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Carceral Empire: A People's History of the Origin of Prison in the United States

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THESIS APPROVAL

The thesis of Henea de Savy for the Bachelor of Arts with Honors in History was presented May 20, 2020, and accepted by the thesis committee and the department.

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ABSTRACT

Despite popular scholarship's conclusion that the American penitentiary had humanitarian origins, focusing on the relationship between the prison and both American Indian nations and black communities reveals its deep and previously ignored connection to slavery and imperialism, both domestic and global. Since black civilians were an intentional subject of the first prisons, American penologists looked to plantation carcerality for inspiration. As America began to envision its imperial expansion across the continent and controlling colonies abroad, the young Empire shifted its strategy from military violence to carceral control and legal colonialism. At the same time, prisons across the 'free' North engaged in a superlegal trafficking of their black prisoners into Southern slavery under the authority of the 1793 Fugitive Slave Act, even though many prisoners were known to be free. Greater police presence and increased prisons served to maintain the local and federal governments' racial control through an Economy of Tenuous Freedom - the State holding black freedom captive to prevent struggles for liberation, civil rights, and political power. Nevertheless, the 1830s saw a widespread mobilization of black anti-carceral activism under the leadership of the working-class black community and a leader willing to fight for freedom at any cost.

CARCERAL EMPIRE:
A PEOPLE'S HISTORY OF THE ORIGIN OF PRISON IN THE UNITED STATES

by

HENEA de SAVY

A thesis submitted in partial fulfillment of the
requirements for the degree of

BACHELOR OF ARTS WITH HONORS
in
HISTORY

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*For Byron White, my Liberation Literacy family, and everyone who has ever
been victim to this system that justifies cages and cages justice.
May the light you hold be shared with the world.*

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The fact that the land, labor, and life of the Chinook, Multnomah, Kathlamet, Clackamas, Tualatin, Kalapuya, and Molalla people was brutally taken to establish the city and college where I was educated is not something I take for granted, nor is something I can reconcile as a “privilege” but as a tragic legacy of power. In this thesis and in my life, I hope to use that power to support the resistance of those most disenfranchised by colonialism and structural racism, resilience which has existed since long before this country was founded and will continue long after its collapse to lead us as peoples toward justice and healing.

Also, this project is not nearly complete. Nor will it be for a long while. That being said, it is the product of a great amount of time, conversation, and collective input, having occupied some part of my heart and mind for at least the last seven years. It has changed in small ways as it has in more fundamental ones, and over time it has grown, shrunk, been completely lost (which sucked haha) and started over, and matured. I cannot begin to say that this is my thesis alone as countless teachers, authors, friends, and family have shaped my thinking and offered incredible advice and ideas along the way, as well as shared life with me and shaped me spiritually. The list is far too long to give my full gratitude and praise, and to every person who has passed through my life, thank you. :)

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And finally, to the Creator God, who like a mother bear fights tirelessly for Her children targeted by systems of oppression. You have taught me to love, to wonder, and to simply be. May justice roll down like the waters, and righteousness like an everflowing stream.

LIST OF ABBREVIATIONS

(In Order of Appearance)

BPDS	Boston Prison Discipline Society
ACS	American Colonization Society
AASS	American Anti-Slavery Society
NYCV	New York Committee of Vigilance
BPP	Black Panther Party for Self-Defense

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EXPLANATION OF TERMS

Prison: Throughout the course of this thesis, I use the terms “prison,” “modern prison,” and “penitentiary” interchangeably. They refer to the prison as we see it today - a militarized public institution designed to hold its captives for long, punitive criminal sentences.

The State: I distinguish between the use of lower-case “states” and “the State.” The lower-case state refers to the fifty individual governments in America that share sovereignty with the federal government, such as Massachusetts or Virginia. By the State (capitalized), I am referring to the centralized governing forces that work to maintain power and order in non-egalitarian societies. In the so-called “modern” era of Western-dominated societies, State power typically operates structurally (ingrained in the systems and institutions of society), and continually evolves and recreates itself through individual actors like politicians and businessmen. Hegemony ensures that individual members of society reinforce the systems which control them.¹

North/South: With the terms North and South, I am referring to the antebellum (before the Civil War) regions north and south of the Mason-Dixon line. This is not to reduce these two regions into politically or economically homogeneous entities, but rather to recognize how the distinct liberalism of the antebellum North (simplified in history as the half of America that abolished slavery) was central to the construction of America as a penal State.

Liberalism: One of the ideas underlying this thesis is the notion that the American penal State was formed in the liberal “free” North. What I mean by “liberalism” is not in the contemporary political sense of Democrat vs. Republican, but to describe the rise of hegemonic State power following the European “Enlightenment” and the beginning of industrial capitalism. Theorist Michel Foucault calls this biopower, and it plays into the relationship of why the white organizations working to end plantation slavery in the South created a structurally racist and colonial carceral State. There is a comparison to be made to contemporary American politics, given that the Democratic party leverages civil rights, diversity, and other progressive agendas as a means of reinforcing the status quo through civilian buy-in (hegemony). However, in the twenty-first century (with the exception of the current president Donald Trump), even the Republican party leans away from reactionary policies towards post-Enlightenment hegemonic liberalism.²

¹ See Stuart Hall, et al. “Crime, Law, and the State,” *Policing the Crisis: Mugging, the State, and Law and Order*, London: Palgrave publishing, 1978. 179-214.

² Though Foucault writes about Europe, particularly France, his theories about power, liberalism, and the Western State apply strongly to the founding of the United States. Michel Foucault. *Discipline and Punish: The Birth of the Prison*. (originally published in 1975, translated to English by Alan Sheridan in 1995, Penguin Random House).

Self-Emancipated: Having escaped from slavery. The language in this thesis is intentional to recognize the agency of enslaved people in their own freedom and the end of slavery. This language is why I use the term **enslaved** instead of slave.

Criminally Condemned: In the same manner as calling people who escape from slavery “self-emancipated,” I intentionally use the term “criminally condemned” instead of calling people convicts or criminals (I also use “criminalized” and “condemned by the State as criminal”). An effect of this is to challenge what most people have been socialized to think of as criminality — an objective, universal, and morally corrupt quality. The term “criminally condemned” recognizes crime and criminality as constructs invented by people in power and leveraged through systems of law.

Black Vigilance: Chapter 3 spends a lot of time exploring the ways black communities defended their own against the prison and police. In defining this type of resistance, I struggled with whether to identify the grassroots strategies as vigilance or vigilantism. While vigilance has a more reactionary quality than vigilantism (the former being self-protection or remaining watchful and the latter being a proactive extralegal pursuit of justice), I ended up feeling vigilance more accurately characterizes their struggle, as the New York Committee of Vigilance was not about self-policing and enacting their own system of laws, but rather about fighting against the systems of law that oppressed them.

Introduction

When I was in high school, a student in my grade was accused and arrested for someone's murder. He spent the next fifteen months in jail without so much as a court hearing because the prosecution's office struggled to come up with enough evidence to convict him. As a black boy, his skin was evidence enough. They did not need to know he was guilty, just that their careers were boosted with conviction rates, and the hurting family of the victim wanted someone to feel the same pain they were feeling. Threatened with an unimaginable sentence if he took his case to court, he was pressured into taking a plea deal, which he did while maintaining innocence (an Alford plea). He got the maximum sentence his plea deal allowed — 28 years. When the courtroom cleared out, the victim did not come back from the dead. Instead, there were now two grieving families, the other having their beloved son and brother ripped away from them and sent to a maximum security prison hundreds of miles across the state.¹

In America, the prison has become something almost impossible to imagine ourselves without, in large part because we have imagined it to have always existed. Most people who are more familiar with the history of the prison believe it originated in humanitarianism, but that has only been the dominant narrative since 1992.² This perspective ignores or brushes away many components of the early prison that reveal its birth and history to be far more complicated. With a special focus on New York State as a case study, this thesis explores many of the untold aspects of how and why the prison was first formed in America, not least that people of African descent were imprisoned at far higher rates than European Americans from the beginning, that the criminal justice system was a central component of America's ongoing colonization of indigenous nations and land, and that there was a large working-class black movement in anti-prison activism not long after the prison formed. By viewing the history of the prison alongside analyses of slavery and American imperialism — both domestically and abroad — we can more clearly see the conditions under which the prison first was created were not nearly as humanitarian as previously imagined.

¹ My friend is still in prison and will be until long after he has spent more life in prison than not. He generously gave his permission for his story to be used in this thesis.

² The book referenced is Adam Hirsch's *The Rise of the Penitentiary: Prisons and Punishment in Early America*. (Yale University Press, New Haven, 1992). I will explore in far more depth the arguments he makes and their implications on the way we perceive American carceral history later in this Introduction.

Historiography

Seminal studies like Michelle Alexander's *The New Jim Crow* and the rise of the #BlackLivesMatter movement recently have brought mass incarceration and structural racism into the public consciousness. This has inspired far more research into how racism pervades every step of our criminal justice system: Compared to their white counterparts, black, brown and indigenous peoples are far more likely to be arrested for the same "crime," they are far more likely to be indicted once arrested, they are far more likely to be found guilty once indicted, and they are given disproportionately long sentences or plea deals.³ It is now common knowledge that America imprisons a greater percentage of its people than any other country in the world, and has for decades.

In light of these statistics, it has become popular to call the system "broken." But when exactly did the system break? Liberals often blame the War on Drugs, when Republican presidents Reagan and Nixon administrations aggressively criminalized and policed communities of color in an effort later exposed as a racist attempt to destroy the Civil Rights movement.⁴ While much can be said about the lasting harm of the War on Drugs, particularly in communities of color, focusing on the policies of conservative presidents ignores the racial dog-whistling of the Bill Clinton presidency, when he and other prominent politicians called black children "super predators" and advocated for "three strikes" laws, mandatory minimum sentencing for a range of acts, and life and death sentences for kids.⁵ In just the eight mere years of his time in office, the US incarcerated population grew from 1.3 to 2 million.⁶ Even before Nixon and Reagan, historian Elizabeth Hinton shows how the liberal presidents J.F. Kennedy and L.B. Johnson's War on Poverty greatly increased

³ For just two examples, see "Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers," *The Sentencing Project*, 2008. Web; and "Research Confirms that Entrenched Racism Manifests in Disparate Treatment of Black Americans in Criminal Justice System" *Vera Institute of Justice*, 2018. Web.

⁴ John Ehrlichman, Nixon's former domestic policy advisor, is quoted to have said "You want to know what [the War on Drugs] was really all about? The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did."

⁵ These laws, among other harmful policies like the elimination of Pell Grants in prison, were passed federally under 1994 Crime Bill. Using racial scare tactics, the Clinton campaign then actively promoted the passing of these laws in state governments around the country. Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, The New Press, 2010.

⁶ Naomi Murakawa, *The First Civil Right: How Liberals Built Prison America*, Oxford University Press, 2014.

government involvement in black and brown communities, and sowed the seeds for hyper-surveillance and policing of communities of color that lead to mass incarceration.⁷ A century before the War on Drugs, the prison was already being used to systematically imprison and exploit the labor of black people in America. In 1865, the 13th Amendment to the U.S. Constitution was ratified, abolishing slavery “except as a punishment for crime.” Immediately afterwards, dozens of prisons were built around the South and laws designed for the arbitrary imprisonment of black people were passed into legislation, reconstructing plantation slavery in the South following the “abolition” of slavery.⁸ The explosion of black imprisonment in the South following the Civil War, something black scholars Ida B. Wells and W.E.B. du Bois criticized as early as the late nineteenth and early twentieth centuries, reveals just how much the disproportionate incarceration and exploitation of black and Native prisoners existed long before Clinton, Reagan, and Kennedy.⁹ And yet, despite the prison having consistently been an institution of targeted and racial oppression throughout its history, we continue to consider it “broken,” an ultimately benevolent institution that was tainted or perverted by bad policies.

In the 1970s and 80s, the history of the prison became a more popular field of scholarship with the likes of Michel Foucault, Michael Ignatieff, and others who argued that the prison in Europe was created as the mechanisms of State power were evolving, with the purpose of subjugating the growing populations of urban poor caused by industrial capitalism.¹⁰ American historian Martin Miller documented how the concern for the

⁷ Elizabeth Hinton, *From the War on Poverty to the War on Crime: The Making of Mass-Incarceration in America*, Harvard University Press, 2016.

⁸ The history of convict leasing was popularized with Ava DuVernay’s 2016 documentary *13th*, as well as in other works of scholarship, such as Angela Davis’ book *Are Prisons Obsolete?* (Seven Stories Press, 2003); Talitha LeFlouria’s book *Chained in Silence: Black Women and convict labor in the New South* (University of North Carolina Press, 2015); Matthew Mancini’s book *One Dies, Get Another: Convict Leasing in the American South 1866-1928* (University of South Carolina Press, 1996); and David Oshinsky’s book *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (Free Press, 1997).

⁹ Ida B. Wells, *The Reason why the colored American is not in the World's Columbian Exposition*, self-printed, 1893; and W.E.B. du Bois, *Black reconstruction; an essay toward a history of the part which black folk played in the attempt to reconstruct democracy in America, 1860-1880*, printed by Brace & co., 1935. 670-709, with particular mentioning of the prison and convict leasing on 698.

¹⁰ Though Michel Foucault’s theory of biopower and the prison are based on the rise of the penitentiary in Europe, it is a critical framework for understanding the evolution of carceral power in America. I will explore this in more depth later on in this introduction. Michel Foucault, *Discipline and Punish: The Birth of the Prison*. (originally published in 1975, translated to English by Alan Sheridan in 1995, Penguin Random House). For scholars arguing the economic motives behind the rise of the penitentiary in Europe, see Michael Ignatieff. *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850*, NY: Pantheon Books, 1976; Hogg. "Imprisonment and Society...." 4-17; Jankovic. "Labor Market and Imprisonment." 17-31; Melossi and Pavarini. *Prison and the Factory*.

wellbeing of prisoners and their ‘rehabilitation’ did not become part of the mainstream dialogue in defense of the prison system until the 1830s and 40s — fifty years after the penitentiary was created. Miller argued that Quaker humanitarianism was largely something historians retrospectively concluded was the rationale behind the prison.¹¹ But while non-American authors and a couple rare exceptions questioned issues of class and State power, their American counterparts almost exclusively romanticized the origins of the prison in positive intent.¹² In 1992, Adam Hirsch’s book *The Rise of the Penitentiary* cemented this narrative into mainstream dialogue.¹³ Concerned with the mistreatment of the criminally condemned, the story goes, religious and enlightened criminologists designed the modern prison to confine the condemned in tight quarters where they would spend hours laboring in workhouses and long, harsh nights to reflect on their immorality, repent for their wickedness, and become rehabilitated people. This is why the modern prison was named the penitentiary — for its supposed intention of rehabilitating its prisoners. Three years after *The Rise of the Penitentiary*, the alleged humanitarianism of the first American prison was canonized in *The Oxford History of the Prison*.¹⁴

The legacy of Hirsch’s work has been to box out contrarian points of view. This includes any exploration into the relationship the original prison had to notions of race and colonialism. Most scholarship on the American prison — with some notable exceptions —

¹¹ Martin Miller describes how rehabilitation and concern for the ‘criminal’ were not popularized as justifications for the expanding State control of the poor until the 1840’s in the debates inspired by Louis Dwight and the Boston Prison Discipline Society. Miller explains that modern scholarship on the history of the prison falsely interjected concern for the prisoner into a narrative about prison history that has now become popular knowledge. "Sinking Gradually Into the Proletariat" (1980). See also Miller. "At Hard Labor" (1974).

¹² American prison historians that ignore the racial, economic, and political dynamics of the first prisons include David Rothman. *The Discovery of the Asylum: Social Order and Disorder in the New Republic*, Boston: Little, Brown, and Co. Publishing, 1971; Hirsch, *Rise of the Penitentiary*. This list should include historians such as Patricia O’Brien, who research European prisons but are schooled and based in the USA. Patricia O’Brien. *The Promise of Punishment: Prisons in Nineteenth Century France*, Princeton University Press, 1982.

¹³ Hirsch's book is well researched, but the conclusions he draws are a weak spurning of the wellspring of evidence he presents, if not the occasional misinterpretation or ignorance of important factors in play. For instance, Hirsch attempts to dismiss the "many reflections of chattel slavery" in the penitentiary by identifying how white people were also imprisoned and alleging that black people needed to have committed a crime prior to their imprisonment. There are many flaws in this reasoning, not least the fact that laws were invented to criminalize black people for arbitrary actions (and that police often made up crimes in order to be able to arrest and imprison black people); that there was a racial hierarchy in coerced labor used to keep poor whites from organizing with enslaved black people, and those same hierarchies existed in the prison. The prison was used to control and subjugate poor whites just as it was to control free black people, and the prison had a gross disproportionate amount of black people. Adam Hirsch, *Rise of the Penitentiary*. 71,73.

¹⁴ Norval Morris and David Rothman. *The Oxford History of the Prison: The Practice of Punishment in Western Society*, Oxford University Press, 1995.

maintains this colorblind reductivism of prison history and refers to Hirsch as the authority on this.¹⁵ Even prison abolitionist and civil rights activist Angela Davis quotes Hirsch when she fails to critique Northern prisons in the same light as she does the postbellum Southern prison system. That someone as radical as Davis could assert that the Northern prison was ultimately a great moral improvement over the medieval system of corporal punishment shows the influence of Hirsch's narrative within the popular American imagination.¹⁶ Like all historiography, how we interpret the past and what parts of the past historians choose to highlight or leave out is political. The timeliness of Hirsch's argument is similarly no accident. *The Rise of the Penitentiary* was published at the height of America's modern prison boom, just prior to the Clinton administration passing the devastating 1994 Crime Bill which catalyzed the largest growth in the global history of the prison. Characterizing the prison as an ultimately benevolent or redeemable institution helped many people justify the morality of creating the largest system of human caging in the post-World War II world.¹⁷

Historical Context

One of the central principles behind the romanticization of early American prisons is the notion — stated or implied — that the period of European Enlightenment awakened the public consciousness towards human rights and brought a wave of change that improved the rights and liberties of the common person. Foucault and other prominent theorists debunk this perspective as Eurocentric — that Western “humanitarianism” was not a major invention of morality, but a shift from collectivism to individualism in Europe due to evolving State power and the rise of industrial capitalism. As private property became a bigger component of the budding capitalist economy in Europe, cultural values began to shift from seeing everyone as part of a collective to seeing everyone as distinct from one another and that our individual needs come before the collective wellbeing and needs of the whole.¹⁸ Leveraging

¹⁵ Examples include McLennan. *The Crisis of Imprisonment*, 2008. For an example of a powerful exception to this trend, see Kelly Lytle Hernandez. *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771–1965*. University of North Carolina Press, 2017.

¹⁶ Davis, like Hirsch, acknowledges the many similarities between the first American prisons and slavery, but fails to recognize the design and implementation of the Northern prison as an intentional, capitalist means of black subjugation and exploitation. Angela Davis, *Are Prisons Obsolete?*. 27-33.

¹⁷ Nazi concentration camps and Soviet Gulag camps similarly detained millions of people.

¹⁸ This is not to say that individualism ignores the way we treat others or that collectivism ignores what happens to the individual, but that both cultural frameworks prioritize different values. This notion of individualism is systematically programmed into the worldview of people living in Western-dominated cultures like America. This comes to inform the way we see everything, from happiness to morality to what we think of as “crime” and how to deal with it. The goal of this discussion is not to say that individualism is worse than collectivism and

the claim of enlightened humanitarianism, freedom, and ‘true democracy,’ Western Europe and America mobilized their alleged cultural supremacy as justification for imperialism abroad and westward into American Indian land. This is explored in more depth in chapter 2, particularly the way in which Western criminal justice was used by the Founding Fathers to claim tribal restorative justice as primitive or savage. Citing the works of Foucault, sociocultural historian Nikhil Pal Singh writes, “the [Enlightenment] ideal of freedom as self-rule was directly linked to a moral and legal right to murder or sequester racial outsiders — designated as savages and slaves — in the name of infrastructure development, collective security, and private development.”¹⁹ This “moral” right was invoked by British and other European abolitionists as the impetus to colonize Africa — Britain, France, and other Western European empires claimed they were colonizing Africa to abolish slavery there, despite having violently profited from slavery for centuries prior and reinforcing slavery under different names once they got there.²⁰ Similarly, American and European demands for democracy and “freedom” in non-Westernized nations and regions are often, if not always, undergirded by economic and political interests that harken to colonialism.²¹

As a product of the Enlightenment, European publications began to rewrite the history of the world, centering the supremacy of European cultures and thought. One of the legacies of this comes in the way punishment (or vengeance) is popularly seen as a universal and the only form of criminal justice. Restorative justice, which aims to heal the harm caused by crime instead of exact revenge on the perpetrator, has been claimed as a recent Western innovation. But for most of human history and in most cultures prior to European global

other non-Western ways of viewing the world, but it is to say that the way we think of everything is only one way to think of it. It is a request to my reader to be willing to let go for a minute the possessiveness we have over what we think we know as good and bad, right and wrong, and to allow our thinking to evolve.

¹⁹ Nikhil Pal Singh. *Race and America's Long War*, University of California Press, 2019. 37.

²⁰ One example of the European fortification of slavery in Africa following their ‘humanitarian’ agenda of abolitionist colonialism was the French system of *engagés à temps*, or gradual emancipation. This was mere rhetoric, and the French changed the language of “slave” to “servant” so no legal cases held up in court anymore. Though Africa had slavery prior to the Trans Atlantic Slave trade, the form it took was far less brutal than European chattel slavery and enslaved people most often had the ability to rise in status and wealth in their new home. The forms of slavery more similar to Europe were brought into existence by earlier European imperialism. See both Kwasi Konadu, “The Anchors: African Understandings of Their Societies and ‘Slavery.’” *Transatlantic Africa, 1440-1888*, Oxford University Press, 1–30; and Christopher Brown. *Moral Capital: Foundations of British Abolitionism*. University of North Carolina Press, 2006. 1-26.

²¹ While there is much written on this topic, perhaps most succinct and compelling is the work of economic historian André Gunder Frank, who reveals the capitalistic motivations of humanitarian imperialism in Latin America and their devastating economic consequences across generations. Frank. “The Development of Underdevelopment,” from *Latin America: Underdevelopment of Revolution*, New York and London: Monthly Review Press, 1969. 4-17. (Originally published in the September 1966 issue of the *Monthly Review*).

imperialism, prisons did not exist. In many non-Western societies around the world, harm was typically responded to in a holistic way, addressing the root of the problem and not seeing the individual as the problem.²² Of this peacekeeping within American Indian nations, Anishnabe Spiritual Teacher and Elder Arthur Solomon writes, “Before the [white-skinned] strangers came across the oceans to this sacred land with their strange ways; there were none of our people in prison. There simply were no prisons, because we had a better way. ... Somewhere back in history those strangers had dispensed with the fundamental laws of Creation and made their own laws out of which came the chaos of prisons and wars and oppression of all life on this planet.”²³

In pre-Enlightenment Europe, criminally condemned people were killed, tortured, or exiled as punishment. Jails had existed since before the Roman Empire, but they functioned primarily as a holding cell before the public punishment of the condemned.²⁴ It was not until the period of the Enlightenment, industrial capitalism, and the changing needs for controlling workers that State detention itself became the primary punishment for alleged crimes.²⁵ Foucault argues the reform movement never had any intentions to address the structural causes of crime, such as economic inequality or mental health. Instead, it emerged as the most effective way to control the growing poor populations that came to the urban centers after their agricultural economies were destabilized by industrialization. Prior to the growth of industrial capitalism, the dispersed and rural poor could be controlled through fear of the

²² Collectivism often recognizes the role that everyone in a community plays in producing and preventing harm. The individual is seen less as a bad person, but as someone the collective whole failed, whether that was in addressing their needs, helping them heal from trauma, or raising them with egalitarian cultural values. Less-possessive or capitalist relationships to material objects also proactively reduces the amount of harm in their communities.

²³ Arthur Solomon, “Prologue” in *The American Indian in the White Man’s Prisons: A Story of Genocide*, ed. Little Rock Reed. Taos, NM: Uncompromising Books, 1993. xii-xiii.

²⁴ As most everything in history, there are exceptions to this statement. There is significant evidence to suggest that as far back as the Roman Empire, imprisonment was used in various contexts as punishment uniquely for the poor and that this was closely associated and often blurred into slavery, though slavery looked and functioned differently than in the antebellum United States and other parts of the European imperial reach. The prominent scholar Fergus Millar writes about how Roman carceral systems of punishment functioned differently for aristocrats and the poor: the former were only punished over political threats to the ruling powers, and were thus punished with exile; the latter, criminalized for a variety of different crimes of survival, were forced to labor alongside enslaved people in a prison-like system. (“Condemnation to Hard Labour in the Roman Empire, from the Julio-Claudians to Constantine.” *Papers of the British School at Rome* v.52 (1984): 124–47). Even Biblical accounts give ancient examples of imprisonment as a punishment, such as the case of Joseph held prisoner in Egypt for an indeterminate sentence that ended after two years because of his ability to interpret dreams (Genesis 39:20; 41:1).

²⁵ Foucault, *Discipline and Punish*. Foucault demonstrates the way the prison evolved as a mechanism of power designed to fit the needs of post-Enlightenment Western Europe, America, and the peoples they colonized.

State, brought on through grand displays of power like military parades. Foucault calls this sovereign power. In the criminal justice sphere, this meant gruesome public torture and elaborate executions designed to make the poor witness the consequences of not surrendering to the law. As urban poor populations grew, so too grew their ability to organize themselves better. Seeing themselves in the plight of those publicly executed, the urban poor began to protest against State violence, threatening the foothold of the elite. It is at this point that Foucault argues European systems of power shifted away from fear of the State towards police and imprisonment. Brought on by Enlightenment politics, the European elite stoked public fear in the ‘other’ through scientific racism and xenophobic popular literature, to criminalize those condemned by the State. The prison as punishment then became the State’s ‘benevolent hand’ in protecting the public from vice and evil. Foucault writes:

“Throughout the eighteenth century, one sees the emergence of a new strategy for the exercise of the power to punish. And 'reform', in the strict sense...was the political or philosophical resumption of this strategy, with its primary objectives: to make the punishment and repression of illegalities a regular function, coextensive with society; not to punish less, but to punish better; to punish with an attenuated severity perhaps, but in order to punish with more universality and necessity; to insert the power to punish more deeply into the social body.”²⁶

According to Foucault, small changes to oppressive institutions (that constitute reform) — even those intended for good — repeatedly allow this institution's power to become more and more ingrained into society as a mechanism of public safety and benevolence, while maintaining or expanding its control over society, including those who do not think they are affected by it. This insidious, structural power of the prison is a product of post-Enlightenment liberalism, explaining the prison’s emergence and popularity in the liberal ‘free’ North and not the conservative ‘slave-holding’ South.²⁷

Like most accounts of history, the idea that the American prison rose from Quaker humanitarianism is limited to the perspective of people with power at the time, perspectives Hirsch and other historians largely take at face value.²⁸ People’s history (also known as Little

²⁶ Foucault, *Discipline and Punish*. Quote from 81-82.

²⁷ See my definition of “liberalism” in the Explanation of Terms, i. See also, Foucault, *Discipline and Punish*.

²⁸ This is called traditionalist history. Because of the way power reinforces and forgives itself through the mistelling of history, mainstream understandings of history have mostly been shaped from the top-down, as noted by post-colonialist author Chinua Achebe in his famous quote, “Until the lions have their own historians, the history of the hunt will always glorify the hunter.” More than anything, Traditionalist history claims

history or Bottom-Up history) attempts to center the perspectives and writings of people who are not in power, such as the layman who may not have had the money or education to write a book, but who can be found between the lines of another's writing or in non-literary evidence like archaeology.²⁹ Centering the perspectives of those who were marginalized often reveals the agency and resilience of oppressed people. It can also reveal facts or timelines that expose the biases of the written accounts of those in power. This thesis hopes to recenter narratives in the rise of the prison that have been systematically erased.

Chapter 1 begins with the question of why, at a time of gradual emancipation from slavery in the North, black people disproportionately filled the earliest prisons. It explores how economic, political, and, in particular, racial motivations drove the creation and expansion of the first American prisons. Many American penologists, the majority of whom were abolitionists, looked to plantation carcerality for inspiration behind the design of the penitentiary and solitary confinement, which strongly suggests black civilians might have been an intentional subject behind the making of the first prisons. Chapter 2 explores the relationship between settler-colonial westward expansion, early American visions of a global Empire, and the rise of the penitentiary. From the independence of America, Western punitive justice was used by the Founding Fathers to distinguish between 'civilized' and 'primitive' governments. Beginning with the Northwest Ordinance, State carceral power increasingly became the agent of subjugating Native peoples and undermining tribal sovereignty. The myth of black criminality, similarly, was used as a justification for American colonization abroad, beginning with the West African colony of Liberia. Chapter 3 traces how Northern states, despite promoting the gradual emancipation of enslaved people, actively participated in trafficking black prisoners into Southern slavery, regardless of their prisoners' fugitive status. In response, particularly following the official end of slavery in New York, 1827, working-class black communities organized en masse, using violence as well as more legal tactics to protect their own from this carceral slave trade. Chapter 3 also

objectivity by a so-called 'lying by omission.' Unfortunately, this top-down approach is ignored as a historiographical lens because it has been normalized as the baseline for all other historiography. While Achebe recognizes the quote as a proverb much older than him, the Nigerian author's novel *Things Fall Apart* (1958) is often credited online as the source of the quote. For descriptions of Traditionalist and People's history, see Mark T Gilderhus. *History and Historians: A Historiographical Introduction*. 4th ed. Upper Saddle River, NJ: Pearson Education, 2000. 122-23; and Norman J. Wilson, *History in Crisis?: Recent Directions in Historiography*. Upper Saddle River, NJ: Simon & Schuster, 1999. 3-4, 69.

²⁹ Wilson, *History in Crisis?*, 69-72.

explores more structural impacts of the superlegal slave trade, arguing that the primary effect had less to do with depleting the population of free black people in the North, and more to do with extending a blanket criminalization over Northern black communities. By holding black freedom hostage, the threat of imprisonment (and the superlegal trafficking into slavery) obstructed black communities' access to political power and their ability to demand better working conditions and higher pay.

The story that prison was catalyzed as a moral reform is far easier to deal with. If the prison is ultimately good, broken only by corrupt policies or power-hungry wardens, we can shift the burden of blame onto individual 'racists' or politicians. A story of structural racism, with colonial and racial violence designed into the prison's roots, is harder to deal with because suddenly every aspect of our society — from cop shows that glorify catching 'criminals' to our internal desires of harm upon people who hurt us — becomes part of the problem. In an individualistic society like America, perhaps our biggest fear is recognizing we all are culpable for maintaining structures of white supremacy and oppression.

Ch. 1 - The Modern Prison as a Racial Capitalist Invention

Since slave days separating fathers from children, institution ain't just a building but a method of having black and brown bodies fill them....They stop, search, and arrest our souls; police and policies patrol philosophies of control.

- Common, "Letter to the Free," 2016

On June 18, 1779, the Revolutionary War far from over, Thomas Jefferson presented legislation before Virginia's governing committee seeking to transform the way criminal justice had previously been handled.³⁰ The bill called for all crimes (except treason or murder) to be punished by detention and hard labor instead of corporal punishment, as was common practice in colonial America and Europe.³¹ This proposal was not unique to his time. A 1776 act in Britain called for an end to the deportation of criminally condemned people to America arguing that it "deprives this kingdom of many subjects whose labor might be useful."³² Northern colonies were similarly discussing a future with prisons, at the same time as they deliberated the possibility of slowly ending slavery. Though no prison had yet been built for the explicit purpose of long-term captivity, Jefferson's call for Virginia to be on the frontier of the prison movement came as the prospect of independence from Britain prompted Jefferson and other wealthy white colonists to imagine what kind of nation they wanted to build.

At the end of the bill, however, Jefferson included a clause that centered race in the arbitration of punishment. While the bill outlined a long list of nuanced sanctions for various odd crimes, for people held in slavery there was only one possible punishment: deportation.

³⁰ This bill was one of 126 pieces of legislation he and others brought to the Committee of the Virginia Assembly, and took a number of years before decisions were made on whether it would be approved. Thomas Jefferson. "A Bill for Proportioning Crimes and Punishments in Cases Heretofore Capital," 18 June 1779. *The Papers of Thomas Jefferson*, vol. 2, 1777 – 18 June 1779, ed. Julian P. Boyd. Princeton: Princeton University Press, 1950, pp. 492–507. Accessed on *Founders Online*, National Archives.

³¹ Adam Hirsch, *Rise of the Penitentiary*, 74-77.

