be a fit companion for fellow slaves," as he had become accustomed to "coveting that liberty" which so many had paid the price of so much blood" to attain. Madison eventually decided to take a loss, and sold Billey into seven years of indentured servitude.³⁰

While Madison considered continuing Billey's enslavement by simply selling him, for books, he ultimately went with a more lenient route. Nonetheless, his impulse to keep Billey

³⁰ James Madison to James Madison, Sr., September 8, 1783, *The Papers of James Madison*, Vol. 7, ed. William T. Hutchinson and William M. E. Rachal (Chicago: The University of Chicago Press, 1971), James Madison to James Madison, Sr., September 6, 1788, *The Papers of James Madison*.

away from his other slaves was one shared by many enslavers. One Virginia assemblyman pointed out the relationship between free and enslaved Black people was a dangerous one. Allowing them around each other meant “if the blacks see all of their color slaves, it will seem to them a disposition of Providence, and they will be content. But if they see others like themselves free, and enjoying rights, they are deprived of, they will repine.”³¹

The proximity of the maroon communities to Georgia meant, in the eyes of Jackson, that the state’s enslaved population was at risk of being influenced and pushed towards open rebellion. The maroons, then, posed just as much of a threat as Lord Dunmore did in 1775. Their mere presence invited not only defiance, but violence. They were an external threat encouraging an internal enemy.

Even when such threats were not immediate or in close vicinity, their influence might yet be felt. The problem for what Americans was paranoia over Black violence tended to keep them on high alert if anything out of the ordinary happened anywhere. This was the case, in part, because white Americans, had difficulty keeping information from being passed among Black people, both free and enslaved. Speaking about the possibility of slaves joining British forces in 1775, John Adams noted if just 1,000 British troops landed in Georgia or South Carolina, they could expect as many as 20,000 slaves to join them from the surrounding colonies. As Adams said, “the Negroes have a wonderfull Art of communicating Intelligence among themselves. It will run severall hundreds of Miles in a Week or Fortnight.”³²

This meant white Americans were, near constantly, at high alert when it came to the threat of Black violence. One event dozens, even hundreds of miles away, could be the one spark

³¹ *Virginia Gazette and Weekly Advertiser* (Richmond, Virginia), August 31, 1782, found in Spooner, *Origins of the Old South*, 167.

³² Diary and Autobiography of John Adams, *The Adams Papers*, Vol. 2, 1771-1781, ed. L. H. Butterfield (Cambridge: Harvard University Press, 1961), 183.

to engulf the nation. Thus, if Black people were viewed as a constant threat to the very safety of the body politic, their place within it was necessarily complicated. There were, by nature, not an outside threat or force. In some places in the south, their numbers were larger than those of the white population. However, Black people could also never be considered a part of the very community their presence put at stake. They were, then, an internal threat fundamentally apart from the people, communities, and nation which they resided among. Their place within the body politic was one of contestation. They were a foreign body poisoning, to use the words of many critics of slavery, the nation.

[V]

If foreignness and danger placed free and enslaved Black people outside the borders of citizenship, yet another aspect made their inclusion within the citizenry impossible. The idea of Black inferiority, and conversely white superiority, meant the former were simply incapable of being citizens. Conception of Black inferiority were, to be sure, in flux by the latter half of the 18th Century. Overall, ideas circulating around this topic were quite different, and much less harsh, than those of earlier period. Most white Americans, for example, certainly did not believe Black people to a wholly separate, and subhuman, species; though there were notable exceptions.³³ However, many white Americans subscribed to a worldview which put themselves naturally above their Black counterparts.

The differences between the races was a fundamental fact in the eyes of many. In 1781, a writer using the name of “Impartial,” announced his opposition to emancipation in New Jersey.

³³ For a look at how the Enlightenment, in particular, changed views of Black people see, Robert Pierce Forbes, “‘The Cause of This Blackness’: The Early American Republic and the Construction of Race,” *American Nineteenth Century History* 13, No. 1 (March 2012): 65-94; Nicholas Guyatt, *Bind Us Apart: How Enlightened Americans Invented Racial Segregation* (New York: Basic Books, 2016).

That enslavers could not be “divested” of their slaves was, “we humbly imagine, as evident as that white is not black, or that slavery is not freedom.” Going on, Impartial told readers of the *New-Jersey Gazette* freed slaves were “naturally indolent; unaccustomed to self-government; destitute of mechanical knowledge; unacquainted with letters; with a peculiar propensity to spiritous liquors.” Impartial then, argued the differences between the races was evidence that “white is not black,” and that abolition was simply impossible.³⁴

That ideas of Black inferiority would come up in condemnations of emancipation may seem natural. Though, their presence in criticisms of slavery itself were just as much, if not even more, prevalent. Jefferson provides an example of this tendency in his *Notes on the State of Virginia*. His comments on slavery, emancipation, and race were part of a larger pattern that began to take shape in the latter parts of the 18th Century, where anti-Blackness and abolition were joined together.³⁵ Those who spoke against slavery, and even advocated for its end, increasingly began to rely on anti-Black principles to make their arguments, a shift that is explored in Chapter Five.

Combining foreignness, internal danger, and the idea that Black people simply could not move on from the horrors of slavery, Jefferson commented that “ten thousand recollections, by the blacks, of the injuries they have sustained...[could] produce convulsions which will probably never end but in the extermination of the one or the other race.” He continued, attacking the mental reasoning, imagination, artistic ability, etc. of Black people. To Jefferson rare cases existed where Black people could equal whites, but overall, they were generally lesser than their white counterparts.³⁶

³⁴ *New-Jersey Gazette* (Trenton, New Jersey), January 10, 1781.

³⁵ For a good study what this looked like, see Joanne Pope Melish, *Disowning Slavery: Gradual Emancipation and “Race” in New England, 1780-1860* (Ithaca: Cornell University Press, 2000).

³⁶ Thomas Jefferson, *Notes on the State of Virginia* (Philadelphia: Prichard & Hall, 1788), 147.

The most vehement remarks against Black people, however, were saved to refute individual examples of Black progress and excellence; the very people many abolitionists held up as prominent examples of the Black race, and proof that in freedom these people could be part of American society. Regarding their music abilities, Jefferson admitted Black people were better than white people in keeping “tune and time,” but their capacity to compose music was very much in doubt. In respect to poetry, he briefly turned his attention to the famous Phyllis Wheatley, only to say her work was “below the dignity of criticism.” As Jefferson saw it, “misery is often the parent of the most affecting touches in poetry,” and “among the blacks is misery enough, God knows, but no poetry.”³⁷

The comments on misery and the production of art should be considered in tandem with Jefferson’s earlier remarks on why emancipation could never work in America. The subtle point here was that a “long train of abuses,” to borrow Jefferson’s own words, produced wildly different outcomes when it came to Black and white people. For the former, their resentment in freedom would cause a race war. However, the latter had just come out of a bloody war for independence, where they turned the abuses they had suffered into a movement towards creating the world’s first modern democracy. For those such as Jefferson, misery spurred the creation of revolutionary documents like the Declaration of Independence. For Black people, however, it only produced poetry beneath the level of criticism.

Jefferson’s view on Black inferiority, in *Notes*, have been presented by some as not only unrepresentative of his own views, but of white Americans writ large.³⁸ Yet, as has been shown, others certainly espoused views in line with Jefferson’s. Those who commented on *Notes* often

³⁷ Jefferson, *Notes*, 150-151.

³⁸ See Forbes, ““The Cause of This Blackness,”” for a discussion of what Forbes calls the Jeffersonian Turn, where the improving image of Africans in the Enlightened world was essentially stopped by Jefferson, who was not only an outlier in his opinions on outright racial inferiority, but helped spur a renewed movement in this ideology.

offered, at best, lukewarm criticism of his views. John Adams, for example, wrote to Jefferson that his views on slavery were “worth Diamonds” and would “have more effect than Volumes written by mere Philosophers.” While Adams could have been commenting on Jefferson’s meek denunciations of the institution of slavery, he nonetheless found nothing wrong with the accompanying comments on Black inferiority; at least not enough to warrant mentioning.³⁹

Charles Thomson, at the time the Secretary of the Confederation Congress, complained to Jefferson that it “grieves me to the soul that there should be such just grounds for your apprehensions” to the emancipation of enslaved people. That being said, Thomson thought Jefferson should not be discouraged, that slavery would eventually end, even if it would “one day be by blood.” Drawing on the rhetorical differences between freemen and freedmen, Thomson went on to predict the union could be preserved and the “spirit of liberty maintained and cherished,” if slavery was “rooted out, & our land filled with freemen.”⁴⁰

In another criticism of Jefferson’s views, David Ramsay told him he had “depressed the negroes too low” in arguing they were a different species. As Ramsay said, all races of man had a common origin, and “only diversified by accidental circumstances.” Yet, in criticizing Jefferson’s views on a distinct Black race, Ramsay also echoed Jefferson and the prevailing view among many white people that Black people in America could not live alongside white Americans.⁴¹

Both men believed, to some extent, contact with white people could help cure Black people of their inferiority. Jefferson could admit some improvement among Black people, but

³⁹ John Adams to Thomas Jefferson, May 22, 1785, *The Papers of Thomas Jefferson*, Vol. 8, ed. Julian P. Boyd (Princeton: Princeton University Press, 1953), 159-160.

⁴⁰ Charles Thomson to Thomas Jefferson, November 2, 1785, ed. Paul H. Smith, *Letters of Delegates to Congress, 1774-1789*, Vol. 22 (Washington D.C.: Library of Congress, 1995), 716-717.

⁴¹ David Ramsay to Thomas Jefferson, May 3, 1786, Robert L. Brunhouse and David Ramsay, “David Ramsay, 1749-1815 Selections from His Writings,” *Transactions of the American Philosophical Society* 55, No. 4 (1965), 101.

made sure to point out in *Notes* “their mixture with the whites...proves that their inferiority is not the effect merely of their condition of life.” Ramsay, on the other hand, countered Jefferson by introducing a contradiction. Black people could, and were, improving as a race within the nation. However, without the least bit of irony, Ramsay couched this claim within the idea that Black people in America were losing their blackness. Geography, climate, and proximity to white people in the north mean Black people there were “less black in Jersey than Carolina,” and “their [lips] less thick – their noses less flat.” Living in “the state of society” was improving Black inferiority by erasing blackness.⁴²

Ramsay either missed or willfully overlooked the paradox at the heart of his statement. He could imagine a place for Black people in America, and even their inclusion within the citizenry, on one condition: they ceased to be Black. The process would take time. Writing two years later to new England pastor John Eliot, Ramsay cautioned against speedy abolition, as it would be “ruinous both to masters & slaves.” For Ramsay, “experience proves that they who have been born & grown up in slavery are incapable of the blessings of freedom.”⁴³ Nonetheless, with time, the nation’s Black population would gradually lose the very feature that both marked and caused their inferiority. Once complete, the former Black race could, in Ramsay’s eyes, finally take its place within the body politic.

While Jefferson’s arguments in *Notes* may have been accepted by many, other objected to his outright and vehement racism was somewhat looked down upon, as the examples above show. However, such arguments were not rare either. In 1789, a multi-month newspaper debate was set off when a question was posed in the *Delaware Gazette* as to whether enslavers were “fit

⁴² Ramsay to Jefferson, May 3, 1786, “David Ramsay, 1749-1815 Selections from His Writings), 101.

⁴³ David Ramsay to John Eliot, November 26, 1788, “David Ramsay, 1749-1815 Selections from His Writings), 123.

persons to represent or govern a free people.”⁴⁴ The question, posed by a writer named “Querist,” was presented in the midst of the state’s legislature debating gradual abolition, and occasioned a heated debate over the institution of slavery which touched on many of the matters already discussed.

After an initial back and forth between several writers, one using the name of “Camillus” responded with an unabashedly racist defense of slavery. Slavery was consistent with both religion and the laws of the nation. Furthermore, it was a way for white Americans to protect themselves against the threat Black people represented in the country. Abolition would only result in newly freed slaves seeking to have “superior influence in every state from Pennsylvania to Georgia.” All the while, white Americans would have no assurances these freedpeople would “use that [numerical] superiority with moderation.” Abolition, then, would lead to an inversion of society, where Black inferiority would reign supreme, and the white race would eventually vanish.⁴⁵

Furthermore, “Camillus” asked their audience if they would “give your daughter to marriage to their sons, and choose the partners of your beds, and confidants of your bosoms from among their daughters?” For the writer, the answer was a clear no, as they went on to say:

...my fellow citizens, nature has marked the line of distinction too strong to be erased, and though it were possible *you* could consent to such a degradation of your nature, they would never accord with it, the idea of a mixture is as disagreeable to them, as you, and

⁴⁴ *Delaware Gazette* (Wilmington, Delaware), September 5, 1789; Many thanks to Paul H. Polgar for sharing these sources with me. I originally came across this debate in his book, *Standard-Bearers of Equality: America’s First Abolition Movement* (Chapel Hill: University of North Carolina Press, 2019), and after being unable to see the sources for myself he was nice enough to mail me his personal copies of the *Delaware Gazette*.

⁴⁵ *Delaware Gazette*, September 23, 1789, 1-2.

though particular instances may be adduced of this sort of—I had almost said, bestiality, yet the general abhorrence on both sides, would under all circumstances, tend to keep us separate and distinct races. The history of passages will shew what wars, massacres, &c. have resulted from a contest for superiority between people the same in complexion and shape, of the same undoubted original, differing only in some customs and prejudices, and inhabiting the same country. Judge then the situation of *your country*, if the negroes are taught to believe themselves equal to you; they will contest for superiority, the black cloud of discord and confusion, raised by the breath of demoniacs, will then burst on our devoted country, and involve in it one general scene of rapine, and all the complicated horrors of a most cruel civil war. Negro and white man will be the distinction—may heaven avert it—As equals we can never live in the same country; and though some philosophers have almost exhausted the powers of language to prove them decedents from the same pair with use—contrary to the evidences of our senses, that Black was white!⁴⁶

In just one passage Camillus combined Black foreignness, danger, and inferiority all together to argue against extending freedom to enslaved people. More than that though, Camillus actually relied on arguments that Black people were subhuman in calling interracial relationship “bestiality.” His racism may have been exception in some regards for the time, but he nonetheless relied on commonly held ideals and used tropes that many white Americans, on both sides of the slavery question, relied on. During his arguments, he fought against giving Black people any formal place within the body politic outside of subjugation. Their “fellow citizens”

⁴⁶ Ibid.

had to be separated from the Black masses. Equality between the races, citizenship for all, was impossible. Camillus may not have explicitly said Black people could never be citizens of the nation, but it is impossible to think they would have supported such a thing.

The matters of Black foreignness, danger, and inferiority could be, and were, deployed to bolster a wide range of argument concerning slavery and freedom in the nation. From what these examples shown, there was a widespread belief among many White Americans that Black people simply could not be in the nation, or really American. It is hard to get at the opinion of everyday people, and pulling from personal letters of prominent people and newspapers certainly doesn't tell the whole story. However, newspapers carried material they knew their readers would want to see. Unlike today, many newspapers of the 18th Century operated on a subscription basis, meaning they tailored their material to their audience. Seeing such sentiments cut across so many avenues, whether they be newspapers, pamphlets, or letters indicates some level of broad based agreement. It doesn't mean all white Americans believed these same things. But it does suggest that many did. It suggests that many white Americans would have believed Black people incapable of holding citizenship simply because they were, fundamentally, un-American. They were not, nor could be, proper members of the nation or its citizenry.

[VII]

Despite such examples of Black exclusion from citizenship is nowhere in the Constitution. Even if the ideas of Black foreignness, danger, and inferiority were, certainly, present in the minds of many who attended the Constitutional Convention, the matter was never put before the body. The historical records provide no instances of delegates even debating, much less attempting to define, citizenship. And so, the question begs: If it is impossible to point

to even one statement where the exclusion of Black people from citizenship is present, how can it be proven this was the intent?

Questions of race, slavery, and freedom abounded during this period. For those supporting slavery, including Black people within the citizenry was unthinkable. For those who fought for freedom, Black people were all too often still seen as incapable of being proper members of society. Abolition would fundamentally reshape the nation, and could very well negatively impact the white population.

With this in mind, is it any surprise no one felt the need to explicitly tackle the question of Black inclusion or exclusion within the citizenry? Or, to put it another way, it should be expected the question never needed to be seriously posed or debated. In fact, the one and only time the idea of Black citizenship was mentioned during the Convention was in an offhand remark by James Wilson. As he complained about the proposed three-fifth clause to representation, Wilson asked the other delegates “are [black people] admitted as Citizens? Then why are they not admitted on an equality with White Citizens?”⁴⁷ The question seemingly went unanswered, though it is likely Wilson never intended to receive an answer. His main concern was representation and making sure the southern states did have an unfair advantage in the new government; not debating the racial confines of citizenship.

The most detailed account of the Constitutional Convention is James Madison’s *Notes of Debates in the Federal Convention in 1787*. Madison’s work has always been, without a doubt, the most important window into the inner workings of the Convention. And yet, for all its insight, Madison’s *Notes* have never been without their faults, and are deeply problematic. Scholars have, for years, understood Madison’s *Notes* were a combination of his notes written

⁴⁷ Farrand, *Records*, 1:587.

during the Convention's long days, edits he made to said notes in the nights after, and then additions and further edits years after the Convention ended. Mary Sarah Bilder pushes this understanding even further by highlighting just how much Madison truly edited his notes both during and after the Convention, and how intentionally incomplete his own record of events were; facts which have clear relevance for how the Constitution and Convention's silences on citizenship should be considered.⁴⁸

Bilder has illustrated how Madison self-consciously set out to present the Convention as a meeting of common minded men, who largely agreed on the big picture of American governance, or lack thereof, under the Articles of Confederation. Madison commitment to this idea resulted in him crafting a narrative of the Convention where debates were as minimal as possible and tempers calmer. Furthermore, he often attempted to present himself as leading the group of delegates. When Madison did present fierce and heated debates and arguments in his *Notes*, Bilder has shown the moments were simply too contentious for Madison to downplay. Additionally, Madison was more than willing to exclude certain material and people from his notes, depending on his mood, opinion on the matter, or who was speaking. For example, Madison loathed Charles Pinckney of South Carolina so much he not only purposefully spelled his name wrong, in his personal notes, but essentially wrote him out of certain parts of the Convention altogether; particularly when Pinckney presented his own plan for a new government.⁴⁹

With this in mind, it must be asked if the apparent silence in the historical record reflects fact or not. It is certainly possible Convention delegates never explicitly discussed Black citizenship. Wilson's question falls certainly points towards the possibility Black exclusion was,

⁴⁸ Bilder, *Madison's Hand*.

⁴⁹ Ibid.

as argued above, so commonly assumed that it did not need to be debated. However, race and slavery played a large role in the proceedings of the Convention. Even settled aspects of the institution were forced into the open, and many delegates were quite upfront in their own opinions. Madison's *Notes* may have wished to present debates as mildly as possible, but slavery and race always come through as deeply contested matters; hinting the real debates were much more heated.

Take, for example, the question of representation, where Wilson posed his own question. The matter came up for debate several times, particularly in connection to slavery, and other delegates were quite explicit in their opinions on race. George Mason, at the cost of losing his own state power in the new government, could not agree to counting enslaved people equally to white people for the purposes of representation. Mason "could not...regard them as equal to freemen." And Gouverneur Morris, of Pennsylvania, commented white Pennsylvanians would likely object to "admitting the blacks into the census...[and] the idea of being put on a footing with slaves."⁵⁰ It is possible, with discussions of race and slavery abounding around this topic, that citizenship was actually discussed, but Madison simply wished to ignore it.

Furthermore, Madison's *Notes* become particularly unreliable after August 21st, when he began taking far less extensive or detailed notes. As Bilder has shown, while he took some notes from that day forward, the actual narrative presented in his *Notes* was crafted two years later from other sources and his own recollection.⁵¹ This is important because the Fugitive Slave Clause was introduced on August 28th, and has typically been understood, in large part because of Madison's *Notes*, to have occasioned little to no debate.

⁵⁰ Farrand, *Records*, 1:581, 583.

⁵¹ Bilder, *Madison's Hand*, 141.

According to Madison's *Notes*, when the Privileges and Immunities Clause was once again taken up towards the end of the Convention, Charles Cotesworth Pinckney proposed what would become the Fugitive Slave Clause, as "he seemed to wish some provision should be included in favor of property in slaves." It should come as no surprise the inclusion of a fugitive slave clause would be linked to the Privileges and Immunities Clause. As covered earlier, the two were linked in the Articles of Confederation, and since the Constitution took much of its structure from the previous document, it was only natural a new version would be included. Additionally, the Privileges and Immunities Clause, in both documents, was key to understanding how citizenship operated. So tying slavery, or rather the protection of slavery, to it was integral.

Yet, while it may be of no surprise a fugitive slave clause was suggested, the lack of any real debate is odd. Slavery was a topic of consistent and fierce debate. Even as the Convention dragged on through the end of the summer, and delegates wished to finish, it is unlikely there was no conversations on the matter. Madison's *Notes*, then, may very well have glossed over any actual discussion of this topic; one which was closely tied to the subject of citizenship.

The silence on the issue of Black people's exclusion from citizenship could very well have been multi-layered: an unspoken assumption among many in attendance, and a purposeful archival omission. Both are certainly possible, and bolster the other. James Wilson's comments illustrate the topic was, at the very least, in the back of people's minds as they crafted the Constitution. The various ways white Americans understood Black people presence in the nation, whether free or enslaved, were certainly present. Even as debates over race and slavery abounded during the Convention, the issue of Black people's relationship to citizenship need not necessarily be brought out into the open. Yet, even if it was, it is quite possible the consensus on

Black people's exclusion meant any mention of it, or even momentary debate, need not be recorded. Both scenarios lend more weight to the idea that white Americans simply did not imagine Black people to be included within the citizenry, even as they were still forging citizenship.

[VIII]

That silence on this matter gave way to one person specifically saying Black people were not citizens, in the opening anecdote, is perhaps one of the best points of support for the idea white Americans simply did not feel the need to speak or debate the matter. David Ramsay's pamphlet had nothing to do with race or slavery. His mentioning of Black people's state was just that, a mention. No words were spent explaining his statement. No lines of defense. No qualifiers. Simply a six-word sentence used as an example.

Ramsay's use of Black people's status in the nation neatly wraps up the topics discussed already. For a variety of reasons, white Americans simply could not imagine Black people as within the bounds of the body politic and citizens of the nation. Furthermore, this self-evident fact was so, near universally, assumed that it rarely, if ever, needed to be reaffirmed. And the mere possibility of Black people claiming citizenship was just one, of many, reasons that a stronger centralized government was needed in the country. The failure of the Articles of Confederation to adequately protect the nation meant the future Constitution had to do a better job excluding Black Americans.

Yet, like so many other aspects, the Constitution never explicitly did what so many assumed it did. As a result, it left open a valuable door for Black Americans and some of their allies. In the first years of the new government, Black Americans in particular understood the

changes in citizenship that had occurred under the Constitution, and what that could do for them. They seized the newly refined status of citizenship as their own, and used it to stake out a place within the nation, fight slavery, and push for a more egalitarian future. The silence of assumption, then, acted as a double-edged sword. For white Americans, it meant they could rest assured the nation would remain one which excluded Black Americans from anything other than subservience. For Black Americans, however, this silence was an integral part of a larger anti-slavery constitutionalism that would define both the abolition and civil rights movement going into the 19th Century.

Chapter Four

The Thief and the Privateer Citizenship (Re)Imagined by Black Americans in the 1790s

[1]

The streets were almost completely empty. Thousands had already fled the city, and met various levels of success in their flight to neighboring towns. Some were welcomed in. Some had private residences they rushed to. Others were rebuffed, left to squander on the side of the road, pleading for help. Many such people's calls for help went unanswered. What few people remained shelter in their homes. Most dared not to venture outside. When necessity forced them from their dwellings, they covered their faces with damp cloths, soaked in vinegar. Walking through the empty city, the smell of tobacco hung in the air near many houses, as man, woman, and child alike smoked it in a desperate attempt to ward off foul and infectious smells.

