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Remaking Slavery in a Free State: Masters and Slaves in Gold Rush California

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Hundreds of white Southerners traveled to Gold Rush California with slaves. Long after California became a free state in 1850, these masters transplanted economic and social practices that sustained slavery in the American South to the goldfields. At the same time, enslaved people realized that Gold Rush conditions disrupted customary master-slave relationships and pressed for more personal autonomy, better working conditions, and greater economic reward. The result was a new regional version of slavery that was remarkably flexible and subject to negotiation. This fluidity diminished, however, as proslavery legislators passed laws that protected slaveholding rights and vitiated the state's antislavery constitution. California's struggle over bondage highlights the persistence of the slavery question in the Far West after the Compromise of 1850 and illuminates slavery's transformation as it moved onto free soil.

In the spring of 1852 the California State Assembly heard an unusual petition. In a lengthy memorial, twenty-three slaveholders from South Carolina and Florida requested permission to establish a permanent slave colony in the state. Led by James Gadsden, later famous for engineering the Gadsden Purchase, the petitioners complained that they had been unfairly excluded from sharing in California's bounty. Slaveholding Southerners had sacrificed "their blood and their treasure" to acquire the new territory for the United States, but, when California entered the Union in 1850, its constitution shut them out by prohibiting slavery. The petitioners urged state legislators to redress this injustice by granting several dozen slaveholding families the "privilege of emigrating with *their household*, and *domestics* reared under their roofs and bound to them by many endearing associations, and sympathies." They insisted that California was particularly well-suited to slave

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labor. Mining in the rainy season and tilling fertile valleys in drier weather, slaves would make the “wilderness . . . blossom like the Rose.” Lawmakers had a duty to ensure “the permanent and future prosperity of California,” and, in Gadsden’s words, “Negro Slavery, under Educated and Intelligent Masters can alone accomplish this.” Assemblymen voted to consider the memorial further and referred it to the Committee on Federal Relations.¹

Gadsden and his followers never received approval to establish their colony. Nevertheless, by the time that their petition came before the California legislature in 1852, African American slavery was already a feature of the Gold Rush landscape. Before and after California became a free state in 1850, slaveholders did more than dream about the profits to be made from slave labor in the region; hundreds migrated westward with nearly a thousand bondpeople.²

1. “Memorial from Southern States to the Legislature seeking to establish a slave colony in California,” Misc. petition reports (1852), California State Archives, Sacramento (emphasis in original); California Constitution (1850), art. 1, sec. 18; James Gadsden to Thomas Jefferson Green, Dec. 7, 1851, in John C. Parish, “A Project for a California Slave Colony in 1851,” *Huntington Library Bulletin*, 8 (1935), 173–174; *Journal of the Assembly of California, Third Session, 1852* (San Francisco, 1852), 159–160. A discussion of Gadsden’s colony appears in Paul Finkelman, “The Law of Slavery and Freedom in California, 1848–1860,” *California Western Law Review*, 17 (1981), 437–438, and Leonard L. Richards, *The California Gold Rush and the Coming of the Civil War* (New York, 2007), 126–127. Leonard Richards suggested that sending the memorial to the Committee on Federal Relations was a way of quietly killing it. Antislavery Californians who corresponded with Frederick Douglass’s abolitionist journal believed, however, that the assembly’s failure to reject the memorial outright indicated strong support for it. *Frederick Douglass’ Paper* [Rochester, N.Y.], March 25, 1852, p. 3.

2. The precise number of enslaved African Americans present in California during the Gold Rush is unknown. Approximately 2,200 African Americans resided in the state by 1852, but census takers usually made no distinction between enslaved and free black residents. For aggregate census statistics on African Americans in California in 1850 and 1852, see U.S. Census Office, *Seventh Census of the United States: 1850* (Washington, D.C., 1853), xxxviii, 967–972, 982–983. Rudolph Lapp speculated that at least 500 to 600 slaves participated in the Gold Rush. Rudolph M. Lapp, *Blacks in Gold Rush California* (New Haven, Conn., 1977), 65. Contemporary sources suggest that there were several hundred, perhaps even a few thousand, slaves in California during the 1850s. Southern newspapers frequently reported the departure of dozens, sometimes hundreds, of enslaved people for the diggings. See, for example, Richards, *The California Gold Rush*, 127, and John C. Inscoe, *Mountain Masters, Slavery, and the Sectional Crisis in Western North Carolina* (Knoxville, Tenn., 1989), 73. An 1852 census conducted by the state of California also listed hundreds of southern-born African Americans, many of them without surnames, laboring as slaves, servants, and miners. See, for instance, the census data collected in an unpublished 1969 research paper, Ernest V. Siracusa, “Black 49’ers: The Negro in the California Gold Rush, 1848–1860,” Appendix A, pp. 1–43, available as Banc Film 241, Bancroft Library, University of California, Berkeley. Finally, in her study of 1850 census data for California’s Southern

Much like the Gadsden petitioners who envisioned transplanting a southern slave economy to the Pacific Coast, westward-bound masters hoped to incorporate California into the economic and social universe of southern slaveholding. They extended familiar practices and relationships that sustained slavery in the American South to the American West. Slavery, however, did not survive the journey to California intact. The vast, anonymous terrain of the mining country, the large presence of antislavery Northerners, and, of course, the illegality of slavery itself in California unsettled familiar relationships of power between masters and slaves. Enslaved African Americans often recognized the disruptive, destabilizing potential of California. Using this instability to their advantage, they pressed against the authority of their masters and renegotiated the terms of their enslavement to reflect their own desires for greater personal liberty, improved working conditions, economic reward, and family stability. By the early 1850s a new regional version of slavery emerged in California that, while still fraught with coercion and violence, was remarkably fluid, flexible, and subject to negotiation.³

The fluidity of California slavery diminished as the Gold Rush wore on. Like the Gadsden petitioners, California slaveholders turned to law and politics to promote their interests. They found allies among powerful proslavery state legislators and jurists who were interested in asserting slaveholding rights in the West. During the early 1850s, the state legislature and judiciary constructed a web of statutes and legal rulings that undercut enslaved people's claims to freedom and committed the state government to compelling slave obedience. Adept at reworking free state laws to advance

Mines, Susan Lee Johnson also found several instances of southern-born whites living in the same households with people who appear to be enslaved African Americans. Susan Lee Johnson, *Roaring Camp: The Social World of the California Gold Rush* (New York, 2000), 68–69, 189–190.

3. Historians have long documented the presence of slaveholders in California and their desires to expand slavery there. Works that examine the lives of California slaves and slaveholders include Delilah Leontium Beasley, "Slavery in California," *Journal of Negro History*, 3 (1918), 33–54; Beasley, *The Negro Trail Blazers of California* (Los Angeles, 1919); Lapp, *Blacks in Gold Rush California*; W. Sherman Savage, *Blacks in the West* (Westport, Conn., 1976); and Quintard Taylor, *In Search of the Racial Frontier: African Americans in the American West, 1528–1990* (New York, 1998), 77–80. Other works, such as Eugene H. Berwanger, *The Frontier Against Slavery: Western Anti-Negro Prejudice and the Slavery Extension Controversy* (Urbana, Ill., 1967), 60–77, and Richards, *The California Gold Rush*, document the strong southern sentiment for extending slavery into California.

slaveholding ends, by 1852 proslavery politicians had passed a fugitive slave act that, in practice, suspended the antislavery clause of the California constitution. The act promoted slaveholding rights so successfully that one antislavery Californian lamented that “this State now is, and forever hereafter must remain, a slave State.”⁴ While the fugitive slave act did make slavery quasi-legal in California and shifted the balance of power toward masters, slaveholders never achieved the kind of security that antislavery advocates feared. African Americans and their allies continued to contest slaveholder power in the courts for the remainder of the 1850s. Although initially unsuccessful, these efforts eventually eroded the political and legal foundations that had once supported slavery on free soil.

This story about the persistence of slavery in California fits uneasily within familiar narratives of western history. In popular mythology, the American West stands as a kind of ultimate free labor landscape, a place where autonomous, mobile individuals were at perfect liberty to pursue their economic interests and raise their social status. Historical scholarship, too, has often linked the West’s destiny with that of free labor. Frederick Jackson Turner’s 1893 frontier thesis portrayed the West as a space of freedom characterized by individual autonomy, geographic mobility, and social and economic fluidity. Starting in the 1920s, historians of the American South also naturalized free labor in the West by arguing that western geography and climate were incompatible with plantation agriculture and thus placed “natural limits” on slavery’s expansion. Social and political historians working in the latter half of the twentieth century took a different approach, documenting how the militantly free-labor, anti-black, and anti-monopoly politics of many western whites, rather than geography alone, precluded slavery. Taken together, these scholarly works depict the region’s history as incompatible with—even antithetical to—slavery. The triumph of free labor in the West appears, if not predetermined, then at least overdetermined.⁵

4. *An Act Respecting Fugitives from Labor, and Slaves brought to this State prior to her Admission into the Union* [hereafter *Act of April 15, 1852*], ch. 33, *California Statutes*, at 67–69; *The Liberator*, Oct. 22, 1852, p. 1.

5. Frederick Jackson Turner, “The Significance of the Frontier in American History,” in Turner, *The Frontier in American History* (1920; New York, 1996), 1–38. The “natural limits” argument is most clearly articulated in Charles W. Ramsdell, “The Natural

In the past three decades, however, scholars have gradually begun to problematize free labor in the West. Examining slavery, indentured servitude, contract labor, and debt peonage in a variety of western contexts, these historians have found that unfree labor systems designed to limit worker mobility and autonomy were foundational both to colonial economies and capitalist expansion in the region.⁶ This was especially true in Gold Rush California. As historians Rudolph M. Lapp and Leonard L. Richards have shown, the new territory quickly attracted southern masters with schemes for creating slaveholding colonies. California historians have also documented how other bound labor systems, from American Indian indenture and debt peonage to Chinese and Latin American contract labor, contributed to the Gold Rush economy and shaped the contours of state law and politics in the 1850s.⁷ Denaturalizing

Limits of Slavery Expansion," *Mississippi Valley Historical Review*, 16 (1929), 151–171, and Charles Desmond Hart, "The Natural Limits of Slavery Expansion: Kansas-Nebraska, 1854," *Kansas Historical Quarterly*, 34 (1968), 32–50. Works that emphasize the prominence of free soil, free labor, antislavery, and anti-black ideology in California and the Far West include Berwanger, *The Frontier Against Slavery*, and Tomás Almaguer, *Racial Fault Lines: The Historical Origins of White Supremacy in California* (Berkeley, 1994), esp. 32–37.