³² This culminated in the Penitentiary Act of 1779 (19 Geo. III, c.74), which compromised the vision of a prison-run criminal justice system with the lingering desire of State officials to still execute and deport certain criminally condemned people. Simon Devereaux. "The Making of the Penitentiary Act, 1775-1779," *The Historical Journal*, vol.42, iss.2, 1999. Quote from the 1776 act "An act to authorise, for a limited time, the punishment by hard labour of offenders who, for certain crimes, are or shall become liable to be transported to any of his Majesty's colonies and plantations." in Danby Pickering, *The Statutes at Large from Magna Charta to the End of the Eleventh Parliament of Great Britain*, vol. xxxi, 1776. 262. This was the beginning of a British experiment in criminal imprisonment as part of a liberal reform movement which Foucault argues was more about an evolving system of power and control. See Introduction for a more in-depth explanation. Foucault, *Discipline and Punish*. See also Hirsch, *Rise of the Penitentiary*, 1-17.

“Slaves guilty of any offense punishable in others by labor in the public works,” he wrote, “shall be transported to such parts in the West Indies, S. America or Africa, as the Governor shall direct, there to be continued in slavery.”³³ This addition is odd for various reasons. To start, plantations largely had their own carceral systems of control — as enslaved people were legally identified as property, the State gave implicit permission for slaveholders to brutalize and even murder those they held in captivity irrespective of any formal rule broken. Thus, there was no real need to distinguish between ‘crimes’ on the plantation, because punishment was given at will of the slaveholders or overseers. If local authorities even attempted to arrest an enslaved person and force them to work in prison, powerful slaveholders would have resisted this as an overreach of government power — either stealing their property or interfering in the sovereignty of plantations to deal out criminal punishments. It is surprising, then, that the distinction Jefferson made was not all that different from incarcerating enslaved people in a public facility. Under Jefferson’s legislation, enslaved people who had committed state crimes would still be held in captivity and forced to work, only they would be deported to another colony, presumably run by the British Empire.

Jefferson’s book *Notes on the State of Virginia*, first published two years later, sheds more light on the significance of this penal clause. After discussing phrenologic and other pseudo-scientific differences between black and white people in *Notes*, Jefferson wrote, “I advance it therefore as a suspicion only, that the blacks, whether originally a distinct race, or made distinct by time and circumstances, are inferior to the whites in the endowments both of body and mind.” It is immediately afterwards that Jefferson concludes that all free black people need to “be removed beyond the reach of mixture” with white people, at the cost of “staining the blood of his master.”³⁴ Given that he believed all free black people should be colonized abroad, it is possible that Jefferson was hoping to use the criminal legislation to further his own visions of empire, particularly given the long history of black people in America being *de facto* recognized under the law as criminals, regardless of their free status.³⁵

³³ Jefferson. “Bill for Proportioning Crimes...”

³⁴ Thomas Jefferson, *Notes on the State of Virginia*. Philadelphia: Prichard and Hall, 1788, first published 1781. 153-54. Accessed through *Documenting the American South*, University of North Carolina at Chapel Hill.

³⁵ DeLombard argues that the only instances of black people being respected as autonomous human beings under colonial and U.S. law was as a criminal, accountable for punishment. Jeannine Marie DeLombard, *In the Shadow of the Gallows: Race, Crime, and American Civic Identity*. University of Pennsylvania Press. 2012. 41.

Jefferson's convictions and the popularity of his book suggest that it was not merely politicians or the elite who were concerned about the matter of black freedom and political power, but that the fear of a violent black liberation dominated white public life — painting blackness with the construction of criminality. Whether indoctrinated with the fear of black freedom or capitalizing on it for political gain, Jefferson greatly aggravated public distrust and racial fears. He tied these strong feelings about deporting free black people to his thoughts on the prison, arguing in a letter to Edward Bancroft that free black people were conditioned to criminality and in most cases needed to be under the control of “government ...to oblige them to labour,” most likely in prison workhouses.³⁶ To Jefferson, this was a natural progression following black freedom, comparing the ‘parental’ role of State carceral supervision and forced labor to the condition of enslaved people on plantations.³⁷ Perhaps Jefferson's condemnation had more to do with his political desire to convert black people into colonialists for the future American empire than it had to do with his disenchantment with the experimental thought of carceral punishment. Regardless, it is noteworthy that Jefferson first felt empowered to demand black deportation through the criminal justice system and tied to the rampant image of black criminality.

Jefferson's proposal came with a bigger question of political identity. On the one hand, the question of evolving racial control was ever-present on their minds, especially as the rhetoric of freedom used to promote the war clashed with America's enterprise of human bondage.³⁸ On the other hand, if the American colonies won the war against Britain, the young nation-state would lose the financial means and global political power of the British Empire, and would be unable to sustain a black slave colony abroad. It was only through the imperial dominion of the Crown that the American colonies had access to the West Indies, South

³⁶ “From Thomas Jefferson to Edward Bancroft, 26 January 1789,” *Founders Online*, National Archives. [Original source: *The Papers of Thomas Jefferson*, vol. 14, 8 October 1788 – 26 March 1789, ed. Julian P. Boyd. Princeton: Princeton University Press, 1958, pp. 492–494].

³⁷ It is possible, too, that Jefferson proposed colonizing enslaved people “guilty of any offense punishable in others by labor in the public works,” because he saw the prison and slavery as similar institutions, and that imprisonment would therefore not constitute much of a punishment for people held in slavery. ‘Parental’ is in scare quotes as Jefferson describes in his letter that giving black people freedom “is like abandoning children.” *Ibid.*

³⁸ The Founding Fathers jumped through hoops to attempt to distinguish their struggle for “freedom” from the British as justified violence from black resistance as undeserving violence. These distinctions are very similar to the rhetoric used to differentiate between white prisoners capable of rehabilitation (into industrial workers) and black prisoners as brutal monsters. This sheds light on how terms like “criminal” are invented and formed as tools for enforcing power and not objective, pre-existing concepts. François Furstenberg. “Beyond Freedom and Slavery: Autonomy, Virtue, and Resistance in Early American Political Discourse.” *Journal of American History*, 2003. 89.

America, and Africa, which Jefferson seems to take for granted in his 1779 proposal for colonization. Though black deportation would continue to remain in the political backdrop of America, the prison emerged more fully in the Northern colonies as the necessary mechanism to control and suppress the growing free black population.³⁹

Though most of this thesis deals with the emergence of the prison in the North, Jefferson's appeal to expand white imprisonment in Virginia is reflective of the underlying questions this chapter seeks to answer: how the prison emerged hand in hand with discussions of slavery. Jefferson's proposal is also interesting because it raises the question of why the prison came about in full force in the North and not in the South. It would be another eight years before the General Assembly decided on the crime legislation, rejecting it "by a single vote," but Jefferson would go on to spearhead many of the bills that became the criminal code of Virginia, invariably influenced by his views on race and slavery.⁴⁰ This chapter argues that while the idea that the condemned members of society should be forcibly detained in a workhouse was invented in Europe (for the sake of controlling the poor and forcing them into the lowest rungs of the economy), the modern prison as we know it was a uniquely American institution whose development was intimately connected to slavery. Following its independence from Britain, the young America had the opportunity to completely reimagine the way a nation-state operated. With this freedom, the earliest penal reformers chose to cement into policy their belief that the criminal justice system should work differently for white people and black people.

The Criminalization of Blackness in Colonial Law

This sentiment of white supremacy in American criminal law was not new — as the concept of race evolved in the early colonies, criminal justice became a tool by which the elite attempted to control people of African descent.⁴¹ In 1640, just a few decades after Virginia

³⁹ While the prison would soon come to reinforce white dominance against the promise of black freedom, it was not the obvious panacea to white America's fear of black freedom and would not develop into a widespread system until almost two decades later. Clear in this bill was Jefferson's solution for black offenders: deportation. White criminals — the "others" in Jefferson's bill — would be forced to work for the State for a number of years, but black prisoners would be deported to be used to promote imperialism abroad.

⁴⁰ The committee allegedly rejected the crime bill due to many members of the committee desiring harsher punishment for horse stealers. "From James Madison to Thomas Jefferson, 15 February 1787," *Founders Online*, National Archives. [Original source: *The Papers of James Madison*, vol. 9, 9 April 1786 – 24 May 1787 and supplement 1781–1784, ed. Robert A. Rutland and William M. E. Rachal. Chicago: The University of Chicago Press, 1975, pp. 267–270.] See also Gaye Wilson's online article "Bill 64," on *Monticello*.

⁴¹ Various historians and sociologists have argued that race has not always existed, and has a nuanced and nonlinear history of its making in the Western world (while we live in a globalized world, race is still conceived

became Britain's first official American colony, its government at Jamestown passed a series of statutes and laws distinguishing between white indentured servants and enslaved black people. At the time, the number of black people held in chattel slavery was a thousand times smaller than what it would become. Apart from formally codifying race into the law, these statutes singled out black people as particular threats to the stability of the society being established. Black people — whether enslaved or free — were specifically excluded from the mandate to carry arms and gather in large groups.⁴²

As the British colonies and the number of black people in them grew, these laws only became more severe, such as the “act about the casual killing of slaves” in 1669, which allowed slaveholders the freedom to kill enslaved black people if they in any way resisted the slaveholder's rule of law.⁴³ Three years later, this law was extended to include police and enforcers of the law who were granted State immunity over killing black people if they resisted arrest, an excuse that is both easy to fabricate and is hauntingly similar to the twenty-first century relationship between police and black communities most recently cemented by the Supreme Court's decision in *Kisela v. Hughes (2018)*.⁴⁴ ‘Free’ black people were also targeted by the law, and lived every day under the threat of the State leveraging their freedom as a criminal punishment. Colonial Pennsylvanian law restricted everything from who they could marry to their geographic mobility. Arbitrary petty crime and vagrancy laws gave permission to law enforcement to arrest free black people with little to no oversight, the penalty including being sold into slavery.⁴⁵

of differently all around the globe). Barbara Fields argues it evolved alongside chattel slavery as a means of justifying racialized divisions in treatment and exploitation, and others have argued too that it was created as a means of keeping the poor of different ethnic backgrounds from organizing together against the elite. In 1619, the alleged date of the first enslaved Africans being taken to the British colonies of America, there were already people of African descent with varying degrees of nobility and land ownership. The division of black and white as fixed racial categories did not emerge until much later. Michael Guasco, “The Fallacy of 1619: Rethinking the History of Africans in Early America,” *Black Perspectives*, Web. See also Barbara Fields, “Of Rogues and Geldings,” in *Racecraft: The Soul of Inequality in American Life*, Penguin Random House, 2014.

⁴² A. Leon Higginbotham. *In the Matter of Color: Race and the American Legal Process: The Colonial Period*, Greenwood Press, 1975. 28. see also “Thomas Jefferson Papers, 1606 to 1827,” a collection of the Library of Congress. Web.

⁴³ Virginia Legislature October, 1669. “Act I: An act about the casual killing of slaves,” transcribed in William Waller Hening, ed., *The Statutes at Large; Being a Collection of All the Laws of Virginia from the First Session of the Legislature, in the Year 1619* (New York: R. & W. & G. Bartow, 1823), 2:270.

⁴⁴ Virginia Legislature September, 1672. “Act VIII. An act for the apprehension and suppression of runaways, negroes and slaves,” transcribed in Hening, *The Statutes at Large*, 299-300. See also *Kisela v. Hughes*, 584 U. S. (2018).

⁴⁵ Douglas Harper, “Slavery in Pennsylvania” *Slavery in the North*, 2003. Web.

These laws reveal significant insight into race relations of the early colonies — first, that black people, individually and in groups, resisted the tyranny of the American elite, and secondly that black people were increasingly being viewed as dangerous and criminal. Laws are most commonly reactionary, and the various laws, such as those preventing black people from gathering in groups larger than three and later laws preventing them from gathering in groups larger than two, shed light on a part of history hidden from the white-dominated narrative of America, that black resistance and organizing against slavery existed since the beginning.⁴⁶ Black resistance to slavery and white supremacy grew more frequent and more extreme as the Transatlantic slave trade continued to kidnap African people to the British colonies. This threatened the power of slaveholders and the richest Americans, who either created or had influence over legislation. As more and more laws were passed that targeted black people, newspapers and other cultural influences filled the American imagination with images of the supposed black threat or criminal.⁴⁷

Over the course of the eighteenth century, white American cultural obsession with the black (particularly male) criminal came to define the relationship between black America and US carceral systems of control. In 1721, New England Puritan minister Cotton Mather preached and published an execution sermon of Joseph Hanno, a black man accused of murdering his wife. This was part of a growing field of literature known as gallows texts, which alleged to depict the last words and actions of people condemned as criminals by the State. To his captive audience, Mather put Hanno on display as both bloodthirsty criminal and self-prosecutor, where his last words were “I deserve to Dy [*sic*].”⁴⁸ The power of this text, and the hundreds of pieces of gallows literature that followed it, was that it gave the State the ability to justify its corporal power through the least likely source — the victim of it. In the decades following Mather’s famous sermon, authors capitalized on the villainization of the

⁴⁶ For a notable example, following Denmark Vesey’s attempted revolution, South Carolina volunteer police heavily monitored and raided black churches, and after the successful Nat Turner insurrection less than a decade later, the state completely criminalized all forms of black religious gatherings, as well as schools and education efforts. C.S. Smith. *A History of the African Methodist Episcopal Church...* (AME Publishing 1922). 51-52. See also Daniel Alexander Payne. *History of the African Methodist Episcopal Church*, 1891. 468.

⁴⁷ DeLombard, *Shadow*, 12-15.

⁴⁸ Cotton Mather, *Tremenda. The dreadful sound with which the wicked are to be thunderstruck. In a sermon delivered unto a great assembly, in which was present, a miserable African, just going to be executed for a most inhumane and uncommon murder.* Boston, May 25th. 1721.

black man who quickly came to be overrepresented in gallows literature,⁴⁹ many of which were entirely fictional.⁵⁰

By the time Thomas Jefferson and others were shaping American carceral policy with such legislation as the *Bill for Proportioning Crimes and Punishments in Cases Heretofore Capital*, the dying criminal was the primary representation of black people in the popular media outside of slave advertisements.⁵¹ In the North, the free black population was beginning to grow, and the pervasiveness of the image of the black criminal reflected a shared intrinsic fear among many prominent white figures, abolitionists and slaveholders alike, of black people having equal rights and privileges to whites.⁵² Widespread black resistance to Northern slavery put pressure on policy makers, but the idea of an immediate end to slavery was impalpable to most influential decision makers, many of whom were slaveholders themselves.

Gradual Emancipation and the Emergence of the Prison

At the same time, the North was undergoing a slow economic transition to industrial capitalism, and the rising population of poor migrant workers in its urban centers became a more profitable source of exploited labor than the costs that went into owning and sustaining enslaved people. With the rise of factory and industrial work in Northern economies, chattel slavery was beginning to become less profitable than exploitative wage-slavery, and mounting resistance from both black communities and white abolitionist groups led some Northern states to begin adopting plans to slowly reduce the number of enslaved people.⁵³ These gradual emancipation laws maintained that all enslaved people would remain in captivity for

⁴⁹ DeLombard, *Shadow*. 1-41. Other scholarship, including DeLombard at various points (pp. 17, 183), positions criminal responsibility as a central component of civil identity in post-Revolution America, but they falsely extrapolate this claim onto black convicts, despite the ways white and black convicts were seen distinctly differently — white convicts as rehabilitable and black convicts as forever corrupted. Karen Halttunen. *Murder Most Foul: The Killer and the American Gothic Imagination*. Cambridge: Harvard University Press, 1998. 21-22. This narrative is countered later in this chapter.

⁵⁰ Such is the story of Henry Mills, an imaginary black man whose execution narrative invents him as having killed his wife and five of his six kids. His last words parrot those of gallows literature before him — that he had been “a dreadful example of human depravity” since his childhood and that he deserved to be killed by the State. The author, perhaps so that no one from his home town could attest to the falsification of the story, described Mills as living and dying in Galesboro, Pennsylvania, a town that had never existed. (Michele Lise Tarter and Richard Bell. 2012. *Buried lives: Incarcerated in Early America*. Athens: University of Georgia Press. i-xii).

⁵¹ This was the case since around the time of Cotton Mather’s *Tremenda* until abolitionists in the 1830s began a mass campaign of producing slave narratives, aided by developments in the printing press. (DeLombard, *Shadow*. 4-5).

⁵² Benjamin Schwarz. *The Atlantic Monthly*, “What Jefferson Helps to Explain.” March 1997, Volume 279, No. 3, pages 60-72.

⁵³ Edward E. Baptist. *The Half Has Never Been Told: Slavery and the Making of American Capitalism*, Basic Books, 2014. 25-54. See also Douglas Harper’s online project, *Slavery in the North*, from <http://slavenorth.com>.

life, but prohibited human trafficking across state lines and set an age limit to the captivity of children born into slavery, effectively phasing out most private forms of human bondage over the course of a generation.⁵⁴ While abolitionist protest put pressure on their state legislatures, the emergence of emancipation acts in the North was complicated by economic incentives for the white elite and near-ubiquitous beliefs of black inferiority among white abolitionists.⁵⁵ Gradual emancipation without recompense frequently left newly emancipated black people struggling financially, and the options for black laborers became increasingly hostile and exploitative as the free black populations grew.⁵⁶ As a result, many of the newly freed black people were forced to sell their labor to industrial capitalists for next to nothing in order to survive.⁵⁷

In 1780, Pennsylvania became the first American colony to pass anti-slavery legislation, creating the framework for abolition in most other Northern states.⁵⁸ This followed fifty years of decline in the size of slavery in the state as well as the southernmost (and most plantation-heavy) portion of the state separating from Pennsylvania to become the state of Delaware. As a concession to the remaining slaveholders in the state, the bill had no immediate effect on the status of anyone held in slavery. Every person held in bondage would remain enslaved until their death, escape, or manumission. Children of enslaved mothers would remain in bondage until they reached the age of 28, children whom slaveholders were still legally allowed to separate from their families and sell. This was known as gradual emancipation, the idea being that over the course of a few generations slavery would

⁵⁴ Harper, *Slavery in the North*. Web.

⁵⁵ Other scholarship attempts to emphasize the radical nature of the abolitionist movement, such as Paul J. Polgar's PhD dissertation, "Standard Bearers of Liberty and Equality," but, like everything, the motivations and forces behind the abolitionist movement were multifaceted. Polgar's analysis fails to distinguish the ways in which abolitionists worked to undermine much of the local working-class black activism, as well as how the anti-kidnapping laws that abolitionists championed modelled a liberal focus on individual racism at the cost of ignoring and even benefitting from the structural and institutional racial violence of the State.

⁵⁶ For an in-depth breakdown of racial economies following the War of 1812, see Nash, *Forging Freedom*, 217 and 248.

⁵⁷ Baptist. *Half Has Never Been Told*.

⁵⁸ Vermont passed legislation that claimed to abolish slavery in 1777, which inspired the Pennsylvania act. It is not, however, the first American anti-slavery act because until 1791 Vermont was a sovereign State, governed independent of the American Union. Like Pennsylvania and the other colonies of the North, the move away from slavery was primarily motivated by economics, not morality. Vermont's "immediate abolition" laws only suggested that slavery should end, and it excluded male children under 21 and female children under 18. Many businessmen who profited from slavery protested this legislation, which is good evidence that these anti-slavery provisions were anticipated to be effective, but the law only went so far. The loopholes in the law and ambiguity of the language provided influential and rich Vermonters leniency in slaveholding, a practice which has been argued continued up until the Civil War. Joanne Pope Melish. *Disowning Slavery: Gradual Emancipation and 'Race' in New England 1780-1860*. NY: Cornell University Press, 1998. 64.

eventually die out. This, of course, would not happen. While chattel slavery would eventually diminish in Pennsylvania and other free states by the mid-nineteenth century, new systems and laws emerged that kept black people from experiencing the freedom promised to them.

Perhaps the most significant portion of the bill was the rights it alleged to grant free black people — general equality to whites under the law, the right to marry whites, and the right to testify in a jury against whites, all things that were denied in the rest of the North. Seeing Pennsylvania as a potential sanctuary, many free black people and those escaping slavery from around the North and South made their way to Pennsylvania after the gradual emancipation act was passed.⁵⁹ The promise of freedom, however, was short lived. In response to the influx of black refugees, the sheriffs and local white men vested with the carceral authority of the State increased their patrols. Quickly, the local jails became filled with self-emancipated people — Philadelphia alone imprisoned dozens of black people every year who had escaped from one captivity only to be confined in another. Between the summers of 1782 and 1784, the Vagrancy Docket recorded Walnut Street Jail alone as having imprisoned at least sixty-eight self-emancipated people, a number that did not include free black prisoners and due to disorganized reporting could have been even higher.⁶⁰

The boom of black prisoners in Pennsylvania's jails quickly became an issue of concern for political leaders. Riots broke out, prisoners broke themselves free, and some even set jail rooms and their own cells on fire to resist their confinement.⁶¹ Occasionally, outsiders would come to the aid of the prisoners. Unlike the military-esque discipline that would soon come to define Northern prison systems, Pennsylvania's jails lacked the infrastructure, size, and organized surveillance necessary to maintain control for the duration of time it took to figure out who claimed ownership over the black prisoners and arrange for their return to slavery.⁶² Prior to holding self-emancipated people captive in Pennsylvania, the Northern jail

⁵⁹ Jean R. Soderlund and Gary B. Nash. *Freedom by Degrees: Emancipation in Pennsylvania and its Aftermath*, Oxford Univ. Press, 1991.

⁶⁰ Gary B. Nash. *Forging freedom: the formation of Philadelphia's Black community, 1720-1840*. p.138, 157.

⁶¹ From the moment American penal systems began to build and rely on imprisonment as punishment, across the North there were countless jail, prison, and penitentiary rebellions, where hundreds would attempt escape, commit arson as resistance, and in general refuse to work. Rebecca McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776–1941*. Cambridge University Press, 2008. 44-46.

⁶² Even after Pennsylvania started sending its criminally condemned people to be locked up instead of physically punished, Walnut Street's prison population was not significantly higher than the number of black people jailed in years prior for having escaped slavery. In 1787, the year after the penitentiary laws were passed, Walnut Street locked up seventy six people — a disproportionate number of whom were black — for crimes other than

system had almost exclusively been used as pre-trial detention, not long-term imprisonment. The only other prevalent instance of this were the thousands of prisoners of war held during the Revolutionary War, and in most instances, the British and Continental governments either arranged for their quick release or the detaining government would recruit enemy prisoners to switch sides.⁶³ In either case, long-term imprisonment was not part of their intentions.

The system strained at its hinges. Having newly signed the Treaty of Paris in 1783 to end the American Revolution and officially be separated from the British Crown, deporting black prisoners had become both financially and politically impractical. America had no colonies of its own to broker black prisoners into slavery overseas, and no real naval power to reap the benefits of black convict colonies. The war had left the American treasury depleted, accelerated by North African naval fleets preventing American trading ships from returning home. While Jefferson and others began planning for military conquest in Africa, deportation at this time was an all but impossible solution to the large rise of black incarceration.⁶⁴ Deportation was still the ultimate solution many abolitionists had in mind for dealing with black people, either self-emancipated or legally free, who were not under the gun of plantation law. In the meantime, Britain had just begun an experiment in criminal justice where they expanded the length of time their condemned remained and labored in prison, inspiring an era of prison reform in America.⁶⁵

In many ways, the penitentiary functioned differently in England than it did in its colonies and in America. Racial relations in England were far different from those of America — while American chattel slavery was domestic and widespread, British slavery was almost

having escaped slavery. This indicates that the imprisonment of self-emancipated black people was one of the major functions of the early prison. Pennsylvania General Assembly, *Report of Committee Relative to the Jail or Penitentiary in Philadelphia*, (Lancaster, Pa., 1811).

⁶³ Though long-term imprisonment was used as a threat against any Americans who sided with the British government during the war. “From James Madison to James Madison, Sr., [29] March 1777,” *Founders Online*, National Archives. [Original source: *The Papers of James Madison*, vol. 1, 16 March 1751 – 16 December 1779, ed. William T. Hutchinson and William M. E. Rachal. Chicago: The University of Chicago Press, 1962, pp. 190–192.]

⁶⁴ Jefferson worked with other politicians to call for an expansion of American power overseas, something that led to the eventual formation of the black colony of Liberia. See “From Thomas Jefferson to James Monroe, 11 November 1784” and “I. A proposal to use force against the Barbary states, 12 July 1790,” as well as the historical complementary analysis by *Founders Online*, “Editorial Note: Reports on Mediterranean Trade and Algerine Captives,” National Archives.

⁶⁵ This was part of a liberal reform movement that Foucault argues was more about an evolving system of power and control. See Introduction for a more in-depth explanation. Foucault, *Discipline and Punish*. See also Hirsch, *Rise of the Penitentiary*, 1-17.

exclusively in colonies overseas, and the black English population was only around fifteen thousand.⁶⁶ Though the British penitentiary system had less to do with racial control than controlling the poor, the same economic and political changes that generated new systems of power in Europe led to the gradual emancipation of black people in the American North and the creation of the penitentiary to control them. As American prison architects designed Walnut Street and other penitentiaries, they looked heavily to European penologists for guidance.⁶⁷ American politicians and businessmen held routine communication with criminologists in Europe and often quoted the penologists like Cesare Beccaria and the British Panopticon inventor Jeremy Bentham in debates calling for the American criminal justice system to shift from corporal punishment to long-term detainment and forced labor.⁶⁸ Many of the first penitentiaries were named after British prisons.⁶⁹ While the most influential criminologists disagreed on various political and penal issues, it is telling that most, if not every Western penologist distinguished between the criminal nature of white men versus “Negroes,” slaves, and Indian “savages,” as well as the amount of suffering they each needed to endure to be controlled. In discussing the use of the most wicked tortuous and death as criminal punishments against black people, particularly slaves, Bentham wrote: “It is said that this punishment is nothing more than is necessary for restraining that people, and keeping them in their servile state... This may perhaps be true. It is certain that a punishment, to have any effect upon man, must bear a certain ratio to the mean state of his way of living, in respect of sufferings and enjoyments.”⁷⁰ Though he saw extreme torture as necessary for “restraining” black prisoners, Bentham strayed away from advocating for torture, instead arguing the State could make money off of penal servitude. Beccaria similarly saw lifetime slavery in prison as a profitable endeavor and effective measure of State control, as he believed it to be more

⁶⁶ “Black Lives in England,” *HistoricEngland.org.uk*. Web. See also the notable case of *Somerset v. Stewart* that clarified the freedom of black Englanders not to be kidnapped and sold into slavery abroad ((1772) 98 ER 499).

⁶⁷ Hirsch, *Rise of the Penitentiary*, 74-77.

⁶⁸ The Panopticon was a fictional experiment in penal control, wherein prisoners were held in solitary confinement cells in a circle that surrounded a watch tower. Prisoners would be unable to tell when the guard was watching, subjugated by this constant looming surveillance. Jeremy Bentham, *Panopticon or the Inspection House*, printed by T. Payne, London, 1791.

⁶⁹ For instance, New York’s first two major prisons, as well as many of the first penitentiaries in neighboring states, were named Bridewell and Newgate after British prisons that were the first to be converted into “penitentiaries” in the late eighteenth century. Connecticut’s first State prison, remodelled at the same year as Walnut Street Jail, 1790, was also named Newgate.

⁷⁰ Jeremy Bentham, *Principles of Penal Law*, originally published 1789.

torturous than any physical punishment including death.⁷¹ Bentham and Beccaria were both abolitionists, and the passage quoted from Bentham's *Principles of Penal Law* followed a strong critique of the treatment of black people in slavery. That Bentham qualified his condemnation of slavery with the suggestion that prisons distinguish between the methods of subjugation required for black and white prisoners is reflected in the thought of most every American penal reformer, often far more explicitly.⁷² As American prison architects planned the creation and expansion of prisons in the North, the high security and militarization was often justified by these same racist principles.

By 1786, just six years after the gradual emancipation act, the Pennsylvania legislature passed a series of laws transitioning from public punishment to solitary confinement at hard labor for most criminal offenses.⁷³ With more regulations and guards, the jail transformed into an instrumental tool for the fortification of slavery elsewhere. By detaining self-emancipated people, the arresting party would typically receive a reward and the State earned money through exploiting the prisoners' labor while they were held in prison. The plan was an immediate success. Walnut Street and other jails around the state quickly became overcrowded and in 1790, Philadelphia remodelled Walnut Street as the nation's first penitentiary, whose exclusive design and purpose was criminal punishment. The prison now could house more than one hundred prisoners though it continued to operate over capacity. Black people continued to represent a disproportionate number of the hundreds of prisoners that languished in the first prisons, as they would across the North with more states building penitentiaries.⁷⁴

For slaveholders in the North, this transition was made seamlessly. In many ways, public jails and prisons across the country had already existed in the service of slavery. Slaveholders who did not have their own private dungeons or quarters for incarceration were freely allowed to imprison those they held in slavery for as long as they wanted, either as a punishment, as holding facilities while the slaveholder travelled, or as part of the domestic

⁷¹ Cesare Beccaria. *An Essay on Crimes and Punishment*, Albany: W.C. Little & Co., 1872. (Originally published in 1764). 100.

⁷² Various examples are explored later in this chapter, such as Thomas Eddy's *Account of the State Prison*, and the BPDS's *First Annual Report*.

⁷³ Myra Glenn. *Campaigns against Corporal Punishment*, 1984. 10.

⁷⁴ Leslie Patrick-Stamp. "Numbers that Are Not New: African Americans in the Country's First Prison, 1790-1835."

slave trade.⁷⁵ No criminal trial was required, no law was needed to be broken; slaveholders were essentially recognized as honorary prison wardens. Slaveholders used this privilege liberally, which exhausted the capacity of small local jails to the extent that colonial governments like that of New York City in 1736 had to pass ordinances restricting the number of months slaveholders could detain enslaved people in public prisons and instituting a small fee per day to mitigate the costs of housing, food, and security for the enslaved prisoners.⁷⁶ The creation of the penitentiary and increased allocation of funds for holding State prisoners gave a green light to slaveholders who wished to use the service of the public prison. This is made clear by a New York law passed in 1790, which gave slaveholders the right to utilize the jails and prisons for free and imprison those they held in slavery for “indefinite” amounts of time to rot in the “abode of wretchedness and misery.”⁷⁷ These laws and others (such as a law setting an age limit on enslaved prisoners so that slaveholders would not be able to send away men and women when they became too old to work productively) reveal how commonly and freely slaveholders utilized the services State prisons provided to them. That public prisons gave slaveholders complete autonomy in deciding which of their enslaved people should be locked up and for how long showed enslaved people and the rest of the country that slaveholders were literally above criminal law, something that was also reflected in the South.⁷⁸

In the summer of 1787, just one year after Pennsylvania led the nation in creating penitentiary laws, Thomas Jefferson, James Madison, George Washington and other Founding Fathers met in Philadelphia to complete the U.S. Constitution. Article IV §2.3 read, “No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labour may be due.”⁷⁹ This became known as the fugitive slave clause, which mandated that any US state or

⁷⁵ Of many examples, see Edwin Olson. “The Slave Code in Colonial New York,” *Journal of Negro History*, vol. 29, no. 2.

⁷⁶ Minutes, Common Council, New York City, 1665-1776, iv, 222. As cited by Olson. “Slave Code.” 164.

⁷⁷ Reports, Standing Committee (April 3, 1802; April 14, 1807), New York Manumission Society, Records, v, IX.]

⁷⁸ The penitentiary did not emerge in the South except in urban areas where there were few to no plantations. This is for many reasons (which are addressed in more depth in Chapter 2), but shows the power slaveholders had over public criminal justice. Police and prisons respected and worked alongside slaveholders, allowing plantation law to rule unquestioned by the authorities.

⁷⁹ U.S. Constitution Article IV section 2 clause 3.

territory return black people who had escaped from slavery. For the South whose economy relied heavily on the violent exploitation of black labor, this clause promised that its claim to the bodies of enslaved people superseded any “law or regulation” Northern states could pass. It also equipped any free person, almost exclusively white men, with the authority to arrest and imprison black people as they saw fit, since they could always claim they believed the arrestee was a fugitive slave.⁸⁰ Thus, at a time when police were not well organized and often did not formally exist, the Constitution nationalized law enforcement. This vested authority became mandatory with the federal Fugitive Slave Act of 1793.⁸¹ Though the North had already begun to shift its economy away from chattel slavery, the same section of the Constitution reified their sovereignty over the growing reliance on carceral systems of control. The clause preceding the fugitive slave clause is similar in content, but in regards to persons who “flee from Justice.” Any prisoner or criminally accused person who escapes into another state or territory must be returned to the jurisdiction where the alleged crime happened. These clauses are remarkably parallel — escapees were to be returned to the powers that held them captive, the latter to chattel slavery and the former to “justified slavery.” That these clauses were published back to back only further emphasizes the relationship between prisoner and enslaved, and the proximity carceral control in the North had to the chattel plantations of the South in the minds of the Founding Fathers.⁸²

One of the puzzling components to understanding the penitentiary movement is that it was largely driven by abolitionists. As expressed earlier, the racial politics of white abolitionism were complicated, and they often clashed with the grassroots activism of black communities in the North, both in their goals and in the strategies they practiced to carry them out.⁸³ Many abolitionist societies did not allow black people to join or participate, and most

⁸⁰ There are many narrative examples of this, for instance the story of Ayuba Suleiman Diallo. <https://docsouth.unc.edu/neh/bluett/bluett.html>.