Some doors bore a mark. Other did not. At night, people set fires in the street, for a time at least. They hoped to purify the air. During the day, the poor folk and orphaned children begged for assistance. Some received it. Many did not. Few people wished to risk contact with others, much less strangers on the street. Throughout Philadelphia the yellow fever had taken hold. No one knew how and where it began. Nothing but rumors and death made their way through the desolate city though. From August to November of 1793, thousands died and tens of thousands fled.

In those dire days, two scenes stand out. The first, is one of ruthless economic extortion and robbery of the dead. As the sick looked for assistance, many were forced to look to the city's Black population for nurses. Yet, knowing the situation and how to take advantage of it, Black people forced the white sick to pay up to five times the daily rate for nursing. Some were even

seen stealing from the sick, dead or alive.¹ The second scene is one of benevolence. An elderly Black woman nursed a white man back to health, helping him survive his “malignant fever.” When the worst had passed, and death no longer stood attending by the man, he asked the old woman what her price was. She replied, simply, “a dinner master on a cold winter’s day,” before leaving to help as many others as she could.²

It is hard to know whether one or both of these scenes actually occurred. Likely they both did, in some fashion. The first was recounted in Mathew Carey’s instant history, *A Short Account of the Malignant Fever, Lately Prevalent in Philadelphia: With a Statement of the Proceedings That Took Place On the Subject in Different Parts of the United States*. The second sits among a number of examples of Black heroism and service in Absalom Jones and Richard Allen’s *A Narrative of the Proceedings of the Black People, During the Late Awful Calamity in Philadelphia, in the Year 1793: And a Refutation of Some Censures, Thrown upon them in some late Publications*. The latter of these two, while less popular than the former, acted as a direct response to charges of Black greed and remorselessness during the epidemic. Both were part of a larger movement in the first years of the nation to define the place of Black people in America, to debate whether they were or were not citizens, as different groups sought to mold the young country in a way which best suited them. These early years were crucial as opposing factions sought to give meaning to the new ratified Constitution, shape the government and nation that came after it, and in the process make arguments about where Black people did, or did not, fit in the nation.

¹ Mathew Carey, *A Short Account of the Malignant Fever, Lately Prevalent in Philadelphia: With a Statement of the Proceedings That Took Place On the Subject in Different Parts of the United States*, 3rd Edition (Philadelphia: Mathew Carey, 1793), 78-79.

² Absalom Jones and Richard Allen, *A Narrative of the Proceedings of the Black People, During the Late Awful Calamity in Philadelphia, in the Year 1793: And a Refutation of Some Censures, Thrown upon them in some late Publications* (Philadelphia: William W. Woodward, 1794), 11.

The 1790s were a critical period. Following the creation and ratification of the Constitution, building a government and nation according to its designs was accompanied by efforts to imbue that document and its byproducts with particular meaning. In short, the initial decade of the new nation was critical period for people to actualize their vision of the Constitution and all it entailed. In particular, enslavers and anti-slavery advocates alike saw the new framework of government as a way to achieve their respective goals. For the former, its creation was undoubtably tied to strengthen the institution of slavery and further reifying racial boundaries. The latter looked to the many ambiguities and silences within the document as a chance to implement immediate or gradual changes in the name of freedom.

Black Americans, however, saw the Constitution as a unique opportunity to position themselves as key players in the future of the nation by seizing and (re)defining citizenship. As discussed in the previous chapter, citizenship underwent substantial changes with the creation of the Constitution. And while the transformation of this status was largely meant to further exclude Black Americans from the body politic, the non-explicit design of these changes gave this group an opportunity to push back in ways they never had. And while the creation of a robust national government was used by many to further strengthen slavery, it also gave Black Americans a new arena to fight for their rights and place within the nation.

This chapter examines Black Americans use of the changing political and constitutional landscape of the country to advocate for their own vision of the nation. In the aftermath of the 1793 Yellow Fever Epidemic in Philadelphia, the city's Black population were forced to defend themselves against accusations used to further alienate them from the political community. Years later, Black activists in the city would petition Congress on two occasions on the subject of slavery. Their petitions were an effort to not only bring Congress's attention to the plight of free

and enslaved Black people, but to represent the larger Black community as citizens, and shape the country themselves. Both were instances of Black Americans not only claiming citizenship in the nation, but actually positioning themselves as better authorities on what path the nation should go down.

[II]

The opening scenes of this chapter came from the 1793 Yellow Fever Epidemic in Philadelphia, and represent a time when both the city and the nation were tested. The 1793 event was, in the grand scheme of early modern epidemics, not out of the norm.³ Yet, it grabbed the attention of the nation. Andrew Brown, editor of the *Federal Gazette*, printed a notice to the people of the city and nation announcing he would bring “the most accurate information he can obtain, relative to the prevailing epidemic.”⁴ As the only paper which continued constant publication from August to November, as the fever ran rampant, Brown knew his audience was at once the concerned citizens who still remained in the city and those of the nation, who sought to obtain real information in the face of waves of rumors and falsehoods swirling the nation’s new temporary capital.

Philadelphia’s unique position as the nation’s temporary capital, and as possibly the permanent capital, (at least in southern fears), made it so Americans had their eyes fixed on the city. The government was in recess at the time of the epidemic, but was due back by years end, and many wondered whether Congress, the President, and whole of government would, or even

³ For more on the epidemic, see J. Worth Estes and Billy G. Smith, *A Melancholy Scene of Devastation: The Public Response to the 1793 Philadelphia Yellow Fever Epidemic* (Canton: Science History Publications: 1997), J. H. Powell, *Bring out Your Dead: The Great Plague of Yellow Fever in Philadelphia in 1793* (Philadelphia: University of Pennsylvania Press, 1993).

⁴ *Federal Gazette*, October 1, 1793 (Philadelphia, Pennsylvania), 3; For more on Andrew Brown and the *Federal Gazette*’s role throughout the epidemic, see David Paul Nord, “Readership as Citizenship in Late-Eighteenth-Century Philadelphia,” *A Melancholy Scene of Devastation*, Estes and Smith, eds.: 19-44.

should, return to the city. On a more abstract, yet still viscerally real, level, an epidemic in the heart of the new nation created something of a crisis for citizenship.

As previous scholars have shown, the epidemic exposed the failings of republican citizenship. Its ideals of duty for the community and progress towards a common cause broke down exceedingly quickly with the coming of the epidemic.⁵ The death toll from the fever was one thing. At 5,000 or more dead, the fever killed roughly ten percent of the city's resident. What was more concerning were the tens of thousands of people who fled the city, seemingly putting their own self-interests and preservation above that of the community's. Furthermore, for those who remained, there seemed to be but few people left willing lend a hand. The *Federal Gazette* carried numerous letters from common people, doctors, and the few government officials still around telling everyone that in "this unhealthy season, it becomes the duty and interests of every citizen to contribute all in his power to prevent the spreading of disorders." Nonetheless, people simply refused to do their civic duty.⁶

While the language of citizenship suffuses contemporaries' coverage, correspondence, and documentation of the epidemic, race provides one of the best areas to witness the crisis of citizenship. Simply put, many white Americans used Black Philadelphians as a scapegoat for the failings of republican citizenship. In a city where many put their own interests above that of the many, the supposed actions of Black Philadelphians were used to distract from the clear truth: As much as white Americans believed republican citizenship, and the revolutionary-era ideals it was

⁵ See, for example, Derrick Spires, *The Practice of Citizenship: Black Politics and Print Culture in the Early United States* (Philadelphia: University of Pennsylvania Press, 2019); Sally F. Griffith, "A Total Dissolution of the Bonds of Society": Community Death and Regeneration in Mathew Carey's *Short Account of the Malignant Fever*," *A Melancholy Scene of Devastation*, Estes and Smith, eds.: 45-59.

⁶ *Federal Gazette*, August 23, 1790 (Philadelphia, Pennsylvania), 3.

meant to uphold, positioned the nation to be uniquely superior to others, the yellow fever epidemic illustrated how these ideas quickly collapsed under stress.

Furthermore, given the epidemic's location in the new nation's capital, staunch defenders of the Constitution and its government feared this crisis of citizenship would also reflect badly on the new government itself. This is especially true of Mathew Carey, a Philadelphia printer and newspaper editor, who wrote an instant hit in his history of the epidemic. Carey's *A Short Account of the Malignant Fever, Lately Prevalent in Philadelphia: With a Statement of the Proceedings That Took Place On the Subject in Different Parts of the United States* went through four editions in just two months, and sold over 10,000 copies nation-wide. Carey's main goal in his *Account* was to rehabilitate the image of Philadelphia, the nation, and importantly, republican citizenship. He went through pains to explain away the ill-behavior of those both in and outside of Philadelphia, even as he criticized those who fell short of putting the community first.

As Sally F. Griffith has shown, Carey's *Account* was a means of navigating the path through community death and regeneration, where he positions a select few citizens, such as the mayor, as essentially saving the city, and correcting course to bring Philadelphia through the epidemic. With citizenship in mind, we can also consider Carey's *Account* as a desperate attempt to find a way to bring republican citizenship back from the dead, having been all but abandoned by the masses during the epidemic. More so, as Derek Spires points out, the failure of republican citizenship that Carey had to respond to extends far past Philadelphia and its residents, as he recounted case after case of fleeing refugees being turned away or worse in neighboring towns and cities. Thus, for Carey, the task of his *Account* was to convince a nation shook by an epidemic that its citizens were, in fact, still citizens, and that that meant something.

One of the ways Carey accomplishes this is by sacrificing Black Philadelphians to the altar of public opinion. He depicted most of the city's Black population as thieves and hucksters, intent on taking advantage of the epidemic for their own benefit. Carey's representation of the Black community was not only based stereotypical imagery and assumption, but presented as the exact opposite of republican citizenship. Not to be presented in such light, the Black community's response came in the form of a pamphlet written by Absalom Jones and Richard Allen, entitled *A Narrative of the Proceedings of the Black People, During the Late Awful Calamity in Philadelphia, in the Year 1793*. Jones and Allen's *Narrative* was a direct response to Carey's accusations against the larger Black community, and presenting Black Americans as the true upholders of republican citizenship.

Carey was not the first or only white Philadelphian to bring race into their observations on the yellow fever epidemic. Jones and Allen, then, in taking aim at Carey's representation of their community, were responding to more than just one man; a fact Carey likely could not see, or admit. Carey, himself, simply picked up on existing rumors and dissatisfaction with Black Philadelphians supposed conduct when writing his *Account*. Jacquelyn C. Miller, for example, illustrates that everyday Philadelphians were commenting on race during the epidemic as they hired Black nurses. Miller's work shows the breakdown in the usual labor market not only forced white Philadelphians to turn to Black nurses in droves, but also upset their perceived control over lower-class workers of all races. As a result, white Philadelphians often complained of their need to employ Black nurses in ways which re-created and reified racial distinctions between white and Black people.⁷

⁷ Jacquelyn C. Miller, "The Wages of Blackness: African American Workers and the Meanings of Race during Philadelphia's 1793 Yellow Fever Epidemic," *The Pennsylvania Magazine of History and Biography* 129, No. 2 (April 2005): 163-194.

The need for Black nurses was the result of two main factors. The first was the simple lack of available labor from usual sources, as so many had fled the city, were sick, and had died. The mass labor shortage not only forced white Philadelphians to look to Black nurses, but also accept their pay requirements. This latter point would be conflated by people like Carey. Nonetheless, the labor shortage did afford some Black nurses access to wages they would have normally been unable to negotiate for. Second, among some white people there was still a belief Black people were all but completely immune to the yellow fever, and thus suited perfectly for nursing their white counterparts back to health.⁸

On the latter point, white Americans had long believed African and African-descendent people were simply immune to the fever because of their origin in a hot environment. While there was some truth in Black resistance to yellow fever, because of prolonged and continuing exposure to it in southern United States and West Indies, Black Philadelphians quickly pointed out themselves how the epidemic affected their community just as much.⁹ Nonetheless, many white Americans held onto a view of Black immunity, even though there was ample evidence to the contrary, especially during and after the 1793 epidemic.

For example, Benjamin Rush, perhaps the nation's most famous doctor at the time, was convinced of Black immunity at the beginning of the epidemic. In the midst of the epidemic he soon found out, and acknowledged, how wrong he was. In any case, his mistaken belief informed how he approached the epidemic in its early stages, as he sought the help of the Black community. Writing to Richard Allen, Rush stated God had granted Black people immunity to the disease, and as such, they were under "an obligation to offer" their services to their

⁸ For more on the false belief in Black immunity, see Eric Herschthal, "Antislavery Science in the Early Republic: The Case of Dr. Benjamin Rush," *Early American Studies: An Interdisciplinary Journal* 15, No. 2 (Spring 2017): 274-307.

⁹ Jones and Allen, *Narrative*.

vulnerable white neighbors. Going further, Rush stated such service would “be very grateful to the citizens” of the city, and the Black community would receive rewards from God for their “every act of kindness done...”¹⁰

As others have pointed out, Rush’s letter to Allen forced him to enter a paradox: he was asking those excluding from citizenship to act as citizens.¹¹ While this characterization of Rush’s letter seems correct at first, the doctor’s request was nothing of the sort. Instead, his letter to Allen should be seen less as a request, and more of an instruction to the Black community on its proper place and, as Rush put it himself, obligations. Because Black people had a natural immunity to the fever they were required to assist the community; however, critically, this duty did not originate in the same place as it did for white Philadelphians. The latter group was expected to perform a civic responsibility as citizens. The former obligated by subjection.

Juxtapose, for example, the language Rush used with Allen to that commonly found in the *Federal Gazette* during the epidemic. Writers to the paper repeatedly told Philadelphians it was “the duty and interest of every citizen to contribute all in his power to prevent the spreading of disorders.”¹² Such language appealed to an existing community of citizens, even as those citizens seemed to be putting their own self-interests above that very community. Rush, on the other hand, drew distinct lines between white and Black Americans in his letter to Allen to protect the existing racial order and the status of citizenship.

Rush’s relationship with Black people was complicated. He saw himself as a benevolent benefactor for Black people, and as a friend to many. He and Richard Allen, for example, refer to

¹⁰ Benjamin Rush to Richard Allen, September 1793, Rush Family Papers, Vol. 38, Historical Society of Pennsylvania, 32-33.

¹¹ Philip Gould, “Race, Commerce, and the Literature of Yellow Fever in Early National Philadelphia,” *Early American Literature* 35, No. 2 (2000), 157.

¹² *Federal Gazette*, August 23 (Philadelphia, Pennsylvania); Other examples of such language can be found on September 18, 20, 23.

each other as friends in their letters. Rush, however, was someone who at once sympathized with the condition of Black Americans and looked down upon them. He constantly held onto the belief that blackness itself was a disease, namely leprosy, and thus believed blackness could literally be cured eventually. And as the yellow fever epidemic illustrated, he believed in an observably false idea of Black immunity; one he would be forced to confront as he eventually admitted how wrong he was about this supposed immunity.

Black Philadelphians were greatly affected by the epidemic, especially those who lent their aid to the city. In a letter to his wife in late September, Rush's fear drove his pen as he exclaimed that "Negroes are everywhere submitting to the disorder." Richard Allen himself had fallen gravely ill. "If," Rush continued, "the disorder should continue to spread among them, then will the measure of our sufferings be full."¹³ Eventually, after months though, the epidemic finally showed signs of slowing down and ending, and the city had survived in large part because of the Black community.

As the yellow fever finally began to leave Philadelphia, Rush replied to a letter from Mathew Carey, who was seeking material for what would become his *Account*. In speaking to how invaluable Black nurses were, Rush reiterated the Black community had also suffered greatly under the epidemic. Yet, while complimentary to the work of Black nurses, whose service "did them great credit," Rush made sure to mention his opinion that most "were ignorant, and some of them were negligent." Rush finished his letter with a postscript informing Carey that Black people's service should mean all the more given the fact that they were not, in fact,

¹³ Benjamin Rush to Julia Rush, September 25, 1793, *Letters of Benjamin Rush*, Vol. 2, ed. L.H. Butterfield (Princeton: Princeton University Press, 1951), 684.

immune from the fever. Many Black people, as he told Carey, had succumbed to the fever, even as “in general it was much milder and yielded more easily to art than in the white people.”¹⁴

Both Rush and Carey ended up singling out leaders of the Black community as performing excellently during the epidemic. By doing so, they sought to elevate a select few above the rest of the Black community, allowing both men to continue broad characterization of the Black masses. Rush was at to praise the Black community to a small extent. Carey, on the other hand, took Rush’s focus on Black leadership and ran with it. The mass majority of Carey’s *Account* says nothing of Black Philadelphians. In fact, Carey’s comments on Black Philadelphians amounts to little more than one and one-third pages out of a pamphlet which measured over one hundred pages. And a third of the space of Black Philadelphians was taken up by a quote from a pamphlet on the 1748 Charleston yellow fever epidemic, written by John Lining, which made claims of Black immunity. As Jones and Allen said in their own pamphlet, it was “a partial, censorious paragraph,” which “hurt most.”¹⁵ But as Jones and Allen recognized, it was not how much Carey said, but what he said about the Black community that counted.

Carey’s first two editions, printed within weeks of each other, simply quoted Lining in his assumptions of Black immunity, without any additional context, despite having information from Rush that directly refuted such opinions. In his third addition, while keeping the Lining quote, Carey added many (white) Philadelphians also believed in Black immunity, but such beliefs were “erroneous,” as Black people did become sick. Carey seemingly wished to completely ignore his own role in perpetuating, and possibly personal belief, in Black immunity.¹⁶

¹⁴ Benjamin Rush to [Mathew Carey], October 29, 1793, *Letters of Benjamin Rush*, 2:731-732.

¹⁵ Carey, *A Short Account*, 77-79; Jones and Allen, *Narrative*, 7; John Lining, *A Description of the American Yellow Fever, Which Prevailed at Charleston in 1748* (Philadelphia: Thomas Dobson, 1799).

¹⁶ Carey, *A Short Account*, 78.

The focus on Black immunity is important when thinking of citizenship, because the false belief in it is tied to white and Black theorizations of citizenship. For Rush, because Black people were immune, not because they were citizens, that they were obligated to help. Hence, Black people were outside the bounds of typical republican citizenship duty to the community, because they were separate from the community. Sick white Philadelphians recognized this as well, as they were forced to turn to Black nurses. As Carey said himself, “many men of Affluent fortunes, who have given daily employment and sustenance to hundreds, have been abandoned to the care of a negro, after their wives, children, friends, clerks, and servants, had fled away, and left them to their fate.” Writing to Rush, B. Fuller wished he “could have a nurse of any kind...” Turning to the Black community, even if they were supposedly immune, was seen as not just relying on those outside the normal bounds of familial and community bounds, but as possibly flipping the established hierarchies.

By tying immunity to Black obligations to service, then, white Philadelphians were able to not only justify the temporary turn in social norms, but also denounce Black people in the same breath they could praise them. Carey, for his part, immediately went from speaking, and supposedly denouncing, thoughts of Black immunity to attacking the larger Black community. Singling out Jones, Allen, and Graw for their great service, Carey moved to “some of the vilest of the blacks” who took advantage of the epidemic, and white people’s need for nurses, to make money for themselves. Cary accused Black nurses of not only extorting up to five times the market rate for their services, but also of robbing the sick and dead. He finished by once again thanking Jones, Allen, Gray, “and others of their colour” for their service, and states their aid “demand public gratitude.”¹⁷

¹⁷ Ibid, 78-79.

Jones and Allen, for their part, saw exactly what Carey was doing in his *Account*, and refused to play along. Their response not only took aim at white Americans who sought to ignore the failings of (white) citizenship by focusing on supposed wrongs committed by the Black community, but to also challenge the notion of singular Black excellence. As much as they were held up as prominent, trustworthy, and excellent examples of their race, Jones and Allen chose not to keep quiet while their praise was being sung at the expense of the large Black community. As Jacqueline Bacon has aptly pointed out, in their *Narrative*, Jones and Allen recognized the defamation of any one Black person could stand for the entire community. Praise, however, did not.¹⁸ The Black community, both in Philadelphia and America writ large, was being judged on the rumors surrounding their conduct during the epidemic, and no amount of personal gratitude towards a select few would change that.

White onlookers attempted to graft onto the Black community some semblance of social hierarchy in the midst and after the epidemic, as they tried to separate virtuous Black leaders from the larger, and disliked, community they led. Jones and Allen leveraged their perceived, and real, leadership of the Black community, and the personal praise and validity they are given, to break down the very hierarchies placed on them. In doing so, they rejected both white understandings of their community and the denization of select Black leaders.

Jones and Allen's *Narrative*, then, is not only a refutation of charges levied by Carey in print, others in their letters, gossip on city streets. Interlaced within the accounts of money spent, beds maintained, and people buried was an argument that U.S. citizenship not only belonged to Black Americans, but only survived the epidemic because of the efforts of that community.

¹⁸ Jacqueline Bacon, "Rhetoric and Identity in Absalom Jones and Richard Allen's 'Narrative of the Proceedings of the Black People, during the Late Awful Calamity in Philadelphia,'" *The Pennsylvania Magazine of History and Biography* 125, No. 1/2 (January – April 2001), 72.

Thanks and recognition were both not enough and not needed. Jones and Allen's principal goal in responding to Carey wasn't to get the Black community its due. Instead, their *Narrative* is meant to present an alternative version of citizenship when not only included Black Americans, but was personified by them.

Derek Spires refers to this citizenship model as "neighborliness," which revolved around classical republican values as well, but emphasized a duty to the community by service to each other.¹⁹ Whereas republican citizenship incorporated some values of community service, and his broke down during the epidemic, it conversely celebrated independence and individuality. Thus, Carey's *Account* meandered between criticizing those who fled and lifting up their actions. Between demeaning those outside Philadelphia who turned away the city's residents, and justifying their decisions. Between condemning those who left their neighbors to die, and celebrating the will to live. Carey was at pains to defend an idea of citizenship fundamentally at odds with itself and prone to internal dissonance.

For example, Carey opened his history by telling his audience they should "not only forgive, but even forget, if possible, all the unpleasant treatment our citizens have experienced." Such experiences went much further than "men of affluent fortunes" having their family, friends, and servants leave them. Throughout Carey's *Account* he told stories of how neighbors openly abandoned each other. Those who fled the city were often met with harsh resistance, as surrounding towns and cities refused them entrance. As Carey said, citizens of Philadelphia were "hunted up like felons" and "debarred admittance and turned back." In one case, a woman traveling to Easton, Maryland was tarred and feathered, and her wagon of goods burned in front of her.²⁰

¹⁹ Spires, *The Practice of Citizenship*, 56.

²⁰ Carey, *A Short Account*, vi-vii, 34-35, 97.

The behavior exhibited by people, as Carey said, should not only be forgiven and forgotten, but was acceptable given the circumstances. Towards the end of his history, Carey took aim at Philadelphians who accused those who left of being deserters. As Carey put it, “it was the duty of every person to avoid the danger, whose circumstance and situation allowed it.” If people had stayed in Philadelphia, the death toll and suffering would have surely been far worse.²¹ Leaving, then, became just as much an act of citizenship as staying to help.

Jones and Allen, however, recognized the knots Carey was tying himself in to justifying all the behavior exhibited by white Philadelphians, while also using the Black community as a scapegoat. By contrast, their *Narrative* presented a citizenship model devoid of contradictions. One which, as Spires says, “could create horizontal structures and day-to-day engagements more conducive to egalitarian citizenship than could contemporary notions of tiered civic republicanism.”²²

Jones and Allen’s *Narrative* presented a positive vision of Black governance. It is important to remember Philadelphia, at once a state capital and the nation’s temporary capital, was left all but abandoned by government officials. In his *Account*, Carey emphasizes this by marking the turning point of the epidemic by focusing on the meeting and subsequent actions of the few government officials still left in the city. His purpose in focus was to show how civic virtue, how citizenship, saved the city. Yet, the conflicting nature of that citizenship weakly lends strength to his story.