6. The most important works that interrogate the relationship between free labor and bound labor in the West are Howard Lamar, "From Bondage to Contract: Ethnic Labor in the American West, 1600–1890," in Steven Hahn and Jonathan Prude, eds., *The Countryside in the Age of Capitalist Transformation: Essays in the Social History of Rural America* (Chapel Hill, N.C., 1985), 293–324, and Gunther Peck, *Reinventing Free Labor: Padrones and Immigrant Workers in the North American West, 1880–1930* (Cambridge, Mass., 2000). Scholars of the Spanish and Mexican borderlands have paid particular attention to the role of slavery in the development of Native and European communities in colonial North America. See, for instance, James Brooks, *Captives and Cousins: Slavery, Kinship, and Community in the Southwest Borderlands* (Chapel Hill, N.C., 2002); Juliana Barr, *Peace Came in the Form of a Woman: Indians and Spaniards in the Texas Borderlands* (Chapel Hill, N.C., 2007); and Ned Blackhawk, *Violence Over the Land: Indians and Empires in the Early American West* (Cambridge, Mass., 2006).

7. Lapp, *Blacks in Gold Rush California*; Richards, *The California Gold Rush*. On systems of American Indian servitude in California, see Michael F. Magliari, "Free Soil, Unfree Labor: Cave Johnson Couts and the Binding of Indian Workers in California, 1850–1867," *Pacific Historical Review*, 73 (2004), 349–389; Richard Steven Street, *Beasts of the Field: A Narrative History of California Farmworkers, 1769–1913* (Stanford, Calif., 2004), 39–59, 89–134; and Albert L. Hurtado, *Indian Survival on the California Frontier* (New Haven, Conn., 1988), 130–131. On contractual labor systems involving Latin American and Chinese migrants, consult Johnson, *Roaring Camp*, 63–67; Sucheng Chan, *This Bittersweet Soil: The Chinese in California Agriculture, 1850–1910* (Berkeley, 1986), 25–26; and Najia Aarim-Heriot, *Chinese Immigrants, African Americans, and Racial Anxiety in the United States, 1848–1882* (Urbana, Ill., 2003), 30–35. For a study that discusses all of these unfree labor systems and their relationship to each other, see Stacey

western free labor and recentering the familiar North-South narrative of the sectional crisis in the multiracial Far West, these works suggest new insights into antebellum slavery and race relations.

This study of California slaveholders and slaves contributes to the literature on the unfree West and antebellum slavery in significant ways. First, it helps refute the inevitability of a free labor economy in the Far West. Even after statehood, Southerners both inside and outside of California continued to imagine the region as a promising sphere for the extension of slavery. They relentlessly pressed the institution to the Pacific Coast and profitably adapted it to western pursuits such as placer mining long associated with small-scale proprietorship and individualism. Second, it illuminates transformations in master-slave relations that occurred when slavery moved onto free soil. California initially lacked legal structures to enforce slavery. This circumstance gave enslaved people more room for negotiation and forced slaveholders to reinvent the institution in profound ways. Finally, this story complicates our understanding of the role that unfree labor played in western politics. The prominence of proslavery whites in the California legislature and judiciary ensured that slaveholders' visions for the state would remain vibrant in regional political discourse. California's birth as a free state was neither natural nor unproblematic, and free labor, antislavery ideologies never achieved complete hegemony in the antebellum era. Instead, Californians continued to work out vital national questions about the status of slavery in the West long after the Compromise of 1850.

Constructing slavery in California

When word of the California gold discoveries reached Missouri in 1848, Reuben and Elizabeth Knox began to imagine the possibilities that the new territory held for slave labor. The Knoxes, like many residents of the Border South, were accustomed to moving west in pursuit of prosperity. The family had migrated from North Carolina to St. Louis with several slaves in the early 1840s, participating in a decades-long migration that expanded the frontier of slavery westward. In St. Louis, the Knoxes followed the lead of fellow urban slaveholders. They hired out their bondpeople to

L. Smith, "California Bound: Unfree Labor, Race, and the Reconstruction of the Far West, 1848–1870" (Ph.D. dissertation, University of Wisconsin, Madison, 2008).

other city dwellers and collected their wages. By the time of the Gold Rush, the Knoxes' profits from slave hiring started to decline. They began to look west again.⁸

In the spring of 1849 Reuben Knox set out for California with a group of family slaves. These included four men—Bill Hunter, Romeo, Lewis, and George—as well as two adolescents—thirteen-year-old Sarah and nine-year-old Fred. “I propose now to free them,” Knox wrote of his bondpeople, “on the condition that they work for me one year in the gold mines of California.”⁹ Knox hoped that the promise of emancipation would keep the enslaved people loyal on the journey. When the party arrived in Sacramento, Knox found that the familiar practice of urban slave hiring promised higher returns than taking the bondpeople with him to the goldfields. Before leaving for the mines, he hired out each slave to city residents. Bill Hunter and Romeo would bring in \$8 a day working as carpenters, and Lewis would work for \$4 a day as a brickmaker. Sarah would labor as a domestic servant for \$10 per week. After an eight-month absence in the mining country, Knox returned to find that, despite promises of freedom, three of the six enslaved people had run away.¹⁰

The saga of these Missouri migrants, white and black, elucidates how some masters attempted to incorporate California into the world of slaveholding and how, in turn, the world of California remade relationships between masters and slaves. In many ways, slaveholders regarded migrating to California with their

8. Reuben Knox, *A Medic Fortyniner: Life and Letters of Dr. Reuben Knox, 1849–1851*, ed. Charles W. Turner (n.p., 1974), 1–4. On the Knox family's experience with slave hiring in St. Louis, see Elizabeth Washington Grist Knox to Franklin Grist, Dec. 19, 1847, folder 12, box 1, Elizabeth Washington Grist Knox Papers, Mss #4269, Southern Historical Collection, Wilson Library, University of North Carolina at Chapel Hill. Each manuscript collection in the Southern Historical Collection has a separate manuscript number that denotes that entire collection, although documents can also be found by the name of each collection and by folder and box within each one.

9. Reuben Knox to Joseph A. Knox, Jan. 14, 1850, in Knox, *A Medic Fortyniner*, 19. Throughout the text I refer to enslaved people by their first names only, rather than automatically giving them their masters' surnames. I have included slaves' surnames only in cases where the documentary record indicates that they adopted or went by their masters' or former masters' surnames.

10. Reuben Knox to Elizabeth Washington Grist Knox, Sept. 20, 1850, May 1, 1851, in Knox, *A Medic Fortyniner*, 58–59, 69. The enslaved people's ages, occupations, and locations can be found in U.S. Bureau of the Census, Seventh Federal Population Census, 1850, M-432, reel 35, Sacramento City, Sacramento County, Calif., in Records of the Bureau of the Census, Record Group 29 (hereafter RG 29), National Archives, Washington, D.C.

bondpeople as a continuation of familiar practices of slaveholding rather than a radical break from them. Although unprecedented in distance, the journey to California resembled earlier westward migrations that had sustained slaveholding families for decades. Once in California, slaveholders like the Knoxes drew upon time-worn practices such as slave hiring to profit from the Gold Rush. Yet, at the same time, the emancipation agreement between Reuben Knox and his bondpeople, as well as the slaves' ample opportunities for flight, shows that customary relationships of slavery changed with the journey west. California was a vast and anonymous terrain where opportunities for escape abounded, where non-slaveholding and antislavery Northerners were numerous, and where, of course, the institution was illegal. Enslaved people recognized California's subversive potential. They often ran away or pressed for better working conditions and greater personal and economic autonomy. Extracting labor, profits, and obedience from bondpeople required a fundamental renegotiation of master-slave relationships. This process resulted in a version of slavery that was far more flexible and open to contestation than that which slaveholders originally hoped to transport west.

When they traveled to California, slaveholding families like the Knoxes reenacted familiar patterns and practices of migration that had long underpinned the southern slave economy. From the turn of the nineteenth century onward, white Southerners who hoped to profit from the cotton boom moved west in search of arable land. Successive waves of migration brought masters and enslaved people into the Old Southwest and Texas, pressing the boundaries of slavery westward. Many slaveholding families saw migration as an opportunity to ensure economic security for their children. Older family members lent younger people money and slaves to help them journey west and establish farms of their own. For many antebellum white Southerners, then, westward migration was a familiar way of transferring capital to the next generation—in the form of cash, land, or slaves—that would finance future comfort and independence.¹¹

11. On southern westward migration, the expansion of slavery, and the networks of capital and kinship that financed this movement, see Adam Rothman, *Slave Country: American Expansion and the Origins of the Deep South* (Cambridge, Mass., 2005), esp. 165–216; Joan E. Cashin, *A Family Venture: Men and Women on the Southern Frontier* (New York, 1991), esp. 32–77, 84–98; Jonathan D. Martin, *Divided Mastery: Slave Hiring in the*

Short-term journeys to the Pacific Coast often served the same purpose as earlier intraregional southern migrations. A substantial number of California slaveholders were young men without slaves or land of their own. Older slaveholding kinsmen financed their journeys to California and lent them slaves to make mining more profitable. This investment came with the expectation that the young men would return home with enough money to buy their own farms back east. Kentuckian George Murrell traveled to California with Rheubin, one of the twenty-seven bondpeople who belonged to his father. With Rheubin's help, Murrell hoped to earn a "comfortable independence" and "acquire enough in a few years to settle me comfortably in old Ky." George P. Dodson, the son-in-law of wealthy North Carolina slaveholder Robert McElrath, traveled to California with four of his father-in-law's bondpeople. He supervised the slaves in the mines, remitted a portion of their earnings to McElrath, and used the remaining profits to buy a farm when he returned to North Carolina.¹² For men like Murrell and Dodson, the move to California was usually temporary. Most would stay two or three years and return home once they had generated a few thousand dollars. Nonetheless, the journey to California, like earlier migrations, could enable young men to live out a particular vision of white southern manhood that included independent land ownership and mastery over a household and slaves.

Once they arrived in California, slaveholding migrants worked to adapt slavery to the Gold Rush economy. Although advocates of free soil insisted that slavery was incompatible with the individualistic work of California placer mining, many masters made the transition to gold digging with relative ease. Assertions that

American South (Cambridge, Mass., 2004), 34–42; and James Oakes, *The Ruling Race: A History of American Slaveholders* (New York, 1992), 69–95. Susan Lee Johnson found that many slaveholders and slaves who migrated to California had already moved west several times with the expanding cotton frontier. Johnson, *Roaring Camp*, 67–69.

12. Albert S. Broussard, "Slavery in California Revisited: The Fate of a Kentucky Slave in Gold Rush California," *Pacific Historian*, 29 (1985), 17; George M. Murrell to Eliza F. Murrell, June 7, 1850, HM 36356, and George M. Murrell to Samuel Murrell, Sept. 17, 1849, HM 36384, in Correspondence of George McKinley Murrell Collection (hereafter Murrell Correspondence), Henry E. Huntington Library, San Marino, Calif. On Robert McElrath and George P. Dodson, see Thomas Parks to Carlo M. De Ferrari, Sept. 11, 1969, folder 13, Parks to sister, n.d., folder 2, and Dodson to McElrath, March 20, 1853, folder 3, all in subcollection 2, Thomas Parks Collection of Parks and McElrath Family Papers (hereafter Parks Collection), Mss #4464, Southern Historical Collection, Wilson Library, University of North Carolina at Chapel Hill.

slavery would never flourish in California ignored the half-dozen gold rushes that had cropped up across the American South during the early nineteenth century and the long history of slave labor in southern gold mines. Indeed, some California slaveholders had employed slaves in placer mining for decades before traveling west. A substantial number of these migrants hailed from western North Carolina, especially from the Burke County area in the heart of the state's placer mining country. Contemporary accounts suggest that at least 200 slaves from Burke and neighboring McDowell counties traveled to California with their masters.¹³ Slave placer mining in Burke County involved gangs of enslaved men, ranging anywhere from four to thirty people, digging and washing gold under the supervision of masters or overseers. Slaveholders replicated these familiar labor patterns in California's placers. Almost all Burke County masters in California traveled with large parties of young enslaved men; they employed slaves exclusively in mining, pooled slaves with relatives, and spent much of their time supervising gangs of enslaved laborers.¹⁴ For these particular masters and slaves, daily work in California maintained striking continuities with that of the slave South.