⁸¹ 1 Stat. 302, U.S. Statutes at Large, 1793.

⁸² Kidnapping was thus foundational to the legal system of America. The juxtaposition here helps illuminate how the prison system followed similar systems of enforcement as the slave trade, and that all forms of arrest and detention are State-sponsored kidnapping, the topic of the second chapter. For more on how the original police in America evolved from slave patrols and fugitive slave laws, see Kristian Williams, *Our Enemies in Blue*, South End Press, 2003.

⁸³ White abolitionists were almost entirely against the principles of ‘freedom at any cost,’ holding strong stances against violence as black self-defense. Many white abolitionists held anti-slavery values from a moral perspective, but did not want to live amongst black people. Chapter 3 reflects more on the ways in which white abolitionists actively undermined the resistance efforts of working-class black activism.

held racist beliefs about the inferiority of black people.⁸⁴ Historian Christopher Brown recounts how abolitionists had many motivations for their activism or political stances, including the feeling that slavery tainted the image of empire needed to justify global domination.⁸⁵ The same is true about the prison architects. Jeremy Bentham, Beccaria, and Thomas Jefferson, each mentioned previously for their role in advocating for the racial necessity of the prison, all identified themselves with the cause of abolition despite Jefferson himself holding black people in bondage.⁸⁶ While British penal reformers felt it necessary to dispel the rhetorical comparisons of critics chastising the modern prison as a “reduc[tion] to a state of slavery” for the prisoner, criminologists in America largely ignored the claims.⁸⁷ Instead, many supporters of carceral punishment excused the racial implications of forced labor as “justified slavery.”⁸⁸

It was no accident that the fugitive slave clause emerged just as Northern states began passing gradual emancipation laws. Slavery was slowly becoming a more political issue that divided the states north and south of the Mason-Dixon line, and states in the North were beginning to shift away from private, chattel forms of subjugating their black populations to public control with the prison. In the decade following the federal Fugitive Slave Act, the penitentiary became a prominent component of nearly every Northern government. In the same year that Walnut Street was remodelled, Connecticut became the first state to follow Pennsylvania and build a penitentiary, converting an old mine into a prison designed for long-term incarceration. This was 1790, just six years after Connecticut passed its gradual emancipation act in 1784. Soon, other states across the North followed suit. The connection to slavery should not be overlooked — in every state the rise of the penitentiary coincided within

⁸⁴ Ibram X Kendi. *Stamped from the Beginning: The Definitive History of Racist Ideas in America*, Bold Type Books, 2016.

⁸⁵ Christopher Brown. *Moral Capital: Foundations of British Abolitionism*. University of North Carolina Press, 2006. 25-26.

⁸⁶ For this reason, many scholars do not consider Jefferson an abolitionist. That being said, many of the causes Jefferson pushed for, such as the gradual emancipation of black people, black colonization, and the end to the international slave trade were synonymous with the work of white abolitionists. William Cohen, "Thomas Jefferson and the Problem of Slavery," *Journal of American History* 56, no. 3 (1969): 503–26.

⁸⁷ In a later account of his life and works, Bentham admitted that when originally proposed in the late eighteenth century, there was a lot of public backlash to the penitentiary. “Principles of Penal Law,” 1789. 441.

⁸⁸ Hirsch quotes a contemporary visitor of the prison as evidence of the many abolitionists involved in the penitentiary movement, but does not question the historical context behind why newspapers might have felt it necessary to emphasize the abolitionist roots of the penitentiary, perhaps anticipating a large public backlash to the penitentiary and prison workhouse. Hirsch, *Rise of the Penitentiary*, 74-77.

mere years of passing their respective anti-slavery bills. In New York, with the influence of one man, the prison industry would soon change forever.

Solitary Confinement: From Plantation Jails to State Prison

In 1796, a 39-year-old businessman made his way to the New York legislature to propose building a state-of-the-art penitentiary. The son of Irish Quaker immigrants, Thomas Eddy was imbued with a rich religious heritage of abolitionism and even was one of the founding members of the New York Manumission Society. He also had a complex relationship to market capitalism and slavery, having learned the business of markets from the former slave auction on Wall Street and who had accrued immense wealth and influence from selling tobacco and other plantation products to Europe.⁸⁹ Working with state senators Philip Schuyler, a wealthy slaveholder, and Ambrose Spencer, Eddy succeeded in getting New York State to issue a bill for the construction of two major prisons three years prior to issuing gradual emancipation laws. One of the two penitentiaries was planned for Albany, but seeing as it was far further from urban populations, its construction was postponed and all energy was rerouted to building the monumental prison in New York City.⁹⁰ This was the Newgate penitentiary.

The construction of Newgate transformed the landscape of carceral control in America. It was unlike any prison to have been designed prior, built from scratch and designed to house 446 prisoners, many of which were in cramped, solitary cells. Located on the outskirts of the city, the giant facility now complemented the infamous Bridewell jail, which had functioned as a penitentiary since 1785 when New York City first experimented with long-term imprisonment as its primary criminal punishment.⁹¹ Newgate's layout was heavily inspired by Bentham's Panopticon, an imaginary prison with isolated cells circling the guards' watchtower such that the prisoners never know when they are being watched and are driven by paranoia into obedience.⁹² It would be a number of years before the Panopticon's

⁸⁹ Freeman Hunt. *Lives of American Merchants*. New York, Derby & Jackson St. 1857. 329-43. See also Walter Barrett, *The Old Merchants of New York City*, 2nd series. New York, Carleton, 413 Broadway, 1863. ch. 34. "Merchant Descriptions." For the history of the Wall Street as a slave auction, see Jim O'Grady, "City to Acknowledge It Operated a Slave Market for More Than 50 Years," WNYC, April 14, 2015. Web. Barnett mentions the Coffee Strip Market and not Wall Street, but this was a different name for the site. See <http://www.revolutionarywarjournal.com/old-slips-of-new-york-city/>.

⁹⁰ Charles G. Haines. "Report on the penitentiary system in the United States," Printed by Mahlon Day, NYC, 1822.

⁹¹ Hirsch, *Penitentiary*, 42.

⁹² Bentham. *Panopticon*.

exclusive use of solitary confinement was implemented in the American penitentiary system, but Newgate was an important stepping stone in this criminological experiment. Eddy was obsessed with Bentham, and even held contact with the British criminologist, exchanging letters about prisons and encouraging him to copy Newgate's model in England.⁹³ Much like the present-day supermax prisons, solitary confinement at Newgate was part of an elaborate plan to force the prisoners into both physical and mental submission.⁹⁴

Immediately following the building of Newgate, police across the North increased their patrolling of black communities. By Eddy's records, in the first four years of the penitentiary's existence between a quarter and a third of the prison population was black — many of whom had been enslaved by Northern slaveholders not long before.⁹⁵ Since free black people only made up 1.8% of the population of New York State in 1800, this meant that they were arrested and imprisoned as much as seventeen to twenty-six times more often than whites.⁹⁶ The racial disparity was even worse for black women who, though being imprisoned in far fewer numbers than their male counterparts, made up four fifths of the female prison population housed at the Newgate Penitentiary.⁹⁷

Across the North, white abolitionists were remarkably unfazed by the consistent mass imprisonment of black people. If anything, the advocates of the prison believed that this relationship was natural, as they held that black people were more prone to criminality. In a

⁹³ Hunt, *Lives*, 337.

⁹⁴ Eddy wrote that solitary confinement was recognized as “too severe” a punishment for ordinary crimes and still advocated its use and expansion for more ‘hardened criminals,’ who were very likely disproportionately black. Thomas Mears Eddy. *Account of the State Prison or Penitentiary House, in the City of New-York*. New York City: Isaac Collins & Son, 1801. 32.

⁹⁵ There are many factors that might influence the numbers in this case. Under the four years of the penitentiary being opened, 28 people died and 25 people escaped without being caught, but the race of these people were not mentioned. Records of the architecture of New York prisons have suggested that black prisoners tended to be put in worse conditions and even special underground barracks. It is likely, then, that a higher percentage of those who died and escaped were black. Thus, the prison population could have been anywhere up to 31% black. This seems more likely, since Thomas Eddy wrote that “nearly one third” of the population was black. Eddy. *Account of the State Prison*. 79, 86.

⁹⁶ That being said, there were about twice as many enslaved as free black people in New York by the 1800 Census, and prisons often partnered with slaveholders by imprisoning enslaved people as punishment. It is not clear whether this would be considered in the demographics of the prison population, but if it were, then the proportions of black to white prisoners per an identical population could be as low as 6:1, which still reflects the grossly disproportionate percentage of black prisoners in the earliest prison. One final thing to consider, the New York City population had a higher percentage of black people than the entire state of New York. This is not very significant, though, since the penitentiary brought in prisoners from across the state. US Census statistics from the University of Maryland, Baltimore County, 2019.

<https://userpages.umbc.edu/~bouton/History407/SlaveStats.htm>.

⁹⁷ Eddy. *Account of the State Prison*. 79, 86.

report that would go on to justify the expanding carceral landscape of the Northern states, Eddy cited this mass black imprisonment as “an additional proof of the degeneracy of the blacks.”⁹⁸ Despite prison and slavery being so ideologically connected that many abolitionists referred to Southern plantations as the “prison-house of bondage,” the large and growing population of black prisoners gave abolitionists no moral conundrum.⁹⁹ No major abolitionist movement sought to change these numbers, and over the next few decades they would only continue to grow. By 1826, New York State’s adult male black population was roughly 39,000, about 1/35th of the total adult male State population, yet they made up roughly a quarter of the adult male prison population. This pattern was the same across all of the Northern States. When it came to urban areas, the discrepancy was even worse. Erlene Stetson and Linda David record that in the 1820s, New York City’s black prison population in both the local jails and penitentiary often was as high as two-thirds, despite representing just one-twelfth of the city’s population.¹⁰⁰

Despite its unprecedented size, increased policing and criminal penalties led Newgate to quickly fill to almost twice its capacity. The prisoner count ruptured any plans for keeping prisoners isolated and those in power soon paid the price. In 1802, dozens of prisoners worked together to overpower and incapacitate the guards in a desperate collaboration towards their freedom. Chaos mounted and the mass escape would have been successful had it not been for local military forces who were called in. Eddy was shocked. The draconian fortifications of his prison had not been enough to hold in the captives. Reflecting on the situation later, Eddy wrote that “the design of Newgate was a mistake that only an entirely new building could rectify.” The only viable solution for complete control over the prisoners was utter solitude “with single cells for the separate confinement of all inmates at night and with shops for their labor in strict silence on weekdays.”¹⁰¹ This model would later be enacted in 1817 with the

⁹⁸ Eddy. *Account of the State prison*. 86.

⁹⁹ Abolitionist print was not popularized until the early 1830s, explaining why most cited examples in footnote 109 fall after this date. That being said, this comparison between slavery and incarceration was frequent in discussions of liberty as early as the Revolutionary War, as both slavery and the prison were used as emotionally-charged evocations of the lack of liberty. See Furstenberg, “Beyond Freedom.”

¹⁰⁰ Erlene Stetson and Linda David. *Glorying in Tribulation: The Life Work of Sojourner Truth*. 63-64. These statistics are separately confirmed in Leslie Harris’ book *In the Shadow of Slavery: African Americans in New York City, 1626-1863*.

¹⁰¹ Eddy quotes from Blake McKelvey, *American Prisons: A History of Good Intentions*. Montclair, New Jersey: Patterson Smith Press, 1977. 8-9.

building of the Auburn Penitentiary in New York. As prison designs went, Auburn became one of the two predominant models of incarceration that defined the nineteenth century.¹⁰²

In a few ways, however, the American penitentiary was unique from the European models. Most notably, American prisons were designed for mass solitary confinement as a form of control. European prisons incorporated solitary confinement into their infrastructure, but not nearly to the same extent and militaristic discipline of American prisons. Foucault identified this as the evolution of torturing the body to torturing the soul — isolating prisoners from being able to communicate, organize, and form community. This is not to say that American prison architects sought the pain of their prisoners. Like all humans, the motivations that drove the American prison architects were complicated, at times contradictory, and they varied from person to person. Concern for the wellbeing of prisoners may have played a role, albeit minor, in the shift away from corporal punishment, as it did for both Bentham and Beccaria.¹⁰³ That being said, this concern was almost entirely isolated to white prisoners and was part of a change in the way Western governments controlled their subjects.¹⁰⁴ What cannot be erased (and which has largely been ignored in modern scholarship on the prison) is that the American penitentiary was created in the context of gradual emancipation and disproportionate black detention.¹⁰⁵

The structural design of the American prison was inspired by carceral control on plantations. Though solitary confinement was discussed as if it were a completely innovative idea, there was one widespread use of dungeons and cage-like isolation as punishment. That was chattel slavery. Private jails were common on plantations as a form of domination and

¹⁰² George Wilson Pierson. *Tocqueville in America*. Johns Hopkins Paperbacks ed. Baltimore: Johns Hopkins UP, 1996. Print.

¹⁰³ Miller argues that the rhetoric about humanitarian uplift of (white) prisoners did not emerge as a central part of the dialogue of prison reform until the 1830's, and has been falsely projected onto the original American penitentiary debate. Martin B. Miller. "At Hard Labor: Rediscovering the 19th Century Prison." *Issues in Criminology* 9, no. 1 (1974): 91-114.

¹⁰⁴ Prison architects always made distinctions, whether explicitly or implicitly, in the reform of white prisoners and non-white prisoners. For one such example, Bentham wrote, "It is said that this punishment [the most extremely torturous death] is nothing more than is necessary for restraining that [black] people, and keeping them in their servile state...This may perhaps be true. It is certain that a punishment, to have any effect upon man, must bear a certain ratio to the mean state of his way of living, in respect of sufferings and enjoyments." *The Rationale of Punishment*, London, 1825 (originally published 1789). 174-75.

¹⁰⁵ One exception to this general erasure of the penitentiary's connections to gradual emancipation is Jen Manion's book *Liberty's Prisoners* (2015), though her analysis stops short of recognizing the structural complicity of State carceral control with impeding black economic and political growth, as well as the relationship prison architects had to plantation slavery — even though who identified with abolitionism. See Manion, *Liberty's Prisoners*, 120-152.

retaliation against enslaved resistance.¹⁰⁶ Prison was recognized as a method of spiritual and psychological subjugation, to the point that it was used to break people even when brutal physical violence was readily available.¹⁰⁷ Extreme violence and murder were still used as tactics of fear and control, but corporal punishment was recognized to hurt the amount and efficiency of labor the wounded victim could manage. For this reason, psychological and spiritual violence through long-term isolation was often wrought alongside floggings and other brutality or completely replaced it.¹⁰⁸ The plantation prison became a site of criminological innovation, with slaveholders developing more and more excruciating psychological torture — such as locking their victims in coffin-like cells submerged to their mouth in water to simulate claustrophobia and drowning — to beat down the spirit of the adults and children they held in bondage while maintaining their physical capacity to work. The information learned through experimental carceral torture of Southern plantations informed and inspired the many psychological strategies of the emerging penitentiary in the North.¹⁰⁹ Even the act of forcibly severing mothers from their newborn children, selling enslaved people to other plantations around the country to separate family members by large geographic distances, and the hierarchies of torture on plantations were all tactics that got brought on with the penitentiary and are still in use in most prisons in twenty-first century U.S.A.

American prison architects were not oblivious, either, to this connection between chattel slavery and the early prisons. Early abolitionist texts repeatedly used the metaphor of a prison to condemn plantations in the South, all while promoting the construction of new

¹⁰⁶ Norrece Jones, *Born a Child of Freedom, Yet a Slave: Mechanisms of Control and Strategies of Resistance in Antebellum South Carolina*. Hanover and London: University Press of New England, 1990. 76-78.

¹⁰⁷ Though Jacob's account of her life is written almost eighty years later, it became widely-circulated and prominent in the American anti-slavery popular consciousness. Her reflections on the use of prisons in Southern slavery are provocative, and reflects the carceral strategies of psychologically torturing enslaved people into obedience. For one instance, she wrote, "If a slave is unwilling to go with his new master, he is whipped, or locked up in jail, until he consents to go, and promises not to run away during the year." Harriet Ann Jacobs, *Incidents in the Life of a Slave Girl*. Boston: 1860. 25. Retrieved from *Documenting the American South*.

¹⁰⁸ At the same time, post-Enlightenment European criminology had shifted discussions from punishing (and really controlling) the body to controlling the soul. It should be seen as no coincidence that these conversations mirrored the on-the-grounds penal experimentation of American plantations, nor that they emerged simultaneous to discussions of controlling labor — the growing urban "idle" populations in Europe and growing free black populations in America. See Foucault, *Discipline and Punish*, esp. 22-31 (though the entire book provides important theoretical and historical context).

¹⁰⁹ Jones, *Born a Child*, 76-78.

prisons in the North.¹¹⁰ The second US president John Adams even positively referred to slave ships as "floating prisons" due to their being heavily militarized following a series of insurrections by their African captives. This language inevitably was a comparison to the burgeoning carceral system in America.¹¹¹ These floating prisons and plantation prisons in the colonies reinforced the American notion that black prisoners — a central subject of the prison — required more security and militarized structure to be controlled. They also played a major role in the formation of Western criminological thought, as trafficked Africans were the first major and consistent group of "inmates" whose carceral punishment would extend for the rest of their life.¹¹² Thus, the growth of penitentiaries at the turn of the nineteenth century was less of an unprecedented invention as it was a rapid transition from private (slave) prisons to public (slave) facilities around the Northern states.

The fact that the penitentiary did not take hold in the South is strong evidence of the relationship between the early prison and slavery. Whereas industrializing ports and river cities in the South built penitentiaries, plantation-dominated areas decried the modern prison, ironically, by invoking the comparison that prison labor was slavery.¹¹³ Slaveholders may have feared that convict labor would compete with and reduce the value of chattel slavery, but at the root of the issue was what "crime" the penitentiary was designed to suppress. Rural plantation areas were not free from poor white crime, and may have, in fact, dealt with a disproportionate amount of crime per their population.¹¹⁴ Instead of lobbying for a penitentiary, these towns, cities, and entire states fought against their construction.¹¹⁵ The role

¹¹⁰ This comparison of slavery as the "prison house of bondage" was a colloquialism, and examples are abundant. See for instance *Pennsylvania Freeman* (published as *Philadelphia National Enquirer*), 9 August 9 1838; *The Emancipator*, 21 July 1842, 17 November 1842, and 18 January 1844; William Lloyd Garrison. "Address to the Slaves of the United States," Southworth and Hawes, June 2, 1843; *Vermont telegraph*. June 21, 1843; And *The Herald*, October 14, 1848. Following the federal abolition of slavery, Sojourner Truth poeticized, "The prison doors have opened, and out the prisoners went." (originally published 10 May 1867). Quoted in Erlene Stetson and Linda David, *Glorifying in Tribulation: The Life Work of Sojourner Truth*, Michigan State University Press, 1994. 154.

¹¹¹ John Adams, "Remarks on the Country Extending from Cape Palmas to the River Congo," 1823 (reprinted in London, 1966. 133).

¹¹² John Adams also considered the captives on slave ships "inmates." From "Remarks on the Country."

¹¹³ On the phenomenon of industrial cities in the South latching onto the penitentiary, see Mark Colvin, *Penitentiaries, Reformatories, and Chain Gangs: Social Theory and the History of Punishment in Nineteenth-Century America*. New York: St. Martin's Press, 1997. On slaveholders rejecting the prison as a reduction to slavery, see Hirsch, *Penitentiary*, 201-60.

¹¹⁴ Historian Edward Ayers argues that the riches of the slave-holding South attracted to it many impoverished white men from more urban areas and from the North, bringing with them crimes of poverty. Edward L. Ayers. *Vengeance and Justice: Crime and Punishment in the 19th-Century American South*, New York, 1984. 79.

¹¹⁵ Colvin, *Penitentiaries, Reformatories, and Chain Gangs*.

that the prison was to fill was already handled through plantation justice — slave patrols, private jails, and daily violence against enslaved black people that the State deemed above the law. Southern cities that were beginning to industrialize, on the other hand, similarly had poor white crime, but had something unique from plantation areas — black freedom. Thus the penitentiary, and the entire State-legitimized system of criminal justice, was oriented around a specific definition of crime and criminal with blackness at its center.

The creation of New York's Newgate penitentiary also helps shed light on the business side of the growing State carceral power. Its financier and chief architect Thomas Eddy had a history of profiting from prisons. Years prior, Eddy started a trade and loaning business with his brother Charles and his friend Benjamin Sykes. During the Revolutionary War, Eddy made a fortune bailing British prisoners of war out of American makeshift jails.¹¹⁶ This business interest was no doubt connected to his fascination with the prison reform movement. As the penitentiary had come to serve in Britain, American prisons forced their captives to work and occasionally leased them out to private contractors, a practice that Eddy commended.¹¹⁷ At times, Northern prisons made a profit from convict labor, but more often than not, they desired only to pay off the original construction costs and become self-sustaining.¹¹⁸ Given the disproportionate percentage of black prisoners, the relationship between convict labor and the plantation would have been nearly impossible to avoid. That being said, if the goal of the prison reform movement was to recreate chattel slavery, there would have been no purpose for prison reformers to fight for abolition in the first place.

For individual capitalists like Eddy, the international attention brought to the innovative American prison helped rocket their influence and careers to greater prominence. After living in Philadelphia and witnessing the international attention brought to the Walnut Street Jail, it would seem no coincidence that Eddy lobbied for Newgate, personally financed the building of the facility and ensured he would both be the primary architect and director of the prison.¹¹⁹ Over the next few decades of Eddy's life, he sat as director for many entrepreneurial and philanthropic organizations and had such political power that

¹¹⁶ Hunt, *Lives*. 332-33.

¹¹⁷ Eddy is quoted as having said, "Like the Penitentiary House at New York [Newgate] some benevolent characters have devoted much time and attention to the economy of the establishments, the labour of the convicts has been rendered, in a certain degree, productive." Samuel Knapp, *The Life of Thomas Eddy*, 145.

¹¹⁸ Hirsch, *Penitentiary*. 93-97.

¹¹⁹ Hunt, *Lives*, 335-36.

businessmen and politicians alleged that “what[ever] he proposed was listened to and acted upon.”¹²⁰

The relationship between the prison industry and abolitionist organizations ensured the mutual growth of both — prison architects profited financially and politically from more prisons being built. While the vision of using black prisoners to create colonies abroad would continue to have a presence in abolitionist circles, for many, the prison appeased their fears about black freedom.

Conclusion

What Walnut Street, Newgate, and other early American penitentiaries represent is that race was central to the creation of the prison — whether spoken or unspoken, the gravely disproportionate incarceration of black people shaped the architecture and function of the prison since day one. The centrality of race to the creation of the prison, however, was in the works a century prior. The institution of chattel slavery was morally justified through the creation of the ‘other,’ both a racial other and criminal other. The supposed objectivity of criminal law helped fortify blackness as criminal into the framework of society. By the time economic and political forces drove the North to shift away from chattel slavery, the prison filled the vacuum of the systematic subjugation of the ‘other.’ Whether this was carefully planned or more of a collision of historical factors is not as important as the effect it had: The prison evolved in America as a mechanism of State control over the free black population, one that looked to plantations for its architectural design and disproportionately held black prisoners since day one. It is no wonder, then, that immediately as the Northern States began to shift their carceral systems of control to the penitentiary system, slaveholders and capitalists in the North took advantage of the new prisons for many purposes that fortified and legitimized this legal system of black bondage.

The persistent idea that the penitentiary’s genesis had nothing to do with race stems from the liberal belief that the Enlightenment inspired higher humanitarian ethics. If historical narratives believe the North was morally superior to the South due to transitioning away from chattel slavery, they erase the political and economic differences that required unique systems of control to maintain power.

¹²⁰ Quote from Walter Barrett, *Merchants of New York City*, ch. 34. “Merchant Descriptions.”

This inseparability of race and criminal law also brings to question the nature of crime and who defines it, an underlying question central to this thesis. As rich white men got away with rampant murder, theft, and rape against black women and men in both the North and South, more often than not crime was defined as black struggles against white oppression or the poor's attempts to survive in an increasingly harsh capitalist economy.

Ch. 2 - Carceral Colonialism

Since the beginning of colonization, Native people of these lands were imprisoned as a form of social control, which could only be described as deliberate genocide...For American Indians, incarceration is an extension of the history and violent mechanisms of colonization.

— Stormy Ogden, Kashaya Pomo Activist and author, 2010¹²¹

At the same time that American politicians were debating the end of slavery in the North, they were already envisioning their young nation as an empire like the one they had just gained independence from. This dominion would be both international with colonies of its own, as well as extend across the continent from sea to shining sea. American plans for westward expansion even helped instigate the Revolutionary War — Britain feared the growing power of the American colonies and attempted to restrict them from expanding their territory past the Appalachian mountains.¹²² This imperialistic mindset can also be seen in the many American commercial ships engaged in trade around the world. After the Treaty of Paris, the newly formed nation made plans to drastically expand their naval forces in an attempt to secure access to global markets and set the stage for future conquest.¹²³ The prison and evolving criminal justice system came to serve as a cornerstone of expanding

¹²¹ Stormy Ogden, “The Prison Industrial Complex in Indigenous California,” part of *The Prisonification of Native Women* project. March 8, 2010. Web.

<http://www.prisonabolitionist.com/2010/03/prisonification-of-native-people.html>

¹²² Alan Taylor, *American Revolutions: A Continental History 1750-1804*, New York, W. W. Norton Company, 2017. 1-10, 251-80.

¹²³ Most trade with Europe and North Africa went through the Mediterranean, and after the Treaty of Paris American ships no longer had Britain or France to protect them from Barbary pirates. Those markets they were not currently profiting from became imperial interests for the United States in a race against other Western European imperial expansion. Businessmen as well as politicians were equally invested in military invasion and control of the Barbary markets, viewing the North African states as just “as profitable to us as any part of our European trade.” Invading the Barbary market was lucrative for more than purely economic reasons — it would present the young nation with a chance to test out and develop its military power abroad and to fight as a unified nation, instead of as individual states. “We ought to begin a naval power, if we mean to carry on our own commerce,” Thomas Jefferson wrote in a letter to James Monroe, 1784. “Can we begin it on a more honourable occasion or with a weaker foe?” This weak “foe” was, however, more powerful than any naval force the United States could assemble and pushed the United States into peace treaties that cost as much as ten percent of their annual GDP. Jefferson imagined that America could wield its naval forces in international warfare, secure pivotal international trading locations in the Mediterranean, and excuse the brutality of its actions by claiming they were defending the waters from local privateers or government-sanctioned pirates. By 1790, Jefferson had formally proposed war against the North African states, despite having secured a peace treaty with Morocco in 1786. Peace treaties with the other Barbary states culminated in the Treaty of Tripoli, 1797. Four years later, the United States officially declared war against them. See “Editorial Note: Reports on Mediterranean Trade and Algerine Captives” *Founders Online*, National Archives, [Original source: *The Papers of Thomas Jefferson*, vol. 18, 4 November 1790 – 24 January 1791, ed. Julian P. Boyd. Princeton: Princeton University Press, 1971. 369–416.]

settler-colonialism and the increasing vision of American imperialism abroad. This functioned in three ways: First, carceral systems of control facilitated American expansion into indigenous lands west of the Appalachian Mountains; secondly, American penal reform gave the newly formed nation respect and political influence across Western Europe; and finally, the myth of black criminality justified American colonial interest in Liberia.

The Prison and Westward Expansion

American independence allowed for unrestrained expansion, and immediately following British defeat, the Founding Fathers set about constructing plans to expand the nation's borders westward and eliminate the indigenous nations who called the land home. Even the Declaration of Independence, a foundational document that enshrined the philosophies and values of America, positioned itself as oppositional to the "merciless Indian savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions," whom the document accuses the British government as exciting against them. The emergence of biopower in the Enlightenment inspired greater understanding that power was more easily obtained through social division and detention than by brute force. Indigenous nations far outnumbered American troops in size, awareness of the terrain, and often military force, and American politicians realized they would not win if they waged war. Prison, law, and other wings of the criminal justice system quickly became a central component of settler-colonial expansion.¹²⁴

One of the first iterations of this came in March of 1784, when a committee of the Confederation Congress released a foundational document that defined how future state and territorial governments of America were to be formed. The report listed just five principles as the required basis for the new governments:

- "1. That they shall for ever remain a part of the United states of America.
- "2. That in their persons, property and territory they shall be subject to the government of the United states in Congress assembled, and to the Articles of confederation in all those cases in which the original states shall be so subject.
- "3. That they shall be subject to pay a part of the federal debts contracted or to be contracted to be apportioned on them by Congress according to

¹²⁴ Vine Deloria Jr. *American Indians, American Justice*. University of Texas Press, 1983. 162-177. See also Carol Chiago Lujan and Gordon Adams. "U.S. Colonization of Indian Justice Systems: A Brief History." *Wicazo Sa Review* 19, no. 2, 2004. 9-23.

the same common rule and measure by which apportionments thereof shall be made on the other states.

“4. That their respective governments shall be in republican forms, and shall admit no person to be a citizen who holds any hereditary title.

“5. That after the year 1800 of the Christian æra, there shall be neither slavery nor involuntary servitude in any of the said states, otherwise than in punishment of crimes, whereof the party shall have been duly convicted to have been personally guilty.”¹²⁵

The first four of these pertained exclusively to the superior authority of the federal government. All territories and states formed within the United States needed to promise permanent allegiance to the federal government, submit foremost to its sovereignty above state laws and power, pay taxes and debt, and prevent any practices or citizens that might cause the new governments to become associated with monarchical rule and thus undermine the sovereignty of the U.S. government. It would follow that the fifth principle would likewise reflect federal concerns over new governments becoming too powerful or rejecting their authority. The remarkably different fifth clause reflects the significance of the criminal justice system as a means of controlling the settlers and the people who lived in the lands the country wished to acquire. This language appealed to abolitionists, promising that the new territories northwest of the Ohio River would be “free” states, but the meaning of this was debated. Even the governor of the NW Territory Arthur St. Clair himself argued the language never intended to end slavery, “but was intended simply to prevent the introduction of other [slaves].”¹²⁶ Others argued against this clause, like Jefferson who believed a complete ban on slavery in the NW Territory would impede settler-colonial migration out west from slave states.¹²⁷

This clause was the first example of abolitionists intentionally including an exception to slavery when brought through the prison. This insidious exception to abolition, “otherwise than in the punishment of crimes” allowed for prison to continue to claim ownership to the bodies and labor of their captives, who continued to disproportionately represent black people

¹²⁵ Thomas Jefferson. “III. Report of the Committee, 1 March 1784,” Accessed from *Founders Online*, National Archives. Original source: *The Papers of Thomas Jefferson*, vol. 6, 21 May 1781–1 March 1784, ed. Julian P. Boyd. Princeton: Princeton University Press, 1952, pp. 603–607.

¹²⁶ Arthur St. Clair, “Enclosure: Report of Governor of the Northwest Territory.” 25 April–29 June 1790. Accessed from *Founders Online*, National Archives. Original source: *The Papers of Thomas Jefferson*, vol. 18, 4 November 1790 – 24 January 1791, ed. Julian P. Boyd. Princeton: Princeton University Press, 1971, pp. 194–207.

¹²⁷ Gen. Rufus Putnam, “ART. III.--THE EARLY HISTORY OF OHIO: Manuscript Autobiography of Gen. Rufus Putnam,” *New Englander*, Aug 1854. 23.

and increasingly Natives. The success of this caveat paved the way for the Thirteenth Amendment's infamous exception to abolishing slavery nationally, as the language used was adopted almost verbatim and allowed the South to recreate the lost plantation economy following the Civil War.¹²⁸ The clause also reveals how early the Founding Fathers recognized the prison as a necessary component of enshrining the dominant hand of the State over colonists and American Indians. With the newly independent nation-state now free to expand its borders, the small and relatively powerless federal government had concerns over the power of individual states and people to declare insurgency or form their own sovereign State. The prison helped with asserting government control over their citizens moving west.

The so-called 'abolitionist' clause of the legislation, enacted into national policy in the Northwest Ordinance of 1787, had a more diabolical relationship to slavery than current scholarship is often willing to acknowledge. The NW Ordinance was formally passed the same summer that the Constitutional Committee deliberated the U.S. Constitution, with many of the members being on both boards. Historian Robert Alexander argues that the fugitive slave clause and the Three-Fifths Clause of the Constitution, which granted slave states more political representation in Congress, both came as a compromise to slaveholders who protested that the region north of the Ohio river would consist of free states.¹²⁹ Essentially, the "abolitionist" clause of the Northwest Ordinance reflected liberal priorities of commandeering indigenous land while cementing anti-blackness into the legal code on which America was founded.¹³⁰

¹²⁸ U.S. Const. amend. XIII. The Thirteenth Amendment to the US Constitution (which is recognized for abolishing slavery) contained an exception: "neither slavery nor servitude...except as a punishment for crime." Immediately after the alleged federal end to slavery, every state across the South passed draconian laws specifically targeting free black people for arbitrary acts such as vagrancy or loitering, and worked to recreate a plantation economy through convict leasing. While this revelation is not new — authors as early as Ida B. Wells (1890) and W.E.B. du Bois (1935) cited this clause with the notion of a continuation of slavery — it has recently been brought into popular culture with such works as Davis (*Are Prisons Obsolete?*), Oshinsky (*Worse than Slavery*), Mancini (*One Dies, Get Another*), and Ava Duvernay's Netflix documentary *13th*.