In their *Narrative*, though, Jones and Allen present a community based model governing based in citizenship that is exemplified by the Black community. To be fair, Jones and Allen do not elevate themselves or anyone else to the rank of an actual governing official. Yet, they make

²¹ Ibid, 108-109.

²² Spires, *The Practice of Citizenship*, 63.

clear they were already mobilizing to aid the city before even asked. There need not be a request, or demand, of service, because their community was actually equipped to handle the medical and social crisis. Both Jones and Allen would take part in expanding this alternate vision of governance years later in petitions to Congress, the subject of the next section.

The two men were not inclined to hold back punches when criticizing Carey either. In taking aim at his assertions that the “vilest of the blacks” took advantage of the epidemic to charge more for their services, Jones and Allen ask “what would *he* have demanded?” (emphasis theirs) The hypothetical needed no answer, as Jones and Allen quickly followed up their question by pointing out like other white Philadelphians, Carey fled during the epidemic. Carey, like other white Philadelphians, may have “had a right to flee,” but it was another thing to “plead the cause of those who fled,” in part, by laying blame on the Black community.²³

Jones and Allen made sure to go into detail about how Black Philadelphians were more than willing to offer their services for free, offering such examples. They did not refute some members of the Black community certainly did attempt to take advantage of the situation to demand higher wages, or even in some cases to steal. Yet, such allegation were not only inflated, but also ignored how much white Philadelphians did the same thing. With such a clearly skewed narrative, Jones and Allen asked the public whether it was “a greater crime for a black to pilfer, than for a white to privateer?”²⁴

The question posed by Jones and Allen was laden with meaning. By comparing the thief to the privateer, Jones and Allen forced their white audience to confront not only the arbitrary difference between the two, but also between the status of Black and white Americans. The thief and the privateer did the exact same thing, yet only the former was shunned and punished by

²³ Jones and Allen, *Narrative*, 8.

²⁴ *Ibid.*

society. The latter, by contrast, enjoyed state recognition for their actions, and was encouraged to steal for the benefit and glory of the community. The only difference between the two was one had a legally sanctioned, and at times even exalted, place within the nation, while the other was seen as a lowly menace.

In the context of a slave nation, too, the comparison between the thief and privateer was a not so subtle condemnation of slavery. Jones and Allen don't mention explicitly mention slavery in their pamphlet. Yet, it was all too common for slavery and the slave trade to be referred to as "man-stealing" by its opponents. Furthermore, privateering was just one-way Africans could be captured and sold into slavery. Thus, in asking their question, Jones and Allen essentially laid a simple query before their readers: What was the theft by a few Black individuals when compared to the collective stealing of human beings the United States perpetuated?

Furthermore, by comparing white actions to privateering Jones and Allen showed how the actions of white people, whether they be swindling, stealing, or abandoning the larger community, could be explained away, justified, and even glorified. As much as Carey had denounced the actions of so many people, including those who abandoned the city, he nonetheless began and ended his history of the epidemic by defending those very same actions. If such forgiveness could be given to white Americans, then why not Philadelphia's Black community? how If the actions of white Americans could be excused, then why could not Carey do the same for Black people? Jones and Allen, then, illustrated how Carey and white Philadelphians not only drew an abstract line between the thief and the privateer, but also between Black and white, non-citizen and citizen. They recognized and forced readers to contemplate the arbitrary nature by which Black Americans were not just denied a place within

the nation, but designated non-citizens when they upheld the true values of republican citizenship in a time of crisis.

Citizenship had, for years, been tested in times of great struggle. Forged amid the Revolutionary War, the status was meant to both unify the new nation along the egalitarian ideas of the period, as well as represent the values and duties individuals had to the nation itself. That duty was at no time more important than when individuals would be tempted to put themselves above others. One thinks of Thomas Paine's famous words in *The Crisis*, when he attempted to rally the nation and its soldiers against insurmountable odds, and said "the summer soldier and the sunshine patriot will, in this crisis, shrink from the service of their country."²⁵ Jones and Allen drew on the meanings of citizenship, and the struggles it underwent during the epidemic, to make a case that the Black community were the ones who did not flee, but stayed and upheld the true values inherent in this status.

Perhaps one of the most important parts of Jones and Allen's *Narrative* was their refusal to allow Carey and others white people to single out them, as well as the late William Gray, as outliers and extraordinary examples of their race. Carey wasn't the only one to do this. Benjamin Rush, in his own history of the epidemic referred to Jones and Allen as the "two African citizens" when briefly speaking of their organizational efforts in the midst of the epidemic.²⁶ Referring to Carey's *Account*, Jones and Allen told their readers "by naming us, he leaves these others, in the hazardous state of being classed with those who are called the 'vilest.'"²⁷

²⁵ "The Crisis, Number I" in *Selected Writings of Thomas Paine*, Ian Sharpio, Jane E. Calvert, eds. (New Haven: Yale University Press, 2014), 53.

²⁶ Benjamin Rush, *An Account of the Bilious remitting Yellow Fever, as it Appeared in the City of Philadelphia, in the Year 1793* (Philadelphia: Thomas Dobson, 1794), 113.

²⁷ Jones and Allen, *Narrative*, 12-13.

This refusal was yet another instance of Jones and Allen advocating for a remaking of citizenship with community at its forefront. Their actions were no different than those of other Black Philadelphians. The actions of the whole were equal, and nothing set them apart from the nurses attending to the sick, or those attending to the dead. This is why Jones and Allen spend so much time speaking about the good deeds of other people, and speak about the efforts, losses, and contributions of the Black community as a whole, instead of personalizing their *Narrative* around their own actions. As they pointed out, Jones and Allen could “conceive, and experience proves it, that an ill name is easier given than taken away.”²⁸ In other words, the compliments given to them meant little when harmful untruths continued to spread about the larger Black community; a community that they were not only part of and helped to lead, but one which no amount of (white) praise could lift them out of.

Jones and Allen’s rejection of such compliments also illustrate their refusal to allow Black worth to be appraised by white opinion. It is critical in rejection the praise given to them that they do not simply try to shift it to the Black community as a whole. The point of their refusal was not to have white Americans instead shift their undivided attention on the whole of the Black community, but reject a system where their worth was assessed at all by white Americans. In a community based citizenship model, such valuation was unnecessary. Furthermore, in a society based on the enslavement of Black people, to buy into such a system of Black appraisal would provide little benefit.

Jones and Allen next took aim at ideas of Black immunity, and tied them to their own service. While Jones and Allen had been quite clear the Black community had been ready to assist with the epidemic throughout their *Narrative*, they made sure to call out white

²⁸ Ibid.

Philadelphians, like Benjamin Rush, who had asserted they had an “obligation” to help, because of their supposed immunity. As they said, Black Philadelphians were called to help even as they were sick, because white people believed they were simply ill with a different disease, not yellow fever. Eventually, when “it became too notorious to be denied,” white Philadelphians began admitting the flaws in their Black immunity theory, but continued to assert “some few died but not many.” Jones and Allen continued, telling their audience the Black community’s “services [were] extorted *a the peril of our lives*, yet you accuse us of extorting *a little money from you*.”²⁹ (emphasis theirs)

Their focus on money was not only a response to the false accusations around them. As Joanna Brooks has pointed out, Jones and Allen’s *Narrative* called out the failures of market capitalism to properly respond to the epidemic, as it was incumbent on the benevolence of the Black community to pull the city through the crisis.³⁰ Thus, in taking aim at white Philadelphians charges of extortion, Jones and Allen laid bare the realities that the very system those people put their faith in, and were increasingly shaping their ideals of civic belonging and citizenship around, was not reliable at all. It was not a market economy that saved the city, but a truly republican vision of citizenship upheld by the Black community.

Towards the end of their *Narrative*, Jones and Allen made perhaps their most radical statement on citizenship and the Black/white divide. As they recounted instances of Black aid in the face of white violence and negligence, Jones and Allen informed their readers that “many of the white people, that ought to be patters for us to follow after, have acted in a manner that

²⁹ Ibid, 15.

³⁰ Joanna Brooks, “The Early American Public Sphere and the Emergence of a Black Print Counterpublic,” *The William and Mary Quarterly* 62, No. 1 (January 2005), 87; Brooks is responding to Philip Gould, who in his own analysis of Jones and Allen’s *Narrative* claimed the two were making an “investment in market capitalism,” by making claims to the very structures, ideals, and values that made up the “republic of letters;” Philip Gould, “Race, Commerce, and the Literature of Yellow Fever in Early National Philadelphia,” 174-176.

would make humanity shudder.”³¹ The statement was one of Jones and Allen’s more explicit condemnations of the white community’s response, as a whole, to the epidemic. At first glance, it would appear to simply be yet another place where Jones and Allen attempted to compare the diverging actions of Philadelphia’s Black and white communities, but they were actually going much further in their remonstrance here.

Up to that point it was quite common for abolitionists and anti-slavery advocates to make the point that Black people could be brought to the level of white Americans with time, education, proper control, etc. While not universal among white opponents of slavery, it was nonetheless a fairly common argument put forth, as many white people believed that slavery debased the condition of Black people; though many did not necessarily think Black people were naturally on par with white people when excluding slavery. Modeling behavior after their white counterparts was a lesson abolitionists and anti-slavery advocates pushed onto the free Black community as a means of improving their condition.

As Jones and Allen pointed out, however, if the Black community had followed this logic during the epidemic, they would have been led to act not as virtuous (white) citizens. Instead, selfishness, violence, and disregard for the community would have ruled; not coincidentally the way many white Americans thought Black people acted to begin with. In this statement, then, Jones and Allen point out the illogical nature of white abolitionists and anti-slavery thought, and exposed a seemingly reversal of racial character at the time. A reversal, however, that could only be seen if one subscribed to the belief that Black uplift could only occur by Black mimicry of white behavior.

³¹ Ibid, 19.

This simple statement forced the white audience, whether abolitionists or enslaver, to grapple with the prevailing racial logic of the time; a logic which denied Black Americans citizenship and a place within the nation. Either accept that Black people needed to be raised to the level of white Americans, and subsequently accept that white Americans had abandoned their role as citizens, only for Black people to willingly step in. Or accept that the entire racial logic of the time was a fallacy.

For his part, Carey was upset, to say the least, with Jones and Allen's *Narrative*. Writing to the public about an anonymous allegation that he had completely abandoned the city during the epidemic, Carey stated he thought Jones and Allen's *Narrative* "underserving of notice," and would have left it to the public to decide had he not felt the need to address this separate matter. He kept his remarks short however, as the majority of the small address was dedicated to combating the desertion allegations from "Argus" in the newspapers. Nonetheless, Carey described Jones and Allen's comments as "indecent, unjust, and ungrateful." He even reprinted the paragraph Jones and Allen took issue with, and put his praise of them in all caps.³²

Carey finished his short rebuke of Jones and Allen by asking the public to judge the comments he made in his *Account*:

Is this the language of an enemy? Is it not rather that of an advocate, endeavouring to palliate facts, which are not attempted to be denied? Does this deserve railing or reproach? Is it honourable for Jones and Allen to repay evil for good?³³

³² Mathew Carey, *Address of M. Carey To the Public* (Philadelphia: Mathew Carey, 1794), 5.

³³ *Ibid.*

It is likely Carey was insulted not only because he had specifically complimented the very men now against him, but because his magazine, *The American Museum*, had often been a home for antislavery writings.³⁴ Carey likely felt his commitment, at least in the role of an editor, to abolitionism and his praise of Jones and Allen would have shielded him from any rebuke. His frustration, though, likely went even further. Carey and others sought to impose onto the Black community a social hierarchy of their choosing. Carey and others attempted to make “African citizens” of Jones and Allen, yet the two men thoroughly rebuffed such efforts.

By doing so, Jones and Allen turned their backs on a conception of (white) citizenship which could extend recognition only to them, and instead advocated for a model of citizenship far more egalitarian and democratic in nature. A conception of citizenship which included all Black people.³⁵ Carey, in his anger, unwittingly proved Jones and Allen correct in their refusal to play along. Jones and Allen refused to accept a position that was *given* by white society, not simply because it could quickly be taken back, or even because it wouldn’t be recognized by all. They did so because the very people attempting to raise Jones and Allen at that time were the same ones who told them to model their behavior after those who failed to uphold the values of citizenship.

[III]

Jones and Allen’s *Narrative* was just one aspect of their larger advocacy. By the end of the decade they would help organize the first two petitions from Black Americans to Congress. Congress had been no stranger to petitions against both slavery and the slave trade. One such set

³⁴ Phillip Lapsansky, “‘Abigail, A Negress’: The Role and the Legacy of African Americans in the Yellow Fever Epidemic,” *A Melancholy Scene of Devastation*, 61-78.

³⁵ Spires, *The Practice of Citizenship*, 63-65.

of petitions was brought to Congress in its opening days, in 1790, and forced one of the most prolonged and contentious debates over slavery to date. While certainly occasion a less virulent and drawn response than those petitions, these two petitions, in 1797 and 1800, were important because of who they represented and what they put forth. Both of these petitions were written and submitted by Black activists. The 1797 petition was made on the part of four formerly enslaved men from North Carolina, who wished for Congress to do something about both that state's manumission laws and the federal Fugitive Slave Act of 1793. Living in Philadelphia, the men lived in fear of being captured and re-enslaved, and sought redress from Congress to ensure the freedom of them and those like them. The 1800 petition also focused on fugitive slavery, and asked Congress to step in to protect Black Americans against the ever-present threat of kidnapping and illegal (re)enslavement.³⁶

The 1797 petition was introduced to Congress on January 23rd, and represented what seemed to be a long campaign by members of the Black community and some of their white allies to present a petition from Black Americans themselves. Following the defeat of the 1790 anti-slavery petitions, some Quakers within the Philadelphia Meeting for Sufferings (PMS), particularly John Parrish, unsuccessfully called for submitting a new petition to Congress directly from enslaved people. The plan was too radical for most Quakers, however, and was

³⁶ While both of these petitions have been mentioned in some scholarly works before, they have rarely been the focus on any extended discussion. One exception worth noting, however, is the work of Nicholas P. Wood, who examines both petition in an article on early Black petitioners to Congress. The main thrust of Wood's argument, as they pertain to these particular petitions, is that Congress ultimately did not decide to subscribe to a race based understanding of the right to petition. Thus, in allowing Black Americans to petition Congress, they implicitly, if not explicitly, recognized this right. House members' tactics in dealing with the petitions illustrate that while some certainly wished for Congress to explicitly deny any Black right to petition, even those against the substance of the petitions were fine accepting them, but simply burying them, contrary to the thrust of Wood's overall work. In comparison to Wood, I see the Congress's acceptance of the petitions as less radical, given the main aim of southerners was simply to bury them, which they did successfully; Nicholas P. Wood, "A 'class of Citizens': The Earliest Black Petitioners to Congress and Their Quaker Allies," *William and Mary Quarterly* 74, No. 1 (January 2017): 109-144.

quickly shot down in support of further petitions from white abolitionists.³⁷ While Parrish would remain enthusiastic about pursuing this route, the fact that it was shot down immediately following the failure of the 1790 petitions illustrates a hesitancy among most white abolitionists, and hints at an emerging divide between Black and white advocates which would become a defining feature of the movement in the 19th Century.

In any event, by 1797, after a number of failed petitions, a few white abolitionists seemed open to openly collaborating with the Black community, and began work on the first petition presented by Black Americans. By the end of 1796, collaborations between Quakers in the PMS and the North Carolina Standing Committee (NCSC) had given life to yet another petition that would represent the plight of Jupiter Nicholson, Jacob Nicholson, Joe Albert, Thomas Pritchett, and possibly some other North Carolinians freedmen. While the two organizations seemed poised to work together to create a petition on North Carolina's strict anti-manumission laws, the direction of the eventual petition seems to have been the unofficial work of just a few Quaker abolitionists and the Black community. Parrish, and possibly another PMS member John Drinker, met with the four men to craft their petition. As Wood points out, the PMS did not openly approve of the collaboration between it and the freedmen, and no official committee reports or correspondence actually mentions working with the Black petitioners.³⁸ Once again, it seemed the bulk of the white abolitionists community was at odds with working with the Black community.³⁹

³⁷ *The Debates and Proceedings in the Congress of the United States*, Fourth Congress, Second Session (Washington D.C.: Gales and Seaton, 1849), 2015; Wood, "A 'class of Citizens,'" 124.

³⁸ Wood, "A 'class of Citizens,'" 127.

³⁹ It is important to point out my reading of the relationship between the Quaker abolitionists and the Black community diverges significantly from Wood's assessment. Wood's article mostly stresses the collaboration between these two groups, and presents Quakers as generally supportive of the Black community's efforts. But from the sources he presents I have come to a different conclusion. However, because of COVID-19, I have been unable to physically view the sources Wood relies on myself. His article is a thorough and deep dive into PMS papers, is well documented, and perhaps the most comprehensively researched piece on the organization background of the

The stories of the four freedmen, as presented in the petition, share many commonalities. They were all likely freed by Quaker enslavers in North Carolina, but had to leave the state at some point in time, with or without family, because of attempt to capture and enslave them. Much like Jones and Allen's *Narrative of the Proceedings of the Black People*, the petitioners present their unique stories and circumstance not as an attempt to receive individual relief, but in an attempt to represent the larger Black community. As the petitioners said themselves, they sought Congress's attention "not only with respect to our personal sufferings, as freemen, but as a class of that people who, distinguished by color," are seen "as unentitled to that public justice and protection which is the great object of Government."⁴⁰

While the petitioners explicitly state they were seeking redress for the larger Black community, they recounted their personal details to illustrate the broader issues. Jupiter Nicholson was freed by Thomas Nicholson, and went on to work as a sailor for a Zachary Nickson. He worked for Nickson for two years, before he was pursued by slave catchers upon coming to shore one day. He escaped to Virginia by night with his wife, who had been manumitted by Gabriel Cosand. In Virginia he worked in the lumber industry for about four years, before moving to Philadelphia with his wife. His father, mother, and brother were all freed as well, but were caught by slave catchers, presumably in North Carolina, and re-enslaved.

Jacob Nicholson was freed by Joseph Nicholson, but remained on his former enslavers' property, possibly because he was given a small plot of land as part of his manumission. At some point in time, however, Nicholson was forced to flee slave catchers who were "induced by the profit afforded them by law." He had to leave behind his mother, two brothers, and a child,

1797 and 1799 petitions. So for the time being, I have relied heavily on sources he uses, but have also significantly diverged in my understanding of this history.

⁴⁰ *Annals of Congress*, Forth Congress, Second Session, 2017.

presumably all of whom were never freed. Job Albert was manumitted by Benjamin Albertson, who leased some land to him and his wife, who was freed by William Robertson. Albertson, in Job's words, protected the two from being capture by slave catchers for a time, but the two were still forced to flee at some point in time. His wife found refuge in Albertson's home, while Job attempted to secure their home from entrance. He was eventually caught by three men and taken to a prison in Hartford, North Carolina. He was assisted by a white prisoner, made his escape, reunited with his wife, and escaped to Virginia by night. He moved to Philadelphia on the advice of others. His mother and sister were still enslaved in North Carolina, having been freed and subsequently caught and re-enslaved.⁴¹

While all four men's stories mirror each other, the story of Thomas Pritchett, and the particular wording used to describe it are especially interesting. Whereas the other three men simply recount the threat of slave catchers, naming their pursuers when possible, Pritchett goes into more detail on the threats made to him and his family. Having been freed by Thomas Pritchett and given land and tools for a home and cultivation, Thomas worked his plot of land for almost three years before being threatened with re-enslavement. When his former enslaver died, and his widow remarried, the new husband threatened Thomas with re-enslavement. This occurred before another white man, Enoch Ralph, threatened Pritchett and his family.⁴²

Pritchett presents the threats made by Ralph in context with his own economic activities. By his third year, Pritchett's crop had grown to thirty bushels of corn, by his estimates. However, before he could harvest his crop, Holland Lockwood, the new husband of his former master's widow, threatened to sell him to the West Indies for refusing to come back to slavery. Furthermore, Ralph threatened him to, saying he would send him to jail and sell him "for the

⁴¹ Ibid, 2016-2017.

⁴² Ibid, 2017.

good of the country.” He fled to Virginia, where he almost immediately boarded a ship for Boston, but ended up in New York because of bad weather. There he worked as a waiter, but returned to Virginia after almost a year and a half in search of his wife and children, (he presumably left them in Norfolk where they fled to from North Carolina). Pritchett, however, only found his advertisement in the newspaper, with a twenty-dollar bounty. Without being able to locate his family, he left Virginia for a second time, and found refuge in Philadelphia.⁴³

Given how Pritchett details the increasing productivity of his farm, it would seem he was aiming to produce enough to sell over time. It is possible by the third year he had finally reached that level, and that it was this fact that occasioned the threats of re-enslavement by others. By placing his economic activity immediately before the threats of re-enslavement and selling, Pritchett was verifying this speculation. The threats against his and his family’s freedom came not from them illegally being freed under North Carolina law, but from Pritchett attempting to enter the economy as a competitor to small white farmers. Selling Pritchett, “for the good of the country,” then, was not necessarily only to rid the state and nation of free(d) Black people, who were always seen as a constant threat themselves as detailed in the last chapter. Instead, it appears to have been a means of eliminating economic competition, which ironically posed less of a threat to middling whites than the institution of slavery itself.

All four men mention their work history, presumably to ward off the common attacks that free(d) Black people were lazy, unintelligent, and a pest to society. All of them present themselves as self-sufficient and industrious members of society, capable of providing for themselves and their family. Pritchett, however, goes further than this. In presenting his presumed entrance into a world of economic activity that went beyond simple self-sufficiency, Pritchett’s

⁴³ Ibid, 2017.

backstory represented more than a simple repudiation of racist stereotypes of free(d) Black people. Instead, his biography was meant to expose the lies at the heart of America's racial logic, by uncovering how white Americans' worldview was not built on a number of racial truths about Black people, but anti-Black principles meant to keep them subjugated.

Presented directly before the main portion of the petition, Pritchett's story forced white Americans to recognize that even disproving racist stereotypes of Black people could not save them in this country. By all estimations, Pritchett had achieved the values of republican citizenship by providing for himself, and even attaining the ability to make a modest profit. He had disproved every racist notion of what a free(d) Black person would, or more aptly wouldn't, do for society. Had he been a drain on the community, he would have risk being re-enslaved and sold "for the good of the country." Yet, even when this wasn't the case, the country still needed protecting from him.

Pritchett, then, critiqued all of American society that built itself, literally and figuratively, on the backs of Black people. Furthermore, along with Jones and Allen's *Narrative*, Pritchett critiques the emerging capitalist system of the nation that was being built from slavery. Just as Jones and Allen had done in their *Narrative*, the petitioners were also taking aim at the increasingly capitalistic nature of the country, and the failure of that vision. It should be of no surprise that at least one of these petitioners' biographies would go so far in its criticism of the existing system and the (il)logic they were built on. Given their leadership roles in the Philadelphia Black community, it is likely Jones and Allen not only knew these men in some capacity either before or after they were selected to present their grievance, but also helped craft the very petition itself.

After stating their petition was meant to represent themselves and the larger Black community, the petitioners end with their understanding of the Constitution and congressional power. Anticipating the common argument that any action on slavery, outside of simply strengthening the institution, was against the Constitution, the petition made sure the members of Congress understood they were not asking for anything “beyond the extent of your Constitutional power or influence.” This power certainly extended to “the unconstitutional bondage in which multitudes of our fellows in complexion are held,” given the anti-manumission laws of North Carolina. Such laws were, in the petitioners’ mind, “morally and politically, a Government defect, if not a direct violation of the declared fundamental principles of the Constitution.”⁴⁴

The assertions made by petitioners about the Constitution and its relationship with North Carolina anti-manumission laws is notable for a number of reasons. First, this petition represented the first time Black Americans had so publicly sought to put forth their own interpretations of the Constitution. In the years following the creation and ratification of the Constitution, the country had been embroiled with one debate after another over just what the document meant. Its many ambiguities and silences were addressed by any number of people and groups who sought to mold the young nation into what they wished. Black Americans were no different in this regard, and had their own ideas of what this document meant and how the nation should be structured around it.