13. Major gold discoveries happened in North Carolina, Virginia, Georgia, and South Carolina from the 1790s to the 1840s. On gold mining in the South, see Otis E. Young, Jr., "The Southern Gold Rush: Contributions to California and the West," *Southern California Quarterly*, 62 (1980), 127–141; Robert S. Starobin, *Industrial Slavery in the Old South* (New York, 1970), 23–24, 215–222; and Jeff Forret, "Slave Labor in North Carolina's Antebellum Gold Mines," *North Carolina Historical Review*, 76 (1999), 135–162. Reports on the numbers of Burke County slaves in California appear in Inscocoe, *Mountain Masters*, 73.

14. Forret, "Slave Labor," 143–144; Inscocoe, *Mountain Masters*, 72–73. Burke County cousins Samuel McDowell and Robert Dickson went to California with a party of at least seven enslaved men whom they supervised and worked alongside in the mines during their stay. See the two men's correspondence with North Carolina relatives in folders 7–8, box 1, William G. Dickson Papers (hereafter Dickson Papers), Mss #221, Southern Historical Collection, Wilson Library, University of North Carolina at Chapel Hill, and Malcolm J. Rohrbough, *Days of Gold: The California Gold Rush and the American Nation* (Berkeley, 1997), 211–215. Wealthy Burke County resident Thomas Lenoir Avery and his uncle, Alexander Hamilton Erwin, arrived in California in 1852 with nineteen slaves whom they supervised in small gangs. McElrath sent a group of four enslaved men to California and employed both his son-in-law and a hired overseer to supervise them. On Thomas Lenoir Avery, Erwin, and McElrath, see Inscocoe, *Mountain Masters*, 73, and Carlo M. De Ferrari, ed., "Southern Miners in the Diggings: Gold Rush Letters Written from the Placer Mines of Lower Wood's Creek and Jacksonville," *Chispa: The Quarterly of the Tuolumne County Historical Society*, 9 (1969), 300–304.

Slaveholders from outside of the southern mining districts made a different set of adjustments to gold mining. Most Southerners in California came from the Border or Upper South, especially Missouri, Kentucky, and Tennessee. Masters from these states—of whom there were many in California—were mostly small slaveholders engaged in diversified commercial agriculture. Most traveled to California with only one or two slaves. Replicating labor patterns common on small southern farms, they worked alongside their bondpeople on modest claims.¹⁵ As the wealth of California placers diminished, however, these small slaveholders frequently turned to another practice common on slavery's expanding western frontier: slave hiring. Hiring out, whereby masters temporarily rented slaves to other whites, was integral to slavery's vibrancy in the South. Rural southern planters hired out enslaved people to poorer neighbors during seasonal lulls in the agricultural calendar. Urban slaveholders like the Knoxes, faced with irregular demand for slave labor, hired out slaves to other city dwellers and factory owners. Hiring out enhanced the flexibility and profitability of southern slavery, especially in non-plantation settings, and this made it an appealing practice to California masters.¹⁶

15. See U.S. Census Office, *Seventh Census*, xxxvi–xxxvii, for a breakout of California residents by their state of origin. The state census records, although notoriously incomplete for 1850, indicate that 24,794 Californians came from the slave states, making up roughly 36 percent of the U.S.-born population. Just under half of these, 12,109, hailed from the Border States while another 8,645 originated in the Upper South. By 1860 people born in the slave states had declined to around just 20 percent of the U.S.-born population, and people from the Border and Upper South made up 85 percent of this total. For the 1860 population broken out by state of origin, see U.S. Census Office, *Population of the United States in 1860* (Washington, D.C., 1864), 34. For examples of Border State residents who worked on small claims with their slaves, see Broussard, "Slavery in California Revisited"; William D. Marmaduke to Elmira Marmaduke, March 6, 1850, William D. Marmaduke Letters (hereafter Marmaduke Letters), Mss 1403, filed with uncataloged manuscripts at the North Baker Research Library, California Historical Society, San Francisco; and Thomas B. Eastland to wife, Dec. 31, 1849, folder 2, Thomas B. Eastland Papers (hereafter Eastland Papers), Mss 19 (Vault), in *ibid.* Walter T. Durham documented numerous instances of Tennesseans traveling west with one or two family slaves whom they worked alongside in the mines. There is evidence, however, that some Tennesseans in California pooled enslaved labor by forming joint-stock companies in which members contributed slaves as part of the capital stock. Walter T. Durham, *Volunteer Forty-Niners: Tennesseans and the California Gold Rush* (Nashville, Tenn., 1997), 31, 33–36, 110–111, 184–190.

16. Lapp was the first to note the importance of Gold Rush slave hiring in Lapp, *Blacks in Gold Rush California*, 132–133. See also Martin, *Divided Mastery*, esp. 34–42, 161–187; Keith C. Barton, "'Good Cooks and Washers': Slave Hiring, Domestic Labor,

Hiring out proved remarkably lucrative for some California slaveholders. In enthusiastic letters home, slaveholders reported hiring out enslaved men as laborers to other miners at the spectacular rate of \$65 or \$75 per month. Skilled slave artisans like the Knoxes' bondpeople might be hired for \$200 or \$300 a month. This far exceeded the \$250 or \$300 a year that a hired enslaved man might bring in Missouri during the same period.¹⁷ Many white gold-seeking men constructed domestic labor as "women's work," a situation that created opportunities for slave hiring amid the overwhelmingly male migrant population.¹⁸ Masters who had initially brought enslaved men to California to mine found they could make more money by hiring them out as cooks and servants in hotels, boardinghouses, and restaurants. Kentuckian George Murrell and his slave, Rheubin, subsisted on their paltry mining income for months before Murrell finally started hiring the man out as a hotel and boardinghouse cook at the rate of \$10 per day. "Foolish I was that [I] did not have him hired all the time," Murrell confided to a friend; "I might have been a great deal better off. \$10.00 a day is big wages and but few hands can get it now."¹⁹ Hiring practices originally designed to mitigate the fluctuating labor demands of the southern slave economy could be reworked to capitalize on Gold Rush markets for mining and domestic labor.²⁰

and the Market in Bourbon County, Kentucky," *Journal of American History*, 84 (1997), 436–460; Clement Eaton, "Slave-Hiring in the Upper South: A Step Toward Freedom," *Mississippi Valley Historical Review*, 46 (1960), 663–678; Starobin, *Industrial Slavery*, 128–137; and Richard C. Wade, *Slavery in the Cities: The South, 1820–1860* (New York, 1964), 38–54, 62–75.

17. *Jackson Mississippian*, Oct. 26, 1849, in the Ralph Bieber Collection (hereafter Bieber Collection), Henry E. Huntington Library, San Marino, Calif.; Robert M. Dickson to Margaret Dickson, Dec. 10, 1852, folder 7, box 1, Dickson Papers; Martin, *Divided Mastery*, 42.

18. On the crisis over gender and "women's work" in Gold Rush California, see Johnson, *Roaring Camp*, 99–139.

19. George M. Murrell to Elisabeth R. Murrell, Oct. 15, 1849, HM 36350, and George M. Murrell to John Grider, Aug. 24, 1850, HM 36345, both in Murrell Correspondence.

20. Rheubin was just one of many enslaved men profitably hired out in domestic service. Dow, an enslaved man who traveled to California with his master, Thomas Eastland, labored as a cook in San Francisco for \$150 a month. Bob, an enslaved man belonging to Missouri gold-seeker William Marmaduke, brought in \$5 a day as a cook. Another enslaved man from Georgia, Ephraim, was hired out by his master as a cook in a restaurant. For these cases, see Thomas B. Eastland to wife, Dec. 31, 1849, folder 2, Eastland Papers; William D. Marmaduke to Elmira Marmaduke, March 6, 1850,

Many slaveholders successfully transplanted the labor practices that underpinned slavery in the American South to California soil. At the same time, the Gold Rush disrupted master-slave relations in profound ways and made slaveholders worry that the institution would unravel before their eyes. The vast geographic expanse of California, the isolation and anonymity of the mines, the presence of antislavery Northerners, and the illegality of slavery meant that slaveholders constantly confronted the specters of slave flight, slave rescue, and slave confiscation. Constructing slavery in California required more than transporting familiar labor relations to the West. It necessitated a series of social and cultural adaptations designed to enforce labor discipline, extend surveillance over bondpeople, and evade legal prohibitions on bound labor.

Slaveholders' correspondence brimmed with anxieties that slaves would use California's immense spaces, its rough geography, and its communities of strangers to seize their freedom. Some slaveholders wrote home to their local newspapers to warn would-be gold-seekers about the dangers that masters faced in the mines. One Tennessean pointed out that many areas were so "hidden and retired" that slaves could escape without fear of recapture. A Kentuckian speculated that each slave had so many "facilities and temptations presented to him to run away that he would be worth very little money to his owner."²¹ The presence of antislavery or free soil Northerners, whom slaveholders invariably identified as "abolitionists," made these scenarios seem plausible. Shadowy, anonymous antislavery men seemed to lurk around every corner. One Missourian wrote that Bob, the enslaved man he brought to California, was in danger of being "put estray by some of these mean Yankeys [with] which this country abounds." Murrell, frequently separated from the hired-out Rheubin, worried that "the most fanatical of the abolitionist party" patronized the boardinghouse where the enslaved man worked. They might corrupt him with their "contaminating and poisoning principles."²²

Marmaduke Letters; and Henry Degroot, "Diving for Gold in '49," *Overland Monthly and Out West Magazine*, 13 (1872), 278.

21. *Daily Republican Banner and Nashville Whig*, March 28, 1850, and *Louisville (Ky.) Daily Journal*, May 9, 1849, both in Bieber Collection.

22. William D. Marmaduke to Elmira Marmaduke, March 6, 1850, in Marmaduke Letters; George M. Murrell to Mary Ann Murrell, Nov. 8, 1850, HM 36368, in Murrell Correspondence.

As they moved from tightly knit slaveholding communities to an immense and socially fluid landscape, masters imagined their authority crumbling away.