¹²⁹ Slave states often had larger populations of enslaved people than whites. Wanting greater political representation in the House of Representatives (which allocates congressional representatives based on the size of the population eligible to vote in the state) the South pushed for the 3/5's clause of the US Constitution, which recognized each enslaved person as three fifths of a voter to increase the numbers of seats given to the Southern states, even though enslaved people did not have the right to vote. This practice continues today through the prison, as most imprisoned people are not allowed to vote but still count for representation in the areas they are held in, giving small towns profiting from the imprisonment of hundreds of adults far greater political representation.

¹³⁰ Robert Alexander. *The Northwest Ordinance: Constitutional Politics and the Theft of Indian Land*. North Carolina, McFarland & co. inc. publishing, April 2017.

Months after Congress convened to discuss western expansion and the necessity of State carceral systems, American officials set in motion the first of a series of treaties designed to subvert Indian sovereignty through criminal law. In January of 1785, US military officers and federal politicians signed a treaty with the Wyandot, Delaware, Ojibwe, and Ottawa nations that gave the United States authority to punish indigenous people who broke US laws on US territory, with the false promise that tribal laws and practices would be respected on lands not yet seized by the colonial government.¹³¹ The relationship between the US and the Native nations signing it was one of equal sovereigns; if anything, the Treaty of Wyandot was an appeal by the US that the sovereignty of their criminal courts be respected. Underlying it, however, was a motion towards imposing Western criminal justice over tribal peacekeeping and restorative justice that would form the foundation of American settler-colonization.

Five years later, the appointed governor of the Northwest Territory Arthur St. Clair made his way to Kaskaskia, and to his grave disappointment found no formal occupying government structure.¹³² Though local Native governments had existed for millenia and had formed new governing practice to peacefully coexist with the few Frenchmen who remained from when France had claimed ownership to the land, St. Clair reported with frustration that American settler-colonizers had failed to draw up a plan of the town and “public Offices” were completely disorganized, failing to hold any power of governance over the people there.¹³³ St. Clair immediately declared the land a US county in his own name, and demanded that all land-holding occupants, both white settlers and indigenous members, present their claims to various parcels of land.¹³⁴ The process of validating land claims (for a cost) helped

¹³¹ “TREATY WITH THE WYANDOT, ETC., 1785.” 21 January, 1785. Federal Indian Affairs, Indian Treaties. (Also known as the Treaty of Fort M[’]Intosh or Fort McIntosh).

¹³² Kaskaskia was located in the Southwest corner of the NW Territory, in present day Illinois. St. Clair’s journey took 75 days due to “a delay met with at the Falls of Ohio for want of Provisions for the Escort—to being afterwards frozen up in the Mississippi for fifeteen [sic] days; and to being again obliged to stop to repair the Damage sustained by the Vessel, which was hurried by the impetuosity of the Stream upon a sunken Tree in the middle of the River, where the Danger of being cast away was very narrowly escaped.” (See note xxxvii — St. Clair, “Report of Governor,” 1790).

¹³³ St. Clair, “Report of Governor,” 1790.

¹³⁴ Regarding indigenous claims to land, St. Clair writes, “Among the Claims for Land that have been rejected, there are several that are founded on purchases made from individual Indians, and the conveyances set forth that they were inherited from their parents, and were not the property of the Nation. It could not however be discovered that any Division of the Lands of the Kaskaskia Indians had ever taken place among themselves, and the Chief of that Nation has applied to be confirmed in a Tract of Land of about five or six thousand Acres, where their Village was situated not long ago; and which would take in the parcels that have been sold and applied for as above:—On this Claim no Decision has been made. It appeared to be a subject that ought to be

ensure that the rich kept their claims to land and the poor lost them — anyone who could not pay the fees of the surveyor who inspected and approved their claims to land in the new government lost their claim to it. As many US political officials claimed authority to liberally grant out land claims without the federal government's permission, this functioned to have settlers colonize the land on behalf of the young government without being able to keep it when the US decided to come in and claim it as public land or sell it to richer businessmen for a profit.¹³⁵

Things did not go as well for St. Clair as he might have hoped. Hardly anyone bothered to show up to have their land claims validated, in part because they failed to see the self-righteous governor as much of an authority figure to respect. On top of this, most of the white occupants were French citizens and did not speak English, making St. Clair and his appointed surveyor Samuel Baird's mission painstakingly slow and difficult.¹³⁶ After a month of rejecting or validating claims to the land (based largely on the holder's ability to pay the fees), St. Clair continued his journey up the Mississippi river to Cahokia, where he again found no territorial government.

The problem he faced was twofold: The indigenous nations were increasingly resisting the US military imposition following the Revolutionary War, and settlers were continuing to trade with them outside of the control of the federal government. On June 6, mere months after his arrival, St. Clair orders the US citizens occupying Kaskaskia and Cahokia to build a prison as soon as possible, noting that nothing was “more necessary for the happiness of society than the proper administration of justice, the prevention of crimes or the punishment thereof in cases where it is impossible to prevent them, and that good citizens be protected in their lives, and their property...[than the full] enforcement of the law.” The prison, along with a militia in which he mandated every man in the St. Clair County to participate, came to serve as the means of addressing the “threat” of American Indians protecting their land as well as keeping the settler-colonizers under the hand of the State.¹³⁷

referred to Congress, but I may be allowed to observe, if one Indian sale is approved, it is probable that a great many will be brought forward.” (St. Clair, “Report of Governor,” 1790).

¹³⁵ Notes in *Founders Online* commentary of St. Clair, “Report of Governor,” 1790.

¹³⁶ Most white occupants of the NW Territory were businessmen the British Crown and the French government (who were occupying the land until they lost the Seven Years War to the British) had given claims to portions of the land. It was not until 1763 that France ceded the land to Britain, after which many of the settlers decided to stay. For this reason, most of them were French-speaking. *Ibid*, note 1.

¹³⁷ St. Clair, “Enclosure: Report of Governor of the Northwest Territory.”

Kidnapping Native men, women, and children as prisoners became a central component of the strategy behind America's all-out offensive to steal the land and conquer the Indian nations that stood in their way.¹³⁸ In the early 1800s, many Native peoples resisted the colonial scouting trip of Lewis and Clark, who turned to kidnapping influential leaders and holding them prisoner until they safely passed through. Historians have shown how settler-colonists like Lewis and Clark and the numerous genocidal Indian wars and massacres America waged in the coming decades used kidnapping and temporary imprisonment as strategies of control and power.¹³⁹ These were military tactics, provisional structures established only for the purpose of war. Less explored are the prisons that remained, how the State penitentiary became a crucial tactic of settler-colonialism.¹⁴⁰ It is no wonder that the prison was the only institution the NW Ordinance mentioned as a requirement for new governments. Barracks built to lock people up not only were used to suppress Indian resistance to American occupation but also served to make a point about claim to the land. More than a public office (which was more transitory and gave no promise of how long the Americans were planning to stay), the prison in both fortitude and its long-term promise loudly proclaimed that the occupiers were not going anywhere. More than an American flag, the prison was an anchor and political statement that the Natives' land was not theirs anymore.

For the white man, the prison also became a symbol of Indian savagery and white supremacy. Benjamin Franklin, recognized as one of the Founding Fathers and most influential early American thinkers, believed that the absence of prisons and police forces in the Indigenous nations of America was a reflection of primitiveness, and that carceral systems of control were an element of the advancedness of American society. "All the Indians of North America not under the Dominion of the Spaniards, are in that *Natural State*," he wrote, "being restrain'd by no Laws, having no Courts or Ministers of Justice, no Suits, no Prisons, no Governors vested with any legal Authority."¹⁴¹ Though he never published this in writing,

¹³⁸ Roxanne Dunbar-Ortiz, *An Indigenous History of the United States*, Penguin Random House, 2015. 57-58.

¹³⁹ John Grenier, *The First Way of War: American War Making on the Frontier, 1607-1814*. Cambridge University Press, 2005. See also Roxanne Dunbar-Ortiz, *Indigenous History*.

¹⁴⁰ Though recent scholarship has begun to address this, such as Hernandez. *City of Inmates*, 16-44.

¹⁴¹ Benjamin Franklin, "Marginalia in a Pamphlet by Allan Ramsay," *Founders Online*, National Archives, date unknown, though likely closer to the publication date of the Ramsay pamphlet in 1769. [Original source: *The Papers of Benjamin Franklin*, vol. 16, *January 1 through December 31, 1769*, ed. William B. Willcox. New Haven and London: Yale University Press, 1972, pp. 304-326.]



Figure 1. "The Great Father," a lithograph showing U.S. President Andrew Jackson holding American Indian leaders depicted as children, circa 1830's.¹⁴²

¹⁴² Common domain. Some sources suggest this depiction was made by opponents of the Indian Removal Act, desiring to show the hypocrisy of Jackson's claims to sympathize with American Indian nations.

Franklin's beliefs reflected a growing liberal philosophy of paternalism that would come to define federal-Indian political relations as the colonizing government transitioned from more militaristic to bureaucratic and systematic strategies of Native disenfranchisement and land theft.¹⁴³ This became more ubiquitous by the Jacksonian era, when the prison, police, and criminal law became more central to the colonization project. This primarily centered around Jackson's obsession with Indian Removal, which he publicly stated would "perhaps cause them gradually, under the protection of the Government and through the influence of good counsels, to cast off their savage habits and become an interesting, civilized, and Christian community."¹⁴⁴ This motif of colonial paternalism included imagery depicting Jackson and other European or American leaders as the "Great Father" of indigenous nations, who were shown as children.¹⁴⁵ In this context, it becomes more apparent that Franklin and other Founding Fathers were, from the first penitentiary experiments, beginning to envision the purpose of the prison and criminal justice systems as both a mechanism of 'civilizing' the Indians and of power. In Native circles, the opposite was true. Western prisons and police were marks of savagery, which the Lakota named *Woope Wasicu*, "'the cruel equipment' of law—from armed soldiers and cops, to guns, cannons, balls and chains, and prisons."¹⁴⁶ The late nineteenth century Oglala Lakota chief and educator Luther Standing Bear wrote that Western criminal justice "designated not order, but force and disorder."¹⁴⁷ Nonetheless, the alleged supremacy of the Western systems of law was a necessary ideology to justify Native genocide and the continued expansion west, as much of this expansion happened through legal colonization.

One of the two most notable moments in American legal colonization came in 1817, when the United States Congress passed the General Crimes Act. This declared that the

¹⁴³ Explored in more depth later in this chapter.

¹⁴⁴ Andrew Jackson, "On Indian Removal," transcript of annual presidential message to Congress, 1830. Accessed on *OurDocuments.org*. Web.

¹⁴⁵ See Figure 1. Though some Western anthropologic scholarship has attempted to characterize this as merely a strategic diplomacy policy, remains that paternalism in federal Indian relations only grew throughout the nineteenth century, as well as the provocative imagery of Andrew Jackson as Great Father. See Raymond J. DeMallie, "Touching the Pen: Plains Indian Treaty Councils in Ethnohistorical Perspective," in Frederick C. Luebke, ed., *Ethnicity on the Great Plains*, (Lincoln and London: University of Nebraska Press, 1980), 38-53; John Tobias, "The Origins of the Treaty Rights Movement in Saskatchewan," in F. L. Barron and James B. Waldram, eds., *1885 and After: Native Society in Transition*, (Regina: Canadian Plains Research Centre, 1986), 241-252.

¹⁴⁶ Nick Estes, *Our History is the Future: Standing Rock versus the Dakota Access Pipeline, and the Long Tradition of Indigenous Resistance*, New York, Verso Publishing, 2019. 71.

¹⁴⁷ Luther Standing Bear, *Land of the Spotted Eagle*, University of Nebraska Press, 1987. 124-26. originally published 1933. Cited in Estes, *Our History is the Future*, 71.

“general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States...extend to the Indian country,”¹⁴⁸ and almost completely removed tribal courts’ sovereignty over criminal matters for any criminalized act involving a non-Indian. Tribal courts were barred from being able to respond to harm that happened to their people by settler-colonizers, including rape and murder — and were legally mandated to trust the colonial courts to address the situation. US courts often ignored these claims, allowing settlers to harm without recourse.¹⁴⁹ Likewise, the law granted federal courts jurisdiction over prosecuting indigenous people for a wide variety of crimes, including trespassing, vagrancy, and self-defense interpreted as assault. The only legal sovereignty the law allowed tribal courts was crime between two Indians on Indian territory. However, this too would soon be taken.¹⁵⁰

The General Crimes Act greatly aided federal control over both Indians and settler-colonizers as the country continued to expand further west. The law allowed white settler-colonizers to invoke the carceral control of the State for their physical and financial protection as they continued the mission of expansion. It also coincided with the legislative success of a petition for New York State to appoint officials to “examine and explore,” or colonize, the western part of the state. This petition was hand-delivered by none other than Thomas Eddy, the eminent Newgate Penitentiary architect. This project would happen through the Western Inland Knock Navigation Company, a private enterprise established in 1792 for the purpose of developing a navigable route along the Mohawk River to Lake Erie. Eddy had been on the board as acting director or treasurer since 1794, but it was not until the General Crimes Act was passed that the canal from New York City to Lake Erie had been approved. Perhaps the timing was mere coincidence, but Eddy’s vested interest, one that

¹⁴⁸ The General Crimes Act (18 U.S.C. § 1152), 1817.

¹⁴⁹ Robert A. Williams. *Like a Loaded Weapon: The Rehnquist Court, Indian Rights, and the Legal History of Racism In America*. Minneapolis, MN: University of Minnesota Press, 2005. Also see Deloria Jr. *American Indians, American Justice*.

¹⁵⁰ The Major Crimes Act (18 U.S.C. § 1153) of 1885, effectively delegitimized tribal courts’ ability to even resolve a conflict between two of their own nation’s members on their own land if the conflict consisted of one of a long list of what the US government considered “major crimes.” The law was upheld as recently as 1995 in the case of *Wetsit v. Stafne*. As explained by Standing Rock Sioux scholar Vine Deloria Jr, “When Crow Dog assassinated Spotted Tail, the matter was solved under traditional Sioux customs. Yet an outraged public, furious because Crow Dog had not been executed, pressured for the Seven Major Crimes Act for the federal government to assume nearly total criminal jurisdiction over the reservations. Thus foreign laws and customs using the basic concepts of justice came to dominate Indian life. If, Indians reasons, justice is for society’s benefit, why isn’t out justice accepted? Indians became convinced they were the world’s stupidest people” (Vine Deloria Jr. *Custer Died for Your Sins: An Indian Manifesto*. New York, Macmillan publishing, 1969. 9).

drove him to single-handedly collect the thousands of signatures needed for its approval, had had a long standing interest in the ‘Indian problem,’ having sponsored various charities in their efforts to assimilate local natives to white American culture and rope them into the Western exploitative economy. The canal turned New York City into one of the nation’s biggest trading centers shipping industrial products and manufactured goods out west and both incentivized and facilitated the continued colonization of indigenous lands west of the major American settlements and cities. This was fully acknowledged, if not mocked, by the city ceremoniously naming the first ship to sail the canal the “Seneca Chief” after its completion in 1825.¹⁵¹

Three years later, the presidential election of Andrew Jackson in 1828 marked a clear shift in the way the United States viewed its relationship with American Indian nations. The General Crimes Act and other legislation that undermined indigenous sovereignty show that since the foundation of the country colonization through Western law was recognized as a potent imperial strategy, but until Jackson, America stole land primarily through its military. As president of the United States, Jackson helped advance what historian Roxanne Dunbar-Ortiz called “imperialist democracy.” Jackson’s campaign appealed to the populist spirit of the poor white farmers whose small and underfinanced crops could not compete with the hundred-acre plantations surrounding them. Jackson’s message of democracy ignored the fate of black Southerners suffering under the weight — or the looming threat — of chattel enslavement. Neither did he call attention to the grave economic divide between the slaveholder class and the poor white farmers. Instead, Jackson scapegoated indigenous farmers as the reason poor whites struggled to feed their families, and leveraged this colonial entitlement to grow federal power over American Indian nations and undermine tribal sovereignty.¹⁵²

From the moment Jackson was appointed president, he forced the displacement of indigenous people. Between 1829-1837, the eight years of Andrew Jackson’s presidency, the federal government made eighty-six treaties with twenty-six Indigenous nations across the map, from the gulf of Mexico to as far north as New York. None of the promises the US

¹⁵¹ Freeman Hunt. *Lives of American Merchants*. New York, Derby & Jackson St. 1857. 329-43; Manuscripts and Archives Division, The New York Public Library. "Western Inland Lock Navigation Company account book" New York Public Library Digital Collections; Frances Robb. "Erie Canal." *Encyclopædia Britannica*. 18 October, 2019.

¹⁵² Dunbar-Ortiz, *Indigenous History*, 107-110.

made were upheld. Instead, the treaties were used to systematically and genocidally displace American Indian peoples to land that the US designated as arid and resource-poor, while appropriating tens of millions of acres of Native land.¹⁵³ This growth of institutionalized power was fortified with one particular structure — the prison. Carceral power was leveraged both directly and as a veiled threat: Native peoples who refused to leave, Jackson warned, would be “subject to [the Southern states’] laws.”¹⁵⁴ By this decree, President Jackson extended a blanket criminalization over indigenous peoples as trespassers in American soil, punishable under the criminal courts of the Southern states. Immediately after, the Georgia legislature claimed all of the Cherokee Nation land as property of the State. The Cherokee Nation sued, and after Georgian courts repeatedly denied their claim to the land they had tended to for millenia, they appealed the case to the US Supreme Court. While the case was making its way through the courts, settler-colonizers discovered gold on Cherokee land. Shortly after, on May 28, 1830, President Jackson signed into law the Indian Removal Act, which included a treaty that the Cherokee Nation would give up all of their land to the federal government in exchange for “Indian Territory” west of where American settlers had already claimed. To assure that the treaty would be signed by the Cherokee Nation, Jackson threw Cherokee leaders in prison and shut down their newspaper, preventing word from spreading and resistance to grow. With some time and perhaps the coercion of violence or empty promises, Jackson eventually found a few members of the nation who would sign the treaty.¹⁵⁵

In March of 1831, Chief Justice John Marshall published the Supreme Court’s decision. Though federal treaties had previously related to the Cherokee Nation as a foreign polity, Marshall rejected their claim to sovereignty. However, the decision also opposed Georgia’s claim that Cherokees had to obey Georgian law. Instead, Marshall redefined the future of federal Indian relations as “domestic dependent nations,” under the ward of the federal government. President Jackson rejected the Court’s decision that the Cherokees did not have to leave or obey Georgian law, effectively arguing that he did not have to obey the

¹⁵³ Ibid. Additionally, historian David Stannard explores how the process of violent displacement was a conscious white supremacist project motivated by political and economic factors that amounts to nothing less than what post-WWII theorists have labelled genocide. David Stannard, *American Holocaust: Columbus and the Conquest of the New World*, Oxford University Press, 1992.

¹⁵⁴ Andrew Jackson, “First Inaugural Address,” March 4, 1829.

¹⁵⁵ Dunbar-Ortiz, *Indigenous History*, 109-110.

Supreme Court's order since he — and not the Supreme Court — had the power of the US military behind him. The State prison helped remove and suppress any Cherokee or outside leaders who posed a threat to the federal subjugation of the Nation. The list of political prisoners included a number of clergy visiting the Cherokee Nation as a means of aiding the struggle against the State. Despite the growing carceral presence in Cherokee territory, large groups of Native men and women formed guerilla resistance groups, taking over tactical areas of land and causing panic among American political leaders who accused them of crimes and referred to them as the “bad citizens” of the Cherokee Nation.¹⁵⁶ Though Jackson, like every president before him since Jefferson, alleged that this displacement should happen “voluntarily,” the use of militant law enforcement and prison starkly communicated the imminence of atrocities if they did not leave on their own. Over the next two years, many Cherokees reluctantly left their homes to head west. Many more, under the declaration of their “perfect and original right” to the land, remained.¹⁵⁷

When Jackson left office, the Cherokee Nation remained. The last years of his presidency had consisted of threats, token negotiations, and a treaty the Nation refused to recognize by almost unilaterally not showing up. Less than eighty people had signed the treaty of New Echota — which required the Nation to migrate west within two years — and more than twelve thousand Cherokees signed a petition to the US Senate renouncing it. Still, Jackson was hellbent on removing the Cherokee people and took this treaty as federal law. He had built his whole career on Indian removal. Prior to being president, Jackson himself was a major figure in this age of conquest, leading four wars of aggression against the Muskogee people in Georgia and Florida. His election campaign had promised land to poor white farmers, and his history of colonial violence against indigenous nations formed the backdrop to his large support among white voters. Before leaving office, Jackson began ordering military forts and prisons to be built in Seminole and Cherokee land in preparation for systematic captivity and removal. He also recruited Martin van Buren to run for president as his successor, and over the next year repeatedly called van Buren to pressure him to carry out the removal. In 1838, President van Buren carried out a widespread purge known in history as the Trail of Tears. Tens of thousands of Cherokee people were brutally arrested from their homes and forced into prison camps, their homes looted by the military police.

¹⁵⁶ Robert V. Remini. *Andrew Jackson and His Indian Wars*. 2001. 254-71.

¹⁵⁷ Dunbar-Ortiz, *Indigenous History*, 109-111.

Children were arrested while playing, adults were seized or shackled while cooking and cleaning. Under military law, the violence and capture of nonaggressive parties would be considered illegal, but criminal law legitimized their very existence as a federal crime. The Treaty of New Echota became the law of the land, and the entire Cherokee people who remained on their ancestral land were effectively labelled criminals of the State. Serving as prison guards, the military marched the majority of their captives — often in stockades and chains — into the cramped quarters of boats and trains where they were transported hundreds of miles west. In the journey, which included a long portion of walking, half of the men, women, and children died. For whatever reason, perhaps due to their particular role in resisting their people's displacement, some Cherokees remained federal prisoners in Georgia. In strong defiance, other Cherokees and targeted Indigenous peoples found ways to evade the displacement and remain in their native lands today, despite state and federal governments often refusing to acknowledge their claims to the land and status as Indians.¹⁵⁸

Over the next two centuries, the prison has only grown as a mode of institutional power against Indigenous sovereignty and suppressing anti-colonial resistance. In California, the 1850 *Act for the Government and Protection of Indians* shifted the agent of controlling Native peoples from missions to criminal law, mobilizing imprisonment liberally as a means of breaking down indigenous women to settler assault and subjugating any forms of resistance.¹⁵⁹ The following year, Congress passed the Indian Appropriations Act, formalizing the creation of Native reservations in large part as a means of enforcing federal legal jurisdiction over tribal law. Though the prison and the reservation are distinct systems (and to equate them would be to simplify the different complexities of each), it is significant to consider the way reservations functioned to control Native peoples politically, economically, and in their mobility through harsh criminal law and carceral powers like federal police.¹⁶⁰ In the 1860s, prison concentration camps were separately used against Dakota and Navajo

¹⁵⁸ Dunbar-Ortiz, *Indigenous History*, 108-114. See also Remini, *Andrew Jackson*, 265-68.

¹⁵⁹ Jacquelyn May Teran, "Colonial Order and the Origins of California Native Women's Mass Incarceration: California Missions and Beyond," Masters Thesis at the University of Los Angeles, 2015. For the economic and political incentives behind the rise of Californian Native imprisonment, see Benjamin Madley, "'Unholy Traffic in Human Blood and Souls': Systems of California Indian Servitude under U.S. Rule" *Pacific Historical Review* 83, no. 4, (2014): 626-667.

¹⁶⁰ Elmer Bennett. *Federal Indian Law*. The Lawbook Exchange, 2008. 195-219.

peoples as a means of suppressing Native resistance to the forced transition to reservations.¹⁶¹

In 1887, the US passed the General Allotment Act, which divided up Indian reservation land into private portions to try to force Native peoples to change their relationship to the land and “assume a capitalist and proprietary relationship with property.” Part of the purpose of the Allotment was to appropriate the remaining land to sell to white settlers, which amounted to nearly one hundred million acres in total (two-thirds of the land Native nations had owned before 1887), and created a checkerboard of indigenous and colonial settlements that compromised the safety of many American Indian people.¹⁶² Native nations fought against the Allotment Act, engaging in direct action and protests as well as appealing to Congress. When the State started arresting and invoking violence against the resisters, thousands of different Native peoples formed resistance communities to not have to succumb to the capitalist commodification and exploitation of the earth. Among other Native resistance communities, Redbird Smith led an organized collective of Cherokee members to the Cookson Hills, and five thousand Muskogee Creeks settled in Hickory Ground under the leadership of Crazy Snake Chitto Harjo. After being discovered by the US military, Harjo and many of the most prominent leaders in the Hickory Ground community were caged in local jails and prisons. When freed, Harjo reformed the collective and resisted US colonization for another decade until he was shot in 1912. As they had with Harjo, the United States used prison and ultimately death in the struggle against Native anti-colonial leaders like Sitting Bull and Crazy Horse — both imprisoned and killed in 1890 — and the radical Chiricahua lead by Geronimo, who despite being promised a short confinement upon their surrender were imprisoned en masse for 27 years.¹⁶³

Visions of a Global Empire

As early as 1790, the international attention to the various American penitentiary models brought the young country political influence and respect from other European

¹⁶¹ During the harsh winter of 1862-63, thousands of Dakotas were held prisoner at Fort Snelling. The Navajo prisoners were held at Fort Sumner between 1864-68. “Carceral Colonialism: Imprisonment in Indian Country,” *States of Incarceration*, supported by the Humanities Action Lab. Web. <https://statesofincarceration.org>.

¹⁶² “General Allotment Act (or Dawes Act), Act of Feb. 8, 1887 (24 Stat. 388, ch. 119, 25 USCA 331), Acts of Forty-ninth Congress—Second Session, 1887.” Quote from Kent Blansett. “Dawes Severalty Act (1887)” in *The Settlement of America: An Encyclopedia of Westward Expansion from Jamestown to the Closing of the Frontier*. Routledge. 2015. ed. James A. Crutchfield. 161–162.

¹⁶³ Dunbar-Ortiz, *Indigenous History*, 151-53, 158-59. For the Chiricahua imprisonment, see “Forced Removal of Native Americans,” *Equal Justice Initiative*, 2016. Web.

empires, and helped pave the way for the US to expand not just domestically but across the Atlantic. As the United States was struggling to situate itself within the global political sphere, the prison emerged as a foothold for the young nation to gain European recognition. Though the ideas behind the penitentiary grew out of Britain and other Western European countries, the size and widespread implementation of solitary confinement in American prisons drew international curiosity and attention. Walnut Street's reconstruction in 1790 attracted everyone from criminologists and politicians to tourists from Europe to the United States to examine it for themselves.¹⁶⁴ American businessmen and politicians jumped on the opportunity to make a name for themselves. Following construction of the Newgate Penitentiary in 1796, Thomas Eddy wrote to the wealthy London magistrate Patrick Colquhoun¹⁶⁵ and Jeremy Bentham, as well as others in Europe and other American cities like Pittsburgh, encouraging them to build prisons in their respective jurisdictions after his design.¹⁶⁶ Through his efforts and those of other prison reformers, new penitentiaries were built around Western Europe and various other American states based on the northeast prison models.¹⁶⁷ Building an international reputation, particularly among the European empires replete with wealth stolen from the labor and resources of indigenous colonies all over the world, gave America greater proximity to the common desire that it too would become a world power.

To what extent Jefferson and other Founding Fathers in the late eighteenth century envisioned America as a global empire is debatable, but early political correspondence shows clear desires to compete with other global powers, especially their former metropole of Britain.¹⁶⁸ The militaristic and economic desire to form American colonies abroad may have

¹⁶⁴ Rex A. Skidmore. "Penological Pioneering in the Walnut Street Jail, 1789-1799," in the *Journal of Criminal Law and Criminology*. vol. 39, iss. 2. 1948. 167.

¹⁶⁵ The following year, Colquhoun and Bentham collaborated on creating the first organized police force in Britain as a means of protecting the wealth of rich merchants whose imports were being stolen at the port of River Thames by impoverished riverfront workers who felt they needed to steal from the rich to survive. That a mob of two thousand people organized to burn down the police office when it was first erected demonstrates the class tension and how the police were formed in solidarity with the ruling class. See more in Dick Paterson, "Origins of the Thames Police," *Thames Police Museum*. Web.

¹⁶⁶ Hunt, *Lives*, 337.

¹⁶⁷ For some examples, Eddy worked to spread the penitentiary to Massachusetts, "Thomas Eddy to Charles Bulfinch," March 28, 1800; to Virginia, "To Thomas Jefferson from Thomas Eddy," 9 February 1802 and May 16, 1817. Accessed from *Founders Online*, National Archives. See also Knapp, *Life of Thomas Eddy*, begins around 173; and Hirsch, *Rise of the Penitentiary*, 42-43, 59-61, 85, 90-92.

¹⁶⁸ See Jefferson's letters "From Thomas Jefferson to James Monroe, 11 November 1784," and "I. A Proposal to Use Force against the Barbary States, 12 July 1790," as well as "Editorial Note: Reports on Mediterranean Trade and Algerine Captives," *Founders Online*, National Archives.

been what led Jefferson in his 1790 *Bill for Proportioning Crimes and Punishments* to demand the deportation and colonization of black ‘criminals.’ The increasing frequency of black resistance to institutional oppression threatened the founders’ American utopia, both in the South (who feared free black people would mobilize enslaved groups to action) and in the North. To the wealthy ruling class, the deportation of free black people would kill two birds with one stone — it would help fortify institutions of black exploitation in both the North and South and expand American global economic and political power.¹⁶⁹ Like Brown’s account of the nuanced motivations of abolitionists, Jefferson’s call to deport all free black people in *Notes on Virginia* may have been influenced by racist fears, but the ulterior implication that black labor be used to create American colonies in the most resource-wealthy lands abroad indicates that his driving force was more imperialistic.¹⁷⁰ Instead of being the basis for action, racist fearmongering was mobilized as rhetoric to help convince most of white America (even those who had no wealth or power to gain from it) to support the mission of colonization. As early as 1790, official proposals to deport free black people were on the table. Ferdinand Fairfax, a justice of the peace in Virginia’s carceral system¹⁷¹ and George Washington’s godson, wrote that black people should never be given the same privileges, for if they were, “The remembrance of their former situation...would be found to operate so powerfully as to be insurmountable...[and] will endanger the peace of society.”¹⁷² In other words, Fairfax

¹⁶⁹ In the North, just like in industrializing Europe, growing urban populations meant more unified organizing against systems that exploited them. Deporting black people, particularly those most dangerous to the status quo of white supremacy — the “criminals,” allowed for businessmen to reap the fruits of their labor while not having to deal with their presence. In the South, free black people compromised the institution of slavery for many reasons — their dignity, intelligence, and successes were a physical contradiction to the racist myths used to justify slavery, and they were the cornerstone of the underground railroad. Also, the more free black people in American cities, the easier it would be for an enslaved person to camouflage and disappear after escaping from captivity. For these reasons and many others, both slaveholders and Northern businessmen (many who were abolitionists) pushed for colonization.

¹⁷⁰ Sectioning off a portion of the continental U.S. as a separatist black nation-state would have been far easier than organizing for ships to take free black people to foreign lands across the sea, largely against their will. To do this, however, would give up the control and ownership America claimed over its black inhabitants, something the rich were unwilling to do, and is why black nationalism (or separationism) has been resisted by the State throughout American history while segregation was enforced. However, a black nation-state would likely have come at the cost of more American Indian displacement instead of taking land that white people were already occupying. As all of it is stolen land, even if the latter came true it shows how complicated land politics are in America, and how multi-cultural liberalism comes at the exclusion of indigenous sovereignty.

¹⁷¹ Justices of the peace functioned in the eighteenth and nineteenth century criminal justice system as more or less of a judge. According to *Digital Panopticon*, “crime” that did not impact the ruling class fell on the shoulders of the victims to deal with and pay for. If the victims chose to take the perpetrator to court, they would be heard before a justice of the peace. https://www.digitalpanopticon.org/Criminal_Justice_1780-1925

¹⁷² Ferdinando Fairfax, “Plan for liberating the negroes within the united states,” *American Museum, or, Universal Magazine* (December 1, 1790): 285–287.

attempted to leverage his audience's fears that black freedom guaranteed an uprising against white people and threatened the very existence of white America.