Just as Absalom Jones and Richard Allen had advocated for a different vision of government in the aftermath of the Yellow Fever Epidemic of 1793, so too did the petitioners and those behind them. However, in this case, the Constitution and nation itself were considered.

⁴⁴ *Annals of Congress*, Forth Congress, Second Session, 2017-2018.

Put simply, the Constitution gave the nation a new federal structure, where power and sovereignty were shared between different levels; namely the national government and the individual states. The national government and states had their own spheres of influence, and even with the Constitution and new government being as young as it was, certain powers were almost universally agreed to belong to one or the other. The power to legislate over the institution of slavery, and the various aspects associated with it, was largely agreed to be a state issue.

Thus, in asking Congress to intervene in North Carolina's anti-manumission law, as well as specifically asserting such action was fully within the preview of that body's power, the petitioners put forth a truly radical theory of government and federalism. Even abolitionists usually agreed that targeting specific aspects of slavery law in a state was constitutionally impossible. Making such a statement was not something which usually occurred, and it represents an early vision of the anti-slavery constitutionalism that became a mainstay of the abolitionists movement in the 19th Century.

Furthermore, the petitioners not only brought their own interpretation of the Constitution to the table, but by doing so also staked out a claim that they were party to the founding document as well. This is apparent in the petitioners' reference to the "fundamental principles of the Constitution," which can only be taken to be a reference to the document's preamble. Given the rest of the Constitution expresses no actual values or principles, but simply lays out a framework for a government, the preamble is the only part of the document the petitioners could be referring to. Doing so was, as with interpreting the Constitution itself, a radical act of claiming the document and a place within the nation. The petitioners may not have said it outright, but they let Congress know they were seeking redress as members of "We the People."

They sought to hold Congress accountable to the words of the Preamble and, at least, “secure the Blessings of Liberty” to them and the rest of the Black community.⁴⁵

While the petition itself is noteworthy, the debate surrounding it is also meaningful. The debate may have been very short, but it was defined by skepticism of the petitioners’ status. Most of the southern delegates who spoke explicitly called into question whether the men were actually free. This is, perhaps, not surprising. But it is important to note, given it formed the basis of rejecting not only the petition itself, in southerners’ eyes, but repudiating their constitutional arguments.⁴⁶

Whereas the petitioners asserted it was well within Congress’s power to act on their situation, southern members relied on the existing division between state and national governments to make their arguments. Considering the federal nature of the country, southerners argued that not only was this a judicial matter, in that the men should initiate freedom suits, but it was also a state issue. As James Madison observed, “if they are slaves, the Constitution gives them no hopes of being heard here.” It seemed “the petitioners are under the laws of North Carolina, and those laws cannot be the interpreters of the laws of the United States.”⁴⁷

The thrust of Madison’s argument here was two-fold. First, the petitioners were likely still enslaved people under North Carolina law. As a result, they were subject to the Constitution, but could not subject it themselves. In other words, their interpretations about constitutional power and principles meant nothing, because they had nothing to stand on to make such presumptions about it. Second, because these men were enslaved under North Carolina law, their only recourse was to go through the state’s institutions, namely the judiciary, to pursue their

⁴⁵ Constitution, Preamble.

⁴⁶ *Annals of Congress*, Forth Congress, Second Session, 2018-2024.

⁴⁷ *Ibid*, 2020.

freedom. In this, Madison and other southerners rejected one of the more radical aspects of the petitioners' arguments, which was to breakdown the understood division between state and national governments.

What often led to fierce and prolonged debates over slavery was how much national actions and laws could be seen as acting on states' rights to legislate on all matters of slavery. William L. Smith of South Carolina, for example, said that if the petition was accepted at all, it would lead to slaves continually petitioning the House, spread alarm throughout the South, and act as an "entering-wedge," whose consequences could not be foreseen."⁴⁸ As with the 1790 Quaker petitions, southerners saw any actions by the national government that did not explicitly strengthen slavery as not just a threat to the institution, but states' ability to legislate on it.

The debate over the petition ended quickly, with a vote of 33-50 resulting in it lying on the table. PMS officials seemingly took more moderate southerners, like Madison, at their word that the issue with the petition was purely constitutional. In a letter to the NCSC, the PMS informed them that "the opposition was chiefly grounded on the Constitution not authorizing Congress to interfere with laws of particular states."⁴⁹ It is unclear the opinion of the Black community, but it is evident that PMS officials, who were hesitant to even submit such a petition missed the mark on the true opposition of enslavers in the House. While representatives like Madison couched their opposition in constitutional language, it was exceedingly clear that they were simply using what amounted to procedural rules to turn the petition away.

In fact, while we don't have the response or reaction by the Black community, given the fact that they advocated for a wholly different understanding of the Constitution in the first place,

⁴⁸ Ibid, 2021.

⁴⁹ "Rough Essay of a letter to the Standing Committee in No Carolina," 1797, PMS Misc. Papers, HC, found in Wood, "A 'Class of Citizens,'" 130.

it is likely they would have seen through enslavers' tactics. By saying the opposition to the petition was grounded in constitutional powers, PMS official overlooked the fact that these Black petitioners had put forward a different way of understanding the Constitution and the relationship between the national and state governments. This speculation about the Black community's response is further upheld by the 1800 petition, which essentially doubles down on the arguments put forth in the 1797 petition.

While it is likely Absalom Jones, Richard Allen, or both, assisted with the creation of the 1797 petition, we know for sure the two men were part of the 1800 petition. They, along with seventy-one other Black Americans, crafted and signed a new petition aimed at holding Congress accountable for protecting free(d) Black Americans from kidnapping and (re)enslavement. In the process, the petitioners, some of whom were the very men who had submitted the 1797 petition, continued the arguments put forth by the Black community about their place within the nation and their understanding of the Constitution. Thus, the 1799 petition represents yet another effort by Black Americans to continuing "fixing" the Constitution and citizenship in the nation.

The 1800 petition was finalized at the end of December in 1799, and sent to Pennsylvania's Robert Waln for submission to Congress. Waln wasn't able to present the petition until the next week on January 2nd, 1800. While still a relatively short debate, this petition did occasion more extensive arguments than its 1797 counterpart, taking two days to fully resolve itself. Throughout the debates, arguments were made that combined many of the aspects already discussed in this chapter. Not only were the citizenship claims of Black Americans attacked, but also the status of Quakers in the nation. People on both ends of the slavery question made arguments that reflected their understandings of the boundaries of

citizenship in the country. And Black Americans continued their efforts to claim citizenship by fixing the status and the Constitution itself.

The topic of the 1800 petition was the illegal kidnapping of free(d) Black people in the north, and the illicit intrastate slave trade that it spurred. The petitioners asked Congress to not only do something about this kidnapping, but to also pave the way towards the eventual freedom of all slaves. While such a request was certainly guaranteed to cause outrage among many, the petitioners attempted to find a middle road by subscribing to some of the existing arguments surrounding freeing enslaved people. In their petition, they admitted that they did “not ask for the immediate emancipation of all, knowing that the degrading State of many and their want of education, would greatly disqualify for such a change.” While they may have taken a somewhat more moderate and compromised tone in asking for Congress’s assistance with the eventual emancipation of all enslaved people, it is important to note that even making this compromised request would have been, and was, seen as very radical at the time; not least because it was in the halls of Congress and from the pen of Black Americans themselves.⁵⁰

Like the 1797 petition, this new one explicitly put forth that it was meant to represent the broader Black community. While the petitioners felt a sense of gratitude in their own freedom, they could not help but notice the “condition of our afflicted Brethren, suffering under various circumstances in different parts of these states.” They felt it their duty to

...petition you in their behalf, believing them to be object of representation in your public Councils, in common with ourselves and every other class of Citizens within the

⁵⁰ The Petition of Absalom Jones and Others – People of Color and Freemen of Philadelphia – Against the Slave Trade to the Coast of Guinea, 12/30/1799, HR 6A-F4.2, Records of the U.S. House of Representatives, Record Group 233, National Archives Building, Washington, D.C.

Jurisdiction of the United States, according to the declared design of the present Constitution, formed by the General Convention and ratified by the different States, as set forth in the preamble thereto, in the following words – vis – “We the People of the United States...”⁵¹

Whereas the 1797 petition had been somewhat implicit in what “fundamental principles” of the Constitution it was referring to, the 1800 petitioners were much more explicit and forceful with their argument. Not only did they make it perfectly clear they thought the Preamble bound the rest of the Constitution, and thus the nation. The Black community here made no qualms about telling Congress they were included within “We the People” as a “class of Citizens.”⁵²

While it is noteworthy these petitioners are claiming citizenship within the United States, it is to be expected by this point. Black Americans had been continually claiming space within the union throughout the 1790s, and had never backed down from their claims. What is perhaps interesting about their framing of this claim, however, is how it illustrates, for the first time, how Black Americans understood the fundamental changes in citizenship that occurred with the creation and ratification of the Constitution. As shown in the previous chapter, the Constitution drastically changed the nature of citizenship in the nation, and thus necessitated the exclusion of Black people from the status. While the exclusion is not, like many things in the Constitution, explicit, it was nonetheless understood at the time. However, given the implicit nature of the exclusion, Black Americans could begin the decades long practice of reading the Constitution against itself as a means of claiming citizenship.

⁵¹ Petition of Absalom Jones and Others.

⁵² Ibid.

These petitioners went further than simply claiming a passive place within the citizenry, when they went on to speak of the Preamble as a “solemn Compact,” being openly violated by the international and illicit domestic slave trade.⁵³ While such a statement may appear to only be another instance of Black Americans interpreting the Constitution, it actually goes beyond this, and represents an escalation in their arguments from the 1797 petition. Whereas the 1797 petition showed Black Americans claiming the right to interpret the Constitution, and how it should be implemented, this 1800 petition showcases their efforts to explicitly present themselves as a party in the ratification of the Constitution.

By presenting themselves as a party to the compact creating the modern government and nation, the petitioners not only claimed citizenship by way of the Constitution, but went further in asserting themselves metaphorically into the founding of the new nation. As discussed in Chapter Three, one of the main arguments put forth to deny the possibility of Black inclusion within citizenship was to present Black people as outside both the bounds of American society, and thus not party to the social contract that created the nation. The 1800 petitioners, however, placed themselves squarely within America’s newest social contract, the Constitution. By doing so, they could not only claim citizenship within the country, but all the protections that came with being subject to the Constitution.

Lest this access to constitutional protections be implied, the petitioners made specific reference to the fact that they should enjoy the same liberties as their white counterparts. As they said, “in the Constitution, and the Fugitive bill, no mention is made of Black people or Slaves – therefore if the Bill of Rights, or the declaration of Congress are of any validity” then they should be “admitted to partake of the Liberties and unalienable Rights therein held forth.”⁵⁴ The

⁵³ Ibid.

⁵⁴ Ibid.

ending of the petition essentially called out Congress, enslavers, their allies, and anyone who would deny Black people protections under the Constitution and the current form of government. In much the same way Black Americans had, throughout the 1790s, drawn attention to the racial (il)logic of the country, the 1800 petitions challenged their opponents to come up with any valid reason why Black Americans should be outside the bounds of constitutional protections; even further, why they should be subject to such enormous burdens in the name of a Constitution which never even made mention of Black people, free or enslaved.

Philadelphia 30th of December 1799

John ^{his} Smith ^{mark} +	Samuel ^{his} Wilson ^{mark}	Stephen ^{his} Jones
Parker ^{his} Harris ^{mark}	John ^{his} Nelson ^{mark}	John ^{his} Jones
John ^{his} Mang ^{mark}	Thomas ^{his} Watson ^{mark}	Charles Johnson
Daniel ^{his} Jackson ^{mark}	Edward ^{his} Matthews ^{mark}	Stephen Lewis
Thomas ^{his} Faulker ^{mark}	Anthony Williams ^{mark}	Robert Williams
Joseph Houlton ^{his} Alexander ^{mark}	John ^{his} Harris ^{mark}	William White
Bartlett ^{his} Tinney ^{mark}	Philip ^{his} Johnson ^{mark}	Stephen Miller
James ^{his} Brown ^{mark}	Edward Simon	Cyrus Porter
William ^{his} Quinn ^{mark}	Charles ^{his} Caldwell ^{mark}	Jacob Nicholson
Adam ^{his} James ^{mark}	John ^{his} Harris ^{mark}	Alex ^r Feathered
Henry ^{his} Williams ^{mark}	Philip ^{his} Johnson ^{mark}	William Gray
Thomas Swower	Edward Simon	Charles Gray
Lot Rafine	Charles ^{his} Caldwell ^{mark}	Thomas F. Allen
Isaac ^{his} Williams ^{mark}	John ^{his} Harris ^{mark}	Lauran ^{his} Brown ^{mark}
Jacob ^{his} Gibbs ^{mark}	John ^{his} Harris ^{mark}	John ^{his} Riley ^{mark}
Severn ^{his} Lister ^{mark}	John ^{his} Harris ^{mark}	John ^{his} Lancaster ^{mark}
James Wilson	John ^{his} Harris ^{mark}	Lucas Clarkson
Benjamin ^{his} Jackson ^{mark}	John ^{his} Harris ^{mark}	Thomas F. Mattis
William ^{his} Coulson ^{mark}	John ^{his} Harris ^{mark}	Robert Green
Richard Allen	John ^{his} Harris ^{mark}	James ^{his} Brown ^{mark}
Job ^{his} Albert ^{mark}	John ^{his} Harris ^{mark}	John ^{his} Black ^{mark}
	John ^{his} Harris ^{mark}	Peter ^{his} Matthews ^{mark}
	John ^{his} Harris ^{mark}	John ^{his} Smith ^{mark}
	John ^{his} Harris ^{mark}	John ^{his} Morris ^{mark}
	John ^{his} Harris ^{mark}	Philip ^{his} Wills ^{mark}
	John ^{his} Harris ^{mark}	Ignatius Cooper
	John ^{his} Harris ^{mark}	Cato Collins

The signature page of the 1800 petition shows that most of the men who signed it simply left an "X" for their mark, in place of a signature. Likely formerly enslaved men themselves, the mark is indicative of the limited educational opportunities afforded to Black people writ large, especially current or former enslaved people. Yet, the lack of a formal education did not stop these people from being politically active. The names of Job Albert and Jacob Nicholson, for example, among the signatories shows the continued effort of some of the 1797 petitioners.

The debate over this petition, while certainly quicker than the debate surrounding the Quaker petitions that opened the first decade of the new government, certainly bared some similarities to them. After Robert Waln of Pennsylvania presented the petition, John Rutledge Jr. set the tone for the debate by speaking first. The son of prominent South Carolinian politician and crafter of the Constitution itself, John Rutledge, Rutledge immediately harkened back to Congress's initial time in New York City, and how that body was subjected to similar petitions there.⁵⁵

In New York, Congress could not get away from these petitions. As soon as Congress would settle the subject, and come to the conclusion that nothing could be done, then yet another petition would come before the nation's legislature. Yet, whereas the Quakers may have been so bold as to pester Congress in the past, they now seemed to have "put it into hands of the black *gentlemen*." (emphasis his) Rutledge continued, pointing out that "they now tell the House these people are in slavery – I thank God they are! If they were not, dreadful would be the consequences." Unsurprisingly, Rutledge, first up to talk and ever the predictable southerner, called the petition to lie on the table.⁵⁶

While Waln and his fellow Pennsylvania colleague John Smilie could agree that some aspects of the petition were out of Congress's control, likely alluding to the call for emancipation support, they nonetheless wished to have it referred to a committee. The next representative spoke just as adamantly against the petition as Rutledge, but came from the other end of the Union. Harrison Gray Otis, yet another son of a Revolutionary-era statesman, spoke for Massachusetts and denounced the petition, saying he had "never seen a petition presented under a more dangerous and unpleasant aspect." Furthermore, Otis could not help but notice that most

⁵⁵ *Annals of Congress*, Sixth Congress, 230.

⁵⁶ *Ibid.*

of the signatories could not even write their own names, and likely could not even read the petition, much less understand what it was advocating for. To accept the petition, “would teach them the art of assembling together, debating, and the like, and would soon, if encouraged, extend from one end of the Union to the other.” Otis, echoing his southern colleague, said slavery was the purview of the states, and “those who were cursed with it.”⁵⁷

Otis seemed intent on denying the reality of the country before him. Not only did he think that it was the Quakers, no Black Americans, who had authored the petition, he went further and claimed that the latter group was not actually politically active. It was only through accepting the petition that Congress might cause Black Americans to be taught how to organize and become political. Yet, Black Americans had long been taking part in politics, not least through petitioning Congress. Given the capital of the nation had been in Philadelphia for years, members of Congress, Otis included, had probably witnessed firsthand the political activism of Black Americans in that city, as they worked with white allies to change the nation. Nonetheless, Otis found the possibility of current Black politicking an impossibility, and something that should remain as such.

Debate over the 1800 petition diverged significantly from that of the 1790 petitions almost immediately, as at least some northern representatives were, by the turn of the century, fine with openly denouncing such petitions. While the 1790 Quaker petitions had some northern opponents, their comments were usually reserved for private correspondence, and were more likely to deal with how ill-timed they were. This 1800 petition, on the other hand, suffered criticisms which sounded as if a southern enslaver had made them, not a representative from a state that proudly boasted of having ended slavery in 1781. However, as the 1790s progressed,

⁵⁷ Ibid, 230-231.

more and more northerners became dissatisfied with the project of emancipation, as previously discussed. That the petition was written and signed by Black Americans, too, should not be forgotten. As even the most steadfast of supporters could find such tactics as too radical, as was the case with the 1797 petition.

The petitioners did enjoy some support from northern members. George Thatcher of Massachusetts, who had defended the 1790 Quaker petitions, admonished his colleagues for their arguments against this current petition. As he pointed out, Congress had legislated on the topic of slavery numerous times. No member, he said, would have thought Congress should abdicate making legislation that dealt with “700,000 enemies,” since “while they were slaves they were enemies.” Thatcher’s defense of this petition, however, was not without its own clues at his own shifting attitudes towards emancipation. Slavery was a problem to be solved, even as the northern states were, in his words, “suffering from the streams which issues from this great and dangerous fountain” of emancipation.⁵⁸

Thatcher’s comments show how even a reliable ally to the anti-slavery cause could grow to abhor some of its consequence. Even with those comments in mind though, Thatcher still supported accepting the petition, regardless of whom the petitioners were. That they were Black or white, or could not read or write, was “immaterial.” Especially given “a great reason why they could not write was their being brought up in early life in slavery.”⁵⁹

Some members took the debate as an opportunity to attack Quakers once again, whom some thought were the real authors of the petition. Otis had already begun this by claiming that the petitioners could not have possibly been the actual authors. Southern representative picked up where Otis left off. James Jones of Georgia asked Quakers, “with all their philanthropy,

⁵⁸ Ibid, 232.

⁵⁹ Ibid.

[whether] they would wish to see those sitting by their sides deliberating in the councils of the nation?” As if it were 1790 again, southern members were intent on calling out Quaker hypocrisy. Jones wouldn’t be satisfied, he told his fellow representatives, with simply letting the petition lie on the table. He wanted it “treated with the contempt it merited, and thrown under the table.”⁶⁰

The first day of debate ended after Waln withdrew his previous motion to refer the petition to a committee in its entirety, and instead moved to only commit the parts of the petition which dealt with the Fugitive Slave Act of 1793 and the international slave trade. Rutledge quickly called Waln’s motion into question, and after being told by the Speaker of the House, Theodore Sedgwick, the motion was in order, called for the House to adjourn for the day. The second day of debate surrounded the procedural matter of whether particularly points of a committee could be referred to a committee, while other’s not. Southerners attempted to use the same strategy they had with the 1797 petition, after debating the merits of slavery and emancipation go them nowhere the previous day.⁶¹

On the second and last day of debate, southerners and their allies attempted to use procedural roadblocks to prevent the petition from being committed. When Sedgwick shut down the possibility of objecting to part of the petition being referred to a committee, southerners used the same tactics they had in 1790, and attempted to add amendments to the petition. Samuel Goode of Virginia moved to have an amendment attached which states “that the parts of the said petition which invite Congress to legislate upon subjects form which the General Government is precluded by the Constitution, have a tendency to create disquiet and jealousy, and out therefore to receive the pointed disapprobation of this House.” The rest of the day’s debates centered

⁶⁰ Ibid, 235.

⁶¹ Ibid, 238.

around whether to add this amendment, and then whether to accept the petition after it was eventually added. The amendment itself was added by a vote of 85-1, which only George Thatcher voted against it, since he had no problem with the petition advocating for eventual emancipation. The petition was then sent to a committee by an unrecorded vote.⁶²

[IV]

What is clear from the debates surrounding the 1800 petition was that not only had some attitudes from northerners shifted in reference to slavery and emancipation, but that many representatives recognized the radical nature of the petitioners' arguments. Whereas enslavers and their allies had been, throughout the 1790s attempting to "fix" the Constitution and citizenship to solidify its anti-Black principles and keep Black Americans in a degraded place within the nation, Black Americans by the end of the decade began to do the exact opposite. In the beginning of the decade, they had, as Jones and Allen showed in their *Narrative*, refused to be sacrificed to uphold a faulty vision of citizenship. They would, instead, put forth their own vision of citizenship that included and was based on Black community values.

As time went on, Black Americans entered into discussion of how to "fix" the meaning of the Constitution, but instead of strengthening slavery and the nation's anti-Black values, they sought to dismantle them. By reading the Constitution against themselves, the Black petitioners began a uniquely Black vision of anti-slavery constitutionalism, that not only read the Constitution as protecting Black people, but as recognizing and guaranteeing their citizenship within the nation.

⁶² Ibid, 238-345.

That the 1799 petition was eventually sent to a committee, however, was not necessarily a victory, considering it went nowhere after that and was never brought up again. Nicholas Wood, in his analysis of both the 1797 and 1800 petition, has stresses that Congress did not throw the petitions out on based on status of the petitioners or their race.⁶³ While some enslavers and their allies made these arguments, others, like James Madison, were fine using other procedural and constitutional methods to defeat the substance of the petitions. That Congress did not, at that time, explicitly bar enslaved people and Black people from petitioning has more to do with a reluctance by some southern members to extend debate even further. As time went on, and more northern delegates such as Otis would join their southern colleagues, this would change.

Even if Black Americans enjoyed little to no substantive victories, they nonetheless spent the 1790s organizing themselves into a formidable voice for themselves. Whereas the beginning of the decade saw white allies purposefully choosing to keep Black voices silent, by the end of the decade Black Americans either pushed back or simply sidestepped such roadblocks to their own political activism. Furthermore, throughout the 1790s Black Americans had not only called out the nation for continuing the practice of slavery, but claimed citizenship in a nation that often did not claim them. By doing so, they claimed the nation and its values as their own, even as they called out the racial (il)logic which acted as the anti-Black foundations for these ideals in the white mind. The 1790s, then, were a time when race, slavery, and citizenship would be debated and fought over by various factions, but for Black Americans the decade represented an important beginning for what would be years of future struggle.

⁶³ Wood himself admits that “on one level, the distinction between Congress dismissing the petition based on legal status and dismissing it because of skin color is purely academic.” Wood, “A ‘class of Citizens,’” 131. This mentality, however, is misguided as I have hopefully shown.

Just one day before affixing his name to the 1799 petition, Richard Allen would deliver a eulogy for George Washington at Bethel Church, the church he had helped found in response to the discrimination he endured in white churches.⁶⁴ Allen's eulogy of Washington presents a somewhat different voice than the petition which bore his signature only a day later. Then again, his audience was completely different. Whereas Allen had helped craft a petition addressed to white Americans, allies, enemies, and everyone in between, his eulogy of Washington was for Black Americans first, and white American second.