Gold-seeking slaveholders tried to combat the fluidity, anonymity, and uncertainty of Gold Rush society by reconstructing familiar ties of kinship and community in California. Slaveholders often traveled with and settled alongside family members, neighbors, and friends from their home communities. Most of the Burke County slaveholders who journeyed to California went west with other local slaveholding men related to them by blood or marriage. When Burke County resident Thomas Lenoir Avery embarked for California with twelve enslaved men belonging to his father and brother, he traveled with his wealthy uncle, Alexander Hamilton Erwin, who brought along seven slaves of his own. Isaac T. Avery, a cousin to Thomas Lenoir Avery, brought family slaves to the mines and eventually settled near his Avery and Erwin relatives. George P. Dodson, the son-in-law of distant Avery relative Robert McElrath, joined his father-in-law's kin in California when he traveled there with McElrath's slaves. Finally, cousins Samuel McDowell and Robert Dickson, Burke County residents who were distantly related to the Averys and McElraths, traveled together to California with a large group of family slaves. Once in California, all these Burke County parties settled near each other in the Wood's Creek diggings in Tuolumne County.²³

Chain migrations extended ties of kinship and friendship westward, allowing slaveholders to mitigate California's unfamiliarity and anonymity. Slaveholders who settled in groups of family and neighbors established *de facto* slaveholding communities that insulated master-slave relationships from scrutiny and interference. The Southern Mines where the Burke County migrants settled were so heavily populated by masters, slaves, and white Southerners that sympathy for slaveholding rights ran high. One

23. On the Averys and Erwins, see Edward W. Phifer, "Saga of a Burke County Family," *North Carolina Historical Review*, 39 (1962), 325–326, and Inscoc, *Mountain Masters*, 74. The McDowells were distantly related to the Averys and Erwins through the Erwin line. John Hugh McDowell, *History of the McDowells, Erwins, Irwins and Connections* (Memphis, Tenn., 1918), 203. Robert McElrath was married to Margaret McDowell, a distant relative of Samuel McDowell's father, Charles McDowell. John H. Wheeler, *Reminiscences and Memoirs of North Carolina and Eminent North Carolinians* (Columbus, Ohio, 1884), 85–87. Members of each family mentioned the other families frequently in their letters.

miner living in Mariposa County assured his father that it would be safe to bring a family slave to the area because “no one will put themselves to the trouble of investigating the matter.”²⁴ Some masters also had the numerical strength to defend slaveholding arrangements from hostile neighbors. In 1852, for instance, W. P. Robinson, a man who briefly supervised Robert McElrath’s slaves in Wood’s Creek, complained about a northern merchant who was well-known for being an “abolishness” and “prejudice[d] against . . . every one that has negroes here.” When the merchant challenged slaveholders’ rights to use water, disgruntled North Carolinians, numerous in the neighborhood, ruined his business by boycotting his store.²⁵ Leonard Noyes, a northern-born miner in nearby Calaveras County, lamented that slaveholders and their “southern friends” passed regulations that excluded Northerners from the best mining claims.²⁶ What Noyes perceived as a pernicious southern plot to monopolize resources may have also been an attempt to shield slaveholding communities from antislavery hostility.

Besides providing community defense, ties of kinship and friendship also helped slaveholders maintain discipline and surveillance over enslaved people. Vigilant communities of slaveholders could join together to suppress slave resistance through extralegal violence. Slaveholders formed informal posses that chased down runaways, shot and beat recalcitrant slaves, intimidated abolitionists, and helped masters return their bondpeople to the slave states.²⁷

24. Robert Givens to father, Sept. 10, 1852, Robert R. Givens Letters, Bancroft Library, University of California, Berkeley. Slaveholders and slaves were highly concentrated in the Southern Mines because the region lay closer to the end of the southern overland trails to California. Susan Lee Johnson noted that Mariposa County, the southernmost of the mining counties, “seems to have been a special haven for slaveowning whites.” According to her research, the 1850 Mariposa County census reveals that 4.5 percent of the county’s residents were African American, and there were many large groups of southern-born whites and blacks living together. Johnson, *Roaring Camp*, 189–190.

25. W. P. Robinson to Dodson, May 18, 1852, folder 2, subcollection 2, Parks Collection. This correspondence is also reprinted in De Ferrari, “Southern Miners,” 301–302.

26. Typescript of Leonard Withington Noyes’s Gold Rush reminiscences (hereafter Noyes Reminiscences), p. 46, Leonard W. Noyes Papers, Fam. Mss 677, Phillips Library, Peabody Essex Museum, Salem, Mass.

27. *The Liberator*, Oct. 11, 1850, p. 1, *ibid.*, Nov. 26, 1852, p. 2. Texan Thomas Thorn intimidated local legal officials who attempted to free two of his runaway slaves in Los Angeles and eventually succeeded in driving the white men out of town. *An Illustrated History of Los Angeles County, California* (Chicago, 1889), 358–359. Cornelius

Southerners who settled together also kept watch over the slaves of family, friends, and neighbors and took charge of bondpeople in the event of a master's absence, illness, or death. When Thomas Lenoir Avery and several of the enslaved men in his party died of cholera in 1855, Avery's uncle, Alexander Hamilton Erwin, oversaw the remaining family slaves. Erwin wrote home to the young man's grieving father to reassure him that he would not lose his bondpeople to enticement or desertion. The enslaved men would be "safe from the influence of abolitionists" because Erwin would divide them into small gangs, "an honest one in each," and set them to work on nearby mining claims where he could keep an eye on them. Samuel McDowell returned to Burke County in 1853, leaving behind five slaves. His cousin, Robert Dickson, made frequent visits to the enslaved men's claims and reported their activities to family in North Carolina.²⁸ The transplantation of social networks to the Pacific Coast proved, in short, to be a vital way of enforcing servitude in a place where, initially, no formal laws protected slavery.

Still, maintaining slaveholding communities could be a difficult proposition. As Leonard Noyes's account shows, large, visible groups of slaveholders often incurred the wrath of their non-slaveholding neighbors. Merging free soil and anti-black arguments, white miners often protested that slaveholders employed gangs of degraded enslaved laborers to monopolize gold claims and push out independent proprietors. In a famous incident in the summer of 1849, a large group of well-armed Texans, headed up by Thomas Jefferson Green, arrived on the Yuba River with fifteen enslaved men. The Texans violated local mining regulations by staking claims in the names of their slaves. They then threatened violence against miners who protested the incursion. A convention

Cole, a Sacramento attorney who aided three slaves in their bid to win their freedom, reported that groups of armed southern whites seized the men from their home, secretly transported them to Sacramento, and intimidated their lawyers in open court. See Cornelius Cole, "Andy Habeas Corpus Case," bound essay, vol. 3, folder 2, box 29, Cole Family Papers, Mss #217, Department of Special Collections, Charles E. Young Research Library, University of California, Los Angeles.

28. Isaac T. Avery to William Waightsill Avery, Nov. 26, 1852, folder 8, box 1, George Phifer Erwin Papers, Mss #246, Southern Historical Collection, Wilson Library, University of North Carolina at Chapel Hill; Rohrbough, *Days of Gold*, 211–215; Albert to Anna McDowell, July 13, 1854, folder 4, box 1, Nicholas Washington Woodfin Collection (hereafter Woodfin Collection), Mss #1689, Southern Historical Collection, Wilson Library, University of North Carolina at Chapel Hill.

of angry white miners finally declared “that no slaves or negroes should own claims or even work in the mines” and resolved to eject all violators. The Texans then fled with their bondpeople. Even in Mariposa County, a major slaveholding refuge, simmering anxieties about slaveholder monopoly could boil over into campaigns for expulsion. In 1850 another party of Texans, this one led by Thomas Thorn, arrived in Quartzburg with thirty bondpeople. Local white miners broke up the party by “stampeding” the enslaved people out of the district. Hostility to slavery, which often erupted into violence against enslaved people themselves, could make life in slaveholding communities precarious for masters and slaves alike.²⁹

Unraveling slavery in California

Slaveholders strove to replicate familiar patterns of slavery and reconstitute slaveholding communities in California. They did so not just because economic necessity and free soil opposition demanded it, but also because enslaved people resisted masters' authority and pressed for greater freedoms. Masters' uneasiness about abolitionists and fugitive slaves reflected a growing reality: Enslaved people behaved differently in California than they had done back home. Slaves often recognized that conditions in the goldfields disrupted familiar power relations and presented new opportunities for flight, negotiation, and economic reward. A few used the chaos, anonymity, and new economic opportunities in the mines to emancipate themselves. Many others, caught between the desire for freedom and the reality that their masters remained their only connection with loved ones thousands of miles away, re-fashioned master-slave relationships in smaller ways. Playing upon slaveholder anxieties, they renegotiated the conditions of their labor, pressed masters to honor their ties with distant family members, and insisted that they receive a share of California's wealth. This process of resistance and negotiation rarely ended in full freedom, but it enabled enslaved people to create, at least temporarily, new kinds of lives for themselves within slavery.

29. Edwin Allen Sherman, “Sherman was There: The Recollections of Major Edwin A. Sherman, Part 2,” *California Historical Society Quarterly*, 23 (1944), 350–356; *An Illustrated History of Los Angeles County*, 358–359; Richards, *The California Gold Rush*, 57–59, 67–68; Lapp, *Blacks in Gold Rush California*, 75–76.

Seizing freedom by running away was among the most powerful ways that enslaved people resisted their bondage. Like slaveholders, slaves saw almost immediately that opportunities to escape abounded in Gold Rush California. Contemporary accounts indicate that dozens of enslaved people secured their freedom by fleeing into California's mines and cities.³⁰ Running away, however, was rarely an obvious, easy, or even desirable option. Like enslaved people living in the U.S. South, California slaves who considered running away faced impossible choices between liberating themselves and maintaining ties with loved ones. All slaves who fled long distances faced permanent separation from their families, and those who took their freedom in California confronted a special set of hardships. With their families thousands of miles away in the slave states, few could realistically entertain hopes of reuniting with or purchasing the freedom of relatives. Slavery may have been illegal in California and the mines may have presented countless prospects for flight, but running away had high costs for enslaved people.³¹

For this reason, escape in California often served purposes other than achieving permanent freedom. Running away, or threatening to run away, could be a short-term strategy to compel masters to grant concessions such as better treatment and working conditions.³² Slaves stranded in California by the death or departure of their masters used this strategy most successfully. Burton,

30. On runaways in the Gold Rush, see Lapp, *Blacks in Gold Rush California*, 134–138; journal entry, Aug. 11, 1849, in David Cosad, “Journal of a Trip to California By the Overland Route and Life in the Gold Diggings During 1849–1850,” Mss 453, North Baker Research Library, California Historical Society, San Francisco; and Horace Snow to Charles Fitz, Aug. 9, 1854, in Horace Snow, “Dear Charlie” Letters: Recording the Everyday Life of a Young 1854 Gold Miner As Set Forth by Your Friend, Horace Snow (Fresno, Calif., 1979), 39–41.