The scare tactics of Jefferson, Fairfax, and other proponents of deportation worked: in the coming decades, many if not most prominent white figures in America shared an intrinsic fear of black people having equal rights and privileges to whites.¹⁷³ In December 1816, catalyzed by New Jersey Presbyterian minister Robert Finley, businessmen and politicians set their eyes on an area in West Africa and formed the American Colonization Society (ACS).¹⁷⁴ In 1819, Congress allocated \$100,000, more than one-tenth of what the federal government had budgeted for the following year, to the establishment of an American colony in what would become known as Liberia.¹⁷⁵

While the Colonization Society sought to colonize all free black people, not just those who had been sent to prison, it still functioned as an extension of the prison for two reasons. First, America was in large part founded as a convict colony. In fact, historian A. Roger Ekirch argues that America was the largest convict colony in history with more than 50,000 of Britain's poor being condemned as criminals and sent across the Atlantic — roughly a quarter of all migrants from Britain to the American colonies.¹⁷⁶ Prior to the penitentiary, the British carceral system typically killed or exiled criminals as punishment. These punishments almost exclusively targeted the poor. The poor were important since their struggle for survival left them vulnerable to exploitation as a source of cheap labor, but they also ended up costing the State a lot in public alms. The solution was simple: convince the poor that riches awaited them in the New World and for the price of being indentured as servants for a number of years, they could be sent to the indigenous lands as violent colonizers for the British Empire. Others were forced across the Atlantic as part of their criminal punishment.

¹⁷³ Benjamin Schwarz. *The Atlantic Monthly*, "What Jefferson Helps to Explain." March 1997, Volume 279, No. 3, pages 60-72.

¹⁷⁴ Reverend Finley was fearful of the rising population of free black people and the hostile race relations. He, along with most white abolitionists and slaveholders, believed that black people and white people could not coexist together and that the solution should be to colonize black people to Africa. Allegedly, he believed that the American Colonization Society would help motivate an end to slavery and a return to a white utopia, but it almost exclusively consisted of sending away free black people, helping maintain the structure of Southern chattel slavery. Eric Burin, *Slavery and the Peculiar Solution: A History of the American Colonization Society* (Gainesville: University Press of Florida, 2005).

¹⁷⁵ "Act in addition to the acts prohibiting the Slave Trade," 3 Stat. 532, 1819. Budget calculated from the *Acts of the Sixteenth Congress of the United States*, December 14, 1819.

¹⁷⁶ A. Roger Ekirch. *Bound for America: The Transportation of British Convicts to the Colonies, 1718-1775*. Clarendon Press, 1987. 26-28.

The effect was the same; most, if not all of the convicts that formed Virginia and some of the original colonies were poor. In the end, the poor were used in the imperial interests of the sending Empire, while relieving it of the financial burden of alms. Up until the Revolutionary War, Britain continued sending America its criminally condemned, and given the vast influence of British penology on the American carceral system, criminality was systematically primed as a platform for black colonization.¹⁷⁷ The idea of exiling the unwanted people and converting them for the metropole's imperial and economic interests was therefore not new to the Founding Fathers. The large black prison populations and notions of black criminality led to an ideological partnership between the prison and global colonization by means of black prisoners.

The other reason the prison played a central role in the global imperial project was that rhetoric supporting colonization went hand in hand with the criminalization of blackness. Thomas Branagan's 1805 anti-slavery tract *Serious Remonstrances* was often quoted in arguments for colonization, where he stokes fear in his readers of the increasing migration and manumission of black people in the North who "generally abandon themselves to all manner of debauchery and dissipation" in the manner of crime.¹⁷⁸ As is clear on the same page where Branagan harkens to an age-old American racial fear of innocent white girls raped by black "monster[s]," Branagan invited other white abolitionists to see the prison as a fit solution to the problem of free black people until his dream of mass black deportation and colonization could be fulfilled. Organizations created for the purpose of prison reform also took up the mantle of the ACS. From the very emergence of the Boston Prison Discipline Society in 1826, debates over colonization would use the disproportionate statistics of black prisoners to argue that black people's "character cannot be raised...to that of the whites," and therefore the only effective solution was deportation.¹⁷⁹ Whether in belief of a biological or cultural inferiority,¹⁸⁰ many other abolitionists propagated this myth of black criminality in

¹⁷⁷ Ekirch. *Bound for America*.

¹⁷⁸ Thomas Branagan, *Serious Remonstrances . . . on the recent revival of the Slave Trade*, 1805. 68.

¹⁷⁹ *The First Annual Report of the Boston Prison Discipline Society*. Printed by T.R.Marvin, Congress St. 1827. 23-25.

¹⁸⁰ The difference being whether people of African descent were described as having been born more savage or criminal than people of European descent (quite possible given how phrenology was an immensely popular way to scientifically justify racism in the first half of the nineteenth century), or whether they were made brutish by their environment. Many abolitionists believed this latter principle, that black people had been made depraved and criminal by slavery, but others believed (or at least argued) there was a genetic difference between races. In either case, most every white abolitionist believed that black people were more prone to criminality.

the same breath as they advocated for the end of slavery, revealing ulterior economic and political motivations for their abolitionism.

In the report mentioned above, the Boston Prison Discipline Society discussed in detail their theories behind why white people committed “crimes” — typically as a consequence of poverty. And yet, with a disproportionate abundance of black prisoners across every Northern state, they were unwilling to ask the same questions as to the origin of “black crime.” Their belief about the criminality of poor whites was shared by almost all other political and charitable organizations, and parroted the language used to justify the original arguments for rehabilitative imprisonment in seventeenth-century Britain — that poor people commit crimes due to their lack of participation in the capitalist economy. Black people were the essential bottom rung for the industrial capitalist economy, but given abolitionist’s desire to use them to colonize Liberia, they were reported as non-rehabilitable. It is no coincidence that economics also were central to their demonization of black people. Besides helping establish the white utopia so many white Americans desired, colonization was supported by many big businesses and banks as it would increase American global imperial power and produce valuable resources like cocoa, rubber, coffee, and gold through the forced labor of native Liberians.¹⁸¹ As a testament to the predominance of money motivating the desire to deport black prisoners, the Prison Discipline Society’s main argument for why disproportionate black incarceration was bad was not to address racism, but because of the heavy financial burden it supposedly lay on the State (though many prisons broke even or even earned a profit off of the contracted prison labor). They even go so far as to break down how much money each Northern state was paying to manage its black prisoners.¹⁸²

While the deportation of free black people was generally agreed upon by white political figures, as the prospect of colonization entered more into the mainstream popular culture, colonization branded itself as part of the so-called moral reforms of the era.¹⁸³

¹⁸¹ David Brion Davis. *The Problem of Slavery in the Age of Emancipation*, published by Alfred A. Knopf, 2014. Page numbers were not included in the online databases I used to read this book, but the cited information can be found in “Chapter 4. Colonizing Blacks, Part II: The American Colonization Society and Americo-Liberians.” See especially citation 34.

¹⁸² *The First Annual Report of the Boston Prison Discipline Society*. Printed by T.R.Marvin, Congress St. 1827. 23-25.

¹⁸³ This is just one take on the political motivations behind the ACS, as scholars have demonstrated a wide variety of different potential rationales for colonization. That being said, it is significant to recognize how the people targeted — primarily working-class black people — were almost entirely opposed to the organization,

Supporters claimed that deportation to Liberia was the nicest thing for black people — that free black people would not succeed in white society, but could have a chance to establish themselves in a uniquely African context. They also claimed that they were helping black people return to their homeland, despite most of the targets for colonization having lived generations in America.¹⁸⁴ The alleged generosity of the colonization efforts only extended to free black people; those still in slavery were excluded.

Massive protest from black Americans obstructed the endeavor's success. One month after ACS organized, middle-class and influential black leaders organized a meeting in Mother Bethel AME church in Philadelphia to rally support of the black community for colonization. Their motives were in stark contrast to the racism of the ACS, believing that America would never be a safe space to be black and that black Americans needed to form an independent state, but they were immediately met with opposition. In a letter to the black colonization-supporter Paul Cuffee, James Forten wrote that “not one sole [sic]” of the three thousand attendees “was in favor of going to Africa.” They believed that the South was strategically trying to expel every free black person in America to further fortify the institution of slavery and protect against outside organization and support of enslaved rebellions.¹⁸⁵ The unified resistance from the black working class and poor had a profound effect on the leaders; by the second black-led colonization meeting eight months later in August 1817, Forten and all the other influential black speakers and writers were in full opposition to colonization.¹⁸⁶ This message was widely spread by the black radical David

and the long history of Enlightenment humanitarianism being used as justification for ulterior economic and political agendas. See *New Directions in the Study of African American Recolonization*, ed. Beverly C. Tomek and Matthew J. Hetrick, University of Florida Press, 2017.

¹⁸⁴ One tactic of control when slave ships docked in the New World was to separate enslaved Africans from people in the same ethnic groups and regions as them, with the goal that they would not be able to talk to each other and build kinship networks so that their sense of self, culture, and ability to resist would be suppressed. Still, Africans held captive in the Americas found ways to furtively carry their culture, language, and sense of self with them, formed vast networks of connection and kinship, and in many ways resisted efforts to control them.

¹⁸⁵ Though quite speculative, there is a possibility that this early and unilateral black resistance to colonization helped ward off even greater reliance on the prison. Given how black criminality was one of the major rhetorical strategies used to advocate for colonization, if the ACS had been allowed to grow as an organization and American businessmen reaped the profits of a larger Liberian colony, there would likely have been an even more widespread carceral push to imprison black people as justification to forcibly transport them to Liberia as unrehabilitable criminals.

¹⁸⁶ William L. Katz. “African America’s First Protest Meeting: Black Philadelphians Reject the American Colonization Society Plans for Their Resettlement.” April 17, 2015. Retrieved from <https://www.blackpast.org/african-american-history/african-america-s-first-protest-meeting-black-philadelphians-reject-american-colonizati/>

Walker in his *Appeal to the Coloured Citizens of the World* to rise up against their white oppressors, as well as black Christian ministers like the famous Reverend Richard Allen.¹⁸⁷ Though the American Colonization Society failed to deport more than a couple thousand of black Americans to Liberia, they still profited through the forced labor of the native Africans in the land they occupied. As America's first colony, Liberia also helped pave the way for the expansion of the American empire as a growing world power.

Conclusion

Unlike black people in America, American Indians did not make up a disproportionate number of the early penitentiary populations. There are many interconnected reasons for this. To start, the costs of building and maintaining the penitentiary (as well as the required organization and structure to reinforce its high security) meant that it was more feasible in urban and industrial areas moving away from chattel slavery than it was in the violently seized territories of westward expansion. That greater American Indian imprisonment in the penitentiary did not emerge until almost forty years after Walnut Street's remodelling is similarly related to the difference between America's relationship to race and to indigeneity. People of African descent were forcibly brought to the land as prisoners for racial capitalist expansion, whereas the very existence of Native nations undermined the settler-colonial project of the domestic American Empire, from sea to shining sea. Thus, America by and large desired to increase the number of black people under its control (this includes slavery in colonies abroad as well as cultural constructions of race like the 'one-drop rule'), and eliminate or gradually erase indigenous peoples (through genocide, forced assimilation, and strict 'blood quantum' rules that restrict many people from being recognized by the federal government as American Indian).¹⁸⁸

¹⁸⁷ David Walker. *Walker's Appeal, in Four Articles; Together with a Preamble, to the Coloured Citizens of the World, but in Particular, and Very Expressly, to Those of the United States of America*. Self-published in Boston, Mass. September 28, 1829. pp 49-84. Richard Allen's address on colonization is included in Walker's *Appeal*, pages 63-65, and originally published in the first black American newspaper, *Freedom's Journal* for Nov. 2, 1827, vol. I, No. 34.

¹⁸⁸ The history of race in America is complex and not always uniform. In the antebellum period, white people generally considered it necessary to distinguish between what they viewed as different races of people. To maintain the 'purity' of people who believed themselves white, any visible phenotypic features attributed to people of African descent were characterized as black, even if they had mostly European ancestry. This became more formalized in the twentieth century with the colloquial term "one-drop rule," that characterized anyone with even the remotest African ancestry as black. Some cities and states even codified these racial qualifications into law. Michael Omi and Howard Winant. *Racial Formation in the United States: From the 1960s to the 1990s*. New York: Routledge. 1994. Many indigenous writers have described the various systematic processes of disenfranchisement. One of these is the Standing Rock Sioux scholar and activist Vine Deloria, jr., whose

At the time of the penitentiary's creation in the late eighteenth century, most Native nations existed west of the original thirteen states, a border that the US treated with military warfare, corporate exploitation, and deceitful treaties. As the country continued colonizing westward, major criminal codes like the General Crimes Act were written to use law to reject and undermine the sovereignty of Native nations and their governments. By 1830 and Andrew Jackson's presidency, US westward expansion increasingly ran up against Native confrontation and the prison became a major mode of controlling resistance. Over the next few decades, the relationship between American Indian nations and the federal government was defined more and more by laws such as the Indian Appropriations Act, the General Allotment Act, and the Major Crimes Act of 1885.¹⁸⁹ As the US-Indian relationship became defined by criminal law, Native peoples became seen and treated unilaterally as criminals. This pattern exists to this day with huge disproportionate numbers of Native people in US prisons, Native men being killed by police at a rate equal if not greater than that of black men, and US courts even invoking such legacies as the 1873 Modoc Indian imprisonment as a means of justifying killing American Indians as terrorists.¹⁹⁰

At the same time as the prison was used to grow and fortify federal power over the sovereignty of Native nations, the prison helped concretize and justify American imperialism abroad. This began with the colony of Liberia, but continued with other imperialist endeavors, such as the colonization of the Philippines following their independence from Spain in 1898, a struggle throughout which the prison and State carceral powers played a major role.¹⁹¹ This same relationship between carcerality and colonialism has been

brief overview of this history is particularly relevant as it compares the American imperial relationship between black and indigenous peoples. *Custer Died for Your Sins: An Indian Manifesto*. New York: Macmillan Press, 1969. 1-27.

¹⁸⁹ The Major Crimes Act was an extension of the General Crimes Act that characterized all forms of Native restorative justice as "savage" and mandated that all major crimes, including those occurring between indigenous parties on tribal land, be regulated by the federal government. This allowed white settlers (who lived in Indian country following the General Allotment Act) free reign to commit crimes and acts of harm against Indians as the federal government often refused to hear these cases, but also refused for tribal courts to try them. Deloria jr., *Custer Died for Your Sins*, 8-11.

¹⁹⁰ For disproportionate Native prison populations, see Roxanne Daniel, "Since You Asked: What Data Exists About Native American People in the Criminal Justice System?" *Prison Policy Initiative*, April 22, 2020. Web. For disproportionate amount of police murder victims, see Center for Disease and Prevention data as reported by Elise Hansen, "The Forgotten Minority in Police Shootings," *CNN*, November 13, 2017. For the invocation of the Modoc Indian Imprisonment as justification for treating Natives as terrorists, see Dunbar-Ortiz, *Indigenous History*, 223-24.

¹⁹¹ Aaron Abel T. Mallari. "The Bilibid Prison as an American Colonial Project in the Philippines," *Philippine Sociological Review*, 1 January 2012, Vol.60, pp.165-192.

demonstrated by many historians of European imperialism into Africa, South America, and Asia. As a mechanism of asserting and maintaining power, forcing the colonized peoples to adopt Western criminal law and prisons was one of the first and most harmful tactics of imperialism.¹⁹²

Though themes of racial capitalism are ever-present and mentioned in this thesis, the economic incentives behind colonial carcerality cannot be understated and deserve more explicit review. The legacy of carceral colonialism and its economic backbone around the world continues to the present day.¹⁹³ America still has an economic foothold in Liberia and controls the export of raw materials like rubber, oil, and diamonds. Liberia's shipping and corporate registry, which is the second largest in the world, is both owned and operated by the United States. This follows the model of modern capitalist extraction: The United States funnels valuable resources out of the country, while importing industrial machinery to produce these raw materials as well as cheap products. This process destabilizes local economies and drives local farmers out of business so the people have to depend on outside sources for food production. Hence, the biggest import from the United States to Liberia is rice.¹⁹⁴ As the criminalization of black and Native peoples formed the basis of domestic and global imperialism, the role of colonialism needs to be recognized as central to the project of the American prison, both now and since its origin.

¹⁹² “My pondering also helps me to reach a second conclusion: the prison in the Nigerian context is not an instrument of reformation but an instrument of perpetual slavery and persecution employed by the privileged against the underprivileged.” Quote by Osadolor Eribo, “Another Face of Slavery” *Colonial Systems of Control: Criminal Justice in Nigeria*, ed. Viviane Saleh-Hanna, University of Ottawa Press, 2008. 123 (the entire book is a powerful indictment of carceral colonialism). See also Graeme Harper, *Colonial and Postcolonial Incarceration*, Continuum Press, 2001; Bronwyn Dobchuk-Land, “Resisting ‘progressive’ carceral expansion: lessons for abolitionists from anti-colonial resistance,” *Contemporary Justice Review*, 02 October 2017, Vol.20(4), pp.404-418; Daniel Branch, “Imprisonment and Colonialism in Kenya, c.1930-1952: Escaping the Carceral Archipelago,” *The International Journal of African Historical Studies*, 1 January 2005, Vol.38(2), pp.239-265; Marilyn Brown and Barbara E. Bloom, “Colonialism and Carceral Motherhood: Native Hawaiian Families Under Corrections and Child Welfare Control,” *Feminist Criminology*, April 2009, Vol.4(2), pp.151-169; and Theresa Ventura, “Prison, plantation, and peninsula: colonial knowledge and experimental technique in the post-war Bataan Rice Enrichment Project, 1910-1950,” *History and Technology: Empires of Knowledge*, 03 July 2019, Vol.35(3), pp.293-315; among others.

¹⁹³ Economic historian André Gunder Frank traces how the closer a nation or communities was to the core of capitalist exploitation during the imperialist eras of past and present, the more underdeveloped their economies were. This extraction process often occurred through what Frank calls “satellite cities” that were Westernized first and destroyed surrounding indigenous economies to rope them into the exploitative capitalist economies that only benefited the metropolises in Europe. By this history, capitalism and Westernization did not improve but actively destabilized the economic and social infrastructures of indigenous communities around the world, a process that was aided and often catalyzed by the prison and police. Frank, “The Development of Underdevelopment,” 4-17.

¹⁹⁴ *Bureau of Public Affairs*, “US Relations with Liberia,” 13 July, 2016. <https://2009-2017.state.gov/r/pa/ei/bgn/6618.htm>

Ch. 3 - Black Vigilance and the Superlegal Slave Trade

Do you see law and order? There is nothing but disorder, and instead of law there is the illusion of security. It is an illusion because it is built on a long history of injustices: racism, criminality, and the genocide of millions. Many people say it is insane to resist the system, but actually, it is insane not to.

— Mumia Abu-Jamal, black American political prisoner and MOVE activist, 2004¹⁹⁵

Early in the morning of April 4, 1837, William Dixon was unexpectedly assaulted by a gang of New York police officers on his way to work. A black man in America, Dixon's life had conditioned him to avoid law enforcement, but the officers were experienced kidnapers and had snuck up on him. In a short scuffle, the police overpowered him and quietly dragged him to Bridewell prison where he would wait in fear, knowing full well that what happened next would determine his fate for the rest of his life. Many black prisoners had languished in the same tiny and airless stone cell where Dixon now was held, only to be sold by New York officials into slavery in the South. After a week, guards entered William Dixon's room, shackled his body, and covered his head. They blindly led him into the New York City courthouse to stand trial before the City Recorder Richard Riker, a judge infamous for using the criminal justice system as a slave market.¹⁹⁶

Dixon's kidnapping was tragically common in the antebellum "free" North. To be black in antebellum America meant that at any moment's notice, one's freedom could be completely stripped. Neither did the systematic kidnapping discriminate based on whether the victim had escaped from slavery or was legally free – both self-emancipated and free black people were constantly under the threat of being stolen into slavery.¹⁹⁷ All across the North, the "kidnapping of free black people, especially children, for sale to the South" exploded in response to gradual emancipation, to such a degree that historian Eric Foner could only call "an epidemic."¹⁹⁸ Historical scholarship has covered how racial kidnappings were often

¹⁹⁵ Mumia Abu-Jamal, *Death Blossoms*, South End Press; Cambridge MA, 2004. 11.

¹⁹⁶ The police officers included Tobias Boudinot and Daniel D. Nash, two notorious members of New York's carceral "kidnapping club," as well as Baltimore police officer A. G. Ridgely. "More Slave Trouble." *The Herald*, April 12, 1837; "To the Thoughtless Part of our Colored Citizens." *The Colored American*, April 15, 1837. From the collection and analysis of the New York Historical Society that compiled a summary report of the Dixon case called *Black Vigilance*. http://www.nydivided.org/PDF/Unit2_Final.pdf.

¹⁹⁷ Carol Wilson, *Freedom at Risk: The Kidnapping of Free Blacks in America 1780-1865*. 9-39.

¹⁹⁸ Eric Foner, *Gateway to Freedom: the Hidden History of the Underground Railroad*, New York: W.W. Norton & Company, 2016, 50.

furtive operations orchestrated by slaveholders or hired agents, but there is little to no scholarship on the way the carceral institutions of the local and federal governments ordained and even orchestrated a large percentage of these kidnappings.¹⁹⁹

Interestingly, in the decades leading up to the Civil War many Northern state legislatures passed laws banning the private kidnapping of black people. There were various distinct motivations pressuring the legislatures for these bills, but they all neglected to address the ways in which kidnapping happened through the prison. Though private kidnappings were rarely prevented by these laws, the fact that Northern governments passed anti-kidnapping legislation while they continued to kidnap black people in a *superlegal* manner shows the beginning of a State monopoly of violence and kidnapping that would come to define criminal justice in America. As more and more black people moved into the North and found their freedom, the local and federal reliance on police and prisons expanded.²⁰⁰ As chattel slavery was increasingly becoming less profitable than wage slavery in the North, mass black imprisonment was less significant as a source of convict labor than it was for the impact it had on the general black population not in prison. By blurring the lines between fugitive and free, the superlegal kidnapping system extended a blanket criminalization over the entire Northern black population. By eroding any semblance of black security, the prison functioned to keep the labor of every free black civilian exploitable.

Finally, this history of the prison should not and frankly cannot be told without drawing in the massive resistance that came from black communities, both individual and organized. While middle-class black commentators tended to critique the violence of the grassroots and poor black struggle, the anti-prison struggle found unity among the two groups, particularly through the leadership of young firebrand activists like David Ruggles.

The Superlegal Slave Trade

In 1784, four years after Philadelphia passed their gradual emancipation laws, Emmanuel Carpenter was arrested and imprisoned under the accusation that he had escaped from slavery. Philadelphia's Walnut Street jail population had experienced a massive boom in the number of black prisoners charged as fugitive slaves following the elusive future

¹⁹⁹ See Foner, *Gateway to Freedom*; Wilson, *Freedom at Risk*; among others. Wilson has a chapter on kidnapers working within the law, but even this is only recognized as private individuals taking advantage of racist laws and not how the prison systematically targeted and funneled black people into slavery.

²⁰⁰ *First Annual Report (NYCV)*, particularly 8-9.

promise of emancipation, but Carpenter's case was different. He had been a free man his whole life, born to free parents in Jamaica around 1745 and immigrating to Philadelphia as a cooper's apprentice. While there is a good chance that others of Philadelphia's black prisoners were falsely accused of having been enslaved, Carpenter was known by many as a free man, having fought in both the Seven Years' War and the Revolutionary War, and having worked for years in the area making wooden barrels, casks, and other common storage products. His employer, William Hamilton, took advantage of the State carceral systems to sell Carpenter into lifetime slavery, and the whole system willingly obliged.²⁰¹

Carpenter was by no means the only free black person kidnapped through the first prisons in the North. Numerous New York newspaper advertisements in the second half of the eighteenth century show how easily free black prisoners could be taken into slavery — no proof or trial was required, just the word of a white person and “paying the lawful costs and charges.”²⁰² This was even more pronounced by the fact that black prisoners who were never 'claimed' as fugitive slaves by kidnappers were frequently advertised and sold into slavery to cover the costs of their jail fees.²⁰³ That Massachusetts and Pennsylvania passed basic anti-kidnapping laws before the US Constitution came into effect shows the pervasiveness of kidnapping in colonial America before the first Fugitive Slave laws. While these laws were barebones and ineffective attempts at curbing kidnapping, they show that there were already political forces pushing against human trafficking.²⁰⁴ These laws, however, uniquely targeted private kidnappers, not the systems of State-sanctioned kidnapping. Courts and prisons as arbiters of the law operated above the law, continuing this superlegal slave market through arrest warrants and the empty ritual of fugitive slave trials. Similarly, in 1785 Pennsylvania passed a prisoner rights law due to concern that the State was abusing its power to arrest white civilians, leaving out any mention of kidnapping or the quickly growing black prisoner population accused of escaping slavery.²⁰⁵ In this manner, the early prison was excused in

²⁰¹ Gary B. Nash. *Forging freedom: the formation of Philadelphia's Black community, 1720-1840*. Harvard University Press, 1991. 54-55.

²⁰² Examples in *New York Weekly Post-Boy*, February 12, 1749/50; April 16, 1750; November 19, 1759; January 8, February 26, 1770; *New York Mercury*, November 9, 1761; March 5, 1770; March 8, 1773. Retrieved from McManus, *Negro Slavery*, 116.

²⁰³ *New York Mercury*, October 22, 1770; March 8, April 12, 1773; *New York Gazetteer*, March 31, 1784.

²⁰⁴ Thomas D. Morris. *Free Men All: The Personal Liberty Laws of the North 1780-1861*, The Johns Hopkins University Press, 1974. 25-28.

²⁰⁵ “An act for the better securing personal liberty and preventing wrongful imprisonments.” February 18, 1785, 2 Smith's Laws 275, § 1, 12 P.S. §§ 1871-1873. See also Richard Vaux. *Some Remarks on the Writ of Habeas*

being one of the primary institutions of kidnapping free black people into violent and lifelong servitude and served in all practical forms as a slave market since its origin.

In 1793, the State-sponsored kidnapping of self-emancipated black people evolved from a less organized and sporadically enforced process to a strict, universally mandated machine. The US Congress passed a federal Fugitive Slave law that was viewed by many slaveholders in political power as the fulfillment of the clause in the U.S. Constitution, which promised the return of indentured or enslaved laborers who escaped. Under the 1793 law, police and courts in every part of the nation were mandated to cooperate in the return of self-emancipated people if the alleged slaveholder could offer substantial “proof” of prior claims to their body and labor.²⁰⁶ This proof could consist of anything from a fabricated receipt to the testimony of a white man – something that was almost impossible to refute as black people were legally not allowed to testify against whites. As prisons evolved and expanded across the North, the criminal justice system became central in an above-ground slave market run by the State that both turned a blind eye to their victims’ slave status and often intentionally targeted free black people.

This was particularly the case for black leaders who the State feared might lead black people into resistance. In 1806, prominent community activist Richard Allen was arrested under a sheriff’s warrant as a fugitive slave. Allen was well-known by whites and black people across the nation and his free status was not a matter of debate. Instead, as a black Methodist preacher and founder of both the first independent black American church and the Free African Society, Allen was a danger to the racial hierarchy of white America. The black community and white abolitionists fought back against Allen’s arrest and he was soon released, but the kidnapping attempt loomed over the heads of every black person in Philadelphia that no one was safe.²⁰⁷

Over the next couple decades, the expanding prison system in the North only grew in targeting its black communities. By 1815, 43% of Philadelphia's prison population was black, despite the War of 1812 having just ended and British soldiers occupying American prisons

Corpus: And Proceedings under the Same. Philadelphia, G.W. Johnson, printer, 1843; as well as footnotes 7-10 from the Justia US LAW summary of *United States v. Rundle*, 221 F. Supp. 1003 (E.D. Pa. 1963). Web.

²⁰⁶ 1 Stat. 302. Act of Congress of 1793, signed into law by George Washington, John Adams, and Jonathan Trumbull on February 12, 1793.

²⁰⁷ Nash, *Forging Freedom*, 242.

en masse.²⁰⁸ For the next seven years after the War, America experienced an economic depression that became the first major US financial crisis.²⁰⁹ The fearful atmosphere and financial depravity that followed the war allowed the criminal justice system to further tilt the prison system against black organizing power and resilience. Wealthy politicians and business owners were eager to shift the blame for the majority of white Americans' financial woes away from the exploitative and fragile economy they had built. The growing free black population became an easy scapegoat. Despite having more than enough wealth to cover the basic needs of those struggling to survive, politicians and business owners repeatedly riled up the public to believe the economy was bad because of free black people who had stolen poor white people's jobs.²¹⁰ In New York State, magistrates encouraged desperate whites to sue free black people over trivially small debts. Grand juries refused to hear the cases, and unable to pay, the targeted black debtors were thrown in prison, putting their freedom in jeopardy.²¹¹

As New York continued expanding the number and size of its public prison system, the state's Supreme Court passed laws that reinscribed its role in State-sponsored kidnapping. One of the pivotal laws came in 1817, the same year Auburn opened, dealing with the claims to ownership over a young man named Primus. Primus had escaped from his slaveholder's violence in 1802 and made his way from Connecticut to New York. Edward Chappie, the man who claimed ownership over Primus, hired police to capture Primus in New York, where he remained imprisoned in New York's prison system for Chappie to attend to other business. Chappie allowed the prison sheriffs to hire out Primus' labor as they saw fit, and the officers often took Primus with them when they travelled overseas. A miscommunication over money led both the lead sheriff Joseph Skinner and Chappie to respectively claim ownership over Primus. Chappie issued a writ *de homine replegiando* — a legal tool to challenge unlawful imprisonment — in an attempt to force the sheriff to hand the young man over and take him to court. Unwilling to do so, Skinner gave Primus over to his legal counsel Mr. Burr, a man

²⁰⁸ While some British prisoners of war might have been detained in Philadelphia, most POW during the War of 1812 were sent deep into US territories. This is explored more in Chapter 2. For Philadelphia prison statistics, see Nash, *Forging Freedom*, 214.

²⁰⁹ The Napoleonic Wars between the French and British empires (of which the War of 1812 was a part) led to an economic collapse in Europe that quickly translated to the American markets. This was facilitated by the vast expansion of banks and too-good-to-be-true loans in the years leading up to 1819. Both European and American industrial economies had relied on the cheap labor of the poor who for the last number of years were forced to fight their leaders' wars and were unable to work. See Murray Rothbard, *Panic of 1819: Reactions and Policies*, Columbia University Press, 2002. 1-24.

²¹⁰ Nash, *Forging Freedom*, 227.

²¹¹ *Ibid.*

who wanted nothing to do with Primus. In the chaos of the trial and Burr's refusal to receive Primus, the young man escaped again, leading Chappie to sue Skinner for compensation over what he saw as lost property. In the landmark case of *Skinner v. Flett*, the New York Supreme Court decided in Chappie's favor, paving the way for writs of replevin and *habeas corpus* to be used by any white man directing sheriffs to surrender black prisoners to them unless there was an excess of proof that the prisoner was a free person. Claims to the ownership of a black person as property fell under civil law and gave the claimant the burden of proof. Criminal law, and the entire carceral system, thus became a near-perfect mechanism of undermining the freedom of every black person in the antebellum North.²¹²

Skinner v. Flett granted white men unprecedented access to arbitrarily claim black prisoners as their property, through the use of a writ *de homine replegiando*.²¹³ This practice was adopted from common law in medieval England and designed to defend English citizens from unfair imprisonment, allowing them release on bail if security measures were ensured that the prisoner would show up in court later to answer the charges against them. While white prisoners would typically get the opportunity to defend themselves by a fair trial, this was rarely granted to black victims. By making fugitive slave cases a matter of criminal law and not civil claims to property, New York and other Northern courts gave slaveholders and kidnappers near-limitless access to laying claim to the freedom of all black people in the North, regardless of their free status.²¹⁴ While there are times when abolitionists were able to use writs to secure the release of free black men imprisoned as fugitive slaves, this process was incredibly slow and typically ineffective, so on-the-grounds work meant much more to the black people whose lives were constantly at risk.²¹⁵ When abolitionists attempted to use the writ *de homine replegiando* in defense of black prisoners in 1834, the Supreme Court referred to the federal Fugitive Slave Act of 1793 and wrote "the right of legislation on this subject [of fugitive slaves] belongs exclusively to the national government."²¹⁶ Other

²¹² "Skinner v. Fleet, 14 Johns. 263 (1817)," *Caselaw Access Project*, Harvard Law School.

²¹³ Dallin H. Oaks, "Habeas Corpus in the States - 1776 - 1865," *University of Chicago Law Review*, vol. 32 iss.2, Winter 1965. 243-288.

²¹⁴ McManus, *Negro Slavery*, 115-8.

²¹⁵ Historian Richard Newman documents five cases of abolitionists successfully freeing black prisoners on writs between 1796 and 1798. "'Lucky to be born in Pennsylvania:' Free Soil, Fugitive Slaves and the Making of Pennsylvania's Anti-Slavery Borderland." *Slavery & Abolition*, vol.32, no.3, September 2011. 423.