Allen's eulogy was a perfect example of Black Americans' arguments in the 1790s. In it, he employs an admittedly selective reading of Washington's life, and presents late war hero, politician, president, and enslaver as a friend to the Black community; as an emancipator. As part of his dying wish, Washington had set his slaves free and provided for them, and "became to them a father" as he was for the nation itself. Allen told his congregation and the nation "deeds like these are not common. But Washington was no typical man or American. He had broken "the yoke of British burdens" and delivered freedom to the country.⁶⁵ As scholars have observed before, in linking Washington's Revolutionary-era legacy with his choice to emancipate his slaves upon his death, Allen redefined the Revolution itself. He centered abolition within the nation's founding moment, recasting that time, and the nation itself, as emancipatory.⁶⁶

By (re)imagining the nation's founding as a moment of emancipation, Allen did several important things. First, as he did throughout the eulogy itself, he placed Black Americans within

⁶⁴ This eulogy would be printed two days, in *Philadelphia Gazette*, December 31, 1799 (Philadelphia, Pennsylvania). For more on the eulogy and its meaning, see Richard S. Newman, "'We Participate in Common': Richard Allen's Eulogy of Washington and the Challenge of Interracial Appeals," *The William and Mary Quarterly* 64, No. 1 (January 2007): 117-128; Francois Furstenberg, *In the Name of the Father: Washington's Legacy, Slavery, and the Making of a Nation* (New York: Penguin Books, 2006), 86-87

⁶⁵ *Philadelphia Gazette*, December 31, 1799; It should perhaps be noted that while Allen presented Washington as having emancipated his slaves, he did not do so immediately. His will left instructions to emancipate his slaves only after his wife, Martha Washington, had also died. *Cite*

⁶⁶ Newman, "'We Participate in Common,'" 118.

the longer history and citizenry of the nation. Washington's death was, in Allen's words, "an event in which we participate in common." He told his congregation to heed the advice Washington gave when leaving office, which would "make you good citizens – and greatly promote the cause of the oppressed and shew to the world that you hold dear the name of George Washington."⁶⁷

By asserting the citizenship of Black Americans, and positioning them alongside Washington himself, Allen slyly placed anyone who opposed emancipation and clung to anti-Blackness as people who diverged from the Revolutionary founding of the nation. From the will of Washington himself. Using an argument he had made with Absalom Jones in their *Narrative* years earlier, Allen presented Black Americans and their allies as the true citizens of the Union; the ones who had inherited and upheld the revolutionary ideals of republican citizenship in the new nation. While the argument built off the wone he and Jones presented in their *Narrative*, his presentation of it now was arguably more radical.

If Washington was the father of the country, then what did it mean for so many to go against the last wishes of their father? What did it mean for Black Americans to be among the few who were willing to abide by advice and follow his example? Allen did not simply position Black Americans as citizens of America, but used Washington's death and legacy to argue that those who stood against Black Americans were not true Americans. They desecrated the true meaning of the Revolution. And they refused to honor the dying wishes of America's greatest man.

Allen's use of Washington's death to make claims on the nation was just one of the first salvo's fired in a movement by Black Americans to stake out a claim and place in the nation. It,

⁶⁷ *Philadelphia Gazette*, December 31, 1799.

along with the other topics discussed above, were early iterations of larger arguments that would become common in the Antebellum-era push for abolition and Black civil rights. Yet, just as Black Americans were able to use their own voice, a wave of backlash came from once former allies, as some parts of the nation had to come to terms with what emancipation would mean. The next chapter will look at how Black and white Americans attempted to come to terms with the prospect of Black freedom, as it slowly began to spread across the northern region, even as slavery continued to become more dominant in the south.

Chapter Five

Black Citizens and White Prejudice The Problem of Emancipation at the Turn of the Century

[I]

Eleven. Eleven topics, or questions. More than eleven really. The number of points needing clarification then. Eleven was how high St. George Tucker's list went, as he wrote a letter. Tucker was a well-known lawyer in Virginia, and currently one of the top professors of law at the College of William and Mary. Tucker's letter was part of his legal research. He was developing a plan, one he hoped would slowly, but surely, change his state for the better. And possibly even the nation. His letter was sent to Jeremy Belknap, a Massachusetts clergyman, historian, and abolitionists. Enclosed within that letter were is eleven queries on the nature of slavery and freedom in the Massachusetts. Depending on the answers he received, Tucker likely imagined he would be able to craft a better, more acceptable, plan for the total abolition of slavery in Virginia.¹

Tucker was just one of many people who, going into the 19th Century, increasingly became frustrated by two problems facing the nation: the problem of slavery, and the problem of emancipation. Slavery was, ideally, an easy problem to solve. In a nation founded on liberty and republican values, the enslavement of one group of people, especially when based solely on the color of their skin, needed to be eliminated. However, if fixing slavery by emancipating enslaved people was, in theory though perhaps not in practicality, simple enough, abolition presented the nation with a host of other issues.

¹ St. George Tucker to Jeremy Belknap, January 24, 1795, *Collections of the Massachusetts Historical Society*, 5th Series, Vol. 3 (Boston 1877), 379-380.

The problem of emancipation grew chiefly out of white Americans' racial prejudices. A fear, disdain, or hatred for Black people led many, most really, white Americans to see emancipation and a growing free Black population in the nation as a problem equal to that of slavery itself. How to deal with such a large bloc of people? What rights should they have? To what degree should the two races intermingle? Could Black people actually be American? Would America cease to be if it became a biracial society built on egalitarian values, instead of one built on slavery? These were the questions so many white Americans asked themselves as slavery gave way to emancipation in certain areas, and as more people came to embrace abolitionism. These were the questions Tucker found himself asking as well.

This chapter explores how people like Tucker attempted to fix the problem of emancipation. As more white Americans, for a variety of reasons, came to support abolition, and as a Black political movement began to coalesce, the nation found itself debating what could, or would, come after slavery. And more specifically, if Black people could, as citizens, live in the nation among their former enslavers.

By the turn of the century, more states in the northern united states had implemented some form of abolition. Whether it be a facially immediate emancipation through judicial fiat in Massachusetts, the banning of slavery in the Vermont constitution, or gradual abolition in Pennsylvania, northern states found their free Black populations growing steadily. As with many things, change caught many off guard, and many white northerners felt society itself was beginning to suffer under the yolk of Black freedom. And in the south, those like Tucker looked with horror at the possibility of Black violence and rebellion. Slavery was a ticking time bomb sitting right next to peace and liberty atop an American made table. If America did not rid itself

of the peculiar institution, what consequences the nation would face in the future was left only to the imagination.

Thus, white Americans began debating certain steps to put an end to slavery and keep the nation safe from emancipation. This chapter explores three of these solutions: dispersion, colonization, and absorption. Each of these fixes sought to address the issue of a free Black population in America through different means. But all were based on the same assumption. Black people simply could not live in America alongside white people in anything but a state of subjugation. Furthermore, they were incapable of holding dear the same republican values that made white Americans citizens. Citizenship and one's place within the body politic became one way of discussing how the problem of emancipation could, if left unchecked, ruin the country.

All three solutions had all been present throughout the 18th Century, and longer, in debates surrounding slavery. But they took on new importance as the nation faced a growing free Black population. Furthermore, as Black Americans began organizing more effectively, they began entering into debates on these topics themselves; unabashedly claiming their place and citizenship in the nation, and at times embracing these solutions for their own reasons. While similar, because of the base concern they sought to address, each of these solutions differed and were supported and looked down upon for different reasons.

Dispersion was the idea that Black people, whether enslaved or free, could be made less dangerous by gradually encouraging, i.e. forcing, them to leave society, and scatter across a large enough geographic area. Finding themselves separated from other Black people, and usually facing heavy legal, political, and civil discrimination, Black people would eventually cease to have a sizable population in any one area. This idea would gain support among some,

particularly older generations of enslavers, who saw it as a way to gradually deal with slavery and a free Black population at the same time.

Colonization, however, would become the most popular solution, going into the 19th Century, for the problem of emancipation. By selecting a large geographic area, sufficiently separated from the United States, free(d) Black people could be sent to colonize and build a future for themselves. Under the strict supervision of white Americans, Black people would be given the opportunity to thrive away from America, and be citizens of their own nation. Enslaved people could be freed without fear of releasing them into the broader society, because they would simply be sent away.

Absorption was simultaneously a far more radical and accepted solution, depending on its mode. Early modern race theory often held one's location vastly affected their physical characteristics. While this way of thinking was becoming less prevalent by the 19th Century, it still held some sway as was shown in Chapter Three. Yet, a more radical form of absorption, certainly embraced by very few, held the problems of slavery and emancipation could be addressed by embracing the one thing almost all white Americans loathed and feared: intermarriage. White Americans were no stranger to the realities of "intermixture," but few would have condoned it, much less advocated for it. Nonetheless, some did.

This chapter then, is concerned with answering a number of questions. How did white Americans respond to the growth, real or perceived, of the free Black population across the nation? What sort of regional differences were there in these responses? What do these solutions tell us about the ways white Americans understood citizenship in the nation. And finally, how did Black Americans respond to the ongoing debates raging around and about them?

In short, this chapter is interested in examining the evolution in the relationship between race and citizenship. As some people began to contemplate a very real future without the institution of slavery, race relations took on a whole new, and often alarming, meaning. Going into the first decades of the 19th Century, both Black and white Americans had to decide what their place within the nation would look like in a potentially post-slavery United States. They had to decide what citizenship, and the citizenry itself, would look like.

[II]

St. George Tucker's letter to Jeremy Belknap was not his first foray into the topic of abolition. In March of 1790, Tucker anonymously wrote to the editor of the *Virginia Independent Chronicle* to express his concern over a recent notice on the creation of an abolitionist society in the state. Tucker had no problems with the society existing, but he questioned with the ban on slaveowner members, which would "exclude from such a laudable association all those who are in a similar predicament" as himself. Given how many people in the state came to become slaveholders simply through inheritance, it seemed unfair to Tucker to exclude those "who, without any act of their own, possess slaves."²

Furthermore, Tucker pointed out not all "possessors of slaves" could easily rid themselves of that form of property. Those with a hundred, or even fifty, slaves would face material ruin by enacting emancipation, but would likely "cheerfully contribute a part of their [slaves] values" towards the end of the institution. Furthermore, plenty of enslavers kept slaves who, if freed, would be a pest to society. His letter ended with a rudimentary plan for ending

² *Virginia Independent Chronicle* (Richmond, Virginia), March 17, 1790.

slavery in the state.³ A plan which would serve as the basis for a much more expanded and researched proposal.

Tucker's letter was no doubt spurred by the current political climate. He submitted it just days after Congress finally stopped debating a number of Quaker petitions against the international slave trade, which had occasioned the most public and heated arguments over the institution of slavery to date. Like many people, Tucker likely followed those debates and witnessed just how much slavery was already dividing the new nation. Shortly after submitting his letter to the editor, Tucker wrote to his longtime friend, John Page, who was currently serving in the House of Representatives, copying his letter to the editor and somewhat expanding on the ideas behind the plan. He asked Page if he would send it to the *American Museum* to be published, a Philadelphia newspaper which printed anti-slavery material.⁴

Over the next few years, Tucker's interests in promoting a means for ending slavery did not dissipate. While teaching law at the College of William and Mary, he began researching and preparing several lectures on the history, nature, and law of slavery. His lectures, in turn, supplemented the other material he was gathering for a detailed gradual abolition plan. By 1796, Tucker published a pamphlet, *A Dissertation on Slavery, with a Proposal for the Gradual Abolition of It, in the State of Virginia*, which combined everything he had collected on slavery into a detailed, if not laborious, work on the institution. And as part of it, Tucker boldly put forth a plan for gradual abolition in the state.

As he prepared his *Dissertation*, Tucker wrote to Belknap, providing a short introduction for himself and his aims, before presenting the Massachusetts clergyman with a number of

³ Ibid.

⁴ St. George Tucker to John Page, March 29, 1790, *The Documentary History of the First Federal Congress of the United States*, Vol. 19, eds. Charlene Bangs Bickford, Kenneth R. Bowling, William C. diGiacomantonio, and Helen E. Veit (Charlottesville: University of Virginia Press, 2019), 1034-1038.

questions. Having never visited the northeast, Tucker told Belknap he was unfamiliar with both the region and its history, and wished to learn more. He had “observed, with much pleasure,” how slavery was “wholly exterminated” from Massachusetts, and hoped the state could serve as an example for Virginia. Tucker thanked Belknap for his assistance in advance, and presented his queries.⁵

The eleven matters Tucker was curious about covered a wide range of topics from the slave trade, the end of slavery, the conditions of emancipated slaves, and the relationship between white and Black people in the state. The subjects he asked about were as follows:

1. When were slaves, Black or otherwise, first introduced in Massachusetts?
2. Was the slave trade carried out in the state? When did it start? What was the extent of the slave trade? When did it begin to decline? When was it completely stopped?
3. Was it Americans or Europeans who were involved in the slave trade? Why caused the slave to initially decline and eventually be abolished?
4. What was the state of slavery when slaves were most numerous in Massachusetts?
How many slaves were there at that time, and what was their proportion to white people?
5. How was slavery abolished in the state?
6. When was slavery completely abolished? What were the numbers of slaves at that time, and their proportion to white people?

⁵ Tucker to Belknap, January 24, 1795, *CMHS*, 5th Series Vol. 3, 379-380.

7. What was the current condition of emancipated slaves? Were any provisions made for educating and providing for Black children? Are there any provisions for the care of elderly, disabled, or insane Black people?
8. What political rights or disabilities do Black people have? Is there a difference between their rights and the rights of white people?
9. Is there a difference in the moral and social conduct of emancipated slaves, their children, etc.?
10. Is intermarriage between white and Black people common? If so, is it more common to see such unions between Black men and white women, or the reverse?
11. Are there good relations between white and Black people in the state? Does each race associated with the other? Does one race assume to be better than the other? Does the latter race accept this?⁶

Belknap immediately forwarded Tucker's questions to many people. And over the next few months, he collected the bulk of the replies he would use to answer Tucker.

Most answers to Tucker's questions share many commonalities. For example, most respondents lacked enough information to accurately speak on the proportional population of the races throughout the state's history. Those who commented on the conditions of enslaved people largely agreed slavey was, in the words of Edward A. Holyoke, a physician, "easy...tolerable...& in very many Instances, scarcely deserved the Name."⁷ Most agreed slavery and the slave trade had always been unpopular in the states, and began to rapidly disappear at the start of the American Revolution.

⁶ Ibid.

⁷ Edward A. Holyoke to Jeremy Belknap, March 19, 1795, *CMHS*, 5th Series, Vol. 3, 390.

A notable exception, however, was James Winthrop, a justice in the Court of Common Pleas, and presumably more acquainted with the slavery's legal history in the state. Winthrop pointed out slavery ended because of a "Misconstruction of our State Constitution, which declares all men by nature free & equal." Clearly referring to the *Quock Walker Cases*, and their aftermath, Winthrop stated because of this interpretation people had been "deprived of property formerly acquired under the protection of law."⁸ At least some white Massachusetts residents, then, did not look back fondly on the state's path towards emancipation.

Whereas the history of slavery in the state was generally presented in a like manner by most respondents, answers varied greatly on the legal nature of Black life in Massachusetts. All agreed intermarriage between the races was rare, but some thought it was explicitly illegal. Several people stated Black men had the same political rights as their white counterparts, and could even hold political office; something Holyoke defined as "a strange Oversight surely, in the Legislature!"⁹ Others believed the 1780 constitution's qualifications for holding office effectively barred Black people.¹⁰

Most of Belknap's correspondents agreed there was a "perceptible difference" in the conduct of Black people.¹¹ This was largely attributed to their times as slaves and how slavery degraded a person's morals and ethics. As such, most reiterated commonly held beliefs about freed Black people. Holyoke said "their Condition is in general pretty miserable," and added they did not work hard or spend money wisely. Others agreed freed Black people had grown accustomed to a certain way of life under slavery, having been raised in wealthier families and

⁸ James Winthrop to Jeremy Belknap, March 4, 1795, *CMHS*, 5th Series, Vol. 3, 389-390.

⁹ *Ibid.*

¹⁰ Winthrop to Belknap, March 4, 1795, *CMHS*, 5th Series, Vol. 3, 389-390; Thomas Pemberton to Jeremy Belknap, March 12, 1795, *CMHS*, 5th Series, Vol. 3, 391-392.

¹¹ John Eliot to Jeremy Belknap, February 1795, *CMHS*, 5th Series, Vol. 3, 383.

treated better than most white servants. In emancipation Black people seemed wholly incapable of financially supporting themselves, much less achieving the lifestyle they thought befitting them. Furthermore, the general lack of a work ethic among freed slaves was made even worse by the fact that work was readily available in the state.¹²

As for the relationship between white and Black people, some people drew a distinction between port cities and country towns, claiming the latter had more harmony between the races. In both areas, however, most agreed white people consistently saw themselves as above Black people. John Eliot commented the two races did not associate much, and Black people rarely admitted the superiority of white people. Thomas Pemberton, a historian, stated white people were “tenacious of their Superiority,” and also thought only lower Class white people associated with the state’s Black population. Holyoke described that association “as an Act of Condescension” in the eyes of most Black residents.¹³

As replies came in, Belknap gathered his own information, and summarized everything he was told and found as he wrote to Tucker.¹⁴ His letter did not deviate much from what his correspondents told him, though Belknap did take the time to consult population records to more accurately answer Tucker’s questions pertaining to the proportion of white and Black people during different periods. Shortly after compiling everything and finishing his report, Belknap published Tucker’s letter and his answers as a standalone pamphlet, entitled *Queries Respecting the Slavery and Emancipation of Negroes in Massachusetts, Proposed by the Hon. Judge Tucker*

¹² Edward A. Holyoke to Jeremy Belknap, March 19, 1795, *CMHS*, 5th Series, Vol. 3, 400-401; John Eliot to Jeremy Belknap, February 1795, *CMHS*, 5th Series, Vol. 3, 383.

¹³ Samuel Dexter to Jeremy Belknap, February 23, 1795, *CMHS*, 5th Series, Vol. 3, 386; Thomas Pemberton to Jeremy Belknap, March 12, 1795, *CMHS*, 5th Series, Vol. 3, 393; John Eliot to Jeremy Belknap, February 1795, *CMHS*, 5th Series, Vol. 3, 383.

¹⁴ Jeremy Belknap, *Queries Respecting the Slavery and Emancipation of Negroes in Massachusetts, Proposed by the Hon. Judge Tucker of Virginia, and Answered by the Rev. Dr. Belknap*, April 24, 1795, *CMHS*, 1st Series, Vol. 4, 191-211.

of Virginia, and Answered by the Rev. Dr. Belknap. Belknap's publication was part of a larger movement in Massachusetts, and the north generally, to redefine the history of slavery and race in those regions. From presenting slavery in milder terms to arguing slavers were unfit for freedom, Belknap's answers attempted to remake both the region and its history.¹⁵

At some point in time, Belknap sent a manuscript copy of his *Queries* to James Sullivan, at the time the state's Attorney General. Sullivan would have been a valuable source of information on slavery's end considering he was not only a member of the state's constitutional convention that created the 1780 constitution, but was also a justice on the state's Supreme Court, and took part in the case of *Jennison v. Caldwell* (1791), one of the *Quock Walker Cases*.¹⁶

At this point, a somewhat confusing three-way conversation happened between Belknap, Sullivan, and Tucker over a few letters. Sullivan was forwarded correspondence between Belknap and Tucker, from Belknap himself. He would then, in writing to Belknap, respond to Tucker's opinions on slavery and race, and his emerging abolition plan. Belknap then forwarded the letters between himself and Sullivan to Tucker, whom he'd already been speaking with since that latter's first letter. Tucker must have thought Sullivan's insight was worth holding onto, because he made sure to create his own copies of his letters.¹⁷ Neither Tucker nor Sullivan spoke directly to each other, however the back and forth between their ideas sheds light on both the evolution of Tucker's plan and his views on race and slavery. In order to understand how these

¹⁵ Margot Minardi, *Making Slavery History: Abolitionism and the Politics of Memory in Massachusetts* (New York: Oxford University Press, 2010); Joanne Pope Melish, *Disowning Slavery: Gradual Emancipation and "Race" in New England, 1780-1860* (Ithaca: Cornell University Press, 2000).

¹⁶ James Sullivan to Jeremy Belknap, April 9, 1795, *CMHS*, 5th Series, Vol. 3, 402-403; John D. Cushing, "The Cushing Court and the Abolition of Slavery in Massachusetts: More Notes on the 'Quock Walker Case,'" *The American Journal of Legal History* 5, No. 2 (April 1961): 118-114.

¹⁷ St. George Tucker to Jeremy Belknap, June 29, 1795, *CMHS*, 5th Series, Vol. 3, 405-412; James Sullivan to Jeremy Belknap, July 30, 1795, *CMHS*, 5th Series, Vol. 3, 412-416; St. George Tucker to Jeremy Belknap, November 27, 1795, *CMHS*, 5th Series, Vol. 3, 417-423.

letters are important, understanding the details of Tucker's abolition plan, as presented in his *Dissertation*, is necessary.

Tucker's plan for abolition actually accounts for only about a third of his *Dissertation*'s total length. At just over 100 pages, most of his *Dissertation* was by the books anti-slavery writing. A sizable part of his work is dedicated to exploring the history of slavery from antiquity to the contemporary world. While doing this Tucker also defined various types of slavery, from political to civil to domestic; the last of which was used to describe American chattel slavery. He then went on to a more precise history of slavery in Virginia, from first introduction to the current day, exploring various legislative acts dealing with the slave trade and the enslaved population. From there he moved onto the legal status of slaves, examining their lack of rights and liberties, as well as their relationship with the law, crime, and punishment. He next went into a general history of manumission and emancipation, again beginning in antiquity. At this point, Tucker began shifting into his own thoughts on abolition and his own plan. By and large, the first two-thirds of Tucker's *Dissertation* was a fairly standard, if not more detailed, exploration of slavery for the day. His plan for ending the institution, though, was anything but.

Compared to many gradual abolition plans of the time, Tucker's approach was not only dreadfully slow, but confusing and cumbersome; reaching the total abolition of slavery through a long and meandering route. Under his plan, all those currently enslaved would continue to be. Women born to slaves after the adoption of the plan would be free. Men born to slaves, however, would still be slaves. Children born to this initial generation of free women, regardless of gender, would be free. However, both generations would be subject to indentured servitude until a

certain age. The first generation women would be indentured until twenty-eight years old. Their children would be indentured until the age of twenty-one.¹⁸

By comparison, Pennsylvania's Gradual Abolition Act of 1780 stood as the most prominent example of plan for the day. It ended the importation of slaves into Pennsylvania made all children of slaves born in Pennsylvania free, with the caveat that they would be indentured to the mother's enslaver until the age of 28. The act also created a registry to keep track of illegally imported slaves and the proper ages of newborn children. In 1788 an amended act was passed which prohibited taking pregnant slaves out of the state, in an attempt to ensure all children would be born free. Additionally, it outlawed the separation of families and required enslavers to register newborn children within six months of their birth to enslaved women. The amended law also prohibited Pennsylvania residents from participating in the slave trade, And finally it fixed a loophole in the 1780 act, where non-resident enslavers were rotating their slaves out before the end of the six-month grace period visitors were allowed. Under the 1788 law, such rotation of slaves was not allowed.¹⁹

Pennsylvania's gradual abolition act was similar to many proposed plans and future laws, in that it didn't free current slaves, and indentured their children. Well into the 19th Century, states that had enacted gradual abolition laws in the latter parts of the 18th Century still had enslaved people. Compared to Tucker's plan, however, such bills phased out slavery and unfreedom much quicker, since it was only one generation, regardless of gender, that was subject to indentured servitude.

¹⁸ St. George Tucker, *Dissertation on Slavery: With a Proposal for the Gradual Abolition of It, in the State of Virginia* (Philadelphia: Mathew Carey, 1796), 91-93.

¹⁹ "An Act for the Gradual Abolition of Slavery," (1780), *The Avalon Project: Documents in Law, History and Diplomacy*, https://avalon.law.yale.edu/18th_century/pennst01.asp; General Assembly of Pennsylvania, "An Act for the gradual abolition of slavery." (Philadelphia: T. Bradford, 1788).