31. Running away, of course, presented similar dilemmas for enslaved people in the antebellum South. On the complexity of fugitivism in southern slave communities, see John Hope Franklin and Loren Schweninger, *Runaway Slaves: Rebels on the Plantation* (New York, 1999), esp. 17–74; Michael D. Naragon, “Communities in Motion: Drapetomania, Work and the Development of African-American Slave Cultures,” *Slavery and Abolition*, 15 (1994), 63–87; and Stephanie M. H. Camp, “‘I Could Not Stay There’: Enslaved Women, Truancy and the Geography of Everyday Forms of Resistance in the Antebellum Plantation South,” in *ibid.*, 23 (2002), 1–20.

32. Short-term flight or truancy aimed at challenging masters' authority and negotiating more tolerable treatment and working conditions was the most common type of running away in the antebellum South. On temporary escape, see Franklin and Schweninger, *Runaway Slaves*, 98–109; Naragon, “Communities in Motion,” 70–72;

one of five slaves whom Samuel McDowell left behind in California, used the threat of flight to make his master acknowledge his ties to family back home. In 1855 Burton wrote to his master, Charles McDowell (Samuel's father), to dispute rumors that he planned to run away permanently. At the same time, he decried the lack of correspondence from home and insinuated that the McDowells needed to provide him with communications from his family if they wanted him to return to North Carolina. An enslaved man named Andrew Jackson ran away to negotiate self-purchase. His master had died in California, and a Memphis newspaper reported that the African American man had escaped into the mines. Jackson did not intend to run away permanently. He wrote to his master's widow and conditionally offered to purchase his freedom. "I would like to know the least money you will take for me and if your price is a reasonable one I will come home and pay for myself as I had rather live in that country than this," he explained. The widow, who probably feared losing Jackson altogether, agreed to free him in exchange for \$1,500.³³

Running away was only one of the ways that enslaved people undermined slaveholders' tenuous authority in the mines. Slaves also renegotiated the terms and conditions of their labor by refusing to work. An enslaved man named Scipio may have used his master's concerns about his faithfulness to fashion a more desirable working life in the mines. Scipio's master wrote home that the man seemed loyal and hardworking, yet, when he tried to hire Scipio out to a stranger, the enslaved man protested the arrangement. Scipio declared that he could make more money for himself by remaining with his master and argued that separation might endanger his chances of returning home. The slaveholder capitulated. In Sacramento, an anonymous enslaved man reshaped the terms of his labor by refusing to work for his hirers. Thomas Eads, the man's master, filed suit in 1849 against two local merchants who hired the slave's services but failed to pay for them. The merchants argued that they owed Eads nothing because the "Negro refused to render

Peter Kolchin, *American Slavery, 1619–1877* (New York, 1993), 158–159; and Camp, "I Could Not Stay There."

33. Burton to Charles McDowell, Jan. 6, 1855, folder 8, box 1, Dickson Papers; Andrew Jackson to Sarah Trigg, Oct. 19, 1851, folder 32, box 1, Slave Documents Collection, Wyles Mss 75, Department of Special Collections, Donald C. Davidson Library, University of California, Santa Barbara; Durham, *Volunteer Forty-Niners*, 186.

service as stipulated in the contract . . . and did not at any time comply with any part of said agreement but on the contrary wholly refused to do so.”³⁴ The outcome in court is unknown, but Eads eventually reclaimed the enslaved man from his hirers. Refusal to work, whether to escape distasteful hirers or to protest hiring altogether, could mold master-slave relationships into a new shape.

Nevertheless, for most slaves, running away or refusing to work were far less common strategies than economic negotiation. One of the most important ways that enslaved people reshaped their servitude was to demand a share of California’s riches. Slaves who dug gold out of riverbeds or worked for wages in hotels saw, in a very direct way, the wealth that their labor produced. They pushed masters for time and opportunities to earn money for themselves. This pressure resulted in an innovation called the “Sunday claim” that drew inspiration from older patterns of bondage. Across the South, many masters granted enslaved people small pieces of land where they cultivated gardens during their time off on evenings and Sundays. Slaves sold this produce for cash or used it to supplement meager plantation provisions. Many slaves viewed access to garden plots as one of the central rights their masters owed them.³⁵ In the mines, the Sunday claim served the same purpose as the garden plot. Slaveholders permitted slaves to stake their own mining claims and to keep the gold they dug on Sundays and during the evenings. Leonard Noyes lived beside a large party of slaveholders in Calaveras County and observed that “the Negroes worked all the week for their masters and on Sundays they had claims wher[e] they worked for themselves.” Similarly, McElrath, the Burke County slaveholder, promised his four slaves that they could work their own claims on the weekends and keep their earnings. Working under this system, each man returned to North Carolina with several hundred dollars in gold.³⁶

34. *Charleston [S.C.] Courier*, Feb. 23, 1850, in Bieber Collection; *Eads v. Miller*, Dec. 18, 1849, Case #330, Court of First Instance, Sacramento County, file 22: 02, box 2, Sacramento Archives and Museum Collection Center, Sacramento.

35. On slave property ownership in the antebellum South, the importance of garden plots, and work that slaves performed during their own time, see Dylan C. Penningroth, *The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South* (Chapel Hill, N.C., 2003), 45–78, esp. 46–52.

36. Noyes Reminiscences, 44; De Ferrari, “Southern Miners,” 300; “Amount of Boys Gold,” an undated account sheet with the amount of money each slave earned in California, folder 22, subcollection 2, Parks Collection. Other accounts of Sunday

While slaveholders viewed Sunday claims and access to cash as privileges, many slaves regarded these things as fundamental entitlements. Enslaved people defended rights to their own time, the fruits of their weekend labor, and the ability to spend their California earnings as they saw fit. A perturbed Isaac T. Avery complained that his slaves demanded to have the entire weekend off for leisure and to work for themselves. The incident led him to despair that “Negroes in California are not the same that they are at home by a long gap.” Albert, stranded in California by the departure of his master’s son, subtly asserted his right to a portion of his time and his California earnings. He sent his master, Charles McDowell, \$400 in gold, but he informed the latter that he had reserved another \$200 for himself.³⁷ Once they had established their entitlement to California gold, enslaved people also asserted the right to use their money in accordance with their own goals and values. A few fortunate men and women used their earnings to buy their freedom from their masters or to purchase their family members.³⁸ Many more chose to redistribute California funds to enslaved family members in the South. Albert sent his \$200 of gold dust to his wife in North Carolina. The four enslaved men belonging to McElrath instructed their master to mint their gold and distribute it to their loved ones.³⁹ Claiming California gold and the ability to control how it would be spent, enslaved people financed new lives for themselves and their families both inside and outside of slavery.

Through running away, refusing to work, and insisting on a share of the Gold Rush’s wealth, enslaved people remade the contours of slavery in California. Slaves’ actions shifted familiar dynamics of power and undermined slaveholders’ efforts to reproduce customary master-slave relationships in the mines. Accustomed to

claims appear in Johnson, *Roaring Camp*, 190; Inscoc, *Mountain Masters*, 96; and Lapp, *Blacks in Gold Rush California*, 72.

37. Isaac Theodore Avery to James Avery, Feb. 20, 1853, quoted in Inscoc, *Mountain Masters*, 74; Albert to Charles McDowell, May 15, 1855, folder 4, box 1, Woodfin Collection.

38. Accounts of California enslaved people’s self-purchase and the purchase of family members appear in Beasley, *The Negro Trail Blazers*, 69–71, 117; Lapp, *Blacks in Gold Rush California*, 71–74; Johnson, *Roaring Camp*, 190; and Durham, *Volunteer Forty-Niners*, 185–186.

39. Albert to Charles McDowell, May 15, 1855, folder 4, box 1, Woodfin Collection; W. P. Robinson to unidentified correspondent, Sept. 20, 1852, folder 2, subcollection 2, Parks Collection, also reprinted in De Ferrari, “Southern Miners,” 303.

commanding slaves, masters now found that they had to negotiate with them. Isaac T. Avery's lament that "Negroes in California are not the same that they are at home by a long gap" captured an important truth: The journey west transformed the conditions of servitude, creating a regional variation of slavery in which power relations between slaveholders and the enslaved were remarkably fluid, ambiguous, and susceptible to give and take.

The consolidation of slaveholder power: Slavery in California law and politics

The unpredictable, flexible nature of California slavery waned as the Gold Rush wore on. Slaveholders, distressed by the erosion of their authority in the mines, sought new ways to suppress slave resistance. They found their remedy in law and politics. Masters looked to California's courts to bind African Americans into semi-contractual servitude and to reclaim runaway slaves. They succeeded, in part, because state legislators and jurists proved sympathetic to the cause of sustaining slaveholder rights in the West. In the first years of statehood, lawmakers considered bills that would force African Americans to fulfill contractual bargains with their masters and that would pledge state aid to masters who sought to return their bondpeople to the slave states. The culmination of these efforts, the California Fugitive Slave Act of 1852, severely constricted the scope of the antislavery constitution and committed the state government to protecting slave property.⁴⁰ Recasting free state law to render chattel bondage quasi-legal, the new fugitive act eliminated much of the negotiation that characterized early Gold Rush slavery.

This successful transformation of free state law to accommodate slaveholding rights seems remarkable at first. Slaveholders who brought bondpeople to California were always a tiny minority, numbering no more than a few hundred individuals at any one time. California masters may have been disproportionately powerful in early state politics—at least five served as state or national legislators—but they were still a minute group.⁴¹ Slaveholders gained

40. *Act of April 15, 1852*, ch. 33, pp. 67–69.

41. For numbers of southern-born people in California, see note 15 above. I have identified at least four state legislators who brought slaves to California: Assemblyman Madison Walthall of San Joaquin County, Assemblyman John H. Watson of San Francisco,

support for their rights not because they were a large constituency but because the state government was filled with transplanted southern-born Democrats interested in promoting slavery's westward expansion. Known as Chivalry Democrats, many of these men were slaveholders in their home states. The Chivalry faction embraced an aggressive proslavery politics that often put it at odds with the northern, free soil branch of California's Democratic Party led by New Yorker David C. Broderick. In the early 1850s proslavery Democrats spearheaded campaigns to split off Southern California and turn it into a new slave state. Chivalry leaders also staunchly supported national legislation such as the Kansas-Nebraska Act and the Lecompton Constitution aimed at forwarding slaveholding rights in the West. For some of these Chivalry Democrats, defending the state's small slaveholding population came from a genuine desire to institute slavery in California. Most, however, probably championed the cause of California slaveholders to assert Southerners' unrestricted rights to carry slave property into the western territories.⁴²

While policies toward slavery in California eventually intersected with the most divisive national political questions of the day, the legal transformation of the institution first began on a small scale with individual masters. Slaveholders hoped that one way to keep their slaves without directly violating the state constitution was to bind them under contracts that resembled those between free laborers and their employers. Under these arrangements, enslaved people ostensibly agreed to work for a period of months or years in the mines or to make a sum of money equivalent to their purchase prices. Masters, in turn, promised to emancipate slaves once they served their terms or earned the cash. The specifics of these contracts varied. In Stockton, an enslaved man named Nathaniel signed a contract agreeing to "well and truly serve" his hirer for

Senator James Estell of Solano County, and Senator Thomas Jefferson Green of Sacramento. David S. Terry of the California Supreme Court and William M. Gwin, U.S. Senator from California, also traveled to the state with their bondpeople.