²¹⁶ Jack, a negro man, v. Martin (1834), documented by Jacob D. Wheeler, *A Practical Treatise of the Law of Slavery, Being a Compilation of all the Decisions Made on that Subject, in the Several Courts of the United States, and State Courts* (New York, 1837), 384.

Supreme Court decisions, like *Trongott v. Byers* in 1826 that adopted a federal ruling that essentially criminalized black people as slaves until proven innocent, only continued to reinscribe into criminal law that prisons were institutions of slavery in an era of abolition.²¹⁷

While the states were feuding over political representation and the question of black freedom, the federal government capitalized on the moment to expand carceral power in its capital. In 1826, the federal government took \$5,000 out of the public treasury to rebuild and expand on the capacity and security of the public prison in Washington DC, and \$10,000 to build an entirely new State penitentiary in Alexandria, VA, less than ten miles away.²¹⁸ In May of the following year, 1827, the DC's government passed a law that required every free black person in the district to prove their free status at penalty of imprisonment as a fugitive slave, regardless of the truth of this charge. Proving one's freedom was already a complicated process since officials often rejected free papers or even disposed of them. This law magnified the difficulty of free persons' residency in the district, requiring every black person to have two white "sureties" with them and make an insurance payment of \$500 every three years. This was impossible for most black laborers who earned less than that amount in the three years in between each renewal, and the inability to pay resulted in a twelve-month prison sentence. Before the end of the twelve months, black prisoners who had already proven themselves to be free would be sold into slavery to pay for their "prison and other expenses, as the law directs."²¹⁹ The American Anti-Slavery Society lamented that "by this law color is made a crime," but stopped short of condemning the system as a whole.²²⁰ Still, the public prison served to threaten all black people who did not immediately escape the city with the fate of lifetime bondage. In the five years following 1827, upwards of 750 black

²¹⁷ *Trongott v. Byers*, 5 Cowens New York Reports 480 (New York Supreme Court, 1826). When a white person claimed a black employee as a slave, the burden of proof rested on the accused. It also mandated any wages that an enslaved black person makes hired out to another employer must go to the slaveholder.

²¹⁸ According to the CPI inflation calculator, the buying power of \$10,000 in 1826 is roughly equivalent to \$259,000.00 in 2020. www.officialdata.org/us/inflation.

²¹⁹ "Slave Market of America." Broadside published by the American Anti-Slavery Society, 1836. Retrieved from the Library of Congress. Quote stated as a matter of fact by James Williams, Keeper of the Prison of Washington County, DC.

²²⁰ The AASS and other white abolitionists were not concerned with the overwhelming disparity of black prisoners in the earliest prisons, nor much of the superlegal kidnapping trade happening in Northern prisons. Instead, it was not until the South began mobilizing the prison as a threat to expel black inhabitants — whose likely destination was the North — that the Northern abolitionist societies called the situation a "perver[sion] from the purposes for which they [prisons] were designed." There are, of course, many more factors at play in the abolitionist reaction to DC's expansion of prisons, but politics and power remain at the center of this narrative.

people were imprisoned under this law, at least 450 of these being acknowledged as legally free.²²¹

The newly built prison had underground solitary confinement portions reserved for black prisoners who would be sold into or returned to slavery.²²² The remaining prisoners, a majority of whom were white, were detained in more communal quarters above. If solitary confinement was a primarily humanitarian and reflective invention, the racial makeup of the facility would be flipped. White prisoners were to return to society within a number of years, and if solitary confinement was seen as rehabilitative, they would be the primary target. Black “fugitives” would not be released to white society, but trafficked to plantations. However, when tasked with the question of where to put self-emancipated black prisoners, the prison engineers imagined solitary and dungeon-like cells. This was not as a means of reforming their captives, but as a system of power and brutal subjugation. The racial nature of solitary confinement showed the priority public prisons had in preventing black prisoners from organizing together or escaping. It would seem, then, purpose of the public prison was thought to be more about fortifying slavery than repressing street crime. Though the function of an institution is far more important than the intent behind it, it is curious to see if the same conclusion might be extended to penitentiary systems in the North like New York and Philadelphia, whose systems of solitary confinement were even more widely used than in DC. Newgate architect and financier Thomas Eddy wrote that solitary confinement was recognized as “too severe” a punishment for ordinary crimes and still advocated its use and expansion for more “hardened and atrocious offenders.”²²³ Eddy’s open acknowledgement of the disproportionate number of black prisoners as “additional proof of the degeneracy of the blacks” suggests that they were more likely to be sent to solitary confinement than white prisoners, but these statistics were not included in his or various other reports on early Northern penitentiaries, and this conclusion is merely speculative.²²⁴

²²¹ AASS, “Slave Market of America” (1836).

²²² Ibid.

²²³ Thomas Mears Eddy. *Account of the State Prison or Penitentiary House, in the City of New-York*. New York City: Isaac Collins & Son, 1801. 32. For quote explaining the use of solitary confinement as a torturous punishment reserved based on alleged criminality, see *Statistical View of the Operation of the Penal Code of Pennsylvania*, 1817, passim; Lownes, op. cit., pp. 12-13, 19ff, as cited by Harry Elmer Barnes, “Historical Origin of the Prison System in America,” in *Journal of Criminal Law and Criminology*, vol. 12, iss.1, 1921, 48.

²²⁴ Eddy. *Account*. 86.

In 1831, the Washington DC legislature passed a law that gave private citizens the right to open and operate private prisons. With the same law came "a license to trade or traffic in slaves for profit, whether as agent or otherwise," going to no lengths to hide that these private prisons were intended as militarized slave markets.²²⁶ The license to operate a private prison cost \$400, an amount directly applied to the district Canal Fund. Whether the DC government was desperate for money for public projects or they were pressured by private citizens who wanted in on the slave trade, in either case the State saw the prison as the best way to achieve this and maintain control over the logistics of operation. Businessmen leapt on the opportunity. A single private prison, operated by Isaac Franklin and John Armfield out of Alexandria, VA, boasted a yearly sale of more than one thousand black adults and children into slavery. As their purpose was exclusively for the capture and sale of both free and fugitive black people into slavery, groups like the American Anti-Slavery Society called these facilities slave prisons.²²⁷

Just a few months later, North Carolina passed the *Act Concerning Slaves and Free Persons of Color*, which required sheriffs to arrest and imprison any enslaved black person brought in from out of the state.²²⁸ This was one of a series of black codes passed following a four-day long enslaved rebellion led by Nat Turner, one which historians consider to be the most violent and sustained black uprising to have taken place in the United States.²²⁹ Slaveholders across the South were terrified that the former system of plantation justice was unable to maintain control over those they held in captivity, and quickly turned to the State and criminal law for help. Virginia, Louisiana, Alabama, and North Carolina passed laws that increased the numbers of armed slave-patrol police, constricted black preachers and religious services, restricted black access to firearms, and even criminalized free black people from living in the state.²³⁰ These black codes not only recognized the need for State power to subjugate black resistance, but also explicitly outlined and empowered the State with more ability to openly orchestrate a superlegal slave trade through the prison system. To a certain

²²⁶ "Act to provide a revenue for the Canal Fund," Alderman and Common Council of the city of Washington, approved July, 28, 1831. Recorded in Andrew Rothwell's 1833 publication *City Laws*. 249.

²²⁷ AASS, "Slave Market of America" (1836).

²²⁸ "An Act Concerning Slaves and Free Persons of Color." North Carolina General Assembly, Revised code--No. 105. 1831. Retrieved from *Documenting the American South*.

²²⁹ Kenneth S. Greenberg, *Nat Turner: A Slave Rebellion in History and Memory*, Oxford University Press, 2004. 45-76.

²³⁰ Sarah N. Roth, "Laws Passed," *The Nat Turner Project*, Meredith College, 2015. Online. See also Greenberg, *Nat Turner*, 161.

degree North Carolina's 1831 *Act* functioned as an anti-kidnapping law, since it outlawed the trafficking of enslaved people into the state by private individuals. However, the black captives were not returned home and instead became property of the State. Sheriffs were ordered to arrest every enslaved person brought in from out of state and then instructed to advertise their prisoners for sale to the highest bidder. After the prisoner was sold back into slavery, the sheriff would receive a handsome portion of the profits from the sale on top of his normal salary. The North Carolina law also granted informants a reward of one-fifth of the profits from the sale of the prisoner into slavery. By this, the law not only heavily incentivized both sheriffs and white civilians to kidnap enslaved as well as free black people in and surrounding North Carolina, but acknowledged that the State's right to hold people in violent bondage supersedes that of private slaveholders.²³¹ Even when kidnapping is declared unlawful, agents of the State are not only permitted to circumvent this rule, but legally mandated to maintain and profit from the kidnapping.

Over the next few years, more Southern states, western territories, and even Northern states passed laws criminalizing black people from entering the state requiring all free black people to leave the state in twelve months or be imprisoned and sold into or back into slavery.²³² The legal purpose for many of these laws was to characterize free black people as being "opposed to the good order and well being of the white citizens thereof."²³³ An extension of the criminality already imposed on black people on the land since before it was called America, to be free and black in many states, counties, and territories around the country was to be an "insurgent."²³⁴ Other states instituted huge fees for free black people entering or passing through, passed laws criminalizing "entertaining" a slave, passed laws requiring black people to be known by whites in the community (a law easily abused by the local white community if they wanted someone gone). In each of these cases, the penalty was imprisonment. Failure to prove one's freedom gave the State permission to sell you into slavery. For black prisoners who could prove their freedom, the State often sold them into slavery anyway, using the cost of prison upkeep as their excuse.²³⁵ South Carolina, North

²³¹ "An Act Concerning Slaves and Free Persons of Color," N. Carolina, 1831.

²³² Carol Wilson, *Freedom At Risk*, 40-41.

²³³ In some states, individual counties passed these laws, like Somerset, Maryland. In others, like Virginia, the criminal law extended throughout the state. *First Annual Report (NYCV)*, 17.

²³⁴ Language from the 1836 law passed in Somerset, Maryland. *Ibid.*

²³⁵ The American Anti-Slavery Society. *Slavery and the Internal Slave Trade*, originally published 1841, reprinted by Kessinger Publishing, 2010. 269-272.

Carolina, Georgia, Florida, Alabama, Louisiana, and Texas all held laws that required all ships and vessels to submit their black seamen to arrest while they remained in the wharf, with an exorbitantly high cost to retrieve them from prison. As the price was too high for most ship captains who moored in the South, they usually left without them. The abandoned prisoners — both American and foreign nationals — would then be sold into slavery for their prison fees.²³⁶ In early 1823, South Carolina's *Negro Seaman Act* was challenged by British consulates whose merchants had lost many men to the laws. Northern abolitionists jumped on the opportunity to challenge Southern slaveholding power and after six months of bitter contestation, the federal courts ruled against South Carolina. While the state made a few small concessions to the law, they ultimately ignored the decree and continued imprisoning black seamen with no recourse from the federal government. In December of 1830, continued pressure from British merchants brought the matter back into the court, to which President Andrew Jackson and his attorney general encouraged South Carolina to ignore the ruling and continue with their law as a necessary measure of internal police and fully constitutional. In 1835, South Carolina doubled down on the severity of the Seaman Act in response to the continued political discord it caused. Over the course of the two decades following South Carolina's original law, an estimated 10,000 black sailors and ship crew were imprisoned under the Southern seaman acts.²³⁷

In the North, the growth of black communities was gravely threatened by frequent kidnapping. Throughout the first half of the nineteenth century, thousands of self-emancipated black people entered the North, along with free black migration – both to flee Southern racism and violence and by legal obligation, as black codes were more frequent and pervasive in the South.²³⁸ As more and more black people moved into the North in search of freedom, the State's reliance on police and prisons greatly expanded. As documented earlier, the increase in carceral control functioned to undermine any security black communities had in their freedom, and the superlegal kidnapping trade separated children from their parents, neighbors who spent years protecting each other, and trafficked large

²³⁶ For a contemporary account of the Negro Seaman Acts, see *The Liberator*, January 15, 1831. For more historical context, see Philip Hamer, "Great Britain, the United States, and the Negro Seamen Acts, 1822–1848," *Journal of Southern History*, 1935. 3–28. For more examples of black seamen's imprisonment under the law and contemporary struggles against the law, see C. Peter Ripley, *Black Abolitionist Papers: vol. iii: United States, 1830–1846*. University of North Carolina Press, 1991. 380.

²³⁷ Hamer, "Great Britain, the United States, and the Negro Seamen Acts, 1822–1848." 3–28.

²³⁸ Edgar J. McManus, *Black Bondage in the North*, NY:Syracuse University Press, 1973.

numbers of otherwise free adults and children into captivity. The exact numbers of people kidnapped and sold into Southern slavery are not known, but reports from abolitionist groups and individuals help give a picture of the horrific magnitude of the situation. This number was likely in the thousands annually. Historian Edgar J. McManus confirms this trend in a thorough analysis of the as well as a careful analysis of the U.S. Census Bureau report on the U.S. Black population between 1790 and 1850.

“Federal census returns reveal that during the period 1790-1830 the rate of growth of New York’s black population declined from 2.13 percent to about 0.57 percent yearly. In 1790 Negroes accounted for 7.6 percent of all inhabitants; by 1830 they had decreased to only 2.3 percent of the total population. This decline had parallels in almost every Northern state.”²³⁹

What McManus leaves out from his analysis is how white populations were growing faster than black populations, giving the appearance that the black population was decreasing by comparison. This being said, black Northerners were shrinking not only in proportion to white Northerners, but in their rates of growth and occasionally even in numbers. This occurred simultaneously to hundreds, if not thousands, of self-emancipated people annually making their way into the North through mass-mobilized rescue networks like the Underground Railroad. Though scholars debate the actual magnitude of black people escaping slavery as “both abolitionists and slaveholders had a vested interest in exaggerating the numbers,”²⁴⁰ various accounts suggest the total number of fugitives aided by the Underground Railroad could be as high as 100,000.²⁴¹ No evidence points to diminished childbirth, infant mortality, or other natural causes as the explanation for the decreasing growth of the North’s antebellum black population. While migration to Canada or England were occasionally options for self-emancipated people, McManus concludes that the “far more probable” reason for this demographic shift was kidnapping.²⁴²

New York was particularly unforgiving. Almost consecutively between 1815 and 1838, New York City’s criminal justice system was controlled by the Recorder Richard

²³⁹ McManus, *Black Bondage*, 182.

²⁴⁰ Foner, *Gateway to Freedom*, 4.

²⁴¹ James A. Banks, *March Toward Freedom: A History of Black Americans*. Belmont, CA: Fearon Publishers, 1970.

²⁴² McManus, *Black Bondage*, 182.

Riker, after whom the infamous Riker's island gets its name.²⁴³ Riker worked with police and slaveholders in the South to kidnap both legally free and self-emancipated black people into lifetime bondage. By the 1830's, this practice was so refined that no more than a few hours would often lapse between the initial arrest of their victim(s) and their shackled departure into Southern plantation slavery. Riker and his police officers worked odd hours and even weekends, kidnapping adults and children from their homes, from schools, from off the street, and even breaking into churches.²⁴⁴ This assured that at every moment, night and day, black Northerners needed to remain vigilant. Abolitionists across New York collectively referred to Riker and his most eager henchmen police as the "Kidnapping Club," but the entire system was complicit.²⁴⁵

However, State-sanctioned racial violence and kidnapping was not without great resistance and resilience from black communities. On November 20, 1835, one year and a half before William Dixon was arrested, a crowd of black New Yorkers met in secret to coordinate and unify the often isolated experience of everyday resistance and survival. The meeting's organizer, 25-year-old David Ruggles, was one of the key conductors of the Underground Railroad in Philadelphia and New York, and envisioned bringing the on-the-ground liberation struggle of aiding enslaved black people in their escape to the streets of New York, where pro-slavery carceral institutions constantly loomed over the freedom of its black population. The meeting was a huge success. While a large percentage of the black community in New York was jaded by the work of white abolitionist organizations like the American Anti-Slavery Society, they "promptly" and "emphatically" responded to the committee of vigilance's call for "immediate emancipation."²⁴⁶ Within weeks, Ruggles had mobilized thousands of black New Yorkers to respond to the often spontaneous call to rescue

²⁴³ Richard Riker presided over the Court of Special Sessions, the main criminal court in New York City. As City Recorder, his position also functioned occasionally as deputy mayor and gave him proximity and influence over political decisions. See "THE RECORDERSHIP" in *New York Times*, January 12, 1866.

²⁴⁴ Many such stories are available in the *Fifth Annual Report (NYCV), 1842*. Other historian Tingba Apidta describes the story of seven year old Henry Scott who "was seized as a fugitive slave from his classroom...[and] forcibly brought the terrified child before Richard Riker, the magistrate of New York City. [The police] claimed that the boy was property belonging to white Virginian Clara Haxall. Though they could not produce paperwork substantiating their wicked claim, instead of discharging the case, Riker—reputedly a former slaveholder — postponed the case and sentenced Henry to jail in the interim." Tingba Apidta, *The Hidden History of New York: A Guide for Black Folks*, Boston: Reclamation Project, 1998. 133.

²⁴⁵ Harris, *In the Shadow of Slavery*, 208.

²⁴⁶ *The First Annual Report of the New York Committee of Vigilance for the Year 1837*, (Piercy & Reed Printers, NY), 16 January 1837, 11-12.

their brethren from the hands of police or out of prison, as well as take various measures to protect their community and educate people still enslaved in New York on their rights.²⁴⁷ This was the beginning of the New York Committee of Vigilance (NYCV), which inspired other vigilance committees and black liberation groups across the North, and would soon become known across the country as one of the most radical threats to slavery and the structural subjugation of black people.²⁴⁸

Black Anti-Carceral Resistance and the NYCV

While the NYCV represented one of the most extensive and unified forms of black resistance to the early carceral State, resistance and resilience were woven into the fabric of black communities since the first days of the prison. In 1777, Job Albertson and his wife Rose were separately freed by the Quaker men who held them in captivity, following a religious ordinance banning Quaker men and women from being slaveholders. Soon after hearing of the Albertsons' manumission, local authorities put a bounty on their heads. "Night and day," Job wrote, they were "hunted by men, armed with guns, swords, and pistols, accompanied with mastiff dogs."²⁴⁹ On one particularly violent night, the two abandoned their home and hid, Rose taking shelter in the home of William Robertson and her husband hiding near their home. In the middle of the night, white men broke into the home and finding

²⁴⁷Education is often dismissed as a radical tool of abolition, but even the most revolutionary antebellum black leaders saw the mind as the crux of liberation. For the NYCV, this included political and legal education to inform enslaved people of their rights under the nuances of New York's slavery laws that were abused by slaveholders and rarely enforced by police. In 1817 New York passed a law that set the date for gradual emancipation to end, included in it a key exception that gave slaveholders a nine-month grace period wherein they could legally continue to detain black people as slaves. After the nine months had passed, these slaveholders would often leave the state for a day or two before returning, and restart the nine-month clock. Even after the effective end of slavery in New York, private chattel bondage continued with the freedom of the law, and members of the vigilance committee took it upon themselves to spread the word among their enslaved brethren. *First Annual Report (NYCV)*.

²⁴⁸ Vigilance Committees did form in the years after the NYCV, but these were predominately organized by white abolitionists who condemned poor black people for taking to self-defense. Such is the case of the Boston Vigilance Committee which was started in 1841 by white abolitionist Charles Turner Torrey. Due to the power of white abolitionists, the group never defended kidnapped lives with the same radical vigilance that the NYCV had. According to black activist William Cooper Nell who took notes on the first meeting, "The object of this Association shall be to secure to persons of color the enjoyment of their constitutional and legal rights. To secure this object, it will employ every legal, peaceful, and Christian method, and none other." This was the same with the Vigilant Association of Philadelphia (later, Vigilant Committee of Philadelphia), that was started in 1837. William Cooper Nell, *William Cooper Nell, Nineteenth-Century African American Abolitionist, Historian, Integrationist: Selected Writings from 1832–1874*, arranged and reprinted by Black Classic Press, 2002. 100.

²⁴⁹ John Parrish, *Remarks on the Slavery of the Black People: Addressed to the citizens of the United States, particularly to those who are in legislative or executive stations in the general or state governments; and also to such individuals as hold them in bondage*. Kimber, Conrad, & co. publishing, Philadelphia, 1806. 61-62.

neither of their targets continued to search outside where they discovered Job. They bound him in rope and took him four miles to the Hertford prison, where he waited four weeks and almost died from not being given much food. As Job's former captors willingly freed the man, the Perquimans county officials knew they could not profit from Job's return, and instead they advertised their prisoner as a slave for sale and were waiting for someone to place a high bid on his life. In the meantime, however, Job and a fellow prisoner hatched an escape plan and broke out. Job reunited with Rose and paid a wagon driver three dollars to carry them out of the state. While Rose and Job were able to resist the hounding of the law over their lives, Job's mother and sister, also freed by Quaker men at the same time, were not as fortunate.²⁵⁰ In fact, in just three of North Carolina's forty counties,²⁵¹ Quaker abolitionist John Parrish documented 134 black men and women kidnapped through the criminal courts; of those, sixteen managed to escape.²⁵²

Black vigilance occurred not only on an individual basis, but a collective one. In 1819, within minutes of law enforcement kidnapping a community member in the black neighborhood of Barclay Street, forty of his neighbors dropped everything to come to his rescue. Through violence, the police were able to keep the group at bay long enough for the steamboat with their friend to escape down the Hudson River to be sold into lifetime captivity, but aggressive police tactics did not prevent black communities from doing everything in their power to fight for their own.²⁵³ Vigilant rescue attempts like these were common and particularly successful when they were able to help the victim move out of state or to Canada, but prior to 1835, police often tracked down the escapees and rearrested them.²⁵⁴ The risks of participating in a rescue were incredibly severe. While the attempt of rescue alone poignantly displayed black resistance, rescuers faced severe brutality, incarceration, and even death at the hands of police and the courts. This violence was felt even more severely with less unified resistance. The smaller the crowds showing up to defend a neighbor's imprisonment or kidnapping, the more police and courts were able to get away

²⁵⁰ Parrish, *Remarks on the Slavery of the Black People*, 61-62.

²⁵¹ The three mentioned counties, Chowan, Perquimans, and Pasquotank all bordered each other in the northeast corner of North Carolina. In 1777, North Carolina divided its land into 40 counties. In 2020, there are currently 100 counties. See www.carolana.com.

²⁵² Parrish, *Remarks*, 59.

²⁵³ Edwin Burrows and Mike Wallace, *Gotham: A History of New York City to 1898*, New York: Oxford University Press, 560-61.

²⁵⁴ Working class black vigilance existed across the North in all-black groups that refused to work with white moral suasionists. For an analysis of this in Boston, see Horton, *Black Bostonians*, 100.

with violence or arrest. The forming of the NYCV drastically transformed the black community's ability to mobilize en masse and respond to persecution. As its networks expanded, black people across New York and neighboring states shared information about kidnappings and conjoined under the call of local black leaders like David Ruggles. While grassroots activism prior to the vigilance committee consisted of groups of four or five or even up to forty, Ruggles recruited and mobilized thousands of New York's black community to gather and rescue their kidnapped family. Instead of abolitionist charity focused more on lofty "principles" than action, the NYCV promised "immediate abolition" and worked with the organizational efforts and desires of New York's black working class, which is represented by the vast participation and support they gave to the vigilance movement.²⁵⁵ Thus, the NYCV was the product of many years of self-defense in response to anti-black riots, State violence, mass incarceration, legal disenfranchisement, discrimination, and other forms of racial oppression, and was birthed out of a long genealogy of organized civil disobedience and self-protection from New York's black community.

While racial violence continued to haunt the black community, the bigger and more insidious threat facing them was the local and federal government. White riots targeting black homes, businesses, and especially churches had become increasingly common in the years leading up to the formation of the NYCV, but as white abolitionists latched onto individual racism as a righteous cause, black activists recognized the need to confront structural racism, particularly that of State carceral systems.²⁵⁶ Black communities in the North were heavily patrolled by police units, greatly overrepresented in the jails, prisons, and other houses of detention, and frequently attacked or kidnapped by police to be sent into slavery in the South.

²⁵⁵ This distinction between white abolitionist inaction and the NYCV's "immediate abolition" was part of the committee's public account of the situation. *First Annual Report (NYCV)*, 10-13.

²⁵⁶ The years leading up to the formation of the vigilance committee in 1835 were repeatedly left tattered with the ever-growing publicity of anti-black sentiment. This growth in anti-black violence was fueled by the rich who used the rise in Irish immigration to incite racial tensions among the working class. As the Irish were commonly poor, they were forced to work under some similar despotic conditions to which free black people in New York were submitted. Though anti-Irish sentiment nowhere paralleled the history of anti-black racism in America, newspapers and popular culture condemned the Irish into similar derogatory characteristics, such as "savage," "bestial," or related to black Americans. Irish citizenship was also widely questioned by the media, influenced by politicians and New York citizens with large social and economic capital. The Irish sought to reject their degradation by asserting their claim to whiteness. Thus, the white-supremacist spirit was probed by those people in control of the media and the subsequent racial violence the marionette of the rich. Burrows and Wallace, *Gotham*, 555-56. See also white threats to black organizing in *Morning Courier and New York Enquirer*, July 9, 12, 1834; and Graham Russell Hodges, *David Ruggles: A Radical Black Abolitionist and the Underground Railroad in New York City*, NC: University of North Carolina Press, 63.

While various abolitionist societies fought for an end to slavery in the South, the clandestine and lucrative system of violence, incarceration, and enslavement continued to permeate the North. This typically operated more insidiously and systematically, though occasionally pronounced itself more explicitly as in the case of John Larzalere, the 1836 mayor of Burlington, New Jersey, who told a crowd of black women and men that his moral obligation was to enforce slavery (though he claimed he did not agree with it and the state government had passed a bill for gradual emancipation three decades before) and to imprison anyone who tried to get in the way of the law. Larzalere's proclamation was more of a threat, mobilizing State carceral power to disband the large and agitated black crowds who came to rescue their friend and neighbor Severn Martin from being spirited into slavery.²⁵⁷

The formation of the NYCV in 1835 was intimately tied to resisting the carceral institutions of the local and federal governments. Its immediate success among poor black communities in New York shows the growing awareness within black resistance movements of the "evils" that were conspired by the hands of government systems and officials, instead of simply focusing on private slaveholders, as most white abolitionist societies did. In the first publication of the committee, Ruggles lamented this systemic evil:

"Among other prominent evils, we cannot forbear mentioning one of no ordinary character, the fact that the laws enacted for the protection of the colored people, are continually violated, not only by men in private life, but even by our judges. ...when courts of law are made the rendezvous of oppression, when those who are appointed to the solemn duty of administering justice, not only pander to the vulgar prejudices of society, but pollute their office by betraying the cause of the oppressor, and turn aside the poor from their right; when judges wield the power of law to subvert and destroy the welfare of their fellow man, then indeed the foundation on which the social fabric rests trembles and affords no support to the superstructure. Yet such is the state of some of our courts of law, when the colored man appeals for justice; and hence the necessity of a committee of vigilance by which he may be protected."²⁵⁸

This call for immediate and even violent protection was not deemed by Ruggles to be an option for black New Yorkers, but a necessity given the ways that not even the law itself was ready to defend black people. And still, despite the government holding justice for black

²⁵⁷ *First Annual Report (NYCV)*, 63.

²⁵⁸ *First Annual Report (NYCV)*, 8-9.

America and their basic human rights captive, the NYCV defiantly proclaimed on the front page of their first annual report that they would seize their liberty as the Biblical Job had millennia before: “Yea, I brake the jaws of the wicked, and plucked the spoil out of his teeth.”²⁵⁹

Immediately, the New York Committee of Vigilance transformed the landscape of black resistance in the North. In their first year alone, the committee reported that they rescued or protected 335 free and fugitive black people. This number only continued to grow. Though the prominence of the group fluctuated and was never as successful as they were in the first years when it was led by Ruggles, over the two-and-a-half decades of its existence, the NYCV alone aided between three and four thousand fugitive slaves, as well as thousands more free black people in New York.²⁶⁰

In January of 1837, Ruggles released the NYCV’s first annual report, an 84-page summary of the terrors black northerners were subject to daily and the various methods with which the committee responded to injustice and protected themselves from it. Their mission was clear: the law was not designed to protect black people in New York, so the black community needed to vigilantly protect themselves. “That colored people were often kidnapped from the free states was generally known--but we have found the practice so extensive that no colored man is safe, be his age or condition in life what it may--by sea and land, in slave states, or in those where colored men are considered free, in all the varied occupations of life, they are exposed to the horrors of slavery.”²⁶¹ The gravity of the situation was such that the laws of the land — even those written to protect the freedoms of free black people — were selectively enforced “just so far as suited the purpose of the [slaveholders], and no further.”²⁶² As the laws would not guarantee the safety of black Northerners, they needed to take the safety of themselves and their community into their own hands.

²⁵⁹ Job 29: 16-17, BIBLE, quoted on the cover page of the *First Annual Report (NYCV)*.

²⁶⁰ Eric Foner, *Gateway to Freedom: The Hidden History of the Underground Railroad*, New York: W.W. Norton & Company, 2016, 10. After the first six years of their existence, the group reported having aided more than two thousand people: *Fifth Annual Report of the New York Committee of Vigilance for the Year 1842*, (G. Vale, JUN, Printer, NY), May 1842. On page 38, they claim their number of rescued was 1,373 over the first five years.

²⁶¹ *First Annual Report (NYCV)*, 7.

²⁶² *Ibid*, 29.

Many of the stories the Ruggles included in the report were used to demonstrate the various strategies police and prisons mobilized in the superlegal slave trade. On July 23, 1836, police stormed the worksite of George Jones and arrested him for having “committed assault and battery.” Jones resisted arrest and asserted his innocence, refusing to go with the police. His employer, a white man who had more reason to trust the integrity of the police, advised Jones to comply and go to jail, assuring him that it would work itself out. A friend came along, not wanting to leave Jones alone with the police and intending to pay his bail. The cops took Jones to the infamous Bridewell and locked him in a cell. They then told his friend to go, that “when he was wanted he could be sent for.” Once gone, the police carried Jones into the Court of Special Sessions, New York City’s main criminal courthouse. Instead of a criminal proceeding for assault, Jones was now being accused of having escaped from slavery. None of the friends, coworkers, and community members who knew Jones well and could attest to his legal freedom were present. He was completely alone in the lion’s den, surrounded by the small crowd of kidnapers, police, and the Judge who accused him. Within three hours from his arrest, George Jones was convicted of being a fugitive slave, chained, and dragged through the streets to be sold into bondage in the South.²⁶³

The inclusion of Jones’ story cautioned black people from trusting the police for any reason — even if they knew they were ‘innocent’ of the accused crime and wanted to clear the situation up. This is because the strategy of using criminal accusations and carceral power to detain and enslave free black people was overwhelmingly common. In the months surrounding Jones’ kidnapping, Ruggles reported that men by the names Jesse Redmond, Jerry, Stewart, “and many others” were arrested and imprisoned under false charges in the attempt to enslave them.²⁶⁴ Fabricated criminal charges helped provide police the veneer of innocence (regarding their intent to kidnap), even incompetence, which helped facilitate the arrest and imprisonment of free black people in the North. At random intervals in the day and night, free black adults and children were vulnerable to be arrested for such crimes as theft or assault, all of which were intentionally made up in order to have them detained and physically incapacitated. While some did not even get the fortune of trial and were immediately whisked away to boats waiting for them in the harbor, others were given the

²⁶³ “Kidnapping in the City of New York.” Republished in *The Liberator*. August 6, 1836. Originally published in *The Sun* (New York City).

²⁶⁴ *First Annual Report (NYCV)*, 53-54.

illusion of trial, their charges immediately changed to the crime of having escaped from slavery. By this tactic, most arrestees did not have the time to find witnesses or gather help in their assistance. “These agents find it most convenient to obtain a warrant against the persons they wish to arrest, charging them with the commission of an assault or robbery. When they thus secured them in gaol [jail], this charge is generally either abandoned, or not proved, and then a detainer is brought against them as fugitive slaves.”²⁶⁵

“We are all liable...We have no protection in law—because the legislators withhold justice,” wrote David Ruggles.²⁶⁶ The story took two weeks to make its way to the newspaper, but not for lack of interest. The community most affected by it were not the primary audience. Ruggles published the story in *The Sun*, a politically conservative New York newspaper with a predominately white working-class audience.²⁶⁷ Due to the hypervigilance and unity of the Northern black working-class community, word about kidnappings spread quickly, and it is likely most of them would have been informed of the Jones’ case by the end of the day. Perhaps some of *The Sun*’s readers were black, but more probable is that Ruggles’ article was a political act. White people — abolitionist or not — tended to condemn violence of any kind as a tactic of revolution, even as a last-resort survival mechanism against kidnappers. Instead, the article was a fiery justification of black self-defense. This is particularly poignant later in the article, as Ruggles challenges the moral suasion tactics of the predominately white anti-slavery societies. “We must no longer depend on the interposition of the Manumission or Anti-Slavery Societies, in the hope of peaceable and just protection; where such outrages are committed, peace and justice cannot dwell.”²⁶⁸ After criticizing the central philosophies of the abolitionist societies as insufficient, Ruggles audaciously calls on his readers to join forces with the NYCV.