Unlike others, Tucker did not seek to free all slaves born after a certain point, because such a model would deprive the state's enslavers of a labor force too quickly, and without a large amount of compensation force them into large amounts of debt. In his estimation, his plan would take over a century to completely rid the state of enslaved people. Furthermore, throughout this period of 105 years, anywhere from two-thirds to three-fourths of the state's free Black population would "*always* be liable for service," because of the indentured servitude requirement.²⁰ Thus, a fully free Black population was seen as a distant eventuality, something Tucker hoped would curry favor for his plan.

His plan, then, was perhaps the most "gradual" of all gradual abolition plans of the time. Sullivan, after reading Tucker's thoughts on slavery and emancipation, presented his own abolition plan, based on a three-stage system, by which successive generations of slaves would be freed at earlier and earlier ages. Those born after a certain date would be free after forty years. Their children would be free at thirty years old. And their children free at twenty-one. For Sullivan, the time abolition took "must be as extensive at least, as that in which slavery has been endured here." The key was to "make haste slowly." Though Tucker commented even Sullivan's plan was too fast.²¹

While Tucker was concerned with wooing over Virginia enslavers, by making it clear they and their descendants would enjoy the labor of Black people for over a century to come, he was also concerned with the safety of society. The specter of Black violence hung over Tucker and his *Dissertation*, as he pointed to the ongoing revolution in St. Domingue as an example of abolition gone wrong. Without "*nature, time, and sound policy*" all acting in unison, the "work

²⁰ Ibid, 96-105.

²¹ Sullivan to Belknap, July 30, 1795, *CMHS*, 5th Series, Vol. 3, 414-415; Tucker to Belknap, November 27, 1795, *CMHS*, 5th Series, Vol. 3, 418.

[of abolition] will be incomplete, dangerous, and not improbably destructive.” Emancipation had to be as gradual as possible, as anything approaching immediate abolition threatened “our [read: white people’s] very existence.”²²

Within Tucker’s plan, too, were restrictions on Black life in Virginia for all free(d) Black people. Black people may have been free, eventually, in Tucker’s Virginia, but their place in the state was to be as degraded as possible. Black people would not be allowed to hold any public office, vote, or own land. They could lease land for a term of twenty-one years. Black people could not be a trustee of lands or tenements, or even have a white person act as a trustee for them. Nor could they have wills or testaments, or be an executor or administrator of a will. And they could not maintain any real action, or sue for real property.²³

They would be unable to bear arms, unless given a special three-year term exemption by the General Assembly. Furthermore, they could not be attorneys, or jurors or witnesses except in cases dealing with Black people. And in criminal cases, they would only be entitled to the same mode of trial which free Black people, at the time of the plan’s adoption, had access to.²⁴

Tucker’s saw such harsh restrictions as necessary to accommodate white “prejudice.” Along with understanding enslavers would only ever support abolition if they were guaranteed a reasonable time with Black labor, all white Virginians would only assent to a plan if the racial hierarchy was kept intact. That hierarchy was formed through slavery, and abolition would threaten it if left unchecked. Thus, Tucker saw restricting Black life in Virginia as critical, to appease the prevailing prejudices of the time. In much the same way Thomas Jefferson declared “deep rooted prejudices entertained by the whites” made it impossible for emancipated slaves to

²² Tucker, *Dissertation on Slavery*, 88-90, 82.

²³ *Ibid*, 93-94.

²⁴ *Ibid*.

remain in the state, Tucker asked his audience if any white person were free from prejudices...as candidly to declare that he has none against” Black people remaining in Virginia.²⁵

When confronted by Robert Pleasants, a well-known Virginia Quaker and abolitionists, on the condition he sought to keep free(d) Black people in, and his allowances to prejudice by white people, Tucker defended his plan. His aim was to “calm prejudices, [and] lay jealousy asleep” as much as possible. If he had attempted to simply ignore the way white Virginians though, he would have done nothing but to “rouse” their prejudices against his plan even more. As such, he resigned to “accommodate myself to prejudice...[rather] than to encounter it.” Though he did share these same prejudices, as he pointed out.²⁶

Planning around prejudice, and crippling free(d) Black Virginian’s rights, was critical for gradual abolition to work, in Tucker’s mind. Doing so would hopefully result in free and freed Black people voluntarily leaving the state, ensuring Virginia’s racial order stayed in place one way or another; either through making freedom all but hollow for Black people, or making the state a white republic. As Tucker said, “by denying them the most valuable privileges which civil government affords, I wish to render it their inclination and their interests to seek those privileges in some other climate.” Key to understanding Tucker’s reasoning here is realizing how much he despised the idea of colonization. Unlike Jefferson, who thought prejudice among white people and resentment among Black people made colonization necessary, Tucker thought any

²⁵ Thomas Jefferson, *Notes on the State of Virginia* (Philadelphia: Prichard & Hall, 1788); Tucker, *Dissertation on Slavery*, 87-88.

²⁶ Robert Pleasants to St. George Tucker, May 30, 1797, Robert Pleasants Papers, *Library of Virginia*; St. George Tucker to Robert Pleasants, June 29, 1797, Tucker-Coleman Papers, Mss. 40 T79, Box 63, Special Collections Research Center, Earl Gregg Swem Library, College of William and Mary. Many thanks to Samantha Seeley for providing me a copy of the Robert Pleasants letter when I was unable to procure one for myself.

colonization schemes were a detrimental to Black people, costly, and simply unable to actually materialize in any meaningful way, and would thus make abolition impossible.²⁷

Instead, Tucker embraced a version of dispersion. By creating an atmosphere that would have encouraged, through brute discrimination, Black people to leave the state, Virginia could successfully carry out abolition without facing the any of the problems which accompanied emancipation. Important to note, Tucker was not at all interested in creating a new class of landless, property-less, and rightless peasants for the state's former enslavers to take advantage of. Such a result was, in reality, certainly a possibility for any free(d) Black people who stayed in the state. But Tucker wasn't interested in creating a permanent class of free(d) people who would be at the mercy of the state's white population. Instead, his principal aim was to force Black people to voluntarily migrate out of the state.²⁸

Tucker's views on dispersion become all the more apparent when his *Dissertation* is considered alongside his queries to Belknap, and the back-and-forth Tucker and Sullivan had through Belknap. For example, at first glance, some of Tucker's questions to Belknap don't quite make sense for someone trying to pin down a gradual abolition plan. Why, after all, would Tucker need information on the relationship between Black and white people in Massachusetts, the rights and conduct of the former, or the prevalence of interracial marriage? While Tucker had little knowledge of race and slavery in Massachusetts, surely such information could have only proven tangentially useful for Virginia.

²⁷ Tucker, *Dissertation on Slavery*, 94-95, 84-85.

²⁸ Paul Finkelman is one of the few scholars to have written an article study of Tucker's plan, but often comes to the wrong conclusions as to his motivations. Presenting Tucker as torn by what to do with the free(d) population, Finkelman asserts, for example, that Tucker "not want to expel them, but he did not want them to leave," and that Tucker "could not come to terms with problem of race." Such views, however, miss the integral aspects and reasoning behind Tucker's plan for free(d) Black people; Paul Finkelman, "The Dragon St. George Could Not Slay: Tucker's Plan to End Slavery," *William and Mary Law Review* 47 (2006): 1213-1243.

It could be argued Tucker simply wanted to know how emancipation affected the relationship between Black and white people in society. And while this could be true, it should be remembered Tucker never asked about such relations *during* slavery. Looking at Tucker's questions, it is evident how thorough he was in asking for the information he wanted, especially when it came to change over time. He asked about the slave trade and slavery during their beginnings, peaks, decline, and ends. He wished to know the proportion of Black and white people in each of these stages as well. When it came to the slave trade and slavery, change over time was useful for Tucker, because they all fed into the information he was most keen on getting: the state of Black and white relations in Massachusetts as he wrote his letter, and more specifically, whether the relationship between the races in that state could handle an influx of freed Black people.

Tucker's letters to Belknap show how, as he worked on his plan, he continually hit a dead end on how to deal with a large free Black population in Virginia. Because he vehemently opposed colonization, Tucker was forced to come up with some sort of domestic solution for race relations in a free state. As he told Belknap, "if humanity plead for their emancipation, it pleads more strongly against Colonization." Without a forced exodus of Black people from the state, Tucker saw only three options: 1) Continue slavery; 2) Emancipate slaves, but withhold legal, political, and civil rights; or 3) Incorporate freed slave wholly, and equally, within society.²⁹

Each solution had its downsides. Tucker wished to end slavery, but keeping free(d) Black people in the state, with such a debased version of freedom, risked rebellion. Incorporating them, with all the "valuable rights of citizenship" was simply impossible. What those rights were,

²⁹ Tucker to Belknap, June 29, 1795, *CMHS*, 5th Series, Vol. 3, 405-412.

specifically, Tucker didn't explicitly say. Though considering he wished to withhold rights such as property ownership, will making, jury participation, voting, etc. it is fair to say any rights Tucker thought shouldn't be extended to free(d) Black people were associated with citizenship. As such, Tucker was left with a quandary. How to create a white Virginia, free of slavery and racial tensions, when all paths available seemed doomed to fail. In the end, he hoped a fourth path would be viable: Force free(d) Black people to leave the state, and disperse across the country, most like in the north. The best path was to simply dump the problem somewhere else.

The response Tucker had to Belknap's answer illustrate his hopes to offload Virginia's Black population. His disappointment as the state of race relations in Massachusetts was palpable in his reply to Belknap. As he said, "if in Massachusetts, where the numbers are comparatively very small, this prejudice be discernable, how much stronger may it be imagined in this Country, where every white man felt himself born to tyrannise."³⁰ With little information on Massachusetts, it is apparent Tucker was hopeful he could count on the state, and region, to be refuge for his state's exodus of free(d) Black people. But after receiving information, that possibility seemed just as impossible as extending citizenship to Black people in Virginia.

Tucker's desperation to find a solution was apparent to Sullivan. Reading his letter to Belknap, Sullivan remarked Tucker's attempt to find a fourth route towards emancipation was commendable. In some regards, his effort "atones for the violation of human rights, which his fellow Citizens have been guilty of." Nonetheless, no such option existed. Sullivan thought emancipating slaves, and denying them rights, as Tucker would eventually go with, was the best route. Though, while "most eligible," he was "clearly of opinion, that this would be nothing

³⁰ Ibid.

more, than to throw 300,000 of the human Race, idle, profligate, and miserable, on the bosom of the Earth.”³¹

Accepting no perfect fourth solution existed, Tucker settled on dispersion, even if he could not predict how it would actually end. It was possible Black people would leave for Spanish Florida or the Louisiana Territory, and find a better life under a different empire. However, considering there was no way to force or direct the flow of people, Tucker surely knew that was a stretch. However, he recognized his fellow white Virginians, and himself, were simply incapable of viewing free Black people as part of the body politic. As part of the state. As part of the nation.

Citizenship was front and center in Tucker’s discussion of abolition and dispersion. To be a citizen was to be a member of the political community and the nation. As we will see with colonization, citizenship was quite literally wrapped up in the very idea of being American. That Tucker felt the need to withhold almost any right a citizen might lay claim on is telling. For Tucker, Virginia and the nation simply could not welcome a Black citizenry.

If he was disappointed in settling on an imperfect plan, Tucker’s frustrations with the entire enterprise of abolition would only grow after finishing his *Dissertation*. Following years of research and work, Tucker submitted his work for publication and as a petition to the Virginia General Assembly, in hopes the body would act on his proposal. Given how much he accommodated the prejudices of his fellow white Virginians, and no doubt because of his rank in society, Tucker thought his proposal stood a good chance. Instead, it was immediately met with hostility, and wasn’t even officially accepted by the lower house.

³¹ Sullivan to Belknap, July 30, 1795, *CMHS*, 5th Series, Vol. 3, 412-416.

To add insult to injury, by April of 1797, Tucker hadn't even received his printed copies of the pamphlet from his publisher in Philadelphia, Mathew Carey. By August Tucker seems to have finally received a few of his copies, and sent one to Belknap. In his letter, Tucker complained once again how awfully his plan had been received by the Virginia legislature. What's more, Tucker believed that those who rose so forcefully against it "had certainly never read or heard the plan read." Tucker went on to solemnly proclaim that "nobody, I believe, has read it; nobody could explain its contents."³²

And while Tucker proclaimed he would continue to work towards the goal of abolition, it seems the experience all but left him unwilling to actually do so. When Robert Pleasants wrote to him, and asked for his signature on his own gradual abolition petition, Tucker initially refused, saying he thought his signature would only bring such a petition down.³³ And he would later abandon his *Dissertation* and abolition plan from that point on. In 1801, writing under the pseudonym of "Sylvestris," Tucker published a short pamphlet defending the purchase of the Louisiana Territory, speaking of all the benefits it would provide the nation. Towards the end of the pamphlet, Tucker briefly brought up the idea of colonizing a southern region of the territory, likely bordering Mexico. It seems in defeat, Tucker was at least willing to entertain the idea of colonization, albeit anonymously. And finally, his *Dissertation* was reprinted, in 1803, as an addendum to his version of William Blackstone's *Commentaries on the Laws of England*.³⁴

³² St. George Tucker to Jeremy Belknap, April 3, 1797, *CMHS*, 5th Series, Vol. 3, 425-427; St. George Tucker to Jeremy Belknap, August 13, 1797, *CMHS*, 5th Series, Vol. 3, 427-428.

³³ Pleasants to Tucker, May 30, 1797, *LVA*.

³⁴ St. George Tucker, *Reflections, on the Cession of Louisiana to the United States* (Washington D.C.: Samuel Harrison Smith, 1803); St. George Tucker, *Blackstone's Commentaries: With Notes of Reference, to the Constitution and Laws, of the Federal Government of the United States; and of the Commonwealth of Virginia*, Vol. 4 (Philadelphia: William Young Birch and Abraham Small, 1803).

[III]

Colonization may have been a nonstarter for Tucker, but going into the 19th Century, it was becoming more and more popular among white Americans as a solution to the problems of slavery and emancipation. The solution was, by no means, new. Throughout the 18th Century it had been floated as a possibility. But as more and more white Americans began advocating for the end of slavery, and as more states began implementing some form of abolition, it experienced a boom in popularity. Tucker's own reluctance to capitulate on the topic is indicative of just how widespread the idea was by the time he began working on his own plan. And his inability to think of a viable alternative illustrates how the colonization could be viewed as either the best or only solution available.

Advocating for colonization, though, took multiple forms, and gradually shifted over time. While some had advocated for returning Black Americans to Africa to begin a colony, most white Americans up to the 1810s supported creating a colony in North America. A settlement could either be inside or outside of the United States' territory, but such colonies were usually presented as still being controlled by the nation, and as a potential outpost in the country's continental imperial visions. From the 1810s, however, colonization schemes gradually shifted towards Africa, and were seen as not just a way to offload the nation's Black population, but as a vehicle to proselytize, civilize, and colonize Africa itself.³⁵

Whatever form colonization took, it was explicitly tied to the idea of making the nation whiter by removing both slavery and Black people from the union. While some enslavers would support colonization, its most focal supporters came from the increasingly freer north. Northern

³⁵ For more on how colonization gradually became wrapped up in American ideals of imperialism, see Brandon Mills, *The World Colonization Made: The Racial Geography of Early American Empire* (Philadelphia: University of Pennsylvania Press, 2020).

states may have had smaller slave populations than their southern neighbors, but their free Black population was exploding; or at least seemed to be. Only Virginia could rival the emerging free Black populations in many northern states. And none more than Pennsylvania felt this boom. As a state which not only enacted gradual emancipation first, but directly bordered multiple slave states, Pennsylvania's free(d) Black population was gradually rising as time went on, much to the dismay of many white Pennsylvanians. And in the early 19th Century, Thomas Branagan sought to channel that frustration and anger in his calls for colonization.

Branagan was a transplant to America. Born in Dublin, Ireland in 1774, a young Branagan ran from an abusive home and education to pursue his own life, and began a career as a sailor, eventually working on slave ships. Branagan's own autobiography recounted how he came into contact with many Africans during his time as a sailor, and makes clear, without saying it, that he was directly involved in capturing Africans on the West Coast for the slave trade. Eventually, Branagan left the life of a slave ship sailor to become an overseer in Antigua for about four years, before leaving after a change of heart over slavery. At that time his father died in Ireland, and Branagan returned there to settle affairs. However, it seems he was disinherited after having converted to Protestantism, and after dealing with things in Ireland, Branagan left for Philadelphia. There, he began trying to make a career out of writing and being an abolitionist.³⁶

To say Branagan thought highly of himself would be an understatement. He housed his autobiographical memoir in a book called *The Guardian Genius of the Federal Union*. When he spoke of his time involved in slavery, Branagan was always keen to point out that African people and enslaved people treated him very well, because of his benevolent character. On his last night

³⁶ Thomas Branagan, *The Guardian Genius of the Federal Union* (New York, 1839), 13-19.

in Antigua, for example, Branagan claimed the enslaved people he oversaw wept at his leaving.³⁷

The factual nature, or lack thereof, of Branagan's memoirs aside, he obviously saw himself as a sort of patron saint for Black people and their eventual freedom.

Branagan's ego was on full display in his first work, *A Preliminary Essay, On the Oppression of the Exiled Sons of Africa*, published in 1804. The main purpose of this work was to serve as an introduction for an epic poem he was working on, as well as drum up interest, and subscribers, for that future work.³⁸ However, at almost 300 pages, describing it as an essay or an introduction was anything but correct.

The length of Branagan's *A Preliminary Essay* belied its importance. Little was new in his work, and Branagan essentially stuck to the preestablished and popular aspects of abolitionists thinking for the time. He spoke to the fundamental equality of the races, the humanness of Black people, the severity and effects of slavery, and presented various arguments in favor of abolition. Interlaced within these conventional arguments, Branagan boasted of his own commitment to emancipation, as he stressed, for example, how he had left a "lucrative" position in Antigua to become an abolitionist.³⁹

What was perhaps less common at the time though was how much Branagan focused on the destruction of Black women's virtue under slavery. This would become a hallmark of abolitionism in the Antebellum period for a time, but it was still a relatively less used line of arguments in turn of the century America.⁴⁰ Branagan brought to his readers' attention how

³⁷ Ibid, 18.

³⁸ Thomas Branagan, *A Preliminary Essay, On the Oppression of the Exiled Sons of Africa* (Philadelphia: John W. Scott, 1804).

³⁹ Beverly Tomek, "'From Motives of generosity, as well as self-preservation': Thomas Branagan, Colonization, and the Gradual Emancipation Movement," *American Nineteenth Century History* 6, Vol. 2 (2005): 125.

⁴⁰ One work which looks at the changes in abolitionism's use of Black women is Susan Zaeske, *Signatures of Citizenship: Petitioning, Antislavery, & Women's Political Identity* (Chapel Hill: University of North Carolina Press, 2003).

slavery corrupted Black women's innocence, and left them to the whims of white men in the South. Such situations destroyed both parties, and here Branagan tied this into more well-established narratives of how slavery was detrimental to both slave and enslaver.⁴¹

Another point of which Branagan was somewhat in minority in stressing was the mental equality of Black people to their white counterparts. While Branagan certainly focused on the degradation which came with slavery, he did not present it as permanent for enslaved and freed people. Nor was it a particularly difficult to remedy. In speaking about Phillis Wheatly, for example, Branagan not only praised her poetry and intelligence, printing some of her work at length, but issued a challenge to his readers: "...produce, if they [white people] can, any thing to excel, even equal it, from a young white female, of equal advantages, rather disadvantages."⁴²

Yet, while Branagan leaned heavily into presenting Black people as equal to their white counterparts, there was a tension at play just under the surface of his work. It might have been his aim to convince white Americans of the folly of their racialized ideas, but Branagan nonetheless fell in line when it came to the place of Black Americans in the country. Branagan made sure to present freed Black people as ready and willing to serve. They would, "if well treated, would continue in the employ of their master; and...would labour with alacrity and fidelity."⁴³

Due to his paternalistic understanding of his relationship to Black people, both free and enslaved, Branagan presented freed Black people as happy to serve white Americans; himself included presumably. He went on to note:

⁴¹ Tomek, "From Motives of generosity, as well as self-preservation," 127.

⁴² Branagan, *A Preliminary Essay*, 108.

⁴³ Ibid, 223.

The experiment has been made, and has turned out exactly as I have said. Ask any man in the northern states, who has emancipated, and now pays wages to his slaves. He will tell you, at once, he has gained greatly by their emancipation and education. One of these now, is better than two formerly were. The slaves emancipated, their children will be born free, and educated as men and Christians. Happy change!⁴⁴

Branagan's paternalism was, by no means, out of place for white Americans of the day. Both white abolitionists and enslavers espoused similar paternalistic ideas about free and enslaved Black people, with each group's arguments varying only slightly. Like Branagan, most paternalists believed freed Black people would, and needed to, labor under their control.⁴⁵ It was some combination of his paternalism and ego which led to his sudden shift towards colonization and outright anti-Blackness in his next work.

Between the time he published *A Preliminary Essay* and his epic poem, *Avenia*, in 1805, Branagan apparently had a falling out with some of the leaders of Philadelphia's Black community. At the end of *A Preliminary Essay*, Branagan placed a brief advertisement for his soon to be published poem, and directed potential subscribers to Jacob Knows, Richard Allen, Absalom Jones, and James Forten, all of whom had agreed to take in subscription for him. Allen, Jones, and Forten were three of Philadelphia's most important Black men, and Allen had even paid for the publication of *A Preliminary Essay*.⁴⁶

⁴⁴ Ibid, 233.

⁴⁵ For some discussions of paternalism and slavery, see Lacy K. Ford, *Deliver Us from Evil: The Slavery Question in the Old South* (New York: Oxford University Press, 2009); Walter Johnson, *Soul by Soul: Life Inside the Antebellum Slave Market* (Cambridge: Harvard University Press, 2001); Lenora Warren, *Fire on the Water: Sailors, Slaves, and Insurrection in Early American Literature, 1789-1886* (Lewisburg: Bucknell University Press, 2019); Paul J. Polgar, *Standard-Bearers of Equality: America's First Abolition Movement* (Chapel Hill: University of North Carolina Press, 2019).

⁴⁶ Tomek, "'From Motives of generosity, as well as self-preservation,'" 131-132.

Yet, there were disagreements over the publishing of *Avenia*, which Branagan also thought Allen would pay for, and eventually the bridges between Branagan and Philadelphia's Black leaders quickly burned down. Betrayed by Allen, who may have been his one-time patron, but was nonetheless still Black, Branagan felt personally betrayed.⁴⁷ To make matters worse, Branagan was obviously having severe financial difficulties, no doubt as a result of poor sales of his first work. By 1806, Branagan was forced to ask President Jefferson, whom he had previously sent his last works to (with no response) for money and assistance finding a job.⁴⁸

Branagan next pamphlet and colonization scheme, *Serious Remonstrances, Addressed to the Citizens of the North States, and Their Representatives* (1805), was defined by its anti-Black rhetoric. Branagan hadn't given up on abolition. However, by 1805, he'd shifted focus towards the problems of slavery *and* emancipation, as he advocated for ridding the country of both slavery and Black people. At times his *Serious Remonstrances* read as little more than a racist attack on the very Black leaders he felt turned their backs on him. At one point, without the least bit of irony, Branagan asserted free born Black Americans had begun to "feel themselves consequential...for the haughtiest people in the world, are up-start gentlemen." Such men desired white wives, and were "exceedingly impertinent to white people in low circumstances." In a footnote, Branagan noted that not all Black people are like this, and that there were some in that state, who he knew, who were "men of information and respectability." Nonetheless, those men

⁴⁷ For discussions of the breakdown of Branagan and Allen's relationship, see Nicholas Guyatt, *Bind Us Apart: How Enlightened Americans Invented Racial Segregation* (New York: Basic Books, 2016), 82-83; Padraig Riley, *Slavery and the Democratic Conscience: Political Life in Jeffersonian America* (Philadelphia: University of Pennsylvania Press, 2016), 69

⁴⁸ Thomas Branagan to Thomas Jefferson, April 27, 1806, *The Thomas Jefferson Papers at the Library of Congress*, Series 1; For the letters sending Jefferson his work, see Thomas Branagan to Thomas Jefferson, May 7, 1805, *TJPLC*; Thomas Branagan to Thomas Jefferson, November 17, 1805, *TJPLC*.

were “aspiring to gain ascendancy over their fellows, something like his negro majesty, the emperor Dessalines” of Haiti.⁴⁹

To those who knew Branagan personally, particularly the leaders of the Philadelphia Black community, the point would have been clear: Free Black people were forgetting their place, and those like Allen, Jones, and Forten were no better than the freshly coronated violent emperor of Haiti, Jean-Jacques Dessalines. But Branagan’s work was more than just a written rebuke of the people he personally felt betrayed by. In it, he sounded less like the, albeit paternalistic, ally of a year ago, and more like the very white Virginians St. George Tucker had been attempting to appeal to a decade earlier.