42. David Alan Johnson, *Founding the Far West: California, Oregon, and Nevada, 1840–1890* (Berkeley, 1992), 245–250; Richards, *The California Gold Rush*, 4–7, 174–175, 180–188; Gerald Stanley, "Slavery and the Origins of the Republican Party in California," *Southern California Quarterly*, 60 (1978), 1–16; David A. Williams, *David C. Broderick: A Political Portrait* (San Marino, Calif., 1969), esp. 32–40, 50–53, 68–102, 148–170. Discussions of plans for state division appear in Richards, *The California Gold Rush*, 129–131, and Williams, *David C. Broderick*, 35–37.

nine months in exchange for his freedom. Peter Green promised to labor for one year or to earn his master \$1,000 before getting his free papers.⁴³ Despite individual differences, these contracts served similar purposes. They gave enslaved people who had many opportunities to run an incentive to continue laboring for their masters. Slaveholders could also continue to profit from their bondpeople's labor without directly violating state law. If eventually forced to comply with the constitution, they could free their slaves without losing their full market value. Contracts mitigated the threat of flight and confiscation that had long vexed California masters.

Contracting with slaves also served a more complicated and insidious purpose. Many slaveholders brazenly appeared before county and city authorities to request that their contracts be documented in official record books.⁴⁴ That slaveholders—who, presumably, would have been reluctant to call attention to their relationships with their bondpeople—were so eager to put these agreements into writing suggests a deeper motive. When slaveholders transformed slaves into workers laboring under contractual arrangements and then officially recorded those transactions, they may have sought to put the power of the state behind enforcing them. That is, they not only hoped that state authorities would fail to identify their relationships with slaves as slavery, but they also expected that officials would intervene in master-slave relationships to uphold contracts and to punish slaves who broke them. Slaveholders, in short, hoped that they had devised a way to commit a free state to enforcing slavery and disciplining slaves.⁴⁵

43. Indenture contract, William H. Fairchild, William Hubbard, and Nathaniel, March 20, 1850, Indenture and Emancipation Papers, San Joaquin County (hereafter San Joaquin Indenture and Emancipation Papers), Mss 2.138, Holt-Atherton Special Collections, University of the Pacific, Stockton, Calif.; contract for emancipation, Thomas Thorne to Peter Green, Feb. 5, 1853, reprinted in Beasley, *The Negro Trail Blazers*, 84.

44. Most of the contracts that Delilah Beasley collected and transcribed in her study of early black Californians were filed before local justices of the peace and entered into county record books. Beasley, *The Negro Trail Blazers*, 84–85. Additional examples of this trend include a contract between W. J. Kyle and a slave named Andrew, Oct. 14, 1852, recorded before Judge Lorenzo Sawyer in San Joaquin County and located in San Joaquin Indenture and Emancipation Papers. Another between James Holman and an enslaved woman named Clanpa, filed with the Los Angeles County District Court, is reprinted in *An Illustrated History of Los Angeles County*, 360.

45. These methods of binding enslaved people had precedents in earlier western contexts. In the Old Northwest, where slavery was prohibited by federal law, slaveholding interests in Indiana Territory and Illinois passed legislation that permitted enslaved people to be held under indentures. On this practice, see Paul Finkelman,

On the surface, slaveholders' hopes that California courts would recognize contracts with slaves as enforceable and binding seem unrealistic. U.S. courts generally rejected the idea that slaves had the power to enter into contracts except in certain rare cases of manumission.⁴⁶ Yet at least one case of a broken slave contract, *People of California v. Richard and Lucy*, suggests that some California legal officials forced bondpeople to abide by these agreements. Richard, aged twenty-one, and Lucy, aged fourteen, had migrated from Missouri to California in 1849 with their master, James Brown. Brown had the young people sign contracts in which they agreed either to work for him for three years or earn \$1,800 in exchange for their emancipation. Two years into the contract, Richard and Lucy fled to San Francisco. They made their escape with their clothing and a few personal items, all of which Brown claimed as his own property when he filed a criminal complaint for theft. Police brought the enslaved people back to Brown's house where they remained chained up in a back bedroom. At their hearing, held in the parlor of Brown's home, a Sacramento County justice of the peace dismissed the theft charges against the bondpeople, on the condition that they remain with their master and fulfill their contracts. As a punitive measure, he extended their terms so that they would have to serve Brown another eighteen months or pay him an additional \$1,500 before receiving their freedom.⁴⁷

Support for enforcing masters' contracts with slaves extended beyond a handful of local judges. Early proslavery legislators, aware that contracts presented slaveholders with new opportunities

Slavery and the Founders: Race and Liberty in the Age of Jefferson (Armonk, N.Y., 1996), 57–79, and Robert J. Steinfield, *The Invention of Free Labor: The Employment Relation in English and American Law and Culture, 1350–1870* (Chapel Hill, N.C., 1991), 141–144. American slaveholders in Texas evaded Mexico's prohibition on slavery by holding bondpeople under long-term indentures. Randolph B. Campbell, *An Empire for Slavery: The Peculiar Institution in Texas, 1821–1865* (Baton Rouge, La., 1989), 23–25.

46. Finkelman, *Slavery and the Founders*, 69; Thomas D. Morris, *Southern Slavery and the Law, 1619–1860* (Chapel Hill, N.C., 1996), 380–385.

47. Complaint of James Brown, June 9, 1851, in *People v. Richard and Louisa [a.k.a. Lucy]*, and transcript of testimony, June 20, 1851, *People v. Lewis Kethly*, both located in the *People v. Lewis Kethly* case file, folder 12, Sacramento County, Justice Court Criminal Case Files, May 12, 1851–June 1851, Sacramento Archives and Museum Collection Center, Sacramento, Calif. A similar case happened in Napa County in 1860. A judge ruled that a teenaged boy named Nathaniel Rice had freely contracted to serve his master, William Rice, for a period of several years and refused to release the young man to the custody of his father. *San Francisco Bulletin*, Aug. 20, 1860, p. 3.

to circumvent California's free state status, proposed laws to enforce these agreements. During the first legislative session, Sacramento assemblyman John F. Williams introduced "An Act Relative to Free Negroes, Mulattoes, Servants and Slaves." This remarkable measure, previously undiscovered, required African Americans "bound to servise [*sic*] by contract or indenture" to work out their terms faithfully or face fines and imprisonment. Slaveholders, on their part, had to refrain from cruel treatment and provide their bondpeople with adequate food, clothing, and shelter. Beyond that, masters would retain most of the customary rights accorded southern slaveholders. They could beat any slave who was "lazy, disorderly, [or] guilty of misbehavior"; they could compel slaves to work; they could capture runaways.⁴⁸ Williams's bill met with defeat in the assembly, but by a margin of only one vote. At least one California slaveholder and several representatives from the mining districts voted to consider the bill further. For the time being, masters would have to rely on the goodwill of individual judges to uphold slave contracts.⁴⁹

The issue of contract enforcement was intertwined with the most pressing threat to California masters' authority—runaway slaves. It was to fugitive slave law that slaveholders and their allies next turned their attention. Existing statutes and case law were of little help to California slaveholders. The federal Fugitive Slave Act of 1850 did give masters substantial latitude to pursue runaway slaves and to enlist the aid of federal and state authorities in their capture. The federal act, however, applied only to slaves who fled across state

48. California State Assembly, Assembly Bill #34, "A Bill for an Act Relative to Free Negroes, Mulattoes, Servants and Slaves," Jan. 28, 1850, Original Bill File, California State Archives, Sacramento, Calif. The provisions of John F. Williams's bill were similar to measures passed in Indiana Territory and Illinois during the early nineteenth century. In fact, the bill may have been modeled on an 1819 Illinois statute, as both have the same title and similar language. On the Indiana and Illinois statutes, see Finkelman, *Slavery and the Founders*, 67–79, and Steinfeld, *The Invention of Free Labor*, 141–146.

49. *Journal of the Assembly of California, First Session, 1849/1850* (San Jose, Calif., 1850), 729; Cardinal Leonidas Goodwin, *The Establishment of State Government in California, 1846–1850* (New York, 1914), 320–323. One of the assemblymen who voted for the measure was Madison Walthall who, along with his wife Elizabeth Walthall, controlled a family of enslaved people bound under contracts to work in California. Emancipation certificate, Elizabeth Walthall to Edward and Martha, Oct. 30, 1854, San Joaquin Indenture and Emancipation Papers. The representatives from the mining districts who voted for the bill likely did so because it contained a clause prohibiting future free black immigration.

lines into free states, not to those who escaped after their masters transported them to free soil. Free state legal precedents regarding the status of slaves within their boundaries also worked against slaveholder interests. Prior to the 1830s many free states protected the property rights of masters who briefly transited through or visited free soil with their slaves. They did so based on comity, the legal principle that each state should enforce the laws of other states as a matter of mutual courtesy. Masters who took up permanent residence in free states with their slaves, however, could be compelled to forfeit their bondpeople. As hostility toward slavery mounted in the antebellum North, free state courts gradually rejected comity and liberated many slaves who arrived on free soil with their masters. It appeared that this trend might adhere in California as well. In a high-profile 1851 ruling, a San Francisco court freed an enslaved man named Frank because he did not qualify as a fugitive under the federal act and his master could not hold him as a slave on free soil. Proponents of slaveholding rights in California would have to invent a definition of fugitivism that could encompass people who ran away within the boundaries of a free state and who had long lived and labored on free soil at the behest of their masters.⁵⁰

Proslavery legislators worked to redefine slave fugitivism during the 1852 legislative session. A coalition of assemblymen, led by Tennessee-born proslavery Whig Henry A. Crabb, pressed for a state fugitive slave law to supplement the 1850 federal act. They proposed to criminalize enslaved people as fugitives from labor if they refused to return to the slave states with their masters. State officials would help capture these uncooperative slaves, just as if they had been runaways under the federal fugitive act. After proving title before state magistrates, masters could transport their bondpeople back to the South.⁵¹

50. On the federal Fugitive Slave Act, see Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery*, completed and ed. Ward M. McAfee (New York, 2001), 231–252. On the problem of slave transit and comity in free state courts, see Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (Chapel Hill, N.C., 1981), and Finkelman, “The Law of Slavery,” 445–550, as well as Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York, 1978), 50–61. The Frank case is detailed in *San Francisco Alta California*, March 31, 1851, p. 2; *ibid.*, April 1, 1851, p. 2; *ibid.*, April 2, 1851, p. 2.