Most of the stories Ruggles and other newspapers document were rescue attempts that were unable to free the prisoner. Thus, if each surviving narrative of State kidnappings were assembled it would seem as though the NYCV was less successful than they were. Part of

²⁶⁵ *First Annual Report (NYCV)*, 53.

²⁶⁶ “Kidnapping...” *The Liberator*. August 6, 1836.

²⁶⁷ *The Sun* was the nation’s first penny-press (costing only a penny), which made its publications far more accessible and popular among working-class white New Yorkers. I was unable to access a version of the article, any context surrounding why the newspaper printed Ruggles’ article, or if *The Sun* qualified or criticized the report in any form. Frank Michael O’Brien. *The Story of The Sun: New York, 1833–1918*, University of Michigan Library, 2005. (Originally published in 1918).

²⁶⁸ “Kidnapping...” *The Liberator*. August 6, 1836.

this is to recognize that even ‘unsuccessful’ rescue attempts worked to undermine the impunity with which the carceral systems of the State arrested and trafficked black prisoners to the South. It is clear in the many newspaper accounts of various rescue attempts that these large vigilance gatherings increased the cost of State kidnappings — more security needed to be on duty while transporting the prisoners, and politicians were forced to disrupt their daily operations to come out and threaten the crowds.²⁶⁹ The gatherings also brought the superlegal slave trade more prominently into the national media’s attention, putting political pressure on local decision-makers.²⁷⁰ But while Ruggles focused on sharing the stories of people the State succeeded in trafficking into the South, he and the New York Committee of Vigilance were unrelenting. Through his work with the NYCV and the Underground Railroad, Ruggles alone is claimed to have personally guided six hundred self-emancipated black people into the North and or into Canada.²⁷¹ His reputation spread like wildfire across continent. Many self-emancipated people were given letters addressed to Ruggles and informed that their freedom hinged on finding him.²⁷² He was not, however, hard to find. For the sake of personally housing and aiding people that had escaped from slavery, Ruggles was public with his address and the location of his anti-slavery bookstore, a business he had been running since 1834.²⁷³ His fearlessness nearly cost him his life many a time and incensed local whites to the point of burning his bookstore to the ground, but Ruggles only increased his public presence and daring abolitionism, including rebuilding his bookstore only a little ways away.²⁷⁴ This audacity did more than inform self-emancipated people of his abolitionist safe haven. Ruggles rejected the dangers of kidnapping and white supremacy in the same fashion he

²⁶⁹ This is apparent in the aforementioned case of George Thompson, as well as the Burlington, New Jersey mayor’s involvement in ensuring the 1836 kidnapping of Severn Martin. For Dixon and Thompson’s kidnapping, see the NYHS report, “Black Vigilance.” For Martin’s kidnapping, see *First Annual Report (NYCV)*, 62–65.

²⁷⁰ This is shown in the previously mentioned case of William Dixon whose trial ended up being postponed for years as media attention to his case blew up. See the NYHS report, “Black Vigilance.”

²⁷¹ Instead of taking credit for this, he redirected all praise to God. “I have had the pleasure of helping six hundred persons in their flight from bonds. In this, I have tried to do my duty, and mean still to persevere, until the last fetter shall be broken, and the last sigh heard from the lips of a slave. But give the praise to Him who sustains us all, who holds up the heart of the laborer in the rice swamp, and cheers him when, by the twinkling of the North Star, he finds his way to liberty.” William Cooper Nell, *The Colored Patriots of the American Revolution, With Sketches of Several Distinguished Colored Persons: To Which Is Added a Brief Survey of the Condition and Prospects of Colored Americans*, (published by Robert F. Wallcut, 1855), 143. Quote from August 1, 1841. Sourced through *Documenting the American South*.

²⁷² Such as the *Autobiography of James L. Smith*, Norwich, 1881. 50. Sourced through *Documenting the American South*.

²⁷³ Graham Russell Gao Hodges, *David Ruggles: A Radical Black Abolitionist and the Underground Railroad in New York City*, NC: University of North Carolina Press, 3.

²⁷⁴ Hodges, *David Ruggles*. 84.

practiced abolition — something that needed to be lived out in his day-to-day life. His unyielding posture threatened the foundation of structural racism in the North, one dependent on fear and hegemonic control.

Ruggles' commitment to fighting slavery by any means necessary threatened many white abolitionists, and even many of the few wealthier black people. Samuel Cornish, a more middle-class and conservative black leader within the NYCV, would continue to have power struggles with Ruggles that would lead to Ruggles' eventual ousting in 1840 from the organization he started. Until that boiling point, however, one of the unique elements of Ruggles' leadership was that he was able to work with both white organizations and working-class black communities. He took advantage of the resources, media, and political influence of white abolitionist societies without compromising the massive resistance networks these tight-knit and unified black communities had — often showing up in the hundreds and even thousands to break free one or more of their brethren from carceral control. In the beginning of April 1837, large teeming crowds of black protestors screamed outside of the Court of Special Sessions. They were armed and ready to fight for the freedom of a young George Thompson, arrested earlier that day. More than one thousand strong, they owed their vast number largely to the recruitment work of black activists like Ruggles. Unlike in the case of George Jones, Thompson had previously escaped slavery and under the federal Fugitive Slave Law of 1793 the former slaveholders had a legal right to his capture and return.²⁷⁵ This did not matter to the crowd. The construct of innocence and guilt, fugitive and free, were irrelevant to them since they believed no one should be enslaved. While there were no explicit documented calls for the immediate release of all black prisoners, the rejection of Western criminal innocence and guilt was similarly reflected in their condemnation of black people held captive in State prisons. Ruggles wrote in depth about how the structural racism of the American legal system made “complexion...[a] crime.”²⁷⁶ Even in cases of “guilt,” where the prisoner was arrested for something a white person would be charged for, Ruggles rejects seeing them as criminals, arguing that these acts cannot be separated from structural issues of poverty, lack of opportunity, and over-policing.²⁷⁷

²⁷⁵ “Black Vigilance” *NYHS*.

²⁷⁶ The full quote is “The complexion of the man indicated his crime,” referring to how black people could be arrested simply under suspicion of having escaped from slavery, ‘suspicion’ often being no more than an excuse to arrest them. *First Annual Report (NYCV)*, 58, citing *The Constitutionalist*, a newspaper from Newark, Ohio.

²⁷⁷ *First Annual Report (NYCV)*, 8.

Especially since the legal distinction meant little to the carceral system that so frequently enslaved free black people, fugitive status came to encompass the entire black community. The kidnapping of one put the entire community in jeopardy.

Outside the courthouse, hours went by and the crowd was getting restless. The court officials and police were stationed up inside to wait until the crowd dispersed, but the vigilant black crowd stayed the long hours throughout the night. Sometime the next morning the crowds were informed that Thompson had been snuck out without their knowing and had been forced onto a ship that had left for the South. It is at this time, just a couple of days later, when William Dixon (whose story opened this chapter) was brought before Riker. Determined to not let the same thing happen to Dixon as had just availed George Jones, the crowd of black freedom fighters assembled once again outside of the courthouse, reportedly twice as large as the case a few days prior.²⁷⁸

Inside the courthouse, Dixon sat in silence. He had spoken briefly the day before to proclaim his innocence, but this second day of the trial proceedings was filled with witness testimony and the banter of lawyers. The nature of his case was extremely unusual; most of the trials for black people accused of having escaped slavery lasted less than an hour. That Dixon received even the slightest chance at freedom was in large part due to fortunate circumstances. Since Judge Riker had been busy with other trials at the time of the arrest, Dixon was imprisoned at Bridewell for a week, more than enough time for the NYCV to gather witnesses on his behalf, speak and counsel him about his testimony, and assign him a lawyer, Horace Dresser. Witnesses filled the courtroom to defend Dixon's right to freedom and vouch for his long presence in his neighborhood on the eastern edge of New York City's 6th Ward. It did not matter that Dixon more than likely had escaped from slavery five years prior. The fugitive slave law and other laws like it were constructs of an oppressive regime and the black community refused to live by them, willingly lying in court for the sake of a brother or friend. One man even claimed to have known Dixon and his parents all his life. For Riker and the prosecution, this tactic was familiar — they too recruited witnesses and fabricated testimony against Dixon as they had with many condemned parties they knew were legally free. Guilt and innocence were little more than theatrics used to justify a judicial

²⁷⁸ Ibid. See also "The Alleged Fugitive from Justice," *The Colored American*, April 8, 1837; and the New York Historical Society's collection "Black Vigilance."

decision made years prior. As Dixon's case stalled in court and hearings were used to improve public optics of the case, trial proven to be little more than an empty ritual.

While the larger anti-slavery organizations sought Dixon's freedom through the lawful procedures of the system, the working-class black community took this into their own hands. At the closure of the second day of trial, Sheriff Lownds brought the accused out to return to his cell in prison. Someone from the crowd yelled, "To the rescue!" and the crowds rushed the police. A brawl ensued and in the confusion of the violence, someone tossed William Dixon a dagger and he managed to escape. Unfortunately, police followed him to his hiding place in a basement on Duane Street and seized him, taking him back to the Bridewell prison.²⁷⁹

Black women played a large role in the violent resistance to kidnappings, especially those involving State carceral systems. In Boston the year before Dixon's trial, the so-called "Abolition Riot" took place when six local black women rushed into the Massachusetts state Supreme Court, surprised and overpowered the guards, grabbed the two prisoners (Eliza Smalls and Polly Ann Bates) who were being tried under the Fugitive Slave Act, and whisked them to safety. Their actions were clearly coordinated and well-planned from start to finish, for the rescue ended before the guards really knew what was going on, and neither the rescuers nor the freed prisoners were ever caught. The opportunity only presented itself since Supreme Court Justice Lemuel Shaw contested Smalls and Bates' confinement on a private ship.²⁸⁰ While Justice Shaw's action could have been forced by the pressure from the black crowds that teemed around the harbor where Smalls and Bates were held, there is another possible force at play. Prisons in Massachusetts were no less austere than those around the North and likewise were part of the superlegal slave trade. The fact that the ship captain was not allowed to use his vessel as a slave prison seems to have less to do with the state being "free" and more to do with the State increasing its control over the captivity and trafficking of black prisoners.²⁸¹

²⁷⁹ Samuel Eli Cornish, "To the Thoughtless Part of our Colored Citizens," *The Colored American*, April 15, 1837; and Henry C. Wright, "Kidnapping in New-York!!" *The Liberator*, April 21, 1837.

²⁸⁰ James Horton, *Black Bostonians: Family Life and Community Struggle in the Antebellum North*. Holmes & Meier Publishers, 2000. 98-99.

²⁸¹ That black abolitionist pressure caused the trial of Eliza Smalls and Polly Anne Bates is a theory put forth by historian James Horton. Speculating on the motivations behind historical events is difficult and an educated

Self-defense and the prominent role black women played on the frontlines of direct action strained the relationship to middle-class black activism, which tended to promote respectability and working within the system for change.²⁸² In *The Coloured American*, Cornish condemned black vigilance, referring to the crowds that showed up for Dixon as the “thoughtless part of the coloured community.” Concerned with the way violence would affect white society’s perception of black people, Cornish accused the men and women of “degrading” themselves. He particularly begs black men to keep their wives from leaving their homes, and emphasized how women degraded themselves more than men, suggesting the great number and fervor that black women brought to protecting their own and possibly that they were more aggressive in their rescue attempts than the men. On the frontlines of the battle to save William Dixon was a woman named Kezia Manning. After the Sheriff who held Dixon was attacked, Justice of the Peace John Bloodgood rushed out with a crowd of police reinforcements. Manning “violently seized” Bloodgood by the throat while a few other members of the crowd helped tackle him to the ground. Manning, Harrod, and the other black community members knew the risks involved in rescuing one of their own — imprisonment brought with it the possibility of their own enslavement, or at least vicious beatings from prison guards. Because of this, the crowd strategically defended most of those who attacked the officers, hiding them among the sea of people and proving escape routes. Manning, however, was caught before she could flee and imprisoned at Bridewell, along with a man named Jesse Harrod who had punched the Justice in the face a few times and held him by the neck. All others involved were able to escape.²⁸³ Unphased, the community kept resisting.

Already the case had gone on far longer than anyone had anticipated. Tobias Boudinot and Daniel D. Nash, two of the police officers who arrested Dixon, were used to their prisoners being sold or sent to slavery within a few hours of their arrest, under the radar of the general public, but now newspapers all over the country were printing the story. Samuel

guess at best, which is why I prefer to raise various alternative theories (backed by evidence or the lack thereof) as questions. Horton, *Black Bostonians*.

²⁸² The discussion of respectability in the twenty-first century has taken on a particularly negative meaning in popular culture, wherein marginalized communities are effectively blamed for failing to ‘improve themselves’ despite being systematically oppressed. Black respectability in the nineteenth century was far more complex, and while working-class black communities often found themselves at odds with the idea that the goal of respectability was the improvement of the condition of Black America, and that they saw themselves as their own liberators, refusing to wait or depend solely on the work of White abolitionists, charity, or the government. Kellie Carter Jackson. *Force and Freedom: Black Abolitionists and the Politics of Violence*. University of Pennsylvania Press, 2019. For emphasis on black women in violent resistance, see pg 8.

²⁸³ “To the Thoughtless part of our Colored Citizens.” *The Colored American*. April 13, 1837.

Cornish's *The Coloured American* was one of the main contributors. Though it tended to be more conservative in politics than the NYCV, Cornish allowed Ruggles to closely follow the Dixon case and publish in his newspaper. With the public's eye keenly tracking the developments of the case, Riker was hesitant to condemn Dixon. Horace Dresser, the lawyer the Vigilance Committee was able to secure for Dixon, had successfully appealed for a writ *de homine replegiando*, giving him a glimmer of hope. While the nefarious nature of antebellum prisons meant that Dixon could at any moment be harmed or transported somewhere against his will, the writ almost guaranteed his safety until the New York Supreme Court met to hear his case. For many in New York's black community, this was not nearly enough. On April 20, eight days after the last rescue attempt, black crowds again attacked Dixon's captors and tried to break him free. Abraham Griffith, James Parn, and "some others" were arrested for their role in the rebellion, but were unable to free their friend.²⁸⁴

The writ also allowed Dixon to be released on bail, though accessing this proved extremely difficult. The bail charge was \$500.00, far more money than the black community in New York could raise quickly. Church groups and the Committee of Vigilance fundraised heavily until they had three hundred dollars; a friend loaned the remainder until it could be fully funded. This whole process took three months. In the meantime Dixon remained, like hundreds of his fellow prisoners, guilty until proven innocent in his cramped and airless stone cell, only able to pray and wait.²⁸⁵

Kezia Manning and Jesse Harrod's fate were tragically sealed. After they were indicted on April 14, 1837, they stayed in prison for months until Harrod was pronounced dead and Manning incapable of attending trial. An oddly bland obituary for the dead man surfaced in the newspaper a few days later, tying the cause of death to "gaol fever," presumably typhus. While the disease was common in the Bridewell prison, this does not prove with certainty that this was how Harrod died. The official prison report accounting for Harrod's death and Manning's "inability to show up for court" likely blamed the fever, but the circumstances surrounding both Harrod and Manning's incapacitation are suspicious. Just

²⁸⁴ *New York Colored American*, April 22, 1837; *New York Herald*, April 21, 25, 1837.

²⁸⁵ "After a long, and tedious imprisonment...." *The Colored American*, July 8, 1837. Collection of the New-York Historical Society.

as the local black community took justice into their own hands to free their brethren, the carceral system often left justice into the hands of racist arbiters of justice ‘of the peace.’²⁸⁶

The following year, New York’s most infamously racist ‘justice of the peace’ stepped down from office.²⁸⁷ Despite Riker’s departure, the problem of carceral kidnapping continued.²⁸⁸ By 1842, the *Fifth Annual Report* of the New York Committee of Vigilance showed that, if anything, the kidnappings were at an all-time high.²⁸⁹ This corresponds to a more formalized growth and expansion of public law enforcement, which only facilitated and rarely penalized kidnapping in both private and State-operated forms. If a single actor had been the main perpetrator wielding State power to jeopardize the fate of every black adult and child in the North, Richard Riker’s retirement in 1838 would have been the turning point in State-sponsored kidnappings. Riker was most infamous and perhaps most audacious in mobilizing the State’s carceral power to threaten the security of black people, but he was not nearly alone in this. Judges all over the North would often give sheriffs and police warrants for the arrest of a large and often intentionally ambiguous number of black people accused of having committed an arbitrary felony. In the case of New York in 1833, Governor Marcy gave the sheriff of New York a warrant for the arrest of seventeen black people accused of a felony, to be handed over to E.K. Waddy, the sheriff of Northampton, who had been known to work closely with slaveholders and kidnappers. This was the excuse for incarcerating and shipping Mr. Henry Peters, a free black man, into slavery in 1836. Under interrogation by a main writer for the *New York Sun*,²⁹⁰ Mr. Tobias Boudinot, the head police chief responsible for the arrest, showed the *N.Y. Sun* Governor Marcy’s warrant, written three years prior. To this end, the *Sun* wrote “Let every black man, therefore, who cannot give a good account of

²⁸⁶ *Jno. M. Bloodgood v. Kezia Manning and Jesse Harrod, District Attorney Indictment Papers*, 14 April 1837, New York City Municipal Archives, Microfilm Roll 171. From the New York Historical Society’s collection “Black Vigilance.”

²⁸⁷ Riker’s reasons for stepping down are not entirely clear. Perhaps it was the national pressure coming from the still ongoing Dixon trial, or perhaps it was his 1838 failed bid for mayor of New York City that took precedence for him. While local black and white abolitionist protests certainly garnered significant pressure for him to resign, resistance to Riker and other pro-slavery judges were common enough before 1838 and none of this had lead Riker to change his decision. A caricature of Riker’s mayoral run was drawn by Edward Williams Clay and Henry R Robinson, “The three mares/mayors, New York course, spring races.” New York City, 1838. Photograph.

²⁸⁸ This is documented in depth in the *Fifth Annual Report (NYCV)* that was produced in 1842. Later in the year 1838 also brought the election of the abolitionist state governor William Seward, but racial kidnappings through the prisons continued to happen under his watch. Paul Finkelman, “The Protection of Black Rights in Seward’s New York,” in *Civil War History*, vol. 34 iss. 3, Kent State University Press, September 1988. 211–234.

²⁸⁹ *Fifth Annual Report (NYCV)*, 11.

²⁹⁰ Likely George Wisner, as the other co-chair of the *N.Y. Sun* quarrelled with Wisner over matters of abolition.

himself for at least more than three years back, look out!” Boudinot himself bragged that he had been and could “arrest and send any black to the South.”²⁹¹

Despite the magnitude of the NYCV’s success under Ruggles, internal conflict strained the group at its seams. In the wake of the William Dixon rebellion, Samuel Cornish wrote a series of articles for the *Colored American* attempting to distance the NYCV from the violent abolitionism of the black working class that Ruggles had so keenly collaborated with. For Cornish, the NYCV was an exclusive group of educated individuals who worked in service of poor black people, not alongside them. Ruggles’ belief in defending black people by any means necessary had for years also angered prominent white abolitionist groups. After a newspaper mistakenly referred to Ruggles as a member of the New York Manumission Society, the abolitionist group immediately denounced him, saying “Ruggles is a colored man, and is Secretary of a Vigilance Committee of colored persons in this city, and who have no connection whatever to the Manumission Society.”²⁹² A Whig newspaper *The New York Express*, which had allegedly been a fierce advocate for the abolition of slavery in Canada and the US, publicly condemned Ruggles for his practice of sneaking onto ships to liberate enslaved crew or prisoners. Rather than push for gradual abolition through non-violent methods, Ruggles’ lawless direct action on ships of commerce threatened trade and business — something they found unforgivable. “If he and his abettors had any portion of their deserts,” the newspaper wrote, “they would hammer stone for the rest of their lives upon Blackwell’s island.”²⁹³ Powerfully, this white abolitionist group’s solution to self-defense by “the genuine soot” (a racial slur for darker-skinned black people) was lifetime servitude in prison.²⁹⁴ This resistance to Ruggles and the NYCV was common among groups believing themselves to be proponents of black liberation. Though recent scholarship has questioned projecting blanket conservatism on white abolitionists, most white abolitionists promoted moral suasion — that the end of slavery will come through convincing advocates of slavery

²⁹¹ *First Annual Report (NYCV)*. Quote on 60.

²⁹² This was on August 14, 1838. The original mistake was made by David Hale for New York’s *Journal of Commerce*, a newspaper that would have had no malice behind their mistake, as they generally were condemning of slavery (though also criticized abolitionists). “David Ruggles and the Daily Papers,” *Emancipator*, August 30, 1838.

²⁹³ Blackwell’s island was a notably harsh penitentiary in New York City, located on what is now called Roosevelt Island.

²⁹⁴ “David Ruggles and the Daily Papers,” *Emancipator*, August 30, 1838.

of its evils.²⁹⁵ For this reason, until Congress passed the Fugitive Slave Act of 1850, many (if not most) white abolitionists were not only themselves strictly nonviolent, but condemned any black person who felt that violence was necessary in their or their community's survival.²⁹⁶

Ruggles gave little credence to his white critics and even openly criticized abolitionist societies for getting lost in lofty "principles" that ignore the day-to-day struggles of the black community.²⁹⁷ Cornish's criticism was harder to ignore. As an influential member of the NYCV's executive committee, Cornish and Ruggles' public disagreement about the purpose of their group continued to grow. After an unsuccessful trial in the end of 1837, Ruggles proposed a resolution to the group that "cannot recommend nonresistance to persons who are denied the protection of equitable laws when their liberty is invaded and their lives endangered by avaricious kidnappers."²⁹⁸ Despite being so widely known and praised among many poor black communities and the Underground Railroad,²⁹⁹ Ruggles left the group he founded in 1840. This might have been partly due to his failing health, but other wealthy black leaders of the NYCV — such as Theodore Wright and Charles B. Ray — were increasingly siding with Cornish against the radicalism of Ruggles.³⁰⁰

The NY Express was not alone in believing that prison or death was the only way to end the threat that was David Ruggles. He was seen as such a threat to the State-sanctioned

²⁹⁵ Polgar attempts to defend white abolitionism as radical, though his analysis is riddled with taking abolitionist rhetoric at its word instead of recognizing systemic patterns that seem to more readily implicate (at least most) white abolitionists with having more complicated motivations. "Standard Bearers of Liberty and Equality," see, for instance, 72n3.

²⁹⁶ After the Fugitive Slave Act of 1850 was passed, which jeopardized black freedom even more by raising penalties on people who harbored or aided self-emancipated people as well as incentivized judges to declare free black people as fugitives, more white abolitionists became willing to support (or at least not condemn) black self-defense. Jackson, *Force and Freedom*, 25-30.

²⁹⁷ Ruggles repeatedly maintained that they NYCV was unaffiliated with white abolitionist groups like the American Anti-Slavery Society and the American Manumission society, citing that their reform-oriented abolitionism of these white-led organizations is too slow and removed. In contrast, Ruggles declared his group "practical abolitionists" and "cordial adherents to the principles of immediate abolition," in contrast to the abolitionist societies whose lofty "principles" need groups like their committee to "bring into operation" and "lose sight of the minor evils, which tend in the aggregate to make up that monstrous system of iniquity." *First Annual Report (NYCV)*, 10-13.

²⁹⁸ "The New York Committee of Vigilance, Secretary's Monthly Report, no. 2," *Emancipator*, November 23, 1837.

²⁹⁹ Ruggles was so widely known that the eminent Frederick Douglass, after escaping slavery and first arriving in New York in Sept. 3, 1838, claimed ruggles was "the first officer on the underground railroad with whom I met after reaching the north, and, indeed, the first of whom I ever heard anything." *My Bondage and my Freedom*, New York: 25 Park Row, 1855. 341.

³⁰⁰ Harris, *Shadow of Slavery*, 213-14.

kidnappings that a thousand-dollar bounty was put on his head by a local kidnapper.³⁰¹ During his short tenure with the NYCV, he was arrested at least three times and faced death threats as well as various other plots to kidnap him into slavery.³⁰² Ruggles' attempted kidnapping through the prison mirrors that of the prominent black leader Richard Allen detailed earlier in this chapter. While the superlegal slave trade tended to kidnap its victims in more insidious ways, through arbitrary arrest warrants or through picking off black prisoners who were usually detained for various crimes of survival, when black people commanded great influence in their communities around the North to unite or rise up, the intentionality behind using the prison to kidnap black people became strikingly obvious.³⁰³ The prison was thus one of the State's most important weapons against the threat of black struggles for liberation.

An Economy of Tenuous Freedom

While the modern prison evolved out of structural efforts to subjugate black people in an era of gradual emancipation, it must not be confused for chattel slavery. There were certainly many similarities in the way the prison and plantations both functioned and were talked about, not least the vastly disproportionate percentage of black prisoners (unmatched even at the height of mass incarceration at the turn of the twenty-first century) and how black convict labor was leased out at a profit to state governments or prison financiers, but the North did not mobilize around the criminal justice system as a means of re-enslaving black people. The numbers were not there to justify the amount of money, time, and effort that went into the construction of the early carceral State. Jail and prison sentences were rarely life sentences, and prisons in the North, though they were growing in size and number, would never have the capacity for black prisoners as were enslaved prior to (and during) gradual emancipation.³⁰⁴ As outlined in depth earlier, thousands of black people fell prey to the superlegal slave trade between 1780 and 1865, but the majority of black prisoners were not

³⁰¹ Robert H. Giles, Robert Snyder, and Lisa DeLisle, *Profiles in Journalistic Courage*, New Brunswick: Transaction Publishers, 14-5.

³⁰² Hodges, *David Ruggles*, 18-20, 98, 136-140.

³⁰³ Harris, *In the Shadow of Slavery*, 38-39.

³⁰⁴ For length of most criminal sentences, see John H. Langbein. *The Origins of the Adversary Criminal Trial*, Oxford University Press, 2003. 64.

kidnapped into slavery and were instead held in State captivity. In fact, the system trafficked far less black people than the Underground Railroad helped bring into the North.³⁰⁵

This is not to say that private contractors or prison financiers did not leverage the public prisons as a means of exploiting the labor of black prisoners, for this did happen. On the whole, however, it would not have made sense for the states north of the Mason-Dixon line to have formally abolished slavery only to recreate it through convict labor. The formation and expansion of the prison did not suddenly make chattel slavery more profitable (in fact, convict labor would have been far more expensive than chattel slavery for the State or for private prison owners); the conditions that led the Northern economy to shift away from chattel bondage only continued to grow with the rise of industrialism. Desires to deport free black people through the prison system were clear but never very successful, and the free black population in the North — with a few notable exceptions mentioned prior — primarily grew.³⁰⁶ With growing free black populations and decreasing economic rationales for chattel slavery, if the purpose of the prison was to recreate slavery post-gradual emancipation, than it would have quickly been declared a failure.

And yet the prison system became immensely popular. Anti-blackness was central to the project. Black prisoners continued to make up a gravely disproportionate percentage of the population, and the prison architects and financiers were more than aware of this. If not to re-enslave the free black population, what then was its purpose?

As anything in history there are many interrelated answers, but one of the foremost functions of the carceral project was to suspend black security in their rights. It was clear that free black people in the North realized the precariousness of their freedom. Racist violence was common, but more so at any point they could be kidnapped by private hands or those of the State with so little as a sheriff's written warrant or a police officer falsely accusing them of crime. Community leaders and black people whose activism posed a threat to white power were particularly targeted by arrest, which carried with it the potential for death (as early prisons often carried disease, as well as the possibility of death by the guards) as well as enslavement. Having extreme punishment constantly loom above black Northerners helped

³⁰⁵ While thousands of black prisoners were trafficked into slavery, Historian James Banks estimates as many as 100,000 black people escaped into the North through the Underground Railroad. Banks, *March Toward Freedom*.

³⁰⁶ See page 54-55, or McManus, *Black Bondage*, 182.

maintain a racial hierarchy within the economy — black laborers were thus most commonly the lowest rung reaping great profits for the wealthy (and often abolitionist) business owners.

This precedent for this argument was first formulated by Immanuel Wallerstein in regard to the present-day American economy and xenophobia. Wallerstein argues that the goal of anti-immigrant sentiment and mass deportations is not to keep brown and black immigrants out of the USA, for without them the economy would collapse. Rather, xenophobia is an intentional tool of capitalism to keep these people and families in fear, and thus their labor cheap and exploitable. Anti-immigrant rhetoric turns the attention away from the rich as being the cause of wealth inequality, and scapegoats brown people as ‘stealing American jobs.’ This puts undocumented (and even many documented) immigrants at risk of both violence from poor whites, as well as deportation. For these immigrant laborers, going on strike to demand better working conditions, higher wages, or any basic rights puts them in grave jeopardy of being deported or attacked. This tenuous freedom is what allows hundreds of thousands of immigrants to work under horrific conditions for next to no money.³⁰⁷

This economy of tenuous freedom is precisely what free black people in the North were forced into following the slow decline of chattel bondage. And to a large degree, it was the purpose of the prison. Free black people were kidnapped into slavery as criminals as often as they were as fugitives, and the long social history of blackness being criminalized in gallows texts, media, and literature meant that “no man, no woman, no child is safe.”³⁰⁸ The blanket criminalization of blackness in the antebellum North was less about profiting from sending every black person into slavery in the South, and more about creating a system of violence and fear by which the North could subjugate its black population, keep them from climbing the social ladder, and continue to exploit their labor.

Nor is this argument new. A group of historians in the late 1970s and early 80s connected the rise of the penitentiary in the US and across Europe with the need for cheap menial labor in industrial capitalism.³⁰⁹ They argue that the changing economic conditions of

³⁰⁷ Immanuel Wallerstein. “The Ideological Tensions of Capitalism: Universalism versus Racism and Sexism,” *Race, Nation, Class: Ambiguous Identities*, 1987. 29–36.

³⁰⁸ *First Annual Report (NYCV)*, 76.

³⁰⁹ See Russell Hogg. “Imprisonment and Society under Early British Capitalism.” *Crime and Social Justice*, no. 12 (1979): 4-17; Ivan Jankovic. “Labor Market and Imprisonment.” *Crime and Social Justice*, no. 8 (1977): 17-31; Martin Miller. “At Hard Labor: Rediscovering the 19th Century Prison.” *Issues in Criminology* 9, no. 1 (1974): 91-114; Martin Miller. “Sinking Gradually into the Proletariat: The Emergence of the Penitentiary in the

industrialism forced many rural workers into urban areas in search of work. As the poor urban population grew, so too grew their ability to organize and unionize against exploitative working conditions and cruel treatment.³¹⁰ The prison, then, served to turn members of the poor against each other by the construction of criminality, transforming their enemy from the rich who stole the profits of their labor to their brethren who stole bread and clothes to survive.³¹¹ convict labor also was used to break apart unions. Since employers could pay the prison for free laborers, the effectiveness of striking was lost and workers had to sell their labor for less.³¹² Prisons leasing their captives charged employers half of what they paid for free laborers to incentivize this exploitative trade.³¹³ Because of this, one of the most fervent groups advocating prison abolition and an end to convict leasing in the nineteenth century were poor white laborers (though widespread resistance to convict labor from white labor unions did not pick up until the rise of black convict leasing in the postbellum South).³¹⁴ Key political debates, including Chief Justices working directly under the British monarchy, centered on integrating impoverished masses into the evolving economy.³¹⁵ Just seven years in the prison alleged to bring “People and their Children after them into a Regular, Orderly and Industrious course of life, which will be as natural to them as now Idleness, and Begging, and Thieving is.”³¹⁶ The argument concludes that contrary to modern popular belief, British and American criminologists were less interested in the rehabilitation of the person than they were the rehabilitation of the industrial worker. These historians identified just how much

United States." *Crime and Social Justice*, no. 14 (1980): 37-43; and Dario Melossi and Massimo Pavarini. *The Prison and the Factory: Origins of the Penitentiary System*. trans. Glynic Cousins (London, 1981).

³¹⁰ Labor strikes in New York City, 1768, when journeymen tailors halted production to protest a reduction of pay, were some of the first unionizing efforts in the United States. As working-class urban populations grew exponentially, more sustained and organized strikes and resistance against the capitalist class became increasingly common. One of the first major examples is the 1794 Philadelphian shoemaker union, the Federal Society of Journeymen Cordwainers. Solomon B. Levine, et. al. “Organized Labour” in *Encyclopædia Britannica*, April 02, 2020.

³¹¹ Foucault, *Discipline and Punish*, 63.