This new pamphlet was a *tour de force* in early American anti-Blackness. He spent time speaking about matters such as interracial marriage, the impossibility of a Black citizenry, the faltering racial hierarchy, and the ever-present threat of Black violence. At one point, as he presented the north as seemingly besieged by Black crime, Branagan brought his readers attention to the case of nine-year-old girl who had died after being raped by a Black man. Relying on both racial and gender arguments, which would become integral to pro-slavery and anti-Black rhetoric going forward in the 19th Century, Branagan asserted such rapes occurred at a ratio of 100:1 in the north compared to the south; a clear link to the ever-growing free Black population, which directly threatened white women’s virtue.⁵⁰

A core part of Branagan’s arguments about Black violence stemmed from his belief that free(d) Black people simply could not control their urge to take revenge on their former oppressors. Branagan was no doubt taking his cue from Jefferson, and his *Notes on the State of*

⁴⁹ Thomas Branagan, *Serious Remonstrances, Addressed to the Citizens of the North States, and Their Representatives* (Philadelphia: Thomas T. Stiles, 1805), 70-71.

⁵⁰ Branagan, *Serious Remonstrances*, 68-69.

Virginia, as he built off established rhetoric, while adding a somewhat new dimension to such arguments. As was discussed in Chapter Three, Black violence was a common argument against emancipation, and was often presented as simply natural. Opponents of emancipation rarely spent time speaking to *why* Black people would live violent lives, and instead presented it as a self-evident fact. While Branagan presented violence as inevitable, and at times leaned into this rhetoric, he also argued it was a logical choice.

Shifting free(d) Black people future violence from natural, almost instinctual, to a conscious and logical choice allowed Branagan to accomplish multiple rhetoric goals. First, he could present colonization as a reasonable form of national self-defense. Combining elements discussed in Chapter Three, Branagan presented free(d) Black people as the ultimate internal enemy. Beyond simply being a drain on regional resources, or being pests to society, free(d) Black people were simply a ticking time bomb waiting to go off. Keeping them within the nation, and specifically the north, would eventually lead the ruin. As he asserted, “ten blacks in the North would do more execution than one hundred in the South.”⁵¹

Second, Branagan was able to establish colonization as a reasonable alternative for Black people themselves, even if they were unable to make that choice themselves. Infusing paternalism into his discussion of colonization, Branagan argued free(d) Black people would likely not make the best choice for themselves, and so it was up to white Americans to make it for them. Like others, Branagan recognized forcing colonization of the nation’s Black people theoretically violated the values the nation was founded on. Yet, if they were incapable of making the choice for themselves, it had to be done. As he asked his audience, “would it not be just and generous, as well as hospitable, to force a foolish or stubborn person from a place where

⁵¹ Ibid, 41.

he was surrounded with poverty, to a place where he would be crowned with plenty: from a place where he was politically a slave, where he would be politically free?”⁵²

And third, by presenting Black violence as the only logical choice for that group, Branagan was able to attack the very notion of Black patriotism and citizenship in unique ways. Black loyalism to the country was, quite literally, only something the “foolish or stubborn” were capable of. By presenting violence as the only reasonable choice, Branagan could cast doubt on Black people who claimed they were, and wanted to be, citizens. As he put it, “it is utterly impossible, for a reasonable and intelligent African, to be in any respect favourable to the government, that is the implacable enemy of his nation, in open hostility with all his countrymen, and of all his color.” If, by some chance, they were to look onto America with warmth in their heart, they would simply be seen as “a tory, and worse than a tory, a traitor,” by their fellow Black people.⁵³

Attacking the very idea of a Black citizen, Branagan also presented citizenship as a zero-sum game. It was simply impossible to admit Black people, the “inveterate enemies of Americans,” into the citizenry without completely destroying the values behind the status and the nation itself. The reality of the matter was “the naturalization of the blacks, [was] unavoidably connected with the degradation of the whites.”⁵⁴ Branagan’s use of the word “degradation,” often deployed to speak about the effects of slavery on Black people, was a purposeful inversion of social roles and place, and was a textbook example of the problem of slavery morphing into the problem of emancipation.

⁵² Ibid, 26.

⁵³ Ibid, 36, 55.

⁵⁴ Ibid, 43, 124.

If Black people could not be citizens in the United States, however, they could possibly find citizenship somewhere else, of their own making. Colonizing free(d) Black people somewhere else on the continent, perhaps on the western edge of the Louisiana Territory, would not only protect America from them, but give them the opportunity to actually experience freedom and equality. There, Black people would be given a set amount of land. Funds would be set up in each state to facilitate and support the emigration of Black people to this colony. And in that colony political offices, including governor, judges, and magistrates would be filled by Black colonists, who were appointed by the president. To Branagan it was the responsibility of Americans to “make them free and happy in every sense of the word, in a republic of their own.” There, they could be “free and independent citizens of American, in a separate state of their own.”⁵⁵

Black citizenship, then, was easily imaginable for someone like Branagan. Just not within the borders of the United States. But in the uneasy tension between his previous sentiments on abolition and Black people, and his current turn towards anti-Blackness, Branagan could still admit, with the right supervision, that Black people could legitimate and productive citizens. But while he imagined a Black republic on the fringes of the nation’s borders, that citizenship was more akin to subjecthood. Black people, as Branagan had said in *A Preliminary Essay*, still needed to be subservient.

The actual plan for colonization was scarcely a page long. Nonetheless, Branagan’s *Serious Remonstrances* is important for how he justified colonization through attacking the very prospect of a Black American citizen. Branagan was not particularly interested in actually formulating a plan to deal with the problems he saw. Instead, he simply advocated for a solution,

⁵⁵ Ibid, 23-24.

and spent his time convincing his audience that colonization, whatever it eventually looked like, was the only reasonable path for the nation. For Branagan, the use of Black people within the union was quickly dissipating, leaving only risk. If white Americans did not act fast, they would face a fate far worse than that of St. Domingue. Nonetheless, with violence on the horizon, he could still imagine, still had to imagine, a world where Black people served their white counterparts. That service could be fulfilled on the borders of an American empire, where Black citizens could find a new society and purpose, in the shadow of the United States.

[IV]

As those like Branagan decried the very presence of Black people in the nation, one person was perhaps so far removed from the ongoing racial crisis in the United States that he began thinking in radically different ways. William Short was a diplomat and protégé of Thomas Jefferson. He had accompanied Jefferson, as his personal assistant, during his diplomatic career in France in the 1780s. When Jefferson returned to America, Short stayed in France and assumed the role of diplomat, from 1790 to 1792, during the initial years of the French Revolution. For about the next twenty years, Short would spend a fair amount of his time in Europe, acting as a diplomat in several countries. By 1809, however, after losing his appointment and failing to convince his longtime lover, a wealthy aristocrat, to marry him, Short finally returned to America.⁵⁶

Perhaps owing to his extensive time in France during the Revolution, Short came to entertain radical ideas on race relations in America. In 1798, he sent a long letter to Jefferson, where he wrote extensively about slavery, race, and emancipation in America. Throughout his

⁵⁶ For more biographical information on Short, see George Green Shackelford, *Jefferson's Adoptive Son: The Life of William Short, 1759-1848* (Lexington: University Press of Kentucky, 1993).

letter, Short put forward his support for interracial marriage and a mixing of the races, arguing it would be a welcomed development for the nation. However, while certainly a radical position to take, Short ideas on race were nonetheless still influenced by quite conservative logic. His support for racial mixing was based on the idea that whiteness could easily be expanded to include the light skinned descendants of intermixture.

Short began his discussion of race in America by bringing up the British colony of Sierra Leone. The colony had been set up in 1787, as a means of relocating many poor Black people in England, particularly London. From its onset the colony served multiple purposes to various interests groups. Many white English people, particularly wealthy Caribbean enslavers, bemoaned the presence of a large free Black population. England's free Black population grew substantially after the conclusion of the Revolutionary War, when Black loyalists, many runaway slaves seeking freedom, escaped onboard British ships leaving New York.⁵⁷ Abolitionists, like Granville Sharp, saw colonization as a means to uplift Black people and prove enslavers' ideas about Black people wrong.⁵⁸

In Short's estimation, and that of many onlookers, Sierra Leone was failing in many regards. The colony had difficulties just keeping colonists alive, as West African diseases, particularly malaria, killed many. Financially, it wasn't doing well either. To Short, it wouldn't be long before Sierra Leone became nothing more than a commercial colony taken advantage of by Britain. Nonetheless, Short could look to the colony with some positivity, as it illustrated the

⁵⁷ For more on Black loyalists, the departure from America, and life afterwards, see Maya Jasanoff, *Liberty's Exiles: American Loyalists in the Revolutionary World* (New York: Vintage Books, 2011); Simon Schama, *Rough Crossings: Britain, The Slaves and the American Revolution* (New York: Ecco, 2006); Cassandra Pybus, *Epic Journeys of Freedom: Runaway Slaves of the American Revolution and Their Global Quest for Liberty* (New York: Beacon Press, 2007).

⁵⁸ For more on the colonization of Sierra Leone, see Bronwen Everill, *Abolition and Empire in Sierra Leone and Liberia* (New York: Palgrave Macmillan, 2013); Deirdre Coleman, *Romantic Colonization and British Anti-Slavery* (New York: Cambridge University Press, 2005).

good that could be done for and by Black people. In particular, reports from the colony, and Africa generally, showed just how well Black people could do in freedom, and provided irrefutable proof that many of the commonly held assumptions about those people were unfounded.⁵⁹

The information coming from the continent would, to Short, fundamentally change the nature of race relations in America. Eventually, Black people would enjoy “the restoration of the rights of citizenship.” Short’s use of the word “restoration” is somewhat interesting, considering Black Americans simply did not possess citizenship in the first place. It is possible he was equating citizenship rights with natural rights, which many anti-slavery advocates agreed enslaved people were both deprived of and had never relinquished. In any case, Short seemingly thought citizenship was a status Black Americans should naturally have.⁶⁰

More important, however, was how Short tied citizenship with his advocacy for interracial marriage. As shown in Chapter Three, some white Americans could imagine a future where Black people became citizens, but only after they had effectively lost their blackness, and become white. Short, on the other hand, reversed this scenario, by claiming citizenship now would help ease the nation into becoming a truly mixed-race country. By restoring citizenship to Black Americans, gradually “the aversion...so natural...even among the least subjected to prejudice” to intermixture would dissipate. Even if it was argued such an interracial future was “an evil,” Short asked if it was not the lesser of two evils, considering the alternative was keeping hundreds of thousands of people, and their descendants, in chains? Furthermore, even in

⁵⁹ William Short to Thomas Jefferson, February 27, 1798, *The Papers of Thomas Jefferson*, Vol. 30, Barbara B. Oberg, ed. (Princeton: Princeton University Press, 2003), 146-154.

⁶⁰ Ibid.

emancipation, the separation of the races “by a marked & impassable line,” was itself also worse than intermixture.⁶¹

Among even the most ardent supporters of abolition, interracial sex was thoroughly looked down upon. So seemingly universal was this way of thinking among white Americans, that it became a predictable, if not still useful, counterargument to emancipation. White Americans, at least publicly, could not imagine interracial sex, mixed race descendants, and a mulatto nation with anything but abject dread.

As seen with Thomas Branagan, colonization became so popular, in part, because sending Black people out of the country foreclosed the possibility of such things. John Parish, a Quaker abolitionist, remarked colonization would not only stop intermixture, but “preserve the distinctions of nation and colour.” Interracial relationship may have been rare, in his eyes, but colonization could only reinforce the “natural aversion and disgust” each race shared to such unions, placed upon them by “Divine Providence.” William Thornton, architect of the U.S. capitol and uncommitted anti-slavery advocate, remarked “if the taste of a white man should be so depraved as to prefer a black to a white they out to be joined, for it would be injustice to permit such depravity to contaminate a white woman.”⁶²

Short may have been exceedingly uncommon in his views, however they were still built on racial logic shared by many white Americans. Echoing an environmentalist view of race, Short commented on how America’s climate appeared to be lightening the skin tone of Black people. He further stated if a Black family were to hypothetically be placed in Sweden, he was sure over the course of several generations their color would surely “disappear.” Waiting

⁶¹ Ibid.

⁶² John Parish, *Remarks on the Slavery of the Black People* (Philadelphia: Kimber, Conrad, & Co., 1806), 42-43; William Thornton, *Political Economy: Founded in Justice and Humanity. In a Letter to a Friend* (Washington, D.C.: Samuel Harrison Smith, 1804), 21.

centuries for Black people to naturally whiten, however, was both not ideal and needed. If Black and white people were to begin mixing, over the course of time, each successive generation's color would begin to "revert to its present state." While racial preference would likely keep white people together for a time, if barriers were taken down and Black people lifted up, through a restoration of citizenship, interracial relationship would gradually occur.⁶³

The immediate results of interracial sex wouldn't be displeasing either, as white people would simply take on the appearance resembling Spaniards.⁶⁴ In making this observation, perhaps unintentionally, Short laid bare the fallacy of America's racial logic and whiteness. He understood while some could look at the Spanish's color, a result of the mixture of Moors and the Spanish, with disdain, most did not. Instead, the Spanish were widely considered to also be white. In fact, going into the 19th Century, this slippage in whiteness was understood so well by enslaved Black people that it was not at all uncommon for light-skinned fugitive slaves to pass as travelers from the Iberian Peninsula.

Several factors came together, then, to ensure the nation's white population would continue to exist. First, intermixture would happen gradually at first, because of preexisting prejudices. Two, the proportion of white to Black people in the country guaranteed the national complexion would lean towards the side of whiteness from the state. And finally, while white Americans would become darker, they would nonetheless return to their former color in time. There was nothing to fear about the process. Who, after all, could look to Spain and say the country and its people were suffering "merely on account of their color?"⁶⁵

⁶³ Short to Jefferson, February 27, 1798, *PTJ*.

⁶⁴ *Ibid.*

⁶⁵ Short to Jefferson, February 27, 1798, *PTJ*.

Additionally, Short was of the opinion such mixed race and darker colored white people would be no less attractive than their fairer skinned counterparts. To prove his point, Short turned Jefferson's attention to Frances Bland Randolph Tucker, the late wife of St. George Tucker. It is unclear whether Short was implying she was mixed race, or simply a darker complexion of white, but there is not any evidence to suggest she was the former.⁶⁶ For Short, though, "there [was] no country that might not be content to have its women like her." Her beauty was proof enough of what the "perfect mixture of the rose & the lilly" could produce.⁶⁷ What Tucker would have thought of such comments about his first wife, considering his own views on intermarriage, would certainly be interesting.

Short surely knew he was walking a tight rope on this entire matter, especially once he brought up the matter of physical beauty. Jefferson, after all, had directly placed Black women's beauty beneath that of their white counterparts in his *Notes on the State of Virginia*. According to Jefferson's public comments, Black women's lack of beauty was so stark that one could observe "the preference of the Oranootan for the black woman over those of his own species."⁶⁸ Of course, those were just Jefferson's public thoughts. Against the backdrop of this entire later sat Short's and Jefferson's time in France together during the 1780s; the very period Jefferson like began his relationship with Sally Hemings, his deceased wife's half-sister, slave, and future mother of multiple children by Jefferson.

Considering his role as personal secretary to Jefferson, it is all but certain he was away of what was happening between Jefferson and Hemings. Of course, he did not dare say anything

⁶⁶ Cara J. Rogers has explored the relationship between Short and Jefferson, including this letter, the most. See, Cara J. Rogers, "The French Experiment: Thomas Jefferson and William Short Debate Slavery, 1785-1826," *American Political Thought* 10, No. 3 (Summer 2021): 354-355; Cara J. Rogers, "Jefferson's Sons: Notes on the State of Virginia and Virginian Antislavery, 1760-1832," Ph.D. Dissertation, (Rice University, 2018).

⁶⁷ Ibid.

⁶⁸ Jefferson, *Notes on the State of Virginia*, 147-148.

directly in his letter. But it is impossible to think Short did not have the matter on his mind when he sat down to write his letter. Nor that Jefferson wouldn't have thought of the relationship when reading Short's letter. In fact, just months prior to Short's letter arriving at Monticello, Hemings gave birth to their second child, and first son, Beverly Hemings in April.⁶⁹

The rest of Short's letter dealt with how to best prepare Black Americans for citizenship. He did not, however, actually have any sort of plan for this, and instead, not so subtly, hoped Jefferson would take up the matter and lend his weight towards supporting it. This was likely not the first, and wouldn't be the last time Short broached the topic of abolition and Black rights with Jefferson.⁷⁰ In the meantime, all he could do was offer a short list of suggestions.

Of particular concern to Short was lessening the severity of slavery, and ensuring meaningful legal protections for enslaved people. With this in mind, he suggested shifting the nature of slavery entirely away from the chattel principle and towards serfdom. By ending property in man and tying slaves to the land, enslaved people would have the security of permanent residency, be safeguarded against family separations, and any number of other legal protections. Short felt particularly strongly that enslaved families should not be separated. When he found out his brother had broken up some families among the slaves they both inherited from their father, he expressed his own guilt and plans to track down, buy, and reunite those separated.⁷¹

In attempting to better the lives of enslaved people, Short thought they should be guaranteed one day a week to work towards saving funds for purchasing their freedom.

⁶⁹ For more on Jefferson's relationship with Sally Hemings, see Annette Gordon-Reed, *The Hemingses of Monticello: An American Family* (New York: W. W. Norton & Company 2008), particularly 536-539 for a discussion of Short's letter.

⁷⁰ Rogers, "The French Experiment," 359.

⁷¹ Short to Jefferson, February 27, 1798, *PTJ*; Rogers, "The French Experiment," 349 n.22.

Enslavers would subsequently be legally bound to honor agreements, work, and wages, and the time of freedom. And finally, abolition societies should be formed in states, and prioritize purchasing the freedom of enslaved women. Doing so would ensure the population of enslaved people increased slower over time, since the status of Black people flowed from their mothers.⁷²

The ideas on emancipation he put forward were not particularly very original. But they were not the most important part of his letter to Jefferson. By showing support for interracial relationships, Short was, at the time, perhaps the most radical anti-slavery advocate of his day. The letter was, however, a private conversation. It is like such ideas never saw the light of day by either man. Yet, while a private matter, interracial relationships were by no means a rare thing, as Jefferson himself could have attested to. Short might have been in the minority by supporting them outright, but plenty of enslavers enacted terror on the bodies of Black women with little regard for public opinions on intermixture.

His ideas on interracial relations might have been against the grain on first glance, but as mentioned before, they were actually entrenched in the very anti-Black ideals most other white Americans held onto. Short could, for sure, imagine a future where Black and white, or the “rose and the lilly,” mixed together. But such a mixture would only create a different “hue” of whiteness. Even as Short supported the extension, or “restoration,” of citizenship to Black Americans, it was only to make their absorption into the body politic easier. In the end, Short still imagined a white future. Americans would still be white. And American would still be a white nation.

While he certainly did not call his ideals absorption, such a word accurately describes Short’s plan to subsume Black Americans within the white population, until they simply did not

⁷² Short to Jefferson, February 27, 1798, *PTJ*.

exist anymore. He turned the common fear of racial extinction in American on its head.

Emancipation, and the presence of free(d) Black people, would not lead to violence which ended with the “extermination of the one or the other race,” as Jefferson once claimed.⁷³ No race wars loomed in America’s future. Instead, freedom would give Black Americans the opportunity to live a better life, enjoy the liberty of the nation, and eventually be incorporated into the white race.

Just what did Jefferson think of such suggestions coming from someone whom he had described as his “adoptive son?” It is possible Jefferson discussed this matter with Short in person, when the latter visited Monticello, after returning to America in 1802. But he apparently never wrote to Short about it. Even after Short mentioned this letter to Jefferson again he simply ignored its mention, and spoke about other matters. In fact, in a letter written on April 13, 1800, Jefferson acknowledged the receipt of various letters from Short during that 1798 period, but did not even mention this letter.⁷⁴ Jefferson quite literally acted, at least in writings, as if he had never received it.

For his part, Short never seemed to have discussed such topics publicly. It is quite likely he did not discuss this matter with anyone else. In any case, he continued to advocate for the end of slavery. He eventually joined the American Colonization Society, having apparently come to the conclusion that colonization represented the best route for ending slavery in the United States. He would remark to Jefferson that while he still looked with hope to other empire’s African colonies, it seemed unlikely that such a settlement would happen for America. Enslavers simply wouldn’t free their slaves to be transported, and not enough freed Black people would “consent to go.” Even if those difficulties were averted, Congress never seemed poised to

⁷³ Jefferson, *Notes on the State of Virginia*, 147.

⁷⁴ Gordon-Reed, *The Hemingses of Monticello*, 539.

financially back an African colony in any meaningful way. Short though the problem was, perhaps, the attempt to create a colony in Africa. He complained that no attempt was made to strike a deal with Haiti to send free(d) Black people there.⁷⁵

Both goals of absorption and colonization were supported by the underlying racial logic he employed back in 1798. Nonetheless, only one was realistic, at least by 19th Century standards. It is quite likely, after his 1798 letter, Short came to the conclusion that was the reality of America.

[V]

Seeking to find a solution to both the problems of slavery and emancipation, white Americans put forth a variety of ideas. Diffusion, colonization, and absorption represented three strands of thinking on how to eventually rid the nation of its Black population, making America neither a slave society nor a freed society. In the end, however, only colonization presented itself as a viable route, and even St. George Tucker and William Short came to support them, even if neither thought it was the best option.

From the opening years of the 19th Century to 1816, when the American Colonization Society was founded, colonization would gradually experience a boom in popularity. By the time the ACS was created, however, most white Americans had shifted their ideas of where a Black colony would be located. For a variety of reasons, including security and their own want for land, Africa became the preeminent site for a Black American colony.⁷⁶

⁷⁵ Beverly C. Tomek, *Colonization and its Discontents: Emancipation, Emigration, and Antislavery in Antebellum Pennsylvania* (New York: New York University Press, 2010), 50; William Short to Thomas Jefferson, July 4, 1817, *The Papers of Thomas Jefferson*, Vol. 11, ed. J. Jefferson Looney (Princeton: Princeton University Press, 2014): 502.

⁷⁶ For more on the changing nature of colonization in these early years, see Mills, *The World Colonization Made*.

Throughout this period and afterwards, Black Americans watched the nation's fascination with colonization with a cautious eye. Some prominent Black Americans initially supported colonization, though their idea of it differed drastically from that of their white counterparts. Whereas white Americans, on either side of the slavery question, generally supported colonization as a means to create a white nation, Black Americans saw voluntary emigration from the nation as an opportunity to be truly free and claim a version of citizenship of their own making.