51. *Journal of the Assembly of California, Third Session, 1852* (San Francisco, 1852), 95; Lapp, *Blacks in Gold Rush California*, 139–140; Richards, *The California Gold Rush*, 127–129. Theodore H. Hittell described Henry A. Crabb as “a violent and aggressive

Supporters of California's fugitive slave bill were likely aware that it conflicted with established case law and California's anti-slavery constitution. To generate support for the measure and to deflect antislavery criticism, they deftly constructed the new law to give slaveholders as much leeway as possible while still seeming to uphold the constitutional ban on slavery. Only those slaveholders who had brought bondpeople before September 9, 1850, the date California entered the Union as a free state, could avail themselves of the law. That way, slaveholders who arrived prior to statehood would not be summarily dispossessed of their property, while those who brought slaves afterward would lose their bondpeople. The act also discouraged slaveholders from staying in the mines indefinitely by giving them only a brief window in which to reclaim slaves. The fugitive law would expire one year after its passage.⁵²

The fugitive bill's seeming moderation—its extension of protection to slaveholders without directly violating the antislavery constitution—appealed to many legislators, and the assembly passed the measure by a large margin.⁵³ A small core of free soil Democrats and Whigs in the senate did try to obstruct the bill by proposing modifications designed to weaken it. Led by David Broderick, these senators pushed (successfully) for a clause prohibiting masters from keeping slaves in the state after reclaiming them and (unsuccessfully) for a measure to guarantee the freedom of slaves who had fulfilled their contracts with their masters. In the end, however, Senator James Estell, a Kentucky-born Democrat who had over a dozen slaves working on his California farm, rallied proslavery support for the measure. He had the numbers. After a vote of fourteen to nine, the California Fugitive Slave Act became law on April 15, 1852.⁵⁴

pro-slavery man" in Hittell, *History of California* (4 vols., San Francisco, 1898), 3: 806. Crabb would later make a name for himself as a proslavery filibuster in Sonora, Mexico, before his execution by Mexican officials in 1857. On Crabb's filibustering career, see Richards, *The California Gold Rush*, 131–132, and Amy S. Greenberg, *Manifest Manhood and the Antebellum American Empire* (New York, 2005), 31.

52. *Act of April 15, 1852*, ch. 33; *San Francisco Alta California*, Feb. 8, 1852, p. 2; *Journal of the California Assembly, 1852*, 139–141.

53. *Journal of the California Assembly, 1852*, 146–147.

54. *Journal of the California Senate, Third Session, 1852* (San Francisco, 1852), 237, 257, 268–270, 274–285; *San Francisco Alta California*, April 9, 1852, p. 2, and *ibid.*, April 10, 1852, p. 2. The 1850 Federal Census for Solano County reveals that James Estell brought fourteen enslaved people from Kentucky and Missouri to work on his farm. The census taker noted that the slaves had "contracted to work in this state and then

Proslavery legislators' efforts to solidify slaveholding rights met with almost immediate challenge. Enslaved Californians, long accustomed to pressing the boundaries of slaveholder power, sought aid from antislavery free black and white allies to contest their deportation as fugitive slaves. These sympathetic advocates managed to bring a test case before the California Supreme Court just a month after the fugitive slave act's passage. In the summer of 1852 the court heard the case of three enslaved men, Robert Perkins, Carter Perkins, and Sandy Jones. The men had arrived in California in 1849 with their Mississippi master who had apparently freed them in 1851 after they had fulfilled an informal agreement to work for their emancipation. Months later, however, their master had them arrested as fugitives under the new state law. The court would evaluate both the men's right to freedom and the constitutionality of the fugitive act.⁵⁵

In one of the most deeply proslavery decisions ever rendered in a free state, the justices declared that the fugitive slave law was constitutional and that the antislavery clause of the California constitution did not free anyone.⁵⁶ The two presiding justices, both southern-born Democrats, noted that the men's master had arrived in California when it was still a federal territory. He could not, under the U.S. Constitution, be suddenly deprived of his slave property when California adopted an antislavery constitution. The justices then pronounced the antislavery clause of the California constitution a mere "declaration of principle." It evinced an aversion to slavery, but it did not have an enforcement section that explicitly freed slaves. It contained no "provision . . . for emancipation" and was therefore "inert and inoperative." Until the state legislature passed statutes that liberated all slaves, California masters had a perfect right to reclaim their bondpeople and were "prevented by no law from the use of their services." Moreover, since

be free after two years." See U.S. Bureau of the Census, Seventh Federal Population Census, 1850, M-432, reel 36, Solano County, in RG 29.

55. For background on the case, see *In Re Perkins*, 2 Cal. 455–457 (1852); Lapp, *Blacks in Gold Rush California*, 142–146; and Ray R. Albin, "The Perkins Case: The Ordeal of Three Slaves in Gold Rush California," *California History*, 67 (1988), 214–224.

56. Chief Justice Hugh C. Murray of Missouri and Justice Alexander Anderson of Tennessee, both with ties to the Democratic Party, were the only justices present at the hearing. On the justices' backgrounds and the politics of the court in this period, see Albin, "The Perkins Case," 224–225, and Oscar T. Shuck, *Bench and Bar in California: History, Anecdotes, Reminiscences* (San Francisco, 1889), 86–87.

most gold-seeking slaveholders planned eventually to return to the slave states, they could reasonably be defined as temporary visitors whose property rights should be protected under the principles of comity. Following these two lines of reasoning, the justices asserted that any slave brought to California at any time remained in bondage. They remanded the three men to their owner.⁵⁷

In his recent study of antebellum California politics, Leonard L. Richards interpreted the California Fugitive Slave Act as “largely symbolic,” an abstract declaration of support for slaveholding rights.⁵⁸ A closer examination suggests, however, that the fugitive act, and the Perkins ruling that sustained it, had far-reaching legal consequences for California’s 2,000 enslaved and free black residents. The act authorized the enslavement or re-enslavement of a wide swath of African American society. Nearly all slaves were vulnerable to the law because most had come with the pre-statehood torrent of gold-seekers in 1849 and early 1850. Enslaved people who arrived after statehood and even African Americans who were free from birth could easily fall victim to fraud and kidnapping under the guise of the law. California statutes barred African Americans from giving evidence against whites in the courts, and the fugitive law prohibited slave testimony, making it difficult to contest accusations of fugitivism. The act’s limited time frame also proved to be eminently flexible and negotiable, leaving African Americans perpetually at risk of deportation. During the next two legislative sessions of 1853 and 1854, Chivalry Democrats prevented the act from expiring by voting to renew it for another year. Consequently, enslaved people could be recaptured and deported until the spring of 1855, five or six years after most had first touched California soil.⁵⁹

57. *In Re Perkins*, 2 Cal. 438–439, 453–467, 459 (1852). Analyses of the decision appear in Finkelman, “The Law of Slavery,” 454–457, and Albin, “The Perkins Case,” 225–226. Fortunately for the enslaved men, they managed to escape from their master’s agents once they reached Panama.

58. Richards, *The California Gold Rush*, 129.

59. My interpretation of the consequences of the California Fugitive Slave Act is strongly influenced by Finkelman, “The Law of Slavery,” esp. 451–453. The California legislature barred black and Indian testimony in criminal cases involving white parties in 1850. It extended this prohibition to civil cases in 1851. On the problems raised by California’s prohibition of black testimony, see Donald Michael Bottoms, Jr., “‘An Aristocracy of Color’: Race and Reconstruction in Post-Gold Rush California” (Ph.D. dissertation, University of California, Los Angeles, 2005), 28–74; Lapp, *Blacks in Gold Rush California*, 192–194; and James A. Fisher, “The Struggle for Negro Testimony in

This expansive new fugitive slave act reshaped the power dynamics of master-slave relationships. When slaves ran away, refused to work, or resisted return to the South, slaveholders could invoke the aid of legal authorities to capture and imprison them. Between 1852 and 1855 California and East Coast newspapers reported the stories of dozens of slaves who found themselves dragged before state courts and remanded to their self-professed owners. When one enslaved woman married a free black man in late 1852, for instance, her master forced her before a San Francisco court. Once the slaveholder rendered “satisfactory proof of title” to her, the judge approved her deportation to Missouri. The same year, an Alabama man who worked in his master’s Sacramento hotel escaped and found shelter in the free black community before suffering arrest and imprisonment. The man narrowly escaped deportation when a group of white residents purchased his freedom.⁶⁰

If the fugitive act made the lives of runaways far more precarious, it practically rescinded the freedom of many slaves who had earned their emancipation by fulfilling contracts with their masters. African Americans’ inability to testify in the courts made it easy for masters to renege on contractual obligations. The abolitionist *Liberator* reported the tragic story of Louisa, an enslaved woman who had labored in her mistress’s San Francisco hotel for two years in exchange for her freedom. Armed men seized the woman and secured her return to slavery just before she completed her term. In Tuolumne County, Stephen Spencer Hill, a former slave who had bought his freedom from his master and lived for more than a year as a free man, suddenly found himself arrested as a fugitive. Hill managed to escape from his former master, but he lost his prosperous farm.⁶¹ Contracts protected masters’ rights to enslaved peoples’ labor when slavery was illegal in California, but they did little to sustain slaves’ rights to freedom once the anti-slavery clause of the constitution had been overridden.

California, 1851–1863,” *Southern California Quarterly*, 51 (1969), 313–324. For some examples of fraud and kidnapping, see Lapp, *Blacks in Gold Rush California*, 147. For the amendments renewing the fugitive act, see *Act of April 15, 1853*, ch. 67, in *California Statutes*, at 94; and *Act of April 13, 1854*, ch. 22, in *ibid.*, at 30.

60. *The Liberator*, Nov. 26, 1852, p. 2; Caleb T. Fay, “Statement of Historical Facts on California by Caleb T. Fay for [the] Bancroft Library,” 1878, pp. 18–21, Banc Mss C-D 78, Bancroft Library, University of California, Berkeley.

61. *The Liberator*, Nov. 26, 1852, p. 2; Johnson, *Roaring Camp*, 67–68, 191; John Jolly, *Gold Spring Diary: The Journal of John Jolly, and Including a Brief History of Stephen Spencer Hill, Fugitive from Labor*, ed. Carlo M. De Ferrari (Sonoma, Calif., 1966), 125–139.