³¹² David Brion Davison. *The Problem of Slavery in the Age of Revolution, 1770-1823*, Oxford University Press, 1999. 252-53.

³¹³ Beaumont and Tocqueville, *On the Penitentiary System*, 81.

³¹⁴ As touched on in the Introduction, the end of the Civil War and the omission of prisoners from the Thirteenth Amendment to the Constitution’s abolition of slavery lead to a massive increase in black prisoners and convict leasing in the South. The huge rise of prison labor led white labor unions to organize around ending it. Some examples include the *Petroleum Centre Daily Record*, January 29, 1869; *New York Herald*, Feb. 3, 1869 and Jan. 1870; *Belmont Chronicle*, February 04, 1869; *Hancock Jeffersonian* Feb. 05, 1869; *Public ledger*, January 04, 1871; and *The Athens Post*, January 23, 1874, among many others.

³¹⁵ Hirsch. 13-15.

³¹⁶ Matthew Hale. *A Discourse Touching Provisions for the Poor*, (London, 1683). 11, 32-33.

class and control of cheap labor played into the creation of the prison, but their analyses largely ignored the racial dynamics that were central to the growing American economy.

As the industrial revolution expanded the factory economy of New York, black people were particularly forced into cheap industrial labor to survive. By the 1830s, 87% of New York's black population worked as underpaid factory workers.³¹⁷ This was the same across the North. In Philadelphia, while the white middle class was growing, almost 90% of black Philadelphians were in poverty, working laborious and low-paying jobs or driven to crime to survive. Homes were run-down, cramped, shared by many families, and almost never owned by them.³¹⁸

To firebrand black activist Maria Stewart, it seemed that her community transitioned from one form of coerced labor to another under capitalism: wage slavery. In September of 1832, just eight months after William Lloyd Garrison first established the New England Anti-Slavery Society, Stewart preached this to the predominately white crowd. "Tell us no more of Southern slavery; for with few exceptions, although I may be very erroneous in my opinion, yet I consider [living as a servant] but little better than that."³¹⁹ Her speech largely addressed the lack of access black women had to education and economic mobility, but was direct in calling out the liberal self-righteousness of white abolitionists who were vehement against Southern plantation but who upheld the structural oppression of Northern black communities. Having spent years working alongside David Walker, a black man who became nationally famous for his unapologetic *Appeal* to enslaved people to violently resist their oppressors, Stewart recognized the need for constant black vigilance. For most black Americans, non-violence was a privilege they did not have. Garrison and white abolitionists' fervent criticism of violence was not just ignorant, but dangerous. Stewart's life and activism was heavily concerned with Southern slavery, and her call to "tell us no more" of it was specific exhortation of her audience's complicity in the structural racism of the North. Her speech also served in stark contrast to the liberal ideals of the 'progress narrative' that structural racism or evil was getting better instead of getting more insidious. In these beliefs,

³¹⁷ Keith Michael Green. *Bound to Respect: Antebellum Narratives of Black Imprisonment, Servitude, and Bondage, 1816–1861*. University Alabama Press, 2015. 101.

³¹⁸ Nash, *Forging Freedom*. 214, 216.

³¹⁹ Maria Stewart. "Lecture Delivered at the Franklin Hall," 1832. *Maria W. Stewart: America's First Black Woman Political Writer, Essays and Speeches*. Ed. Marilyn Richardson. Bloomington: University of Indiana Press, 1987. 45–49. In *Black Thought and Culture*.

Stewart was not alone among black leaders calling attention to the fleeting promise of Northern liberty.³²⁰

Other scholars have identified how race was used to sow division among the poor, giving poor whites just enough privileges that they feel they have something to lose by uniting forces with black laborers and refrain from challenging the status quo.³²¹ It is no stretch, then, to connect these two extensively researched arguments: The prison in the North was used to help create and fortify the racial hierarchies within the large and multi-ethnic working class. This is further made evident by the lack of presence of penitentiaries in the plantation South. Plantation slavery did much of the same work of racial control in the South that the prison fulfilled in the North. Only in more industrial economies would the prison be useful in keeping the poor fearful, desperate, and productive.³²²

The prison also was used to force black children into exploitative labor. Following the gradual end of slavery in New York and around the North, black youth were often indentured out to rich white families for little to no pay. Many of these youth were orphans and being indentured served as part of the white power-structure's socialization as subservient, but the New York Manumission Society even encouraged black parents to send their children into the workforce, suggesting that if they did not instill in them the values of an obedient and productive laborer, their kids would end up in prison.³²³ This system of pauper apprenticeship was not exclusive for black youth, but race played a large role in the motivation behind encouraging black children to be sent to live with wealthy families — while poor white children were often taught to read and received plenty of food and free time, black youth were consistently relegated to work as servants for these families. Black youth were “apprenticed” far longer than white youth (as late as the age of thirty one) and most

³²⁰ One such example is black activist Martin Delany who lamented in a newspaper article how free black people in the North were too eager to “seek positions, such as servants, waiting maids, coachmen, nurses, cooks in gentlemens’ kitchen, or such like occupations, when they can gain a livelihood at something more respectable.” Quote from Martin Delany, *Blake; or, The Huts of America: A Tale of the Mississippi Valley, the Southern United States and Cuba*. 1852. Ed. Floyd J. Miller. Boston: Beacon Press, 1970. Originally cited in Green, *Bound to Respect*, 101-103.

³²¹ Ira Berlin, “Race: The Power of an Illusion,” *PBS*. Web.

³²² Mark Colvin. *Penitentiaries, Reformatories, and Chain Gangs: Social Theory and the History of Punishment in Nineteenth-Century America*. New York: St. Martin's Press, 1997.

³²³ To put pressure on black parents, they claimed (or perhaps threatened) that early employment would prevent “close confinement at maturer age in a state prison or house of correction.” Harris, *In the Shadow of Slavery*, 131, see also 165-66.

commonly exited the relationship into the same poverty from which they left.³²⁴ Because of this mistreatment, many black children resisted their apprenticeship. In 1848, Mary Wales set the barn of her “employer” on fire in an attempt to flee her confinement. As a result, she was sent to a youth prison (at the time called a House of Refuge). The imprisonment of black children in adult facilities was not uncommon, either. Youth prisons did not emerge until the mid 1820s, and were typically segregated. Because of segregated youth prisons, as well as black children being considered more criminal, many black vagrants or orphans were brought to adult prisons. The same year Mary Wales attempted escaped, forty other kids ran away and four of them were sent to adult prison.³²⁵

Ironically, though black communities were disproportionately policed and arrested for activism, crimes of poverty, and for their general disenfranchisement, high black prison populations were used as evidence of their “aggregate moral character” against being given the right to vote. During New York state’s 1846 Constitutional Convention, New York City’s police chief John Kennedy cited how the state prisons held thirteen-and-a-half times as many black prisoners as whites, an even greater disparity considering how black New Yorkers made up less than five percent of the total population. He boldly claimed that the grossly disparate black prison population had nothing to do with racial prejudice or systemic oppression. Instead, he said it reflected “distinctions and divisions that nature designed to exist” between black and white people.³²⁶

Conclusion

William Dixon ultimately was granted his freedom in 1840, in a major legal battle that was used to win the right to jury trials for self-emancipated people in New York. Two years later, the United States Supreme Court ruled anti-kidnapping laws were unconstitutional in the infamous *Prigg vs. Pennsylvania* decision, where the abolitionist Justice Story cited his higher obligation to the law than to morality.³²⁷ Though the right to a

³²⁴ Green, *Bound to Respect*, 102-111.

³²⁵ Harris, *In the Shadow of Slavery*, 165-66.

³²⁶ Harris, *In the Shadow of Slavery*, 268. Demographic statistics come from Harris, “African-Americans in New York City, 1626-1863,” *Emory University*, Web.

³²⁷ Barbara Holden-Smith, “Lords of Lash, Loom, and Law: Justice Story, Slavery, and *Prigg v. Pennsylvania*,” *Cornell Law Review* vol. 78 iss. 6, 1993. She writes, “Justice Story himself is to some extent responsible for the scholarly enchantment with the ‘morality versus duty’ theory as a means to reconcile his proslavery position in *Prigg* with his antislavery reputation. He laid the foundation for this view shortly after the decision. Writing to a friend in November of 1842, he argued that he was compelled by his duty as a judge to render decisions upholding the laws, even where those laws upheld the institution of slavery. Story explained: I shall never

jury trial would not be officially revoked until the 1850 Fugitive Slave Act, *Prigg v. Pennsylvania* only exacerbated State power and obligation to kidnap black people and traffic them into the South.³²⁸ While the Dixon victory was monumental, it also represented a classic reformist change that was not enough to save Dixon or other black victims of the carceral State. In 1850, ten years after his case ended, Dixon is recorded to have been arrested again and locked in prison, adding to the list of black men behind bars and forced to work.³²⁹

For most historians, Dixon's story and its significance to history ends the moment he is acquitted and wins the right for fugitive jury trials. His later return into State custody is ignored at best, or blamed on some want of character at worst. Dominant narratives of history, concerned more with the explicit acts of individual racist than the system that fuels and upholds it, have almost entirely ignored the mechanisms by which the carceral systems of the North were rooted in anti-blackness. Anti-kidnapping laws and abolitionist societies in the North are used to depict the situation as a struggle of benevolent State power against malicious kidnapers. This, however, is a reductive understanding of history. Every actor in history has complicated interests guiding their actions, and black protest contributed to the pressure to pass these laws. What is more important is to note how the system functioned — anti-kidnapping laws were rarely enforced and mostly targeted individuals, allowing the State to traffick black prisoners into the South in a superlegal slave trade.

While white historians often laud the abolitionist work of anti-slavery societies and white abolitionists, most of the day-to-day resistance to slavery happened on the ground through the local working-class black community. The lack of access (and perhaps desire) the black working class had to broadcast their activity in the media, as well as the general systematic racism that keeps the journals and letters of the marginalized from being preserved in historical archives, means there is not a lot of clear records of the actions of poor black communities. That being said, numerous newspapers and cities around the North hint to the

hesitate to do my duty as a Judge, under the Constitution and laws of the United States, be the consequences what they may. That Constitution I have sworn to support, and I cannot forget or repudiate my solemn obligations at pleasure. You know full well that I have ever been opposed to slavery. But I take my standard of duty as a Judge from the Constitution.”

³²⁸ Every civilian, white or black, was required to assist in the arrest and imprisonment of self-emancipated black people. Failure to do so was met with rigid fines and prison sentences. This also gave near-blanket impunity for police and private kidnapers to arrest free black people under the excuse that they were formerly enslaved. *Fugitive Slave Act of 1850* (9 Stat. 462).

³²⁹ “Black Vigilance,” in the New York Historical Society's online project, *New York Divided: Slavery and the Civil War*. For Dixon's late imprisonment, see page 111.

clear threat that both slaveholders and more “respectable” abolitionist societies found in their riots, rescue missions, and battles with local police, prison guards, and court officials.³³⁰

Until now, historians like Graham Hodges have deemphasized anti-carcerality as a driving force of the committee, choosing instead to focus more on individual kidnapers whose consistent use of the “pro-slavery spirit” pervading the criminal justice system is downplayed. This does a disservice to Ruggles and the NYCV, who throughout their publications center the “evils” that are conspired by the hands of government systems and officials. The NYCV was most prominently known for their direct action and on-the-ground abolition through rescue and protest, but their work also encompassed education and the creation of a transnational network of alerts and needs; the recovery and rescue of black people incarcerated in the south; coordinating legal services, bringing human traffickers to trial, and fighting for black people to get a trial by jury; and housing self-emancipated people.³³¹

Dominant narratives of history also tend to erase the far more common modes of resistance that did not guarantee prisoners’ freedom — building networks of community in an intentionally anti-social institution, destroying tools and even the prisons themselves through acts of arson, and refusing to work.³³² Their resistance, however, does not often get considered as prison abolition or part of the anti-carceral struggle. This is for a few reasons, the first of which being the favoring of narratives we characterize as masculine. Violence, whether in a drawn-out seige like the case of Nat Turner’s rebellion or in hand-to-hand combat, gets favored by dominant history because of a bias towards centering wars as the signposts of change in our world. Black women did frequently partake in violent revolution during the late eighteenth and nineteenth centuries, but modes of resistance we characterize as feminine (such as subversive social networks) are often erased. The other reason for this erasure is because analyzing these modes of resistance presents key challenges and requires more work and speculation as to their effectiveness. Some of this resistance may even seem

³³⁰ As explained earlier, for an example, see “To the Thoughtless Part of our Colored Citizens.” *The Colored American*, April 15, 1837.

³³¹ Hodges, *David Ruggles*.

³³² In New York, see Beaumont and Tocqueville, *On the Penitentiary System*, 156 n.Q; and Stephen Allen, Samuel Hopkins, and George Tibbits, “Report on the Auburn Penitentiary” 1824. 107. In Massachusetts, see “Regulations of 1815,” in Gideon Haynes, *Pictures from Prison Life: A Historical Sketch of the Massachusetts State Prison*, Boston, 1870. 234; and Massachusetts State Prison “Visitors Minutes,” September 26, 1822, 2:206-09.

counter-effective, such as ‘failed’ escape attempts or arson that lead to new oppressive policies or increased security. In an article about the effects of insurrections on Trans-Atlantic slave ships, historian David Richardson shows how the frequency of uprisings (which he estimates is as high as ten percent of the thousands of slave ships between the late fifteenth and nineteenth centuries) forced ships to pay for more guards and weapons, leading to a great reduction of the number of ships these companies could afford annually as well as the number of trafficked Africans. Richardson estimates that the hundreds of “failed” rebellions prevented as many as one million fewer African natives kidnapped into human bondage.³³³ Similarly, historians Manisha Sinha and Barbara Bush shows how the daily nonviolent resistance of black people enslaved in the South, such as “accidentally” breaking tools and feigning grave ignorance, was the underpinning of abolition.³³⁴ In the earliest American prisons, individual efforts of escape, damage, and even suicide greatly undermined the superlegal slave trade monopolized by the State. A full exploration into ‘feminine’ anti-carceral resistance is long overdue and unfortunately outside of the scope of this paper, but is essential as a framework to understand the extent to which anti-slavery and anti-carcerality were integrated into black Americans’ everyday lives.

³³³ David Richardson. "Shipboard Revolts, African Authority, and the Atlantic Slave Trade." *The William and Mary Quarterly* 58, no. 1 (2001): 74-75.

³³⁴ Manisha Sinha, *The Slave's Cause: A History of Abolition*, Yale University Press, 2017. See also Barbara Bush, *Slave Women in Caribbean Society*, Indiana University Press, 1990. 51-82.

Conclusion

No matter how much I cow tow tap dance and jump through a bunch of hoops, I'll still be the one who winds up in a jumpsuit...One's just the same slavery; the other unlocks chains, turn key. I hate that this deferred dream keeps recurring. Wake up America, Wake up and hurry.

- Raphael Saadiq, "Rikers Island Redux," 2019

One hundred and thirty one years after the 25-year-old radical David Ruggles first organized the NYCV, young black activists in Oakland, California gathered under similar principles of freedom at any cost. Though the Black Panther Party for Self-Defense (BPP) was unique from the NYCV in many regards, central to their struggle for liberation was the abolition of State carceral control of black Americans. They demanded an immediate "Freedom For All Black Men Held In Federal, State, County And City Prisons And Jails," along with an end to racist police brutality and the freedom of self-determination.³³⁵ The BPP was part of a moment in time that has since been claimed to be the origin of the prison abolition movement. But just as historian Manisha Sinha traces the origins of the slavery abolition movement to the resistance of enslaved black people, the continuous resistance of black and Native peoples to policing and imprisonment build a case for tracing the prison abolition movement to the first penitentiaries.³³⁶ Ruggles, however, is explicit about his denouncement of the entire criminal justice system. Just as the Northern police are the arms of the Southern plantations and criminal courts are a "rendezvous of oppression," so too are "the jails of this free city, like the dungeons of the South...shambles for human beings while passing to a more convenient [slave] market."³³⁷ The fact that thousands of working-class black people in the North — who had rarely participated in the liberal activism of white abolitionists — quickly, energetically, and consistently mobilized behind the anti-carceral vigilance of David Ruggles suggests the philosophy of prison abolition was part of the black working-class consciousness since at least 1835, if not long earlier. The system, then, is not

³³⁵ "The 10-Point Program." (Originally written October 15, 1966). Published later by Huey P. Newton, *War Against the Panthers*, Harlem River Press, 1980.

³³⁶ In her book *Are Prisons Obsolete?*, Angela Davis claims the prison abolition movement "dates back to the historical appearance of the prison as the main form of punishment," but leaves her claim unsupported by any evidence. Davis, 9.

³³⁷ *First Annual Report (NYCV)*, 9 and 47.

broken: Since the birth of the prison, black justice required resisting the very institutions who claimed to protect them.

White Liberalism

One of the primary reasons the prison has been characterized as a “broken system” and not an inherently oppressive one is because it was founded in the post-Enlightenment rise of liberalism. It is easier to blame the reactionary politics of conservative racism than to address the systems that value diversity but thrive on the exploitation and trauma of black, brown, and Native people, for to address structural racism would be to recognize our complicity in it. It is for this reason that Malcolm X said, “The white liberal is the worst enemy to America, and the worst enemy to the black man.”³³⁸ In the history of the prison, the reactionary and conservative politics of convict leasing and the War on Drugs are blamed for ‘perverting’ the system that was ‘humanitarianly’ designed by white Quakers.³³⁹

By this narrative, the structural racism and colonization from which the prison arose are entirely erased. As argued throughout this thesis, since before the reconstruction of Philadelphia’s Walnut Street Jail in 1790, State carceral institutions functioned on behalf of slaveholders. Slaveholders transferred the people they held in bondage from one captivity to another, moving them freely between private and State custody. It was not, however, until the birth of the penitentiary movement that this relationship between State power and black subjugation was formalized. This modern prison system arose in the “free” North and not the South.³⁴⁰ The penitentiary formed in sync with gradual emancipation, the North’s slow shift

³³⁸ Malcolm X explained this immediately after, claiming “white conservatives...are like wolves; they show their teeth in a snarl that keeps the Negro always aware of where he stands with them. But the white liberals are foxes, who also show their teeth to the Negro but pretend that they are smiling.” Other Civil Rights leaders, like Martin Luther King jr., said similar things: “I have almost reached the regrettable conclusion that the Negro's great stumbling block in the stride toward freedom is not the White Citizen's Council-er or the Ku Klux Klanner, but the white moderate who is more devoted to "order" than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice; who constantly says "I agree with you in the goal you seek, but I can't agree with your methods of direct action;" who paternalistically feels he can set the timetable for another man's freedom; who lives by the myth of time and who constantly advises the Negro to wait until a "more convenient season.” For Malcolm X quote, see “God's Judgement of White America,” (speech originally delivered on December 4, 1963), published by *MalcolmX.org*, April 6, 2016. For MLK jr. quote, see “Letter from Birmingham Jail,” (originally written April 16, 1963) published by the African Studies Center, *University of Pennsylvania*. Web.

³³⁹ This bias in how we think about oppression plays its way into dominant narratives of history: African American history gets rewritten as a story of conservative racists (from slaveholders to segregationists to Trump-supporters) struggling against the white abolitionists or noble white heroes like John F. Kennedy, despite actively participating in the systematic disenfranchisement of black America.

³⁴⁰ With the exception of some Southern urban cities and ports that for economic reasons shifted away from plantation slavery to the wage-slavery of industrial capitalism. See Chapter 1, page 31 of this thesis.

away from slavery. It also formed as the American Empire — both domestic and foreign — relied more and more on institutional forms of colonialism instead of military force. Although many factors were at play in the invention and growth of the penitentiary, this connection to white liberalism (including white abolitionists) is no accident.

White Southerners largely looked to plantation justice to control and exploit black labor; even poor whites reinforced this out of feeling proximity to power by identifying more with wealthy white slaveholders than with enslaved black people. In the North, the system of chattel slavery was slowly ending and the prison rose within a context of the need to maintain the ideas of white supremacy. The prison, however, was not only influenced by its racial and colonial context, but emerged *because* of the need for centralized control over the growing free black population, and the rise of liberal State biopower.³⁴¹

The influence of liberalism in American historical narratives of the prison is reflected in how central the notion of intent is. If the prison architects plotted together to devise the superlegal slave trade, or wrote about the prison as a mechanism of undermining Native sovereignty and exploiting black labor, only then could the system be denounced. The way systems emerge in a need or vacuum of power are mere accidents, side stories to the initial (alleged) humanitarianism. But historical actors, like all of us, had complex and mixed rationales behind their actions. Even the desire to end public executions were mixed: some powerful men thought prison was more torturous as it targeted the soul and not the body, others wanted to move torture behind doors out of fear that it would corrupt the public, and some certainly believed human beings should not be tortured. While this thesis shows how frequently police, judges, and politicians mobilized the carceral systems of control against black people for the sake of personal gain, it also highlights how the power of laws like the Fugitive Slave Act and the Indian Removal Act forced even well-intended sheriffs and officers to reinforce white supremacy. Police were obligated by law and their jobs to kidnap self-emancipated black people and traffic them into slavery, as well as cage and systematically displace thousands of Native peoples from their ancestral homes. Failure to be

³⁴¹ See Saidiya Hartman, “Fashioning Obligation: Indebted Servitude and the Fetters of Slavery.” *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America*. Oxford University Press, 1997. 125-163; Dennis Childs, *Slaves of the State: Black Incarceration from the Chain Gang to the Penitentiary*. Minneapolis: University of Minnesota Press, 2015; and Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity*, Duke University Press, 2009.

part of State racial and colonial oppression would make them a criminal — the opposite of being a police officer — as the penalty of not enforcing the law equated to “aid[ing], abet[ting], and assist[ing]...a fugitive” and was punishable by a large fine and even time in prison.³⁴² Because of this, the twenty-first century argument excusing racist police brutality as solely the product of “bad apples” does not make sense: if the system has laws that either directly or disproportionately target poor, black, or Native peoples, then it is the job of every well-intended, “good apple” police officer to uphold them.

To a large degree, however, the intent behind a system does not matter. Even well-intended decisions can cause significant harm. Regardless of any supposed humanitarian aims of the prison architects, the system has been inundated from its genesis with high black imprisonment, the superlegal trafficking of black prisoners into Southern slavery, and the undermining of Native self-determination by dismantling the authority of tribal justice. What cannot be refuted is the influence of ideas that people of African descent were more criminal, more beast-like, and required more violence to control. As is argued in the first chapter of this thesis, the fact that no prominent abolitionist became concerned with the grossly disproportionate number of black prisoners reflects that this racism, unconscious or conscious, undergirded the development of the original prison. Similarly, whether prison architects admitted to the influence of westward colonization in the timing and expansion of the prison does not matter. In either case, prison was one of the first institutions built whenever settler-colonizers established claim to territory, and it immediately fortified American legal dominion over Native nations, particularly after the General Crimes Act of 1817.

In American history, marginalized people have tried using the prison and criminal justice systems as protection. We can see in specific instances how David Ruggles brought charges against human traffickers or when Richard Allen sued his kidnappers and got them sent to jail. In both cases, the kidnappers were released quickly because the system worked for them. Even in rare cases when a kidnapper was sentenced to a long prison term, the system of carceral oppression of black communities continued uninterrupted. Individual kidnappers, even figureheads like police and judges, were not the problem but rather pawns

³⁴² The 1793 act require a five hundred dollar fine. The 1850 law increased this penalty to one thousand dollars and six months in prison.

of a much larger system. The same applies today: imprisoning people who commit acts of racial violence does nothing to address the structural white supremacy that raised these individuals to commit prejudicial harm. The only effect it has is to reinforce the idea that justice means sending someone to prison, a belief that allows mass incarceration to remain unchallenged. The idea that justice is achieved through vengeance is one of the strongest values of Western society and became so since the period of European “Enlightenment” and the emergence of liberal philosophies about morality, the economy, and race.

The Invention and Reinvention of Crime

One of the motifs of this thesis is the notion of crime. As black and indigenous activists have recognized for generations, crime is not a fixed or real concept, but a social construct, something dictated by the creators and enforcers of criminal law. Ideas we take for granted as crime, such as theft and murder, are themselves divided into subcategories of justified and unjustified acts: the theft and murder by the poor or groups aiming to bring revolutionary change is criminalized, but the theft and murder of corporations or governments is good business or patriotism. Instead, the hard notion crime was and is continually invented as a means of criminalizing marginalized populations.³⁴³ Since long before the first prisons were established, black identity was constructed within the white public consciousness as criminal. Laws like the Fugitive Slave Clause and the Indian Removal Act were created to criminalize black freedom and Native sovereignty. To defy these laws made one a criminal. As the prison system expanded, these laws often became more insidious and systemic — such as drug laws that targeted specific racial groups without criminalizing their race.³⁴⁴

In American culture, obedience to the law has become associated with morality, but crime is not synonymous with harm. As evidenced in this thesis, resisting kidnapping and

³⁴³ For an exploration into the invention of crime alongside the emergence of the modern capitalist state, see Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century*, Verso Press, 2006.

³⁴⁴ The first drug to be criminalized in the United States was a San Franciscan ordinance against opium in 1875, following a wave of Chinese immigration to California. The same year, the federal government banned Chinese women immigrating to the country and in 1882 banned all Chinese immigrants, the first of its kind. In 1910, Dr. Hamilton Wright, the lead US investigator of narcotic harm in America, testified to Congress that “cocaine is the direct incentive to the crime of rape by Negroes of the South and other sections of the country.” Four years later, the federal government made cocaine use a crime, using this to police black communities harder. White cocaine use was ignored. In the next couple of decades, immigration from Mexico began to increase and public officials began associating cannabis-use with Mexican savagery, passing anti-cannabis laws to target Mexican communities. See Zachary Bowles. “A Dope History: The History of the First Federal Narcotics Laws in the United States Between 1880-1925,” Bachelor's thesis from Reed College, 2018.

chattel slavery was a grave crime and those who protected their family or community from kidnapping risked enslavement or death themselves as a State-sanctioned criminal punishment. Similarly, harm is not synonymous with crime. There are so many examples of harm against people, against society, and against nations around the world that the US government and corporations get away with, with impunity. And yet, on average close to half a million people held in jail have not been convicted of any crime, unable to pay bail. Many of these people, desperate to get out to not lose their jobs, homes, or their children, take a plea deal to get released early, giving them a criminal record and roping them into the system simply because they are poor.³⁴⁵

Crime, then, has less to do with what you do and more to do with who you are.³⁴⁶ In a system of racial capitalism, becoming rich has often required exploiting, harming, and even killing the marginalized populations of our society.³⁴⁷ Getting and maintaining power is praised by capitalist societies, regardless of the harm done to multitudes of people. To resist this power, whether through organized protest, fighting against corporate policies, or stealing food and money to survive, you become a criminal. If you are poor, a person of color, queer, indigenous to the land, or any combination of marginalized identities, you are automatically criminalized by a militarized police State that shoots first and asks questions later.³⁴⁸ The

³⁴⁵ Numbers from the most recent Bureau of Justice Statistics' report on jails by Zhen Zeng, Ph.D., BJS Statistician. "Jail Inmates in 2017," published April 2019.

³⁴⁶ Young black and brown boys today are called thugs for being systematically roped into gangs based on long histories of their communities being disenfranchised, but officials in the United States government kill thousands of innocent people around the world without being called murderers. A woman who steals identities to survive and take care of her family after being kicked from her home is a class-A felon in many states, but corporate CEOs can systematically appropriate billions of dollars from their customers through marketing scams, hidden fees, and buying up property during a recession without being seen as criminal.

³⁴⁷ Arguably all wealth in a society with grave wealth disparities necessitates the disenfranchisement of many more people. Adam Smith himself, claimed by many as the father of capitalism, said "Wherever there is great property there is great inequality. For one very rich man there must be at least five hundred poor, and the affluence of the few supposes the indigence of the many. The affluence of the rich excites the indignation of the poor, who are often both driven by want, and prompted by envy, to invade his possessions." This was followed with Smith's theorization of the purpose of military - to protect the property of the rich. *An Inquiry into the Nature and Causes of the Wealth of Nations*, MetaLibrary, 2007. Web. 550. (Originally printed London, 1776).

³⁴⁸ The US Supreme Court giving permission to police to "shoot first, ask questions later" (*Kisela v. Hughes*, 2018) is just a component of a long series of admissions that the purpose of the police lies in protecting power and not people. The Supreme Court has previously ruled that police: Do not have a duty to protect you (*Castle Rock v. Gonzales*, 2005); Don't need to know any laws (*United States v. Shelton Barnes et.al*, 2015); Can arrest you for laws they think exist (42 USC 1983, Et. Seq.); Can lie to you; And can stop and frisk you and run background check without grounds of suspicion (*Utah v. Strieff*, 2016). On top of this, under civil forfeiture laws and eminent domain laws, police are allowed (and frequently do) seize any private property they desire even if it has nothing to do with the alleged crime having been committed, and police receive billions of dollars of military weaponry under the 1033 program.

more the notion of crime is explored, the more it appears to be a social construct, invented by people in power to control those underneath them. What is lawful is often not what is moral. Carceral institutions of control, then, do not aim to decrease harm, but to subjugate the criminalized. This is the power of the early black vigilance movements: not only were they directly opposed to the explicit racism of private slaveholders, but in their anti-carceral struggle, Ruggles and others were conscious of implicit systemic racism, the “rendezvous of oppression” that defined the courts of law and institutions of State captivity.³⁴⁹ The NYCV, like later black radical groups, rejected the labels of criminal or innocent, of fugitive or free, of unjust imprisonments and just imprisonment. As the early prison system extended a blanket criminalization over both indigenous nations as settler-colonization became more institutionalized, and black communities to enforce an economy of tenuous freedom, no one was free until everyone was free.

Final Thoughts

The broader implications of this thesis are crucial in this era of prison reform becoming more of a bipartisan and popular issue. The first of these is the notion that the prison system is not broken, but has been entrenched in racism and colonialism since its founding. If the prison is oppressive by its very nature, no amount of reform will uproot the systematic violence it causes. Prison reformers and even many abolitionists point to the model laid out by Scandinavian countries, but even this system — which humanizes its prisoners — relies on the notion of the individual as the cause of the harm instead of the product of it. For people struggling with the structural issues of poverty, drug addictions, and mental health illnesses, rehabilitation can do little if the prisoner is returned into the system that made them turn to crime to survive.

Before we can even begin to have that conversation, though, we need to uproot the cultural legacy that the rise of the American penal State caused. When asked to dream of a world without prisons, people who have never experienced violent crime in their life invent preposterous stories of remorseless mass rapists who would be set loose to ravage upon innocent victims. Nevermind that the vast, vast majority of sexual assault is committed by someone the victim knows, and ‘stranger danger’ is a racial myth stemming back to the 1915 American film *Birth of a Nation*. Nevermind that these extremely rare - if nonexistent -

³⁴⁹ *First Annual Report (NYCV)*, 9.

stories are used to justify the mass imprisonment of more than 2.3 million people at any given time in the US, State carceral supervision of an additional 4.5 million people, the 10.6 million jail admissions every year, and the 77 million people (23.4% of Americans) who are restricted from specific jobs and housing due to having a criminal record.³⁵⁰ We need prisons, we are told, to keep us safe (though the evidence suggests imprisonment does not statistically reduce crime), but we want prisons because we believe the only true justice is revenge.

Since the United States was founded on the basis of the doctrine of discovery³⁵¹ and westward expansion,³⁵² indigenous genocide and the undermining of Native sovereignty is written into the DNA of this country. America's existence and growth is thus predicated upon Native colonization and land theft, a process that continues to this day on both sides of the political aisle. Similarly, the mass enslavement of African people is the backbone of this country's economy — without it, America would exist in the way it does now without it. As wealth breeds more wealth (you need money to make money), the economic, social, and political capital of many white families grew and grew across generations. Institutions evolved and even were created to protect it. At every stage in American history, black wealth and power were systematically fought against (sharecropping, redlining, bailouts, etc.).³⁵³ Though the life of loved ones lost can never be returned, the only way healing can begin to happen is if we move to set the scales of justice even again — repaying the generational consequences of systemic racism from chattel slavery to mass black incarceration.

³⁵⁰ Wendy Sawyer and Peter Wagner. "Mass Incarceration, the Whole Pie 2020," *Prison Policy Initiative*, March 24, 2020.

³⁵¹ That the settler-colonists "discovered" the land and therefore had every right to it. Mark Charles and Soong-Chan Rah. *Unsettling Truths: The Ongoing, Dehumanizing Legacy of the Doctrine of Discovery*, InterVarsity Press, 2019.

³⁵² As explained earlier, one of the main reasons the American colonists fought against Britain for their freedom was because Britain wanted them to stop expanding. That expansion was at the root of the desire for independence means that this country was founded in large part on the principle of getting rid of the indigenous people and nations of the land.

³⁵³ For a powerful account of how black wealth and access has not only been extremely difficult but actively stolen once fought for, see Ta-Nehisi Coates' article, "The Case For Reparations," *Atlantic Magazine*, June 2014.

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