In much the same way that colonization schemes had been circulating in America for over a century, emigration had presented itself as viable last resort to any number of Black Americans before the turn of the century. In 1773, for example, four enslaved men petitioned the Massachusetts legislature do something about the state of slavery in the colony, stating they eventually aimed to leave for Africa. In 1787, Prince Hall, America's foremost Black man of the time, joined other Massachusetts Black men in petitioning the legislature to allocate funds for emigration. Noting the debased condition free(d) Black people were subjected to in the state, the petitioners asserted that they would only find relief for themselves and their children outside of the United States.⁷⁷

Paul Cuffe, the nation's most successful Black businessman and sailor by the early 19th Century, saw the creation of a Black American colony and emigration to Africa as a means to not only give Black Americans a true place to call home, but to improve the condition of Africa itself. Cuffe was initially interested in settling Black Americans in the British colony of Sierra Leone. However, after multiple trips to the colony, unsuccessful lobbying efforts, meek initial success in settling families there, and a relatively negative opinion of the ongoing efforts there,

⁷⁷ Petition of Peter Bestes, Sambo Freeman, Felix Holbrook, and Chester Joie, Boston, April 20, 1773, in Dorothy Porter Wesley, ed., *Early negro Writing, 1760-1837* (Boston: Beacon Press, 1971), 254-255;

Cuffe came to the opinion it would be best for Black Americans to create a new settlement. He also wished to have another colony in North America itself as well.⁷⁸

Cuffe's initial efforts to begin an emigration movement inspired, at least in the words of Robert Finley, the creation of the ACS. Finley, a Presbyterian clergyman, became interested in the idea of colonization after reading Cuffe's short account of his travels to Sierra Leone.⁷⁹ Finley initially advocated for the creation of an African colony as a way to deal with the nation's free Black population, and hopefully spur abolition. The opening of his pamphlet on the matter quite literally begins with the question: "What shall we do with the free people of color?"⁸⁰

Yet, while colonization quickly became white American's preeminent model for solving the problem of emancipation, it just as quickly became overtly unpopular among Black Americans. Cuffe had already had a difficult time finding emigres when he attempted to settle Black Americans in Sierra Leone. However, after 1816, and the founding the ACS, colonization became synonymous with deportation for many Black Americans. When Cuffe, Richard Allen, and James Forten held a meeting among Philadelphia's Black community to discuss colonization, all apparently optimistic about its popularity, of the supposedly three thousand attendees not a single man was in favor of colonization.⁸¹

As colonization's popularity took off among white Americans it became virtually and almost universally condemned by Black Americans just as quickly. The ACS did have some success setting free Black people over its years of operation, as some Black Americans all but

⁷⁸ Floyd J. Miller, *The Search for a Black Nationality: Black Emigration and Colonization, 1787-1863* (Chicago: University of Illinois Press, 1975), 28-47; For more on the life of Paul Cuffe, see Lamont D. Thomas, *Rise to Be a People: A Biography of Paul Cuffe* (Urbana: University of Illinois Press, 1986); Matthew J. Hetrick, "Rewriting Their Own History; or, The Many Paul Cuffes," in Beverly C. Tomek and Matthew J. Hetrick, *New Direction in the Study of African American Recolonization* (Gainesville: University Press of Florida, 2022), 288-302.

⁷⁹ Paul Cuffe, *A Brief Account of the Settlement and Present Situation of the Colony of Sierra Leone, in Africa* (New York: Samuel Wood, 1812).

⁸⁰ Robert Finley, *Thoughts on the Colonization of Free Blacks* (Washington, 1816).

⁸¹ Miller, *The Search for a Black Nationality*, 48-50.

gave up on America itself. Writing to the secretary of the ACS, Elias B. Caldwell, in 1818, Abraham Camp announced his and his family's readiness to emigrate from the country. They loved America, but that did not change the fact that they only enjoyed a "partial" freedom with "no hope that it ever will be otherwise here." Even if they had to "suffer hunger and nakedness for years," Camp and his family would "rather be gone."⁸²

The overwhelming majority of Black Americans, however, vehemently opposed colonization as simply an attempt to continue denying them citizenship in their rightful country, as well as deport them to a foreign land.⁸³ By the end of the 1810s, Black Americans had been fighting for their place within the nation for decades. They had claimed citizenship as their own, and put forth their own ideas of what the Constitution meant. For years they had been working to make the nation not only live up to the very ideals which led to its formation, but to recognize that Black people, as Americans, had a rightful say in what those ideals meant.

While colonization, for a time, beat out any other model for solving the problem of emancipation, it was by no means a solution for *all* Americans. Thus, as the 19th Century progressed on, the nation would continually debate the place of Black Americans and how they fit into society. And Black Americans would continue to fight for citizenship as a means of claiming a formal space within the United States, and as a way to guarantee their rights. Colonization was but one conversation in the larger chorus of voices which made up American debates about Black inclusion or exclusion from citizenship and the nation.

⁸² Herbert Aptheker, *A Documentary History of the Negro People in the United States: From Colonial Times Through the Civil War* (New York: Citadel Press Book, 1951), 72.

⁸³ For more on Black Americans' responses to colonization going forward, see Christopher James Bonner, *Remaking the Republic: Black Politics and the Creation of American Citizenship* (Philadelphia: University of Pennsylvania Press, 2020); Martha Jones, *Birthright Citizens: A History of Race and Rights in Antebellum America* (New York: Cambridge University Press, 2018); Andrew K. Diemer, *The Politics of Black Citizenship: Free African Americans in the Mid-Atlantic Borderland, 1817-1863* (Athens: University of Georgia Press, 2016).

Conclusion

[I]

It was February 13, 1821, and at sixty-three years old, the aging Charles Pinckney of South Carolina rose from his seat to address the United States House of Representatives. Following more than a year of contentious debates over the admission of Missouri as a slave state, the nation's legislature once again found itself arguing over the would be state. This time, however, Missouri's constitution was in question, and particularly a section which demanded the soon-to-be state's legislature to enact laws barring "free negroes and mulattoes" from residing in the state. Northern restrictionists, who had previously rallied behind stopping slavery from spreading west, now staked their opposition to Missouri on the claim the state's constitution violated the federal Constitution's Privileges and Immunities Clause, which guaranteed "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." Pinckney, however, defended Missouri's restriction of free Black people as not just consistent with the federal Constitution, but as "the very best republican constitution I have ever seen."¹

The focus of northern representatives on the potential violation of the Privileges and Immunities Clause was less born out of a commitment to Black rights than necessity. Northern states had, for decades, been discriminating against their Black residents and actively denying them states citizenship and the rights commonly associated with it.² Yet, the clause in the Missouri constitution represented the only real place of potential conflict with its federal

¹ Constitution, Article IV, Section 2; *Annals of the Congress of the United States*, 16th Congress, 2nd Session, 1130.

² For more on the rise of northern racism and the walk back of Black Americans' rights, see Joanne Pope Melish, *Disowning Slavery: Gradual Emancipation and "Race" in New England, 1780-1860* (Ithaca: Cornell University Press, 2000).

counterpart, and thus became the focus of northern restrictionists.³ The debates surrounding this provision were the first time the nation had been rocked by the question of Black Americans' citizenship status in such a public and explicit fashion. But it was certainly not the first time Americans, Black or white, had thought on the matter.

Pinckney had always boasted of his role at the Constitutional Convention. He regularly exaggerated the importance his proposals made on the final design of the Constitution. He was even prone to lying about his age, saying he was twenty-four instead of twenty-nine, in an attempt to cast himself as the youngest Convention delegate; a title which actually belonged to New Jersey's Johnathon Dayton. That day was no different. According to him, he was the first and only one to submit a plan for government based on articles and sections, meaning he must have been the sole author of Article IV, Section 2. That being the case, he was in the best position to speak to the Privileges and Immunities Clause's meaning.⁴

As he told his colleague, when he created the clause in question, he "perfectly knew that there did not then exist such a thing in the Union as a black or colored citizen, not could I then have conceived it possible such a thing could ever have existed in it." Even with all the debates raging in Congress and throughout the country, Pinckney still did not believe such a thing existed. Pointing towards his own state, he briefly explained what citizens of South Carolina were entitled to and the duties they have to their community, covering voting and trial rights, as well as militia service. Less than these rights and duties could constitute a citizen of the nation, and yet, even in the North, Black people were excluded from most of these. As Pinckney asked, given Black people were "so unlike a citizen, and so almost wholly without his privileges" in

³ Robert Pierce Forbes, *The Missouri Compromise and Its Aftermath: Slavery and the Meaning of America* (Chapel Hill: University of North Carolina Press, 2007), 110-112.

⁴ *Annals*, 16:2, 1134.

their own states, how could northerners “be serious in refusing the admission of Missouri, and risking the consequences.”⁵

It is unclear whether Pinckney was asserting that he never even considered the possibility of Black people’s inclusion within the citizenry, when crafting the Privileges and Immunities Clause, or that he simply felt no need to actually make their exclusion explicit. What is clear, however, is Pinckney sought to convince his colleagues, many of whom came from states which debased the status of Black people, that it was simply assumed citizen meant white. Pinckney certainly was not the sole crafter of the Privileges and Immunities Clause. And his deployment of a highly selective and embellished history of his role was a blatant and pointed political strategy. And while Pinckney was no stranger to lying, as this dissertation has shown, it would be a mistake to assume he did not mean what he said here. Or that those who actually crafted the Constitution alongside him, did not share similar sentiments.

[II]

The Missouri Crisis, and particularly the Second Missouri Crisis over Black Americans’ citizenship status, was the first time many of the threads highlighted throughout this dissertation came bursting onto the national stage in such an explicit manner. It put many white northerners in the uncomfortable, if not hypocritical, situation of asserting and defending the citizenship rights of Black Americans after decades of broad based agreement in the country that they were not, in fact, citizens. After months of debate, a Second Missouri Compromise was finally achieved when Congress accepted the territory’s constitution, on the condition the new state’s legislature did not act on the anti-Black migration provision in its constitution. Missouri would

⁵ Ibid, 1135.

be barred from creating such laws and using their constitution as a mean to justify any act “which any citizen, of either of the states in this Union, shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled under the constitution of the United States.”

The compromise language, proposed by Kentucky’s Henry Clay, was anything but specific. After months of debating who counted as a citizen in the nation, what citizenship meant, and the place of Black people in the country, the amendment to Missouri’s statehood answered none of these questions. The ambiguous language muddled the distinction between state and national citizenship, by placing state citizenship status as seemingly equal to national citizenship, for the purposes of a person’s rights under the Privileges and Immunities Clause. It did not explicitly bar Missouri from enacting anti-Black immigration laws, only demanding that the state’s constitution, which specifically empowered and required the legislature to enact such legislation, not be used to justify any act. It was, in reality, an amendment that treated citizenship as confusingly as the Privileges and Immunities Clause in the Articles of Confederation had.

After months of debate, and more than a decade of concerted Black organization in the nation, the country’s Black population was still left without any guarantees that they were, in fact, citizens. And in the months that followed, several northern states even attempted to enact similar anti-Black immigration laws, with varying levels of success. Massachusetts eventually decided against such a move, and reaffirmed the state’s white citizens had always considered Black Massachusettsians to be citizens as well. And New York, a constitutional convention ended with expanding the rights of white men to vote, while restricting the franchise for Black men, all the while reaffirming the latter group were, in fact, citizens.⁶

⁶ For more on the immediate aftermath of the Second Missouri Compromise, see Kate Masur, “The Second Missouri Compromise, State Citizenship, and African Americans’ Rights in the Antebellum United States,” in Jeffrey L.

In the years to come, Black Americans would point to the Missouri Compromise as the point when white Americans, both friend and foe, completely abandoned them in the name of national (white) peace. Gone were the days some hoped would come where the rest of the continent would be created to foster freedom, instead of protect slavery.⁷ In 1829, the *Freedom's Journal*, the first Black newspaper in the nation, called the Missouri Compromise a “moral calamity.”⁸ In perhaps the most radical piece written by a Black American at the time, David Walker encouraged other Black Americans to resist the sort of compromise pushed onto them and agreed upon by their white counterpart. In his 1829 *Appeal to the Coloured Citizens of the World*, Walker, implored the nation’s Black people to claim their rights and stave off encroachment with violence if need. As he said:

Let no man of us budge one step, and let slave-holders come to beat us from our country. America is more our country, than it is the whites – we have enriched it with of blood and tears. The greatest riches in all America have arisen from our blood and tears: - and will they drive us from our property and homes, which we have earned with our *blood*? They must look sharp or this very thing will bring swift destruction upon them. The Americans have got so fat on our blood and groans, that they have almost forgotten the God of armies. But let them go on.⁹

Pasley and John Craig Hammond, eds., *A Fire Bell in the Past: The Missouri Crisis at 200: “The Missouri Question” and Its Answers, Volume II* (Columbia: University of Missouri Press, 2021): 129-162.

⁷ For more on Black responses to the Missouri Compromise, see Richard Newman, “The Other Fire Bell: African American Politics and the Missouri Compromise before the Civil War,” in *A Fire Bell in the Past*, Vol. II: 197-228.

⁸ Seen in Jeffrey L. Palsey and John Craig Hammond, “The 1821 Project,” in *A Fire Bell in the Past*, Vol. II: 11.

⁹ David Walker, *Appeal to the Coloured Citizens of the World, But in Particular and Very Expressly, to Those of The United States of America*, Sean Wilentz, ed. (New York: Hill and Wang, 1995): 65.

Walker was not speaking about the Missouri Compromise, specifically, in the above passage. However, it is almost certain it was on his mind.¹⁰ Instead, Walker was arguing against the idea of colonization, a solution Chapter Five showed became increasingly popular among white Americans as a way to solve the dual problems of slavery and emancipation. Colonization was, at best, a slap in the face, to Walker, who saw it as a way for white Americans to preserve an anti-Black nation, offload the sin of slavery, and further debase Black people in America and across the world. Walker denunciations of colonization were thoroughly built on the idea that he and his brethren were just as much citizens of the nation as white people.

In his *Appeal*, Walker built on what Black Americans had been doing for decades. While much more militant and radical, the basis for Walker's anger was white Americans choice to not recognize him and those who looked like him as American. Walker looked to the nation as it was and as it had been, and called upon Black Americans to fight for the very rights white Americans claimed were universal. To make the country accept that nothing barred them from enjoying the exact same liberties which were guaranteed to white citizens.

In looking back, Walker focused particularly on Thomas Jefferson, who had died only a few years earlier on the fiftieth anniversary of American independence. Bringing attention to Jefferson's racism and hypocrisy was nothing new. Black Americans had found an easy target with Jefferson, who was one of the foremost Founding Fathers, and perhaps second only to George Washington himself. It is hard to believe Walker's denunciations of Jefferson were not influenced by those who came before him. In pointing out what was said in *Notes on Virginia*, it is possible to see the influence of Benjamin Banneker, who two-and-a-half decades earlier had

¹⁰ For more on this, see Newman, "The Other Fire Bell."

written to Jefferson and spoke on the same matter.¹¹ In claiming citizenship and a place within the nation, and pointing out nothing but racism could justify the denial of rights and liberties, Walker drew on the anti-slavery constitutionalism pioneered by Black petitioners at the turn of the century. Walker, then, put a militant bent on the work those who came before him had done; no doubt deciding enough was enough in part because of the consistent abandonment Black Americans felt from their white allies following the Missouri Crisis.

[III]

In both Pinckney and Walker we can see the culmination of decades of seemingly invisible and silent debate over the relationship between citizenship, race, and slavery. Everything examined in this dissertation led up to the arguments made by each of these men. And in doing so, put the country on a path where the issues of slavery and race would continue to divide the nation, and prove to be near insurmountable obstacles that made actual compromise all but tenuous.

Somerset v. Stewart (1772) may have been fought in the courts of England, but it had ramifications for the entirety of the British Atlantic. Even as Lord Mansfield attempted to keep the case purely about the conflict between Virginia and English law, the realities of the case meant some sort of legal precedent would have to be reached on the status of Black people in the British Empire, and what rights or protections that status entailed while in England. The resulting ruling affected slavery minimally in the empire as a whole, but created the possibility for future conflicts-of-law over slavery, especially after America declared independence.

¹¹ For more on the Banneker-Jefferson exchange, see Eric Herschthal, “What kind of abolitionists was Benjamin Banneker? Reluctant activism and the intellectual lives of early Black Americans,” *Slavery & Abolition* 42, No. 4 (2021): 669-690.

This possibility, in part, led some of the crafters of the Articles of Confederation to both push for a system of government which protected the institution of slavery, and a status which would foreclose the possibility of an American *Somerset*. They failed on both fronts, not least because the states could not agree on even the most basic matters of state, and the Articles became a rushed necessity of war, with next to no power. The *Affa Hall* affair showed just how little slavery was protected, and hinted at the possibility that a *Somerset*-esque case could happen in the new nation. The Constitution, while created to address a wide range of issues, protected slavery much better by cleaning up the language used in the Articles, and by implicitly guaranteeing citizenship only to the nation's white population.

Yet, because enslavers and non-enslavers alike were both unwilling and unable to make explicit the exclusion of Black people from citizenship, they left the door open for future generations to challenge this racialized idea of citizenship. But it did not take even one generation for Black Americans to utilize the Constitution's silences for their own purposes. By the turn of the 19th Century, Black Americans had already begun pioneering an early version of anti-slavery constitutionalism, which posited they were just as much a part of "We The People" as their white counterparts. The growing movement among Black Americans and the ever-expanding population of free Black people in the nation quickly led to a white backlash, as many white Americans across the nation sought to address the problem of emancipation. The idea that Black people were simply incapable of being American citizens led many white people to push for emancipation and relocation, the best solution for keeping the nation a homogeneous white state.

The idea that slavery and emancipation were simply two sides of the same problem, namely the presence of Black people in the nation, led to some, such as Thomas Jefferson, to

embrace Missouri's entrance as a slave state. Slavery could be dispersed throughout the country, and eventually the institution would die out. Even northerners who wished to admit Missouri as a free state, and who demanded the citizenship of Black people, went home to their states to find white residents attempting to enact the exact sort of legislation they had fought against in Congress. It is no wonder Walker looked upon the nation and saw nothing more than a land full of potential white enemies. Decades of debates over various issues had skirted the issue of Black inclusion within citizenship until the Missouri Crisis. And when all was said and done, the nation's white people ultimately decided to compromise among themselves, and leave Black people to largely fend for themselves.

[IV]

While this dissertation has shown many parts of that early debate, more work is left to be done. As mentioned in the introduction, works on the 19th Century are able to center Black people and their actions much more because of the abundance of sources left behind. This story, while able to do this to some extent by the turn of the 19th Century, requires more. The first two chapters focused on court cases because they provide one way to bring Black people to the forefront when they had, relatively, less of an ability to speak with their own voices. Petitions, to, provide some opportunities for growth. Incorporating more of these sources may allow for the story of citizenship to not only be taken back further than it usually is, but the history of Black activism as well.

Furthermore, gender presents an interesting parallel for race when examining citizenship. White women during this period were undoubtedly considered citizens. And because citizenship was not a rights bearing status, women's debased legal status compared to men meant they could

still be considered part of the citizenry while also being deprived of many rights and legal protections. However, white women's citizenship status was also in fragile state. In 1805, the case of *Martin v. Commonwealth of Massachusetts* established citizenship for the state's women flowed from their husbands, and could be forfeited if women married a non-American. The principle would go on to influence American constitutionalism, and by the turn of the 20th Century, it would explicitly be stated in U.S. law.¹²

If the citizenship white women enjoyed was evident of the radically conservative nature of the American Revolution, then we must ask what Black women's relationship to the status was like. This dissertation has argued Black people were not citizens, but it has done so largely without interrogating gender. Doing so would only bolster the idea that Black people were meant to be excluded from the status, but it would nonetheless add another dimension to the argument. However, examining the role of gender within the Black community would likely give new meaning to the early arguments for citizenship expressed by Black men. Considering slavery could often feminize Black men, by forcing them to do work white women, not men, would perform, it is certainly possible in articulating a vision for Black inclusion within citizenship, Black men did so by relying on and elevating traditional gender norms. Black men's citizenship, then, would have come at the expense of Black women's, a fate not at all surprising, but nonetheless important and worth study.

Furthermore, considering how anti-Blackness operated in such a way as to infantize Black people, an interesting connection can possibly be drawn between the exclusion of Black people and children from citizenship. As Holly Brewer has shown, the shifts in the legal status and rights of children in the early modern Anglo-Atlantic were indicative of larger changes in

¹² For more on this, see Linda K. Kerber, *No Constitutional Right to be Ladies: Women and the Obligations of Citizenship* (New York: Hill and Wang, 1998).

ideals surrounding birthrights, consent, and status. As American's embraced citizenship, they consciously did so with varying ideas on what the proper age of consent was and the rights of children. As children began to increasingly be seen as incapable of making important decisions, such as choosing citizenship, rights and protections they had held slowly began to be stripped from them.¹³

Black people were often compared to children. This can be seen in how white Americans understood crime and criminal behavior during this time period, as they often saw actions like arson as crime committed principally by either children or Black people. Furthermore, Black people were often understood as being incapable of making certain choices, and were commonly denied the ability to consent to things such as contracts, wills, etc. While the link between children and Black people was not necessarily one-for-one, it is yet another avenue for future research on the question of citizenship.

These are just a few topics which are deeply related to this history; the doors to are opened wide by bringing the study of citizenship back to this time period and placing it in conversation with race and slavery. In the end, examining citizenship and anti-Blackness during this period brings a host of new questions to bare. How did citizenship influence ideas on racial extinction? What was the relationship between emerging, and increasingly visible, French ideas of citizenship and the evolution of American citizenship during the French and Haitian Revolutions? How did Black Americans use, or possibly distance themselves, from the ongoing Haitian Revolution when making claims on citizenship? How debates surrounding Black Americans access to citizenship relate to and interact with discussions on the place of Native

¹³ For more on this, see Holly Brewer, *By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority* (Chapel Hill: University of North Carolina Press, 2005).

Americans in the nation? These questions are all part of the history that makes up this period, and the history that would go on to inform a myriad of issues in the United States going forward.

[V]

As he sat and delivered his decision, Roger Taney doubtlessly understood the ultimate irony of the *Dred Scott* decision. He, like many who had come before him, was participating in a long debate over Black people's citizenship status. He surely thought he was ending all arguments over the matter; or at least would begin to put the final death nail into it with the authority of the Supreme Court behind him. He looked to the nation's history to justify his decision. Black people were not, nor could ever, be citizens of the United States, because the founding generation simply could have never imagined them as such.

Yet, he only examined one part of that history. One part of the founding generation. Because Black Americans and their allies in the 19th Century were simply building off the arguments *their* founding generation made. Black Americans, from the start, argued citizenship was a rights bearing status. A status which included them, and put them under an umbrella of rights and protection. In his attempt to strike down the idea of Black inclusion within citizenship, Taney ultimately embraced a Black conception of the status. He thought of citizenship as a status imbued with rights and protections, and as such out of the reach of Black people. They could not have access to it because they had historically been denied the very rights, as nebulous as that list might be, that became associated with the status. But those rights and protections only became tied to citizenship through the hard work of Black Americans, who began fighting for inclusion within the citizenry from the beginning. In doing so, they articulated a new meaning for the status that would drastically influence its evolution.

Citizenship, as a rights bearing status, did not exist at its creation. Instead, it was forged throughout the founding generation and after by Black Americans who claimed the status as their own, and asserted it afforded them federal protections. Whether it be the right to petition Congress, have the national government interfere in state affairs, or create special legislation to protect the nation's Black population, citizenship provided, in Black Americans' minds, a platform on which to stand and make demands of the nation itself. Thus, as he denounced the very idea of Black inclusion within citizenship, Taney was forced, whether he knew it or not, to embrace an idea of citizenship created and fought for by Black Americans.

It would be another decade before *Dred Scott* would officially be overturned by a constitutional amendment. The Fourteenth Amendment guaranteed birthright citizenship to all people born in America and the lands under its jurisdiction. That amendment too would embrace and now codify a version of citizenship developed largely by Black Americans over generation, from the 1790s onward. The early history of citizenship in the nation finally culminated in a guarantee that everyone born in the nation would be a citizen, regardless of race. Of course, it should come as no surprise the history which led to the Fourteenth Amendment meant that turning point would not be the end to debates. Going forward, the anti-Black origins of citizenship would continue to influence how the status operated and was debated upon. Even with slavery done, its long shadow continued to hang over both the country and its new citizenry.

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