Ex Parte Archy and the decline of slaveholder power

In the spring of 1855 the California Fugitive Slave Act was set to expire unless the legislature chose to extend it again. By that time, the changing demographics of California slaveholding and the shifting terrain of state politics prevented renewal. Declining Gold Rush prospects seem to have dampened slaveholder enthusiasm for California migration and prompted many to return home. Masters and slaves gradually disappeared from California newspaper accounts and court records by the late 1850s. At the same time, new obstacles to proslavery legislation emerged. During the 1854 state elections, disagreements over the federal Kansas-Nebraska Act fractured California Democrats along sectional lines. Chivalry and northern free soil candidates ran on separate tickets with separate platforms. Chivalry Democrats ultimately routed Free Soilers at the polls, but the split allowed California's branch of the nascent Know Nothing Party to make headway in state politics. A nativist party that attracted both disaffected Democrats and Whigs, the Know Nothings unified around opposition to "foreign" influences and tried to mute sectional divisions by studiously avoiding the issue of slavery in the territories. Know Nothings' determination to sidestep the slavery question probably prevented the party's sympathizers from supporting renewal.⁶²

More importantly, the Know Nothings' sudden ascent to power and their challenge to Democratic dominance may have discouraged Chivalry Democrats from pressing for the act's extension. To combat the Know Nothing threat, free soil and Chivalry Democrats worked toward reconciliation in early 1855; demanding renewal would have endangered this tentative rapprochement. Indeed, San Francisco's *Alta California* reported that even the most "chivalrous of the chivalry" Democrats dared not pressure their free soil colleagues on the issue of fugitive slaves because "anti-Nebraska leaven" had already given rise to so much tension between the two factions. The 1855 session ended without a single effort to renew the law. Chivalry Democrats continued to assert the sanctity of

62. On the population decline of Southerners in California by 1860, see note 15 above. Williams, *David C. Broderick*, 89–102, 107–109; Peyton Hurt, "The Rise and Fall of the 'Know Nothings' in California," *California Historical Society Quarterly*, 9 (1930), 24–36, 41–42; Richards, *The California Gold Rush*, 176–178, 187–188. Lapp credits the rising Know Nothings with the death of the fugitive slave act in *Blacks in Gold Rush California*, 147.

slaveholding rights in California in the years following the act's expiration. Nonetheless, these ongoing sectional rivalries within the state Democratic Party, the emergence of the free soil Republican Party of California in 1856, and persistent legal challenges from antislavery black and white activists hindered the revival of proslavery legislation for the rest of the decade.⁶³

Nowhere were these political and legal changes more evident than in California's last major fugitive slave case, *Ex Parte Archy*. In January 1858, nearly three years after the expiration of the fugitive slave act, a Mississippi slaveholder named Charles Stovall procured the arrest of an eighteen-year-old enslaved man named Archy Lee. The two men had arrived in Sacramento in 1857, and Stovall followed the lead of earlier California slaveholders by hiring Lee out as a laborer. When Lee fled and found refuge in the free black community, his liberty initially seemed secure. Stovall had brought Lee long after both statehood and the expiration of the fugitive act; Lee had escaped only after his master had transported him to free soil; and Stovall's participation in slave hiring suggested that he was no mere sojourner briefly transiting through California with his slave property. When Stovall brought Lee before Judge Robert Robinson of the Sacramento County Court and U.S. Commissioner George Pen Johnson—a federal official charged with enforcing the Fugitive Slave Act of 1850—both men ruled against the master's interests.⁶⁴

As the case moved up to the highest levels of the state judiciary, however, Lee's status as a free man fell into jeopardy. Stovall's attorney managed to get a hearing before the California Supreme Court. Two of the three judges, Justice Peter Burnett and Chief Justice David S. Terry, were "men of Southern birth and education, and were nurtured in the belief that slavery was a divine institution." Terry, a Know Nothing, was also an erstwhile Chivalry Democrat

63. *San Francisco Alta California*, May 7, 1855, p. 2. California Democrats' efforts to reunite in 1855 are outlined in Williams, *David C. Broderick*, 103–106. On the emergence of the Republican Party in California, see *ibid.*, 139–147; Richards, *The California Gold Rush*, 173–176; Gerald Stanley, "Slavery and the Origins of the Republican Party"; and Stanley, "Racism and the Early Republican Party: The 1856 Presidential Election in California," *Pacific Historical Review*, 43 (1974), 171–187.

64. *Ex Parte Archy*, 9 Cal. 147 (1858). For accounts of the Archy Lee case, see Rudolph M. Lapp, *Archy Lee: A California Fugitive Slave Case* (1969; Berkeley, 2008); Finkelman, "The Law of Slavery," 457–464; and William E. Franklin, "The Archy Case: The California Supreme Court Refuses to Free a Slave," *Pacific Historical Review*, 32 (1963), 137–154.

who vigorously supported the westward expansion of slavery.⁶⁵ Favored with this sympathetic audience, Stovall's attorney argued that the U.S. Supreme Court's recent decision in *Dred Scott v. Sandford* protected slavery not only in the federal territories but also in free states where the legislature had not explicitly banned the institution. What was more, Stovall was a short-term visitor who had traveled to California to recover his health. He should not, under the principles of comity, be deprived of his slave property. Oddly, Burnett, the author of the court's decision, rejected both of these arguments. He declared that the absence of an antislavery statute did not hinder state courts from enforcing California's constitution. Stovall's long stay in California and his decision to hire out Archy Lee also suggested that he was not a temporary visitor, but a semi-permanent resident who illegally profited from slave labor.⁶⁶

Even so, Burnett concluded that, although Stovall had very little law on his side, he was still exempt from losing Lee's services. Burnett pointed out that Stovall's case was the first to reach the California Supreme Court after the lapse of the fugitive slave act. It was therefore likely that Stovall was either ignorant of the state's new policy toward slaveholders or that he had assumed, given the previous decision in the Perkins case, that his slave property was safe. Under these conditions, it would be unjust to "rigidly enforce" the state's prohibition on slavery against a hapless and inexperienced young man—he could take Lee back to Mississippi.⁶⁷ In returning Lee to slavery on this shaky legal reasoning, Burnett rendered the kind of proslavery decision that shocked and angered free soil Californians. He acknowledged that Stovall had violated state law and had almost no legal ground to stand on, but he contended that Stovall's right to his slave property outweighed these concerns.

65. A. E. Wagstaff, *Life of David S. Terry: Presenting an Authentic, Impartial, and Vivid History of His Eventful Life and Tragic Death* (San Francisco, 1892), 146; A. Russell Buchanan, *David S. Terry of California: Dueling Judge* (San Marino, Calif., 1956), 93–94; Gerald F. Uelmen, "The Know Nothing Justices on the California Supreme Court," *Western Legal History*, 2 (1989), 98, 103–105. For more on the political views of the supreme court justices, see Lapp, *Archy Lee*, 12–13; Finkelman, "The Law of Slavery," 459; and Franklin, "The Archy Case," 153.

66. *Ex Parte Archy*, 9 Cal. 147–156, 165–171 (1858). In unraveling the complex legal arguments in the case, I rely heavily on the analyses in Franklin, "The Archy Case," 139–142, 147–150, and Finkelman, "The Law of Slavery," 459–463.

67. *Ex Parte Archy*, 9 Cal. 171 (1858); Franklin, "The Archy Case," 150–151; Finkelman, "The Law of Slavery," 461–462.

If Burnett had hoped to strike another blow for proslavery interests, the changed political climate of the late 1850s ensured that *Ex Parte Archy* would be the dying gasp of slaveholding rights in California. The court's contorted reasoning drew outraged responses from across the political spectrum. Free soil interests affiliated with both the Republican and Democratic parties condemned the ruling as a piece of Slave Power sophistry. Even Democrats sympathetic to slaveholding rights worried that the audacious decision would discredit southern interests and further polarize the state along sectional lines. Stockton's *San Joaquin Republican*, long affiliated with the Chivalry Democrats, called the decision "a mockery and a trifling with Justice." Likewise, a proslavery Southerner wrote home that "this way that ultra Southern men have of trying to force this [fugitive slave] law to cover cases for which it was never intended by its framers" only hurt the cause by stirring up abolitionist dissent.⁶⁸

Widespread discontent with the ruling helped guarantee that Archy Lee never saw Mississippi or slavery again. Before Stovall could leave town, Lee's determined advocates obtained another hearing before a San Francisco County Court judge. Stovall struck back by petitioning Commissioner Johnson a second time. Both officials ignored the California Supreme Court's decision. Finally, Johnson declared that Lee did not qualify as a fugitive from labor under federal law and dismissed the case. Lee walked away a free man, protected by a large group of supporters.⁶⁹ Legislative defeat followed this loss in the courts.irate proslavery assemblymen denounced the defiance of the Supreme Court's ruling. They proposed a revived fugitive slave act as well as a measure to punish Lee's free black allies by restricting African American migration and residence in the state. Neither bill passed.⁷⁰

68. For criticisms of the ruling, see *Sacramento Daily Union*, Feb. 16, 1858, p. 2, *ibid.*, Feb. 18, 1858, p. 3; *San Joaquin Republican*, quoted in *Sacramento Daily Union*, Feb. 16, 1858, p. 2; Richards, *The California Gold Rush*, 173; Thomas B. Pate to "Dear Dabney," April 4, 1858, folder 56, box 4, Charles William Dabney Papers, Mss #1412, Southern Historical Collection, Wilson Library, University of North Carolina at Chapel Hill. Additional critical commentary on the opinion can be found in Lapp, *Archy Lee*, 14–16, and Franklin, "The Archy Case," 151–153.

69. Franklin, "The Archy Case," 153; Lapp, *Archy Lee*, 57–62; Finkelman, "The Law of Slavery," 462.

70. *Journal of the Assembly of California, Ninth Session, 1858* (Sacramento, 1858), 84, 108, 489, 500, 523–525. These failed measures included Assembly Bill #26, "An Act Concerning the Recapture of Slaves Escaping from the Service of their Owners and Masters while Traveling through or Sojourning in this State," the text of which is reprinted in *Sacramento Daily Union*, Jan. 19, 1858, p. 1, and Assembly Bill #395, "An Act

Archy Lee's release in 1858 marked a turning point in the history of California slavery. For nearly a decade, slaveholders had attempted to carry southern slavery with them into California. They found, however, that enslaved people readily seized upon the peculiarities of California geography, law, and social relations to recast the conditions under which they labored. Uneasy with the new fluidity of master-slave relations on the Pacific Coast, slaveholders looked to the state legislature and courts for remedy. Sympathetic proslavery judges and legislators, eager to assert southern rights in the Far West, reworked free state law to suppress slave resistance and cement rights to slave property. By 1852 these efforts resulted in a temporary suspension of the antislavery constitution that rigidified master-slave relationships and bolstered slaveholders' control over their bondpeople. Yet, as the resistance to the Archy Lee ruling revealed, the effectiveness of proslavery influence in state politics eroded dramatically at decade's end. For the next five years, the state's newly ascendant free soil Republican Party would labor strenuously to resurrect the antislavery promise of California's constitution. In 1859 Republicans helped defeat a proposal to import African American apprentices into the state. In the wake of the Emancipation Proclamation, they finally repealed the ban on black court testimony that had long made African Americans vulnerable to abuse and re-enslavement. All the while, Republicans remained keenly aware of the fragility of California's free state status. As one Republican advocate of black testimony rights declared in 1862, true freedom from slavery would remain elusive until state legislators broke "the coils of the proslavery, chivalric sentiment which has been thrown around the free state of California."⁷¹ Republicans had learned from a decade of experience that neither the antislavery constitution nor the Compromise of 1850 automatically conferred freedom on the state. Rather, free soil had to be constantly cultivated and shored up in the face of a powerful proslavery vision for California's future.

to Restrict and Prevent the Immigration to and Residence in this State of Negroes and Mulattoes," reprinted in *Sacramento Daily Union*, March 30, 1858, p. 1. On the role that the Archy Lee case played in the assembly's deliberations about these measures, see *Sacramento Daily Union*, March 27, 1858, p. 2, and Lapp, *Archy Lee*, 16.

71. *Sacramento Daily Union*, March 25, 1859, p. 2; Bottoms, "An Aristocracy of Color," 52–62; Charles Maclay, "Speech before the Assembly for a Bill to Permit 'Inferior Races' to Testify in Court," April, 1862, MC 164, Charles Maclay Papers, Henry E. Huntington Library, San Marino, Calif.